

SRI LANKA¹

OVERVIEW OF MUSLIM FAMILY LAWS & PRACTICES

(Updated as at 12 March 2018)

Family Law Matters	Description				
	Legislative Framework	Case Law	Policy	Procedure	Practice
<p>Equality of spouses in marriage</p> <p><i>Is there a Constitutional provision on equality and are there exceptions? Are there specific laws that recognize marriage as a partnership of equals i.e. are family laws and/or other laws relating to marriage and the family codified or uncoded? If codified, what are the titles of all the applicable laws? If codified, do these laws apply to all citizens irrespective of religion? If not, do these laws</i></p>	<p>There is a constitutionally enshrined provision on equality.²³</p> <p>However, Article 16(1) of the Constitution states that: “<i>all written and unwritten law that existed prior to the 1978 Constitution is ‘valid and operative’</i>”. This means that laws such as the Muslim Marriage and Divorce Act (MMDA) which governs marriages of Sri Lankan Muslims are valid even if provisions of the Act violate fundamental rights granted to all</p>		<p>Sri Lanka has not made any specific reservations to CEDAW.⁸</p> <p>In its 2015 report to the CEDAW Committee, the Government of Sri Lanka stated that amendment of personal laws is not warranted by the Convention, and that amendment are justified only where the request</p>		<p>In 2016, Sri Lanka ranked 100 out of 144 countries in the World Economic Forum’s Global Gender Gap Index.¹⁰</p>

¹ This Musawah project to map Muslim Family Laws globally was led by Zainah Anwar and coordinated by Lead Researcher Sharmila Sharma, with substantive support from Salma Waheedi and students at the International Human Rights Clinic, Harvard Law School. For this Sri Lanka country table, we would also like to thank Ermiza Tegal and Hyshyama Hamin from Muslim Personal Law Reforms Action Group (MPLRAG), Sri Lanka and Divya Srinivasan from Harvard Law School, and for their inputs in its preparation.

² Constitution of Sri Lanka, 1978, art. 12. <http://www.parliament.lk/files/pdf/constitution.pdf>. Article 12 states “(1) All persons are equal before the law and are entitled to the equal protection of the law. (2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds.”

³ Constitution of Sri Lanka, 1978, art. 16(1). <http://www.parliament.lk/files/pdf/constitution.pdf>. Article 16 (1) states that “All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter.”

⁸ UN Women, <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>

<p><i>apply to all Muslims or are there different codified laws for different sects within Islam? If uncoded, or if codified laws do not sufficiently address a particular issue, how is the issue addressed e.g. what Muslim school of law is applicable? Do these laws explicitly state gender-stereotypical roles between husbands and wives e.g. the husband is the head of the household or the wife is the primary caregiver?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Article 16(1)(a)</p> <p>General Recommendation 21</p>	<p>citizens.</p> <p>There is no specific Constitutional provision recognizing marriage as a partnership between equals.</p> <p>The codified law on marriage is contained in the general Marriage Registration Ordinance (GMRO) of 1907, which is couched in terms of equality.⁴</p> <p>However Muslims who marry within the faith are specifically and explicitly exempted from the GMRO⁵.</p> <p>The law applicable to Muslims marrying within the faith is the Muslim Marriage and Divorce Act of 1951(MMDA).⁶ Muslims who wish to marry partners of a different faith can only marry under the GMRO and do not have the option of marrying</p>		<p>for change emerges from the particular community in question itself.⁹</p>		
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¹⁰ World Economic Forum, "Global Gender Gap Index 2016", Table 3, pp. 10-11, http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf

⁴ Marriage Registration Ordinance, 1907, [http://www.hrsl.lk/PFF/Llibrary_Domestic_Laws/Legislation_related_to_children/Marriage%20\(general\).pdf](http://www.hrsl.lk/PFF/Llibrary_Domestic_Laws/Legislation_related_to_children/Marriage%20(general).pdf)

⁵ See Full title of the Marriage Registration Ordinance, 1907 - "An Ordinance To Consolidate And Amend The Law Relating To Marriages Other Than The Marriages Of Muslims And To Provide For The Better Registration Thereof".

[http://www.hrsl.lk/PFF/Llibrary_Domestic_Laws/Legislation_related_to_children/Marriage%20\(general\).pdf](http://www.hrsl.lk/PFF/Llibrary_Domestic_Laws/Legislation_related_to_children/Marriage%20(general).pdf)

⁶ Muslim Marriage and Divorce Act, 1951, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

⁹ Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Eighth Periodic Report of Sri Lanka", 29 May 2015, para 16, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f8&Lang=en

	<p>under the MMDA.</p> <p>The Muslim community in Sri Lanka is diverse and includes members of the two main sects; Sunni (majority) and Shi'a. While the MMDA is based on the <i>Shafi'i madhab</i> it provides space for the unwritten law of different sects to apply in certain instances⁷ so what may be permissible for a Hanafi bride may not be permissible for a Shafi'i bride and so forth.</p>				
<p>Minimum and equal age of marriage</p> <p><i>Is there a minimum age of marriage? Are there exceptions to the minimum age (e.g. min. age at 18, with exceptions to 16)? Is there an absolute minimum age without exceptions? Is there equality in the minimum age of marriage? Is there a minimum</i></p>	<p>The GMRO prescribes that the minimum age for marriage for both men and women is 18 years.¹¹</p> <p>However, under the MMDA there is no minimum age of marriage specified for Muslims.¹² The Act only specifically states that for a Muslim child (male or female) under the age of 12 to marry, the Quazi judges' approval is required.¹³</p>				<p>Cases coming to the attention of women's organizations working at the community level, as well as Quazi courts, indicate early marriage is still prevalent.</p> <p>Marriages arranged</p>

⁷ Muslim Marriage and Divorce Act, 1951, s. 16, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

¹¹ Marriage Registration Ordinance, 1907, s. 15, [http://www.hrcsl.lk/PFF/Library_Domestic_Laws/Legislation_related_to_children/Marriage%20\(general\).pdf](http://www.hrcsl.lk/PFF/Library_Domestic_Laws/Legislation_related_to_children/Marriage%20(general).pdf)

¹² Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Combined Fifth, Sixth and Seventh Periodic Reports of Sri Lanka", 24 March 2010, para 10,

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f5-7&Lang=en

¹³ Muslim Marriage and Divorce Act, 1951, s. 23, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

<p><i>age verification process before the marriage is concluded?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Article 16(2)</p> <p>General Recommendation 21</p>	<p>According to the Sri Lankan Penal Code, sexual intercourse with a girl below 16 years of age, with or without her consent, amounts to statutory rape.¹⁴</p> <p>However, this provision does not apply to married girls between ages of 12 and 16, unless the spouses are judicially separated.¹⁵ Since only Muslim girls between the ages of 12-16 are legally allowed to be married, this exception practically applies only in relation to Muslim girls.¹⁶</p>			<p>by guardians are occurring between 14 and 17 years of age, in districts like Puttalam and Batticaloa as gathered through research¹⁷.</p> <p>Records on Muslim marriage registration in Kattankudy indicate that in 2015, 22% of all registered marriages involved a bride below 18 years of age.</p> <p>This is a considerable increase from 2014 when the figure was 14%. According to the</p>
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¹⁴ Sri Lankan Penal Code, 1883, s. 363, <http://www.refworld.org/docid/4c03e2af2.html>

¹⁵ Sri Lankan Penal Code, 1883, s. 363, <http://www.refworld.org/docid/4c03e2af2.html>

¹⁶ Savitri Goonasekere and Harini Amarasuriya, "Emerging Concerns and Case Studies on Child Marriage in Sri Lanka", *UNICEF*, 2013, p. 5, https://www.unicef.org/srilanka/2013_Child_Marriage_Case_Studies.pdf

¹⁷ Hyshyama Hamin and Hasanah Cegu Isadeen, "Unequal Citizens: Muslim Women's Struggle for Justice and Equality in Sri Lanka", October 2016, p.6, <https://mplreforms.com/unequal-citizens-study/>.

					<p>Quazi for Colombo East, there are also many instances of early marriages happening in areas like Mattakkuliya and Maradana. According to interviews by local activists, the Quazi for the minority Muslim community in Colombo also mentioned that girls of the community mostly get married between 15 and 17 years of age, because according to him, “the value of the girl decreases after she is 17.”¹⁸</p>
<p>Consent to marriage / Forced marriage</p> <p><i>Is a marriage valid without the woman’s consent? Is the practice of forcing women to</i></p>	<p>Unlike the GMRO, consent of Sunni brides is not a pre-requisite under the MMDA to enter into a marriage contract and it is the <i>wali</i> (legal guardian – always a male) who has the</p>	<p>In <i>Yaseem v. Noor Naeema</i>, a girl’s father, acting as</p>		<p>Every marriage concluded between Muslims needs to be registered</p>	<p>There are documented cases of forced marriage of girls by <i>walis</i> who abuse their legal authority and compel women and</p>

¹⁸ Hyshyama Hamin and Hasanah Cegu Isadeen, “Unequal Citizens: Muslim Women’s Struggle for Justice and Equality in Sri Lanka”, October 2016, p.6, <https://mplreforms.com/unequal-citizens-study/>.

<p><i>marry against their will (ijbar) prohibited? Is it mandatory to register a marriage? Is there a standard marriage contract? If so, what are its broad provisions and is there anything particular in the contract that ought to be highlighted on the basis that it advances women's rights or otherwise?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(a), 16(1)(b)</p> <p>General Recommendation 21</p>	<p>right to give the bride in marriage.¹⁹</p> <p>From the bride's side, the <i>nikah</i> (marriage) ceremony and registration process only requires the declaration (and signature) of the <i>wali</i> of the bride.²⁰</p> <p>The practice is different for the Dawoodi Bohra community of the Shi'a sect, in which the community has a unique marriage form, which has a provision for the bride to sign as a method of guaranteeing official consent.</p>	<p>her <i>wali</i>, had registered her marriage without her knowledge or consent. The girl petitioned for divorce on the grounds that she had been unaware of the registration and that she did not consent to the marriage. However, the <i>Quazi</i></p>		<p>immediately after the conclusion of the <i>nikah</i> ceremony.²² However, non-registration does not affect the validity of the marriage.²³</p>	<p>girls into marriage, even at a young age.²⁴</p>
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¹⁹ See Muslim Marriage and Divorce Act, 1951, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

²⁰ Muslim Marriage and Divorce Act, 1951, s.19, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

²² Muslim Marriage and Divorce Act, 1951, s.17, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

²³ Muslim Marriage and Divorce Act, 1951, s. 16, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

²⁴ Hyshyama Hamin and Hasanah Cegu Isadeen, "Unequal Citizens: Muslim Women's Struggle for Justice and Equality in Sri Lanka", October 2016, p. 11, <https://mplreforms.com/unequal-citizens-study/>.

		held that the marriage was valid since the father had the right to give his daughter in marriage, without her consent. ²¹			
<p>Women's capacity to enter into marriage</p> <p><i>Is consent of a guardian (wali) required? Can the woman choose her own wali? Can a woman go before a court or other competent authority to seek permission to marry if her wali refuses to consent to her marriage? Can a woman negotiate her marriage rights prior to marriage and can these rights be changed</i></p>	<p>Under the MMDA, majority of adult Muslim women cannot enter a marriage of their own free will and require the permission of a male guardian.</p> <p>Section 19 of the MMDA states that marriage register can only be signed by the <i>wali</i> of the bride, if having a <i>wali</i> is required by the Muslim law governing the sect to which the bride belongs.²⁵</p> <p>Section 47 of the MMDA states that the requirement of the <i>wali</i> can only be dispensed with if the</p>				<p>Ignorance about the ability of Hanafi women to consent to marriage with a wali means that in the majority of cases regardless of whether the bride identifies as Hanafi, Shafi'i or from any other <i>madhab</i>, the <i>wali</i> signs and consents on her behalf²⁷.</p>

²¹ 3 MMDLR 113, as quoted in Eugene Cotran, M.Lau (eds.) *Yearbook of Islamic and Middle Eastern Law*, Vol, 10, 2003-04,p. 138 (Brill Academic Publishers, 2006).

²⁵ Muslim Marriage and Divorce Act, 1951, s.19, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

²⁷ Marsoof, Saleem 2012, *Muslim Matrimonial Law – Some Grey Areas* https://www.academia.edu/9905307/Muslim_Matrimonial_Law_-_Some_Gray_Areas

<p><i>during marriage? If so, who can change these rights and under what circumstances e.g. mutual consent?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(a), 16(1)(b)</p> <p>General Recommendation 21</p>	<p>woman complains that her <i>wali</i> is withholding consent unreasonably or if there is no <i>wali</i>, and the <i>Quazi</i> inquires into such situations and decides to dispense with the need for a <i>wali</i>.²⁶</p> <p>While under the Hanafi <i>madhab</i>, the marriage of an adult (and sane) woman without the approval of her <i>wali</i> is valid if she marries a person who is deemed 'legally suitable' (<i>kuf'u</i>). Therefore technically a Hanafi woman can marry without a <i>wali</i>'s consent as the section 18.1(b) of the MMDA allows for the law of the sect to govern.</p>				
<p>Polygamous marriage</p> <p><i>Does the law or marriage contract prohibit polygamy or impose strict conditions on such practice? Is the permission of the court required for a polygamous marriage? Is the permission of</i></p>	<p>Polygamy is permitted under the MMDA which allows for Muslim man to marry up to four women legally, and any subsequent marriage thereafter is considered "irregular".²⁸</p> <p>There are no conditions or criteria stipulated in the law for a man to marry more than one woman. There is no legal</p>			<p>There is no provision made in the marriage registration form to formally record existing marriages.³⁰</p>	<p>According to activists, the unrestricted 'right' of polygamy means that Muslim men who are unable to maintain plural marriages are still able to enter them, thereby placing</p>

²⁶ Muslim Marriage and Divorce Act, 1951, s.47, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

²⁸ Information obtained from Sri Lankan advocate, February 2017.

³⁰ Muslim Marriage and Divorce Act, 1951, Form IV, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

<p><i>an existing wife required for a polygamous marriage? Are temporary marriages recognised? Is it necessary to register a polygamous marriage?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(a), 5(a)</p> <p>General Recommendation 21</p>	<p>requirement for the man to obtain the permission of the existing wife. In fact, the man is only required to provide a 30 day administrative notice to the <i>Quazis</i> in the area he resides, his existing wife resides, and the intended wife resides.²⁹</p>			<p>The <i>Quazi</i> is required to post the notice at each of the <i>Jumma</i> mosques within his area, and also at a conspicuous place at the address of the existing or intended wives, as provided by the husband.³¹</p> <p>However, in practice, <i>Quazis</i> often do not post this notice, leave the responsibility to the</p>	<p>multiple women and children in vulnerable situations. Many Muslim women who find themselves in polygamous marriages were unaware that they were part of plural marriages and were unable to exercise any agency and autonomy on the matter.</p> <p>For women, attempts at speaking out about the husband's decision to take another wife is likely to result in ill-treatment, domestic violence and mental trauma. In some instances, women are threatened and</p>
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²⁹ Muslim Marriage and Divorce Act, 1951, s. 24, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

³¹ Muslim Marriage and Divorce Act, 1951, s. 24(3), http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

				<p>husband, or in some case, the mosques do not allow the posting of such notices.³²</p> <p>Furthermore , non-declaration of existing marriage at the time of registering another only attracts a fine of Rs 100.00 (USD 0.66).³³</p>	<p>forced to live in plural marriages.</p> <p>Furthermore, family and <i>Quazis</i> often blame women when their husbands take another wife. Thus there are also serious financial consequences, including financial loss, for wives and children in polygamous marriages. Anecdotal evidence suggests that husbands have divorced previous or subsequent wives on the basis of being financially incapable of sustaining plural marriages.³⁴</p>
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³² Hyshyama Hamin and Hasanah Cegu Isadeen, "Unequal Citizens: Muslim Women's Struggle for Justice and Equality in Sri Lanka", October 2016, p. 18, <https://mplreforms.com/unequal-citizens-study/>, p. 18

³³ Muslim Marriage and Divorce Act, 1951, s. 85, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

³⁴ Hyshyama Hamin and Hasanah Cegu Isadeen, "Unequal Citizens: Muslim Women's Struggle for Justice and Equality in Sri Lanka", October 2016, p. 18, <https://mplreforms.com/unequal-citizens-study/>.

<p>Divorce</p> <p><i>Is there equal right to divorce? Can the husband divorce at will and without grounds? What are the main forms of divorce? Can all forms of divorce be sought only through the courts? Are the grounds for divorce the same for the husband and wife? Is unilateral divorce prohibited? If unilateral divorce is not prohibited, what is the procedure e.g. are witnesses required or does the spouse need to go to court? Is the right to divorce delegated to the wife? If so, is it by law or through the marriage contract? Is it mandatory to register a divorce?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Article 16(1)(c)</p>	<p>There is no equal right to divorce under the MMDA. MMDA provides a form of divorce called “<i>talaq</i>” for men, and “<i>fasah</i>” for women. <i>Talaq</i> does not require the husband to have specific grounds or basis for divorce,³⁵ while <i>fasah</i> is fault based in the sense the wife has to prove a form of matrimonial fault or insanity or impotence. <i>Fasah</i> is the only form of divorce for a wife where she does not need the husband’s consent for divorce.³⁶</p> <p>In case of unilateral divorce initiated by the wife, when the required mediation fails, the Quazi is required to appoint three Muslim males to hear and determine the case. At least two witnesses from the wife’s side are required to corroborate her side of the story (unless the husband admits to fault).³⁷</p>			<p>The registration of divorce is mandatory under the provisions of the MMDA.⁴¹ However, lack of registration does not affect the validity of the divorce.⁴²</p> <p>The MMDA specifically prohibits the <i>Quazi</i> from recording the alleged reasons or grounds on which the husband seeks to pronounce <i>talaq</i>.⁴³</p>	<p>Women of the Shi’a sects cannot divorce without the prior consent of their husband, as sect law does not recognise women’s right to divorce.⁴⁴</p> <p>As <i>talaq</i> entails a minimum compensation also being provided, there have been several reported cases of women being subjected to violence compelling them to file for <i>fasah</i> divorce, which as a practice does not result in compensation for the woman.⁴⁵</p>
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³⁵ Muslim Marriage and Divorce Act, 1951, s. 27, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

³⁶ Muslim Marriage and Divorce Act, 1951, s. 28, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

³⁷ Muslim Marriage and Divorce Act, 1951, Third Schedule, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

	<p>Since there is provision under the MMDA for the (unwritten) law of the sect to apply³⁸, if a particular sect does not recognize <i>fasakh</i>, the option is then unavailable for the women of that sect. Two other forms of divorce, “<i>mubarat</i>”³⁹ (on mutual consent), “<i>khula</i>”⁴⁰ (if the wife is no longer happy and makes a compensatory payment, nevertheless with the husband’s consent).</p>				
<p>Women’s financial rights after divorce</p> <p><i>Is there a legal concept of matrimonial assets? Is there equal division of marital property during marriage and at its dissolution? Is the woman’s role as wife and</i></p>	<p>Under Section 47 of the MMDA, the wife can file an application in the <i>Quazi</i> court to obtain maintenance due to her in the event that the husband defaults on his responsibility (i.e. is unable or unwilling) to provide maintenance.⁴⁶ A woman must be separated from her husband on the basis of a “reasonable</p>				<p>A common occurrence that was noted by women’s rights organizations working closely with affected women was that Quazis decide upon maintenance</p>

⁴¹ Muslim Marriage and Divorce Act, 1951, Part III, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

⁴² Muslim Marriage and Divorce Act, 1951, s. 16, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

⁴³ Muslim Marriage and Divorce Act, 1951, Schedule 2, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

⁴⁴ Hyshyama Hamin and Hasanah Cegu Isadeen, “Unequal Citizens: Muslim Women’s Struggle for Justice and Equality in Sri Lanka”, October 2016, p. 15, <https://mplreforms.com/unequal-citizens-study/>.

⁴⁵ Hyshyama Hamin and Hasanah Cegu Isadeen, “Unequal Citizens: Muslim Women’s Struggle for Justice and Equality in Sri Lanka”, October 2016, p. 16, <https://mplreforms.com/unequal-citizens-study/>.

³⁸ Muslim Marriage and Divorce Act, 1951, s. 98, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

³⁹ Muslim Marriage and Divorce Act, 1951, s. 98, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

⁴⁰ Muslim Marriage and Divorce Act, 1951, s. 28(2), http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

⁴⁶ Muslim Marriage and Divorce Act, 1951, s. 47, http://www.commonlii.org/lk/legis/consol_act/mad134294.pdf

<p><i>mother recognised as contribution to acquisition of assets? What spousal maintenance are available to the wife after a divorce? Is she entitled to maintenance during the waiting period after the divorce (iddah)? Is she entitled to a 'gift' upon divorce (muta'a)?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(c), 16(1)(h), 15(2)</p> <p>General Recommendations 21, 29</p>	<p>cause” in order to be entitled to maintenance.⁴⁷</p>			<p>amount arbitrarily. They often times order insufficient amounts of maintenance and are reluctant to increase the amount despite appeal by the wives, and sometimes decrease the amount if the husband disagrees with paying a certain amount.⁴⁸</p> <p>In <i>khula</i> divorces, wives have been ordered to pay back their mahr, iddat and other property in the form of compensation when they seek to obtain <i>khula</i> divorces.⁴⁹</p>
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⁴⁷ Kodikara, Chulani, *Muslim Family Law in Sri Lanka: Theory, Practice and Issues of Concern to Women* (Sri Lanka: Muslim Women’s Research and Action Forum (MWRAF), Sri Lanka, 1999).

⁴⁸ Hyshyama Hamin and Hasanah Cegu Isadeen, “Unequal Citizens: Muslim Women’s Struggle for Justice and Equality in Sri Lanka”, October 2016, p. 20, <https://mpreforms.com/unequal-citizens-study/>.

⁴⁹ Kodikara, Chulani, *Muslim Family Law in Sri Lanka: Theory, Practice and Issues of Concern to Women*(Sri Lanka: Muslim Women’s Research and Action Forum

<p>Custody of Children</p> <p><i>Do parents have equal rights over the custody of their children? If no, who has priority rights over the child? Is custody decided based on the best interest of the child? Do mothers automatically lose custody upon remarriage or if she is deemed disobedient or when the child reaches a designated age when custody goes to father?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(d), 16(1)(f)</p> <p>General Recommendation 21</p>	<p>Custody is governed by the ordinary law and not under Muslim personal law. Under common law, fathers are given preferential right of custody over the child.⁵⁰</p>	<p>Courts have interpreted the custody regulations more broadly, holding that the paramount consideration in custody cases will be the welfare of the minor.⁵¹</p>			<p>Quazi judges have been known to overstep their jurisdiction and make orders relating to custody based on a biased notion of giving preference to the father. Only those litigants who are socially and financially capable and legally literate are able to challenge such orders.⁵²</p>
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(MWRAF), Sri Lanka, 1999).

⁵⁰ Ruwantissa Abeyratne and Anoma Abeyratne, "The Rights of the Child in Sri Lanka", 17 CILSA 348, 351 (1984)

⁵¹ *Fernando v. Fernando* 70 NLR 534

⁵² Information obtained from Sri Lankan Advocate, February 2017.

<p>Guardianship of Children</p> <p><i>Is there equal right to guardianship? If no who has priority rights over the guardianship of the child? Is guardianship decided based on the best interest of the child?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(d), 16(1)(f)</p> <p>General Recommendation 21</p>	<p>The father is considered as the natural guardian of the child under Dutch-Roman common law that applies in Sri Lanka.⁵³</p>				
<p>Family Planning</p> <p><i>Do women require the consent of the husband to practise family planning, including abortions and sterilization in the law, procedure or practice?</i></p>	<p>Abortion is a criminal offense under the Sri Lankan Penal Code, unless the act was done in good faith for the purpose of saving the life of the mother.⁵⁴</p> <p>Whoever performs an act of abortion that is prohibited under the Penal Code is punishable</p>		<p>The Sri Lankan government considers the issue of abortion to be an “unresolved health issue in terms of the woman and her right to determine her fertility.”⁵⁶</p> <p>The Sri Lankan</p>		<p>The abortion rate is estimated to be very high in Sri Lanka, with the Government estimating that around 650 abortions are conducted in Sri Lanka every day.⁵⁹ Further, the lack of</p>

⁵³ Ruwantissa Abeyratne and Anoma Abeyratne, “The Rights of the Child in Sri Lanka”, 17 CILSA 348, 351 (1984)

⁵⁴ Sri Lanka Penal Code, 1883, s. 306, http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf

<p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(e), 12</p> <p>General Recommendation 21</p>	<p>with imprisonment for a term of upto 10 years, or a fine.⁵⁵</p>		<p>Law Commission has proposed a draft Bill for liberalizing the law related to abortion.⁵⁷ However, even the Law Commission's draft Bill only proposes exceptions to the criminalization of abortion in certain specific cases, like rape, where the woman is below 16 years old or when the fetus suffers from serious impairment.⁵⁸</p>	<p>access to safe abortions has resulted in abortions contributing to 12.5% of all maternal deaths in Sri Lanka.⁶⁰</p>
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⁵⁶ Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Combined Third and Fourth Reports of Sri Lanka", 18 October 1999, para 140,

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f3-4&Lang=en

⁵⁹ "Over 650 Abortions on a Daily Basis: Health Ministry Elaborates", *News First*, 9 May 2016, <http://newsfirst.lk/english/2016/05/650-abortion-daily-basis-health-ministry-elaborates/136150>

⁵⁵ Sri Lanka Penal Code, 1883, s. 306, http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf

⁵⁷ Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Combined Fifth, Sixth and Seventh Periodic Reports of Sri Lanka", 24 March 2010, para 85,

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f5-7&Lang=en

⁵⁸ Law Commission of Sri Lanka, "Proposals of the Law Commission to Provide for the Medical Termination of Pregnancy in Cases of Rape and Serious Fetal Impairment", February 2013,

http://lawcom.gov.lk/web/images/stories/reports/medical_termination_of_pregnancy_proposals_of_the_law_commission_of_sri_lanka.pdf

⁶⁰ MS Suranga et. al. , "Perception on Abortion Laws in Sri Lanka: A Community-based study in the city of Colombo", 61 *Ceylon Medical Journal* 171 (2016), <http://cmj.sljol.info/articles/abstract/10.4038/cmj.v61i4.8384/>

<p>Personal rights of spouses</p> <p><i>Does a woman need the consent of her spouse or guardian to work, choose a profession, leave the house, travel, drive, receive various health services, study, etc. on her own behalf? Does a woman have the right to retain her birth name upon marriage or to choose her family name?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Article 16(1)(g)</p> <p>General Recommendation 21</p>	<p>There are no laws regarding such consent or the retention of her birth name.</p>				<p>In practice, to a large extent, Muslim women particularly in rural areas need the consent of their spouses or guardians to work, pursue a profession, travel and pursue higher studies.</p>
<p>Inheritance</p> <p><i>Are men and women in the same degree of relationship to a deceased entitled to equal shares in the estate and to equal rank in the order of succession?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 16(1)(h), 15(2)</p>	<p>The Sri Lankan Wills Ordinance gives right of disposition to every citizen including Muslims, under which a person is at liberty to bequeath the entirety of his/her property to anyone of their choosing.</p> <p>Intestate succession amongst Muslims is governed by the Muslim Intestate Succession Ordinance No. 10 of 1931, which provides that succession will be</p>		<p>A Bill to amend the Land Development Ordinance and provide women with equal rights to inheritance is pending before Parliament.⁶³</p>		<p>A 2006 study found that only 30% of women surveyed owned property.⁶⁴</p>

<p>General Recommendation 21</p>	<p>governed by the Muslim law applicable to each sect.⁶¹ Legitimate sons are entitled to twice the share of legitimate daughters.</p> <p>The civil law related to inheritance - the Land Development Ordinance, 1935, gives preference to male successors when an owner dies intestate.⁶²</p>				
<p>Violence against women in the family</p> <p><i>Are there laws and practices that define what constitute domestic violence such as battery, female circumcision, marital rape and other forms of sexual assault, mental and other forms of violence that</i></p>	<p>The Penal code criminalizes many of the physical acts of violence such as assault, kidnapping, grievous hurt etc.⁶⁵ There is no law that explicitly criminalizes “domestic violence”. Female genital mutilation is not criminalized. Marital rape is also not recognized as a crime, unless the wife is judicially separated from the husband.⁶⁶</p>		<p>The Government of Sri Lanka had reported to the CEDAW Committee that it has been holding sensitization programmes for all stakeholders, setting up an increased number</p>		<p>Despite absence of national level statistics on domestic violence, studies conducted by different organizations place the percentage of women who experience domestic violence</p>

⁶³ Committee on Elimination of Discrimination Against Women, “Consideration of Reports submitted by State Parties under Article 18 of the Convention: Eighth Periodic Report of Sri Lanka”, 29 May 2015, para 21,
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f8&Lang=en

⁶⁴ Indika Bulankulame, “Property Ownership and Inheritance Rights of Women for Social Protection—The South Asia Experience: Synthesis Report of three studies” International Center for Research on Women, 2006, p. 74-6

⁶¹ Muslim Intestate Succession Ordinance No. 10 of 1931, http://www.commonlii.org/lk/legis/consol_act/mis72383.pdf

⁶² Land Development Ordinance, 1935, Third Schedule, <http://extwprlegs1.fao.org/docs/pdf/srl13623.pdf>

⁶⁵ Sri Lankan Penal Code, 1883, <http://www.refworld.org/docid/4c03e2af2.html>

⁶⁶ Sri Lankan Penal Code, 1883, s. 363, <http://www.refworld.org/docid/4c03e2af2.html>

<p><i>affects a women's mental health, which are perpetuated by traditional attitudes? Is there specific legislation that recognises domestic violence as a crime? Are there support services for women who are the victims of aggression or abuses?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Articles 2, 5, 11, 12 and 16</p> <p>General Recommendations 12, 19, 21</p>	<p>Domestic Violence Act of 2005 provides only for "protection orders" and is a civil remedy with penal consequences attached to violating the protection order.⁶⁷</p>		<p>of Women and Children Police Help Desks, and setting up a toll-free helpline operated under the National Commission for Women to receive complaints.⁶⁸</p>	<p>from 40%⁶⁹ to as high as 60%⁷⁰.</p> <p>A recently released briefing paper on Violence Against Muslim Women (FOKUS Sri Lanka 2017) based on interviews with Muslim women states that "18 of the 22 women interviewed had faced some form domestic violence ranging from verbal abuse to physical violence. 14 women had faced physical violence ranging from occasional beating to severe and frequent physical and/or sexual</p>
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⁶⁷ Prevention of Domestic Violence Act No. 35 of 2005, <http://www.refworld.org/pdfid/4c03ba2f2.pdf>

⁶⁸ Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Eighth Periodic Report of Sri Lanka", 29 May 2015, paras 29-31,

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f8&Lang=en

⁶⁹ A.C. Jayatilleke et.al., A.C., "Intimate partner violence in Sri Lanka", 4(3) BioScience Trends 90 (2010)

https://www.researchgate.net/publication/44889216_Intimate_partner_violence_in_Sri_Lanka_Bioscience_Trends_4_90-95

⁷⁰ S Deraniyagala "An Investigation into the Incidence and Causes of Domestic Violence in Colombo", Women in Need (WIN), Sri Lanka. 2010.

				<p><i>abuse, including one case of attempted murder resulting in serious medical conditions. Two women also shared experiences of forced abortion through physical violence.”</i></p> <p>According to activists, Muslim women do not access the local Magistrate courts as they are familiar with and are led to believe that the Quazi court is the court for Muslim personal law issues. However Quazi judges have no jurisdiction over domestic violence complaints and cannot issue protection orders. They also do not refer such complaints to the local Magistrate</p>
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				<p>Court. In effect the manner in which Quazi judges deal with complaints creates a barrier for women legally seeking redress for the violence.⁷¹ It has also been documented that police do not record domestic violence complaints by Muslim women and have been known to say that it is a Muslim issue and that they cannot get involved.</p> <p>A dangerous practice of “Hadd” punishments being meted out to women has been reported in Batticaloa and Puttalam Districts by the local Mosque</p>
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⁷¹ Shreen Abdul Saroor, “Muslim Women: Second Class Rights Holders in Sri Lanka’s Quazi System”, *The Island*, 10 December 2016, http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=156963

					<p>Committees which have the sanction of the community. The punishment which involves lashes is given to women believed to have committed adultery even though there is no provision in the law of such “punishment”.</p> <p>There are no support services legally provided for, which a victim has a right to.</p> <p>There are two State run shelters and one or two non-governmental shelters for battered women, which is wholly inadequate to cater to needs of victims.</p>
Nationality	Sri Lankan law does not discriminate between men and women with regards to the				

<p><i>Does a wife have the right to confer citizenship on foreign born husbands and children? Can the nationality of the adult woman be arbitrarily removed because of marriage or dissolution of marriage or because her husband or father changes his nationality?</i></p> <p><u>Applicable CEDAW Provision</u></p> <p>Article 9</p> <p>General Recommendation 21</p>	<p>conferment of citizenship on foreign born spouses.⁷²</p> <p>The Citizenship (Amendment) Act, 2003 amended the earlier discriminatory law to ensure that women could also pass on their citizenship to their children.⁷³ The Act confers this right retrospectively, which means that children who had previously been denied citizenship have the opportunity to apply now based on their mother's Sri Lankan citizenship.⁷⁴</p>				
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⁷² Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Combined Third and Fourth Reports of Sri Lanka", 18 October 1999, para 73,
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f3-4&Lang=en

⁷³ Citizenship (Amendment) Act No.16 of 2003, s.3, http://www.commonlii.org/lk/legis/num_act/ca16o2003274/

⁷⁴ Committee on Elimination of Discrimination Against Women, "Consideration of Reports submitted by State Parties under Article 18 of the Convention: Combined Fifth, Sixth and Seventh Periodic Reports of Sri Lanka", 24 March 2010, para 78,
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2f5-7&Lang=en