MINIMUM AGE OF MARRIAGE

This position paper is the first in a series of position papers analyzing the recommendations in the report of the 2009 Committee Appointed to Recommend Amendments to the Muslim Marriage and Divorce Act (MMDA), (or MMDA Reform Committee), which was officially released by Ministry of Justice in July 2018.

This analysis for this paper is structured on the adaptation of a holistic framework* which takes into consideration:
1) Contemporary lived realities of Sri Lankan Muslim women
2) Islamic principles and diversity of Islamic jurisprudence and legal tradition
3) Constitution and national laws
4) International human rights frameworks

Such a holistic approach is necessary in the context of MMDA reform in Sri Lanka in order to ensure that any and all amendments to the MMDA are based on Shari’ah principles of justice, fairness and dignity, while also achieving rights entailed in the Constitution and international human rights treaties.

Most importantly each and every recommendation and amendment must consider, respond to and address the discrimination, issues and challenges currently faced by Sri Lankan Muslim women and girls in their daily lives.

Muslim women all around Sri Lanka have been advocating and agitating for reform of the MMDA for the past 30+ years. Muslim Personal Law Reform Action Group (MPLRAG) is an advocacy group of young Muslim women who seek to continue this effort to lobby for justice and equality in our family law.

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#18withoutExceptions
A. RECOMMENDATIONS OF THE MMDA REFORM COMMITTEE

On the issue of minimum age of marriage, the MMDA Committee has presented the following divergent recommendations:

RECOMMENDATION BY: Chairperson
Justice Saleem Marsoof PC, Mrs. Safana
Gul Begum, Mrs. Jezima Ismail, Mr
Razmara Abdeen, Mrs. Faleela Be
Jurangpathy, Ms Sharya Scharenguivel,
Mrs. Sharmeela Rassool, Mrs. Dilhara
Amarasinghe and Mr Suhada Gamlath

Uniform minimum age of marriage
fixed at 18 for males and females.

However, Quazi Court can
authorise the solemnization and
registration of the marriage of
individuals between 16 to 18 years.

Therefore absolute minimum age
is proposed as 16 years.

RECOMMENDATION BY: Mr Faisz
Mustapha PC, Mr Shibly Aziz PC,
Justice A.W.A. Salam, Mrs. Fazlet
Shahabdeen, Justice M. Mackie, Dr.
M.A.M. Shukri, Mr Nadvi Bahudeen,
Mufti M.I.M Rizwe and Ash-Shiekh
M.M Ahamed Mubarak

Minimum age of marriage 18 years
for males and 16 years for
females.

However, Quazi can authorise
marriage of children between 12 to
16 years of age.

Therefore absolute minimum age
is proposed as 12 years.

B. POSITION OF MPLRAG

#18WithoutExceptions

MPLRAG recommends that minimum age of marriage of 18 without exceptions be introduced to the MMDA. MPLRAG strongly opposes any exceptions to the minimum age of marriage. Our recommendation is in keeping with the national minimum age of marriage for all other Sri Lankan communities, addressing the lived realities of Muslim girls, Islamic values of protecting education and learning, and State's obligation to protect the best interest of children.

Both sets of recommendations of the MMDA Committee fail to address the main issue of child marriage within Muslim communities in Sri Lanka as national data (see below) indicates that 16 and 17 years is when Muslim girls are most vulnerable to underaged marriages around the country.
Chairperson Justice Saleem Marsoof and Committee members recommending lifting of minimum age to 18 years (with exception for 16 years), have presented Islamic jurisprudential arguments for why minimum age must be raised. We note that these very same arguments can also be used to justify why there should be no exceptions to the minimum age as 18 years in the first place.

The formulations of the committee on exceptions, are arbitrary. The MMDA Committee Report mentions, but fails to define “exceptional circumstances” under which girls below 18 can marry. It also does not adequately present evidence for any presumed benefits an exception will have. In fact there are documented harms faced by girls who were married at 16 to 17 year (see cases on page 5).

Furthermore as Muslims we believe the purpose of Shari‘ah (Maqasid al-Shari‘ah), includes the right to protection of education and learning. So any and all reform to MMDA needs to consider whether or not this aspect is safeguarded. The ages between 15 and 18 are the most crucial educational years for young people as this period determines completion of secondary education and boosts chances for educational and economic opportunities for young people.

MPLRAG argues that a different and/or conditional minimum age of marriage for Muslims in Sri Lanka will continue to deny Muslim children the same protections given to other non-Muslim children. It creates a legal loophole through which Muslim children, especially girls, are likely to be denied opportunity to complete education and contribute at their highest capacity in society and family and community life.

Thus MPLRAG believes that prescribing 18 years without exception is necessary to ensure the empowerment of Muslim women and consequently result in the advancement and improvement of the Sri Lankan Muslims.

C. CHILD MARRIAGE DATA

Limited statistics have been made available by the Registrar Generals Department to the MMDA Reform Committee on the number of registered marriages for 18 years and below. The prevalence of underaged marriages can be analysed to some extent from this.

These statistics show that the majority of Muslim underaged marriages involve 16 and 17 year olds around the country. For example 83% of marriage in Colombo in 2012 and 2013, 90% in Kandy in 2014, 92% in Puttalam between 2012-2014 and 100% in Kalutara, Matara, Kurunegala and Kegalle in 2014, were with 16 and 17 year old brides.

Marriages of lower age groups have also been noted, but to a lesser extent. Statistics for 2012 and 2014 indicate that marriages have occurred with brides as young as 12 years in Colombo and Kandy districts, and as young as 13 in Kalutara, Hambantota and Ampara.
We strongly believe that no amount of debate and discussion on MMDA reform will be useful, unless there is a deep understanding of how lives of Muslim women and girls are affected in present-day Sri Lanka.

Amongst the many reasons why there has been agitation towards reforming the Muslim Marriage and Divorce Act (MMDA), is that there is pressure on young Muslim children to marry for various reasons including economic security, and societal and community pressure. In all cases MPLRAG have come across, child brides have had to drop out of school either before or right after getting married.

In the years 2014 to 2016 there were a total 5491 marriages registered in which the bride was between 12 and 18 years, representing 9% of the total number of Muslim registered marriages. Therefore the issue of underaged marriages within the Muslim community is significant for consideration by the reform process.

The fact that majority of underage marriages taking place in the Muslim community are with girls aged 16 or 17 means that this is the age group which requires the protection of the law and not an exemption of it. This is also the age group whose secondary education will be affected. As the case studies below indicate, many girls who are married at 16 and 17 do not complete their O’Level or A’Level exams, effectively preventing pursuit of further studies and limiting opportunity for employment.

It is important to note that currently available data captures only those marriages that are registered and there are many marriages, especially involving child brides which are unregistered. Even in registered marriages there is a practice of falsifying the age of the bride (giving brides an older age), as our work with women in different parts of the country have indicated. The current legal situation under the MMDA is that marriage can be treated as valid even if unregistered. This means that the statistics available have to be interpreted only as the officially recorded marriages and may not reflect full extent of the situation.

D. CONTEMPORARY LIVED REALITIES OF MUSLIM GIRLS

We strongly believe that no amount of debate and discussion on MMDA reform will be useful, unless there is a deep understanding of how lives of Muslim women and girls are affected in present-day Sri Lanka.
TESTIMONIES OF CHILD BRIDES

Testimonies below gathered from field research show the strong link between early marriage, increased vulnerability to domestic violence, discontinuing studies and harassment in Quazi courts. The names of the interviewees have been changed in the testimonies below to protect their identity as they feared ostracisation and retaliation. Consent has been acquired to share these testimonies.

CASE 1: LATIFA’S STORY

After I completed my O/Level exam I wanted to continue studying but my parents insisted that I get married. I was 16 when I married and my husband was 28. Before our marriage I had heard that he had other girlfriends but when questioned he denied these relationships. After our marriage he would abuse me verbally, shame and demean me to his family. He was also sexually abusive and I developed health problems as a result. It turned out that he had many affairs with other, sometimes married, women. Unable to cope with him I filed for divorce but it was difficult for me to explain to the male Quazi my problems and the divorce proceeding stretched on. I am divorced now and have started studying again, I feel an education can help me and wish that other girls too will be allowed to study and not be compelled to marry so young.

CASE 2: RIMA’S STORY

I was 17 years old when I got married. Soon after marriage my husband who had a drinking problem began to beat me, even when I was pregnant. I lost three babies prematurely but had two sons who survived. One day my husband, who did not provide adequately for me or my sons, beat me and set me on fire after dousing me in kerosene, simply for sending my son to ask my brother for food. I was severely injured and spent months in recovery. My husband was arrested and I got a divorce from him. After six months he was released from prison and out of pressure from the mosque and community I had to remarry him. The physical abuse started again and I divorced him again. At the Quazi court I found out he has another wife. After divorce my husband only paid my Iddah (3 months) maintenance, he does not support my sons or me.

CASE 3: FARAH’S STORY

I was 16 when I was 'given in marriage' by my father. My husband was obsessively possessive and abusive. He didn't want me talking to anyone and even made me cut ties with my father and sister. When I got pregnant he abandoned me. I was compelled to seek maintenance through courts and received Rs.7000/- a month. After I had our baby, our families forced us to reconcile. He would constantly berate me and I lived in constant fear and got into depression. Eventually I became physically ill. My family finally took me away. When I went to the Quazi to file for maintenance for our child, I was told that my husband had filed for divorce. The divorce proceedings have been going for a long time. Every time I go to Quazi court I was not allowed to speak, and am constantly scolded by the Quazi. Once the Quazi asked me to get a mental health check. At this point I just want the divorce. I have decided to work at a garment factory to support my children.
The above testimonies and the experience of women working within their communities to alleviate the difficulties faced by Muslim women depict a situation that urgently requires reform. It requires the law to prescribe a minimum age of marriage to ensure that:

- Children below 18 cannot be given in marriage under the guise of it being ‘for their best interest’. It is never in the best interest of a child to marry and/or bear children prematurely;
- Certain families are prevented from exploiting their children by giving them in marriage for financial gain usually seen in situations of financial difficulty. Child marriage is not an answer to alleviate poverty and in fact cause or worsen it;
- Girls who want to pursue their studies are strengthened by the law in their efforts to stay in school and focus on completing secondary education;
- Law prevents men taking child brides with a view to asserting control, abusing or demeaning their young ‘wives’;
- Muslim marriages are contracted between two consenting adults with sound judgement and understanding or their responsibilities;
- Respect, equality and dignity are prioritised as the basic foundation for marriage relationships.

E. ISLAMIC PRINCIPLES PROMOTES 18 YEARS AS MINIMUM AGE

In Islam, the purpose of marriage is to create a successful union that promotes love, tranquility and mercy between husband and wife, and contributes to a healthy society. Thus one of the main conditions for marriage is free and informed consent of both adult spouses.

'Sound judgment' and ability to manage contracts as a prerequisite in the Qur'an

The Qur'an does not provide any specification for the age of marriage. The closest reference can be found in Chapter 4, Verse 6 of the Qu’ran, which requires that guardians of orphans manage their inheritance until they become fit to marry and are of “sound judgment” (rushd) to manage their own property.

There is a direct link made between the ability to manage property and marry, to the age at which maturity to do both is reached. Marriage is viewed as a contract in Islam and it is one of the most important contracts that an individual will enter into during their lifetime. Therefore if it is nationally decided that it is only at 18 years an individual reaches intellectual and emotional maturity to vote, drive, enter into contracts, independently manage property, exercise his/her full rights as a citizen, and assume the responsibilities of a citizen, then only this age can be considered a valid age for marriage even for Muslims in Sri Lanka.

Shari‘ah principles promotes child rights and education

The purpose of Shari‘ah (Maqasid al-Shariah) includes the right to protection of life, family, education, religion, property/resources and human dignity. For Muslims the protection of life and wellbeing of humans should guide every decision, law and policy.

Another principle of Islamic jurisprudence is that of ‘maslahah mursalah’, or ‘unrestricted public interest’, whereby laws and policies must be decided on what is best for the public good and must be standard for all citizens.

'MQRA' (READ!)

The first word revealed to Prophet Muhammad, commanding Muslims to seek knowledge, educate & be educated.
Principle of 'La Dharar' or No Harm

As per the Islamic legal principle of “no harm” (la dharar) - if an action results in both good and harm, it is preferable to avoid the harm.

Global and national research and medical evidence overwhelmingly indicates negative impact and harm of early marriage on girls, and this must be considered especially given that the exception is supposed to be in the ‘the best interest of the child’. It is unclear how the Committee (with no medical expert) decided that premature sexual relationships, and possible pregnancy and childbirth by young mothers does not amount to harmful health risks. Placing an exception to the minimum age of marriage will contravene the Islamic obligation to protect the life and rights of girl children, as it is internationally understood that the costs greatly outweigh any benefits of early marriage. It is noteworthy to mention once again that no benefit has been articulated by proponents of the lower age of marriage.

F. STATE OBLIGATION TO PROTECT RIGHTS OF CHILDREN

The State is the primary duty bearer of protecting rights of all children and this issue must be dealt with as establishing one age for all. As per international human rights treaties, which Sri Lanka has ratified, early and forced marriage is considered a “harmful practice” that needs serious and urgent action to reduce and eliminate.

If the State determines that adolescents and children marrying before 18 years is detrimental to their health, education and wellbeing then it should apply to all children in the country irrespective of ethnic or religious group they belong to. It is important for the Sri Lankan state to recognize and protect the rights of all citizens to enjoy his/her culture, traditions and freedom of religion. However in establishing a minimum age of marriage – it is the responsibility of the State to ensure that child rights are not compromised in the name of culture and religion.

Child Rights Convention (CRC)

Article 1 (Definition of the child): The Convention defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18. In January 2018, in its Sixth Concluding Observation, the Committee on the Rights of the Child made the following recommendation to the Sri Lankan government:

“15. Noting that, under the Muslim Marriage and Divorce Act, girls aged under 12 years may be married with the permission of a Quazi (Muslim judge ruling on family matters), the Committee urges the State party to expeditiously increase the minimum age of marriage for all to 18 years of age without exceptions, including by amending article 16 of the Constitution in this regard.”

Sri Lanka is a member of the South Asian Initiative to End Violence Against Children (SAIEVAC), which adopted a regional action plan (2025 - 2018) to end child marriage. There has been little to no progress in Sri Lanka to this effect.
CEDAW Convention

Sri Lanka has also ratified CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women). Article 16(2) of CEDAW States that, "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."

In 2017, in its Eight Concluding Observations to Sri Lanka, the CEDAW Committee made the following recommendation under Discriminatory Laws in Marriage and Family Relations:

| 45(d) Increase the minimum age of marriage for all women in the State party to 18 years of age. |

Sustainable Development Goals (SDG's)

SDG Goal 5 is to Achieve gender equality and empower all women and girls. One of main Target 5.1. under this goal is to ‘End all forms of discrimination against women’ and Target 5.3. Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation. SDG Goal 4 is 'Quality Education' under which governments needs to ensure equal access to secondary education and eliminate gender and other disparities.

As the case studies indicate, girls who are married at young ages are more likely to be removed from school before or right after their O’Level exams and have their educational and economic opportunities significantly curtailed. Given this situation, it is unfair and unjust for Sri Lanka to have an exception for age of marriage as 18 years for Muslim children. It goes against the government’s sustainable development goals as well as violates international human rights obligations to protect rights of all children.

In addition to ensuring a uniform minimum age of marriage for all Sri Lankans, government undertake strategic interventions to promote education, attitudinal change, reproductive health awareness, and social and economic programs through to country for all children throughout the country.

REFERENCES & RESOURCES

1. Report of Committee Appointed to Consider Amendments to MMDA, 2018
2. * Framework for Action - Musawah - Global Movement for Equality and Justice in the Muslim family -
   www.musawah.org/framework-action-english
4. Islamic Relief - An Islamic Human Rights Perspective on Early & Forced Marriage
5. Musawah Statement to OHRHC on Early & Child Marriage
   www.musawah.org/musawah-to-OHCHR-child-marriage
   www.mplreforms.com/unequal-citizens-study/