



## Marriage And Human Rights Violations:

# Are They Closely Linked?

BY SHIHAAM HASSANALI

Getting married is sometimes, no easy feat. With the multitude of faiths and the rules by each of them, getting hitched for many is no longer as easy as heading to a civil court or registrar. It involves time, multiple discussions and even tears. Certain groups in Sri Lanka do not even have a say in who they marry — often, the parents decide for them, and in instances, the woman does not even need to present for her own marriage.



Last year, when my now-husband and I were prepping for our big day, one of our biggest hurdles was the formalities of getting married. Although, I come from a family that is completely mixed (think different nationalities, faiths and cultures) and my husband is biracial, we faced a host of issues when it came down to how we could ultimately get registered. We both agreed we wanted a civil ceremony, minus the religious additions that are typically present at Lankan weddings. But, because the law of the country is such and both our birth certificates state that we were born to Muslim fathers, we were compelled to either walk the straight and narrow or not get married at all.

### THE MUSLIM MARRIAGE AND DIVORCE ACT OF 1951

“What’s so bad about getting married under the realm of your faith?” you may ask. Well, the Muslim Marriage and Divorce Act (MMDA) of 1951 deals with the marriage laws of the Muslim community in Sri Lanka. And, culturally, the MMDA doesn’t allow the woman to sign for herself during the marriage ceremony. In fact, she does not even need to present. Her father (or male guardian), the groom and his father (or male guardian) are the only individuals necessary to proceed with the *Nikah* (registration). Consent from the bride is not paramount compared to consent from her father.

### Aside from this very problematic issue, some other serious infringements on rights include:

- Ⓛ Legally allowing child marriage by not stipulating the minimum age of marriage as 18 years. (The Quazi can even permit children to marry under the age of 12).
- Ⓛ Different divorce conditions for men and women.
- Ⓛ Qualified women not allowed to be, Quazis, jurors or Board Of Quazi members.
- Ⓛ No mandatory requirement of qualifications or compulsory training for Quazis.\*



### PERSONAL LAWS TRUMP THE CONSTITUTION

The Sri Lankan Constitution clearly states that, “All persons are equal before the law and are entitled to the equal protection of the law.” But, it also declares that Muslim Personal Law supersedes any other law. This basically means that despite the existence of the Constitution, the laws surrounding marriage and divorce for the Muslims is what is expected to be followed (like a woman not being able to sign her own marriage contract).

The law is archaic and activists are attempting to push reform forward as

this is a clear violation of basic human rights. After all, Fundamental Rights must be applicable to all citizens of Sri Lanka irrespective of race and faith. The thought of being handed over from one man to another, along with a dowry that the groom must give, of which the value is even listed in the marriage certificate (typically the bride is expected to give a dowry, but the Muslim system is different), made my blood boil. It went against everything I believed in and thankfully, hubs was completely in agreement with me. When I started digging deeper into how I can by-pass these archaic laws, I was met with animosity from the Quazis who were confused as to why I was fussing over this so much and they openly displayed this.

\*MUSLIM PERSONAL LAW REFORMS ACTION GROUP, MPLREFORMS.COM  
\*\*WOMEN'S ACTION NETWORK, AS REPORTED BY ADARANA.LK | IMAGE: GETTY IMAGES





marrying outside of the MMDA. However, there are a couple of ways a woman can sign for herself. “I know brides that signed for themselves,” revealed **Vishmi Fernando**, Attorney At Law. “In fact Section 47 (2) and (3) of the MMDA provides where a Quazi can make an order dispensing the necessity for the presence or the consent of a *wali* (male guardian). These are:

- I. When *wali* is unreasonably withholding the consent
- II. Woman has no *wali*”

### GENERAL LAW WILL APPLY...

Irrespective of whether or not the man and woman in question are believers, whatever appears on their birth certificates is final and must be adhered to when it comes to marriage. But, assuming you wish to find a way around this, consider if you and your partner fit the following criteria.

#### If one party is non-Muslim

According to Vishmi, “The preamble to the General Marriage Registration Ordinance specifically states that ‘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’. So if a Muslim is marrying a non-Muslim, that couple can marry under the general law and not otherwise.”

#### If one party is not Sri Lankan

What’s more, any Sri Lankan Muslim woman who wishes to marry in her home country, can only do so if her partner is not from the same country. “The MMDA strictly states that this law will only apply to inhabitants of Ceylon who are Muslims,” explains Vishmi. Therefore, it appears that if a Sri Lankan Muslim wants to marry a Muslim from another country, they can opt to marry under the general law.

My husband and I even went to the Deputy Registrar General to see if something might be possible, but to no avail. After consulting with a couple of lawyers, I was left with two alternatives — bite down and marry under the MMDA or contest the issue in a court

of law on the grounds of a violation of human rights. I was told that the latter could easily take over a couple of years and the outcome may not be as positive as I might want. Plus, I didn’t have a lot of time on my hands to follow through on this, as much as I wanted to. By this point, both my husband and I were mentally and emotionally exhausted dealing with the many Quazis and registrars. After 3 months of futile attempts at trying to find a way around the system, we had no choice but to go forward with registering under the MMDA.

Aside from the MMDA, the Kandyan and the Thesawalamei Laws do not allow marriages between persons below the age of 18,” said Vishmi. “In 1995 laws were amended specifying the minimum age as 18 (except in the Muslim Law as it stands upto date as 12, and the Quazi can permit anyone younger, too. However, the Penal Code would consider it statutory rape if below 16). Therefore, there a serious question of interpretation, that the Supreme Court would have to address given the opportunity. Aside from this, the Kandyan Law does not recognize customary marriages, it is mandatory for the bride and groom to sign.” Non-Muslims are expected to sign themselves unless they marry by way of custom.

Bottom line: The issues are very real and unless reforms take place in the near future, Muslim women who are less well-off than others will be the ones suffering. If you fall into a category where laws like these apply to you, and you’re planning to get hitched, speak to someone in the know (think lawyer or registrar) on how you need to go about getting married. ■

*If you would like to help or require more information on the Muslim Personal Law reforms, visit [mplreforms.com](http://mplreforms.com)*

Once a woman is bound by the MMDA, she cannot easily apply for divorce if the marriage goes south. The Quazi court system is very different from that of the civil court as it doesn’t allow the person to have proper legal representation. To that end, if a woman applies for divorce, the process is more complicated as opposed to what a man would have to face at the Quazi Court. Her whole family will get involved and she will undergo an inquiry in front of the Quazi court. Often, the woman is unable to express her side of the story for fear of being verbally abused, threatened and humiliated in the court itself\*\*.

As long as both parties are Sri Lankan Muslim, there is no way around