

Should Muslim Personal law be Abolished?

Demand to abolish Muslim Personal law has been understood as something created by anti-Muslim rhetoric which began after the civil war. It's considered by most of the civil community and Muslims as an extension and expression of Sinhalese desire to dominate over minority rights using the rise of extremism as an excuse and as a step of the process of subverting all the cultures to the majority domination.

But the demand for abolishing Muslim Personal law is not something that can't be solely attributed to the current rise of Sinhala-Buddhist nationalism, for this demand is not something coming only from racist groups. It's a suggestion coming from legal experts also. For example in the 'Introduction to Laws in Sri Lanka', a textbook provided for first-year students of the LLB degree program of the Open University of Sri Lanka, citing Prof: Savithri Gunasekara, it has been written that prevailing different legal systems in the island has caused to conflicts between these various legal systems and the solution for this is making laws applicable in the same way to every citizen. The textbook provides many examples where provisions of Muslim personal law have in contradict with the general law and since Muslim law's provisions have become an injustice when compared to the provisions of the general law and hence citizens who have under the jurisdiction of Muslim Personal Law have been deprived of the rights given to the other people of the country.

Discussion about the inequalities of Muslim Personal Law is centered on the issue of child marriages and divorce, but if analyzed the impact of provisions of Muslim Personal Law in other areas also, such as intestate inheritance, maintenance rights of children over 18, and right of spouses to claim maintenance from each other, then we will see more inequalities in many provisions implying that Muslim Personal Law of Sri Lanka is beyond reformation. It seems like that Muslim Personal Law has given birth to inequalities in almost every area it touched thanks to the Islamic foundation of it. Let's see some such instances from the case law.

According to the S.6(3) of the Adoption of Children Ordinance No: 24 of 1941 as amended, an adopted child has a can inherit property from his adopting parents. Though Muslims also can adopt children under this ordinance, since the section 2 of the Muslim Intestate Ordinance Act of No: 10 of 1931 does not consider an adopted child as a true son/daughter, an adopted Muslim child won't receive an inheritance from his/her adopting parents in a case of intestate inheritance. On the other hand, the adopted child will not be entitled to the property of original parents since (s)he was adopted under the general law. This legal state was confirmed in *Gawus v. Gawus*. (1998) - 1 SLR 25 Thus a child being adopted by a Muslim couple will be deprived of any inheritance in a case of intestate inheritance.

According to the maintenance act of No. 37 of 1997, a youth can ask for maintenance from parents until he/she is 25 years old if he/she has no independent means. But

Muslim children above the 15 years of age won't receive this legal protection ensured by the general law to the other children. In the case of *Ummul Marsoona v. Samad* (1977), a father refused to maintain his school-going son who was 15 years old, claiming that under the Muslim law father is not bound to maintain the child after the age of 15. Though fortunately using a provision of Muslim law which says parents are bound to maintain their disabled children, and interpreting the school going child as a disabled one also, the Supreme Court ruled that father is bound to maintain his school-going child, this is a misinterpretation of the provision of Muslim law.

Under the general law, spouses have a right to claim maintenance from each other. But under the Muslim law, a husband who is in ill health or indigent can't claim maintenance from his wife who is earning a higher income.

What all these examples prove is that Muslim personal law is filled with many inequalities and injustices when compared to the general law. Some believe that we can erase all these inequalities by reforming these provisions. This is possible if there are only a few provisions that are problematic. But it isn't. Removing all these inequalities will remove anything Islamic from the Muslim personal law. Such a reformation will be resulted in making the provisions of Muslim Personal law more like that of the provisions of general law. So there's the question what is the need for Muslims to keep separate law if there's no Islamic basis behind it?

There's an argument by those who want to keep the Muslim personal law, that removing the special laws will be a threat to the cultural diversity of the Sri Lankan society. Are special laws necessary to keep the cultural diversity of Sri Lanka? What is the obstacle to follow your culture without legal recognition for it? Though in the future if even the Muslim marriages will govern by the provisions of the general law, still you will be free to follow those religious laws which were the provisions of Muslim law (necessity of the Wali for females to marry, Thalak divorce) as customs related to marriage in your community. No one will interfere with that right. But we can't accept something discriminatory as a law in this country because it damages the reputation of the country. Especially if it's based on outdated archaic religious law codes. You can follow them as your culture but not as a law in this country. A government can't hold its duty and responsibility to guarantee equal rights for every citizen regardless of their religion or ethnicity in order to please the religious needs of a certain community. The individual rights of citizens must be regarded in higher respect than the cultural rights of communities.

The cultural diversity of the country will be threatened only if we are going to ban the practicing customs, religious obligations at all, a thing we will never do!

There's another argument by those who want to keep special laws that it was a right they are exercising even in history. [Saleem Marsoof committee report](#) cites some accounts by foreign historians which can be used to suggest that the personal law of Muslims existed before the Dutch rule. For an example, they quote Emerson Tenant

who writes that “from Idrisi’s account of the Sinhalese court of the 12th century, it would appear that the Muslims, as well as the Christians and Jews, were accorded complete freedom of worship and a matter of internal jurisdiction to be governed by their own laws and usages, apart from being actively associated in the royal consultative council.” And chief justice Alexander Johnston has also said that there was a court of justice in Colombo to settle disputes according to Islamic law when the Portuguese arrive.

However, A. F. Hayley writes that Udarata law which was originated from the customs of the Sinhalese applied to everyone lived in the kingdom irrespective of their ethnicities and it was never a personal law. (A. F. Hayley, *The laws and customs of the Sinhalese or Kandyan Law*, New Delhi: Navrang, 1923, p. 25.) Since there’s no reason to think that when the whole country was under a single Sinhalese ruler or when the low country was ruling by Sinhala kings they applied a different policy, we can reasonably assume that laws applied for low land Sinhalese must have been applied to other ethnicities lived there also. Above all, chief justice Alexander Johnston's account is not so reliable as since it’s not something he witnessed but a thing belonging to the past of more than 200 years ago. Regarding the Emerson Tenant’s record, it should be said that Idrisi’s account on Sinhalese court in the 12th century does not mention anything about a separate court of Muslims but that, in the King’s advisory council there were four Jews, four Muslims, four Christians, and four Buddhists. That is his account. It’s the Tenant who suggests that “if so they may have been entertained a separate law also”. Above all Tenant, himself writes the following words on Idrisi’s account. (I could not give page numbers since I referred to an [eBook by Gutenberg.net](#) which was published as a single web page, but this can be found as a footnote at the end of chapter III of part IV)

Edrisi did not write from personal knowledge, as he had never visited either Ceylon or India; but compiling as he did, by command of Roger H., of Sicily, a compendium, of geographical knowledge as it existed in his time, the information which he has systematised may be regarded as a condensation of such facts as the eastern seamen engaged in the Indian trade had brought back with them from Ceylon.

So even Idrisi’s that account is not so much reliable since it’s not a 1st hand evidence. Further, historical chronicles written in Sri Lanka, like Chulavamsa do not mention anything about separate laws or courts established for the benefit of Muslims or Jews even about any presence of Jews or having such a pluralistic advisory council. To the claim of Jewish presence in 12th century Sri Lanka a friend of mine commented as follows:

“Many traders from all over the world came to Sri Lanka for trading and stay in SL temporarily even during the time of Lord Buddha. According to the records, two traders namely Tapassu and Bhalluka met Lord Buddha in India and they built a dagoba (first stupa for Gautama Buddha) in SL when they

came here. In that sense, it is not surprising that there were Jews (as merchants) in Ceylon, but it is ridiculous to say that they were permanent residents of Ceylon.”

(Hasith Amarathunga)

And there's another spurious argument that “why this slogan is coming now? If enjoying Muslims these rights for centuries wasn't a problem why it a problem now? Is it because of the current rise of Sinhala-Buddhist-Majoritarianism?” Today in most developed countries special laws for different communities can't be seen. Because it causes inter-law conflicts and thus creates practical problems. Though pluralism in society must be welcomed, plurality in the legal system creates problems. The existence of something for centuries is not a valid reason to keep something problematic forever. We have the right to correct these messes created by colonial rulers, even after being too late. I see any argument which interprets the slogan of applying one common law to the country as a reflection of majoritarian domination as denying Sri Lanka's right to choose and apply which is more practical and is normative in the civilized world and as an attempt to prevent the nation's progressive steps to please the needs of communities who are confined in primordial thinking.

And it should be pointed out the future possibilities of this when linked with Islamic politics and how it can be a threat to the “diversity” and freedom, religious rights, and human rights. From a few decades, we can see a strong wave of Salafi interpretations becoming dominant and gaining community support than before (especially among the young generations) and Muslim society becoming more conservative. They switched from the mild way they followed Islam to a hardcore version of Islam realizing that it's the true version.

Hyshama Hameen and Hasana Cegu Issadheen write in their study “[Unequal Citizens: Muslim women's struggle for justice and equality](#)” former Quasi of the eastern province has given whipping penalties for Muslims accused of adultery before four male witnesses of the Muslim church committee.

“From FGD's it was gathered that flogging punishments on persons suspected of adultery is occurring at the community level, either commissioned by mosque committees and mosque federations.”

in this context of Islamic identity getting strength and fundamentalist interpretations affecting the Muslim society more than ever before, Islamic politics also will be get inspired by these changes. so this mild cultural entertainment can be a fierce political monster in a future where Muslim politicians come with the slogan of full sharia for Muslims as a response to community changes.

Thus there is a possibility of expanding the application of Islamic law resulting in full sharia in Sri Lanka in a future where Muslim representation in the parliament has

become an influential number than today and as a response to the demands of Muslims. Or imposition of it on the non-Muslims also. If that happened like in South Sudan or like in Aceh province of Indonesia that will be great damage to the religious freedom and human rights of the country. And will lead to communal rights also.

It should be added that as shown by Dr: Peter Hammond in his book “Slavery, Terrorism and Islam: The Historical Roots and Contemporary Threat” where he shows how demand for Islamization increases with the growth of the Muslim population, demanding for sharia for them is a one-step of that process.

By using the [same approach as used by Professor Imithias Razack](#) and some others who said that Sinhala-Buddhist symbols (like Lion in the national flag, Bo leaves in the national flag, and the foremost place given to Buddhism in the constitution) which sustaining a Sinhala Buddhist majoritarian view is a reason for anti-Muslim violence in Sri Lanka (eg: Digana riots) we can say that the presence of special laws to Muslims can also be a psychological motivation to fundamentalism or formation of terror groups for it gives a strong feeling of Islamism. Since making the Sharia law dominant is the main objective of the Islamist movements we can see a clear relationship between Islamic terrorism and Sharia.

The foremost objective of Islam is to “reclaim” the earth and establish Allah’s law on it. The goal is not to convert everyone, but to make the Sharia dominant. Even countries that are 100% Sharia complaint are legitimate targets of Jihad.

[\(Understanding Muhammad by Ali Sina\)](#)

Here we have given a part of it. And It will foment their desire, lingering dream, and religious obligation of creating a world which is the sharia dominant. Existing sharia as a law in the country can be a motive for them to fight demanding the full Islamic law being implemented. In other words, we have sowed the seeds of Islamism and extremism in our legal system. That must be removed as soon as possible before it will grow.

- Sachintha Madhushan