

2 October 2021

## **PRG expresses extreme concern about the Cabinet Decision to abolish material provisions of the Muslim Marriages and Divorces Act (MMDA) and the continuing discriminatory policies of the Government of Sri Lanka (GoSL)**

**People's Rights Group (PRG)**, a rights based advocacy and lobbying group based in the UK particularly dealing with human rights violations in Sri Lanka, notes with a sense of extreme concern and trepidation about the continuing developments which have been unravelling in Sri Lanka which negatively impacts upon the fundamental rights of the Muslim community to practice and enjoy their religious and cultural rights. It is particularly a worrying phenomenon that such moves are either being initiated and carried out apparently either with the implicit stamp of approval of those in the hierarchy of the GoSL or being consciously mooted as official policy.

Coming in the wake of these measures, has been the unilateral decisions taken by the Cabinet of Ministers recently inter-alia, to (1) abolish the Quazi Court system in toto and to (2) disallow polygamous marriages, which tantamount to undermining the letter and spirit of the MMDA, and devalues the Muslim identity, on the premise of promoting a policy of 'one country-one law' to appease the calls of nationalistic majoritarian forces.

All personal laws in Sri Lanka, including the MMDA need reform. The MMDA has a number of provisions that are discriminatory against women and patriarchal in essence and application. There are also certain elements that contradict international human rights conventions that Sri Lanka has ratified. It is also a fact that customary traditions have been misused and abused resulting in severe human rights violations. Many Muslim women have rightly felt aggrieved by certain provisions of the MMDA, and have been demanding reforms to the law for the past several decades so that it is fair and equal to all, regardless of the gender. PRG therefore agrees with the undernoted recommendation of the Justice Saleem Marsoof Report (2009) which read as the '*MMDA must be reformed comprehensively. There is no other way to ensure justice for Muslim women of Sri Lanka.*'.

PRG however views the current attempt of GoSL to use justifiable calls for the MMDA to be reformed, to substantively and effectively repeal it by abolishing its essential provisions that have little or no connection to the shortcomings highlighted by numerous GoSL appointed commissions. Therefore in its view, the so called 'reforms' are devious attempts to

- a) *justify broad-based disentitlement of minorities and curtailment of expressions of religious and cultural rights of minority communities,*
- b) *that fails to appreciate the fact that the concept of 'one law' within a majoritarian context must also strive to positively recognize minority rights and concerns.*

The existence of the MMDA and other Personal laws in the statute book is also a reflection of the beautiful mosaic that constitutes the Sri Lankan nation. A reading of Articles 10, 12 (2), 14, 27 (1), 27 (2), 27 (5), 27 (11) of the Constitution leads to the irresistible conclusion that pluralism is a core value of the Constitution. These practices form part of the unmistakable collective spirit and character of the Muslim community handed down from antiquity. They are so deeply embedded that they cannot be separated from the cultural ethos of the community. In other words, they constitute the 'conscience' referred to in Article 10 of the constitution.

None of the government appointed Reform Committees had ever made recommendations to abolish substantive provisions of the MMDA. It is thus tragic that energy is being directed towards trying to abolish or undermine the Quazi Court system and other aspects of the MMDA, without focusing on what really needs to be done.

In this context, repealing the substantive provisions of the MMDA will not be the answer for the issues faced by Muslim women due to the MMDA. It is highly likely that repealing it, will only cause these issues to go underground and worsen.

PRG, therefore feels that this move to abolish essential provisions of the MMDA without taking into account its religious, social and cultural implications on the ethos of the community and its identity will be an ill-conceived one and will be counterproductive from a perspective of nation building and ensuring human rights for all.

PRG recalls one such move which was the widely discredited forced cremation policy of the GoSL in the mindset of the COVID pandemic, which was reversed due to international pressure. In fact, these types of continuous episodes of institutionalised racism, have been causing anguish and agony among the Muslim community, already licking the wounds of demonization since the ethnic war ended in 2009, which came to the forefront of Sri Lankan politics after a series of suicide attacks on Easter Sunday in 2019.

PRG therefore strongly appeals to the GoSL to reconsider the ramifications of its cabinet decision. PRG calls for a comprehensive reform of the present system and structure of the MMDA and its application in line with the recommendations of the government appointed expert committees, the latest of which was headed by Justice Saleem Marsoof, and whose report was submitted to GoSL in 2017. PRG also calls on the government to exercise full transparency in the process and engage in meaningful consultations with the community, and desist forthwith, going ahead with the short-sighted move to totally abolish the Quazi court system and other substantive provisions of the MMDA, as envisaged.

It needs to be stressed that GoSL is under obligation under international human rights instruments, to ensure respect for distinctive identities of minorities while ensuring that any differential treatment towards groups or persons belonging to such groups does not mask discriminatory practices and policies, and acknowledging that minorities enrich society through this diversity.