

Maldives

1. Discrimination in the family

a) Overarching legal framework for marriage

Marriage is governed under the 2001 Family Law Act and the Constitution of the Maldives, which was updated in 2008 (Maldives, 2008). Marital and family relations are governed by the Islamic Sharia (CEDAW, 2013). The Constitution attributes significant importance to Islam and Sharia as legal instruments: Article 10 states that Islam shall be at the basis of all laws in the Maldives, and that no law contrary to any tenet of Islam shall be enacted (Maldives, 2008).

Maldivian women require the consent of their legal guardian - typically, their father - to marry and are prohibited from contracting a marriage with a non-Muslim foreigner (Maldives, 2001). A Maldivian man, however, can marry a non-Muslim foreigner if they are from a religion allowed under Islamic Sharia, such as Christianity or Judaism, or if they convert to Islam prior to the marriage (Maldives, 2001).

Coercing a person to marry against his or her will is considered an offense and punished by a fine or temporary exile (Maldives, 2001). It is legal for men to take up to four wives, as long as they are able to declare their competency in providing for their wives and children (CEDAW, 2015).

Unmarried cohabitation is not tolerated, and the law maintains flogging as a suitable punishment for couples who live together or have sexual relations outside of wedlock (CEDAW, 2013). This provision is found to disproportionately affect women and girls and prevents them from reporting sexual offenses (CEDAW, 2013; CEDAW, 2015).

b) Child marriage

The Family Act sets the legal age of marriage for both men and women at the age of 18 (CEDAW, 2013). The Act grants the Marriage Registrar the discretionary power to approve marriages of minors, taking into consideration their physical well-being, reasons for entering the marriage and competence to maintain a livelihood (Maldives, 2001).

The 2009 Child Sex Abuse Act criminalizes sexual relations with and prostitution of children under 18 (Maldives, 2009). However, the Act states that if a person is legally married to a minor under Islamic sharia, none of the offences specified in the legislation are considered a crime (CEDAW, 2013). Reports by non-governmental organizations highlight that child marriage, both registered and unregistered, continues to be prevalent in conservative communities in the Maldives and endorsed by extremist scholars (Hope for Women, 2012).

c) Household responsibilities

While the Maldives does not have any official legislation pertaining to household responsibilities in the private sphere, culturally household management, home and child care are seen as the responsibility of women, with men assuming the role of family decision-makers (ADB, 2014). A

survey by the UN Development Programme found that most men agree that a wife should always obey her husband even if she disagrees (UNDP, 2011).

CEDAW reporting notes that there exists a presumption of joint parental decision-making regarding the health and education of the child, but not in cases of family violence and child abuse (CEDAW, 2013). The majority of households are headed by women as a result of divorce, widowhood, or their husbands seeking employment at sea, in the capital or at resorts (ADB, 2014; CEDAW, 2013).

While women enjoy relative freedom in the public sphere through education, health and labour force participation, social conservatism remains the norm in the private sphere where Sharia law is more likely to be adhered to (World Bank, 2016).

d) Divorce

Under Islamic practice and according to national laws, husbands in the Maldives may divorce their wives more easily than vice versa in the absence of a mutual agreement (Maldives, 2001). A husband is able to divorce his wife after obtaining consent from a judge, while a wife can only file for divorce in the case of her husband committing acts of cruelty, damaging her integrity, staying abstinent, or compelling her to commit acts unlawful by religion (Maldives, 2001). In practice, women are rarely granted a divorce when they file as the evidence permissible by the court is difficult to obtain, and since the testimony of one man is held equal to that of two women (CEDAW, 2013).

Following divorce, children are usually placed in their mother's care, though their father remains their Principal Judicial Guardian until they reach adulthood (Maldives, 2001). NGO reports have found that divorced women are particularly economically vulnerable and face limited choices to improve their situation aside from remarrying (ADB, 2014).

e) Inheritance

Sharia law governs private estate inheritance and grants male heirs twice the share of female heirs, based on the premise that men bear the responsibility of supporting a household financially while women are not required to assume such responsibilities (CEDAW, 2013). Civil inheritance law, where private assets are concerned, is viewed as subordinate to Sharia, and as in divorce cases, the testimony of men is given twice the evidentiary weight of that of women (US Dept. of State, 2007).

Nevertheless, since most of the land in the Maldives is owned by the state and Sharia only applies to the private sphere, it is typically shared equally among male and female heirs (CEDAW, 2013).

2. Restricted Physical integrity

a) Violence against women

The Maldives currently does not have an overarching law addressing violence against women. However, such violence is addressed in the Domestic Violence Act (2012), the revised Penal Code (2014), the Sexual Harassment Prevention Act (2014), and the Sexual Offences Act (2009).

The Maldives ratified international conventions such as CEDAW, the Beijing Platform for Action and the Cairo Plan for Action but with reservations where they are deemed to violate Sharia law (CEDAW, 2013; World Bank, 2016).

b) Domestic violence

In 2012, the Government passed a Domestic Violence Act that includes measures for prevention of violence, guidelines for the protection and support of survivors, and recommendations for the investigation of perpetrators (Maldives, 2012). The Act broadly defines domestic violence as including physical, sexual, psychological and economic violence (Maldives, 2012).

In 2014, the Government also released a Domestic Violence Action Plan, prepared through a participatory process, which includes benchmarks and indicators and allocates monitoring responsibilities to the Family Protection Authority (Maldives, 2014b). However, it does not allocate a specific budget or funding (Maldives, 2014b).

Domestic violence remains a widespread issue (Maldives, 2014b).

c) Rape

The 2014 revised Penal Code broadly defines sexual assault as sexual intercourse without consent, while a rape classification requires the use of force or a victim who is a minor (Maldives, 2014). The Penal Code also criminalizes unwanted sexual contact, indecent exposure and sexual exploitation (Maldives, 2014). While the definition of rape previously did not include spousal rape, the 2009 Sexual Offences Act (Part II, Art. 5) recognizes marital rape under certain circumstances (Maldives, 2009).

International organisations report that controversial provisions that criminalise extramarital sexual relations under Sharia law, or *zina*, persist (World Bank, 2016). Women make up the vast majority of those convicted of *zina* crimes, as their testimony carries less evidentiary weight in court, and they are often subjected to public lashes as punishment (World Bank, 2016). Rape is sometimes interpreted as “forced *zina*,” which complicates female victims’ ability to obtain justice or attempt restitution (World Bank, 2016; Solotaroff and Pande, 2014).

d) Sexual harassment

The parliament passed the Sexual Harassment and Abuse Prevention Act in 2014, which addresses sexual harassment in the workplace and in educational establishments.

e) Female genital mutilation

There is no legislation related to female genital mutilation. There have been no studies conducted to estimate the its prevalence. However, some non-governmental sources have reported that it may be widespread and encouraged by leading religious figures (Orchid Project, 2014).

f) Abortion

Under Section 416 of the Penal Code, abortion is permitted only in case of danger to the pregnant woman’s health, as determined by a medical professional, and pregnancy resulting from sexual assault or incest (Maldives, 2014). Any woman or doctor found to be performing an abortion outside the scope of the law can be imprisoned for up to a year (Maldives, 2014).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Women and men have equal rights to own, use and make decisions regarding land and property, as delineated in the Constitution (Maldives, 2008, Art. 40). The 2004 Family Act does not include any guarantees to equal distribution of marital property upon divorce (CEDAW, 2015).

Inheritance of private property and land remains an important challenge, since it is governed by Sharia law which states that male heirs inherit twice the share of female heirs (World Bank, 2016). Since land is scarce in the Maldives, and property is generally inherited, this contributes to lower property ownership by women (Hope for Women, 2012).

b) Secure access to formal financial resources

Women and men have the same rights to access financial services, including to obtain credit and open a bank account (Maldives, 2008b). The government has conducted awareness and training programmes for women on writing proposals, managing finances, small- and medium-sized enterprises, credit facilities and savings (CEDAW, 2013).

c) Workplace rights

The 2008 Employment Act mandates non-discrimination on the basis of sex in employment, including in remuneration, recruitment, training and type of employment (Maldives, 2008b). The Maldives has ratified ILO Conventions C100, on Equal Remuneration, and C111, on Discrimination of Employment and Occupation (CEDAW, 2013)

In 2016, the parliament approved the Gender Equality Act, which aims to bridge gender gaps in political, economic and family life, for instance by taking affirmative action in sectors where women perform below average.

The Human Rights Commission of the Maldives is vested with investigation authority on human rights and women's rights causes, and can facilitate redress of discrimination issues in the workplace (HRCM, 2017). Authorities such as the Employment Tribunal and the Civil Service, however, are not equipped with gender sensitivity and thus are not responsive to gender discrimination issues (CEDAW, 2013)

The law mandates 60 days of paid maternity leave, paid for by the employer but offers men only 3 days of paid leave upon the birth of their child (Maldives, 2008b, Section 23).

International and non-governmental organizations report that while on paper women face no legal hurdles to their participation in the labour force, household, cultural and personal beliefs contribute to wage and work inequalities (World Bank, 2016; Hope for Women, 2012). For instance, while the tourist industry is encouraged to hire local women, cultural norms and limits on their mobility restrict them from participating in this type of employment (CEDAW, 2013). There is strong community and family opposition to allow female workers to remain on a resort island overnight (CEDAW, 2013). Moreover, most women are fully occupied with housework and childcare, and in the absence of adequate day-care facilities are blocked from participating in the labour force (CEDAW, 2013; UNDP, 2011).

4. Restricted Civil liberties

a) Citizenship rights

Women and men have equal rights to acquire and retain their nationality under the Constitution. According to the Maldives Immigration Act, non-Muslims are not eligible for acquiring Maldivian citizenship (Maldives, 2007, Art. 3). Women and men can apply for government-issued identification cards and passports, and acquire them for their children (Maldives, 2007, Art. 6).

As per Article 9 of the Constitution, non-Muslims, including non-Muslim women, may not become citizens of the Maldives (Maldives, 2008). Maldivian women are prohibited from contracting a marriage with a non-Muslim foreigner and thus cannot transfer their citizenship in this way, contrary to men (Maldives, 2001).

In 2013, the government reported that based on the principles of Sharia law, children born out of wedlock to Maldivian mothers receive Maldivian nationality but children born out of wedlock to Maldivian fathers do not. This practice has a disparate impact on children born out of wedlock to foreign mothers, as they experience discrimination due to stigma, and inequity in access to welfare services (CEDAW, 2015).

b) Voting

The 2008 Constitution guarantees women the same rights as men to vote and run for public office and it removed the constitutional ban on women standing for President (Maldives, 2008, Art. 26).

c) Political voice

Women's political participation is limited, and the number of women in government remains low at all levels. Legislative initiatives submitted to the parliament on the introduction of quotas for parliamentary and council elections have repeatedly been rejected, and the absence of temporary special measures inhibits women's full participation in political life (CEDAW, 2015).

The Ministry of Law and Gender implements multiple initiatives and policies to attempt to increase women's political participation (World Bank, 2016). The 2010 Decentralization Act mandates that local councils have Island Women Development Committees as an integral part of local governance (Hope for Women, 2012; World Bank, 2016). However, the CEDAW committee found that these have a restricted autonomy and mandate, and notes the limited participation of rural women in the use, management and governance of natural resources at the community level (CEDAW, 2015).

NGOs and international organizations have noted that women's participation in national political life is hampered by social norms, familial attitudes, conservative religious groups and a lack of knowledge among women about political structures (UNDP, 2011). Many of the women who achieve high-ranking political positions are members of the political and economic elite, and are not representative of most Maldivian women (World Bank, 2016).

d) Access to justice

The Constitution states that every citizen of the Maldives enjoys equal access to a fair and public hearing (Maldives, 2008). Judges are constitutionally required to refer to the Constitution and to

laws passed by the parliament. In cases where either of these sources is silent, Sharia law is in effect (World Bank, 2016).

The testimony of women is equal to that of men for finance and contract cases, but women are disadvantaged in legal proceedings in matters such as divorce, sexual violence and inheritance (CEDAW, 2013; World Bank, 2016). In these cases, as dictated by Sharia law, the testimony of one man is equivalent to the testimony of two women (CEDAW, 2013).

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