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# Gender Rights and Freedom of Religion or Belief in South and Southeast Asia

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**With gender equality as one of the most significant cross-cutting themes in development, humanitarian work, and peacebuilding, bridging divides that often separate women's movements and their advocates from others has special importance.**<sup>1</sup> Meaningful bridges are critically missing in formal peace processes and community activism, and there are significant gulfs where religious identities are concerned, including among communities of and advocates for women. Women of faith who are also gender activists are often sidelined in mainstream feminist movements. A lack of gender-responsive peacebuilding and FoRB promotion actions, then, contributes to existing harmful structures and attitudes towards women and other gendered minority groups, further escalating conflict. The situation differs by country and region; thus, careful attention to context is essential. Addressing religious traditions and their expression both in social attitudes and in legal frameworks (notably family law), is rarely explored in depth in efforts to understand and address social tensions, but they can present significant obstacles to freedom of religion and belief, with direct and distinctive impacts on women and girls. Analysis of how this plays out in different contexts merits a high priority. Both gender equality and FoRB are linked in multiple ways to social cohesion and, more broadly, to peaceful societies. It can be argued that the tensions that arise where religious practices impede or limit women's participation in peace and conflict resolution efforts or accentuate violence against women can and should be eased with clearer appreciation of the integral links between gender equality and FoRB. Violent practices that affect women undermine social peace and curtail the well-established benefits that come with women's equality.

## **Are Freedom of Religion or Belief (FoRB) and Gender Equality Norms Mutually Conflicting?**

Since the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) came into force, tension between women's rights and the right to FoRB has taken significant forms both within some UN agencies and at the state level. A broadly held concern is that women and other minority groups are often discriminated against in the name of religion. Validating and upholding FoRB, then, can be seen to contradict CEDAW's tenets of gender equality. Various research and advocacy papers highlight contradictions and potential areas of clash, as, in many different settings, religiously motivated family/customary laws, patriarchy, sociocultural coercion, and body politics violate women's and other gendered minorities' fundamental rights to property ownership, access to services, and safety. A growing body of research recognizes the importance of women's involvement in peace and security issues in volatile settings. The Women, Peace and Security Agenda set out in the of United Nations Security Council Resolution 1325 "reaffirms the important role of women in the prevention and resolution of conflicts, peace negotiations, peace-building, peacekeeping, humanitarian response and in post-conflict reconstruction as well as stresses the importance of their equal participation

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<sup>1</sup> For this brief, examples and data are used that are relevant for the SEA-AIR project focus countries in the regions: Bangladesh and Sri Lanka from South Asia, and Thailand, and Indonesia from Southeast Asia.

and full involvement in all efforts for the maintenance and promotion of peace and security.”<sup>2</sup> The resolution also focuses awareness about and calls for protecting women and girls from conflict-related sexual violence through gender-friendly program development and implementation. A proper understanding of the right to FoRB makes clear that violation of human rights in the name of religion is *not* what it is about. The following points should be helpful in understanding the interdependent relationship between gender equality rights and FoRB rights:

- FoRB does not support discriminations and violation of human rights in the name of religion. FoRB protects an individual’s and a community’s rights (regardless of sex, gender, race, ethnicity, and other social classes), both affirmatively and negatively, to have, adopt, change, and manifest religions and beliefs as well as their practices.
- FoRB recognizes, protects, and advocates for women and Sexual Orientation and Gender Identity (SOGI) minorities’ right to interpret and practice their religion “even when this goes against the orthodoxy of the religious community.”<sup>3</sup>
- FoRB does not support, endorse, and protect discrimination and harmful practices done particularly to any gendered groups in the name of religion, such as female genital mutilation, child marriage, honor killings, or gender-based violence.<sup>4</sup>
- FoRB does not support any forms of violence and discrimination against religious minorities by any state and non-state actor. This needs to be reinforced as violence against religious minorities often involves distinct atrocities against girls, women, transgendered, and other SOGI minorities in the form of rape, forced sterilization, forced marriage, kidnappings, land grabbing, etc.
- FoRB also does not protect other gender-based discriminatory practices related to religion such as discriminatory policies that bar women’s access to ownership, women’s unequal statuses in religious institutions, and obligatory dress codes.
- Studies show that countries that have less religious freedom also perform poorly in gender equality indices. Therefore, religious rights and gender equality rights are not contradictory, rather, often complementary.

Gender equality is a fundamental human right that is highlighted in the Sustainable Development Goals (SDGs). SDG 5 has 9 target points that iterate the goal to achieve gender equality and empower all women and girls. FoRB is directly relevant to at least five of these targets:

- **5.1** End all forms of discrimination against all women and girls everywhere.
- **5.2** Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.
- **5.3** Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.

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<sup>2</sup> “Landmark Resolution on Women, Peace and Security (Security Council Resolution 1325).” Accessed March 25, 2021. <https://www.un.org/womenwatch/osagi/wps/>.

<sup>3</sup> Petersen, M. J. (n.d.). Promoting freedom of religion or belief and gender equality in the context of the Sustainable Development Goals: A focus on access to justice, education and health. 108.

<sup>4</sup> “States should not use religious beliefs to justify women and LGBT+ rights violations – UN expert,” The Office of the High Commissioner for Human Rights, March 02, 2020, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25644&LangID=E>

- **5.5** Ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic, and public life.
- **5.C** Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

This discussion makes it evident that disentangling different elements of religious practices and FoRB applications is needed to build synergies between the two sets of rights that ultimately aim to uphold basic human rights. Against this backdrop, it is also important to identify and examine existing faith-inspired discriminations and violations both by state and non-state actors that undermine both FoRB and gender equality rights.

## 10 Broader Areas of Gender Discrimination

Globally, countries have made progress over the last decades sending more girls to schools, reducing child marriage, increasing women representation in the parliaments and leadership positions, and developing a consciousness about gender equality through ratifying international laws and policies. Child marriage rate has dropped by 40% since 2000 in South Asia.<sup>5</sup> However, many challenges remain that need immediate, collaborative, and creative work. Discriminatory social norms and laws such as denominational family laws marginalize many women and other gendered minorities by barring equal access to custody, marriage, divorce, inheritance, and property. Daughters and sons do not have equal inheritance rights 39 countries. Only 13% of women own agricultural land globally.<sup>6</sup> An estimate suggests that 2.5 billion women and girls live in countries with gender discriminatory laws.<sup>7</sup> Often these laws and social norms are based on religion and administered by religious courts and/or religious leaders. Gender-based violence and female genital mutilations are often interlinked with patriarchal religious norms. According to an UN estimate, one in five women and girls between the ages of 15 and 49 report experiencing physical or sexual violence by an intimate partner within a 12-month period.<sup>8</sup> 49 countries have no laws that specifically protect women from such violence. The COVID-19 pandemic has exacerbated the situation due to mandatory lockdown and other restrictive public health measures that reduced women’s ability to seek services. Although the global trend is descending, child marriage and female genital mutilation numbers are still staggering. Around 750 million women and girls got married before the age of 18 and at least at least 200 million women and girls in 30 countries have undergone female genital mutilation

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<sup>5</sup> UNICEF. *Ending Child Marriage: Progress and prospects*. 2013.

[https://www.unicef.org/media/files/Child\\_Marriage\\_Report\\_7\\_17\\_LR..pdf](https://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf)

<sup>6</sup> UN Secretary-General’s High-Level Panel on Women’s Economic Empowerment. *Leave no one behind: a call to action for gender equality and women’s economic empowerment*. 2016

<sup>7</sup> UN Women, *Equality in Law for Women and Girls by 2030. A Multistakeholder Strategy for Accelerated Action*, 2019

<sup>8</sup> United Nations Sustainable Development. “Gender Equality and Women’s Empowerment.” Accessed June 18, 2021. <https://www.un.org/sustainabledevelopment/gender-equality/>.

according to recent data.<sup>9</sup> The following figure helps to visualize 10 intertwined areas that are directly and indirectly linked to FoRB globally.



*Figure 1 Areas of gender discrimination in relation to FoRB*

## South and Southeast Asian Experience of Gender-based Discrimination

South and Southeast Asian countries have shown steady and generally significant progress towards gender equality, with almost all countries showing improvements in the United Nations Gender Inequality Index over the last several decades.<sup>10</sup> However, gender inequalities persist for all age groups. Sociocultural and religious norms, values, and lack of effective policies often intertwine to hinder progress. The current COVID-19 pandemic has exacerbated all forms of discrimination against girls and women as well. Data on basic social indicators such as health, education, and safety show how the regions fare in terms of gender inequalities. In all countries of the regions, there are fewer girls than boys. Indonesia and the Philippines have more than a million fewer girls than boys. Age pyramids show significant differences from international norms, though with different patterns and trends by country. Pre-birth sex selection, high mortality rates among girls under five, and gender difference in migration patterns are some of the direct contributing factors.<sup>11</sup>

There are significant and distinctive effects of health and welfare patterns by gender. Women and girls generally bear disproportionate burdens from poverty and food insecurity.<sup>12</sup>

<sup>9</sup> *ibid*

<sup>10</sup> "Gender Inequality Index," United Nations Development Program, (n.d.), <http://hdr.undp.org/en/content/gender-inequality-index-gii>

<sup>11</sup> "Gender Counts: East and Southeast Asia," United Nations International Children's Emergency Fund, August, 2020, <https://www.unicef.org/eap/reports/gender-counts-east-and-southeast-asia>

<sup>12</sup> Boudet AMM, Buitrago P, de la Briere BL, et al. Gender differences in poverty and household composition through the life-cycle. 2018.

Adolescent girls are more anemic than their male counterparts. Poor reproductive health care, social taboos regarding sex education, and unavailability of contraceptives make girls vulnerable to adolescent pregnancy. There are substantial legal restrictions on abortion in Indonesia, Malaysia, and Philippines. Many women do not have protection from marital rape, including in Malaysia and Myanmar. On the other hand, boys are more vulnerable to child labor, risk of injury, and suicide mortality. These trends are set against a broad pattern of low government spending on health and education in most of the South/Southeast Asian countries. Indonesia, Myanmar, and the Philippines, for example, spend only about 1% (regional variance 1-3%) of their GDP in health and around 2-4% in education (regional variance 2-7%).<sup>13</sup>

Violence against women is common in this region and has some distinctive features, some with direct or indirect links to religious traditions and institutional practice. Child marriage and intimate partner violence affect many girls and women. More than one in five young women aged 20-24 years in Thailand are married before 18 years of age. Similarly, 20% of women face physical and or sexual intimate partner violence in Myanmar.<sup>14</sup> Over 70% of married women or girls in Bangladesh have faced some form of intimate partner abuse.<sup>15</sup> Girls are at a higher risk of human and sex trafficking in this region. Children generally experience substantial disciplinary practices at household and schools. Around half of the women in Indonesia (60 million), the world's most populous Muslim community, are estimated to have undergone female genital mutilation or cutting (FGM/C).<sup>16</sup>

These regional trends of gender-based discriminations are indicative of deep rooted social, cultural, legal, and political structures and contexts that also vary country-wise.

## Country Case Studies

The following section presents selected country cases to illustrate in specific terms de jure gender-based discrimination in and outside of the family through existing legal frameworks and restricted physical integrity through gender-based violence. It highlights religious dimensions where information is available. Most countries tend to have progressive and equalitarian civil laws but also adhere to religious/customary laws when it comes to marriage, divorce, inheritance, and role in family issues causing tension. Since marriage, inheritance, and safety are three major sectors where gendered discrimination takes place more frequently and has a faith connection, these issues are highlighted in the following country case studies.

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<sup>13</sup> "Gender Counts."

<sup>14</sup> *ibid*

<sup>15</sup> "Violence against Women and Girls in Bangladesh: Barriers to Legal Recourse and Support," Human Rights Watch, October 29, 2020, <https://www.hrw.org/report/2020/10/29/i-sleep-my-own-deathbed/violence-against-women-and-girls-bangladesh-barriers>

<sup>16</sup> "Study: Indonesians Embrace FGM as Religious, Traditional Practice | Voice of America - English." Accessed March 29, 2021. <https://www.voanews.com/east-asia-pacific/study-indonesians-embrace-fgm-religious-traditional-practice>



## Bangladesh

Bangladesh has ratified the CEDAW with reservations on article 2 (policy measures to eliminate discrimination against women) and article 16/1 (marriage) which reflect the fact that religious laws take precedence on these two points.<sup>17</sup> Muslim marriage requires registration and consent from both partners, although coercion is a common phenomenon for females during arranged marriages. Polygamy is allowed to men conditionally (up to four wives, equal treatment of wives, and official authorization by local government) but never for women.

Hindu marriages are often not registered and seen as sacraments. Although the government passed the Hindu Marriage Registration Act in 2012, a 2013 amendment made the registration process discretionary.<sup>18</sup> Without a registration process, there is no policy mechanism to prevent child marriage. Hindu women get no practical advantages from their marriage. There is no restriction on how many wives a man can take, although polyandry is prohibited.

Divorce is generally not recognized in Hindu customary law in Bangladesh. However, Hindu married women can get a court decree and choose to live separately from her husband under the Hindu Married Women's Right to Separate Residence act of 1946. Marriage of widows is permitted but a widow loses any inheritance from her deceased husband if she remarries. Christian marriage Act of 1872 requires registration and does not allow polygamy. However, the Divorce Act of 1869 favors men over women.<sup>19</sup> There is little information on Buddhist marriage regulations in Bangladesh; there is no registration requirement.<sup>20</sup>

**Bangladesh has one of the highest rates of child marriage in the world. The government passed the Child Marriage Restraint Act in 2017 with a provision to allow marriages for girls under 18 in “special cases” or for “the greater good of the adolescent” without specifying what those special cases might be.**

Both Muslim and Hindu personal laws permit girls to get married after puberty. The Christian Marriage Act sets the legal age at 18 for girls and 21 for boys, with a provision for

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<sup>17</sup> “Bangladesh Gender Index,” Organisation for Economic Co-operation and Development, (n.d.), <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/BD.pdf>

<sup>18</sup> “Hindu Marriage Registration Act: A protective shield for women,” Dhaka Tribune, February 01, 2020, <https://www.dhakatribune.com/bangladesh/2020/02/01/hindu-marriage-registration-act-a-protective-shield-for-women>

<sup>19</sup> Men and women do not enjoy equal rights to divorce under Christian law. According to the Divorce Act of 1869, “men can initiate divorce on the basis of allegations that their wife committed adultery. On the other hand, women must prove the adultery committed by their husband and one additional act stipulated under the law including incestuous adultery, bigamy with adultery, sodomy, and bestiality (Divorce Act, Section 10). Source: “Bangladesh Gender Index.”

<sup>20</sup> “Modernizing Marriage Registration Law in Bangladesh,” International Journal of Physical and Social Sciences 3, Issue 7 (2013). [https://www.researchgate.net/publication/272409369\\_MODERNIZING\\_MARRIAGE\\_REGISTRATION\\_LAW\\_IN\\_BANGLADESH](https://www.researchgate.net/publication/272409369_MODERNIZING_MARRIAGE_REGISTRATION_LAW_IN_BANGLADESH)



parental consent where legal age can be decreased.<sup>21</sup> Dowry and dowry related abuse and torture of women are of high frequency in Bangladesh, and prevalent across all religions. Inheritance laws are also religiously regulated personal laws in Bangladesh and discriminatory against women.

Violence against women is all too common in Bangladesh, including murder, heavy beating, acid violence, gang rape, and other physical and psychological torture. A report shows that 235 women were killed by their husband or husband's family in the first nine months of 2020.<sup>22</sup> The number hits 3,300 between 2001-2019. It is likely that "only a fraction of the true levels of such violence" are officially reported<sup>23</sup> Violence against women coming from religious and ethnic minorities are also high due to their "double infidels" status.<sup>24</sup>

## Sri Lanka

Sri Lanka's legal framework for marriage includes the Marriage Registration Ordinance of 1908—the general law, and three personal laws—the Muslim Marriage and Divorce Act (for the Sri Lankan Muslims), the Kandyan Marriage and Divorce Act (for the Kandyan Sinhalese), and the Thesawalam law (for the Tamils).<sup>25</sup> Marriage registration is mandatory in the Kandyan tradition whereas the general and Muslim laws make it discretionary.<sup>26</sup>

Sri Lanka's approximately 2 million Muslims (around 10% of the population) are subject to the Muslim family law formally known as the Muslim Marriage and Divorce Act (MMDA) of 1951. MMDA includes several discriminatory provisions with "grave impacts on women."<sup>27</sup> The Muslim Personal Law Reform Action Group (MPLRAG), a group of Muslim female human rights advocates, lawyers, researchers and writers, lists the following discriminatory practices within MMDA that limit gender equality<sup>28</sup>:

- Legally allowing child marriage by not stipulating the minimum age of marriage for Muslims as 18 years (A Quazi can permit even the marriage of a child under the age of 12)
- No requirement of mandatory (and written) consent from the bride

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<sup>21</sup> "Bangladesh Gender Index."

<sup>22</sup> "Violence Against Women."

<sup>23</sup> *ibid*

<sup>24</sup> "Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Bangladesh," The Office of the High Commissioner for Human Rights, (May 20-29, 2013), A/HRC/26/38/Add.2, [https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiF8JTMptTuAhVZFFkFHW2EA8sQFjAAegQIBRAC&url=https%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession26%2FDocuments%2FA-HRC-26-38-Add2\\_ar.doc&usq=AOvVaw3ZKLZEm0WuRMQcTDInXa8c](https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwiF8JTMptTuAhVZFFkFHW2EA8sQFjAAegQIBRAC&url=https%3A%2F%2Fwww.ohchr.org%2FEN%2FHRBodies%2FHRC%2FRegularSessions%2FSession26%2FDocuments%2FA-HRC-26-38-Add2_ar.doc&usq=AOvVaw3ZKLZEm0WuRMQcTDInXa8c)

<sup>25</sup> "Sri Lanka Gender Index," Organisation for Economic Co-operation and Development, (n.d.), <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/LK.pdf>

<sup>26</sup> *ibid*

<sup>27</sup> "Critical issues and questions to be raised with the Sri Lankan government at CEDAW Constructive Dialogue," Women's Action Network, July 2016, [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_24266\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_24266_E.pdf)

<sup>28</sup> "Sinhala – FAQs on Article16(1)," Muslim Personal Reform Action Group, (n.d.), <https://mplreforms.com/article-16/>

- Different conditions of divorce for men and women
- Only husbands are granted the right to unilateral divorce without reason
- Process of divorce for wives lengthy, requiring reasons and evidence, witnesses and case hearings
- Arbitrary provision for wife and child maintenance depending on Quazi
- Practice of polygamy without requirement of consent from the wife/s or wife to be (and without their knowledge)
- Qualified women not allowed to be marriage registrars, Quazis, jurors or Board of Quazi members. The position of Quazi is a state-salaried and tax-funded position that is allowed to discriminate against women simply on the basis of sex; again due to Article 16(1), this State discrimination is 'legalized'
- No mandatory requirement of qualifications or mandatory training for Quazis

A process to amend the MMDA is currently underway in Sri Lanka that sets the minimum age for marriage at 18, allows brides to sign their own consent to marriage, and provides for female Quazis.<sup>29</sup>

While MMDA has received much criticism and is currently going through a transition, it is important to note that the Kandyan law also allows underage marriage in specific scenarios. Underage unions are deemed legal "if both parties cohabit for one year after turning 18, or if a child is born as a result of the union."<sup>30</sup> The general Marriage Registration Ordinance also offers "contradictory provisions" in regard to child marriage. While article 15 invalidates marriages under 18, article 22 leaves it up to the parental consent.<sup>31</sup>

**Sri Lanka has one of the lowest rates of child marriage in South Asia. An estimate suggests that around 10% of girls are married or in a union before the age of 18 and 1% before 15 years of age. However, child marriages are on the rise in several pockets particularly in the underdeveloped, war affected and geographically dry and arid areas.**

Discriminatory divorce laws make it difficult for women to get out of abusive marriages. MMDA allows men to divorce at their will through the *Talaq* process; whereas women have to go through Quazi courts to prove a "fault" in their husband. The fault will be assessed by a male Quazi for its merit. Kandyan law requires women to prove significant enough reasons for divorce (for example adultery AND gross cruelty). Inheritance law in Sri Lanka also varies by personal/family laws based on religion and ethnicity. The 1938 Kandyan Law Declaration and Amendment gives women and men equal rights to moveable properties, although the women are not entitled to equal land inheritance rights. According to the Muslim Intestate Succession Act 1931, female heirs inherit a lesser share than male heirs of the same degree

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<sup>29</sup> "Sri Lanka- Muslim Marriage and Divorce Act to be amended," The Middle East North Africa Financial Network, Inc., January 06, 2021, <https://menafn.com/1101395507/Sri-Lanka-Muslim-Marriage-and-Divorce-Act-to-be-amended>

<sup>30</sup> "Sri Lanka Gender Index."

<sup>31</sup> *ibid*

of relationship to the deceased. A widow inherits half the portion that a widower would inherit.<sup>32</sup>

Violence against women in Sri Lanka is widespread in certain regions and often underreported.<sup>33</sup> The military presence in northern and eastern regions of the country since the civil war ended in 2009 has resulted in an increasing number of assaults among predominantly Tamil women and girls.<sup>34</sup> Reports on GBV in Sri Lanka suggest that “[F]emale heads of households, war widows, former combatants, human rights defenders and women seeking truth and accountability after the civil war, are especially vulnerable to acts of violence (e.g. rape, abductions, torture, sexual bribery, sexual slavery) and home invasions perpetrated by the military and the police.”<sup>35</sup> The Prevention of Terrorism Act allows police and military members to carry out body inspections and “searches” without proper justification or prior permission. Similar to other South Asian countries, Sri Lanka’s GBV victims suffer from limited access to justice, extreme delays in investigation, very low conviction rates, and arbitrary outcomes. Female genital mutilation is practiced among the Dawoodi Bohra community. There is no law to prevent these practices.<sup>36</sup>

## Myanmar

Myanmar embodies a plurilegal legal framework for marriage including “customary, religious and civil laws, such as the Buddhist Women’s Special Marriage and Succession Act 1954, the Islamic Marriage Act, the Christian Marriage Act, and the Hindu Customary Law.”<sup>37</sup> There is a dearth of data and information about whether and how these marriage laws undermine gender equality, since they vary significantly from state to state. However, some of the features include prohibition of forced marriage and polygamy. Myanmar’s customary laws set the legal marriage age for women at 20 but this varies by religious tradition. Buddhist boys and girls can be married at the age of 14 with parental consent.<sup>38</sup> Men and women in Myanmar have equal legal rights to divorce and inheritance but practice varies according to religious family laws. The de facto practices of discrimination are largely unknown.

**Sexual and gender-based violence (SGBV) are largely “silent and hidden” in conflict-affected settings like Myanmar. As a result, most SGBV cases remain**

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<sup>32</sup> “Gender and Land Rights Database: Sri Lanka,” Food and Agricultural Organization of the United Nations, (n.d.), [http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/inheritance-legal-mechanisms/en/?country\\_iso3=LKA](http://www.fao.org/gender-landrights-database/country-profiles/countries-list/national-legal-framework/inheritance-legal-mechanisms/en/?country_iso3=LKA)

<sup>33</sup> “Sri Lanka Shadow Report,” The Women and Media Collective, January 2017, [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_26306\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26306_E.pdf)

<sup>34</sup> “Sexual Violence in Sri Lanka,” European Center for Constitutional and Human Rights, (n.d.), <https://www.ecchr.eu/en/case/sexual-violence-in-sri-lanka/>

<sup>35</sup> “Sri Lanka Shadow Report.”

<sup>36</sup> “Sri Lanka,” Orchid Project, (n.d.), <https://www.orchidproject.org/about-fgc/where-does-fgc-happen/sri-lanka/>

<sup>37</sup> “Myanmar Gender Index,” Organisation for Economic Co-operation and Development, (n.d.), <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/MM.pdf>

<sup>38</sup> “Myanmar Gender Index,” Organisation for Economic Co-operation and Development, (n.d.), <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/MM.pdf>

**unreported particularly when Myanmar has come under the military rule. Myanmar's state-sponsored violence against the Rohingya community, however, drew global media attention, especially in 2017-18.**

Human Rights Watch reported Burmese security forces' brutality, rape, and sexual assault of women and girls both during major attacks on villages but also in the weeks prior to these major attacks sometimes after repeated harassment.<sup>39</sup>

## **Thailand**

The Civil and Commercial Code of 1925 regulates marriage, family matters, and inheritance law in Thailand. Men and women have similar right to enter a marriage, but widowed women must wait 310 days to remarry while widowed men do not. Legal age for marriage is 17 for both men and women, although underage marriage is permitted under undefined "special" cases with parental consent.<sup>40</sup> Child marriage is still prevalent among Muslims in the majority southern provinces where Islamic laws are observed. However, since 2018, Islam's guiding council in Thailand requires that marriages of children under age 17 be approved by a religious committee.<sup>41</sup> Same sex marriage is not yet recognized in Thailand's Civil and Commercial Code of 1925 despite the Thai Constitution's commitment to equality, "all persons are equal before the law, and shall have rights and liberties and be protected equally under the law."<sup>42</sup> However, progress has been made recently as the Thai cabinet has endorsed a bill called "Civil Partnership Bill" that allows registration of same-sex Thai couples and same rights as opposite sex couples.

**Violence against women is a significant problem in Thai society. There are no national level statistics on the prevalence of SGBV. Intimate person violence is seen as a private matter and highly under reported.**

Statistics show that the numbers of domestic violence cases have significantly increased from 25,767 to 31,866 between 2010 and 2013 respectively.<sup>43</sup> Royal Thai Policy report data shows that 1,965 complaints of rape were made between January 1 and December 31 of

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<sup>39</sup> "Sexual Violence by the Burmese Military Against Ethnic Minorities," Human Rights Watch, July 25, 2018, <https://www.hrw.org/news/2018/07/25/sexual-violence-burmese-military-against-ethnic-minorities>

<sup>40</sup> "Thailand Gender Index," Organisation for Economic Co-operation and Development, (n.d.), <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/TH.pdf>

<sup>41</sup> "Thai Islamic leaders tighten rules on child marriage," Associated Press, December 14, 2018, <https://apnews.com/article/f6d46cd35d2c460b8e789c835bb96bc3>

<sup>42</sup> Chandran, Rina. "Thai LGBT+ activists in legal bid to force marriage equality," Reuters, November 22, 2019, <https://www.reuters.com/article/us-thailand-lgbt-lawmaking-trfn/thai-lgbt-activists-in-legal-bid-to-force-marriage-equality-idUSKBN1XW0JO>

<sup>43</sup> *ibid*

2019.<sup>44</sup> There are some reports of FGM in the Southern provinces, but exact numbers and gravity of this practice is generally unknown.

## Indonesia

Marriage/divorce, family relations, inheritance to property, physical integrity, and economic participation in Indonesia are generally framed by a combination of civil, customary (*adat*), and Sharia law.<sup>45</sup> According to the Marriage Law 1/1974, all marriages are required to include a religious ceremony and state registration. The law provides equal right for men and women to file a divorce and preserves equal social status. However, the law defines husbands as “heads of the family” and wives as “mothers of the households.”<sup>46</sup> The law is vague on interfaith marriage, which is more complicated by cultural and administrative barriers. The Indonesian Ulama Council has declared interfaith marriages as “*haram*.” The civil servants tend to discourage such marriages by not registering interfaith marriages.<sup>47</sup> Same-sex marriage is not recognized in Indonesia and criminalized in Aceh and South Sumatra provinces. Child marriage is highly prevalent in the country. In 2018, 1 out of 9 girls got married before the age of 18.<sup>48</sup>

**However, Indonesia raised the legal minimum age at which girls can marry to 19 in 2019—a laudable example for other states. The parents can still petition for an exemption to marry their daughters earlier with no minimum age requirement.**

Violence against women is high in Indonesia. A 2017 nationwide survey among 9000 households show that more than 33% of women, aged 15 to 64 years old, had experienced physical and/or sexual violence. 42% of women reported restrictions against freedom that include controlled socialization, curtailed religious freedom, and restricted health care services.<sup>49</sup> Rape and marital rape are punishable offense, although very few cases of rape and sexual assaults are brought to court. Sexual harassment is ill-defined in the penal code.

Female genital mutilation is a large issue as the country ranks third in the world for the percentage (49%) of girls who experience such practices. Indonesian Basic Health Research study of 2013 shows that 51% of girls were circumcised up to the age of 11. FGM occurs mostly between the age of 1 and 5 months (72% according to the 2013 data), followed by

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<sup>44</sup> Salva, Ana. “Thailand has a Gender Violence Problem,” The Diplomat, October 26, 2020.

<https://thediplomat.com/2020/10/thailand-has-a-gender-violence-problem/>

<sup>45</sup> “Social Institutions and Gender Index.” OECD Development Center 2019. <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/ID.pdf>

<sup>46</sup> O’Shaughnessy, Kate. *Gender, State and Social Power in Contemporary Indonesia*. 1st edition. London: Routledge, 2009.

<sup>47</sup> “In Indonesia, Interfaith Marriage Is Legal - But With Many Obstacles | Voice of America - English.” Accessed March 28, 2021. <https://www.voanews.com/east-asia-pacific/indonesia-interfaith-marriage-legal-many-obstacles>.

<sup>48</sup> “Child Marriage in Indonesia.” Accessed March 29, 2021. <https://www.unicef.org/indonesia/reports/child-marriage-in-indonesia>.

<sup>49</sup> “New Survey Shows Violence against Women Widespread in Indonesia.” Accessed March 29, 2021. [/fr/node/16015](https://www.voanews.com/fr/node/16015).

13.9% between 1-4 years and 3.3% between 5-11 years.<sup>50</sup> FGM in Indonesia is often religiously motivated. A 2017 survey among 4,250 households in 10 provinces shows that 92% of respondents believed that female circumcision is a religious practice. 97% of these respondents approved of the practice as a religious and traditional one. FGM is a political issue as well in Indonesia. The ministry of health banned FGM in 2006 prohibiting any medical professional performing any form of FGM. The regulation was rejected by the Indonesian Ulema Council, which issued a fatwa in 2009 disbanding the regulation as anti-Islamic. The government allowed only medically performed FGM in 2010. However, reports show that FGM is regularly performed by midwives and birth attendants who may not have any medical training.<sup>51</sup>

## Areas for particular attention and advocacy

**Policymakers at the national and regional and regional levels should be made clearly aware of the complementary and synergetic relationship between the FoRB and gender equality rights.** The UN Special Rapporteur on FoRB<sup>52</sup> website has good resources on these links.

**More spaces, both on and offline, need to be created and encouraged for dialogue and cooperation between religious and secular FoRB and gender equality advocates at the national and regional levels.** More spaces, both on and offline, need to be created and encouraged for dialogue and cooperation between religious and secular FoRB and gender equality advocates at the national and regional levels. ASEAN Parliamentarians for Human Rights (APHR) and SAARC<sup>53</sup> platforms could provide the opportunities to engage at the regional levels in Southeast and South Asia.

**Policymakers should be encouraged to consider that FoRB and gender inequality discussions are part of the global Sustainable Development Goals that aim to end all religious, income, gender, age, ethnicity, race, migratory status, disability, and geography-based discriminations.**

**State regulatory bodies should be brought together in regional platforms where analysis of current country level discriminatory laws, litigation procedures, policies, and practices and their impacts on gendered minorities should be discussed openly.** Targeted, consistent, and concerted efforts among state and nonstate actors are needed

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<sup>50</sup> "Study: Indonesians Embrace FGM as Religious, Traditional Practice | Voice of America - English." Accessed March 29, 2021. <https://www.voanews.com/east-asia-pacific/study-indonesians-embrace-fgm-religious-traditional-practice>.

<sup>51</sup> "Social Institutions and Gender Index." OECD Development Center 2019. <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/ID.pdf>

<sup>52</sup> "Special Rapporteur on freedom of religion or belief," The Office of the High Commissioner for Human Rights, <https://www.ohchr.org/en/issues/freedomreligion/pages/freedomreligionindex.aspx>

<sup>53</sup> South Asian Association for Regional Cooperation

towards law reform. Regional and national level alliance building could be one of the first steps.

**Engaging with local and regional religious leaders from a broad spectrum of religious traditions and gender rights advocates is key.** These groups either do not work together or take a limited and utilitarian approach.

**Stopping SGBV needs to be addressed at all levels.** As a precursor, reliable and consistent data collection and distribution is very important. Culturally and contextually relevant indicators for data collection needs to be developed. Consistent sources of funding, training data collectors, and continuous identification of gaps in data are some of the major steps.

**Religious leaders and local gender advocates should be provided with resources on interfaith perspectives on gender equality.** It is important to convince youths and other social influencers multiple interpretations of religious texts are possible.

**Gender policies and practices should move beyond men-women binary and embrace all gendered minorities.** Men and boys are often left out from gender equality conversations that involve religious groups, which should be avoided.

**Men's participation in anti-patriarchal movements and their involvement in gender equality and women empowerment programs is critical, but it needs more innovative strategies and approaches.** Changing the competitive narrative (men vs. women) to a reciprocal one (men and women) might help.

**Gender advocates and civil society organizations (CSO) are often targeted by religious hardliners.** Therefore, CSO needs more support in term of financial, opportunity, and facility to enable them to mobilize freely within the country and outside the country.



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