

Legal & Policy Analysis Report

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Title:	Family Law Reforms in Sri Lanka: A Human Rights Analysis of the Proposed 'No-Fault Divorce' Model and Individual Liberty
Data Source:	BBC Sinhala News Reports (Based on a report by Kumudu Jayawardena, January 12, 2026)

1. INTRODUCTION AND CONTEMPORARY CONTEXT

When evaluated against global statistics, Sri Lanka ranks as the country with the second lowest divorce rate in the world, quantitatively recording a mere 0.15 divorces per 1,000 individuals. This statistical reality is heavily driven by deeply entrenched religious and social pressures, coupled with a rigid statutory legal framework that regulates marital dissolution.

However, an intense dialogue has emerged within the legal and human rights domains following the preparations by Member of Parliament Lawyer Faiszer Musthapha to table a Private Member's Bill within the coming month. This bill aims to comprehensively reform existing divorce laws to harmonize them with contemporary societal needs.

2. SRI LANKA'S EXISTING MARITAL LEGAL FRAMEWORK

Under the General Marital Law currently operational in Sri Lanka, a decree of divorce can only be granted if a specific 'matrimonial fault' is judicially proven beyond reasonable doubt. The civil courts strictly recognize only three statutory grounds for dissolution:

- **Adultery:** The voluntary sexual intercourse of a married person with any individual other than their legal spouse. Proving this ground requires the submission of stringent, unassailable evidence to the court.
- **Malicious Desertion:** This fault is categorized under two distinct legal doctrines:
 - **Actual Malicious Desertion:** Where a spouse deliberately vacates the matrimonial home with a definitive intention to bring cohabitation to an end.
 - **Constructive Malicious Desertion:** Where the abusive conduct or severe misbehavior of one spouse forces the aggrieved partner to flee the matrimonial home. In this scenario, the party vacating the home is legally blameless, while the party whose conduct necessitated the departure is held liable.
- **Incurable Impotency:** The physical inability to perform sexual intercourse at the time of marriage or subsequently. The law explicitly isolates this from childlessness or general infertility, requiring rigorous clinical and medical records to satisfy judicial standards.

3. THE PROPOSED AMENDMENTS: INSTITUTIONALIZING 'NO-FAULT DIVORCE'

The core legislative intervention proposed by MP Faiszer Musthapha is the institutionalization of a 'No-Fault Divorce' mechanism. This legal framework would allow a husband and wife to secure a dissolution based solely on mutual consent and an irreconcilable breakdown of marriage, eliminating the necessity of mudslinging or proving a specific matrimonial fault in open court.

In tandem with this, several targeted personal law reforms have been integrated into the private member's motion to catalyze broader social equity:

- **Muslim Marriage and Divorce Act (MMDA):** Rectifying the minimum age of marriage to a mandatory 18 years for all citizens, transferring maintenance litigation to the Magistrate's Courts, and allowing legal practitioners to represent clients within Quazi courts.
- **Thesawalamai Law:** Reforming the patriarchal provision that restricts a married woman's financial autonomy by requiring the marital consent of her husband to alienate or manage her separate immovable property.

4. STAKEHOLDER PERSPECTIVES AND SOCIO-LEGAL DISCOURSE

4.1 Political and State Apparatus Response

The main opposition, Samagi Jana Balawegaya (SJB), through Member of Parliament Lawyer Ajith P. Perera, vocally commended the initiative as a highly progressive legislative advancement, pledging their absolute parliamentary support for its enactment. Concurrently, the Minister of Justice Hon. Harshana Nanayakkara stated that the government would formally evaluate and systematically analyze the draft provisions once tabled before executing a final executive decision.

4.2 Progressive Human Rights and Legal Standpoint

Human rights advocate Lawyer Ermiza Tegal underscores that 'No-Fault Divorce' is a humane legal standard universally practiced across democratic jurisdictions. The primary objective is to dissolve empty marital shells, preventing citizens from being structurally trapped in hostile unions and endless litigation. However, she emphatically highlights that the implementation of such liberal frameworks must be accompanied by ironclad legal safeguards protecting child rights and welfare.

4.3 Traditional and Cultural Critique

Conversely, Senior Professor Mayura Samarakoon of the University of Sri Jayewardenepura presents a traditionalist perspective, arguing that the high statutory thresholds of Sri Lanka's existing law were intentionally designed to fortify the family unit and guarantee child security by preventing hasty separations. He cautions that over-liberalizing divorce laws could trigger a rapid escalation in broken families, insisting that the amendments must be scrutinized with extreme caution to evaluate their long-term societal fallout.

5. GHRF CONCLUSIONS AND POLICY RECOMMENDATIONS

The Research & Analysis Division of the Global Human Rights Front (GHRF) posits that structurally forcing citizens to remain chained within dead, abusive, or dysfunctional marriages constitutes a severe violation of their fundamental right to liberty, mental health, and individual well-being. Using the law to artificially hold a shattered union together does not preserve family values; rather, it actively fosters domestic violence and psychological trauma.

Our Policy Recommendations:

- 1. Enactment of the No-Fault Divorce Model:** Parliament must legalize the right to separate via mutual consent to honor individual autonomy. This will eradicate the systemic wastage of financial resources and time spent manufacturing fabricated, bitter fault allegations in civil courts.
- 2. Automated Custody and Maintenance Mechanisms:** The new legislation must strictly embed an automated, expedited fast-track mechanism to adjudicate child custody, educational rights, and financial maintenance concurrent with the filing of a no-fault dissolution application.
- 3. Institutionalization of Court-Annexed Family Counseling:** While liberalizing exit options to prevent trauma, the state must simultaneously enact provisions for mandatory, professionally managed family counseling services annexed to the court system, ensuring couples explore genuine reconciliation pathways prior to final execution.

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