

GENDER INEQUALITY IN EXERCISING LAND RIGHTS: A CRITICAL ANALYSIS OF ITS IMPLICATIONS FOR WOMEN HEADED FAMILIES IN POST - WAR JAFFNA, SRI LANKA

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Introduction

Land is an important resource for livelihood generation and is an asset that is passed down through generations. Despite its importance, a gender inequity in the ability to exercise land rights is often witnessed. Women suffer negative impacts on social status, economic wellbeing, empowerment and the gross domestic product of the country is also affected. Although the right to property is not considered a fundamental right under Chapter III of the Sri Lankan Constitution of 1978, it can be ascertained from the Directive Principles of State Policy.¹ Unlike in India², the right to life is not enshrined in the Sri Lankan Constitution, thus, provisions relating to shelter, housing and property remain silent. The laws governing property in Sri Lanka are based on Roman Dutch Law and Customary Laws *i.e.* Kandyan Law, *Tesawalamei* and Muslim Law, which govern married women's proprietary rights. These remain gender biased notwithstanding national³ and international instruments⁴ recognizing gender equality. This paper primarily focuses on the effect of discriminatory provisions in the Jaffna Matrimonial Rights and Inheritance Ordinance No.01 of 1911 as

¹ Article 27 (1) (c) of the Sri Lankan Constitution provides "*the realization by all citizens of adequate standard of living ... including adequate food, clothing and housing.*"

² Article 21 of the Indian Constitution provides "*No person shall be deprived of his life or personal liberty except according to procedure established by law.*"

³ Article 12 guarantees equality before the law and equal protection of law without any discrimination *inter alia* of sex.

⁴ Article 17 of UDHR

Art.1,2,3,5,13,15,16(h) of CEDAW

amended by No.58 of 1947 (JMRIO) in post conflict Jaffna. The Jaffna Tamil community is traditionally patriarchal, however, the war has left many families headed by women. In such situations, the discriminatory provisions in the JMRIO, have negatively impacted married women's ability to exercise their land rights. The core objective of this paper is to identify problems in the JMRIO, in post conflict Jaffna and to examine coping strategies adopted by women.

This study analyses the JMIRO and Married Women's Property Ordinance⁵ and published works such as *Land in the Northern Province* by Bavani Fonseka et al., (2011); Sundaram Sriskandarajah et al., *Legal Analysis of Property Issues affecting Internally Displaced Persons and Refugees in Sri Lanka*, (2003), Kishali Pinto-Jayawardena and Jayantha de Almeida Guneratne's *Is Land Just for Men? Critiquing Discriminatory Laws, Regulations and Administrative Practices relating to Land and Property Rights of Women in Sri Lanka*, (2010) and extended abstracts by Rose Wijeyesekera on *Property Rights in Sri Lanka: A Means of Gender Discrimination?*, and by Gbadegesin, Job Taiwo titled *A Survey of Cultural and Traditional Implication on Women's Rights to Land for Development*.

The paper examines how discriminatory provisions in JMRIO affect the women's rights to land and property. In what ways do the provisions in JMRIO impact women headed families in Jaffna? And how does the law enable a married woman, whose husband has disappeared as a result of the armed conflict, to dispose her property?

Methodology

The research is a socio – legal study conducted using the qualitative approach. The primary data for this research was collected from

⁵ No.18 of 1923

Acts and International Conventions and secondary data was from textbooks, journals and scholarly articles.

Results and Discussion

Even though women are discriminated under the Kandyan Law⁶ and Muslim Law, this paper is limited to an analysis of the impact of discriminatory provisions of the JMARIO against married women who are governed by the *Tesawalamei* law in post war Jaffna. Section 6 of the JMARIO provides that a married woman does not have a power to dispose her immovable property without the written consent of her husband. She can however, dispose her property without her husband's consent in case he unreasonably withholds consent⁷ with the order of the District Court. Unlike under the Married Women's Properties Ordinance, a married woman under the *Tesawalamei* law is unable to handle her properties as *feme sole*. This issue became critical with the end of the war when significant numbers of men were reported as missing or disappeared. This created families where women bore the responsibility of head of household. Though many women had immovable properties, they were unable to dispose of them, as consent could not be obtained from their husbands.

The Sri Lankan government enacted the Registration of Deaths (Temporary provisions) Act No.17 of 2005 as a solution. Although the Act enables a married woman to dispose her immovable property by securing a temporary death certificate, many women hesitate to obtain these as they are certificates of death and not of absence. They are unwilling to betray their loved ones even though circumstances (financial need, dowries required for daughters on marriage etc.) may force them to do so. Additionally, accepting the

⁶ Sections 11 and 12 of the Kandyan Law Ordinance No. 38 of 1939 provide that the Kandyan widows, sisters and daughters who married in deega are forfeited to inherit the property of their deceased husband or father.

⁷ S.8 of the JMARIO provides that provides that the wife could obtain consent in certain circumstances from court to dispose of her property in the absence of a written consent of her husband.

certificate requires her to adopt a new cultural identity *i.e.* widow, which carries many negative connotations. Further, the Act, fails to address the effect of the transaction a woman makes based on the death certificate in case the husband is found to be alive.

Conclusion

It is evident from this study that policy intervention is urgently needed to ensure women's rights to land. However, laws and policies alone are inadequate if their application is compromised by the customary. This paper finally emphasizes that any reformation must be subject to the consideration of cultural pluralism.

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