Sri Lanka

1. Discriminatory family code

Family relations in the country are governed by several legal systems. The General Law (civil law) is predominant, but three parallel systems of law may also apply: Islamic, Kandyan, Sinhala and Thesavalamai law. These three systems are all grounded in customary practices of particular ethnic groups and/or religions.\(^1\) Under the general civil law, Sri Lanka’s legal age of marriage is 18 years for both men and women,\(^2\) and under the Marriages (General) Act (as amended in 1995), early marriages are prohibited. However, the general law as well as personal laws of certain communities allow early marriages with the consent of the parents.\(^3\) The Muslim Personal Law, for example, does not provide a minimum age for marriage.\(^4\) The United Nations reports, based on 2007 data, that 9.2% of girls between 15 and 19 years of age were married, divorced or widowed (comparable date for boys was not available). In 1987, 7% of girls aged between 15 and 19 were married, divorced or widowed.\(^5\) The mean age of marriage for women is 24.\(^6\)

Parental authority is not equally shared in Sri Lanka. Fathers are regarded as the natural guardians of children while mothers are viewed as custodians and are usually responsible for the daily activities related to raising the children.\(^7\) Recent developments in case law have reduced discrimination against women in this area by invoking the ‘best interests of the child’ principle. New child protection legislation introduced in 2007 emphasises the wellbeing of children, who may be placed with either parent upon divorce. However, this principle has not been incorporated into the law on marital obligations.\(^8\)

None of the personal laws of communities allow no-fault divorce. Regarding children’s rights after divorce, the court is the final authority and may issue a ruling that it considers ‘proper with respect to the custody of minor children’.\(^9\)

Women’s inheritance rights vary, depending on the legal system. Under the civil Matrimonial Rights and Inheritance Ordinance, a widow inherits one half share of the estate and one half is

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\(^1\) Asian Development Bank (2008), p. 4
\(^2\) Marriage Registration Ordinance 1908 (amended in 1995): Section 15.
\(^3\) Marriage Registration Ordinance 1908 (amended in 1995): Section 22 (1)
\(^4\) CEDAW (2002) paras 270, 274
\(^5\) United Nations Department of Economic and Social Affairs, Population Division (2008)
\(^6\) World Economic Forum (2013), p. 2343
\(^7\) The Women and Media Collective (2010), p. 32
\(^8\) The Women and Media Collective (2010), p. 32
\(^9\) Civil Procedure Code 1889: Section 621
shared among descendants including sons and daughters.\textsuperscript{10} In 2009, the Rural Development Institute reported that Islamic law discriminates against women in the area of property in that Muslim women are typically granted smaller inheritance shares than male heirs.\textsuperscript{11} Following the death of a father, Kandyan law ties the inheritance rights of daughters to marital practices: daughters who marry in diga (i.e. the bride is taken into the groom’s home) must transfer any inherited property to their brothers or to sisters who have married in binna (i.e. the groom is taken into the bride’s home).\textsuperscript{12} Under Tamil Customary Law, both widows and widowers do not have a right to ancestral property.\textsuperscript{13}

As will be discussed further in the Ownership section, the Land Development Ordinance discriminates against women by giving preference to male heirs over female heirs. However, the government reported in 2010 that it was considering an amendment to this law to remove gender discrimination.\textsuperscript{14}

**More**

Pursuant to the Citizenship (Amendment) Act No. 16 of 2003, a Sri Lankan woman is able to transmit her citizenship to her child.\textsuperscript{15}

Polygamy is illegal under the Penal Code in Sri Lanka,\textsuperscript{16} although it is permitted for Muslims but the Muslim Marriage Divorce Act requires notification in the event of a Muslim male wishing to enter into a polygamous marriage.\textsuperscript{17}

The Asian Development Bank reports that the armed conflict and tsunami disaster have created an environment conducive to early marriage, and there are reports that corrupt registrars falsify ages of young girls to approve underage marriages.\textsuperscript{18} Additionally, some cultural groups continue to practice early marriage. However, the government reports that between 1996 and 2003 there has been a steady decline in the number of Muslim girls married before the age of 16, mainly due to increasing participation in higher education. According to government data the number has dropped from 109 in 1996 to 80 in 2003.\textsuperscript{19}

The civil war in Sri Lanka resulted in a rise in the number of female-headed households, particularly in the Northern and Eastern Provinces.\textsuperscript{20} This has meant that an increasing number of women have become breadwinners, thus challenging the social institution of the male breadwinner in the family. However, there are a number of legal and administrative barriers facing women as heads of the households, including discriminatory provisions in the laws on

\begin{flushleft}
\textsuperscript{10} RDI (2009), p. 10  \\
\textsuperscript{11} RDI (2009), p. 10  \\
\textsuperscript{12} RDI (2009), p. 10  \\
\textsuperscript{13} RDI (2009), p. 10  \\
\textsuperscript{14} CEDAW (2010b), p. 2  \\
\textsuperscript{15} CEDAW (2011), p. 2  \\
\textsuperscript{16} Penal Code 1883 (as amended by Act. No 9, 22 of 1995), Section 362B.  \\
\textsuperscript{17} RDI (2009), p. 69  \\
\textsuperscript{18} Asian Development Bank (2008), p. 4  \\
\textsuperscript{19} CEDAW (2010a), p. 8  \\
\textsuperscript{20} Asian Development Bank (2008), p. 5
\end{flushleft}
pensions and social security.\textsuperscript{21} For example, in the aftermath of the tsunami, women were disentitled to property as a consequence of the stipulation that the male ‘head of the household’ be authorised to sign official documentation.\textsuperscript{22} As such, the legal superiority of male-headed households suggests that negative attitudes towards female-headed households persist.\textsuperscript{23}

\section*{2. Restricted physical integrity}

There is no specific criminal provision prohibiting domestic violence. Acts of physical and sexual violence are prohibited under the general provisions of the Penal Code.\textsuperscript{24} The Prevention of Domestic Violence Act was enacted in 2005, in order to allow for the issue of civil Protection Orders where acts of domestic violence has been committed or is envisaged. An act of domestic violence is defined under the civil law in the widest terms to include physical abuse and emotional abuse. Such an act of abuse becomes an act of domestic violence if it is committed within the environment of the home or even outside, by a ‘relevant person’ defined broadly. Section 364 empowers the court to determine the amount of compensation to be paid to the victim.\textsuperscript{25}

The Women and Media Collective in Sri Lanka reported a number of limitations of the domestic violence law. When an Interim Protection Order is issued there is provision in the Act for the court to order counselling. It is reported that this has led to women being advised to return to the abusive home environment.\textsuperscript{26} The United Nations Committee on the Elimination of Discrimination Against Women (CEDAW Committee) has expressed concern about the police seeking to mediate cases of domestic violence.\textsuperscript{27} Further, the Women and Media Collective has raised concerns that women face difficulties in accessing court proceedings. They report that from 2005-2009, a total of 219,825 clients sought assistance from Women in Need (a service provider), however only approximately 101 clients filed for Protection Orders.\textsuperscript{28}

Sri Lanka does not publish any official charge, prosecution or prevalence data on domestic violence. However, a 2013 UN study found that 45.6\% of men surveyed admitted to having committed some form of sexual or physical violence against a domestic partner; while 42.9\% of women reported to have experienced such violence in their lifetimes. About 10\% of Sri Lankan men in relationships admitted sexually abusing their partners.\textsuperscript{29} Additionally, social attitudes impede the laws ability to effectively deal with domestic violence. According to one 2013 UN study, 31.8\% of Sri Lankan men, and 37.5\% of women believed that there are times when a

\begin{footnotesize}
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\item\textsuperscript{21} Centre on Housing Rights and Evictions (2011), p. 6
\item\textsuperscript{22} Centre on Housing Rights and Evictions (2011), p. 7
\item\textsuperscript{23} The Women and Media Collective (2010), pp. 32-33
\item\textsuperscript{24} CEDAW (2010a) pp. 23-24
\item\textsuperscript{25} The Prevention of Domestic Violence Ast of 2005, http://www.refworld.org/pdfid/4c03ba2f2.pdf
\item\textsuperscript{26} The Women and Media Collective (2010), p. 35
\item\textsuperscript{27} The Women and Media Collective (2010), p. 35
\item\textsuperscript{28} The Women and Media Collective (2010), p. 35
\item\textsuperscript{29} UNDP, UNFPA, UN Women and UNV (2013), p. 29
\end{itemize}
\end{footnotesize}
women deserves to be beaten; and 41.2% of women, and 58% of women agreed that a woman should tolerate violence to keep her family together.\(^{30}\)

**Rape** in Sri Lanka is prohibited by Chapter XVI of the Penal Code.\(^{31}\) Marital rape is not in general a criminal offence under the Penal Code as amended (1995) except in the case where the spouses are separated under a court order. Under the Code, rape victims are not required to provide evidence of physical injuries to the body in order to prosecute perpetrators of a grave crime.\(^{32}\)

There is limited data to assess the extent of sexual and gender-based violence against women in Sri Lanka. According to the US Department of State, the police recorded 900 incidents of rape during the first six months of 2012, but this number was an unreliable indicator of the degree of this problem because many victims were unwilling to file reports.\(^{33}\) In 2008, the Asian Development Bank reported that the general perception is that there has been no decrease, and even perhaps an increase, in violence against women following the amendments to the Penal Code in the late 1990s to criminalise rape.\(^{34}\) A 2010 Asian Human Rights Commission report on the state of human rights in Sri Lanka reported long delays in court proceedings, concluding that the impunity enjoyed by the perpetrators has contributed to the *de facto* decriminalization of rape.\(^{35}\) The US State Department reports that an average rape case took six to 12 years to be resolved,\(^{36}\) and that services to assist victims of rape and domestic violence, such as crisis centres, legal aid, and counselling, were generally scarce due to a lack of funding.\(^{37}\)

A 2013 UN study on attitudes to rape, revealed that 14.5% of all men surveyed in Sri Lanka admitted to have committed rape in their lifetimes: 15.5% had committed rape of partner, 6.2% committed non-partner rape in their lifetime, while 1.6% admitted to participating in a gang rape.\(^{38}\) The most common motivation was cited as sexual entitlement, followed by punishment.\(^{39}\) Moreover, a 1.9% of men reported that they were younger than 15 years at the time they first perpetrated rape.\(^{40}\) Social attitudes towards rape are also problematic in Sri Lanka. The same study found that 29.9% of men and 31.9% of women believed that when a woman is raped, she is usually to blame for putting herself in that situation.\(^{41}\)

**Sexual harassment** is a criminal offence carrying a maximum sentence of five years in prison under Section 345 of the Penal Code. Although there are no reliable figures on the prevalence of

\(^{30}\) UNDP, UNFPA, UN Women and UNV (2013), p. 53
\(^{31}\) The Women and Media Collective (2010), p. 30
\(^{32}\) Penal Code, 1883 (as amended by Act No.6, 29 of 1995), Section 363 (ii)
\(^{33}\) US State Department (2013)
\(^{34}\) Asian Development Bank (2008), p. 35
\(^{35}\) AHRD (2010), p. 50
\(^{36}\) US State Department (2013)
\(^{37}\) US State Department (2013)
\(^{38}\) UNDP, UNFPA, UN Women and UNV (2013), p. 40
\(^{39}\) UNDP, UNFPA, UN Women and UNV (2013), p. 44
\(^{40}\) UNDP, UNFPA, UN Women and UNV (2013), p. 43
\(^{41}\) UNDP, UNFPA, UN Women and UNV (2013), p. 53
the crime, the Asian Development Bank reports that sexual harassment is trivialised and there is a culture of acceptance around violence against women.42

**Female genital mutilation** is not a general practice in Sri Lanka.

**More**

Under section 303 of the Penal Code **abortion** is generally illegal in Sri Lanka, and carries punishment of up to seven years of imprisonment, fine or both if performed with the woman’s consent. However, the Penal Code has provisions for termination of pregnancy if it is in good faith to save the life of the woman.43 Access to abortion depends on social class with women from higher income households more easily accessing abortion after consulting a psychiatrist for severe mental depression. The psychiatrist may advise an abortion in order to save the life of the mother, and a qualified medical practitioner may then terminate the pregnancy in a private or government hospital. Women from middle-income and lower income households, however, must often resort to abortions performed by “back-door abortionists” under primitive and unhygienic conditions, resulting in high maternal mortality and chronic ill health: which account for about 10% of maternal mortality.44

The 2006-2007 Demographic Health Survey found that 68% of married women were using some method of **contraception**, with 53% using modern methods.45

Women’s physical integrity in Sri Lanka has also been gravely affected by the decades of armed **conflict**. The European Centre on Constitutional and Human Rights cites a Danish study on the use of torture by Sri Lankan law enforcement agents. The study showed evidence that sexual violence had been used against women by those enforcing law as a form of torture. The study emphasized that cases of sexual abuses were often not ‘discovered’ and reported, even by organisations or persons working at the local level, due to issues of fear, stigma and shame. Tamil women and girls have historically been the targets of various forms of sexual assault following their arrest or detention at checkpoints. Such assaults were justified on the grounds that they or their family members were suspected members of the Tamil insurgency.46 Widespread sexual violence and crime has also been a serious issue in internment camps during the conflict.47 Even following the end of the country’s three-decades-long civil war, many Tamil women, especially widows and the wives of disappeared or ‘surrendered’, continue to be vulnerable to sexual harassment, transactional sex, rape, exploitation or assault by army personnel or other militias, often with impunity.48

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42 Asian Development Bank (2008), p. 36
43 CEDAW (2010), p. 11
44 CEDAW (2011), p. 7
45 Department of Census and Statistics (2007)
46 European Centre on Constitutional and Human Rights (2010), p. 13
47 European Centre on Constitutional and Human Rights (2010), p. 14
48 Minority Rights Group (2013), p. 3
3. Son bias

The male/female sex ratio at birth is 1.04 and for the working age population (15-64 years old) is 0.96. There is no evidence to suggest that Sri Lanka is a country of concern in relation to missing women.

More

Gender disaggregated data on the rates of infant mortality and early childhood nutrition does not provide evidence of preferential treatment of sons in relation to household allocation of nutrition. Data from a 1999 survey on child labour indicates that girls are more likely to be involved in household chores and for slightly longer periods than boys. This suggests a slight preferential treatment of sons in the allocation of household chores. With respect to access to education, United Nations data reports that Sri Lanka has reached gender parity in primary and secondary education attendance, which suggests that there is no preferential treatment of sons with respect to education.

4. Restricted resources and assets

Cultural practices impact on women’s use and access to land and property. Under Jaffna Matrimonial Rights and Inheritance Ordinance 1911, followed by some members of Tamil community in Sri Lanka, a wife requires the ‘written consent’ of her husband to transfer immovable property, even if such property is her own. Similarly, the Kandyan Law Declaration and Amendment Ordinance do not confer equal intestate rights to women. Section 11 (1) of the Ordinance stipulates that when a man dies intestate leaving a spouse, the surviving spouse shall be entitled to an estate in the acquired property of the deceased; if there is no acquired property or property is insufficient for her maintenance, then maintenance will be paid out of the woman. Under the Muslim Intestate Succession Ordinance 1931, women’s share of inheritance is half that of men.

The General law – Married Women Property Ordinance 1923 – awards equal rights to men and women to conclude and administer property.

At the time of drafting, the Sri Lankan Land Development Ordinance of 1934 discriminated against women as the statutory law prefers male heads of households. One instance where this discrimination came to the fore was after the tsunami of 2004 where the state allocated new land for those who had lost property to the tsunami. According to the Centre on Housing Rights and Evictions, when the government allocated new land to those who has lost land, it gave it to the person who had signed the relevant form as head of the household. A study of 100 cases

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49 CIA (2014)
50 Department of Census and Statistics (2007)
51 Understanding Children’s Work (n.d.)
52 UNICEF (2013)
53 Jaffna Matrimonial Rights and Inheritance Ordinance 1911, Section 8.
54 Kandyan Law Declaration and Amendment Ordinance 1939
55 Muslim Intestate Succession Ordinance 1931
56 Married Women’s Property Ordinance 1923, Section 5(I)
conducted by the Centre on Housing Rights and Evictions revealed that 85% of women stated that new property was given in the name of the spouse even though property was in their names prior to the tsunami.\textsuperscript{57} In 2010, the government reported that it was considering an amendment to remove the discriminatory provisions in this legislation, although as of 2014 no progress has been made.\textsuperscript{58}

Women’s access to property was also affected by the conflict. In the conflict-affected areas in the north, many women owned houses that were given to them as dowry upon marriage but were unable to claim compensation for destruction or damage in many instances due to loss of documentation.\textsuperscript{59} Following the end of the civil armed conflict, backdrop of competing claims and mass resettlement, of minority women in the north and east of Sri Lanka also became especially vulnerable to ‘land grabbing’ and other rights violations.\textsuperscript{60}

Women also have equal access to bank loans, mortgages and other forms of credit from a variety of sources including the government, private financial institutions and donor-assisted or local credit delivery programmes.\textsuperscript{61} The Asian Development Bank reports that low-income women tend to benefit from the micro-level group credit schemes. However, studies indicate that microcredit programs for self-employment have perpetuated poverty among low-income women who desperately need to increase their incomes but who have been limited to producing for other low-income consumers and earning minimal incomes.\textsuperscript{62}

According to 2011 World Bank data, women were more likely than men to have obtained a loan from a financial institution in the last year (19.4%, compared with 15.9% of men), although they were slightly less likely than men to have taken out a loan from a private lender (2.8%, versus 3.7% of men).\textsuperscript{63}

5. Restricted civil liberties

There are no reported legal restrictions on women’s access to public space in Sri Lanka. However, as noted in the Physical Integrity section women’s freedom of movement in post conflict areas has been infringed by the threat or incidence of sexual violence.\textsuperscript{64} Further, women’s freedom of movement has been curtailed in the camps for internally displaced people, where it is reported that they have been subject to widespread human rights violations based on their gender. For example, it is reported that female prisoners who were forced to go naked before male guards and made allegations of rape in the internment camps.\textsuperscript{65}

The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 14 (1) protects any organization that works for the promotion of women’s interests. NGOs report that since the

\textsuperscript{57} Centre on Housing Rights and Evictions (2011) p. 8
\textsuperscript{58} CEDAW (2010a) p. 7
\textsuperscript{59} The Media and Women Collective (2010) p. 49
\textsuperscript{60} Minority Rights Group (2013), p. 3
\textsuperscript{61} FAO (n.d.)
\textsuperscript{62} Asian Development Bank (2008), p. 25
\textsuperscript{63} World Bank (2011)
\textsuperscript{64} Minority Rights Group (2013)
\textsuperscript{65} European Centre on Constitutional and Human Rights (2010), p. 16
end of the armed conflict, these women – alone or in some instances with limited support – have taken up the large number of human rights violations occurring in their areas. It is also reported that these women face real and continuous danger from military personnel and other actors, they have little or no protection because they are not prominent public figures.\(^\text{66}\)

With respect to women’s participation in political life, women in Sri Lanka are granted the same rights as men under the 1978 Constitution including the right to vote in all elections, to be elected and to participate in the political and public life.\(^\text{67}\) However, this has not translated into equal political representation, as following the 2010 elections, women made up only 5.8% of elected Parliamentarians.\(^\text{68}\) Additionally there is low representation of women in Parliament, Provincial Councils and Local Authorities;\(^\text{69}\) and women are poorly represented in the decision making structures of religious bodies – as reflected in the Buddhist Temporalities Ordinance, which prevents women from holding religious office or taking part in the election of office bearers.\(^\text{70}\) The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) Committee also noted with concern that the government of Sri Lanka attributes the low representation of women to their own choice, their preoccupation with multiple roles, high costs of the electoral campaigns and the lack of confidence of political parties in the ability of women to garner votes.\(^\text{71}\)

**More**

Concerning workplace rights, the Constitution of 1978 stipulates that women and men have equal rights of ‘work, wages and benefits’;\(^\text{72}\) although, these Constitutional provisions do not cover workers in private sectors. The law also protects the formal worker’s right to minimum wages, working hours, overtime rates, annual leave and public holidays.\(^\text{73}\)

Maternity-related benefits such as maternity leave, protection against dismissal, child care services and nursing breaks are also granted pursuant to the section 18 of the Shops and Office Employees Act 1954.\(^\text{74}\) According to the World Economic Forum, women in Sri Lanka are entitled to 12 weeks paid maternity leave, paid at either 86% or 100% of wages, depending on the employment type.\(^\text{75}\)

However, observance of these laws largely depends on self-regulation by employers and the efficacy of labour inspectors. Despite labour inspection procedures, women still suffer from weak and inconsistent monitoring and enforcement of laws concerning wage equality, occupational health, and labour standards.\(^\text{76}\) Moreover, Labour laws are not applicable to the

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\(^{66}\) Minority Rights Group (2013), p. 17  
\(^{67}\) Constitution of the Democratic Socialist Republic of Sri Lanka 1978: Article 4(e); and Article 90  
\(^{68}\) IPU (2014)  
\(^{69}\) CEDAW (2011), p. 6  
\(^{70}\) UNDP (2010), p. 115  
\(^{71}\) CEDAW (2011), p. 6  
\(^{72}\) Constitution of the Democratic Socialist Republic of Sri Lanka 1978, Article 12  
\(^{73}\) Wages Boards Ordinance 1941  
\(^{74}\) Shop and Office Employees Act 1954; Maternity Benefits Ordinance 1939  
\(^{75}\) World Economic Forum (2014), p. 343  
\(^{76}\) Asian Development Bank (2008), p. 5
private sector in which large numbers of women are employed as piece rate workers, agricultural workers and unpaid family labourers. Workers in the public sectors, however, do enjoy benefits such as employment provident fund, sick leave, maternity leave etc.\textsuperscript{77}

\textsuperscript{77} UNDP (2010), p. 132
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