

Legal Subordination of Married Women in Special Laws of Sri Lanka; A Critique on Certain Aspects of ‘Thesawalamai’ in light of the International Standards

G.I.D. Isankhya Udani¹

Lecturer, Department of Private and Comparative Law, Faculty of Law,

University of Colombo, Sri Lanka

udanigammanpila@yahoo.com

As a human being who born free and equal in dignity and rights, and specifically, when measured up with the CEDAW standards, a married woman, irrespective of her personal law should also be capable of exercising equal legal capacity, as her husband to administer the property, to obtain equal access to economic opportunities, and to play a significant role in the economic survival of her family. It is well-observed that, married women’s unequal and unprivileged status in the family; which mainly reinforced by the paternalistic dominance in social structures is not still effectively addressed by the existing legal framework in many countries. Sri Lanka is a country enriched by multifarious systems of law, including, three customary laws, namely; Thesawalamai, Kandyan Law, and Muslim law. In general, although Thesawalamai recognises the property rights and economic independence of the women, it must be acknowledged that, some legal restrictions have been imposed on married women in Thesawalamai, by section 06 of the Jaffna Matrimonial Rights and Inheritance Ordinance 1911 (as amended by the Ordinance No 58 of 1947) by preventing them from enjoying the full power of disposing and dealing with her separate property without the written consent of the husband. Therefore, it is needed to have possible reforms in this area of law, in order to ascertain the principle of substantive gender-equality. The main objective of this research is to make possible recommendations to eliminate the discriminatory legal provisions in Thesawalamai, in light of the international human rights standards. This study further focuses to analyse the gender-discrimination in non-western philosophical viewpoint. In third world feminism, it is clearly underlined that inferiority is enforced on women, not only on sex, but also in the name of culture, ethnicity, and religion. This is a qualitative research; mainly, carried out by reference to secondary data. The research problem is analysed by using legislation, case law, international conventions, reports of the international committees, academic writings, and electronic databases.

Keywords: Thesawalamai, Gender Discrimination, CEDAW, Third-World Feminism, Gender Equality

¹ Lecturer, LL.B. (Hons) (Colombo), LL.M. (Candidate) (Colombo), PGD in IR (BCIS), Attorney-at-Law