



No. 284/ 2014

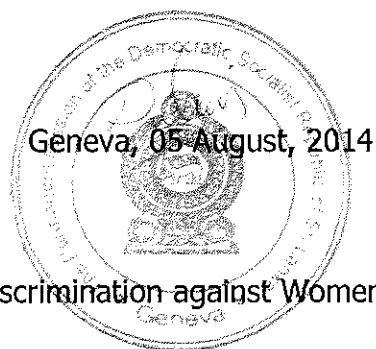
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The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office in Geneva and Other International Organizations in Switzerland presents its compliments to the Office of the Chairperson-Rapporteur of the Working Group on Discrimination against Women in Law and in Practice and has the honour to refer to its communication dated 30 April 2014 transmitted to all Permanent Missions in Geneva with regard to a Questionnaire on Non-discrimination and equality in family and cultural life.

The Permanent Mission of Sri Lanka has the honour to transmit herewith the response received from the Ministry of Justice of the Government of Sri Lanka to the aforementioned Questionnaire.

The Permanent Mission of Sri Lanka would appreciate acknowledgement of receipt of this communication by the Office of the Chairperson-Rapporteur of the Working Group on Discrimination against Women in Law and in Practice.

The Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office in Geneva and Other International Organizations in Switzerland avails itself of this opportunity to renew to Office of the Chairperson-Rapporteur of the Working Group on Discrimination against Women in Law and in Practice the assurances of its highest consideration.



Ms. Frances Raday,
Chairperson-Rapporteur of the Working Group on Discrimination against Women
in Law and in Practice,
Special Procedures,
Palais des Nations,
1211, Geneva.

Questionnaire on Non-discrimination and equality in family and cultural life
Response by the Government of Sri Lanka
Ministry of Justice

Questionnaire

General

1. **What status/hierarchy does your Constitution give to international human rights treaties versus domestic law?**

The Supreme law of the Democratic Socialist Republic of Sri Lanka is the Constitution of 1978. Since Sri Lanka has a dualist legal system, an Act of Parliament is required to domestically implement international instruments that the State ratifies/accedes to.

2. **Has your state ratified international human rights treaties with reservations to provisions dealing with equality in family life?**

No

3. **Are the principles of non discrimination on the basis of sex/gender and equality between men and women established in the Constitution of your State?**

Yes.

E.g. (i) Article 12(1), All persons are equal before the law and are entitled to the equal protection of the law.

(ii) Article 12(2), No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds.

(iii) Article 12(3), No person shall on the grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.

(iv) Article 27(13) 'The State shall recognize and protect the family as the basic unit of the society'.

4. **Are there any specific anti-discrimination or gender equality laws in your State?**

No. Since the Constitution of the Democratic Socialist Republic of Sri Lanka ensures the protection against discrimination based on gender, there are no specific laws that address the same.

5. **Have there been any relevant legal reforms in your State to guarantee non-discrimination and equality between men and women in family and cultural life?**

Yes. The Article 12 (2) of the Constitution of the Democratic Socialist Republic assures that 'No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds.'

6. Are there any customary, religious law or common law principles/provisions that discriminate against women in family and cultural life?

Since Sri Lanka is a country where multi cultural, multi ethnic groups of people live, there are certain personal laws that prevail at certain parts of the island. Namely Kandyan Law, Muslim Law and the Thesawalamai Law.

Kandyan law – The areas in which the Kandyan law prevails in Sri Lanka related to marriage and divorce and intestate succession. All the Kandyans have the option of choosing whether they marry under the General Marriages Ordinance which is the common law of the country. In the case of intestate succession, a Kandyan person is governed by the Kandyan law by virtue of the Kandyan Law Ordinance as well as the Matrimonial Rights and Inheritance Ordinance.

Thesavalamai Law – The Thesavalamai law is applicable to the ‘Malabar’ inhabitants of the Jaffna Peninsular and the persons governed by the law include those who do not reside in Jaffna any longer. The only areas which Thesavalamai laws applicable are matrimonial rights with respect to property and intestate succession.

Muslim Law – The Muslim Law are applicable to people who follow Islam. Unlike with Kandyans and the persons governed under the Thesawaalamai law in the event of marriages between Muslims they do not have the option of marrying under the general law of the country. Marriage, divorce and other related areas are governed by the Marriage and Divorce (Muslim) Act and the subsequent amendments.

7. Are there any good practices that you can share regarding the elimination of sex discrimination in family and cultural life in your State?

The practices vary from individual household to another. In general, in most of the households both the husband and wife are employed and contribute for the upbringing of the child. Specific provisions have introduced pertaining to providing of maternity benefits to expectant mothers, mothers who give birth to infants and nursing mothers. Further, a circular issued by Minister of Public Administration, No.03/2006 provides paternity leave for new fathers in the public sector to strengthen the family ties.

8. What actions have been taken by your State to eradicate negative gender stereotypes, including in the media?

Based on the Constitution of the Democratic Socialist Republic of Sri Lanka, the men and women are treated equally before the law. For instance, men and women are offered with equal legal rights and privileges in job opportunities, job stability, and termination, retirement benefits, provident Fund, ETF, EPF contributions. In addition

working hours, working hours, working conditions and leave. There are certain exceptions in provisions in relation to night work, maternity benefits and benefits for nursing mothers assuring the wellbeing of the same.

9. Are tribunals upholding the principles of equality and non-discrimination in matters relating to family and cultural life?

Yes.

10. Are there any other mechanisms to monitor draft legislation, specific provisions in draft legislation or reverse decisions discriminating against women in family or cultural life?

Every legislation is presented to the Parliament after obtaining a certificate from the Attorney General stating that the provisions of the law are consistent with the provisions of the Constitution which is the supreme law of the country.

Family Life – Equality within marriage

11. Is there a legal designation of head of household?

No.

12. Do women have the same rights as men in your State in relation to:

- The minimum age for marriage - yes
- The right to enter in to marriage – yes
- The freedom to choose a spouse and to express consent - yes

13. Which permission or authorization from parents/guardians/courts, at what minimum age can men and women marry in your State? What enforcement measures are provided by law in this regard?

The Marriage Registration Ordinance No.19 of 1907 provides for the provisions in relation to the marriages other than the marriages of Muslims in Sri Lanka.

According to Section 15 of the Ordinance, 'No marriage contracted after the coming into force of this section shall be valid unless both parties to the marriage have completed eighteen years of age'.

14. Is there a reference to dowry in the legislation of your State, for example, in marriage contracts or in traditional practice?

Yes

In Sri Lanka the law of marriage is governed by the Marriage Registration Ordinance which states the law relating to marriages other than the marriages of Muslims. There is no reference in the said General Marriages Ordinance regarding "dowry"

The Muslim Marriage and Divorce Act contains provisions with respect to the Marriages and Divorces of Muslims in Sri Lanka. In the said Muslim Marriage and Divorce Act No. 13 of 1951, the provisions contain regarding the dowry '*mahar*' and '*kaikuli*'.

Accordingly, '*kaikuli*' means any sum of money paid, or other movable property given, or any sum of money or any movable property promised to be paid or given, to a bridegroom for the use of the bride, before or at the time of the marriage by a relative of the bride or by any other person".

'*Mahar*' means the sum of money or other property to be paid or delivered to the wife. It is either specified or unspecified but in either case, the law confers a mandatory right of *Mahar* on wife.

15. Are forced marriages prohibited in your formal and customary laws?

As per Section 15 of the Marriage Registration Ordinance, no marriage contracted shall be valid unless both parties to the marriage have completed eighteen years of age. Since the consenting age is 18 years which is the age of majority it implies that the consent is implied in a marriage.

16. Are forced marriages or arranged marriages practiced in your State?

If there is an undue influence to enter in to a marriage, always the victimized party can lodge a complaint regarding the same for redress. Further arranged marriages are taken place in the State as a practice with the consent of the parties.

17. Is polygamy illegal in your State?

Yes.

18. Is the registration of marriage compulsory in the following cases?

Civil marriages - Yes, if it is under the general law

Religious marriages - Yes, if it is under the general law

19. Are same sex marriages allowed in your State?

No.

20. Are same sex relations criminalized in your State?

No.

In terms of Section 365 A. of the Act No. 22 of 1995 of the Penal Code, any person, who in public or private, commits or is a party to the commission of, or procures, or attempts to procure the commission by any person of , any act of gross indecency with another person shall be guilty of an offence.

21. Is equality guaranteed between husband and wife in law and practice with respect to:

- (i) The right to choose a family name – The family name is accepted as the name of the husband for the children.
- (ii) The right to choose a profession and occupation – Yes. Guaranteed by Article 14 (1) (h)
- (iii) The right to choose the place of residence - Yes. Guaranteed by 14(1) (h)
- (iv) The right to have and retain one's nationality – Yes.
- (v) The freedom of movement –Yes Guaranteed by Article 14(1) (h) of the Constitution.

22. Do both spouses have the same rights and practice with respect to:

- (i) Ownership of property and land - Yes
- (ii) Management and administration of property and land - Yes
- (iii) Enjoyment and disposition of property and land – Yes

Married Women's Property Ordinance No. 18 of 1923 which governs the law relating to the property of the married women considers property of a woman married to be held by her as fame sole.

Section 7 of the said Ordinance specify as follows:

Every woman who marries shall be entitled to have and to hold as her separate property, and to dispose of in manner aforesaid, all movable and immovable property which shall belong to her at the time of marriage or shall be acquired by or devolve upon her after marriage including wages, earnings, money and property gained or acquired by her in any employment , trade or occupation in which she is engaged or which she carries on separately from her husband or by the exercise of any literary artistic or scientific skill.

23. Are women who get married subjected to any form of male guardianship?

No

24. Do parents have same rights and responsibilities regarding to :

- (i) Deciding the number and spacing of children – Yes

- (ii) Guardianship, ward ship and trusteeship – The District Court is the upper guardian of the child based on the concept of the best interest of the child.
- (iii) Adoption of children – Yes but with the consent of the both parties based on the order given by a competent Court.
- (iv) Care of children – Yes
- (v) Education of children – Yes
- (vi) Alimony – Yes

25. Are de facto unions recognized in your State?

No.

26. Do men and women have the same legal rights with respect to dissolution of marriage?

Yes.

Section 19 of the Marriage Registration Ordinance No. 19 of 1907, no marriage shall be dissolved during the lifetime of the parties except by judgment of divorce a vinculo matrimony pronounced by a competent Court.

Such judgment shall be founded either on the ground of adultery subsequent to marriage, or of malicious desertion or of incurable impotence at the time of such marriage.

27. Do men and women have the same rights in law and practice when a marriage or union ends in terms of :

- (i) Equal share of the marital property and land – Based on the judgment given by a competent court regarding the same.
- (ii) Custody of Children – Based on the decision of the upper guardian of such children, i.e the competent court.
- (iii) Remarriage – Once the marriage is dissolved both parties are permitted to remarry.

28. Is it contemplated in the legislation of your State that in the event of a divorce, women should remain in the family or common household?

No

29. Are legal provisions guaranteeing non-financial contributions including care of children the sick and elderly in the family, taken in to account in the division of marital property upon divorce?

No. But the care of children is taken in to consideration when deciding the alimony which is the permanent payment given to the wife and in the situation of deciding on maintenance. Other divisions are taken place based on case by case basis.

30. Are rights of widow(er)s the same for women and men in terms of:

- (i) Custody of children – Yes
- (ii) Property and land distribution - Yes
- (iii) Remarriage – Yes
- (iv) Freedom to choose residence – Yes (Guaranteed by Article 14(1) (h) of the Constitution)

31. Do women have access to legal aid in relation to family matters?

Yes.

The Legal Aid Commission which was established by Act No. 27 of 1978 provides Legal assistance through their centers island wide for the needy. If the head of the household earns a considerable income, irrespective of such fact the wife and children or any other member of the family could seek legal aid service. Specifically Legal aid is available to all women seeking maintenance for them or for them and children both irrespective of their financial status.

Equality within family

32. What is the legal definition /concept of 'family' in your State?

There is no specific definition regarding the same and at the meantime, the State has recognized the concept of the family in terms of Article 27(1) (12) of the Directive principles of State Policy as follows: "The State shall recognize and protect the family as the basic unit of the society".

33. In law are men and women equal in the family in your State?

Yes.

34. Do men and women have the same social status within the family in your State?

Yes.

35. Question is not clear.

36. Do men and women in the family have the same rights in law and practice with regard to inheritance (including equal rank in the succession)?

Based on the 1923 Married Women's Property Ordinance which constitutes the general law on matrimonial property rights, a married woman is capable of holding, acquiring and disposing of any movable or immovable property or of contracting as if she were a feme sole without the consent or intervention of her husband.

The 1938 Kandyan Law Ordinance as amended applies to Kandyan Sinhalese in property matters. Women do not have equal intestate rights with men under Kandyan law. Further, legitimate sons and daughters inherit their parents' property in equal shares, although daughter who marries in *diga* after the death of her father must transfer any immovable property she inherited from him to her brothers or *binna*-married sisters, upon their request for such property.

The 1931 Muslim Intestate Succession Ordinance applies to Muslims in inheritance matters. The Ordinance provides that the applicable law is that of the sect to which the party belongs to. With regard to almost all sects, female heirs inherit a lesser share than male heirs of the same degree of relationship to the decedent. A widow inherits half the portion that a widower would inherit.

The 1911 Matrimonial Rights and Inheritance (Jaffna) Ordinance applies to Tamils in property matters. Under the Ordinance, movable or immovable property a woman acquires during or before marriage remains her separate property after marriage.

37. Does family education in your State include a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of the children?

Yes. Recently through Public Circular No.03/2006 the new fathers who serve in the public sector was granted paternity leave in recognition of the motherhood.

38. If equality is guaranteed in law and practice, does this apply in all different types of families?

Yes.

Violence within the family and marriage

39. Are there any of the following traditional practices in your State?

- (i) Female Gender Mutilation – Not exactly known. No statistics are available.
- (ii) Honor Killing - No.
- (iii) Son Preference – No.
- (iv) Dowry Deaths – No.
- (v) Polygamy –No.
- (vi) Prohibition of work or travel without the permission of guardian .- When an individual attains the age of majority (i.e 18 years) then such individuals does not need the permission of the guardians as they are not minors and such right is guaranteed in the Constitution.

40. Is/are there any anti-domestic violence legislation/regulations in your State?

Yes. Prevention of Domestic violence Act No. 34 of 2005

41. Does your State have a legal definition of discrimination which covers gender-based violence or violence against women which includes domestic violence?

In terms of Section 23 of the Prevention of Domestic Violence Act No. 43 of 2005, 'domestic violence' means,

- (a) An act which constitute an offence specified in Schedule I of the said Act ;
- (b) Any emotional abuse,

Committed or caused by a relevant person within the environment of the home or outside and arising out of the personal relationship between the aggrieved person and the relevant person.

42. Does your State have a national policy to eliminate gender-based violence or violence against women, including domestic violence?

Yes.

The National Action Plan for the Protection and Promotion of Human Rights further consolidates the policy framework with its strong emphasis on violence against women, women and the criminal justice system, female migrant workers and trafficking in women and children.

43. Is marital rape considered a crime in the legislation in your State?

In general there is no criminal offence called marital rape, but in terms of the Section 363(a) of Act No.22 of 1995 which is an amendment to the Penal Code, a man is said to commit 'rape' who has sexual intercourse with, a woman without her consent even where such woman is his wife and she is judicially separated from the man.

44. Is adultery considered a crime in the legislation in your State?

'Adultery' is a ground for dissolution of a marriage. In terms of Section 19 of the 'Marriage Registration Ordinance' the judgment of divorce can be pronounced in a competent Court on the ground of adultery subsequent to marriage, or of malicious desertion, or of incurable impotence at the time of such marriage.

45. Is there any public campaign in your State to raise awareness that violence against women and girl is a human rights violation?

Respective Ministries and Departments conduct awareness programmes within the respective mandates.

46. What measures have been taken in your State to raise awareness among law enforcement officials regarding violence against women and girls, including domestic violence?

The respective Ministries and the Departments who are responsible for the matters in relation to children and women (Ministry of Child development and women's affairs, National child protection authority, other relevant organizations which are involved in the matters of women) conduct various kinds of awareness Programmes Island wide.

47. Are there special law enforcement units to respond to complaints of violence against women and girls, including domestic violence?

There are 36 desks operated by Children and women's Bureau island wide under the supervision of a senior police officer who is in charge of the respective district.

48. Please provide information on the incidents/complaints of domestic violence, sexual assault including rape, and child abuse against women and girls in your State?

Statistically it is difficult to provide since there are several organizations which involve in the process. However, the main data base is maintained by the Department of Police.

49. Are there shelters or safe houses for women and girls who are victims of gender-based violence, including domestic violence in your State?

Yes. There is a safe house managed by the National Child Protection Authority pertaining to the victims of child abuse and a safe houses managed by the Ministry of Child Development and Women's Affairs pertaining to the victims of domestic violence and victims of trafficking. In addition there are safe homes managed by the Non Governmental Organizations as well.

If the answer is yes are these available to women and girls living in rural areas and remote areas?

Yes.

Participation in cultural life

50. Are men and women equally entitled in law and practice to interpret cultural traditions, values and practices in your State?

Yes.

51. Are there restrictive dress codes for women which do not apply to men?

No.

52. Are women in the country allowed to be a member and fully participate in cultural and scientific institutions in your State?
Yes.
53. Are women entitled in law and practice, independently of their marital status, to decide freely whether or not to participate in certain cultural events, traditions and practices in your State?
There are no restrictions in participation of the cultural events like Sinhala and Tamil new year celebrations, Vesak, Poson celebrations, Christmas celebrations, Hindu celebrations, Muslim religious celebrations, Esala Parahara and other cultural events organized by different ethnic groups.
54. Are there any specific actions to recognize and value the contributions of women to culture in your State?
No.
55. Do you have data regarding the participation of women in arts, science, sports and in the proportion of public funding allocated to women in these activities?
The activities are carried on by different organizations on different occasions so that proper calculation is not possible.
56. Has your State developed any temporary special measures to enhance the participation of women in arts, science, sports and any other cultural activity?
No.
57. Are women allowed and encouraged by your State to participate in all sports?
Yes, there are no restrictions for males or females to participate in any of the events.
58. Is any special dress code provided in the legal regulations for all women exercising sports in your State?
No.
59. Are there any differences in your State in conditions for women's access, to museums, parks, theaters, sports stadiums and other facilities where culture, sports and science are disseminated in comparison with men?
No.
60. Is your State promoting the participation of women in the arts?
Yes, Arts is a subject included in the school curriculum from grade 1, irrespective of the difference in the gender.

61. Have there been any cases in your State in last decade of women artists prosecuted for the performance of art, allegedly violating public authority and morals?

No.