



INTERNATIONAL
CENTRE FOR
ETHNIC STUDIES

WOMEN AND LAND IN SRI LANKA

A LITERATURE REVIEW

VIYANGA GUNASEKERA

Women and Land in Sri Lanka: A Literature Review

Viyanga Gunasekera

International Centre for Ethnic Studies

2021

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Sri Lanka

E-mail: admin@ices.lk

URL: www.ices.lk

ISBN: 978-624-5502-01-1

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INTERNATIONAL
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Printer: Horizon Printing (Pvt.) Ltd.
1616/6, Hatharaman Handiya,
Malabe Road, Kottawa,
Pannipitiya

Women and Land in Sri Lanka: A Literature Review

by

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Acronyms

ACPR	Adayaalam Centre for Policy Research
CENWOR	Centre for Women's Research
COHRE	The Centre on Housing Rights and Evictions
CPA	Centre for Policy Alternatives
HSZs	High Security Zones
IDP	Internally Displaced Persons
ILO	International Labour Organization
LDO	Land Development Ordinance
LRC	Land Reform Commission
LTTE	Liberation Tigers of Tamil Eelam
MCC	Millennium Challenge Corporation
NCW	National Committee on Women
NEHRP	North East Housing Reconstruction Program
PARL	People's Alliance for Right to Land
PEARL	People for Equality and Relief in Lanka
THRU	Tsunami Housing Reconstruction Unit
UN	United Nations

Acknowledgments

I am deeply grateful to Mario Gomez, Executive Director of ICES, for believing in me and giving me the opportunity to draft this piece. I am grateful to Dr. Nireka Weeratunge and Ms. Ranmini Vithanagama for their detailed feedback on the initial manuscripts, and also to Dr. Kanchana Ruwanpura and Prof. Camena Gunaratne, who generously provided suggestions in strengthening the quality of this literature review. Finally, my sincere gratitude to all the ICES staff for their constant assistance and support.

*Out of the land we came and into it we must go—and if you will
hold your land you can live—no one can rob you of land.*

– *The Good Earth*, Pearl S. Buck

Why is land so important?

“Land has been and continues to be the most significant form of property in rural South Asia. It is a critical determinant of economic well-being, social status, and political power.” (Agarwal 1994a, xv). This statement holds true as Sri Lanka has continued to be a predominantly agricultural country,² and the majority of people depend on arable land as the main source of livelihood and income (Bulankulame 2006). It is also established that there is a lower risk of poverty and unemployment for those households with land when compared to landless households (Agarwal 1994a; 1990; Ruwanpura 2006; Melis, Abeyesuriya, and de Silva 2006).

Apart from land being an economic asset, land also has a significant connection to one's identity and idea of home or rootedness (Thiranagama 2011). Similar to identity and rootedness, ancestral land usually holds a symbolic meaning of continuity of kinship ties and citizenship (Selvadurai 1976; Gunasinghe 1990). Selvadurai in his study of Mulgama, a Sinhalese village in the Western Province, gives examples of disputes villagers have had regarding their ancestral land. The author shows how people are willing to invest money and energy, often more than the land's worth, in order to secure claims to ancestral land. Land as property is also perceived as an asset that is durable and permanent, which are qualities that other property like cash, jewellery, animals (such as cattle), or domestic goods like furniture do not possess (Agarwal 1994b).

² Agricultural land makes up about 34% of the country; State-managed forests, reserves and inland water bodies make up about 65%, and less than 1% of the land area is classified as urban (Melis, Abeyesuriya, and de Silva 2006, 4).

The changes made to land tenure and inheritance rights during the colonial periods, as discussed in this review, point to land's importance in relation to not only economic activity but also to social and political power. Land continues to hold its value in the growing economy today, with 35% of the Sri Lankan population being indirectly or directly dependent on land (Melis, Abeysuriya, and de Silva 2006, vii). Land ownership has become more crucial than ever in terms of investment and financial security (Agarwal 1990), and also as the focal point of action to curb discrimination against women with regard to property (Swaminathan, Lahoti, and Suchita 2012).

This literature review was conducted to explore and critically analyse the case of women and land in Sri Lanka. Firstly, this review explores the pre-colonial, colonial, and post-colonial land tenure in Sri Lanka in a bid to understand how history of land tenure has affected land ownership patterns of women. Secondly, it details the general and customary laws, inheritance practices of land, and how colonial influences have changed women's inheritance patterns of land. Thirdly, changes to land tenure and women's ownership of land are explored from the post-independence period to the present, with special focus on land settlement schemes, post-tsunami land allocation, post-war changes, and more recent land reform proposals. The review then critically analyses different arguments as to why women should own land, the gaps between law and practice, and between ownership and control, and the consequences of women's lack of access to land. Finally, the review discusses recent research surveying what land means to women in contemporary Sri Lanka, the knowledge gaps gleaned from the review, and final conclusions.

History of land tenure in Sri Lanka

Sri Lanka's landmass of 6.5 million hectares constitutes two main topographical regions: the central highlands and a lowland plain that surrounds the hilly areas and extends to the coastal regions. From this total landmass, about 63.6% is in the Dry Zone,³ 23.2% in the Wet Zone,⁴ and 13.2% in the Intermediate Zone⁵ (Gunasekara 2020, 10). Of all this land, it is only about three million hectares or around 46% of the total land area that is arable, and the remaining land is either forest reserves, inland water bodies, or land unsuitable for cultivation (ibid).

For Sri Lanka, being an agrarian country, land has always been a source of sustenance, but it is with colonial intervention that land started to gain its economic and political leverage. When looking at the patterns of land tenure and use of land in ancient pre-colonial Sri Lanka, de Silva (1992) explains that during the times of kings, land was used as the main source of sustenance for all citizens. Even though it was the king who had supreme control over all land (though he was not the sole owner of all the land), it was the community at large that cultivated the land and reaped its produce, for themselves and for the king (de Silva 1992, 1; Abeysinghe 1978, 1:32). There was no notion of exclusive rights over land for individuals or families, but all the people, except the *sangha*,⁶ were obliged to participate in cultivation, its administrative duties, or other related livelihoods. Quoting Knox (1681), de Silva exemplifies that,

‘the king farms out his land not for money, but service. Some served the king in his wars, some in their trades, some as laborers and the others as farmers. In short, every landowner owed some

³ Dry Zone – less than 1,750 mm of annual rainfall

⁴ Wet Zone – more than 2,500 mm of annual rainfall

⁵ Intermediate Zone – between 2,500-1,750 mm of annual rainfall

⁶ Buddhist monks

personal service, trivial or important, to the king.’ (de Silva 1992, 44).⁷

De Silva further states that the history of land tenure is not well documented and tracking its process of change is difficult (p. 3). However, before the Portuguese rule, the land tenure system was governed by traditional laws. The king was entitled with the power to grant lands to any person he wills under two categories: grants of *pangus* or portions; and grants of villages. Within the feudal Kandyan social system, land tenure was based on a caste system dominated by the land-owning and/or cultivating caste, the *Goigama*, to whom the other castes owed services in exchange for land or a part of the harvest. The king granted lands titled *ninadagam* to noble and other families for loyal service to the crown (Pieris 2011), and also to temples as *viharagam* (Buddhist temples) or *devalagam* (Hindu temples), as a meritorious deed. Parts of these lands were sub-divided into plots, and peasants of the cultivator caste, as well as service castes⁸ under them, were granted access to these plots on a share cropping basis, working under their landlords (whether feudal landowners or temples) as tenants, obliged to provide 50% of the harvest to their landlords (Gunasinghe 1990). Landowners and tenants also owed *rājakāriya*, a form of free service to the King/State, in exchange for the land they cultivated.

⁷ Currently, the Sri Lanka State holds and controls 82% of the total land area of the country. One in three Sri Lankan families lives on State land under different forms of land tenures (Sarvodaya Shramadana Movement 2010, 218)

⁸ Silva (2005) classifies four levels in Sinhalese caste system; (1) Goigama (land owning elites, farmers, and cattle farmers); (2) Lowland castes (such as Karāva (fishermen), Salāgama (cinnamon peelers), Durāwa (toddy tappers), and Hunu (lime burners)); (3) Service castes (such as Navadana (smiths), Hēna (washers), Vahumpura (jaggory makers), Badahala (potters), Dura/Villedurai (keepers of Sri Maha Bodhi and elephants), Beravā (drummers), Batgama (laborers); and (4) Low castes (such as Gahala (funeral drummers), Kinnara (weavers), and Rodi (beggars)) (p. 33-50). See also Ryan (1993).

Moreover, in the Kandyan system the village was not a common property-owning body but based on a feudal system of share cropping, whereas there seems to have been a traditional common property system in Dry Zone or lowland villages (in the margins of the Kandyan system), where land was rotated, based on the *thattumaru* system, in which each lineage inherited not a piece of land but a share (*pangu*) (Leach 1961, Obeyesekere 1967). While most shares appeared to have been in the hands of men, Obeyesekere (1967) discussed the inheritance conditions under which women could have access to these shares. For example, daughters had a temporary joint interest with their brothers in the landed property of their parents, until they were married in *diga*⁹ marriage, yet had the right to return to the parents' house and was entitled to family support in the case of divorce or widowhood (Obeyesekere 1967, 42). A widow also had temporary life interest in the deceased husband's land until she married in *diga*, but she had no permanent interest or power to dispose of the property at will. Women could, however, inherit acquired property absolutely and permanently, but such property often included movable property such as cash, jewellery, family heirlooms, and so on but not land (see the discussion on Kandyan law).

Portuguese era

During the Portuguese colonial period, the Portuguese started acquiring land and gradually the land tenure system of the country started to change. The Portuguese landholding group was exempted from the obligatory services of cultivation, but instead they paid a quit-rent¹⁰. Abeysinghe (1978) marks this point as a novel event in the land tenure

⁹ *Diga* marriage: upon marriage the wife comes to live with the husband and his family.

¹⁰ A form of tax paid in lieu of service obligations to the State

system in Sri Lanka. The Portuguese also started to buy and sell *pangus*, and by 1619 Portuguese held villages covered around 1/5 of the Kotte¹¹ area. With the acquiring of land, the Portuguese influenced the exports industry as well – notably that of cinnamon.

The previous social system was that common people would engage in agricultural work from which they were sustained while also producing goods for the king's use and export. This system was 'near self-sufficient' (Abeyasinghe 1978, 1:5), and struggles among people for more land or wealth did not typically occur. The Portuguese did not disturb this social system drastically, but they started to use the people's efforts to serve other economic and political interests of the Portuguese and later of the Dutch (ibid, p. 1:13).

For example, more focus was allocated to the production of cinnamon in order to increase exports. Furthermore, the appointment of headsmen by the Portuguese as liaison officers between them and natives eventually paved way to the birth of a new privileged and influential class within the once traditional society. More people started to move towards urban settlements also where more opportunities for occupations started to arise. The social fabric of once 'near self-sufficient' agrarian community thus started to change in the direction of an economically and politically regulated system.

Dutch era

The Dutch ousted the Portuguese in a prolonged war from 1638 to 1658. With the arrival of the Dutch, de Silva (1992) notes that they expressed the need "not to follow the old laws, customs or practice of the Sinhalese" (p. 14) with regard to land and cultivation practices. The Dutch then

¹¹ Ancient Sri Lankan kingdom in the 15th century (see Piyadasa (2017) for more details)

introduced new laws and traditions in relation to those of the Netherlands. They also established a new court system in 1661 to deal with land disputes, but later on these courts were used to hear civil and criminal cases as well. Initially these courts functioned according to the Statutes of Batavia and the local laws, but later they took steps to codify the Tamil and Muslim laws. In the instances where the local law was not adequate, Roman-Dutch law was used and this paved the way to formulating a more comprehensive legal status to property rights in Sri Lanka (ibid, p. 14-15).

The process of land registration was initiated in Jaffna in 1674, where a committee of five members checked each plot of land in all of the villages and entered the information in a registry together with the details of the families that depended on each land (Abeyasinghe 1978; de Silva 1992). These registers were called *thombo*.¹² The Dutch policy of land grants in the South West coastal belt was also carried out, and was guided mainly by their interests in cinnamon, which was the Dutch's single most important item of trade and many regulations were enacted to control every aspect of its production and protect its monopoly. In general, the Dutch tried to gain and maintain absolute sovereignty over lands under their control. The more fertile lands in urban areas were acquired by the government and less fertile land were given to families to be passed down to their descendants.

De Silva (1992) describes four types of land classified by the Dutch (p. 17-18);

1. *Sevaparaveni* – lands held in return for service to the State which was heritable so long as the service was continued to be rendered to the State.

¹² There were 'land thombos' (registers with detailed descriptions of lands), and 'head thombos' (details of the dwellers and their rents/taxes due) (Abeyasinghe 1978, 1:80).

2. The *accomodessan* – lands given to a person for the service, but could be withdrawn on the holder's dismissal or at his demise.
3. The purchased *paraveni* – lands purchased by an inhabitant.
4. The gift *paraveni* – lands given to an inhabitant by the Governor as a token of appreciation.

A pattern of free-hold lands, which permitted the owner of land exclusive rights of alienation, emerged. Under the Dutch, it was only the children born to Christian families who had the right to inherit property. Land was also becoming a marketable commodity and a class of landholders were on the rise. This further complicated land tenure of the natives. Like the Portuguese, the Dutch also used their control over land to utilize labour to enhance their economic and political interests. Their manipulation of different castes in the island to exploit labour that favoured the masters more than the subjects led to the compartmentalization of services and to the stratification of the society (see also Abeysinghe (1978)).

British era

According to de Silva (1992, 34–36), by the time the British came to Sri Lanka in 1796, there were three types of land tenure systems:

1. The land that the government retained possession of under which there were six types of land;
 - a. *Muttettu* lands – lands granted annually or longer to be cultivated for half the produce for government
 - b. *Ratninda* lands – administered like *Muttettu* receiving half the produce for the government
 - c. *Ratmahara* lands – waste and jungle lands granted on condition of cultivating them within three years for a portion of the produce to the government

- d. The *Chēnas* – temporary clearings of jungles permitted to cultivate, with a portion of produce to the government
 - e. *Malapālu* lands – granted on tenure of personal services. The family can retain the land as long as there is a male issue to perform the required services, if not, the land reverts to the government
 - f. *Nilapālu* lands – granted to individuals with prescribed services, but reverted to the government when the original holder dies.
2. Non-service tenure lands – these lands were held free of personal service obligations but the holders were required to give a portion of the produce to the government.
 3. Service tenure lands – lands that were granted to people on the condition of receiving personal service from the holders. Though these lands belonged to particular families, unlike the government land, they cannot be sold, mortgaged, or given to another person by will. These lands were the *paraveni* and *accommodessans*.

The British took steps to abolish the service tenure system¹³ in 1796, although this was not officially enforced with full effect till the Proclamation of 1801 (and in 1832 in the Kandyan areas), which transformed the traditional *rājakāriya* service tenure system and caste system of the natives. The British made it possible for the families who were depending on the service tenure lands to be actual owners of the lands by introducing private property rights (Bandarage 1983), which gave them rights to dispose of the lands, pass on to another by will, and heritable by both males and females. By taking these steps, the British wanted to reduce the influence of headsmen in administration

¹³ Also known as *rājakāriya*, which was a form of free service to the State.

mediation, and also encourage cultivation by giving official ownership of land.

However, under the British government the Crown Lands Encroachment Ordinance was implemented in 1840, whereby all uncultivated forest land, unused land, and land with ambiguous ownership was taken under government authority (Gunasekara 2020, 12). This type of land was referred to as 'Crown Land'. At the same time, with the establishment of the Waste Land Act of 1840 and Crown Land sales, forests and lands belonging to the Crown were made available for purchase for interested buyers, including Westerners and natives without distinction (see also Risseeuw (1988); Wijayatilake (2002); Abeysinghe (1978)). However, most of the land was acquired by the Europeans and local elite, leaving 45% of the country's population landless, and another 21% having less than one acre each (Agarwal 1990, 13). For the local people who were able to purchase more lands, this was an opportunity for upward social mobility (Samaraweera 1982).

Today there are two categories of land, namely, (1) State land – all land legally entitled to the State including lands of various corporations and boards, and (2) Private land – land solely owned by individuals or private entities (CPA 2014). The government owns over 80% of all land in the country, and only 17.7% of land is privately owned. This is notably different to countries like Thailand where 80% of land is privately owned and government owns only about 20% of land (Gunasekara 2020).

Customary laws and general law in Sri Lanka

The three major communities in Sri Lanka practice three forms of customary laws¹⁴ with regard to marriage, divorce, maintenance, and succession (Panditaratne 2007). They are Kandyan law of the Kandyan Sinhalese, Tesavalamai of the Jaffna Tamils, and Muslim law of all Muslims in Sri Lanka (see below for more details). These customary laws are in place to practice and protect the traditional rights and customs of religious or ethnic groups (Fonseka and Raheem 2011). Those who do not come under the above categories follow the general law of Sri Lanka. Such types of customary laws are common not only in Sri Lanka, but are also in place in other South Asian countries including India, Bangladesh, Thailand, Malaysia, and Singapore.

In the case of Sri Lanka, there are multiple laws that govern the inheritance¹⁵ and ownership patterns of land of different groups of people. Traditionally, the inheritance patterns of land as property had revolved around the overall intention of keeping the land under the purview of the particular household or community. Therefore, Sri Lankan communities, including the three major communities of Sinhalese, Tamils, and Muslims, had adopted bilateral inheritance practices¹⁶ in order to ensure that land remains within the family despite who (either sons or daughters) inherits the land. The general law of the country is gender-neutral and ensures equal succession rights to men

¹⁴ The terms customary laws and personal laws are used interchangeably to refer to the distinct forms of laws adhered to by the three major communities in Sri Lanka.

¹⁵ Inheritance refers to the devolution of property upon the death of its owner. It can either be through law upon intestacy or effected by a will (Wijayatilake 2002, 1).

¹⁶ Bilateral inheritance practices mean that ancestral property, including land, passes to and through both sons and daughters. Matrilineal inheritance means property passes through the female line, and patrilineal inheritance means property passes through the male line (Agarwal 1994a, 8).

and women. The actual practice and implementation of these laws can be a different matter at times as will be discussed later.

The traditional personal laws of the country that were not influenced by the Dutch and English legal systems, are often acknowledged as more progressive towards their reception towards women's rights to property. The colonial influence on the establishment of the general law of the country also undermined the more liberal values of the personal laws (Goonesekere 1990).

General Law

The general law in Sri Lanka pertaining to inheritance of property was founded on the Roman Dutch law and later influenced by the English law. All Sri Lankan citizens come under the general law, except for those who practice the three customary laws (see below). Currently, the inheritance or intestate succession is regulated by the Matrimonial Rights and Inheritance Ordinance of 1877 along with the Married Women's Property Ordinance of 1924.

Briefly, under this general law, in the occasion of intestate property, the surviving spouse receives half of the property while the other half is divided equally among the children of the deceased (Guneratne 2006, 2). If there are no children of the deceased testator, then the parents of the deceased inherit the half share. If the parents are deceased, the testator's siblings receive the half share equally (Wijayatilake 2002, 25).

Under the Married Women's Property Ordinance married women have certain independent rights, such as the right to hold property and of contracting as if she were unmarried, the right to dispose of all movable and immovable property held by her before marriage and acquired after marriage, to name a few.

Kandyan Law

As the name suggests, the Kandyan personal law is applicable to those who identify themselves as Kandyans. They are the descendants of those who were permanent residents in Kandy and the surrounding areas at the time the Kandyan provinces were annexed by the British in 1815 (Agarwal 1990, 6).

As previously mentioned, Kandyan personal law is governed by the sole intention of ensuring that property, especially immovable property like land, remains within the purview of the household. Corresponding laws related to inheritance, marriage, divorce, adoption, and so on are therefore closely linked to ensuring that ancestral property revert to or remain within the family. Some scholars maintain that “the equality of division amongst children is one of the cardinal points of the Sinhalese rules of inheritance.” (Risseeuw (1988, 24) quoting Hayley (1923, 330)).

When it comes to marriage, an important distinction is made between *binna*¹⁷ and *diga*¹⁸ marriages (Panditaratne 2007; Risseeuw 1988). For example, in the case of *binna* marriage, where the daughter remains in the family, the married daughter has the same rights to inherit her father’s ancestral or *paraveni*¹⁹ property equally as her married or unmarried brothers, unmarried sisters, and *binna* married sisters. Since the married daughter is based in her ancestral household, her children stand to take her ancestral name and also claim rights to her father’s ancestral property. This type of property was called *ganu-binna* or *gana-panguwa*, which means property held by a woman in her own right (if it is landed property, it would mean a portion of the main ancestral land belonging to the woman) (Abeyasinghe 1978, 1:39).

¹⁷ *Binna* marriage: upon marriage the husband comes to live with the wife and her family.

¹⁸ *Diga* marriage: upon marriage the wife comes to live with the husband and his family.

¹⁹ *Paraveni* property: ancestral immovable property that a deceased person was entitled to. This could be paternal *paraveni* and maternal *paraveni* (Ministry of Justice 2016).

In contrast, in the case of *diga* marriage, where the daughter goes to reside with her husband and his family, the daughter is required to forfeit her direct inheritance to the ancestral *paraveni* property (Agarwal 1990, 7; Panditaratne 2007, 90). By doing so, it ensures that ancestral property remains within the family. Likewise, if the sons are married in *binna*, they have to forfeit rights to *paraveni* property, and the sons married in *diga* can inherit the *paraveni* property.

As such, Kandyan customary laws related to inheritance are bilateral, but conditional upon the post-marital residence of the family members. Both sexes had equal rights to land and property, and also independent rights to control their shares. In the context of widows' property rights, Agarwal (1990) says that the *diga* married widow daughters could return to the father's estate and seek maintenance until another marriage is arranged. Risseeuw (1988) says that when the husband dies intestate, his widow would have the chief control and management of the landed property of the husband, but this was in the form of life interest, and the property would be divided amongst the children after her death (p. 26). Basically, widows had no permanent rights to the deceased husband's *paraveni* property (Agarwal 1990, 9) (see also Ministry of Justice (2016).

Even though distinctions were made under *binna* and *diga*, which were basically references to post-marital residence, marriage in general was a relatively liberal practice in the pre-colonial Sinhalese community where practices, such as polyandry, polygamy, and easy divorce were common. In such practices however male parentage remained ambiguous, and Risseeuw (1988) argues that this could be a reason to tracing descent through the women and favouring daughters when passing down

property, not only among Sinhalese but also among some of the *Vedddhas*²⁰ and *Mukkuvars*²¹ (p. 17).

Tesavalamai

Tesavalamai²² customary law is applicable to those Tamils with a permanent home in the 'Jaffna province'²³ (Agarwal 1990, 6). Tambiah (2000) further clarifies that Tesavalamai (which means customs of the land in Tamil language) as a personal law, 'only applies to a person who is a Malabar²⁴ inhabitant of the Northern Province' (p. v), emphasizing on the significance of inhabitancy in Jaffna (see Tambiah 2000, 57-62 for further clarification). Tesavalamai does not apply to the Tamils residing in Eastern Sri Lanka (Trincomalee, Batticaloa, etc.) and those of Indian origin residing in the hill provinces (Tambiah n.d.)

Unlike Kandyan law, Tesavalamai law applies only to matrimonial property and inheritance issues, and Jaffna Tamils are subjected to the general law with regard to marriage and divorce (Fonseka and Raheem 2011, 209). The provisions of the Tesavalamai currently practised are codified in the Tesavalamai Regulation No. 18 of 1806 and the Matrimonial Rights and Inheritance (Jaffna) Ordinance No. 1 of 1911. These laws have been amended by the Jaffna Matrimonial and Inheritance Rights Amendment Ordinance No. 58 of 1947 (ibid).

²⁰ A group of indigenous people in Sri Lanka

²¹ A land-owning and higher rank of caste in Batticaloa

²² Sometimes written as Thesawalamai

²³ Jaffna Province or Province of Jaffna – 'included the districts of Mannar and Mullaitivu and the extreme southern limit was the line separating Cheddikulam from Nuwara Kala Viya' (Tambiah 2000, 62-67)

²⁴ Malabar – used as synonymous with Tamil (Tambiah 2000, 53)

Under the original pre-colonial Tesavalamai law, there were three types of property that were recognized in inheritance practices. They are as follows:

1. *Mudusam* – ancestral property of husband or wife (inherited from parents and no other)
2. *Chidenam* – hereditary property brought as dowry by the wife
3. *Thediatettam* – acquired property (profits and purchases made during the marriage)

Inheritance patterns of Tesavalamai

The inheritance patterns of the Jaffna Tamils were bilateral. Under the old Tesavalami law, the sons inherited their father's property and the daughters were given a dowry as inheritance out of the mother's property. Quoting the Tesavalamai Code,²⁵ Tambiah (2000) explains that sons would inherit all the ancestral property of the father while the daughters would receive dowry or *chidenam* from their mother's property, "so that invariably the husband's property remains with the male heirs and the wife's property with the female heirs..." (p. 154). If the woman is childless, her *chidenam* passed after her death to her sisters. The *thediatettam* passed on to both sons and daughters equally, but after the death of both parents.

On the death of the father, the mother became the manager of the property and so long as the mother lived the sons could not claim any property of the father (Tambiah 2000, 189). The widowed mother also had the duty to give dowry to the daughters, and under the old Tesavalamai, the *chidenam* could be given only out of the mother's own

²⁵ The Code was first compiled under the Dutch administration in 1706-07, but came into full legal force after the British passed Ordinance No. 5 of 1869 (Agarwal 1994a, 127).

dowry property. If the mother dies first, the father is obliged to give dowry to the daughters from his wife's *chidenam* and the sons would inherit his *mudusam* and all children would inherit *thediatettam* equally.

As mentioned in the above section, *chidenam* or dowry property were given out of the property belonging to the mother. However, under the Portuguese rule, the dowry to female heirs were given indiscriminately from the father's or mother's property, or the acquired (i.e. *thediatettam*) property of both (Tambiah 2000, 163; Agarwal 1990, 33). Furthermore, Tambiah (2000) states that dowry may be given to a daughter at any time, either at a time of marriage or even when no marriage is in contemplation (p. 167).

Under the Tesavalamai, even though *chidenam* was strictly the woman's property, her decisions to alienate her immovable property have to be made with the expressed written approval of the husband (Agarwal 1994a, 129; Fonseka and Raheem 2011, 210). The husband cannot lease, mortgage, or sell the immovable *chidenam* property of the wife without her consent (Tambiah 2000, 170). The wife could also not dispose of her share of the *thediatettam*. At the same time, a widow does not need the children's consent to sell her property. The wife can also control her movable property without such consent from the husband. When it comes to bequeathing her movable or immovable property by will, the wife can do so without the husband's consent (Tambiah 2000, 198–99).

However, Agarwal (1994a, 1990) points out that not every household in the Tesavalami community could give a dowry, and that the practice was not often seen among the poor and the untouchable castes. She also notes that it was the *Vellalas*, who were the principal agricultural community of the Jaffna Tamils, who practised dowry customs and that land was a mandatory part of dowry.

Under the Jaffna Matrimonial Rights and Inheritance Ordinance (1911) *thediatettam* property includes “profits arising during the subsistence of marriage from the property of any husband or wife” (Tambiah 2000, 170). Under this ordinance, the acquired property of one spouse was equally shared by the other spouse. However, with the amendment introduced in 1947, *thediatettam* of each spouse belonged to them independently, and the other spouse could inherit only half of that *thediatettam*. Even though the woman has restricted control of *thediatettam*, the husband could sell or mortgage the *thediatettam* belonging to the wife without consulting her. As Agarwal (1994) and Fonseka and Raheem (2011) note, the husband’s authority over the wife’s immovable property, including her *chidenam* and a share of *thediatettam*, without such restrictions to the control of the husband’s property is the biggest form of gender discrimination in the Tesavalamai law.

Muslim Law

Muslim law as a personal law is applicable to all those who follow Islam by birth or conversion (Agarwal 1990, 6). Unlike the other customary laws, which are based on ethnicity and/or location, Muslim law is based on adherence to religion (Goonesekere 2000).

Agarwal (1990, 1994) presents inheritance practices of the Muslims²⁶ both before and after the introduction of Islamic law, which was established and revered as the primary source of law for all Muslims towards the end of the 19th century. Quoting scholars, such as McGilvary (1973) and Yalman (1963), Agarwal (1990) points out that Muslims, especially in the Eastern Province, previously practised similar

²⁶ Also termed ‘Moors’ since Portuguese times (Agarwal 1990; Goonesekere 2000)

inheritance and marriage patterns as that of the local Tamil population. The inheritance practices of the Tamils of Batticaloa were significantly different from those of the Jaffna Tamils, as discussed below in detail. One major distinction was that matrilineal inheritance and matrilineal marriage systems were favoured by the Batticaloa Tamils, and resident Muslims also had similar practices. For example, both movable and immovable property was transferred through dowries given to the daughters, and daughters were married in *binna* and stayed at home, while the sons were supposed to live matrilocally with their wives when they married.

Today, Islamic law is applicable to all Muslims in the country, and the Hanafi School of intestate inheritance is applicable with regard to inheritance practices (Agarwal 1990, 40). Accordingly, three types of heirs were recognized: agnatic heirs who are almost always men; Koranic heirs who are mostly women; and agnatic co-sharers. A daughter who is an only child can receive half of the deceased parent's estate, but if there is a son, the daughter stands to get only half of what the son receives. A widow would get one-eighth or one-quarter of the husband's estate, but this proportion might change depending on whether there is a child or son's descendants (*ibid*).

Even though Muslim women's inheritance rights to ancestral immovable property are recognized to a certain extent, they are clearly unequal to those of men (Goonesekere 1990). With the Islamic law in place, matrilineal inheritance practices are no longer applicable and Muslim women are always disadvantaged as they are legally bound to get only half of what their men inherit. The only advantage is that unlike Tamil women of Tesavalamai, the Muslim women can dispose of their property without expressed consent of the husband. According to Islamic law, a Muslim woman is considered "a 'femme sole', capable of acquiring and

holding separate property and entering into legal transactions.” (Goonesekere 2000, 59). However, at the same time Goonesekere (2000) points out that in practice, the husband is customarily conferred with powers of management and control of the wife’s *mahr*,²⁷ even though the wife has independent rights.

Matrilineal inheritance practices in Sri Lanka

The Tamils of Batticaloa, East Sri Lanka or the *Mukkuvar* caste are a good example of those who practise matrilineal inheritance system (Agarwal 1990; 1994a). Under this type of system, ancestral property, both movable and immovable, passed down through the daughters of the family. Such property was pledged to the daughters as dowry, with the eldest daughter getting the largest share. The daughters also resided in their matrilineal residences post-marriage and this ensured the property remaining in the family.

The Muslims of eastern Sri Lanka also had similar matrilineal inheritance practices. Ruwanpura (2006) providing examples for such practices say that the mother’s dowry property was usually passed down to the eldest daughter, and the minimum for dowry for other daughters being a house or land to build a house (p. 53). While the daughters remain matrilocally, the sons who move to their wife’s estate are responsible for the upkeep and wellbeing of the wife’s family.

Today however, the *Mukkuvars*’ form of personal law is not officially and legally recognized in the country. *Mukkuvars* are now subjected to the General law of the country. Today, in Batticaloa, there is a trend for the

²⁷ A payment made by the husband to the wife at the time of marriage as a sign of his respect and regard for her. *Mahr* is also considered as financial security or insurance for the wife against divorce (Goonesekere 2000, 61–62)

daughters to receive the house while the land goes to the sons. In marriage, the wife is expected to bring a house as dowry but this property is generally registered under the husband's name (CPA 2005b, 12). These practices have shifted from a matrilineal system of devolution of property to a system of bilateralism, which has consequently led to the decline in women's rights to lands and property. Aggravating the situation further, a recent article by Aneez (2020) details how increasing demand for dowry is forcing up land prices, and putting families in debt and many women without partners in the eastern coast of Sri Lanka.

At the same time, Ruwanpura (2006) notes that the practice of matrilineal inheritance patterns did not mean that patriarchal social structures were not in existence in the past. For example, while Muslim women had independent rights to land and a higher degree of autonomy in the household, they were not allowed to go into public places, and men remained the "visible members of the community" (ibid, 55). Similar type of inheritance patterns are practised in Kerala, India where the Nair women (upper Hindu class) receive land and property through matrilineal inheritance, but it is the men who have complete control over such property as they are considered the official heads of household (Arun 1999).

Changes of land tenure through a gendered perspective

When looking at changes to land tenure through a gendered lens, it is noted that it was under British rule that women's situation with regard to land was legally and systematically changed and deteriorated to a certain extent (Agarwal 1990; Dhaatri Resource Centre for Women and Children-Samata 2010). Women's access to ownership and control of

land was largely manipulated with the changes made to marriage and inheritance laws. Traditionally, in the pre-colonial periods, Sinhalese marriage practices were rather liberal where polyandry and polygamy were practiced, divorce and multiple marriages were uncomplicated, and children of any union were considered legitimate and were able to inherit property (Risseeuw 1988). The British in 1859 made polygamy, polyandry, and unregistered marriage punishable offences, and divorce a decision of the court decree (Agarwal 1990, 12). These changes resulted in a category of illegitimate children, who were not legally entitled to inherit their parents' *paraveni* or acquired property (Ministry of Justice 2016).

Drawing from Risseeuw's (1988) conclusions, Agarwal explains that what the British wanted was to appoint unambiguous individual owners of land (from its original communal sharers), limit economic power to one of the spouses, and reduce the network of responsibility from an extended family to a smaller unit so that economic decisions and exertions would be swift. The woman's position in this situation was undermined and provisions were made to give more rights to the men. Risseeuw (1988) however proposes that women's loss of access to property (which was once either equal or more favourable to women) did not occur in a drastic legislative change or something similar, but rather through a slow and gradual process where the changes to personal laws did not appear radical (p. 5).

Changes to married women's inheritance rights

The marriage practice of *binna* of the Sinhalese, which favoured women's inheritance rights over those of men, declined in the British period and *diga* marriage was favoured, as the colonials regarded the

binna marriage as demeaning the power of the male as per the patriarchal system (Risseeuw 1988, 18). Families were also reluctant to accept daughters in *diga* marriage back into the family in the case of divorce or widowhood and this obstructed the daughters' access to ancestral land. The husband's rights over property including land was more recognized than that of the wife, who had no power to control her property without the husband's approval (Agarwal 1990, 15).

The Married Women's Property Ordinance of 1923 was instrumental in radically altering the women's inheritance and property rights under the General Law, and it recognized the married woman as "no different from an unmarried woman" with independent rights and responsibilities to her separate property (Goonesekere 1990, 164). Risseeuw (1988) however notes that passing of this ordinance was no easy task as the legislators were clearly aware of the strong links between women's control over property and power dynamics in a marriage.

However, it should be noted that such changes were felt largely by the women of the landed class; the case was very much different for working-class and peasant women. Risseeuw (1988) states that majority of the poorer classes did not adhere to demands of registering marriages and that land rights were merely theoretical as most of the population was landless (p. 75) with the expansion of plantations under colonial rule. Marasinghe (1979) argues that the peasantry was largely landless due to the lack of clear land reform movements. He also states that with prominence given to the English language as the official language, the peasantry was again excluded from civil service and other government occupations that could have helped their upward social mobilization and hence access to land. Ruwanpura (2006) states that inheritance practices were in fact a burden for the poor people as they were pressured to acquire dowries and land for their descendants.

Post-independence period (from 1948 to the present)

Scholars note that land settlement²⁸ and land reforms²⁹ were the two most significant policies in the post-colonial periods (Bastian 2009, 5). For example, the Land Development Ordinance (LDO) of 1935³⁰ and Crown Lands Ordinance of 1947 were introduced to define the system of permits and grants which regulate an individual's access to State land, and through these laws major irrigation and settlement programs were initiated in the country (see below). The Land Reform Law of 1972 and 1975 (Amendment) are also a pivotal point in land reform in Sri Lanka. Through the Land Reform Law of 1972, the Land Reform Commission (LRC) was established, and through this commission privately and individually owned land in excess of 25 acres in paddy land and 50 acres of other agricultural land was taken over by the State (Samaraweera 1982, 104). The law in 1975 enabled the nationalization of public companies. Peiris (1978) in an extensive analysis of land reform and agrarian change argued that these programs were initiated with the objectives of maximizing agricultural production and employment, and reducing inequalities in wealth and income. Moreover, the Land Grants (Special Provisions) Act of 1979 was introduced so that the State can give land grants to those who are landless, but such grants entail restrictions against the alienation of property and are discriminatory to women (Law and Society Trust 2015).

Dry Zone settlement schemes, which were initiated in the colonial period but continue in the post-colonial period, were presented as a remedy to

²⁸ Distribution of state-owned land.

²⁹ Aimed at reforming tenure arrangements.

³⁰ Introduced through the first Land Commission in 1927.

the landlessness of the peasantry in the country.³¹ Since colonial acquisition of land resulted in many of the rural peasantry being displaced and losing their traditional livelihoods, resettlement in the Dry Zone was enforced in the post-independence period. Between 1948 and 1953, 16 colonization schemes were inaugurated, and 10,426 people settled (Gunasekara 2020, 24). Through these settlement programs, the peasantry received permits to occupy the State-owned land mainly for cultivation. In addition, infrastructure facilities such as irrigation, roads, schools, health centres, post offices, and other amenities were also provided to sustain a rural community (Bastian 2009). After the land is developed, the holder is eligible to receive a grant. The grant is similar to a property title, naming the holder as the 'owner' of the land, but there are notable restrictions on transfer, sale, mortgage, and lease (Gunasekara 2020, 24).

Under such settlement initiatives, the biggest national program planned in the post-independent period was the Mahaweli Ganga Development in the 1970s. An agreement was signed in 1969 between the government of Sri Lanka and the World Bank to develop the Mahaweli river basin, involving a multi-purpose irrigation project aimed at developing and modernizing irrigation and agriculture in the country. This program was geared to develop approximately 900,000 acres of land in the Dry Zone, and produce 970 megawatts of power (Gunasekara 2020, 31). The settlers were initially allocated a family farm of three acres, either lowland, highland, or both.

³¹ 27% of peasants are deemed landless, and there is no clear data on urban landlessness (CPA 2005a, 16)

Women's access to land in settlement schemes

Laws relating to property such as the Land Development Ordinance (LDO) of 1935 implemented under British rule is discriminatory to women. This is ironic, because Universal Suffrage giving voting rights to women was introduced to Sri Lanka in 1931, but consecutive laws like LDO are gender discriminatory. While LDO has been generally considered as pro-poor for facilitating the allocation of rural lands for settlement and expansion to the landless, it has deprived women of rights to such lands through its inheritance schedules. LDO is also restrictive to both men and women in terms of autonomy and independent control over land (Lindberg and Herath 2014), and it should be noted that LDO had categorically excluded the Indian Tamil population of the plantations (Gunasekara 2020, 18). On the one hand, the schemes that were operated under these laws were helpful in reducing landlessness³² in the country, but on the other hand significantly weakened the property rights of women.

Despite the significance of these programs in terms of agricultural development of the country, it is clear that these land reforms have further aggravated the issue of the property rights of women. Within these, the policy was to limit land ownership and inheritance to one family member, and preferably a male at that (Risseuw 1988, 88). For example, in irrigation settlement schemes like the Mahaweli scheme and Uda Walawe scheme,³³ the practice has been to give land titles solely in the name of the senior male member (assumed to be the head of the

³² According to Centre for Policy Alternatives (2005), the then per capita availability of land in Sri Lanka was 0.29 hectares. It is projected that with the increase in population (about 25 million), the per capita availability will be reduced to 0.22 hectares by the year 2030 (p. 15).

³³ Such irrigation schemes fall under the Land Development Ordinance of 1935, and the legislation is drafted in a gender-neutral language (Guneratne 2006, 12–13)

household³⁴) of the family and succession to such land usually passes on to the male heirs (Schrijvers 1985; Agarwal 1990, 30; Guneratne 2006, 2). Likewise, the succession to a land/grant gained through the Land Grants (Special Provision) Act of 1979 is also gender discriminatory as male heirs are favoured in the nomination order (Law and Society Trust 2015). At the same time, while around 7-35 per cent of land is estimated to be owned by women in most village systems, the proportion of *de facto* land ownership by women in the newer settlements is considerably lower at less than 10 per cent (Ratnayake 2015). Despite traditional customary laws being bilateral, these more recent practices of land allocation by the State are largely male-centred or patrilineal.

Post-tsunami land allocation to women

Post-tsunami land allocation exemplifies gender discriminatory land policy in recent years. After the tsunami in 2004, the Tsunami Housing Reconstruction Unit (THRU) was established under the purview of Urban Development Authority, and was tasked with allocating land and housing for those who lost property in the tsunami. Their priority was to allocate State-owned land for this initiative (CPA 2005a). While this is an important resettlement program, studies show that the post-tsunami land allocation was made primarily in the name of head of the household, who is recognized as male. This is a grave injustice done to the women who owned land in their names pre-tsunami (NCW 2006; CPA 2005a). The PARL (2020) people's land commission report shows that not only did women lose their claims to land (especially dowry land) in the resettlement process, but they also had to face domestic violence

³⁴ A head of household is defined as 'the person who usually resides in the household and is acknowledged by the other members as the head.' (COHRE 2008, 2)

when negotiating their rights to property and power relations in the household (p. 56).

War and post-war changes in North and East Sri Lanka

With a nearly three-decade civil war ending in 2009, the country has already made attempts to transition from war to peace, but it is doubtful whether the issue of land is adequately addressed. Land in the North and East has been and continue to be a complex issue closely tied to ethno-political tensions, and may even be considered a key trigger that caused the ethnic war in 1983 (see Lindberg and Herath 2014).³⁵ With the end of the war, land issues in the north and east need to be addressed in order to implement economic recovery, social rehabilitation, and justice (Fonseka and Raheem 2011).

There are several key issues related to land tenure in the post-war North and East:

1. Ambiguous ownership and competing claims to land

As a result of the prolonged civil war and its stronghold being the north, the area was under the control of both the government and Liberation Tigers of Tamil Eelam (LTTE) parallelly for several decades. Therefore, multiple actors often claim rights to the same plot of land. Many have also lost their documentation to prove ownership of land during the height of the war and due to displacement, further exacerbating the ambiguity of ownership. Fonseka and Raheem (2011) state that,

competing claims over plots of lands are not only occurring between individuals, but also between state, non-state, and religious entities. The

³⁵ The findings of the study done by CPA (2005) indicate that caste, ethnicity, or religion do *not* have a particular gender-specific effect on the issues related to land for women (p. 9).

act of deciding whose claim is more legitimate is one that has the potential to aggravate tensions between communities and shake the trust of the people in government intentions and commitment to peace. (p. 14).

Loss and destruction of documents due to fires, bombings, and looting is an issue not only for individuals but also for institutions such as district registrars and notaries (Guneratne, Pinto-Jayawardena, and Gunaratne 2013). Therefore, post-war land tenure has vastly become a sensitive issue that needs careful consideration and strategic initiatives and intervention.

Three such initiatives have been taken to address this issue. Firstly, the passing of the Memorandum titled 'Regularize Land Management in the Northern and Eastern Provinces' and a subsequent Land Circular in July 2011 by the cabinet (Fonseka and Raheem 2011, 12). The main aim of this initiative is to address the aforementioned land tenure issues having multiple and competing claims, by conducting investigations to the competing claims, issuing proper ownership certificates, setting up an appeals procedure for objecting to decisions, and subsequently establishing a fixed system of land titling (ibid). It is not certain to what extent the Land Circular has been successful. Secondly, the North East Housing Reconstruction Program (NEHRP) is another attempt implemented with World Bank support in January 2005, to provide housing assistance to conflict-affected areas (CPA 2005a). Thirdly, the Prescription (Special Provisions) Bill with amendments was passed in 2016, with special legal provisions made 'in respect of persons who were unable to pursue their rights in court for the recovery of any immovable property including land, due to the activities of a militant terrorist group.' (DailyFT 2016).

2. Military occupation in the north

The continued military occupancy in the north remains a problem. According to various military communiques, one of the reasons for their prolonged presence in the once war zone is to ensure that there is no relapse and recidivism of the former combatants now reintegrated to the society (Gunasekera and Pathiraja 2019). Additionally, there is also a threat of active landmines that are yet to be defused and hidden arms stocks, both of which requires military intervention. However, the military occupancy is not merely limited to camps and barracks, but land is used by the military for purposes that are traditionally 'civilian', such as agriculture, tourism, and other commercial ventures (Perera 2020; Usoof-Thowfeek and Gunasekera 2020).

According to the ACPR & PEARL (2017) report, approximately 25% of the active military personnel in the country are based in Mullaitivu, occupying a land mass of 30,000 acres.³⁶ Fonseka and Raheem (2011) estimate that 65,000 people were displaced directly due to the High Security Zones (HSZs³⁷) in Jaffna (p. 154). The statistics and information available on the military occupation in the north is sparse.

3. Return and resettlement in the North and East

During the war, many Tamils and Muslims in the north and east were either forced to leave or escaped their homes in fear. It is estimated that about 300,000 people were internally displaced in the Northern Province alone due to the war (Saparamadu and Lall 2014; Sarvodaya Shramadana Movement 2010). Fonseka and Raheem (2011) claim that

³⁶ Mullaitivu has a land area of 2,415 square kilometers (Survey Department 2012), which is approximately 600,000 acres.

³⁷ The largest HSZ in Jaffna is called Tellipallai/Valikammam HSZ and it encompassed about 43 GS divisions in the DS divisions of Tellipallai, Chankani, Sandilipay, Uduvil, and Kopay. In Tellipallai, 35 of its 45 GS divisions belonged to the HSZ.

the resettlement initiatives of the government have resulted in 250,000 (nearly 95% of all official internally-displaced persons (IDPs)) being ‘allowed’ to return to their communities in the North (p. 15). The Internal Displacement Monitoring Centre (2018) reports that Sri Lanka has a total of 42,000 IDPs due to conflict as of the end of 2017. The number of people that actually returned to the north and east therefore may differ. Furthermore, despite the opportunities given to return, most returnees do not have access to their lands and homes, often for the reasons discussed above (Lindberg and Herath 2014; Fonseka and Raheem 2011). A case in point is the IDP returnees, who were traditionally fishermen, being relocated to Kombavil, in Mullaitivu district, an area away from coasts (Sarvodaya Shramadana Movement 2010).

The group academically referred to as Northern Muslims had to forfeit their property including homes and lands when they were evicted by the LTTE in 1990. There were no proper resettlement mechanisms after the end of the war for these Muslims, and many scholars note that a number of these Muslims had not returned to their traditional homes in the north, and have therefore lost their lands (Hasbullah 2001; Brun 2003; Thiranagama 2011). Furthermore, it is estimated that 50% of the new generation in Puttalam has no land to return to or no desire to return to the North (CPA 2005a).

4. Land issues in female headed households

As a result of the war and the death or disappearances of men, a significant number of families in the north and east are female-headed households. There are about 89,000 female heads of household in the war-affected Northern and Eastern Provinces (Women’s Action Network 2016, 19). Fonseka and Raheem (2011) note that there are about 40,000

widows in the Northern Province,³⁸ with about 20,000 widows in the Jaffna district (p. 109) (see also International Crisis Group (2017)).

The incidence of female heads of household is not only due to war. According to the International Labour Organization (ILO) definition, female headed households are “households where no adult males are present, owing to divorce, separation, migration, non-marriage, or widowhood, or where men, although present, do not contribute to the household income.” (Jeyasankar and Ganhewa 2018, 1). The category discussed above are mostly widows and wives of men disabled due to war. Overall, it is estimated that of the 5.2 million households in Sri Lanka, 1.1 million households (23%) are female-headed households (Sri Lanka Department of Census and Statistics 2013).

This is a marked change in the dynamics of family and inheritance. However, it is not clear whether the policies and practices have been reformed in order to facilitate the inheritance rights of the ‘new’ heads of the households. For example, in the cases of disappearances, it is problematic for the widow to gain intestate property of the husband as there is no death certificate, and obtaining such documents is time consuming (Pinto-Jayawardena and Guneratne 2010).

The personal laws add additional burdens for female heads of household. For example, under the Tesavalamai law, a widow cannot mortgage property devolved on minor children and this can impede her efforts such as repairing damaged property or obtaining financial capital to establish livelihoods.

Another example, Tesavalamai law requires the woman to get formal approval from the husband if she wants to dispose of the land, but if the

³⁸ The UN estimates that 58,121 households in the Northern Province are headed by women (UN Sri Lanka 2015)

husband is no longer present and the woman is the head of the household, does she still need approval from a male relative to dispose her legally-owned land? Fonseka and Raheem (2011) state that in the case of an absent husband, the wife has to take the issue to court. This complicates matters further for the women not only in terms of access to land but also their access to law (de Mel and Medawatte 2020). The authors' interviews with legal experts show that they do not envision a change in policy in this matter.

Millennium Challenge Corporation (MCC)

Furthermore, the recent controversy over the Millennium Challenge Corporation (MCC), a new international disbursement agency of the United States of America, is a pivotal point in Sri Lanka's ventures on land reform. The MCC Sri Lanka compact includes two key areas: transportation and land. Transportation involves road development, alleviating traffic, developing pedestrian crossings, modernizing bus services and so on. In terms of land reform Gunasekara (2020) states that the agreement advocates for modernizing land titles by introducing e-titles, improving the Valuation Department, identifying 'underutilized' State land that can be better used, and increasing tenure security and tradability of land for smallholders, women and firms (p. 41). Despite its seemingly harmless overview, many academics, civil society activists, and both government and opposition parties vehemently oppose the Sri Lankan collaboration with MCC.

The opposition stems partially from the suspicion of a hidden agenda by the government to 'privatise' land ostensibly for the benefit of currently vulnerable groups but instead to transfer it into the hands of transnational agribusiness corporations and private investors for large-

scale projects. Critics have also referred to past experiences of providing tradable land titles to the poor, resulting in land sales by indebted smallholders and the concentration of land holdings among a few large landowners or companies (Kuruwita 2019; Gunasekara 2020). The poor are thus dispossessed of the agricultural lands that they have been cultivating for generations, based on usufruct rights. They are also deprived of their access to so-called ‘underutilized’ State lands which act as ‘commons’ for rural communities and vital for livelihoods, such as grazing livestock, gathering food and medicinal plants, and collecting firewood. Moreover, these lands can hold critical water sources for cultivation, drinking and other domestic uses. The only option for landless smallholders would then be to become a part of a cheap labour pool for the benefit of agribusiness and other industries (Kuruwita 2019). Therefore, it is pointed out that, contrary to its claimed objectives, the MCC compact will lead to dispossession of the poor, resulting in exacerbating poverty and inequality (Kuruwita 2019; FT 2019). Even though women have been specifically singled out as beneficiaries of the land component of the MCC compact document, how tradability of land titles would affect women’s ‘secure tenure’ or access to and control of land has not been adequately analysed either by the proponents or the critics of the MCC compact.

Why should women own land?

It is acknowledged that independent ownership of economic resources such as land can promote the wellbeing and empowerment of women (Agarwal 1994a; Pallas 2011). Pallas (2011) states that ensuring women's effective access to land can be instrumental in decreasing their vulnerability to poverty and risk of social and economic marginalization (p. 271). Similarly, Kishor (2000) states that one such source of empowerment includes the assets and objects women have to advance and strengthen their agency. Based on this, ownership of assets, especially land, is a source of empowerment and should be central to driving women's economic empowerment. However, there is a serious lack of evidence-based research, especially in the global South, that looks at how land ownership influences women's economic empowerment (Agarwal 1994a; Pallas 2011). Agarwal (1994a) criticizes that as much as there is a neglect of women's issues related to land by governmental and non-governmental institutions, there is a similar neglect and gap in the academic domain as well.

From a welfare perspective, research suggests that there is a clear connection between risk of poverty and the physical well-being of a woman and her children to the woman's direct access to income and wealth-generating assets, such as land (see Agarwal 2003). Swaminathan, Lahoti, and Suchita (2012) study the impact of rural women's property ownership on their mobility and autonomy in Karnataka, India. The findings show that owning a house or a plot of agricultural land enhances women's ability to travel to places outside the community such as the market, health centre and so on. Findings also show that women are able to make more independent decisions about their employment, health, and use of money with the ownership of

property (p. v). These findings are similar to those of Doss et al. (2014), who conclude that women who own land jointly or independently, in the study areas of Mali, Malawi, and Tanzania, have more input into family decision-making than women who are not landowners.

With more autonomy and decision-making abilities for women, their children's and household's nutritional standards are also enhanced (Meinzen-Dick et al. 2019). As women of poor households typically use almost all their incomes for food and upkeep of the children and family than men do, a woman having independent ownership and control of land significantly affects the welfare of the woman, her children, and the family at large (Agarwal 1994a, 30; Swaminathan, Lahoti, and Suchita 2012, 1). Even if the woman owns a small plot of land that cannot be used for large-scale agricultural produce, she can gain other advantages such as garner income from animal husbandry, growing vegetables and fruits for day-to-day consumption and small-scale businesses, mortgage and get credit, among many other advantages. Evidence suggests that small farms in developing countries garner more productivity than larger farms (Banerjee 2000).

From an efficiency perspective, women having rights to land can increase their efficacy and production (Meinzen-Dick et al. 2017). For example, investments in farms managed by women would be more effective, as evidence suggests that women tend to repay loans more than men (Agarwal 1994a, 36-37). Doss (2018) points to the fact that women, especially in the Global South, are deeply involved in all phases of agricultural production, including seed selection, purchasing, management, marketing, animal care and so on. Women in South Asian agrarian communities are also considered to be better informed about traditional crop varieties that can enhance efficiency (Agarwal 2003). Arun (1999) explains that women who own and autonomously control

land can function as independent farmers who make critical decisions and have direct access to resources for better production. As mentioned previously, since women directly influence physical wellbeing of the children, women having legal rights in lands can also be an effective way of involving the children in increasing production. Furthermore, women owning land could lead to a reduction in the migration of women and their children to cities, allowing local produce to claim a stake in the economy (ibid).

Land ownership to improve gender equality and ensure women's empowerment

Generally, equality is an indicator of a just society, and therefore having equal rights in owning and controlling land without being discriminated on the grounds of sex should ideally be enforced. Despite the Sri Lankan constitution and international ratifications granting such gender equality on paper, there is a vast gap in its actual enforcement and practice (Guneratne 2006, 7–9). Furthermore, having equal rights is also an indicator of women's empowerment in social, political, and economic spheres. Empowerment is generally understood as a process of emancipation, and gaining gradual awareness and actual control over decisions (Pallas 2011, 272; Vithanagama 2016).

Agarwal (1994a) defines empowerment as follows:

a process that enhances the ability of disadvantaged ('powerless') individuals or groups to challenge and change (in their favour) existing power relationships that place them in subordinate economic, social, and political positions. (p. 39).

Vithanagama (2018, 47), citing Kabeer (1999) defines disempowerment as being denied choice, and empowerment as the process through which

such individuals are given the ability to make choices. Vithanagama also introduces three dimensions along which the ability to make choices should be evaluated. They are resources (material, social, and human, that enable the ability to make choices), agency (the inner ability to understand what one wants in life and act upon them), and achievements (what one achieves by utilizing the resources through agency) (Vithanagama 2018, 47).

Women's empowerment is basically a process that enables women to own and control various factors that are necessary for their economic independence, political participation, and social development. Women's empowerment is particularly important since it may have a positive multiplier effect on her family, community, and the next generation (Vithanagama 2016, v). In many cases, the empowerment of women depends on and is measured by their economic and financial independence, but not property rights. Having equal rights in land would strengthen women's opportunities in economic development and decision-making, and these capabilities can benefit them to challenge social and political gender discriminations. There is a plethora of evidence that point directly to the importance of land rights in creating sustainable livelihoods and food security, particularly for women (Pallas 2011). Land security is therefore a crucial dimension of women's empowerment. However, even where gender equality is legally recognized, laws pertaining to property rights often do not give equal status to women. Where they do, such property rights may not be respected in practice (Pallas 2011).

Agarwal promotes the idea that it is the *process* of gaining effective and independent property and land rights that would emancipate women from traditional gender discriminations and eventually empower them. On a similar note, Rajgor and Rajgor (2008) show through a case study

conducted in Kutch district, India that “the process of claiming it [land] has, in itself, clarified women’s views about the relative importance of property rights for their lives and position in society.” (p. 41).

Similarly, in Sri Lanka, ensuring equal rights to land, both legally and in practice, is not an easy task and it will certainly not be ‘bestowed’ upon the women of Sri Lanka. Effective change requires alterations not only in legal terms, but also challenging and shifting traditionally-practised social perceptions and treatment of women. Agarwal suggests that it is precisely the wide-ranging nature of the obstacles of the struggle to gain equal land rights that has the potential to transform gender relations and empower women, not only in Sri Lanka but also in the whole of South Asia.

Jackson (2003) argues that a singular focus on independent land rights for women should not be considered a ‘magic bullet’ that can transform women’s positions and conditions in the society (p. 477). Instead she argues that other resources such as education, vocation, health services, and reform of discriminatory laws should be equally important. Goldman, Davis, and Little (2016) similarly argue that access to land, knowledge, social relations and political processes are more important for women’s empowerment. As empowerment entails a process of change, it implies that someone is at a state of disempowerment at a given point in time. Therefore, it is imperative to understand the causes of disempowerment and power relations when contemplating interventions (Vithanagama 2018). Despite land being understood as an effective tool to empower women, Kieran et al. (2015) argue that there is surprisingly little nationally representative data on women’s land and property rights and ownership in Asia. The case is true to Sri Lanka as well. There is a serious lack of academic research and a neglect of women’s concerns related to land by both governmental and

nongovernmental institutions in Sri Lanka. Despite land being an invaluable resource and a part of everyday life to both men and women in an agrarian country like Sri Lanka, women's perspectives on ownership, control, and insights into what land means to women are limited. There is also a need for understanding women's perspectives on what interventions would help secure their rights or property including land (see Scalise 2009).

Gap between law and practice

Women's empowerment is oftentimes hampered due to different barriers, such as their perceived substandard statuses in the household and community, with the unequal laws and practices related to property and land rights of women further aggravating the situation. In Sri Lanka, gender disaggregated statistics of property ownership of private and State land are not available (Pinto-Jayawardena and Guneratne 2010; Bulankulame 2006).

However, according to a study done by Bulankulame (2006), the statistics of the three sites³⁹ of study indicate that 30.4% of women surveyed reported to own some form of property. Among those women who reported to own property, about 54% owned only the house and not the land it was built on, 13% owned house and land, and 32.2% owned only land (p. 62).

Potentially, women can obtain land through the family, State, or purchase. When it comes to family, sons are often favoured over daughters in traditional patrilineal communities and few women inherit land, and usually under restricted conditions. Bulankulame (2006)

³⁹ A rural village in Matale, an urban area in Galle, and a village in the Mahaweli settlement scheme in Badulla.

shows that in the study sites, the majority of women have received property primarily through inheritance. The other main source of acquiring property was through purchase (ibid, p. 62). There are instances where women have access⁴⁰ to plots of land, perhaps to cultivate and reap an income, but no legal right of ownership (Agarwal 1994b, 1459). Such barriers to women inheriting land may appear less challenging in traditionally matrilineal and bilateral communities. However, the evidence indicates that while most customary laws decree that women have equal inheritance rights with men over land in theory, this is not necessarily followed in practice (Asian Development Bank 2008).

According to Agarwal (1994a), the factors that constrain women's inheritance of land, despite the laws, include patrilocal post-marital residence, strong opposition from male kin, social construction of gender needs and roles, low levels of female education, and male dominance in all decision-making bodies (p. xvi). In certain contexts, men and women tend to favour men owning land over women as they believe that this would increase security and insurance in the family and generate more income (Pinto-Jayawardena and Guneratne 2010). Such perceptions can affect the practice of law related to land ownership. In contrast to such perceptions, Guneratne's (2006) study shows that a majority of respondents perceive that widows should inherit land along with children and siblings when the landowning man dies.

Fonseka and Raheem (2011) through interviews with land-related government officials show that officials are dismissive of joint titles, and prefer one owner, usually male, to land. These opinions are further expressed in the CENWOR (2008) report, which notes that officials say that it is important to identify a single individual for practical purposes,

⁴⁰ Access to land through informal concessions granted by close kin or friends.

such as signing relevant forms and engaging in transactions with the State (p. 3). Interestingly, Guneratne's (2006) study shows that among its study respondents, the concept of a single successor is absent and that they prefer assets such as land being distributed among close relatives (p. 62).

The negative impacts of acknowledging the man as the head of the household and giving preference to this *de facto* position when allocating land was seen in the aftermath of tsunami in Sri Lanka in 2004. A study on the subject was conducted by the Centre for Housing Rights and Evictions in 2007 in Hambantota, Matara, Galle, Ampara, and Batticaloa on 100 women. The findings of the study show that 85% of the respondent women did not receive property given by the government and private sector in their names even though they held property prior to the tsunami. The property was given in the husbands' names. Only 3% of respondent women had received property in their names (COHRE 2008, 25).

In the instances where women do get titles to land, it is typically when there are no adult men in the family, as in the case of widows heading households (Agarwal 1994b; CENWOR 2008). Furthermore, under the Mahaweli scheme, if a woman divorces her husband she is no longer able to have access or gain profits from the land, which shows the subordinate position of the women in relation to men. Such practices clearly undermine the bilateral ownership and inheritance practices of customary laws in Sri Lanka, and form new trends of discrimination against women. Thus, it is not surprising that the proportion of female agricultural and deputy agricultural operators, categorized as the

decision-makers in smallholdings, were estimated at 18.4 per cent of the total agricultural operators in Sri Lanka in 2014.⁴¹

As much as women's legal right to land and ownership of land is problematic, the actual practice of this right is also an area of gender inequality. Gender equality in legislation to own land/property may not necessarily guarantee gender equality in actual ownership of land/property. For example, a woman may have the legal right to own land or property, but this may be merely a formality if the family does not bequeath any land to her, but favour the male heirs. The woman may also be pressured to forfeit her shares of land and hand them over to the males in the family. As Pallas (2001) suggests, legal procedures are critically essential to ensure equal land rights to women, but the issue cannot be resolved simply with formal legal privileges (p. 287).

Gap between ownership and control

The issue of property ownership and actual control of it encompasses a complex set of concerns. According to Meinzen-Dick et al. (2019) there are five types of rights that fall under the overarching term of 'land ownership': (1) Access is the right to enter a property; (2) Withdrawal is the right to remove things from the property, such as gathering firewood or collecting produce; (3) Management is the right to make changes to the property; (4) Exclusion is the right to keep others off the property; and (5) Alienation is the right to transfer property rights to others through bequest, gift, or sale (p. 73). Ideally, legal ownership of land should entail all of these different rights. However, this is not always the case. Oftentimes, there are women who legally own land only in name,

⁴¹ Computed from the Department of Census and Statistics (2015). "Summary Report on Agricultural Activities: Economic Census 2013-14." Colombo, Sri Lanka: Department of Census and Statistics

but do not have other rights as stipulated above. Risseuw (1988) argues that women's subordinate positions were developed as a result of earlier and recent laws and practices pertaining to private ownership of property (p. 11).

It is argued that even in traditionally matrilineal communities or in other communities where women had rights to own and control lands, such rights were conditional especially on factors like her marriage, post-marital residence, widowhood, degree of control and so on (Agarwal 1994a). For example, in historical matrilineal communities, where inheritance and ownership of land was vested in women, it was the men who often had control over the land (Ruwanpura 2006; Pinto-Jayawardena and Guneratne 2010). Agarwal (1994a) had further stated that despite gender-progressive legislation in South Asia, few women inherit land, and fewer women have control over it (p. xvi).

Control can have multiple meanings. For example, control may mean the power to decide how the land is used, how its produce is used, or to make decisions regarding the lease, mortgage, selling, or bequeathing the land to kin (Agarwal 1994b). Legal ownership of land does not necessarily transform to actual control of land, and ownership of land does not guarantee that women have actual autonomy to enjoy her land (Fonseka and Raheem 2011). For example, while the general law, Kandyan law, and Muslim law provide separate property and contractual rights for women, in the Tesavalamai customary law, the woman needs her husband's approval to make decisions regarding the land she legally owns.

Pinto-Jayawardena and Guneratne (2010) citing a survey done by the National Committee on Women in 2006 shows that in the Southern and

Eastern Provinces women own more property than men,⁴² but more men have authority in the household (p. 1). The authors also flag that women often lack awareness of their land and property rights and are hesitant to seek and exercise the rights they do have due to various social pressures (ibid). Another issue is the growing rates of men migrating out of their villages. This leaves behind the women, who also function as de facto heads of household, with land without legal ownership, which can lead to difficulties when utilizing and bequeathing land (Dhaatri Resource Centre for Women and Children-Samata 2010).

While CENWOR (2008) calls for joint ownership of land by spouses to ensure equality and non-discrimination before the law, Agarwal (1994a) proposes ‘independent rights’, which means rights independent of male ownership or control (i.e. joint titles with men), for women (p. 20). She proposes that with independent rights, women can have more power over her share in case of marital disputes, better control over the use and produce of land, and have the power to bequeath the land.

Such recommendations are however not equally shared by other scholars. Independent rights may be favourable to women in the instances of marital disputes, but under normal circumstances Rao (2005) claims that “most women do have access and use rights to land though these are contingent on their relationships to men and unless the relationship breaks down, they often do not find a need to claim independent rights.” (p. 4701). Therefore, it would be worthwhile to seek further understanding of the preferences and perceptions of the women with regards to land and property rights.

⁴² In contrast, more men own property than women in the Uva Province (Badulla) (Pinto-Jayawardena and Guneratne 2010).

What happens when women do not own and control land?

Sri Lanka is often lauded as having relatively favourable positions for women with regards to education, health, employment, and also matrilineal and bilateral inheritance patterns and property rights for women (Agarwal 1994a; Ruwanpura 2006; Klasen 1993; Bulankulame 2006). However, the situation may not be the same especially in female-headed households (Ruwanpura 2006), for women ex-combatants (Gunasekera and Pathiraja 2019), and disabled women (Vanniasinkam and Vitharana 2019). Despite the many benefits of land tenure as discussed in this essay, there is reason to believe that such benefits are not necessarily shared by men and women equally, and especially by the women in abovementioned categories of vulnerable groups of people.

As evidence, Wijayatilake's (2002) study shows that 27% of women in the Western Province sample, 15.4% of women in the Central Province sample, and 13% of women in the agricultural settlement sample did not own any immovable property either on their own or jointly. Secure land rights are crucial, irrespective of gender, as it enables the owners to invest in their land with the expectations of reaping its benefits without being fearful of losing the profits to a third party. Lawry et al. (2017) suggest that secure land rights are seen as key to improving the conditions in developing countries, including “economic growth, agricultural production, food security, natural resource management, gender-related inequalities, conflict management and local governance processes more generally.” (p. 61).

Bezabih, Holden, and Mannberg (2016) citing a number of sources show that security in land tenure can enhance productivity of the land owned especially by women. With independent ownership of land, women get

leverage to bargain power within the household and outside (Agarwal 1990). In the absence of such leverage, they stand to lose such power and may even lose economic safeguards in the face of marital ill-treatment or breakdown. She also points out that in cases of women owning land but in joint titles with their husbands, they could be at risk in situations of marital conflict or violence. While joint titles can give equal footing to a woman in making decisions about land, the woman could also be subsequently forced to stay in a violent marriage so as to protect her and her children's claims to the land.

There are examples from India and China where when women obtained independent rights to land, they were subsequently empowered to leave their oppressive husbands and succeed not only economically but also in improving their individual identities (Agarwal 1994a, 40). Therefore, having independent rights is beneficial for the woman in many scenarios. Furthermore, in agricultural communities, without land, both women and men may also face the risk of unemployment and poverty (Melis, Abeysuriya, and de Silva 2006).

What does land mean to women in the current Sri Lankan context?

Bulankulame (2006) through research conducted in three villages in Sri Lanka, points out that ownership of property can enhance social status, increase income, reduce domestic violence, and empower women to negotiate or walk out on a marriage (p. 62). The study group of women also ranked that ownership of property gives greater security in widowhood and old age as the most important aspect, along with ownership giving protection in times of economic crisis and from domestic violence and threats. COHRE (2008) study shows that 83% of the study group believed that women should have the right to own their own property (p. 26).

When it comes to ownership of land as a means against domestic violence, Bulankulame's (2006) and Jayasundere's (2009) studies also show that there is no direct link between ownership of property and reduction of domestic violence for women in Sri Lanka. However, ownership of land is instrumental in how women respond to violence. Bulankulame (2006) using interviews with women landholders gives instances where ownership of land/property helped women in situations of abandonment or divorce. The women elaborate how they could take care of the children and avoid social discrimination by giving a dowry to daughters with the property they legally and independently owned (*ibid*, p. 68). The author also shows that of the women who tried to defy domestic violence, more than half owned property.

A problematic tendency that can be gleaned from the literature is the women's lack of understanding of property (including land) rights, knowledge of documentations to prove ownership of land, and lack of understanding of what ownership actually means (Lindberg and Herath

2014; Fonseka and Raheem 2011). Wijayatilake's (2002) study of inheritance rights of women shows that a considerable number of women were not aware of the inheritance laws applicable to them. For example, 21.6% in the Western Province sample, 76.9% in the Central Province sample, and 33% in the Mahaweli system sample were not aware of their inheritance rights. This is despite Sri Lanka's high literacy rate (over 90%) which could have been expected to educate women on their opportunities and rights.

A CPA (2005) study conducted in Batticaloa, Jaffna, and the Vanni shows that the majority of women had either minimal or complete lack of awareness of their land and property rights. They were also not aware of the available laws and regulations that endorse and protect women's right to land (ibid, p. 6). Many women were under the impression that a woman's name cannot be registered in a deed or permit, even if it is dowry property. However, an interesting distinction is made where many upper-class women in the Vanni⁴³ area have knowledge of their property rights, but the middle and lower-middle class women are largely unaware of their rights (ibid, 31). It would be worthwhile to examine how these issues have changed since the end of the war in 2009.

Literature shows that Sri Lankan women's perceptions and aspirations related to land are diverse and nuanced. Even though women consider land to be an important asset that can render them strength and leverage, especially in times of economic crisis and in cases of abandonment, not all women seem to believe that they ought to have legal ownership of land. Wijayatilake (2002) through interviews with women in different parts of Sri Lanka states that "in terms of the fairness or unfairness of the distribution of property, appear to reflect a sense of 'fair play' in their [women's] view and in some instances even to justify

⁴³ The Vanni region comprises of Kilinochchi, Mullaitivu, and parts of Mannar district.

their [women] being disinherited.” (p. 66). Similarly, Pinto-Jayawardena and Guneratne (2010) citing many studies done in Sri Lanka argue that often men and women both hold the opinion that women do not need to own property as “ownership of property by women can tilt the balance of power between husband and wife by undermining the carefully defined roles.” (p. 8).

Citing findings of the NCW (2006) study, Pinto-Jayawardena and Guneratne (2010) point out that in the Southern Province sample, female respondents prefer men owning land (40% of 658 households) or joint ownership of land (36% of the households) over independent ownership, to ensure greater security and insurance. In the Eastern Province sample (997 households), the majority of women preferred joint ownership of land.

The CPA (2005) study shows that many educated women in Jaffna are aware of their rights and impediments to own and autonomously control land under the Tesavalamai law, but that they are reluctant to resist traditional practices in fear of upsetting cultural norms and creating social stigma. They also seem to perceive Tesavalamai law to safeguard women from external pressures to sell her lands. Another point raised in the PARL (2020) report is the bequeathing of land given by the State under LDO especially for displaced communities. It was previously mentioned that women are often discriminated, as State lands are usually given to male heads of household and passed on to the eldest son. Another issue flagged is that such plots of lands are often very small and sufficient for only one household. So even if the family wants to give property or dowry to a daughter/s, it is impossible to do so (ibid, 57). The same would be the case for families living in apartment buildings. Therefore, women’s right to land should be advocated by considering their sensitive, unique, and nuanced contexts.

When looking at the case of female heads of households and their land ownership issues, independent legal ownership of land for women in these households is continuously endorsed. Despite its values, such women also tend to face difficulties when seeking labour for cultivation and other livelihood activities. For example, even if a woman owns land, she may find it difficult to hire male laborers as they are more likely to resist working under women (International Crisis Group 2011). Women also express difficulty in doing labour such as ploughing land for cultivation and handling heavy equipment in the absence of male support (Jeyasankar and Ganhewa 2018, 29). For those who resettle in the war-torn areas, the destruction of land, flora, and other resources like wells that once sustained them is another issue of post-war land tenure. A woman explains that “when I came back after displacement, all of the land was bare. Before displacement we had lots of trees like coconut and jackfruit trees. But nothing is available now.” (ibid, 56).

Some women still struggle to reclaim their land after the war and the tsunami. The PARL (2020) report shares experiences of many women who engage in numerous fights to gain their lands occupied by the military, and also tsunami resettlement housing. Some Tamil women in the North have been protesting for more than three years to reclaim their ancestral land. The women also consider it their responsibility to fight for their land:

The men say they have to work, that they are afraid of the army. But for us women, this land is our security, our right – if we do not fight for it, who will? (Reuters 2020).

Reclaiming land is not only about securing a financial asset or ancestral identity, but for some women it is also about reclaiming their independence and dignity (PARL 2020).

Knowledge gaps

The review of existing literature on land and gender point to significant areas of knowledge gaps. Firstly, there is a serious lack of gender disaggregated data on land ownership in Sri Lanka. A systematic survey needs to consider the statistics of different types of ownership, such as individual ownership, joint ownership, informal ownership, ownership patterns in plantations, resettlement schemes, and so on. There is also a lack of adequate empirical evidence on what differences in legal ownership may imply for the ground realities of women's access and rights to land. Land is constantly referred to and acknowledged as an effective tool that can enhance economic and social wellbeing especially of women. However, when there is a lack of nationally available data, proposing interventions and policy implementation becomes problematic.

Secondly, there is a lack of narrative experiences of women with regard to land ownership and control. Past studies show that land ownership has the potential to positively affect women's overall wellbeing and empowerment. However, in contrast, some studies indicate that in certain contexts, ownership of property can be perceived to have negative impacts on women's family life. There is little knowledge about how different women understand the relationship between ownership of land and their overall social wellbeing.

Thirdly, there is a notable lack of information and evidence on the land ownership patterns of women belonging to vulnerable groups such as women with disabilities, women ex-combatants, women in female-headed households, women in fishing communities, and women in plantation sectors. The inheritance, ownership, and control patterns of

these women could be altogether different even if they come under the jurisdiction of either general law or personal laws of the country.

Finally, there is a lack of information on the challenges women face in securing land ownership and autonomous control of land in Sri Lanka. The diverse laws that limit women's inheritance, ownership, and control of land are elaborated, but the situation seems to be different in real-life scenarios of using land. Furthermore, the challenges women face when accessing land in war-affected areas is minimally understood. Such challenges could be legal, social, economic and psychological, but there is little knowledge of these experiences.

Conclusion

The overall literature review and the knowledge gaps identified indicate that there is a serious need to conduct research and generate evidence that would create further knowledge on the current status of women and land ownership and management issues in Sri Lanka. The historical patterns of land tenure and land reform are critical in understanding the diverse ways in which women's claims and struggles regarding land were set in motion and redefined in the pre-colonial, colonial, and post-colonial periods. This knowledge is important to understand the context of women's access to and ownership of land in Sri Lanka. In-depth research and knowledge can potentially feed into necessary policy reforms on land, especially those recent laws and practices that discriminate against women's inheritance, ownership, and claims of autonomous control. At the same time, it is important to garner comprehensive analysis of the current context in order to shape the practice of State and non-State actors, raise public awareness of the

subject, and respond to ground realities of women's issues with a nuanced understanding of their diverse social backgrounds and needs. Such research could also generate an impetus for broader studies on challenges to women's property ownership in Sri Lanka and in other countries.

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WOMEN AND LAND IN SRI LANKA: A LITERATURE REVIEW

Viyanga Gunasekera

This literature review is a comprehensive exploration of the history of land tenure in Sri Lanka, recent changes to land tenure, and the significance of land ownership through a gender perspective. For Sri Lanka, being an agrarian country, land has always been a source of sustenance, socio-economic and political leverage, and is closely tied to one's identity and belongingness to home. With the colonial influences, the legal ownership of land became more important for both the State and its people, and the more recent land settlements, land reforms, and conflicts over land are significant milestones in the history of land in Sri Lanka. Laws and customs related to inheritance and ownership of land in Sri Lanka are mainly governed by three forms of customary laws, namely Kandyan law of the Kandyan Sinhalese, Tesavalamai of the Jaffna Tamils, and Muslim law of all the Muslims, and the general law of the country. The historical patterns of land tenure, colonial influences, customary laws, and more recent land reforms are important in understanding the current contexts and patterns of inheritance, ownership, and control of land by women in Sri Lanka. This literature review takes a critical look at how women's access to land has both deteriorated and improved over time, and provides insights into the case of women and land in contemporary Sri Lanka.

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ISBN 978-624-5502-01-1



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