



NAVIGATING GENDER EQUALITY IN THESAWALAMAI: CUSTOMARY CHALLENGES AND LEGAL REFORMS IN SRI LANKA

*Thivyaa Sivakunalan**

Department of Legal Studies, The Open University of Sri Lanka, Sri Lanka

The Thesawalamai law, a customary legal system governing the Tamil population of Sri Lanka's Northern provinces, significantly affects gender equality, particularly in inheritance, property rights, and family relations. While this system reflects a rich cultural heritage, it perpetuates male preference in inheritance and restricts women's autonomy in property matters, marriage, and child custody, leading to systemic gender disparities. This study examines the legal challenges posed by Thesawalamai, analyzing its conflict with constitutional provisions on gender equality and international conventions like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Utilizing a qualitative methodology, this paper combines a literature review, legal analysis, and interviews with legal experts, community leaders, and women affected by Thesawalamai. The findings reveal that women face significant legal and social barriers under this customary law, including limitations on disposing of property without a husband's consent and unequal access to inheritance. These practices, upheld by judicial precedents, undermine women's financial independence and reinforce male dominance. Additionally, Thesawalamai's child custody and divorce rules further disadvantage women, especially when family assets are involved. The study underscores the need for legal reforms, notably an amendment to Article 16 of Sri Lanka's Constitution, to ensure that customary laws comply with constitutional gender equality guarantees. Furthermore, the judiciary must interpret existing laws in line with international human rights standards, while community engagement initiatives can help balance tradition with modern gender equality norms. By addressing these issues through legal reforms, judicial reinterpretation, and awareness programs, Sri Lanka can bridge the gap between traditional customs and modern human rights, creating a more equitable society for women under Thesawalamai.

Keywords: Thesawalamai, gender equality, Jaffna matrimonial rights, constitutional law, CEDAW

**Corresponding Author: pthivyaa93@gmail.com*



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INTRODUCTION

The Thesawalamai law, a traditional legal system of the Sri Lankan Tamil community in the Northern provinces, encapsulates the customs and practices developed under the Tamil rulers of the Jaffna Kingdom. While it represents a rich cultural heritage, it also poses significant challenges to gender equality. Rooted in tradition, Thesawalamai has faced increasing criticism for perpetuating gender disparities, particularly regarding women's rights in inheritance and family relations. Inheritance practices favoring male heirs lead to an unequal distribution of property and assets, undermining women's economic security and independence. This legal framework not only limits women's financial security but also restricts their rights in ownership, divorce, and child custody, affecting their roles in family and community decision-making. Although Article 12 of the Constitution of Sri Lanka guarantees gender equality, its implementation is limited by the Thesawalamai law. This paper explores the implications of Thesawalamai on gender equality and discusses potential reforms and community engagement strategies to address these issues.

METHODOLOGY

This study employs a qualitative approach, combining a literature review, legal analysis, and interviews with the general public. The literature review examines historical and contemporary sources to understand the evolution and current application of Thesawalamai, with a focus on women's rights.

The legal analysis identifies specific provisions of Thesawalamai, particularly those that contribute to gender disparities, such as Section 6 of the Matrimonial Rights and Inheritance Ordinance (Jaffna). Which allows women to retain their property as a separate estate but requires the husband's written consent for the disposal of immovable property. Additionally, international conventions such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) are considered for their relevance.

Interviews with legal experts, community leaders, and married and unmarried women provide insights into the practical challenges women face under this legal system. The data gathered is used to provide a comprehensive understanding of the issues and to inform reform recommendations.

RESULTS AND DISCUSSION

The analysis identifies several specific areas of gender inequality within Thesawalamai law, such as inheritance, property rights, marriage and family relations, divorce, and child custody. Under Thesawalamai, male heirs are often given preference in inheritance, especially about immovable property, limiting women's access to economic resources.



The legal analysis reveals that this practice conflicts with international standards, such as those outlined in CEDAW, which Sri Lanka has ratified. Notably, in the case of *Kandasamy v. Kanagasabai*, 53 NLR 49 (1951), the Supreme Court of Ceylon reinforced the principle of male preference in inheritance under Thesawalamai, underscoring how judicial interpretation has historically maintained this gender bias.

While Section 6 of the Matrimonial Rights and Inheritance Ordinance (Jaffna) states that women retain separate ownership of property acquired before or during marriage, it also imposes that immovable property cannot be disposed of without the husband's written consent. This severely limits women's autonomy and control over their assets. Legal precedents, such as *Murugesu v. Sinnathamby* 58 NLR 25 (1956), have upheld this requirement, emphasizing the need for consent from the husband, further entrenching patriarchal control over property.

Interviews with married women revealed that gender inequality extends beyond property matters into broader family dynamics. Women often faced being excluded from decision-making processes, particularly in financial and household matters. The findings suggest that these legal norms reinforce cultural expectations that women should defer to their husbands, a practice that is at odds with both Article 12 of the Sri Lankan Constitution and international human rights standards. Unmarried women expressed concern over the potential loss of autonomy after marriage due to these social and legal norms.

Legal analysis shows that divorce and child custody rules are often unfair to women. When a woman files for divorce, she struggles to get a fair share of property. Child custody laws also usually favour men, especially when family wealth and inheritance are involved.

Sri Lanka is a signatory to several international conventions, including CEDAW and the International Covenant on Civil and Political Rights (ICCPR), both of which emphasize the need for gender equality in all areas of life. However, the continued existence of Thesawalamai under Article 16 of the constitution law creates a legal barrier to aligning local laws with international standards. For instance, CEDAW's General Recommendation No. 21 explicitly highlights the need for equal property and inheritance rights, which Thesawalamai fails to ensure.

Legal scholars and human rights advocates have called for the amendment of Article 16 to ensure that all laws, including those based on customary practices like Thesawalamai, are reviewed by the constitution. Such reforms would allow for applying Article 12's gender equality mandate to Thesawalamai, thus closing the gap between constitutional protections and customary law. While supportive of reform, community leaders advocate for culturally sensitive solutions that balance tradition with modern human rights norms.

CONCLUSIONS AND RECOMMENDATIONS.

The ongoing gender inequality under Thesawalamai poses a significant obstacle to achieving gender equity in Sri Lanka's Tamil community. To address this issue, several recommendations are proposed. First, legal reforms should amend Article 16 of the Constitution to ensure that all laws, including Thesawalamai, align with constitutional guarantees of gender equality. This includes revising the Matrimonial Rights and Inheritance Ordinance to remove the need for male consent in property transactions and ensure women's equal inheritance right.



Additionally, a judicial review is necessary to encourage courts to reinterpret existing laws in line with international human rights standards, challenging legal precedents that uphold gender bias. Community engagement and education programs should promote discussions on gender equality and women's legal rights, fostering awareness among both men and women. Finally, following international standards is essential, ensuring that national laws comply with Sri Lanka's obligations under conventions like CEDAW. By implementing these reforms, Sri Lanka can bridge the gap between traditional customs and modern human rights, creating a more equitable society for women under Thesawalamai.

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