

## **GENDER BIAS OF PROPERTY RIGHTS IS A REFLECTION OF CULTURE: A COMPARATIVE STUDY OF KANDYAN LAW AND THE LAW OF THESAWALAMAI**

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### **ABSTRACT**

*A land is a tool through which an income can be generated by an individual, family and a community at large. Because of the civilization and emergence of human rights concepts, it became a proprietary right and it is internationally recognized that the states have to ensure that every one has the equal right to access the land. Despite of this development, most of the countries reserve the land rights in the hands of male. Although Sri Lankan Constitution ensures the equality and equal protection before the law, the women are discriminated to have and handle the property as feme sole under the customary laws. This paper studies the discriminatory provisions in both Kandyan law and Thesawalamai. The Kandyan law discriminated the diga married daughter, wife and widow to inherit the paraveni property of their deceased father or husband. A married woman who is subject to Thesawalamai cannot handle her immovable property as feme sole because of her husband's marital power over her immovable property. This discrimination is a reflection of the patriarchal system where the man is the head of the family and can have the control over the others. The result of this study proposes the means to balance the right of both men and women to access the land in an equal manner in the contemporary society. It is a qualitative mode of study based on the ordinances, judicial decisions and academic writings.*

**Keywords:** *Discrimination, Equality, Gender, Patriarchal system*

### **1. INTRODUCTION**

The concept of gender equality in the Sri Lankan context has a constitutional mandate. Although it is technically ensured by the constitution that '[n]o citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds', it further guaranteed

that 'all existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter.' The customary laws of this country are the *Thesawalamai*, Kandyan law and Muslim law, which are fallen under the ambit of 'all existing written law and unwritten law' as provided under Article 16 (1) of the Constitution. The customary laws contain