

Abstract

This paper provides an overview of the legal and policy framework as well as the institutional mechanisms that are in place to promote and protect women's rights in Sri Lanka. Suggesting that the current national machinery remains marginalized and the need for continued promotion of women's rights is necessary, The Sri Lankan government is proposing a new mechanism with greater powers. The paper provides an overview of the key provisions of the draft National Commission for Women Bill.

Introduction

In relation to the legal policy framework of Sri Lanka, the International Women's Year (1975) and the United Nations Decade for Women (1976-1985) inspired the adoption of laws, policies and mechanisms for the promotion and protection of women's rights. These pivotal events set the stage for the adoption of Chapter III of the Constitution on Fundamental Rights, the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1981, the establishment of a Women's Charter, and the development of a National Plan of Action for Women in 1996. Currently the government of Sri Lanka is in the process of negotiating the institution of the latest gender equity mechanism, the National Commission for Women.

Legal and policy framework

Chapter III of the Constitution of Sri Lanka provides for the protection of fundamental rights. Article 12 of Chapter III recognizes the right to equality and equal protection of the law as well as the right to protection from discrimination on certain specified grounds, including sex. Any person, whose right to equality is violated, under this Article, by either executive or administrative action, can file a Fundamental Rights Application in the Supreme Court. Article 12(3) also recognizes that a special provision to promote substantive equality can be made by law, regulations, or administrative action for the advancement of women. The only criticism of this clause is that women are not provided the provision independently; instead, it is inclusive of women, children, and disabled persons. The Fundamental Rights Chapter itself has certain inherent limitations. It has no retrospective effect, and there is no provision for judicial

review of past legislations. Therefore, gender discriminatory laws, which were in existence at the time the constitution was adopted, cannot be challenged on the basis of Article 12. This means that any reform of such laws depend on political will.

Unlike in South Africa, the right to culture and religion in Sri Lanka has so far trumped the right to equality. As an example, in 1995 the legal age of marriage for both men and women was raised to the age of 18 years. No corresponding change was made in the Muslim law, as there is no minimum age of marriage for Muslims and child marriages are possible (although rare), under the law. This exclusion was justified on the ground that the, "Muslim community is entitled to be governed by their own laws, usages and customs and it would not be productive to aim at a level of uniformity which does not recognize adequately the different cultural traditions and aspirations of the Muslim community."

Current national machinery for women

Together, the Ministry of Women's Affairs, the Women's Bureau, and The National Committee for Women comprise the national machinery for women in Sri Lanka; however, their roles and responsibilities vary.

Ministry of Women's Affairs

A cabinet portfolio for Women's Affairs was created in 1983 due to lobbying by women's groups and activists. Responsibilities of the Ministry are primarily centered around the implementation of policies, plans and programs with a focus on women's empowerment. This includes the advancement of the quality of life for women, increased participation in national development policies,

and promotion of gender equity and gender justice. The Ministry is also responsible for the implementation the Women's Charter, while the Women's Bureau of Sri Lanka and the National Committee for Women are statutory institutions under the Ministry.¹ Throughout its twenty-five year history, however, it has more often than not been combined with another ministry; at present it functions within the "Ministry of Child Development and Women's Empowerment."

Women's Bureau

Created in 1978, the Bureau was originally housed under the Ministry of Plan Implementation, though it now functions under the Ministry of Women's Affairs. The Women's Bureau is more project-based than the Ministry, and focuses mainly on issues of income generation and raising awareness.

The Women's Charter

As mentioned above, Sri Lanka is a signatory to CEDAW, without reservations, and adopted a Women's Charter in 1993. The Women's Charter was created as a means of translating the CEDAW commitments into a Sri Lankan context. The Charter spells out more detailed steps the State should take in ensuring the equal rights of women. Seven areas of concern specific to women in Sri Lanka are highlighted, they include: civil and political rights; the right to education and training; the right to economic activity and benefits; the right to healthcare and nutrition; rights within the family; the right to protection from social discrimination; and the right to protection from gender based violence. The Charter also provided for the establishment of a National Committee for Women whose formulation was a collaborative effort of the national machinery and women's NGOs. Despite its importance, the Charter remains a document with no legal force.

National Committee for Women (NCW)

The National Committee for Women is comprised of a Chairperson and experts from fourteen sectors, all appointed by the President for a period of four years; ten staff members; a legal officer with eight support staff; an Executive Director, also appointed by the President; and the Secretary of the Ministry of Women's Affairs, who serves as an ex-officio member of the Committee. Together, their mandate is to monitor and ensure the implementation of provisions as stated in the Women's Charter. The NCW accomplishes this through their powers of policy formulation, awareness raising and advocacy. A Gender Complaints Unit has also been established to receive complaints on gender-based discrimination.

National Plan of Action for Women

In late 1995 and early 1996, the Ministry of Women's Affairs and the National Committee for Women formulated the National Plan of Action for Women in Sri Lanka. Through several key measures, the National Plan of Action reflects the critical areas of concern set forth in the Beijing Platform for Action. The Plan identifies problems and issues, sets goals for their solution, recommends strategies and activities, and is responsible for the identification of implementing agencies. There are eight sectors in which programs under the Plan were proposed, they include: violence against women, human rights and armed conflict; political participation and decision-making; health; education and training; economic activities and poverty; media and communication; environment; and institutional strengthening and support. Since its inception, the Plan was revised in 1998 and 2000.

Litigation under current processes

In the last 28 years of the Fundamental

Rights Chapter, there have only been two cases of gender discrimination filed in the Supreme Court. In the first case, a female doctor was subjected to suspension from her internship and later transferred when she made an allegation of rape against a male colleague who worked in the same state hospital. The case was settled out of court and the female doctor obtained the relief she wanted. In the second case, a Sri Lankan woman who was married to a non-Sri Lankan challenged the regulations that discriminated against foreign male spouses obtaining a resident visa. Following the decision in this case, these regulations were amended.

The creation of a National Commission for Women would hopefully establish a clear and accessible pathway of reporting and action if such cases are brought forward in the future.

Establishing the National Commission for Women

Writing of the Draft Bill

The need for legislation to convert the National Committee on Women to a National Commission with greater powers was raised in 1994. At that time, draft legislation was formulated but shelved. The matter was again taken up in February 2004 with the Ministry of Women's Affairs publishing a document titled, "The Draft Bill on Women's Rights (Sri Lanka)." Once the draft was published, the Ministry called for views on the document from women's organizations and the public. A consultation was also held with women's groups to discuss the Bill further. The general consensus coming out of these consultations was that that the Bill was not well conceptualized both in terms of its objectives and the institutional framework it

outlined, and therefore should be revised.

As a result, a small Technical Committee was created to review the Bill and prepare a new draft that could then be finalized for presentation to Parliament. The Draft Bill prepared by the Technical Committee was submitted to the National Committee on Women and the Ministry of Women's Affairs in October 2004. The Bill was approved in November 2004 and was subject to a few changes.

Key Provisions of the Draft Bill on the National Commission for Women

The Draft Bill reflects and recognizes Sri Lanka's commitment to women's rights under the Constitution, the Women's Charter, and international instruments ratified by Sri Lanka. In fact, the Women's Charter is an annex to the Bill.

The proposed procedure for appointment of members of the National Commission mirrors the procedure of appointments to other independent commissions in Sri Lanka. The members are appointed by the President upon recommendation of the Constitutional Council.² The Commission consists of nine members who have distinguished themselves as leaders in areas varying from law and development to environment and the media, with a commitment and proven track record of having worked to advance women's rights and gender equality. Each member will hold office for a period of four years and can be eligible to hold office for a further four-year term. Out of the nine appointments, three will function as full time members. The Bill also lays down distinct procedure for the removal of Commissioners; however, there are substantial safeguards in place against arbitrary removal.

Functions of the Commission

The role of the Commission, as envisaged by the Bill, primarily focuses on quasi-judicial responsibilities, research, and education, advising, monitoring, and networking. The ability of the Commission to carry out these duties is only possible with sufficient authority. The proposed "powers" of the National Commission are: to carry out investigations, call for reports, or intervene in any proceedings regarding the infringement or imminent infringement of women's rights; to conduct public inquiries in relation to women's rights; to conduct programs for the empowerment of women and the advancement of women's rights; establish regional offices; take steps as directed by the Supreme Court, or any other court, in respect of any matter referred to it by that court; award in its absolute discretion, to an aggrieved person such some of money as is sufficient to meet the expenses that may have been reasonably incurred by her through making a complaint to the Commission; to call for annual reports from relevant bodies on measures to implement the Women's Charter and other rights recognized by this Act in areas within their purview; and finally, to forward a report to Parliament at least once in every year on its activities and the achievement of its objectives.

The investigative provisions of the Bill are devoted to spelling out, in more detail, the Commission's powers of inquiry and investigations that relate to the infringement of women's rights. The Bill strives for substantial powers of investigation, including the ability to summon witnesses and to take action against those who do not appear before the Commission or fail to submit evidence. The Bill recognizes a very broad concept of standing. It is envisaged that complaints to the Commission can be made not only by a

person acting in their own interest, but also by anyone acting on behalf of another person, acting as a member of or in the interest of a group or class of persons, acting in the public interest, or, an association acting in the interest of its members. The Commission will be able to investigate complaints against both State and non-State actors. Lastly, it is authorized to enter any place of detention in which a woman is being detained.

In relation to finances, the Bill seeks to establish a fund entitled the "National Fund for Women" which will include allocations from the national budget, independent grants and donations, and proceeds from sale of movable and immovable property.

Remedies for violations and enforcement

When an investigation conducted by the Commission discloses an infringement, or imminent infringement, there are several procedures that can be followed. First, the matter can be referred for conciliation or mediation with the agreement of both parties. Second, referrals can be made to the appropriate authorities to remedy the "violation" and recommendations can be made for prosecution or legal action. Lastly, other appropriate relief may be granted if determined just and equitable.

At this time, the enforcement of recommendations and decisions of the National Commission are through the High Court in the province where the complainant resides or to which the subject matter of the finding relates. The drafters of the National Commission for Women envision this to be a high power, independent Commission.

Current status of the National Commission for Women Bill

As of December 2007, the Draft Bill for the National Women's Commission is still being revised and the new version has not been available for general public discussion.

Conclusion

The need for a National Commission for Women with greater powers is critical for the continued protection and promotion of gender equality and women's rights in Sri Lanka. Within the current gender machinery, there remains an overlap between the Ministry of Women's Affairs, the Bureau, and the National Committee for Women. As a whole, the national machinery for women is still much marginalized from the national decision-making processes to the national planning processes. Gender discrimination remains a category that is not addressed frequently in litigation and hopefully, through the introduction of the National Commission for Women, the focus on and legitimacy of gender equality issues will become more prevalent in the Sri Lankan system of governance.

Endnotes

- 1 The official site of the Government of Sri Lanka: Ministry of Child Development and Women's Empowerment, http://www.priu.gov.lk/Ministries_2007/Min_Child_Dev_womens_empower.html, viewed on November 14, 2007.
- 2 Constitutional Council - The 17th Amendment to Sri Lanka's Constitution was unanimously passed in Parliament in 2001 to stipulate independent supervision over important appointments in public service. This constitutional amendment mandated a process of appointments to several key commissions and offices through approval by a 10-member Constitutional Council (CC).