Annual CGSUK Distinguished Keynote Oration

“Social Transformation, Gender Inequality and Violence against Women in Contemporary Sri Lanka”

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Centres For Gender Studies or Women’s Studies Centres have been established in many universities, globally, and in our own region, South Asia. The Centre for Gender Studies (CGSUK), University of Kelaniya however is a pioneering venture in the university system in Sri Lanka. The late Mahbub Ul Haq, the distinguished South Asian development economist once said, “development that is not engendered is endangered.” I would like to express the hope that this Centre will face the many challenges it is bound to encounter, and emerge as a national centre of excellence. It can perhaps even become a national postgraduate institute that has the advantages of financial and administrative independence within the University of Kelaniya. The Centre For Gender Studies of the University of Kelaniya has been established as a pioneering venture with the commitment of many people, including the founding Director, Professor Maithree Wickramasinghe, the Vice Chancellor Professor Sarath Amunugama, and others. It has potential for contributing, not merely to teaching, learning and research on gender issues in this university, but helping to fulfil a vision on engendered national development that continues to have relevance for both our country and our region. Thank you for inviting me to deliver the inaugural Distinguished Keynote Oration of the Centre.

We live today in a new Sri Lankan environment where the universality of some abiding values and even some issues of global concern are being challenged as unpatriotic, and contrary to our own national consciousness or “chinthanaya.” A country that has emerged from thirty years of bloodshed and armed conflict through the endeavours of its own elected leaders and established institutions, including the armed forces, will naturally experience a strong sense of national pride. However it is also important to avoid the dangers of insularity. We must recognise that our desire to find home grown solutions with sensitivity to our own cultures and experiences should not cut us off from benefiting from the inspiration of outside ideas and experiences that have contributed to the wellbeing of our nation and others throughout the world.

Sri Lanka’s history from antiquity to contemporary times demonstrates the powerful impact of a diversity of social economic and political forces and ideologies, most of which have come from across the borders of our island nation. Even as we celebrate the first ever Centre for Gender Studies, we need to constantly remind ourselves that the rationale and purpose of gender studies is to work towards the now universally accepted goal of achieving equality between women and men and eliminating gender based discrimination. This is important in an environment where this objective is sometimes described as an alien discourse, foisted upon the country by an elite of Western educated women and men. Global experience indicates that there can be no sustainable economic growth and development, when women who invariably constitute, as in Sri Lanka, more than 50% of the population, do not have the same life chances and opportunities to contribute to the wellbeing of their nation. This is why the commitment to eliminate discrimination and inequality, based only on the biological differences between men and women, has become the foundation of the Basic Law of many countries – their national Constitutions, international human rights instruments, and policy documents.

Advancing the concept of gender equality as developed in international law should, I think, provide both the vision and the framework of a Centre for Gender Studies at the University of Kelaniya. That concept is linked to Article 12 of our own Constitution which recognises the norm of gender equality as a binding commitment of our governments, reinforcing international treaties that Sri Lanka has ratified, and most
recently, Goal 3 of the Millennium Development Goals (MDGs). A timeframe has now been set for achieving some dimensions of this standard, and monitoring our achievements on including women as equal partners with men in development.

Goal 3 of the MDG’s is described as “Women’s Empowerment.” The word “power” has for many of us negative connotations, since we are all familiar with the many opportunities for the abuse of power. It is understandable if men, including our male colleagues in the university system, feel threatened if this Centre for Gender Studies describes as one of its goals “the empowerment of women.” Phrases like this fuel the strident claims that gender issues must be relegated to the back burner, because they disrupt family relationships and are alien to our Asian cultures. However it is our task to deconstruct the language and explain its real meaning. Simone de Beauvoir in her book “The Second Sex” published decades ago in the last century commented, “the battle of the sexes is not inherent in the human anatomy.” She made a powerful argument for eliminating a social construct of relationships between men and women that permitted the biological differences to be interpreted in terms of the inferiority of women and the superiority of men. “Women’s empowerment” therefore must be understood and explained in terms of transforming laws, policies, institutions and social values so as to internalise a standard of substantive equality. This endeavour is described in international law and some legal systems as eliminating disadvantage, providing equal opportunities, and eliminating the marginalisation that women experience as a group, in most societies, because of their sex. When this perspective is not recognised, addressing gender inequality and empowering women is perceived as a strategy for placing women in a superior position, ignoring the need to ensure for women too, equal opportunities and life chances that are the inherent birth right of all human beings.

Why Prioritise Gender Equality?
UN Women, the agency recently created to lead the now accepted global agenda on achieving equality for women, has brought together research and information on the reality of gender based discrimination. Responding to our contemporary concern that all realities should be explained in numbers, and economic performance, a World Bank publication cites UN Women as confirming that “women perform 66% of the world’s work, produce 50% of the food, earn 10% of the income and own 1% of the property.” It has also been clearly demonstrated that countries that have reached greater parity in men and women’s equal access to opportunities and life chances have progressed further on the path to economic development. While it is predicted that Asia, rather than Europe, will become the centre of economic growth and power in the next two decades, the UN ESCAP has indicated that poverty and inequality in some countries with current achievements and further potential for economic growth within the region, will make them less competitive than others. There is adequate information from research on gender issues already published, including a recent Human Development Report of the Institute of Policy Studies (2012), that Sri Lanka’s progress does not match its constitutional commitments on gender equality, or its obligations under international law, as a party to international treaties.

If these are the realities, it is important that we understand the constraints and the barriers that must be overcome if we are to address and eliminate gender inequality in our society. I believe that the greatest challenge in this regard in contemporary Sri Lanka is the gradual erosion of the value system on gender equality integrated into both our Constitution and International law. I would like in this lecture therefore to reflect on gender relations in our country from a historical perspective, with a view to placing before you some thoughts on the transformations that have occurred over time, and the critical need to nurture the positive trends and undermine those that can dilute even the progress we have achieved.

The late Prime Minister S W R D Bandaranaike in his speech at the opening of Sri Lanka’s first parliament, remarked, “no people can live on memories alone; it is equally true that history often provides a source of both strength and inspiration to guide them in the future. It is only against the background of the past that the present and the future can be viewed in their correct perspective.” These are words of
wisdom that we in the education system and disciplines of Humanities, Social Sciences and Law in the country have failed to appreciate, by being complicit in denying generations of students, knowledge of the history of their country, the region, and the world. A historical perspective on the transformations that have taken place in gender relations in this country can help us, I think to dispute some myths, and develop insights on how to address the contemporary challenges to achieving gender justice and equality. I interpret the phrase “social transformation” in my lecture in the broadest sense, including the interface between social changes and changes in the political and economic environment that inevitably impact on gender relations. Social transformation is complex and a product of many influences, and economic and political contexts impact and also transform social values and beliefs.

The study of social transformation and its impact on relations between men and women, and values and perceptions on gender equality becomes especially complex in plural societies with diverse cultures and religions. Those who argue that the concept of gender equality is an alien Western concept and that gender relations in Sri Lanka must be analysed within the framework of our own cultural sensitivities and values, assume a homogenous value-base of attitudes, practices, and perceptions, that have not been subject to change or transformation over the centuries of our history. It also fails to recognise the impact of economic and political change in the transformation of attitudes and beliefs in our plural society of diverse communities. It is interesting in this context to reflect on the different approaches to gender equality in our personal laws and some of our religious values, and the manner in which they too have been transformed over time in each community. This is a neglected area of research and study in the field of gender. Developments in our personal laws and cultural practices offer insights which show that culture is never static and is the product of diverse influences. The awareness that we can transform values and attitudes embedded in diverse cultures can help to develop a new culture of respect for gender equality. We need advocacy based on analysis and understanding of social changes to challenge ideologies that justify inequality and discrimination against women in the name of culture, and promote instead the concept of gender equality and justice.

I would like to highlight some important facts that have emerged in my own research on our plural personal laws, reflecting also on the changes that we see in the Sinhala Buddhist tradition of the community to which I belong, by ethnicity and religion.

**The Transformation and Diversity in Sri Lankan Cultural Values**

Those of us who are Sinhala Buddhists are familiar with those texts that indicate this religion’s approach to relations between men and women. When the Buddha in his discourses challenged the inequality of caste in the Vasala Sutta, it was on the argument that it was human conduct, one’s deeds and spiritual growth rather than birth and origin that determined whether a person was a Brahmin (of a high caste) or a low outcaste. This concept of aristocracy and nobility by deed as opposed to birth and origin, and the capacity of all to aspire to spiritual freedom, not only undermined the discrimination based on caste, but had a profound impact on the approach to relations between men and women. It was therefore logical that those early women activists of antiquity led by the Buddha’s own foster mother should succeed in their demand to be ordained as Buddhist nuns. Similarly, the songs of the Buddhist nuns or the ‘Theri Gatha’ of antiquity celebrate the right of women to achieve spiritual freedom, emancipating themselves from abusive husbands or the drudgery of domestic chores. The Buddhist scriptures record the achievements of many women, but Kundelexesi stands out as a woman whose religious discourses and brilliance in debate and discussion on the Dhamma, excelled those of her contemporaries.

This egalitarianism in the approach to relations between men and women is reflected in the norms and customary laws of many Buddhist countries, including Sri Lanka, Myanmar and Cambodia. These were all paddy-growing countries in which men and women had different roles, but shared agricultural tasks. This partnership in agricultural activities in Sri Lanka including chena cultivation is highlighted in the
work of contemporary feminist scholars on land issues, like Bina Aggarwal. Customary laws therefore recognised the equal and separate rights of women to property. Kandyan Sinhala law is often highlighted as a discriminatory law reflecting gender bias, because a daughter married in diga loses her inheritance rights. And yet, this loss of rights was linked in the pre-colonial era to economic production, rather than gender bias. A son who became a monk or a daughter who married in diga lost inheritance rights because they were no longer part of the unit of economic production. They reacquired these rights when they returned to the family home, because of divorce or return to lay life. The egalitarianism in the Kandyan law on the right to divorce because of a breakdown in the marital relationship reflected the same egalitarian approach to women, and represented a recognition of their individual identity and personality. Many of the British colonial writers including Robert Knox remark on the obvious freedom and ease of relations between men and women in Kandyan Sinhala society, and the fact that they mingled freely in public places as well as within the family. However this egalitarian tradition has also been transformed over time, due to other influences, sometimes derived from ideologies of male preference in Hinduism, and a Victorian British colonial legal and social tradition.

The influence of Hinduism and the laws of Manu are clearly seen in the Buddhist Customary law of Myanmar. In the laws of Manu, “a woman is under the power of her father in her girlhood, the husband during marriage and her son in widowhood; she is therefore never free.” However those values were not incorporated in Sri Lanka’s Kandyan Sinhala law. Besides Buddhism did not recognise the concept of pollution, nor exclude women from religious worship during menstruation. Yet in later decades, Sinhala Buddhist girls and women were sheltered and discouraged from participating in religious ceremonies in devales during menstruation. Girls are secluded during puberty rituals. Today there is a growing practice of excluding women from worship at the upper levels surrounding a Bo tree. These practices linked to pollution do not conform to the religious values of Buddhism, but are now considered part of Buddhist religious belief, culture and tradition. The Sinhala Buddhist marriage ceremony was a simple one, and non ritualistic. It is full of rituals today, sometimes even excluding the bride’s mother if she is a widow. Puritanical attitudes to dress and the need to impose a dress code for women in public places were suggested some time ago by an official cultural affairs agency. Women worshippers at the Dalada Maligawa, clad in saree and a sleeveless blouse, are now told brusquely to “cover up,” and follow our time honoured Buddhist traditions. Yet the renowned artist Solius Mendis’ famous painting from the Kelaniya temple has a figure of Hemamala carrying the Buddha’s precious relics in her hair, tied in a topknot. Hemamala’s attire in that famous picture, commonly seen on our beaches and in our hotels today, was not perceived as against our traditional Bhuddhist values. When feminists refer to the entrenched patriarchy in Sinhala Buddhist culture, they often refer to the “Bamunu Matha’ as represented in the admonition of a Sinhala father to his beloved daughter – “Never leave your home without permission from your husband, or a covering for the upper part of your body.” We tend to miss the fact that the admonition comes from the “Piya Bamuna” or the Brahmin father.

The transformation of legal values and their impact particularly in the area of family relationships and religious organisation is also seen in an analysis of later trends in the Kandyan Sinhala law, and Buddhist ecclesiastical law and practice. Persons who belong to the Kandyan community, who value their Kandyan cultural identity, invariably contract marriages under the Kandyan personal law. This system gives spouses the right to divorce by mutual consent or for irretrievable breakdown of the marriage evidenced by living apart. However marital property rights reflect gender inequality and discrimination against women. Neither the mother of the bride nor the bride realise that in 1938, colonial policy makers with the endorsement of local male elites, disenfranchised women of their property rights under traditional Kandyan Sinhala law. These policy makers and elites gave priority to the need for clarity of title to land, which had become a highly marketable asset in the colonial plantation economy. It was inconvenient to recognise a concept that married women could reacquire inheritance rights in ancestral lands, on the dissolution of a marriage. And so the legislation of 1938 transformed the traditional egalitarian principles, and prevented married women re-acquiring property rights in their paternal ancestral property. A woman
married under Kandyan law, whose husband does not gift or will property to her today, acquires almost no rights even in a matrimonial home, if it is part of his ancestral property. A daughter who marries in diga, loses for all time any right to paternal property, even if she lives with her parents and cares for them, fulfilling the Buddhist values of the Karaneeya Meththa Sutha on care and concern for her elderly parents. Indeed, an unmarried daughter who can inherit immovable property from her father is required to return this property on marriage, if her male siblings are willing to pay the market price of the property to her within one year of her marriage. These patriarchal norms of a colonial era have not been reviewed and changed over 60 years after independence, but are often justified as the cultural and even Buddhist heritage of the Kandyans. In an even more disturbing trend, relatives of Kandyan men who marry Non-Kandyans under the completely different General law of the land, which gives equal rights to widows and daughters, are now claiming that since he was governed by his personal Kandyan law, his property should devolve under Kandyan law that gives preference to male siblings. This has created a situation where both Non-Kandyan and Kandyan women who marry Kandyans experience the same discrimination.

Patriarchal values have also been entrenched in the un-amended Colonial Buddhist Ecclesiastical Law. Despite the long tradition of equality for women in Buddhism, the tradition of Sanghamitta, the Theris, Kundekeksi and Hemamala, women government officials are debarred from even voting at an election for the Diyawadana Nilame, the male lay custodian of the Temple of the Tooth. We saw the First Lady recently assist in the ritual of placing the relic casket on the perehera elephant at the Navam Perahera, surrounded by many important people. No one said that this was against our Buddhist culture, and tradition. Yet Buddhist culture tradition and ritual are used to justify the discrimination in the Buddhist Ecclesiastical Ordinance that was first introduced by the British colonial political regime. The male hierarchy of the Buddhist clergy have also refused to recognise the women Bhikkhus who have received ordination according to the Buddhist tradition, outside the country. Since their status is not recognised, they are denied a right to change their national identity cards from lay people to ordained monks – a privilege reserved for males who join the order. Recently some members of Buddhist clergy have disrupted medical clinics engaged in the performance of legal sterilisation operations. The Angulimala Sutta, the Buddhist text emphasises the importance of safe pregnancy for women so that the wellbeing of both mother and child is assured.

These same divergences in sources and contradictory value systems can be seen in Muslim Personal Law. The original Code of Muslim Law was brought into the island in the period of colonial rule as a collection of Muslim customs from East Asia, and accepted by a few leaders of the community as conforming to the customs of local Muslim communities. The Tsunami land settlement experience has clarified that the Muslim communities of the Eastern Province in fact follow a legal regime that recognises the separate property rights of women. Yet this system described as “Mukkuvar Law” is considered obsolete in the legal system of Sri Lanka, and has no connection to the original Muslim Code. Besides the colonial Muslim Law Code itself has been replaced. Today principles of Islamic law of the particular sect a Muslim belongs to apply in some specific areas like marriage inheritance and divorce. Nevertheless common norms of family law derived from the General Law apply even to Muslims, in regard to adoption of children and maintenance of non-marital children. Marital rape of a child below the age of 12 years is an offence in the Penal Code; yet, Muslim personal law does not recognise a minimum age of marriage.

The codified Muslim law itself recognises non-Muslim law concepts of dowry such as a marital gift of cash to the bridegroom called “Kaikuli,” (or bribe in Tamil). Another type of dowry gift called “Stridhanam” as the term suggests, represents a local custom not recognised in Islamic law. These customs on dowry demonstrate the influence of Tamil customs on Muslim communities. The concept of “Kaikuli” is therefore accommodated in the current legislation on Muslim law, together with the Islamic law concepts on a woman’s marital property or “mahr”. There is some evidence that the un Islamic practice of “Kaikuli” and of “Stridhanam” as dowry are more important in Muslim communities today than “mahr”, which is even given as a token payment. The Islamic law of inheritance, which prefers
males, applies to property rights. Yet if State land is allocated to Muslims, under State land legislation it is those principles rather than Islamic law that will determine property rights. Despite the fact that the same criminal law applies to Sri Lanka Muslims, adultery is not a crime, and men have a legal responsibility to support non-marital children, there have been recent disturbing incidents where Muslim women who have relationships with non-Muslim men have been beaten inside mosques or in public places on the basis of decisions taken by elders of the community. This represents a new and dangerous method of informal dispute settlement, which is legitimised on the basis of community values that are not accepted in the legal system of the country.

The Tesawalamai law applies to Tamils of the Northern Province. This system has special principles which apply to the sale and use of land in the Northern provinces, but also determine ownership and distribution of marital property, and property of family members, on death. As in the case of other communities, State land legislation containing different principles apply when State land is allocated to persons governed by Tesawalamai. However the customary principles of Tesawalamai law apply to private property. These principles have been significantly modified, because of the superimposition of statutory principles and jurisprudence in the Courts influenced by Roman Dutch law. Significant changes in the content of the law have occurred due to these divergent legal and political influences as well as more recent social practices such as giving donations to a man on marriage. The customary practice of giving separate dowry property to a woman, as her own separate property or “chidenam” has diminished in significance. These transformations in the original principles have invariably undermined and had a negative impact on the rights of women in the Tesawalamai as recorded in the original code of the Dutch colonial period.

A comment made on patriarchal influences in the Mukkuvar law which originally recognised a strong concept of women’s property rights, refers to the manner in which males with their superior power and influence eroded the property rights of women. This could be an apt description of the patriarchal influences that have been justified by reference to culture, and undermined the rights of women under the original Tesawalamai law. The complexities of current Tesawalamai law and Mukkuvar also pose special challenges to the task of land distribution and restitution in the post armed conflict situation in the Northern and Eastern Provinces. It is a matter of regret that the recent circular on land distribution in these areas, (which appear to have been withdrawn), nevertheless adopted a gender-neutral approach. The circular failed to address and accommodate the rights of women, particularly widows in these areas to obtain an important economic asset like land, through proactive interventions by the State.

The discrimination faced by war widows including female heads of household in the North and the East and other parts of the country have been well documented in research findings from the 1980s, and in the recent LLRC Report. Yet widows were considered responsible heads of household and managers of family property, with child care responsibilities, in both Kandyan Sinhala law and Tesawalamai. Their rights came to be expressed in the colonial legal regime as a life interest in the husband’s property – a surviving spouses’ limited claim in respect of an important asset. Subsequent developments in legislation and public policy and jurisprudence have restricted the rights of widows. Though the General Law recognises the survivor rights of a widow in the family, the property rights of a widow governed by Kandyan law and Tesawalamai have been eroded over time. There are no legal restraints on a woman’s capacity to be considered a head of household. Our census and statistics and general law on family support and maintenance recognise that men and women share responsibilities as equal partners. And yet, public administration continues to focus on a “male breadwinner” and “head of household,” particularly in relation to social security benefits such as pensions and State land distribution. Widows, who were recognised as important members of the family, and community, were not perceived in our personal laws as “unlucky” people, in some way responsible for the loss they have suffered.
The history of transformation of our personal laws, as well as the Sinhala Buddhist, Tesawalamai and Muslim customs and practices outlined, indicate the fallacy of using a homogenous and pristine Sri Lankan cultural argument to justify gender based discrimination. The conflicting values in the sources of law and the contradictions in the legal norms themselves undermine arguments that there is a homogenous cultural Sinhala Buddhist value system in the country.

The sensitivity of successive governments to identity politics has promoted a lack of political will in changing personal laws and family policies that prevent men and women realising the Constitutional promise of gender equality. Sri Lanka ratified the Women’s Convention (CEDAW) in 1981 and has submitted several progress reports to the CEDAW Committee in the last 30 years. Resistance to eliminating discrimination in personal law as well in some other areas of family law has been justified consistently by the government delegations presenting our report, by reference to culture, ignoring the reality of the transformations that have occurred over time. It is also ironical that identity politics has not prevented these same governments introducing laws and policies that impact negatively on other rights of minority communities.

**Some Current Realities**

There are many areas in which Sri Lanka’s women do have equal rights. A recent World Bank Report (2012) identifies indicators of gender equality in the laws regulating economic inclusion. These are, access to credit, and interaction with public and private institutions, managing and owning property, getting a job, taxation provisions, and going to court. In all the areas specified, except property rights, all Sri Lankan women have formal legal rights and protection. In particular, in many areas such as applications for a passport, travel and residence, engaging in economic activities and trade, signing legal documents and opening bank accounts, being a head of household, work and employment rights, and litigation in civil cases, men and women in this country do have formal legal equality. We are perhaps the only country in the world that has had so many women in leadership positions – whether as President or Prime Minister, or more recently, and at the same time as Chief Justice, Attorney General, Legal Draftsman and Secretary to the Ministry of Justice – the key posts in the area of administration of justice. Sri Lanka is unique in the region, and even globally in giving over 80% women law students and over 50% medical students access to a cost free legal education in the public university system.

These are significant achievements – yet the equal access to leadership positions in public administration is in sharp contrast to the failure to address de facto inequalities in many areas including violence against women, access to political participation and employment. Why is it that with such successes only 38% of a female population of over 50% has access to productive livelihoods and employment? Why does Sri Lanka have the lowest representation of women in all legislative bodies in South Asia? Are the positive gains being undermined by other trends, which are seeking to limit women’s access to the public space and their right to equal treatment and opportunities within and outside the home and family?

The high incidence of gender based violence including rape, gang rape and murder of women has been documented over several decades in research, and has received a great deal of media attention during the armed conflict and very recently. The Health Ministry has publicly acknowledged the high incidence of sexual harassment and abuse of male authority in the health sector and the need for preventive interventions. The law provides for legal accountability, since sexual harassment is a criminal offence. However there is hardly any reference today to the need to enforce disciplinary or penal sanctions for such abuse. An initiative of the Women’s Ministry requiring all government ministries and agencies to formulate sexual harassment policies appears to have been ignored. Neither staff nor students seem aware of sexual harassment policies of a university, even when there are such policies.
Statistics on the high incidence of domestic violence in this country are recorded in our hospitals, in newspapers reports and sometimes in police records. Why do women stay in abusive relationships, even at the risk of being maimed and killed, and the lives of their children traumatised? Why do women themselves not question family values that support access to education but deny the right of women to bodily security and freedom from violence and sexual abuse?

Contemporary Kandyan law permits divorce on the ground of irretrievable breakdown of a marriage, evidenced by factors such as domestic violence. However our General Law, which applies to all other communities is based on Christian values introduced during the British colonial period. Proof of fault in adversarial court proceedings is necessary to obtain a divorce. Women’s groups who counsel victims of domestic violence encounter the daily pressures faced by women to continue in abusive marital relationships, because of the adversarial nature of legal proceedings and the social stigma of divorce, that is associated with the “fault” approach to divorce. Indeed this fault-based perception of divorce is reflected in the jurisprudence of our country. In Tennekoon v Tennekoon, (1986 1 Sri LR 90) a celebrated divorce case, the Chief Justice of the time disapproved of an interpretation that undermined the fault principle in our General law on divorce, remarking that “divorce that is based on marital breakdown rather than fault destabilises the institution of marriage, and undermines the moral and social foundation of our society” (p 100).

Given that some principles of Kandyan law applicable today permits no fault divorce for irretrievable breakdown of a marriage, our legal system has not entirely rejected permitting spouses to part without social disapproval, due to factors such as abuse and violence in family relationships. The fault based assumptions of the received colonial law on divorce undermine women’s right to bodily security and reinforce false social values on the need to preserve a broken and dysfunctional marriage, where the male spouse or partner perpetrates violence against women and children. Sri Lanka’s parliament passed the Domestic Violence Act in 2005 and there is increasing evidence, including from a recent report by the NGO Women in Need, that women are seeking relief against domestic violence. However official statements from even highest in the land continue to see legal relief and remedies for domestic violence in a dysfunctional and already broken family as a Western conspiracy to “break up families.” When double messages on domestic violence are given in families, the community and by law enforcement agencies such as the police and the judiciary, women are denied their right to make their own decisions in responding to such violence, by moving out of abusive relationships. Some justify in the name of culture, and family privacy, pathological domestic violence as a casual response that lasts, as a Sinhala saying goes, only as long as the “pot of rice cooks.” What does society have to say when a man beats a woman almost to death because, as reported recently, she refused her husband’s repeated requests to donate a kidney for Rs.500, 000?

Transformations in family values and culture that encourage insensitivity to the predicament of women, who experience violence because they are women, have been reinforced in an environment of political violence. The culture of impunity associated with selective law enforcement and administration of justice discourages women from using available legal remedies. Access to pornography on the Internet in our new “knowledge based” society, and growing consumerism fosters a “macho” culture, which reinforces values of male domination over women. Witness also the recent lobbies resisting strictly regulated medical termination of pregnancy advocated on grounds of public health, and in the limited circumstances of violence against women perpetrated through incest and rape. The National Child Protection Authority and the police have frequently referred in the last year to the very high incidence of adult sexual abuse of young girls below the age of sexual consent – a criminal offence that amounts to rape. Such offences are also committed by teenage boys, in an environment of co-education in State schools and the ubiquitous “tuition classes” where boys and girls interact freely. Forced marriage of teenage girls by falsifying birth registers is a response to both adult sexual abuse and the reality of teenage sexuality. The absence of a sentencing policy that was promised by the Supreme Court in a litigated case, and the shockingly low
sentences pronounced in cases of sexual abuse of children, legitimises men having sex with underage girls. This should be as much a concern as the emergence of a new phenomenon of child marriage of girls in conflict affected areas. All efforts to encourage responsible sexual behaviour through school curricular has been resisted by education authorities in the name of “our traditional” cultural values. The incapacity to raise public awareness encourages new forms of violence against women and girls, without diminishing its incidence. If sexual harassment of women is perpetrated on public transport, it is now also perpetrated through the Internet and the cell phone.

It is in this environment that there is an urgent need to find a discourse and ideology that can provide consistency and coherence in public policy and also guide us in sustaining the gains on gender equality and justice in Sri Lanka. The recently published government Human Rights Action Plan, (2012) addresses gender inequality and violence against women as realities that must be addressed through a Human Rights approach. This offers some hope that the contradictions we have recently witnessed in state policy and official statements will be replaced by some clear initiatives to carry forward this action plan. The plan offers an opportunity that women’s groups and institutions like the Centre for Gender Studies should used in developing their programmes to promote a gender equality agenda. An erosion of the Constitutional principle of gender equality by ideologies that seek to enthrone repressive cultural and religious values in the name of authentic homegrown solutions to problems should not be underestimated.

The Human Rights Discourse and Eliminating Gender Based Discrimination

Feminist criticism of human rights has often prevented women’s groups developing and adopting a holistic and consistent advocacy strategy to advance gender equality. The political battle lines on State and Non-State actor accountability in international law for human rights violations has unfortunately created an environment where Sri Lankans in positions of responsibility are increasingly persuaded that human rights are a selectively implemented Western and alien ideology. We then fail to understand that respecting, protecting and fulfilling human rights has provided the foundation for many of the progressive developments in governance, public law and policy that that Sri Lanka has witnessed in over six decades of independence. Women too have benefited from these developments. It is because the progressive social values of rights, including those on gender equality, were accepted as the normative foundation of good governance, that equality, without discrimination and denial of equal life chances on the basis of the biological differences between the sexes, was accepted in our Constitution of 1978.

The feminist critique of the human rights discourse is in general based on a misunderstanding of human rights as giving priority to individual civil liberties. It is argued that gender equality from the perspective of women cannot be achieved without recognising that women function in a world where they want connectivity to others, in shared and caring relationships. This critique fails to recognise the reality that international and even national human rights norms have moved towards recognising the indivisibility and interdependence of both the traditional civil liberties of the West, and the social and economic rights that have been the focus of communitarian socialist political ideologies.

Critics of human rights tend to ignore the contribution of feminist theories on human rights in deconstructing gender bias in principles of criminal justice. It is these endeavours that have contributed to extensive reforms in law and policy in many countries including Sri Lanka, and the transformation of international and national approaches to violence against women in situations of armed conflict. Violence against women in any form, including sexual violence is not considered today an issue of women’s chastity but an infringement of women’s right to personal security and bodily integrity. Patriarchy in feminist theory lies at the foundation of gender based discrimination. Patriarchy from the time of the Romans, with their ideology of “patria potestas” or male power, represents institutionalised abuse of power, creating conditions where people are gripped by the fear of power and the power of fear. All
dimensions of human rights whether civil or political or socio and economic seek to prevent abuse of power, and encourage responsible accountable use of power.

It is also important to recognise the significant contribution of feminist jurisprudence based on human rights protection to our understanding of gender equality. The traditional Anglo American approach to equality focuses exclusively on realising formal or de jure equality in law and public policy. Feminist jurisprudence has contributed to refashioning this limited concept of equality, focusing on achieving both formal equality and de facto equality in impact and result. The concept of substantive equality which seeks to eliminate de facto discrimination and disadvantage, also emphasises the need to transform attitudes and institutions that contribute to the discrimination experienced by women. This concept of achieving substantive gender equality as a necessary dimension of the human right to gender equality, brings Non-State actors, whether in the corporate sector, the community or the family, within the scope of accountability for human rights violations. It is important that all those working on gender issues understand and relate to this norm of substantive equality that is now incorporated as part of international human rights, and explained in the CEDAW (Women’s) Convention General Recommendations, particularly No 25 and 28.

If we examine the contradictions in law and policy in Sri Lanka, the myths of a homogenous pure local culture that deny the realities of social transformation, the gap between formal legal rights even when they exist, and women’s incapacity to access these rights, we must surely understand the importance of a human rights concept of substantive equality. The apathy of the State and the lack of political will in eliminating gender based discrimination, and the incapacity to enforce fundamental rights when the perpetrators are Non-State actors have been highlighted by gender activists. Substantive equality addresses these gaps and lacuna.

The failure to understand substantive equality is mirrored in the judgements of the Supreme Court in its recent determination on the Local Government Bill. The Attorney General was able to argue and persuade the Supreme Court, presided by the Chief Justice, that Art 12 (4) of the Constitution, which mandates temporary preferential measures for women to address de facto inequality, was a “weapon” to achieve gender equality. The Supreme Court rejected arguments for a specific quota of seats only for women in local government assemblies in a situation where Sri Lanka has the poorest record and one of the lowest percentages of women in parliament and local assemblies in the South Asian region. By using the term “weapon” to describe preferential measures, and creating the spectre of a battle between the sexes in the political arena, lawyers for the State and the Supreme Court de-legitimised substantive equality as a guideline for effective public policy to achieve gender justice.

The State faces challenges in ensuring that women have equal access to political participation, livelihoods and land, and freedom from violence, particularly in the post armed conflict situation of the North and the East. Substantive equality is a norm that includes Non-State authors. It can help to fashion laws and policies that address the ground realities of discrimination and marginalisation of women, and gender based violence, including as war widows and female heads of household who have suffered the trauma of years of conflict and violence. Substantive equality is also important for all women, in an environment of increasing privatisation and expansion of the corporate sector. Sri Lanka’s pregnancy leave laws and policies are generous, and were formulated on the basis of women’s reproductive health rights and children’s wellbeing. Yet, there is anecdotal evidence of the private sector perceiving this leave as a “women workers’ employment benefit” which can be justifiably denied. Male employers then foster the idea that care obligations in the family are the exclusive responsibility of women, rather than a shared and joint commitment of women and men and society.

Sri Lanka’s experience on law and policy formulation, and the ground realities faced by women also reaffirm the importance of the human rights approach to cultural diversity. The right to manifest religion
and belief in worship, practice and teaching, individually, or with others in one's community, is recognised in international human rights and in our Constitution, Art 14 (e) and (f). However there is recognition that cultures are never static and unchanging, but reflect the impact of diverse political and economic and social changes over a period of time. Consequently it is also accepted in international human rights law and our Constitution that the State has a right and duty to give leadership and introduce laws and policies in the wider community interests of “national security, public order, the protection of public health and moral values or to secure due recognition and respect for the rights and freedom of others, or to meet the requirements of the general welfare of a democratic society” (Constitution Art 15 (7)). It is on this same rationale, that the international human rights treaty bodies, including the CEDAW Committee that monitors the CEDAW Women’s Rights Convention that Sri Lanka has ratified, repeatedly question the States failure to eliminate discrimination against women in the personal laws in the name of sensitivity to culture or manifestation of religious beliefs. Thus, practices that encourage child marriage or child labour of girls, contrary to public health and human resource development needs, violence against women, and denial of women’s economic and property rights because they are women, are acts of discrimination that cannot be justified today in a culturally relativist approach.

The new Centre for Gender Studies at Kelaniya University can through its work, help to develop a consensus on using human rights as a valid framework to promote gender equality both within the university and the community, demonstrating the need to move beyond a cultural relativist approach to the many problems in our country. It is such a framework that in my view can impact on State and community accountability for promoting the welfare of both men and women. We must resist the recent argument of cultural and religious fundamentalists that gender equality is an alien and Western value by disseminating information on the many women of all classes including grassroots communities who have had the courage to challenge gender based discrimination and claim their human rights. The incapacity to change negative stereotypical values and attitudes regarding women and institutions that reinforce these values, is a recognised barrier to achieving a standards of substantive equality in many countries. Transforming gender inequality becomes impossible, unless there are proactive initiatives, that challenge and address cultural relativism.

Too often women’s groups and gender activists promote cultural relativism by our inability to come together on a common platform of human rights, even for law and policy reform. The history and reality of change in cultural and religious practice needs to be understood by all of us, and should provide the basis of our advocacy for change. As the late Muhamed Ali Jinnah of Pakistan remarked in a debate on the introduction of restraints to child marriage, “If we are going to be influenced by the public opinion that can be created in the name of religions (and I would add, culture) when we know that (they) have nothing to do with the matter, … we must have the courage to say ‘No, we are not going to be frightened by that.”

Let us all from our diverse communities not be misled or frightened by arguments of cultural relativism, and the false consciousness and myths created by those who would seek to undermine the advances made by the women of this country in claiming in peace, that historically and globally accepted right to substantive gender equality and non-discrimination. Let us have no illusions about the power of negative social forces that seek to push Sri Lankan women into a world of submission to male domination in the home and the public space in the name of “home grown” ideology and falsified truth about our diverse religions and cultures. Unless women in positions of leadership in universities, professions and public life combine to resist these negative trends, and used the opportunities we still have, to promote gender equality we may regress and become a society that replicates the type of discrimination against women we see in other parts of our region today.