

# TOWARDS A GENDER EQUAL CONSTITUTION

## INTRODUCTION

This document was created to help users understand and analyze the challenges and disadvantages faced by Sri Lankan women due to the existing laws and policies of the country. Part A of this document will discuss the micro finance crisis and its consequential impact on socio economic and political conditions of women. Part B will look into the substance and process of a gender sensitive constitution and thematically explore four broad recommendations from the Report of the Public Representations on Constitutional Reforms (the PRC Report) that promotes women's rights and contributes to their empowerment.

# WOMEN IN SRI LANKA: THE SOCIO ECONOMIC CONTEXT

Although Sri Lanka is ranked as a middle income country, many people live below the poverty line across different sectors.

Women are doubly challenged because they are invisible in the statistics and also face discrimination in the private and public spheres.

They face a range of disadvantages through the limitations of society, cultural norms and structural inequalities.



Over the next few pages we hope that our audiences will gain an understanding of these structural barriers that hinder female development in Sri Lanka as issues to be addressed by our laws and policies as national issues of concern, and not as a reflections of personal inadequacies.

## Part One: Women and The Micro-Finance Crisis



The Law & Society Trust conducted several interviews with women from the rural and plantation sectors to understand the effect of debt and the micro-finance crisis on social, economic, and cultural conditions they face. Some of them are discussed here:

## Social Norms and Gender Inequality

Women are the primary caretakers in a family, and they are defined through the roles of daughter, wife, mother, and sister.

Their autonomy, dignity, and independence are constantly at risk.

## Valuing Women's Work and Livelihoods

Certain professions are stereotyped as “womens’ jobs”.

Despite their vital contributions to several industries their policies, wages and career prospects are limited.

They face difficult working conditions; long hours, lack of sanitary facilities, occupational diseases and ailments, sexual harassment and intimidation.

Additionally, women are responsible for the care of elderly, young, and disabled at home.

This reduces the “care-giving cost” to be paid and allows men to be more economically active. Such care-giving work is a duty that should be supported by the State.



## Unequal Access to Education

Despite Sri Lanka's system of free education, its quality and cost varies according to location.

When difficulties arise, the education of young girls is the first to be affected.

Prolonged war, displacements, and safety concerns also affect their education and advancement.

## Managing Sickness – The Female Burden

### INEQUALITIES

in the geographic distribution of medical personnel or facilities

can affect women's sexual and reproductive health and its improvement including pre-natal and post-natal health



Pregnancy and childbirth are referred to as “sickness” and restrict women's economic contribution to the family.

## Patriarchy at Home- Impact of Marriage and Family on Women



A woman may exercise some autonomy and still be controlled by male relatives who manage their salaries and expenses. This restricts their financial independence.

Families who are unable to provide financial / physical security to their daughters give them in marriage. This also happens when they drop out of school.

Families see dowries as security for their daughters. But it is a patriarchal practice requiring excessive costs.

## Women and Land Rights

Current laws and administrative practices restrict the rights of women to land ownership, inheritance and succession. These laws and practices that favour men limit women's development.

Women turn to micro-finance companies to meet their urgent financial needs. These companies don't require documentation to provide loans but charge very high interest for unsecured loans.

Preferential grants of land permits to men disadvantages women displaced by war. This dependency on men makes women vulnerable to sexual bribery and violence.

## Gender-based Violence

For several interviewees, domestic violence is a normal part of their family lives. Traditional patriarchal expectations add social pressure on men and suppress them calling for psychological help.

They turn to "manly" pursuits such as drinking and habitually terrorizing family members as coping mechanisms.



Male debt collectors threaten women and their families by calling at inappropriate times, disregarding their right to privacy.



Male members of the family in turn use violence against the women to express their disapproval of their financial transactions.

## Women in Politics: Where are They?

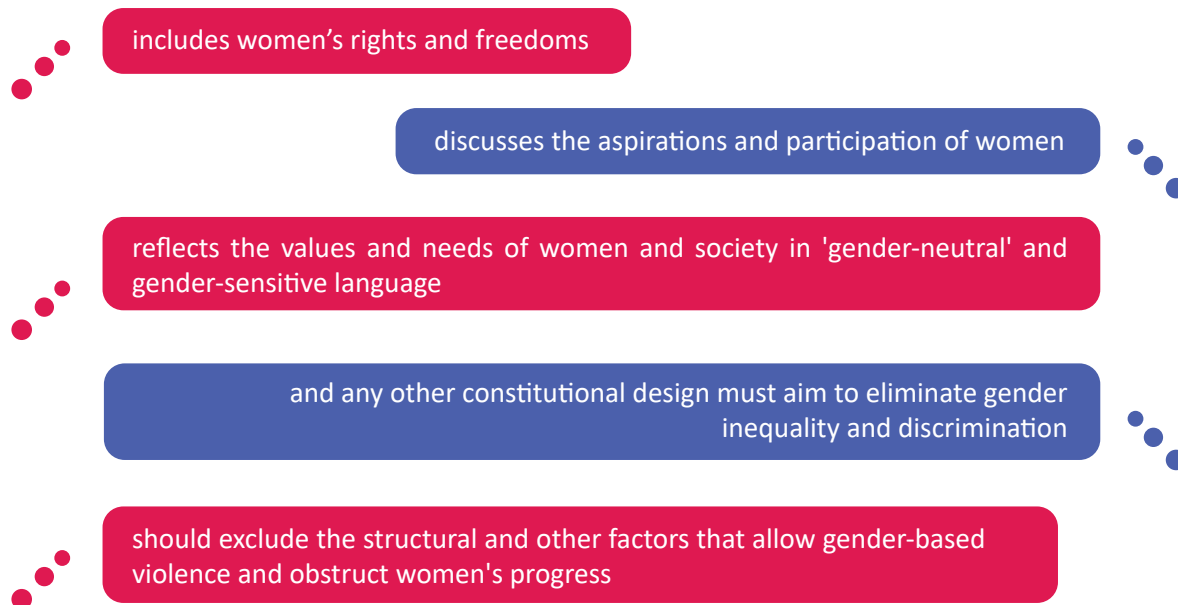
The national parliament of Sri Lanka has consistently seen a proportionately low number of female Members of Parliament. Only 5.33% of seats held by women in 2019.

Legislative bodies must invest in opportunities for women to sustain their political participation at the levels of local government and national government.

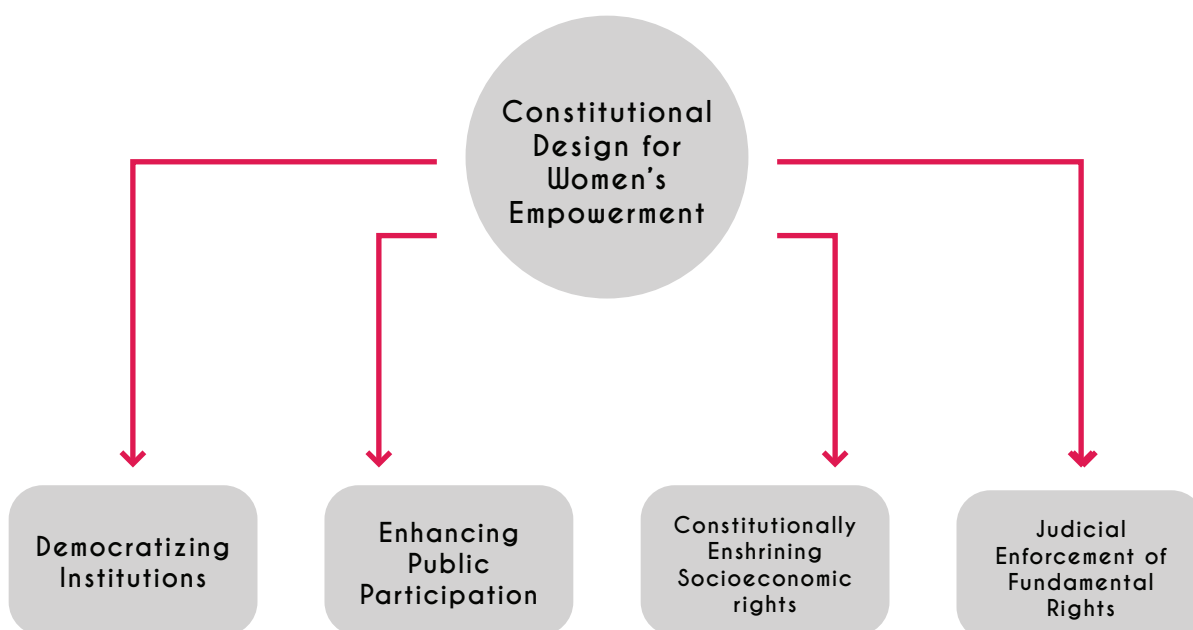
The micro-finance crisis has compelled the women to protest and demand redress and change through community-based solutions to combat the debt traps that they face. This reflects their political activism.

# DESIGNING A GENDER-SENSITIVE CONSTITUTION THAT EMPOWERS WOMEN

## A gender-sensitive constitution...



The Public Representations Commission reached out to Civil Society Organizations, interest groups, and individuals to hear their concerns and it engaged with the people on the elements they would like to see in the constitution. The report highlights 4 broad recommendations that promote women's rights and contributes to their empowerment.



## 01 Democratizing Public Institutions to Advance the Rights of Women

Democratic public institutions must be built on inclusivity and facilitate women's participation and engagement. The focus on institutional design to advance women's rights includes:

a) An autonomous and representative legislature with female representatives who will have a realistic point of view towards bridging the gaps in legislation that have a negative impact on women.

b)



c)



d) Establishing independent commissions to reform discriminatory laws and cultural practices and a gender sensitive public service to inquire into systemic injustice and delays with a focus on women and marginalized groups.

## 02 Enhancing Women's Participation in Governance



Women's participation in governance must improve to uphold their rights and meet the challenges they face



Right to franchise with free and fair elections promote women's participation in governance and provide an opportunity for them to choose the best representative to fight for their rights.



Access to political and public office for women to participate in decisions that affect them and the wider community.



Establishment of Grama Sabha/ Grama Rajy to facilitate direct participation of people, especially women in local governance to remedy malfunctioning bureaucratic governance.

### 03 Constitutional Enshrinement of Socioeconomic Rights to Empower Women

Enshrining social and economic rights within the constitution can assist in mainstreaming women's rights.



#### Legal Reform

- Establishment of an Anti-Discrimination Commission to address and monitor the right to substantive equality.
- Women's rights to be addressed in the constitution and judicially enforced.



#### Equality in the Workplace & Livelihood

- The constitution should guarantee the right to work, employment, and livelihood for all genders.
- The State must provide the right to just and safe conditions of work. This should include equal rights to promotions and career advancement.



#### Equality and Health, Education, Family & Social Rights

- Food, water, housing, and social security should extend to welfare schemes that efficiently provide social welfare support to families in need. Issues can be raised through class actions.
- Right to education with emphasis on encouraging the education of girl children.
- The right to health must include women's right to health which includes maternal, child, and reproductive health care.
- Examine the different personal laws, ethno-religious customs and practices that discriminate against women and are protected by Article 16 of the constitution.
- Constitutional protection of women's equal rights to shelter and ownership and other facets of property ownership and succession.
- The conditions of households should extend to the rights of senior citizens.
- Protection of rights of persons with disabilities.
- Rights of children and young people to be developed parallel to health care and education policies that focus on reproductive and sexual health services.



#### Environment and Sustainability

- Recognizing the women's role in preserving the environment and empowering women to protect their environment
- Right to sustainable development and well being.

## 03 Judicial Enforcement of Fundamental Rights

### THE FOURTEEN RIGHTS OF CITIZENS

1. Freedom of thought, conscience and religion

2. Freedom from torture

3. Right to equality

4. Freedom from arbitrary arrest, detention and punishment

5. Freedom of speech

6. The freedom of peaceful assembly

7. The freedom of association

8. The freedom to form and join a trade union

9. Freedom of language and culture

10. Freedom of business / profession

11. Freedom of movement and the freedom to return to Sri Lanka

12. Right of access to information

13. Right to a lawyer

14. Right to state education and other state facilities

In order for a gender sensitive, rights based jurisprudence to develop the judiciary must be open to expanding their interpretations of the scope of fundamental rights.

The jurisdiction for fundamental rights applications must expand and public interest litigation for class-action suits must be encouraged to create easier access to justice for women and marginalized groups.

a) Judicial Review of legislation through a Constitutional Court that is empowered to interpret the constitution and to assess the constitutionality of constitutional amendments, bills, and laws passed by parliament and the provincial councils is crucial.

b) Legal Aid with a specific mandate to assist women who seek to ensure their rights.

c) Guidance from Directive Principles of State Policy to ensure accountability of the government; giving effect to these principles through the laws and policies that it frames, or at a minimum, not violating these principles through its laws and policies.



# SUMMARY

Laws and policies must understand and embody the real-life experiences, constraints and challenges of women in order to improve their lives and livelihoods.

The constitution making process through the Public Representation Committee brought to the forefront several issues and well-considered recommendations for possible reforms.

Whenever the discourse around a new constitution or calls for reforms to make government stronger arises, the gender perspective is forgotten. This is absent in many policy and legislative reforms proposed and brought into effect and consequently has no impact on women's lives.

Women need to understand these setbacks and demand for a constitution that is gender sensitive and supports their aspirations.

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The government newly elected in 2020 is also calling for constitutional reform – a complete overhaul of the constitution to remove articles that control the power of the president.

They argue that only a President with unfettered powers can develop the country. The new constitution may remove or constrain the independent institutions, provincial councils and restrictions on dual citizens entering Parliament.

To date we have not heard how the new constitution will engage with and empower women.

Women must add their voice to this debate. They must have a clear focus and understand what constitutional changes that exclude a gender perspective will mean to them.

