

An Analysis of Legal Issues Regarding Nomination of Successor of Land Development (Amendment) Act No.16 of 1969 in Light of the Constitutional Right to Equality.

P.R.S.M.Peramune

LLB(University of Peradeniya),
Sri Lanka Law Collage
mayuharshi@gmail.com

Abstract— Mahaweli Development Program had launched in 1970 and it was converted to Accelerated Mahaweli Development Program in 1978. It called as a multipurpose program which covered 1/5 of territory in Sri Lanka. Such enormous part of the territory in Sri Lanka is governed by the Land Development Ordinance No.19 of 1935 when nominate successors for lands. Those provisions regarding restrictions on the nomination of a successor was amended by Land Development (Amendment) Act No.16 of 1969. Though there were amendments to the provisions on the nomination of the successor, they contradict with the right to equality which is guaranteed Article 12 of the constitution of Democratic socialist Republic Sri Lanka. The research focused to identify whether nomination of a successor in Mahaweli zone violate the right to equality which is guaranteed by Article 12 of the constitution of Sri Lanka plus found out the remedy for the legal issues which have arisen in Mahaweli zone when nominating a successor. The research has been used a combination of quantitative and qualitative research methods. Furthermore, to collect primary data it was conducted field survey based on questionnaires and interview with officials. Statutes, Acts, Case Laws, Articles, Books regarding Mahaweli development program, Land Development (Amendment) Act No 16 of 1969 and Websites were used as secondary data. As a summary of research finding, currently, Mahaweli zone has become enormous miserable zone. People in Mahaweli zone victims of the law as well as decreasing of lands. To avoid fragmentation of lands, Land Commission was introduced a law. Yet, the law which restriction on nomination of successor has created various types of discriminations are continually happening in the zone generation to generation violating fundamental rights as well as human right

Keywords— Mahaweli Development Program, Nomination of successor, Land Development (Amendment) Act No.16 of 1969.

Mahaweli Development Program was introduced in 1969 and implemented in 1970. In 1978 it was diverted as “Accelerated Mahaweli Development Program (AMDP)”. Under the Mahaweli Development Program, the government provided lands for the families, but they were not given a title for land. Under the state, they had only possession for the land. So, the owner of holding can't sell those lands. Yet, owner of holding can nominate the successor to holdings. Land Development (Amendment) Act, No. 16 of 1969 is a significant legislation which is using for the nominating successor to holdings in Mahaweli zone. According to that ‘Successor’ has been interpreted in Section 22 as, ‘...a person who is entitled under this chapter to succeed to that land or holding upon the death of the permit holder or owner thereof, if that permit holder or owner died leaving behind his or her spouse, upon the failure of that spouse to succeed to that land or holding or upon the death of that spouse.’

Further, Section 26 of it elaborates about the restriction on the nomination of the successor for holdings. According to that, ‘no person shall be nominated by the owner of a holding or a permit holder as his successor unless that person is the spouse of such owner or permit-holder as his successor unless that person is the spouse of such owner or permit holder, or belongs to one of the groups of relatives enumerated in rule 1 of the Third Schedule’. Accordingly, Third Schedule, rule 1(b) added, "Title to holding shall devolve on one only of the relatives of the permit holder or owner in the order of priority in which they are respectively mentioned in the subjoined table, the older being preferred to the younger where there are more relatives than one in any group."

Its priority is given to elder son within a family. Further, it is added in Third Schedule, rule 1 table. So, it clearly reflects conflict with the constitutional right to equality which is guaranteed by Article 12. As it is, (1) All persons are equal before the law and are entitled to the equal protection of the law. (2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.

I. INTRODUCTION

So, considering with above mentioned Third Schedule, the law itself creates inequality by giving priority to the older one and 'son'. It causes various social, economical, cultural and legal issues. There are prima facie human rights violations and many legal issues. Discrimination against sex, Discriminate within elder, younger in family, Violation of right to land and Violation of self-dignity, Violation of matrimonial right to inherent property and Violation of right to inherit

So, a large part of the country like 1/5th of the territory is covered under the Mahaweli Development Program also there are more than 838,322 people live in the Mahaweli zone. (95 PASU MAHAWELI, 2010) Those large parts of the country still suffer those ill treatments which have been given by the law since even before their generations. Yet, still, there's no effective study had done to recognize those legal issues in the zone.

Hence, further study this area the research question was, "Do the provisions of Land Development (Amendment) Act No 16 of 1969 protect the right to equality of the successor of Mahaweli Land Owner?"

The main Research Objectives are, identify whether nomination of the successor in Mahaweli zone violates the right to equality which is guaranteed by Article 12 of the constitution of Sri Lanka, also, find out the remedy for the legal issues which have arisen in Mahaweli zone when nominating successor.

II. RESEARCH METHODOLOGY

Land Development (Amendment) Act, No. 16 of 1969 is operated in Mahaweli zone. Primary data was collected by field survey. Toward conduct field survey System H (fourth Generation), System G (third Generation) and System C (Second Generation) were selected based on the generations. It was based on questionnaires and interviews. 30 samples had been used to conduct questionnaires field survey. 10 samples had been selected from each selected system. Due to lands distributed under the Mahaweli Development Program, control over the land also consists with Mahaweli Authority. So, names and addresses of the landowners could get from Mahaweli Block Offices in the areas. Those 30 samples' addresses were selected on the basis of the systematic method. Interviews conducted with 10 officials who were Grama Niladari, Justice and Peace Officer, Mahaweli Officer and Lawyer from all selected systems.

Articles, Books regarding to Mahaweli development program, Land Development (Amendment) Act No 16 of 1969 and right to equality, Grama Niladari's records, Hansard reports, International treaties, Law review, and Websites were used as secondary sources plus Statute /

Acts and Case Laws were used as primary sources in the study.

To analyse quantitative data which has been found from field survey based on questioner had analysed using statistical methods – SPSS. To analyse Quantitative Data which are collected from an interview with officials had used Qualitative Analyse.

III. RESULTS AND DISCUSSION

As mentioned in the introduction chapter, there are legal issues which have arisen in the Mahaweli zone when nominate successor under the restrictions elaborate in the Act and the Third Schedule, due to it contradict with the right to equality guaranteed by Article 12 of the constitution in Sri Lanka.

Accordingly, there is discrimination based on sex in the nomination of the successor for land due to the restriction of Third Schedule. With the results of the field survey, it can be successfully proved practically as well.

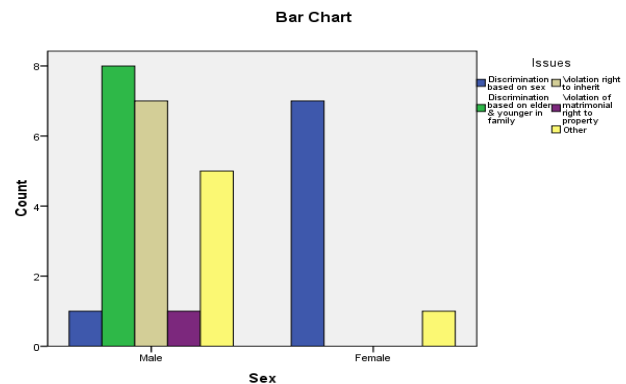


Figure 1. Major personal issues based on sex.

8 females were in the sample of the field survey. 7/8 clearly mention that sex-based discrimination is there and they are victims of that law. Even some males also accept that there's discrimination based on sex. Also, with the interview of a lawyer in system C, he also mentioned that many of women in the area suffering from the law. Female usually couldn't succeed to lands as they marry someone and go with him. Not stay in the home. Yet, there are some widows, and even husband also don't have lands. In such situation discriminating them based on sex is make huge inequality. According to Article 12, all persons are equal before law together with entitle to have equal protection under the law. Not only that but also Sri Lanka has ratified ICCPR and ICESCR. Those conventions mainly added even in the preamble non-discrimination based on sex. Similarly, in ICCPR Act, No. 56 of 2007, Section 2 also affirms that equal before the law. Yet, mainly the Section 26 and Section 43 of the (Amendment) Act are prima facie have given priority to 'older Son' in a family which is against to this fundamental right to equality.

Also, Sri Lanka has signed CEDAW on 17th July of 1990. It affirms equal rights and dignity for men and women. Section 2 of the convention added that state parties agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women. So, Article 12 (2) and (4) can consider as such protection for women to prevent from discrimination based on sex. But, with the restriction on the nomination of the successor in Mahaweli zone that constitutional safeguards are not practical. Some women were ousted home by elder son due to the law has given unlimited power to him succeed over ownership of property. Sometimes elder son may be the younger child in a family. Though there are elder daughters in family power over to succeed to land has given to that younger son in the family. law consider he as elder son in the family. it does not matter there are elder daughters in the family. It's like patriarchy view of the law. Considering discrimination among older and younger in the family, 8/30 in the sample was mentioned that they were victims of that discrimination. In the officials interviews also it could be proved that the there's a discrimination based on the order of birth. Though there is no sex-based discrimination, there are issues regarding succeed to lands among male children as well. In the interviews with officials also it could be proved. Every Grama Niladharies, Justice and Peace officers and Mahaweli Officers added that there are many cases come for them for a month. Even they cannot count those cases. According to system C, Unit Manager of Mahaweli office added that due to the amount of land are reducing and the population is increasing those land issues are continuously arising. Some older sons are in the family living outside the Mahaweli zone, even outside the country. They may have landed outside the Mahaweli zone. Yet, younger children can be poor and unemployed. Yet, without considering them older son can transfer that land to someone. With the law, the older son can be the powerful one in the family. Though spouse survives as he or she has life interest only, survive spouse also cannot against to the decision of the elder son.

Violation of right to inherent property is another issue. 'Women in many countries often confront a denial of inheritance and land rights. In many countries, a woman's social status is inextricably linked to her husband's, so that when her husband dies, a woman no longer has a place in society.' (International Widows' Day, 2011) It is practicing in Mahaweli zone as well. Due to a woman is linked to husband many families' males do not like to devolve ownership of land to women. They have an idea that by transferring land for women that land goes outside from the family. To protect those lands, they tried to not to give lands for women. Second World Conference on Women was held in Copenhagen in 1980 also identified women are discriminating when they going to inherit property. So they take steps for national measures to ensure women's ownership and control of property, plus improvements in

women's rights with respect to inheritance (Women). So, violation of the right to inheritance of women has discussed even in international level. Yet, the law relating to the nomination of the successor in Mahaweli zone violate the right to inheritance both male and female. To establish the right to equality in inheritance right, inherent lands has to divide among all children equally.

Violation of matrimonial right to inherent property is another issue in the zone. There are situations discussed this issue even internationally. Yet they were mainly focused on matrimonial rights of women not much about the male spouse. "Lesotho in South Africa has embarked on legal reform processes that have resulted in the development of the Married Persons Equality Bill (2000) and Land Bill (2003) these Bills will bring about legal equality between men and women and will enable married women to, among others, register land in their own names" (Matashane-Marite, 2005) in that country also, spouse (woman) has no right to succeed to inherent immovable property of husband. Elder son only could do it. He has to equally divide it among all other younger brothers. Sisters are not reflecting there. (Matashane-Marite, 2005). Similar in Mahaweli zone widow has only life interest for the property. This system is discriminating dignity of the surviving spouse. Anyhow Sri Lanka has successful legislation to protect the dignity of the spouse and right to inherit matrimonial property. Matrimonial Rights and Inheritance Ordinance No.18 of 1923, Part II, Section 22 and 23 added that half of intestate property of descended person goes to his survives spouse and another half of share equally divide among all children. So, many of them in the field survey suggested above system for amending the law.

Access to land and self-dignity is another issues in the zone people are suffering. 6/30 sample directly reflected. Land rights refer to the inalienable ability of individuals to freely obtain, utilize, and possess land at their discretion, as long as their activities on the land do not impede on other individuals' rights. (Adi, 2009) The preamble of ICESCR reflects '...everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights...'. So, Mahaweli zone is the one of a large part of the country which produces 1/5 rice national rice production. So, agriculture is the main economic system in the zone. So, without land, those people may not have their livelihood. Also, to build up residences for them they want lands. Without residence and livelihood, people cannot build up their dignity of life. That's why various issues have arisen in the area. (Manuratne M.G., 2004)

So, the law regarding the nomination of the successor has created a lot of issues in the zone. Many of them including the interview of officials added that family issues are increasing in the zone day by day due to the law. Members of the family fight against for land. Killing and injure each other, duress over each other, landless people, non-

permission residences, litigations over siblings. So, many of them are suffering from the law.

Though the fundamental right to equality is violating, Mahaweli zone people cannot go to Supreme Court to get an order of writ against their siblings. As it cites in the Article 126 of the constitution that violation shall be done by the administrative or executives. Anyhow, if some discrimination had happened by the Mahaweli authority then one can go Supreme Court by saying Fundamental Rights violation. Issues regarding Land Development Ordinance have to file in High Courts in Central Government to get an order of writ. Such court established only in Colombo. So, people in Mahaweli zone do not make an effort to go there. Access to justice is far away from the Mahaweli zone residence people. So, when disputes arise they used to go Mahaweli office in the area. Those authorities tried to establish justice. Yet, practically there's no fair hearing procedure. So, bias can be affected the decision made by the authority. So that procedure also cannot success to resolve those issues.

As identified from the qualitative research, reasons for existing this law though it creates huge discriminations and legal issues in the Mahaweli zone are, Authorities do not take these issues as serious. And dangerous effects to the society even though they aware about these issues. Issus regarding lands are unlimited in the area. So, that may be the reason for unamended the law. Anyhow considering Hansard reports though there were debates regarding Ordinance and Amendments, their main concern had not directly moved to this restriction on the nomination of the successor. Even nowadays there are no successful debate or even mention these issues in the parliament. Though there was Bill in parliament to amend special priority has given to elder one by the Third Schedule, rule 1 that attempt also was not succeed.

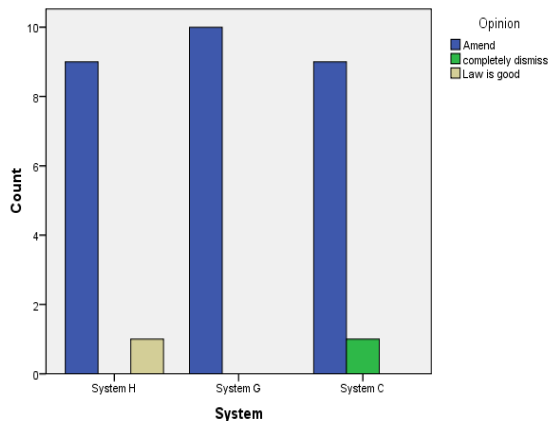


Figure 2. Opinion regarding the law of nomination of the successor

As mention in Figure2, a vast number of people in each selected system said the law has to be amended. Totally from the sample 28/30 had proved it.

There are recommendations for amending the law which has identified through the survey.

Totally, 19/30 sample added that law has to be amended as half of property for spouse and another half of property has to be equally distributed among all children. Totally 5/30 added that Land has to equally divide among family without giving priority to one. It does not reflect spouse. 4/30 from total sample added that law has to terminate word 'Son'. Elder daughter also can succeed. Totally 2/30 of sample added, it has given the most helpless person in the family.

IV. CONCLUSION

As a conclusion in the report, it can be noted that Mahaweli Development Program is very enormous development project in the Sri Lanka also in the South Asia which consists with multi purposes. The settlement was one of purpose. Yet, due to it did not consider about future generations, currently Mahaweli zone had become enormous miserable zone. People in Mahaweli zone victims of the law as well as decreasing of lands. To avoid fragmentation of lands, Land Development Ordinance No 19 of 1935 had introduced the restriction on the nomination of the successor for holdings under the Third Schedule which was of recommendations recommended by 1927 Land Commission. Some provisions of the Ordinance were amended by Land Development (Amendment) Act No.16 of 1969.

Yet, that restriction on the nomination of the successor has created various legal issues in the zone. Various types of discriminations are continually happening in the zone generation to generation which violates of fundamental rights as well as human rights.

Even though, Mahaweli Development Program covered a large part of the territory in Sri Lanka currently settlers of this program and their generations may be their coming generations continuously become victims of this restriction on the nomination of the successor under the land development Amendment Act no 16 of 1969.

So, many of officials and people lived in the zone ask amendment for the law which is protected right to equality of citizen.

V. RECOMMENDATION

When to amend the law regarding the nomination of the successor for a land has to be amended as such.

- It has to remove word 'son' from the Third Schedule, rule 1 table.

There's no rational behind giving lands for sons can protect land or can develop the land. Daughters also have the possibility to do that. There is a number of succeeding women in the country. So, it has to remove the priority table which mentions in Third Schedule. This recommendation had given by the people who lived in the area and officials. Especially lawyers who participated in the interview mentioned that, though there was attempt to pass Bill to parliament about this recommendation it did not succeed. Yet, it's one of way which can reduce those legal issues in the zone. So, it has to consider what were the reasons to fail to success that Bill and, then it has to re-amend also bring it to parliament again.

- The procedure of the succession inherent property mention in Matrimonial Rights and Inheritance Ordinance No 18 of 1923.

According to the Ordinance, Section 22 and Section 23, half of intestate property of descended person goes to his surviving spouse and another half of property divided equally among children. So, it helps to protect dignity life of the surviving spouse as well. As she or he has power over the land which is she or he gets ownership. To succeed this recommendation, it has to remove on minimum land restriction as well.

I. References

Th Abesinghe, A. (1990). Kadinam Mahaweli Sanwardana Viyaparaya.

Ariyaratne, W. (2014). *Legal Issues regarding nomination of successor in Mahaweli zone.*

Athukorala, A. (2014). *Legal Issues regarding nomination of successor in Mahaweli zone.*

Ediriweera, P. (1982). Britanya Palana Samaye Rajya Idam Pratipattiye Vikashanaya. *Isura*, pp.26-27.

GILBERT, J. (n.d.). *Land Rights as Human Rights: The Case for a Specific Right to Land.* [online] www.surjournal.org. Available at: http://www.surjournal.org/eng/conteudos/getArtigo18.php?artigo=18,artigo_07.htm [Accessed 29 Nov. 2014].

Goonesekere, R. (2006). *Selected Laws on State Lands.* Law and society trust press.

Jayarathne, J. (2014). *Legal Issues regarding nomination of successor in Mahaweli zone.*

Kadinam Mahaweliya. (1978). Mahaweli Prakashana.

Koswatta, R. (2014). *Nomination of the successor for land in Mahaweli zone.*

Mahaweli Engineering and Draft Agency. Colombo 5, (2016). *Mahaweli Ganga Sanwardana Viyaparaya Pragatiya, Prabodaya saha Pramodaya.*

Manuratne, M. (2004). Sri Lankawe govijanapada ashrittha athdekim . *Samaja Vimasuma*, pp.96-98.

Matashane-Marite,, K. (2005). *Women's Rights and Participation -Including Women's Access to Land and Inheritance, and the Role of Lobbying and Grassroots Organizations in Lesotho.* 1st ed. [ebook] Available at: <http://www.un.org/womenwatch/daw/egm/enabling-environment2005/docs/EGM-WPD-EE-2005-EP.3%20K.pdf> [Accessed 24 Nov. 2014].

Okide, K. (2016). Rural Development Trends In Nigeria: Problems And Prospects. [Blog]academicexcellencesociety.com. Available at: (n.d.). Retrieved from http://academicexcellencesociety.com/rural_development_trends_in_nigeria.html [Accessed 21 Nov. 2014].

Ranathunge, (2014). *Legal issues regarding nomination of successor in the zone.*

Rev. Kudagama Piyatissa, (2014). *Legal Issues regarding nomination of successor in Mahaweli zone.*

Saiman, V. (2014). *Nomination of the successor for land in Mahaweli zone*

Schwarzschild, M. (1999). *Constitutional law and equality: A Companion to Philosophy of Law and Legal Theory.* Blackwell: In D. Patterson, p.156.

Shah, A. (2010). *Gender Discrimination throughout a Lifetime.* [online] www.globalissues.org. Available at: <http://www.globalissues.org/article/166/womens-rights#Genderdiscriminationthroughoutlifetime> [Accessed 26 Nov. 2014].

www.un.org. (1948). *The Universal Declaration of Human Rights.* [online] Available at: <http://www.un.org/en/documents/udhr/> [Accessed 23 Nov. 2014].

www.un.org: (n.d.). *Women.* [online] Available at: <http://www.un.org/en/globalissues/women/> [Accessed 26 Nov. 2014].

ACKNOWLEDGMENT

I am extremely thankful to Dr. Lalitha Dissanayeka who was my Instructor of this dissertation for giving me all contribution to do this study effectively. Also for the Head of the Law Department in the University of Peradeniya Dr.N.D.Udagama and the academic staff especially Mrs. Kanchana Liyanapathirana who confident me giving their precious implications. for all interviewees for giving their valuable time and views to success this task. I would also like to gratitude towards Mr. S.D.Wedagedara for giving me fullest support to successfully overcome this mission. I would like to thankfulness to all who help me to success this study.