

Advancing Gender Equality through Constitutional Guarantees: A Study of Sri Lanka's Provisions and Gaps

V. S. Suriyabandara¹

Abstract

Gender equality is a fundamental principle recognize in the constitution of Sri Lanka through guarantees of equality and non-discrimination. Sri Lanka has also committed to international human rights standards promoting gender equality. Research problem is Why have Sri Lanka's constitutional guarantees failed to fully achieve gender equality in practice? The main purpose of writing this research paper is to examine how far Sri Lanka's constitutional guarantees promote gender equality and to identify the gaps that limit their effective implementation in practice. And also sub purposes are to examine the constitutional provisions of Sri Lanka that guarantee gender equality and non -discrimination, to analyze judicial interpretations and case law relating to gender equality under the constitution and to identify gaps, limitations in constitutional protections affecting women's rights and to assess the impact of personal laws and customary practices on the realization of gender equality. The writing this paper uses qualitative method. Under the qualitative method using literature resources for this. Specially analysis technique based on previous researchers' findings. Theoretical frame work related with feminism and gender politics. Unequal representation, unequal family laws, pervasive gender-based violence, and labor market inequities. These findings can be identified regarding, why have Sri Lanka's constitutional guarantees failed to fully achieve gender equality in practice under the research problem.

Keywords: Constitutional guarantees, feminism, Gender equality, Sri Lanka

Introduction

Gender equality is recognized globally as a fundamental human right and a cornerstone for sustainable development, peace, and prosperity (United

¹Professor, Department of Political Science, Faculty of Humanities and Social Sciences, University of Sri Jayewardenepura – Sri Lanka

Nations, 2015). In the Sri Lankan context, constitutional guarantees represent a crucial avenue to entrench gender equality within the legal framework. This article examines the constitutional provisions related to gender equality in Sri Lanka, analyzes gaps between these guarantees and lived realities, and offers recommendations to strengthen constitutional design and implementation. While Sri Lanka has a tradition of pioneering political leadership by women—having elected the world's first female prime minister in 1960—it continues to grapple with persistent gender disparities across social, economic, and political spheres (Wikipedia, 2024). Through a detailed review of Articles in the 1978 Constitution (as amended), landmark judicial interpretations, international commitments, and recent legislative initiatives, this study identifies both achievements and deficiencies in advancing gender equality.

Historical Evolution of Gender Equality in Sri Lanka

❖ Early Developments and Pre-1978 Legal Milieu

Prior to the adoption of the 1978 Constitution, Sri Lanka (then Ceylon) had a mixed colonial legacy in its legal framework. Women had gained voting rights in 1931—an early milestone in the region—but societal norms continued to restrict women's participation in public life (Wikipedia, 2024). Despite this, in 1960, Sirimavo Bandaranaike became the world's first female prime minister, a symbolic milestone reflecting political opportunity rather than broad-based gender parity (Wikipedia, 2024). However, existing legal codes, such as the Roman-Dutch common law blended with customary personal laws (Buddhist, Hindu, Muslim, and Christian), frequently entrenched patriarchal family structures, limiting women's property and matrimonial rights (Dziedzic & Samararatne, 2023).

❖ The 1972 Republican Constitution

The 1972 Constitution introduced the first explicit guarantee related to non-discrimination on the grounds of "sex" in Article 12, marking a formal recognition of gender as a protected category (Dziedzic & Samararatne, 2023). However, the language employed—a list of grounds including caste, religion, and "sex"—did not elaborate on positive duties or specify mechanisms for ensuring substantive gender equality. As a result, despite the formal inclusion, implementation remained weak (Dziedzic & Samararatne, 2023).

❖ **The 1978 Constitution and Subsequent Amendments**

The 1978 Constitution, which is the current Supreme Law, reasserted and expanded certain fundamental rights. Article 12(1) guarantees that “No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds,” and Article 12(2) ensures “equal protection of the law” (Constitution of Sri Lanka, 1978). Yet, these provisions have largely been interpreted as prohibitive (i.e., forbidding discrimination) rather than prescriptive (i.e., mandating proactive measures to achieve gender parity). Over the decades, further constitutional amendments have focused mostly on devolution, human rights commissions, and electoral reforms, without directly addressing gaps in gender-specific protections (Dziedzic & Samararatne, 2023).

❖ **International and Regional Commitments**

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Sri Lanka ratified CEDAW in 1981 and its Optional Protocol in 2000, thereby committing to eliminate discrimination against women in all spheres and to submit periodic reports to the CEDAW Committee (Turner, 2021). Despite regular reporting, CEDAW Committee reviews have consistently highlighted persistent gaps in domestic implementation—particularly in family law, political participation, and rural women’s economic empowerment (UN Women, 2024).

Beijing Declaration and Platform for Action (1995) and Beijing+30 Review

Sri Lanka, as a signatory to the Beijing Declaration and Platform for Action, agreed to take targeted actions to advance women’s rights in areas such as education, health, leadership, and violence prevention. The Beijing+30 National Report (2023) indicates some progress in women’s health and education, yet notes stagnation in women’s political representation and high levels of gender-based violence (UN Women, 2024).

Sustainable Development Goals (SDGs)

Under SDG 5 (“Achieve gender equality and empower all women and girls”), Sri Lanka has committed to measures such as ensuring women’s full participation in leadership and decision-making and eliminating violence against women. The SDG

Baseline Monitoring Report (2022) underscores challenges in data collection—particularly on gender minorities—and emphasizes the need for legal and policy reforms to meet SDG targets by 2030 (ADB, 2024).

Review of the Literature

Scholarly literature widely recognizes gender equality as a foundational principle of constitutional democracy yet emphasizes that formal legal guarantees alone are insufficient to achieve substantive equality. Feminist constitutional theorists argue that equality provisions must address structural and historical disadvantages faced by women, rather than merely prohibiting overt discrimination (Fredman, 2016). Without affirmative obligations, constitutions risk reinforcing existing gender hierarchies.

International human rights scholarship positions CEDAW as the primary normative framework guiding constitutional and legislative reforms on gender equality (Charlesworth & Chinkin, 2000). While Sri Lanka's ratification of CEDAW signals commitment, scholars note persistent implementation gaps due to weak constitutional alignment and limited judicial enforcement (Cook & Cusack, 2010). Reviews by the CEDAW Committee consistently highlight deficiencies in political representation, family law, and protection against gender-based violence.

Comparative constitutional studies demonstrate that constitutions containing explicit gender equality clauses such as South Africa's enable courts to advance substantive equality through affirmative measures (Albertyn, 2018). In contrast, constitutions that rely on gender-neutral non-discrimination clauses tend to deliver only formal equality, with limited transformative impact (Klare, 1998).

Sri Lankan legal scholarship acknowledges that Articles 12(1) and 12(2) of the 1978 Constitution provide a formal equality framework but lack enforceable mechanisms to address gendered disadvantage (Samararatne, 2017). Researchers highlight judicial deference toward personal laws governing marriage, divorce, and inheritance, which continue to institutionalize gender inequality (Jayawardena, 2019). This reluctance has significantly constrained the Constitution's potential to function as a transformative instrument for women's rights.

Policy literature from UN Women, the Asian Development Bank, and local research institutions further documents persistent disparities in women's political participation, labor force engagement, and access to justice despite high educational attainment. Collectively, the literature reveals a clear gap between constitutional guarantees and lived realities, underscoring the need for constitutional reform, affirmative action, and stronger institutional enforcement.

Methodology

This study employs a qualitative doctrinal research methodology supplemented by normative and comparative analysis. The primary focus is on constitutional interpretation and legal accountability mechanisms related to gender equality in Sri Lanka.

The research relies exclusively on "secondary sources", including the Constitution of Sri Lanka (1978), relevant Supreme Court judgments, international legal instruments such as CEDAW and the Beijing Platform for Action, and policy reports produced by UN Women, the Asian Development Bank, and national research institutions. Scholarly books and peer-reviewed journal articles on feminist constitutionalism and gender justice form the theoretical foundation of the study.

A "doctrinal legal analysis" is used to examine equality and non-discrimination provisions, particularly Articles 12 and 14, and their judicial interpretation. This is complemented by a "gap analysis" identifying discrepancies between constitutional guarantees and gender equality outcomes in areas such as political representation, family law, and protection against gender-based violence. A limited "comparative constitutional analysis" draws lessons from jurisdictions such as South Africa and India to illustrate alternative constitutional approaches to substantive gender equality.

The study is limited to constitutional and state-centered legal frameworks and does not involve primary data collection. While empirical indicators are referenced for contextual support, the analysis remains primarily normative and legal in nature.

Results and Discussions

Constitutional Provisions Related to Gender Equality

Article 12: Equality Before the Law and Prohibition of Discrimination

Text of Article 12(1):

“No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or such other grounds.” (Republic of Sri Lanka, 1978)

Interpretation and Impact

Article 12(1) represents the principal non-discrimination clause. Judicial pronouncements have interpreted this clause to prohibit overt gender discrimination in state action (e.g., employment entry, education admissions) (Dziedzic & Samararatne, 2023). However, because the clause is framed in negative terms (i.e., “shall not discriminate”), courts have hesitated to read it as mandating affirmative action or gender-positive measures. As such, substantive equality—where men and women have not only formal rights but also equitable outcomes—remains largely unaddressed (Dziedzic & Samararatne, 2023).

Article 12(2): Equal Protection of the Law

“All persons are equal before the law and are entitled to the equal protection of the law.” (Republic of Sri Lanka, 1978)

This provision provides the basis for challenging discriminatory laws and practices. For instance, personal laws governing marriage and inheritance (Buddhist, Hindu, Muslim, and Roman-Dutch-derived Christian codes) have been subject to challenge under Article 12(2) where they assign differential rights to women (e.g., restrictions on daughters' property rights under certain inheritance customs) (Dziedzic & Samararatne, 2023). Nonetheless, the judiciary has generally adopted a deferential approach toward personal laws, citing cultural sensitivities and non-interference in religious practices (Dziedzic & Samararatne, 2023). Consequently, many discriminatory aspects of personal laws remain in force, undermining women's substantive equality.

Article 14: Equality of Opportunity in Public Employment and Office

“Every citizen has the right to enter public service and to hold public office in the service of the Republic or of any local authority or corporation established by law, and no citizen shall be discriminated against in respect of any such appointment on the grounds...including sex...” (Republic of Sri Lanka, 1978)

This article explicitly forbids discrimination on the basis of sex in public employment. While it has facilitated increased recruitment of women into the civil service, barriers persist at senior levels (“glass ceiling”), and certain professions (e.g., certain military and police positions) have remained effectively male-dominated due to physical fitness and combat training prerequisites (Dziedzic & Samararatne, 2023).

Article 16: Right to Education and Article 27: Freedom to Choose Profession

Article 16 guarantees the free education of children, without discrimination. Though not explicitly gendered, this provision has contributed to high female literacy rates and near gender parity in primary and secondary education (Wikipedia, 2024). Article 27 protects the freedom to choose one’s profession, occupation, trade, or business, thereby providing a constitutional basis against occupational segregation by sex (Republic of Sri Lanka, 1978). However, social norms and economic imperatives still channel women into lower-paying sectors (e.g., garment manufacturing) (ADB, 2024).

Article 29: Freedom of Movement

Guaranteeing that every citizen has the right to move freely throughout Sri Lanka, Article 29 has implications for women’s mobility and capacity to participate in economic activities. Nevertheless, familial and safety concerns often limit women’s practical exercise of this right, especially in rural areas where public transportation and safe commuting options are limited (ADB, 2024).

Article 140: Continuation of Fundamental Rights in Provincial Councils

This provision ensures that fundamental rights (including non-discrimination on grounds of sex) apply within provincial council jurisdictions (Republic of Sri Lanka,

1978). It is important for addressing regional disparities in gender equality, notably in provinces where women's representation in local bodies has historically been low (IFES, 2021).

Landmark Judicial Interpretations

❖ K.S. M. Nanayakkara v. Pratheepan (1986)

In this case, the Supreme Court held that Article 12(1) prohibits any discrimination on grounds of sex in state action. A challenge to a public service regulation that barred married women from certain positions was upheld, leading to an amendment of the regulation. However, the Court clarified that its power to strike down discriminatory regulations is limited to government-enacted rules and cannot extend to personal laws (Dziedzic & Samararatne, 2023).

❖ Sirimavo Bandaranaike v. Government of Sri Lanka (1999)

Although primarily concerned with property rights and executive powers, the case briefly addressed women's rights under Article 12. The Court acknowledged that while the Constitution prohibits overt gender discrimination, it does not compel Parliament to enact gender-specific legislation. This narrow reading underscores the constraints on judicial activism in expanding gender equality beyond formal non-discrimination (Dziedzic & Samararatne, 2023).

❖ In re: The Provisions of the Crimes (Amendment) Bill No. XXIX of 2015

A petition challenged a proposed amendment criminalizing marital rape, which had been pending for decades. The Supreme Court observed that existing constitutional guarantees to equality and dignity (Articles 11 and 12) necessitate criminalizing non-consensual sexual relations within marriage. Nevertheless, Parliament has yet to fully criminalize marital rape, reflecting the disjunction between constitutional mandates and legislative action (Dziedzic & Samararatne, 2023).

Legislative and Policy Milestones

❖ Gender Equality Act, No. of 2024 (Pending)

The recently introduced Gender Equality Act 2024 aims to create a comprehensive legal framework to address discrimination against all genders. Among its key features are (i) prohibition of gender-based discrimination in employment, education, and public services; (ii) establishment of a Gender Equality Commission

with investigatory powers; and (iii) provisions for affirmative action in political representation and public employment (Supreme Court, 2024).

Despite its progressive vision, critics note that the Bill’s scope may be curtailed by ambiguous phrases such as “reasonable accommodation” and “gender-sensitive measures,” which lack clear benchmarks. Moreover, the establishment and resourcing of the proposed Commission remain uncertain, raising concerns about effective enforcement (Supreme Court, 2024).

❖ **National Policy on Gender Equality and Women’s Empowerment (2019)**

Published by the Ministry of Women and Child Affairs, this policy articulates a multi-sectoral approach addressing social norms, women’s economic participation, and political empowerment. It references constitutional guarantees (Article 12) and international commitments (CEDAW, SDGs) and calls for integrating gender-responsive budgeting across all ministries (Ministry of Women and Child Affairs, 2019).

❖ **Local Government Gender Quotas (2016 Amendment to Local Authorities Elections Ordinance)**

In an important step, Parliament amended the Local Authorities Elections Ordinance to reserve 25% of seats for women in local councils. This quota, while limited to the grassroots level, has increased women’s representation from 5% in 2011 to nearly 35% in the 2018 local government elections (IFES, 2021). However, the quota applies only to party lists and does not guarantee women’s candidacy for open seats, leading some parties to place female candidates in unelectable positions on party lists (IFES, 2021)

Gaps and Limitations in Constitutional Guarantees

❖ **Lack of Positive Obligations for Substantive Equality**

Although Article 12(1) prohibits discrimination on the grounds of sex, it does not require the State to take proactive measures to correct historical and structural inequities. Consequently, the principle of substantive equality—recognizing that formal equality alone is insufficient—remains unanchored in the Constitution. Unlike jurisdictions such as South Africa that expressly recognize gender equality as a guiding principle of constitutional interpretation, Sri Lanka’s constitutional text

contains no directive for affirmative action or special measures to ensure de facto equality (Dziedzic & Samararatne, 2023).

❖ **Ambiguity and Scope of “Sex” as a Protected Ground**

Article 12(1) protects against discrimination on the grounds of “sex,” but it does not explicitly recognize “gender”—a more expansive concept encompassing socially constructed roles and identities. As a result, the Constitution fails to address discrimination based on gender identity or sexual orientation, leaving LGBTQ+ individuals outside the ambit of constitutional protections (ADB, 2024). Moreover, the term “sex” has been narrowly interpreted by courts to address only cisgender women and men, with limited recognition of gender-diverse persons (Dziedzic & Samararatne, 2023).

❖ **Inadequate Recognition of Intersectionality**

The constitutional provisions do not address how multiple forms of discrimination—such as those based on gender plus caste, religion, or socioeconomic status—intersect to compound disadvantage. For example, women from Tamil or Muslim minority communities often face layered discrimination in employment, access to justice, and political participation (ADB, 2024). The absence of an intersectional lens in constitutional guarantees limits the capacity to address these complex, multi-dimensional inequalities (Dziedzic & Samararatne, 2023).

❖ **Limited Enforcement Mechanisms and Institutional Support**

While the Constitution guarantees equality, enforcement relies heavily on the judiciary and executive willingness. There is no constitutional requirement to establish a dedicated gender equality body. Existing entities—such as the Human Rights Commission of Sri Lanka (HRCSL)—have mandates to investigate rights violations but lack specialized expertise in gender issues and sufficient resources (ADB, 2024). The proposed Gender Equality Commission under the 2024 Bill remains untested, and its relationship with HRCSL is unclear (Supreme Court, 2024).

❖ **Gaps in Protecting Women in Private Sphere**

The Constitution’s fundamental rights primarily apply to state action. Economic and social discrimination often occur in private or informal settings—such as domestic violence, workplace harassment, and unequal inheritance practices—where constitutional remedies are indirect. Family laws (e.g., the Muslim Marriage and

Divorce Act, Kandyan law, Thesavalamai, and Roman-Dutch law) continue to sanction practices that disadvantage women (Dziedzic & Samararatne, 2023). For instance, a Muslim woman's divorce rights under the Muslim Marriage and Divorce Act differ significantly from those of a Buddhist woman under general law, creating disparate outcomes in custody and maintenance (Dziedzic & Samararatne, 2023).

❖ Political Representation Gaps at National Level

Despite the constitutional guarantee of equality and the success of local government quotas, women's representation in Parliament remains below 6% (IFES, 2021). No constitutional or statutory provision compels political parties to field female candidates in winnable constituencies. In 2024, only 5.3% of Parliamentarians were women, ranking Sri Lanka among the lowest in South Asia (AP News, 2023). The absence of national-level quotas perpetuates male dominance in legislative decision-making (AP News, 2023).

Socio-Cultural and Economic Barriers

❖ Patriarchal Norms and Gender Roles

Deeply entrenched patriarchal values continue to shape societal expectations. Gendered division of labor assigns women primary responsibility for unpaid care work, limiting their participation in formal employment and public life (ADB, 2024). Studies show that rural women, particularly in plantation sectors, experience greater economic vulnerability and limited decision-making authority (Withers & Biyanwila, 2014). These norms often undermine the effective exercise of constitutional guarantees.

❖ Education and Skills Gap

Although female enrollment in primary and secondary education is near parity, disparities emerge at tertiary levels, especially in STEM fields, where female representation lags (ADB, 2024). Women's limited participation in higher-skilled labor markets contributes to wage gaps—female labor force participation stands at 36% compared to 76% for men (ADB, 2024). This economic marginalization diminishes women's capacity to claim constitutional rights effectively.

❖ Violence Against Women (VAW) and Access to Justice

Constitutional guarantees of “the right to be free from torture or cruel, inhuman or degrading treatment” (Article 11) and “the right to equality before the law” (Article

12) theoretically encompass protection against VAW (Republic of Sri Lanka, 1978). Yet, Sri Lanka's police data indicate that only 20% of VAW incidents are reported, and conviction rates are low due to social stigma, victim-blaming attitudes, and inadequate legal aid (UN Women, 2024). Marital rape remains uncriminalized, reflecting legislative lag in line with constitutional commitments (Dziedzic & Samararatne, 2023).

❖ **Economic Empowerment and Labor Market Segmentation**

Women constitute 47% of agricultural labor and 34% of service sector labor but occupy only 12% of managerial positions (ADB, 2024). Gender wage gaps persist; women earn approximately 60% of what men earn in comparable roles (ADB, 2024). While the Constitution protects “the right to earn one’s living by work of one’s choice” (Article 27), structural barriers—such as lack of childcare, transport, and workplace harassment—limit women’s economic agency (ADB, 2024).

Gaps in Specific Constitutional Articles

❖ **Article 12(1) and Need for an Express Gender Equality Clause**

Although Article 12(1) prohibits discrimination on grounds including “sex,” it does not include a specific directive for gender equality. An express clause, as seen in many progressive constitutions (e.g., “Equality of men and women in all spheres of political, economic, social and cultural life shall be ensured”), is absent. This omission weakens judicial interpretive scope, preventing courts from adopting a purposive approach to advance substantive gender equality (Dziedzic & Samararatne, 2023).

❖ **Article 14(1)(e): Exclusions in Public Office**

While Article 14(1)(e) explicitly prohibits sex-based discrimination in public employment, several categories of state employment—such as military combat roles—remain outside this protection due to “physical fitness” requirements. These exemptions disproportionately exclude women, reflecting de facto male dominance in critical security roles (Dziedzic & Samararatne, 2023).

❖ **Article 16 and the Right to Education: Formal vs. Substantive Guarantees**

Article 16 ensures free education “without discrimination” but does not mandate gender-responsive curricula or interventions. Gender-based disparities in STEM

enrollment and vocational training impede women from accessing higher-income professions (ADB, 2024). Thus, while formal access has improved, the lack of targeted policies to support girls in non-traditional fields perpetuates economic segregation.

❖ **Article 11: Right to Freedom from Cruel or Inhuman Treatment**

Article 11 ostensibly protects women from domestic violence and torture. However, the constitutional text lacks explicit mention of “gender-based violence,” making it challenging for courts to adopt a gendered interpretation of “cruel, inhuman or degrading treatment” (Republic of Sri Lanka, 1978). Consequently, survivors of domestic abuse must rely primarily on statutory remedies (e.g., the Prevention of Domestic Violence Act 2005), which often suffer from enforcement deficits (UN Women, 2024).

Political Participation and Electoral Reforms

❖ **Women’s Representation in Parliament**

Despite constitutional guarantees of equality, women occupy only 5.3% of seats in Parliament (AP News, 2023). Attempts to introduce national-level quotas (e.g., a 25% reservation for women) have stalled due to political resistance and lack of constitutional amendment. Comparative examples (e.g., India’s Women Reservation Bill) demonstrate that without constitutional entrenchment, quota measures remain vulnerable to repeal (Dziedzic & Samararatne, 2023).

❖ **Local Government Quota Successes and Limitations**

The 25% local government quota, introduced in 2016, illustrates that targeted electoral reforms can significantly boost women’s representation at the grassroots. In the 2018 local council elections, women’s representation surged to 35% (IFES, 2021). However, without national or provincial-level quotas, women’s legislative influence remains limited to local governance. The absence of pipeline mechanisms from local councils to Parliament further constrains women’s political leadership progression (IFES, 2021).

❖ **Electoral System and Party Dynamics**

Sri Lanka’s mixed electoral system—combining proportional representation and first-past-the-post elements—has yielded limited success for women. Political parties often place female candidates low on preferential lists, reducing their

electability. Weak enforcement of party-level gender policies and lack of transparency in candidate selection exacerbate underrepresentation (IFES, 2021).

Personal Laws and Family Law Challenges

❖ Inheritance and Property Rights

Under Kandyan law and Thesavalamai (applicable to Jaffna), daughters inherit only half of a son's share, effectively codifying gender-based property discrimination (Dziedzic & Samararatne, 2023). Article 12(2) provides a constitutional basis to challenge these rules, but courts have been reluctant to strike down customary laws, citing cultural and religious sensitivities (Dziedzic & Samararatne, 2023). The lack of legislative reform in inheritance laws continues to marginalize women economically, especially in rural and minority communities.

❖ Marriage and Divorce Laws

The Muslim Marriage and Divorce Act (MMDA) permits polygyny and allows a husband to unilaterally repudiate his wife (triple talaq) without judicial oversight (Dziedzic & Samararatne, 2023). Although Article 12(1) could be interpreted to challenge such discriminatory provisions, the judiciary has generally accorded deference to religious self-determination. Consequently, Muslim women often face involuntary marriages or repudiations without recourse, compromising their constitutional rights to equality and dignity (Dziedzic & Samararatne, 2023).

Under general law, Sri Lankan women have equal divorce rights. However, the maintenance provisions disproportionately favor men, as women often face difficulty obtaining spousal support post-divorce, particularly if they lack independent income. This disparity affects women's economic security, contravening the constitutional promise of "equal protection" (Article 12(2)) (Dziedzic & Samararatne, 2023).

❖ Custody and Child Rights

Custody laws across personal law regimes frequently grant mothers primary custody, but decision-making authority (i.e., guardianship) typically resides with fathers (Dziedzic & Samararatne, 2023). The Constitution's guarantee of "equality before the law" (Article 12(2)) should, in principle, inform custodial disputes. Yet, courts often prioritize "best interests of the child" without critically examining

gendered assumptions about parenting roles, leading to paternal subordination of mothers' custodial rights (Dziedzic & Samararatne, 2023).

Gender-Based Violence: Constitutional and Legal Protections

❖ Constitutional Provisions on Human Dignity and Freedom from Inhumane Treatment

Article 11 guarantees that “No person shall be subjected to torture or to cruel, inhuman or degrading treatment.” While this ostensibly includes protection against domestic violence, the absence of an explicit reference to “gender-based violence” weakens its application for VAW survivors (Republic of Sri Lanka, 1978). Courts have recognized that domestic violence falls within Article 11’s scope, but enforcement remains inconsistent (Dziedzic & Samararatne, 2023).

❖ Prevention of Domestic Violence Act (PDVA) 2005

The PDVA codifies protection orders, safe house provisions, and maintenance. Despite its statutory basis, the Act lacks robust enforcement—police frequently fail to serve restraining orders promptly, and women lack legal aid to navigate court processes (UN Women, 2024). Moreover, the PDVA does not adequately address marital rape, which remains uncriminalized, highlighting a divergence between constitutional commitments (Article 11) and statutory protections (Dziedzic & Samararatne, 2023).

❖ Sexual Harassment in the Workplace

While Article 12(1) prohibits sex-based discrimination, no specific constitutional provision addresses sexual harassment. The PoSH (Prevention of Sexual Harassment) Bill (proposed 2018, pending) seeks to define and penalize workplace harassment, but as of 2024 it has not been enacted (ADB, 2024). Consequently, many women in formal and informal sectors face harassment without clear legal recourse.

Economic Rights and Employment

❖ Article 27: Freedom to Choose One’s Occupation

The Constitution protects “the right to earn one’s living by work of one’s choice.” However, discriminatory practices—such as employers refusing to hire women with young children—persist. While the Labor Tribunal can hear discrimination claims,

women often lack awareness of their rights, and tribunals take several years to adjudicate cases (ADB, 2024).

❖ **Gender Wage Gap and Occupational Segregation**

Despite constitutional guarantees, women's average wages are 60% of men's wages for comparable work (ADB, 2024). Occupations such as technical trades and management roles remain male-dominated due to entrenched gender stereotypes. Article 27's promise is thus undermined by societal attitudes and lack of legislative affirmative action to promote women into non-traditional fields (ADB, 2024).

❖ **Maternity Benefits and Workplace Policies**

The Maternity Benefits Ordinance (MBO) provides 84 working days of paid leave, but it applies only to the formal sector. Many women in the informal economy are excluded, leaving them without protections during pregnancy and postnatal periods (ADB, 2024). Although Article 12 prohibits discrimination, without a constitutional directive to extend MBO coverage universally, informal sector workers remain unprotected.

Education and Health Rights

❖ **Article 16: Right to Education without Discrimination**

Sri Lanka boasts near-universal primary education enrolment for girls, with female literacy at 94% (ADB, 2024). However, secondary and tertiary enrolment gap widens; in STEM fields, female participation is only 30% of the student body (ADB, 2024). While Article 16 provides formal access, lack of gender-sensitive programs, school infrastructure (e.g., sanitary facilities), and gender-biased curricula limit girls' full realization of educational rights.

❖ **Reproductive Health and Article 12(1)**

Although the Constitution does not explicitly mention health, Article 12(1) has been invoked to challenge discriminatory health regulations (e.g., restricting women's access to certain contraceptives). Sri Lanka's maternal mortality ratio stands at 30 per 100,000 live births, with rural and estate-sector women facing higher risks due to limited access to health facilities (ADB, 2024). Gaps in constitutional interpretation of health as fundamental to women's rights impede comprehensive reproductive health protections.

❖ **Right to Life and Maternal Health**

Article 12(2) (equality before the law) and Article 11 (freedom from inhuman treatment) extend to safeguarding women’s lives, including pregnancy-related risks. Yet, high malnutrition rates, adolescent pregnancy, and lack of safe abortion access (only permitted to save the mother’s life) reflect deficiencies in translating constitutional rights into maternal health outcomes (ADB, 2024).

Intersectionality and Marginalized Groups

❖ **Women of Ethnic and Religious Minorities**

Tamil, Muslim, and indigenous “Vedda” women face compounded discrimination. In Northern and Eastern provinces, ongoing post-conflict reconstruction has not adequately addressed gendered needs—female-headed households struggle with land rights due to customary inheritance laws (ADB, 2024). Article 12’s generic protection fails to account for such intersectionalities, resulting in policy blindness to unique regional and community challenges.

❖ **Gender-Based Discrimination in Disability and Age**

Older women and women with disabilities confront intersecting barriers. While disability rights are constitutionally guaranteed under Article 12, the particular vulnerabilities of women with disabilities—such as higher poverty rates, limited mobility, and increased risk of abuse—are not explicitly addressed in either constitutional text or national policies (ADB, 2024).

❖ **LGBTQ+ Communities**

Article 12’s protection on grounds of “sex” has been interpreted narrowly, excluding sexual orientation and gender identity. As a result, LGBTQ+ individuals have no explicit constitutional shield against discrimination, and Section 365 of the Penal Code criminalizes consensual same-sex relations (ADB, 2024). The absence of constitutional recognition for gender minorities exacerbates stigma and denies basic rights, including access to healthcare and employment.

Comparative Perspectives: Lessons from Other Constitutions

Comparative constitutional analysis serves as a valuable tool for understanding the strengths and weaknesses of any given constitutional framework. By examining how

different nations have addressed common governance challenges—ranging from the distribution of power between central and sub-national entities to the protection of fundamental rights—Sri Lanka can glean lessons to inform its own constitutional evolution. This section explores salient features from a selection of influential constitutions, with a focus on those within the Commonwealth as well as prominent examples outside the Commonwealth that have inspired constitutional reform movements globally. Topics covered include approaches to devolution and federalism, entrenchment and judicial review, independent institutions to bolster democratic accountability, protection of fundamental rights, mechanisms for minority representation, and processes for constitutional amendment. Each discussion highlights practical lessons that might be adapted, with due consideration of Sri Lanka's unique socio-political context.

Approaches to Devolution and Federalism

India's constitution, which came into effect in 1950, established a federal system tailored to accommodate its vast linguistic, cultural, and regional diversity. States possess significant autonomy over specified domains (e.g., law and order, agriculture, public health), while the Union retains powers over national defense, foreign affairs, and other central concerns. Key features include a clear demarcation of legislative lists: The Union List, State List, and Concurrent List. Additionally, mechanisms such as the Inter-State Council foster consultation between the Center and the States, allowing for dialogue when disputes arise.

India's model illustrates how a federal structure can preserve national unity while granting sub-national units meaningful self-governance. The concept of "asymmetrical federalism" emerges in provisions enabling special status for certain regions—most notably Jammu and Kashmir (prior to 2019) and the Northeastern states under the Sixth Schedule—reflecting sensitivity to historical or cultural factors. For Sri Lanka, grappling with demands for greater regional autonomy, particularly in the Northern and Eastern Provinces, India's experience underscores the importance of designing clear legislative competencies and embedding consultative mechanisms to address intergovernmental disputes. However, one must also recognize India's challenges—frequent central interventions under Article 356 (presiding over state governments), instances of politicized use of central authority, and periodic tensions around language policy—which illustrate the

potential pitfalls of cooperative federalism if central democratic accountability is weak.

Canada's constitution, formalized through the Constitution Act of 1867 (previously the British North America Act) and patriated with the Constitution Act of 1982, incorporates a federal division of powers between the federal government and ten provinces. While the federal government holds authority over issues like trade and defense, provinces govern education, property, and civil rights, among others. Notably, the 1982 Charter of Rights and Freedoms extends protections across all governmental levels, adding a uniform dimension to Canadian constitutionalism. Canada's approach emphasizes cooperative federalism. Federal-provincial conferences, ministerial councils, and fiscal arrangements—such as equalization payments—seek to balance disparities between wealthier and less affluent provinces. This model suggests that intergovernmental forums can mitigate conflicts over jurisdictional boundaries and resource allocation. Furthermore, Canada's recognition of Indigenous peoples in Section 35 of the Constitution Act, 1982, which affirms existing Aboriginal and treaty rights, provides a constitutional framework for addressing historical injustices and fostering reconciliation. Recent jurisprudence, including the Supreme Court's decisions on the duty to consult and accommodate Indigenous communities, underscores the dynamic character of these protections.

For Sri Lanka, where post-conflict reconciliation and the aspirations of ethnic Tamil communities remain pressing concerns, Canada's experience suggests that constitutional recognition of minority groups, coupled with structured channels for dialogue, can promote inclusion. However, Canadian federalism has also been marked by recurring disputes over fiscal federalism, French-English language rights, and the status of Quebec. These illustrate that federal arrangements require ongoing negotiation and a shared ethos of goodwill. Sri Lanka may thus learn from Canada the importance of establishing durable institutions—such as a devolution commission or a permanent intergovernmental secretariat—to uphold agreements and monitor compliance over time.

The United Kingdom lacks a single, codified constitution. Instead, it relies on statutes, conventions, and judicial precedents. In recent decades, the UK has embarked on a devolutionary project, granting varying degrees of legislative autonomy to the Scottish Parliament, Senedd Cymru (Welsh Parliament), and

Northern Ireland Assembly. Each devolved legislature possesses control over certain domestic matters—such as education, health, and transportation—while Westminster retains authority over defense, foreign relations, and fiscal policy.

The UK's "evolutionary devolution" model highlights flexibility and adaptability. Legislation such as the Scotland Act 1998 and the Government of Wales Act 2006 allows for periodic recalibration of powers based on political consensus and referenda outcomes. Importantly, the Supreme Court of the United Kingdom (upon its formation in 2009) has adjudicated disputes between the devolved administrations and Westminster, reinforcing legal boundaries while respecting parliamentary supremacy.

Sri Lanka's constitutional heritage, influenced historically by British colonial rule, might draw on the UK's incremental approach—introducing phased devolution that can be deepened over time, contingent on demonstrable intercommunal trust. Yet, the UK model's strengths—flexibility and legal clarity through statutes—are tempered by criticisms regarding asymmetry (Scotland's autonomy far exceeds that of Wales) and occasional tension between the devolved governments and Westminster (particularly around fiscal arrangements). For Sri Lanka, an asymmetrical system may be appropriate if certain provinces have distinct needs; however, asymmetry must be transparently justified to avoid perceptions of favoritism. Moreover, embedding a constitutional or statutory framework that delineates the process for expanding devolution—perhaps conditional upon institutional performance—could help manage expectations and maintain stability.

Entrenchment and Judicial Review

The United States Constitution of 1787 is often regarded as the archetype of a rigid, codified constitution. Amending the U.S. Constitution requires supermajorities in both houses of Congress and ratification by three-fourths of state legislatures, ensuring that changes reflect broad national consensus. The judiciary, led by the Supreme Court, plays a central role in interpreting constitutional provisions. Landmark cases such as *Marbury v. Madison* (1803) established the principle of judicial review, empowering courts to invalidate legislative or executive actions that violate constitutional norms.

This rigidity has both virtues and drawbacks. On one hand, it provides stability and predictability; on the other, it can render necessary reforms—particularly those reflecting evolving social values—difficult to achieve. The U.S. model demonstrates that judicial supremacy can safeguard minority rights against majoritarian impulses, but it may also transfer political decision-making from elected representatives to life-tenured jurists, potentially diminishing democratic responsiveness.

In Sri Lanka's context, adopting a more rigid amendment procedure—beyond simple parliamentary majorities—could protect core constitutional provisions, such as fundamental rights or the structure of government, from transient political pressures. However, too much rigidity risks locking in outdated provisions and stifling reform. Striking a balance might involve requiring special majorities for a defined set of “entrenched” clauses (e.g., fundamental rights, devolution framework) while permitting ordinary legislative processes to address less foundational matters. Judicial review could be bolstered by clarifying the scope of judicial authority, possibly through a constitutional council or commission that advises on legal disputes between branches of government, thus fostering collaborative adjudication rather than confrontational standoffs.

Germany's Basic Law (*Grundgesetz*), promulgated in 1949, is celebrated as one of the world's most successful post-war constitutions. Although formally intended as an interim document until reunification, it has endured, emphasizing human dignity, democratic participation, and federalism. The Basic Law incorporates an explicit “eternity clause” (Article 79(3)), declaring that certain core principles—such as respect for human dignity, the democratic and social state principle, and federal structure—cannot be amended even by parliamentary supermajorities. This clause reflects a post-war consensus that some constitutional fundamentals transcend partisan politics.

The German Constitutional Court (*Bundesverfassungsgericht*) serves as a robust guardian of the Basic Law, equipped to adjudicate disputes concerning constitutional compatibility of legislation, conflicts between federal and state (*Länder*) governments, and protection of fundamental rights. The Court's decisions are widely respected, contributing to Germany's stable democratic culture.

Sri Lanka may draw from Germany's example by identifying, through broad consensus, non-negotiable constitutional values—such as the rule of law, separation

of powers, and ethnic equality—that require special constitutional safeguards. Embedding an “eternity clause” could prevent backsliding on core commitments. However, Sri Lanka must also ensure that its judicial institutions possess both independence and legitimacy. The German model’s success stems not only from textual provisions but also from a legal culture that respects constitutional authority. Thus, any attempt to emulate the Basic Law must include rigorous judicial appointments processes, transparent funding, and public education on judiciary roles.

South Africa’s 1996 Constitution, born of the negotiated settlement ending apartheid, represents a paradigm of transformational constitutionalism. It enshrines an elaborate Bill of Rights, covering not only civil and political liberties but also socio-economic rights such as housing, healthcare, and education. Importantly, many of these socio-economic rights are justiciable; courts can compel the state to take “reasonable legislative and other measures” to achieve substantive equality. The Constitution also includes a clear separation of powers, independent institutions supporting democracy (e.g., the Public Protector, Electoral Commission, Human Rights Commission), and mechanisms for public participation in lawmaking.

The Constitutional Court of South Africa has delivered a series of landmark judgments that operationalize socio-economic rights—such as *Government of the Republic of South Africa v. Grootboom* (2000) on the right to housing and *Minister of Health v. Treatment Action Campaign* (2002) on access to lifesaving drugs. These decisions illustrate how a constitution can be an engine for social transformation, recognizing that formal equality is insufficient without structural change.

Sri Lanka’s post-war challenges—particularly addressing historical grievances, land restitution, and equitable development—parallel South Africa’s quest to redress entrenched inequalities. Adopting a comprehensive rights framework, including socio-economic rights, could send a powerful signal of state commitment to inclusive development. Nevertheless, South Africa’s experience also underscores potential risks: protracted litigation can strain court resources, and socio-economic rights enforcement may heighten tensions between branches of government over budgetary priorities. Sri Lanka may mitigate these risks by specifying clear standards for review (e.g., “minimum core obligations”) and establishing independent bodies—akin to the South African Human Rights Commission—to monitor

government compliance, thereby reducing the need for contentious court interventions.

Independent Institutions and Democratic Accountability

India's Election Commission (ECI) is constitutionally mandated to conduct free and fair elections at the national and state levels. Empowered by Articles 324–329, the ECI formulates electoral rules, oversees voter registration, and adjudicates disputes. Its independence—ensured through secure tenure of its commissioners and budgetary autonomy—has been central to maintaining democratic legitimacy despite episodic allegations of political interference.

In parallel, India hosts various anti-corruption bodies, such as the Central Vigilance Commission (CVC) and State Lokayuktas. While the CVC's authority is primarily advisory, it has garnered modest successes in highlighting maladministration. Supreme Court-led creation of the Central Bureau of Investigation (CBI) as a premier investigative agency demonstrates judicial activism in institutional innovation, albeit with persistent criticisms regarding CBI's subjection to governmental influence.

Sri Lanka, which faces challenges of political patronage and corruption, might consider constitutionalizing an independent electoral commission with clear safeguards—such as requiring bipartisan consensus for appointment of commissioners and ensuring financial autonomy. Additionally, establishing an independent anti-corruption commission, modeled on Hong Kong's Independent Commission Against Corruption (ICAC), could enhance credibility. Unlike India's decentralized anti-corruption apparatus, ICAC's broad remit and prosecutorial powers have enabled robust investigations. Nonetheless, Sri Lanka must tailor such institutions carefully, embedding checks to prevent mission creep and establishing oversight mechanisms—possibly a parliamentary committee comprising multiple parties—that review institutional performance without undermining operational independence.

The UK's approach to appointing members of the House of Lords and senior judges reveals how independent institutions can evolve through a combination of tradition and statutory reform. The House of Lords Appointments Commission, created in 2000, recommends non-partisan life peers to diversify the upper chamber. This

commission operates transparently—publicizing criteria and inviting public nominations—thus enhancing legitimacy. For judicial appointments, the Judicial Appointments Commission (JAC), established in 2006, selects candidates for Crown and higher courts based on merit, minimizing political influence.

Sri Lanka's constitutional reform efforts could draw on the UK's experience to depoliticize appointments to key bodies—whether a prospective constitutional council or a proposed upper chamber (if bicameralism is ever considered). Transparent selection criteria—published online—coupled with broad stakeholder consultation, can engender public trust. However, the UK model's reliance on conventions and gradual evolution might be ill-suited if rapid reform is politically imperative. Consequently, Sri Lanka should consider embedding statutory parameters for appointments, balancing the need for experienced individuals with the risk of entrenching elite networks.

Beyond its judicial innovations, South Africa's Constitution envisions a suite of independent institutions—collectively called Chapter Nine institutions—including the Public Protector, South African Human Rights Commission, Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, and the Auditor-General. These entities possess mandates to investigate governmental malfeasance, promote human rights, and ensure financial accountability. Their composition—appointed via parliamentary committees with multi-party representation—and secure tenure foster independence. Furthermore, they enjoy guaranteed funding through parliamentary appropriation, insulated from executive manipulation.

Sri Lanka could benefit from a holistic approach to independent institutions. Instead of piecemeal reform, the constitution might define a cadre of constitutional bodies with clear, interlocking mandates—such as a National Human Rights Commission, an independent auditor's office, and an ethics commission—each with public reporting duties. By diversifying oversight, Sri Lanka can create redundancies that prevent single-point failures and encourage mutual reinforcement of accountability. Nonetheless, South Africa's experience also reveals risks: overlapping mandates can lead to jurisdictional conflicts, and financial constraints may hamper effectiveness. To mitigate these, Sri Lanka should delineate precise functions, ensure budgetary provisions commensurate with mandates, and craft

mechanisms—such as an Oversight Council—where heads of independent bodies coordinate.

Protection of Fundamental Rights

The first ten amendments to the U.S. Constitution, collectively known as the Bill of Rights, enumerate specific civil and political liberties—such as freedom of speech, religion, and due process. These provisions constrain government action, protecting individuals from majoritarian overreach. Judicial interpretations have expanded these rights over time, incorporating them against state governments through the Fourteenth Amendment. Landmark rulings—such as *Brown v. Board of Education* (1954) on racial segregation and *Miranda v. Arizona* (1966) on due process warnings—illustrate how constitutional language can evolve to meet changing social norms.

Sri Lanka's own constitution includes a chapter on fundamental rights, but recurring debates center on the breadth of judicial enforcement, the balance between rights and public order, and the availability of constitutional remedies. The U.S. model demonstrates the merits of enumerated rights with clear textual anchors—the explicit guarantee of “freedom of speech” or “right to a fair trial” leaves less room for ambiguity. However, Sri Lanka must adapt these lessons to local conditions: ensuring that fundamental rights extend to socio-economic dimensions—such as access to equitable education or healthcare—without overburdening the judiciary or impinging on legislative discretion. A possible approach is to classify rights into justiciable and non-justiciable categories, clarifying which protections courts can enforce directly and which require legislative or policy action.

Canada's Charter of Rights and Freedoms—which formed part of the Constitution Act, 1982—guarantees fundamental freedoms (e.g., expression, religion, assembly), democratic rights, mobility rights, and legal rights, including protection against unreasonable search and seizure. Notably, Section 33 (the “Notwithstanding Clause”) allows federal or provincial legislatures to pass laws that temporarily override certain Charter rights (specifically, those in sections 2 and 7–15) by explicitly invoking the clause, with a maximum duration of five years before renewal is required.

While the Notwithstanding Clause has been sparingly used, it embodies the tension between judicial review and parliamentary sovereignty, signaling that elected representatives retain ultimate authority. For Sri Lanka, considering a mechanism akin to the Notwithstanding Clause could foster a more balanced rights regime—one that affirms judicial protection yet permits democratic override during exigencies (e.g., national emergencies). However, caution is paramount: the clause's misuse in Canada (for instance, Quebec's invocation to preserve French-language charter schools) has drawn criticism. Sri Lanka would need to ensure robust procedural safeguards—such as requiring supermajority votes or temporal limitations beyond the five-year standard—to prevent capricious suspension of rights. Moreover, the inclusion of a clause permitting periodic sunset reviews would incentivize governments to revise contentious laws rather than rely on indefinite overrides.

As previously noted, South Africa's constitution is distinctive in recognizing socio-economic rights—such as access to housing, healthcare, and food—as enforceable obligations. The Equality Clause (Section 9) prohibits unfair discrimination on grounds including race, gender, sex, pregnancy, marital status, ethnic or social origin, and more. Courts have adopted a purposive interpretation, viewing these provisions as instruments for achieving substantive equality, rather than mere formal equality.

Sri Lanka can learn from South Africa's insistence that protecting rights requires addressing historical disadvantage. For example, the Sri Lankan constitution could be amended to guarantee access to essential services (e.g., education, sanitation) in underdeveloped regions, thus embedding development objectives within the rights framework. However, non-justiciable or programmatic rights risk being unenforceable in practice if the judiciary lacks resources or if political will is absent. Consequently, Sri Lanka should pair constitutional guarantees with institutional commitments—such as a dedicated Office of Socio-Economic Rights—to monitor compliance and guide policy implementation. By doing so, the constitution's aspirations are more likely to translate into tangible improvements in citizens' lives.

Mechanisms for Minority Representation

New Zealand's constitutional framework is unwritten in the strict sense but is shaped by statutes (e.g., the Constitution Act 1986), common law, and the Treaty of Waitangi (1840), which serves as a foundational document between the Crown and

Māori. The Electoral Act (1993) introduced Māori electorates—seats in Parliament reserved for those on the Māori electoral roll—ensuring direct Māori representation. Additionally, the principles of the Treaty of Waitangi have been enshrined in legislation governing fisheries, land claims, and local governance, providing Māori communities a voice in policy areas of cultural significance.

Sri Lanka's Tamil minority has long sought constitutional guarantees for proportional representation or reserved seats. New Zealand's experience suggests that establishing reserved electorates can enhance minority participation while preserving the overall electoral system. However, New Zealand's proportional representation Mixed Member system (introduced in 1996) also ensures that party lists reflect community diversity. Sri Lanka might examine proportional mechanisms—such as preferential votes within multi-member districts or proportional correction seats—to achieve similar aims. These models can mitigate sectarian polarization by encouraging cross-community party platforms. Nevertheless, Sri Lanka must consider potential backlash—particularly if reserved seats are perceived as privileging one group over others—and design transitional arrangements, perhaps time-bound or subject to periodic review, to assess efficacy and public acceptance.

Belgium exemplifies consociational federalism—a power-sharing arrangement among distinct linguistic communities. Its federal structure comprises three regions (Flanders, Wallonia, and Brussels-Capital) and three language-based communities (Flemish, French, and German-speaking). Crucially, the constitutional framework mandates linguistic parity in federal institutions, including equal representation of French-speaking and Dutch-speaking ministers in the federal cabinet (Article 99 of the Belgian Constitution). The King's oath must be administered in both languages, and many laws require parallel texts in multiple languages.

Belgium's model demonstrates that constitutional protections for minority groups can be coupled with institutional mechanisms ensuring continuous representation. Sri Lanka, grappling with Sinhala-Tamil ethnic divisions, can examine whether embedding guaranteed representation—through designated ministers or constitutional commissions—helps build trust. For instance, constitutional language might mandate that certain high offices (e.g., Prime Minister, Chief Justice) cannot be held exclusively by members of a single ethnic community. Additionally, creating a constitutional Council for Inter-Ethnic Relations—modeled

on Belgium's Council of the German-speaking Community—could provide structured input on national policies.

However, Belgium has encountered challenges: linguistic paralysis, where the inability to form majority coalitions in Parliament has led to prolonged government formation crises; and regional disparities exacerbated by economic divergence. Sri Lanka must therefore avoid rigid quotas that hamper governance. Instead, adopting a flexible “zipper” approach—alternating representation between communities within party lists—might promote integration. Moreover, embedding dispute-resolution mechanisms—such as a constitutional court or a special conciliation committee—can preempt legislative deadlock.

Bosnia and Herzegovina's constitution, annexed to the Dayton Peace Agreement (1995), constructs a highly decentralized state with two entities (the Federation of Bosnia and Herzegovina and Republika Srpska) and a separate Brčko District under international supervision. Political offices at the state level (e.g., tripartite presidency, House of Peoples) require representation of Bosniaks, Croats, and Serbs. At face value, this model underscores the imperative of power-sharing among warring ethnic groups to maintain peace and stability.

Yet decades of post-Dayton experience reveal that the entrenchment of ethnic quotas can entrap the state in institutional paralysis. The European Court of Human Rights, in *Sejdić and Finci v. Bosnia and Herzegovina* (2009), ruled that the exclusion of minorities outside the three constituent peoples from certain offices violated the European Convention on Human Rights. Attempts to reform the constitution have been stymied by divergent political interests, thus prolonging governance crises. For Sri Lanka, which emerged from internal conflict, Bosnia's experience serves as a cautionary tale: constitutional power-sharing can institutionalize divisions rather than supersede them. If Sri Lanka considers ethnically based representation, it should opt for mechanisms that incentivize cross-ethnic collaboration—such as preferential voting that encourages parties to appeal to multiple communities—rather than rigid quotas that reduce politics to ethnic bargaining. Additionally, procedural safeguards—like periodic sunset clauses requiring renegotiation of power-sharing arrangements—could encourage adaptation as inter-communal relations evolve.

Constitutional Amendment Processes

As noted earlier, the U.S. Constitution's Article V prescribes a stringent process: an amendment must pass two-thirds of both houses of Congress and be ratified by conventions in three-fourths of the states (or, less commonly, by state legislatures). Consequently, only 27 amendments have been adopted since 1787. While this rigidity protects core principles from ephemeral political shifts, it has also locked in outdated provisions (e.g., the requirement that senators be elected by state legislatures, rectified only through the Seventeenth Amendment in 1913).

Sri Lanka's 1978 Constitution allows amendments through two routes: (a) a two-thirds parliamentary majority, and (b) for entrenched provisions affecting provincial devolution or fundamental rights, a referendum in addition to the two-thirds requirement. In practice, referenda have been rare, and political majorities have at times bypassed devolution safeguards. The U.S. experience underscores that supermajorities alone may prove insufficient if political cultures lack genuine consensus. Moreover, the absence of a built-in sunset or review mechanism for entrenched amendments may perpetuate concessions made under duress.

To refine Sri Lanka's amendment procedure, one lesson from the U.S. is to delineate clearly which constitutional clauses require supermajority plus referendum, versus those amenable to simple parliamentary processes. Introducing intermediate categories—such as requiring three-fourths parliamentary majorities for certain adjustments—could calibrate rigidity. Additionally, implementing periodic constitutional review commissions—composed of representatives from political parties, civil society, academia, and minority groups—could recommend updates in line with changing circumstances, maintaining constitutional relevance without frequent referenda.

Canada's Constitution Act, 1982, outlines different amendment procedures depending on the subject matter:

General Procedure (7/50 formula): Amendments affecting the core structure of Parliament, provincial legislatures, or fundamental rights require approval by the Senate, House of Commons, and legislatures of two-thirds of the provinces representing at least 50 percent of the population.

Unanimity Procedure: Amendments to the Office of the Queen, the composition of the Supreme Court, or changes to the amending formula itself demand the agreement of all provinces, the Senate, and the House of Commons.

Provincial Consent: For amendments affecting only one or a group of provinces—such as altering boundaries or provincial powers—only the consenting province(s) and federal Parliament need to agree.

Canada's tiered approach offers flexibility: provinces enjoy autonomy over certain matters while the nation can enact overarching amendments with broad support. Despite occasional friction (e.g., Quebec's resistance to patriation without consensus), Canada's formula has permitted evolution, such as introducing the Charter of Rights and creating new territorial governments without triggering crises. The flexibility enables context-specific procedures rather than a one-size-fits-all rule.

Sri Lanka might consider a similar multi-tier amendment system. For instance, changes to provincial powers could require consent from the affected province(s) and Parliament, whereas national-level reforms—such as restructuring the executive presidency—would demand supermajority plus (perhaps) referendum. By differentiating amendment routes, Parliament could address localized concerns expeditiously without jeopardizing nationwide consensus on foundational principles. To ensure clarity, the constitution should enumerate amendment categories and delineate required majorities explicitly, reducing ambiguity that might lead to litigation or political standoffs.

As an uncodified constitution, the UK's "amendment" mechanisms occur through ordinary legislation. Parliament enacts statutes that modify constitutional conventions or statutes (e.g., devolution acts or human rights legislation). Judicial review of primary legislation is limited; while courts can interpret statutory provisions in light of human rights obligations, they cannot strike down Acts of Parliament. Instead, the Human Rights Act 1998 enables courts to issue declarations of incompatibility, nudging Parliament to reconsider impugned laws.

For Sri Lanka, the British model underlines that constitutional change can occur through legislative processes if entrenched neither textually nor culturally. However, this model relies on a political culture that respects constitutional

conventions and values evolutionary change. Sri Lanka's institutions, by contrast, have experienced periods of constitutional uncertainty—illustrated by judicial challenges to executive actions in 2018 and 2020—highlighting insufficient deference to constitutional norms. Emulating the UK's flexibility without the underpinning conventions could exacerbate instability. Therefore, Sri Lanka should complement any legislative amendment powers with institutional guardians—such as a constitutional court empowered to interpret and clarify ambiguities—and promote a robust civic education campaign to instill respect for constitutional principles.

Constitutional Courts and Dispute Resolution

India's Supreme Court not only interprets constitutional provisions but also resolves intergovernmental disputes, adjudicates fundamental rights petitions, and oversees election petitions for the office of the President and Vice-President. The Court's original jurisdiction under Article 131 permits referral of disputes between the Center and States—enabling legal resolution rather than political confrontation. Landmark judgments, such as *Kesavananda Bharati v. State of Kerala* (1973), propounded the “basic structure doctrine,” asserting that Parliament cannot alter the constitution's core framework—an approach analogous to Germany's eternity clause. Subsequent cases, like *Minerva Mills v. Union of India* (1980), reinforced limits on parliamentary amending power, ensuring that fundamental democratic values remain protected.

Sri Lanka might adopt a Basic Structure doctrine or its equivalent to shield certain constitutional principles—such as the unitary character tempered by devolution, the rule of law, and fundamental rights—from majoritarian encroachment. Entrenched judicial review, combined with original jurisdiction for constitutional disputes, could prevent protracted political impasses. However, India also demonstrates the risk of judicial overreach: critiques contend that an activist court can usurp legislative policymaking, generating tensions between branches. To strike an appropriate balance, Sri Lanka's constitution could clearly demarcate judicial functions—specifying that the Constitutional Court hears only matters of high public importance or conflicts between branches—while routine statutory challenges proceed through ordinary courts.

The Bundesverfassungsgericht's reputation for procedural rigor and accessibility has fostered public confidence. Citizens can bring constitutional complaints

(Verfassungsbeschwerde) directly to the Court if they allege that their basic rights have been violated by public authority. The Court's docket spans challenges to legislation, administrative actions, and political party bans. Its multi-judge panels—organizing cases by subject matter—ensure expertise and consistency in rulings.

One lesson for Sri Lanka is the importance of structuring a constitutional court with clear procedural rules, enabling direct citizen access to constitutional remedies. Presently, Sri Lanka's Supreme Court exercises both appellate and original jurisdiction over fundamental rights petitions; however, case backlogs and procedural complexity have impeded timely redress. Establishing a separate Constitutional Court with streamlined procedures—such as summary admissibility filters to weed out frivolous petitions—could improve efficiency. Moreover, standardized reporting requirements, whereby the Court publishes annual overviews of pending cases, popular judgments, and systemic recommendations to the legislature, can enhance transparency and accountability.

Canada's Supreme Court possesses "reference jurisdiction," allowing federal or provincial governments to refer questions of law—often concerning the constitutionality of proposed legislation—to the Court for advisory opinions. While these opinions are not technically binding, governments generally adhere to the Court's reasoning, avoiding future invalidation of laws. Reference cases, such as the Patriation Reference (1981) or the Reference re Secession of Quebec (1998), illustrate how courts can guide major constitutional decisions, encouraging political actors to work within constitutional boundaries.

Sri Lanka might consider empowering its highest court to issue advisory opinions on contentious constitutional questions before Parliament enacts legislation—for instance, on proposed devolution bills or major institutional reforms. Advisory opinions could preempt litigation and political crises, sparing citizens the uncertainty of protracted legal battles. However, safeguards are necessary to prevent the judiciary from supplanting the political process: implementing strict standing rules—permitting only the President or a specified number of parliamentary members to seek references—can maintain political accountability while leveraging judicial expertise.

Lessons on Constitutional Culture and Civic Participation

Germany's success hinges not solely on textual design but also on a political culture that values intergovernmental consultation. Regular conferences—where federal ministers convene with their state counterparts—create a habit of negotiation, smoothing the way for joint policymaking. Likewise, Germany's strong local governments (Länder and municipalities) maintain robust channels for citizen engagement through local councils and referenda on regional matters. This culture of polycentric governance encourages citizens to view democratic participation as continuous and multi-layered, rather than episodic and centralized.

Sri Lanka's political culture has historically exhibited high levels of centralized decision-making, with limited space for meaningful local participation. Embedding constitutional provisions that mandate public consultations—through town hall meetings, participatory budgeting at the provincial level, or mandatory impact assessments for major laws—can gradually foster a culture of engagement. Additionally, empowering local governments constitutionally (rather than leaving them as statutes subject to executive modification) would create stable platforms where citizens can influence local policy. This decentralization of power and responsibility may also alleviate overcrowded national debates, allowing citizens to see tangible outcomes from their participation, thereby reinforcing the legitimacy of constitutional institutions.

Post-apartheid South Africa recognized early on that a text alone is insufficient without popular understanding. The Constitutional Court and the Department of Justice launched extensive outreach programs—translating the Constitution into multiple languages, conducting school programs, and engaging civil society to disseminate constitutional values. These efforts have fostered widespread awareness of rights and responsibilities, giving the public a sense of ownership over the constitutional order.

In Sri Lanka, civic education on the constitution remains sporadic. Integrating constitutional studies into school curricula—across ethnic and linguistic divides—could build a foundation of shared understanding. Beyond schools, partnering with community organizations, religious institutions, and the media to produce accessible materials—radio dramas, televised debates, and graphic novels—can demystify constitutional content. Additionally, periodic “Constitution Day”

events—featuring public lectures, debates, and exhibitions—could normalize reflection on constitutional matters, creating a constituency that demands accountability from all branches of government.

Canada's commitment to multiculturalism—enshrined in the Canadian Multiculturalism Act (1988) and reflected in Charter interpretations—underscores constitutional tolerance. Courts have interpreted freedom of religion and multiculturalism as complementary, permitting accommodation of minority customs so long as they do not contravene other rights. This ethos has enabled reasonable accommodation—a Sikh police officer wearing a kirpan (ceremonial dagger) was deemed permissible in a 2006 Supreme Court ruling—demonstrating sensitivity to cultural practices.

Sri Lanka's constitutional order can benefit from normative commitments to multiculturalism, extending beyond devolution or minority representation. Embedding a constitutional value—such as “cultural pluralism”—could guide policy in education, language policy, and public employment. For instance, mandating that government services be provided in Sinhala, Tamil, and English in designated regions would concretize constitutional multiculturalism. However, Canada's experience also shows occasional backlash—e.g., Quebec's debates on religious symbols—illustrating the need to balance accommodation with social cohesion. Sri Lanka must therefore foster a narrative that constitutional multiculturalism enhances national unity rather than detracting from it, emphasizing shared values while respecting diversity.

Mechanisms for Constitutional Implementation and Enforcement

South Africa's Constitution not only empowers the Constitutional Court but also prescribes “implementation reports” to Parliament on fulfilled or pending constitutional obligations. Government departments must produce annual reports on progress regarding specific clauses—especially socio-economic rights implementations. Moreover, the Public Protector can initiate systemic investigations into governmental failures to implement constitutional mandates.

For Sri Lanka, requiring periodic governmental self-assessment on constitutional obligations—spanning devolution milestones, human rights promotion, and institutional reforms—could institutionalize accountability. These reports, submitted to a bicameral committee (if established) or to Parliament directly, would

generate public records of progress and delays. Embedding these requirements constitutionally reduces the likelihood that governments ignore reform imperatives, fostering a culture of transparency.

India's framework includes constitutional commissions—such as the Election Commission, Finance Commission, and National Commission for Scheduled Castes and Tribes—each tasked with specific implementation and oversight roles. The Finance Commission, for instance, submits periodic recommendations on revenue sharing between the Union and the States, reviewed by Parliament. Similarly, the National Commission for Scheduled Castes (and later Scheduled Tribes) monitors constitutional safeguards, investigates violations, and recommends policy changes. Sri Lanka could institute analogous commissions—such as a Devolution Commission to monitor provincial powers, a Commission on Ethnic Harmony to evaluate inter-community indicators, and a Rights Commission overseeing fundamental rights compliance. By specifying their mandates and reporting duties in the constitution, these bodies gain legitimacy and continuity across governments. However, commissions must be staffed by credible experts—appointed through transparent processes—and provided with resources to fulfill their mandates; otherwise, they risk becoming inactive or politicized.

In addition to advisory references discussed earlier, Canada's provinces occasionally refer enactments to the Supreme Court to clarify implementation concerns—such as whether provincial legislation adheres to Charter standards. Although such references are typically issued by governments themselves, they generate public debate and promote legislative precision.

Sri Lanka might incorporate an explicit reference procedure: whenever Parliament passes legislation touching upon constitutional thresholds—such as fundamental rights exceptions or changes to provincial powers—they could be automatically referred to the Constitutional Court for pre-enactment review. This “preventive review” would reduce legal uncertainty and litigation costs, ensuring that laws comply with constitutional standards before taking effect. To prevent judicial bottlenecks, Sri Lanka could limit references to laws surpassing a defined threshold of significance (e.g., laws that modify entrenched clauses or significantly impact provincial autonomy).

Combining Lessons for a Contextualized Sri Lankan Model

- ❖ **Proposed Constitutional Reforms for Strengthening Gender Equality**
- ❖ **Introducing an Express Gender Equality Clause**

Amending Article 12 to include explicit language—e.g., “Equality of men and women in all spheres of social, political, and economic life shall be ensured and the State shall take positive measures to eliminate discrimination and to advance women”—would provide clearer judicial guidance for advancing substantive equality (Dziedzic & Samararatne, 2023). Such a clause would align with international best practices and compel the legislature to enact supportive measures.

- ❖ **Constitutionalizing Gender Quotas at National and Provincial Levels**

Incorporating quotas in legislative bodies (e.g., 30% reservation for women in Parliament and Provincial Councils) into the Constitution—similar to Nepal’s model—would secure women’s representation and generate a critical mass for gender-sensitive policymaking. Ensuring quotas for candidate nomination (not just party lists) would prevent parties from circumventing the spirit of reservation (IFES, 2021).

- ❖ **Recognizing Gender Identity and Sexual Orientation as Prohibited Grounds of Discrimination**

Amending Article 12 to add “gender identity” and “sexual orientation” explicitly would remove ambiguity around LGBTQ+ protections. This addition would require legislative reforms to repeal Section 365 of the Penal Code and enact anti-discrimination laws inclusive of gender minorities (ADB, 2024).

- ❖ **Mandating a Gender Equality Commission via Constitutional Provision**

Establishing a constitutional Gender Equality Commission with powers to investigate, monitor, and recommend on gender-based discrimination cases—similar to India’s National Commission for Women (constitutionalized in 2014)—would strengthen institutional support. The Commission should have autonomy, resources, and authority to issue binding recommendations to government agencies (Dziedzic & Samararatne, 2023).

❖ **Affirmative Action in Education and Employment**

Embedding affirmative action mandates in the Constitution—requiring scholarship quotas for girls in STEM disciplines and upper management quotas in the civil service—would address structural barriers in education and employment. Such measures should be time-bound with periodic review clauses, ensuring the State’s commitment to closing gaps (ADB, 2024).

Implementation Challenges and Strategies

❖ **Legislative Will and Political Consensus**

Amending the Constitution requires two-thirds parliamentary majority. Building cross-party consensus on gender equality clauses necessitates advocacy, public mobilization, and leveraging Sri Lanka’s international commitments (e.g., CEDAW, SDGs). Civil society coalitions—including feminist NGOs, legal scholars, and youth movements—must engage in sustained dialogue with legislators (UN Women, 2024).

❖ **Judicial Capacity and Training**

To ensure effective judicial review of gender equality claims, judges at all levels require training on gender-sensitive jurisprudence and international human rights standards. Incorporating gender modules into judicial education curricula would facilitate more nuanced interpretations of Article 12(1) and related provisions (Dziedzic & Samararatne, 2023).

❖ **Strengthening Institutional Mechanisms**

The proposed Gender Equality Commission (if constitutionalized) and the HRCSL must be resourced adequately. This includes budget allocations for regional offices, hiring gender specialists, and establishing monitoring and evaluation units. Embedding gender-responsive budgeting within the Ministry of Finance would ensure that fiscal policies advance gender equality goals (Ministry of Women and Child Affairs, 2019).

❖ **Community Engagement and Social Norms Change**

Legal reforms alone cannot uproot patriarchal norms. Community-based interventions—targeting rural areas, school curricula, media campaigns, and religious institutions—are necessary to challenge gender stereotypes. Partnerships

with faith leaders and traditional authorities can facilitate culturally sensitive messaging about women's constitutional rights (ADB, 2024).

❖ **Data Collection and Accountability**

Timely, disaggregated data on gender indicators (e.g., political participation, wage gaps, VAW prevalence) is essential. Constitutionalizing a mandate for regular national gender audits—conducted by an independent statistical body—would enable tracking of progress and inform policy decisions. The Public Finance and Audit Act could be amended to require gender-disaggregated budget expenditures (ADB, 2024).

Case Studies: Discrepancies Between Constitutional Guarantees and Outcomes

❖ **Political Representation: Sri Lankan Women in Parliament (2010–2020)**

Between 2010 and 2020, women's representation in Parliament hovered between 4% and 6% despite constitutional guarantees and local government quotas (IFES, 2021). This stagnation underscores the inadequacy of non-binding constitutional guarantees. The 2018 local council elections, where women's representation jumped to 35%, highlight how statutory quotas can effect change at lower levels but fail to cascade upward in the absence of national-level mandates (IFES, 2021).

❖ **Domestic Violence: Enforcement of PDVA 2005**

A 2022 UN Women survey found that 45% of women aged 15–49 have experienced intimate partner violence (UN Women, 2024). Despite constitutional and statutory protections, 70% of women do not report abuse due to fear of stigma, lack of legal aid, and distrust in authorities (UN Women, 2024). The disconnect between constitutional rights (e.g., Article 11 freedom from inhumane treatment) and on-the-ground support systems demonstrates the necessity of strengthening enforcement mechanisms and community outreach.

❖ **Labor Market: Women in Export-Processing Zones (EPZs)**

Approximately 75% of EPZ workers are women, drawn by wage differentials compared to agricultural labor (ADB, 2024). However, these jobs often lack job security, social insurance, and expose women to occupational hazards. The Constitution's guarantee of "freedom to earn one's living" (Article 27) does not

translate into protections against workplace exploitation. The PDVA does not extend to workplaces, leaving women susceptible to harassment and poor working conditions (ADB, 2024)

❖ Inheritance Disputes: Kandyan Law vs. Constitutional Mandates

In 2019, a Kandyan widowed daughter challenged her denial of equal inheritance rights. Relying on Article 12(2), she argued that Kandyan law's unequal inheritance provisions violated her constitutional rights. The District Court ruled in her favor, but the case was appealed to the Supreme Court, which ultimately upheld Kandyan law on grounds of protecting customary practices (Dziedzic & Samararatne, 2023). The judgment illustrates judicial reluctance to override personal laws despite constitutional equality guarantees.

Recommendations for Bridging Gaps

❖ Constitutional Amendment for Substantive Gender Equality

Insert a Specific Gender Equality Clause: Amend Article 12 to explicitly guarantee “equality of men and women in all spheres of political, economic, social, and cultural life,” and obligate the State to enact positive measures.

Mandate Affirmative Action: Incorporate a clause permitting “temporary special measures” to accelerate the realization of substantive equality, including quotas in education, employment, and political representation.

❖ National and Provincial Quotas for Women’s Representation

Embed Quotas in Constitution: Revise the Constitution to reserve at least 30% of seats in Parliament and Provincial Councils for women, with mechanisms to ensure placement in winnable positions on party lists.

Monitor Compliance: Establish an independent electoral commission mandate to oversee gender quotas and impose penalties for non-compliance (e.g., party de-registration).

❖ Constitutionally Recognize Gender Identity and Sexual Orientation

Amend Non-Discrimination Grounds: Expand Article 12(1) to include “gender identity, sexual orientation, and other status,” thereby protecting LGBTQ+ individuals.

Repeal Discriminatory Penal Provisions: Mandate Parliament to repeal Section 365 (criminalizing consensual same-sex relations) within two years of constitutional amendment.

❖ **Establishment of a Constitutional Gender Equality Commission**

Create Independent Commission: Enshrine in the Constitution an autonomous Gender Equality Commission with investigatory powers, right to initiate legal action, and authority to review all legislation and policies for gender impact.

Ensure Adequate Resources: Mandate minimum budgetary allocation (e.g., 0.5% of national budget) to guarantee operational capacity and regional outreach.

❖ **Strengthening Enforcement of Rights**

Expand PDVA and Kusuri Protections: Amend PDVA to criminalize marital rape and include workplace sexual harassment, mandating swift police action and legal aid services at all police stations.

Gender-Responsive Budgeting: Constitutionally require government budgets to demonstrate gender impacts, with annual parliamentary reviews of gender-disaggregated expenditures.

❖ **Judicial Training and Sensitization**

Gender Sensitization Programs: Incorporate mandatory training modules on CEDAW obligations, intersectionality, and gender-sensitive adjudication in judicial education curriculums.

Gender Bench Directive: Issue a judicial directive to create “Gender Benches” in High Courts for handling VAW, family law, and labor disputes with specialized expertise.

❖ **Promoting Social Norm Change**

Civic Education Campaigns: Leverage public media, school curricula, and community workshops to challenge patriarchal norms, promote women’s rights, and engage men as allies.

Engagement with Religious Leaders: Partner with faith-based organizations to reinterpret religious teachings in support of gender equality, leveraging the moral authority of community leaders.

❖ **Data Collection and Monitoring**

Gender-Disaggregated Data Mandate: Constitutionally require all government agencies to collect and publish disaggregated data on employment, education, health, and political participation.

Periodic Gender Audits: Institute mandatory five-year gender audits conducted by an independent body with published findings to inform policy adjustments.

Conclusion

Sri Lanka's Constitution, while containing important non-discrimination provisions, falls short of guaranteeing substantive gender equality. The text's emphasis on formal equality without positive obligations has resulted in persistent gaps—reflected in low women's political representation, unequal family laws, pervasive gender-based violence, and labor market inequities. By comparing constitutional approaches from other jurisdictions, such as South Africa's express gender equality clause and India's affirmative action frameworks, Sri Lanka can draw lessons to strengthen its legal architecture.

Amending the Constitution to include an explicit gender equality clause, embedding national-level quotas, recognizing gender identity and sexual orientation, and establishing a robust constitutional Gender Equality Commission are essential steps toward bridging the gap between formal promises and lived realities. Concurrently, comprehensive judicial training, constitutionalized gender-responsive budgeting, and community-driven social norm change initiatives are critical for translating constitutional guarantees into tangible outcomes. Such reforms would align Sri Lanka with its international commitments under CEDAW and the SDGs, ensuring that “no citizen is discriminated against on the grounds of sex” truly becomes not only a phrase on paper, but a lived experience for every Sri Lankan.

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Correspondence:

V. S. Suriyabandara

vishaka@sjp.ac.lk
