

# General Recommendations 19 and 36 Issued under the Convention on the Elimination of all Forms of Discrimination against Women: A Critical Review of Sri Lanka

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**Abstract:-** Sri Lanka became a state party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on 5<sup>th</sup> October 1981 and has even introduced a Women's Charter in 1993 all of which is put in place to afford women with equality and fairness. The 1978 Constitution of the Democratic Socialist Republic of Sri Lanka, under Article 12 of the Constitution prohibits discrimination based on sex and it further provides for the governments to take affirmative actions in safeguarding and promoting the rights of the women. This paper in particular looks at general recommendation 19 dealing with gender-based violence against women and general recommendation 36 which deals with the right to education of the women, both issued under CEDAW. In looking at the background of these recommendations and their implementation from a Sri Lankan context, it is revealed that, while compared to many South Asian countries, the standards enjoyed by the women in the country can be appreciated, there still remains some gray areas in the laws and policies of the country that is some what short of the standards expected under CEDAW. Therefore, this article showcases those gray areas and suggests possible solutions that could be practically implemented to overcome those shortcomings.

**Key Words:** Women's Rights, Non-Discrimination Based on Gender, Right to Education, Violence Against Women.

## I. INTRODUCTION

The convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is the only key international legal instrument which is exclusively dedicated towards the protection of the rights of the women<sup>1</sup>. It has been described as the landmark treaty in the struggle of women's rights and as constituting an international bill of rights of the women.<sup>2</sup> The convention applies to all forms of discrimination against women and is not limited to specific fields spelled out within it. Discrimination against women is defined in terms of its impact on women's equal enjoyment of their human rights and fundamental freedoms. Its scope is

wide, requiring States parties to address how the enjoyment of recognized human rights is adversely affected by gender-based distinctions, laws and policies.

Article 21 of the Convention on the Elimination of All Forms of Discrimination against Women empowers the Committee on the Elimination of Discrimination against Women (CEDAW) to make suggestions and general recommendations based on the examination of reports and information received from States parties. These, as well as comments from States parties, are included in the session reports of the Committee. Suggestions are usually directed at United Nations entities, while general recommendations are addressed to States parties and usually elaborate the Committee's view of the obligations assumed under the Convention<sup>3</sup>. As of 01.01.2018, there are 37 general recommendations all together.

This article focuses on the implementation of general recommendation 19<sup>4</sup> which deals with gender-based violence against women, which is updated by general recommendation No. 35 and general recommendation 36<sup>5</sup> which deals with right of girls and women to education in the Sri Lankan context. Sri Lanka is a state party to the CEDAW which was ratified on 1981. Further, Sri Lanka has also ratified the additional protocol to the CEDAW which it ratified on 2002, which allows the CEDAW committee to receive individual complaints of alleged violations of the rights recognized under the CEDAW by state parties. Sri Lanka has also made a Women' Charter in 1993 to endorsed international standards and to give effect to international obligations under the Convention on the Elimination of all Forms of Discrimination

3UN, 'General Recommendations Adopted by The Committee on The Elimination of Discrimination Against Women' (*Un.org*, 2019) <<http://www.un.org/womenwatch/daw/cedaw/recommendations/index.html>> accessed 01 March 2019.

4UN, 'General Recommendation No. 19 On Gender-Based Violence Against Women' (UN 1992). and UN, 'General Recommendation No. 35 On Gender-Based Violence Against Women, Updating General Recommendation No. 19' (UN 2017).

5UN, 'General recommendation No. 36 (2017) on the right of girls and women to education' (UN 2017).

1Marsha A Freeman, C. M Chinkin and Beate Rudolf, *The UN Convention on The Elimination of All Forms of Discrimination Against Women* (1st edn, Oxford University Press 2013) 1.

2*The United Nations and The Advancement of Women, 1945-1995*, UN Blue Book Series, Vol. VI (Rev edn, 1996) 5.

against Women. Further, Article 12 (2) of the constitution<sup>6</sup> explicitly recognizes the right not to be discriminated against on the basis of gender or sex.

In addition, Article 12(4) provides that, “[n]othing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons.”<sup>7</sup>

## II. AN OVERVIEW OF GENERAL RECOMMENDATION NO. 19 ON GENDER-BASED VIOLENCE AGAINST WOMEN

The general recommendation 19 (GR 19) of 1992 has been expanded by the general recommendation 35 (GR 35) of 2017. The GR deals with the issue of gender-based violence against women. GR 19 was adopted in 1992 and it discusses about the gender-based violence which is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men. Article 1 of CEDAW is broad enough to include gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention<sup>8</sup>. The recommendation finds that some of the traditional attitudes where women are regarded as subordinate to men or as having stereotyped roles aid in the practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision<sup>9</sup>. The impact and effect of such kinds of violence on both the physical and mental integrity of women will most likely deprive them of the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms which would be a contravention of the core elements of CEDAW. Freeman and *et al*<sup>10</sup> observe that, Article 1 of CEDAW discusses about both formal (*de jure*) and substantive (*de facto*) discriminations against women, and in this light of argument, it can be seen that eliminating any gender-based violence against women is important at both the formal and substantive level. This is endorsed in General recommendation No. 28, which states that, ‘the obligations of States are to respect, protect and fulfil women’s rights to non-discrimination and the enjoyment of *de jure* and *de facto* equality.’<sup>11</sup>

6Article 12(2) of the Constitution of Democratic Socialist Republic Sri Lanka states that, “No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds

7Vide Article 12(4) of the Constitution

8Vide UN, ‘General Recommendation No. 19 On Gender-Based Violence Against Women’ (UN 1992).

9Ibid Para 11,

10Marsha A Freeman, C. M Chinkin and Beate Rudolf, *The UN Convention on The Elimination of All Forms of Discrimination Against Women* (1st edn, Oxford University Press 2013) 1.

11 General recommendation No. 28, para. 9. Other human rights treaty bodies also use that typology, including the Committee on Economic, Social and

The GR 19 finds that, **Poverty and unemployment** increase opportunities for **trafficking in women**<sup>12</sup>. In addition to established forms of trafficking there are new forms of sexual exploitation, such as **sex tourism**, the recruitment of domestic labour from developing countries to work in developed countries, and **organized marriages** between women from developing countries and foreign nationals. Poverty and unemployment force many women, including young girls, into **prostitution**. Prostitutes are especially vulnerable to violence because their status, which may be unlawful, tends to marginalize them.

**Equality in employment**<sup>13</sup> can be seriously impaired when women are subjected to gender-specific violence, such as **sexual harassment** in the workplace. It includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. States parties are required by article 12 to take measures to ensure **equal access to health care**<sup>14</sup>. Violence against women puts their health and lives at risk. **Rural women**<sup>15</sup> are at risk of gender-based violence because of traditional attitudes regarding the subordinate role of women that persist in many rural communities. **Compulsory sterilization**<sup>16</sup> or **abortion** adversely affects women’s physical and mental health, and infringes the right of women to decide on the number and spacing of their children. **Family violence** is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes.

GR 35 adopted in 2017 is an expansion of GR 19 discussed above. The general recommendation (GR 35) complements and updates the guidance to States parties set out in general recommendation No. 19 (GR 19). The fact of having to adopt an expansion of GR 19 itself showcase that, gender-based violence against women is a serious concern for the true realization of the respective rights recognized under CEDAW. In GR 35 committee has found that, the *opinio juris* and State practice suggest that the prohibition of gender-based violence against women has evolved into a principle of customary international law<sup>17</sup>. However, the committee has observed that, despite these advances, gender-based violence against women, whether committed by States, intergovernmental organizations or non-State actors, including private persons and armed groups remains pervasive in all countries, with

Cultural Rights, in its general comment No. 12 (1999) on the right to adequate food.

12CEDAW Article 6

13CEDAW Article 11

14CEDAW Article 12

15CEDAW Article 14

16CEDAW Articles 16 and 5

17UN, ‘General Recommendation No. 35 On Gender-Based Violence Against Women, Updating General Recommendation No. 19’ (UN 2017). Para 2.

high levels of impunity. In many States, **legislation addressing gender-based violence**<sup>18</sup> against women is non-existent, inadequate or poorly implemented.

Gender-based violence affects women throughout their life cycle and, accordingly, references to women also include girls. GR 35 states that, Gender-based violence against women is affected and often exacerbated by cultural, economic, ideological, technological, political, religious, social and environmental factors, as evidenced, among other things, in the contexts of displacement, migration, the increased globalization of economic activities, including global supply chains, the extractive and off shoring industry, militarization, foreign occupation, armed conflict, violent extremism and terrorism.

Gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices. (gender sensitive approach in answers)The Committee regards gender-based violence against women as being rooted in gender-related factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour. GR 35 further states that, gender-based violence against women as being rooted in gender-related factors, such as the ideology of men's entitlement and privilege over women, social norms regarding masculinity, and the need to assert male control or power, enforce gender roles or prevent, discourage or punish what is considered to be unacceptable female behaviour.

In the above circumstances which have been the focus of GR 19 and GR 35, this article will discuss on the compatibility of the existing Sri Lankan legal system.

### III. AN OVERVIEW OF GENERAL RECOMMENDATION NO. 36 ON THE RIGHT OF GIRLS AND WOMEN TO EDUCATION

Education plays a pivotal, transformative and empowering role in promoting human rights values and is recognized as the pathway to gender equality and the empowerment of women<sup>19</sup>. Article 10 of CEDAW extensively deals with the right to education. Article 10 focuses on the negative impact of discrimination in the realization of the right to education for women and girls. Education is broadly defined to include primary school, vocational training, and functional literacy programmes<sup>20</sup>. The education of girls and women is considered to be one of the most effective investments for sustainable and inclusive development; however, in 2012, 32

million girls of primary school age around the world were out of school, representing 53 per cent of all out-of-school children, as were 31.6 million adolescent girls (50.2 per cent) of lower secondary school age.<sup>21</sup>

The need to ensure inclusive and quality education for all and promote lifelong learning is a priority of Sustainable Development Goal 4, as contained in General Assembly resolution 70/1, adopted with a view to transforming the world by 2030. However, certain factors disproportionately prevent girls and women from claiming and enjoying their basic human right to education. Such factors include barriers to access for girls and women from **disadvantaged and marginalized** groups, exacerbated by **poverty and economic crises, gender stereotyping in curricula, textbooks and teaching processes, violence against girls and women** in and out of school and structural and **ideological restrictions** to their engagement in **male-dominated academic and vocational fields**.

According to the comments of GR 36, the gap between the legal recognition of the right of girls and women to education remains critical, and the effective implementation of that right calls for further guidance and action on article 10 of the Convention. Since the adoption of the Universal Declaration of Human Rights by the General Assembly in December 1948, education has been acknowledged as a basic human right. In addition to the Universal Declaration of Human Rights, the right to education is enshrined in a number of international and regional<sup>22</sup>legally binding instruments. States parties, therefore, have an obligation to respect, protect and fulfil the right to education, which must be justiciable in national legal systems.

Education that empowers girls and women equips them with capacities to claim and exercise broader socioeconomic, cultural and political rights, on an equal basis with boys and men in their societies. To achieve gender equality all aspects of the education system, laws and policies, educational content, pedagogies and learning environments should be gender sensitive, responsive to the needs of girls and women and transformative for all<sup>23</sup>. GR 36 is grounded in a human rights framework for education, which is focused on three dimensions. The first is the right of access to education; the second, rights within education; and the third, the instrumentalization of education for the enjoyment of all human rights through education. In the above circumstances

21UNESCO Institute for Statistics and United Nations Children's Fund, *Fixing the Broken Promise of Education for All: Findings from the Global Initiative on Out-of-School Children* (2015).

22 Arab Charter on Human Rights, Charter of the Organization of American States, American Declaration of the Rights and Duties of Man, African Charter on Human and Peoples' Rights, African Charter on the Rights and Welfare of the Child, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, first Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms and European Convention on the Legal Status of Migrant Workers.

23UN, 'General recommendation No. 36 (2017) on the right of girls and women to education' (UN 2017). Para 13.

18Ibid Para 7.

19Azza Karam, "Education as the pathway towards gender equality", *UN Chronicle*, vol. L, No. 4 (2013).

20 Marsha A Freeman, C. M Chinkin and Beate Rudolf, *The UN Convention on The Elimination of All Forms of Discrimination Against Women* (1st edn, Oxford University Press 2013) 254.

which have been the focus of GR 36, this article will discuss on the compatibility of the existing Sri Lankan legal system.

#### IV. THE APPLICATION OF GR 19, GR 35 AND GR 36 TO IMPROVE SRI LANKAN HUMAN RIGHTS SITUATION OF WOMEN

##### *General Out Look*

As a state party to the CEDAW convention, Sri Lanka has to some satisfactory extent has tried to make its laws compatible with CEDAW in order to achieve the specific CEDAW objectives. Compared with many other developing countries, social indicators for Sri Lankan women are relatively high<sup>24</sup>. Sri Lanka is also well on its way to achieving the Millennium Development Goals<sup>25</sup>. Aside from high educational and health indicators enjoyed by Sri Lankan women due mainly to an extensive welfare system adopted even before independence, women also won the right to vote way back in 1931 when the British colonial authorities introduced universal adult franchise despite sustained opposition of conservative local politicians. Women's entry into and role in public life has increased over the years. Women have also gained entry into many professions in a significant way<sup>26</sup>. Sri Lanka submitted its eight periodic report in 2015 and it sets out developments, achievements and progress relevant to the period from 2011 to 2014. The report points out that, Sri Lanka is committed to taking consistent and sustainable pro -equality and pro-empowerment policies learning from experience and best practices elsewhere. As a result, the country is making progress in achieving equality for women in all aspects including their empowerment, equal participation in the labour force and increased engagement in decision making processes. Sri Lanka is one of the few countries in Asia that has a sex ratio favourable to women.

The state report indicates that as Sri Lanka is following a dualistic approach with regard to International Law, and that it will only endeavour to incorporate provisions to the domestic legal system where there is a gap. Further, the report states that, it is not mandatory to have a single piece of legislation to incorporate Convention obligations into the domestic legal system as there are several legislations which are in place that has a cumulative effect of implementing the CEDAW obligations<sup>27</sup>. The State report finds that, provisions in several statutes including, the 1978 Democratic Socialist Republic Constitution of Sri Lanka, Penal Code Ordinance No 02 of 1883, Citizenship Act No 18 of 1948, Human Rights Commission of Sri Lanka Act No 21 of 1996, Prevention of

Domestic Violence Act No 34 of 2005 are sufficient to give full effect to Sri Lanka's obligations under the CEDAW in spite not having a CEDAW enabling legislation.

#### V. THE COMPATIBILITY OF THE SRI LANKAN HUMAN RIGHTS SITUATION OF WOMEN WITH REGARD TO CONTENTS OF GR 19 AND GR 35 OF CEDAW

Both the GR 19 and 35 deals with violence against women. According to the broader definition given in Article 1 of CEDAW, violence that is being subjected to a woman on the basis of her being a woman and that affects her rights in a disproportionate manner. GR 35 finds that, gender-based violence against women is one of the fundamental social, political and economic means by which the subordinate position of women with respect to men and their stereotyped roles are perpetuated. In considering the legal framework available for the protection of women from gender-based violence, before the submission of the 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> combined reports to CEDAW in 2010, one of the concluding observations that was made regarding the country was that, it should Ensure the implementation of legal and other measures to stop violence against women and to provide women victims of violence with accessible and effective means of redress and protection. This recommendation was given in light with GR 19.<sup>28</sup>In response to this observation, Sri Lanka has mentioned the implementation of The Prevention of Domestic Violence Act, No. 34 of 2005. The Act, in its preamble declares that, it is implemented to provide for the prevention of any act of domestic violence. Domestic violence is defined in the widest terms to include physical abuse and emotional abuse. This Act provides for the issue of Protection Orders (POs) where acts of domestic violence has been committed or is envisaged. The basic principle of the Act is to afford 'protection to victims of domestic violence through the issue of POs by court. It provides for a civil process which enables a possible victim to secure speedy court intervention to restrain an aggressor, and prevent an act of violence within the home environment and to ensure the safety of the victim. The state report submitted to CEDAW in 2015 finds that, all acts of violence against women are criminalized. Sri Lanka's legal regime in this regard is comprehensive. The implementation mechanisms have also been strengthened with a network of State Institutions that reach the grass roots level vested with tasks to address violence issues.<sup>29</sup> However, it must be noted that, the Prevention of Domestic Violence Act, No. 34 of 2005 is not sufficient to stop all kinds of violence against women as it is restricted in application and only covers domestic violence which normally occurs in the household. The concluding observations made in 2011 finds that, despite the adoption of

24This includes, literacy rate, life expectancy, per capita income, employment rate and etc.

25Malathi de Alwis and Kumari Jayawardena, *Castling Pearls* (Social Scientists' Association, Colombo 2001)

26Deepika Udagama, Implementation of the UN Convention on Women (CEDAW) in Sri Lanka: A Country Study, 24 Sri Lanka J. Int'l L. 53 (2012-2015)

27Government of Sri Lanka, 'Consideration of Reports Submitted by States Parties Under Article 18 Of the Convention Eighth Periodic Report ff States Parties Due In 2015' (UN 2015).

28Vide Government of Sri Lanka, 'Consideration of Reports Submitted by States Parties Under Article 18 Of the Convention Combined fifth, sixth and seventh periodic reports of States Parties 2010' (UN 2010).

29Vide Government of Sri Lanka, 'Consideration of Reports Submitted by States Parties Under Article 18 Of the Convention Eighth Periodic Report ff States Parties Due In 2015' (UN 2015).

the Prevention of Domestic Violence Act, there are significant delays before cases are processed under this Act. It appears from the constructive dialogue that most cases are dealt with through police mediation, and that family relations prevail over protection of women and suppression of violence against women<sup>30</sup>. In the concluding observations made in 2017, the committee finds that, in cases of domestic violence, victims are required to participate in mediation as a requisite for pursuing a case in court, which results in women withdrawing their complaints due to intimidation<sup>31</sup>. Therefore, in protecting violence against women in other fields would require other initiatives to be taken.

GR 19 specifically finds that violence against women are committed in the workplace and that **sexual harassment** at the work place is a serious issue that needs to be addressed. It observes that, equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace. In Sri Lanka, sexual harassment was criminalized as an offence under the Penal Code in 1995. Section 345 of the penal code imposes a maximum of 5 years imprisonment and explanation 1 attached to that section makes it clear that harassment at the work place even in form of unwanted sexual advancements are to be penalized. The 2015 state report reveals that there have been several initiatives that have been taken to prevent sexual harassments and the violence that results from such kind of harassments. The initiative in particular include, establishing committees to address issues related to sexual harassment, bringing about policies and a code of conduct and guidelines for the prevention of and to respond to sexual harassment at the workplace and conducting awareness raising programmes on prevention of sexual harassment at the workplace<sup>32</sup>. These initiatives are inline with the Article 11 of CEDAW which address comprehensively on the obligations of State parties to eliminate discrimination against women in employment and occupation, which are key to sustainable development and to the human dignity and personality of the individual. In the recent case of *Sarath de Abrew v. Chanaka Iddamalgoda*<sup>33</sup> the court found that even a domestic worker could be subjected to harassment at the work place when she is looking after the household. However, in concluding observations made in 2017, the committee has found that, the lack of disaggregated data on sexual harassment in the workplace and on measures taken to address such cases is a serious concern which needs prompt actions to be taken in order to protect women from sexual harassment.

As GR 19 points out issues such as **trafficking in women, prostitution and sex tourism** has a direct link with violence against women. This is also pointed out under the GR 35 which observes that, because women experience varying and

intersecting forms of discrimination, which have an aggravating negative impact, the Committee acknowledges that gender-based violence may affect some women to different degrees, or in different ways, meaning that appropriate legal and policy responses are needed. In addressing the issue of trafficking, by the Penal Code (Amendment) Act, No. 16 of 2006, a new definition of the offence of Trafficking of persons was introduced to the Penal Code under section 360C. The scope of the offence of trafficking has been expanded to conform to the internationally accepted definition as contained in the United Nations Convention Against Transnational Organized Crime in 2000 and its Optional Protocol<sup>34</sup>. Trafficking of persons for forced or compulsory labour, for the removal of organs, for prostitution, for other forms of sexual exploitation or for the commission of any other offence is covered by the new definition. Since 2009, 12 indictments have been served in respect of the offence of trafficking and 03 convictions have been secured. There were no acquittals during this period.<sup>35</sup> The international legal definition of trafficking has thus evolved significantly to include trafficking of women, men and children, for the purpose of placing them into a wide range of exploitative labour practices beyond forced prostitution. The CEDAW committee while commenting on Article 6 which deals with trafficking and prostitution, in its consideration of State parties' reports have always always called upon them to protect the women, men and children from such unfortunate situations and the Sri Lankan experience can be appreciated for its effort. However, there are areas in which significant improvements will have to be made. Specially the law enforcement officers will have to be better educated in handling these situations and there have been many instances where law enforcement offices have inflicted violence on women who have been caught in prostitution. The committee has made special recommendations to repeal the Vagrants Ordinance No 04 of 1841 and, in the interim, impose penalties on police officers who misuse the Act to harass women in prostitution as well as sexual minority women, and ensure that victims are provided with gender-sensitive protection and support, including exit programmes for women wishing to leave prostitution<sup>36</sup>.

Equal access to health care has also been found as an area where there is a connection with the violence against women. GR 19 finds that, equal access to health care. Violence against women puts their health and lives at risk. It further observes that, traditional practices perpetuated by culture and tradition that are harmful to the health of women and children. These practices include dietary restrictions for pregnant women, preference for male children and female circumcision or

30 CEDAW/C/LKA/CO/7

31 CEDAW/C/LKA/CO/8

32 *Vide* Government of Sri Lanka, 'Consideration of Reports Submitted by States Parties Under Article 18 Of the Convention Eighth Periodic Report ff States Parties Due In 2015' (UN 2015). Para 77-79.

33 S.C. F/R No. 424/2015

34 Government of Sri Lanka, 'Consideration of Reports Submitted by States Parties Under Article 18 Of the Convention Combined fifth, sixth and seventh periodic reports of States Parties 2010' (UN 2010).

35 *Vide* Government of Sri Lanka, 'Consideration of Reports Submitted by States Parties Under Article 18 Of the Convention Eighth Periodic Report ff States Parties Due In 2015' (UN 2015).

36 CEDAW/C/LKA/CO/8

genital mutilation<sup>37</sup>. Regarding the health care sector in general, Sri Lanka has performed well compared to its regional counterparts. All the health care indicators from life expectancy to mortality rates are at an acceptable level. The free health care system has been appreciated on numerous occasions. Factors such as socio-economic development, free education and related high literacy rate, free health services, control of communicable diseases and well-organized primary health care systems have been attributed to this success.<sup>38</sup> The concluding observations made in 2017 appreciate the work done related to health and its related services so far. However, it recommends that, the availability and quality of health care services for women in conflict affected areas and the plantation sector, as well as the existence of programmes and support to address the psycho-social trauma of war-affected women should be looked into. Further, issues such as, availability and accessibility of sexual health information that takes into account the needs of all women and girls and lack of data on prevalence of HIV/AIDS in the State party, including among women and girls, and the existence of programmes for early prevention and early detection of HIV/AIDS are also requested to be addressed.

In addition to the above, issues related to compulsory sterilization or abortion are also mentioned in GR 19. It points out that, compulsory sterilization or abortion adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children. In the Sri Lankan context, there is no requirement of compulsory sterilization. Instead the government has encouraged upbringing of many children as possible and has even implemented programmes to incentivised families to have more children. Currently the ministry of Women and Child Affairs and Dry Zone Development is carrying on with the programme which started in 2015, where every pregnant mother registered with Medical Officer of Health Office was provided this nutrition allowance in the form of a nutrition pack worth Rs 20,000 consisting of all nutrients required by pregnant or lactating mothers for 10 months. Regarding the laws relating to abortions, the penal code has a blanket prohibition of abortions and such are only allowed to protect the life of the mother. The 2015 state report has mentioned that, the Law Commission has formulated a comprehensive draft Bill recommending the liberalization of the current strict approach contained in the Penal Code. However, there is no such Bill presented for consideration even at the time of preparing this article. Concluding observations made in 2011 finds that, it is imperative to take measures to ensure that women do not seek unsafe medical procedures, such as illegal abortion, because of lack of appropriate services in regard to fertility control. Further, the concluding observations of 2017

finds that, it is necessary to legalize abortion not only in cases in which the life of the pregnant woman is threatened, but also in all cases of rape, incest and severe fetal impairment, and to decriminalize abortion in all other cases and to remove barriers to women's access safe abortion services, such as the requirement of a judicial inquiry as to whether there should be a medical termination of the pregnancy and the need for a medical certificate authorizing an abortion.

In light of the above it can be seen that, as with regard to making the Sri Lankan law compatible with CEDAW in general and in particular with the general recommendations regarding violence against women by GR 19 and GR 35, the existing legal system is in need of further development to secure the rights of non-discrimination in the field of stopping violence against women.

#### VI. THE COMPATIBILITY OF THE SRI LANKAN HUMAN RIGHTS SITUATION OF WOMEN WITH REGARD TO CONTENTS OF GR 36 OF CEDAW

Article 10 of CEDAW is concerned with the education and it focuses on the negative impact of discrimination on the realization of the right to education for women and girls. The right to education has been recognized within international and regional human rights instruments. The UNESCO Convention against Discrimination in Education is particularly important in this regard. The convention finds that, it is not only about preventing and eradicating discrimination against but also about facilitating the substantive realization of education rights for all. In the Education 2030 Framework for Action, adopted on 4 November 2015 by the General Conference of UNESCO, and considered by the global education community as complementary to the Sustainable Development Goals, it is acknowledged that gender equality is inextricably linked to the right to education for all and that its achievement requires taking a rights-based approach, in order to ensure that all learners not only gain access to and complete education cycles, but are empowered equally in and through education.<sup>39</sup>

State report submitted by Sri Lanka in 2011 states that, Sri Lanka has incorporated the Millennium Development Goals (MDG's) into the national development agenda and is on track in reaching most of the indicators while some have been already achieved at the national level and that among the notable achievements are those relating to equitable primary education. The report also finds that, age-old prejudices are fast eroding with women acquiring higher levels of education and becoming partners in the development process. Sri Lanka's commitment since 1945 to free education at primary, secondary and tertiary levels was reiterated in the policy statement of the new Government that came into power in December 2005. The investment in education has, as its ultimate objective, the increase in national income, reduction

<sup>37</sup>Vide UN, 'General Recommendation No. 19 On Gender-Based Violence Against Women' (UN 1992).

<sup>38</sup> Government of Sri Lanka, 'Consideration of Reports Submitted by States Parties Under Article 18 Of the Convention Eighth Periodic Report ff States Parties Due In 2015' (UN 2015). Para 83.

<sup>39</sup>Vide UN, 'General recommendation No. 36 (2017) on the right of girls and women to education' (UN 2017). Para 13.

of poverty and the promotion of human development. In Sri Lanka, **education is viewed as a basic right** and is supported by a Government policy that has made schooling compulsory for those between 5 – 14 years.

The report finds that, girls tend to perform better than boys at the Grade 5 scholarship examination and other Public examinations. This is a good indication pointing that, at least in the primary level of education girls are not being discriminated based on gender. The report also finds that, even with regard to the admission to universities, girls have done better than the boys apart from the science and maths streams. Even with regard to vocational and technical education, there are many institutions like NAIT and Sri Lanka Youth, where girls are able to pursue professional courses which would enable them to better chance of employment. However, it is important to note that, the right to free education is not recognized as a fundamental right and it is only recognized under the directive principles. Article 27 (2) (h) of the Constitution pertaining to directive principles declares that, the government gives assurance to all persons of the right to universal and equal access to education at all levels. The problem with the directive principles lies in the fact that, directive principles are not justiciable as for the Article 29 meaning that, no person can challenge to vindicate the right to education as a right itself. This is something which is incompatible with the GR 36 which clearly reiterate the importance of having the right to education as a justiciable right. GR 36 observes that, as the right to education is globally recognized, States parties, therefore, have an obligation to respect, protect and fulfil the right to education, which must be justiciable in national legal systems.<sup>40</sup> Granting and protecting the right to education and preventing discrimination in education on the bases of gender is an essential requirement to realize and enjoy most of the other human rights such as employment, leisure, social and economic conditions and the social recognition.

As a human right, education enhances the enjoyment of other human rights and freedoms, yields significant development benefits, facilitates gender equality and promotes peace. It also reduces poverty, boosts economic growth and increases income, increases the chances of having a healthy life, reduces child marriage and maternal deaths and provides individuals with the tools to combat diseases.

2015 state report states that, Sri Lanka's most significant achievements have been in the health and education sectors. Due to consistent policies upholding free education and compulsory enrolment in school followed by successive government, women achieve a high level of education. Report points out that according to the records of 2014, 99.7% of the children are having primary education and all of the students who enrol into grade 1 qualifies to grade 5. It also states that,

consistent education policies that have provided freedom of choice and opportunities to women equal with those available to men have paved the way for such achievements. However, in the concluding observations made in 2011, the committee has raised concerns over the persistence of gender role stereotyping in the educational system, resulting in girls' concentration in lower-skill areas of vocational and technical education, as well as the lack of action of the State party to combat the persistent underrepresentation of women in the high education technical and engineering fields<sup>41</sup>. Therefore, the committee has urged the state party to, strengthen its efforts to achieve universal provision of quality education for girls at each level of the education system and from each ethnic group, continue its efforts to overcome gender role stereotyping in the formal education and elaborate a policy aimed at promoting the access of girls to vocational and technical education and women in higher education to science, engineering and other technical disciplines<sup>42</sup>.

In the concluding observations made in 2017, the committee has raised concerns on, low education level among women from low-income families and, in particular from ethnic minority groups, schools located nearby fisheries and plantation in the Northern and Eastern provinces, in poor urban and rural areas, among children of migrant workers whose parents work abroad, girls from women heads of households, victims of child and early marriage and girls with disabilities, absence of programmes to provide education as a means of reparation and reconciliation, protect girls in the conflict area from harassment, abuse and violence in schools, underrepresentation of women and girls in STEM (Science, Technology, Engineering and Mathematics) subjects in tertiary education and women teachers and researchers, low number of vocational schools with adequate infrastructures for girls, especially in conflict-affected areas and early pregnancy which remains a cause for girls' dropout from school.<sup>43</sup>

In order to negate the concerns shown above the committee has made recommendations to, use temporary special measures aimed at eliminating disparities in access to quality education, ensure the implementation, monitoring, and evaluation of human rights and peace education in the curricula at all levels of education, combat discriminatory gender stereotypes in education and mainstream gender into national education policies including the Education Sector Development Framework and Programme and integrate gender equality education into school curricula at the primary level, develop and expand gender-sensitive programmes including temporary special measures in high technological skills, within the Technical Education and Vocational Training sector, to orient women and girls towards technical fields of studies and career paths, with a view to qualifying them to access employment within such sectors and Institutionalize age-appropriate comprehensive education on

<sup>40</sup>Vide UN, 'General recommendation No. 36 (2017) on the right of girls and women to education' (UN 2017). Para 13.

<sup>41</sup> CEDAW/C/LKA/CO/7

<sup>42</sup>*Ibid*

<sup>43</sup> CEDAW/C/LKA/CO/8

sexual and reproductive health and rights, addressing responsible sexual behaviour with special attention to the prevention of early pregnancy.<sup>44</sup>

In the above circumstances it can be seen that, while in general the right to education and the elimination of discrimination against women has been achieved with regard to primary education, when it comes to higher education and vocational training, due to the stereotypes that still remains with the society women have been discriminated against in the field of education. This has been the case in engineering and technical subjects which offers greater opportunities in employment which would be imperative for women to be financially independent. Therefore, it becomes important to implement in particular the recommendations made in the 2017 concluding observations to make parity with the recommendations made at GR 36 regarding right to education.

## VII. CONCLUSION

CEDA Was the only convention which is specifically dedicated to the protection of discrimination has made a positive impact world over regarding changing the attitude towards women and their rights. The concept of non-discrimination does not end at a de jure level, that it to say non discrimination is not the only thing guarded against, instead at the substantive or the de jure level protections are also afforded under the convention. GR 19, 35 and GR 36 are prime examples for the de facto or substantive application of the convention. The rights are not just to stop violence against women or just not to discriminate against them. Instead the rights are much broader, the rights are there for the achievement of women all the things which are achievable to them in parity with their male counterparts. For an example, right to education and non-discrimination in education in itself is not enough to make women come par with men, there is a need of affirmative actions and temporary measures that have to be made to bring about parity. General recommendations are made with this specific objective in mind and to a great extent those objectives have been achieved. However, there is always the possibility and the opportunity of moving forward.

When one considers the situation regarding GR 19 and GR 35 and how the recommendations made therein could help to advance the status of women, it becomes clear that the social stigma and the stereotypes are the major concerns in eradicating violence against women. The cultural context teaches or inculcates in women the need to be silent suffers. As long as one is not able to abolish the though process that, as a woman one must get accustomed to been threaten with or inflicted with violence, the statutes themselves would not be sufficient to get rid of the violence against women. Regarding cases concerning domestic. It is important to provide after support to women who are victims of violence. If they are again required to go back to the same place where they were inflicted with violence, then becoming heroic for a moment

would not work as she would have to tolerate even more. The stereotypes and the social stigma attached to a single woman who has deserted her husband is very much difficult to bear. Further, due to the subordination of women by men, in places of education and employment, women would be reluctant to come out and make their grievances. The system should be developed to protect those who make such complaints and the implementation of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 can be appreciated as a step forward in protecting women as well. However, it remains pivotal that, concluding observations be given a good look at and the necessary changes be made accordingly regarding the protection of woman from acts or threats of violence.

Right to education enunciated in GR 36 is again an important aspect with regards to empowering women. Statistics on education and educational levels are satisfactory with regard to statistics from the other parts of the region. One important thing that would have to be seriously looked at would be the justiciability of the right to education as there is no fundamental right regarding the right to education. In the sub-committee report<sup>45</sup> on the fundamental rights for the implementing of a new Constitution, the right to education is recognized as a separate fundamental right and it makes compulsory to have primary and secondary education and that shall be the responsibility of the government to provide for that. In the case of tertiary education, it shall be provided free by the State to all on the basis of capacity and equitable opportunity, which shall be progressively realized.

In general, the rights of women are protected to an acceptable level when compared to other South Asian countries. However, comparisons always depend on with whom you compare with. Therefore, the standards should not only be comparatively good, but they should be actually good. In order to make this actually good for women it becomes imperative to further develop our laws according to GR 19. 35 and 36.

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<sup>45</sup>Available at <https://english.constitutionalassembly.lk/images/pdf/reports2018/Fundamenta%20rights%20report%20English%20final.pdf>

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