

SUDU:

**A Reflection on the
Legal Status of Foreign
Spouses in Sri Lanka**

Rossana Favero-Karunaratna

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'A foreign alien has no right, no legitimate expectation of being allowed to stay. He can be refused without reasons given and without hearing; once his time has expired he has to go.'¹

¹ Laub vs. Attorney General and another, Sri Lanka Law Reports (1995) 2 Sri L.R.

PREFACE

While writing this paper it struck me that I have not been the only one in the family, as far as I know, that left her own country as a consequence of marriage to settle down far away, in another continent with hopes and dreams. I am not the first one who married a foreigner, and coincidentally, a man from Asia.

I was born in Lima, capital of Peru, to parents both Peruvians. In the case of my father we can trace the family line back to a certain extent. His father was born to Italian parents who came to Peru by ship during the last period of the 1800s. They were attracted by the dream of a better and prosperous life and decided to settle down in Peru, although most of the Italian immigrants continued their trip up to Argentina. Years later my grandfather had to give up his Italian nationality due to lack of employment opportunities for Germans and Italians during the period of World War II.

My father's mother was born to a lady who came from Scottish ancestors, but who her husband was (my great grandfather) was totally unknown to us! My generation and my father's have always demanded to know who he was and to see his photograph. For some reason that photograph was removed from the family album. The only fact we have is that he came from Asia (China or the Philippines) and worked in one of the plantations located in the south of the country. Whatever the explanation, nothing can justify taking him away from our past.

When I decided to get married and settle down in Sri Lanka, some friends and relatives expressed different fears. Some of them were related to my going to a far-away country, different in culture and religion. The issue of not getting married to a 'white man' was

According to Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka (20-12-01), the new Government allocated the functions related to the Department of Immigration and Emigration and Citizenship to the newly created Ministry of Interior. The Ministry of Defence is no longer in charge of these matters. The chapter related to legal aspects of immigration regarding issuing of Residence Visas and application for Citizenship must be read taking this amendment into consideration.

also there. On my husband's side, although his parents never interfered and always supported us, others did not like the idea of seeing him marrying a divorced woman with a child, even though he had also been married before. They would (not his parents) have preferred to see us leaving Sri Lanka to live in another country. This, I understood, was to maintain their social status of not having a member of the family married to a divorced foreigner!

THOUSANDS OF STORIES ...

The experiences of those who have contracted marriages to foreigners are quite illuminating, and to properly understand and evaluate these experiences it would be desirable to quote some of these in verbatim. Out of thousands of such narrations, the following few would give an insight to the problems that affect parties to such marriages.

Mary Yasuda, an American married to a Japanese, makes a simple but deep analysis of marriage between two foreigners. Her simple and logical reasoning is an apt lesson to any two people who seek to join themselves in marriage.

'I think that international marriage is wonderful. It is richer and more colorful and more interesting than marriage between two people of the same racial and cultural background. I think that international marriage is the way to eliminate prejudices of all kinds (racial, ethnic, cultural, national, sexual etc.). For young (and not so young) people who are considering international marriage, you need to think very deeply about what you are really committing yourself to, because these marriages are many times more difficult than current mainstream marriages.'

'As you probably know, there are immigration troubles due to national barriers of all kinds. There are also social troubles that might not be so apparent but which have deep impact on our children who must grow up with them. If your marriage is based on assuming that your ideas about family life and the roles of family members are the same, you might find yourself very hurt or misunderstood or even wind up with a broken marriage. If something happens and someone becomes handicapped or severely disfigured or the like, how will your marriage survive? If you live in a distant country rather than your native country and something happens to your beloved spouse and you are left alone to raise your family, how will you manage? Did you know that in some countries, the spouse who is a foreigner might not be legally entitled to benefit from life or health insurance or inheritances? From age 12, kids' travel fares are the same as adult fares, so international travel becomes very expensive. All of these

practical things can have tremendous impact on your family life, your marriage, your sanity. If your marriage is based on truly deep understanding and total commitment on both sides, you can weather the difficulties ahead, and you will experience a wealth and depth of joy, fulfillment and stimulation that current mainstream marriages don't ever taste.'

'I experienced, in the area of the country where I live, a lot of kindness from those around me and experienced being 'popular' because I am different. But my kids' experience with their peers and teachers has been different from my experiences. Externally things appeared to be smooth and they appeared to be well accepted as part of their community, but in reality, below the surface, things were and even now are quite different. In my area, people are warm and kind to me, but there is a limit to the depth of human contact, and understanding can be very superficial and based on stereotyped concepts about what and who I am'.

Ana, a Peruvian married to an American citizen relates her experience as follows:

'I met my husband, a Jewish-American citizen, when we were both pursuing post-graduate studies in New Hampshire back in 1983. After an eighteen-month courtship, we decided to get married. I don't think there was any question as to where we would live. Peru was a developing nation, which couldn't offer us the opportunities we would have in the United States. Besides, I was fluent in English and very familiar with the American culture, whereas my husband could barely say three words in Spanish. The most difficult part of leaving Peru for good was being away from my family. I was very homesick at first, but with time, I began to like my life in the U.S. My husband's family was very nice to me, and even though we did not have too many friends, we were very happy together. The issue of religion did not arise because neither of us practiced our religion by going to church or the temple. We each

prayed silently as we had done before we met. However, when our children were born (now we have three), we had to decide in what religion they would be raised. I told my husband that as long as my children believed in God, I thought things would turn out O.K'.

Before committing themselves, some people would like to know what they get into, especially with regard to the religious and cultural differences. A Latin American woman who was planning to marry a man from a Muslim country wanted 'to know about the legal situation for women who are not Muslims and do not intend to convert in the future'.

Sometimes it may be language that creates misunderstanding. A Peruvian woman working in Hong Kong met a Sri Lankan. They decided to get married and settle down in Sri Lanka. This is what she has to say:

'I talk in Spanish to my daughter. She is a baby and cannot understand but I talk to her so she can get used to it and speak later...I can't understand Sinhala, but I have learned to say -you don't know!! (Oya danne ne!). One thing is that I will never call my daughter Putha!² There was a lot of confusion in the hospital where I delivered my baby. They could not understand me and I could not understand what they were saying...my husband does not want me to go out without him...'

The procedure adopted by countries may vex the foreign spouse. A Swiss woman married to a Sri Lankan who has been residing here for over 25 years is just tired of the problems that she has to face year in and year out. In her own words:

'The problem is that there is no such a thing as a permanent residence visa here. Therefore every year we

² 'Putha' in Sinhala means son but sometimes it is used to address even daughters. In Spanish the sound suggests the word 'puta' which means, 'Bitch'!

have to go to the immigration authorities and I have been married for more than 25 years. Our daughters have double nationality, so it is OK for them. In relation to me I am just tired of all this procedure.'

Another aspect is that of the children born of international marriages. The following was published in the People's Forum/Letters to the Editor, *Sunday Times* of January 28th, 2001.

'I am a Sri Lankan woman who is married to an Indian. My husband, who has been working in Sri Lanka for over five years has a residence visa obtained by the company. We had a baby girl a month ago in Sri Lanka and I would like to get the following information:

- (1) Can my husband get Sri Lankan citizenship or dual citizenship?
- (2) Should my daughter obtain a Sri Lankan or Indian passport?

The Controller of Immigration and Emigration replied that the husband cannot obtain Sri Lankan citizenship or dual citizenship, and that the daughter would have to obtain an Indian passport since her father is an Indian citizen.

MIGRATION: INTERNATIONAL PERSPECTIVE

Who is an 'alien'? If we look for the common definition of the world 'alien', the term refers to a foreigner, the one who is not naturalized as a citizen of the country where he/she is living.

Migration involves two countries: the country of origin and the 'host' country, so the policy involved will also be constructed according to the relation between the states regarding social and economical issues, security and defense, etc.

Even though migration is now a massive world phenomenon, there are still many problems migrants face, whether in the case of a forced or a free migration, a labor migration or a migration caused by marriage. Voices are heard to claim discrimination, caused by either societal attitudes or legal systems. In developed countries immigrants

from developing countries will be blamed for the existence of certain crimes in the host countries, and in some cases foreign spouses will face abuses perpetrated by their husbands.³ On the other hand, host developing countries will also blame immigrants from developed countries for the abuse of their nationals or for the cultural decay in their societies, such as occurs in Eastern countries in relation to the West.

Recently, 'The Economist' published a note regarding 'mixed marriages' in the UAE. the cases of locals married to foreigners. The UAE Marriage Fund, a government-financed group has declared that mixed marriages, especially when they involve non-Muslims, threaten social stability. They claim that 28% of the country's one million people are married to foreigners, and that 79 % of the men who divorce local women marry a foreign one. It was also stated that in the future foreign women under 40 years would not receive a visa unless they travelled with a male relation. Jamal Al Bah⁴ declared that these marriages led to drug abuse, high divorce rates and loss of the country's heritage, in addition to creating an excess of local spinsters.⁵

Whether 'mixed marriages' are socially accepted or not, every society has its own stereotypes, and in Sri Lanka, the 'Sudda'⁶ will have to deal especially with stereotypes regarding sexual conduct. Male foreigners are sometimes depicted as sexual abusers⁷ while female foreigners are depicted as 'easy' regarding their sexual

³ Buklod Kababaihang Filipino is a women's organization based in Australia committed to eliminate abuses perpetrated against Filipino wives. Violence is exercised in many ways. One of the cases related to the prohibition on cooking their national food or maintaining their cultural habits. One cultural myth about Filipinos is that 'they are lucky to be here'.

⁴ Jamal Al Bah directs the Marriage Fund which was started in 1992 with a donation of US \$ 440 million from President Zayed bin al-Nahayan.

⁵ 'Marriage and Divorce, Emirates style', 'the Economist' January 28th, 2001, p. 48.

⁶ 'Sudda' is the common term used by the people to identify a foreigner, specially a westerner. It means 'white.' A white woman is called 'Suddi.'

⁷ Recently there have been many reports of child abuse attributed to foreigners from Europe.

conduct.⁸ The media has also been keen in disseminating news regarding businesses handled by foreigners that are used for other purposes⁹. 'There are other cases where foreigners have come to Sri Lanka to get involved in illegal and immoral activities like pornography and child prostitution.'¹⁰

The recent developments in the field of communication technology have brought easy and quick access to information. Nowadays information about migrating to developed countries, such as the United States of America, is available on the Internet. This is mainly to promote legal immigrations and to gradually prevent and eliminate illegal ones. The American Government allows the entrance of 800,000 legal immigrants to its territory annually and provides all sorts of facilities for applicants, including free lawyers through the Net!¹¹ In the event that an American national wants to get his/her future spouse to the country, there is also a form available in the Internet called 'American Citizen-Foreign National marriages' with two possibilities available: the fiancé visa and the spouse visa. In many cases the first one implies a shorter procedure than the second one. In the first case the wedding must occur within three months of the arrival of the fiancé/e.¹²

⁸ See Nilsen Jan v. The State, C.A. 26/99, H.C.Negombo 232/99 where Justice P.H.K.Kulatilaka held '...that the learned trial Judge had failed to exercise that degree of moderation and restraint which one expects of a Judge' He referred to the expressions of passion such as 'little witness', 'infant' when referring to Indika Prasad and 'foreigner', 'wicked foreigner', 'white man' while referring to the accused-appellant'.

⁹ Recently concern has been expressed with regard to the number of Chinese 'Medical Clinics' that are operating in Sri Lanka.

¹⁰ M.B.Bambarawana, Controller of Immigration and Emigration, in 'Marriages of Inconvenience: Right Man, Wrong Country', Daily Mirror, October 23rd, 2000.

¹¹ See 'Oportunidad para los inmigrantes', www.elcomercioperu.com/ccenre/Html/2000-09-22/EcEnReArticu0063.html

¹² See, American Citizen-Foreign National marriage, USA Department of State, Bureau of Consular Affairs, Visa Procedures.

An immigration policy must take into account the size and ratio of increase of the local population, the labour market and the social cost involved. It must also take into account the different kinds of migration, their statistics and adopt different policies towards each of them, under a national immigration policy.

Latin America, for example, is a region where migration played a very important role for economic development in countries like Argentina, Chile and Peru, although promoting immigration and settlement at the beginning of the last century, were not so successful due to the lack of planning, of proper expertise and geographical difficulties of the country itself. Lack of proper infrastructure was a problem difficult to overcome.

Presently, migration involving neighboring countries is very intense, but lack of statistics in this regard is a serious problem. These migrations are not planned as they respond to political instability and economic situation of the countries of origin. Most of the people involved do not have proper expertise and take 'inferior jobs' discarded by nationals of the host country. After independence of these countries, female and male aliens performed those jobs, as the locals did not want to be employed in such menial occupations. The situation now is that immigrants will perform whatever occupation locals in other countries will do because of the need to survive.¹³ Unfortunately the data available fail to indicate the marital status of the immigrants at their arrival and after or whether they got married to locals.

However, in some cases it is possible to find information on the numbers of nationals married to foreign citizens, as in the case of Singapore (see table).

¹³ Peruvian Authorities have declared that Peruvians leave mainly to find employment abroad. During the last period of Alberto Fujimori's Government, due to a strong recession in the country, there has been a high flow of Peruvians, specially women, going to work as domestic servants in Chile, with social and cultural repercussions as it has become a part of Chilean life to employ Peruvians as domestic servants as 'Latinos' mostly handle these jobs in the United States of America.

Singaporeans with foreign spouses (Years 1997 and 1998)		
Brides by country	1997	1998
Malaysia	1615	1649
Indonesia	647	958
China	820	808
Thailand	232	331
Philippines	200	178
India	74	68
Taiwan	54	51
Japan	31	48
South Korea	12	15
Hong Kong	25	0
Asia-others	48	84
Sri Lanka	0	5
Brunei	1	2
Pakistan	2	3
Africa	1	1
Bangladesh	0	1
Australia	15	21

The list includes USA (12,12), South America (1,4), Europe (12,8) among other countries.¹⁴

The trend of migration generally involved entire families, or at least husband and wife. In many cases aliens continued marrying their nationals as a mechanism to preserve their cultural identity.

A study undertaken by the Population Register Centre of the foreign citizens living in Finland as at 31 July 1999 makes interesting reading with regard to the nationality of migrants and the percentage of male and female migrants. However, this study fails to disclose whether there have been marriages between the migrants and the

¹⁴ See: www.filmo.com/sgspouse.htm

locals, nor does it indicate the employment opportunities the migrants have received. As a percentage the female migration as at 31 July 1999 was 49.5, which is considered very high as compared with the earlier trends, or with the normal trends that prevail in migrations. It has been customary that the men migrate first and, if they are married, bring their families later to live in the host country¹⁵.

In the case of Sri Lanka, I came across an interesting testimony regarding the union of a British planter and a local woman. I imagine there must be many cases like this, and although it is not my intention to cover these stories here, presumably these experiences have created a culture of 'breaking silence'; they raise the problems faced by women and their children who were in many cases brought up isolated from the local culture and religion and the lives of their mothers.

'The mothers were sometimes cared for and looked after by their children like queens, with great love and respect. But the casual liaisons? The woman would come to the Big Bungalow but will not remain there all the time. They would return to their own lives, accepted by their own people as if it had been the duty of these women to serve the grand seigneurs, the colonizer, the man they co-habited with. No written record. My father had not wanted to share his country with us, but I would make my own discoveries. Marriage brought acceptance for me. I was the wife; my mother the concubine'.¹⁶

On these issues, Kumari Jayawardena¹⁷ mentions that 'while European men had liaisons with local women, by the early 20th century these were strongly discouraged and in the case of civil servants, actually prohibited in 1909 by circulars from the Colonial Office.

White women were considered the guardians of the purity of the race, and those who did not conform to this image were therefore

¹⁵ For further information visit http://www.utu.fi/erill/instmigr/eng/e_19c.htm

¹⁶ See 'The Concubines', article written by Jean Arasanayagam, in 'Voice of Women', April 2000, Sri Lanka.

¹⁷ Read, Jayawardena, Kumari 'The White Woman's Other Burden. Western Women and South Asia during the British Rule', Routledge Ed., London 1995

a threat to colonial rule. Those who had local friends were accused of *going jungli* and their socializing with local men was seen as racial betrayal¹⁷.

When discussing 'problems' related to 'mixed marriages' not only preservation of the cultural heritage but 'security reasons' among issues involving national and international interests of the countries have been raised. On this matter it would be interesting to highlight the declaration of the former Chief of Intelligence of Peru, Vladimiro Montesinos, who is presently being accused of corruption. Montesinos affirmed, 'How Chileans used to do their espionage work? They used to come to the country, to Moquegua, Tacna¹⁸ even Puno and used to pay women to marry them, get nationality and remain in the territory.'¹⁹ 'The Citizenship Debate', an article written for a Sri Lankan paper by Sandaruwan Madduma Bandara, shows a strict approach to the issue of immigration in this country (Sri Lanka) as it states, 'We are a country that suffers from severe overpopulation, as it is. It has been a struggle to control the population growth. So what possible rationale can there be for having slipshod laws on population growth by immigration? The official policy of the Government of Sri Lanka should be that we do not encourage immigration, period. The grant of citizenship to any person must be done on a very strict basis'²⁰ Maddumma Bandara also mentions the importance of showing a good command of the country's languages, at least one of them. The language criteria can be used to ostracize or assimilate people to a culture. According to the author's experience each person is willing to learn the languages of the host country as it represents a secure way to feel assimilated to the new society while keeping their own language. Even though the applicant may not have to go through an examination when applying for citizenship in this country, the

¹⁸ Tacna is located in the south of the Peruvian territory on the border with Chile.

¹⁹ Transcription of videos Number 1347,1348, taped on February 26th 1999, facilitated by the Peruvian Congress.

²⁰ See, 'The Citizenship Debate', The Sunday Leader, December 10th 2000, page 15.

authorities question him/her about their knowledge of the language and appreciate it in relation to the time of residence and the applicant's expectations. In the case of children, they are immersed in the national system of education and learn the language/s.

The recent move to impose an annual residence visa tax on all foreigners, including foreign spouses of Sri Lankans, showed the lack of transparency, understanding and the importance of marriage. Foreign spouses were not previously informed of the imposition of the tax, and there was confusion as the amount announced in the budget proposals differed substantially from the amount demanded by the Immigration Department.²¹ The annual residence visa tax of Rs.20,000 imposed after years of being exempted from any payment constituted a violation of basic human rights, affecting the concept of family as a basic unit protected by the state. If such a payment was not made, the Controller of Immigration and Emigration had the authority to refuse to extend the visa and order the person to leave the country. This situation would have been a serious harassment, with deep implications, including separation of families.²²

However, it is interesting to consider that almost all the foreign female spouses the author has met have expressed their desire to keep their own nationality. They expect the state to facilitate their settling down in this society without being compelled to renounce

²¹ In a Letter addressed to President Chandrika Bandaranaike Kumaratunga, a group of foreign spouses and their husbands claimed the move was a transgression of Human and Fundamental Rights and contrary to the principles of state policy to recognize and protect the family as basic unit of the society and the need to grant permanent resident status as it is humiliating and embarrassing for a Sri Lankan husband to annually 'throw himself at the mercy of the Controller to obtain a temporary residence permit for his wife'. They have to declare they have 'no objection' to their wives living with them. The letter was sent in April 2001.

²² On April 26th, the Government decided to cancel the imposition of a Resident Visa Tax to foreign spouses of Sri Lankans after protests were made. Confusion arose on the amount specified by the Budget proposal and the amount that was being charged. 20, 000.00 Rupees were imposed on the spouse holding a Resident Visa and per child even under 16.

their nationality of origin. They consider it the duty of the state to treat them fairly, considering their time of residence in the country, the children to whom they have given birth, and their decision to remain, even through the difficult social and economic situation in the country.

MIXED MARRIAGES AND GENDER

Mixed marriages or 'intercultural, multilingual, inter-religious marriages', are a sphere where gender issues are a central element of analysis. The adherence to the paternal lineage as a criterion regarding citizenship does no justice to the role women have always played in the construction of nations. Women play a central role in the transmission of culture, tradition and religion, and many countries like Nigeria, consider a citizen of the new country (i.e. after it received independence) as anyone who was born *to a father or a mother* from the former colonial territory. Nira Yuval Davies, Professor of Gender and Ethnic Studies, University of Greenwich, U.K., writes: 'Because of the central importance of social reproduction to culture, gender relations often come to be seen as constituting the essence of cultures as ways of life to be passed from generation to generation.' Yuval Davies also raises the importance of the roles gender relations play in the construction of ideological and emotional attachments between territories, states and nations.²³

Let us recall the case of Sonia Gandhi in India. When her political opponents were criticizing her foreign roots and the fact that she applied for citizenship after 14 years of residence, she replied strongly that her roots were in India, the country where she became bride, wife, mother and widow, and publicly reaffirmed her 'Indian bondage'. The general public will never forget the experiences she went through when her mother-in-law, Indira Gandhi, was shot dead in 1984 and later when her husband Rajiv was killed. She also suffered the death of her husband's only brother due to a plane crash. People

²³ Read: Yuval-Davies, Nira, 'National Spaces and Collective Identities: Borders, Boundaries. Citizenship and Gender Relations', in *Nivedini*, Vol.7, N.1, June 1999, Colombo, Sri Lanka.

will always remember the image of her standing close to the funeral pyres with her children. Despite her Italian origin, it has been said that 'she embodies Indian values'. This is the central issue of citizenship for women: the process of embodiment of a culture, which represents adoption of codes of conduct, clothes, attitudes and sufferance that are not generally so strongly imposed on men. For women, in many instances, it is also the adoption of a new religion, culture and a way of the husband and in-laws.

In Sri Lanka the case of Doreen Wickremasinghe (née Young, a British national) makes an ideal study as to how foreign spouses successfully integrate with their adopted countries. Her story has now become a part of Sri Lankan history. Doreen Young came to Sri Lanka to get involved in an education project and later married a Sri Lankan political activist, Dr. S.A. Wickremasinghe, from an influential family from the South. She became the Principal of Sujatha Vidyalaya, a school in Matara, but was very involved in activities out of the school. Doreen, as she was commonly known, took an active interest in leftist politics. Her husband became a Member of Parliament for the left movement and was later imprisoned by the colonial rulers. After many events Doreen contested a parliamentary seat for the Communist Party. She suffered many verbal attacks from the other contestants for being a white woman and a foreigner. She spoke Sinhala, shared her life with the people and was very much at home in the rural areas. She was elected, by popular vote, to be a Member of Parliament from 1952 to 1956.²⁴

The relation between marriage, immigration and citizenship is an area where the private sphere interacts with the public sphere, and this makes its boundaries hard to establish. All these problems are experienced by women in such particular ways that have a definite effect on the 'shaping of traditions and culture' in the host country.²⁵

²⁴ For more details read, Jayawardena Kumari, op.cit.

²⁵ It is interesting to see that in many cases such as Sonia Gandhi and Doreen Wickremasinghe experienced, the adoption of the dress codes is part of the process. Gandhi wears the Indian sari and speaks Hindi; Wickremasinghe wore saris and spoke Sinhala.

ONCE UPON A TIME ...

Ceylon, as it was known before 1972, was well known to ancient travelers as an island with a unique blend of cultures. Though numerous foreigners have visited Ceylon as either individual travelers or adventurers, the overall impact of such contact with the outside world did little to change the island's isolation until the semi-state sponsored bands belonging to Portugal, Netherlands and Britain took control of parts of the island and left their legacy through years of colonization.

When the British arrived to this land, the population of Ceylon was far from being homogeneous. Henry Marshall, Deputy Inspector General of Army Hospitals in Ceylon, described the population as divided into 5 classes²⁶: The Sinhalese; the Hindoos or Malabars or Tamils coming from South India.; the Moors, descendants from Arabs; the Veddahs, aboriginal people; and the Burghers or people of European descent. In 1907 the British introduced the 'Destitute Immigration Ordinance', which was implemented in order to prevent the entry of persons who would be a liability to the Treasury. This Ordinance established the necessity for an Asian to be in possession of Rs. 150.00 or an European to possess Rs. 600.00 to be permitted to enter Ceylon. In the absence of such an amount they were required to have sufficient documentary evidence as proof that they were going to be employed in Ceylon. Entry into the country was also permitted under the requirement of producing a letter of guarantee or at times by the mention of a friend's name or this friend being present to receive the immigrant. Bonds were also permitted to be handed over by a local, to the effect that this person would maintain the immigrant for a period of one year and ensure his departure. Entry of laborers and kanganis of British India origin were not covered by this Ordinance.

Migration increase contributed heavily to population growth before the turn of the last century, according to the Ministry of Plan Implementation. The migrants during the period between 1871 and

1901 were South Indians laborers who were brought by the British to work in the first coffee and tea plantations. (With the banning of Indian immigration by the legislature the contribution of migration to population growth decreased to the order of about 5% by the end of 1940).²⁷

According to Jayampathi Wickramaratne²⁸, the provisions for the status of 'citizens of Ceylon' were made only by the Citizenship Act No. 18 of 1948, which along with the Ceylon Amendment Act No. 48 of 1949 had the practical effect of entitling the citizens of Ceylon to vote. Members of the Indian Tamil community were not qualified to have their names entered in the electoral register. This law was challenged and the Supreme Court refused to consider its practical effect, and the Privy Council took the view that there may be circumstances in which legislation, though framed so as not to offend directly against a constitutional limitation of power of the legislature, may indirectly achieve the same result and that in such circumstances the legislation would be ultra vires. However, the Privy Council held that it was a perfectly natural and legitimate function of the legislature of a country to determine the composition of its nationals, and the Citizenship Act could not be said to be legislation intended to discriminate against Indian Tamils.²⁹ Nearly all people (citizens) of recent Indian origin were made 'stateless' by the Citizenship Act.³⁰

²⁷ Data found in 'Census of Population and Housing 1981', General Report Vol. 3.

²⁸ See, Wickramaratne, Jayampathi, 'Fundamental Rights in Sri Lanka', page 15, Ed. Navrang, India, 1996.

²⁹ See, Wickramaratne, op.cit, pages 15-16.

³⁰ This 'stateless' population numbered 975,000 in 1964. The Indo-Ceylon agreement signed in 1964 for a period of 15 years, established that during that time 525,000 people would be granted Indian citizenship and 300,000 Ceylon citizenship. 'Repatriation' to keep pace with granting of Ceylon citizenship. The remaining 150,000 to be covered by subsequent agreement. For further information read: 'A note on the Legal Saga of Hill-Country Tamils, Appendix V, in Hoole, Rajan, 'Sri Lanka: The Arrogance of Power, Myths, Decadence and Murder', University Teachers for Human Rights (Jaffna), July 2001, Sri Lanka.

²⁶ See, 'Ceylon: A General Description of the island and its inhabitants with an Historical Sketch of the Conquest of Ceylon by the English', by Henry Marshall, Edinburgh, October 1846.

The new Ceylon Passport came to be used only in November 1949. British subjects who were resident for five years on the appointed date were issued temporary residence permits. Permanent residence permits were issued in small numbers. Premapala Ratnayake³¹ explains that 40,003 Indians were given permanent permits in 1949 and 4925 in 1950. The number of other British Subjects was: 329 in 1949 and 1467 in 1950. Other aliens with no reference to their origin were given a total number of 401 in 1950.

Regarding 'other aliens', the Census scheduled to be conducted this year (2001) should necessarily show the numbers of mixed marriages, their status and the number of citizens of foreign origin. The trend of the last National Census held in 1981 was not to make any difference between citizenship by birth and by registration. These criteria have not helped the state to determine the number of aliens who acquired citizenship and their nationality of origin, information that would be of importance in order to analyze the present situation and introduce proper amendments to the immigration policies. According to the 1981 Census Report, from a population of 14,846,750 a number of 14,211,600 are citizens of Sri Lanka. 635,000 are non-citizens of this country and the vast majority of this number are Indian Tamils. Other aliens are 21,174, but their countries of origin are not stated. The Census Report states that the majority of these aliens are from Australia, France, Great Britain and China. Lack of basic information referred to earlier would hinder the Government from determining its policies, which would have an impact on those who have married and settled down in this country. Restrictions are anti-social and anti-productive. Such shortsighted policies fail to consider the contributions the foreign spouse can make to the economy and the development of the country. The persistence of the authorities in granting only a temporary residence visa to foreign spouses reflects the tendency of the Sri Lankan immigration polices to be under the spirit of the Citizenship Act, which was formulated regarding Indian Tamils and therefore discriminatory on ethnic grounds. The need to

³¹ See Rathnayake, Premapala, 'Lawful Entry To And Departure From Sri Lanka In The Last 50 Years', *The Island*, November 1999.

design a long-term policy on this matter and the need to take into consideration the active social and economic roles migrants play are key issues for the construction of a nation and the promotion of peace and harmony among all the communities. Article 52 of the proposed Constitution, presented on August 3rd 2000, states:

52. The following principles shall guide the State in making the governance of Sri Lanka-

(1) The State shall recognize the pluralistic character of Sri Lanka and strengthen national unity by ensuring that the composition of the institution of the State reflects such character and shall promote cooperation and *mutual trust*, confidence and understanding among *all sections* of the People of Sri Lanka.

AND THE PRINCESS MET THE PRINCE, OR VICE VERSA ...

Application for a Residence Visa

Foreign spouses of Sri Lankans are supposed to be granted a residence visa after their arrival. The tourist visa granted on arrival will then be changed to a residence visa, which has to be renewed every year.

The guidelines designed for the approval of a residence visa contain contradictory principles of approval, which will be referred to later. In any event the Controller will formulate the final decision and that decision would be difficult to challenge in Court.

Legal provisions exist under Section 4 of the Immigrants and Emigrants Regulations 1956³² for the grant of residence visas to foreigners. Residence visas for spouses of Sri Lankans will be granted subject to the following:

1. The criteria for the grant of residence visas to spouses of Sri Lankans are family re-union.

³² Set of Guidelines, distributed by the Controller of Immigration and Emigration when applying for a Residence Visa.

2. An application for the residence visa shall be rejected if there is evidence that the applicant has contracted a marriage of convenience for the sole purpose of qualifying for a residence visa.
3. An applicant shall not seek employment or engage in business in Sri Lanka except with the approval granted at the time of issuance of the visa by the issuing authority. However, a spouse of a Sri Lankan can obtain a residence visa with permission to work or to invest in Sri Lanka on the recommendation of the appropriate authority (BOI/Line Ministry), as in the case of expatriate employees and investors.
4. An applicant shall adduce documentary evidence acceptable to the Controller of Immigration and Emigration in support of his/her marriage.
5. Residence visas for spouses of Sri Lankans will not be issued if the issuing authority is satisfied that the presence of the holder is not in the interest or well being of Sri Lanka.
6. An annulment of the marriage, which formed the basis for a grant of residence visa, will invalidate the residence visa already granted.
7. An application for a residence visa should be accompanied by a letter of consent from the spouse for the grant of a residence visa.

A basic principle in treatment of aliens is the 'integration of foreigners.' Thus, the attitude of the Sri Lankan authorities to include the principle of family re-union is understandable. However, it is unfortunate that this principle is applied at a minimum level; therefore, a visa is issued only for the re-union of the family at the very first time of the arrival to the country but not in the event of an annulment of marriage, where the authorities were clear to establish that *an annulment of the marriage which formed the basis for the grant of the visa will invalidate the residence visa already granted*. The authorities will not consider, in the case of foreign spouses, the number of years lived in the country and even the existence of children. The principle of family re-union is totally disregarded by these guidelines.

In fact, this principle is basically applied in the case of migrant workers and their rights to be re-united with their families. In the case of foreign spouses *family re-union* constitutes a right, as it is the essence of marriage. The problem with immigration policies is that every marriage with a foreigner is viewed or considered as 'suspicious'. The immigration policy in this country is based on suspicion that all marriages are marriages of convenience. This attitude was originally adopted with regard to marriages between locals and Indians or Pakistanis, but the legislation consequently introduced has also affected others.

The myopic view adopted by the authorities that an annulment of the marriage that formed the basis of granting a residence visa will invalidate the visa may hold true in marriages of convenience. However, such a general statement is detrimental to the majority of foreigners who have contracted marriage and who have over the years contributed to the economy of this country.

Consider the situation of a foreign male married to a Sri Lankan: after 25 to 30 years of marriage the union is dissolved or the death of the local spouse occur. Consider also that there are children from this marriage. As the law presently stands, the children cannot claim to be citizens of this country. In the first scenario, that is the dissolution of the marriage, the children too must depart with their father. This essentially means the breaking up of the family. In the latter scenario too, with the death of their mother the children, who have been brought up in Sri Lanka following the customs of this country, would unceremoniously be uprooted from the heritage of their mother. This is a situation that needs immediate remedial legislation.

The powers vested in the Controller have been recognized as an absolute power. The concept of exercising discretion in the exercise of this power has not been recognized. It appears that the decision of the Controller to grant a visa or refuse to extend a visa is not even amenable to the writ jurisdiction exercised by the Court of Appeal. Aage Gunner Hansen was a Dutch pensioner married to a Sri Lankan woman. On medical advice Hansen decided to settle down in Sri Lanka with his wife and arrived in Sri Lanka on 16th September 1980. He was issued a three months' visa, which was later extended annually.

The last occasion the visa was extended was on 29th November 1984, valid till 3rd December 1985. Hansen adopted the daughter of his wife's sister and brought the child up as his own. He also invested the pension he received from the Dutch government to purchase a farm in the name of his wife and the child. He also purchased another farm and was managing this as well. After about five years of marriage problems arose between the husband and wife, with the wife complaining to the Controller. The Assistant Controller in charge of visas restricted the visa issued to Hansen, valid till 3rd December 1985, to 8th September 1985, and required him to leave the country by that date. This decision of the Controller was challenged by Hansen before the Court of Appeal. The state conceded this application with an undertaking that the cancellation would be withdrawn.

When the time came for Hansen to renew his visa, he duly applied to the Controller. However, this application was not permitted as the Controller had already decided not to renew the visa, and Hansen was required to leave the country at the expiration of his visa. Nevertheless, he was informed that he would be issued a visit visa every time he was required to appear in Court with regard to the divorce proceedings initiated by him. Hansen challenged this decision by way of a writ application. In his petition filed in Court, Hansen submitted, in addition to the earlier facts, that the District Court had granted custody of the adopted child to him and his wife; that the decision of the Controller was made at the instigation of his wife; the refusal to renew his visa was mala fide in that even before he applied for the extension the Controller had decided not to extend his visa and he was not given an opportunity of being heard in support of his application.

Their Lordships of the Court of Appeal held in *Aage Gunner Hansen vs. C.W. Siriwardena and another*,³³ that the petitioner as an alien had no right to an extension of his stay and that he had no right to an audience before the Controller or authorized officers who decided to cancel his visa. It was contended successfully on behalf

of the state that matters regarding grant of visa to an alien are at the absolute discretion of the Controller and the Courts have no right to fetter this discretion. Reference was made to Regulation 20 framed under Act No. 20 of 1948 that the prescribed authority may in his absolute discretion cancel, vary or annul a visa or terms and conditions specified in a visa. In response to the submissions made on behalf of the state that the Controller was vested with absolute discretion, the Court observed that under normal circumstances a citizen of Sri Lanka cannot be made the subject of an adverse administrative decision without his having being given an opportunity of being heard, but that rule will not apply to an alien. Lord Denning in the case of *Schmidt v. Secretary of State* had held the principle of absolute discretion with regard to immigration matters.³⁴ The Court also held rules such as legitimate expectation will not apply to an alien in matters of immigration.

It is respectfully submitted that the Court failed to adequately consider the question of legitimate expectation. The facts stated above clearly weighed in favour of Hansen, who was not only married to a Sri Lankan but also invested a considerable sum of money in foreign exchange in this country. He also adopted a child and was given custodial rights by the Court. One of the farms he bought was in the name of his wife and the adopted child. What expectations did he have, firstly, when he married a Sri Lankan woman and secondly, albeit on medical advice, decided to settle down in Sri Lanka and raise a family? Over five years of his life spent in Sri Lanka and the investments he made left him with nothing, due to the arbitrary actions of the Controller who was clothed by the legislature with a concept that has no meaning or acceptance in the present administrative law field. The Court, rather than examining the concept of legitimate expectation, only made a cursory reference to this doctrine and

³³ Hansen vs. Siriwardena, Application 1359 of 1985.

³⁴ (1969) 2 Ch division 149.

immediately found the answer in the negative by reference to the judgment of Lord Denning³⁵.

Even with regard to the submissions made by the state that the Controller had an absolute discretion with regard to visas, it is respectfully submitted, the Court failed to properly evaluate this concept with the evidence furnished by the petitioner. The facts of the case clearly demonstrate a planned action on the part of the Assistant Controller to deprive the petitioner of his rights, but these were not properly weighed in the judgment of the Court. The Court rather concentrated on the pronouncements of Lord Denning, the regulations framed under the Act and the fact that the petitioner violated the conditions of his visa that he should not engage in any employment or business without the special authorization of the Controller first being obtained. Thus, the running of the farms by the petitioner was held to be an act in violation of the conditions imposed on his visa³⁶.

Additionally, it is respectfully submitted that Their Lordships failed to properly analyze the regulations under the Act and merely cited the words 'absolute discretion' appearing in section 23(1)(b) and Regulation 20. Even though Parliament has vested the Controller with absolute discretion, the fact that such discretion must necessarily be used and applied legitimately and in a fair manner was not

considered. Unfortunately, Hansen did not appeal from this judgment and he suffered not only economic loss with his disastrous marriage to a Sri Lankan but also the deprivation of his fatherhood.

In *Laub v Attorney General and another*³⁷ the facts were as follows: Laub, a German national, arrived in Sri Lanka on a one-month visit visa. This visa was subsequently extended till 7.7.1993; an application for a further extension was refused by the Controller and Laub was asked to leave the country on or before 4.8.1993. Laub challenged this decision in the Court of Appeal. In deciding the application of the petitioner the Court took into consideration the violation of the principle of *uberrima fides* in that the petitioner suppressed material facts from court, and that, though reasons need not be given by the Controller for the non-extension of the visa, the Controller has set out in his affidavit filed in Court the matters taken into account by him in exercising his discretion. The Court also held that the contention of the petitioner that he had a legitimate expectation of a right to be present in Sri Lanka to oversee his business could not be justified. The Court also held that a demand for a procedural justice in cases of legitimate expectation did not include a right to a hearing or to be provided with reasons for a decision. Additionally, the Court held that the Controller had the sole discretion in the matter of issuing visas and of considering applications for extensions. An alien has no right to an audience before the Controller or authorized officer before he decided not to extend the visa, the Court held.

The judgment in Laub's case is preferable to the judgment in Hansen's case though the rationale is the same. In Laub's case, the petitioner's conduct in suppressing material facts from Court weighed heavily against the petitioner. The Court considered the submissions on legitimate expectation and concluded that the contention of the petitioner could not be justified. The Court observed, 'The principles of natural justice undeniably apply to a situation where some legal right, liberty or interest is affected but good administration demands their observance also where a person may legitimately expect to be treated fairly.' However, in this instance too, the Court held that the

³⁵ Lord Denning in the Schmidt's case too only made a passing reference to the concept of legitimate expectation. To quote from the judgment 'He has no right to enter this country except by leave; and, if is given leave to come for a limited period, he has no right to stay a day longer than the permitted time. If his permit is revoked before the time limit expires, he ought, I think to be given an opportunity of making representations; for he would have a legitimate expectation of being allowed to stay for the permitted time. Except in such a case, a foreign alien has no right – and I would add, no legitimate expectation – of being allowed to stay. He can be refused, without reasons given and without a hearing; once his time has expired, he has to go.'

³⁶ The application made by the petitioner to amend the conditions of his visa and to permit him to engage in business had been earlier refused by the Controller without affording the petitioner a hearing. This decision was not challenged.

³⁷ (1995) 2 Sri LR 88

Controller had an absolute discretion with regard to issue and extension of visas.

The decision in Laub's case is the right decision considering the facts involved. However, the affirmation of the absolute discretion rule, it is respectfully submitted, should have been restricted to the present case only and not as a general rule.

In Sri Lanka only the two cases mentioned before came up for judicial determination. A third case, though filed, was not proceeded with as the state conceded the guidelines to be discriminatory. This matter will be referred to later.

It is important to mention that under European Community Law (1972), aliens of member states must be afforded the same remedies against administrative acts as are available to nationals. It has been said that 'A civilized system of law must treat aliens fairly as well as their citizens'³⁸ Compare this affirmation with the pronouncement of the Court of Appeal in Hansen's case.

APPLICATION FOR CITIZENSHIP

Treatment of aliens, naturalization and citizenship are areas in which each country calls for non-interference from others. Citizenship is often fused with nationality, and therefore it is important to refer to the relationship between state and nations.³⁹

The word 'naturalization' refers to the admission of a foreigner to the citizenship of a country. Naturalization (acquisition of citizenship) has been defined by the International Court of Justice in the *Nottebohm* case (1955) as 'a legal bond having as its basis a

³⁸ Read, Wade H.W.R., 'Administrative Law', Oxford University Press, 1982.

³⁹ It is pertinent to remember that the Ministry of Defence of Sri Lanka is the Ministry in charge of maintenance of law and order controlling entry into and the departure of persons from Sri Lanka, controlling the residence and employment of non-nationals in Sri Lanka, providing policy direction and guidance to operating Departments: Citizenship Division, Immigration and Emigration and the Registration of Persons of Indian origin, among others. The Minister of Defence is the President of Sri Lanka. Presently, the Subject of Immigration and Citizenship is with the Ministry of Interior.

social fact of attachment, a genuine connection of existence, interests and sentiments together with the existence of reciprocal rights and duties...'⁴⁰

In relation to citizenship laws, this country has made special provisions, in the section regarding citizenship by registration, to married applicants and the cases of spouses, widow or widower of a citizen. Marriage does not constitute an automatic step to acquire citizenship in this country, although, according to the experience of the author, most of the people assumed that after marriage the new spouse would acquire citizenship as a consequence of it! The general public is unaware that acquisition of citizenship implies renunciation of nationality among other aspects, and constitutes a separate procedure. The possibility of getting 'double nationality' relies on the existence of agreements between the host country and other countries. Costs implicated are different if the applicant is a male or a female foreigner.

Citizenship laws were formulated in order to establish differences between individual citizens of a country 'by birth' and individuals who must follow procedures to acquire citizenship by registration. Acquisition of citizenship should not involve the loss of nationality of origin but a 'renunciation of the alien citizenship' as a necessary step to acquire the new status. However, when the law refers to 'renunciation of 'nationality'⁴¹, it is done on the basis of reaffirming the citizen's oaths in order to secure his/her loyalty to the newly embraced country. After this 'he/she shall be entitled to all political and other rights, powers and liabilities to which a citizen of Sri Lanka *by registration* is entitled or subject, and have, to all intents and purposes the status of a citizen of Sri Lanka *by registration*'.⁴²

The Constitution of Colombia is very clear when it declares, 'citizenship is automatically lost when a person renounces his/her

⁴⁰ See, MacLean, Robert; 'Public International Law', HLT Publications, London, 1992.

⁴¹ The process of acquisition of Sri Lankan citizenship refers to the renunciation of alien citizenship.

⁴² As it appears on the Certificate Of citizenship under Section 17.

nationality...⁴³ Therefore, both concepts are linked intrinsically. Further, the Constitution of Venezuela, promulgated in 1999, establishes in Article 43 that opting or adopting a new nationality does not forfeit original nationality. This means that when a dual nationality agreement does not exist, nationality must be renounced expressly. The law provides the legal figure of 'recuperation of nationality' under certain conditions.

In the case of Sri Lanka, according to L.L.T. Pieris, the Citizenship Law is based neither on the principle of 'jus soli' or 'jus sanguinis'. The law has been formulated on a blend of both criteria; therefore the law does not make reference to the word 'national' but citizen. It was decreed that the status of citizen in this country is acquired by right of descent (through the father) and by virtue of registration. This legal approach excludes Sri Lankan women from passing their citizenship to their children when they are married to a foreigner. As a principle, the exercise of human rights and the entitlement to equality of treatment before the law must never be affected by marriage or its dissolution in cases where a foreigner marries a Sri Lankan. Women's right to their own nationality and citizenship and their right to pass them to their children, if so willing, must be preserved by the law as a consequence of a free and full exercise of their civil, political, social and cultural rights.

WHERE ARE WE NOW?⁴⁴

The present Sri Lankan Constitution, promulgated in 1978, continues to recognize two kinds of citizenship. It clearly declares that apart from citizenship by descent, a person may acquire citizenship by registration. Accordingly, the authority must be satisfied that the

⁴³ Read Article 98, Constitution of the Republic of Colombia.

⁴⁴ In January 2002, a group of foreigners (the author is also taking part in this action) made an appeal to the Human Rights Commission in order to raise the problems they are facing and the urgency to introduce amendments to the present Immigration policy.

applicant has fulfilled all the requirements established by law and also show that he/she will be able to contribute to the country. The residence qualification is an element of importance to show the will of the applicant to remain in the country and his/her familiarity with the environment.

The Draft Constitution of the Republic of Sri Lanka presented to Parliament last year (2000), establishes in Article 1.2 that the state shall preserve and advance a **Sri Lankan Identity**, recognizing the multi-ethnic, multi-lingual and multi-religious character of this society. If this provision is considered as a first step towards a serious elimination of the discrimination and violation of human rights perpetrated by the state, to consolidate a Sri Lankan identity and a full-fledged citizenship, then it would be advisable to revise the concept of citizenship as contained in the Citizenship Act and introduce necessary amendments. A closer study of Latin American Constitutions will certainly contribute to the analysis of this matter.

Some of the salient features contained in the Draft Constitution are:

- (1) There shall be one status of citizenship known as 'the status of a citizen of Sri Lanka.'
- (2) A citizen of Sri Lanka shall for all purposes be described only as a 'citizen of Sri Lanka' whether such a person became entitled to citizenship by descent or by virtue of registration in accordance with the law relating to citizenship or by the operation of any law or by the operation of paragraph (6) of Article 51
- (3) No distinction should be drawn between citizens of Sri Lanka for any purpose by reference to the mode of acquisition of such status, as to whether acquired by descent or by virtue of registration or by the operation of any law or by the operation of paragraph (6) of Article 51.

The Draft Constitution also contains the Principles of State Policy and Fundamental Duties. Art 53 casts a duty on every citizen of the Republic of Sri Lanka to uphold and protect the independence, sovereignty, unity and territorial integrity of the country, value and

preserve the heritage of the country, foster national unity and promote harmony for all the People of this country. With regard to the election of President of the Republic, Art. 56 (1) establishes that any citizen who is qualified to be an elector under the Constitution shall be qualified for election by Parliament as the President.

Professor T.K. Oommen, in his book, *Citizenship and National Identity*, points out that 'It is not possible to extend measures of social well being and the right of political participation to all residents of a State because they are two types: citizens and non-citizens. All citizens by definition are entitled to welfare and participation. Therefore, a polity ought to be a community of full-fledged citizens, although often it is not the case. That is why frequently we encounter the phrase 'second class citizen'. Residents who are nationals are invariably citizens. Non-national residents, the ethnics, can also be citizens, although they encounter several problems in acquiring citizenship. Thus, one may speak of full-fledged citizens, nominal citizens and non-citizens.'⁴⁵

SOME REFLECTIONS : THE IMPORTANCE OF THE ISSUE OF 'LEGITIMATE EXPECTATIONS'

The Sri Lankan legislation regarding immigration used to apply different treatment when a Sri Lankan male is married to a foreigner and when a Sri Lankan female is married to a foreigner. This is similar, to a certain extent, to the case in Lebanon where a foreign woman married to a Lebanese man is granted Lebanese citizenship after a period of one year at her request, while a Lebanese woman married to a foreigner is prohibited from transmitting Lebanese citizenship to her husband and children even if they were born and living in Lebanon.⁴⁶

⁴⁵ Oommen, T.K., 'Citizenship and National Identity: from Colonialism to Globalism', Sage Publications, India, 1997.

Read, Moghadam, Valentine; 'Gender, National Identity and Citizenship: Reflections on the Middle East and North Africa', in *Comparative Studies of South Asia, Africa and the Middle East*, Vol XIX, n.1, 1999.

Recently, steps were taken by the Sri Lankan Government to introduce certain amendments regarding visa procedures. This was the result of an action instituted by Fisher, a German national resident in Sri Lanka with his Sri Lankan wife. Fisher married in Sri Lanka and returned to Germany with his wife. After some time they returned to Sri Lanka and Fisher was given a tourist visa valid for six months, which was later extended by two months.

When he applied to obtain a residence visa Fisher was asked to deposit US \$ 25,000 to consider his application. He was also called to show an inward remittance of US \$ 9,000.00 to entertain his application. Fisher contended that such requirements were discriminatory and violated the equality guaranteed by the Constitution. The state settled this matter by agreeing to publish fresh guidelines, which will not discriminate between male and female spouses in issuing residence visas in the future. In any event, it is interesting to note that the state conceded that 'the effect of the policies and procedures set out ... is to make grant of Residence Visas to foreign female spouses of Sri Lankans a matter of course and the grant of Residence Visas to foreign male spouses of Sri Lankans the exception, without any rational basis for the difference. Prima facie, this places Sri Lankan females at a disadvantage vis-a-vis males'⁴⁷

The outcome of this case augurs well to eliminate the discriminatory procedure that is now being applied by the state. However, the problems are far from over; as the law presently stands, a foreign spouse may not be the beneficiary of the new guidelines unless blessed with a patron.

To recall the powers of the Controller of Immigration and Emigration, he has full powers to refuse to grant a visa, refuse an extension, issue cancellations and deport aliens. These powers are absolute and he can exercise them without any fear of being called upon to answer for his decision. If the marriage is dissolved, then the foreign spouse will no longer be in possession of a valid visa or be

⁴⁷ In *Bernard Maximillian Fisher and Ronik Fisher nee Joseph vs. The Controller of Immigration and Emigration, Deputy Controller of Immigration and Emigration and the Attorney General*, 1999.

able to claim an extension. In the case of female spouses, the Sri Lankan husband is required to annually issue a letter to the Controller undertaking to be responsible for the maintenance of the wife and accepting responsibility for the wife's actions. Only on receipt of such a letter along with the application for an extension, will the Controller extend the residence visa. If the marriage is dissolved, the foreign wife will not be able to produce such a letter. The Controller will not recognize the number of years the wife has been resident and the children born during the subsistence of the marriage. If the foreign wife has not obtained citizenship the only alternative available for her on the dissolution of the marriage or on the death of her husband is to leave this country and return to her own native land even though she may have not been there for years. If there are children she may have to leave without them. In the case of a foreign male, at the death of his wife he must depart with the children, if any.

The present law is a violation of human rights. True, that every country is sovereign and matters of this nature are within the exercise of its own jurisdiction. Nevertheless, there exist a number of Human Rights Declarations, signed and ratified by this country, which obliges the country to prevent and eliminate discrimination based on sex, race and social or economic status. The protection of a national is not based on the deterioration and abuse of the 'others' rights. The acquisition of citizenship definitely is the only way to become a 'full fledged citizen by registration', but criteria must be imposed to defend basic rights of female and male foreign spouses who leave their countries to come to Sri Lanka and start a new life and a family here. The Attorney General has also stated that the present guidelines relating to grant of visas to foreign spouses violate Article 12 of the Constitution as the state has a duty to recognize and protect the family as a basic unit of the society. These families are not 'second class families'.⁴⁹

The Law Commission has now taken steps to eliminate most of the discriminatory provisions contained in the Citizenship Act. In

See 'Equal treatment for foreign men married to Lankan women', in 'The Island', Sunday, January 21st, 2001, p.3.

the preface to the amendments proposed to the Act the Commission states that 'it has been found that Sections 4 and 5 of the Citizenship Act dealing with *citizenship by descent* permit the transmission of Sri Lankan citizenship only through the male (i.e. paternal) line. The Commission is of the view that such provisions are an infringement of the fundamental rights to equality before the law and freedom from gender-based discrimination which are enshrined respectively in Articles 12(1) and 12(2) of the Constitution...' It also mentions that the provisions of this Act have been found to cause many practical difficulties to Sri Lankan women who marry foreigners. Even if they are divorced, separated or widowed and resident in Sri Lanka, they cannot bring up their children as Sri Lankan citizens. The amendments are based on similar amendments formulated in 1992 in relation to the Indian Citizenship Act.

It appears that the Sri Lanka authorities have lost sight of the importance of marriage. Marriage, as Justice Field eloquently said in *Maynard v Hill*⁵⁰ over one hundred years ago, is 'an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress. ... It is a social relation, like that of a parent and child, the obligations of which arise not from the consent of the concurring minds, but are the creation of the law itself, a relation the most important, as affecting the happiness of individuals, the first step from barbarism to incipient civilization, the purest tie of social life, and the true basis of human progress. ... In strictness, though formed by contract, it signifies the relation of husband and wife, deriving both its rights and duties from a source higher than any contract of which the parties are capable, and as to these uncontrollable by any contract which they can make. When formed, this relation is no more a contract than 'fatherhood' or 'sonship' is a contract.'

In *Rattigan and others v Chief Immigration Officer and others*⁵¹ Chief Justice Gubbay of Zimbabwe observed that 'marriage is a

⁵⁰ (188) 125 US 190 at 211-212

⁵¹ (1994) 1 LRC343

juristic act sui generis. It gives rise to a physical, moral and spiritual community of life – a consortium omnis vitae. It obliges the husband and wife to live together for life (more realistically for as long as the marriage endures) and to confer sexual privileges upon each other. Conjugal love embraces three components: (i) eros (passions); (ii) philia (companionship); and (iii) agape (self-giving brotherly love). The duties of cohabitation, loyalty, fidelity, and mutual assistance and support, flow from the marital relationship. To live together as spouses in community of life, to afford each other marital privileges and to be ever faithful are the inherent commands which lie at the very heart of marriage.’ Marriage, as observed by Chief Justice Warren in *Loving v Virginia*⁵¹ ‘is one of the basic rights of man, fundamental to our very existence and survival.’

The Zimbabwean Court in the case referred to above considered the applications of three female citizens of Zimbabwe married to foreign husbands. The foreign husbands had all applied for permits to work or reside in Zimbabwe, but their applications had been denied by the immigration authorities on the ground they had no scarce skills to offer the country. The applicants and their husbands all desired to establish permanent matrimonial homes in Zimbabwe. The applicants claimed that the refusal of the Chief Immigration Officer to issue a residence permit or an alien’s permit to each husband and the consequent requirement that the husbands leave the country circumscribed the applicants’ fundamental and unqualified right as citizens to freedom of movement, because, if the husbands were compelled to depart, the right of the applicants to reside in Zimbabwe would be directly affected because the applicants would have to leave also in order to secure and maintain their marital relationship.

The Court observed, ‘The predicament of each wife has not been caused by the decision of the husband, as head of the family, to establish the common household in a country other than Zimbabwe. If that were so, then, provided the decision was not unreasonable, the wife, if she wished the marriage to survive, would be obliged to accept it and leave Zimbabwe.’ The Court ruled in favour of the applicants.

⁵¹ (1967) 388 US 1 at 12

The Immigration guidelines embrace the principle of family reunion to grant a residence visa to an applicant, but the same principle is not considered at all when a matter of extension of the residence visa is applied for. When the marriage is disrupted due to separation or divorce or death of the spouse, the holder of the visa will not be given an extension, causing huge distress in his/her personal life besides the legal and economic consequences of it. The pronouncement of Justice Ismail in *Laub v Attorney General* that the ‘principles of natural justice undeniably apply to a situation where some legal right, liberty or interest is affected, but good administration demands their observance also where a person may legitimately expect to be treated fairly’ is an apt description of what is presently required by the Controller.

It is a fact that legal rights are affected by a denial of the extension of the residence visa of a foreign spouse, even, when separated or divorced, due to the rights that emerge as a consequence of marriage (personal relations, children, properties). The legitimate expectation of a foreign spouse of a Sri Lankan is to remain in this country, settle down, live with his/her spouse with all the consequences of this transcendental decision, which in many cases includes the separation and breaking of links and ties with the country of origin. It is regrettable that in the two cases quoted earlier, the Court did not properly evaluate the issues pertaining to legitimate expectation. The issue of legitimate expectation or reasonable expectation is fundamental to grant the holder of a visa a hearing prior to any decision taken not to grant the extension. While appreciating that the Controller should be vested with absolute discretion to grant or refuse a visa to an alien, this power should be circumscribed in relation to a foreign spouse married to a local unless the marriage is one of convenience. Certain restrictions may be imposed, such as the number of years the foreign spouse has been resident and the children born by the marriage. Where an extension is refused, the party affected should have the right to an appeal before a tribunal as in the case of the United Kingdom. However, it is proposed that after a certain number of years — for example, five years — a permanent resident visa should be issued to the foreign

spouse. An additional consideration should be the right of the children to obtain citizenship once they attain the age of majority.

The Ministries of Foreign Affairs and Defence should work together to initiate action on these matters and to eliminate the gross violations of human rights against foreign spouses. Taking into account that there are different types of migration, each of these requires a different policy. The information should be easily accessible, readily available and transparent. Taking into account the technological advances that are now in place, the dissemination of information should not be a problem. The creation of an Association of Foreign Spouses will definitely improve the legal situation of foreign spouses and help to disseminate information and provide advice⁵². The need to build a 'solidarity net' is quite important to be able to work on proposals to improve the present legal conditions.

Through the Internet it is also possible to know more about experiences regarding 'mixed marriages' and obtain information from other couples, share 'bureaucratic' problems and exchange words of encouragement. The International Couples Mailing List is one of them. Mami (from the Philippines) and Federico Canziani (from Mexico), husband and wife, host this page.⁵³

⁵² A group of foreigners, mainly westerners, have come together to discuss their problems. The author also was told about the existence of an Association of Filipinos married to Sri Lankans.

⁵³ There are also web pages especially designed for inter-religious marriages, multilingual marriages and children's education, etc.

NATIONAL AND INTERNATIONAL INSTRUMENTS TO CONSIDER.

NATIONAL SPHERE

Citizenship Act, Act No.18 of 1948

Amended by Act No.45 of 25.11.87, Act 15 of 31.02.1993, Act 43 of 22.09.93

Immigrants and Emigrants Act, Act No.20 of 1948

Amended by Act No.68 of 7.12.1961, Act 16 of 19.04.93 and Act 42 of 28.07.1998

Stateless Persons Act No.39 of 1998

Indian and Pakistani Residents-Citizenship Act, Act No.3 of 1949

INTERNATIONAL SPHERE

- Universal Declaration of Human Rights
- International Covenant of Civil and Political Rights
art 12 guarantees free movement and choice of residence for everyone lawfully within the territory of a state, as well as the right to leave any country and to enter one's country.
art 17 protects against the interference with a person's privacy, family, home or correspondence as well as against attacks on honor and reputation.
- International Covenant on Economic, Social and Cultural Rights
- Convention on the Rights of the Child
- Convention on the Elimination of All Forms of Discrimination against Women.

CONVENTION ON THE NATIONALITY OF MARRIED WOMEN

Opened for signature and ratification by General
Assembly resolution 1040 (XI) of 29 January 1957

Entry into force 11 August 1958, in accordance with article 6

The Contracting States,

Recognizing that, conflicts in law in practice with reference to nationality arise as a result of provisions concerning the loss or acquisition of nationality by women as a result of marriage, of its dissolution or of the change of nationality by the husband during marriage, *Recognizing* that, in article 15 of the Universal Declaration of Human Rights, the General Assembly of the United Nations has proclaimed that 'everyone has the right to a nationality' and that 'no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality', *Desiring* to co-operate with the United Nations in promoting universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to sex, *Hereby agree* as hereinafter provided:

Article 1

Each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.

Article 2

Each Contracting State agrees that neither the voluntary acquisition of the nationality of another State nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.

Article 3

1. Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband

through specially privileged naturalization procedures; the grant of such nationality may be subject to such limitations as may be imposed in the interests of national security or public policy.

2. Each Contracting State agrees that the present Convention shall not be construed as affecting any legislation or judicial practice by which the alien wife of one of its nationals may, at her request, acquire her husband's nationality as a matter of right.

Article 4

1. The present Convention shall be open for signature and ratification on behalf of any State Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a Party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. The present Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 5

1. The present Convention shall be open for accession to all States referred to in paragraph 1 of article 4.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 6

1. The present Convention shall come into force on the ninetieth day following the date of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article 7

1. The present Convention shall apply to all non-self-governing, trust, colonial and other non-metropolitan territories for the

international relations of which any Contracting State is responsible; the Contracting State concerned shall, subject to the provisions of paragraph 2 of the present article, at the time of signature, ratification or accession declare the non-metropolitan territory or territories to which the Convention shall apply ipso facto as a result of such signature, ratification or accession.

2. In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Contracting State or of the non-metropolitan territory for the application of the Convention to that territory, that Contracting State shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by that Contracting State, and when such consent has been obtained the Contracting State shall notify the Secretary-General of the United Nations. The present Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve-month period mentioned in paragraph 2 of the present article, the Contracting States concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of the present Convention may have been withheld.

Article 8

1. At the time of signature, ratification or accession, any State may make reservations to any article of the present Convention other than articles 1 and 2.

2. If any State makes a reservation in accordance with paragraph 1 of the present article, the Convention, with the exception of those provisions to which the reservation relates, shall have effect as between the reserving State and the other Parties. The Secretary-General of the United Nations shall communicate the text of the reservation to all States which are or may become Parties to the

Convention. Any State Party to the Convention or which thereafter becomes a Party may notify the Secretary-General that it does not agree to consider itself bound by the Convention with respect to the State making the reservation. This notification must be made, in the case of a State already a Party, within ninety days from the date of the communication by the Secretary-General; and, in the case of a State subsequently becoming a Party, within ninety days from the date when the instrument of ratification or accession is deposited. In the event that such a notification is made, the Convention shall not be deemed to be in effect as between the State making the notification and the State making the reservation.

3. Any State making a reservation in accordance with paragraph 1 of the present article may at any time withdraw the reservation, in whole or in part, after it has been accepted, by a notification to this effect addressed to the Secretary-General of the United Nations. Such notification shall take effect on the date on which it is received.

Article 9

1. Any Contracting State may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. The present Convention shall cease to be in force as from the date when the denunciation which reduces the number of Parties to less than six becomes effective.

Article 10

Any dispute which may arise between any two or more Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation, shall, at the request of any one of the parties to the dispute, be referred to the International Court of Justice for decision, unless the parties agree to another mode of settlement.

Article 11

The Secretary-General of the United Nations shall notify all States Members of the United Nations and the non-member States

contemplated in paragraph 1 of article 4 of the present Convention of the following:

- (a) Signatures and instruments of ratification received in accordance with article 4;
- (b) Instruments of accession received in accordance with article 5;
- (c) The date upon which the present Convention enters into force in accordance with article 6;
- (d) Communications and notifications received in accordance with article 8;
- (e) Notifications of denunciation received in accordance with paragraph 1 of article 9;
- (f) Abrogation in accordance with paragraph 2 of article 9.

Article 12

1. The present Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of the Convention to all States Members of the United Nations and to the non-member States contemplated in paragraph 1 of article 4.

2. Convention on the Nationality of Married Women

New York, 20 February 1957

Entry into force: 11 August 1958 by exchange of letters, in accordance with article 6.
Registration: 11 August 1958, No. 4468.
Status: Signatories: 28, Parties: 70.
Text: United Nations, *Treaty Series*, vol. 309, p. 65.

Note: The Convention was opened for signature pursuant to resolution 1040 (XI) adopted by the General Assembly of the United Nations on 29 January 1957.

PARTICIPANTS

Participant	Signature	Ratification, Accession (a), Succession (d)
Albania		27 Jul 1960 a
Antigua and Barbuda		25 Oct 1988 d
Argentina		10 Oct 1963 a
Armenia		18 May 1994 a
Australia		14 Mar 1961 a
Austria		19 Jan 1968 a
Azerbaijan		16 Aug 1996 a
Bahamas		10 Jun 1976 d
Barbados		26 Oct 1979 a
Belarus	7 Oct 1957	23 Dec 1958
Belgium	15 May 1972	
Bosnia and Herzegovina		1 Sep 1993 d
Brazil	26 Jul 1966	4 Dec 1968
Bulgaria		22 Jun 1960 a
Canada	20 Feb 1957	21 Oct 1959

Chile	18 Mar 1957	
China		
Colombia	20 Feb 1957	
Côte d'Ivoire		2 Nov 1999 a
Croatia		12 Oct 1992 d
Cuba	20 Feb 1957	5 Dec 1957
Cyprus		26 Apr 1971 d
Czech Republic		22 Feb 1993 d
Denmark	20 Feb 1957	22 Jun 1959
Dominican Republic	20 Feb 1957	10 Oct 1957
Ecuador	16 Jan 1958	29 Mar 1960
Fiji		12 Jun 1972 d
Finland		15 May 1968 a
Germany		7 Feb 1974 a
Ghana		15 Aug 1966 a
Guatemala	20 Feb 1957	13 Jul 1960
Guinea	19 Mar 1975	
Hungary	5 Dec 1957	3 Dec 1959
Iceland		18 Oct 1977 a
India	15 May 1957	
Ireland	24 Sep 1957	25 Nov 1957
Israel	12 Mar 1957	7 Jun 1957
Jamaica	12 Mar 1957	30 Jul 1964 d
Jordan		1 Jul 1992 a
Kazakhstan		28 Mar 2000 a
Kyrgyzstan		10 Feb 1997 a
Latvia		14 Apr 1992 a
Lesotho		4 Nov 1974 d
Libyan Arab Jamahiriya		16 May 1989 a
Luxembourg	11 Sep 1975	22 Jul 1977
Malawi		8 Sep 1966 a
Malaysia		24 Feb 1959 a
Mali		2 Feb 1973 a
Malta		7 Jun 1967 d
Mauritius		18 Jul 1969 d

Mexico		4 Apr 1979 a
Netherlands		[8 Aug 1966 a]
New Zealand	7 Jul 1958	17 Dec 1958
Nicaragua		9 Jan 1986 a
Norway	9 Sep 1957	20 May 1958
Pakistan	10 Apr 1958	
Poland		3 Jul 1959 a
Portugal	21 Feb 1957	
Romania		2 Dec 1960 a
Russian Federation	6 Sep 1957	17 Sep 1958
Saint Lucia		14 Oct 1991 d
Saint Vincent and the Grenadines	27 Apr 1999 d	
Sierra Leone		13 Mar 1962 d
Singapore		18 Mar 1966 d
Slovakia		28 May 1993 d
Slovenia		6 Jul 1992 d
South Africa	29 Jan 1993	
Sri Lanka		30 May 1958 a
Swaziland		18 Sep 1970 a
Sweden	6 May 1957	13 May 1958
the former Yugoslav Republic of Macedonia	20 Apr 1994 d	
Trinidad and Tobago		11 Apr 1966 d
Tunisia		24 Jan 1968 a
Uganda		15 Apr 1965 a
Ukraine	15 Oct 1957	3 Dec 1958
United Kingdom of Great Britain and Northern Ireland	[20 Feb 1957	28 Aug 1957]
United Republic of Tanzania		28 Nov 1962 a
Uruguay	20 Feb 1957	
Venezuela		31 May 1983 a
Yugoslavia	27 Mar 1957	13 Mar 1959
Zambia		22 Jan 1975 d
Zimbabwe		1 Dec 1998 d

Commission on the Status of Women, 45th session

Draft agreed conclusions on gender and all forms of discrimination, in particular racism, racial discrimination, xenophobia and related intolerance

1. The Charter of the United Nations, the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women, and other international instruments reaffirm the principles of equality and non-discrimination.
2. Recalling the consistent efforts of the international community in promoting gender equality through the convening of World Conferences on Women and that the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, the Beijing Declaration and Platform for Action adopted at the Fourth World Conference on Women and the outcome document of the twenty-third special session of the General Assembly, entitled 'Women 2000: gender equality, development and peace for the twenty-first century' emphasized that all human rights of women and of the girl-child, are an inalienable, integral and indivisible part of universal human rights. The Platform for Action reaffirms that all human rights – civil, cultural, economic, political and social, including the right to development are universal, indivisible, interdependent and interrelated.
3. The Beijing Declaration and Platform for Action indicated that many women face additional barriers to the enjoyment of their human rights because of such factors as their race, language, ethnicity, culture, religion, disability, or socio-economic class or because they are indigenous people, migrants, including women migrant workers, displaced women or refugees. Also the Outcome Document of the special session indicates that in situations of armed conflict and foreign occupation, human rights of women have been extensively violated. Amongst the further actions and initiatives to implement the Platform

- adopted by the special session of the General Assembly on Beijing + 5 were several directed at the elimination of racially motivated violence against women and girls.
4. Recalls the efforts of the international community in combating racism, racial discrimination, xenophobia and related intolerance.
 5. There has been growing recognition that various types of discrimination do not always affect women and men in the same way. Moreover, gender discrimination may be intensified and facilitated by all other forms of discrimination. It has been increasingly recognized that without gender analysis of all forms of discrimination, including multiple forms of discrimination, and , in particular, in this context, racial discrimination, xenophobia and related intolerance, violations of the human rights of women might escape detection and remedies to address racism may also fail to meet the needs of women and girls. It is also important that efforts to address gender discrimination incorporate approaches to the elimination of all forms of discrimination, including racial discrimination.
 6. In its resolution 52/111 the General Assembly decided to convene a World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa from 31 August to 7 September 2001, and proclaimed 2001 as the International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance. It is therefore timely that the gender dimensions of racism, racial discrimination, xenophobia and related intolerance are addressed by the Commission on the Status of Women.
 7. The increasing gravity of different manifestations of racism, racial discrimination and xenophobia in various parts of the world requires a more integrated and effective approach on the part of relevant mechanisms of the United Nations human rights machinery. These trends affect the implementation of Beijing+5 'Women 2000: gender equality, development and peace for the twenty-first century' as well as to the relevant international instruments against discrimination.

Actions to be taken by Governments, the United Nations and civil society, as appropriate

- A. **An integrated, holistic approach to address multiple forms of discrimination against women and girls, in particular, racism, racial discrimination, xenophobia and related intolerance**
8. Examine the intersection of multiple forms of discrimination including their root causes from a gender perspective with special emphasis on gender-based racial discrimination in order to develop and implement strategies, policies and programmes aimed at elimination of all forms of discrimination against women, and to increase the role women play in the design, implementation and monitoring of gender-sensitive anti-racist policies,
9. Establish and strengthen effective partnerships with and provide support, as appropriate, to all relevant actors of civil society, including non-governmental organizations working to promote gender equality and advancement of women, particularly women subject to multiple discrimination to promote an integrated and holistic approach to the elimination of all forms of discrimination against women and girls,
10. Acknowledge the need to address the issues of racism, racial discrimination, xenophobia and related intolerance as and where they affect young women and men, boys and girls and recognize the role they play in the fight against racism, racial discrimination, xenophobia and related intolerance, including particular forms of racism experienced by young women and girls, and support the fundamental role played by youth NGOs in educating young people and children to build a society based on respect and solidarity,
11. Promote respect for and value of the full diversity of women's and girls' situations and conditions and recognize that some

women face particular barriers to their empowerment and ensure that the goals of achieving gender equality and advancement of women, including marginalized women are reflected in all strategies, policies and programmes aimed at elimination of all forms of discrimination against women and girls. Mainstream a gender perspective into the preparation and implementation of policies integrating multiculturalism, ensuring the full enjoyment of all human rights and fundamental freedoms by all women and girls and reaffirming that human rights - civil, cultural, economical, political and social, including the right to development are universal, indivisible, interdependent and interrelated,

12. Promote recognition that the empowerment of women is an essential component of a proactive strategy to fight racism, racial discrimination, xenophobia and other forms of related intolerance and take measures to empower women subject to multiple discrimination to fully exercise their rights in all spheres of life and play an active role in the design and implementation of policies and measures which affect their lives,
13. Take action to raise awareness of and to promote eradication of all forms of discrimination including multiple discrimination experienced by women through inter alia, education and mass media campaigns,
14. The Platform for Action recognized that women face barriers to full equality and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability, because they are indigenous women or of other status. Many women encounter specific obstacles related to their family status, particularly as single parents; and their socio-economic status, including their living conditions in rural, isolated or impoverished areas. Additional barriers also exist for refugee women, other displaced women, including internally displaced women, as well as for immigrant women and migrant women, including women migrant workers. Many women are also particularly affected by environmental disasters, serious and infectious diseases and various forms of violence against women,

15. Acknowledge that racism, racial discrimination, xenophobia and related intolerance manifest themselves in a differentiated manner for women, increasing poverty, causing their living conditions to deteriorate, generating violence, and limiting or denying them the full enjoyment and exercise of all their human rights,
16. Ensure the full and equal opportunity for the sustained participation and representation of indigenous women and girls, and women and girls as appropriate from culturally diverse background in all relevant decision-making processes,
17. Ensure that the Commission on the Status of Women takes account of the impact of all forms of discrimination including multiple discrimination on women's advancement in its work,
18. Acknowledge the ongoing work of the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination of Racial Discrimination in taking into account the impact of multiple forms of discrimination on women's advancement and the achievement of gender equality,

B. Policies, legal measures, mechanisms and machineries

19. Establish and/or strengthen, where appropriate, legislation and regulations against all forms of racism, racial discrimination, xenophobia and related intolerance, including their gender-based manifestations,
20. Condemn all forms of racism and racial discrimination, including propaganda, activities and organizations based on doctrines of superiority of one race or group of persons that attempt to justify or promote racism or racial discrimination in any form,
21. Take concrete measures to promote equality based on the elimination of gender and racial prejudice in all fields, through inter alia, improving access to education, health care, employment and other basic services to promote full enjoyment of economic, social and cultural rights for all women and girls,

22. Take measures to address through policies and programmes, racism and racially motivated violence against women and girls and to increase co-operation, policy responses, effective implementation of national legislation and other protective and preventive measures aimed at the elimination of all forms of violence against women and girls,
23. Review where appropriate national legal and other mechanisms, including the criminal justice system, to ensure equality before the law so that women and girls can seek protection, shelter, and remedies against all forms of discrimination, including intersectional discrimination,
24. Review, where appropriate, policies and laws, including those on citizenship, immigration and asylum for their impact on the elimination of all forms of discrimination against women and the achievement of gender equality,
25. Design and implement policies and measures that address all forms of violence against women and girls. Empower victims of all forms of violence, in particular women and girls, to regain control over their lives, inter alia, through special protection and assistance measures,
26. Devise, enforce and strengthen effective measures to combat and eliminate all forms of trafficking in women and girls through a comprehensive anti-trafficking strategy consisting of, inter alia, legislative measures, prevention campaigns, information exchange, assistance and protection for and reintegration of the victims and prosecution of all the offenders involved, included intermediaries,
27. Develop and implement policies to ensure the full enjoyment of all human rights and fundamental freedoms by all women and girls regardless of race, color, descent or national or ethnic origin,
28. Take measures, as appropriate, to promote and strengthen policies and programmes for indigenous women with their full participation and respect for their cultural diversity, to combat discrimination based on gender and race, to ensure their full enjoyment of all human rights,

29. Review and revise , as appropriate, emigration policies with a view to eliminating all discriminatory policies and practices against migrants, specially women and children, and to protect fully all their human rights, regardless of their legal status, as well as to provide them with humane treatment,
30. Take steps to eliminate any violations of the human rights of women refugees, asylum seekers and internally displaced persons who are often subjected to sexual and other violence,
31. Urges all States that have not yet done so to become parties to the International Convention on the Elimination of All Forms of Racial Discrimination in order to achieve its universal ratification emphasizes the importance of the full compliance of States parties with the obligations they have accepted under this Convention,
32. Consider signing, ratifying or acceding to the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their families as a matter of priority, and consider promoting ratification of the relevant conventions of the International Labour Organization,

C. Change attitudes, eliminate stereotypes and prejudice

33. Develop gender sensitive education and training programmes aimed at eliminating discriminatory attitudes towards women and girls, and adopt measures to address the intersection between racist and gender based stereotypes,
34. Develop and implement programmes and policies to raise awareness among all relevant actors at national, regional and international levels to the issue of multiple discrimination against women and girls,
35. Review and update educational materials, including textbooks, and take appropriate action to remove all elements promoting discrimination in particular gender based discrimination, racism, racial discrimination, xenophobia and related intolerance,

36. Ensure that education and training, especially teacher training, promote respect for human rights, the culture of peace, gender equality, cultural, religious and other diversity, and encourage educational and training institutions and organizations to adopt policies of equal opportunities and follow-up their implementation with the participation of teachers, parents, boys and girls and the community,
37. Develop strategies to increase awareness among men and boys with respect to their shared responsibility in promoting gender equality and combating all forms of discrimination, in particular racism, racial discrimination, xenophobia and related intolerance as well as multiple discrimination,
38. Develop anti-racist and gender-sensitive human rights training for personnel in the administration of justice, law enforcement agencies, security and health-care services schools and migration authorities, paying particular attention to immigration officials, border police and staff of migrant detention centres, as well as for UN personnel,
39. Bearing in mind gender perspective, encourage the mass media to promote ideas of tolerance and understanding among peoples and different cultures

D. Research and collection of data and information

40. Develop methodologies to identify the ways in which various forms of discrimination converge and affect women and girls and conduct studies on how racism, racial discrimination, xenophobia and related intolerance are reflected in laws, policies, institutions and practices and how this has contributed to the vulnerability, victimization, marginalization and exclusion of women and the girl child,
41. Collect, analyse and disseminate quantitative, qualitative and gender-sensitive data regarding the impact of all forms of discrimination including the multiple discrimination, on women

When a Sri Lankan citizen marries a spouse of foreign origin, what is the legal status of that spouse under the country's laws and administrative regulations? What rights does s/he and the children of such a marriage have, and what are the problems they encounter on account of existing laws and official practices? The author of this book sets out to answer these questions, basing herself not only on her personal experience of her subject but also on informed research.

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