



# **In The Shadows of Ceylon Tea; Post-Colonial Feminist Analysis on Access to Justice in Cases of Intimate ‘Partner Violence Among Malaiyaha Tamil Women in Sri Lanka’s Tea Plantations**

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**Abstract.** The global tea industry has celebrated the flavour of Ceylon Tea for centuries while erasing the historical and continuing marginalization faced by Malaiyaha Tamil women who sustain its production. Unlike the broader sociological literature on gender-based violence, few scholarly contributions explore the interplay between substance of law and lived realities in access to justice among female victims of intimate partner violence within Malaiyaha Tamil community. This study employs a post-colonial feminist lens to critically examine how intimate partner violence (IPV) within Malaiyaha Tamil women is protected, obscured and perpetuated within socio-economic structures of Sri Lanka’s tea plantations. It argues that while domestic and international legal frameworks nominally protect women against IPV, the law has failed to account for compounded vulnerabilities resulted through double colonisation, caste, ethnicity, culture and plantation patriarchy. Using doctrinal and intersectional approach, the study reveals how outdated legal definitions, institutional inertia, language barriers and systemic exclusion undermines Malaiyaha women victims from accessing justice. Through a critical analysis of law and secondary qualitative data, the study demonstrates an urgent need to reimagine legal protections by focusing on lived realities and addressing power asymmetries that underpins intimate partner violence and broader socio-economic order of plantation community. Ultimately, it calls for an urgent effort to bridge the gap between law and reality in application, highlighting that legal remedies alone are inadequate without deconstructing the structures of historical and social oppression.

**Keywords:** Intimate Partner Violence, Legislations, Malaiyaha Tamil Plantation Community, post-colonisation, Plantation Patriarchy

## 1 Introduction

Ceylon Tea is canonized for its rich flavour has been the cornerstone of economy in colonial and post-colonial economy of Sri Lanka. In 2024, Sri Lanka has ranked as the fourth largest tea producer of the tea world and the third largest exporter of tea (Sri Lanka Tea Board, 2024). Despite the celebrated flavour of Ceylon tea, there lies a hidden story of struggle, discrimination, poverty and endless victimization of violence against female Malayaha Tamil Plantation workers. With the establishment of Ceylon tea industry in 1867, by James Taylor, a Scottish planter with starting first tea plantation in Loolecondera estate in Kandy (Sandika, 2018), there was a dire need of cheap labour. British tea planters identified Malayaha community as a labour force which is easy to control (De Silva, 1984) as they represented a landless agricultural field workers from lowest ranks in the existing caste hierarchy (Hollup, 1994, p.25). This community was a representation of Malayaha community in India who suffered from discrimination due to low-caste status, starvation and constant poverty (Association for the Interaction of Sri Lanka and the World,2015). With the British promising better living conditions with work, moving to Ceylon was appeared to be a solution for survival. This south migratory workforce constituted a new ethnicity in Sri Lanka. Followed by independence, wealth and property conditions imposed by the Ceylon Citizenship Act of 1948 excluded the Malayaha Tamil community from acquiring citizenship (Ceylon Citizenship Act, No 18 of 1948, s 2-3), thereby violating their right to representation and franchise. Excluded from citizenship, these community continued to be subjected to systemic discrimination, being deprived of their basic rights while enduring poor living conditions, social marginalization, economic exploitation with inadequate access to education. As political scientist S.B. de Silva notes;

“Education was not part of plantation culture; it was neither technically necessary nor did it have any survival value. For labourers’ children, education is a means of emancipation, but to the planter it is a potential threat to the labour supply” (de Silva 1982:346)

Although women, along with men have been central characters in tea plantations, Work of women’s contribution in the plantation and household are spatially and ideologically connected with the way of defining their subordinate position within the community. Within Malayaha Tamil community, gender ideologies underline the divisions of roles in plantations and households, their entitlement to household resource and their recognition within society. As existing scholarly work indicate, Tea plantation sector is an environment where socio-political marginalization, economic dependency and patriarchal hierarchies exacerbate vulnerability of women both within household and in tea estates (Gamage, Abeywickrama, Thotahewa,2022).

The study provides another dimension of violence experienced by women within Malayaha Tamil tea plantation community. As Robert K. Yin articulates, in depth examination of contributing socio-economic disparities is essential to understand the efficacy of law through the understanding of lived experience of individuals within society (Yin,

2018). This study offers a gendered analysis on how socio-economic, cultural disparities deeply entrenched in socially and ethnically oppressed community of Malaiyaha Tamils hinders intimate partner violence against women in the community and access to justice in such circumstances. It also fills a lacuna in the existing scholarly literature on the access to justice in cases of intimate partner violence which generally do not address the substance of law and its implementation in a socio-legal perspective. Considering International human rights obligations and national legal framework on violence against women, this study examines to what extent the female Malaiyaha Tamil plantation communities in Sri Lanka, have the access and benefit from legal protection during victimization of Intimate partner violence (hereinafter referred as IPV) within family unit.

## 2 Materials and Methods

With the central objective of exploring the efficacy of the implementation of national legal framework on addressing IPV within Malaiyaha Tamil Plantation community and influence of socio-economic disparities in implementation of the law, the research was based on qualitative research methodology. Within the qualitative research methodology, desk research grounded on doctrinal research method, drawing upon statutes, case law, policy instruments and academic literature was utilized. Due to the multi-disciplinary nature of the research, large amount of secondary qualitative data was incorporated to build its arguments. Secondary data was collected from academic databases, NGO reports, government publications ensuring a wide range of perspectives on both regulatory framework and socio-economic realities of the Malaiyaha Tamil plantation community. The study begins with theoretical understanding of IPV followed by exploring the existing national and international framework on protecting women against intimate partner violence. A critical analysis of Penal Code (Amendment) Act No 22 of 1995 and Prevention of Domestic Violence Act, No. 34 of 2005 was conducted to identify the substantial legal framework against intimate partner violence. Nonetheless Sri Lanka is a state party to numerous International Human Rights Conventions, the study draws its limitations to Convention on the Elimination of All Kinds of Discrimination Against Women (CEDAW) and its recommendations. Considering the historical marginalisation of the community, the study was grounded on postcolonial feminist theory which emphasize the diversity and complexity of women's subordination due to continuation of colonial and hegemonic powers by indigenous men after the decolonization, postcolonial feminist literature was examined to conceptualize postcolonial feminist lens to Intimate partner violence and interpret the role of law in domestic context in addressing such violence within Malaiyaha Tamil community. Qualitative primary data analysis is crucial to establish an in-depth understanding on understanding lived experience of violence and contribution of socio-economic, cultural disparities (R.K Yin 2018). However, the present study faced significant limitations in collecting primary data. Practical constraints including limited access to the Malaiyaha community, ethical concerns surrounding traumatization of survivors and resource restrictions rendered primary data collection infeasible. Consequently, the study necessarily relied on

existing available resources including reports, published datasets and existing scholarly contributions. Although reliance on secondary data provided a central foundation for analysis, it also restricted the study's ability to generate first-hand narratives, thereby limiting immediacy and contextual depth that primary data could have offered.

### 3 Results and Discussion

#### 3.1 Understanding Intimate Partner Violence; The Theory Behind

Love is a basic need of every individual. Being a victim of violence within their intimate relationship is haunting experience while trauma extends beyond physical acts of violence. World Health Organization (WHO) defines IPV as “any behaviour within an intimate relationship that causes physical, psychological or sexual harm to those in the relationship”. It is an umbrella term which encompasses acts of physical violence, sexual violence, including forced sexual intercourse, emotional abuse and restricting access to financial resources, education and medical care (World Health Organization, 2022). Although both men and women are victims of IPV, as existing evidence indicate women are disproportionately affected by IPV, subjected to more intense injuries, and experience more significant barriers while seeking protection from violence (Hamberger & Larson, 2015).

Even though, IPV is a common phenomenon within every socio-economic and cultural setting, existing scholarly discourse suggests that women within certain unprivileged communities are at a higher risk of being vulnerable to IPV (World Health Organization, 2012, Kishor & Johnson, 2006). Globally, over a quarter (27%) of women within age of 15-49 have subjected to some form of violence by their intimate partner (World Health Organization, 2021). Theoretical debates on feminism, places patriarchal attitudes as a central factor for IPV and gender inclusive perspective while the gender inclusive perspective considers broader intervention of socio-cultural associations as a root cause of IPV (Bell & Naugle, 2008).

As evident, IPV is not isolated within intimate relationships, it is associated with various behavioural, social, psychological, economic and cultural factors (R Jewkes, 2003) and understanding the impact of contributing factors to victimization contributes to efficient policy responses (DM Capaldi, NB Knoble, 2012). Thus, examination of socio-economic, cultural disparities with Malaiyaha Tamil tea plantation community provides more realistic account on understanding IPV within the community.

#### 3.2 Malaiyaha Tamil Women; Caste, Culture and Plantation Patriarchy

As emphasized earlier, British colonial plantation system was based on capitalist system of agricultural production with cheap bounded labour force. These plantations were maintained as ‘Ethnic enclaves and ‘complete institutions’ (Goffman, 1961) with entire labour force was working and living in the same tea estate isolated from the rest of the world. This was explored in a study of Management control, gender and post-colonialism: the case of Sri Lankan tea plantations (Ranasinghe, 2017) reveals a statement given by a plantation manager as follows;

“Inside the estate there were saloons. People did not need to go outside. People used to get their hair trimmed here. There was a tavern in every estate .... Estate workers used to go to these taverns those days to consume alcohol. There was a bakery in the estate. People bought their bread from them. There was a man to wash the clothes of the workers. The estate workers did not have any relationship with the outside villagers. It was not encouraged. There was a school in the estate. The children of the workers were sent there. There were 6 kanganies appointed in the 6 divisions of the estate responsible for bringing children to and from these schools. The village was not connected to the estate in any way .... people depended on the white planter for their every need”.

As evident in the statement, worker’s mobility in the plantations were restricted in forms of ties of indebtedness, oppressive regulations and organizations of guards to prevent these workers from leaving their employment (Ranasinghe,2017). Thereby, plantation structure resembled a community enclave with its total institutionalisation effectively suppressing their opportunities in accessing the society outside the plantation. This institutionalisation supplemented the capacity of planters to preserve a bonded labour relationship within the plantations. (Alawattage and Wickramasinghe, 2009a, p.710).

Patriarchy embedded in plantations has been widely explored by feminist scholars (Jayawardena and Kurian, 2015; Kurian, 1982, Kurian and Jayawardena, 2013). The patriarchy within plantations is identified as ‘Plantation patriarchy’ and Jayawardena (2015) argues that women of Malaiyaha Tamil community are exposed to multiple layers of patriarchal systems due to the reason of patriarchy embedded in labour structure and social organisation. According to scholar’s plantation patriarchy encompasses social hierarchies and gender discrimination stemming from colonialism, race, caste, ethnicity, religion and cultural practices (p.12). These patriarchal structures are hegemonic as they have been sustained through cultural consent and acceptance of male authorities within community (Jayawardena and Kurian, 2015, p.298). As patriarchy is structured by the interconnection of dynamics of ethnicity, class, religion, political, historical and social factors (Ruwanpura, 2006, p.206), it is essential to understand their cultural and religious roots which plays a critical role in hindering IPV and access to justice for the victims. Within the tea estates, Thottam (Garden) encompasses spatial extent of estate is gendered as mother in its evocation form to symbolize the nurturing contribution of tea plantation in relation to survival. Partition of feminine and masculine spaces in the plantations limit the contribution of women to the plucking areas while men contribute in factories and commercial shops. Male presence within in the plucking field and household as Karuppan, Muniady, and Madesamy are associated with their roles as protectors/ overseers of women within boundaries of the plantation (O. Hollup, 1994). Cultural identification of women with tea bushes to symbolize generative power with Kozhuntu (Tea leaves and a bud) to represent women’s life cycle stages denotes the embedded patriarchy within Malaiyaha Tamil community. Bud represents virgin daughter, while Kattai ilai (Short leaf) and Karattai ialai (Coarse leaf) respectively represent young and old women.

Thiruchandran (2006) argues on the dynamics of class, caste and gender among the Malaiyaha community as follows;

“Women, despite caste and class differences that exist among them at individual levels, can be identified as also subjected to subordination by common culturally defined and culturally enforced patterns of restriction. These restrictions are reinforced and transmitted by a common ideology .... The answer as to why this subordination exists relates to the fact that the Tamil social formation acts as a power network which has its own gender regime. Ideology sustains this regime, re-enforcing the subordination of women” (Thiruchandran, 2006, p.227).

The traditions embedded within the community is a clear reflection of women being worshipped on the surface level while being subordinate within male oriented household. Patriarchy in Estate Tamil culture having roots in an inferior ideology of women, affect women 's private lives, work roles and their position in the hierarchy of plantation work. Kurian (1998) argues that patriarchal ideology made it relatively easy for plantation management to continue their traditional forms of labour control. For instance, it justified the payment of lower wages for women working in the same worker category as men; also, when the overall wages were equalised for genders in 1984, it justified paying similar wages for all even though women worked longer hours than men (Kurian, 1998). The work of women in the plantations was monotonous, labour intensive and time consuming, yet it was justified on the ground that women were more patient (Kurian, 1998, p.80). Further it justified why women should endure male violence from their own spouse.

With the examination of existing socio-economic, cultural setting of the community, it is apparent that women of the community are subjected to double colonisation which can hinder their access towards justice in times of victimizations. As coined by Petersen and Rutherford in post-colonial settings, women are colonised twice; once by colonial realities and also by patriarchy (Tyagi, 2014, p.45). It highlights the multiple oppressions experienced by postcolonial women, arguing that colonialism escalate to patriarchal systems of already unequal situations (McLeod,2000, p 177). Followed by the understanding of socio-economic, cultural settings embedded within the community, the study will analyse the lived realities of intimate partner violence within these communities.

### **3.3 The Legal Landscape; Domestic and International Legal Framework on Intimate Partner Violence**

The examination of domestic law on IPV begins with a sketch of the focus on existing penal legislations, the Prevention of Domestic Violence Act No. 34 of 2005, and the procedural safeguards available to the victims of IPV. Sri Lankan legislators attempted to address some aspects of IPV through the Prevention of Domestic Violence Act No.34 of 2005 (PDVA). The PDVA defines ‘domestic violence’ to either any act that is categorised as a crime under schedule I of the statute or emotional abuse that encompasses repeated pattern of behaviours which are either cruel, degrading or serious in nature where the perpetrator is someone closely connected to the victim to include

broader range of individuals such as intimate partners including current spouse, ex-spouse and cohabiting partner, a wide category of family members such as parents and grandparents (biological or step), children and grandchildren (biological or step), siblings and step-siblings etc (Prevention of Domestic Violence Act, No.34 of 2005, s 3) While term 'domestic violence' indicates a border level of severity to involve violence within the family, 'intimate partner violence' indicates conflicting situations within romantic relationships which suggests less severity (Claire Houston, 2014).

It is visible that within the scope of definition of domestic violence, national law recognizes violence against women within the boundaries of intimate relationships. Except for 'emotional abuse', there are no legal provisions under PDVA which recognizes new offences related to IPV.

The offences already recognized under Chapter XVI of the Penal Code – Offences against human body and offences affecting life (i.e. culpable homicide, hurt, wrongful restraint) are incorporated as forms of physical violence within DVA. The legal remedy available for aggrieved person is to make an application for protection order under the jurisdiction of magistrate court to prevent such acts of violence further.

The provisions of protection order are initially enforced by the Police Department as the primary law enforcement agency of the country. The 1978 Constitution of Sri Lanka recognizes fundamental right of equality of everyone before the law and their entitlement to equal protection of law (Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, art12(1)). Stark argues that legislative attempt to end male violence against women has failed as the way domestic violence is defined in manner which results on no individual to go into jail for coercive, controlling intimate partner violence as such violence is not often accompanied with serious violence and the criminal justice system responds to "discrete episodes of force designed or likely to hurt or injure a partner" (Stark, 2006, p. 1019). This argument is evident through section 02 of the PDVA where the legal remedy is limited to further prevention of violence against the aggrieved party.

However, the gender-neutral nature of PDVA, alongside with constitutional guarantee of equality, reinforces a commitment to affording legal protection against all kinds of domestic violence, including IPV to all individuals which includes strata of Malaiyaha plantation community. Extending the principle of equality, interests of women and children are facilitated with additional care to ensure their physical, psychological, religious and social well-being as a whole to protect them from gendered oppression and discrimination.

In conjunction with national obligations, Sri Lanka's obligation towards recognition of international law against violence fortify the legal framework against IPV. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) within international law and women's rights is significant for protecting women against IPV. Gender-based violence constitutes a form of discrimination under Article 1 of CEDAW as it targets women because of their gender. This encompasses different forms of physical, psychological, sexual harm and other forms of violence which may violate women's enjoyment of human rights including equality within the family. State parties are required to ensure the elimination of any form of gender-based violence against women (Convention on the Elimination of All Forms of Discrimination Against

Women, art 2). However, while CEDAW indirectly addresses violence in domestic relationships, it does not explicitly mention or define the terms “domestic violence” or “violence” within its articles.

Coexisting the substantial legislative protection, the law enforcement authorities from Police to Judiciary plays a crucial role in protecting victims of intimate partner violence. As defined in the Police Ordinance No.16 of 1865, police officials have the obligation use his best endeavours and ability to prevent all crimes, offences, and public nuisances; to preserve the peace; to apprehend disorderly and suspicious characters; to detect and bring offenders to justice; to collect and communicate intelligence affecting the public peace; and promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority ( Police Ordinance No.16 of 1865, s 56).

### **3.4 The Lived Reality of Intimate Partner Violence in Malaiyaha Plantation Community**

The reality on the widespread nature of IPV within Malaiyaha plantation community of Sri Lanka has been subject of existing scholarly discourse through quantitative and qualitative analysis. A cross-sectional descriptive study in 2003 analysed the experience on Gender-based violence (GBV) of 350 female participants in Hatton estate sector (K. Wijayathilake, 2003). By employing of interviewer-administered questionnaire, the study identifies that irrespective of their civil status, 83% of participants were subjected to GBV at least once during their lifetime through examination of multiple location of where violence occurs, extending to household, workplaces, religious sites (Kovils), educational institutes and public transport. The primary perpetrators of GBV were identified as close family members, supervisors, and kangannies (male overseers). The study emphasized that among the selected Hatton estate sector, incidents of GBV is significantly higher (86%) in comparison to their urban counterparts (54%). As the study identifies, socioeconomic disparities among rural communities are key contributors in intensifying vulnerability of women towards GBV within these communities.

The study ‘Human Rights of Women Workers in Plantation Sector’ assessed the status of human rights of women of the plantation sector in Kandy, Kegalle, Nuwara Eliya and Galle (A.s Chandrabose, 2007). Analysing the data through focused group discussions with a sample of 649 women in Plantations, findings indicated that, among female victims of GBV, 66% of the perpetrators were male individuals which includes father, husband, brother and ‘kangannies’ (male supervisors). 21% of the perpetrators were reported as women while 13% identified perpetrators as broader community. Participants from Kandy and Nuwara Eliya districts exhibited complete reliance on Estate authorities and trade union leaders to guide their actions on seeking legal remedies as they were feeling powerless to act independently without consent of their leaders.

In a 2022 study, it was identified that GBV has become a significant issue within the family unit among tea plantation sector in Sri Lanka, particularly in Kandy, Matale and Nuwara Eliya (Gamage, P.G, Abeywickrama C, & Thotahewa , I. 2022). The findings identify that highest level of sexual and economic violence is experienced by women in Nuwara Eliya district accounting 71% and 100% respectively, whereas physical violence is most prevalent in Kandy as 91%. All four types of violence – physical,

sexual, economic and emotional violence are mostly prevalent in Nuwara Eliya accounting to 57%. Alcoholism, extended family arrangements, financial instability and lack of trust among partners were identified as significant contributors to GBV. Further material and social poverty, limited access to education was identified as factors entrenching cycles of GBV. As identified by Prof. W.M Jayasundara, most of the women within estate sector had become victims of domestic at the age between 31-40 years and was married when less than 18 years old. The study revealed that brewing of illicit liquor, alcoholism, extra marital relationships of the husband were the main root causes for domestic violence within plantation sector (M.W Jayasundara, 2003). While these studies contribute critical insights; further comprehensive and longitudinal research is essential to thoroughly understand the systemic nature of IPV faced by women within Malaiyaha Tamil community. Nevertheless, the available statistics along with the understanding of socio-economic and cultural setting of plantations unequivocally demonstrates that women in the Malaiyaha plantation sector remain disproportionately vulnerable to IPV, necessitating urgent legal, policy and institutional responses.

### **3.5 Challenges in Implementation; Hidden Barriers in Accessing Justice**

As illustrated above, the domestic legislative and institutional framework has taken a certain amount of endeavour to address IPV within the domestic jurisdictions. In light of this context, examining the implementation of law is essential to discover the reality of Malaiyaha women in accessing justice during victimisation to IPV.

Access to justice is defined as “the ability of all people to seek and obtain effective remedies through accessible, affordable, impartial, efficient, effective and culturally competent institutions of justice” (Agrast et al, 2013). It ensures equal access to obtain remedies through law enforcement authorities without any discrimination. As discussed earlier, the fundamental recognition of right to equality and equal protection of law (Article 12 of the Constitution of Sri Lanka) reflects national obligation to ensure access to justice of victims of IPV within Malaiyaha Tamil plantation community. In parallel with access to justice, citizenship concept argue that legal status associated to citizenship provides different avenues of rights (civil, political and social) and entitlements (Kymlika & Norman, 2004, p 32). Moreover, as T.H Marshall argues in order to be full members of a community, citizens should be entitled to civil, political and social citizenship rights and are essential for complete citizenship as it enables disadvantaged social groups to exercise their political and civil rights. (Marshall, 1950). In 2003, individuals of Indian origin were granted with status of citizen in Sri Lanka including Malaiyaha community (Grant of citizenship to persons of Indian origin Act No. 35 of 2003, s 2) granting them with the protection of law as a Sri Lankan citizen. However, empirical evidence indicates an opposing perspective.

Existing scholarly evidence demonstrates that the Malaiyaha Tamil community have long been left behind in accessing governmental services which has created a barrier in social rights, poverty and poor social development (Hittinayake, 2009; Kader, 2015; Uyangoda, 2013, 2012). These studies argue that despite of international human rights obligations, the deprivation of citizenship for five decades acts as the key ground for the continuous marginalization of the community. (Bass, 2012:82). From 1948, they were discriminated as ‘stateless and were debarred from being a part of the government

services. Empirical evidence reveals that until recent, there has been an absence of internal motivation and demand for public services among Malaiyaha Tamil plantation community due to prolonged statelessness continue to act as barrier in claiming their rights as legal citizens. Within the citizenship concept, when officials fail to adhere to relevant protocols and treat their citizens in consistent with the law, citizens are entitled to voice and demand for their rights. But the case of Malaiyaha Tamil community, illustrates on when stateless people regain their legal citizenship, they require time to develop their civic virtues, capacity, knowledge and skills to have a fair understanding of the law. On the contrary, it can be argued that even though legal status of citizenship establishes the right to access governmental services as an inherent right, the institutionalization and realities in the plantation community reflects a reversed circumstance where they are sidelined from governance. As argued, for more than 200 years, their lives and work has been limited to plantations, while practicing, protecting and promoting their own language, religion, culture and customs (Nadesan, 1993). R. Ramaswamy as explored in the access to public services in Sri Lanka, Male superiority in tea plantation culture as discussed above acts as a contributing factor in continuous IPV within tea plantations. Additionally, he argues that despite of acquiring formal citizenship in 2003, this community are subjected to discrimination and exclusion in accessing governmental services (R. Ramaswamy, 2018).

However, it is also equally viable to assume that the limited access towards justice and rights in the Malaiyaha Tamil community stems from ineffectiveness or poor quality of law enforcement and public institutions, outdated laws and lack of transparency, accountability and responsiveness in relation to delivery of services.

Enhanced legal framework is essential in ensuring justice to victims of IPV in Malaiyaha Tamil community. Outdated laws and lacunas in existing legal definition can be a barrier in particular cases of IPV. For an instance, section 363 of the Penal code of Sri Lanka defines rape as;

“Section 363. A man is said to commit " rape " who enactment has sexual intercourse with, a woman under circumstances falling under any of the following descriptions: -

(a) without her consent even where such woman is his wife and she is judicially separated from the man

(b) with her consent when her consent has been obtained, by use of force or threats or intimidation or by putting her to. fear of death or hurt, or while she was in unlawful detention.

(c) with her consent when her consent has been obtained at a time when she was of unsound mind or was in a state of intoxication Induced by alcohol or drugs, administered to her by the man or by some other person”

As aforementioned, Section 363 of the penal code, the definition of rape is restricted to penal- vaginal penetration only in cases of judicial separation, thereby excluding rape within intimate relationships. This limits victims of marital rape within Malaiyaha Tamil community from seeking justice.

Absence of accessible and effective legal services serves as a significant barrier in hindering justice for victims of IPV. As domestic scholarly studies have identified, the

transparency and language barriers within law enforcement officials is a pertaining issue in cases of violence against women. As studies reveal, many police stations lacked availability of Tamil speaking officers during all the times. Based on a analysis of cases received to office of Trincomalee District Women Network in the period from November to December 2022, it was observed that even in predominantly Tamil speaking locations, only few local police stations have Tamil speaking women police officers. With the unavailability of Tamil speaking officers, victims are asked to return back in a later date and time which has led to inconvenience and discourage the victims from pursuing their complaints (Trincomalee District Women Network, 2023). As emphasised by FOKUS women, the absence of Tamil speaking officials can result in incorrect recording of initial complaint due to recording officer's lack of proficiency in Tamil language which could impair the complete trial process (Centre for Equality and Justice, 2020).

Adequate involvement of the police authorities is crucial in IPV cases as they act as the initial point of contact for victims in pursuing justice. However, as Wijayathilaka argues in 'Monitoring Progress of Discrimination against Advancement of Equality for Women', a study conducted analysing primary data on domestic violence incidents from police cords, court cases and hospital reports revealed a concerning approach in handling domestic violence cases by police authorities, 38.8% of reported cases were settled by the police without taking it forward (K Wijayathilake and C Gunaratne, 1999). In another study which examined the experiences of domestic violence victims with law enforcement authorities in selected six locations within Sri Lanka revealed only 42.2% victims reported the incidents to police, while significant proportion of 313 participants refrained from seeking legal remedies. 11.3% recorded the police responses as futile, while 35.5% of the participants were advised by the police reporting officers to return to their marital home and reconcile with the perpetrator (S. Jayaweera, T Sanmugam, M Dias and K Nagahawatte, 2010). As Stark argued, police which is the primary institution involved in criminal justice process of violence within domestic relationships, often focus solely on investigating about what abuser did rather than what they failed to do (Evan Stark, 2012). This argument is clearly visible within the domestic context as revealed in existing scholarly evidence where most of the domestic violence cases were settled by the police.

In addition to lacunas in substance of law and its implementation, lack of literacy among the Malaiyaha community is more likely to have an impact on negotiating and demanding legally mandated legal services. The national indicators depict the low level of education within the community, thereby affecting in adhering with formalities related to legal services. Studies reveal in the attempt to find out the level of awareness of public services, which revealed that some 70% of plantation people were aware of only 5 per cent of services, such as National Identity Card, Birth Certificate, Marriage Certificate, Passport and Samurthi (R.Ramaswamy, 2018).

Through a postcolonial feminist lens, the contrast between the Sri Lankan legal framework and empirical realities of IPV in the Malaiyaha Tamil plantation community demonstrates how law can reproduce colonial hierarchies under the guise of neutrality. As emphasized by Chandra Talpade Mohanty, universalist framing of women's rights often erases the historically situated oppression of women in postcolonial contexts; which is evident in Sri Lankan legal framework that adopts gender neutral approach,

ignoring the specific structural subordination of Malayiyaha women. Similarly, Spivak's critique of the silencing of the subaltern woman resonate within the context of Malayiyaha plantation community, where reliance on estate authorities and trade union leaders mediate women's access to justice. The PDVA's narrow focus on discrete acts of harm, rather than coercive and intergenerational patterns of violence fails to engage with what Gayatri Menon depicts as the 'afterlives of colonial dispossession' which continue to define socio-economic vulnerabilities of Malayiyaha women. Thus, while Sri Lanka's alignment with CEDAW and constitutional guarantees of equality provides a rights-based framework, the law's universalist orientation masks entrenched asymmetries of power, leaving Malayiyaha women disproportionately affected by IPV.

While the foregoing analysis, offered a broader and generalized analysis of the implementation of laws relating to sexual and gender-based violence with the limitations arising from absence of extensive empirical data specifically focused on IPV among Malayiyaha Tamil plantation community. Nevertheless, it is important to acknowledge that available evidence provides a clear indication that implementation of relevant laws on IPV remains largely unsatisfactory in terms of victims of IPV in Malayiyaha Tamil community. The interplay of restricted and outdated legal definitions, institutional barriers, literary constraints along with double colonialisation continues to hinder the ability of the community in accessing justice effectively.

#### **4 Conclusion; Need of Bridging the Gap Between Law and Lived Reality**

This study questioned whether legal framework within domestic context could adequately ensure justice to victims of intimate partner violence among Malayiyaha Tamil plantation community. The findings demonstrated that prolonged statelessness coupled with plantation patriarchy prevented the community from acquiring the protection of law. Moreover, as this community lives under a restricted institutionalised plantation, there is an evident dysfunctional relationship with minimum interaction with law enforcement officials and institutions. As the study examined, a significant gap exists between the law and its implementation, which has led to undesirable outcomes in accessing justice. For an example, even though national efforts have been made to ensure fluency of Tamil language among government officials, evidence suggest incapacity and inadequacy of officials to serve Malayiyaha Tamil community in their language. The constitutional and legal entitlement of language is guaranteed to all citizens. But practice has been adverse in given situation. The study builds an interesting argument that constant discrimination in all levels have restricted women in Malayiyaha community from putting forth against abuse they face on a daily basis. The lacunas in existing substantive law acts as another barrier for women of the community from accessing justice for violence within romantic relationships. Considering the existing complexities within law and its context of application, there is a pressing need for more context-

specific research and policy interventions to bridge the gap between the legal framework and the lived realities of Malaiyaha Tamil women facing IPV. The study concludes with following recommendations to strengthen the weak and unresponsive legal enforcement mechanisms while making it easily accessible, empower the Malaiyaha community through rights-based approach with better understanding on their right as citizens for legal and constitutional rights, equal access to implementation agencies.

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