

Effectiveness of British Legislation regarding Kandyan Law: the Kandyan Marriage Ordinance of 1859

D.T. KOGGALAGE

Abstract

This essay is based on research on Kandyan woman as a legal person under the British. There were two main objectives in carrying out this research: one was to find out whether there was a change in the legal position of Kandyan women, which incidentally was governed by the traditional unwritten law called the Kandyan Law, during the first fifty years of British rule in the Kandyan Provinces; and the other was to look into the social and economic transformation which took place as a result of British legal policy regarding the Kandyan Law at the time. This research was carried out in order to shed light on the legal changes under the British during the initial years of their rule over the Kandyan Provinces since almost all the pioneer and subsequent researches have focused mostly on socio-economic, political, and administrative changes at the time. The legal position of women was taken into consideration because it created an ample profile of the said society which had not been paid adequate attention in most of the previous studies. The hypothesis of the study was that there was a clear transformation in the Kandyan Law during the time from 1815 to 1870 which can be highlighted through marriage law and the change of the legal position of Kandyan woman corresponding to that aspect of law. Major finding of the research was that a change has indeed occurred in the legal position of Kandyan woman which subsequently led to a social transformation or rather, a sense of disorientation in her social position after the new changes.

Key Words: Kandyan Law, British Legislation, Kandyan Women

Legislation was one of the major mechanisms through which the British colonial policy was carried out in the colonies. By this measure they were able to achieve their goals and justify their colonial rule in accordance with social, cultural and judicial ideals.

In this essay, it is expected to examine one of the reforms introduced by the British in Sri Lanka through legislation, namely, the Kandyan Marriage Ordinance, no. 13 of 1859 (Legislative Enactments, 1923) and to evaluate the extent to which it was successful in making changes in the traditional customary law in the Kandyan Provinces.

The British in general seems to have regarded themselves as the agents of civilization and they believed that they had a moral duty to improve the cultural standards of the eastern societies including Sri Lanka. This is clear from the following words of Henry Dundas, President of the Board of Directors of the British East India Company, written to Governor North in 1801:

[Do] whatever can be done in the Island, consistently with its present limited Resources, to improve the present Education of the Natives and to inculcate Sentiments and habits of Fidelity, Integrity and Industry, and gradually to eradicate superstition and prejudice...(Mendis, 1956, pp.130-4)

Another such observation by Governor Stuart Mackenzie very much later is as follows:

Viewing as I do among the most important measures that this Government ought steadily to pursue the extension of universal instruction and extension of roads throughout the Island, creating intercourse and thereby ensuring early civilization, improvements of morals and wealth to the community.(Wickremeratne, 1996, pp. 262-3).

Thus, it is clear that the British rulers in general, thought that they were on a 'civilizing mission' in countries such as Sri Lanka. This

idea, in a way justified their colonial policy as in theory the colonial policy was not compatible with the egalitarian political ideologies in most parts of Europe at the time. Therefore they took steps to propagate Christianity, spread of Western education and culture and to introduce European institutions by making changes in local social institutions (see Kulasekera, 1988, p.104). One such institution which attracted the attention of the British in Sri Lanka was the traditional customary law of the Kandyans.

It seems that the British genuinely believed that the Kandyan law needed much improvements in their mission to 'civilize' the Kandyans. This is very much clear from the ideas they expressed regarding the marriage law.

At the outset it can be said that they thought the Kandyan marriage system was barbarous and oppressive especially regarding the position of women. One clear example was the attitude of an English officer during the mid 19th century regarding marriage and divorce law of the Kandyans: '...A man who has taken a wife...[without registration of the marriage] has the privilege of turning her out of doors whenever it suits his convenience to do so...' (SP No. III, 1869). This type of observations regarding the Kandyan Marriage law has proven to be erroneous in later times. The reasons behind such remarks were their lack of understanding of the local customs and the pre-assumption that the Eastern social institutions were barbarous.¹ Accordingly, we see a situation in which '...what could be justified as a custom in one context was regarded as oppression in another conceptual framework and presented as a reason for further change.' (Kulasekera, 1988, p.116). Thus, the British were inclined towards changing the Kandyan Marriage Law which they regarded uncivilized.

¹ For a critical study of this aspect regarding the Kandyan Customary Law see, Dilma T. Koggalage, 'Kandyan Woman as a Legal Person: A Study Regarding the British Legal Policy during the 19th Century' (in Sinhala), M.Phil. Dissertation, University of Kelaniya, 2006, pp. 99-147.

In order to bring about changes the British utilized legislature. The Kandyan Marriage Ordinance no. 13 of 1859 (hereafter referred to as Ordinance 13 of 1859) was the result of such legislature. In introducing the law the British seemed to have had two aims. One was to make changes in the Kandyan marriage law based on Christian ideology which was considered superior. Professor Savitri Goonesekere explains the aims of the British thus:

Administration reports indicate that this legislation was enacted to 'obtain proper evidence of marriage' to 'prevent the fact of living together of two people...being set up as a valid marriage'. It was also enacted 'to secure the claims of legitimate filiations' or children born with lawful marriage, as distinguished from 'irregular cohabitation' (Goonesekera, 1990, p.190).

The more focused aim was to improve the 'condition of the Kandyan Mothers'. Envisaging the success of the Ordinance 13 of 1859, A.O. Brodie, the District Agent of Matale stated:

The excellent Marriage Law, though not so fully appreciated as might have been wished, has yet done much good, and will, I have no doubt, shortly raise the mothers of the people to that station which they ought to occupy (SP No. III, 1869).

The words of Brodie himself hint that the Ordinance was not accepted by the Kandyans to the level anticipated by the British. The important question which could be raised here is - why did the Kandyans refuse to give a higher status to their women in society as anticipated by British officers such as Brodie? To answer the question a deep survey of the existing system at the time and the changes introduced by the Ordinance are essential.

The Kandyan Marriage Law was a simple one. It was based on customs and carried forward for generations with benefits and taboos acting as the means which ensured the smooth operation of the law. Marriage, for the Kandyans was not a mere union between a male and a female. According to a document which belongs to the 18th century, Kandyan marriage was the beginning of a relationship between two extended families (cited in Wimaladharm, 2003, p.110). For a bond of such significance there seemed to be two principal conditions. The first was to protect the caste endogamy and the second was to prevent the fragmentation of land. These conditions not only served the interests of the parties concerned but also contributed to maintain the socio-economic foundation of the society as a whole.

The social base of the Kandyan society was the caste system. Even the economic activities assigned to the people were based on the caste hierarchy. Caste ruled the day to day activities, culture and functioning of the Kandyan society. Caste was something that one was not able to acquire: it was hereditary.² Since caste was so important that caste endogamy was strictly practised by the Kandyans. In marriage, that the bride and the groom should be from the same caste and creed (*sama kula-gotra*) was a rigid rule. Therefore marriage was decided by the elders of the family (*Niti Nighanduva*, 1880, p.20).

Similarly, land was the economic base of this society which was primarily an agrarian society. Since the economy was based mainly on subsistence agriculture land was a key factor in determining the livelihood of a family. As a whole, the fragmentation of land would have been a major challenge to the economic interests of the families: if the situation was not controlled there was the risk of the whole economy being affected. Thus, Kandyan families took various

² For a study about the Kandyan caste system see, Ralph Pieris, *Sinhalese Social Organization: the Kandyan Period*, Colombo, 1956; Bryce Ryan, *Caste in Modern Ceylon*, New Jersey, 1953.

measures to prevent the fragmentation of their land: one such measure was marriage. Some of the customs, especially those regarding the inheritance of paternal property, related to the three modes of Kandyan marriage - *Diga*, *Binna* and *Samagi* (a polygamous or polyandrous marriage) amply demonstrate this situation. For example: in a *Diga*, a daughter of a family joins her husband's family and her issue would retain her husband's family name. Thus she would belong to another family as a result of her marriage. Therefore, she would lose the right to inherit her paternal property. The rationale behind this seems to be that if she inherited the property it would fall into another families' possession since in a *Diga* it was considered that the bride was given to another family although of the same caste and creed. In *Binna*, where the daughter stays with her parents and exercise certain amount of authority as a decision maker over her husband and where the issue normally retains her family name she had the right to inherit her paternal property in the similar manner as her male sibling does. It could be said that the *Samagi* marriage was practiced almost for the sole reason of keeping the family land intact (*Niti Nighanduva*, 1880, p.22).

The above conditions indicate that in Kandyan marriage individuals did not have a say in finding their life partner (*Niti Nighanduva*, 1880, p.22).³ Even these aspects of the Kandyan Law might have been seen by the British as instances of oppression. There is evidence to show that they considered the deprivation of right of a *Diga* married daughter to her paternal property as unfair.⁴ They may have

³ Only in *Samagi* marriage, the bride was asked whether she preferred to take the brothers of her husband as husbands. *Niti Nighanduva*, p. 22.

⁴ The case, *Galagoda Banda vs. Girigama Menika*, in 1823, was filed regarding the inheritance of a deceased woman's property by her issue. The authorities, giving the verdict explained that, since the daughters of the deceased woman, who married into *Binna* marriages and her two sons have already inherited their father's property, the deceased woman's property would be distributed between a daughter who entered into a *Diga* marriage and a son of another daughter whose marriage was also a *Diga*. (cited in F.A. Hayley, *A Treatise on the Laws and Customs of the Sinhalese*, Colombo, 1923, Appendix II.) The reason given by the British Judicial authorities for their decision clearly shows their attitude

considered the *Samagi* marriage as outright immoral. It is quite possible that the British did not understand the socio-economic base of this pre-modern society and thought it fit to introduce their own moral values to that society.⁵

Another aspect that seems to have ignored by the British was the more progressive and positive aspect of the marriage law which, one could say, had compensated the restrictions mentioned above. For example, the Kandyan women had been assigned certain special rights by the law itself. The most prominent among them was the individual right to her property experienced by married women. Even in Europe at the time, a married couple's individual property came under a provision called 'community of property' as a result of the marriage bondage. The legal unity debarred individuals from acting according to their own will regarding their own property (Hayley, 1923, p.285). Another right was the right to remarry which was given to divorced and widowed women (*Niti Nighanduva*, pp. 22, 76, 96, 41-2). In comparison to Asian countries such as India this was a very progressive measure especially since the woman always had to depend on a male for their subsistence in this pre-modern economy.⁶

However, the British seemed to have failed in grasping this legal and socio-economic rationale behind the concept of Kandyan marriage. They were simply inclined to change the law. They used legislation for this purpose. One such measure was Ordinance 13 of 1859.

The Kandyan marriage had a very simple procedure. Relations from the two parties witnessed the performance of customary rituals in a simple ceremony and the man and the woman were considered as married (Knox, 1681, p.247). Divorce was also a simple matter without much legal complexities. However, there were conditions regarding the payment of maintenance to wife and issue, division of

towards the provision of the customary law which blocked the right to inherit paternal property by a daughter who married into a *Diga* marriage.

⁵ See above, words of Dundas, Mackenzie and Brodie.

⁶ For a detailed study of Kandyan marriage system, its' limitations and benefits, especially regarding women, see Koggalage, pp. 99-147.

property acquired during marriage and the guardianship of children and the like (*Niti Nighanduva*, pp. 76, 96, 41-2).

Theoretically, the British accepted these customs and refrained from changing them. However, in practice, as a result of legislation the validity of the customary law was undermined. This is clear from the provisions of the Ordinance 13 of 1859 which focused primarily on the registration of marriages. The reason for this step may have been the influence of the concept of Christian marriage and the morals which went along with that marriage system.⁷ However, in practice these changes created a chaotic situation regarding the marriage law of the Kandyans.

Clause 8 of the Ordinance is important regarding the registration of Kandyan marriages. If a marriage had taken place prior to the date which the Ordinance became effective, the parties should fulfill two requirements in order to accept it as a legal marriage: **a)** to produce evidence to prove that the relevant ceremonial and customary rituals took place at the wedding; **b)** proven thus, to register the marriage by a registrar. Accordingly, the marriages taken place prior to 1860 (the year in which the Ordinance came into effect)⁸ were not legal unless they were registered after 1860. In order to register a marriage according to this Ordinance, the parties should prove that a wedding ceremony had indeed taken place; but, most of the parties were unable to prove that because the Kandyan marriage was legalized not by documentation but by the presence of relations at a simple ceremony. It can be assumed that those who sought the registration of the marriages were faced with a crisis when producing such persons who witnessed the wedding. If they did not produce the witnesses, the registrar would not register the marriage, which meant that it would not be regarded as a legal marriage.

⁷ See above, the comments of Professor Goonesekera on British legislation regarding marriage law.

⁸ This was proclaimed by a Proclamation dated 27 December 1859.

Where a marriage has taken place after the date which the Ordinance came into effect, the registration of the marriage was essential in order it to be a legal marriage. Thus, under this legislation the legality of marriage was based on something totally alien to system of Kandyan registration of marriages.

The problem of legality of marriage under the Ordinance 13 of 18159 had its consequences. Since the Ordinance focused only on areas such as marriage and divorce the Kandyans were to rely on original Kandyan law for other areas of marriage. This created a somewhat confused legal situation. For example, a woman who married prior to 1860 and was unable to prove her marriage to the registrar would not be able to go before law for maintenance from a husband who had deserted her since the new system did not accept her marriage as legal. But according to her knowledge, she was married before her relations and therefore she was entitled to receive maintenance from her ex-husband according to the Kandyan law. However, the Ordinance being bent on exercising a rigid law with a view to registering all the marriages ignored the problematic areas such as this which occurred at the practical level.

According to the Ordinance, the legal age for marriage was 16 for a female and 18 for a male. Marriages taken place between minors were considered not legal with the exception of occasions where such parties lived together for a period extending 365 days. Marriage between minors was accepted as legal only if they had the consent of the elders. However, if the elders refrained from giving consent 'unjustly' the registrar or the deputy registrar had the right to register the marriage. Here the traditional authority of the elders regarding the marriage of their younger ones was undermined and the British authorities were given an upper hand. This situation, in practice may have led to the disregard of the caste endogamy and the fragmentation of land by the next generations – which was the base of the Kandyan socio-economic system.

In divorce, the Kandyan system allowed two people to go their own separate ways if they were unable to live together. However, there

were very rigid and positive legal steps to protect the parties concerned. Robert Knox, perhaps influenced by his own Christian thinking, described this system as a very loose marriage system where the couple could desert each other as they pleased. But it was not so in practice. Although divorce was accepted by the society, individuals could not act irresponsibly. For example, if a husband divorced his wife without any fault from her part he must give maintenance to her and the obligation ends only after her subsequent marriage (*Niti Nighanduva*, pp. 24-5). Furthermore, if a husband left his wife who was pregnant he was to provide for the child until six months after his/her birth (*Niti Nighanduva*, p. 25). There were many regulations such as these. However, the law did not mention specific ground for divorce. The Ordinance, however, determined such areas which acted thereafter as grounds for divorce - namely, unfaithfulness of the wife, and unfaithfulness of the husband along with incest and cruelty, irreparable difference proven after separation for a period of one year and separation for a period of two years (Ordinance 13 of 1859, Clause 16). These provisions have restricted the grounds for divorce to conditions which the Kandyans were not used to and probably would not have understood.

Similarly, according to the Ordinance the parties could not remarry without obtaining a proper divorce from a district court (Ordinance 13 of 1859, Clause 24). In a situation where the indigenous community barely understood the ground for divorce and almost all the marriages were not registered, this was impractical. Simply, how could they divorce properly from a marriage which was not regarded as legal in the first place by the British law courts? But without a proper divorce, matters such as maintenance were out of question.

What we see here is a chaotic legal situation created by British legislation which changed some areas of the existing customary law. This has created a dichotomy between the two systems- the customary law and the law introduced by new legislation.

In this situation, one could assume that the legislation did not work. There is documentary evidence in this regard.

At the beginning, when the Ordinance came into effect, the general feeling among the British officials seemed to be positive. They thought that the Ordinance would be a success. According to the Government Agent of Sabaragamuva, the registration of marriages in the area in the year 1862 was successful. During that year 3111 marriages were registered in Sabaragamuva (S/P, No. III, 1869). The fact that the officials were optimistic regarding the success of the Ordinance is clearly visible in the words of Sharp, the Government Agent of Kegalla in 1863:

...not more, I fear, than one marriage in four being registered under the Ordinance. The Bandas and people of the higher classes are however, registering, and I trust that after a time, the notion that registration is respectable will lead to its becoming general (S/P No. III, 1869).

Although Sharpe was optimistic, his words hint that even after three years registrations were not taking place to the extent that the British expected them to be. However, even after five years, some of the officials were still optimistic. Government Agent of the Central Province was of the opinion that, gradually the Ordinance was becoming a success. In 1867, he reported that, 2710 marriages in Kandy were registered while 923 in Matale, 6438 in Badulla and 260 in Nuwaraeliya were registered which in total was 10 331 registered marriages in the area (S/P No. III, 1869).

Nevertheless, by this time at least some of the British officials were gradually becoming aware of the real situation. They understood the Ordinance 13 of 1859 was not as successful as they thought it to be. Government Agent of Sabaragamuva summed up the situation in his Annual Report: after more than five years since the Ordinance came into effect, the number of marriages registered in the year 1867 in Sabaragamuva Province exceeded ten only in two areas, i.e. 15 in Navaduan Meda/Palle Pattu and 12 in Kolonna Korale; in Navadun

Uda Pattu not a single marriage was registered (S/P No. III, 1869). A more vivid account was given by the District Judge of Kurunegala. According to his calculation (out of 47 636 males, who were in the age category between 18 to 55, paid road tax annually), about 3328 males should be of the age 20, which was the average age for a Kandyan male to marry at the time. He pointed out that at least about 1664 marriages should have taken place in a year supposing the males and the females are equal in number. He then mentioned the number of marriages registered annually from 1861 to 1867: 186 in 1861, 131 in 186, 55 in 1863, 450 in 1864, 228 in 1865, 146 in 1866 and 112 in 1867 all amounting to 1308 registered marriages. On the basis of these data he pointed out that in reality, the Ordinance was not successful in its mission (S/P No. III 1867).

Accordingly, these observations made by the British officers themselves, it is clear that the Ordinance 13 of 1859 had not fulfilled the expectations of British legislators. The legislators, it seems, were working on changing the existing traditional system in order to consolidate their power as well as to make the administration of the colony easier for the officials. At the same time, they were on a mission to 'civilize the backward Kandyan society' by introducing their own social values. The situation analysed above clearly indicates that, in the case of the Ordinance 13 of 1859 they were not successful. In fact the Ordinance was a failure. If so, the next vital question which has to be raised here is - why? According to the records prepared by the British officials in the Kandyan Provinces at the time, it is clear that several reasons were behind the failure of this Ordinance.

The lack of understanding regarding the new legislation among the Kandyans was certainly a major reason. As we have explained before, the Kandyans may have felt that they were taken away from the non-complicated traditional marriage law. It was not only non-complicated but also something very dignified and trustworthy; they respected and obeyed it not because of the fear of penalization or because it was imposed by the government, but because they thought it to be part of their culture and tradition. The British promised that

they would accept the traditional modes of marriage and the law which went along with these modes of marriage. But at the same time in legislation they were categorically denied the legality of a marriage which was not registered and a divorce which was not formally given by a district court. This situation may have confused the indigenous community on the question, what was legal and what was not. The following words of the Government Agent of Kegalle in 1862 present the situation very clearly:

...They have for generations considered the giving and receiving of a white cloth a sufficient ceremony. They do not understand the object of registration, which is to their view a superfluous and troublesome addition to their own simple mode of procedure; and yet, if this form be neglected, a marriage which is regarded by the parties, and by the feeling of the country, to be legitimate, is by the law declared to be null and void (S/P No. III, 1869).

This situation may have led to the disregard of the Ordinance by the indigenous community. Also, it may have led them to believe that as the British seemed to have accepted the traditional marriage law, there is no point in registering it, which in fact was a complicated procedure.

Another reason would have been the unwillingness of the Kandyan to disregard their traditional customary law or to make it secondary in authority to the new law introduced by the British through legislation. There were real indications of the community's displeasure regarding the new law. The Government Agent of Kurunegala, in a letter to the Colonial Government in 1866 warned about such displeasure: 'The public are somewhat prejudiced against it [registration of marriages], interfering as it does with their social customs.' (S/P No. III, 1869). The same officer, when he was the Government Agent of the

Northeastern Province, emphasized the unwillingness of the Kandyan to abide by the new law:

The substance of the legislative Enactment was widely published, and its benefits fully explained to the inhabitants, but such is their indifference to measures, the benefits of which are prospective, that neither coaxing nor threats will induce them to confirm to regulations opposed to their customs (S/P No. III, 1869).

This unwillingness may have led the Kandyan to ignore the new law which ultimately resulted in the failure of the Ordinance 13 of 1859.

The lack of understanding of the function of the traditional marriage law or outright disregard for it by the British was another reason. The following criticism leveled against the Kandyan divorce system which was a part of the traditional marriage law, by the Government Agent of Ratnapura offers a clear example of the inability of the British to understand the Kandyan law of marriage::

It is evident that the law has failed to be appreciated and therefore to provide a corrective for the matrimonial inconsistency which forms a marked feature of the Kandyan idiosyncrasy. The frequency of divorce was a custom not less acknowledged than the plurality of husbands. Formerly, a wife could at anytime leave one or all of her husbands, and carry away the dower, and paying the expenses of the marriage ceremony, while a husband might sever his share of a marriage by making a present of great value, or if he happened to be the single consort of his wife, by maintaining her for six months

during which she might be presumed to be on the look and for another connection (S/P No. III, 1869).

Some of his remarks regarding marriage were erroneous and one cannot accept the Kandyan divorce system as irresponsible as he points out.⁹ Pre-assumptions and misunderstandings of this sort may have made the officials adamant to make the new law a success in order to change the situation which they considered as uncivilized. This very enthusiasm of the British officials may have made the indigenous community on the defence regarding their traditional law, which they thought the British were bent on changing. Given the situation, this idea which incidentally seems to be a sound argument, may have led them to disregard the new law or not to abide by it.

Another major reason for the failure of the Ordinance may have been the complication aroused in the functioning of the traditional marriage law due to the new legislation. As analyzed above, when introducing the provisions of the Ordinance, these complications might have confused the Kandyans on what to do and what not to do regarding the legalization of their marriages. A main reason for these complications seems to have originated from the contradictory situations created by the Ordinance itself. For example, as described above, the Ordinance implied that the new law accepted the Kandyan marriage system and at the same time it emphasized that no marriage taken place prior to or after the Ordinance became effective would be legal unless it was registered. Even the local officials who were familiar with a very simple procedure regarding the legal acceptability of a marriage may have become confused in a situation such as this. Several British officials have described this chaotic legal situation with examples. For example, the Government Agent of Sabaragamuva stated thus:

Now hundreds of thousands of persons were thus on 1st January, 1861, legally bounded to each other. At least three-

⁹ For a detailed analysis on Kandyan Divorce Law see, Koggalage, pp. 127-35.

fourths of that vast number have since separated and are now living with other partners, whilst no 20 couple throughout all the Kandyan districts have affirmed their mutual consent before a District Court...the 'consent' in 99 cases out of 100 'is' mutual; in most cases both parties have new partners, and in many cases, where a partial knowledge of the law has been attained to, they register the after Marriage to (as they think) more completely dissolve the first, thus committing Bigamy under the Ordinance (S/P No. III, 1869).

This description vividly explains the confusion faced by the Kandyans as a result of the changes introduced by the new law. Another official, District Judge of Kurunegala also pointed out the gravity of the problem in 1867. After describing the Kandyan marriage law as a simple procedure he criticized the situation created by the new law: 'The evil effects of the non-compliance with the new law will be fearful hereafter, such a large proportion of the rising generation being illegitimate according to our statute law.' (S/P No. III, 1867).

The District Judge of Kandy also explained the complexities created in the marriage law by the new legislation: 'Suits of divorce are incompatible with the Kandyan Law as it stood prior to the recent Marriage Ordinance....I am constrained therefore to concur with those who have arrived at the conclusion, that the effect of the new law, in its present working, will be to bastardize and disinherit multitudes of the generation now being born, who would otherwise have had, under the old law, the status of legitimacy. The more marriages are registered is the increment of the evil.' (SP No. X, 1869).

Further, these reforms would have been pre-mature and uncalled for. This would also have contributed to the failure of the new law. The

Government Agent of Kegalle, referring to the Ordinance, wrote in 1864 in his Annual Report that the Kandyans were not ready for such 'measures requiring a far greater amount of civilization'. He further explained that the Ordinance was introduced 'without their [i.e. the Kandyans] wishes on the question being ascertained'. Although he was prejudiced when referring to the factor of 'civilization' in it, one can assume that since the Kandyans were still struggling to retain their traditional institutions, laws and culture, the time when the law was introduced was not appropriate. In simple words, the British did not create a background or a base in the socio-economic structure which would have facilitated the smooth functioning of such a new legislation.

In conclusion, it can be assumed that the new legislation failed because the British authorities failed to understand the Kandyan system as a whole and to identify the rationale behind the traditional law, especially regarding marriage. Without making such a thorough study, they rather imposed what they thought was right and civilized on the pre-modern society in the Kandyan Provinces which had its own legal base inherent in the Kandyan traditional socio-economic structure. The British took up a particular section of the law and tried to 'civilize' it with total disregard to the purpose, rationale and interdependency of the existing traditional law as a whole. For example, they did not consider the fact that when a change in the marriage law would involve a greater change in the whole system of inheritance and the law governing the inheritance. The Kandyan marriage law had certain interdependency with law of inheritance, law of property and the like.

However, one may argue that it paved way for a more dynamic Kandyan socio-economic structure. It could have done so, if the whole system was led to a way out of the pre-modern conditions with a specific target and policies to achieve them. The British did not have in mind, such a plan for the Colony; they changed what was obstructive to their consolidation of their power; they changed local institutions in order to gain more benefits from the colony; and they changed what they thought would contribute to their moral justification of colonialism. Thus, the British made changes here and

there without a clear-cut policy. The result was chaos, confusion and the complexities in the existing system.

Finally, the following words of T.R. Berwick, District Judge of Kandy in 1866 clearly demonstrate the failure of the legislation with regard to Kandyan marriage law:

...it is difficult to thrust a social revolution by mere legislation, not expressly penal, on an Asiatic race, until they are prepared for it....if we try it we are baulked, not by an active opposition but by that sort of passive bearing....and complacent submission to our laws, joins a simple and silent non-acceptance of them in fact...people merely, with docility, take the law as a form of words without objection but disregards it in their action (SP No. X, 1869).

To wind up the analysis, it is worth mentioning an observation made by the same official at a time when other British officials thought that the Ordinance would ameliorate the conditions of Kandyan women whom they thought were suffering from the oppressive and uncivilized marriage law of the Kandyans:¹⁰

As to any argument for fixity of the tie, depending on a desire for elevating the position of wives and mothers, there is, I am certain, already no peasantry in the world (unless it be the Scandinavian fish-wife) in which both the actual as well as the legal equality of the sexes is so great as in the Kandyan Provinces, or in which the power and influence of the wife and mother is more felt; and this

¹⁰ Cf. the words by A.O. Brodie quoted above.

arises from the wife's fields remaining by the law her separate property, and from the very power she has of voluntary divorce (SP No. X, 1869).

Bibliography

Government Documents and Correspondence:

Legislative Enactments of Ceylon, Vol. I- A.D. 1708 to 1888, Colombo, 1923.

Ordinance 13 of 1859.

Proclamation dated 27 December 1859.

Sessional Paper No. III, 1867:

Annual Report of H.W. Gillman, District Judge - Kurunegala, 1867.

Sessional Paper No. III, 1869:

Annual Report of A.O. Brodie, 1862.

Annual Report of J.F. Dickson, Government Agent - Kegalle, 1862.

Annual Report of T.C. Power, Government Agent - Sabaragamuva, 1862.

Annual Report of W.E. Sharpe, Government Agent - Kegalle, 1863.

Annual Report of H.S. Oldnell Russel, 1866.

Annual Report, W.C. MacReady, 1867.

Annual Report of P.W. Braybrooke, Government Agent - Central Province 1867.

Annual Report of F.R. Saunders, Government Agent - Sabaragamuva, 1867.

Annual Report of E.N. Atherton, Government Agent - Northeastern Province, 1867.

Sessional Paper No. X, 1869:

Annual Report of T. Berwick, District Judge - Kandy, 1866.

Monographs:

Hayley, F.A. 1923. *A Treatise on the Laws and Customs of the Sinhalese*, Colombo.

Knox, Robert. (first published in London, 1681) 1981. *An Historical Relation of Ceylon*, Dehiwala.

Le Mesurier, C.J.R. and Panabokke, T.B. (trs.). 1994 (first published in Colombo, 1880). *Niti Nighanduva or the Vocabulary of Law as it Existed in the Last Days of the Kandyan Kingdom*, New Delhi.

Books:

Koggalage, Dilma Thusshari. 2006. 'Kandyan Woman as a Legal Person: A Study Regarding the British Legal Policy during the 19th Century' (in Sinhala), thesis submitted for the Degree of M.Phil., University of Kelaniya.

Mendis, G.C. (ed.) 1956. *The Colebrooke-Cameron Papers: Documents on British Colonial Policy in Ceylon, 1796-1833*, Vol. II, London.

Pieris, Ralph. 1956. *Sinhalese Social Organization: the Kandyan Period*, Colombo.

Wickremeratne, U.C. 1996. *The Conservative Nature of the British Rule of Sri Lanka with Particular Emphasis on the Period, 1796-1802*, New Delhi.

Wimaladharmasiri, Kapila Pathirana. 2003. *Women in the Kandyan Kingdom of the Seventeenth Century Sri Lanka*, Kandy.

Journal Articles:

Goonesekere, Savitri W.E. 1990. 'Colonial Legislation and Sri Lankan Family Law: the Legacy of History', K.M. de Silva, Sirima Kiribamune and C.R. de Silva (eds.), *Asian Panorama: Essays in Asian History, Past and Present*, pp.193-210.

Kulasekera, K.M.P. 1988. 'Religion and Politics in the Administration of a British Colony: the Kandyan Scene in Sri Lanka', *Social Sciences Review: Studies in the Social History of Sri Lanka*, No. 4, January, pp. 101-126.

