

Domestic Workers' Rights: A Critical Analysis of Labour Legislation in Sri Lanka

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Abstract - Domestic works can be considered as fastest growing economic factor in many parts of the world. Though this domestic works and domestic workers are most important, the respect and admiration of them and their service is less. "Domestic Workers" is a category that has an uncertain position under labour legislation in Sri Lanka. Uncertain and unclear situation of legislation on domestic workers has created dispute among workers and their masters. To find out the domestic workers position and protect their rights is essential to identify the existing labour law regime in Sri Lanka. Thus to find out the definite position of domestic workers, this research attempts to critically analyze the Sri Lankan existing labour legislation. Do the Domestic workers are not identified as workers in Sri Lankan Labour Law regime, caused to infringed their rights is the research problem of this research. There are number of labour legislation can be identified in Sri Lankan existing legal regime. Some legislation interpret 'workmen and work place' in favor to domestic workers. But some legislation intentionally excluded them from its scope. Some legislation is not very much clear and difficult to get certain idea on them. As not having a proper legal framework on domestic workers in Sri Lanka lots of abuses, discriminations, rights violations and harassments are happening on them as they are mostly vulnerable and working in isolated environment. Hence it is very much essential to take an immediate action to overcome these issues and make pleasant and decent working environment for domestic workers in Sri Lanka.

Key words - Domestic worker, Employer, Labour Law, Working Rights

I. INTRODUCTION

According to the Universal Declaration of Human Rights (UDHR), working rights is considered as human rights. Article 23 of the UDHR emphasized that "Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."

There are various kinds of workers can be identified, Such as permanent employees, probationary employees, fixed term contract employees, casual employees, apprentices.

Those workers' rights and entitlements are different, based on their position. To regulate those employees-employers and to ensure their rights, various kind of legislation has been introduced by the Legislature. Such as Industrial Dispute Act no: 43 of 1950, the workmen's compensation Ordinance no: 19 of 1937, the Trade Union Ordinance no: 14 of 1935, the maternity Benefits Ordinance no: 32 of 1939.

However though there are legislations to regulate employer-employee relationship, some workers are intentionally excluded from the scope of existing labour legislation. "Domestic Workers" is a category that has an uncertain position under labour legislation in Sri Lanka. As per the Article 1 of the International Labour Organization (ILO) Convention on Decent Work for Domestic Workers defined domestic work as "the work performed in or for a household or households" and domestic worker as "any person engaged in domestic work within an employment relationship"[1]. Maids, guards, chauffeurs, gardeners, and other similar occupations are considered as domestic workers and home owners directly employ them[2]. When consider the Sri Lankan legal framework on domestic workers, some legislation interpret 'workmen and work place' in favor to domestic workers. But some legislation intentionally excluded them from its scope. Some legislation is not very much clear and difficult to get certain idea on them.

Uncertain and unclear situation of legislation on domestic workers has created dispute among workers and their masters. Though Domestic workers are workers and they work like others or more they have not considered as other workers. [3] They do not have contract of service and they are not covered under law of Contract. Moreover employer and employee relationship can be questioned under the principles and concept of the law of Delict. However without a proper working contract or certain working conditions domestic workers are not covered under the law of Delict. Furthermore domestic workers are not considered as employees and also their service is not considered as worthy one, Sri Lankan labour law regime expressly excluded them from existing legal frame work. Hence without a proper legal frame work and certain position it is challenging that protects

the rights of domestic workers and making decent work. Further as not having legal protection for domestic workers employers have a tendency to abuse domestic workers' rights. Therefore this research attempted to ascertain the position of domestic workers in Sri Lanka by critically analyzing the existing labour legislation to make recommendations to uphold domestic workers' rights.

II. MATERIALS AND METHODOLOGY

This research is a qualitative legal research and it is mostly based on a literature review based on secondary data review. Conventions, Legislation, Acts and Ordinance were used for collecting primary data and scholarly and journals articles, relevant books, electronic resources were used for collecting secondary data.

III. DISCUSSION

Sri Lanka is a state party to number of international instrument including Universal Declaration of Human Rights (UDHR) and Convention on Elimination of All kind of Discriminations against Women (CEADAW) which can be applied to domestic workers since most of domestic workers are women. Furthermore Sri Lanka is a party to a number of specific labour conventions that are designed to guarantee fundamental principles and rights at work such as the Freedom of Association and the Protection of the Right to Organize Convention, 1948, the Right to Organize and Collective Bargaining Convention, 1949, the Forced Labour Convention, 1930, the Equal Remuneration Convention, 1951, the Abolition of Forced Labour Convention, 1957, the Minimum Age Convention, 1973, the Worse Forms of Child Labour Convention, 1999[4].

According to the above conventions Sri Lankan legislature had enacted several legislations to uphold workers' rights, for instance the Industrial Disputes Act no 43 of 1950, the Factories Ordinance no 45 of 1943, the Employees Provident Fund Act no 15 of 1958, Employment of Women, Young persons and children Act no 47 of 1956. However even though there are legislations to protect worker's rights and uphold social protection it can be significantly identified that legal gap on protection of domestic workers rights. Since domestic workers has excluded from legal frame work, there are major issues in areas of payments of minimum wages, social protection, living conditions, dispute resolution and job security of them[5].

Payment of wages is most significant that every worker have a right to get reasonable wages for rendering their service. However domestic workers are comparatively lower paid

and some employers are hesitating to pay reasonable amount of payments for domestic workers. There are two statutes regarding minimum wages in Sri Lanka, The Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954¹ and The Wages Boards Ordinance No. 27 of 1941². However domestic workers are not covered by the aforesaid Acts since domestic work does not coming under the shops or office spheres but private households and as per the Wages Boards Ordinance domestic workers do not include in to the category of any trade. Therefore domestic workers are not entitling to minimum wages and they have no any legal protection in this regard.

Any worker has a right to having social security as a key factor of uplifting their service and living standards. Therefore there are specific laws to ensure social security of workers in Sri Lanka named The Employees Provident Fund Act No 15 of 1958 (EPF Act), The Employees Trust Fund Act no 46 of 1980 and the Payment of Gratuity Act No 12 of 1983. However domestic workers are not considered as 'covered employment' they are not covered under the EPF Act³. Moreover ETF Act also expressly excludes the domestic workers by indicating "the employers of employees in any domestic service in any household will not be held liable for the non-payment of stipulated contributions under the Act"⁴. Not only that the above Acts but also the Payment of Gratuity Act mentioned that this Act can apply to the employer employ fifteen or more workers at any given time.⁵ However it is very much improbable and unpractical since such numbers of domestic workers are not employed in same time within the same household. According to that domestic workers are explicitly exclude from the scope of the social protection legislations of Sri Lanka.

All working women have a right to have sufficient maternity leave and other benefits. Since majority of the domestic workers are women, they also should have a right to have maternity leave and benefits[6]. However unfortunately domestic workers are not interpreted as workers under the Wages Boards Ordinance, the Maternity Benefits Ordinance No 32 of 1939 also not apply to the domestic women workers and they have not maternity benefits or maternity protection.⁶

Moreover adequate living condition and personal security are most significant to all kind of workers. Even if domestic workers are mostly vulnerable and they have not adequate living condition and personal security. Since domestic workers are working in private places in isolated manner they have not protected from exploitation, abuse, human rights violations and harassments. The Factories Ordinance

1. The Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954

2. The Wages Boards Ordinance No. 27 of 1941

3. The Employees Provident Fund Act No 15 of 1958

4. The Employees Trust Fund Act no 46 of 1980

5. The Payment of Gratuity Act No 12 of 1983

6. The Maternity Benefits Ordinance No 32 of 1939

No 45 of 1943 provides proper working conditions regarding factories workers.⁷ However it is clear that domestic workers are not factories workers and the Act not applies on them. In addition to that domestic workers are excluded from the scope of the Workman Compensation Ordinance No 19 of 1934.⁸ Moreover to get relief from harassments and abuses, sexual abuses in work place there is no proper labour legislation in Sri Lanka and the Penal Code No 02 of 1883 provides essential assistance under the scope of criminal law.⁹

Even though the above mentioned legislations are not covered the domestic workers the Industrial Dispute Act No 43 of 1950 has limitedly apply to the domestic workers.¹⁰ Section 31 B of the Act mentioned that a workmen or a trade union can apply to the Labour Tribunal (LT) to get relief or redress for specific grievances. Accordingly the Act can be interpreted in favor to the domestic workers and they can access the Labour Tribunal to get back wages.

IV. RESULTS

As per the discussion it is clear that domestic workers are not covered under the existing labour legislation. Not only Sri Lanka but the widespread practice of most of the countries is excluding domestic workers from the scope of their national labour law regime. When consider the Sri Lankan labour law regime on domestic workers, some legislations are expressly and directly excluding them from its scope. Some legislation implicitly excludes them and some legislation can be interpreted in favor to them. This uncertain position and legal gap has caused to infringe domestic workers' rights. However domestic workers are also workers and they also should have proper working rights and working conditions.

V. CONCLUSION AND RECOMMENDATIONS

Sri Lanka is a state party to the number of international conventions relating to workers' rights. According to those conventions the legislature of Sri Lanka has implemented several legislations to protect and uphold workers' rights. There can be identified categories of workers and the entitlements, rights and benefits are different according to their position. Domestic workers are a category of workers and their service is vital. However though the domestic workers are also workers they are not covered from the existing legal framework in Sri Lanka. When analyze the labour legislations it is significant that most of the legislations

are not covered domestic workers and few legislations can be interpreted in favor to domestic workers. As not having a proper legal frame work to cover domestic workers caused to infringe their rights. Therefore it is high time to amend existing laws and introduce new laws based on international standards and interpret the existing laws broadly to cover domestic workers.

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7. The Factories Ordinance No 45 of 1943

8. The Workman Compensation Ordinance No 19 of 1934

9. The Penal Code No 02 of 1883

10. The Industrial Dispute Act No 43 of 1950