

Empowerment of Sri Lankan Female Workers with International Law

Thesara V.P. Jayawardane*

Department of Industrial Management, University of Moratuwa, Moratuwa, Sri Lanka.



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corresponding authors:

thesarai@uom.lk

Abstract

This paper was written with the intention to view and examine the various challenges encountered by the Sri Lankan female workers who work in the International grounds as domestic-aid and to explore how these female workers contribute to the development of Sri Lanka. It intends to examine the various violations of International Law with regards to these female workers and ways to avoid such violations by empowering them. There is a progressive upsurge in the female workers who leave Sri Lanka annually and they contribute to bringing in a significant amount of foreign currency to Sri Lanka's economy. The literature affirms that there were many cases where Sri Lankan female workers had to face refusal of payments, violation of their employment contract, physical, mental and sexual assaults, and sometimes death. Thus, this can be seen as a significant threat to human rights of these workers. Sri Lanka affiliates with various international treaties and therefore must find means to protect the rights of these female workers are safeguarded. This paper strongly recommends Sri Lanka to implement legal policies, international agreements and national legislations which will safeguard the human rights of these female workers. Currently existing national laws are insufficient since the human rights of these females are violated frequently. The International laws will provide and protect the female workers, but the existing Sri Lankan judiciary does not support that fully. This paper recommends domestic laws, policies, and practices to be instigated in order to identify resolutions to fight the key concerns.

Key Words: *Empowerment, Female Workers, International Law, Sri Lanka.*

JEL Code: K1, K3.

1. Introduction

Sri Lankan females choose to work as unskilled laborers and seek job opportunities in international grounds, especially in the Middle Eastern countries for the past three decades. These Sri Lankan female workers working in international grounds contribute to a large portion of the national economy. The career journey of these female workers is full of obstacles, challenges and difficulties. Since most these females leave their families behind they risk possible harms to their children left back, family disruptions, deprivation of education for these children and risk of child labor or abuse from current guardians of them. These female workers will also face absence in workplace safety, societal prestige, insufficient pay, and most importantly inability to obtain legal aid. Unfortunately these female workers encounter violations of their human rights more than the skilled female workers or professional workers. These female workers are known to face physical and mental abuse, sexual assaults, rape and possible death with the criminal offences committed by their foreign employers. They are often exposed to discrimination due to race or religion, limited freedom to move, restrictions with communication, and unequal economic treatment during the time of their employment. Hence, their fundamental rights as humans are violated. In a rare case where they commit an offence due to their helplessness, the legal consequences they face at the employers' country is almost barbaric. Therefore, ensuring the human rights of Sri Lankan female workers are protected is an important issue in hand.

During many international conventions, many laws and regulations have been brought about to protect these female workers. As a member of most of these conventions Sri Lanka has boasted to have brought aboard various national laws to protect these women. This paper intends to evaluate such national laws which claim to have been implemented to protect the human rights of those female workers. This paper intends to identify the rights of children who are left in Sri Lanka, when the mother seeks employment overseas and look at the existing national law and resources which will protect them. The paper will also make recommendations for future security of the female workers.

2. Research Problem

With the current economy, women all over the work do not have the luxury of being a stay at home mother. According to Schwartz (2009) women nowadays contribute to the economy as innovative and knowledgeable people. McCellend et al., (2005) observes how female workers create supportive work environment and encourage harmony and team spirit in their place of employment. This paper aims to identify the existing human rights of the female workers who find employment in international grounds. It will also look at the rights of the children that are left at home. International law provides a condensed set of rules which are enacted to protect these female workers and children. Within Sri Lanka, the constitution along with other

provincial laws must adhere to provide such protection to them. Government policies must be amended or implemented accordingly. (Weeraratne, 2021). Additionally the cohesion of family, social status, education of the children and the health and well-being of the respective female worker should also be considered in these laws. This paper will establish that the female workers in Sri Lanka contribute significantly to the economic development of the country.

With the intention of providing the above information, the objectives derived for this study are stated as below.

3. Objectives

- To identify the human rights of the Sri Lankan female workers working in the international grounds.
- To recognise the competencies of the existing national policies to safeguard these female workers.
- To affirm the female workers contribute significantly in the economic development of Sri Lanka.

4. Literature Review

Female workers are defined by Kinnear (2011) as “women earning wages or salary by providing their labour as a service”. Even though men and women started working for wages around the same time in history, women have always faced discrepancies in the workforce. Most women lack the ability to access higher education which adversely affects them in obtaining well-paid and high status employment. Even today in Sri Lanka Women often face unfair pays and unsuitable work environments due to this. According to Kanji (2011) “the increasing rates of women contributing in the work force has led to a more equal disbursement of hours worked across the regions of the world”.

Sri Lanka’s population is about 21 million people. According many international measures like literacy rate, health system and education Sri Lanka stays in a upper level compared to most South Asian countries. However, as per the international labour organisation report (2011), “the country is marked by low public expenditures on health as a percentage of GDP (ranking 173 of 187 countries) and on education (151 of 157 countries). Sri Lanka’s population remains largely rural with only a fifteen percent (15%) of the population living in urban areas”.

As per United Nations Committee on the Rights of the Child in 2010, “fifty-nine percent (59%) of Sri Lankan females seek employment overseas before the age of thirty-five. In terms of the country of employment, ninety-three percent (93%) of Sri Lanka’s migrant workers are employed in the Middle East, primarily in four destination countries— Saudi Arabia, Qatar,

Kuwait, and the United Arab Emirates (UAE)”. In a research done in 2009 of Sri Lankan female workers employed in foreign countries, it was identified that poverty was the reason for them to come to those countries for employment.

According to Encyclopedia Britannica, (2019) “International law is a system of treaties and agreements between nations that governs how nations interact with other nations, citizens of other nations, and businesses of other nations”. As per United Nations, International law is defined as, “the legal responsibilities of States in their conduct with each other, and their treatment of individuals within State boundaries. Its domain encompasses a wide range of issues of international concern, such as human rights, disarmament, international crime, refugees, migration, problems of nationality, treatment of prisoners, the use of force, and the conduct of war, among others. It also regulates the global commons, such as the environment and sustainable development, international waters, outer space, global communications and world trade”.

When assessing the current laws in Sri Lanka it is evident that there is a remarkable gap in the current national law and policies in Sri Lanka in terms of providing protection to the female workers employed overseas. Understanding the relevant International laws and endorsing them in to the national laws is an objective of this paper. Shah (2013) points out that insufficient females employed in the underdeveloped areas of a country is a reason for failures in such economies. This verifies a key objective of this study where it is expected to affirm that the women entrepreneurs contribute towards the economic growth of Sri Lanka.

5. Methodology

The initial research was carried out using secondary data that was collected from the United Nations conventions, resolutions, declarations, committee reports and comments under the key areas of “Elimination of all forms of discrimination against Women from 1979 and the Security Council Resolution 1325 on women peace and security from 2000”(United Nations Human Rights Website, 2020)

In the second stage of the research data was collected from a data-base population consisting three hundred (300) female workers. They were all given a survey to answer. With the use of convenience sampling eleven (11) female workers were selected who were interviewed face to face. As per Bell and Bryman (2007) convenience sampling can be used when it is usually difficult to produce an adequate level of response. The chosen eleven female workers displayed the key attributes and qualities seen in the whole sample. The interviews were conducted mostly in person and at times over video conferencing or telephone. It was affirmed that the previous responses which were given in the survey was similar when speaking to them in person. These female workers have been employed as domestic workers in the middle-east countries and have children whom they left behind when flying overseas.

5.1 Validity and Reliability

The responding female workers were requested to go through their responses to identify if there is any error in recording or interpreting. Views of seniors in the respective field including academic consultants were also consulted for validation. Information retrieved was compared and checked by research experts of the industry and professionals for further validation.

With the intention of checking reliability the study was repeated with a few chosen respondents. Selection was randomly done and the survey and the interview were repeated by another person. Intention was to identify the similarity or disparities in the results. Due to the significant sample size not all surveys can be repeated but the chosen sample reaffirmed that the given responses were consistent.

6. Key Findings

6.1 Sri Lankan Female Workers

Since the beginning of 1980s Sri Lankan females sought employment overseas as domestic aids. They found work in Middle East and European countries mostly with an increase of female workers joining the workforce in Singapore. According to the Central Bank (SL) data, these women contribute to bringing in the largest amount of foreign currency to the economy of Sri Lanka. Out of the total population of 20 million people in Sri Lanka, 300,000 female workers travel overseas annually to work as such employees. In short this contributes to a total of nearly 19% of the Sri Lankan workforce who in return brings in 35% of the country's foreign income.

Unskilled Sri Lankan females in the rural areas with minimal education tend to seek employment overseas as domestic workers, in order to overcome poverty and to improve their living conditions. As per the data extracted from the Ministry of Foreign Affairs in Sri Lanka, most these females are employed as house maids who are expected to do daily chores of the house they are employed at. The females who are employed as house-maids faces the most serious violations of their rights. They are known to have been exposed to harassments physically, mentally and sexually, labour exploitation, torture and sometimes death. Once they arrive at the employers' country their passports and money-in-hand are taken by the employer for security reasons. This restricts them from communicating with their family at home as well as stops them from leaving the employer if the conditions are unfavourable. They even go through months and years without any salary. Most of these female workers are mothers who seek employment overseas for the betterment of their children. Their children back in Sri Lanka face equal violations of their rights in terms of the abuse from their caregivers to not being provided with educational, health and other basic facilities. In spite of all these factors Sri Lankan females continue to seek employment overseas as domestic aids.

6.2. International Law

Many countries have enacted International Laws to protect their domestic workers male or female, and they are implemented accurately in the eyes of the justice system. It is only fair to expect the same legal protection be provided to the Sri Lankan females working overseas. When a female worker faces violation of her human rights in a foreign country, International Laws specifically the International Human Rights law, ought to come in aid. International human rights law stand by to safeguard human rights of workers of many countries but do not guarantee protection to the Sri Lankan female workers overseas.

Below listed are some International treaties that support the Human Rights of female workers:

- “The International Covenant on Civil and Political rights (ICCPR),
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- International Convention on the protection of the rights of All Migrant Workers and Members of their Families (MWC)” (United Nations Human Rights Website, 2020)

Most of the human rights violation of these female workers, take place within the houses of the respective employer. Hence, it is important for the said countries to implement international law against such violations. One may argue that a particular country may not be bound to provide such safety measures or follow international laws altogether. (Nagata, 2020). According to the United Nations Human Rights Convention (UNHRC), basic human right norms should be fair to any human, no matter what their race, sex or the country they work in. Therefore, the international laws and legislations should be able to provide protection to any human being including the non-citizen female workers. These international laws should also ensure safe work environments with reasonable hours of work and paid leave system, and provide safety against abusive contracts and exploiting working conditions of female workers working overseas.

6.3. Existing National Laws of Sri Lanka

Sri Lanka has enacted eight (8) fundamental Conventions, two (2) Governance Conventions, and thirty Technical Conventions (3) of the International Labour Organisation (ILO). Sri Lanka proudly affiliates in the international treaties stated above as an active member.

Below listed are the various National Laws related to this in Sri Lanka:

Fee Charging Employment Act No. 37 (1956) – Provide the Commissioner of Labour the rights to supervise the agencies involved in recruitment of workers for local and foreign employment.

The Foreign Employment Agency Act No. 32 (1980) – Overlooks the increasing needs of the Sri Lankan workers employed in foreign countries.

Preventing and Combating Trafficking in Women and Children for Prostitution Act (2005) – addresses the issues of trafficking and prostitution within the country as well as overseas.

National Labour Migration Policy (2008) – Keeping in par with the South Asian region protects and promotes the welfare of migrant workers and their families.

Sri Lanka Bureau of Foreign Employment Act No. 21 (1985) - The Sri Lanka Bureau of Foreign Employment (SLBFE) acts as the main regulatory body for labour migration and is enlisted with a duty to develop and manage the foreign employment.

The Association of Licensed Foreign Employment Agencies (ALEFA) was formed to overlook the registered foreign employment agencies with strict disciplinary control.

Sri Lanka Foreign Employment agency was established under the Companies Act of Sri Lanka which is the only state owned agency, which recruits people for foreign employment.

With the continuous violation of the human rights of female workers it is inevitable but to introduce and implement new national laws. The original legal position prohibited agencies from operating in recruiting female workers for foreign employment, unless they are registered under ALEFA. But the amendment to this act which took place in 2009 (section 8 of Act No. 56 of 2009), made it optional and not mandatory. This amendment exposes the female workers to a vulnerable situation and indirectly encourages the agencies to act unethically or break law. There is no law to ensure safety from other brokers and in-betweens who transact with these female workers and the respective agencies. This is seen as a weak point in the Sri Lankan national law.

7. Recommendations

The study makes the following recommendations which will safeguard female workers of Sri Lanka in the future.

7.1 Improving National Laws, Policies, and Practices

Even though international laws are present all around the world, it is not always possible to provide protection to the female workers and their children through these laws. The procedures implemented through the United Nations do not necessarily safeguard employees in non-member countries. Which is why it is essential to enact and improve national laws, policies, and practices, which would in turn, provide such protection. Laws could be introduced to allow the families of the female worker to visit the employers' country readily if and when the need arises. This should be implemented for workers who stay away for longer periods of tenure.

National policies should be created to provide easy means of communication and travel conditions for the female workers.

7.2. Improving the Skills of the Female Worker

Central Bank Data of Sri Lanka, has shown that there is vast difference between the rights of a skilled female professional as compared to an unskilled female worker. Sri Lankan National Labour Migration Policy specifies that it is easier to safeguard workers with one or more specific skill. The majority of the current unskilled female workforce is massive, amounting to a seventy percent (70%). Therefore, if these female workers can be trained to be an expert in a specific skill, it could help with safeguarding their human rights. Such skills development would also assist them in finding employment back in Sri Lanka once they return. Most developed countries believe that to empower a woman, the nation must equip them with proper skills and education.

8. Conclusion and Implications

The objectives of this study was to examine the human rights of the Sri Lankan female workers working in the international grounds, to recognise the competencies of the existing national policies to safeguard these female workers and to affirm that the female workers play a significant role in the economic development of the country.

Due to unemployment and poverty many Sri Lankan females, mainly uneducated and unskilled, seek employment overseas as domestic workers. They contribute to bringing the highest foreign income to the country's economy. These females constantly face threats to their safety with the continuous violations of their human rights at the respective foreign country. The existing national laws do not cover all the female workers who are employed overseas. The Sri Lankan Government has a responsibility towards these women and must intervene to safeguard them. The Sri Lankan laws should be amended if needed or created altogether to provide protection for these female workers as well as their families left behind, especially the children. Strong and effective national laws which follow the regulations imposed by the international human rights treaties should be enacted and implemented. Laws and policies to create bilateral agreements with the employer countries must be sanctioned. By protecting the rights of these female workers, the government will be indirectly protecting the country's economy. Existing international laws provide comprehensive frameworks for safeguarding the rights of children. These laws should be brought in to the national laws and policies of Sri Lanka. It is vital that the national laws ensure the bilateral agreements with the foreign country, allow the children to communicate with their mother frequently. Policies also should ensure these children are protected from violation of their human rights.

Sri Lanka needs support from the international community, especially from developed countries in Asia like Singapore to enhance their laws and policies. The international community can provide the insight in to identifying ways of employment training which will provide skills for low-skilled female worker and empower them and enable them to seek better job opportunities. Such guidance along with the expert advice from the international community can assist with reforming the laws and policies in Sri Lanka.

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