

Protection of the Rights of Sri Lankan Migrant Women Workers: Critical Analysis of the Domestic and International Legal Regime.

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Abstract- Sri Lanka is a third world country in which foreign employment plays a major role in directing foreign currency towards the country. The rate of migrant women workers in Sri Lanka is very high and they are highly vulnerable in the form of the protection. Violation of their rights can be seen in the form of physical, emotional, sexual and economics. The domestic legal regime governing this issue includes the fundamental rights jurisdiction, labor rights jurisdiction and Bureau of Foreign Employment Act No. 21 of 1985. The international jurisdiction compromises of the International convention on the protection of the rights of all migrant workers and members of their families and the CEDAW convention. Despite all this protection there are incidents which reflect that all what have been done are not sufficient in order to protect the rights of the women migrants.

Research Problem- Whether the available protection granted by the domestic and International legal regimes for Sri Lankan women migrant workers is sufficient to protect their rights.

The objective of this study is to critically review the current domestic and international context relating to the protection of the women migrants and in order to realize whether such protection is sufficient to protect the rights of the Sri Lankan women migrants.

This study is based on the qualitative research method where the research will extensively examine the relevant provisions of national and international legal instruments and national policy on migrant workers. The data collection was done through library research and internet data bases. The primary sources of this work include relevant Acts, International conventions. Research reports, journal articles, books and newspaper articles are also analyzed as secondary sources.

Keywords- women migrant workers, women's rights, Domestic legal context, International legal regime

I. INTRODUCTION

Sri Lankan women migrant workers are employed all over the world especially in the Middle Eastern countries such as Kuwait, Saudi Arabia, UAE ,Qatar etc. Such workers expect and require the same dignified and healthy working conditions enjoyed by the domestic workers. The role of the women migrant workers cannot be disregarded since they bring large amount of foreign currency to the country. According to the Human Rights Watch (HRW) report of 2007 Labor Migration brings USD525 million more than the country received through foreign aid and foreign direct investment when both combined.

The majority of migrant women belong to disadvantaged communities. The reasons for migration may be due to lack of access to regular and substantial income and the lack of capacity to bear the rising cost of living.

The majority of the Sri Lankan women migrants are working in Middle East countries works as domestic workers. The reason for that may be their vocational skills are lower than the males, so that job options available for women are limited to domestic works while male workers have more job opportunities.

These women workers are highly vulnerable to violation of their rights due to the lack of knowledge as to the rights available to them and what actions should be taken in protecting their own rights. This is because poor levels of education. Recently many cases have been reported on violations on rights of the women migrant workers. The case of Rizzana Nafeek which happened recently reflects phenomena of

failure of the home country to safe guard the rights of the women migrant workers as well as the lack of enthusiasm of the host country to protect the rights of the women migrant workers. Rizzana Nafeek was a young girl who had not reached the prescribed age limit to work as a migrant worker and migrated as a domestic worker with false document which was supplied by erroneous agents, also she did not have any particular training related to domestic works. Ultimately she was convicted with the death penalty for killing a child according to the Shea Muslim law. Even though the Sri Lankan government and many non-governmental organizations requested the host country to reconsider the judgment, they failed.

Most complaints made by women migrants alleges that they were denied adequate food, communication restricted, not given proper medical assistance as well as physical and sexual harassments.

Thus it is questionable whether migrant women workers of Sri Lanka enjoy the rights conferred to them by the domestic legal frame work as well as the International legal frame work.

II. DOMESTIC LEGAL FRAME WORK.

The applicable legal standards in the domestic level for the protection of the rights of the women migrant workers consist of the fundamental rights jurisdiction and Bureau of Foreign Employment Act No.21 and Sri Lankan national policy on labor migration.

A. Fundamental Rights Jurisdiction

Under the Article 11 of the constitution it has been guaranteed that no person shall be subjected to torture, cruel, inhuman or degrading treatment or punishment. Thus when a woman is subjected to physical, sexual harassment or mental abuse it amounts to the violation of the rights conferred by this article. Further Article 12 of the constitution guarantees equality before law and equal protection of the law. Thus all migrant women should be given equal job opportunities and healthy and dignified working conditions as equal to men. And also migrant women are entitled to the equal protection of the law as well.

Furthermore, it has been prohibited by the constitution to discriminate on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any of such grounds. Accordingly migrant women workers shall not be discriminated on the ground of their sex, race, religion, place of birth etc. Thus these rights ensure that no women migrant worker shall be subjected to any form of violation of their rights especially physical, mental and sexual abuse.

B. Bureau of Foreign Employment Act No.21 of 1986

The Bureau of Foreign Employment Act No.21 of 1986 Act came in to force in response to the increasing number of migration to the Middle Eastern countries that took place in 1980s and to overcome the malpractices in relation to foreign employment.

The major work done by this Act was establishing the Sri Lanka Bureau of Foreign Employment (SLBFE). This Act was amended in 1994 and included the SLBFE as a scheduled institution under the Bribery Act. Currently SLBFE functions through 24 branches all over the country. SLBFE operates as a self-financed organization that is also semi-governmental in nature. The funds are derived by the SLBFE through the recruitment fees of the migrant workers and the commissions paid by the employment organizations.

The objectives of the SLBFE are as follows

1. To promote/develop foreign employment opportunities
2. Regulate Foreign Employment Agencies
3. Assist Foreign Employment Agencies to grow and development.
4. Set standards for foreign employment
5. Recruit Sri Lankans for foreign employment
6. Provide for the welfare and protection of migrant workers
7. Undertake the training and orientation
8. Verify documentation of migrant workers

The Act provides that "a person other than the Bureau shall not carry on the business of a Foreign Employment Agency unless he is the holder of a license issued under this Act and otherwise in accordance with the terms and conditions of that license".

Under Sec 37 (1) it prohibits the licensee from advertising on any foreign employment opportunities and call for applications without the prior authority of the SLBFE. Furthermore, Act contains provisions for renewal and cancellation of the license.

The role of the SLBFE is significant in order to safe guard the rights of the women migrant workers especially in terms of the compulsory registration of migrant workers, training programs to develop their skills, awareness programs to avoid malpractices, monitoring of licensed recruitment agencies etc.

C. Sri Lankan national policy on labor migration

The Sri Lankan national policy on labor migration was developed by the Ministry of Foreign Employment Promotion and Welfare. It was the outcome of the realization of the contribution of the migrant workers to the economy of Sri Lanka and ultimately it works towards the fulfillment of human rights and labor rights of the migrant workers.

The national policy aims to promote opportunities for all men and women in engaging decent and productive foreign employment in condition of freedom, equity, security and human dignity. The policy is basically developed under three headings,

1. Governance of the migration process
2. Protection and empowerment of the migration Workers and their families
3. Linking migration and development processes.

The objectives of the policy are ,

1. To develop a long-term vision for the role of labor migration in the economy
2. To enhance the benefits of labor migration on the economy, society, and the migrant workers and their families and minimize its negative impacts;
3. To work towards the fulfillment and protection of all human and labor rights of migrant workers

The National Policy on Labor Migration promotes and supports the migration of skilled men and women which ensure healthy work environments with the aim of achieving the protection of fundamental human rights at work in their highest

standards.

And also it is provided that the State recognizes the fundamental equality of women and men before the law and the significant role of women workers in nation-building and recognizing the contribution of Sri Lankan women migrant workers and their particular vulnerabilities. It also recognizes the duty of the State to apply gender sensitive criteria in the formulation and implementation of policies and programs affecting migrant workers.

III. INTERNATIONAL LEGAL FRAME WORK.

The International legal frame work of protecting rights of migrant women is consists of the CEDAW convention and International convention on the protection of the rights of all migrant workers and members of their families.

A. Convention on elimination of all forms of discrimination against women (CEDAW).

CEDAW contains 30 provisions which are set out to overcome the discrimination against women in the areas of education, family life, employment, contribution to the development etc.

Sri Lanka ratified CEDAW in 1981 without reservations. Therefore Sri Lanka has an obligation to act in accordance with the CEDEW convention. Under Article 3 of the CEDAW convention, women are fundamentally equal with men in all spheres of life. And also it requires that countries must take measures to uphold women's equality in the political, social, economic, and cultural fields. Thus women migrant workers enjoy the equal level of rights as men as well as equal level of job opportunities. But it is important to point out that even though women migrant workers enjoy equal levels of protection as men the authorities also must recognize that women migrants are especially vulnerable to abuse.

CEDAW also recognizes that women have equal rights in employment, including without discrimination on the basis of marital status or maternity. It guarantees that Women have the right to have equal access to work, to choice of profession, job security and benefits, vocational training, social security and paid leave, and equal pay for work of equal value.

Under the Article 8 of the convention it has been guaranteed that women have the right to work at the international level without discrimination. Thus women should not be prevented from engaging in foreign employment solely on the ground of their gender.

B. International convention on the protection of the rights of all migrant workers and members of their families.

Sri Lanka has ratified the convention on the protection of the rights of all migrant workers and members of their families in 1996. The convention provides a comprehensive treaty focusing on the protection of migrant workers' rights. It also emphasizes the link between migration and human rights as well.

Article 2 (1) defines a migrant worker as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

Article 7 of the convention sets out the principle of non discrimination where it provides that State parties should respect and ensure the rights contained in the Convention without distinction of any kind such as sex, race, color, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

Furthermore part 3 of the convention grants a series of rights to migrant workers and their family members. Most of these rights were guaranteed under ICCPR as well. However according to Art. 35 of the convention it states that nothing in the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation. Thus while the convention aims to protect the rights of the legal migrants on the other hand the convention aims to curb and discourage illegal migration.

Apart from this convention, the ILO Convention on Forced Labor, No. 29, has been ratified by Sri Lanka, Saudi Arabia, Kuwait, Lebanon, and the UAE. It defines forced labor as all work or service which is exacted from any person under the

menace of any penalty and for which the said person has not offered himself/ herself voluntarily. However if these conventions are not ratified by the labor receiving countries Sri Lanka cannot enforce the rights of the migrant worker in the receiving countries.

But ILO declaration also provides that all members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions. Thus labor receiving countries which have not ratified the ILO conventions, but members to ILO cannot simply ignore the content in such conventions.

IV. CONCLUSION

Foreign currency derived through migrant workers play a major role in the Sri Lankan economy. On the other hand it has a great impact on maintaining healthy international relations among nations and violation of the rights of such migrant workers breaks the pattern of the relationship between home state and the host state ultimately.

With regard to the violation of the rights, women migrant workers are especially vulnerable to such violations. It may be due to their lack of education, awareness or may simply be because they are women. Thus under the domestic legal frame work fundamental rights jurisdiction and Bureau of Foreign Employment Act No.21 and Sri Lankan national policy on labor migration provides protection to the women migrant workers while under the International jurisdiction CEDAW convention and International convention on the protection of the rights of all migrant workers and members of their families apart from the other ILO conventions which provides protection. But when analyzing these instruments it became clear that even though these instruments (except CEDAW) provides a number of provisions for ensuring the rights of the migrant workers, number of provisions available which specifically address the protection of the rights of women migrant workers are very limited such that insufficiently addressed. Lack of such special protection for women migrant workers may lead to increase the

vulnerability of the violation of the rights of women migrant workers.

Thus there is a need for setting up a special mechanism to protect the rights of the women migrant workers since they are vulnerable to abuse by their nature. And also it is important to increase the options of employment for women through special focus on developing vocational skills. Vocational training centers should conduct courses in upgrading the skills of women as domestic workers who would work abroad. And also awareness programs should also be conducted to increase the knowledge of women migrant workers before their departure as to the rights available for them, what action should be taken in case of violation of their rights, to whom they should be addressed in such cases etc.

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