

# Sri Lankan Legal Version of Migrant Workers' Rights: How It is and How It shall be

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**Abstract**— 'Migrant workers' are generally defined as people who leave their home country in search of employment. It is known that the largest source of income in Sri Lanka is foreign employment. Protection of the migrant becomes an integral need in this context. With the recent unpleasant tragedies occurred to migrants of Sri Lanka pose the question of actual protection of rights and its compatibility with the international standards. On the other hand protection of migrant worker is linked to the protection of families of the migrant worker. Thus the dependants, especially children of the migrants have the direct effect on deprivation of their rights and vice-versa. Therefore this social phenomenon enables the author to seek the legal protection of the migrant worker and its extent. Thereby this paper objects to compare the current domestic and international context on migrant workers' rights and to identify the key areas for improvement. The black letter and international and comparative legal research approaches were followed to analyze data. Related enactments and international standards as primary sources and journal articles, research publications and statistics published by authorities as secondary sources would be utilized in this research to recommend suitable legal reforms.

**Keywords**— Migrants, Protection of Rights, Foreign Employment

## I. INTRODUCTION

International Labour Organization (ILO) which is the international source of set-standards relating to employees defines "Migrant Workers" as people who migrate for employment (ILO, 1949). United Nations Convention on the the Protection of the Rights of All Migrant Workers and Members of Their Families (UN, 1990) defines the term 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.

It is hard to control the scope of a person when he/she is not within the sovereign limits of a country. Yet the home country is responsible for departure, journey as well as safe return to the home country as per the international standards set out.

In this article it is focused on people who leave for employment and how their rights are protected through Sri Lankan legal framework.

## II. PROBLEM STATEMENT

Due to non compliance with the protection agenda in terms of migrant workers by Sri Lanka several tragedies stemmed out to people who left the country in search of employment. In a platform which requires solution and protection towards migrant employees, the need arrives to identify the gap between international standards and the legal framework relating to migrant workers. Therefore the problem which this article attempts to address is "What are the legal reformations Sri Lanka needs, to attain the best level of protection to migrant workers in par with international standards?"

## III. RESEARCH OBJECTIVES

Objectives of the research are followings:

- To identify international standards on migrant workers.
- To recognize the Sri Lankan legal framework on migrant workers' rights.
- To assess the gap between international standards and domestic legal framework.
- To recommend suitable reforms to develop the Sri Lankan version on migrant workers' rights.

## IV. METHODOLOGY

This research is based on black letter approach and international comparative legal research methodology. Black letter approach of research was used to gather existing knowledge on the protection of migrant workers and to have an in depth analysis on the Sri Lankan legal provisions applicable to the area of research. International and comparative research methodology was utilized to analyse international standards on migrant workers to make recommendations on how Sri Lankan law can be developed/amended to accord a better protection to migrants as well as their families.

Two methodologies were carried out based on primary and secondary sources. Primary sources include the Constitution, related legislations, case laws and international standards and secondary sources include

journal articles, conference proceedings, case commentaries, statistics and online articles.

## V. ANALYSIS

### A. Demographic overview

Foreign employment has become the largest source of foreign exchange in the Sri Lankan economy during the past few years. Since 1970's when formal employment migration commenced, foreign employment has generated substantial inflows of remittance while relieving pressure on unemployment of youth by providing employment abroad (Sri Lanka Bureau of Foreign Employment, 2015).

*“Foreign employment opportunities have continuously helped to reduce the domestic unemployment pressure in Sri Lanka. Migrant workers originate not only from the unemployed and underemployed categories but also from the employed workforce. Outflow from the first two categories provide only a partial solution to the unemployment problem in the home country. It has helped to alleviate economic deprivation and frustration associated with unemployment to a significant level but does not offer a permanent solution to the unemployment issues of the country. (International Organization for Migration, 2009)”*

It was revealed that over 48% of the Sri Lankan labour migrants are female housemaids with children (CWR, 2001) which turns migration into an issue on one hand. According to the United Nations Population Division, South Asians were the largest group of international migrants living outside of their home region in 2013. Out of the 36 million international migrants from South Asia, 13.5 million resided in the oil-producing countries in Western Asia (United Nations Population Division, 2013).

*“...Migration policy in Sri Lanka is best understood within the wider policy framework of the economic policy initiated by the United National Party in 1977 which called for the introduction of private sector participation and market-based reforms. The oil boom in the Middle East spurred Sri Lanka's government to respond to the increased demand for labor which would provide a substantial windfall to Sri Lanka's economy through foreign workers' remittances...” (Rosario, 2008)*

One of the main reasons for the high rate of labour importation by the Arab countries was the social conditions that emerged in the Middle East coupled with their economic development. The shortage of human resources in the Middle East was addressed by the

Western countries by filling the gap for the skilled jobs and the shortages in unskilled jobs were filled by the Asians (International Organization for Migration, 2009).

### B. International Legal Framework

The international legal framework for the protection of human rights of migrants is very broad (Grange, 2006). It includes the Convention on the Elimination of All Forms of Racial Discrimination (ICERD, adopted in 1965), the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), the International Covenant on Civil and Political Rights (ICCPR, 1966), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984), the Convention on the Rights of the Child (CRC, 1989) and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) which are considered as 'seven core human rights documents'. Except the latter document other six international standards are applicable to all human beings, irrespective of their citizenship. Therefore in this article the discussion is limited to the rights protected by ICRMW.

ICRMW was adopted by General Assembly in 1990 and it is noteworthy that Sri Lanka is a party to the same. The Convention reiterates a number of rights applicable to migrant workers and members of their families that are included in the six international human rights instruments listed above, and highlights a few specific ones (Grange, 2006). It is the first universal codification of the rights of migrant workers and members of their families in a single instrument (Lonnröth, 1991). It provides a synthesis of the human rights of migrants organized as a tool kit to better address the specific vulnerability in which they find themselves when they are outside their state of origin and at all stages of the migration process (Grange, 2006). Article 1 of the Convention states the application of the document and it mentions about application without any discrimination to all migrants and their families. Mainly three areas are covered from this UN document and they are (UN, 1990)

- Non-discrimination with Respect to Rights
- Human Rights of All Migrant Workers and Members of their Families
- Promotion of sound, equitable, humane and lawful conditions in connection with international migration of workers and members of their families

It is noted that provisions of the Convention corresponds with the rights recognized by existing human right documents and the only difference is the term “persons” or “individuals” have been replaced by the term “migrant workers and members of their families” (See Grange, 2006). Moreover the Convention specifically identifies

rights of migrant workers in a regular situation as well as non-documented or irregular migrants.

Implementation of the rights recognized by the UN Convention is done by Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families under article 72. (UN, 1990). Article 73 requires that;

States Parties undertake to submit to the Secretary-General of the United Nations for consideration by the Committee a report on the legislative, judicial, administrative and other measures they have taken to give effect to the provisions of the present Convention:

- (a) Within one year after the entry into force of the Convention for the State Party concerned;
- (b) Thereafter every five years and whenever the Committee so requests.

According to Grange,

*“This Committee on Migrant Workers (CMW) will examine the initial and periodic reports submitted by each State Party. The Convention explicitly refers to the possibility for the Committee to “invite the specialized agencies and organs of the UN, as well as intergovernmental organisations and other concerned bodies to submit written information”.* (Grange, 2006)

It was observed that Submission of reports as per the given guidelines under article 73 is very slow by Sri Lanka as a party to the Convention.

The Committee can also receive individual complaints. To activate this mechanism States Parties need to formally recognize the competence of the Committee to do so, by making a declaration under Article 77. However, none of the current 34 States Parties have made this declaration (Grange, 2006) and unfortunately it means none of the State parties to the Convention allow the remedy of ‘individual complaint mechanism’ to be utilized by its citizenry.

It is pertinent to discuss about how International Labour Organization (ILO) pursue migrant workers’ rights. Migration for Employment Convention (Revised), 1949 (No. 97) is the main set of standards prepared by ILO in this context. And Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) provides supplementary to it. Article 1 of the Convention No 97 states that;

“...Each Member of the International Labour Organization for which this Convention is in force undertakes to make available on request to the International Labour Office and to other Members--

- (a) Information on national policies, laws and regulations relating to emigration and immigration;
- (b) Information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment;
- (c) Information concerning general agreements and special arrangements on these questions concluded by the Member...” (International Labour Organization , 1949)

It enables a duty towards state parties to update the information often thereby make them they are easily available.

Article 2 entrust a basic duty to provide all services relating to migration for free. It is mentioned as “[e]ach Member for which this Convention is in force undertakes to maintain, or satisfy itself that there is maintained, an adequate and free service to assist migrants for employment, and in particular to provide them with accurate information. (International Labour Organization , 1949)

Other preceding articles (e.g. – Article 4, 5 and 6) in the ILO Convention establish the foundation towards protection of rights of the migrant workers.

It was observed to have relatively low rates of ratification for both abovementioned ILO Conventions. Convention No. 97 has 41 ratifications, and No. 143 only 18, making a total of 59 ratifications for both; 12 member States have ratified both instruments. The rate of ratifications has slowed in recent years. Since 1980, seven new ratifications were registered for Convention No. 97 and ten for Convention No. 143 (International Labour Organization, 1999).

As observed by ILO,

“... [o]n the whole the ILO instruments seem to have fulfilled their role in orienting national laws and regulations in certain areas, including the organization of migration flows. Generally speaking, countries tend to follow the provisions made by the instruments in broad terms, but less so when it comes to provisions calling for more specific commitments, in particular with regard to the protection of migrant workers. The international mobility of workers is today increasingly in the hands of private fee-charging recruitment agencies. Except where bilateral agreements on migration have been concluded between sending and receiving countries, the public services today have a minor and shrinking role in the recruitment and placement of migrant workers. This has negative aspects, however, since workers are vulnerable to malpractices...” (International Labour Organization, 1999)

Having an idea about the international legal framework it is worthy to evaluate the domestic version of migrant workers' rights/ statutory protection.

### C. *The Domestic Picture*

Act No. 21 of 1985 established the Sri Lanka Bureau of Foreign Employment (SLBFE) which is responsible for governance and regulation of the foreign employment industry, protection and welfare of migrant workers and their family members, and promotion and development of employment opportunities for Sri Lankans outside Sri Lanka. Apart from SLBFE institution, private recruitment agencies represented by the Association of Licensed Foreign Employment Agencies (ALFEA) also play a major role in promotion of recruitment of labour (International Organization for Migration, 2009).

Moreover National Policy for Labour Migration adopted in 2010 needs to be noted in this context. It enables to promote opportunities for all men and women to engage in migration for decent and productive employment in conditions of freedom, equity, security and human dignity. Thus gender equality and decent work approach are the main objectives of the national policy. It also aims to articulate the state policy regarding Sri Lankan citizens engaged in employment in other countries and to recognize the significant contribution of all Sri Lankan migrant workers to the national economy through foreign exchange remittances and other mechanisms (NPLM, 2010).

Apart from above institutional and policy framework there are few Memorandums of Understanding between the Government of Sri Lanka and labour receiving countries like UAE, Jordan, Qatar and Bahrain. Main objective of these memorandums is to ensure the protection of and securing the rights of Sri Lankan workers, particularly women workers.

Moreover Sri Lankan trade unions had signed an agreement with their counterparts in Bahrain, Jordan and Kuwait to ensure the strict supervision and control of activities of recruitment and employment agencies as well as subcontractors and eliminate the abuse of sponsorship schemes (SEDEC, n.d.).

### D. *The Evaluation*

It is recognized that Sri Lanka has not ratified the ILO Conventions on labour migration which is a lacuna. Main reason behind this non-ratification is the requirement of free service. Article 2 of the Convention No. 97 reveals that all the services relating to labour migrants shall be free according to the international bench mark. Yet Sri Lanka, through its SLBFE provides required services but not as a free service. Therefore Sri Lanka needs to amend

its practices and legal provisions relating to SLBFE in order to ratify the aforementioned Convention.

It is noteworthy that UN Convention on the topic under consideration has been ratified by Sri Lanka and has failed to provide all the protection required by that instrument as well. On the other hand positive reactions of the government in terms of the UN Convention should be appreciated. For example provision of assistance regarding contract making, free life insurance coverage to migrant workers, provision of Overseas Workers Welfare Fund (OWWF) provision of scholarships for children of migrant workers, provision of pre-migration loans and pre-departure training programmes need to be noted. This reaction by the government has commended by International Labour Organization in a published working paper as well. It states "As part of its regulatory function, the SLBFE has initiated and implemented a series of welfare measures to protect and promote migrants from abuse during the course of their overseas employment." Following description as cited in Rosario (2008) would provide an idea about the aforementioned programmes by SLBFE.

- Pre-departure training is a mandatory requirement for all prospective migrants. A training certificate is awarded to migrants who have completed this process, and is submitted to the SLBFE along with their registration. Training covers a range of topics including language skills (primarily English and Arabic), home management, and cultural adjustment. Majority of migrants who receive training are female workers destined for the Middle East countries to work as housemaids. The SLBFE has 29 training centres all over the country. (Dias & Jayasundere, 2004)
- Skills Improvement is to be consistent with the mission of the Ministry of Foreign Employment Promotion and Welfare to upgrade the skills of Sri Lankan migrant workers, the SLBFE launched a joint program with the Tertiary Vocational Education Commission. This program is an outgrowth of Sri Lanka's concern about the predominance of female migrants employed as housemaids abroad (Rosario, 2008).
- The issuance of model contracts by the SLBFE is used as a benchmark for employment agencies to ensure that conditions of work for Sri Lankan migrants are upheld (Rosario, 2008).
- Among the various objectives of the SBLFE is the establishment of the (OWWF). The Fund also possibly represents the most significant social protection measure for migrants, insofar as it attempts to provide a comprehensive system for migrants' welfare (Rosario, 2008).
- Admittedly, the coverage of the insurance policy for migrants follows standard global practice (Rosario, 2008). However, there is little room within the policy to address various contingencies faced by migrants

during the course of the employment overseas (Rosario, 2008). Based on complaints filed by migrants to the SLBFE, the most common are in the areas of non-payment of wages, breach of contract, and harassment (SLBFE, 2006). The insurance policy covers death, disability, and sickness only. Thereby the real issues faced by migrants such as breach of contract, non-payment of wages are not covered by the insurance policy available to them. Statistics suggest that in the year 2006 reported number of deaths of migrant workers were 379 (SLBFE, 2006). In contrast reported complains regarding non-payment of wages were 6,638 and number of cases regarding breach of contract were 5,392 during the same period. Thus it is in dire need to reconsider the extension of insurance policy coverage to ensure a real protection towards migrant employees.

Apart from above, it is identified that legal framework of Sri Lanka lacks an enabling statute which recognizes rights of the migrant workers. Due to the dualist nature of the country, enabling statute is a prominent requirement to incorporate international standards into the legal system. Thereby ratification of UN Convention would not be completed without such enabling statute.

Moreover evidence of exploitation reveals that low skilled and unskilled categories of migrants are subject to high level of violation of human rights, including labour rights, harassment and abuse at the work place more than skilled professionals (NPLM, 2010). Further In 2001, the Centre for Women's Research estimated that around 10 per cent of the approximately 500,000 female migrant workers from Sri Lanka have been victims of some form of physical, psychological or sexual abuse (CWR, 2001). Thereby it urges the need to enable legal protection to prevent and control such victimization.

#### V. WAY OF BRIDGING THE GAP

Following recommendations can be made to bridge the gap between international standards and the domestic legal framework:

Sri Lanka requires an enabling statute to recognize UN Convention on the Protection of the Rights of All Migrant Workers and their Families, 1990 which can establish institutional and policy obligation.

Moreover it is required to ratify the ILO Convention No. 97 and the Convention No. 143 on migrant workers to incorporate best practices into the country by which Sri Lanka can follow ILO footsteps when developing domestic law.

It is required to improve Memorandums of Understanding between Sri Lanka and labour receiving countries to legally binding bilateral agreements to protect rights of migrant workers more specifically.

Sri Lanka Bureau of Foreign Employment should be empowered more to regulate employment agencies in terms of the obligation on their part. It is required to establish an obligation to facilitate the migrant worker from departure to return back to the home country. Governing body should be powerful enough to maintain discipline in every segment of migrant worker.

Moreover the social benefit schemes provided by SLBE currently need to be revisited corresponding actual need of the migrant worker as discussed above.

Not only the regulatory framework shall be created but also the implementation process requires thorough reference by the government in order to protect the rights of the migrant workers in the labour world.

Thus the migration policy should be strong enough to ensure migrant workers' rights while providing them a shading umbrella of protection.

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### **Biography**

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