

# **Domestic Workers' Rights in Sri Lanka - Work Like Any Other, Work Like No Other: Need for a Legislative Intervention**

**A. Sarveswaran**

*Dept of Private and Comparative Law, Faculty of Law*

## **Background**

The phrase 'work like any other, work like no other' taken from the ILO Report on Domestic Workers is used in this paper in the context of domestic workers performing their work similar to other workers, but domestic workers are not protected by labour legislation, while other workers are protected. As the plight of the domestic workers has transformed from a domestic issue to global concern, the International Labour Organization (ILO) has adopted a Convention Concerning Decent Work for Domestic Workers (Convention No.189) on 16 June 2011. The Convention provides for working hours, minimum wages, overtime payment, daily and weekly rest, paid annual leave, social security, maternity protection, safe and healthy working environment, trade union rights and protection from all forms of abuse, harassment and violence. The Convention will come into force twelve months after the ratification of two members of the ILO. It is believed that Uruguay may ratify the Convention soon, and become the first member to ratify the Convention. However, as Sri Lanka is a state party to all important human rights conventions of the United Nations and core conventions of the ILO which protect the basic rights and interests of all workers, it has an obligation to protect the rights and interests of the domestic workers as well.

## **Methodology**

This paper discusses, in the light of relevant international declarations, recommendations, covenants and conventions, the extent to which labour law regime consisting of legislation, regulations and decided cases protect the rights and interests of domestic workers in Sri Lanka. The scope of this paper is limited to rights and interests of domestic workers in Sri Lanka.

## **Outcome**

Most of the domestic workers are females and children, and they are subject to forced labour, sexual abuse and harassment. The provisions in the Penal Code relating to forced labour, sexual abuse and harassments are applicable to all, including domestic workers. The Employment of Women, Young Persons and Children Act provides that minimum age for employment is fourteen years, and minimum age for hazardous nature of employments is eighteen years. The Act is also applicable to domestic workers without any distinction. A regulation gazetted under the Act provides that a young person who has attained the age of fourteen years but is under age of eighteen years cannot be employed as a domestic worker in such a manner to preclude at least three hours of leisure between the hours of 6.00 a.m. and 8.00 p.m. on any day, and enjoying at least seven consecutive days of leisure in every period of four months.

The Industrial Disputes Act is applicable to domestic workers as interpretation to the words 'workman', 'industry' and 'industrial dispute' in the Act would include a domestic worker as well. The Act also provides that relief for unjustified termination of services of a domestic worker is not reinstatement, but compensation. Hence, this provision in the Act also recognizes that domestic workers are covered by the Act.

The question arises whether a domestic worker can make an application to a labour tribunal to recover balance wages or arrears of wages. In *Karunaratne v. Appuhmay*, Pandita- Gunawardene, J. has stated that a workman cannot make application to recover balance wages in arrears *simpliciter*. However, in *Sirisena v. Samson Silva*, Rajaratnam, J. has stated that unpaid wages can be awarded by a labour tribunal when the tribunal makes a just and equitable order for termination of services. In *Wijedeera v. Babyhamy* also Rajaratnam, J. has stated that labour tribunals shall have regard to proved arrears of wages when they make just and equitable orders.

Hence, a domestic worker could recover balance wages or arrears of wages when he couples it with relief for termination of his services. If he wishes to recover balance wages or arrears of wages in *simpliciter* without coupled with relief for termination of services, the appropriate forum would not be a labour tribunal, but the Commissioner of Labour.

The Trade Unions Ordinance provides for registration of trade unions, and rights and immunities of the registered trade unions. Interpretation to the words 'workman', 'trade union' and 'trade dispute' in the Ordinance is broad enough to include domestic workers as well. The Industrial Disputes Act which provides, *inter alia*, for trade union rights of the workmen is also applicable to domestic workers. However, as domestic workers are generally illiterate, singly employed at households and neglected by the society, trade union rights cannot be realistically exercised by them.

The Wages Boards established under the Wages Boards Ordinance determine terms and conditions of employment in the trades covered by the Ordinance. As the word 'trade' has commercial connotations it cannot be interpreted to include 'domestic service'. The Workmen Compensation Ordinance provides for payment of compensation for accidents in employment and occupational diseases. But, the interpretation to the word 'workman' provides 'any person who ...works under a contract with an employer for the purposes of his trade or business...'. The words 'trade' or 'business' in the Ordinance also cannot be interpreted to include 'domestic service' within their scope. The Maternity Benefits Ordinance is applicable to woman workers employed in any 'trade'. Hence, the Maternity Benefits Ordinance is also not applicable to domestic workers.

Domestic workers are expressly excluded from the application of the Payment of Gratuity Act. However, it is possible for them to claim gratuity from a labour tribunal after termination of their services as they are covered by the Industrial Disputes Act. The Employees' Provident Act is applicable only to the employees in covered employments. However, an Order published by the Minister under the Act expressly excludes domestic service from covered employment for the purpose of the Act. The Employees' Trust Fund Act provides that the liability of an employer to pay contributions under the Act shall commence after the day fixed in relation to employment by the Minister by order published in the Gazette. However, an Order published by the Minister under the Act expressly excludes domestic service in any household from the application of the Act.

There is no legislation in Sri Lanka to provide for working hours, minimum wages, overtime payment, daily and weekly rest, paid annual leave, social security, maternity protection and safe and healthy working environment for domestic workers.

### **Conclusion and Recommendations**

Domestic workers rights are not only a domestic issue, but also an international labour issue. However, the failure of the labour legislation to protect the rights and interests of the domestic workers make them domestic slaves even in the 21<sup>st</sup> century in a country where religious values have recognized workers' rights ( in the form of employers' obligations) about 2,500 years ago. Hence, it is suggested to either amend the words that expressly or implicitly exclude the domestic workers from the application of existing labour legislation, or enact a special legislation to protect the rights and interests of the domestic workers.

### **References**

Decent work for domestic workers, International Labour Conference, 99<sup>th</sup> Session, 2010

Karunaratne v. Appuhmay, (1970) 74 NLR 46

Labour Code of Sri Lanka, 2010

Sirisena v. Samson Silva, (1972) 75 NLR 549

Wijedeera v. Babyhamy, (1973) 79(1) NLR 88