



The role of labour law in the protection of employees during COVID-19 pandemic in Sri Lanka

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Abstract

The COVID19 pandemic has created an unimagined crisis that caused thousands of employees worldwide to lose their jobs, have their wages deducted, and deal with and fight against the blatant violations of labor rights benefits guaranteed to them by the existing laws. The Sri Lankan labour force saw no exception to this situation. In this context, it is essential to ascertain the efficacy of the existing legal framework in Sri Lanka in protecting the interests of the employees against adverse labour practices adopted by the employers in their favour, during the COVID-19 pandemic. Therefore, this research seeks to address whether Sri Lankan labour laws were sufficient to protect the interests of the employees during the pandemic situation. The research is carried out using three methodological approaches: the black letter approach of research empirical research methodology and the international and comparative research methodology. The findings of the research reveal the inadequacy and silence of the labour laws in Sri Lanka in addressing and dealing with the labour issues that have arisen due to COVID19 pandemic. The research lays down suggestions to reform the law in Sri Lanka to ensure the maximum protection of the employee rights and benefits against the abuses stemming from the employers' unequal bargaining power during the unfavourable times of global health emergency.

Keywords: employee interests, labour rights and role of labour law

Introduction

The COVID-19 pandemic has brought the fast-phased human activities into a standstill consequent to the virus prevention mechanisms adopted throughout the world. The situation resulted in a fall in economic activity, critically affecting the employees. According to International Labour Organization, by the end of 2020, the total loss of worker's income would range between 860 and 3,440 billion USD and more than 125 million people will permanently lose their employment (International Labour Organization, 2020). The Sri Lankan employment sector has also gotten severely affected by the pandemic related economic downturn. Many industries in Sri Lanka, which largely depend on the global demand and supply, had to go for layoffs, under employment and salary cuts. While these actions are inevitable for certain employers, some employers adopted these measures solely for their benefit. In this situation,, it is incredibly vital to analyse whether the Sri



Lankan law is well equipped to protect the employees' rights and benefits against adverse labour practices adopted by the employers in their favour during the COVID-19 pandemic. The main problem sought to be addressed in this research is whether the Sri Lankan labour laws were sufficient to protect the employees' interests during the pandemic situation.

Literature Review

The literature carried out in the selected research area is rare, perhaps due to the unprecedented nature of the COVID-19 pandemic. From the limited literature available on the Sri Lankan context, Wimalaweera (2020) recognizes that:

the existing legislation does not address the current pandemic situation, depriving both employees and employers alike of relief measures adopted in this situation. (p. iii)

Similarly, research work focusing on other countries also recognize the inadequacy of the existing laws to address COVID-19 related labour issues (Sheeshan, 2013). Some literature emphasizes the necessity of the State's expanded role for the protection of the interests of the labour force during the pandemic (Tham, 2020). However, the existing body of literature still lacks a comprehensive analysis carried out on the efficacy of the labour laws in Sri Lanka in pandemic times, which is sought to be addressed by the present research.

Methodology

The research was carried out using three methodological approaches. The black letter approach of research and the international and comparative research methodology was used based on legislative enactments and international legal standards as primary sources and books, journal articles, conference proceedings, theses, and online resources as secondary sources. The international standards are used as the yardsticks or benchmarks against which the Sri Lankan law's efficacy is ascertained. The empirical research methodology was used to analyse the law in context through the researchers' observations. Moreover, unstructured interviews were held with the selected employees in Information and Communication Technology, Education, Financial Services, Medical and Legal. The sample was selected using the stratified random sampling method to include the employees working at different organizations' levels.



Results and Discussions

The labour law's role has ample angles that raised the need for attention during the health emergency experience. Most parts of the contemporary labour law remained hidden until recently due to a lack of such attention. However, this research will be limited to the following sub-heads that require priority since authors focus on an in-depth analysis in every angle.

i. Work from Home (WFH)

WFH is not a novel topic in the modern labour market. However, it is novel to the conventional labour practices where the employees used to work inside an office within a given timeframe, which was the traditional Sri Lankan practice before the bad experience of COVID – 19. Main enactments that regulate work and remuneration hours such as Shop and Office Act No. 19 of 1954 (as amended) and Wages Boards Ordinance No. 27 of 1941 (as amended) do not include any specification on the concept of WFH. Moreover, the empirical data reveals several unfair labour practices by employers during WFH conditions. According to the interviewees' data, these include unrestricted working hours, cancellation of leaves, no provision of the necessary telecommuting equipment, and the refusal to cover up WFH related expenses. The experience will have been different if the applicable rules and regulations have touched the contemporary labour market models such as WFH. When considered the international standards on WFH, the Home Work Convention, 1996 stipulated by the International Labour Organization can be identified. However, the Home Work Convention does not cover all the practical difficulties that might occur during WFH condition and some employments due to its uniqueness of nature, cannot be performed while staying at home (International Labour Organization, 2020). The Home Work Convention of 1996 can be used as a standard-setting subject to other modifications based on the practical issues that need to be addressed by a law reform in Sri Lanka.

ii. Wages and Other Benefits

The formula to calculate the salary does not mention any of the labour law statutes in Sri Lanka other than the minimum wages stipulated. The main reason behind such silence in the law was to provide a free labour market based on the competent and demand under the free employment contract. The employer will be at liberty to exercise its right under the respective employment contracts, including a mutual settlement between the two parties for lesser payment or no payment of salaries during the lockdown, as the case may be (Goel & Sharan, 2020). However, extreme exploitation of law during the COVID – 19 based on the unavailability of relevant rules and regulations with non-payment of wages and salary and unreasonable deduction of salaries



during the lockdown situation without mutual agreement, is entirely erroneous. On the other hand, employers' condition should be understood since the lockdown brought a huge impact on all employers due to stoppage of production and service provision. If the law has provided a guideline upon which the salaries should be paid and deducted, it would be a relief. Due to the unavailability of such law, employers acted on their sole discretion unequally and disproportionately and it affected the balance of the interests of the tri-party in this labour relationship. Moreover, the Employees' Provident Fund (EPF) and Employees' Trust Fund (ETF) do not include guidelines to be followed during such a situation where the whole salary is not paid. Both the employer and the employee are put in a position of misery due to unavailability and incompatibility of the country's labor laws.

iii. Essential Services

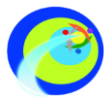
It is with utmost importance the services of the essential service providers need to be admired and appreciated. During the COVID – 19, if not their wholehearted services, Sri Lanka will not manage at least up to this progress level. Thus, the labour laws applicable to them should cover incentives such as higher overtime rates, higher social benefits and other amenities which is a lacuna in the existing legal framework of Sri Lanka. It is the role of the law to identify the needs of the employees in such a way that protects the interests of both the employer and the employee (Arnold, 2020).

iv. Psychological status

The mental condition of the employees is an untouched area of law. In order to expect high performance from the employee, his psychological status should be unharmed. During the lockdown period, the employee's mental status might have been damaged by the unreasonable and mischievous steps taken by the employer and the silence on the part of the State (Millson, 2020). Thus, it will impact on the performance level of succeeding months as well. It is imperative to state that the consistency of the labour laws of a country affects several angles, including the workers' performance, quality of the products, workers' health and social aspects, and operation levels of the work or business.

Conclusions and Recommendations

Sri Lankan labour law framework needs reformation to address the issues that prevailed due to the health emergency. Thus, Work from Home Standards should be introduced with suggestions to practical issues and the international standards as discussed. Moreover, it is required to provide a legal guideline to be followed by employers for calculation of salary, EPF and ETF during an emergency respecting the equality, reasonableness and justice to all



employees affected. Also, recognizing employees of the essential services with higher benefits would provide a better approach to address the issue in discussion. Finally, it is recommended to establish a 'Grievance Handling Office' at the Department of Labour to provide advisory and investigatory services to the employers and the employees who require assistance during an emergency. Reformation of labour laws is not sufficient if the implementation of it is not effective. There should be a mechanism to ensure the proper application of the laws.

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