

# ILO DECENT WORK AGENDA AND SRI LANKA: TEETH FOR TIGER

BKM Jayasekera<sup>1</sup> and NKK Mudalige<sup>2</sup>

<sup>1,2</sup>General Sir John Kotelawala Defence University, Sri Lanka

<sup>2</sup>*mnamudi@gmail.com*

**Abstract** - “Decent Work” is recognized as a normative foundation of the ‘Right to Work’ by the International Covenant on Economic, Social and Cultural Rights. International Labour Organization (ILO) identifies the agenda of decent work as a tool involving opportunities for work that are productive, deliver a fair income and other rights at work, and provides social protection and social dialogue with gender equality and the “Decent Work Agenda” can be designated as the sharp set of teeth of the tiger called “Decent Work. The Role of ILO and the standardization of national legal framework have a positive relationship in the arena of labour law. Thus Decent Work Agenda adopted by ILO remains as a standard accepted worldwide in this standardization process of decent work apart from other measures such as Conventions and Recommendations of ILO. As an instrument of good governance the decent work agenda fosters cooperation and economic performance while helping to create an enabling environment for the realization of the objective of Decent Work at the national level. Sri Lanka has reiterated its obligation towards decent work agenda during many international and regional meetings. Moreover the 1978 Second Republican Constitution of Sri Lanka by means of fundamental right to engage in any lawful occupation, profession, trade, business or enterprise and related Constitutional freedoms establishes the foundation to agenda of decent work. On the other hand labour legislation such as Shop and Office Employees Act, Wages Boards Ordinance, Industrial Dispute Act, Employees Provident Fund Act, Employment of Women, Young Persons and Children Act, Maternity Benefits Ordinance, Employment of Females in Mines Act that cover areas of decent work, namely; employment, rights at work, social protection and social dialogue, aspire ‘Decent Work’ within the domestic framework subject to legally prescribed restrains. Thereby the problem of this study was ‘to what extent Sri Lanka has incorporated international standards of decent work in

domestic labour law through substantive and procedural legal principles.’ Objectives of the research were to evaluate decent work agenda adopted by ILO with that of Sri Lankan legal framework and to suggest recommendations to improve the legal framework of Sri Lanka in line with international standards of the same. The research was carried out based on two methodological approaches; Black letter approach and International and Comparative research methodology. 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 peer reviewed journal articles, conference proceedings, case commentaries and online articles. The study concluded with the connotation that teeth of tiger can be sharpen through suggestions made in the study which would shape the legal framework based on ‘decent work’ that ultimately avail the employees, employers and the government to maintain ‘decent work’ within Sri Lanka.

**Keywords** - Decent Work Agenda, National Policy, Standardization

## I. INTRODUCTION

International Labour Organization (ILO) is often referred itself as the custodian of workers’ rights. “Decent work” is one of the concepts that had been introduced in 1999 in the report to the Director-General to the International Labour Conference 87th meeting. Decent work is the converging focus of all its four strategic objectives: the promotion of rights at work; employment; social protection; and social dialogue (ILO, 1999). It must be noted that ILO as the main forum to maintain labour standards it provides directions through Conventions and Recommendations. Apart from Conventions and Recommendations, ‘Decent

Agenda' is a platform where working environment is concerned in terms of given criteria and assessed whether they are met. Substantial notion is that where more criteria are met there is decent work in that particular institution or country.

"...Decent work is one of the democratic demands of people everywhere. The Decent Work Agenda is an agenda for development that provides a sustainable route out of poverty..." (Sirleaf, 2006).

Relationship of ILO's framework for decent work and Sri Lanka was evident at the 13th Asian Regional Meeting of the ILO constituents in 2001 where the Government, workers' and employers' representatives in Sri Lanka made a commitment to develop a National Policy and a National Action Plan for Decent Work. The goal of decent work is to promote opportunities for women and men to obtain productive work in conditions of freedom, equity, security and human dignity (SteeringCommittee, 2006). In the process of implementation of the above plan it identifies weaknesses in the focus areas of decent work and sets out the policies designed to overcome them (SteeringCommittee, 2006). Problem under the discussion is whether ILO decent work agenda is compatible with Sri Lankan legal framework in order to protect the workers' rights. Main Objective of this paper is to evaluate decent work agenda adopted by ILO with that of Sri Lankan legal framework and to suggest recommendations to improve the legal framework of Sri Lanka.

Methodologies followed are black letter approach and comparative research methodology. Primary sources are the Constitution, related legislation, international standards and judicial decisions and secondary sources are books, theses, commentaries and journal articles that were utilized in this paper. It is noted that this research used the comparative research methodology at the stage of making recommendations in which lessons from other jurisdictions were addressed.

## II. ANALYSIS

"...Decent work is defined by the ILO and endorsed by the international community as productive work for women and men in conditions of freedom, equity, security and human dignity. Decent work involves opportunities for work that: is productive and delivers a fair income; provides security in the workplace and social protection for workers and their families; offers prospects for personal development and encourages social integration; gives

people the freedom to express their concerns, to organize and to participate in decisions that affect their lives; and guarantees equal opportunities and equal treatment for all..." (International Labour Organization, 2008)

Four criteria can be identified which is hereinafter mentioned as "Pillars of Decent Work". They are employment, rights at work, social protection and social dialogue.

Employment is the first pillar of decent work agenda and it can be stated that it is the main aspect which keeps other three pillars intact. Main idea under this head is to provide opportunities for employees which leads to enhancement of productivity and pro-poor economic growth. On one hand promoting employment for women and youth, facilitating economic development of employees and targeting towards declination of poverty, using knowledge management tools, promoting innovations and creativeness are other criteria which can be illuminated under the pillar of 'employment'. The situation of the "working poor" should be a matter of particular attention – especially in countries where the formal economy is small, many women and men are working, often arduously and for long hours, but are simply unable to earn enough to lift themselves and their families out of poverty (UN System Chief Executives Board for Coordination, 2008). In terms of the domestic legal framework it can be overviewed that legal platform had been set in Sri Lanka to fulfill the first pillar of decent work agenda. The Constitution of the Democratic Socialist Republic of Sri Lanka of 1978 in Chapter III under Fundamental Rights it is guaranteed to every citizen the freedom to engage in any lawful occupation, profession, trade business or enterprise by virtue of Article 14 (1) (g). It substantiates the first pillar at a certain rate. However the fundamental right violation being able to enforce at the Supreme Court in case of executive or administrative action is a bar in which most of the time people lose the way to enforce a fundamental right and judiciary also has not shown the willingness to go beyond it. *Samson vs. Sri Lanka Airlines Limited* is one such example where the Supreme Court of Sri Lanka rejected a fundamental rights application on the basis of non deprivation of violation from executive or administrative action but a private sector employer. Although possible legal bars can be identified recognition of right to work in the Constitution as a Fundamental Right needs to be apprehended.

Employment of Women Young Persons and Children Act No. 47 of 1956 is another legislation that can be pointed

out which this first preposition is embedded. It is a piece of legislation that was passed to empower women and young person at their employment. Leaving aside the gaps in the said law positive approach is evident by introducing such enactment which proves decent work criteria in Sri Lankan legal framework.

The gender distribution and its balance in employment is another factor that needs to be considered under the first pillar. In Sri Lanka the Constitution guarantees the equality principles as a fundamental right under Article 12 and based on it one can argue that equal distribution of employment between men and women is possible. However the labour market is not constructed upon such values. Knowledge, skills and attitudes (collectively called as competencies) are taken as criteria for employment and it is logical and justifiable. Legal framework can only facilitate at a limited range in such a context.

But the empowerment through legal framework can be possible provided that it is justifiable. Thus the legal framework should be carved to balance the sociological and cultural diversity between men and women in South Asia that would empower women for employment.

Second pillar is 'rights at work'. Emphasizing about the available rights based on the employment is the main idea of this phase. Individual as well as collective rights can be highlighted in this discussion. Working hours, salary/wage, leave, parental benefits are the main pointed to be evaluated under individual rights. Collective rights are the rights relating to freedom of association and collective bargaining.

In terms of the legal framework it is identified that enjoyment of above rights is different based on the sector of employment. Private sector and public sector employees are entitled to different versions of rights which are sometime discriminatory. Moreover the applicable legislation and regulations are different at the outset.

Leave entitlement in the private sector is a statutory right and within private sector two applicable statutes are there; The Shop and Office Employees Act No.15 Of 1954 and Wages Boards Ordinance No. 27 of 1941. On the other hand the Establishment Code stipulates that leave is a privilege not a right to public sector employees.

Parental benefits also have the same effect but rather discriminatory approach. Maternity benefits available to public sector employees are higher than private sector

and with private sector two different layers of leave are applied based on the nature of the employment which is discriminatory. Paternity leave is available to public sector employees (although it is not a reasonable entitlement) whereas private sector employees left nothing.

Fundamental workers' rights are part of the set of basic human rights and define a universal social basis of minimum standards in the world of work. The ILO Declaration on Fundamental Principles and Rights at Work covers the rights to freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation (UN System Chief Executives Board for Coordination, 2008).

Trade union rights are available to both private and public sector employees at different scales. However legal barriers like Essential Public Services Act No. 61 of 1979 and Public Security Ordinance No. 25 of 1947 hinder the rights of freedom of association. Collective bargaining tool also has the legal recognition in Sri Lanka which should be appreciated despite lacunas.

Adequate social protection is a viable need of the employee. "Social protection" as a wide concept covers not only social security but labour protection. Labour protection covers occupational safety and health and decent working conditions, and combines risk prevention strategies with the protection of rights and the integration of vulnerable groups, such as people living with HIV/AIDS (UN System Chief Executives Board for Coordination, 2008). Also it covers income security to people in the cases of emergency, unemployment, sickness, old ages etc.

Statutory entitlements of employees to Employees' Trust Fund (ETF) and Employees' Provident Fund (EPF) are the main legislative provisions under the pillar of 'social protection'. Employees' Trust Fund is a non-contributory benefit fund which is given by the employer as 3% of the total earnings of the employee. To the Employees' Provident Fund it will be mutually contributed by the employee and employer at 8% and 12% rates respectively. Moreover it is given the entitlement to gratuity payment to the employees who have worked over five years subject to certain conditions under Payment of Gratuity Act No. 12 of 1983. Ancient legislations need amendments to cater present demands of employees which is timely and worthy of highlighting. Increasing contribution rates, increasing

supervision over funds and focus on the main objectives of the funds are the areas to improve in terms of EPF, ETF and Gratuity entitlements.

Health and Safety component is another area which reveals social security. Workmen's Compensation Ordinance, Factories Ordinance and Shop and Office Employees Act provide legal stipulations to cover health and safety. However the formula followed in Workmen's Compensation Ordinance is not enough to cover up the damage inflicts on an employee. Compensation amounts needs to be increased. Compulsory insurance policy, availability of ambulance facility and proper inspection can be suggested to improve the decent work in Sri Lanka (this aspect is comprehensively discussed elsewhere in this paper)

Social dialogue refers to all types of negotiation, consultation and exchange of information between or among representatives of governments, employers and workers. Effective social dialogue depends on: respect for the fundamental rights of freedom of association and collective bargaining; strong, independent workers' and employers' organizations with the technical capacity and knowledge required to participate in social dialogue; political will and commitment to engage in social dialogue on the part of all parties; effective governance structures; and adequate access to relevant information and agreed processes for the prevention and resolution of disputes in the event that these should arise (UN System Chief Executives Board for Coordination, 2008).

Trade Unions Ordinance No. 14 of 1935 and Industrial Disputes Act No. 43 of 1950 are the main legislation to consider under this aspect. Provision of both legislation articulate many rights and at some point they hinder the same right too. For instance both private sector and public employees are given the right to form and join trade unions. When the right is violated by their employer, public sector employee receives the privilege to file a fundamental rights application under the 2nd Republican Constitution and the private sector employee can only complain to the Department of Labour which in turn can take necessary legal action against the employer. Applicable legal remedy is different in this context and it is discriminatory. Moreover the public sector employees are not allowed to establish federations and confederations. Also collective bargaining is not available as a statutory right to public sector.

### III. ISSUES

It was identified few key areas that have issues or legal gaps in the Sri Lankan framework. First issue is the unavailability of fundamental rights jurisdiction to private sector human rights violations by the employer or any other third party. Next it was identified the issues and disparities in terms of parental benefits. The empowerment of women and young person is not effectively catered through the Employment of Women Young Persons and Children Act No. 47 of 1956 although some aspects are covered. In terms of social protection pillar workmen's compensation needs to be readdressed and need serious improvements. Finally the pillar of social dialogue requires to be improved.

### IV. CONCLUSION

'Decent Work Agenda' is a programme where working environment is assessed and improved in terms of given criteria. Substantial notion is that where more criteria are met there is decent work in that particular institution or country. Decent work which includes all its four strategic objectives-the promotion of rights at work, employment, social protection, and social dialogue have been implemented in some situations in Sri Lanka, especially in public sector better than in private sector. But it should be implemented in public sector and private sector in equal manner. Moreover the areas such as social protection need improvement with new strategies to promote decent work. Commitment towards the decent work programme necessarily be mentioned herein.

"...Decent Work Country Programmes (DWCPs) have been established as the main vehicle for delivery of ILO support to countries. DWCPs have two basic objectives. They promote decent work as a key component of national development strategies. At the same time they organise ILO knowledge, instruments, advocacy and cooperation at the service of tripartite constituents in a results-based framework to advance the Decent Work Agenda within the fields of comparative advantage of the Organization. Tripartism and social dialogue are central to the planning and implementation of a coherent and integrated ILO programme of assistance to constituents in member States..." (International Labour Organization Official Web site, 2018)

It was reported four Decent Work Country Programmes in Sri Lanka after adoption of it. The most recent Decent Work Country Programme was launched in May 2018

which was named as “Decent Work Country Program’ (DWCP) 2018-2022”.

“...[The main areas of concern] are the creation of sustainable, inclusive and decent employment, better governance of the labour market, ensuring rights at work for all and greater data and knowledge generation. The four outcome areas are closely aligned with national policy frameworks and constituent priorities...” (The Employers’ Federation of Ceylon Official Web site, 2018)

However the recognizing and launching of programmes would not be effective unless the implementation part is completed via improving legal framework. Teeth for tiger must be provided via necessary and practical improvements in order to get the best out of “Decent work agenda”.

## V. RECOMMENDATIONS

Some recommendations can be made to enhance the decent work conditions in work places in Sri Lanka. To address the problem of fundamental rights actions against private institutions in Sri Lanka, in addition to its current application only to public sector, in line with the legal framework of the United Kingdom where its Human Rights Act of 1998 makes it possible for actions against private institutions, Sri Lanka also must develop the law to make the avenues possible for fundamental rights actions against private sector violations.

The other issue is about parental leave in the event of child birth. Sri Lankan public sector workers enjoy a meager maternity benefit than the private sector women workers. Further paternity benefit is not enjoyed by the private sector workers at all, while public sector male employee have 03 days leave in view of a birth of a baby according to the Chapter XII of the Establishments Code. While more maternity and paternity benefits should be allocated to all workers, Sri Lanka should introduce maternity and paternity leave in an equal manner to public and private sector as practiced in the United Kingdom and Sweden.

The other recommendations relate to the promotion of employment. The child labour is prohibited in Sri Lanka and it is prohibited to employ children under the age of 14. However in the year of 2016 it was increased the mandatory period of education from 14 years to 16 years by virtue of a Gazette Notification under the Education Ordinance No. 31 of 1939. Disparity between lawful age of education and lawful age of employment needs to

be eliminated in order to balance both rights of young persons. Thereby the definition of ‘young persons’ under Employment of Women Young Persons and Children Act No. 47 of 1956 needs to be amended.

Decent agenda includes the promotion of social protection category. Insurance must be compulsory for all the employees and employers as when damage is caused to employer or employee, there is no recovery or compensation process which gives more benefits to victims. Therefore there should be introduced mandatory insurance policy in public and private sector in Sri Lanka as provided by Hong Kong laws.

Further, every institution must take health and safety precautions such as providing equipments and guidance, and they must keep necessary ambulances, nurses and doctors in working hours. Pension scheme must be introduced to both public and private sector, as only some public sector intuitions have introduced this. This must expand to the other public sector institutors such as departments and authorities and private sector institutions.

Promotion of social dialog is the other component of decent agenda. To implement this agenda properly in Sri Lanka, the collective bargaining concept should be introduced in public sector

Teeth of tiger can be sharpen through such suggestions which will shape the legal framework based on ‘decent work’ and ultimately avail the employees, employers and the government to maintain ‘decent work’ with Sri Lanka.

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