

## Impact of Covid-19 to the National Economy of Sri Lanka: A Comparative Analysis with the United Kingdom on Employees' Rights

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**Abstract**— Impact of Covid-19 on labour rights and national economy has become a prominent issue at present. Therefore, this research aims at finding out whether there are sufficient laws to secure labour rights in such unforeseeable situations. The effect of the lock down in the country due to the pandemic has caused the demand shock, supply shock and financial shock to occur at the same time which has adversely affected the national economy. The research problem is whether the prevailing labour legislations are adequate to address the issues arising out of unexpected situations, specifically due to Covid-19 while contributing to the national economy. The objectives of this research are to identify the impact of Covid-19 to the national economy and labour rights, identify whether the Sri Lankan labour laws are sufficient to address such issues and to propose necessary amendments to the existing legal regime to fill the gaps. The methodology of this research is a combination of Black-Letter methodology and Comparative Research Methodology with the United Kingdom.

Moreover, this research would employ a qualitative analysis of primary data including the 1978 Constitution of Sri Lanka, the Industrial Disputes Act No. 43 of 1950, Wages Boards Ordinance No. 27 of 1941, Termination of Employment of Workmen Act No. 45 of 1971, Employees' Provident Fund Act No. 15 of 1958, Employees' Trust Fund Act No. 46 of 1980 and the Gratuity Act No. 12 of 1983 and secondary data including journal articles and web articles. Finally, the research concludes with a view that the existing industrial laws are insufficient to address unforeseeable situations in a way which would contribute to national economy and to the national growth.

**Keywords**— Covid-19, National Economy, Sri Lanka

### I. INTRODUCTION

*Sui generis* nature of contract of employment in Sri Lanka promotes the ideals of social justice. Further, the welfare States have intervened to the employer-employee relationships since parties do not have equal bargaining power and the imbalance of bargaining power will lead to exploitation. In Sri Lanka, the private sector is the main contributor to the national economy.<sup>1</sup> Therefore, the private sector has the highest capability of influencing the national economy and the national growth.

As a result of the Covid-19 pandemic, the national economy of Sri Lanka was highly affected which led to the reduction of national growth.<sup>2</sup> Specifically, the Colombo Stock Market was highly affected by this unforeseeable pandemic which ultimately resulted in reduction of the national growth leaving both short term and long term issues. Additionally, profits of the companies were drastically reduced because of the temporary suspension of business transactions and therefore many issues relating to labour rights have arisen. Here, it should be noted that a balance should be struck between the interests of both employers and employees in order to overcome the issues arising out of

<sup>1</sup>Central Bank of Sri Lanka, (2019), *Economic and social statistics of sri lanka*. [online] Statistics Department. Available at: [http://www.cbsl.gov.lk/sites/default/files/cbslweb\\_documents/statistics/otherpub/ess\\_2019\\_e.pdf](http://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/statistics/otherpub/ess_2019_e.pdf) [Accessed 1 June 2020].

<sup>2</sup> Janz, J. (2020). *The impact of covid 19 on the sri lankan Economy* [online] pulse. Available at: <http://www.pulse.lk/everythingelse/the-impact-of-covid-19-on-the-sri-lankan-economy/> [Accessed 1 June 2020].

unforeseeable situations and reduce the impacts to businesses. Moreover, it would be effective to relax the existing labour legislations to balance the interests of the employer-employee relationship.

Furthermore, it is also significant to note that ILO standards and recommendations have also been introduced to cover the Covid-19 situation. Hence, workers whose employment is terminated due to the economic impact of Covid-19 or for health and safety issues should be entitled to a severance allowance or other separation benefits, unemployment insurance benefits or assistance to compensate for the loss of earnings incurred as a result of the termination. Additionally, workers who are absent from work for the purpose of quarantine or for undergoing preventive or medical care and whose salary is suspended should be granted a (sickness) cash benefits.<sup>3</sup>

## II. METHODOLOGY AND EXPERIMENTAL DESIGN

The research methodology would be a combination of Black-Letter (Doctrinal) Methodology and a Comparative Research Methodology with the United Kingdom. The Black-Letter methodology is used to provide a descriptive analysis on the area. Under the Comparative Research Methodology, a comparative analysis between Sri Lanka and the United Kingdom will be conducted to identify the differences in both jurisdictions relating to the industrial law. Further, the research would employ a qualitative analysis of primary data including the 1978 Constitution, Industrial disputes Act No.43 of 1950, Wages Boards Ordinance No.27 of 1941, Termination of Employment of Workmen Act No.45 of 1971, Employees' Provident Fund Act No. 15 of 1958, Employees' Trust Fund Act No.46 of 1980 and

the Gratuity Act No. 12 of 1983 and secondary data including journal articles and web articles.

## III. RESULTS AND DISCUSSION

### A. Impact of labour legislations on national growth

Labour legislations are the laws authorised by the governments for the purpose of providing monetary and social equity to the employees in businesses. More specifically, these laws provide rules to businesses or industries to address issues that might arise relating to wages, E.P.F., E.T.F, payment of gratuity and working conditions of labours.

As indicated by Mr. V.V. Giri, labour legislation is "a provision for equitable distributions of profits and benefits emerging from industry, between individualists and workers and affording protection to the workers against harmful effects to their health safety and morality".<sup>4</sup> This highlights that a balance should be struck between the interests of employers and employees.

Labour legislations are formed upon the principles of social justice, social equality, national economy and international uniformity. Thus, when considering the above facts the importance of labour legislations can be identified. In other words, the objectives of labour legislations can be identified. This includes improving industrial relations between employers and employees, minimizing industrial disputes, reducing the possibility of workers being exploited by employers or management, assisting workers in getting fair wages, reducing conflicts and strikes, ensuring job security for workers, promoting environmental-friendly conditions in the industrial system, fixing working hours and also providing compensation to workers who are victims of accidents.

<sup>3</sup> International Labour Organization, (2020), *ILO Standards and Covid19*. [online] Available at: [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/genericdocument/wcms\\_739937.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_739937.pdf) [Accessed 4 September 2020].

<sup>4</sup> Chand, S. 'Necessity and Importance of Labour Law and Principles'. [online] Available at: <https://www.yourarticlelibrary.com/law/necessity-and-importance-of-labour-law-and-principles/34381> [Accessed 4 June 2020].

Labour laws introduce reasonableness standards in employment contracts to assist in defeating coordinating failures inside the business and can add to positive efficiency and work impacts over the more extensive economy. Generally, in industrialized economies, legislations introduced mechanisms to reduce risks in labour market. In the present low-and middle income nations, labour law reforms can help to construct institutional limits in zones which incorporate social protection, aggregate dealing and debate goals and can add to the formalization of employment which is a significant advance in decreasing financial instability implying the effect to the national growth.

#### *B. U.K. legal regime on rights of employees pertaining to unforeseeable situations*

Due to the consequences of Covid-19 pandemic, industrial law in the U.K. has undergone many changes.<sup>5</sup> This includes Coronavirus Job Retention Scheme, Self-Employment Income Support Scheme, Changes to statutory sick pay, Emergency Volunteering Scheme and changes to Off-Payroll Working etc. More importantly, U.K. has passed the Coronavirus Act 2020 to grant emergency powers to the government to handle the pandemic.<sup>6</sup> The Act gives discretionary powers to the government to relax regulations in various sectors as a precaution to limit the spreading of the disease including national health care services and social care.<sup>7</sup>

The Coronavirus Job Retention Scheme was introduced by the Coronavirus Act 2020 which indicates the eligibility and entitlements under it. It applies to all employers in the U.K. who

have a U.K. bank account and who have started a PAYE payroll scheme on or before 28th February 2020. Moreover, the employees retain the right to statutory sick pay, unfair dismissal rights and rights to redundancy payments. Furthermore, the Self Employed Income Support Scheme was introduced to provide grants to self-employed individuals for three months. According to this, self-employed individuals or employees who are part of partnerships will receive a grant 80% of their gross average monthly profits.

Another important grant by the U.K. government is the changes made to Statutory Sick Pay in response to Covid-19. Currently, this is payable not on a permanent basis. This is payable to employees who have been advised to self-isolate under the guidance of the government. The Emergency Volunteering Scheme is also another initiative of the U.K. government to safeguard rights of employees in Covid-19 situation. This scheme allows employees to take emergency volunteer leave in two to four weeks statutory unpaid leave in any period of sixteen weeks and employees who volunteer through an authorized authority will be compensated for loss of earnings during this period.

Simultaneously, the employees who have not taken their statutory annual leaves will be allowed to take it to the next two years with the introduction of the Working Time (Coronavirus) (Amendment) Regulations 2020.

Moreover, the employment tribunal service for England, Wales and Scotland has issued guidance on conducting tribunals during the Covid-19 pandemic.<sup>8</sup> According to it, if the tribunal thinks it is just and equitable, hearings may be conducted by means of electronic communications to prevent parties from being interacted with others specifically in the Covid-19 situation. Sending applications to tribunal through electrical means is encouraged since

<sup>5</sup> JDSUPRA (2020). 'UK Employment Law Changes and Response to Covid-19'. [online] Available at: <https://www.jdsupra.com/legalnews/uk-employment-law-changes-and-response-13552/> [Accessed 4 June 2020].

<sup>6</sup> Coronavirus Act 2020. United Kingdom. Available at: <http://www.legislation.gov.uk/ukpga/2020/7/content/enacted/data.htm> [Accessed 4 June 2020].

<sup>7</sup> *ibid*

<sup>8</sup> CIPD (2020) *Recent and Forthcoming Legislation*, Available at: <https://www.cipd.co.uk/knowledge/fundamentals/emp-law/about/legislation-updates> [Accessed 4 June 2020].

judges need not to work in the tribunal building. Additionally, changes have been made to statutory rates and compensation limits and there is a rise in the national/ minimum wage in the U.K. Precisely, limits were imposed relating to compensation limits including unfair dismissal and statutory redundancy pay, statutory sick pay and national minimum wage rates.

Consequently, as a whole when analysing the U.K. legal regime on rights of employees relating to unforeseeable situations, specifically Covid-19 situation, it is clear that the U.K. has immediately taken many initiatives in response to the pandemic to protect rights of employees, at least to a considerable extent.

### *C. Sri Lankan legal regime on rights of employees pertaining to unforeseeable situations*

The 1978 Constitution, being the supreme law of the country, recognizes the fundamental right of every citizen to 'freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise' in Article 14(1)(g).<sup>9</sup> Further, this is strengthened by Article 27(2) (a) which states that "The state is pledged to establish in Sri Lanka a democratic society, the objectives of which include the full realization of fundamental rights and freedoms of all persons."<sup>10</sup> Even though according to Article 29, none of the provisions (Directive Principles of State Policy and Fundamental Duties) is enforceable before a court of law or tribunal<sup>11</sup> no part of the Constitution can be dismissed as redundant.<sup>12</sup> Simultaneously, Article 27(2) (c) has directed the state to ensure adequate standard of living to all citizens and continuous improvement of living conditions.

<sup>9</sup> *The Constitution of the Democratic Socialist Republic of Sri Lanka 1978, C3*. Available at:

<https://www.parliament.lk/files/pdf/constitution.pdf>  
[Accessed 4 June 2020].

<sup>10</sup> *ibid*

<sup>11</sup> *ibid*, Article 29.

<sup>12</sup> *Ravindra Gunawardena Kariyawasam v. Central Environment Authority and Others*. [2019] (Supreme Court of Sri Lanka).

Moreover, under Section 31E of the Industrial Dispute Act (Part IVB), the Act shall not apply to workers in a workplace which has less than fifteen workmen one month preceding the retrenchment of any workman, or to workmen in businesses which is seasonal in character or to retrenchment of any workmen who have been employed for less than one year in any industry. However, as per Section 31E(2), if the Minister is of the view that an industry is likely to affect that industry in a manner as to cause serious repercussions to it, the Minister shall either declare that this part shall not be applied or shall apply subjected to some conditions. Moreover, according to Section 31F, the employer holds a duty to give notice on retrenchment to the workmen or the union before one month and a copy should be sent to the Commissioner.

However, these sections apply only to disciplinary retrenchment.

On the other hand, the Termination of Employment of Workmen Act (hereinafter referred to as the Termination Act) would be important to identify the methods of termination of employees in a workplace including the rights of employees, specifically with regard to the Covid-19 situation. According to the Act, non-disciplinary termination occurs in relation to closure of business and retrenchment. In pursuant to Section 2(2) (e), the Commissioner may, in his absolute discretion, decide the terms and conditions subject to which his approval should be granted including particular terms and conditions relating to payment by employer to the workman of gratuity or compensation for termination of employment. Section 2(4) (a) also accepts the ability to terminate employment of workmen on non-disciplinary grounds based on temporary (lay off) or permanent non employment and non-employment due to closure of the business, trade or industry.

Furthermore, according to Section 6A of the Act, the Commissioner holds power to order an

employer to pay compensation to a workman on or before a specified date in consequence to the closure of business. Thus, it could be argued that this section can be utilized as a remedy available in unexpected and unforeseeable situations, in particular, the Covid-19 situation. Consequently, it could be argued that the Termination Act has impliedly promoted job security in ordinary situations to some extent but not to completely cover unexpected and unforeseeable situations.

When analysing the Sri Lankan context, it is important to identify the changes occurred in the stock market on 11th of May 2020 due to the Covid-19 pandemic which led Sri Lanka to experience a halting of trading at the Colombo Stock Exchange within a few minutes of its regular trading time after the lockdown on that day. It has occurred 5% dip within 10 minutes and according to the analysts, the market fell due to the fear of foreign investors exit from the risky assets which directly affected the national economy.<sup>13</sup> As mentioned above, since both local and foreign investors are looking at leaving from risky assets due to the global pandemic the end result would be the fall of the domestic economy which eventually will affect the rights of workmen which directly or indirectly connected to listed companies of the Colombo Stock Exchange and as a whole to the economic growth of Sri Lanka.<sup>14</sup>

Additionally, Covid-19 has led to imposition of curfews and reduction in demand for exports which has resulted in unemployment in Sri Lanka, especially with regard to small and medium businesses and industries. As a result, lower pay will be given to employees because of the low income of these businesses which will ultimately affect employee rights.

It could be identified that three main labour issues have arisen due to the pandemic. This

<sup>13</sup> News1st. (2020). The colombo stock market closes within a few minutes of trading. [online]. Available at: <https://www.newsfirst.lk/2020/05/11/the-colombo-stock-exchange-stops-trading-within-seconds/> [Accessed 5 June 2020].

<sup>14</sup> *ibid.*

can be categorized into issues under terms and conditions of contract of employment, issues relating to termination of employment and issues with regard to new forms of employment. When analysing the issues relating to terms and conditions of employment, salary issues, non-contribution of EPF and ETF and payment of gratuity issues have arisen. Thus, it is important to identify the legal aspect of these issues.

Firstly, there can be contracts in abeyance where contract is temporarily suspended and contracts due to frustration where contract is terminated due to a reason beyond the control of parties such as the Covid-19 pandemic. Here, both the employers and employees are not at fault. Even though frustration is not a part of the Sri Lankan legal system some argue that the supervening impossibility of performance has led to the termination of contract.<sup>15</sup> Another issue is with regard to the termination of services of probationers due to the pandemic by reason of the low income of the businesses. Thus, another issue arises as to whether an employer is bound to contribute to EPF and ETF which is basically calculated on the basis of earnings of the month where the pandemic has resulted in low income of businesses. In addition, Section 5(1) of the Gratuity Act<sup>16</sup> states that an employer who employs fifteen or more workman during twelve months preceding termination of services of workman and workman who has completed five completed years under the employer shall pay gratuity to such workman. However, here a question arises as to whether what will happen if there is a break in the services of employees due to absence from work due to the pandemic because to be entitled for gratuity workman

<sup>15</sup> Law Net. 'Frustration of Contract (Termination of Service by Operation of Law and Impossibility of Performance) The Legal Consequences'. [online] Available at: <https://www.lawnet.gov.lk/1960/12/31/frustration-of-contract-termination-of-service-by-operation-of-law-and-impossibility-of-performance-the-legal-consequences/> [Accessed 5 June 2020].

<sup>16</sup> *Payment of Gratuity Act 1983*, Available at: [http://www.mostr.gov.lk/web/images/pdf/acts/payment\\_of\\_gratuity.pdf](http://www.mostr.gov.lk/web/images/pdf/acts/payment_of_gratuity.pdf) [Accessed 5 June 2020].

should complete a continuous five years period in employment.

When considering the issues relating to termination of employment relating to the pandemic, employees are terminated on non-disciplinary grounds such as closure of the business, retrenchment and lay-off. Some employers may even issue letter of vacation of post due to absence of workers even if there is non-availability of curfew passes and non-availability of transport facilities to workmen due to the pandemic. The legal aspect of this can be covered under the Termination Act.

According to the Act, no employer shall terminate the scheduled employment of any workmen without the prior consent in writing of the workman or prior written approval of the Commissioner.<sup>17</sup> Further, it is important to note that employers cannot simply issue a letter of vacation of post to an employee unless the employee is absent from work beyond a reasonable time period or time period mentioned in the letter of appointment or employee has the intention to abandon the employment.

On the other hand, the main issue regarding new forms of employment such as online workers is whether they can be regarded as employees. In *Uber London Ltd, Uber Britannia Ltd v Mr. Y Aslam, Mr. J Farrar, Mr. R Dawson and Others*<sup>18</sup> the issue was whether Uber taxi drivers were employees or not where the Court of Appeal of England and Wales held that they were employees even though they work using digital technology apps. However, it should be noted that with regard to the present situation, not only the rights and interests of employers and employees should be considered, but also the businesses should also be protected. Hence, a balance of interest should be struck between the two.

<sup>17</sup> *Termination of Employment of Workman 1971*, Available at [http://www.commonlii.org/lk/legis/consol\\_act/toeow154449.pdf](http://www.commonlii.org/lk/legis/consol_act/toeow154449.pdf) [Accessed 5 June 2020].

<sup>18</sup> *Uber London Ltd, Uber Britannia Limited v. Mr. Y Aslam, Mr. J farrar, Mr. R Dawson and Others*. [2018] Employment Appeal Tribunal Appeal No. UKEAT/0056/17/DA.

The proposal introduced in Sri Lanka in relation to the pandemic suggests that employees should not be terminated due to the pandemic, employment should be continued with social distance and contributions shall be made to EPF and ETF. It is of importance to note that even though a temporary proposal has been introduced in Sri Lanka to address the issues on employee rights arising due to the Covid-19 pandemic, it does not effectively address all the employee rights.<sup>19</sup>

On this basis, the necessity to repeal the current domestic legal framework which protects workmen rights with a view to the future to face such unexpected situations such as Covid-19 is visible and it should be recognized as a legal lacuna that should be filled undeniably.

#### IV. OBSERVATIONS AND RECOMMENDATIONS

When comparing with the U.K. legal regime, it is clear that there's a clear gap in the Sri Lankan legal regime with regard to providing recourse to safeguard rights of employees in unforeseeable situations, especially with regard to Covid-19 situation which has highly affected the national economy. Therefore, following recommendations were made in order to effectively address the prevailing gap in the existing legal regime of Sri Lanka while comparing the both jurisdictions.

- When considering the industrial relationship between employer and employee, it is evident that employees are generally unaware of their labour rights. Hence, it could be suggested that an effective mechanism or programme should be introduced to make awareness among employees in businesses or industries by supporting greater social protection while balancing the interests between employers and employees. This could be

<sup>19</sup> DailyFT (2020) *Ceylon Federation of Labour Fumes over tripartite deal on pro-rate wages during Covid-19*, Available at: <http://www.ft.lk/front-page/Ceylon-Federation-of-Labour-fumes-over-tripartite-deal-on-pro-rate-wages-during-COVID-19/44-700422> [Accessed 6 June 2020].

achieved by enhancing health and safety in the work place by adopting occupational health and safety measures, adopting work arrangements such as flexible working hours and by safeguarding rights of the migrant workers.

- In Sri Lanka, there are many labour legislations to address issues relating to industrial relations in various aspects. However, when analysing the Sri Lankan context it is clear that there is no single labour legislation to address the rights of employees arising out of unforeseeable situations. Thus, it could be recommended that a new legislation be passed to protect the rights of both the employer and employees in unforeseeable situations, specifically with regard to the wages and to secure the retirement benefits of the private sector. Thus, it would be effective to include a provision on providing employees with paid sick leave for employees of covered employment including duration of the leave and calculation of pay which is to be effective from a specific effective date. Additionally, it should include an interpretation clause without any ambiguities. It should cover the definitions of 'covered employees' to be applicable to both public and private sector and 'eligible employees' to be applicable to all employees of covered employment.
- Due to the Covid-19 pandemic, it was identified that there were many violations of employee rights specifically due to non-disciplinary termination, which violates employee rights. Therefore, it could be suggested that the existing legal regime on industrial law should be relaxed to include

unforeseeable situations, because firstly the rights of employers should be protected in order to protect the rights of employees.

- To address this issue, at least an online parliament could have been convened to pass a special labour legislation which is also to be applicable retrospectively based on the concept that prevention is better than cure.

## V. CONCLUSION

The study reveals that the existing industrial laws are not sufficient to address the issues relating to rights of employees in unforeseeable situations including Covid-19 in a way which would contribute to the national economy and national growth. In Sri Lanka, even though a proposal has been introduced as a remedy to address employee rights, it has failed to address many employment issues within the practical context.

Therefore, as a whole when analysing the above facts it is clear that there are many unaddressed issues that have arisen due to the Covid-19 pandemic which should be addressed promptly in order to protect employee rights while balancing the interests of employers and employees. Hence, it would be effective to relax labour legislations to effectively address these issues.

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*Uber London Ltd, Uber Britania Limited v. Mr.Y Aslam, Mr.J farrar, Mr.R Dawson and Others*. [2018] Employment Appeal Tribunal Appeal No. UKEAT/0056/17/DA.

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