



Empowering Women Domestic Workers' Rights in Sri Lanka: A Legal Analysis in the Stand Point of Sustainable Development

Yasodara Kathirgamathamby*

Janaha Selvaras**

Danushka Manoj***

Abstract

An inclusive growth in terms of sustainable development includes ending poverty and other deprivations to go hand in hand with strategies to improve health and education, reduce inequality and spur economic growth whilst working on climate change and preserving oceans and forests as per the 2030 agenda for sustainable development by United Nations in 2015. Among these 17 goals, which make an urgent call for action, goal No-5 –gender equality emphasizes the need to eliminate discriminatory treatment against women as they have been subjected to gender discrimination despite the fact that they play a major role in all fields including economic development. Considering the prominent contribution by women, international law has guaranteed protection for women against inequality and discriminatory treatment. This includes labour rights of women. However, still women of certain groups have been deprived of their labour rights. In the light of this context, the objectives of this paper are to examine the legal protection assured for domestic women workers under international law and Sri Lankan law, and to analyze how to guarantee them to the domestic women workers

*LL.B (Hons.), LL.M, PhD Senior Lecturer in Law, Department of Legal Studies, The Open University of Sri Lanka

**LL.B (Hons.), LL.M Senior Lecturer in Law, Department of Legal Studies, The Open University of Sri Lanka

***LL.B (Hons), LL.M, MPhil, Attorney-at-law, Senior Lecturer in Law, Department of Legal Studies, The Open University of Sri Lanka

in Sri Lanka that align with the Sustainable Development Goals (SDGs). The scope of research is limited to the inward migration of workforce and domestic workforce within Sri Lanka. This study adopts the qualitative research method and under which respective International legal frameworks and Sri Lankan laws were examined, interpreted and analyzed. Drawing upon comparative study with international law, the study proposes concrete recommendations for legal reforms, policy interventions, and institutional mechanisms that align with the SDGs. These recommendations incorporate areas such as legal recognition of domestic work, minimum wages, improved working conditions, statutory benefits, access to social protection, capacity-building programs, and awareness campaigns that contribute to Decent Work and Economic Growth (SDG 8), SDG 5 (Gender equality), and SDG 10 Reduced Inequalities), and SDG 16 (Peace, Justice, and Strong Institutions). In conclusion, this legal analysis serves as a call to action for policymakers, legislators, civil society organizations, and other stakeholders to prioritize the rights of women domestic workers in Sri Lanka in alignment with the SDGs.

Keywords: *Gender equality, Empowering Women, Domestic women Workers, Rights in Sri Lanka, Sustainable Development Goals*

Introduction

Globally, 83% of domestic workers are women.¹ Domestic work is also primarily done by women in Sri Lanka, where it is essential to the economy of the country. However, these workers face numerous challenges, including limited legal protection, exploitative working conditions, and a lack of recognition for their contributions, that hinder progress. This study provides an overview of the legal framework governing domestic workers in International law and Sri Lankan Law, identifying key gaps and shortcomings that undermine the realization of goals . The term domestic worker is defined under International Labour

¹ UN Women, Progress of the world's women, <http://progress.unwomen.org> , accessed 28 May 2023.

Organization (ILO) Convention No. 189. As per Article 1(b) of the convention, a domestic worker means “any person engaged in domestic work within an employment relationship”. However, this definition does not explicitly mention the above types of domestic workers. Domestic workers may work full time or part time Swithin the country or overseas. Nevertheless, this paper confines the study only to women (including girl children) domestic workers and adopts a working definition for domestic women workers as “women worker who performs full time work residing in the household of the employer within the country”. This study intends to investigate the rights of women domestic workers in Sri Lanka in the light of attaining inclusive growth and sustainable development. International frameworks continue to address the women domestic workers’ rights through international human rights instruments and international labour organization conventions. It is unfortunate that the national legal framework of Sri Lanka falls short in addressing critical issues, including minimum wage regulations, working hour limits, social security benefits, and the right to form trade unions of domestic women workers. Thereby, this hinders the progress towards sustainable development goals such as SDG 8² and SDG 5³. By examining the interplay between gender inequality, social exclusion, and economic disparities, this analysis sheds light on the obstacles women domestic workers face in accessing justice and legal remedies, which obstruct progress towards SDG 10⁴ and SDG 16⁵.

There has been little discussion of the need for legal protection for domestic women workers, despite the fact that the issue has been raised in numerous international scholarly publications. However, academic research on Sri Lanka’s domestic workers’

2 Decent Work and Economic Growth

3 Gender Equality

4 Reduced Inequalities

5 Peace, Justice, and Strong Institutions

legal protection is scarce. Considering the gap, this study seeks to add originality to research by exploring the issues of domestic workers' rights under national law and domestic workers' rights for women, with an emphasis on inward labor migration for domestic employment. This paper consists of four parts. Part I and Part II examine the status of domestic women workers at International and national levels respectively. The Part III is an analysis on empowering women domestic workers rights in Sri Lanka. The last part concludes the paper with a few recommendations with a special mention of calling on Sri Lanka to ratify and adopt international instruments on labour rights and standards of domestic women workers.

Research Methodology

This research adopts a normative research method. Relevant legislations, international conventions are used as primary sources. General comments of treaty bodies, United Nations (UN) reports, and journal articles have been used as secondary data.

International Legal Framework Relating to Rights of Domestic Women Workers.

A. Human Rights Conventions

Although the international human rights legal framework requires that workers' rights have to be guaranteed, less attention is given to domestic women workers. Their basic rights are not properly guaranteed under international human rights law. This part attempts to analyze the extent existing legal provisions extend protection for the women domestic workers.

The Universal Declaration of Human rights (UDHR,1948), International Covenant on Civil and Political Rights (ICCPR, 1966), International Covenant on Economic, Social and Cultural

Rights (ICESR, 1966), UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), and Child Rights Convention (CRC, 1989), and Migrant Workers Conventions are covered in this section.

The above human rights instruments recognize the overarching principles of equality and non-discrimination. These core principles are important to address gender inequality and ensure the rights of domestic women workers.

The state parties are legally bound to fulfill legal obligations. They require the state not to exercise discrimination based on sex in all fields including employment. Hence, the International Human Rights IHR instruments emphasize the SDG-5 that is gender equality. The CEDAW defines what gender equality is. According to Article 01 of the CEDAW “for the purposes of the present Convention, the term “ discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, as basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” According to this definition domestic woman workers should not be discriminated based on sex in all fields including employment.

The right of everyone to the enjoyment of equal and satisfactory working conditions, the right to form trade unions and join them, and the right to enjoy social security, including social insurance and maternity leave are primarily recognized under article 7 to 10 in the ICESCR. The term ‘everyone’ includes women domestic workers too.

Article 11 of the CEDAW obliges the State Parties to eliminate

discrimination against women in the field of employment. Article 32 of the CRC recognizes the right of the child to be protected from economic exploitation and from performing any work. In addition to the above convention UN Convention against torture⁶ is also relevant in terms of treatment of domestic workers. States are required to take legislative, institutional arrangements to prohibit torture and other kinds of treatment by the employers.

The UN has adopted The International Convention on Migrant Workers and their families in 1990 (IMCW). This convention addresses the issues migrant workers face. In this context, it is to be noted although the basic human rights conventions prohibit gender inequality in all fields, there are no particular provisions that cover domestic women workers who performs full time work residing in the household of the employer within the country.

Further to this, the Committee on ICESCR recognizes domestic work as formal employment and places emphasis on their labour rights. This committee also highlights that domestic work must also to be treated as other forms of work and domestic workers should enjoy protection and benefits as other workers.

B. International Labour Organisation Conventions

To date, the body of ILO contains 173 conventions, 6 protocols and 167 Recommendations. Of them there are 11 fundamental labour instruments. These fundamental ILO conventions protect the labour standards and rights in terms of freedom of association and protection of the right to organize (No.87), collective bargaining, 1949 (No.98), and to suppress the use of forced or compulsory labour, 1930 (No.29), also the abolition of child labour and to ensure minimum age for admission to employment of work 1973 (No. 138). Additionally, prohibition and elimination of the worst forms of child labour and discrimination in the field of employment

⁶ UNCAT, 1984

and occupation with the special emphasis on equal remuneration for men and women workers for work 1951 (No. 100) are included. Whilst these above mentioned ILO conventions ensure the protection of labour standards and rights they also declare the principle of inequality in workers and among the workers as men and women with the diligent application of intersectional approach. The ILO's vision of equality among men and women promotes equal opportunities for both to be employed in decent work with conditions of freedom, equity, security and human dignity and this has been reflected through its conventions namely; the Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention (No. 111), Workers with Family Responsibilities Convention (No. 156) and Maternity Protection Convention (No. 183).

In addition, the domestic workers rights convention 2011, C189. has been adopted to protect the rights of domestic workers. Despite the significant contribution of domestic workers to the global and domestic economy, they are continued to be undervalued. Highlighting the fact that the domestic legal frameworks of the countries, specifically the developing countries, fail to accommodate the fundamental principles and rights at work in terms of domestic workers.⁷ Member states of these conventions are upon ratification legally bound to incorporate the listed labour standards and rights into their domestic contexts to ensure protection of labour rights including the equal treatment and non-discrimination.⁸ It is to be

⁷ Namely; (a) freedom of association and the effective recognition of the right to collective bargaining;(b) the elimination of all forms of forced or compulsory labour;(c) the effective abolition of child labour; and(d) the elimination of discrimination in respect of employment and occupation)

⁸ As an example, refer, Article 8 and 9 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Accordingly, Article 8 (2) states as 'The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention' and Article 9 (2) stipulates as 'In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the

mentioned that as a matter of well-established principle, the ILO Conventions may not be ratified subject to reservations.

Sri Lankan Legal Framework on Women Domestic Workers

According to the 2016 Labour Force Survey, there were a total of 80,771 domestic workers, with 66,195 being women and 14,575 being men.⁹ Despite the fact that the domestic workers' contribution is significant to the labor force, domestic workers in Sri Lanka have never received legal recognition, except for two outdated laws enacted before independence. (Registration of Domestic Servants Ordinance No. 28 of 1871 (Amended in 1936) and the Chauffeur Regulation Ordinance No. 23 of 1912.

Section 24 of the Domestic Servants Ordinance 1871 (Amended in 1936) broadly uses the term “domestic servants” and provides a definition of “servant” that contains workers employed on a monthly basis or receiving monthly wages. This definition encompasses a range of positions, including head servants, under servants, female servants, cooks, coachmen, horse-keepers, and house and garden servants. As a result, domestic work remains largely invisible within the informal sector, primarily performed by women from disadvantaged backgrounds and persistently undervalued.¹⁰

The Industrial Disputes Act No. 43 of 1950 specifically acknowledges domestic workers as a distinct category. The Act primarily focuses on the prevention, investigation, and resolution of industrial disputes and related matters. Section 33 subsection 3 of the Act pertains to awards issued by a Labor Tribunal in cases where employment involves roles such as personal secretary, personal clerk, personal attendant, chauffeur, domestic servant, or any other

armed forces or the police enjoy any right guaranteed by this Convention.

⁹ ILO 2020.

¹⁰ Ibid.

designated position similar to those mentioned. This provision recognizes domestic workers as a recognized group of workers who possess the right to initiate legal action in a Labor Tribunal to address disputes arising from their employment agreements. The legislation acknowledges that in cases of disputes, the Labour Tribunal's decision should include the option of compensating domestic workers instead of reinstating them. Since the Industrial Disputes Act covers individuals working in any capacity, regardless of whether their contract is implied or expressed, domestic workers are able to get redress under this law.

Except Employees' Trust Fund Act No. 46 of 1980, other laws such as Workmen's Compensation Ordinance No. 19 of 1934 Ordinance, Wages Boards Ordinance No. 27 of 1941, Trade Unions Ordinance 14 of 1935, Employees' Provident Fund Act No.15 of 1958, Employment of Women, Young Persons, and Children Act No. 47 of 1956, Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 15 of 1954, Factories Ordinance No. 45 of 1942, Ordinances and Acts do not give a specific reference to domestic workers.

Sections 5 and 7 of the Payment of Gratuity Act No. 12 of 1983 explicitly exclude domestic servants and personal chauffeurs employed in private households from the applicability of the Act.

Section 345 of the Penal Code punishes sexual harassment at work place. Hence, domestic workers are able to make complaints under this section.

According to Article 14 (1) of the Constitution¹¹ of Sri Lanka, all citizens have the constitutional right to participate in any lawful occupation, profession, trade, business, or enterprise. However, in terms of domestic women worker this provision is far from reality.

¹¹ 1978 Constitution of Sri Lanka

The Proposed Employment Act of 2019 is a remarkable progressive step as it specifies that the domestic workers in the Act, acknowledges the existence of “unwritten employment contracts” on par with written contracts. However, it is worthy to note that oral contracts are considered based on certain conditions. Hence, there is a possibility of excluding oral contracts of domestic workers.

The National Policy for Decent Work 2006 emphasizes the need to enhance legal protection and enforcement mechanisms for domestic workers and the National Policy on Eliminating Child Labour specifically focuses on eradicating all forms of child labor and including domestic child workers.

In S. S. Wijedeera V S. K. Babyhamy(1973) a ‘domestic servant’ approached the Labour Tribunal seeking redress for the termination of her employment without pay. The court acknowledged the domestic worker’s entitlement to wages.

National Action Plan to promote and protect human rights 2018 includes provisions for the rights of domestic workers. Additionally, the Cabinet granted approval to include ‘domestic worker’ in the definition of a ‘worker’ under the Industrial Disputes Act and the Employees’ Provident Fund and Employees’ Trust Fund Acts. This recognition categorizes ‘domestic workers’ as a distinct worker category.¹² However this has not been translated into a legislation yet.

It is important to note that Sri Lanka has not yet ratified Convention No. 189 or taken steps to formalize domestic work. Despite the international framework provided by the Convention and Recommendation, domestic work in Sri Lanka remains unregulated

¹² Jayasekera, S. 2018. “National Action Plan to Bring Domestic Workers under Country’s Labour Law.” Daily Mirror [online]. Available at: <https://www.pressreader.com/sri-lanka/dailymirror-srilanka/20180314/282359745231486>, [Accessed 24 May 2023].

and lacks the necessary legal recognition and protection.

An examination of labor and employment laws and judicial decisions reveals that there is no clear recognition of domestic workers. This lack of recognition does not give an avenue for domestic workers to enjoy their basic rights .

Analysis on Empowering Women Domestic Workers Rights in Sri Lanka

Sustainable development and domestic women workers rights are two important interlinked aspects of social progress and gender equality. Recognizing and protecting rights of domestic women workers is essential for gender equality which is one of the SDGs established by the UN. Further, Sustainable development aims to ensure that economic growth benefits all members of society, including marginalized group such as domestic women workers. Moreover, protecting rights of domestic women workers contributes to women empowerment.

Similarly, labour rights and standards that are ensured and promoted by the ILO also are a reflection of human rights. As the specialized agency of United Nations, the ILO includes the human rights standards set by the United Nations Charter (1945) and the Universal Declaration of Human Rights (1948). The UN's Call to Action for Human Rights promotes the international labour standards as part of the human rights norms and standards which keeps the basis of the 2030 Agenda. The interconnection between the ILO standards and the SDGs also sets a background for gender rights and equality between men and women. Together these, show that the successful implementation of women domestic workers rights at the national level will indicate the accomplishment of attaining the SDGs through the mandates of its ILO obligations.

Addressing the rights of domestic workers is essential in achieving

the SDGs, as the majority of domestic workers in Sri Lanka are women. By ensuring decent work conditions, fair wages, social protection, and access to education and healthcare, the rights of domestic workers can be protected, empowering them to participate fully in society and contribute to economic development. The Sri Lankan government has to ratify the ILO convention 189 which addresses the rights of domestic workers.

Sri Lanka has ratified all the fundamental the ILO conventions, except Conventions Nos. 155 and 187 which fall under occupational safety and health. However, Sri Lankan labour legislation, except Industrial disputes Act, does not fully recognize women domestic worker in the term ‘worker’. This non-recognition continues to negatively impact on women domestic workers including the girl children. In this context, the ratification and incorporation of ILO C-189 will bring a legal definition for the term ‘domestic work’¹³

It is also evident from the discussion that the Shop and Office Employees Act which is the domestic framework to draw the requirement of the written contract of employment, does not cover domestic workers. In addition to this, the Sri Lankan laws which deals with wages and minimum wage rate do not ensure protection for wages and minimum rate of wage for domestic workers.¹⁴ Ratification of C-189 would fill this gap and create a legal enactment for this purpose¹⁵ and it will also introduce legally recognized working hours and holidays for domestic workers in Sri Lanka.¹⁶ Moreover, this international commitment, will also pave the way to ensure health and safety provisions for the domestic workers under the Factories Ordinance and the Shop and Office

13 Article 1 and 6 of the ILO Convention no 189

14 Wages Boards Ordinance, National Minimum Wage of Workers Act No 3 of 2016

15 Article 11

16 Article 10 (The Shop and office Employees Act does not cover); Weekly Rest (Industry) Convention of 1921 No 14 and Weekly Rest (Commerce and office) Convention of 1937 No 106 also emphasizes a day off per work and Sri Lanka is a member state to these. However, the scope of these conventions do not favour domestic workers.

Employees Act which currently does not cover domestic workers.

17

Certain ILO conventions provide freedom of association and right to organize.¹⁸ However, the domestication of Article 3 of the C-189 which will provide a clear background for the right to association and organize in terms of bargaining powers of domestic women workers. In addition, ILO C 189 includes provisions in terms of women maternity benefits, sexual harassment free environment and mechanism for settling disputes.¹⁹ Focusing on girl women children, the Employment of Women, Young Persons and Children Act No 47 of 1956 defines the person under 14 years as a child. The Shop and Office Employees Act adopts the similar definition for a child for the purpose of the Act. However, the international arrangement is different from the domestic provisions. For example, Article 4 of the ILO Convention 2011 on Domestic Workers provides the minimum age as 18. Equally, Article 03 of the Minimum Age Convention No 138 is also given similar provisions. Implementation of above provisions in Sri Lanka would bring adequate protection for girl children who serve as domestic workers.

Conclusion and Recommendations

The above discussion reveals that although the international human rights conventions ensure the principle of gender equality and non-discrimination in general in all fields including employment they do not pay adequate attention on domestic women workers as defined in this paper. Migrant domestic workers' rights are given

17 Articles 5 and 13

18 Example includes Article 3 of the Freedom of Association and Protection of the Right to Organize Convention 1948 No 87 provides that the employee or employer of any category can enjoy the freedom of Association and right to organize.

19 Currently the national laws which ensure the maternity benefits such as Shop and Office Employees Act and The Maternity Benefits Ordinance are silent on their application for domestic women workers.

more responsiveness than workers who engage in domestic work within the country. Similarly the existing domestic laws also give less consideration for the domestic women workers.

Based on the analysis this paper suggests that role of domestic women workers should be explicitly recognized under international human rights law. A separate instrument has to be adopted by the UN to protect the domestic women workers. Sri Lanka has to take legal measures to include minimum wages in sectorial basis. When the minimum wages for the domestic workers are decided, the nature of the job should be taken into account. Further, working conditions and other statutory benefits should be extended to women domestic workers. A complaint mechanism should be designed for women domestic workers. This mechanism should include both work related issues and violence against women workers.

Sri Lanka should conform to its international obligations under ILO. As a response, it should domestically implement the labour standards and rights it conceived by the ratification. For an example, Maternity Protection Convention 1952 C.103 is ratified by the Sri Lankan government but still the domestic laws are not amended accordingly. Sri Lanka should realise the changes and needs occurring and pressing local society and should ratify relevant international labour organization conventions to bring international labour standards and rights into the under valued and marginalized labour community who serves for its development. In this light this paper strongly recommends the ratification of C189 by Sri Lanka. Sri Lanka should also specially focus on the protection of girl children as domestic workers as the incidents often occur in the country show that the minor girl children are harassed and abused at their work place. Hence, to protect them, working age as of Sri Lanka should be raised to 18 from the age of 14. In the end Sri Lanka should fulfill the core principles of ILO in protecting the rights of domestic women workers, 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.

This empowerment will contribute to overall wellbeing of the domestic women workers. To achieve the gender equality and promote domestic women workers rights states, employers, CSOs and individual should take joint efforts. There is still a significant gap between policy and practice. Enforcement of labor laws remains a challenge, and many domestic workers are unaware of their rights or lack the means to assert them. Limited access to education and skills training further hampers their prospects for upward mobility and economic empowerment.

Further , this paper also recommends the following for enhancing the women domestic workers' rights with the SDGs, they are; legal Reforms including strengthen and enforce existing labor laws, ensuring comprehensive protections for women domestic workers, including fair wages, regulated working hours, social security benefits, and protection against abuse and discrimination, awareness and education including conduct awareness campaigns to inform women domestic workers about their rights, entitlements, and available support services. Collaborating with civil society organizations to provide training and capacity-building programs for women domestic workers, empowering them with knowledge and skills to advocate for their rights, social dialogue and stakeholder engagement including the fostering collaboration between the government, employers, trade unions, and domestic worker organizations to establish mechanisms for social dialogue, collective bargaining, and addressing grievances. Involving women domestic workers in policy-making processes to ensure their voices are heard and their needs are adequately represented and strengthening support services are provided including the

establishment of accessible and reliable support services, including counseling, legal aid, and helplines, specifically tailored to the needs of women domestic workers. These services should be available in multiple languages and culturally sensitive to ensure inclusivity.