

PROTECTING THE RIGHTS OF DOMESTIC WORKERS IN MIDDLE EASTERN COUNTRIES

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Introduction

Each year scores of housemaids depart to the Middle East with the intention of creating a worthwhile future for themselves and their families. Most migrant ‘domestic workers’ are from rural villages, in poverty and unable to obtain an occupation with good wages due to their lack of educational qualifications. But while some of them reach their goals, many females return to home after being subject to labour or sexual exploitation. The recent incident of a Sri Lankan woman being stoned to death, and the episode of Rizana Nafeek clearly indicate their vulnerability. It also indicates the possibility that these domestic workers may not be entitled to non-discrimination and equal protection of the law - key concepts of Human Rights Law. Hence (it can be argued), the Sri Lankan government has a big responsibility to protect their rights.

A review of the literature reveals that despite the existence of international and domestic legal regimes, many female migrants are subject to grave infringements of their rights: sexual abuse, forced abortion when pregnant after rape, illicit human trafficking schemes or prostitution, lack of freedom of movement, unequal economic treatment, religious and racial discrimination, arbitrary interference with their privacy, physical abuse, forced labour, food deprivation, wage exploitation, and confiscation of passports.

The objective of this study is to critically evaluate whether the existing domestic laws and policies are adequate to protect the rights of Sri Lankan domestic workers in the Middle East, and to make suggestions on improving such protection.

Methodology

This study is based on a library survey where the researcher gathered relevant information from books with critical analysis, journal articles, conventions, statutes, newspapers as secondary sources to uncover the

trends in this subject matter. Further statistics in this regard gathered by relevant authorities are used as primary source to complete this research. The analysis will cover the extent to which the rights of migrant workers are violated with special reference to the international conventions being implemented in Sri Lanka and Middle Eastern countries.

Results and Discussion

There are many international legal instruments such as the Convention of Rights of all Migrant Workers and members of their family (MWC), Convention of Eliminating all forms of Discrimination against Women (CEDW), International Covenant on Civil and Political Rights (ICCPR), and the International Convention on Economic, Social and Cultural Rights (ICESCR) dealing with protecting the rights of migrant workers. Further there are domestic legal instruments: Bureau of Foreign Employment Act No.21 of 1985 and Sri Lankan national policy on labor migration, Article 12 of the constitution which guarantees the right to equality, and Article 11 which guarantees that no person shall be subjected to torture, cruelty, inhuman or degrading treatment or punishment.

One of the major obligations of the International Labor Organization (ILO) is to protect a woman's right to non-discrimination in her working environment. Countries which have not ratified ILO conventions are yet bound to protect Convention Nos. 29, 95, 100 and 111 which discuss the protection of workers. However according to ILO (2004) around fifty percent of domestic workers in Kuwait, Bahrain and UAE alleged physical, verbal or sexual abuse. Article 6 of the CEDW deals with the protection of women from trafficking and prostitution, but as mentioned in Human Rights Watch (2007) approximately 10% of women migrant workers from Sri Lanka cite harassment and abuse as serious problems.

In the Sri Lankan context, it can be speculated that because migrant workers do not have the opportunity to vote in Sri Lankan elections politicians are not interested about their welfare. However, arguably the Sri Lankan government should ensure the migrant domestic workers' right to equal protection of the law. Most of these people are from rural villages and are not well educated. In such a situation they presumably know little of what rights they are entitled for. Since undergoing training

at the Sri Lanka Bureau of Foreign Employment (SLBFE) is mandatory for these migrants their training should include cultural practices in those countries as well as improve their knowledge about their rights.

Articles 11(1), (2) of the MWC guarantee that no migrant worker shall be held in slavery and no migrant worker can be subject to forced labour. But in fact these workers may have to work beyond their contracted duties. Documented cases include taking on additional duties; e.g. workers recruited for childcare having to do the employer's housework as well as taking care of elders, working in more than one house, foregoing adequate sleep and food, and obtaining their monthly wages.

The above instances constitute violations of guidelines in Article 25(1) (a) of the ICCPR on migrant workers' overtime, hours of work, weekly rest, holidays with pay, safety, health according to national law and practice. Further Article 7 of the ICESCR states everyone has a right to just condition of work and fair wages, to ensure a decent life for themselves and their families. Institutional intervention is arguably required – for instance through the SLBFE – to bring such workers back home and all their costs recouped by the agent who initiated the contract. Moreover by keeping an open line of communication with employees and the Sri Lankan embassies, the SLBFE could intervene with the assistance of the relevant embassy.

To minimise cruel and degrading treatment (e.g. the case of L.P. Ariyawathi who allegedly returned to Sri Lanka with 22 nails and 5 needles in her body) a preventive and monitoring mechanism is needed. The Sri Lankan embassy could conduct health checkups twice a year for housemaids in these countries and maintain records.

Sri Lankan national policy on labour migration aims at the protection and empowerment of migration workers and their families. According to UN 2010 report most of the Sri Lankan migrant workers' children fall below six years. This affects the child's personality development, education and health, and the child may be subject to sexual abuse. In legal aspect this violates universal concept of 'best interest of child'. Therefore the Sri Lankan government should utilize the services of the SLBFE to check on the health and education of the children whose mothers are abroad. If

those children's reports are negative then the SLBFE should bring the mother back to the country. Through this process the author believes the best interest of the child can be protected.

One of the major objectives of the SLBFE is to provide welfare and protection for the migrant workers. But the SLBFE has not established a proper procedure for the return of migrant workers. When they come back after facing such brutal incidents Sri Lanka does not have proper procedure to rehabilitate them and their families. Hence it is essential to facilitate welfare programs for return migrant workers.

Most importantly the author suggests that the Sri Lankan government adopts/adapts Section 4 of the Migrant Workers and Overseas Filipinos Act of 1995 which envisages that the State shall deploy overseas workers only in countries where the following conditions exist (cited).

"(a) It has existing labor and social laws protecting the rights of workers, including migrant workers; "(b) It is a signatory to and/or a ratifier of multilateral conventions, declarations or resolutions relating to the protection of workers, including migrant workers; and "(c) It has concluded a bilateral agreement or arrangement with the government on the protection of the rights of overseas Filipino Workers: Provided, That the receiving country is taking positive, concrete measures to protect the rights of migrant workers in furtherance of any of the guarantees under subparagraphs (a), (b) and (c) hereof.

(Page 2 of the Act, cited in Human Rights Library (online)
<http://hrlibrary.umn.edu/research/Philippines/RA%2010022-20%20Migrant%20Workers%20Act.pdf>)

Finally by enhancing self-employment and labor-intensive growth, the government can decrease the attraction of job opportunities as housemaids abroad. Also skilled migrant job opportunities such as nursing and teaching can be pursued in other regions of the world. Through that processes the government can keep its earnings of foreign remittances high.

Conclusion

Poverty is a leading reason for overseas migration of women. This demand for overseas employment will clearly create a potential for the social issues highlighted above. Also, migration of women especially affects their children negatively and it directly violates the universal principle of best interest of children. At a macro level, the Sri Lankan government is unlikely to stop sending them as housemaids to these countries as remittances earned by the domestic workers is second to only to the apparel industry in earning foreign exchange. The existing protection of domestic workers abroad by the Sri Lankan government through international and domestic legal regimes is not adequate to protect their rights. The government has a huge responsibility to protect their rights by enhancing the legal protection.

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