

Sri Lanka Labour law reforms: A Trojan horse for deregulation

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Since coming into power in 2015, every Budget of the Yahapalana Government has faithfully advanced a labour law reform agenda. The 2019 Budget proposals attempt to frame labour law reforms as a solution to address the low participation of women in the workforce.

In the words of the Minister of Finance, ‘inflexible labour laws’, among others, ‘have been identified to be the reasons women leave the labour force or never enter it at all’. He goes on to propose amendments to labour laws to allow part time, flexi hours and home working as a solution to accommodate women. These proposals are accompanied by the Minister of Labour’s renewed interest in consolidating all labour laws into a single code.

Proposals for labour law reform date back to the early 1980s when the then UNP regime led by J.R. Jayawardena attempted to introduce a new employment relations law to significantly reduce many existing protections. In the face of militant trade union resistance Jayawardena withdrew the plan and Sri Lankan workers continue to enjoy many of those protections under the present labour regime. In the past four decades under the liberalised economy, however, labour laws have increasingly come under attack as archaic, out of date and hindering better prospects for both employers and employees.

Who needs a labour law?

The only labour reform agenda set by the Government is for the deregulation of labour for the full benefit of the private sector. For example, Vision 2025, the official policy document of the current Government, uses market oriented terminology to describe labour laws. The inflexibility of the labour laws is understood in Vision 2025 to be hampering productivity growth and international competitiveness. ‘Inflexibility in the labour laws’ largely refers to the restrictions imposed on employers against hiring and firing employees at will; state interventions in setting minimum wages and minimum standards of working conditions; and the guaranteeing of trade union rights such as collective bargaining and freedom of association. Instead of viewing these rights as essential tools to democratise the economy and strike a balance between property (capital) owners and the labour force, the Government subscribes to an ideology that sees labour laws as obstructions to attracting private investments and maximising the profits of the private sector.

The rise of market fundamentalism as a forceful political ideology since the late 1970s has posed a serious threat to democratic legal regimes like labour laws, which seek to function outside of the rationalisation of the free market. The characterisation of labour laws as inefficient and hindering productivity is entrenched in this market fundamentalist worldview which Minister Samaraweera and the Government attempt to pass as universally accepted truths. This is despite the consensus on free market orthodoxy breaking down worldwide, even among its most rigid proponents like the IMF.

Contrary to the market oriented view of our own Government, modern labour law is premised on the fundamental understanding that the relationship between the employer and the employee is one of subordination and therefore freedom to contract and other market oriented rationalisations are not fitting schemes to govern the employment relationship. The state has to intervene and address the power imbalance between the employer and the employee in order to free workers from subordination and reconceptualise the worker not as a commodity but as a human being.

The challenge of atypical employment

Over the past few decades however, the nature of the typical employment relationship itself has transformed. New forms of employment like fixed term contracts, part time jobs, temporary jobs, manpower jobs and freelance jobs do not fall within the ambit of the existing labour regime which is based on the concept of permanent, fixed hours work under one employer until retirement. While there are sometimes genuine needs to use fixed term contracts and outsource labour, a closer look into many of these new atypical jobs will also reveal that employers use these forms to digress from standard employment contract regulations to circumvent the law entirely.

Minister Samaraweera either fails to consider or wilfully ignores these aspects of what he calls flexible labour arrangements which are also instrumental in subjecting working class mothers and women to super exploitative conditions. Many of these contracts do not offer protection guaranteed under the existing labour law like EPF/ETF benefits, overtime pay, maternity leave or compensation in case of termination.

In fact, contemporary discussions on labour law identify workers in these flexible labour arrangements to be more vulnerable to exploitation than more traditional workers. Unlike the traditional working class who are organised in trade unions and therefore empowered with collective bargaining power, workers in these new forms of employment are mostly unorganised and therefore defenceless against the will of the employers.

Labour reform that we need

Popular discourse on labour, fuelled by irresponsible Ministers like Samaraweera and employers' lobbies like the Employers Federation of Ceylon, glorify the use of atypical employment and deregulation of labour as something which can expand opportunities for women and the unemployed. The reality, however, is that widespread use of fixed term contracts, manpower labour and so on have undermined employment relationships and contributed to a culture of labour law circumvention depriving a large number of workers from enjoying their legally protected rights.

Several trade unions, especially manpower labour unions, have repeatedly demanded that the Government address these deteriorating labour conditions due to circumvention on the part of the employers. In 2016 almost 2,000 manpower employees of Sri Lanka Telecom PLC went on a three-month-long strike highlighting the unequal treatment of manpower employees and the cuts to their benefits when compared with permanent workers. Sri Lanka Telecom PLC to this date continues to deny any employment relationship with its manpower employees and continues to treat them differently.

It is evident that Minister Samaraweera's solutions are only going to create more problems for working class men, and especially women. The labour law reforms we need at this hour are not fixed terms contracts or flexi hours but laws that can curb the unequal power balance that lies in those new employment forms and guarantee equal rights to all workers across the spectrum regardless of whether they are men or women, or if they are employed in traditional or non-traditional forms of employment. Ensuring that contract employees, temporary employees or manpower employees are

not left out of the ambit of labour law so that they too can enjoy the rights enjoyed by other workers must be the essential task of labour law reforms today.

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P.S.

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