

The Workers Tribunal on Plantation Workers in Sri Lanka: Findings and Recommendations

Retd. Justice A. P. Shah (India), Retd. Justice Shiranee Thilakawardane (Sri Lanka), Retd. Justice Pawan Kumar Ojha (Nepal)



This Tribunal is horrified by the stark realities of the lives of tea and rubber plantation workers. It has shocked the conscience of the Tribunal that such practices could continue unabated in the modern civilised world. The Tribunal is moved by the heart-rending testimonies of the workers, especially the women workers.

This Tribunal observes that the daily wage is at the heart of the issues faced by the workers. Workers experience abysmal pay, extremely slow progression in wage increase, and blatant non-implementation of wage increases. Wage increases have been defeated by practices such as reducing the weight of tea leaves collected; unilaterally increasing norms to be met to receive the

stipulated daily wage; refusing to allocate legitimate working days in a month by insidious casualisation of workforce; and reducing allowances added to the basic wage. This subterfuge enables employers to blatantly flout minimum wage decided by the statutory body, such as the Wages Boards leading to a situation of destitution for workers.

The collective agreement was experienced by workers as a relatively useful tool for protecting their rights. Unfortunately, such agreements have not been afforded the sanctity of the tenure as recognised in neighbouring jurisdictions, and as a result the last agreement was terminated by the employers with just one month's notice and now they are refusing to negotiate even for the bare minimal framework of labour protection. Employers have thus unilaterally chosen to abandon the process of collective bargaining which is a right recognised in the statutory framework of Sri Lanka as well as international conventions, such as the ILO Conventions to which Sri Lanka is a signatory.

This Tribunal particularly finds casualisation and informalisation of the workforce extremely troubling as it strips the workers of their fundamental protection of basic rights which are bestowed by the labour laws of Sri Lanka.

This Tribunal further notes with profound anguish that there has been a blatant lack of fundamental living standards and working conditions for plantation workers, especially women workers in plantations. The right to life which is recognised and protected by the Sri Lankan Supreme Court does not mean a mere animal existence, it means something more than just physical survival. It emphasises an inalienable right to live and work with dignity.

This Tribunal is also deeply concerned with the blatant disregard for workers' occupational health and safety. It is noted that the Sri Lankan legal framework does not have specific laws addressing the issues of plantation workers existing in neighbouring jurisdictions such as India and Malaysia.

This Tribunal finds with a heavy heart that the sufferings and woes of plantation workers have continued for generations since they arrived on the shores of Ceylon 200 years ago. The current state of affairs is one of systemic discrimination and exploitation and reduces them to bonded labour, thereupon perpetually affecting the lives of the workers intergenerationally.

The Tribunal strongly affirms that all workers, including plantation workers, are entitled to the freedom of association and the effective recognition of the right to

collective bargaining; elimination of all forms of forced or compulsory labour; the elimination of discrimination in respect of employment and occupation; and a safe and healthy working environment.

In light of these findings the Tribunal presents the following recommendations:

Wages

It is recommended that all measures be taken by all stakeholders including the State to execute in letter and spirit, without delay, the minimum wage of LKR 1700 fixed by the government.

The government should prohibit all unfair practices adopted by plantation companies, such as reducing days of work, arbitrarily increasing the norms/daily targets, and informalising/casualising of labour to deprive the workers of their right to receive the minimum wage as statutorily fixed.

It is recommended that the government should appoint a committee comprising of workers (including women workers), employers, and experts in the field to review the current economic conditions and cost of living of plantation workers, and determine a fair living wage that sustains a basic standard of living for a worker and her family.

Preserving the Tenure of Collective Agreements

It is recommended that the government should bring laws/rules to protect the sanctity of the tenure of collective agreements and to preclude parties from arbitrarily rescinding such agreements. Collective agreements that require prolonged negotiation and impact every aspect of the lives of scores of workers cannot be terminated at will.

Living and Working Conditions

It is recommended that the State stipulate minimum standards for working conditions specific to tea and rubber plantation workers. Such minimum standards must address the following:

Decent working hours, intervals for rest and meals, facilities for safe sanitation and meal consumption, clean drinking water, and medical attention.

Given the predominance of women workers in plantations, working conditions must address safety, sanitation needs vis-a-vis periods, facilities for rest and breast feeding for new mothers, feeding infants, and creche facilities.

It is recommended that the State must recognise the plantation workers' right of adequate housing which is a part of the right to life that is recognised by the Supreme Court of Sri Lanka as a fundamental right. An adequate standard of housing must include adequate space for a family, a permanent structure, water, and other basic facilities.

Social Securities

Ensure coverage of government social safety mechanisms in the plantations that affirm equality before the law and equal protection of the law for plantation workers. The State must recognise that plantation workers are the poorest segment of the country's workforce and are in need of statutory support.

All plantation workers should receive post-retirement benefits (ETF, EPF, gratuity) calculated on the basis of the full wage including all allowances.

Occupational Health and Safety

The government has already established the National Institute of Occupational Safety and Health (NIOSH) under the National Institute of Occupational Safety and Health Act No. 38 of 2009. Using the powers under this Act, the NIOSH must advise the Minister of Labour on formulation of policy with regard to standards, codes, practices, and guidelines in matters relating to occupational health and safety of plantation workers, for example, threat from wild animals, insects and reptiles, and the precarious condition of pregnant women and lactating mothers working in the fields. Especially workers in rubber plantations must be provided with personal protective gear like gloves, boots, protective goggles, masks, etc. especially when they work with chemicals.

The government may put down detailed rules and regulations along with actionable penalties and other consequences for lack of due diligence both in not ensuring workplace safety and in not ensuring proper compensation in the event of an injury/harm.

The government must bring into force and implement the Cabinet Decision to integrate 450 Estate Dispensaries (primary health care centres in plantations) with the government health system and provide for a further 59 Estate Dispensaries in Provincial Health Authorities.

The State must respond proactively to stop casualisation of labour in the plantations

It is recommended that the Government introduces laws and rules to prevent and discourage casualisation/informalisation of plantation workers, which in turn deprives them of statutory rights such as minimum wage, protection from unlawful termination, compensation for injuries at the workplace, retirement benefits such as provident fund and gratuity, maternity benefits, as well as the right to unionise and engage in collective action.

A New and Separate Law to Protect Plantation Workers

It is recommended that the State considers passing, similar to the Shop and Office Act and the Factories Ordinance, a law specific to the protection of plantation workers on the lines of the existing laws in countries such as India and Malaysia.

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