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Reframing Outsourced Labour Protections in Sri Lanka: A Comparative Analysis across Southeast Asian Jurisdictions

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ABSTRACT

This paper explores the evolving legal landscape of outsourced labour in Sri Lanka, focusing on the precarious position of “sandwich workers”—individuals contracted by third-party agencies but operationally managed by principal employers. Despite the rise of outsourcing as a strategic HR practice, Sri Lanka lacks a comprehensive regulatory framework to safeguard these workers' rights. Drawing upon doctrinal analysis and comparative legal research, the study evaluates statutory frameworks in Malaysia, Indonesia, and the Philippines to identify transferable best practices. The findings reveal significant legislative gaps in Sri Lanka's labour law, particularly in employer liability, contract registration, and worker protections. This paper proposes a restructured legal approach to balance organisational flexibility with equitable labour standards, aiming to harmonise business needs with international human rights obligations.

Keywords: Labour Outsourcing, Sandwich Workers, Contract Labour, Sri Lanka, Employment Law, Legal Gaps, Southeast Asia, Doctrinal Legal Research, Worker Protections, Third-Party Employment

I. INTRODUCTION

Outsourcing has emerged as a dominant feature of global labour markets, offering businesses operational flexibility, cost control, and specialised workforce access. However, this evolution has simultaneously birthed a precarious category of workers—those hired through intermediaries but functionally integrated into the host enterprise. These individuals, often referred to as “sandwich workers,” occupy a liminal space between two employers: the principal organisation and the manpower agency (Egalaheva, 2021).

In Sri Lanka, outsourced workers are increasingly engaged across public and private sectors, yet their legal position remains largely undefined. Existing labour laws, rooted in traditional master-servant doctrines, fail to account for triangular employment arrangements (Sarveswaran, 2011). Consequently, these workers experience inferior working conditions, limited access to

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social protection, and minimal legal recourse, despite performing tasks similar to permanent employees (Jayawardena, 2016).

Comparative examples from Southeast Asia demonstrate more structured approaches. Malaysia regulates manpower suppliers under the Private Employment Agencies Act 1981 but still grapples with enforcement gaps (CRMC, 2013). Indonesia's Manpower Act 2003 restricts outsourcing in core business areas but suffers from compliance limitations (Setiawan et al., 2023). The Philippines, by contrast, integrates outsourced workers under its Labour Code, providing for parity of benefits in triangular employment arrangements (Macaraya, 2006).

In this context, the Sri Lankan case stands out not only for its regulatory gaps but also for the absence of coherent jurisprudence that uniformly protects outsourced labour. As outsourcing becomes a widespread HR model amidst economic crisis and public sector downsizing, the need for robust, inclusive labour legislation becomes urgent (Gunatilaka & Chandrasiri, 2022).

This paper addresses these concerns through a legal-comparative methodology, identifying weaknesses in Sri Lanka's legislative framework and proposing reforms inspired by successful regional practices. The study ultimately seeks to contribute to the development of a more equitable and transparent outsourcing regime, harmonised with international labour standards and responsive to domestic socioeconomic realities.

II. CONCEPTUAL FRAMEWORK AND THEORETICAL FOUNDATION

This study is grounded in two key jurisprudential theories that critically examine the classification and treatment of outsourced workers: the **Theory of Non-Discrimination** and the **Theory of Justifiable Classification**. Together, they establish a conceptual basis for evaluating whether Sri Lanka's current legal framework upholds principles of equity in labour relations.

A. Theory of Non-Discrimination

The Theory of Non-Discrimination asserts that all workers, regardless of their employment arrangement, should receive equal treatment and protection under the law. This principle is enshrined in international legal instruments, including **Article 23 of the Universal Declaration of Human Rights (United Nations, 1948)** and **ILO Convention No. 111 (1958)**. In the context of outsourced workers, this theory implies that individuals performing similar tasks as regular employees should not face inferior conditions or restricted access to benefits such as social security, union representation, or grievance redressal (ILO, 2003).

In Sri Lanka, however, outsourced workers are often excluded from statutory benefits provided to their in-house counterparts (Egalaheewa, 2021), violating both domestic equal protection

doctrines and international labour standards.

B. Theory of Justifiable Classification

While legal systems may allow distinctions between groups of workers, such classifications must serve a legitimate public or organisational interest and not be arbitrary or discriminatory (Pillai, 2019). The Theory of Justifiable Classification allows differential treatment only when it meets the **test of reasonableness** and satisfies the **principle of proportionality** (Perera, 2020).

In Sri Lanka, businesses frequently justify the unequal treatment of outsourced labour on the basis of “contractual distinction.” However, such justification collapses under scrutiny when outsourced workers are fully integrated into the workforce, performing identical tasks as direct employees without corresponding protections. This paper argues that current classifications violate constitutional protections and international human rights norms, failing the standard of justifiability.

III. RESEARCH DESIGN AND METHODOLOGY

A. Research Design

This study adopts a **qualitative legal research design**, incorporating two methodological strands:

- **Doctrinal legal analysis:** evaluating existing legal instruments, precedents, and regulatory frameworks in Sri Lanka.
- **Comparative legal analysis:** examining corresponding laws in Malaysia, Indonesia, and the Philippines to extract policy insights and structural models.

This design allows for both critical reflection on Sri Lanka’s current framework and exploration of internationally recognised best practices.

B. Data Collection

The research relies entirely on **secondary legal data**, collected from:

- Primary sources: Acts, Regulations, Circulars, Judgments, Parliamentary Hansards, and Gazette notifications.
- Secondary sources: Journal articles, legal commentaries, dissertations, and law review papers.
- Tertiary sources: Legal encyclopaedias, law dictionaries, and academic websites.

The doctrinal analysis emphasises **case law interpretation**, while the comparative analysis identifies similarities and divergences in legislative intent, enforcement structures, and worker protections across jurisdictions.

C. Comparative Jurisdictional Selection

The selection of **Malaysia, Indonesia, and the Philippines** is based on:

- **Structural relevance:** These countries share similar socio-economic transitions from agrarian to industrial economies.
- **Labour market similarity:** Each has a significant presence of informal, contractual, or third-party labour.
- **ASEAN alignment:** These countries are part of regional initiatives toward harmonising labour protections.

Unlike South Asian countries such as India or Bangladesh, these Southeast Asian systems offer better-aligned models for comparison with Sri Lanka's evolving economy (Serrano, 2014; McKenzie, 2018).

D. Methodological Integrity

To ensure **validity**, legal sources were triangulated across government portals, peer-reviewed journals, and institutional publications. To establish **reliability**, the research adhered to doctrinal analysis protocols recommended by Hutchinson and Duncan (2012), employing clear citation, jurisdictional context, and thematic categorisation.

IV. ANALYSIS AND FINDINGS

This section presents a doctrinal and comparative legal analysis of outsourced labour regulation in Sri Lanka, drawing contrasts with Malaysia, Indonesia, and the Philippines. The findings are categorised into four major thematic domains: legal definition of employment, principal employer responsibilities, contractual obligations, and worker protections.

A. Sri Lankan Legal Framework: Gaps and Implications

Sri Lankan labour law lacks a dedicated statute governing third-party or outsourced employment. Existing frameworks such as the Wages Board Ordinance (1941), Employment Provident Fund Act (1958), and Workmen's Compensation Ordinance (1934) were developed in a pre-outsourcing context and do not extend protections to contract labour.

Judicial decisions offer piecemeal interpretations:

- *Bandara v. Commercial Bank of Ceylon PLC (2015)* recognised the possibility of implied employment, depending on the degree of control exercised by the principal employer.
- In *SLT Human Capital Solutions v. All Ceylon Telecommunication Employees Union (2017)*, the court rejected union rights for outsourced workers, citing absence of direct employment.

These inconsistent rulings have contributed to legal ambiguity, which businesses exploit to deny workers entitlements such as job security, benefits, or union representation (Egalahewa, 2021).

B. Comparative Analysis: Malaysia, Indonesia, and the Philippines

A critical comparison reveals robust legal provisions in regional jurisdictions that Sri Lanka lacks:

Jurisdiction	Statutory Regulation	Employer Responsibilities	Worker Rights	Contractual Safeguards
Malaysia	Private Employment Agencies Act (1981)	Mandates dual employer liability	Excludes migrant workers from unions (CRMC, 2013)	Registration required; agency licensing mandatory
Indonesia	Manpower Act (2003) + Job Creation Law (2020)	Employers must differentiate core vs. support functions	Permits limited union activity; weak enforcement	Contract duration capped; job categories regulated
Philippines	Labour Code + DOLE Order 174	Principal employer is jointly liable with contractor	Full benefits parity with permanent staff (Macaraya, 2006)	Registration of service contracts required; labour-only contracting prohibited

The Philippines represents the most progressive of the three, legally recognising triangular employment relationships and mandating equity in remuneration and benefits (De Guzman et al., 2019). Indonesia's model, though progressive on paper, suffers from enforcement loopholes, particularly in distinguishing between core and non-core work (Hudiana & Susetyo, 2020). Malaysia, while structured, tends to marginalise outsourced migrant workers, creating a

two-tier labour system.

C. Key Legal Gaps in Sri Lanka

From the doctrinal and comparative review, we identify four systemic deficiencies in Sri Lanka's current legal structure:

1. **Undefined Employment Status:** The law does not formally recognise triangular employment, leaving workers in legal limbo.
2. **Lack of Contractual Regulation:** No legal mandate exists for registering or standardising labour supply contracts.
3. **Absence of Principal Employer Liability:** There is no statutory framework assigning co-liability for worker welfare, pay, or dispute resolution.
4. **No Worker Protections:** Rights such as non-discrimination, collective bargaining, and termination benefits are unavailable to outsourced workers.

These findings expose how Sri Lankan outsourcing practices legally enable disguised employment, allowing employers to benefit from worker performance while evading accountability.

D. Legal Doctrine Interpretation: Disguised Employment

Applying international definitions, notably from the ILO (2003), Sri Lanka's current model may constitute disguised employment, where contractual arrangements mask the real nature of the employer-employee relationship. This undermines constitutional protections under Article 12(1) of Sri Lanka's Constitution, which guarantees equal protection of the law.

V. LIMITATIONS

Despite the depth of legal analysis and comparative synthesis, this study is subject to several limitations:

- **Doctrinal Scope:** As a doctrinal and comparative study, it does not incorporate empirical interviews with affected workers or policymakers, which could enrich the practical application of the legal analysis.
- **Jurisdictional Range:** The comparative analysis is confined to three Southeast Asian jurisdictions, excluding other potentially informative systems such as India, Mexico, or Chile.
- **Judicial Fluidity:** Ongoing legal reforms in the compared countries, especially in Indonesia and the Philippines, may outpace the findings by the time of publication.

- Interpretive Bias: The study relies on statutory interpretation and secondary sources, which may reflect the researcher's framing of legal intention and effect.

These limitations present opportunities for deeper, mixed-method studies incorporating sociological and economic dimensions of outsourcing policy.

VI. FUTURE RESEARCH DIRECTIONS

To build upon this foundational legal work, several avenues of research are recommended:

1. Empirical Legal Studies: Conduct qualitative interviews and surveys with outsourced workers, HR managers, and union representatives in Sri Lanka to capture lived experiences.
2. Cross-continental Legal Analysis: Compare Sri Lankan law with Latin American and European models that integrate stronger trade union involvement and data protection laws.
3. Policy Implementation Evaluation: Study the real-world effects of outsourcing regulations in countries like the Philippines or Indonesia post-reform to inform context-specific Sri Lankan legislation.
4. Digital Outsourcing and Gig Economy: Investigate legal parallels between traditional outsourcing and platform-based work (e.g. Uber, Upwork), which share similar precarities.

Such interdisciplinary approaches will be essential to modernising Sri Lanka's labour law in line with international best practices and future-of-work developments.

VII. CONCLUSION

Outsourcing in Sri Lanka has evolved into a dominant labour strategy, yet the absence of specific legislation has entrenched legal invisibility and socio-economic vulnerability for outsourced or "sandwich" workers. Despite performing equivalent tasks to permanent employees, these workers remain structurally excluded from social security, fair remuneration, and collective bargaining rights.

This paper's doctrinal and comparative approach reveals that Malaysia, Indonesia, and the Philippines have made varying degrees of progress in legislating the rights of outsourced workers—particularly in assigning employer liability, standardising contracts, and recognising triangular employment.

By contrast, Sri Lanka's outdated labour laws are ripe for reform. The findings recommend an

integrated legal framework that:

- Recognises third-party employment legally;
- Assigns shared liability between labour suppliers and principal employers;
- Guarantees equal treatment and protections for outsourced workers;
- Prevents disguised employment relationships through clearer contract regulation.

Such a framework must be underpinned by the theory of non-discrimination and justifiable classification, harmonising economic flexibility with labour justice.

In doing so, Sri Lanka can chart a path toward a more ethical, resilient, and equitable labour regime—aligned with international norms, grounded in legal clarity, and reflective of the realities of the 21st-century workforce.

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