**Employment Legislation in Sri Lanka**

**Comparison with Germany**

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# 1. Introduction

Sri Lanka is a socialist country. It means, in lay terms, that the country must happen to be a nightmare for the employers and a paradise for the workers. Approximately, thirty pieces of legislation are applied on the workers covering every aspect of their work from the minimum wage to the cubic space an employee is entitled to in an organization. Despite this entire glorious outlook of the picture, an alarming number of employees in Sri Lanka especially the ones working in the top notch private companies do not enjoy the privileges due to the fact that they remain completely unaware of their Legislative rights.

The contract of employment in Sri Lanka is just like any other agreement. It is legally binding between both parties, i.e., the employer and the employee. However, the contract does not necessarily be in writing form. It means that an employee-employer relationship can also be started even without an employment contract. As a matter of fact, most of the clauses provided in a typical employment contract do not apply on the work relationship of the contracting parties in the country. For instance, the termination clause is often made part of an employment contract, which states that either party can terminate the contract between the parties by giving a one-month notice. However, the situation is different. The employer in Sri Lanka is not allowed to terminate his employee by just giving a notice.

This assignment discusses this termination clause and several other important areas of an employment contract made between the employer and employee in the country in the light of the applicable legislation. Primarily, this assignment discusses the employee representation and the role of trade unions in this regard. It later moves to the idea of workmen’s compensation in the country. Next, it discusses the termination of employment in detail. Lastly, it provides detail analysis on laws concerning minimum wage and discrimination and harassment at workplace. For the purpose of evaluation the position of the current employment laws in the country on the said five areas, this assignment draws a respective comparative analysis with Germany, a European jurisdiction. The German labor and employment laws extensively regulate the relationship between the employers and employees in the country.

# 2. Employee Representation and Trade Unions

After the introduction of the Industrial Dispute Act in Sri Lanka in 1951, the country has successfully been addressing the issues concerning the functioning of labor courts, labor tribunals, labor arbitration, collective bargaining, termination of service of employees, and other issues arising out of industrial disputes. However, this Act does not cover the public sector of the country.

In Germany, a formal system governing the relationship of the employees and employers exists. There are a significant number of statutes in this regard such as the Working Time Act, the Minimum Wage Act, and the Civil Code. However, despite all of this, an institutionalized system recognizing trade unions is lacking in the country. For this reason, the country also lacks actual ability of negotiating agreements of collective bargaining. The parties have to go to courts for this fact. The labor courts also handle the hear-related issues between the contracting parties and co-determination issues. Work councils, under the law, are available in the country but they are not trade unions. These work councils maintain certain co-determination and participation rights in companies.

# 3. Workmen’s Compensation

In Sri Lanka, Workmen’s Compensation Ordinance plays a foremost role in deciding the situation concerning injuries occurred to employees during work. This Ordinance covers all workmen including employees working under written or implied contracts, employees paid on daily, weekly, or monthly basis, employees in private or government businesses, employees working on probationary, permanent or temporary basis, and laborers, trainees, clerks, and executives. However, the following parties are excluded, i.e., employees facing injuries not resulting in deaths due to disregarding or willful removal of any safety guard or device, willful disobedience, or under the influence of drugs or liquor, employees facing minor accidents (that would keep them in bed for three days only), members of the Sri Lankan police force, and army forces of the country.

The German workmen’s compensation laws are the first of their kind in the European Jurisdiction. Every employee is a member of a related workers compensation institute. Moreover, the country allows the self-employed people to voluntarily become a member of such institutes. The key strategies of these institutions include upgraded vocational qualifications and vocation training for approximately ninety-percent return-to-work rate. Additionally, the country covers all types of injuries at workplace including sixty-seven types of vocational diseases. The employers fund the compensation programs.

# 4. Employment and Termination of Employees

In Sri Lanka, employment contracts are renewed on annual basis. However, if an agreement is continually being renewed for three years, the employee is considered a permanent employee of the company. It means that such an employee does not need to renew his agreement every year and he can continue working at the organization even after expiration of his contract.

Termination of contract is a tricky matter in the country. As pointed out in the beginning of the discussion, the termination clause is often made part of an employment contract, which states that either party can terminate the contract between the parties by giving a one-month notice. But, the situation is different. The employer in Sri Lanka is not allowed to terminate his employee by just giving a notice. However, this situation is subject to termination due to non-disciplinary actions. The Termination of Employment Act of Sri Lanka (1971) states that no employee in the country can be terminated without his consent or by application to the Commissioner of Labor. However, this situation is subject to probation period, i.e., any employee in the probation period can be terminated without any specific reason. If the Commissioner approves of such a termination then the employee is entitled to compensation. The amount of compensation is decided by the number of years the employee has serviced the organization. For this reason, the notion of termination notice period in employment contract in Sri Lanka is invalid. Moreover, employees cannot be asked to resign from their employment. Also, they enjoy the privilege of challenging every termination for disciplinary reasons in the labor tribunals of the country.

In Germany, the employers are allowed, under the Employment Protection Act, to terminate the contract for personal, conduct-related or business reasons. However, this Act is only applicable to the companies possessing ten or more employees and the employee must have completed continuous employment of at least six months in the company. If these conditions are not met then the employer has the discretion to terminate the employment contract by giving the one-month notice to the employee. Moreover, immediate termination is also an option for the employees in Germany. It becomes available in cases of serious misconduct (non-authorized competitive engagement, disclosure of sensitive information, theft, disturbance of general working environment, and continued non-performance of agreed work) such that continuation of the contract becomes unacceptable for either of the contracting parties. The condition of termination notice period does not apply to this situation. Moreover, employees can also terminate the employment contract on serious misconduct of the employer, i.e., unlawful working and non-payment of wages.

# 5. Minimum Wage

Recently the Sri Lankan government has introduced the National Minimum Wage Act (2016) and Budgetary Relief Allowance Act (2016). The National Act requires the employers to keep a register of the wages they pay to their employees. Moreover, this Act requires the Commissioner General of Labor (in his capacity of competent authority) to enter and inspect any workplace any time to investigate that if the employers have been keeping up with the requirements of the National Act. If the Commissioner finds any employer in breach of his duty, he is obliged to take any necessary actions.

The Budgetary Relief Allowance Act requires the employers to pay Allowance to their employers on annual basis. The allowance can be paid in any form such as Employee Trust Fund of Sri Lanka and the Sri Lankan social security scheme, i.e., the Employee Provident Fund. If any of the workers has a monthly salary of less than LKR 40,000, his employer is obliged to give him an allowance of LKR 2500. The allowance can be paid in two installments of equal amounts. If the employee earns a monthly salary of more than LKR 40,000 but less than LKR 41,500 then the employer is obliged to pay an allowance equals the difference between LKR 41,500 and the wage earned. However, workers are employed by any religious institution for worship purposes, any charitable institution or covered by a collective agreement do not receive such an allowance.

Although the minimum wage laws have exited in various European countries from the beginning, Germany has recently started the same footsteps. The country passed the Minimum Wage Act in 2014. This Act provides statutory obligations concerning the minimum wages in the country. Before the application of this Act in Germany, the country heavily relied on business groups and trade unions for setting the minimum wages.

This Act is applied to all workers, i.e., approximately four million people aged eighteen or above. No distinction between the white-collar workers and blue-collar workers is made in this regard. However, some internships, trainees and self-employed people fall under the category of exception to this law. Moreover, the fact that if a person is an employee or a freelancer is determined by the authorities and courts on the grounds of several factors. The most important of these factors is the element of dependency in work, i.e., to which degree the employee is dependent on his employer for the performance of his work. Primarily, if an employee is integrated into an organization and is thus subject to the instructions of the employer, he will not be considered a freelancer because they are allowed to maintain the content, time and place of their work.

# 6. Discrimination and Harassment

As a matter of fact, Sri Lankan laws do not expressly talk about the issue of discrimination at workplace. However, in practice, international companies operating in the country and more established national organizations develop and implement internal guidelines and policies concerning discrimination at workplace, whistleblowing, codes of conduct, and equal opportunities.

In 1995, the first formal step towards harassment at workplace was taken in Sri Lanka and sexual harassment was entered as an offence in the country’s Penal Code. As per the Code, any person guilty of sexual harassment will be punished with any of the following:

1. Imprisonment for up to five years (with or without hard labor)
2. Fine of up to LKR 1 million
3. A combination of both
4. A compensation amount decided by the court to be paid to the victim (a Magistrate can order up to LKR 100,000 in compensation)

If a sexual harassment claim comes up at any workplace, the employer is obliged under the law to investigate the matter. If proven through credible evidence, the employer must take appropriate disciplinary action. Additionally, the victim has the choice of filing a complaint to the Police Station under the Penal Code of the country against the offender. However, the victim remains responsible to provide credible evidence suggesting commission of such a crime to the courts.

When it comes to sexual harassment at workplace, the laws in Germany are quite strong. The country introduced the General Equal Treatment Act in 2006. This Act provides considerable rights to the employees regardless of their gender and clearly states what unwelcome sexual advancements at workplace constitute. Beyond the serious and obvious cases of physical assault, according to law, sexual harassment at workplace means include the acts of displaying of pornographic materials, sexist jokes, sexual comments, lewd looks, leering, and unwanted physical contacts. Moreover, the employers, under the law, are obliged to carefully investigate any claim brought forward at a workplace concerning sexual harassment.

However, some legal gaps still prevail in the German laws concerning unwelcome sexual advancements at workplace. Firstly, the victim has to bring forward the claim within two months of it taking place. Some of the critics in the country have suggested increasing the time limit to six months primarily due to the fact that victims often take time in coming out of the trauma and filing a complaint. Another gap in German laws in this regard is the fact that the law although protects the people working in a university but provides no protection to the students studying at the university and getting harassed by the workers there.

# 7. Concluding Remarks

The contract of employment in Sri Lanka is just like any other agreement. It is legally binding between both parties, i.e., the employer and the employee. Approximately, thirty pieces of legislation are applied on the workers covering every aspect of their work from the minimum wage to the cubic space an employee is entitled to in an organization. This assignment drew a respective comparative analysis with Germany, a European jurisdiction. The German labor and employment laws extensively regulate the relationship between the employers and employees in the country.

In the area of employee representation and trade unions, this assignment finds that the Industrial Dispute Act in Sri Lanka has been used for addressing the issues concerning the functioning of labor courts, labor tribunals, labor arbitration, collective bargaining, termination of service of employees, and other issues arising out of industrial disputes in the country but this Act does not cover the public sector of the country. On the other hand of discussion, a formal system governing the relationship of the employees and employers exists in Germany but an institutionalized system recognizing trade unions is lacking.

In the area of workmen’s compensation, Workmen’s Compensation Ordinance plays a foremost role in deciding the situation concerning injuries occurred to employees during work in Sri Lanka. However, in Germany, every employee is a member of a related workers compensation institute. Moreover, the country allows the self-employed people to voluntarily become a member of such institutes.

The Termination of Employment Act of Sri Lanka (1971) states that no employee in the country can be terminated without his consent or by application to the Commissioner of Labor. However, this situation is subject to probation period. In Germany, the employers are allowed, under the Employment Protection Act, to terminate the contract for personal, conduct-related or business reasons.

In Sri Lanka, the National Act requires the employers to keep a register of the wages they pay to their employees and Budgetary Relief Allowance Act requires the employers to pay Allowance to their employers on annual basis whereas Germany passed the Minimum Wage Act only in 2014.

In 1995, the first formal step towards harassment at workplace was taken in Sri Lanka and sexual harassment was entered as an offence in the country’s Penal Code whereas Germany introduced the General Equal Treatment Act in 2006. This Act provides considerable rights to the employees regardless of their gender and clearly states what unwelcome sexual advancements at workplace constitute.

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