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Legal Position of Sandwich Workers in the Contemporary Business Environment in Sri Lanka: A Comparative Analysis Across Southeast Asian Jurisdictions

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CHAPTER 1: INTRODUCTION

1.1 Background of the study

In the contemporary business environment, the 'outsourced workers' can be seen as 'sandwich workers' because they are positioned between two employers known as the principal employer and the immediate employer. The principal employer or the business organization represents the entity where the workers provide their services, while the immediate employer, or labor supplier, assumes the technical role of their employer. This distinctive setup frequently places outsourced workers in a vulnerable and precarious position, as they become situated between the conflicting interests and expectations of these two employers.

Sri Lanka faces unique challenges in labor outsourcing, similar to but distinct from those observed in countries like Malaysia, Indonesia, and the Philippines. A key issue in Sri Lanka is the absence of specific laws governing outsourced workers, which leaves them exposed to exploitation, as highlighted by Egalahewa (2021). This mirrors challenges in Indonesia, where gaps in the enforcement of the Manpower Act 2003 have led to widespread misuse of outsourced labor, particularly in core business activities despite legal prohibitions (Setiawan, Firmansyah, & Boyd, 2021).

In Malaysia, outsourcing is heavily linked to migrant labor, where workers provided by agencies are excluded from union membership and collective bargaining agreements (Centre for Research on Multinational Corporations [CRMC], 2013). Similarly, Sri Lankan outsourced workers employed through manpower agencies lack the same rights and benefits as their permanent counterparts. For instance, they often work longer hours and receive fewer leave days than regular employees (Jayawardena, 2016). This disparity in both countries highlights how outsourcing practices are used to evade employer responsibilities and cut costs, at the expense of labor rights.

The Philippines has a more developed legal framework that protects outsourced workers through the Labor Code, ensuring that subcontracted workers receive the same benefits as regular employees (Macaraya, 2006). However, in Sri Lanka, the legal system does not provide such guarantees, leaving outsourced workers without protections like termination benefits or career advancement opportunities (Jayawardena, 2016). The Philippines also struggles with labor-only contracting, which compromises job security, a problem that is also seen in Sri Lanka, where agencies frequently shift workers between assignments without their consent to avoid paying gratuities (Egalahewa, 2021; Asuncion, 2019).

While Indonesia and Malaysia face significant issues related to migrant labor and poor working conditions, the challenges for Sri Lanka are more focused on the unequal treatment of domestic outsourced workers compared to permanent employees. In all cases, outsourced laborers are often subjected to poor working conditions, job insecurity, and limited rights, but the absence of comprehensive legal protections in Sri Lanka amplifies these issues. In comparison, the Philippines and Indonesia have legal frameworks in place, albeit imperfect, while Malaysia and Sri Lanka need more robust enforcement and policy reforms to safeguard worker rights (Setiawan et al., 2023; CRMC, 2013).

Across these countries, the common theme involves balancing the protection of the rights of workers with business flexibility. However, the lack of a clear regulatory framework in Sri Lanka for labor outsourcing contrasts sharply with the reforms in Malaysia, Indonesia, Philippine, Peru, Mexico, Colombia, United Status, and Chile, where legislation aims to protect workers while maintaining business flexibility. The examples from these countries highlight the potential for Sri Lanka to adopt similar frameworks to address the inequality faced by outsourced workers and ensure greater labor rights protection.

In conclusion, while these countries struggle with balancing cost-efficiency and labor protections, the lack of a dedicated legal framework in Sri Lanka leaves its outsourced workers particularly vulnerable. The experiences from other jurisdictions provide valuable lessons in both the pitfalls of outsourcing and the importance of implementing and enforcing robust legal protections for all workers, outsourced or not. The absence of specific legislation governing the labor outsourcing sector in the country has led to the emergence of unjust labor practices, as business organizations often engage outsourced workers through external labor suppliers. Consequently, these workers are left vulnerable to exploitation, with their entitlements often being undermined by the business owners. Consequently, the escalating unrest among outsourced workers may be suppressing industrial harmony. Therefore, it is crucial to identify the gaps in the labor outsourcing law in Sri Lanka to propose recommendations aimed at strengthening regulatory frameworks to ensure a stable and healthy business environment.

1.1.1 Problem statement

Even though prevailing labour laws in Sri Lanka protect the rights of regular employees, but fail to extend these protections to outsourced workers performing similar job rolls (Sarveswaran, 2011). This legal gap allows business organizations to utilize outsourced workers through external labor suppliers, reducing their liabilities and mitigating the risk of litigation in the event of a labor dispute (Egalahewa, 2021). Consequently, outsourced workers are vulnerable to exploitation, as business organizations can impose practices that undermine the entitlements of these workers (Rathnayake, 2016; Dayawansha, Wewala, Mahapatuna, Raajapaksha, & De Mel, 2022). There are currently no specific laws in place in Sri Lanka to address this labor issue, necessitating urgent action to ensure that the rights of outsourced workers are protected. In the prevailing business context, this research endeavors to explore what policy suggestions can be made to develop laws to regulate the labour outsourcing sector in Sri Lanka (Amerasinghe, 2009; Chandra, 2009).

1.2 Purpose of the study

The purpose of this research is to thoroughly examine the current landscape of outsourced labor in Sri Lanka, aiming to gain a clear understanding of how this sector operates and the challenges it faces. As labor outsourcing becomes an increasingly common practice, it is crucial to evaluate the status of outsourced workers, their working conditions, and the legal protections available to them. This study seeks to identify the unique issues faced by outsourced workers in Sri Lanka, including the absence of job security, unequal treatment compared to permanent employees, and insufficient legal safeguards.

This study aims to identify gaps in Sri Lankan labor legislation concerning outsourcing, as existing laws mainly cover direct employer-employee relationships, leaving outsourced workers unprotected (Sarveswaran, 2011). Egalahewa (2021) highlights the misuse of outsourcing, where businesses bypass responsibilities through vague legal definitions, a concern similarly noted by Asuncion (2019) in the Philippines, where subcontracted workers face insecurity and limited rights.

The absence of a solid regulatory framework in Sri Lanka exposes outsourced workers to potential exploitation. This research will compare local laws with those of other jurisdictions to recommend reforms. For instance, in Malaysia, the Private Employment Agencies Act 1981 regulates outsourcing but insufficiently protects migrant workers (Serrano, 2014). Similarly, the Manpower Act 2003 in Indonesia has loopholes that allow companies to assign outsourced workers to core tasks, as Izzati (2017) observes.

Furthermore, studies in Indonesia (Hudiana & Susetyo, 2020) show unionized outsourced workers face challenges in labor movements due to their employment status which is a situation mirrored in Sri Lanka, where traditional labor laws inadequately protect outsourced workers (Chandra, 2009). In the Philippines, triangular employment complexities make unionizing difficult, reflecting the concerns highlighted by Fernando (2007) about labor rights erosion with the rise of outsourcing in Sri Lanka.

Addressing the aforementioned challenges in regulating the labor outsourcing sector, despite the presence of specific laws in certain Southeast Asian countries, this research aims to identify the gaps in Sri Lankan legislation. By examining the laws and regulatory frameworks of countries such as Malaysia, Indonesia, and the Philippines where more comprehensive legal structures for labor outsourcing have been established, this study seeks

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to provide a clearer understanding of the existing shortcomings in Sri Lanka's legal framework. The study will ultimately offer valuable insights that can inform and shape reforms in Sri Lanka, helping lawmakers create a more robust and equitable legal framework that ensures outsourced workers are better protected and have access to the same rights and benefits as their permanent counterparts.

1.2.1 Understanding the Current State of Outsourced Labor in Sri Lanka

In Sri Lanka, businesses increasingly adopt outsourcing, freelancing, and subcontracting to manage costs and maintain flexibility. Both private and public sectors use outsourcing as a strategy to reduce human resource expenses and focus on core activities. Outsourced workers, employed through third-party agencies, often face poor working conditions, low wages, and limited rights, as they are not protected by the same labor laws as direct employees. This results in exploitation, with many outsourced workers unaware of their rights (ILO, 2016a; Jumabhoy et al., 2022).

Fernando (2007) highlights the growing use of outsourced labor to reduce costs, but this trend raises concerns about workers' rights and job security. Jayawardena (2016) discusses how companies like Sri Lanka Telecom hire outsourced workers, who often work longer hours with fewer benefits. These workers' lack of accountability can also undermine productivity. Sri Lanka's labor laws regulate employer-employee relationships but do not extend to outsourced workers (Sarveswaran, 2011). Outsourced workers face fewer protections, as businesses reduce liabilities through external labor suppliers.

The High Court case Bandara v. Commercial Bank of Ceylon PLC (2015) marked a critical ruling on labor outsourcing. The court ruled that outsourced workers could be considered employees of the principal organization, even if hired through a supplier. The case highlighted issues around unjustified termination and compensation for outsourced employees.

In Sri Lanka Telecom PLC v. All Employees' Union of Information and Telecommunication (2014), the court issued an injunction preventing outsourced workers from striking, ruling they were not directly employed by the company. Similarly, in SLT Human Capital Solutions v. All Ceylon Telecommunication Employees Union (2017), an injunction was granted to prevent a strike by outsourced workers demanding absorption into the principal employer.

These cases reveal inconsistencies in how outsourced labor is treated in Sri Lanka, underscoring the lack of a comprehensive legal framework. Courts have relied on existing labor laws to address disputes, leading to varied outcomes. This legal uncertainty creates tension among business organizations, labor suppliers, and trade unions.

A clear legal framework for outsourcing could improve relations and ensure fair treatment of outsourced workers, benefiting all parties involved. However, the absence of such a framework continues to leave outsourced workers vulnerable to exploitation and unresolved industrial disputes.

1.2.2 Identifying gaps in Sri Lankan legislation

Outsourced workers, or manpower workers, are persons who are not directly employed by the primary business but are hired through third-party agents or labor contractors. This employment model is often referred to as disguised employment, as these workers typically do not receive social protection, earn low wages, and face considerable challenges due to limited trade union representation and weak bargaining power (ILO, 2016-a; Jumabhoy, Adiyasa, Lumsdaine, Lim, & Miao, 2022). So, it is essential to understand the Sri Lankan context through the seminal papers concerning labour outsourcing from legal perspective.

Sarveswaran (2011) observed that the legislature has introduced numerous laws to regulate the employer–workman relationship, covering aspects such as employment terms and conditions, social benefits, job security, and industrial dispute resolution. However, since these laws apply solely to the employer–workman relationship, in the absence of such a relationship, Sri Lankan labor legislation does not extend to workers, even if the nature of their services suggests the existence of an employment contract.

Nonetheless, Egalahewa (2021) noted that Human Resource managers are introducing new terms for old concepts. Outsourcing was never intended to involve outsourcing individual employees to fill vacancies in the regular workforce. What is being referred to as 'outsourcing' is more accurately described as recruitment through an agent, known as 'contract labor.' In Sri Lanka, there is no specific law governing contract labor, unlike in India, which has legislation for this employment arrangement. By relying on contract labor, businesses aim to avoid the responsibilities of being an employer, particularly those related to labor laws on termination and terminal benefits.

Further, Egalahewa (2021) highlights the position of the Court in the case of Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979). In this case, the court found that, as the business owner had directly recruited the outsourced workers, there was sufficient evidence to show that all aspects of employment were controlled by Moosajees, while Upasaka Appu was merely a figurehead. The court determined that this arrangement was a deliberate tactic by the petitioner to evade employer liabilities.

Amerasinghe (2009) explains that in Carson Cumberbatch & Co. v. Nandasena (1974), the Supreme Court ruled that an agent would not be deemed an employer unless the agent failed to disclose their role as an agent, leading the worker to believe that they were the employer. According to the view of the Court, a labor supplier can only be considered the employer of outsourced labor if they do not reveal their status as an agent for a principal employer. If the agent is clearly acting on behalf of a principal employer, they will not be recognized as the employer of the outsourced workers.

Based on the aforementioned seminal works, it becomes evident that there is a significant gap in the legal framework concerning labor outsourcing. This gap permits principal organizations to exert control over outsourced workers through their own human resource practices, thereby undermining the security of employment for these workers. As a result, outsourced employees often face precarious working conditions, lacking the protections and benefits typically afforded to directly employed staff, which further exacerbates their vulnerability in the workforce. Despite the lack of legal provisions in Sri Lanka concerning labour outsourcing, some other countries such as Malaysia, India, Thailand, Indonesia, Vietnam, Singapore, Philippines, Peru, South Korea, Japan, Finland, France, Peru, Mexico, Colombia and Chile have successfully implemented labour outsourcing as a human resources strategy. In these countries, specific laws have also been developed to govern the outsourcing sector as per their domestic requirements. So, existing literature concerning labour outsourcing from the above countries is presented.

1.3 Rationale of the Study

The rationale for this research stems from the significant transformation of employment relationships in Sri Lanka, shifting from traditional employment to outsourced labor, a trend reflective of global economic changes. Sarveswaran (2011) highlights that Sri Lanka's labor laws primarily protect traditional employer-employee relationships, excluding outsourced workers from essential benefits and protections. This legal gap challenges outsourced workers who perform similar functions as permanent employees but lack formal recognition (Jayawardena, 2016). Egalahewa (2021) critiques the misuse of outsourcing to evade employer responsibilities, emphasizing the need for a comprehensive legal framework addressing outsourced workers' challenges.

In Malaysia, the Private Employment Agencies Act 1981 recognizes outsourcing agents as employers of migrant workers (Serrano, 2014), but the Centre for Research on Multinational Corporations (2013) notes significant barriers to unionization and collective bargaining for these workers, paralleling issues in Sri Lanka. Similarly, in the Philippines, subcontracting complicates workers' rights to unionize and engage in collective bargaining, as subcontracted workers can form separate unions but cannot join those of the principal employer's regular employees (De Guzman et al., 2019). Indonesia's Manpower Act 2003 outlines labor rights but lacks clear distinctions between core and non-core business activities, enabling companies to circumvent protections for outsourced workers (Hudiana & Susetyo, 2020; Izzati, 2017). Rochadi (2019) explains how labor movement fragmentation among worker categories weakens collective bargaining power, a challenge mirrored in Sri Lanka.

The Philippines' Labor Code 1974 recognizes triangular employment relationships (Macaraya, 2006), but Asuncion (2019) notes ongoing issues with job insecurity and inadequate protections in labor-only contracting. These limitations hinder subcontracted workers' unionization rights, exacerbating labor disparities, a concern shared in Sri Lanka. The Colombo Discussion Forum (2015) highlights disparities between permanent and outsourced employees in Sri Lanka, emphasizing the need for comparative studies to identify best practices from Southeast Asia.

So, this study aims to develop a robust legal framework ensuring fair treatment and legal clarity for outsourced workers in Sri Lanka, addressing widespread labor market and social equity implications.

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1.3.1 The Changing Shape of the Employment Relationship in Sri Lanka

The labor landscape has evolved significantly, transitioning from radical capitalism to industrial democracy, where labor and capital are viewed as equal partners. Labor exploitation dates back to Roman times, with slavery legally sanctioned under Roman law, treating slaves as property. This practice, contrary to human nature, persisted in the United States and South Africa into the 18th century (Berg, 2016). The Industrial Revolution transformed society, shifting from medieval economies to industrial systems, especially in England. Increased iron production and steam power revolutionized manufacturing, resulting in factories and urban growth. However, the oversupply of labor led to exploitation, with low wages and poor conditions. Workers endured long hours, inadequate housing, and harsh treatment, with women and children earning less than men. Wages and conditions were dictated by market forces, with minimal state intervention, reflecting the laissez-faire doctrine and its emphasis on free contracts favoring factory owners (Egalahewa, 2021).

In Sri Lanka, the employment relationship is firmly rooted in labor laws influenced by Roman-Dutch and English legal principles. Initially, employment was seen as a contract between a master and servant under Roman-Dutch law, recognizing rights and obligations despite inherent power imbalances. Contracts were shaped by economic disparities, and remedies were limited to damages. Over time, social welfare laws transformed this framework, emphasizing employee protections such as wages, working conditions, health, safety, and termination procedures. Trade Unions and collective bargaining further reshaped the rigid employer-employee relationship into a more flexible agreement, particularly concerning dependent workers (Chandra, 2009).

1.3.2 Motives for choosing this research

Experiencing the significant disparities faced by outsourced workers in Sri Lanka has fueled my commitment to examining the legal frameworks that render them vulnerable. Working closely with these individuals revealed how gaps in labor protections often lead to unequal treatment, limited job security, and fewer rights compared to their directly employed counterparts. This exposure has motivated me to delve deeper into understanding the legislative shortcomings and to advocate for a more inclusive and protective legal framework that addresses the unique challenges of outsourced labor in Sri Lanka.

In Sri Lanka, fair treatment for outsourced workers has remained merely a political promise. During election campaigns in Sri Lanka, labor outsourcing emerged as a key issue, as outsourced workers, who faced discrimination, were rallied in support of opposition leaders. The newly elected governments, promising reforms, tried to secure employment and improving working conditions for these workers (Collective for Economic Democratisation in Sri Lanka, 2015). Budget proposals have included a plan to integrate outsourced workers with over seven years of experience into permanent positions at state-owned organizations such as the Electricity Board and Water Board (Hansard, 2015). However, implementation has been limited, with many private and semi-government employers opposing the policy due to concerns about worker competency and qualifications (Ada Derana, 2020). The ongoing economic crisis in Sri Lanka, the worst since independence in 1948, has exacerbated the situation. High inflation, shortages of essentials, and depleted foreign reserves are among the severe impacts. Contributing factors include tax cuts, excessive money printing, and external shocks such as the 2019 Easter attack and the COVID-19 pandemic. The crisis culminated in the 'Gota-Go-Home' protests (Luke, 2022).

Over the past four years, the economic decline faced by the country has severely impacted the business sector, prompting organizations to curtail labor rights in an effort to prioritize survival. Gunatilaka and Chandrasiri (2022) note that the pandemic and subsequent crises have intensified challenges in education and skills development, particularly affecting workers in the industry and service sectors, many of whom are women. Self-employed, casual, and contract workers especially those who are less educated and low-skilled have been disproportionately affected, with over half a million job losses reported in 2022 (Raiser, 2023). Outsourced workers, in particular, are highly vulnerable and often face unfair treatment during economic downturns, as business organizations frequently dismiss them first, resulting in dissatisfaction and poor performance them. This dissatisfaction can negatively impact overall employee morale and productivity. To address these challenges and improve business outcomes, it is essential to reassess outsourcing practices and ensure fair treatment of outsourced workers, taking into account all relevant legal considerations.

1.4 Scope of the study

Labor outsourcing is a global phenomenon with significant implications for worker rights and business operations. Countries worldwide have adopted varied approaches to regulating this sector, reflecting the balance between protecting workers and enabling business flexibility. For instance, in many developing countries like Sri Lanka and Malaysia, gaps in legislation allow businesses to exploit outsourced labor by minimizing costs while providing fewer benefits and job security. This mirrors the situation in Mexico before its 2021 reforms, which now restrict outsourcing to non-core functions, addressing similar abuses by enforcing contracts and reporting to labor authorities (Rodriguez et al., 2021).

The scope of this study is primarily centered on gaining a comprehensive understanding of the current state of outsourced labor in Sri Lanka. This involves examining the practices, challenges, and trends surrounding labor outsourcing in the country. Furthermore, this study seeks to explore the existing laws governing labor outsourcing in Sri Lanka, with a specific focus on identifying the legal provisions currently in place to regulate this sector, through the secondary data collected through reliable sources. In Sri Lanka, the lack of specific labor outsourcing laws results in substantial inequality between permanent employees and outsourced workers, as seen in Malaysia and Indonesia, where outsourcing is prevalent but often poorly regulated (Hudiana & Susetyo, 2020; Serrano, 2014). Further, countries, like Sri Lanka, face challenges in protecting outsourced workers who are excluded from union representation and labor protections, often leaving them in precarious positions. However, Indonesia's efforts to reform outsourcing regulations under the Job Creation Act of 2020 show promise, despite enforcement difficulties (Hudiana & Susetyo, 2020).

Across these countries, the enforcement of labor standards remains a critical challenge. For instance, in Colombia, the government has taken steps to ensure that outsourced workers are treated fairly, but enforcement gaps persist, leading to ongoing concerns about illegal labor intermediation (Garrigues, 2022). Similar issues exist in Sri Lanka, where regulatory oversight of outsourcing is minimal, resulting in labor practices that undermine the rights of temporary workers. Indonesia and the Philippines also face difficulties in enforcing outsourcing regulations, with many outsourced workers remaining outside the protections guaranteed to permanent employees (Macaraya, 2006).

The global trend of tightening outsourcing regulations in countries like Malaysia and Indonesia highlights the need to protect workers from precarious employment. These countries have introduced measures such as joint liability, stricter contract requirements, and outsourcing limits. However, inconsistent implementation, especially in developing nations, allows businesses to exploit legal loopholes. Sri Lanka can benefit from these international experiences when developing a framework that balances business needs with worker rights.

The study will examine labor outsourcing laws in jurisdictions with well-established frameworks and compare them with Sri Lanka's current laws. By identifying gaps based on defined criteria, the study aims to offer recommendations to enhance Sri Lanka's legal structure for regulating outsourced labor, creating a fairer, more effective system.

1.4.1 Data collection

This study relies exclusively on secondary data, which is derived from primary, secondary, and tertiary legal sources. However, the analysis conducted in this study utilizes secondary data solely obtained from primary legal sources to ensure accuracy and relevance in addressing the research objectives. In this study, the researcher examines primary legal sources such as constitutions, statutes, legislation, judgments, case law, circulars, regulations, Parliament Hansards, and gazettes, as well as secondary sources like books, journal articles, research papers, census data, research papers, theses, dissertations, symposia and conference proceedings. Tertiary legal sources, including dictionaries, encyclopedias, legal opinions, guide books, bibliography, web articles and other relevant materials, are also utilized. The aim is to gather, organize, and explain the law, provide commentary, and identify underlying themes and interconnections. The researcher identifies specific legal rules, discusses their meanings and principles, addresses ambiguities and criticisms, and proposes potential solutions.

1.4.2 Basis for choosing Maritime Southeast Asian countries for the analysis

The labor outsourcing-related laws of Malaysia, Indonesia and Philippine are more suitable for comparison with Sri Lankan law than those of other countries due to several key factors. Firstly, these Southeast Asian nations share similar economic and industrial contexts with Sri Lanka. Like Sri Lanka, these countries have transitioned from agrarian-based economies to more industrialized and service-oriented economies, leading to an increase in labor outsourcing practices. As this economic shift has necessitated the development of legal frameworks to regulate labor outsourcing and protect outsourced workers, making their laws more relevant to the current situation in Sri Lanka. Secondly, the labor markets in Malaysia, Indonesia and Philippine are characterized by a significant presence of informal employment and outsourced labor, similar to the Sri Lankan context. These countries have experienced rapid industrialization and urbanization, leading to the proliferation of outsourced labor as organizations seek to reduce costs and increase flexibility. Consequently, the legal frameworks in these countries have evolved to address the specific challenges and vulnerabilities faced by outsourced workers, offering valuable insights for Sri Lanka as it seeks to enhance its own labor laws (McKenzie, 2018: Serrano, 2014).

Moreover, Malaysia, Indonesia and Philippine have developed comprehensive legal mechanisms that balance economic growth with worker protection. These countries have implemented regulations that set standards for wages, working conditions, and social security for outsourced workers, while also imposing responsibilities on both labor suppliers and principal employers.

In contrast, many South Asian countries, such as Maldives, Pakistan, and Bangladesh, still grapple with informal labor practices and lack robust legal protections for outsourced workers. In India, different regions have amended the principal outsourcing law to meet their specific needs, resulting in variations in the application of outsourcing laws across the country. Therefore, the legal approaches of Southeast Asian nations are more aligned with the objectives of improving worker protection within rapidly industrializing economies like Sri Lanka (Bhattacharjee, 2019).

Lastly, these Southeast Asian countries are also part of regional economic communities, such as ASEAN, which promotes the harmonization of labor standards across member states. This regional collaboration has led to the adoption of progressive labor laws and policies that could serve as models for Sri Lanka. In contrast, the South Asian Association for Regional Cooperation (SAARC) has not achieved the same level of integration or standardization in labor laws, making Southeast Asia a more relevant region for legal comparison with Sri Lanka regarding labor outsourcing.

1.4.3 Criteria for the comparative analysis

The primary criteria used for the analysis in this study include the responsibilities of principal employers, the terms and registration of contracts, work standards, and the rights and protections afforded to outsourced workers within the framework of labor outsourcing. Accordingly, Sri Lankan law will be assessed against the above criteria through a comparative analysis of the legal frameworks in Malaysia, Indonesia and Philippine.

1.5 Research Aims

The primary aim of this research is to investigate and identify the gaps in the legal framework of Sri Lankan labor outsourcing sector, which leave many outsourced workers vulnerable to job insecurity, inadequate employee rights, and unfair working conditions. Sarveswaran (2011) highlights that Sri Lanka's labor laws exclude outsourced workers from the protections afforded to regular employees, emphasizing the need for legal reform. Moreover, Egalahewa (2021) critiques the misuse of "outsourcing" in Sri Lanka, particularly in how businesses exploit this system to evade responsibilities, a practice that perpetuates inequalities between permanent and outsourced employees.

This research will also conduct a comparative analysis of labor outsourcing laws in Malaysia, Indonesia, and the Philippines, which have implemented more developed legal frameworks to regulate outsourcing. For instance, Private Employment Agencies Act 1971 in Malaysia mandates the provision of essential services to outsourced workers, yet concerns persist regarding their exclusion from union rights and collective agreements (CRMC, 2013). Indonesia's Manpower Act 2003 provides some labor protections but suffers from weak enforcement, leading to the continued exploitation of outsourced workers (Hudiana & Susetyo, 2020). Meanwhile, the Philippines has recognized triangular employment relationships through its Labor Code, offering workers some rights, although issues with subcontracting persist (Macaraya, 2006; De Guzman et al., 2019).

By comparing the legal framework of Sri Lanka with these countries, this research aims to highlight best practices and legal provisions that can be adapted to improve Sri Lankan outsourcing regulations. Drawing from these insights, the study will propose legal reforms that enhance the protection of outsourced workers in Sri Lanka, aiming to ensure fair treatment, job security, and legal parity with permanent employees. The ultimate goal is to contribute to a more equitable labor environment in Sri Lanka, as emphasized by Fernando (2007), who calls attention to the pressing need for better protections for outsourced labor.

1.6 Research questions

i. What are the existing labor laws in Sri Lanka that establish the legal position of outsourced workers deployed at business organizations?
ii. How do current practices of business organizations adversely affect the outsourced workforce?
iii. How does the absence of specific laws regulating the labor outsourcing sector promote flexibility in labor handling for business organizations in Sri Lanka?
iv. What is the impact of prevailing legal frameworks governing labor outsourcing in Sri Lanka in comparison with Malaysia, Indonesia, and the Philippines?
v. What insights from the specific laws of other jurisdictions can be applied to regulate the Sri Lankan labor outsourcing sector?

1.7 Research objectives

i. To explore the existing labor laws in Sri Lanka that establish the legal position of outsourced workers deployed at business organizations.
ii. To understand the impact of current practices followed by business organizations on the outsourced workforce in Sri Lanka.
iii. To examine how the absence of specific laws regulating the labor outsourcing sector promotes flexibility in labor handling for business organizations in Sri Lanka.
iv. To assess the impact of prevailing legal frameworks that governing labor outsourcing in Sri Lanka in comparison with Malaysia, Indonesia, and the Philippines
v. To provide insights from the specific laws of other jurisdictions in order to regulate the Sri Lankan labor outsourcing sector.

1.8 Research Philosophy

This research is grounded in the belief that robust legal frameworks are essential for safeguarding the rights of outsourced labor. The philosophy underpinning this study emphasizes that laws are not merely regulatory tools but also reflections of societal values and priorities concerning worker protection and equity. By recognizing that specific legal provisions are crucial in addressing the vulnerabilities faced by outsourced workers, this research aims to highlight the significance of legislative clarity and enforceability in fostering fair labor practices.

Through a comparative analysis of labor outsourcing laws from jurisdictions such as Malaysia, Indonesia, and the Philippines where more comprehensive frameworks have been established. So, this study seeks to identify best practices and effective legal mechanisms that can be adapted to the Sri Lankan context. This philosophical approach underscores the notion that learning from the experiences and successes of other countries can provide valuable insights into creating an ideal legal framework tailored to the unique challenges of the Sri Lankan labor outsourcing sector.

Ontology and epistemology are fundamental concepts in research philosophy. Ontology examines the nature of reality and questions whether it is objective. Epistemology explores the nature of knowledge and its acquisition, suggesting that knowledge is influenced by perspectives. (Burrell and Morgan, 1979). Exploratory research involves qualitative studies and explanatory research involves quantitative studies and hypothesis testing. Descriptive studies most often involve quantitative research techniques or a combination of qualitative and quantitative method. When considering different approaches to research, researcher will have to be concerned about ‘research paradigms’. Rossman and Rallis (1998) define paradigm as ‘shared understandings of reality’. Quantitative and qualitative research methods involve very different assumptions about how research should be conducted and the role of the researcher (Keong, Husin & Kamarudin, 2023).

This research faced significant challenges due to the lack of clarity within the Sri Lankan legislature. As a result, a clear understanding of labor outsourcing is also lacking among the Sri Lankan society, making their input unlikely to be valuable for this study. Given the anticipated challenges in data collection, a qualitative doctrinal study was initially planned, relying on existing secondary sources rather than primary data collection methods. This ‘black letter’ approach focuses on gathering printed secondary data from reliable sources, which is well-suited for legal research. For this study, legal provisions from the outsourcing laws of Malaysia, Indonesia, and the Philippines are analyzed to identify gaps in Sri Lankan labor outsourcing regulations and propose solutions to address these deficiencies.

Furthermore, the research recognizes that laws must be dynamic and responsive to the evolving nature of work and labor relations. By

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examining not only the content of existing laws but also their implementation and impact on outsourced workers, this study aspires to contribute to a deeper understanding of how legal protections can be strengthened. Ultimately, the goal is to advocate for reforms that not only enhance the legal landscape for outsourced labor in Sri Lanka but also promote social justice and equitable treatment within the broader labor market.

1.9 Research methodology

The methodology of this research is grounded in two key methods known as the doctrinal research method and the comparative analysis method. Doctrinal legal research method involves a thorough examination of the legal principles and provisions related to labor outsourcing within Sri Lanka, as well as in Malaysia, Indonesia and Philippine. It focuses on a detailed analysis of relevant statutes, regulations, and judicial interpretations to understand how labor outsourcing is legally structured and regulated in these jurisdictions. This approach aims to provide a comprehensive understanding of the legal frameworks and their application in practice.

Building on the insights gained from the doctrinal research, the comparative analysis method involves a systematic comparison of labor outsourcing laws between Sri Lanka and the selected jurisdictions. This method emphasizes critical aspects such as worker protection, employer responsibilities, regulatory requirements, and enforcement mechanisms. By examining these elements across different legal systems, the research aims to identify gaps, inconsistencies, and areas for improvement in Sri Lankan law relative to the practices observed in the other jurisdictions.

1.9.1 Doctrinal research method

This study aims to thoroughly delineate and understand the legal provisions governing labor outsourcing within the Sri Lankan legal framework. It involves an in-depth examination of existing statutes, regulations, and judicial interpretations specific to labor outsourcing in Sri Lanka. Concurrently, the study will expand its scope to include a detailed description of labor outsourcing laws in Malaysia, Indonesia and Philippine. This will encompass a detailed review of the legislative frameworks, regulatory guidelines, and case law in each of these jurisdictions. The objective is to distinguish how these countries address key concerns related to labor outsourcing, such as worker protection, employer responsibilities, and regulatory requirements, and to identify insights that could inform potential reforms in Sri Lanka.

So, this this employs a doctrinal methodology, derived from the Latin word doctrina meaning instruction, knowledge, or learning. Doctrinal method involves the analysis of legal concepts, principles, cases, statutes, and rules, synthesizing various norms and interpretive guidelines to explain and justify segments of the law within a broader legal system (Hutchinson and Duncan, 2012). Doctrinal research focuses on identifying legal principles, interpreting their meanings, and applying them to specific contexts, relying on established methods of legal analysis and interpretation (Magyar, 2019). The aim is to identify gaps in the labor outsourcing sector in Sri Lanka compared with other jurisdictions and propose remedial actions.

1.9.2 Comparative analysis method

This study analyzes and compares the labor outsourcing laws across selected jurisdictions. The primary aim is to identify legislative gaps in Sri Lankan current framework by comparing it to the laws of Malaysia, Indonesia and Philippine. The comparative legal analysis will involve three key stages. First, a descriptive comparison will outline the statutory frameworks governing labor outsourcing in each of the selected jurisdictions. This will provide a foundation for understanding how different countries structure their laws to regulate outsourcing practices. Second, a functional comparison will analyze how these laws operate in practice, with particular attention to how they protect or fail to protect outsourced workers. Finally, a critical evaluation will identify gaps in Sri Lankan law by examining how the laws in Malaysia, Indonesia and Philippine address issues such as worker rights, employer obligations, and regulatory oversight.

The comparative analysis method is crucial for identifying differences and similarities between legal systems. It helps researchers understand how various jurisdictions address similar issues, such as labor outsourcing, by revealing strengths and weaknesses in domestic laws. This approach enhances the understanding of legal concepts, informs decision-making, and uncovers gaps in the law by contrasting regulations across countries, thus providing a comprehensive view of the legal landscape (Bhagyamma, 2023).

1.10 Theoretical foundation

Theoretical foundation aims to identify key theories related to labor outsourcing in the contemporary business context and apply those theories to this study concerning the outsourced labor in Sri Lanka. Further, the theoretical foundation is crucial for research because it offers a structured framework that is based on the study in established knowledge which guiding the research process and enhancing its credibility.

1.10.1 Theory of Non-discrimination

Since regular employees and outsourced workers perform similar job functions at business organizations, it is essential that they are treated equally, without any form of discrimination against outsourced workers. So, the theory of non-discrimination ensures that both categories of workers receive fair compensation, benefits, and opportunities for career advancement, irrespective of their employment status. It is rooted in the idea that individuals should be treated equally, regardless of characteristics such as race, gender, religion, nationality, or any other status (United Nations, 1948; United Nations, 1966; ILO, 1958; ILO, 2003). According to this theory, business organizations must not discriminate against outsourced workers in any way compared to their directly employed staff, regardless of the fact that outsourced workers are employed through external labour suppliers.

1.10.2 Theory of Justifiable classification

Although regular employees and outsourced workers may perform the same job functions within a business organization, the level of responsibility, accountability, and reliability expected from regular employees is often higher. This is because business organizations tend to place greater trust in their directly employed staff compared to outsourced workers. Therefore, regular employees and outsourced workers can be distinguished by the business organizations under certain conditions. However, this classification must be reasonable, non-arbitrary, and serve a legitimate interest. Also, this classification must be relevant to the purpose it seeks to achieve ensuring that similar situations must be treated similarly, while different situations can be treated differently if there is a rational basis for the distinction (Perera, 2020; Pillai, 2019). According to this theory, business organizations may differentiate between regular employees and outsourced workers and treat them differently, provided there are justifiable grounds for doing so.

1.11 Significance of the study

This research addresses the growing trend of outsourcing in Sri Lanka as a strategic tool for reducing labor costs and improving operational efficiency, while raising concerns about the social and economic well-being of the outsourced workforce. By comparing legal protections in other Asian countries, it reveals gaps in Sri Lankan legislation. Addressing these gaps can promote ethical business practices among entrepreneurs. Better legal protection for outsourced workers can lead to higher employee satisfaction, reduced turnover, and a positive corporate image, vital for long-term sustainability. Ensuring protection against exploitation and safeguarding workers' rights will contribute to a fairer labor market and improve the overall business environment in Sri Lanka. Clear legal provisions can also reduce the risk of litigation by providing guidelines for outsourced workers, fostering stable employer-employee relationships and a more predictable legal environment. This study can serve as a benchmark for future research and policy development on labor outsourcing.

1.12 Structure of the research

This research consists of five chapters, each contributing to the overall study. Chapter One, Introduction, outlines the background, problem statement, research questions, objectives, and limitations of the study. Chapter Two, Literature Review, explores existing knowledge on labor outsourcing, focusing on frameworks in other jurisdictions, particularly in Asia, and addressing related legal issues. Chapter Three, Theoretical Framework and Research Methodology, explains the comparative legal analysis used to evaluate labor outsourcing laws in Sri Lanka alongside those in other countries, identifying similarities, differences, and gaps to inform labor law reform for the benefit of outsourced workers and businesses. It also applies key theories of labor outsourcing to the Sri Lankan context. Chapter Four, Analysis and Findings, examines legal data from selected jurisdictions, providing a comparative analysis of labor outsourcing frameworks and identifying insights for Sri Lankan legal reform. Chapter Five, Conclusions and Recommendations, proposes policy reforms and legal amendments to enhance protections for outsourced workers in Sri Lanka, outlines strategies for implementation, summarizes key findings, discusses their implications, and suggests areas for future research to refine legal protections in modern business environments.

1.13 Limitations of the research

Outsourcing has become a common business strategy, enabling organizations to leverage their core competencies. Various forms of

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outsourcing include labor outsourcing, business process outsourcing, subcontracting, franchising, shared services, gig working, and freelance work. This study focuses solely on labor outsourcing from a legal perspective in Sri Lanka, excluding social, economic, and other aspects.

The research employs a doctrinal methodology, emphasizing written law over empirical data collection. It relies on secondary data from primary legal sources, such as statutes and regulations from jurisdictions with well-defined labor outsourcing laws. The study highlights that outsourced workers in Sri Lanka face significant challenges due to inadequate legal provisions, irrespective of their workplace, sector, or industry, and examines the sector as a whole.

The findings aim to identify gaps in Sri Lankan labor outsourcing laws and offer recommendations for outsourced workers, labor suppliers, business owners, and policymakers. Although these findings will not undergo formal review by Sri Lankan labor experts, they may provide valuable insights for lawmakers to develop new legal frameworks for the labor sector.

1.14 Definition of Terms

In Malaysia, the Employment Act 1955, amended in 2012, defines a contractor for labour as a person who enters into an agreement with a principal, contractor, or sub-contractor to provide labour for the execution of all or part of the work assigned by a principal or contractor. The Act defines the principal as any person who contracts with a contractor for the execution of work by or under the contractor for the purposes of their trade or business. In Indonesia, Regulation No. 19 of 2012, which streamlines labour outsourcing, defines a worker supply company in Article 1(3) as a limited liability company that meets conditions to provide support services to the employer company. Article 1(1) defines an employer company as one that hires out partial work to a contractor or worker supply company. In the Philippines, Department Order No. 174 governs contracting and subcontracting. Section 3(e) defines an outsourced worker as an employee of a contractor hired to perform work for the principal under a service agreement with the contractor. Section 3(h) outlines that labour-only contracting is where a contractor or sub-contractor merely recruits or places workers to complete a job for a principal. Section 3(i) defines a principal as any natural or juridical entity who outsources work to a contractor.

1.15 Summary

This chapter introduces the research study titled Legal Position of Sandwich Workers in the Contemporary Business Environment in Sri Lanka: A Comparative Analysis Across Southeast Asian Jurisdictions. It outlines the central problem of the uncertain legal position of sandwich workers, or outsourced workers, in Sri Lanka's evolving business landscape. These workers, often caught between permanent employees and temporary labor, face unique legal challenges. The absence of clear protections and inconsistencies in their legal treatment underscores the study's significance.

The study aims to explore the current state of outsourced labor in Sri Lanka and identify legislative gaps leading to unequal treatment. It examines how Sri Lanka's legal framework compares with Southeast Asian countries, focusing on rights and protections for outsourced workers. This research is motivated by changing employment dynamics in Sri Lanka, where outsourced labor increasingly replaces traditional employment without corresponding legal adjustments, and is shaped by firsthand observations of these disparities.

The scope includes data collection and the rationale for selecting Maritime Southeast Asian countries such as Singapore, Malaysia, and Indonesia for comparison. These jurisdictions provide insights into labor outsourcing regulation in similar economic contexts. The comparative analysis emphasizes labor laws, contractual protections, and judicial precedents affecting outsourced workers.

The study seeks to address gaps in Sri Lankan labor law through clear research questions and objectives, using a doctrinal research method and comparative analysis to examine legal frameworks in Sri Lanka and Southeast Asia. Its theoretical foundation is rooted in principles of non-discrimination and justifiable classification, analyzing whether outsourced workers are unfairly marginalized.

The study's significance lies in its contribution to labor rights discourse in Sri Lanka, offering recommendations for legal reforms. The chapter concludes by explaining the research structure, limitations, and key terms, setting the stage for an in-depth exploration of outsourced workers' legal position within Sri Lanka and Southeast Asia.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

Outsourcing has become a pivotal strategy for organizations seeking to enhance operational efficiency and reduce costs. This concept encompasses a wide array of practices through which businesses delegate specific tasks or services to external providers. From manufacturing to information technology and human resources, outsourcing enables companies to focus on their core competencies while relying on specialized vendors for ancillary functions. Labour outsourcing, in particular, has gained prominence as organizations aim to optimize workforce management by contracting external workers for tasks traditionally performed by permanent staff.

The implications of labour outsourcing extend beyond mere cost reduction; they also encompass strategic human resource management, allowing businesses to adapt quickly to changing market demands. However, the practice is accompanied by a complex interplay of perceived benefits and challenges. While labour outsourcing can improve operational flexibility and access to specialized skills, it may also lead to job insecurity and diminished morale among employees (Sakai, Nagata, Nagata, Mori, Odagami, & Adi, 2023). Additionally, the legal landscape surrounding labour outsourcing raises critical questions about the rights and protections afforded to outsourced workers.

This review will also evaluate the extensive body of research on outsourcing across various contexts, with a focus on regional and international perspectives, including those specific to Sri Lanka and the broader Asian region. By analyzing key studies and identifying literature gaps, this review aims to provide a comprehensive understanding of outsourcing's multifaceted nature, particularly in relation to labour and human resources management.

2.2 Labour outsourcing

Labour outsourcing is a business practice in which external parties are hired to perform regular job functions of a company instead of hiring in-house employees. It's also known as human resources outsourcing, labour outsourcing, or contracting for labour. In this triangular or multi-party employment relationship, the outsourced workers are supervised by the respective business entity while being deployed and paid by the immediate employer (Dayawansha et al., 2022). This arrangement allows the principal employer to benefit from the expertise and experience of the outsourced workers without having to bear the administrative and legal responsibilities of being their direct employer (ILO, 2016b).

Recent literature underscores the evolving challenges of labor outsourcing, which have been exacerbated by global economic disruptions and the COVID-19 pandemic. Jumabhoy et al. (2022) observe that outsourced workers in sectors such as manufacturing and services were disproportionately affected by job losses during the pandemic, particularly in countries with weak labor protections. This observation is echoed in the findings of Gunatilaka and Chandrasiri (2022) in Sri Lanka, where outsourced workers were among the first to be laid off amid the economic downturn. Additionally, the rise of the gig economy has introduced new complexities to traditional outsourcing models. Raiser (2023) highlights the need for adaptive legislation to address the evolving nature of work in this digital era, stressing that current labor laws may no longer be sufficient to protect workers in these increasingly flexible and fragmented employment structures (Gussek & Wiesche, 2021).

In contemporary business environments, the transition of employees from fixed-term contracts to outsourced positions has become increasingly prevalent. However, this practice poses significant challenges for human resource management. A primary concern with outsourcing strategies is the tendency for client organizations to engage solely in the interview process, sourcing candidates through the outsourcing firm, and subsequently deploying these workers. While this may initially seem advantageous, it can inadvertently limit the control that client organizations have over their human resources management. Therefore, it is imperative for business organizations to thoroughly assess the benefits and drawbacks of outsourcing prior to making decisions. By doing so, they can maintain effective and efficient human resource management, ultimately fostering the organization's long-term success. Although outsourcing strategies can offer various advantages, they often introduce challenges that require careful attention. One notable issue is ensuring that workers are aware of their actual employer, which can lead to conflicts in industrial relations (Robinson, Sibala, Ito, & Beyer, 2022).

Moreover, outsourcing can hinder skill development, as tasks are frequently standardized and simplified for easier tracking and evaluation of contract performance. This often results in reduced investment in skills development due to the cost considerations associated with these employment contracts. Additionally, there is a risk of job loss, contingent upon the level of contractual security provided to workers (Grimshaw & Miozzo, 2009; Edvardsson & Teitsdottir, 2015).

According to Halim, Ee, Ramayah, and Ahmad (2014), their research underscores the essential role of service quality in bolstering the relationship between the success of HR outsourcing and the quality of partnerships. The findings indicate that the efficacy of HR outsourcing hinges on the strength of the relationship between business organizations and their service providers. This relationship is significantly influenced by factors such as top management support, commitment, communication, trust, and an understanding of the business context. Moreover, the study identifies service quality as a crucial moderating factor that enhances the connection between HR outsourcing success and partnership quality. These insights provide valuable recommendations for organizations, emphasizing the importance of prioritizing both service quality and partnership quality in the selection of suitable service providers. By doing so, businesses can improve their HR outsourcing outcomes and strengthen their overall operational effectiveness. This perspective aligns with the broader discourse on strategic partnerships and service excellence in the context of outsourcing, highlighting how inter-organizational relationships can significantly impact business performance.

As per research held on labour outsourcing in the manufacturing sector in Sri Lanka by Rathnayake (2016), several significant findings emerged. The study indicated that outsourced employees typically do not remain in their positions for more than five years, primarily due to high turnover rates, as they tend to resign more frequently than their in-house counterparts. To address this issue, the research recommends that organizations consider absorbing outsourced employees into permanent positions after three years of satisfactory performance with the principal employer. Furthermore, the study highlighted that most outsourced employees in Sri Lanka have only completed their ordinary level examinations, with just 35% having passed the advanced level. Unfortunately, these qualifications often do not meet the criteria for higher education. The research also evaluated management empowerment and employee satisfaction, revealing that management viewed outsourcing as ineffective in achieving desired performance levels. The challenges identified include high labour turnover, a lack of long-term commitment from employees, and insufficient initiatives from employers to enhance the skills and capabilities of employees.

Rathnayake (2016) emphasized the importance of fostering interpersonal relationships among the three parties involved in contract labour: the workers, labour suppliers, and business organizations. He recommended implementing attractive HR activities and motivational strategies to build confidence among outsourced employees and improve their performance. Regardless of employment type, organizations should strive to maintain a healthy work environment where all employees, particularly those outsourced, feel valued and treated equitably. This study also explored the link between psychological expectations and new orders for businesses, highlighting that outsourced employees recognize the risk of losing their jobs if new orders are not forthcoming. This dynamic may lead to indirect engagement from new investors, thereby supporting the continuation of outsourced labour contracts in the future. These findings underscore the complexities of labour outsourcing in Sri Lanka and suggest that a strategic approach to human resource management is essential for fostering a stable and productive workforce.

It is significant to highlight that both third-party labour suppliers and business organizations are jointly and severally liable for the payment of wages to outsourced workers, as well as for the provision of employment benefits such as social security contributions and compensation for work performed under a labour supply contract (Fana, Giangregorio, & Villani, 2024). When a principal employer engages a third-party labour supplier for regular labour provision, such an arrangement may be regarded as a 'disguised employment relationship' if the outsourced worker’s role is integral to the principal employer's business. In cases where the relationship is deemed to be disguised employment, the worker is entitled to claim full employment rights from the principal employer. These rights include but are not limited to gratuity, social security, provident and trust funds, leave entitlements, overtime pay, and protections related to termination of employment (Jumabhoy, Adiyasa, Lumsdaine, Lim and Miao, 2022).

Business organizations can enhance their strategies by outsourcing critical processes such as engineering, manufacturing, marketing, and design, which may be challenging to manage internally due to a lack of specialized expertise. By doing so, they gain access to the unique and specialized knowledge of suppliers with expertise in these specific areas. Suppliers with such expertise can bring valuable experience to the organization, helping achieve economies of scale through their proficiency. Therefore, businesses should leverage the capabilities of expert suppliers to manage

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critical processes, thereby gaining a competitive advantage (Saarinen, 2024).

Rathnayake (2016) provides a comprehensive analysis of the relationship between fluctuations in manufacturing demand and the increased reliance on outsourced labour. Outsourced employees are acutely aware of the insecurity of their positions, making them particularly vulnerable to dismissal as per the needs of organizations. This highlights the necessity for businesses to communicate openly with outsourced employees about their roles and the reasons for their employment. Moreover, organizations must take proactive steps to prevent discrimination against outsourced workers and offer education and motivation to foster a positive mindset. However, labour outsourcing is frequently employed as a cost-cutting measure, often resulting in the avoidance of gratuity payments to outsourced workers. Interestingly, the research found that some outsourced employees earn more than permanent staff, leading to a more neutral attitude regarding their tenure with the company. The study also revealed that most outsourced workers held a neutral view when questioned about their employment duration, suggesting that outsourcing is perceived as a low-risk strategy by organizations. To mitigate risks, many companies retain outsourced employees for extended periods. This research underscores the importance of fostering healthy relationships with outsourced employees and ensuring they receive equal treatment. Additionally, it emphasizes the need for attractive human resource activities and motivational initiatives to enhance the performance of outsourced workers.

In conclusion, labour outsourcing has emerged as a widely adopted business strategy, allowing organizations to access specialized skills and manage costs more effectively. However, this approach presents challenges such as limited control over human resource management, reduced opportunities for skill development, and high turnover rates among outsourced workers. Studies emphasize the importance of maintaining strong inter-organizational relationships, fostering healthy work environments, and ensuring outsourced workers are treated equitably. To enhance the success of outsourcing, businesses must focus on strategic partnerships, service quality, and creating motivational initiatives for outsourced workers. By addressing these complexities, organizations can optimize the benefits of labour outsourcing while mitigating its drawbacks.

2.3 Asian Regional Context

This review includes a consideration of how countries with more developed outsourcing practices have tackled similar challenges, particularly in terms of worker protections, fair wages, and social benefits. The review also integrates a diverse selection of journal articles, case studies, and scholarly literature from other jurisdictions that have already developed established legal frameworks for regulating labour outsourcing. Countries such as Malaysia, Indonesia, and the Philippines serve as critical reference points, as their labour laws offer well-documented models for managing the rights and obligations of both employers and outsourced workers. By examining these legal frameworks, the review offers insights into the best practices and pitfalls of outsourcing regulations, providing the study with a broad, comparative foundation.

Furthermore, this literature review serves to identify gaps in both local and Asian regional research. While Sri Lankan legal framework for labour outsourcing is still developing, this review reveals the lack of comprehensive studies on the subject, pointing out areas where the current legal structures fail to adequately protect outsourced workers. By contrast, this review demonstrates how countries with established frameworks have navigated these challenges, offering valuable lessons for the reform of Sri Lankan law. Examining how other jurisdictions regulate labour outsourcing is essential for protecting the rights of outsourced workers and addressing gaps in the Sri Lankan labour outsourcing sector. Insights from foreign journal articles can inform the development of a legal framework that enhances local practices and ensures fair treatment for outsourced workers. Reviewing the research articles below, mainly from other Asian regional countries, will provide valuable guidance for effective policy and regulatory improvements.

2.3.1 Malaysia

In Malaysia, the origins of outsourcing can be traced to the employment of migrant labourers. A significant policy shift in 2005 by the Malaysian government enabled factories and workplaces to hire workers through outsourcing agents or companies. As a result, these outsourced workers do not have a direct employment contract with the organizations they serve, which means they are excluded from joining workplace unions and are ineligible for collective agreement benefits. Under the Private Employment Agencies Act 1981, private employment agencies are recognized as legitimate employers of the migrant workers they

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supply to various business organizations. Although this Act was initially designed to protect migrant workers, it has since been extended to include domestic workers as well. The primary aim of the Act is to support smaller firms that lack the resources to employ migrant workers full-time, as well as larger organizations that may require additional labour during peak production or harvesting seasons. Outsourcing agents are mandated to provide these workers with essential services, including accommodation, transportation, wages, medical checkups, and insurance coverage (Serrano, 2014).

In Malaysia, fixed-term contracts are categorized into two main types: 'contract of service' and 'contract for service.' A 'contract of service' refers to a legally binding employment agreement between an employer and an employee, ensuring specific protections for both parties. In contrast, a 'contract for service' involves an individual providing services to another party without being classified as that party's employee.

In 2010, the Malaysian government introduced the concept of a 'contractor for labour' through an amendment to the Employment Act of 1955, aiming to provide legal recognition for labour suppliers. According to the Employment (Amendment) Act 2012, a contractor for labour is defined as a person who enters into an agreement with a principal, contractor, or sub-contractor to supply the necessary labour for completing all or part of the work assigned to the contractor or sub-contractor by the principal. This amendment sought to legitimize outsourcing practices and facilitate the establishment of trilateral employment relationships. In such relationships, workers supplied by outsourcing agents to business organizations remain employees of the outsourcing provider, even when they perform their duties at the premises of the principal business. However, the law also imposes specific obligations on businesses regarding their treatment of outsourced workers. The Malaysian government views the contractor for labour as the employer of these workers, maintaining this status even after the workers commence their roles at the premises of the principal business.

In 2013, the Centre for Research on Multinational Corporations (CRMC) published a research paper addressing the impact of outsourcing on migrant labour rights within the electronics industry in Malaysia. This study aimed to raise awareness among young entrepreneurs about human rights, social, and environmental issues. The findings revealed that the manufacturing sector of Malaysia is heavily reliant on foreign investment from multinational companies that produce labour-intensive goods. The country is particularly attractive to these businesses due to its low-cost labour force, minimal unionization, and weak labour rights. However, the labour laws in Malaysia are notably restrictive, limiting collective bargaining, freedom of association, and the right to strike.

As per CRMC (2013), workers in the electronics sector face significant challenges in defending their rights, resulting in poor working conditions, low wages, and excessively long hours. Many factory workers are paid meager salaries and subjected to strenuous tasks, all while adhering to tight schedules and enduring prolonged work periods. The industry experiences a high turnover rate, as few Malaysian workers are willing to endure such harsh conditions and low pay. As a result, the electronics industry has become increasingly dependent on migrant workers, who represent 70-80% of the workforce, predominantly women. These migrant labourers are typically not hired directly by factories; instead, they are recruited and migrated through outsourcing agents who oversee the recruitment process. Consequently, these agents have assumed the role of direct employers, bearing the responsibility for compensating the workers.

In line with standard outsourcing practices in Malaysia, the effects of labour outsourcing are experienced by both local and migrant workers. In the country, labour outsourcing agents are referred to by various titles, including manpower suppliers, labour contractors, and outsourcing agents. These agents supply workers to diverse industries, such as manufacturing, construction, and agriculture. Notably, the workers provided by these agents are employed directly by them. Despite significant opposition from Malaysian trade unions and civil society organizations, the Amendment Act was enacted in 2012, introducing a new provision for interpreting the term 'Contractor for Labour.' It is important to distinguish between labour contractors or suppliers and the business organizations known as principal employers, who are accountable for executing the work. Labour contractors or suppliers typically lack the expertise or resources necessary to perform the actual operations, as they do not possess the means or equipment for production or services. Rather, outsourcing providers often function as intermediaries, benefiting from the hard work and sacrifices of the labourers (Hassan, 2013).

In the Malaysian legal context, employers are prohibited from including terms in employment contracts that restrict the rights of employees to

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join a trade union, participate in union activities, or collabourate with other employees to organize unions. However, Article 10(1)(c) of the Federal Constitution 1957 stipulates that only citizens can form trade unions, which effectively excludes migrant workers from establishing their own unions. Nevertheless, migrant workers can join unions established by citizens for collective bargaining purposes.

Labour contractors can serve as employers by supplying workers to various individuals or companies. These outsourcing agencies can function as both recruiters and employers. Article 2(1) of the Employment Act 1955 defines a contractor for labour to enhance accountability among employers hiring foreign migrant workers. This provision addresses the challenges related to accountability when outsourcing agencies or labour brokers act as employers.

Given the complex contractual relationships that may exist between contractors, sub-contractors, and employers, determining the responsible party can be challenging. Although the intention behind this provision was to promote transparency and accountability, it has created ambiguities regarding the legal definition of an employer. This has led to confusion over whether the listed contractor for labour or the company where the worker is actually employed should be regarded as the legal employer. In situations involving workplace accidents or health and safety concerns, both the contractor for labour and the employing business may evade responsibility due to the absence of a direct contractual relationship (ILO, 2018).

In order to enhance knowledge and understanding of challenges in the Palm Oil Industry, Liberty Global Asia (LGA) published a research paper in 2018 titled 'Creating an Environment Safe from Modern Slavery'. This study examines the significant risks associated with current governance, management, supervision, and administration of labour within the sector. It highlights that inadequate management practices and insufficient infrastructure for outsourcing labour have led to widespread instances of workers being underpaid or not paid at all. This issue primarily arises from outsourcing arrangements that impose various levies and recruitment fees through multiple layers of agents, both individual and organizational. Many of these agencies engage in unlawful salary deductions, debt bondage, and theft of wages. Migrant workers, particularly those without proper documentation, are especially susceptible to exploitation and mistreatment in this industry. Additionally, the prevalence of child labour and inadequate health and safety facilities are well-documented concerns affecting workers. Such conditions pose significant risks and financial liabilities for employers who neglect effective human resource practices and fail to implement safeguards to protect their workers.

While outsourcing can provide significant advantages for businesses and government entities, it often compromises workers' rights. Employees hired through outsourcing frequently experience discrimination, facing unequal treatment compared to their directly employed counterparts. These outsourced workers are generally excluded from collective bargaining agreements, meaning they miss out on bonuses and benefits available to regular employees. In many cases, they are compensated solely for the hours they work, lacking access to essential benefits like paid annual leave, sick leave, and maternity leave. The Malaysian Parliament has acknowledged this issue by enacting measures to prevent discrimination based on the status of the worker as local or migrant. However, outsourcing agencies maintain considerable influence over migrant workers, as their employment permits are contingent upon specific employers and locations (CRMC, 2013).

In Malaysia, workers in the plantation sector contribute their labour either directly to plantation companies or through outsourcing providers, regardless of whether their employment status is documented. Regardless of the labour arrangement, the plantation owners reap the benefits of these workers' efforts. Generally, plantation employees engage in various tasks, including pesticide spraying and crop harvesting, earning weekly or monthly wages. Notably, some workers are compensated based on the weight of the harvest they collect. While Malaysian law includes protections for the rights of workers and mandates fair wages, studies show that payment discrepancies remain common, especially among those working under outsourcing agreements. The intricate contractual relationships between plantation entities, outsourcing providers, and workers can lead to conflicting legal interpretations, potentially hindering workers' access to fair compensation and remedies for injustices. Workers without written contracts face additional challenges in securing wage payments and pursuing legal action. Moreover, the lack of formal agreements complicates establishing the employer-employee relationship, which can have significant implications in cases of workplace accidents, illnesses, or other occupational hazards. Although plantation entities may attempt to evade their legal responsibilities by arguing the absence of written contracts, such claims can be contested, given that workers' contributions are integral to the value of the employer's operations. Under Malaysian law, a worker's contributions may be interpreted as implicit consideration for an employment contract formed through conduct (LGA, 2018).

As per research conducted by LGA (2018), certain recruitment agencies that operate with multiple layers may pose significant risks to businesses that utilize their services. Many of these agencies are unregistered and present themselves as representatives of business owners. Although they claim to provide job opportunities to individuals in exchange for a fee, this fee can lead to debt bondage, leaving job seekers financially vulnerable and susceptible to various forms of exploitation. Once individuals are employed, these recruitment agencies often cease to represent the workers, shifting their focus to serve the interests of the plantation owners who manage the workforce and payroll. It is important to highlight that the legal framework governing the payroll deductions made by outsourcing agencies is dictated by distinct legal requirements. Moreover, these outsourcers are obligated to supply information to relevant authorities and ensure that recruitment practices in the plantation sector align with established management policies.

Outsourcing is a strategic business approach that enables organizations to enhance budget flexibility and control by only paying for the services they need, when they need them. This practice allows business organizations to minimize the necessity of hiring and training specialized personnel, thereby reducing both capital and operational expenses. Businesses often choose to outsource to avoid certain costs, such as minor or non-core business expenses, high taxes, elevated energy costs, excessive governmental regulations, and production or labour expenses. A significant advantage of outsourcing labour is that it helps businesses mitigate substantial liability. Since the labour is not directly employed by the organization, the contractual relationship is established between the business and the outsourcing provider. This arrangement shifts the responsibility for any work-related actions performed by the outsourced staff onto the labour supplier. Prior to commencing work at the main business site, each worker must enter into an employment contract with the outsourcer, which places the burden of accountability for any actions whether omissions or commissions on the outsourcer. In this model, the organization does not hold a direct employment contract with the labourers, effectively transferring labour-related liability to the outsourcer. As a result, outsourced workers operate without direct legal safeguards from the business organization (Rahim, Tajuddin, Bakar, & Rahim, 2015).

As per research conducted by LGA (2018), it has come to light that some recruitment agencies are making unauthorized deductions from the wages of workers. These deductions are often attributed to expenses such as medical tests, training, safety equipment, and accommodation. Alarmingly, it appears that employers are transferring these costs to workers through salary deductions without providing clear information about the total amounts owed or what has already been paid. The lack of proper record-keeping and digitization complicates the documentation of instances of debt bondage. To address these issues, it is essential to simplify and better regulate the complex relationships among employers, recruitment agencies, and workers. Workers deserve to receive full compensation for their labour, whether on a monthly basis or calculated based on the amount of harvest collected, as well as any associated benefits that arise from the employer-employee relationship. In cases where an outsourcing agent is tasked with paying wages on behalf of a plantation entity, it can be interpreted that an implied contract exists between the plantation and the outsourcing agent. This agent acts on behalf of the plantation to ensure wage payment, governance, and the fulfillment of liability to the workers once their labour is completed. If workers do not receive their full wages, the responsibility ultimately lies with the plantation company. Should the plantation owner transfer funds to the outsourcing agency for wage payments, but the agency unlawfully withholds those funds, this could constitute a criminal breach of trust.

Building on the findings of the CRMC (2013), the Malaysian manufacturing sector has increasingly turned to outsourcing agents for labour. While migrant workers are now allowed to join trade unions in Malaysia, they face significant obstacles in doing so. Workers supplied through outsourcing agents are not recognized as employees of the factories they work in, which undermines their right to freedom of association. Additionally, outsourcing agents typically supply workers across various sectors, while national and regional trade unions are often sector-specific. This makes it challenging for outsourced workers to establish their own trade unions. Furthermore, these workers are excluded from the collective bargaining agreements that apply within the factories. The practice of employing migrant workers through outsourcing agents, rather than through direct recruitment by factories, effectively bars them from union membership. In contrast, if factories were to directly hire migrant workers and use intermediaries solely for the recruitment process, those workers would have the opportunity to join trade unions.

The betrayal of trust by outsourcing agencies in the industry towards both plantation companies and workers is a significant concern. This breach could have long-term repercussions for plantation companies regarding their responsibilities to workers, especially if it is found that these outsourcing providers act as agents for the plantations. According to the Malaysian Employment Act 1955, employers are prohibited from deducting employee salaries, except in specific circumstances related to debts owed to recruitment agencies by the employees. Reports indicate that some workers have gone without their rightful wages for years, with the responsibility for payment falling on the outsourcing agencies. This situation raises critical questions about whether these agencies are receiving payroll funds and whether those funds are being withheld for personal use or other purposes. Such actions could lead to allegations of criminal breach of trust against the plantation companies (LGA, 2018).

Moreover, CRMC (2013) emphasizes the difficulties faced by migrant workers in Malaysia stemming from their dependence on employers and outsourcing agencies. These workers are often tied to specific industries and employers, making them vulnerable to exploitation. When a worker departs from their outsourcing agency, their work permit becomes invalid, potentially classifying them as an illegal worker. Even if all necessary documentation is in order, migrants can still be deemed technically illegal if the outsourcing agencies or employers incorrectly complete the forms. Additionally, migrants risk becoming undocumented if their employers fail to secure the required permits before their temporary visas expire or neglect to renew existing work permits while still employing them. This issue is particularly pressing in Malaysia, where overstaying is considered a criminal offense, and violators may face imprisonment, corporal punishment, and hefty fines. Employers and housing providers who engage with undocumented migrants may also encounter legal consequences.

In conclusion, despite legal measures intended to uphold the rights of outsourced workers, issues such as wage theft, unauthorized deductions, and inadequate working conditions persist, particularly for those employed under outsourcing arrangements. Whether, the legal framework, while designed to protect outsourced labourers, often fails to fully address their unique vulnerabilities, especially concerning their status and rights as employees. The ongoing reliance on outsourced labour underscores the need for stronger regulatory oversight and enforcement mechanisms to ensure fair treatment and protection for all workers, regardless of their employment status. As Malaysia continues to navigate the intricacies of labour outsourcing, it is imperative to prioritize the rights and welfare of workers, ensuring that they receive just compensation, adequate protections, and the opportunity to engage in collective action. By addressing these fundamental issues, Malaysia can work towards a more equitable and just labour market that benefits both outsourced workers and the economy as a whole.

2.3.2 Indonesia

Research conducted by Rochadi (2019) on the labour response to outsourcing policies in Indonesian industrial-intensive regions reveals that outsourced employees often react with intense and sometimes violent responses. These reactions stem not only from concerns about their rights and entitlements but also from their struggles for self-esteem. Their survival and sense of self-worth are closely tied to their employment status. Unfortunately, these labour struggles have not led to satisfactory results due to the existing divisions among workers, categorized by their employment types, such as regular employees, outsourced workers, hired labourers, and freelancers. This fragmentation, exacerbated by trade union activities, has created a significant rift among workers. The government's lack of intervention in the struggles organized by outsourced workers has further undermined the labour movement. While it can be challenging to justify the negative responses of outsourced workers to outsourcing policies intended to be beneficial, such mechanisms are essential for competing effectively in a volatile business environment. It is crucial to treat all workers outsourced or otherwise with dignity and to ensure they receive adequate entitlements. This approach fosters a more cooperative and productive relationship between labour and industry.

As per Paragraph (2) of Article 27 of the Constitution of the Republic of Indonesia 1945, every citizen is guaranteed the fundamental right to secure decent work and a means of livelihood. Moreover, Article 28D, Paragraph (2) of the Constitution affirms that every individual is entitled to employment, along with fair and equitable remuneration and treatment within the employment relationship. To protect the rights of workers as enshrined in the Constitution, the Indonesian Parliament enacted Manpower Act 2003, which establishes a comprehensive legal framework governing labour activities. This legislation aims to promote positive industrial relations between workers and organizations, while also delineating the responsibilities of both employers and employees. Additionally, the rights of workers to form and participate in trade unions are articulated in Article 5 of Trade Union Act 2000.

Hudiana and Susetyo (2020) conducted a study examining the legal and human rights protections of outsourced labour under Manpower Act 2003. Their research uncovered several challenges related to labour outsourcing, despite the existence of specific legislation governing this sector. The findings indicate that workers affiliated with trade unions possess greater bargaining power in collective negotiations compared to their non-unionized counterparts. However, business organizations often obstruct outsourced employees from participating in union activities, and the non-regular status of these workers complicates their ability to establish unions. When organizations identify outsourced workers interested in union participation, these individuals frequently face discrimination from their peers. While business organizations do not explicitly prohibit or undermine union formation in verbal or written policies, they often take indirect actions against unions by opposing their objectives. In many instances, outsourced workers who express interest in trade union involvement are swiftly reassigned to their immediate employer, as these organizations do not recognize trade unions. To further deter workers from engaging with unions, some are relocated to remote areas far from their homes. Additionally, business organizations may resort to intimidation and discriminatory practices to create barriers against the establishment of trade unions.

Izzati (2017) emphasizes the crucial role of trade unions in prioritizing worker welfare by advocating for job security, fair wages, and safe working conditions, with a strong emphasis on health and safety. The significance of trade unions in protecting the interests of workers and ensuring they are treated fairly and respectfully cannot be overstated. The researcher argues that trade unions play a vital role in safeguarding the rights and entitlements of outsourced employees, providing a pathway for them to join specific unions. However, the lack of supportive provisions in Indonesian law hinders the protection of outsourced workers wishing to become union members, leading to a significant number remaining unrepresented. Several factors contribute to this issue. Firstly, the prevalence of short-term employment contracts diminishes the perceived value of union membership, even though it guarantees the right to associate freely. Secondly, the temporary and unstable nature of labour outsourcing complicates the formation of unions at the workplaces of labour suppliers. Thirdly, outsourced workers often hesitate to join unions due to concerns that doing so might jeopardize their already precarious employment, even when they have the opportunity to participate. The fear of losing job security deters many outsourced workers from pursuing union membership. When workers are not directly employed by a company, it can create a sense of insecurity, discouraging them from joining a union. Nonetheless, trade unions can provide essential stability and security for workers, helping to protect their rights and interests within the workplace.

Labour outsourcing presents significant challenges not only in terms of the laws and regulations that govern it but also in their enforcement by businesses. Hudiana and Susetyo (2020) highlight that the real difficulties lie less in the laws themselves and more in how organizations apply them. Despite protective labour laws, the provisions of Chapter X of the Constitution 1945, and various court rulings, outsourced workers continue to face issues, particularly concerning their welfare benefits. Although legal frameworks and court decisions are designed to protect outsourced employees, in practice, these protections often fall short. For instance, the law imposes penalties, such as fines, for non-compliance with labour regulations. However, problems arise when employers repeatedly renew contracts or enter into long-term outsourcing agreements beyond three years, which should, under labour laws, change the worker's status to permanent. Unfortunately, both businesses and labour suppliers often fail to recognize this status change. To address these ongoing challenges, researchers suggest that the Indonesian government should take a more proactive role in resolving issues related to outsourced labour. Empowering government labour authorities with greater enforcement capabilities could help ensure that critical labour problems are addressed more effectively, fostering better communication between all parties involved.

As per Article 59 of the Manpower Act 2003, workers employed under fixed-term contracts are entitled to a maximum contract duration of two years, with the possibility of a one-year extension. Section 7 of the same article states that if the contract extends beyond three consecutive years, the employment status automatically shifts to permanent. This rule applies to all categories of workers, including those hired through outsourcing arrangements. So, if a contract of an outsourced worker is extended beyond the three-year limit, their status should change from fixed-term to permanent. However, this raises the question of who assumes responsibility for the permanent employment of the outsourced worker. Employers often hesitate to take on this obligation, as outsourced workers typically maintain a formal employment relationship only with the labour supplier. Legally, the labour supplier is regarded as the immediate employer, which suggests that the outsourced worker should become a permanent employee of the labour supplier, not the contracting business organization.

The outsourcing system in Indonesia has long been a source of concern, particularly due to gaps in labour regulations. Izzati (2017) conducted a study on this issue, uncovering some significant insights. Her research focused on how current laws are implemented within the outsourcing sector. She mentioned that outsourced employees do not work for their direct employer. Rather, their daily performance is closely tied to the business of the principal employer. Logically, this should make them permanent employees of the company they serve. However, due to the absence of legal provisions binding outsourced workers to the business organization, this is not the case. To avoid responsibility, both the principal employer and the labour supplier manipulate the system. At the end of the contractual period, the entire outsourced workforce is transferred to a new labour supplier. This allows both employers to sidestep employment obligations. After the maximum three-year contract ends, the labour supplier terminates the agreement with the workers and creates a new contract, often shifting them to a different business. This ensures that these workers never attain permanent status, no matter how long they have worked for the organization. Unfortunately, outsourced workers have little recourse to challenge this exploitative system. With limited options, they are forced to either accept the transfer or lose their job. As a result, their tenure with any single company remains short-lived, perpetuating job insecurity and preventing them from gaining permanent employment status.

The outsourcing sector in Indonesia has faced criticism since the enactment of Manpower Act 2003, which was seen as favoring workers. However, the introduction of the Job Creation Act 2020 has brought a more balanced approach. Aimed at improving the ease of doing business, the law is implemented through Regulation No. 35 of 2021, which addresses key employment issues such as fixed-term contracts, outsourcing, working hours, rest entitlements, and termination. This regulation marks a significant step in balancing the interests of outsourced employees and employers. Previously, fixed-term employment contracts were limited to a maximum of three years with two years initially, with the possibility of a one-year extension. The new regulation extends this period to five years, a change expected to benefit both workers and employers. Additionally, employers are now required to provide compensation to employees at the end of their fixed-term contract if they have worked for at least one month. Those who have worked for 12 months or more must receive compensation equal to one month's wages, while those with shorter service periods will receive proportional compensation based on their tenure.

If a fixed-term contract is extended beyond the initial period, the employer is required to provide compensation at the end of both the initial term and each subsequent extension. However, this requirement does not apply to expatriate employees. A fixed-term contract should only be used for work that is temporary, seasonal, or expected to be completed within a specified or limited timeframe. It is also acceptable for tasks that can be finished within a maximum of five years. Permanent roles cannot be filled through fixed-term contracts. Employers must register fixed-term contracts with the local government manpower service, following the most recent regulations. In most cases, this registration can be completed online, with a three-day deadline for online submissions and a seven-day deadline for manual registrations. Importantly, there are no penalties for late registration. This new regulation is anticipated to have a significant impact on Indonesia's outsourcing sector, with benefits expected for both employers and employees (Setiawan, Firmansyah & Boyd, 2023).

Lieke, Mawuntu, Freederik, and Maramis (2017) highlight that the insufficient legal protections for workers, especially those hired through outsourcing firms, are evident in the repeated violations of labour regulations by businesses that rely on outsourced labour. The lack of a clear classification system to differentiate between core and non-core business activities has led to outsourced workers being assigned tasks directly related to the production process, contrary to legal requirements that dictate they should only engage in non-core activities. To strike a balance between investor interests and safeguard the rights of workers, policymakers need to navigate the complexities of outsourcing while ensuring robust legal protections for all workers.

Ocktavianti, Cahyani, and Nugroho (2021) highlight a critical flaw in the recently enacted Regulation No. 35 of 2021 concerning outsourcing. Because it does not distinguish between core and non-core activities performed by outsourced workers. Businesses typically outsource operational tasks to external parties to concentrate on strategic elements and enhance profitability. However, many outsourced workers find themselves engaged in tasks integral to the core business rather than solely supporting functions. This discrepancy undermines the expectations established by labour legislation and calls for a more nuanced understanding of outsourcing complexities to ensure a balance between investor interests and the legal protections afforded to workers.

In Indonesia, the outsourcing system has been adversely affected by numerous challenges, with a significant issue being the lack of clarity regarding the appropriate use of outsourced labour. The Manpower Act 2003 explicitly states that outsourced work should not be related to the core activities of the organization. However, Article 66(1) of this law does not clearly define what constitutes the core or non-core functions of an organization. Consequently, many outsourced workers are assigned tasks connected to the core operations or production processes of a business, resulting in confusion and potential legal complications.

Addressing the critical issue of labour outsourcing is paramount due to its profound implications for both businesses and outsourced workers. Organizations need a comprehensive understanding of their core activities to make well-informed outsourcing decisions, while outsourced workers must be aware of their job roles and the legal rights they hold. By clearly defining core activities, the Indonesian government can enhance security for both businesses and workers, fostering a more stable and productive outsourcing system that benefits all parties involved.

As noted by Izzati (2017), the implementation of equal treatment for all employee categories in Indonesia is essential to dispel the misconception that outsourced workers are less effective. The principle that the status of worker should not determine their rights and benefits is particularly relevant to labour outsourcing. Ensuring that outsourced employees receive the same rights and protections as permanent staff is a crucial step toward promoting fairness and preventing discrimination in the workplace. If the law guarantees equal entitlements for outsourced workers, it could potentially weaken the influence of Indonesian trade unions in their efforts to abolish outsourcing.

Article 66(1) of the Manpower Act 2003 prohibits principal organizations from utilizing workers supplied by labour suppliers to perform their core business activities. However, the law does not define or interpret what constitutes a company's core operations. Consequently, it falls to the principal employer and the labour supplier to determine which activities are considered core and which are non-core. This lack of clarity has led to the unlawful use of outsourced personnel in core business functions of organizations.

Nonetheless, the labour outsourcing industry has seen significant improvements with the introduction of Regulation No. 35 of 2021. This new regulation eases restrictions on the types of work that can be outsourced, now permitting work deemed core to be outsourced. Previously, outsourcing was confined to tasks that could be distinctly separated from the core operations of the business entity. Under the new regulation, even work related to essential functions, such as production and manufacturing, can be legally outsourced. This development represents a positive shift, potentially leading to a more effective and productive outsourcing system in Indonesia (Setiawan, Firmansyah & Boyd, 2023).

As per Indonesian law, two key legislations provide legal protections for outsourced workers in cases of termination during the contract period. These legislations are the Manpower Act 2003 and the Job Creation Act 2020. The Regulation No. 35 of 2021 serves as an implementing regulation for certain provisions of the Job Creation Act 2020. The Job Creation Act 2020 is a comprehensive law aimed at streamlining regulations and boosting investment in Indonesia. Regulation No. 35 of 2021 likely provides specific guidance and details on how certain aspects of the Job Creation Act 2020 will be implemented in practice. However, conflicts have emerged due to inconsistencies between the Manpower Act 2003 and the Job Creation Act 2020 which is outlined in Article 17 of Regulation No. 35 of 2021. Both laws aim to protect the rights of workers in the event of contract termination, but they contain contradictory provisions.

Specifically, Article 62 of Manpower Act 2003 stipulates that either the employer or the worker must compensate the other based on the remaining contract duration. In contrast, Article 17 of Regulation No. 35 of 2021 mandates that compensation be based on the length of service provided by the worker in the event of termination. This discrepancy raises questions about the intent of Indonesian lawmakers regarding the compensation of employers in cases of early termination by outsourced employees, who are typically engaged in temporary rather than permanent roles, with an average employment tenure of three years. Consequently, outsourced workers should be allowed the flexibility to seek better job opportunities without undue obstacles. Unfortunately, the provisions of Article 62 of Manpower Act 2003 hinder the ability of the outsourced workers to exit contracts with labour suppliers as needed.

It is essential to harmonize the provisions of the Manpower Act 2003 and the Job Creation Act 2020, particularly in relation to the treatment of outsourced workers whose contracts are terminated prematurely. Chamdani, Nasution, Suhartono, and Hufron (2022) propose two legal principles that can help resolve potential conflicts between these laws. The first is the principle of lex specialis derogat legi generali, meaning that specific laws take precedence over general ones when both address the same subject matter and are in conflict. In this context, Manpower Act 2003, which provides specific regulations on labour outsourcing, should override the more general provisions of the Job Creation Act 2020. Accordingly, in cases of dispute, Article 62 of the Manpower Act 2003 should prevail. The second principle is lex posterior derogat legi priori, which states that newer legislation supersedes older laws if both regulate the same issue and contradict one another. In this case, Article 17 of Regulation No. 35 of 2021 which implemented the Job Creation Act 2020, as the most recent legal framework, would take precedence over Article 62 of the Manpower Act 2003 based on this principle. In practical terms, both employers and workers retain the right to specify which legal framework governs their employment contracts in the event of early termination during the contract period.

In 2011, the Indonesian Constitutional Court issued its ruling in the case of Gugus S. Handok and Others v. The Government of Indonesia (2011), declaring certain provisions of Manpower Act 2003 to be conditionally unconstitutional. The decision of the court stemmed from the observation that when a principal business organization changes its labour supplier, the existing regulations governing fixed-term employment contracts through outsourcing do not adequately protect the rights of current outsourced workers. To rectify this gap, the Transfer of Undertaking Protection of Employment (TUPE) rules were introduced in Indonesia to safeguard the rights of outsourced employees.

According to the TUPE principle, if an outsourced worker employed by provider A has been working for an extended period at client enterprise Z, and Z subsequently opts for a different outsourcing provider, B, then provider B can continue the remaining work for Z along with the outsourced workers from provider A. In such cases, both enterprise Z and the new service provider B are required to maintain the same terms, conditions, duration of service, and benefits for the workers as stipulated in their contracts with the previous provider A (Setiawan, Firmansyah & Boyd, 2023).

In conclusion, the issue of labour outsourcing in Indonesia presents significant challenges, both for workers and businesses. The complex legal landscape, coupled with the frequent misuse of outsourcing arrangements, has contributed to widespread worker dissatisfaction and exploitation. Despite the existence of legal frameworks like the Manpower Act 2003 and Regulation No. 35 of 2021, the rights of outsourced workers remain insufficiently protected, particularly concerning job security and union participation. The inconsistent application of these laws, especially regarding contract termination and the ambiguous distinction between core and non-core activities, further complicates the situation.

It is clear that a more cohesive approach is needed, one that harmonizes the various labour laws and provides clear guidelines for businesses. Equal treatment of outsourced and permanent employees, along with stronger enforcement mechanisms, will be crucial in promoting fairness and stability in the labour market. Additionally, empowering trade unions and encouraging government intervention in labour disputes could help ensure that outsourced workers are treated with dignity and respect, ultimately fostering a more cooperative and productive relationship between labour and industry.

2.3.3 Philippine

Triangular or trilateral employment relations, common in the Philippines, involve three key parties known as the principal employer, the contractor or subcontractor, and the workers. The Labour Code acknowledges this arrangement and sets regulations to protect workers' rights. In the landmark case of Philippine Telegraph and Telephone Company v. NLRC (1997), the Supreme Court ruled that while parties can form their own

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agreements, these must adhere to the law, morality, public order, and public policy. The Court stressed that the relationship between capital and labour is not purely contractual; it must align with public interest and serve the common good.

In such employment relationships, the direct employer is legally recognized as an independent contractor. The case of Naguiat v. NLRC (1997) further defined an independent contractor as someone who operates autonomously, executing specific tasks using their own methods, and is only accountable to the principal for the results of their work. Additionally, the law mandates that workers engaged through contractors or subcontractors must receive the same benefits as regular employees, including compliance with minimum wage standards. The principal employer holds the responsibility for ensuring that contractors or subcontractors meet these labour requirements.

Macaraya (2006) conducted a study on workers' protection in the evolving employment landscape of the Philippines. The research found that in the late 1980s, many Philippine businesses underwent reorganization in response to heightened competition, leading to the rise of subcontracting. This shift was largely driven by the growing market rivalry spurred by global economic expansion. Initially, subcontracting was limited to services such as janitorial, maintenance, and security tasks. However, in more recent years, it has expanded into more complex areas, including roles traditionally performed by permanent employees, such as manufacturing and related operations. Subcontracting has now become a key strategy for businesses to manage fluctuating demand and reduce production costs by employing fewer regular workers. Even large, unionized corporations like Manila Electric Company (Meralco), Philippine Long Distance Telephone Company (PLDT), Philippine Appliance Corporation, and Shoe Mart (SM) have embraced subcontracting in response to globalization. For instance, PLDT outsourced its line-laying operations and laid off all its linemen, while Meralco subcontracted its meter-reading services, resulting in the removal of its meter readers. Similarly, Shoe Mart sought out lower-cost manufacturers and engaged freelance dealers to promote its products, thereby boosting revenue. Likewise, the Philippine Appliance Corporation outsourced its delivery services, leading to the dismissal of its entire delivery crew.

Workers employed through contractors or subcontractors often face job insecurity, as their continued employment depends on the renewal of the contract between their direct employer and the principal company. In the Philippines, two types of triangular work arrangements exist: service contracting and labour contracting. Service contracting involves a principal employer hiring a contractor or subcontractor to perform a specific task or service, with the contractor providing the necessary workers. For instance, a security firm may be engaged to protect a business premises. In such triangular or trilateral employment relationships, the workers are considered employees of the contractor, not of the principal employer. This principle was affirmed in the case of Philippine Bank of Communications v. National Labour Relations Commission (1986), where the Supreme Court clarified that under Article 106 of the Labour Code 1974, there is no employer-employee relationship between the principal employer and the workers of the contractor. Consequently, these workers remain solely under the employment offered by the contractor. It is important to highlight that labour contracting arrangements are subject to legal regulations. Contractors must register with the Department of Labour and Employment to ensure compliance with labour laws, distinguishing these agreements from traditional business contracts.

When a principal employer enters into a contract with a manpower agency to supply workers, this arrangement is commonly known as labour contracting. For such a contract to be considered valid, the contractor must be actively engaged in the business of providing manpower and must possess sufficient capital to carry out a specific task or project. It is important to highlight that the law prohibits labour-only contracting. This occurs when a contractor or subcontractor merely provides workers for a job, work, or service without having the necessary capital or investment to undertake the job independently. In these cases, the employees supplied by the contractor perform tasks that are directly related to the core business of the principal employer, which is also unlawful. To be recognized as a legitimate contractor or subcontractor, an individual or company must operate as a separate and independent business. They must take full responsibility for the work performed and conduct operations according to their own methods and procedures. The principal or client should not exert control or direction over the contractor's work, except regarding the desired outcomes. Additionally, the contractor should have significant investments or capital and ensure that their contractual employees are afforded labour rights and comply with occupational safety and health standards. Furthermore, the agreement between the principal and contractor should guarantee the rights of workers to self-organization, access to social and welfare benefits, and job security (Macaraya, 2006).

Asuncion (2019) conducted a study examining labour flexibility in the Philippines and the challenges associated with corporate social responsibility (CSR) compliance. The findings indicate that many factories have adopted subcontracting as a strategy to minimize labour costs while satisfying buyer demands. However, this approach often results in a neglect of obligations toward workers involved in the production of goods and services. It also enables factories to dismiss employees without adhering to proper protocols. The study reveals that such abuses of subcontracting have led to labour-only contracting, which is explicitly prohibited. Despite the requirement for subcontractors to register and obtain licenses from the Department of Labour and Employment, this labour arrangement frequently infringes upon the rights of workers. Additionally, the research highlights the vulnerable status of cooperative workers within subcontracting frameworks. Although these workers are managed by cooperative leadership, they are not officially recognized as factory employees and, as a result, are deprived of the benefits they are entitled to. Identified as owner-members of the cooperative, they lack a formal avenue to address grievances regarding poor working conditions. This predicament mirrors the challenges faced by self-employed individuals, who bear sole responsibility for their well-being.

Macaraya (2006) highlights specific situations in which a principal may opt to engage contractors to safeguard the interests of permanent employees. These situations typically arise when there is a temporary or occasional need for work or services, often due to a sudden surge in demand for products or services, or when specialized expertise is required to enhance the management or operations of the enterprise. Outsourcing is permissible for various types of work, including casual labour, janitorial services, security, landscaping, and messenger duties, as well as tasks unrelated to the manufacturing processes within manufacturing establishments. Additionally, contracting may be necessary to facilitate the introduction or promotion of new products or services that do not directly align with the principal business's core operations. Moreover, specialized tasks requiring unique skills, expertise, tools, or equipment may also warrant the use of contractors, as well as substitute services during the absence of regular employees. When utilizing contractors for substitute services, it is essential that the deployment period coincides with the duration of the absence, and that this arrangement is clearly communicated to the substitute worker at the time of engagement.

Asuncion (2019) argues that subcontracting practices enable factories to circumvent issues related to collective bargaining and the right to freedom of association for their core workers, whose numbers are deliberately minimized. By outsourcing their work to subcontractors, factories evade their responsibilities as employers, as they do not recognize these workers as regular employees. Consequently, these workers are denied social security and insurance benefits. This approach allows factories to maintain low labour costs while still fulfilling buyer demands. Additionally, subcontracting arrangements enable factories to outsource their workforce, paying subcontractors a fixed service fee, while the subcontractors bear the responsibility for compensating their workers based on the output delivered, irrespective of whether this payment meets minimum wage requirements.

In December 2011, an amended subcontracting law was enacted to establish applicable labour standards aimed at protecting workers in this context. According to the current regulations, subcontracted workers employed through manpower agencies are entitled to legal protections such as work hours, minimum wage, overtime pay, and service incentives. However, the law's provisions concerning job security for subcontracted employees are vaguely articulated, leading to challenges in understanding the extent of their job security. It remains uncertain whether these workers enjoy job security under the subcontractor or if their status resembles that of fixed-term employees, who only have security during their contract term. This ambiguity generates confusion and uncertainty for subcontractor employees, highlighting the need to address these issues to ensure fair treatment and the protection of their rights. The effectiveness of the amended law in enhancing worker protections in these situations remains to be seen.

Macaraya (2006) emphasizes that workers employed by contractors should receive the same rights and benefits as regular employees and be treated accordingly. Contractors are legally required to adhere to labour standards and protective provisions established by law. The principal employer is responsible for ensuring that both contractors and subcontractors meet all legal obligations, including providing job security for their employees. However, for workers of contractors, job security often proves to be more of an illusion, as the principal employer can demand the replacement of any contractor's workers at any time, leaving employees vulnerable to job loss. Moreover, occupational hazards pose significant risks for contractor workers, necessitating adequate protection while they work on the principal employer's premises. The Department of Labour and Employment performs inspections at work sites to ensure compliance with safety regulations. Contractors and subcontractors are legally obligated to provide their workers with the necessary safety equipment. Additionally, employees engaged in triangular or trilateral relationships are entitled to social security benefits. Contractors and subcontractors must register their employees with the Social Security System, as mandated by Philippine law. The principal employer is responsible for ensuring that the contractor or subcontractor fulfills this legal requirement. Noncompliance may result in joint and several liabilities for both the principal employer and the contractor or subcontractor.

According to De Guzman, Filio, Salvanera, and Rabanal (2019), employers are not legally required to consult with employees about outsourcing decisions. However, it is advisable to engage in such discussions when feasible. When a trade union or workers' council exists, notifying them of planned outsourcing can help alleviate potential negative impacts on employees. Article 211(g) of the Labour Code 1974 grants workers the right to participate in policy and decision-making processes that affect their rights, benefits, and welfare, subject to specific regulations. While obtaining employee consent is not always necessary, employers should ensure that employees are informed about any actions that may affect their rights and welfare. Additionally, under Article 248(c) of the Labour Code 1974, outsourcing services or functions currently performed by union members is considered an unfair labour practice in the Philippines. Employers often engage in such practices to undermine or discourage employees from exercising their rights to organize.

Employees working for contractors or subcontractors have the legal right to join or form trade unions for collective bargaining and other related activities. However, they cannot participate in trade unions representing regular employees of the principal employer. In the Philippines, the right to collective bargaining is confined to existing employer-employee relationships, which do not extend to the relationship between the principal employer and workers provided by contractors or subcontractors. While workers employed by contractors or subcontractors can engage in collective bargaining with their direct employers, they are not permitted to negotiate with the principal employer. Additionally, these employees can partake in union activities against their direct employers but must refrain from initiating strike actions on the principal employer's premises. Engaging in such union activities may be classified as a criminal offense rather than a labour dispute. In the event of a strike, workers from contractors or subcontractors may be called to appear in court to address both criminal and civil liabilities (Macaraya, 2006).

In conclusion, the triangular or trilateral employment relationships common in the Philippines present unique challenges and complexities. The Labour Code 1974 acknowledges these arrangements, establishing regulations to protect the rights of workers. However, issues such as job insecurity, lack of worker benefits, and potential abuses in subcontracting practices continue to undermine labour protections. Landmark cases like Philippine Telegraph and Telephone Company v. NLRC (1997) and Naguiat v. NLRC (1997) emphasize that labour agreements must align with public interest and legal standards, reinforcing the independent status of contractors while holding principal employers accountable for labour standards. Despite some advancements in labour regulations, labour outsourcing remains a double-edged sword, offering flexibility to businesses but often at the expense of worker security and rights. Moving forward, ensuring stronger enforcement of existing laws and clearer regulations on job security for outsourced workers are crucial to safeguarding the welfare of workers within these employment arrangements.

2.4 Sri Lankan Context

This literature review conducts an in-depth examination of seminal works that provide a foundational understanding of labour outsourcing within the Sri Lankan context. These texts offer historical, legal, and socio-economic perspectives on the evolution of labour outsourcing in Sri Lanka and the challenges it presents. The review draws on a wide range of sources, including early studies documenting the rise of outsourcing, key legal texts that define outsourcing practices, and analyses of their impact on outsourced workers and business organizations.

Sarveswaran (2011) stated that "legislature has enacted many legislations to regulate employer – workman relationship, and provide for terms and conditions of employment,

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social benefits, job security and settlement of industrial disputes. As these legislations are applicable only to employer – workman relationship". In the absence of such a relationship, Sri Lankan labour legislation does not apply to workers, regardless of whether the nature of the services they provide implies a contract of employment.

In his study, Sarveswaran (2011) primarily emphasizes the differentiation between employees and independent contractors. This analysis plays a crucial role in identifying the categorization of workers in outsourced arrangements. However, the author does not address labour outsourcing directly across various sectors or industries. Further, he does not provide a comparative analysis with practices in other jurisdictions, leaving a gap in understanding how these distinctions might differ globally.

In the article regarding the Contract of Employment; A Critical Analysis, Egalahewa (2021, p.13) stated as follows:

Human Resource managers using new expressions and words for old concepts. Outsourcing never meant to outsource individual employees to fill vacancies in the regular workforce. What they are referring to as 'outsourcing' is probably recruitment through an agent which is called 'contract labour'. The system of contract labour is not covered by any special law in Sri Lanka. Unlike in India we have no law covering this mode of employment. By resorting to contract labour, the main objective of the business community is to avoid the responsibilities of being an employer and avoid labour law specially the law relating to termination and terminal benefits.

Further, Egalahewa (2021) illustrates the stance of the court in the case of Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979). In this case, since the business owner directly recruited the outsourced workers, the court held that "there is evidence that every incidence of employment was by Moosajees and that Upasaka Appu was a puppet. It appears fairly clear that this was a device adopted by the petitioner to escape the liabilities of an employer". In here, Moosajees operated as the business owner, while the Upasaka Appu functioned as the labour supplier.

Moreover, Egalahewa (2021) mainly examines the traditional employment contracts, offering valuable insights into the contractual dynamics between employers and outsourced workers. This analysis is crucial for comprehending the legal relationships that underpin labour outsourcing. Nonetheless, this study does not specifically address the unique challenges and complexities associated with labour outsourcing, nor does it offer a comparative perspective that could enhance understanding of how these issues are managed in different legal systems.

Amerasinghe (2009) provides a comprehensive contextual framework for understanding labour outsourcing within Sri Lanka's broader legal and regulatory environment. This study is instrumental in situating labour outsourcing within the national context.

According to Amerasinghe (2009), in the case of Carson Cumberbatch & Co. vs Nandasena 1974, 77NLR73(CA), the Supreme Court held that "an agent would not be considered an employer unless the agent had failed to make it known that he was acting as an agent and the workman therefore considered him as the employer". In accordance with the view of the Court, a labour supplier can only be regarded as the employer of the outsourced labour if he doesn't disclose his status as an agent of a principal employer. In the event that he appears as the agent of a principal employer, he will not be recognized as the employer of the outsourced labour.

However, Amerasinghe (2009) lacks a focused examination of labour outsourcing as a distinct phenomenon, missing an opportunity to delve deeper into the specific legal challenges and implications unique to outsourcing practices.

Rathnayake (2016) delivers a targeted analysis of labour outsourcing within the manufacturing sector, exploring the implementation practices and their broader implications. He explains that the shift in political leadership in 1977 under Hon. J R Jayewardene led to economic reforms and industry liberalization in Sri Lanka. Supported by loans from the World Bank, IMF, and other organizations, the country moved from government to private sector production. Acts No. 22 and 23 of 1985 facilitated privatization, transforming government businesses into public companies and boosting private investment. By 1990, 46 public entities were privatized, driving demand in the manufacturing sector and increasing labour costs. To cut costs, Sri Lankan industries turned to labour outsourcing, establishing it as a primary cost-cutting strategy.

However, Rathnayake (2016) does not extend his analysis to other significant industries, nor does it fully explore the legal and regulatory frameworks that govern labour outsourcing, thus limiting its applicability to other sectors.

Chandra (2009) offers an in-depth analysis of the employment relationship within the Sri Lankan legal framework, which is crucial for understanding labour outsourcing. The study elucidates the legal definitions of employment relationships and their implications for outsourced workers. Chandra explores various legislative interpretations, including the Industrial Disputes 1950, which characterizes an 'industrial dispute' as a conflict between an employer and a 'workman,' defined as any individual working under a contract with an employer. Similarly, the Termination of Employment of Workmen Act 1971, the Trade Unions Ordinance 1935, the Maternity Benefits Ordinance 1939, the Payment of Gratuities Act 1983, and the Workmen's Compensation Ordinance 1934 all define 'workman' or 'worker' in terms of traditional employment contracts. These statutes primarily address direct employer-employee relationships within the context of conventional employment contracts. Consequently, Chandra concludes that these traditional labour laws do not extend protection to outsourced workers, who do not have a direct employment contract with the businesses utilizing their services through external manpower suppliers.

With reference to the aforementioned definitions of the workman in the statutes in Sri Lankan, Chandra (2009, p.10) asserted as follows:

The definitions in the above Statutes which are favorable to employees has sometimes resulted in Employers adopting ways and mean of avoiding the statutory duties caste on them for example employing labour through a Labour Contractor. However, case law in Sri Lanka is indicative of the fact that such methods have been failures as the tendency is to bring the employee under the definition of the term "workman". In this case The Fertilizer Corporation employed labour through a third party with whom there was a contractual agreement to supply labour. However, it was shown that the Corporation had exercised control over the employees supplied by the third party and that the contract entered into between the corporation and the third party was a subterfuge to overcome the application of the labour laws. It was held that the Corporation was the employer of the employees.

However, like many other studies, Chandra (2009) lacks a comparative analysis with other jurisdictions and does not thoroughly explore how the defined scope of employment relationships impacts the legal protections available to outsourced workers, leaving a critical aspect of the issue underexplored.

In conclusion, the literature on labour outsourcing in Sri Lanka presents a nuanced understanding of the complexities surrounding legal frameworks, worker categorization, and the impact on labour rights. While various studies have contributed significantly to defining employer-employee relationships and highlighting the challenges of outsourcing, gaps remain in areas such as comparative analysis with other jurisdictions and the examination of sector-specific practices. The legal ambiguity surrounding outsourced workers in Sri Lanka, particularly in the absence of direct employment contracts, underscores the need for reforms that can provide clearer protections and address the evolving nature of labour outsourcing.

2.5 Literature Gaps

The Sri Lankan literature on labour outsourcing provides initial insights into employment classifications and contract structures but lacks the depth and scope observed in studies from Southeast Asia, Latin America, and Europe. For instance, Sarveswaran (2011) examines the distinction between employees and independent contractors, which is essential for understanding outsourced arrangements. However, his analysis does not extend to legal challenges specific to sectors or industries, unlike research from Malaysia, such as the study done by Serrano (2014) on the Private Employment Agencies Act. Serrano's work demonstrates how this act affects outsourcing in various industries, including electronics, addressing issues such as worker categorization and legal protections with specificity that is not seen in the Sri Lankan studies. This gap reveals an area where Sri Lankan research could benefit from incorporating more focused, sector-specific analyses to understand better the varied legal dynamics in outsourcing.

Similarly, Egalahewa (2021) examines the contractual nature of employment in traditional settings, shedding light on the legal relationships between employers and outsourced workers. However, his work does not specifically address the unique complexities that arise within labour outsourcing, nor does it explore these issues in a comparative context. In contrast, Malaysian research provides more nuanced insights into the challenges faced by outsourced workers. For example, Hassan (2013) explores migrant labour rights, especially in relation to legal protections, while Hudiana and Susetyo (2020) delve into the specific protections under Indonesia's Manpower Act of 2003, discussing its implications for trade unions and non-unionized outsourced workers. These studies offer a model of sector-focused research that could enhance Sri Lankan literature, allowing it to account for differences across industries in legal protections and the structure of outsourcing.

Additionally, while Amerasinghe (2009) provides valuable insights into employment contracts and their general legal implications, the study does not present labour outsourcing as a distinct phenomenon. The research could have benefited from an in-depth analysis of legal challenges unique to outsourcing practices. Similarly, Rathnayake (2016) limits his analysis to one primary industry without exploring the broader legal and regulatory frameworks governing labour outsourcing in Sri Lanka. This approach contrasts with research from Latin American countries, where studies often explore cross-industry issues in detail. In Peru, for example, the introduction of Decree N-001-2022-TR prohibits outsourcing in core business activities, illustrating how legal frameworks can shape labour outsourcing practices across various industries. This decree highlights the importance of regulatory specificity, an aspect largely absent in Sri Lankan studies that have yet to address such sector-wide regulatory issues.

Further comparative insights emerge in the Philippine context, where labour rights cases like Philippine Telegraph and Telephone Company v. NLRC (1997) and Naguiat v. NLRC (1997) underline the importance of aligning labour agreements with legal standards and public interest. These cases provide a framework for understanding how legal definitions and protections impact outsourced workers, an approach that could strengthen Sri Lankan research. Egalahewa (2021) examines employment contracts but does not specifically address the rights of outsourced workers through court cases, a gap that could be filled by analyzing local or regional case law relevant to outsourced labour. Philippine case law reveals how Sri Lankan studies could benefit from similar judicial analysis, particularly to examine how outsourcing impacts worker rights and protections in Sri Lanka.

2.6 Critical analysis of the literature in selected jurisdictions

Labour outsourcing across Malaysia, Indonesia, the Philippines, and Sri Lanka reveals deep, complex intersections of legal frameworks, socio-economic factors, and challenges for workers, particularly those in outsourced and migrant labour positions. Outsourcing, initially seen as a strategy to reduce costs and increase business flexibility, has evolved into a contentious issue where legal gaps and weak enforcement exacerbate workers' vulnerabilities and inequalities.

In Malaysia, outsourcing practices, particularly in the manufacturing and plantation sectors, reflect a heavy reliance on migrant labour, with legal provisions like the Private Employment Agencies Act 1981 offering recognition to outsourcing agents as employers of migrant workers. This legal recognition has often been exploited to bypass direct employment contracts, resulting in workers being excluded from union membership and collective bargaining rights (Serrano, 2014). The situation mirrors Indonesia's, where outsourced workers face significant barriers to union participation due to discriminatory practices and intimidation from employers (Hudiana & Susetyo, 2020). The legal gap between 'contract for service' and 'contract of service' in Malaysia is reflected similarly in Indonesia's system, where regulatory ambiguity regarding fixed-term contracts and outsourcing for core tasks allows businesses to bypass workers' rights to permanent employment and fair compensation (Setiawan, Firmansyah & Boyd, 2023).

In both Malaysia and Indonesia, outsourcing practices have also perpetuated precarious working conditions. The electronics sector in Malaysia, where migrant workers make up a significant proportion of the workforce, faces wage exploitation, long hours, and poor labour rights protections (CRMC, 2013). This resonates with Indonesia, where workers are often stuck in short-term contracts, and practices such as reassigning workers to new suppliers prolong their status as temporary workers, thus circumventing the benefits of permanent employment (Izzati, 2017). While both countries have legal frameworks meant to protect workers, including health benefits and wages, enforcement is weak, and loopholes often leave workers unprotected, resulting in exploitation.

Meanwhile, the Philippines presents a distinctive legal context with its triangular or trilateral employment relations, a system that involves the principal employer, the contractor, and the worker (Macaraya, 2006). The Labour Code's provisions on subcontracting arrangements have been a double-edged sword—intended to regulate outsourced work, but often bypassed by businesses to avoid labour obligations such as social security and collective bargaining (Asuncion, 2019). Subcontracted workers in the Philippines face the challenge of legal insecurity, where employment is contingent upon the contractor's agreement with the principal employer, creating job insecurity. This insecurity is exacerbated by the limited ability of subcontracted workers to exercise union rights, as they can only negotiate with their direct

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employers, not the principal employers who are ultimately responsible for their working conditions (Macaraya, 2006). This scenario is comparable to Sri Lanka, where outsourced workers are excluded from legal protections such as the Industrial Disputes Act and the Termination of Employment Act (Chandra, 2009), making them vulnerable to exploitation without recourse to formal legal support. In Sri Lanka, while there is some recognition of attempts to bypass employer liabilities through third-party contracts, the lack of specific laws addressing contract labour remains a critical gap, similar to the challenges faced by subcontracted workers in the Philippines and the outsourced migrants in Malaysia and Indonesia.

The interaction between outsourcing and worker rights has been a point of contention in all four countries, where the legal system's failure to keep pace with business practices leaves workers vulnerable. For instance, Malaysia's amendments to the Employment Act 1955, introducing the concept of "contractors for labour," were intended to protect workers but have instead blurred the lines of responsibility between principal employers and outsourcing agents, often resulting in disputes over workplace safety and wages (ILO, 2018). Similarly, in Indonesia, Regulation No. 35 of 2021 sought to address some of the issues related to outsourcing and compensation but lacked penalties for non-compliance, rendering it less effective in ensuring workers' rights are fully respected (Setiawan, Firmansyah & Boyd, 2023). The Philippines has also been criticized for allowing businesses to exploit the subcontracting system to minimize labour costs at the expense of worker security (Asuncion, 2019).

One of the most glaring issues in these countries is the exclusion of migrant workers from unionization and collective bargaining, which is particularly acute in Malaysia and Indonesia. In Malaysia, migrant workers' dependence on specific employers for valid work permits has left them vulnerable to legal and administrative lapses that exacerbate their precarious position (LGA, 2018). Similarly, Indonesia's outsourced workers, often subjected to short-term contracts, face difficulties in securing permanent status and forming unions, despite constitutional guarantees for decent work (Izzati, 2017). In both countries, weak enforcement of labour laws and legal gaps allow for exploitative practices to persist, undermining workers' rights to fair wages, job security, and adequate working conditions.

In contrast, Sri Lanka's historical approach to outsourcing reflects the limitations of its existing legal frameworks, which do not extend adequate protections to outsourced workers. The legal distinction between employees and independent contractors in Sri Lanka has led to many workers in outsourced arrangements being left without the full rights and benefits provided under employment law (Sarveswaran, 2011). While there have been legal challenges to the misuse of outsourcing terminology, such as in the Moosajees Limited case (1979), these cases highlight the systemic issue of insufficient legal safeguards for outsourced workers, a problem shared across the region.

In conclusion, outsourcing in Malaysia, Indonesia, the Philippines, and Sri Lanka is a practice deeply rooted in economic and legal frameworks that frequently leave workers, particularly migrants and subcontracted employees, vulnerable to exploitation. Despite various legal protections and regulations intended to safeguard workers' rights, gaps in enforcement, ambiguous legal definitions, and the dominance of outsourcing agents and employers in controlling working conditions contribute to a system that often undermines fair treatment and economic security. To address these challenges, all four countries must harmonize their labour laws, improve regulatory enforcement, and strengthen protections for workers, especially those in outsourcing arrangements, to ensure that the benefits of global labour practices are more equitably distributed.

2.7 Summary

While Sri Lankan literature establishes foundational knowledge of labour outsourcing, it lacks the sector-specific depth, comparative focus, and regulatory analysis observed in studies from Southeast Asia. Addressing these gaps by incorporating sectoral perspectives, regulatory insights, and cross-industry analyses would enrich Sri Lankan research and provide a more comprehensive legal framework for managing labour outsourcing and safeguarding the rights of outsourced workers. Then, it became evident that there is a pressing need for additional research focused on the legal perspectives surrounding this issue. Such research should include a comprehensive comparative analysis that examines relevant legal frameworks and practices in different jurisdictions. By doing so, it can be identified the appropriate legal and regulatory requirements, highlight gaps in existing laws, and explore how various legal systems address the challenges faced in this area. This comparative approach will not only enhance the understanding of the legal landscape but also provide valuable insights for

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developing effective policies and recommendations tailored to our specific context.

CHAPTER 3: THEORETICAL FRAMEWORK AND RESEARCH METHODOLOGY

3.1 Theoretical Framework

Labor outsourcing has emerged as a prominent strategy for business organizations aiming for flexible labour handling. However, this strategy often results in unequal treatment of outsourced workers compared to the primary employer's regular employees. Due to their indirect employment relationship, outsourced workers are typically excluded from labor protections, allowing principal employers to establish separate labor practices, which can lead to unfair or discriminatory treatment. Addressing this inequality is essential, recognizing the significant contributions of outsourced workers to organizational success.

This chapter provides the theories in brief that are in relation to labour outsourcing which was more fully described in the previous chapter Literature Review, focusing on Sri Lankan context to highlight these dynamics. The theory of non-discrimination is central, underscoring the ethical and legal necessity of fair treatment regardless of employment status. It assesses whether outsourced workers receive equitable compensation, benefits, job security, and working conditions, aligning with both national and international labor standards for equal treatment. Non-discrimination theory forms a moral and legal basis for advocating reforms to protect outsourced workers from unjust disparities.

The theory of justifiable classification, meanwhile, examines if differences in worker treatment are based on legitimate factors, such as job requirements or contract terms, rather than arbitrary biases. This theory helps analyze whether variations in pay, benefits, or security between outsourced and regular employees are proportionate to their respective roles. If outsourced workers perform similar duties yet experience different treatment, this theory helps determine if such distinctions are reasonable or unfair.

Together, these theories provide an essential framework for evaluating labor outsourcing practices. The theory of non-discrimination emphasizes equal treatment, while justifiable classification allows for fair distinctions grounded in rational factors. By combining these perspectives, researchers can assess whether labor outsourcing practices foster inequities or are justified based on lawful reasons. These theories guide the development of policies promoting fair and ethical employment practices within labor outsourcing frameworks.

3.1.1 Theory of non-discrimination

The theory of non-discrimination centers on the principle that all individuals should be treated equally, regardless of factors like race, gender, religion, or nationality. It is a core tenet in international human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which affirm equal access to opportunities and protections against unjust treatment (United Nations, 1948; United Nations, 1966; ILO, 2003).

In Sri Lanka, labor outsourcing is a widespread practice where organizations source labor from external suppliers, often resulting in discriminatory treatment of outsourced workers. Compared to in-house employees, outsourced workers may receive lower wages, lack job security, have limited access to benefits, and face poorer working conditions due to their indirect employment status. The Sri Lankan Constitution of 1978 contains provisions promoting equality and protecting against discrimination. This includes Section 12, which can be interpreted to ensure that outsourced workers are treated fairly under the same legal protections as other employees.

Despite these constitutional protections, outsourced workers are frequently denied equal treatment. The ‘sameness’ model of non-discrimination, which advocates uniform treatment, may overlook the structural inequalities faced by these workers, while the ‘difference’ model supports measures to uplift disadvantaged groups, acknowledging that equal treatment alone does not equate to true equality. The 'transformation' model calls for structural change to address systemic discrimination (Rees, 1998, as cited in Lindsay, Munro, & Wise, 2007; Parker, 2003, as cited in Lindsay et al., 2007; Callerstig, 2014).

In alignment with these models, the International Labour Organization (ILO) underscores that discrimination traps individuals in low-paid and insecure jobs, reinforcing inequality. The ILO’s Convention No. 111 on Discrimination prohibits any distinction that impairs equality in employment, and urges member states to eliminate discrimination through national policies (ILO, 1958).

Outsourced workers in Sri Lanka struggle to access the same benefits as direct employees, as their immediate employers cannot provide these, and principal employers are hesitant to engage on

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such issues. The lack of specific legal protections for outsourced labor leads to structural discrimination, revealing gaps between Sri Lankan laws and the principles of equality upheld by international labor standards. A comparative analysis of labor outsourcing practices and non-discrimination laws across jurisdictions indicates that the unequal treatment of outsourced workers, solely due to employment status, warrants reevaluation under Sri Lankan law.

3.1.1.1 Principle of equal protection of laws

The principle of equal protection of laws is also a subset of the broader theory of non-discrimination. This principal is deeply connected to non-discrimination, especially relevant in labor outsourcing. Although outsourcing can provide business advantages, it poses challenges to fair treatment for all workers, regardless of employment status. Key issues include defining legal responsibilities, enforcing labor standards, protecting worker rights, and promoting transparency. Addressing these challenges requires a coordinated effort to ensure adherence to equal protection laws, so all workers receive equal rights and protections.

According to the Constitutional Law course book of the OUSL (1985), “Equality before the law requires that the laws of the land shall be enforced against all persons equally without any distinction being made on any ground whatsoever” (p.90). It further explains that equal protection ensures everyone can stand before the law on equal terms, enjoying the same rights and bearing the same burdens as others in similar situations (cited from Row v. State of Madras, 1951).

Equal treatment in workplaces should extend to outsourced employees, who should receive the same benefits as regular staff for performing similar work. Izzati (2017) recommended that the principle of equal rights be integrated into outsourcing regulations, ensuring that outsourced workers receive equal conditions in areas like working hours, pay, maternity rights, and protections for young workers. This principle would reduce job insecurity for outsourced workers and address existing legal ambiguities.

3.1.1.2 Theory of just and equitable

The theory of just and equitable is also an another subset of the broader theory of non-discrimination. Ensuring fair treatment for both regular and outsourced employees when they work together is essential, though achieving absolute equality can be challenging for principal employers. Adopting a ‘just and equitable’ approach, especially concerning outsourced labor, may offer a practical solution. This principle of ‘just and equitable’ emphasizes fairness and impartiality, with ‘just’ signifying adherence to fairness and the law, and ‘equitable’ reflecting justice tailored to individual circumstances.

According to De Silva (1997) in Some Concepts of Labour Law (as cited in OUSL, 1990), the idea that what is just is also equitable suggests equity aligns with natural law or justice. OUSL (1990) elaborates that ‘natural law’ represents an ideal higher than ‘positive law,’ or the law as it currently exists. This distinction is critical to understanding fairness, as illustrated in Peiris v. Podisingho (1978), where the court noted that a just and equitable order must reflect what a fair-minded person would recognize as such. Similarly, in Richard Peiris and Co. v. Wijesiriwardene (1962), the court ruled that justice and equity should be measured within legal frameworks, not merely from kindness. Further, in Manager Nakiadeniya Group v. Lanka Estate Workers (1977), the court asserted that a just and equitable order should consider the interests of employees, employers, and society, supporting a balance in social legislation.

3.1.1.3 Freedom of speech, assembly, association, occupation, and movement

Freedom of speech, assembly, association, occupation, and movement are also essential components of the broader theory of non-discrimination. Section 14 of the 1978 Constitution of Sri Lanka guarantees key fundamental rights relevant to labor outsourcing, including the freedoms of speech, assembly, association, occupation, and movement. These rights empower outsourced workers by supporting their ability to advocate for fair treatment, organize collectively, choose their employment, and seek better opportunities, thereby fostering a fairer and more just labor environment.

Freedom of speech allows outsourced workers to openly address issues regarding working conditions, wages, and discrimination without fear of retaliation. This freedom encourages a workplace culture where workers feel secure in voicing concerns about unfair practices, discrimination, or other grievances, whether through management discussions, union participation, or media engagement.

The freedoms of assembly and association enable outsourced workers to organize, form unions, and participate in collective bargaining. In labor outsourcing, where protections and benefits may be minimal, these freedoms are essential, allowing workers to unite in negotiating for better wages and conditions, and to advocate collectively for their rights within the labor system.

Freedom of occupation permits individuals to select their employment and working conditions, safeguarding the right of outsourced workers to pursue jobs that align with their skills and aspirations. This freedom also helps protect workers from exploitation, fostering fair labor practices and empowering workers to seek just and equitable employment.

Freedom of movement ensures outsourced workers can explore job opportunities across various regions and industries, which is crucial in an outsourcing context where job availability may fluctuate. This freedom allows workers to pursue better positions without restriction, promoting a dynamic labor market where they can escape unfavorable working conditions.

In essence, Section 14 of the Constitution significantly bolsters the rights of outsourced workers in Sri Lanka by promoting essential freedoms that support advocacy, organization, fair employment, and mobility. This foundation not only strengthens the standing of outsourced workers but also contributes to a more equitable labor environment in the country.

In summary, the theory of non-discrimination advocates for equal treatment of all. In Sri Lanka, labor outsourcing creates disparities, with outsourced workers often facing lower wages, limited benefits, and job insecurity. While the Sri Lankan Constitution promotes equality, enforcement for outsourced workers remains inadequate. The International Labour Organization (ILO) highlights how discrimination deepens employment inequality, underscoring the need for equal protection of laws to ensure all workers, including outsourced ones, receive fair wages, benefits, and working conditions. The theory of ‘just and equitable’ further emphasizes that justice must consider individual circumstances, with court rulings illustrating a need for balanced fairness in labor relations. Additionally, constitutional rights like freedom of speech, assembly, and association empower outsourced workers to advocate for their rights and organize collectively. Upholding non-discrimination is essential for fair labor practices and a more equitable work environment in Sri Lanka.

3.1.2 How Non-Discrimination relates to equal treatment and fair compensation The theory of non-discrimination encompasses rights to equal pay, fair compensation, benefits, freedom of association, access to occupational health and safety facilities, collective bargaining, and welfare facilities. This principle is significant in outsourcing, as seen in cases like Raj Diamonds (Pvt) Ltd v. Weerakoon (1993), Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985), and Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979). These rulings emphasize that employment status depends on substantive control over workers rather than contractual labels, ensuring outsourced workers' rights to fair wages and benefits. For example, in Raj Diamonds, the court prioritized substantive control in determining employment relationships, aligning with non-discrimination principles to protect contractual workers. Similarly, Ceylon Mercantile Union highlighted fair compensation and reinstatement rights for outsourced workers, asserting that employers remain accountable for workers' rights regardless of contract terms.

Outsourced workers often face inequities such as lower wages, limited access to benefits, and exclusion from collective bargaining. The absence of specific legislation in Sri Lanka exacerbates these issues, allowing employers to sidestep responsibilities like fair compensation and occupational health protections. In Moosajees Limited, the court found that a labor contractor was used to evade employer obligations, establishing that significant control by the business over workers justified equitable treatment and remuneration. These rulings underscore that equal pay is foundational to non-discrimination, as reflected in Section 12 of the Sri Lankan Constitution, which prohibits discrimination and ensures equality.

The principles of fair compensation and rewards, including bonuses and benefits, are critical for addressing disparities between outsourced and regular employees. Affirmative action under the Sri Lankan Constitution supports the advancement of disadvantaged groups, reinforcing equitable remuneration for equal work. Non-discrimination policies ensure fair access to workplace benefits like healthcare, retirement plans, and paid leave, which are often restricted to full-time staff, creating a discriminatory environment. Freedom of association and collective bargaining empower outsourced workers to advocate for better conditions, preventing further discrimination. Occupational health and safety protections are equally vital, ensuring outsourced workers performing hazardous tasks receive the same safeguards as direct employees. Welfare facilities, including access to sanitary and medical support, affirm the dignity and equity of all workers.

International frameworks such as ILO Convention No. 111 of 1958 promote equality in employment, resonating with Sri Lankan constitutional provisions that mandate equal treatment under the law. Addressing workplace discrimination is essential for individual welfare and labor market productivity. Eliminating discrimination enhances motivation and competitiveness, fostering a more equitable workforce.

3.1.3 Theory of justifiable classification

The theory of justifiable classification, or justified discrimination, addresses the ethical and legal considerations of classifying individuals or groups by specific criteria. This theory is particularly relevant to outsourced workforces, stressing the importance of avoiding arbitrary discrimination based on race, gender, or nationality, and instead classifying based on job performance, skills, or qualifications. Legal principles dictate that classifications should serve a legitimate state interest and be non-arbitrary, treating similar situations alike and different situations justifiably distinct (Perera, 2020; Pillai, 2019).

In legal assessments, justifiable classification helps determine if laws or policies differentiating groups are constitutionally valid, ensuring fairness, equity, and rationality. For instance, in Elmore Perera v. Montague Jayawickrema (1985), the court ruled against discrimination when reasonable classification based on actual distinctions was evident (OUSL, 1985). The theory supports merit-based evaluations and inclusive environments for outsourced employees, contributing to overall organizational productivity. Embracing diversity within this framework also encourages perspectives that enhance workplace function (Lindsay et al., 2007).

Critics argue that 'difference' models may unintentionally reinforce labor market inequalities (Jewson & Mason, 1986, as cited in Lindsay et al., 2007). They suggest that a 'transformation' model, which redefines the standards of equality, may instead be more productive for workplace inclusivity. In the case of outsourced workers, legally mandated employment contracts with the immediate employer establish minimum standards, while distinctions between outsourced and regular employees may be justified if based on objective factors, such as differing job responsibilities or contractual obligations. This theory provides a framework to assess the fairness of distinctions made between outsourced and directly employed workers under Sri Lankan law, balancing non-discrimination with efficiency.

3.1.4 How Justifiable Classification relates to equal treatment and fair compensation

The theory of justifiable classification is central to addressing disparities faced by outsourced workers within labor law. It legally and ethically justifies distinctions between workers based on roles, contributions, and employment status. In Uttar Pradesh Rajya Vidyut Utpadan Board vs. Uttar Pradesh Vidyut Mazdoor Sangh (2009), the Indian Supreme Court highlighted the complexities of comparing regular and outsourced workers, emphasizing factors like job nature, responsibilities, and skill requirements. The court noted that trustworthiness and accountability significantly influence task perception, necessitating a qualitative evaluation beyond mere workload.

In Hindustan Steelworks Construction Ltd. vs. Commissioner of Labour and Others (1996), the liability of the principal employer for wage discrepancies among contract workers performing similar duties as permanent employees was analyzed. Although work similarities were acknowledged, no obligations were imposed on the employer, reflecting a lack of judicial advocacy for wage parity, which leaves contract workers vulnerable to compensation disparities.

The Sri Lankan Constitution of 1978, under Section 12, emphasizes equality and non-discrimination, which supports fair treatment for outsourced workers. However, wage and benefit disparities persist, challenging the principle of equal pay. In Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979), the court found that attempts to classify labor contractors as separate entities to avoid employer responsibilities were unjustifiable. Similarly, in Raj Diamonds (Pvt) Ltd v. Weerakoon (1993), the court recognized an employer-employee relationship despite contractual claims, focusing on actual working conditions and employer control. Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985) highlighted that agreements not involving workers could not undermine genuine employer obligations, reinforcing the priority of employment realities over formal contracts.

The Sri Lankan Constitution allows affirmative action to support disadvantaged groups, addressing vulnerabilities of outsourced workers and prohibiting discrimination under Section 12(1). Models of equal opportunity, such as the sameness, difference, and transformation approaches, provide frameworks to address structural inequalities. The difference model advocates positive discrimination to uplift marginalized groups, while the transformation model seeks systemic change.

Legal precedents like Moosajees Limited (1979), Raj Diamonds (1993), and Ceylon Fertilizer Corporation (1985) demonstrate the necessity of recognizing true employment relationships to ensure equitable protections. The Indian Supreme Court's decisions in Uttar Pradesh Rajya Vidyut Utpadan Board (2009) and Hindustan Steelworks Construction Ltd. (1996) reflect a narrower interpretation of wage parity, contrasting with Sri Lankan judicial stances. These comparisons highlight the need for legal reforms to protect outsourced workers and eliminate discriminatory practices. Justifiable classification upholds fairness in evaluating roles and compensation, supporting reforms to ensure workplace inclusivity and equitable treatment.

3.1.5 Conclusion

The theories of non-discrimination and justifiable classification often conflict when applied to outsourced workers, as they embody different approaches to workplace fairness and equality.

Non-discrimination theory advocates that all workers, regardless of status or employment type, should be treated equally. It calls for equality in wages, benefits, working conditions, and career opportunities, with no unjust distinctions based on characteristics such as race, gender, or employment classification. From this view, outsourced workers should enjoy the same rights and protections as direct employees to avoid inequality or exploitation.

Justifiable classification, however, allows for distinctions between worker groups if based on reasonable, objective, and legally sound criteria. For instance, it argues that treating outsourced and direct employees differently may be valid if rooted in differences in job responsibilities, qualifications, or contractual obligations. This theory sees unequal treatment as non-discriminatory if based on legitimate factors aligned with legal intent.

The contradiction between these theories lies in their opposing stances: non-discrimination minimizes differences in treatment, while justifiable classification defends differentiation based on reasonable criteria. For outsourced workers, this creates tension: non-discrimination suggests disparities are unfair, particularly if outsourced workers perform similar tasks but receive less pay or fewer benefits, while justifiable classification accepts these disparities if justified by contractual or role-based differences.

This contradiction presents challenges in defining when treatment differences become discriminatory. For outsourced workers, the clash of these theories can lead to complex employment scenarios, where they may face contractual classifications justifying different treatment while experiencing perceived inequality and exclusion. These two contradictory theories should be carefully balanced through the Policies and regulations to prevent the exploitation or exclusion of outsourced workers, by allowing organizational flexibility and legal compliance. Ultimately, non-discrimination and justifiable classification offer opposing perspectives on workplace fairness, creating a complex and sometimes challenging dynamic for outsourced workers in their employment experiences.

3.2 Research methodology

The methodology of this research is based on two fundamental approaches: the doctrinal research method and the comparative analysis method. Each of these methods plays a distinct role in investigating labor outsourcing laws, providing both depth and breadth to the study's analysis.

The doctrinal legal research method involves an in-depth examination of the legal principles and provisions surrounding labor outsourcing in Sri Lanka, as well as in Malaysia, Indonesia, and the Philippines. This method focuses on analyzing existing laws, regulations, judicial decisions, and authoritative interpretations to gain insight into how labor outsourcing is structured and regulated within these jurisdictions. The doctrinal approach enables a comprehensive understanding of the statutory frameworks, including labor codes, outsourcing-specific provisions, worker protection laws, and any related regulations. By thoroughly exploring these legal sources, the research aims to clarify the specific rights and obligations related to labor outsourcing within each country’s legal system. Additionally, this analysis considers the practical application of these laws, shedding light on how they impact both outsourced workers and employers, and highlighting the legal complexities and potential areas of ambiguity within the frameworks.

Building on the doctrinal findings, the comparative analysis method provides a systematic comparison between Sri Lankan labor outsourcing laws and those of Malaysia, Indonesia, and the Philippines. This approach examines critical areas such as worker protection standards, employer obligations, regulatory oversight, and enforcement mechanisms. By comparing these elements across different legal systems, the comparative method aims to uncover both strengths and weaknesses in Sri Lanka's approach to labor outsourcing. Specific focus is given to how each jurisdiction addresses key issues, including workers' rights, benefits, job security, health and safety measures, and legal recourse options for outsourced employees. This comparative perspective also helps to identify gaps or inconsistencies in Sri Lankan law by benchmarking against the practices and protections established in the other jurisdictions.

Ultimately, this two-pronged methodology combining doctrinal research with comparative analysis allows the study to not only map out the current legal landscape of labor outsourcing in Sri Lanka but also to propose informed recommendations for legal reform. These suggestions aim to enhance worker protection, clarify employer responsibilities, and align Sri Lankan laws more closely with best practices observed internationally. By integrating these methodologies, the research seeks to contribute to a more robust, equitable, and legally sound framework for labor outsourcing in Sri Lanka.

3.2.1 Doctrinal research method

This study seeks to comprehensively outline and analyze the legal provisions governing labor outsourcing within Sri Lankan legal framework. It involves a meticulous examination of the country's existing statutes, regulations, and judicial interpretations that specifically relate to labor outsourcing. The research will closely investigate how these legal elements define the rights and responsibilities of both outsourced workers and employers, as well as how they address regulatory requirements, compliance standards, and enforcement mechanisms. By understanding these domestic legal parameters, the study aims to clarify the strengths and limitations within the current framework, identifying areas where reforms may be necessary to enhance worker protection, ensure fair treatment, and support balanced employer obligations.

In addition to this domestic focus, the study expands its scope to provide an extensive analysis of labor outsourcing laws in Malaysia, Indonesia, and the Philippines. This includes a thorough review of each country's legislative frameworks, regulatory guidelines, and relevant case law. By studying how these jurisdictions handle labor outsourcing, the research will explore how they address key issues such as worker rights and protections, employer responsibilities, regulatory oversight, and the general structure of the outsourcing framework. Through this comparative analysis, the study aims to highlight the strengths and weaknesses of each legal system and derive valuable insights that could inform potential reforms in Sri Lanka.

This research employs a doctrinal methodology, rooted in the Latin term doctrina, meaning instruction, knowledge, or learning. This methodological approach emphasizes the analysis of legal concepts, principles, case law, statutes, and regulations, synthesizing various norms and interpretive guidelines to systematically explain and justify segments of the law within a broader legal system (Hutchinson and Duncan, 2012). Doctrinal research is designed to identify fundamental legal principles, interpret their meanings, and apply them to specific legal contexts. It relies on established legal methods for interpreting statutes and case law, such as textual, purposive, and historical analysis (Magyar, 2019). In this study, the doctrinal approach is employed to examine and interpret the legal frameworks of Sri Lanka, Malaysia, Indonesia, and the Philippines, with the objective of understanding and comparing how each jurisdiction approaches labor outsourcing.

Ultimately, the aim of this study is to identify any legal gaps in Sri Lankan labor outsourcing sector relative to the approaches observed in the other jurisdictions. By uncovering these gaps, the research seeks to provide informed recommendations for legal reform. These proposed reforms are intended to address potential deficiencies in worker protection, clarify employer responsibilities, and enhance the regulatory framework to align more closely with international standards, thus creating a fairer and more comprehensive legal foundation for labor outsourcing in Sri Lanka.

3.2.2 Comparative analysis method

The comparative analysis can be used by a researcher to better understand their home jurisdiction by analyzing how other jurisdictions handle the same issue. This method can also be used as a critical analytical tool to distinguish particular features of a law (Bhagyamma, 2023).This study conducts a thorough analysis and comparison of labor outsourcing laws across selected jurisdictions, specifically focusing on Sri Lanka, Malaysia, Indonesia, and the Philippines. The primary objective is to identify legislative gaps within the current framework governing labor outsourcing in Sri Lanka by juxtaposing it with the legal provisions established in the other jurisdictions. This comparative legal analysis will be structured into three key stages to ensure a comprehensive examination of the topic.

The analysis begins with a descriptive comparison, outlining the statutory frameworks governing labor outsourcing in each selected jurisdiction. This involves exploring relevant laws, regulations, and guidelines to establish a foundational understanding of how each country structures its legal provisions. The comparison highlights similarities, differences, and the guiding principles behind these frameworks. Next, the functional comparison examines the practical application of these laws, assessing their effectiveness in protecting outsourced workers. This includes analyzing enforcement mechanisms, benefits, and dispute resolution processes through case studies and empirical data to determine whether legal provisions translate into meaningful protections or reveal gaps in practice. Finally, a critical evaluation identifies deficiencies in Sri Lankan labor outsourcing laws by comparing them with the approaches of Malaysia, Indonesia, and the Philippines. This analysis pinpoints areas where Sri Lanka's framework falls short and offers recommendations for improvement by drawing on best practices from the other jurisdictions.

The comparative analysis method is vital for elucidating the differences and similarities between various legal systems. This method enables researchers to gain insights into how different jurisdictions tackle similar issues, such as labor outsourcing, by revealing the strengths and weaknesses inherent in domestic laws. By contrasting the regulatory approaches across countries, this analysis not only enhances the understanding of relevant legal concepts but also informs policymakers and stakeholders in decision-making processes. Furthermore, it uncovers gaps in the law and illuminates potential avenues for reform, thus providing a comprehensive view of the legal landscape and fostering a more informed dialogue about labor outsourcing regulations (Bhagyamma, 2023).

In summary, the structured approach of this study to comparative legal analysis will contribute significantly to identifying the gaps in legislation in the Sri Lankan labor outsourcing framework while simultaneously offering insights and recommendations drawn from the practices observed in Malaysia, Indonesia, and the Philippines. This comprehensive examination aims to pave the way for meaningful reforms that enhance worker protections and ensure a fair and equitable labor outsourcing environment.

3.2.3 Research Approach

This research builds on empirical findings from secondary data in previous studies, which reveal that current laws in Sri Lanka fall short in safeguarding the rights and entitlements of outsourced workers. These findings point to a significant gap in protection for this workforce segment, often subjected to disparities in rights compared to permanent employees. Consequently, this study aims to shed light on the limitations of Sri Lankan legislation in addressing the specific needs of outsourced workers. By comparison, other jurisdictions, including Malaysia, Indonesia, and the Philippines, have enacted targeted labor outsourcing regulations that afford stronger protections. This difference underscores the study's central hypothesis: that Sri Lankan labor laws may lack the necessary provisions to effectively protect outsourced workers' rights and entitlements. Given the qualitative nature of this study, the hypothesis is implied rather than explicitly tested through quantitative methods.

The research undertakes a comparative analysis of the legal frameworks in these jurisdictions to assess whether specific legal provisions in Malaysia, Indonesia, and the Philippines contribute to greater security and rights for outsourced workers. The analysis examines legislation on outsourcing practices, employment rights, and worker entitlements, comparing them with existing labor laws in Sri Lanka to qualitatively evaluate the implied hypothesis that 'prevailing labor laws in Sri Lanka are inadequate to ensure the protection of outsourced workers.' This process is carried out in stages, beginning with the definition of the hypothesis, followed by a systematic comparison of the legal frameworks from the three selected jurisdictions, and culminating in a conclusion that assesses the extent of protection available under Sri Lankan labor laws. This structured approach, rooted in deductive reasoning, allows the study to draw conclusions on the adequacy of Sri Lankan labor laws in addressing the unique needs of outsourced workers.

3.2.4 Selection of Maritime Southeast Asian countries for the analysis

This study is based on secondary data and employs a qualitative doctrinal research method, which focuses on examining and analyzing legal texts, policies, and relevant literature. Therefore, it does not utilize probability sampling techniques, nor does it rely on traditional non-probability sampling methods. Instead, secondary data was gathered from credible and trustworthy sources, specifically from selected Southeast Asian countries, namely Malaysia, Indonesia, and the Philippines, whose legal frameworks in labor outsourcing are well-developed and clearly governed by specific statutes.

For comparative purposes, the researcher's view was important in selecting these Southeast Asian countries. This selection method is a type of non-probability technique where the researcher exercises expertise and discretion to choose a sample that is likely to provide accurate and relevant information efficiently. This method allows the researcher to target sources that align closely with the research objectives, saving time and resources while ensuring data relevance (Adeoye, 2023). In this study, the chosen selection technique based on the intention of the researcher facilitated a targeted choice of countries with comprehensive legislation on labor outsourcing. The legal frameworks of these nations are particularly well-equipped to address the unique challenges of outsourced labor, providing valuable insights into the research questions at hand.

Additionally, the choice of Malaysia, Indonesia, and the Philippines was not based solely on the intention of the researcher. Specific criteria and justification were applied to ensure these countries met the objectives of the study. The rationale behind their selection is based on the alignment of their economic, industrial, and legal landscapes with the situation in Sri Lanka, particularly in terms of labor outsourcing regulation and the protection of the rights of outsourced workers. The thorough justification for this selection ensures that the data used in this comparative analysis is not only accurate but also aligned with the broader goals of the study.

3.2.5 Basis for choosing Maritime Southeast Asian countries for the analysis

The labor outsourcing laws of Malaysia, Indonesia, and the Philippines are particularly relevant for comparison with Sri Lankan law due to several important factors. Firstly, these Southeast Asian countries share economic and industrial contexts similar to Sri Lanka. Like Sri Lanka, they have transitioned from primarily agrarian economies to more industrialized and service-oriented ones. This transformation has led to a significant rise in labor outsourcing, necessitating the development of legal frameworks to regulate such practices and to safeguard the rights of outsourced workers. This economic parallel makes their legal approaches especially pertinent to the current situation in Sri Lanka.

Secondly, the labor markets in Malaysia, Indonesia, and the Philippines are characterized by substantial informal employment and a high prevalence of outsourced labor, much like the situation in Sri Lanka. As these nations have undergone rapid industrialization and urbanization, outsourcing has become a common strategy for organizations aiming to reduce labor costs and increase operational flexibility. In response, these countries have implemented legal frameworks to address the unique challenges faced by outsourced workers, focusing on reducing exploitation, improving working conditions, and securing social protections. The evolution of these legal systems provides valuable insights for Sri Lanka as it seeks to modernize and enhance its own labor laws to better protect outsourced workers and address the distinct issues within its labor outsourcing sector (McKenzie, 2018; Serrano, 2014).

In Southeast Asia, countries like Malaysia, Indonesia, and the Philippines have established comprehensive legal frameworks that strive to balance economic growth with the protection of worker rights. These countries enforce standards for wages, working conditions, and social security specifically for outsourced workers. Both labor providers and principal employers bear defined responsibilities, which contributes to a more equitable employment landscape.

Conversely, in South Asia, countries such as the Maldives, Pakistan, and Bangladesh still face challenges with informal labor practices and have limited legal protections for outsourced workers. India presents a unique case, where various states have amended the primary outsourcing law to meet local needs, leading to diverse applications of labor outsourcing regulations across the country. In this context, the legal frameworks of Southeast Asian nations align more closely with the goals of safeguarding worker rights in rapidly developing economies like Sri Lanka (Bhattacharjee, 2019).

Moreover, these Southeast Asian countries are part of regional economic alliances like ASEAN, which fosters the harmonization of labor standards across member states. This regional cooperation has led to progressive labor laws and policies that could serve as models for Sri Lankan labor outsourcing sector. In contrast, the South Asian Association for Regional Cooperation (SAARC) has not reached comparable levels of labor law standardization, highlighting the Southeast Asian region as a more relevant model for Sri Lanka when considering legal frameworks for labor outsourcing.

3.2.6 Criteria for Comparative Analysis of Labor Outsourcing Regulations

To conduct a comprehensive comparative analysis of labor outsourcing regulations across selected countries, this study examines the

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following key criteria such as the responsibilities of principal employers, the terms and registration of contracts, work standards, and the rights and protections provided to outsourced workers under labor outsourcing frameworks. Sri Lankan law will be evaluated based on these criteria through a comparative analysis of the legal frameworks in Malaysia, Indonesia, and the Philippines.

Based on the criteria outlined above, this study will conduct a comparative analysis to evaluate the current legal mechanisms in Sri Lanka governing labor outsourcing in relation to the established legal frameworks in Malaysia, Indonesia, and the Philippines. This study examines Employment Act No. 265 of 1955 of Malaysia, as amended in 2012, along with key cases such as Trident Malaysia Sdn Bhd v. National Union of Commercial Workers (1987) and Ipoh City & Country Club Berhad v. Mohd Khurshaid Ramjan Din (2006). In the context of Indonesia, it considers the Manpower Act of 2003, Regulation No. 19 of 2012 (regarding contracting partial work to other companies), Regulation No. 35 of 2021 (concerning employment agreements for specific periods, outsourcing, working hours, rest time, and employment termination), and the Constitutional Court decision in Case No. 27/PUU-IX/2011. For the Philippines, it includes the Labour Code of 1974, Department Order No. 174, and the cases Philippine Telegraph and Telephone Company vs. NLRC (1997) and Naguiat vs. NLRC (1997). The literal rule, also known as the 'plain meaning rule,' is a principle of statutory interpretation applied in this study, where the words are given their ordinary, natural, or dictionary meaning without looking beyond the text itself. By systematically comparing the statutes in these three countries, the analysis aims to identify similarities, differences, and potential gaps in Sri Lankan legal framework concerning the rights and protections of outsourced workers, as well as the obligations and liabilities of both labor suppliers and business organizations.

3.2.7 Data collection

This study uses a comprehensive approach to analyze labor outsourcing laws, incorporating primary, secondary, and tertiary legal sources to navigate their complexities. Primary sources include constitutions, statutes, specific legislation, judgments, case law, regulations, parliamentary records like Hansards, circulars, and government gazettes, which together provide the legal framework and insights into legislative intent, judicial interpretations, and ongoing reforms. Secondary sources, such as books, journal articles, research papers, theses, census data, and conference proceedings, offer critical analysis, empirical data, and context for understanding outsourcing trends, worker rights, and the socio-economic impacts of regulations. Tertiary sources, including legal dictionaries, encyclopedias, guide books, bibliographies, and web materials, clarify terminology, summarize concepts, and provide practical insights, ensuring contemporary legal discussions are addressed. The research systematically organizes and interprets these sources to explain labor outsourcing laws, comment on interpretations, identify legal connections, and clarify ambiguities. It also addresses criticisms and suggests improvements to enhance the understanding and practical application of these laws for workers and employers.

3.2.8 Categorization

In this study, data categorization begins with a detailed assessment of similarities among legal provisions within specific laws governing labor outsourcing in Malaysia, Indonesia, and the Philippines, following the criteria outlined above. The primary objective is to analyze and interpret provisions from statutes in these jurisdictions, applying predefined criteria to establish a structured comparison. This process requires a nuanced approach to recognizing both commonalities and unique aspects of each provision, carefully noting where substance aligns across jurisdictions as well as where it diverges based on the specific categorization points defined.

The next stage involves identifying the most significant legal and regulatory requirements from this categorized data. By aligning equivalent legal provisions under a common set of criteria, the study aims to provide a clear understanding of the scope and content of these data sets, particularly focusing on how they align with the legal provisions from the statutes of Malaysia, Indonesia, and the Philippines. This categorization helps isolate the provisions that show common regulatory trends or practices across these countries, offering valuable insights into shared legal approaches to labor outsourcing.

Once these provisions are categorized, they are easy to compare with the laws and regulations in Sri Lanka. This kind of comparative analysis is designed to facilitate the identification of similarities and gaps in the legal frameworks across the selected countries, arranging these provisions for efficient retrieval and side-by-side comparison. Such well-categorized legal provisions are essential not only for understanding cross-jurisdictional legal trends but also for purposes of legal discovery, ensuring compliance, and aiding policymakers in developing a more informed regulatory approach to labor outsourcing.

3.2.9 Data analysis

The data analysis for this study is structured to systematically evaluate and synthesize the legal frameworks governing labor outsourcing in Sri Lanka, Malaysia, Indonesia, and the Philippines. Utilizing the predefined criteria established earlier, this analysis will focus on identifying both similarities and differences in the legal provisions and practices across these jurisdictions.

The initial stage involves mapping out the legal frameworks of each country in terms of their organizational structure and the specific statutes governing labor outsourcing. This analysis will categorize the laws based on several aspects, including legal definitions, employer responsibilities, and worker protections. It will identify how each jurisdiction defines labor outsourcing and the scope of work that can be outsourced, as well as examine the obligations placed on both principal employers and labor suppliers regarding worker welfare, including health and safety measures. Additionally, the analysis will delve into the protective measures in place for outsourced workers, such as rights to fair wages, grievance mechanisms, and anti-discrimination policies.

Next, the study will evaluate the effectiveness of the regulatory mechanisms implemented in each jurisdiction. This involves assessing how effectively labor rights are enforced and how violations are remedied, including reviewing case studies on labor disputes and their resolutions. The analysis will also consider the compliance standards set for labor suppliers and how adherence to these standards is monitored. Furthermore, it will evaluate the regulatory requirements for business organizations and labor suppliers concerning licensing, registration, and operational practices.

The comparative analysis will also explore how these legal frameworks operate in practice, focusing on real-world implications of the laws in place. To this end, specific instances of labor outsourcing disputes within each jurisdiction will be examined through case studies. The analysis will compare outcomes for outsourced workers, particularly regarding wage equality, job security, and access to benefits, to determine how effectively laws translate into protections on the ground.

Through the comparative lens, the study will identify gaps in Sri Lankan labor outsourcing laws in relation to other jurisdictions. This may involve highlighting areas where Sri Lankan laws lack adequate protections for outsourced workers compared to the best practices observed in Malaysia, Indonesia, and the Philippines. Moreover, the analysis will consider ambiguities and inconsistencies within Sri Lankan law that could leave room for exploitation due to unclear or inconsistently enforced provisions.

Finally, based on the insights drawn from this comparative analysis, the study will offer informed recommendations aimed at legal reform in Sri Lanka. These recommendations will consider the adoption of effective provisions by suggesting the incorporation of successful elements from the legal frameworks of other jurisdictions to strengthen worker protections. Additionally, improvements in regulatory oversight and enforcement practices will be proposed to ensure compliance and accountability among employers and labor suppliers.

In summary, the data analysis aims to provide a comprehensive overview of labor outsourcing laws across the selected jurisdictions. By systematically evaluating and contrasting these laws, the analysis will facilitate a deeper understanding of the effective components of labor law and highlight significant areas for potential reform for the Sri Lankan labor outsourcing framework. This multi-layered approach not only contributes to the academic discourse on labor law but also offers practical guidance for policymakers in fostering a fairer and more equitable labor market.

3.2.10 Validity and Reliability of the study

The validity and reliability of a research study hinge on the robustness of its methodology and the systematic application of analytical tools. For a doctrinal legal study focusing on labor outsourcing, these aspects are critical, as the research involves interpreting legal texts, analyzing case law, and comparing regulatory frameworks across jurisdictions. The combination of a doctrinal method and comparative analysis establishes both the validity and reliability of this research on labor outsourcing. The study's meticulous focus only on secondary data from primary legal sources, supported by critical analysis of secondary and tertiary literature, ensures that its findings are grounded, consistent, and applicable to the Sri Lankan context. By addressing legal gaps through insights from jurisdictions with more developed frameworks, the research not only offers robust recommendations for legislative reform but also serves as a reliable foundation for future academic

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and policy-oriented inquiries into labor outsourcing.

3.2.10.1 Validity

Validity refers to the extent to which the research measures what it is intended to measure. In this context, the validity of the research is ensured through the systematic and rigorous analysis of primary legal sources such as statutes, regulations, and case law that directly pertain to labor outsourcing. The research specifically focuses on identifying gaps in Sri Lanka's labor laws by comparing them to the more comprehensive frameworks in jurisdictions such as Malaysia, Indonesia, and the Philippines.

The study achieves content validity by incorporating diverse sources, including seminal judgments like Raj Diamonds (Pvt) Ltd v. Weerakoon (1993), Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985) and Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya(1979), Carson Cumberbatch & Co. v. Nandasena (1974), Bandara v. Commercial Bank of Ceylon PLC (2015) and Sri Lanka Telecom PLC v. All Employees' Union of Information and Telecommunication (2014), which highlight key issues in the treatment of outsourced workers in Sri Lanka. This ensures the research addresses the nuanced realities of outsourced labor and the gaps in legal protections.

Construct validity is further established by structuring the analysis around well-defined research objectives and questions, ensuring the study remains aligned with its purpose of evaluating and proposing improvements to Sri Lankan labor laws. Comparative analysis of jurisdictions enhances external validity by providing insights into how countries with similar socio-economic contexts address labor outsourcing. For instance, Malaysia's Employment Act No. 265 of 1955 (amended in 2012) and landmark cases like Trident Malaysia Sdn Bhd v. National Union of Commercial Workers (1987) and Ipoh City & Country Club Berhad v. Mohd Khurshaid Ramjan Din (2006) offer valuable precedents. Similarly, Indonesia's Manpower Act of 2003, Regulation No. 19 of 2012 (on contracting partial work to other companies), Regulation No. 35 of 2021 (on employment agreements, outsourcing, working hours, rest time, and termination), and the Constitutional Court decision in Case No. 27/PUU-IX/2011 provide additional models. In the Philippines, the Labour Code of 1974, Department Order No. 174, and key rulings like Philippine Telegraph and Telephone Company v. NLRC (1997) and Naguiat v. NLRC (1997) further contribute to understanding regulatory approaches. These comparative frameworks offer practical insights for Sri Lankan reforms, ensuring the findings are not only theoretically robust but also applicable in practice.

3.2.10.2 Reliability

Reliability concerns the consistency and replicability of research findings. The doctrinal method ensures reliability by grounding its analysis in established legal principles, statutes, and judicial precedents. By using recognized literal rule of legal interpretation, this study maintains methodological consistency.

The study employs a structured comparative analysis method, which involves descriptive, functional, and critical evaluations of legal frameworks. This systematic approach ensures that findings are consistent across jurisdictions and that any conclusions drawn about Sri Lanka's legal gaps are replicable in future studies. The reliance only on secondary data from reliable sources, such as constitutions, statutes, legislation, judgments, case law, circulars, regulations, Parliament Hansards, and gazettes, further strengthens reliability by cross-verifying interpretations and providing a broader context.

To mitigate biases and enhance reliability, the research incorporates a wide range of perspectives, from judicial rulings and parliamentary records to empirical studies on worker rights and socio-economic impacts. For example, insights from authors like Sarveswaran (2011), Amerasinghe (2009), Chandra (2009), Egalahewa (2021), Rathnayake (2016) and Dayawansha et al. (2022) are balanced against international findings from the International Labour Organization (ILO) and regional studies, ensuring a comprehensive and unbiased evaluation.

3.2.11 Research Ethics

Conducting research on labor outsourcing using the doctrinal method required adherence to rigorous ethical principles to ensure integrity, accountability, and respect for the legal and social implications of the study. Since this research relied exclusively on secondary data, ethical considerations focused on transparency, responsible use of information, respect for intellectual property, and the potential societal impact of the findings.

First, the research upheld the principles of honesty and accuracy in the collection, interpretation, and presentation of secondary data. As the study was based on legal texts, case law, academic literature, and regulatory documents, the researcher ensured that sources were cited accurately and comprehensively. Proper acknowledgment of authorship was crucial to respect intellectual property rights and avoid plagiarism. This included referencing all statutes, judgments, scholarly articles, and other sources utilized in the analysis.

Second, the researcher critically evaluated and contextualized the information sourced from secondary data. This involved ensuring that interpretations of laws, judicial decisions, and regulatory practices were unbiased and reflected the original intent of the source material. Misrepresentation or selective use of data to support preconceived conclusions was avoided, as such practices could have compromised the validity of the study and its ethical standing.

Third, the research remained objective and impartial, especially when comparing legal frameworks from different jurisdictions. While drawing lessons from countries like Malaysia, Indonesia, and the Philippines, the researcher provided a balanced analysis, highlighting both strengths and weaknesses in these legal systems. Any recommendations for reform in Sri Lanka were grounded in evidence and considered the country's unique socio-economic and cultural context.

Fourth, confidentiality and sensitivity to stakeholder interests were prioritized. Although the study did not involve primary data collection or direct interaction with individuals, the researcher remained mindful of how the findings might impact outsourced workers, employers, labor suppliers, and policymakers. Recommendations were framed to promote equitable treatment, industrial harmony, and social justice, avoiding language or implications that could have unintentionally exacerbated existing tensions or vulnerabilities.

Fifth, accessibility and transparency of findings were critical for ethical research dissemination. The research outcomes were communicated clearly, avoiding technical jargon that might have limited the understanding of policymakers, labor advocates, and other stakeholders. The study aimed to inform and empower these groups by providing actionable insights that could drive positive changes in the regulation of labor outsourcing in Sri Lanka.

Finally, the research was conducted with the intent to promote the greater good by addressing gaps in Sri Lankan labor laws and proposing reforms that safeguarded the rights and welfare of outsourced workers. The findings and recommendations aligned with the broader goals of social justice, equality, and sustainable business practices, ensuring that the outcomes benefited both workers and the business community. By adhering to these ethical principles, the study contributed to creating a fairer and more equitable legal framework for labor outsourcing in Sri Lanka.

3.2.12 Summary

The research methodology of this study employs two primary approaches: doctrinal research and comparative analysis, aimed at exploring labor outsourcing laws in Sri Lanka alongside those in Malaysia, Indonesia, and the Philippines. The doctrinal method focuses on in-depth examination of legal principles and provisions related to labor outsourcing within these countries, analyzing existing laws, regulations, and judicial interpretations to clarify the rights and responsibilities of outsourced workers and employers. This approach helps to identify strengths and shortcomings in Sri Lankan laws, suggesting areas for potential reform. Complementarily, the comparative analysis method contrasts the labor outsourcing frameworks of the selected countries to uncover strengths and weaknesses in the legal framework of Sri Lanka, particularly regarding worker protections and employer obligations. The study employs judgment sampling to select relevant Southeast Asian countries, justified by their similar economic contexts and legal developments in labor outsourcing. Various criteria guide the comparison, focusing on key aspects such as employer liability, wage payments, and worker welfare. Data collection includes a wide range of primary, secondary, and tertiary legal sources to ensure comprehensive understanding. Through systematic categorization and analysis, the research identifies gaps in Sri Lankan laws and evaluates real-world implications for outsourced workers, ultimately leading to informed recommendations for legal reform to enhance protections and align with international best practices.

CHAPTER 4: ANALYSIS AND FINDINGS

4.1 Introduction

The absence of specific legislation regulating the labor outsourcing sector in Sri Lanka has led to significant labor and industrial disputes, particularly around issues such as job security, wage equality, and working conditions for outsourced workers. According to Egalahewa (2021, p.13) express concerns regarding the non-existence of labour outsourcing in Sri Lanka as follows;

Outsourcing never meant to outsource individual employees to fill vacancies in the regular workforce. What they are referring to as 'outsourcing' is probably recruitment through an agent which is called 'contract labour'. The system of contract labour is not covered by any special law in Sri Lanka. Unlike in India we have no law covering this mode of employment. By resorting to contract labour, the main objective of the business community is to avoid the responsibilities of being an employer and avoid labour law specially the law relating to termination and terminal benefits.

While Sri Lanka lacks dedicated laws addressing labor outsourcing, certain statutory provisions provide some regulatory support to address the pressing concerns within this sector. These provisions serve as a framework, albeit limited, to manage the dynamics between outsourcing agencies, employers, and employees.

In addition to these legal provisions, Sri Lankan courts have played a crucial role in shaping the labor outsourcing landscape. Through landmark judgments in precedent-setting cases, the judiciary has clarified aspects of labor law as it pertains to outsourced employees. These judicial interventions have not only addressed immediate disputes but have also established principles guiding fair treatment, wages, and benefits, contributing to an evolving legal framework that is increasingly cognizant of outsourced labor issues.

This chapter aims to provide a comprehensive overview of the current legal provisions that apply to labor outsourcing in Sri Lanka. It also examines specific laws governing labor outsourcing in other jurisdictions, aiming to highlight how such laws shape outsourcing practices abroad. By comparing Sri Lankan labor law with these foreign regulatory models, the chapter identifies gaps that may exist in the current legal framework. This comparative approach sheds light on potential improvements for Sri Lankan labor law, particularly in establishing fair and ethical standards within the outsourcing sector.

This analysis aims to offer insights that could guide legislative development in Sri Lanka by comparing its existing legal framework with those of other jurisdictions that have specific laws to protect the rights of both outsourced workers and businesses. Through a better understanding of the legal landscape, this chapter seeks to advocate for the fair and equitable treatment of outsourced workers while promoting transparency and responsibility within the outsourcing sector.

4.2 Implied statutory provisions for labor outsourcing in Sri Lankan law

While Sri Lanka does not have specific legislation explicitly governing the labor outsourcing sector, several statutes provide implied statutory provisions that impact this area. Notably, the Wages Board Ordinance No. 27 of 1941 establishes minimum wage standards and working conditions applicable to various industries, including those utilizing outsourced labor. This ordinance empowers Wages Boards to set wage rates, thus indirectly influencing the compensation of outsourced workers.

The Employees' Provident Fund Act No. 15 of 1958 also plays a critical role in the context of labor outsourcing. This act mandates contributions to a provident fund for employees, including those engaged through outsourcing arrangements. By requiring business organizations to contribute to this fund, the act provides a layer of financial security for outsourced workers, which is essential for their welfare and retirement planning.

Additionally, the Workmen's Compensation Ordinance No. 19 of 1934 offers protections for workers who sustain injuries or illnesses while performing their duties, irrespective of their employment status. This ordinance ensures that all employees, including outsourced laborers, have access to compensation for workplace injuries, thereby safeguarding their rights and well-being.

Together, these statutes, while not specifically designed for the labor outsourcing sector, create a framework of rights and protections that apply to outsourced workers. They highlight the need for legislative clarity in the context of labor outsourcing, as the current legal provisions reflect a broader approach to labor rights in Sri Lanka, aiming to promote fair treatment and adequate protection for all employees, including those in outsourcing arrangements.

4.2.1 Wages Board Ordinance No. 27 of 1941

Under Section 59A(3)(a) of the Ordinance, when a person enters into an arrangement with another for the execution of work for commercial purposes, the first person is responsible for ensuring that the workers employed by the second person receive their wages in accordance with the Ordinance. This provision establishes that when a principal employer contracts with an immediate employer to carry out work, the principal employer must guarantee that the immediate employer complies with wage regulations and pays their workers as stipulated in the Ordinance during the execution of that work.

According to Section 59A(3)(b) of the Ordinance, if a person enters into an arrangement with another for the execution of work, and that other person fails to pay wages to any worker employed during that work, the first person will be held responsible for paying the outstanding wages in accordance with the Ordinance. However, the principal employer may avoid liability if he can demonstrate to the court that he took all necessary measures and exercised due diligence to ensure that the immediate employer fulfilled his obligation to pay wages.

Section 45 of the Ordinance addresses scenarios in which an immediate employer of a worker is simultaneously employed by another individual or entity, and the worker is assigned tasks related to the trade or business of that other party. In such circumstances, the other person is recognized as a joint employer of the worker alongside the immediate employer. This provision clarifies that when an immediate employer, who is employed by a principal employer, engages a worker to perform duties that serve the business of a principal employer, both the immediate employer and the principal employer share responsibility as joint employers of that worker.

Section 45A states that if a person (referred to in this section as the ‘contractor’) agrees to undertake a specific job and subsequently enters into a contract with another party (referred to as the ‘subcontractor’) to execute all or part of that work, the contractor shall be held accountable for wage payments. If the subcontractor fails to pay any worker employed in the execution of that contract, the contractor will be liable for paying the wages owed to that worker as stipulated in that section.

According to Section 59(1) of the Ordinance, if an offense for which an employer is responsible is committed by an agent or another individual acting on behalf of the employer, that agent or individual may face legal proceedings for the offense as if they were the employer. This prosecution can occur concurrently with, prior to, or after the employer's own conviction. Upon conviction, the agent or individual will incur the same penalties as those imposed on the employer. This provision underscores that if a principal employer is found liable for an offense committed by an immediate employer, the immediate employer will also be prosecuted in the same manner as if he was the principal employer. The immediate employer can be prosecuted alongside, before, or after the principal employer's conviction and will be subject to identical penalties.

Under Section 59(2) of the Ordinance, if an employer is charged with an offense specified in the Ordinance, he can demonstrate to the satisfaction of the court that he diligently complied with the Ordinance and that the offense was committed by his agent or another individual without their knowledge, consent, or involvement. In such instances, the principal employer will be exempt from penalties for the offense, without prejudice. However, the court retains the authority to order the employer to pay any outstanding wages owed to the worker. This means that if an immediate employer commits an offense under this Ordinance without the principal employer's knowledge, the principal employer is exempt from penalties. Nonetheless, the principal employer remains responsible for paying any wage arrears owed to the workers of the immediate employer.

4.2.2 Employees’ Provident Fund Act No. 15 of 1958

According to Section 9 of the Act, if an immediate employer is employed by another person and that immediate employer hires someone to perform work for the business of the second person, the second person will be considered a joint employer of that worker alongside the immediate employer. This section clarifies that when an outsourced worker is engaged to perform tasks for a principal employer through an immediate employer, the principal employer is regarded as a joint employer of that outsourced worker along with the immediate employer.

4.2.3 Workmen’s Compensation Ordinances No.19 of 1934

Section 22(1) of the Ordinance states that when a principal enters into contracts with a contractor to perform work that is normally part of the principal's business, the principal is responsible for paying compensation to any worker engaged in that work, just as if that worker was directly employed by the principal. This means that if a principal employer hires an immediate employer for tasks that are typically part of the principal employer's operations, the principal employer must compensate any worker employed by the immediate employer as if the worker were directly employed by them.

4.2.4 Labor Outsourcing Allowed 'Employer Definition'

Further, in accordance with the definitions outlined in the Industrial Disputes Act No. 27 of 1966, the Employees’ Provident Fund Act No. 24 of 1971, the Employees' Trust Fund Act No. 46 of 1980 the Payment of Gratuity Act No. 12 of 1983, and the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971, it is established that the term ‘employer’ is also construed to refer to any person who on behalf of any other person employs any workman.

Also, it appears that the Wages Board Ordinance No. 27 of 1941, the Maternity Benefits Ordinance No. 32 of 1939, and the Employment of Women, Young Persons, and Children Act No.47 of 1956, describe an employer as any person who employs workers, even on behalf of someone else. In general, the term 'employer' essentially also refers to any person who employs a worker on behalf of another person.

Thus, the legislation above acknowledges labor outsourcing arrangements by broadly defining an employer as anyone who employs a worker on behalf of another person. This inclusive meaning enables an immediate employer to place workers within the business of the principal employer while maintaining a legal relationship between the worker, immediate employer and the principal employer. This arrangement effectively allows business organizations to engage outsourced workers in their operations without directly employing them. Consequently, Sri Lankan labor laws support a framework in which both immediate and principal employers hold responsibilities toward outsourced workers, ensuring their rights are protected regardless of the employment structure.

One landmark case that has examined the definitions of ‘employer’ and ‘workman’ is Carson Cumberbatch & Co. Ltd. v. Nandasena (1974), wherein the decision primarily revolved around the status of a Managing Agent of the Employer. The Court found that no workman and agent were in a contract of employment. In his Judgment, Hon. Justice Tennekoon concerned the meaning of ‘employer’ in the Industrial Disputes Act. He stated that the definition is composed of three limbs where ‘any person who employs any workman’, ‘any person on whose behalf any other person employs any workman’ and ‘any person who on behalf of any other person employs any workman’. As Justice Tennekoon was of the view that the expression ‘person employing’ a workman in each of the above three limbs of the definition should be taken to refer to a person who is under a contractual obligation to the workman. The first limb of the definition includes individuals who directly employ a worker. The second limb is applicable for a principal on whose behalf an agent where provided if an agent hires a workman without revealing the identity of his principal. Later, if the workman discovers the existence of the principal and identity, then the workman may hold the principal responsible for the contract. The third limb provides that the agent is considered as personally contracted due to the effect of the common law if he falls under the second limb (Chandra, 2009).

In conclusion, the analysis of implied statutory provisions for labor outsourcing in Sri Lanka reveals a legal landscape that, while not specifically designed for this sector, offers trivial protections for outsourced workers through existing statutes. The Wages Board Ordinance 1941, the Employees’ Provident Fund Act 1958, and the Workmen’s Compensation Ordinance 1934 collectively establish a framework that safeguards the rights of outsourced laborers, ensuring wage standards, statutory payment security, and compensation for workplace injuries. The provisions within these laws clarify the responsibilities of both principal and immediate employers, reinforcing the concept of joint employer liability in outsourcing arrangements. This inclusive definition of 'employer' across various legislations emphasizes the interconnectedness of labor relations, enabling immediate employers to place workers within the business of the principal employer while maintaining legal accountability for their welfare. However, landmark judgments on labor outsourcing reveal that existing legislation is inadequate to fully control and regulate the various types of labor outsourcing arrangements, given the widespread adoption of these practices among business organizations in the country.

4.3 Landmark judgments pertaining to labour outsourcing

The aforementioned landmark cases have had a significant positive impact on Sri Lankan common law, providing clarity on the nature of employment relationships in subcontracting arrangements. One such case is Raj Diamonds (Pvt) Ltd v. Weerakoon (1993, as cited in Sarveswaran, 2011), which concerned a dispute over the contractual and employment status of diamond cutters engaged by a service provider.

In this case, a diamond import company contracted a service provider to cut and polish rough diamonds, a process involving multiple parties and specific contractual terms. The company supplied the equipment, raw diamonds, and work premises, and the service provider engaged diamond cutters to perform the polishing work. Importantly, the arrangement was for the service provider to follow the instructions given by the company closely during the process. Payments were made by the company upon the submission of bills, from which the service provider retained a commission before compensating the diamond cutters. The agreement between the company and the service provider also included a stipulation that only diamond cutters recommended by the company could be engaged. This arrangement later became the focal point of a legal dispute when the service provider terminated the services of diamond cutters. According to the service agreement, if the services of any diamond cutters were terminated, they were prohibited from performing similar work for any other party for a specified duration.

In court, the company argued that the diamond cutters were independent contractors, emphasizing that they did not work regular hours, report to the company directly, or maintain attendance records, and thus, no employer-employee relationship existed. However, the opposing argument suggested that the company used the service provider as an intermediary to avoid the obligations that typically accompany direct employment relationships. The court carefully examined these assertions by applying the 'control test,' a well-established principle in common law used to evaluate the nature of the relationship between parties in employment contexts. Control test focuses on the extent to which one party exercises control over the work performed by another, including factors such as supervision, the right to dictate how tasks are carried out, and the overall authority to direct the activities of workers (Collins v. Hertfordshire County Council, 1947)).

The court found that, while the service provider managed the diamond cutters on a day-to-day basis, the overarching control and instructions came from the company itself. This, combined with the authority of the company over who could be engaged and the level of direction provided for the work, led the court to rule that the company was effectively the employer of the diamond cutters. This ruling emphasized the principle that employment relationships are not solely defined by contractual labels but also by the substantive nature of the control and supervision involved. The case has since informed the interpretation of employment status and subcontracting practices within Sri Lankan common law, reinforcing the role of the court in scrutinizing employment arrangements to prevent potential circumvention of labor rights.

The case of Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985) brought to light critical discussions regarding labour outsourcing issues. The Ceylon Mercantile Union (appellant) had filed an application against the Labor Tribunal against Ceylon Fertilizer Corporation (1st respondent) for the termination of employment of its 502 members, alleging unjust treatment. The Ceylon Mercantile Union had sought gratuity and requested either a reinstatement with back wages or alternative compensation. The Hunupitiya Labour Co-operative Society (2nd respondent) was also implicated in the case with regard to the payment of wages to the workmen based on the instructions of the 1st respondent. The primary issue at hand was to determine whether the Fertilizer Corporation, the 1st respondent, was indeed the employer of these outsourced workmen.

In a case that was brought before the Labour Tribunal, the President of the Tribunal found that the 2nd respondent Hunupitiya Labour Co-operative Society (2nd respondent) had acted as an agent to the 1st respondent Fertilizer Corporation for the provisioning of labour. Based on this, the President determined that the workmen were employees of the 1st respondent and ordered either their reinstatement together with six months back wages or in lieu of this, one-year wages. The President arrived at this conclusion after reviewing clear evidence that was presented before him, and which proved the existence of an employment relationship between the workmen and the 1st respondent Fertilizer Corporation. However, this decision was appealed to the Court of Appeal, which held that the 1st respondent was not the employer of these workers and, as a result, the order made by the Labour Tribunal was reversed. The Court of Appeal believed that the control test applied by the Labour Tribunal was not applicable to this case because the 1st respondent neither conducted an interview nor issued a letter of appointment to the workers. Additionally, a list of names of the respective workers was also not found in the documents relating to the direct staff of the 1st respondent. This decision was subsequently appealed to the Supreme Court by the Ceylon Mercantile Union.

The order made by the President of the Labour Tribunal was accepted by the Supreme Court. However, it is worth noting that Chief Justice Samarakoon did not agree with the majority decision of the Supreme Court. In his Dissenting Order, he expressed concern about two main conditions as follows:

The first condition is the payment of a wage agreed to between employer and worker. There is no such agreement. On the other hand, the agreement by the appellant is to pay the Society the scheduled rate. The Society pays the labourer a lower rate keeping a rake off for itself. This is in pursuance of an agreement between the Society and the labourer. (Ceylon Mercantile Union v. Ceylon Fertilizer Corporation, 1985, p.406, para.2)

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The second condition in relation to the control test to determine whether a relationship exists between the worker and the master was concerned by Samarakoon, C.J. as follows:

Counsel for the appellant made much of the element of control which is the second condition. ‘Control by itself is not always conclusive’. There is no doubt that the respondent assigned the work to the labourers and stipulated the proportions for mixing and also indicated the mode of distribution. This had necessarily to be done if its business was to be properly conducted. Apart from this the respondent could do nothing else. Disciplinary action was in the hands of the Society. When a labourer was inefficient the Society was asked not to send the particular labourer for work in case of misconduct the Society was asked to take action. (Ceylon Mercantile Union v. Ceylon Fertilizer Corporation, 1985, p.407, para.1)

Samarakoon, C.J. had expressed his disagreement with the majority decision which was supported by the guarantee of employment or continuity of work. Further, he stressed the fact as follows:

All negotiations on behalf of the labour were conducted, and all claims for enhancement of rates were made, by the Society with the respondent. Two labourers were put on the check roll by the respondent's Manager but they were accounted in the check roll as the Society's labourers. The Society was so informed and their rates were paid direct to the Society in terms of the agreement. Furthermore, there is no guarantee of employment or continuity of work. (Ceylon Mercantile Union v. Ceylon Fertilizer Corporation, 1985, pp.407-408, para.2)

Samarakoon, C.J. held the view that there was no employment contract between the workers and the Fertilizer Corporation, and he dismissed the appeal with costs. However, Wanasundera, J. examined the relationship between the workers and the Fertilizer Corporation and found that most of the workers had been employed by the Fertilizer Corporation before the establishment of the Co-operative Society, even before the problematic contract for service was signed. Nonetheless, the Fertilizer Corporation had directly recruited some workmen who were not members of the Co-operative Society at the outset. The Co-operative Society was later informed of the completion of such recruitments. Additionally, Wanasundera, J. found that the Fertilizer Corporation held the authority to determine salaries, assign work, supervise and control the work, enforce discipline, and provide salary advances and compensation. The Fertilizer Corporation also had the power to terminate the services of these workers, and the Co-operative Society had no control over them. In conclusion, Wanasundera, J. stated the as follows:

The workman had the most tenuous contact with the 2nd respondent and in truth and in fact it was the 1st respondent who calculated and determined the wages and advances to the workmen and not the 2nd respondent which acted as a mere conduit for the transmission of the payment. The 2nd respondent, as the President says, had merely undertaken to supply labour and not to perform any specific services (Ceylon Mercantile Union v. Ceylon Fertilizer Corporation, 1985, p.415, para.4).

The appeal was allowed with costs by the Honorable Justice Wanasundera, who proceeded to restore the order initially made by the President of the Labour Tribunal. As per the restored order, the workmen were entitled to either back wages until the date of reinstatement or payment of compensation.

In recent times, there has been a noticeable shift in the terminology used by human resource managers to describe traditional concepts. It has been observed that direct hiring, which was originally intended to meet the needs of the labor force by enlisting internal employees to fill vacant positions in the regular workforce, is now being replaced by a method of recruitment commonly referred to as contract labor or labour outsourcing. Unfortunately, there are no provisions covering the contract labor system in the laws and regulations in Sri Lanka, and there is no specific law that addresses this issue. In contrast to India, where legislation exists to regulate the use of this method, Sri Lanka currently lacks such laws. One of the reasons why the business sector often prefers to use contract labor instead of hiring employees directly is that it allows them to evade the obligations of being an employer, including labor legislation pertaining to termination and post-termination benefits. The case of Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979) is a prime example of the confusion that can arise regarding service outsourcing versus contracting labor (Egalahewa, 2021).

The case of Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya(1979) was one that involved the application for a Writ of Certiorari by Moosajees Limited, seeking to quash the order made by the Commissioner of Labour under section 6 of the Termination of Employment of Workmen (Special Provisions) Act 1971. The order required the petitioner to reinstate ten workmen belonging to the Respondent Union. The petitioner argued that the company had not employed any of these ten workers, nor had it dismissed them, and therefore, the Commissioner of Labour had no power to make an order under section 6 of the Act. The respondents in this petition included the trade union, labour contractor, and officials from the labour department, with the second respondent being identified as Mr. Upasaka Appu. The petitioner stated that Mr. Upasaka was an independent contractor providing services of these workers for the company in unloading, baling, and loading coconut fiber for export. The payment was made on a piece-rate basis.

However, based on the strong documentary and oral evidence presented, it was found that the petitioner company acted as an employer. The Works Manager of the company even took disciplinary action against Upasaka Appu's son. Additionally, both the General Manager and Director sent warning letters to workers, which also had copies sent to the Works Manager, proving that these workers were under direct supervision and disciplinary control of management from the petitioner Company. Upasaka Appu did not seem to understand why he was being paid Rs. 75 per week as a service fee by the company. Although the dismissal letter of K. Hemapala was signed by his father Upasaka Appu as the employer, it was proved in court to have been sent from Moosajees Ltd. The workplace for Upasaka Appu was established out of the company premises. The view of the court was that there was compelling proof that the company was responsible for all instances of hiring workmen and that Upasaka Appu was just a puppet. Court found that Upasaka Appu was a device used by the petitioner to evade employer responsibilities. As per the conclusion of the Court the decisions reached by the labor authorities were sound given the evidence presented, and there was no fault found on their part. The opinion of the Court that the affidavits filed in this application concerning the employment of workmen cannot be considered true and further held that in accordance with the available material, it can be seen that the company used Upasaka Appu as a means to avoid its employment responsibilities.

In reference to the previous discussion on the case of Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985), it is noteworthy to mention that Justice Wimalaratne, in agreement with the majority order proposed by Justice Wanasundera, highlighted two additional crucial points. In relation to the first point, Justice Wimalaratne stated as follows:

That too much reliance has been placed on the agreement, which was an agreement between the Corporation and the Society, to which the workmen were not parties. It is doubtful whether they were even aware of the existence of agreement. The existence of such an agreement cannot act to their detriment if the facts establish a relationship of employer and employee between the Corporation and themselves. (Ceylon Mercantile Union v. Ceylon Fertilizer Corporation, 1985, p.419, para.4)

Moreover, Justice Wimalaratne made a statement concerning his second point as follows:

The fact that 'none of the workmen had been interviewed prior to appointment, nor was a letter of appointment given to them or the name of any person entered in the Corporation books maintained for the permanent staff'. A common law contract of service can yet be implied even without any or all of these circumstances. (Ceylon Mercantile Union v. Ceylon Fertilizer Corporation, 1985, p.420, para.1)

The four cases discussed above provides valuable insights into how Sri Lankan courts interpret the roles and responsibilities of employers in labor outsourcing scenarios. These judgments collectively shed light on the ground of unavailability of specific statutory provisions, the interpretation of employer-employee relationships as per existing laws, and the legal frameworks used to resolve disputes in outsourcing arrangements. Following is the summery of above discussed four cases.

Table 4.1: Summary of the case decisions of Sri Lanka

Case	**Conclusion**
Raj Diamonds (Pvt) Ltd v. Weerakoon (1993)	The court determined that, despite day-to-day management by the labour supplier, the business organization maintained overarching control, directed work, and decided worker engagement, making it effectively the employer of the diamond cutters.
Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985)	Court concluded that the business organization controlled salaries, work assignments, supervision, discipline, salary advances, and terminations, while the labour supplier had no authority over the workers. Further, court held that the workers

	had minimal contact with the labour supplier, which merely supplied manpower, with the business organization determining wages and acting as the true employer.
Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya(1979)	The court held that the business organization was solely responsible for hiring workers, with labour supplier acting as a mere tool to evade employer responsibilities.
Carson Cumberbatch & Co. Ltd. v. Nandasena (1974)	Employer means a person who, on behalf of another, employs a workman. So, employer includes a person acting on behalf of the principal but who is personally liable under common law.

In conclusion, it's essential to note that the none of direct recruitment of outsourced workers by the principal employer, the absence of appointment letters issued by the principal employer, or the absence of personnel files for outsourced workers in the principal employer's custody does not rule out the possibility of an implied contract of service between outsourced workers and the principal employer under common law. Often, principal employers rely on immediate employers to recruit workers on their behalf, which results in outsourced workers receiving fewer benefits and rewards than the direct employees of the principal employer, even though both groups may perform the same tasks. This disparity has led to dissatisfaction among outsourced workers, motivating them to seek direct employment status with the principal employer. To address these challenges, it is crucial to implement clear legal and regulatory measures to protect the rights and entitlements of outsourced workers. Additionally, the roles, responsibilities, and obligations of the principal employer, outsourced employees, and immediate employers should be distinctly defined. A review of labor outsourcing legislation in relevant Asian countries indicates that establishing legal frameworks for outsourcing could help address these issues. Therefore, examining the regulatory approaches in other Asian countries may provide valuable insights for developing an effective labor outsourcing framework in Sri Lanka.

4.4 Summery of Sri Lankan Context

The statutory provisions related to labor outsourcing in Sri Lanka, while not explicitly codified in dedicated legislation, demonstrate a framework shaped largely by judicial rulings and existing labor laws. These implied legal provisions offer essential protections for outsourced workers, even in the absence of specific outsourcing regulations.

The Wages Board Ordinance of 1941 holds primary employers accountable for ensuring that subcontractors comply with wage regulations, particularly regarding wage payments and scenarios where joint liability exists between employers. The Employees' Provident Fund Act of 1958 further safeguards workers by mandating contributions to a provident fund, extending financial security to all employees, including those engaged through outsourcing arrangements. This act underscores the importance of financial protection for outsourced workers. Moreover, the Workmen's Compensation Ordinance of 1934 ensures that all workers, including outsourced labor, have access to compensation for workplace injuries, offering vital protections in case of workplace accidents.

The landmark case Carson Cumberbatch & Co. Ltd. v. Nandasena illustrates how various pieces of legislation define the roles of both immediate and principal employers in outsourced work contexts. The judiciary's interpretation of 'employer' in outsourcing arrangements highlights the obligations of both parties to safeguard the rights of workers. Important rulings in cases such as Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979), Raj Diamonds (Pvt) Ltd v. Weerakoon (1993), and Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985) emphasize the critical role of the judiciary in upholding labor rights and preventing employers from evading their responsibilities in outsourcing contracts.

While the existing body of law provides some degree of protection, the absence of dedicated outsourcing legislation in Sri Lanka leaves significant gaps. Judge-made laws and existing regulations offer a framework that indirectly supports the fair treatment and protection of outsourced workers. However, these provisions are fragmented and inconsistent, underscoring the need for more comprehensive and robust legislation to address the complex dynamics of labor outsourcing. The experiences of other jurisdictions, where clearer and more detailed regulations exist, demonstrate the importance of creating a more transparent and enforceable legal framework to ensure fair treatment and protect the rights of outsourced workers in Sri Lanka.

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4.5 Asian Regional Context

While Sri Lankan courts have made notable attempts to address the gaps in labor outsourcing regulations through landmark judgments, these judicial efforts remain fragmented and lack the cohesion provided by comprehensive legislative backing. Relying solely on case law creates inconsistencies and unpredictability, leaving outsourced workers vulnerable to exploitation and inadequate protections.

A review of regional approaches in countries like Malaysia, Indonesia, and the Philippines demonstrates how carefully crafted and targeted regulations can effectively tackle the complexities of labor outsourcing. For instance, Malaysia emphasizes accountability through inspections, Indonesia enforces registration and licensing requirements to ensure legal compliance, and the Philippines imposes strict prohibitions on exploitative practices like labor-only contracting while mandating transparency through registration of agreements. These frameworks provide a structured and enforceable approach to safeguard the rights of outsourced workers, ensuring fair treatment and shared accountability between employers and labor supply companies. Sri Lanka stands to benefit significantly from adopting similar best practices, which would not only close existing gaps but also establish a more robust and equitable regulatory framework to address labor outsourcing challenges effectively. The legislation governing labor outsourcing in Malaysia, Indonesia, and the Philippines includes several key laws and regulations.

In Malaysia, the Employment Act 1955, the Employment (Amendment) Act 2012, and the Occupational Safety and Health Act 1994 are relevant to outsourcing practices, outlining the rights and responsibilities of both employers and employees within outsourced labor arrangements. Under the Occupational Safety and Health Act 1994 (Section 15), the principal employer is responsible for ensuring the safety, health, and welfare of workers. Under the Employment Act 1955, both the principal and contractor are jointly responsible for paying wages to workers (Section 33(1)), and in cases of property sale by court order, labour contractors have priority over other creditors (Section 31(1)). The principal is liable for wages due to outsourced workers as though they were directly employed (Section 33(1)). Contracts and registration laws require any service contract for a specific period or task to be documented in writing (Section 10(1)), and the labour contractor must establish a written agreement with the principal (Section 33A(1A)), ensuring availability for inspection (Section 33A(1)). Work standards are not explicitly defined in the laws. Regarding workers' rights, equal treatment of employees, including locals and foreigners, is mandated (Section 60L(1)), and contracts cannot restrict union activities (Section 8). Labour outsourcing laws do not specifically address these aspects.

Similarly, Indonesian labor outsourcing is governed by the Manpower Act No. 13/2003, along with Regulation No. 19 of 2012 and Regulation No. 35 of 2021, which detail standards and requirements for employment practices in the context of outsourcing. Principal employers are legally responsible for outsourced workers if the immediate employer fails to meet employment terms, such as welfare protection or wages, as stipulated in Article 66(4) of the Manpower Act 2003. They are also liable when no written outsourcing contract exists or when outsourced work does not qualify as auxiliary functions (Article 65(8) of the Manpower Act 2003). Labour suppliers must provide written employment contracts (Article 27(1) of Law Number 19 of 2012) and register agreements with local manpower authorities within 30 days of signing, failing which their licenses may be revoked (Articles 20 and 23 of Law Number 19 of 2012). Outsourced work must support auxiliary functions like cleaning, security, or transportation and cannot include core business activities or permanent positions (Articles 65(2) and 59(2) of the Manpower Act 2003). Contracts can last up to two years, with a one-year extension, but must not exceed five years (Article 6 of Regulation 2021). Workers are entitled to equal treatment and the right to unionize, with dispute resolution and protection the responsibility of the labour supplier (Articles 5, 6, and 104 of the Manpower Act 2003; Article 18(3) of Regulation 2021).

In the Philippines, Dept. Order No. 174 of 2017 and the Labor Code of 1974 set forth guidelines on labor outsourcing, ensuring worker protections and fair practices. Under the Labour Code and Department Order No. 174, principal employers bear significant responsibilities for contractor compliance. If contractors fail to pay wages, the principal employer is jointly liable for the amounts owed (Article 106, Labour Code; Section 9, Dept. Order No. 174). Contractors must provide a bond to cover labor costs (Article 108, Labour Code). Workers have preferential claims over unpaid wages during bankruptcy (Article 110, Labour Code). In cases of labor-only contracting or prohibited arrangements, the principal is deemed the direct employer (Articles 106, 109, Labour Code; Sections 7, 12, Dept. Order No. 174).

Violations of labor laws result in the principal's solidary liability with contractors (Article 109, Labour Code; Section 9, Dept. Order No. 174). Employment contracts must outline tasks, duties, work location, and terms (Section 11(a), Dept. Order No. 174). Service agreements must detail subcontracted work, scope, duration, terms, and fees (Section 11(b), Dept. Order No. 174). Contractors must register with the Regional Labor Office and submit authenticated Certificates of Registration when operating outside their region (Sections 14, 20, Dept. Order No. 174). Contractors are required to operate independently, possess substantial capital, and work without control from the principal, except for results (Section 8, Dept. Order No. 174). Labor-only contracting, or involving workers in core business activities of the principal, is prohibited (Section 5, Dept. Order No. 174). Outsourced workers are entitled to wages, benefits, job security, safe conditions, and freedom to organize and bargain collectively (Section 10, Dept. Order No. 174). Discrimination, wage reductions, or dismissal for filing complaints or testifying are prohibited (Section 27, Dept. Order No. 174). Labor authorities may inspect contracting arrangements, with unrestricted access to premises and records to ensure compliance (Section 24, Dept. Order No. 174).

Additionally, landmark judgments from each jurisdiction are reviewed to understand judicial interpretations and applications of these laws, further illuminating the legal landscape surrounding labor outsourcing in each country. This evaluation examines these statutes and regulations based on several critical criteria, including the legislative and regulatory framework, definitions of key terms and roles, responsibilities of the principal employer, duties of the immediate employer, requirements for contracts and registration, standards for work conditions and wages, and the rights and protections for outsourced workers.

4.5.1 The analysis of respective criteria vs Southeast Asian regional jurisdictions

Table 4.2: Analysis of laws of the four jurisdictions

Criteria/ Country	**Malaysia**	**Indonesia**	**Philippine**	**Sri Lanka**
1. Legislative and Regulatory Framework				
Availability of specific legislation/ law	Employment Act No. 265 of 1955	The Manpower Act No. 13/2003	Dept. Order No 174 of 2017	Not available
Availability of other legislation	Employment (Amendment) Act of 2012 Occupational Safety and Health Act 1994	Regulation No. 19 of 2012 Regulation No. 35 of 2021	Labour Code 1974	Wages Board Ordinance No. 27 of 1941 Employees' Provident Fund Act No. 15 of 1958 Workmen's Compensation Ordinance No. 19 of 1934
Landmark judgments	Trident Malaysia Sdn Bhd v. National Union of Commercial Workers (1987) Ipoh City & Country Club Berhad v. Mohd Khurshaid Ramjan Din (2006)	Case of No.27/PUU-IX/2011 Indonesian Constitutional Court	Philippine Telegraph and Telephone Company v. NLRC (1997) Naguiat v. NLRC (1997) Philippine Bank of Communications v. NLRC (1986)	Carson Cumberbatch & Co. Ltd. v. Nandasena (1974) Raj Diamonds (Pvt) Ltd v. Weerakoon (1993) Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985) Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya

				(1979)
Regulatory authorities	Director General of Labour as per Section 69 of the Employment Act 1955	Labor Inspectors from the Ministry responsible for manpower affairs and/or from provincial offices overseeing manpower-related government affairs as per Article 60 of Regulation 2021	Secretary of Labour and Employment as per Dept. Order No. 174	Department of Labour but not specifically mentioned in labour
2. Principal Employer Responsibilities				
Liability for welfare, health, safety, and other facilities	Provide the safety, health, and welfare (Section 15 of the Occupational Safety and Health Act 1994)	If the immediate employer does not fulfil employment terms such as welfare protection for outsourced workers, it is considered that the principal employer is legally responsible as the employer (Article 66(4) of the Manpower Act 2003)	Not provided	If a principal engages a contractor for work, the principal is liable to compensate the workers of the contractor for any injuries as if they were directly employed (Section 22(1) of the Workmen's Compensation Ordinances 1934)
Responsibility for wage payments	The principal and contractor are jointly responsible for paying any wages owed to a worker (Section 33(1) of the Employment Act 1955) Labour contractor secures priority from the principal over the claims of other creditors in the event of a property of a principal is sold by court order (Section 31(1) of the Employment Act 1955)	If the immediate employer does not fulfil employment terms such as wages for outsourced workers, it is considered that the principal employer is legally responsible as the employer (Article 66(4) of the Manpower Act 2003)	If contractors fail to pay their employees, the principal employer is jointly liable to pay wages for the work done under the contract (Article 106 of the Labour Code) Contractors shall provide a bond to the principal covering labor costs, as specified in the employment contract (Article 108 of the Labour Code) In situations of bankruptcy, workers have a	If a principal employer must ensure the workers of the labour supplier are paid wages (Section 59A(3)(a) of the Wages Board Ordinance 1941) The principal employer is liable for unpaid wages for workers of labour supplier unless he demonstrates due diligence to ensure that the immediate employer fulfilled his obligation to pay wages (Section 59A(3)(b) of the Wages Board Ordinance 1941)

			preferential claim over other creditors for unpaid wages Article 110 of the Labour Code In the event of unpaid wages, the principal has the solidary liability for the amounts owed (Section 9 of the Dept. Order No. 174)	Principal contractor is responsible for wage payments if a subcontractor fails to pay his workers engaged in the work (Section 45A of the Wages Board Ordinance 1941)
Designating the principal employer as the employer of outsourced workers	The principal shall be liable to due pay wages as if the outsourced worker had been immediately employed by the principal (Section 33(1) of the Employment Act 1955)	If there is no written contract for outsourcing work or outsourced work is not an auxiliary function, the principal employer is legally responsible as the employer of the outsourced workers (Article 65(8) of Manpower Act 2003) If no written agreement exists or the immediate employer fails to meet employment terms, the principal employer is legally responsible as the employer of the outsourced workers (Article 66(4) of the Manpower Act 2003)	Under a 'labour-only' contract, the principal employer is considered the employer of the workers, while the labor supplier acts as an agent (Article 106 of the Labour Code) In the event of a violation of the labor code, the principal is considered the direct employer of the workers (Article 109 of the Labour Code) If a contractor is found to be engaging in labour-only contracting or in other prohibited employment arrangements, the principal employer shall be deemed as the direct employer of the workers of the contractor (Section 7 of the Dept. Order No. 174) Failure to provide job	The principal has become the employer of the outsourced workers as per the decisions of the casesRaj Diamonds (Pvt) Ltd v. Weerakoon (1993), Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985) and Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya(1979)

			security, safe conditions, wages, benefits, and the right to organize, or to have clear contracts and service agreements detailing job terms, results in the principal being considered the direct employer (Section 12 of the Dept. Order No. 174)	
Joint or solidary liability with immediate employer	The principal is jointly liable with the labour contractor for due wages to outsourced workers (Section 33(1) of the Employment Act 1955)	Not imposed	Principal employers bear solidary liability with contractors for violations of the labor code (Article 109 the Labour Code) If the contractor fails to pay workers, the principal employer holds joint liability with the contractor for wages (Article 106 of the Labour Code) In the event of a violation of the labor code, there exists solidary liability on the principal employer (Section 9 of the Dept. Order No. 174)	When a worker performs tasks for a principal employer's business under an immediate employer who is an employee of the principal, both are considered joint employers and share responsibility for the worker (Section 45 of the Wages Board Ordinance 1941) If the principal employs an immediate employer and that immediate employer hires someone to perform the work of the principal, the principal will be considered as a joint employer of that worker alongside the immediate employer (Section 9 of the Employees' Provident Fund Act 1958)
3. Contracts and Registration				

Requirement for a written employment contract	Not specifically mentioned in labour outsourcing laws Any contract of service for a specified period or involves completing a specific task must be documented in writing (Section 10(1) of the Employment Act 1955)	Labour supplier that supplies workers is required to provide workers with written employment contracts (Article 27(1) of Law Number 19 of 2012) The employment relationship between the immediate employer and the worker must be clearly determined and specified through a written employment agreement (Article 65(6) of the Manpower Act of 2003)	The employment agreement must detail the tasks, duties, work location, and all terms of the employment relationship (Section 11(a) the Dept. Order No. 174)	Not specifically mentioned in labour outsourcing laws
Registration of employment contracts	Not required	Employment contracts between immediate employer and outsourced workers must be registered in the relevant institution in the region or municipality (Article 27(2) of Law Number 19 of 2012)	Not required	Not required
Requirement for a written commercial contract between employers	Labour contractor must enter into a written contract with the principal (Section 33A(1A) of the Employment Act 1955)	An agreement between the labor provider and the principal enterprise must be in writing (Article 66(2) of Manpower Act 2003) Principal organization has the option to outsource its work to the labour supply company through a written agreement (Article 17(1) of	The Service Agreement between the principal and contractor must specify the subcontracted work, including its scope, duration, location, terms, contract amount, and a standard administrative fee (Section 11(b) of Dept. Order No. 174)	Not required

		Regulation 2012)		
Registration of commercial contracts between employers	Not required	The employer and worker supply company must register their agreement with the local manpower authority within 30 working days of signing along with a valid operating license and draft employment contract (Articles 20(1) and (2) of Law Number 19 of 2012) If the worker supply agreement is not registered, the operating license of the labour supplier will be revoked by the institution in charge of manpower regulation (Article 23 of Law Number 19 of 2012)	If a contractor operates outside its registered Regional Office, it must request an authenticated copy of its Certificate of Registration and submit it, along with its Service Agreements, to the Dept. of Labour Regional Office (Section 20 of the Dept. Order No. 174)	Not required
Registration and licensing requirements for labor outsourcing	Labour contractor shall ensure that the written contract with the principal, along with any related documents, is available for inspection (Section 33A(1) of the Employment Act 1955)	The labour supplier must be a legal entity having an agreement with the principal organization (Article 1(14) of Regulation 2021) The immediate employer must be a legal entity (Article 65(3) of Manpower Act 2003) The immediate employer must be a legal entity and hold a valid license issued by a government	Contractors must register with the Regional Office of the Department of Labor in the area where they primarily operate (Section 14 of the Dept. Order No. 174)	Not required

		agency (Article 66(3) of Manpower Act 2003)		
4. Work Standards				
Types and nature of permissible outsourced work	Not mentioned	Outsourced work must be auxiliary, separate from core business activities, and not disrupt the production process of the principal business (Article 65(2) of Manpower Act 2003) Tasks delegated to labour suppliers must primarily involve support services, such as cleaning, catering, security, mining and petroleum support, or worker transportation, without directly impacting production (Articles 17(2) and 17(3) of Regulation 2012)	Contractors must operate as independent businesses, have substantial capital (e.g., tools, equipment, and supervision), and perform work independently of the principal's control, except for the final outcome (Section 8 of the Dept. Order No. 174)	Not mentioned
Limitations on the period of outsourced work	Not defined	Period of the employment contract in outsourcing arrangement may last up to two years and can be extended once for a maximum of one additional year (Articles 59(4) and 59(1)(b) of Manpower Act 2003) Period of the employment contract in outsourcing arrangement cannot be exceeded five years (Article 6 of	Workers must not be required to sign contracts that artificially shorten their employment duration in comparison to the full term of the Service Agreement (Section 6(i) of the Dept. Order No. 174)	Not defined

		Regulation 2021)		
Prohibited job categories to outsource	Not specified	Permanent positions cannot be outsourced (Article 59 (2) of Manpower Act 2003)	Labor-only contracting or cases where workers are directly involved in the core business of the principal are prohibited (Section 5 of the Dept. Order No. 174) Contracting through in-house agencies or cooperatives that merely supply labor, outsourcing to bypass strikes or lockouts, and the assignment of contractor employees to tasks typically handled by regular staff are prohibited (Section 6 of the Dept. Order No. 174)	Not specified
5. Rights and Protections of outsourced workers				
Prevention of discriminatory treatment compared to regular employees	Not specifically mentioned in labour outsourcing laws The equal treatment of employees, particularly concerning local and foreign workers, is ensured (Section 60L(1) of the Employment Act 1955 of Malaysia)	Not specifically mentioned in labour outsourcing laws Every individual seeking employment shall have equal opportunity to obtain a job, free from discrimination (Article 5 of Manpower Act 2003) Every worker has the right to receive equal treatment	The withholding of payment, reduction of wages or benefits, discrimination, or dismissal of any worker who has filed a complaint, initiated legal action, or testified in labor-related proceedings is prohibited (Section 27 of the Dept. Order	Not mentioned

		from their employer, without any form of discrimination (Article 6 of Manpower Act 2003)	No. 174)	
Grievance handling or dispute resolution	Not provided	The protection of workers and the resolution of any disputes is a responsibility of the outsourcing provider (Article 18(3) of Regulation 2021)	If a complaint is filed against a contractor, it must be submitted in writing and under oath to the Regional Office that issued the Certificate of Registration to the contractor (Section 24 of the Dept. Order No. 174) Labor authority are granted the power to conduct inspections of establishments involved in contracting arrangements. Unrestricted access to records and premises is permitted at any time, with records reviewed, employees interviewed, and conditions investigated to identify violations or enforce labor laws and regulations (Section 24 of the Dept. Order No. 174)	Not specifically mentioned in labour outsourcing laws
Freedom of association for outsourced workers	Not specifically mentioned in labour outsourcing laws No contract of service shall restrict an	Not specifically mentioned in labour outsourcing laws Every worker has the right to form and join a trade	Workers of contractors are entitled to the right to organize, engage in collective bargaining, and	Not specifically mentioned in labour outsourcing laws

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	employee's right to freely engage in trade union activities (Section 8 of the Employment Act 1955)	union (Article 104(1) of Manpower Act 2003)	participate in peaceful concerted activities, including the right to strike (Section 10 of the Dept. Order No. 174)	

4.5.2 Summery of analysis

Points are awarded based on how well each jurisdiction meets the specified legal requirements. A jurisdiction receives 1 point if it fully satisfies a criterion, 0.5 points if it partially addresses the criterion, and 0 points if the criterion is not addressed at all.

Table 4.3: Summary of analysis of laws of the four jurisdictions

Criteria/ Country	**Malaysia**	**Indonesia**	**Philippine**	**Sri Lanka**
1. Legislative and Regulatory Framework				
Availability of specific legislation/ law	Available 1 Point	Available 1 Point	Available 1 Point	Not available 0 Points
Availability of other legislation	Available 1 Point	Available 1 Point	Available 1 Point	Available (Partially) 0.5 Point
Landmark judgments	Available 1 Point	Available 1 Point	Available 1 Point	Available (majorly) 1 Point
Regulatory authorities	Established 0.5 Point	Established (specifically) 1 Point	Established (specifically) 1 Point	Established 0.5 Point
2. Principal Employer Responsibilities				
Liability for welfare, health, safety, and other facilities	Defined 1 Point	Defined 1 Point	Not provided 0 Points	Defined (partially) 0.5 Point
Responsibility for wage payments	Defined 1 Point	Defined 1 Point	Defined 1 Point	Defined (partially) 0.5 Point
Designating the principal employer as the employer of outsourced workers	Defined 1 Point	Defined 1 Point	Defined 1 Point	Established (by case law) 1 Point
Joint or solidary liability with immediate employer	Imposed 1 Point	Not imposed 0 Points	Imposed 1 Point	Imposed (partially) 0.5 Point
3. Contracts and Registration				
Requirement for a written employment contract	Mentioned (not specifically) 0.5 Point	Required 1 Point	Required 1 Point	Mentioned (not specifically) 0.5 Point
Registration of employment contracts	Not required 0 Points	Required 1 Points	Not required 0 Points	Not required 0 Points

Requirement for a written commercial contract between employers	Required 1 Points	Required 1 Point	Required 1 Point	Not required 0 Points
Registration of commercial contracts between employers	Not required 0 Points	Required 1 Point	Required (special circumstances) 1 Point	Not required 0 Points
Registration and licensing requirements for labor outsourcing	Not required 0 Points	Required 1 Point	Required 1 Point	Not required 0 Points
4. Work Standards				
Types and nature of permissible outsourced work	Not mentioned 0 Points	Mentioned 0.5 Point	Mentioned 0.5 Point	Not mentioned 0 Points
Limitations on the period of outsourced work	Not defined 0 Points	Defined 1 Point	Defined (slightly) 0.5 Point	Not defined 0 Points
Prohibited job categories to outsource	Not specified 0 Points	Specified 1 Point	Specified 1 Point	Not specified 0 Points
5. Rights and Protections of outsourced workers				
Prevention of discriminatory treatment compared to regular employees	Mentioned (not specifically) 0.5 Point	Mentioned (not specifically) 0.5 Point	Defined (partially) 0.5 Point	Not mentioned 0 Points
Grievance handling or dispute resolution	Not provided 0 Points	Provided (partially) 0.5 Point	Provided (partially) 0.5 Point	Not provided 0 Points
Freedom of association for outsourced workers	Allowed (not specifically) 0.5 Point	Allowed (not specifically) 0.5 Point	Allowed 1 Point	Allowed (not specifically) 0.5 Point
Total Points	**10/19**	**15/19**	**14/19**	**5/19**

The following chart highlights the strengths of legal frameworks in different jurisdictions. Indonesia and the Philippines have notably strong legal frameworks for labor outsourcing, while Malaysia's framework is moderate in comparison. Sri Lanka's legal framework is the weakest among the four jurisdictions. Therefore, it is essential to introduce new legal reforms to strengthen Sri Lanka's labor outsourcing sector.

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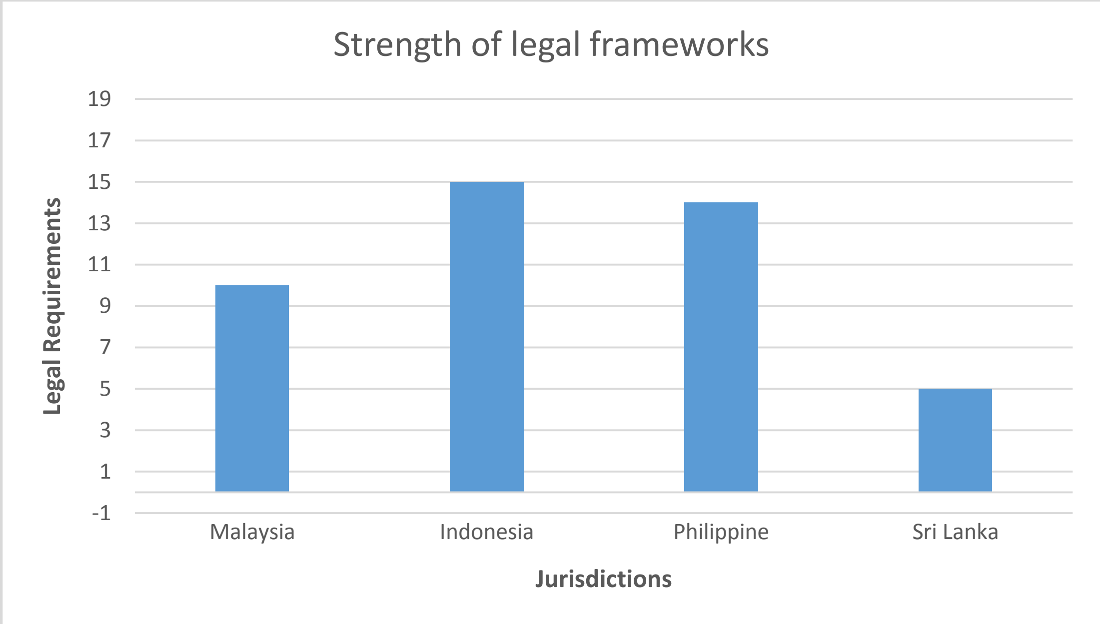

Figure 4.1

4.6 Findings

The findings from the analysis are organized to address the research questions systematically. First, the study examines the existing labor laws in Sri Lanka that define the legal position of outsourced workers within business organizations. Second, it highlights how current business practices negatively impact the outsourced workforce, particularly in terms of disparities in wages, benefits, and working conditions compared to directly employed workers. Third, the analysis explores how the absence of specific laws regulating the labor outsourcing sector in Sri Lanka enables business organizations to maintain greater flexibility in labor management, reducing operational constraints and costs. Fourth, the study assesses the impact of Sri Lanka's prevailing legal frameworks governing labor outsourcing by comparing them with those of Malaysia, Indonesia, and the Philippines, revealing significant gaps and areas for improvement. Finally, the research identifies insights from the regulatory frameworks of other jurisdictions that can be applied to develop a robust legal framework for the Sri Lankan labor outsourcing sector, ensuring fair treatment and enhanced protections for outsourced workers while fostering ethical business practices.

4.6.1 Existing labor laws that define the legal position of outsourced workers

The first research question explores the existing labor laws in Sri Lanka that define the legal position of outsourced workers deployed in business organizations. Understanding these laws lays the groundwork for analyzing the rights and protections currently available to outsourced workers and the responsibilities of employers within the outsourcing framework. In terms of wage payment responsibilities, Sections 59A(3)(a), 59A(3)(b), and 45A of the Wages Board Ordinance of 1941 in Sri Lanka offer similar protections to those provided by Articles 106, 108, and 110 of the Labour Code, Section 9 of Department Order No. 174 in the Philippines, Article 66(4) of the Manpower Act 2003 in Indonesia, and Sections 33(1) and 31(1) of the Employment Act 1955 in Malaysia.

Further, in terms of liability for welfare, health, safety, and other facilities, Section 22(1) of the Workmen's Compensation Ordinance of 1934 in Sri Lanka provides protections similar to those outlined in Article 66(4) of the Manpower Act 2003 in Indonesia and Section 15 of the Occupational Safety and Health Act 1994 in Malaysia. Regarding joint or solidary liability with the immediate employer, Section 45 of the Wages Board Ordinance 1941 and Section 9 of the Employees' Provident Fund Act 1958 of Sri Lanka offer protections similar to those found in Articles 109 and 106 of the Labour Code of the Philippines, Section 9 of Department Order No. 174 in the Philippines, and Section 33(1) of the Employment Act 1955 in Malaysia.

4.6.2 How current business practices negatively impact the outsourced workforce

The second research question explores how current business practices negatively impact the outsourced workforce. These findings underscore the significant challenges faced by outsourced workers, particularly in areas such as wage disparities, limited benefits, and substandard working conditions when compared to directly employed workers. Analyzing legal precedents, such as the cases of Raj Diamonds (Pvt) Ltd v. Weerakoon (1993), Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985), and Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979), reveals that Sri Lankan courts have consistently ruled in favor of outsourced workers. In Raj Diamonds (Pvt) Ltd v. Weerakoon (1993), the court determined that the business organization exercised overall control over the workers and assigned tasks directly to them. Consequently, the court recognized the business organization as the employer of the diamond cutters. In Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985), the court concluded that the business organization had full authority over determining workers' wages and acted as the actual employer. In Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979), the court held that the business organization bore sole responsibility for hiring workers, as the labor supplier merely functioned as an intermediary with no real authority. In Carson Cumberbatch & Co. Ltd. v. Nandasena (1974), the court interpreted ‘employer’ to mean a person who, on behalf of another, employs a workman. This definition includes not only the principal employer but also any individual acting on the principal’s behalf, who remains personally liable under common law.

The decisions in these cases highlight the detrimental effects of current business practices on outsourced employees, affirming the courts' recognition of the negative impact these practices have on the workforce. These legal rulings emphasize the need for better protection and regulation of outsourced labor, reflecting the challenges and inequities inherent in the existing business models. These legal rulings also support the concept of designating the principal employer as the employer of outsourced workers. This approach aligns with Article 106 and Article 109 of the Labour Code and Sections 7 and 12 of Department Order No. 174 in the Philippines, Article 65(8) and Article 66(4) of the Manpower Act 2003 in Indonesia, and Section 33(1) of the Employment Act 1955 in Malaysia.

4.6.3 How the Sri Lankan legal framework allows business organizations greater flexibility

The third research question looks at how the absence of specific laws regulating the labor outsourcing sector in Sri Lanka allows business organizations greater flexibility in managing labor. This lack of dedicated regulations enables businesses to leverage outsourcing to reduce employer responsibilities while maintaining operational agility. The Sri Lankan legal framework remains largely silent on many aspects of labor outsourcing, particularly in key areas related to contracts, registration, work standards, and the rights and protections of outsourced workers. Regarding contractual and registration requirements, there is no explicit mandate for written employment contracts, the registration of employment contracts, written commercial contracts between employers, or the registration and licensing of such contracts and labor outsourcing arrangements. In terms of work standards, the legal framework does not define the types or nature of permissible outsourced work, impose limitations on the duration of outsourced assignments, or identify job categories prohibited from being outsourced. This lack of regulation creates significant ambiguity in the management and oversight of outsourcing practices.

Moreover, the rights and protections of outsourced workers are inadequately addressed. There are no specific measures to prevent discriminatory treatment compared to regular employees, establish grievance-handling mechanisms, or ensure effective dispute resolution processes. Additionally, the framework does not explicitly guarantee freedom of association for outsourced workers, leaving them without a clear legal basis to organize or negotiate collectively. This regulatory gap underscores the need for comprehensive reforms to safeguard the welfare and rights of outsourced labor while promoting fair and ethical outsourcing practices. The absence of legal requirements regarding contracts, registration, work standards, and the rights of outsourced workers provides business organizations with significant labor management flexibility. Without the mandate for written employment or commercial contracts, organizations face fewer administrative burdens and enjoy greater discretion in structuring outsourcing arrangements. The lack of registration or licensing requirements for labor outsourcing further reduces regulatory oversight, allowing businesses to engage labor suppliers or outsourced workers with minimal procedural constraints. Similarly, the absence of defined work standards—

such as permissible job types, limitations on the duration of outsourcing, or prohibited job categories—enables organizations to utilize outsourced labor across a wide range of roles without restrictions.

This flexibility allows businesses to adapt quickly to changing operational needs, scale their workforce as necessary, and allocate resources with minimal interference. Furthermore, the lack of specific protections for outsourced workers, such as safeguards against discriminatory treatment, grievance mechanisms, and the right to organize, reduces the legal obligations of businesses. By avoiding these responsibilities, organizations can maintain cost efficiency, reduce liabilities, and exercise greater control over labor conditions. While this regulatory gap benefits businesses in terms of operational agility and cost management, it raises concerns about the equitable treatment and welfare of outsourced workers.

4.6.4 Gaps in Sri Lankan legislation

The fourth research question compares the prevailing legal frameworks governing labor outsourcing in Sri Lanka with those in Malaysia, Indonesia, and the Philippines. This comparative analysis reveals the strengths and weaknesses of Sri Lanka's legal framework in relation to these countries, providing insights into effective regulatory practices. The statutory provisions and case law on labor outsourcing in Sri Lanka, alongside frameworks in Malaysia, Indonesia, and the Philippines, reveal varying approaches to regulating this sector. This study identifies gaps in Sri Lankan law by comparing it with the legal frameworks of these jurisdictions. The analysis explores statutory provisions, licensing requirements, registration protocols, and enforcement mechanisms, aiming to identify deficiencies in Sri Lankan regulations and propose actionable recommendations for a comprehensive legal framework aligned with international best practices.

Sri Lanka's legal framework for labor outsourcing is assessed under key criteria compared to Malaysia, Indonesia, and the Philippines. In terms of legislative and regulatory frameworks, Sri Lanka lacks specific laws on outsourcing, unlike Indonesia and the Philippines, which have dedicated provisions. Principal employer responsibilities are also underdeveloped in Sri Lanka, as there is no explicit accountability for welfare, health, safety, or wage payments, exposing outsourced workers to risks. By contrast, Indonesia and the Philippines clearly assign these obligations to principal employers.

Sri Lanka does not mandate the registration of employment or commercial contracts in outsourcing arrangements, unlike the Philippines and Indonesia, where structured requirements ensure legal certainty and worker protection. Work standards are poorly regulated in Sri Lanka, with no limitations on the types of work or durations of outsourcing arrangements, leaving room for exploitation. The Philippines and Indonesia have clear restrictions to prevent abuse. Rights and protections for outsourced workers in Sri Lanka, such as protection from discrimination and the right to unionize, are minimal. In contrast, the Philippines and Indonesia provide comprehensive safeguards, including explicit provisions for grievance handling and freedom of association.

Traditional employment contracts involve a direct relationship between employer and employee, governed by general labor laws. In contrast, labor outsourcing introduces a triangular relationship involving the outsourced worker, the immediate employer, and the principal employer. The principal employer assumes significant responsibility for ensuring fair treatment and benefits for outsourced workers. This complexity necessitates specific laws to bridge the gap between the immediate employer's obligations and the principal employer's accountability.

To regulate labor outsourcing effectively in Sri Lanka, laws must prioritize principal employer accountability, address contract clarity, establish fair working conditions and wage standards, and protect outsourced workers' rights. Lessons from Malaysia, Indonesia, and the Philippines can guide the development of a robust framework, ensuring transparency and worker welfare while aligning with global best practices.

4.6.4.1 Principal Employer Responsibilities

The key concerns such as liability for welfare, health, safety, and other benefits; responsibility for wage payments; designating the principal employer as the employer of outsourced workers; and joint liability with the immediate employer are thoroughly examined under the specific labor outsourcing laws in Malaysia, Indonesia, and the Philippines. This analysis also includes a comparison with Sri Lankan legislation to identify gaps within the Sri Lankan current labor laws concerning outsourced workers.

4.6.4.1.1 Liability for welfare, health, safety, and other facilities

Section 15 of the Occupational Safety and Health Act 1994 of Malaysia mandates employers to ensure the health, safety, and welfare of employees at work, including providing safe systems of work, adequate facilities, and protection against risks. Employers must conduct risk assessments, provide safety training, and ensure contractors comply with safety protocols. Malaysia's legal framework emphasizes proactive measures like training and safety systems. In contrast, Section 22(1) of the Workmen's Compensation Ordinance 1934 of Sri Lanka focuses on compensation for injuries, lacking preventive welfare measures. The Malaysian law sets a higher standard by actively requiring employers to ensure safety and welfare, while Sri Lanka's approach remains reactive.

Article 66(4) of the Manpower Act 2003 of Indonesia requires employers to provide facilities for health, safety, and welfare, including safe work environments, rest areas, and medical care. Employers must also ensure outsourced workers' safety. Similar to Malaysian law, Indonesian provisions mandate proactive measures for health and safety. Conversely, Sri Lanka's Workmen's Compensation Ordinance 1934 focuses on post-incident compensation, creating a notable gap in preventive safety and welfare obligations compared to Malaysia and Indonesia.

The Philippine Labor Code lacks a detailed provision addressing principal employers' responsibilities for health, safety, and welfare in outsourcing. While Department Order No. 174 ensures basic rights like safe working conditions, it does not match the robust frameworks of Malaysia and Indonesia. The Workmen's Compensation Ordinance 1934 of Sri Lanka also does not mandate proactive measures for outsourced workers, leaving gaps in worker protection. Both Sri Lanka and the Philippines fall short in ensuring comprehensive health and safety responsibilities for principal employers, especially in outsourcing contexts.

Section 22(1) of the Workmen's Compensation Ordinance 1934 of Sri Lanka provides compensation for workplace injuries but does not impose duties to proactively ensure health, safety, or welfare facilities. Its limited scope contrasts sharply with the proactive requirements in Malaysia's Occupational Safety and Health Act 1994 and Indonesia's Manpower Act 2003. The Sri Lankan law focuses solely on post-incident compensation without preventive obligations, highlighting significant gaps in ensuring worker welfare and safety compared to Malaysia and Indonesia.

In summary, Sri Lanka's Workmen's Compensation Ordinance 1934 narrowly addresses compensation and lacks proactive measures seen in Malaysia and Indonesia. This leaves workers in Sri Lanka at a disadvantage, as employers are not explicitly required to provide health, safety, and welfare facilities, particularly for outsourced workers. Malaysia and Indonesia emphasize preventive safety systems, welfare facilities, and comprehensive worker protection, while Sri Lanka's reactive approach results in significant gaps in its legal framework.

4.6.4.1.2 Responsibility for wage payments

The Employment Act 1955 of Malaysia, particularly Sections 33(1) and 31(1), establishes joint liability of principals, contractors, and sub-contractors for wage payments, aligning with the Wages Board Ordinance 1941 of Sri Lanka. However, Malaysia limits liability to three months of unpaid wages and restricts principal liability in construction unless the principal is a contractor. Sri Lankan law, under Sections 59A(3)(a) and (b) of the Wages Board Ordinance 1941, does not impose a time limit on unpaid wages and allows the principal employer to avoid liability if due diligence is proven. This clause provides a defense for employers but may weaken protections compared to Malaysia's stricter approach.

Article 66(4) of the Manpower Act of Indonesia makes the principal employer fully responsible if no written agreement exists, creating a safeguard against ambiguous employment relationships. Conversely, Sri Lankan law holds the principal accountable even with written agreements, emphasizing direct responsibility while offering a due diligence exemption under Section 59A(3)(b). Unlike Indonesia's focus on contractual clarity, Sri Lanka's approach ensures continuous accountability, potentially providing stronger protections against wage defaults.

Articles 106, 108, and 110 of the Labor Code of the Philippines, along with Department Order No. 174, form a robust framework for principal employer liability. Article 106 mandates joint liability and regulatory oversight by the Secretary of Labor, while Article 110 prioritizes employee wage claims over other creditors in bankruptcy. The Philippines also allows principal employers to require contractor bonds, offering financial safeguards absent in the Wages Board Ordinance 1941 of Sri Lanka. Without such mechanisms, Sri Lankan workers face higher risks in cases of contractor defaults or insolvencies.

In summary, the Wages Board Ordinance 1941 of Sri Lanka imposes responsibilities on principal employers but lacks comprehensive protections seen in other jurisdictions. Workers under the Shop and Office Employees Act 1954 remain excluded. Unlike the Philippines, Sri Lanka lacks regulatory oversight of contracting practices, financial safeguards like bonds, and prioritization of wage claims in bankruptcy. These gaps leave Sri Lankan workers more vulnerable compared to counterparts in Malaysia, Indonesia, and the Philippines.

4.6.4.1.3 Designating the principal employer as the employer of outsourced workers

Section 33(1) of the Employment Act 1955 in Malaysia imposes joint and several liabilities on principals, contractors, and subcontractors for unpaid wages, with liability in the construction sector limited to principals directly involved as contractors or developers. In contrast, the Wages Board Ordinance 1941 in Sri Lanka mandates principals to ensure wage payments but allows them to avoid liability by showing due diligence. Malaysian provisions focus solely on unpaid wages, whereas Sri Lankan law offers a broader approach, extending liability beyond wages and addressing employment relationships more comprehensively, as demonstrated in Raj Diamonds Pvt Ltd v. Weerakoon 1993. Malaysian law lacks broader criteria for defining employment relationships, a gap Sri Lankan common law fills through its emphasis on control.

Articles 65(8) and 66(4) of the Indonesian Manpower Act 2003 define the principal as the employer if outsourced work does not meet specified conditions, requiring such work to be auxiliary and separate from core business functions. This structured approach contrasts with Sri Lanka's broader control test, which relies on judicial interpretation, as seen in Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985). While both frameworks deem the principal responsible if conditions are unmet, Indonesia enforces stricter upfront criteria, highlighting a gap in Sri Lankan law, where predefined business activity criteria could enhance predictability in determining employer responsibility.

Philippine labor law, particularly Articles 106 and 109 of the Labor Code and Dept. Order No. 174, establishes an extensive framework for protecting outsourced workers, covering unpaid wages and violations of labor standards by contractors. It explicitly defines labor-only contracting, deeming the principal the employer if the contractor lacks capital or merely supplies labor. This contrasts with Sri Lankan reliance on judicial interpretation, particularly the control test, as illustrated in Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979). The Philippines prohibits outsourcing practices undermining labor rights, while Sri Lankan case law focuses on the dynamics of control and relationships, lacking comprehensive statutory definitions and restrictions to safeguard against exploitative practices.

In summary, Sri Lanka relies primarily on judicial interpretation to recognize principal employers, often based on the level of control exercised and the nature of work performed by outsourced employees. Unlike jurisdictions such as Malaysia, Indonesia, and the Philippines, Sri Lanka lacks statutory clarity, relying instead on the control test to determine employer status. Existing laws, including the Wages Board Ordinance 1941, Employees' Provident Fund Act 1958, and Workmen's Compensation Ordinance 1934, address wages and compensation but fail to provide explicit criteria for labor outsourcing arrangements. This reliance on judicial interpretation, coupled with the absence of robust statutory provisions, results in potential inconsistencies and limited protections in Sri Lankan labor law.

4.6.4.1.4 The joint liability of principal employer with the immediate employer

Joint liability in labor outsourcing ensures that both the business organization and the labor supplier are responsible for safeguarding outsourced workers' rights and welfare, preventing exploitation and ensuring accountability. Section 33(1) of the Employment Act 1955 in Malaysia establishes that the principal employer is jointly responsible with the immediate employer for compliance with wage payments, overtime, and other labor standards. This provision allows workers to seek redress from both employers if obligations are unmet, ensuring workers are not left without compensation or benefits. In contrast, Sri Lanka's Wages Board Ordinance 1941 and Employees' Provident Fund Act 1958, which address wage payments and provident fund contributions, lack explicit provisions for joint liability in outsourcing. Section 45 of the Wages Board Ordinance focuses on setting minimum wages but does not address joint liability for non-payment of wages in outsourcing. Similarly, Section 9 of the Employees' Provident Fund Act emphasizes contributions but does not enforce joint liability for broader employment conditions, leaving Sri Lanka without a robust framework for holding principal employers accountable in outsourcing arrangements.

Indonesia also lacks joint liability provisions under the Manpower Act 2003, creating a less protective environment compared to Malaysia. While Indonesian laws ensure minimum labor standards, they do not hold principal employers liable for immediate employers' non-compliance, similar to Sri Lanka. However, in Sri Lanka, although the Wages Board Ordinance and Employees' Provident Fund Act hold principal employers accountable for wage payments and provident fund contributions, they fail to establish joint liability as explicitly as Malaysia's Employment Act. This gap limits protection for outsourced workers when immediate employers default on obligations.

In the Philippines, Article 106 of the Labor Code and Section 9 of Department Order No. 174 explicitly impose joint liability on the principal employer in outsourcing arrangements. Article 106 ensures principal employers are responsible for wage and labor standard violations when contractors fail to meet obligations, supported by Article 109, which establishes solidary liability for labor law violations. These provisions provide strong legal protection for workers in outsourcing, contrasting with Sri Lankan laws, which lack explicit mechanisms for joint liability. Sri Lankan workers remain disadvantaged, as the legal framework focuses on direct employer compliance without extending obligations to principal employers in outsourcing contexts.

While Section 45 of the Wages Board Ordinance 1941 mandates minimum wage payments and Section 9 of the Employees' Provident Fund Act ensures provident fund contributions, these provisions do not address principal employers' joint liability for outsourced workers. Unlike Malaysia and the Philippines, where joint liability provisions like Section 33(1) of the Malaysian Employment Act and Articles 106 and 109 of the Philippine Labor Code enable workers to claim wages and benefits from both employers, Sri Lanka's framework emphasizes compliance by direct employers alone. This creates a gap in protecting outsourced workers when immediate employers fail to fulfill their obligations.

In summary, Sri Lanka's Wages Board Ordinance 1941 and Employees' Provident Fund Act 1958 lack provisions for joint liability of principal employers in subcontracting arrangements, exposing workers to exploitation. In contrast, Malaysia and the Philippines impose clear joint liability provisions, ensuring workers' rights are protected regardless of immediate employer compliance. This gap in Sri Lankan law highlights limited enforcement mechanisms compared to the robust protections provided in Malaysia and the Philippines.

4.6.4.2 Contracts and Registration

A comprehensive policy recommendation on labor outsourcing should focus on labor contracts and labor supply agreements, emphasizing their formulation and registration. This includes key areas such as the requirement for a written employment contract, the registration of employment contracts, the necessity of written commercial agreements between employers, the registration of such commercial contracts, and the registration and licensing requirements for labor outsourcing. These aspects are thoroughly analyzed and discussed in the following sections.

4.6.4.2.1 Requirement for a written employment contract

The requirement for written employment contracts in labor outsourcing varies across Malaysia, Indonesia, the Philippines, and Sri Lanka, with notable gaps in Sri Lankan legislation. In Malaysia, labor outsourcing laws do not explicitly mandate written employment contracts, leaving room for ambiguity in employment relationships. Similarly, Sri Lankan laws lack explicit requirements for written contracts in outsourcing, leading to potential disputes and unclear worker rights and employer responsibilities.

Conversely, Indonesia and the Philippines have robust legal frameworks promoting transparency and worker protection in outsourcing. Article 27(1) of Law Number 19 of 2012 of Indonesia obliges labor suppliers to provide written employment contracts, while Article 65(6) of the Manpower Act of 2003 requires documentation of the relationship between the employer and the worker, detailing tasks, duties, work location, and employment terms. The Philippines mandates similar clarity under Section 11(a) of Department Order No. 174, which requires employment agreements to specify the nature of work, duties, and other essential terms.

These measures in Indonesia and the Philippines ensure accountability and safeguard worker rights, minimizing exploitation risks. By contrast, the absence of such requirements in Sri Lanka exposes outsourced workers to inconsistencies and potential exploitation due to unformalized employment relationships.

Sri Lanka would benefit from statutory provisions mandating written employment contracts for outsourced workers. Such laws should detail job responsibilities, wages, and the duration

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of employment, aligning with best practices in Indonesia and the Philippines. This would enhance transparency, protect worker rights, and promote fairness in labor outsourcing arrangements.

The gaps in Sri Lankan legislation include the lack of explicit legal requirements for written contracts, unlike Indonesia and the Philippines, which have clear statutory mandates under Department Order No. 174 and Article 27(1) of Law Number 19 of 2012. Additionally, Sri Lanka has no standards specifying contract details such as tasks, duties, and terms of employment, creating ambiguity in employer-worker relationships and increasing the risk of disputes and exploitation.

4.6.4.2.2 Registration of employment contracts

The requirement for registering employment contracts in labor outsourcing reveals notable gaps in Sri Lankan legislation compared to international frameworks. Sri Lanka and Malaysia do not mandate the registration of employment contracts for outsourced workers, which hampers the monitoring and enforcement of labor standards due to the absence of official records. In contrast, Indonesia's Article 27(2) of Law Number 19 of 2012 requires the registration of employment contracts between immediate employers and outsourced workers with regional or municipal institutions, ensuring oversight, accountability, and protection of workers' rights. This formal mechanism enhances transparency and provides a framework for resolving disputes or irregularities in contract terms.

The Philippines, like Sri Lanka and Malaysia, does not require the registration of employment contracts for outsourced workers. However, the Philippines compensates by enforcing strict guidelines on labor contracting, including the need for written agreements outlining employment terms, as stipulated in Department Order No. 174. This approach offers a level of protection and clarity that Sri Lanka's legal framework lacks, as it neither mandates written agreements nor requires the registration of outsourcing contracts.

The absence of a registration mechanism in Sri Lanka leaves outsourced workers vulnerable to exploitation and weakens the ability of regulatory authorities to enforce labor protections. Without a formal record, monitoring compliance with wage laws, work conditions, and other statutory obligations becomes challenging. Introducing a requirement for employment contract registration, similar to Indonesia's provisions, could enhance transparency and accountability in labor outsourcing, ensuring better worker protection and promoting a more equitable labor market.

4.6.4.2.3 Requirement for a written commercial contract between employers

In labor outsourcing, Sri Lankan legislation lacks a requirement for registering commercial contracts between employers, creating a regulatory gap compared to Indonesia and the Philippines. Articles 20(1) and (2) of Law Number 19 of 2012 in Indonesia require employers and worker supply companies to register agreements with local manpower authorities within 30 days, including an operating license and a draft employment contract. Non-registration allows authorities to revoke the labor supplier's operating license under Article 23, ensuring transparency and protecting workers' rights.

The Philippines, under Section 20 of Department Order No. 174, mandates contractors operating outside their registered region to submit their Certificate of Registration and Service Agreements to the Labour Department. Although less stringent than Indonesia's system, this process provides oversight by requiring key document submissions to regional authorities.

In Sri Lanka, there is no requirement to register contracts between principal employers and labor suppliers. This regulatory omission hinders the monitoring of agreements, facilitates non-compliance with labor standards, obscures accountability, and reduces protections for outsourced workers. Introducing a registration system similar to Indonesia or the Philippines could enhance transparency, enforce compliance, and safeguard worker rights in Sri Lanka's labor outsourcing sector.

4.6.4.2.4 Registration of commercial contracts between employers

The Sri Lankan legal framework does not require the registration of commercial contracts between principal employers and labor supply companies in labor outsourcing. This marks a significant gap compared to Indonesia and the Philippines. In Indonesia, Articles 20(1) and (2) of Law Number 19 of 2012 mandate registering agreements between employers and worker supply companies with the local manpower authority within 30 working days of signing, accompanied by supporting documents like a valid operating license and draft employment contracts. Failure to comply can lead to revocation of the labor supplier's operating license under Article 23, ensuring accountability, compliance with labor laws, and safeguarding outsourced workers. The

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Philippines, under Section 20 of Department Order No. 174, similarly requires contractors operating outside their registered regional offices to submit authenticated Certificates of Registration and service agreements to the Department of Labor Regional Office, strengthening transparency and monitoring.

In contrast, Sri Lanka has no statutory provisions mandating such registrations, resulting in a lack of oversight or accountability mechanisms to monitor the terms and conditions of labor outsourcing agreements. This regulatory gap increases the risk of non-compliance, exploitation, and ambiguity. By not implementing registration requirements similar to those in Indonesia and the Philippines, Sri Lanka fails to ensure transparency, monitoring, and employer accountability. Adopting such protocols could enhance the protection of outsourced workers, improve compliance with labor standards, and prevent misuse of outsourcing arrangements.

4.6.4.2.5 Registration and licensing requirements for labor outsourcing

Sri Lankan legislation lacks explicit requirements for labor suppliers to register with a government agency or obtain a license to operate. This contrasts with Indonesia and the Philippines, where stringent legal frameworks are in place. Article 65(3) of Indonesia's Manpower Act 2003 requires immediate employers to be legal entities, and Section 14 of Department Order No. 174 in the Philippines mandates contractors to hold valid licenses and register with the Department of Labor's Regional Office. These provisions establish a regulated framework that Sri Lanka currently does not have.

In Indonesia, Articles 1(14) of Regulation 2021 and 65(3) of the Manpower Act 2003 ensure labor suppliers are legal entities with formal agreements, while in the Philippines, licensing and registration promote transparency and accountability. Sri Lankan law, however, lacks mechanisms to verify the legitimacy of labor suppliers, increasing the risk of unregulated entities exploiting workers.

Malaysia's Section 33A(1) of the Employment Act 1955 obliges labor contractors to provide written contracts for inspection, enabling authorities to monitor compliance. In Sri Lanka, no such provisions exist, limiting regulatory oversight of outsourcing practices. The absence of licensing and registration requirements weakens worker protections, as seen in the Philippines, where such measures allow enforcement of minimum standards and penalties for non-compliance. Without these safeguards, Sri Lanka's labor market remains vulnerable to exploitation.

By not mandating registration or licensing, Sri Lanka misses the opportunity to enhance oversight and enforce standards. Countries like the Philippines use these mechanisms to ensure compliance, collect data, and inform better policymaking. Sri Lanka's lack of such requirements restricts its ability to address systemic labor outsourcing issues.

To close these gaps, Sri Lanka could introduce legislation requiring labor suppliers to be registered, licensed, and subject to inspections. These measures would enhance accountability, promote fair labor practices, and align the country's framework with international standards. Key gaps include the absence of legal requirements for registration or licensing, lack of entity verification mechanisms as seen in the Manpower Act 2003 of Indonesia and Department Order No. 174 of the Philippines, absence of inspection provisions akin to Section 33A(1) of Malaysia's Employment Act 1955, and weaker protections against exploitation.

4.6.4.3 Work Standards

In order to identify gaps in Sri Lankan law regarding work standards for outsourced workers, a comparison is conducted with the legal frameworks of Malaysia, Indonesia, and the Philippines. The focus is on the types and nature of permissible outsourced work, limitations on the duration of outsourced work, and prohibited job categories for outsourcing.

4.6.4.3.1 Types and nature of permissible outsourced work

Malaysian law does not provide specific guidelines on the types of work that can or cannot be outsourced, giving companies considerable discretion in determining outsourced work, which could jeopardize job security for regular employees. Sri Lanka similarly lacks explicit statutory guidance distinguishing between core and non-core outsourced functions. Both countries would benefit from clear criteria to safeguard workers in essential business roles. Indonesia, by contrast, has a detailed legal framework under Article 65(2) of the Manpower Act 2003 and Article 17(3) of the Regulation 2012, limiting outsourced work to auxiliary tasks and prohibiting subcontracting by worker supply companies, which protects employees attached to core business activities. This clear delineation reduces ambiguity compared to Sri Lanka's reliance on judicial

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interpretation, as demonstrated in cases like Raj Diamonds (Pvt) Ltd v. Weerakoon (1993).

The Philippines provides a structured outsourcing framework under Section 8 of Department Order No. 174, mandating that contractors and subcontractors must be independent entities with substantial capital and provide workers with legal rights and benefits. Outsourcing is limited to non-core activities, ensuring job security for permanent employees. Sri Lanka's approach, based on the ‘control test’ in cases like the Ceylon Fertilizer Corporation case, lacks the clarity of the Philippines' framework, making it more susceptible to arbitrary outsourcing. The Philippine model offers stronger worker protection, a model that could improve worker safeguards in Sri Lanka.

Sri Lanka’s legal provisions, including the Wages Board Ordinance 1941 and Employees’ Provident Fund Act 1958, focus on wage protection and responsibility sharing between employers but do not distinguish the nature of work suitable for outsourcing. Judicial cases like Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979) have shaped the understanding of employer-employee relationships based on control and employment substance. However, Sri Lanka’s reliance on judicial discretion without statutory criteria for outsourcing leads to inconsistencies. Introducing statutory guidelines similar to those in Indonesia or the Philippines would offer clearer protection for outsourced workers and reduce the reliance on judicial interpretation.

In summary, Sri Lanka’s lack of statutory guidance on permissible outsourced work contrasts with the structured frameworks in Indonesia and the Philippines, which specify that outsourcing should be limited to non-core functions. This framework could improve the consistency and predictability of employment outcomes in Sri Lanka and help prevent misuse of outsourcing arrangements that may jeopardize worker rights and job security. Key gaps in Sri Lanka’s legal framework include the lack of distinction between core and non-core work types and the absence of restrictions on outsourcing core activities, undermining protections for both outsourced and regular employees.

4.6.4.3.2 Limitations on the period of outsourced work

Article 59 of the Manpower Act 2003 of Indonesia sets clear parameters for temporary employment, regulating contract duration and renewal, while prohibiting temporary agreements for permanent roles. Article 6 of Regulation 2021 further limits short-term employment agreements to five years. In contrast, Sri Lanka's limitations on contract duration are more implicit, relying on general legal principles and judicial interpretation rather than fixed statutory timelines. Sri Lanka does not impose caps on contract terms, leaving workers without clear protections on contract duration. This results in greater legal clarity in Indonesia and potential employment insecurity in Sri Lanka due to limited contract term protections.

Section 6(I) of the Department Order No. 174 of the Philippines prohibits contracts that arbitrarily shorten employment below the full contract duration unless linked to specific project phases. This regulation aims to ensure transparency and prevent manipulative contract structuring, offering more robust protection than Sri Lanka's reliance on judicial rulings to address labor abuses. The Philippine framework ensures job security by aligning contract length with the work assignment duration, while Sri Lanka's case law and generalized ordinances leave room for employers to structure contracts in a way that could disadvantage workers.

Sri Lanka’s legal framework, including the Wages Board Ordinance 1941 and key judicial decisions, lacks direct provisions on maximum employment periods for non-permanent roles. While landmark cases like Carson Cumberbatch & Co. Ltd. v. Nandasena (1974) and others have established standards for employer relationships, they do not provide the clarity seen in Indonesian or Philippine statutes. Sri Lanka’s ordinances protect wages and responsibilities in outsourcing but do not prevent indefinite contract extensions, creating a gap in protections related to job security and contract clarity.

In summary, Sri Lanka's labor laws would greatly benefit from explicit statutory provisions regulating the duration of employment contracts for non-permanent roles, similar to the frameworks in Indonesia and the Philippines. Such measures would enhance job security, reduce overreliance on judicial interpretation, and align Sri Lanka with international worker protection standards. Notable gaps in Sri Lankan legislation regarding labor outsourcing include the lack of limitations on contract tenure and unrestricted periodic renewals. Unlike Indonesia, which imposes a five-year maximum on employment contracts, Sri Lanka permits indefinite extensions, undermining job stability. Furthermore, the absence of restrictions on repeated contract renewals creates uncertainty in employment terms, leaving workers vulnerable to exploitation and insecure conditions.

4.6.4.3.3 Prohibited job categories to outsource

Malaysian legislation does not specify prohibited job categories for outsourcing, creating potential gaps in employee rights protection, especially where employers try to avoid direct employment obligations. This contrasts with the Philippines, where strict limits exist. Malaysian labor law allows employers more discretion in outsourcing, which can lead to exploitative practices in industries requiring job security and fair labor standards. In Indonesia, Article 59(2) of the Manpower Act 2003 ensures that principal employers remain liable for wages owed if their immediate employers fail to meet wage obligations. This provides indirect protection for workers, though Indonesia does not directly restrict outsourced job categories. Sri Lanka's Wages Board Ordinance 1941 holds principal employers accountable when outsourced work is integral to the business, a principle that could strengthen protections in Indonesia if applied to core business roles.

Philippine law under Sections 5 and 6 of Department Order No. 174 is particularly strong in prohibiting labor-only contracting for core functions. It prevents contractors from lacking necessary resources or using outsourcing to bypass strikes or force predated resignation agreements. This robust framework goes further than Sri Lanka, where outsourcing regulations mainly focus on employer accountability for wages and benefits rather than job category restrictions. Landmark cases like Raj Diamonds (Pvt) Ltd v. Weerakoon(1993) and Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985) show that Sri Lankan courts apply a ‘control test’ in employment relationships but rely on case law, creating potential inconsistencies in applying employment rights. Unlike the Philippines, Sri Lanka depends on judicial interpretation instead of clear statutory prohibitions.

In summary, Malaysia and Sri Lanka have similar gaps in prohibiting specific outsourced job categories, while Indonesia offers wage protection but lacks broad prohibitions. The Philippines provides extensive safeguards against labor-only contracting and for core business roles. Sri Lanka would benefit from clearer legislative provisions like those in the Philippines to prevent exploitation and ensure fair working conditions for outsourced workers, particularly in key sectors. The gaps in Sri Lankan legislation include no defined prohibited job categories, lack of labor-only contracting restrictions, and absence of union-based prohibitions.

4.6.4.4 Rights and Protections of outsourced workers

To identify gaps in Sri Lankan legislation regarding the rights and protections of outsourced workers, a comparison is made with the laws of Malaysia, Indonesia, and the Philippines. The focus is on areas such as the prevention of discriminatory treatment compared to regular employees, grievance handling and dispute resolution mechanisms, and the freedom of association for outsourced workers.

4.6.4.4.1 Prevention of discriminatory treatment compared to regular employees Malaysia does not explicitly address discriminatory treatment of outsourced workers in labor outsourcing laws. However, Section 60L(1) of the Employment Act 1955 ensures equality in employment conditions between local and foreign workers in the same role, establishing a precedent for non-discrimination in some employment contexts, though it does not specifically apply to outsourced workers. In contrast, Sri Lanka lacks similar protections in its labor laws, leaving outsourced workers vulnerable to discriminatory practices, especially regarding wages, benefits, and working conditions.

In Indonesia, labor outsourcing laws do not directly address discrimination against outsourced workers, but Articles 5 and 6 of the Law No. 13 of 2003 prohibit workplace discrimination based on race, religion, or political affiliation, which can be interpreted to include outsourced workers. Sri Lanka, however, does not have equivalent anti-discrimination provisions, highlighting a gap in its legal framework compared to Indonesia's broader anti-discrimination measures.

The Philippines offers the most comprehensive protection, with Section 27 of Department Order No. 174 prohibiting discriminatory actions such as withholding payments, reducing wages or benefits, or termination against workers involved in labor disputes. This provision ensures equitable treatment of outsourced workers. In contrast, Sri Lanka lacks such specific regulations, leaving outsourced workers vulnerable to inferior wages, benefits, and conditions compared to directly employed workers. The Philippine model offers a potential framework for Sri Lanka to adopt in enhancing protections for its workforce.

In summary, Sri Lanka’s labor laws do not specifically address discrimination between outsourced and regular employees. While they provide wage and liability protections, they do not ensure parity in employment conditions, allowing inequalities to persist. Sri Lanka's labor laws lag behind those of countries like the Philippines, Malaysia, and Indonesia in protecting outsourced workers from discrimination. Adopting provisions similar to those in the Philippines could help Sri Lanka align with international labor standards and better protect its outsourced workforce.

Key gaps in Sri Lankan legislation on labor outsourcing include the lack of non-discrimination provisions, which are present in Indonesia and Malaysia, and the absence of specific mechanisms to prevent discriminatory actions, like those found in the Philippines' Department Order No. 174. Additionally, Sri Lanka's labor laws do not incorporate broad anti-discrimination standards like Indonesia's Law No. 13 of 2003, leaving outsourced workers without sufficient legal recourse to challenge unfair treatment.

4.6.4.4.2 Grievance handling and dispute resolution

In Malaysia, labor outsourcing laws do not specifically address grievance handling or dispute resolution mechanisms for outsourced workers, creating a gap that leaves these employees without a formalized process for resolving disputes with their contracting or principal employer. This lack of clarity regarding responsibility for grievance handling may expose outsourced workers to unfair treatment or delayed dispute resolutions. Similarly, Sri Lanka's labor outsourcing laws lack provisions for grievance handling or dispute resolution, resulting in a vulnerability for outsourced workers who lack access to formal channels for resolving employment-related issues. Both Malaysia and Sri Lanka could benefit from provisions outlining grievance procedures and assigning responsibility to either the outsourcing agency or the principal employer. Without such measures, outsourced workers in both countries may face barriers in accessing fair resolutions to their complaints.

In contrast, Indonesia has developed grievance mechanisms for outsourced workers under Article 18(3) of Regulation 2021, providing a clear process for handling disputes and ensuring that workers have a defined route to raise grievances. This framework supports a more structured employment environment and improves employer accountability. Indonesia's system offers protections not available in Sri Lanka, where outsourced workers often rely on informal processes, limiting their ability to address grievances effectively.

The Philippines also provides robust grievance mechanisms for outsourced workers under Sections 24 and 28 of Department Order No. 174, requiring both contractors and principal employers to provide avenues for workers to resolve disputes. These sections ensure timely resolutions, protect workers from prolonged grievances, and mandate joint responsibility for dispute resolution. In comparison, Sri Lanka's lack of explicit grievance mechanisms highlights a significant gap, as workers face less clarity and longer resolution times. By implementing similar provisions, Sri Lanka could enhance the support for outsourced workers and improve access to fair dispute resolution.

In summary, Sri Lanka's labor laws, like Malaysia's, lack specific grievance handling provisions, leaving workers vulnerable to delayed resolutions. Indonesia and the Philippines, however, offer clearer and more structured grievance mechanisms, underscoring the need for Sri Lanka to adopt similar frameworks to protect outsourced workers more effectively. The gaps in Sri Lankan laws include the absence of specific legal means for grievance resolution, lack of a clear framework, absence of joint responsibility for dispute handling, and vulnerability to prolonged disputes due to the absence of defined timelines and procedures.

4.6.4.4.3 Freedom of association for outsourced workers

Labor outsourcing laws in Malaysia do not specifically address the freedom of association for outsourced workers. However, Section 8 of the Employment Act 1955 prohibits employers from preventing employees from joining or forming trade unions, which applies to all employees, including outsourced workers. This offers some protection for their right to associate, though the lack of explicit inclusion in outsourcing laws leaves room for interpretation, potentially creating challenges for outsourced workers due to the triangular employment relationship between principal employers, contractors, and workers. Sri Lanka faces a similar issue, as its labor outsourcing laws do not specifically address the freedom of association for outsourced workers, creating practical difficulties for them in forming or joining unions. General labor laws might offer some protections, but explicit provisions for outsourced workers would strengthen their rights.

In Indonesia, Article 104(1) of the Manpower Act 2003 guarantees all workers, including outsourced workers, the right to form and join trade unions, offering stronger protections than Sri Lanka's laws. This explicit legal recognition ensures outsourced workers in Indonesia have the same rights as permanent employees concerning freedom of association. Meanwhile, the Philippines explicitly protects outsourced workers' freedom of association under Section 10 of Department Order No. 174, ensuring that neither the contractor nor the principal employer can interfere with their rights to join or form unions. This provision offers clear protection, making the Philippines' approach more robust than those of other jurisdictions, including Sri Lanka, where outsourced workers must rely on general labor laws that do not adequately address their specific employment context.

In conclusion, while Malaysia and Sri Lanka share the gap of not explicitly addressing the freedom of association for outsourced workers in their labor outsourcing laws, Indonesia and the Philippines have taken steps to provide stronger protections. The Philippines, in particular, offers a comprehensive model for protecting outsourced workers' rights to unionize in outsourcing-specific legislation, a framework that Sri Lanka could consider to improve its own laws. The gaps in Sri Lanka's legal framework include a lack of explicit protection and the vulnerability of outsourced workers to exclusion from union activities due to the complexities of their employment relationships.

4.6.5 Recommendations for enhancing legal framework in Sri Lanka

The final research question considers the insights that can be drawn from the labor laws of other jurisdictions to help regulate the Sri Lankan labor outsourcing sector. By examining the regulatory approaches of Malaysia, Indonesia and Philippine, this analysis aims to identify strategies for developing a robust legal framework in Sri Lanka, one that protects outsourced workers and ensures fair and ethical practices within the labor outsourcing sector. Recommendations for establishing a comprehensive legal framework are presented in the final chapter.

4.7 Summery

The findings reveal significant gaps and inconsistencies in Sri Lanka's labor laws regarding labor outsourcing when compared to the frameworks in Malaysia, Indonesia, and the Philippines. These deficiencies span across multiple critical areas, undermining the protections and rights of outsourced workers. While other countries have implemented comprehensive regulations to address the complexities of outsourcing, Sri Lanka's legal framework remains inadequate and fragmented.

In terms of principal employer responsibilities, Sri Lanka fails to prioritize proactive measures for the welfare, health, and safety of outsourced workers. Its approach relies heavily on compensatory mechanisms following workplace incidents rather than emphasizing prevention. Wage protections are inconsistent, with significant gaps in ensuring financial security during contractor insolvency or wage defaults. Additionally, the absence of statutory clarity regarding the role of principal employers and the lack of joint liability provisions leave workers exposed to exploitation and reduce accountability across outsourcing arrangements.

When evaluating work standards, Sri Lanka's labor laws do not differentiate between core and non-core functions, permitting unrestricted outsourcing of critical roles. This practice undermines job security and creates a two-tier workforce, where outsourced workers often face inferior working conditions. Moreover, the lack of statutory limitations on contract duration or renewal fosters a cycle of precarious, indefinite employment for outsourced workers. The absence of regulations prohibiting labor-only contracting or protecting against the outsourcing of essential job categories further weakens safeguards for both permanent and outsourced employees, leaving them vulnerable to instability and exploitation.

With regard to the rights and protections of outsourced workers, Sri Lanka lacks comprehensive legal provisions to prevent discriminatory treatment, ensure access to grievance mechanisms, or uphold the freedom of association. Unlike its regional counterparts, Sri Lanka does not provide clear legal mandates for parity in wages, benefits, and working conditions between outsourced and regular employees. The absence of structured grievance resolution processes tailored for outsourced workers further exacerbates their vulnerabilities, leaving them with limited recourse to address workplace disputes. Additionally, the lack of explicit protections for freedom of association hinders outsourced workers' ability to join trade unions or engage in collective bargaining, significantly diminishing their capacity to advocate for improved labor conditions.

Overall, the analysis highlights a pressing need for Sri Lanka to reform its labor laws to address the unique challenges posed by outsourcing. By adopting clear regulations for employer responsibilities, work standards, and the rights of outsourced workers, Sri Lanka can align its legal framework with regional and international legal standards. Such reforms are essential to foster greater accountability, equity, and protection for outsourced employees, ensuring a fair and secure working environment for all.

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

This chapter assesses the impact of the current legal framework governing outsourced workers in Sri Lanka on business organizations, drawing on the findings presented in the previous chapter. It critically evaluates how the existing legal framework affects both outsourced workers and the operational efficiency of businesses. Furthermore, it provides a set of well-considered recommendations aimed at reforming and introducing new legal measures to regulate the labor outsourcing sector. These recommendations seek to ensure a balance between safeguarding the rights and entitlements of outsourced workers and enabling businesses to manage their labor force flexibly and effectively, thereby promoting operational excellence without unnecessary labor-related complications.

The discussion highlights key gaps in the current legal framework, focusing on issues such as the responsibilities of principal employers, contract terms and registration, work standards, and the rights and protections of outsourced workers within the context of labor outsourcing. Simultaneously, it explores how legal reforms can facilitate businesses in navigating labor management challenges, enhancing competitiveness, and optimizing workforce utilization. The proposed measures advocate for a regulatory framework that fosters a fair and sustainable environment for all stakeholders, ensuring compliance with international labor standards while aligning with the unique socio-economic context of Sri Lanka.

The research successfully addresses several key objectives related to the legal and operational landscape of labor outsourcing in Sri Lanka. The first objective was to explore the existing labor laws in Sri Lanka that establish the legal position of outsourced workers deployed in business organizations. This study has delved into the statutory provisions that define the rights and responsibilities of outsourced workers, highlighting the current legal framework and its limitations.

The second objective aimed to understand the impact of current business practices on the outsourced workforce in Sri Lanka. Through this exploration, the study has provided a comprehensive view of how business practices affect outsourced workers, shedding light on challenges such as wage disparities, inadequate benefits, and poor working conditions compared to directly employed workers.

The third objective focused on examining how the absence of specific laws regulating the labor outsourcing sector impacts flexibility in labor handling for business organizations in Sri Lanka. The research reveals that the lack of dedicated outsourcing regulations provides businesses with greater flexibility in managing labor, allowing them to swiftly adjust to operational needs while avoiding the constraints of a more rigid regulatory framework.

The fourth objective sought to assess the effectiveness of Sri Lanka's prevailing legal frameworks governing labor outsourcing in comparison to those in Malaysia, Indonesia, and the Philippines. The study successfully compares these frameworks, identifying strengths and weaknesses relative to international standards, thereby shedding light on areas where Sri Lanka's laws could be improved.

The final objective was to provide insights from the specific laws of other jurisdictions to guide the regulation of the Sri Lankan labor outsourcing sector. Drawing on lessons from other countries, the study offers valuable recommendations for establishing a robust legal framework that can effectively regulate labor outsourcing in Sri Lanka. Collectively, these findings contribute to a deeper understanding of the challenges and opportunities in the current legal and operational environment, paving the way for informed policy development and improved labor protections for outsourced workers.

5.1 Sri Lankan Labor Laws Governing Outsourced Workers

The research objective of exploring the existing labor laws in Sri Lanka that establish the legal position of outsourced workers deployed in business organizations has been met. The analysis reveals that Sri Lankan labor laws, such as Sections 59A(3)(a), 59A(3)(b), and 45A of the Wages Board Ordinance of 1941, address wage payment responsibilities in a manner comparable to protections provided by Articles 106, 108, and 110 of the Labour Code, Section 9 of Department Order No. 174 in the Philippines, Article 66(4) of the Manpower Act 2003 in Indonesia, and Sections 33(1) and 31(1) of the Employment Act 1955 in Malaysia. Additionally, Section 22(1) of the Workmen's Compensation Ordinance of 1934 aligns with Article 66(4) of the Manpower Act 2003 in Indonesia and Section 15 of the Occupational Safety and Health Act 1994 in Malaysia in addressing liability for welfare, health, safety, and other facilities for workers. Furthermore, joint or solidary liability with the immediate employer is covered under Section 45 of the Wages Board Ordinance 1941 and Section 9 of the Employees' Provident Fund Act 1958 in Sri

Lanka, offering similar protections to those provided by Articles 109 and 106 of the Labour Code of the Philippines, Section 9 of Department Order No. 174 in the Philippines, and Section 33(1) of the Employment Act 1955 in Malaysia. This comprehensive analysis confirms that the research objective has been achieved.

5.2 The Impact of Business Practices on Outsourced Workforce

The objective of understanding the impact of current practices followed by business organizations on the outsourced workforce in Sri Lanka has been met through a detailed analysis. The findings reveal significant challenges faced by outsourced workers, particularly regarding wage disparities, limited benefits, and substandard working conditions compared to directly employed workers. Legal precedents from cases such as Raj Diamonds (Pvt) Ltd v. Weerakoon (1993), Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985), and Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979) highlight how Sri Lankan courts have consistently recognized the negative impact of these practices.

In Raj Diamonds (Pvt) Ltd v. Weerakoon (1993), the court identified the business organization as the employer, given its direct control over workers and task assignments. Similarly, in Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985), the court concluded that the organization, as the decision-maker regarding wages, was the actual employer. In Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979), the court determined that the labor supplier was merely an intermediary, with the business organization bearing full responsibility for hiring workers. Furthermore, in Carson Cumberbatch & Co. Ltd. v. Nandasena (1974), the court interpreted the term “employer” broadly to include not only the principal employer but also individuals acting on their behalf, who are personally liable under common law.

These rulings underscore the detrimental effects of current outsourcing practices on employees and emphasize the need for stronger protections and regulatory measures. They also support the principle of designating the principal employer as the employer of outsourced workers, aligning with international standards such as Article 106 and Article 109 of the Labour Code and Sections 7 and 12 of Department Order No. 174 in the Philippines, Article 65(8) and Article 66(4) of the Manpower Act 2003 in Indonesia, and Section 33(1) of the Employment Act 1955 in Malaysia. This alignment highlights the necessity for comprehensive reforms to address the inequities and challenges inherent in the existing business models.

5.3 Impact of the Existing Legal Framework on Business Organizations and the Economy

The objective of looking at how the absence of specific laws regulating the labor outsourcing sector impacts flexibility in labor handling for business organizations in Sri Lanka was met The previous chapter highlighted significant gaps in Sri Lankan legislation on labor outsourcing, especially compared to Malaysia, Indonesia, and the Philippines. These gaps have led to challenges for both outsourced workers and business organizations. The absence of clear laws has left workers vulnerable, affecting their rights and entitlements, while businesses face uncertainty in managing outsourced labor.

Business organizations struggle with operational inefficiencies, disputes, and legal risks due to the lack of specific legal guidance. This has made it difficult for businesses to establish clear contractual obligations, ensure compliance, and maintain stable outsourcing arrangements. It is essential to understand how these legislative gaps affect business operations and competitiveness.

The responsibility of the principal employer for the welfare, health, and safety of outsourced workers remains unclear. Without laws outlining these duties, businesses risk legal liabilities, financial penalties, and reputational damage. The unclear distribution of responsibilities for wage payments further complicates accountability, often leading to disputes over worker entitlements.

The absence of laws mandating written contracts creates risks for businesses, with potential disputes over employment terms and difficulties in proving obligations. Without formal registration and licensing for labor outsourcing agencies, businesses may unknowingly engage with substandard providers, exposing themselves to compliance and legal issues.

Additionally, the lack of regulations defining permissible outsourced work, as well as the duration and job categories for outsourcing, can result in legal and operational challenges. This could lead to disputes, fines, and loss of competitive advantage.

Finally, the absence of legal protections for outsourced workers such as protection against discriminatory treatment and effective grievance handling can lead to poor employee relations,

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unrest, and legal challenges, impacting business productivity, morale, and reputation.

In conclusion, addressing the legal gaps in outsourcing is vital for businesses to ensure smooth operations, compliance, and a positive work environment. Developing specific laws will provide clear guidelines on responsibilities, contracts, work standards, and worker protections.

5.3.1 Principal Employer Responsibilities

The lack of clear laws governing outsourced workers in Sri Lanka creates significant challenges for businesses, particularly regarding welfare, health, safety, wage payments, and joint liability. This absence of regulation raises uncertainty about the principal employer's responsibilities and obligations, leading to risks in compliance and operational efficiency. A comparison with Malaysia, Indonesia, and the Philippines illustrates how Sri Lanka's legal framework complicates the management of outsourced labor.

5.3.1.1 Liability for welfare, health, safety, and other facilities

The Sri Lankan legal framework lacks comprehensive regulations on outsourced workers' welfare, health, and safety. Unlike Malaysia and Indonesia, which enforce proactive measures, Sri Lanka focuses on post-incident compensation, which increases business risks. The absence of welfare facilities can lead to reduced morale and productivity. Moreover, businesses may face legal liabilities and reputational damage if accidents occur. Proactive health and safety measures would reduce long-term risks and align with global standards.

5.3.1.2 Responsibility for wage payments

Sri Lanka's legal framework for wage payment lacks safeguards for outsourced workers. Unlike the Philippines, which has robust mechanisms for wage protection, Sri Lanka's absence of oversight exposes both workers and businesses to financial risks. Without regulations like wage bonds or bankruptcy protections, outsourced workers may face financial insecurity, leading to disputes and reputational harm for principal employers. To mitigate risks, businesses may need to implement independent financial safeguards and monitor contractor compliance.

5.3.1.3 Designating the principal employer as the employer of outsourced workers

Sri Lanka's reliance on judicial interpretation to designate the principal employer of outsourced workers creates uncertainty. Unlike neighboring countries with explicit statutory provisions, the absence of clear criteria exposes businesses to unexpected legal obligations. Without clarity, businesses may face unforeseen liabilities, discouraging outsourcing. To mitigate these risks, businesses must establish detailed contracts and compliance monitoring, which increases costs but ensures legal protection.

5.3.1.4 Joint liability of the principal employer with the immediate employer

Sri Lanka lacks a joint liability framework, unlike Malaysia and the Philippines, where workers' rights are protected regardless of the immediate employer's compliance. This gap leaves businesses exposed to reputational and operational risks. The absence of joint liability means that principal employers must ensure contractors comply with labor standards, requiring additional monitoring and financial safeguards. These efforts incur costs but are necessary to prevent legal and reputational risks, especially in industries with high ethical standards.

5.3.2 Contracts and Registration

The absence of specific laws for contracts and their registration in Sri Lanka exposes businesses to legal risks, disputes, and financial penalties in labor outsourcing. Without formal commercial agreements and registration of these contracts, misunderstandings arise, and responsibilities remain unclear, increasing the risk of legal conflicts. The lack of registration and licensing for labor outsourcing agencies further enables unregulated and substandard providers, harming business reputations and increasing the risk of non-compliance with labor standards. Sri Lankan businesses face challenges navigating outsourcing without clear legal guidance, unlike countries like Malaysia, Indonesia, and the Philippines.

5.3.2.1 Requirement for a written employment contract

The absence of a legal requirement for written contracts for outsourced workers in Sri Lanka fosters ambiguity in employer-worker relationships, unlike Indonesia and the Philippines, where such contracts are mandatory. Without clear written agreements, employment terms remain undefined, leading to disputes, miscommunication, and potential exploitation of workers, which can harm business operations and reputations. The absence of standardized documentation also weakens oversight of contractor compliance with labor standards. To mitigate risks, employers should require written contracts that define job roles, compensation, and worker protections.

5.3.2.2 Registration of Employment Contracts

Sri Lanka's lack of mandatory registration of employment contracts for outsourced workers limits regulatory oversight and increases the risk of non-compliance with labor laws. Unlike Indonesia, where contract registration enhances transparency, Sri Lanka's absence of such a system exposes businesses to indirect liability for labor violations. Without a registration mechanism, businesses face increased administrative burdens to verify contractor compliance. To mitigate this, employers should adopt internal measures, such as requiring formal contracts and implementing monitoring systems to ensure compliance with ethical labor practices.

5.3.2.3 Written Commercial Contracts between employers

The lack of a legal requirement for written commercial contracts between employers and labor supply companies in Sri Lanka creates vulnerabilities in outsourcing arrangements. Without mandatory registration, Sri Lankan businesses face increased risks of partnering with non-compliant or unethical contractors. The absence of registration reduces accountability, and businesses must independently verify contractor compliance, which is time-consuming and costly. To reduce these risks, employers should adopt internal controls, such as requiring written contracts, conducting audits, and maintaining detailed records of outsourcing agreements.

5.3.2.4 Registration of Commercial Contracts between employers

In Sri Lanka, the absence of a registration requirement for commercial contracts between employers and labor supply companies limits oversight and increases the risk of labor violations. Without registration, businesses are exposed to the possibility of engaging with illegitimate suppliers, which may lead to labor rights violations. The lack of oversight undermines Sri Lanka's alignment with international labor standards and impedes businesses' ability to compete globally. Employers should implement internal vetting processes, require detailed written agreements, and voluntarily maintain records of outsourcing arrangements to mitigate risks.

5.3.2.5 Registration and Licensing for Labor Outsourcing

The absence of registration, licensing, and inspection requirements for labor suppliers in Sri Lanka increases the risk of engaging with non-compliant or exploitative contractors. Unlike Indonesia and the Philippines, which mandate labor supplier registration, Sri Lanka lacks a formal system for verifying supplier legitimacy, leading to potential violations of labor laws. This lack of transparency also makes it harder for businesses to ensure fair treatment of workers. To address these issues, employers should adopt internal policies for vetting labor suppliers, conducting audits, and ensuring transparency in contracts, thereby reducing legal, financial, and reputational risks.

5.3.3 Work Standards

Sri Lanka's business sector faces challenges due to the lack of specific laws regulating work standards for outsourced workers, causing uncertainty and inconsistency in outsourcing practices. This issue is examined in comparison with Malaysia, Indonesia, and the Philippines, where laws define permissible outsourced work, limit the duration of outsourced contracts, and prohibit outsourcing of certain jobs. These frameworks highlight the challenges Sri Lankan businesses face.

5.3.3.1 Types and nature of permissible outsourced work

In Sri Lanka, the lack of distinction between core and non-core functions presents significant challenges for businesses, as they can outsource critical roles, exposing them to operational risks, loss of control, and employee dissatisfaction. Without clear legal guidelines, businesses may outsource essential functions, jeopardizing job security, and employee morale. Outsourcing core activities can lead to quality issues, brand damage, and threats to intellectual property. Furthermore, the absence of clear legal frameworks may increase scrutiny from unions and regulators. Businesses should retain core functions internally and outsource non-core roles, ensuring fair labor practices and maintaining employee trust.

5.3.3.2 Limitations on the period of outsourced work

Sri Lanka's lack of statutory limits on the duration of outsourced contracts leads to risks such as job insecurity for outsourced workers. While countries like Indonesia impose limits (e.g., five years), Sri Lanka's absence of restrictions allows indefinite contract renewals, causing workforce

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instability, higher turnover, and reduced morale. This uncertainty can result in reputational risks and legal disputes over permanent employment claims. To mitigate these issues, businesses should implement policies that limit contract renewals, offer stable employment, and align outsourced contracts with long-term goals.

5.3.3.3 Prohibited job categories to outsource

Sri Lanka lacks defined prohibited job categories for outsourcing, unlike countries such as the Philippines, which protect essential roles and union activities. This gap can lead to exploitation, weakened labor relations, and potential legal risks, including labor-only contracting and undermining union activities. The absence of protections allows businesses to outsource critical functions, losing control over operations and worker job security. To avoid these risks, businesses should limit outsourcing to non-core tasks, ensure compliance with ethical standards, and prioritize direct employment to maintain a stable workforce.

5.3.4 Rights and Protections of outsourced workers

Sri Lanka's lack of clear legal protections for outsourced workers creates challenges for businesses, exposing them to disputes and inefficiencies. Unlike Malaysia, Indonesia, and the Philippines, where protections exist, Sri Lanka's gaps can lead to discriminatory treatment, unresolved grievances, and lack of union rights for outsourced workers. These issues can escalate into unrest, turnover, and operational disruptions. Businesses need comprehensive legislation to ensure fair treatment and protections for outsourced workers, fostering a compliant and efficient workplace.

5.3.4.1 Prevention of Discriminatory Treatment

The absence of anti-discrimination provisions in Sri Lanka's labor laws leaves outsourced workers vulnerable to exploitation, unlike countries like Indonesia and Malaysia that offer legal protection for these workers' wages, benefits, and conditions. This gap results in economic inefficiencies and unequal treatment. Businesses that discriminate against outsourced workers risk legal disputes, reputational damage, and decreased morale, leading to reduced productivity and higher turnover. Nationally, the lack of protections contributes to income inequality and a segmented labor market, hindering economic growth. To mitigate these issues, businesses should align outsourced workers' wages and benefits with regular employees, fostering fair treatment and improving overall workforce morale and productivity.

5.3.4.2 Grievance Handling and Dispute Resolution

Sri Lanka lacks effective grievance and dispute resolution mechanisms for outsourced workers, unlike Malaysia and the Philippines. This leaves workers without a reliable way to address disputes, risking unresolved issues that could escalate into legal or reputational challenges. For businesses, this can lead to higher turnover, increased costs, and potential legal actions. Nationally, this creates a fractured labor market with limited protections, undermining workforce stability and productivity. Businesses should implement clear grievance systems and shared responsibility between principal employers and labor suppliers, as seen in the Philippines, to ensure accountability and improve labor relations.

5.3.4.3 Freedom of Association for Outsourced Workers

The lack of protection for outsourced workers' freedom of association in Sri Lanka restricts their ability to organize, negotiate, and address grievances. This gap makes them vulnerable to exploitation, reducing morale and productivity. Businesses may face disengagement, higher turnover, and reputational damage if workers are denied union rights. Economically, this limits the development of a fair labor market, leading to inequalities and reduced productivity. To address this, businesses and policymakers should include provisions that protect outsourced workers' rights to organize, promoting a more equitable and productive workplace and enhancing the nation's labor market stability.

5.4 Gaps in Sri Lankan legislation

The fourth objective of assessing the effectiveness of Sri Lanka's prevailing legal frameworks governing labor outsourcing in comparison to those in Malaysia, Indonesia, and the Philippines was met. The analysis of the legal context governing labor outsourcing in Sri Lanka, in comparison with Malaysia, Indonesia, and the Philippines, reveals significant gaps and areas for improvement in Sri Lanka's regulatory framework. Unlike its counterparts, Sri Lanka lacks specific legislation or a dedicated regulatory structure to govern labor outsourcing. While existing statutes such as the Wages Board Ordinance (1941), the Employees' Provident Fund Act (1958), and the Workmen's Compensation Ordinance (1934) provide some indirect protections, they do not comprehensively address critical aspects such as written contracts, registration, and licensing for outsourcing arrangements. This regulatory void creates ambiguity about the roles and responsibilities of principal employers, immediate employers, and outsourced workers, leaving outsourced workers vulnerable to unfair practices.

In contrast, Malaysia, Indonesia, and the Philippines have well-established labor outsourcing laws, such as Malaysia's Employment Act (1955), Indonesia's Manpower Act (2003), and the Philippines' Department Order No. 174 (2017). These frameworks clearly define essential elements, including the necessity for written employment and commercial contracts, registration of contracts, and the licensing of labor contractors. Additionally, these laws regulate the types of work that may be outsourced, prohibit outsourcing for core business functions, and set limits on the duration of outsourcing contracts, ensuring more protection for workers. These jurisdictions also provide stronger safeguards against discriminatory treatment, guarantee equal benefits for outsourced workers, and, in the case of the Philippines, protect workers' rights to organize and access grievance mechanisms and dispute resolution procedures.

In Sri Lanka, while courts have attempted to address the gaps through landmark judgments such as Raj Diamonds (Pvt) Ltd v. Weerakoon (1993) and Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985), the lack of clear statutory provisions has led to inconsistent interpretations and opportunities for exploitation. This comparison highlights the need for Sri Lanka to introduce a dedicated legal framework for labor outsourcing, drawing lessons from the regulatory approaches of Malaysia, Indonesia, and the Philippines. By adopting clear guidelines and establishing robust protections for outsourced workers, Sri Lanka could enhance worker welfare and promote ethical practices in the outsourcing sector.

5.5 Recommendations for the Enhance Legal Framework in Sri Lanka

The final objective of providing insights from the specific laws of other jurisdictions to guide the regulation of the Sri Lankan labor outsourcing sector was met. The increasing reliance on labor outsourcing in Sri Lanka necessitates the development of a comprehensive legal framework to address the challenges faced by both business organizations seeking labor flexibility and outsourced workers, ensuring fair treatment and protection of their rights. Labor outsourcing generally offers businesses increased flexibility but often leaves workers in a vulnerable position, with insufficient protections and unclear accountability from their employers. At the same time, there are instances where principal organizations also face legal challenges due to the complexities of managing outsourced labor. Drawing on the legal frameworks of Malaysia, Indonesia, and the Philippines, this initiative seeks to bridge critical gaps in Sri Lankan labor laws, focusing on principal employer responsibilities, contract and registration requirements, work standards, and the rights of outsourced workers.

A key area of focus is the responsibilities of the principal employer in ensuring the welfare of outsourced workers. This includes liability for providing adequate welfare, health, safety, and other necessary facilities. The principal employer must also bear responsibility for wage payments and be formally designated as the employer of outsourced workers, creating clear accountability. Furthermore, joint liability between the principal employer and the immediate employer is essential to safeguard the rights of workers and ensure compliance with legal obligations.

Equally important is the establishment of robust requirements for labor contracts and their registration. Written employment contracts should be mandatory to define terms and conditions clearly, and these contracts must be registered to enhance transparency and accountability. Additionally, written commercial contracts between employers should be required and subjected to registration to formalize the relationships governing labor outsourcing. A licensing and registration system for labor outsourcing entities would further strengthen oversight and ensure compliance with standards.

The proposed legal framework must also address work standards to protect workers from exploitation. It should clearly define the types and nature of permissible outsourced work and impose limitations on the duration of such work to prevent indefinite outsourcing arrangements. Furthermore, certain job categories should be prohibited from outsourcing, particularly where the work is inherently integral to the core operations of the organization, to maintain fairness and job security.

Lastly, the rights and protections of outsourced workers must be prioritized. Measures to prevent discriminatory treatment compared to regular employees are essential to ensure fairness. Mechanisms for grievance handling and dispute resolution should be clearly established, providing workers with effective avenues to address workplace issues. Furthermore, outsourced workers should be guaranteed the freedom of association, enabling them to unionize and advocate for their rights collectively.

By addressing these areas comprehensively, Sri Lanka can establish a robust legal framework for labor outsourcing, promoting fair treatment, accountability, and protection for outsourced workers while fostering a balanced and equitable labor market.

5.5.1 Strengthening Employer Responsibilities

New legislation should address the principal employer's responsibilities towards outsourced workers, including welfare, health, safety, benefits, and wage payments. The law should recognize the principal employer as the employer of outsourced workers, establishing joint liability with the immediate employer. A comparison of labor laws in Malaysia, Indonesia, the Philippines, and Sri Lanka will help identify gaps in the current framework.

5.5.1.1 Clarify Principal Employer Liabilities

Sri Lanka should introduce provisions to ensure that outsourced workers receive comprehensive welfare, health, and safety measures. This would align with Section 15 of the Malaysian Occupational Safety and Health Act 1994 and Article 66(4) of the Indonesian Manpower Act 2003, addressing gaps in the Sri Lankan Workmen's Compensation Ordinance 1934. Employers should be responsible for the health, safety, and welfare of outsourced workers, ensuring safe work environments and necessary facilities. Regular inspections and reports should be mandated, with penalties for non-compliance. A regulatory body should oversee these obligations and provide recourse for workers.

5.5.1.2 Responsibility for wage payments

Sri Lanka should hold principal employers jointly liable with contractors for wage payments, as in Section 33(1) and Section 31(1) of the Malaysian Employment Act 1955. This liability should extend beyond three months of unpaid wages. The law should also require principal employers to demonstrate due diligence in ensuring contractors comply with wage laws, similar to Section 59A(3)(b) of the Wages Board Ordinance 1941. In cases of contractor insolvency, workers should have priority claims for unpaid wages, as per Article 110 of the Philippine Labor Code. A regulatory body should monitor wage payments and enforce compliance.

5.5.1.3 Designating the principal employer as the employer of outsourced workers

Sri Lankan law should define when the principal employer is considered the employer of outsourced workers, especially when the work is integral to the principal employer's business, similar to Articles 65(8) and 66(4) of the Indonesian Manpower Act. The 'control test' from Sri Lankan case law, such as Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985), should be formalized to determine employment relationships. The law should prohibit labor-only contracting and impose joint liability for employment obligations, as seen in Section 33(1) of the Malaysian Employment Act. The law should ensure that outsourcing agreements are written and protect workers' rights.

5.5.1.4 Joint liability of principal employer with the immediate employer

New legislation should impose joint liability on principal and immediate employers for fulfilling obligations to outsourced workers, similar to Section 33(1) of the Malaysian Employment Act 1955 and Article 109 of the Philippine Labor Code. This includes wage payments, benefits, and adherence to labor standards. If the immediate employer fails, the principal employer should be liable. The law should also mandate joint contributions to the provident fund, as in Section 9 of the Employees' Provident Fund Act 1958 of Sri Lanka. A regulatory body should enforce compliance, and workers should be able to claim unpaid wages from the principal employer in case of contractor default.

In conclusion, these provisions would create a comprehensive legal framework for labor outsourcing in Sri Lanka, ensuring better protection for outsourced workers through joint liability, enforcement mechanisms, and clear definitions.

5.5.2 Regulating Contracts and Registration

The proposed labor outsourcing law should regulate labor contracts and supply agreements, focusing on their formulation and registration. Key elements include requiring written employment contracts, mandatory registration, and regulating labor outsourcing entities.

5.5.2.1 Introduce Mandatory Written Contracts

To protect outsourced workers, the law should require written employment contracts, similar to Indonesia's Article 27(1) of Law Number 19 of 2012 and the Philippines' Section 11(a) of Department Order No. 174. Contracts should outline job title, description, wages, benefits, and

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duration. Written contracts will ensure transparency and reduce exploitation. All contracts should be standardized and provided in a language the worker understands. Additionally, contracts must be registered with the relevant authorities, following Indonesia's Article 66(4) of the Manpower Act of 2003. Non-compliance should be penalized, and workers should have access to legal assistance to review contracts.

5.5.2.2 Registration of employment contracts

The law should require the registration of all employment contracts with the Ministry of Labor or relevant authority, as in Indonesia's Article 27(2) of Law Number 19 of 2012. Employers must submit contracts within 30 days, and penalties should be imposed for non-compliance. The Ministry should review registered contracts for compliance and provide public access, ensuring transparency. Amendments to contracts should also be registered. A secure database should store contracts for auditing and dispute resolution.

5.5.2.3 Formalize Commercial Contracts Between Employers

The law should mandate written commercial contracts between employers and labor suppliers, ensuring clarity on work terms, wages, and benefits, similar to Indonesia's Article 20(1) and (2) of Law Number 19 of 2012. Contracts must be registered with the Ministry of Labor within 30 days, and non-compliance should be penalized, including fines or license revocation. The Ministry should oversee the registration and conduct audits for compliance. Registered contracts should be publicly accessible, and amendments should be re-registered. A dispute resolution mechanism should be established, following the Philippines' approach.

5.5.2.4 Registration of Commercial Contracts Between Employers

Sri Lanka must introduce legal provisions mandating the registration of agreements between principal employers and labor suppliers. Drawing from Indonesia and the Philippines, agreements should be formalized in writing and registered with the Ministry of Labor within 30 working days, as outlined in Article 20(1) and (2) of Indonesian Law Number 19 of 2012. Required documents should include the labor supplier's operating license and a detailed employment contract.

Penalties for non-registration should include fines or revocation of licenses, as seen in Article 23 of Indonesian Law Number 19 of 2012. The Ministry of Labor should oversee registration, review contracts to ensure compliance with labor standards, and publish registered contracts for transparency, similar to the Philippines' Department Order No. 174. Amendments to contracts should also be registered.

A mechanism for workers to report violations should be included, with a dedicated tribunal or court for resolving disputes. These provisions would address gaps in Sri Lanka's labor outsourcing laws, ensuring transparency and accountability, and protecting outsourced workers.

5.5.2.5 Establish Licensing Requirements for Labor Suppliers

Sri Lanka must implement a legal framework for the registration and licensing of labor suppliers, modeled after Indonesia, the Philippines, and Malaysia. Labor suppliers should be registered with the Ministry of Labor, providing evidence of their legal entity status, tax compliance, and employee records, similar to Article 65(3) of Indonesia's Manpower Act 2003 and Section 14 of the Philippines' Department Order No. 174.

Contractors should hold valid operating licenses, demonstrating financial stability and compliance with labor rights, as per Regulation No. 35 of 2021 in Indonesia. Inspections and audits by the Ministry of Labor will ensure compliance with labor laws, following Malaysia's Employment Act 1955, Section 33A(1).

Penalties for non-compliance should include fines, license suspension, or revocation, as in Article 23 of the Indonesian Manpower Act 2003. The Ministry of Labor should maintain a public database of registered and licensed suppliers, enhancing transparency. License renewals should be required periodically to ensure ongoing compliance.

By adopting these provisions, Sri Lanka can strengthen labor outsourcing regulations, improving worker protections and accountability, drawing from successful frameworks in Indonesia and the Philippines.

5.5.3 Enhancing Work Standards

To improve work standards for outsourced workers in Sri Lanka, it is essential to address gaps in the current legal framework by comparing the laws of Malaysia, Indonesia, and the Philippines. This includes defining permissible outsourced work, limiting the duration of outsourced work, and prohibiting outsourcing in certain job categories.

5.5.3.1 Define Permissible Outsourced Work

Sri Lanka should establish a legal framework to regulate permissible outsourced work, drawing on practices from Indonesia and the Philippines. Outsourcing should be limited to non-core functions, such as cleaning, security, and IT support, to protect permanent employees and prevent exploitation. Subcontracting by labor supply companies should be prohibited to ensure accountability, as per Indonesian Regulation No. 19 of 2012. Contractors should comply with labor laws and maintain separate facilities. Employers should remain responsible for outsourced workers' entitlements, and outsourcing contracts should be reviewed by the Ministry of Labor to ensure compliance.

5.5.3.2 Set Limits on Contract Duration

Sri Lanka should set limits on the duration of outsourced work, drawing on models from Indonesia and the Philippines. Temporary outsourced contracts should be capped at two years, with one renewal option, and should be tied to specific tasks or projects. Early termination should only occur under specific conditions, and contracts must be in writing. After three years, workers should be transitioned to permanent roles or provided severance. Employers should submit contract details for monitoring, and violations should be penalized.

5.5.3.3 Prohibit Exploitative Practices

The law should prohibit labor-only contracting and outsourcing of core functions, such as manufacturing and design, to protect job security. Outsourcing should also be banned in cases that undermine strikes, bargaining, or unionization efforts. Employers must ensure contractors comply with labor laws, and those that fail to do so should face penalties. An oversight body should monitor compliance, and violations should result in fines and conversion of workers to permanent roles if misclassified. These provisions would enhance worker protections, reduce exploitation, and align Sri Lanka's labor laws with international standards, inspired by practices in Indonesia and the Philippines.

5.5.4 Protecting Worker Rights

Introducing new labor outsourcing laws in Sri Lanka requires addressing gaps in worker protections. A comparison with Malaysia, Indonesia, and the Philippines highlights areas such as discrimination, grievance handling, and freedom of association for outsourced workers.

5.5.4.1 Prevent Discrimination

Outsourced workers must receive equal wages, benefits, and working conditions as regular employees performing similar roles, following Section 60L(1) of the Malaysian Employment Act 1955. Discriminatory practices based on gender, race, religion, etc., are prohibited (Articles 5 and 6 of Indonesian Law No. 13 of 2003). Outsourced workers must have access to similar workplace facilities as regular employees. Employers violating these rights will face fines. Workers are also protected from retaliation (Section 27, Department Order No. 174, Philippines). Contractors must offer contracts with terms comparable to regular employees. Anti-discrimination training will be mandatory for employers, with violations resulting in suspended outsourcing operations. Outsourced workers have the right to collective bargaining and legal protections under labor dispute laws.

5.5.4.2 Establish Grievance Mechanisms

Every contractor and principal employer must establish a grievance mechanism for outsourced workers, modeled after Article 18(3) of Indonesian Regulation No. 35 of 2021. Grievances must be acknowledged within 7 days and resolved within 30 days. If unresolved, workers can escalate complaints to the Labor Tribunal. Retaliation for filing grievances is prohibited (Section 27, Department Order No. 174, Philippines). Training on grievance handling will be required for employers. Contractors must submit quarterly reports on grievance outcomes. This framework ensures accessible dispute resolution, promoting fairness for outsourced workers.

5.5.4.3 Guarantee Freedom of Association

Outsourced workers shall have the right to form and join trade unions and engage in collective bargaining, as per Article 104(1) of the Indonesian Manpower Act 2003. Contractors and employers are prohibited from interfering with union activities (Section 10, Department Order No. 174, Philippines). Violations will incur fines, and a grievance mechanism will address union-related disputes. The regulatory authority will monitor compliance and mediate disputes. This framework guarantees the associational rights of outsourced workers, empowering them to negotiate better working conditions.

5.6 Conclusion

This study critically examined the legal framework governing labor outsourcing in Sri Lanka in alignment with its research objectives, identifying significant gaps that impact outsourced workers and business operations. The findings reveal that Sri Lanka's existing labor laws inadequately define the legal position of outsourced workers deployed in business organizations, leaving them vulnerable to exploitation and uncertainty.

The analysis highlighted how current practices by business organizations, shaped by these insufficient regulations, often neglect the rights and welfare of outsourced workers. Additionally, while the absence of specific laws offers businesses a degree of flexibility in labor handling, this comes at the cost of fair and equitable treatment of workers.

A comparative analysis of Malaysia, Indonesia, and the Philippines highlights successful strategies for regulating outsourcing. Key shortcomings in Sri Lanka's framework include the lack of mandatory written contracts, unclear employer liabilities, inadequate grievance mechanisms, and insufficient provisions to safeguard outsourced workers from discrimination. These gaps contribute to a precarious environment for outsourced workers while creating compliance uncertainties for businesses.

The study underscores the need for a comprehensive legal framework tailored to Sri Lanka’s context. This framework should establish clear legal positions for outsourced workers, address the operational practices of businesses, and promote equitable treatment of the outsourced workforce. Drawing insights from specific laws in other jurisdictions, such a framework can enhance worker protections while maintaining the operational flexibility businesses require.

Judicial interpretations in Sri Lanka, reflected in landmark cases, show an increasing acknowledgment of the substantive employment relationships involving outsourced workers. Despite their weak standing within the workplace environment, the legal position of outsourced workers is notably stronger than that of employers when disputes reach the courts. This is evident in several landmark judgments in Sri Lanka, where the judiciary has imposed obligations on business organizations regarding the employment responsibilities owed to outsourced workers. These rulings have effectively recognized the rights of outsourced workers and clarified that the ultimate responsibility for their welfare and entitlements lies with the business organizations where they are deployed, rather than solely with the labor-supplying entities.

As a result, the role of labor suppliers has been legally characterized as that of intermediaries or facilitators, with limited accountability or direct involvement in safeguarding the rights of outsourced workers. This has led to the designation of labor suppliers as entities that merely ‘supply labor’, functioning almost as passive players or ‘puppets’ in the broader employer-employee relationship. The stance of the courts underscores the necessity for business organizations to assume a more active role in ensuring fair treatment, compliance with labor laws, and the protection of the rights of outsourced workers, effectively shifting the legal burden away from labor suppliers and onto the business organizations benefiting from their services.

This judicial approach reflects a growing recognition of the need to bridge the gap between legal concepts and workplace realities, reinforcing the notion that outsourced workers are not merely commodities to be managed but individuals whose rights and dignity must be upheld. In the case of Moosajees Limited v. Eksath Enginaru Saha Samanya Kamkaru Samithya (1979), the court held that “At every turn there is evidence that every incidence of employment was by Moosajees and that Upasaka Appu was a puppet. It appears fairly clear that this was a device adopted by the petitioner to escape the liabilities of an employer” (p.287, para.2).

Further, in the case of Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985, p.419, para.4), in the majority decision, Hon. Wimalaratne, J. stated as follows:

That too much reliance has been placed on the agreement between the Corporation and the Society, to which the workmen were not parties. It is doubtful whether workers were even aware of the existence of agreement. The existence of such an agreement cannot act to their detriment if the facts establish a relationship of employer and employee between the Corporation and themselves.

Moreover, Hon. Wimalaratne, J. also stated as follows:

The fact that ‘none of the workmen had been interviewed prior to appointment, nor was a letter of appointment given to them or the name of any person entered in the Corporation books maintained for the permanent staff’. A common law contract of service can yet be implied even without any or all of these circumstances. (Ceylon Mercantile Union v. Ceylon Fertilizer Corporation (1985, p.420, para.1)

As reflected in the aforementioned judgments, it becomes evident that even if none of the outsourced workers were directly recruited by the principal employer, no letter of appointment was issued to them by the principal employer, and the personnel files of outsourced workers were not maintained under the principal employer's custody, a contract of employment between the outsourced workers and the principal employer may still be implied.

This implication arises regardless of the absence of formal employment documentation or direct hiring processes. The courts have emphasized the substantive nature of the employment relationship over its formalities, focusing on the actual control, supervision, and integration of outsourced workers into the operations of business organizations. This judicial interpretation ensures that the rights of outsourced workers are not diminished merely due to the structural or procedural arrangements between the principal employer and the labor supplier. Therefore, it is imperative that new legal reforms be introduced, not only to safeguard the rights and welfare of outsourced workers but also to protect the legitimate interests of business organizations. These reforms should strike a delicate balance between ensuring fair treatment and adequate protections for outsourced workers and providing business organizations with the flexibility and clarity they need to effectively manage their workforce within a legally compliant framework. However, reliance on judicial remedies alone is inadequate to address the systemic challenges in the sector. Proactive legislative reforms are essential for clear, consistent, and enforceable standards. These reforms should be aligned with ILO Convention No. 181 on Private Employment Agencies, ensuring Sri Lanka's labor market meets international benchmarks.

In essence, this research highlights the urgent need for reforms that align with international best practices, balance the rights and protections of outsourced workers, and support the operational needs of businesses. By addressing these objectives, Sri Lanka can foster a sustainable and equitable labor outsourcing sector that enhances both worker welfare and business competitiveness.

5.7 Implementation Strategy

To ensure the successful implementation of labor outsourcing policies, a comprehensive strategy must be established. First, a dedicated regulatory authority should be created under the Department of Labour and the Ministry of Labor to oversee compliance with outsourcing laws. This regulatory authority will play a pivotal role in conducting regular inspections, addressing grievances, and ensuring adherence to legal standards, thereby fostering a fair and transparent outsourcing environment. Businesses are also required to submit compliance reports and undergo periodic inspections by a regulatory authority. Furthermore, penalties for non-compliance, such as fines or suspension of operations, may be imposed.

Engaging all stakeholders is critical to creating a balanced and effective regulatory framework. Businesses, labor unions, and labor suppliers must collaborate during the drafting and implementation phases of new regulations. This inclusive approach ensures that the perspectives of principal organizations, outsourced workers, and labor suppliers are considered, fostering a "win-win-win" outcome where all parties benefit from equitable practices.

Awareness campaigns are essential to educate both employers and employees about their rights and responsibilities under the new framework. Clear communication of legal obligations and protections will empower stakeholders and minimize disputes. Such campaigns may include workshops, digital resources, and outreach programs tailored to various industries.

Lastly, a phased implementation of reforms should be adopted to allow businesses adequate time to adapt to the new regulations. This approach will mitigate potential disruptions, providing companies with the opportunity to align their operations with legal requirements while ensuring that workers' rights are safeguarded throughout the transition. By taking these steps, labor outsourcing can be effectively managed, benefiting all parties involved and contributing to economic growth and social equity.

5.7.1 Implementation Plan

Short-Term Action Plan (0–12 Months)

Objective: Lay the groundwork for reforms through awareness, policy preparation, and interim measures.

Table 5.1 - Short-Term Action Plan

Action	Details	Key Stakeholders	Expected Outcomes
Awareness Campaigns	Conduct targeted campaigns to educate businesses, workers, and labor suppliers about existing labor rights and the need for regulatory reforms.	Labor Ministry, NGOs, Industry Associations	Increased awareness and stakeholder buy-in.

Establish a Task Force	Form a multidisciplinary task force to oversee reform efforts, comprising policymakers, academics, business leaders, and union representatives.	Government, Labor Experts, Trade Unions	Centralized coordination and oversight.
Draft Interim Guidelines	Introduce interim policies mandating written contracts for all outsourced workers, specifying wages, benefits, and job roles.	Ministry of Labor, Legal Experts	Immediate clarity and reduced exploitation risks.
Stakeholder Consultations	Engage in dialogue with businesses and workers to gather feedback and ensure that recommendations align with practical realities.	Employers, Workers, Labor Unions	Better-informed policy proposals.
Capacity Building for Inspectors	Train labor inspectors on outsourcing-related issues, enabling them to monitor existing labor laws more effectively.	Labor Ministry, Training Organizations	Improved enforcement capabilities.

Medium-Term Action Plan (1–3 Years)
Objective: Develop and formalize comprehensive legal reforms and enforcement mechanisms.

Table 5.2 - Medium-Term Action Plan

Action	**Details**	**Key Stakeholders**	**Expected Outcomes**
Draft Comprehensive Legislation	Develop a new Outsourcing Regulation Act, incorporating lessons from Malaysia, Indonesia, and the Philippines.	Ministry of Labor, Legal Experts, Lawmakers	A robust legal framework for outsourcing.
Introduce Joint Liability	Mandate joint liability for principal employers and labor suppliers to ensure accountability for wages, benefits, and working conditions.	Parliament, Legal Experts	Enhanced worker protection.
Establish Dispute Resolution Mechanisms	Create a specialized tribunal or mediation process for resolving disputes involving outsourced workers.	Ministry of Justice, Trade Unions, Arbitration Bodies	Faster resolution of labor disputes.
Regulate Recruitment Agencies	Require registration, licensing, and compliance audits for labor suppliers to ensure ethical practices.	Ministry of Labor, Regulatory Bodies	Higher standards among labor suppliers.
Promote Social Dialogue	Institutionalize regular dialogue among stakeholders to monitor the implementation of reforms and address emerging challenges.	Government, Employers, Unions	Ongoing collaboration and adaptive policy-making.

Long-Term Action Plan (3–5 Years)
Objective: Institutionalize reforms and monitor long-term impacts to ensure sustainability.

Table 5.3– Long-Term Action Plan

Action	Details	Key Stakeholders	Expected Outcomes
Establish a Regulatory Body	Create an independent authority to oversee labor outsourcing, ensure compliance, and handle grievances.	Parliament, Ministry of Labor	Centralized oversight and better enforcement.
Monitor and Evaluate Reforms	Conduct periodic impact assessments of the new outsourcing legislation and enforcement mechanisms.	Academics, NGOs, Government Auditors	Data-driven adjustments and continuous improvement.
Align with Regional Standards	Collaborate with ASEAN to harmonize Sri Lanka's labor policies with regional best practices.	ASEAN Representatives, Foreign Ministries	Increased regional competitiveness and alignment.
Implement Technology Solutions	Deploy digital platforms to track contracts, wages, and compliance, ensuring transparency in labor outsourcing practices.	IT Companies, Ministry of Labor	Efficient monitoring and data collection.
Incentivize Ethical Outsourcing	Provide tax benefits or certifications to businesses that comply with outsourcing regulations and promote worker welfare.	Finance Ministry, Industry Associations	Encourage voluntary compliance among employers.

5.8 Future Research Directions

Future research on labor outsourcing in Sri Lanka could delve into several critical areas to understand its evolving dynamics and implications. One key area is the economic impact of labor outsourcing reforms on businesses and workers. Investigating how policy changes influence operational efficiencies, employment rates, and income distribution can provide valuable insights. This research could help policymakers and stakeholders strike a balance between enhancing business competitiveness and ensuring worker welfare.

Another important focus is the impact of digital platforms and gig economy trends on outsourced labor dynamics. The rise of gig work and online platforms has significantly transformed traditional outsourcing models. Exploring how these trends affect job security, income stability, and skill development for outsourced workers can shed light on both opportunities and challenges created by this digital shift. This understanding is essential for adapting to the evolving labor market landscape.

Lastly, studying the effectiveness of grievance mechanisms in outsourced labor arrangements is critical. Effective mechanisms for resolving workplace concerns can enhance worker satisfaction and productivity. Research in this area could assess how well these systems address the needs of outsourced employees, fostering trust and collaboration between employers and workers. Such findings can contribute to the development of more sustainable and equitable labor outsourcing practices in Sri Lanka.

LIST OF REFERENCES

[1]. Abraham, K.G. and Taylor, S.K. (1996) 'Firms' Use of Outside Contractors: Theory and Evidence', Journal of Labor Economics, 14(3), pp. 394-424. Available at: http://www.jstor.org/stable/2535360

[2]. Act on the Contractor's Obligations and Liability when Work is Contracted Out (1233/2006). Finland. (2006). Available at: https://tyosuojelu.fi/documents/154017715/168008481/Tilaajavastuulaki_EN.pdf/77bdeac5-0073-f418-0851-78f66aae49b9/Tilaajavastuulaki_EN.pdf?t=1630485708792.

[3]. Ada Derana (2021) 'Will not absorb recruits of "100,000 jobs scheme" into health service – President'. Ada Derana. Available at: https://www.adaderana.lk/news/71821/will-not-absorb-recruits-of-100000-jobs-scheme-into-health-service-president [Accessed 19 September 2024].

[4]. Adeoye, M. A. (2023). Review of Sampling Techniques for Education. ResearchGate; unknown. Available at:

https://www.researchgate.net/publication/370358209_Review_of_Sampling_Techniques_for_Education
[5]. Air India Statutory Corporation v. United Labour Union & Others, AIR 1997 SC 645. Available at: https://indiankanoon.org/doc/178542/ (Accessed: 5 October 2024).
[6]. Alur, P.R. and Karibasamma, N. (2018) 'Contract Labour System in India: Issues and Challenges Need for Social Work Intervention'. ResearchGate. Available at: https://www.researchgate.net/publication/344466211_Contract_Labour_System_In_India_Issues_and_Challenges_Need_For_Social_Work_Intervention [Accessed 9 September 2024].
[7]. Amerasinghe, F. (2009) 'The Current Status and Evolution of Industrial Relations in Sri Lanka'. International Labour Organization (ILO). Available at: https://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@sro-new_delhi/documents/publication/wcms_123323.pdf [Accessed 9 September 2024].
[8]. Asuncion, M. F. (2019) 'Labour flexibility in the Philippines and the challenges to CSR compliance'. In Reconstructing Labour & Business Through the Human Rights Lens. Available at: https://shapesea.com/wp-content/uploads/2019/04/Chapter-3-Part-1-Reconstructing-Labour-Business-Through-the-Human-Rights-Lens.pdf
[9]. Ayudhya, S.C.N. (2010) 'The Thai Labour Movement: Strength Through Unity Challenges and Recommendations'. Friedrich-Ebert-Stiftung. Available at: https://library.fes.de/pdf-files/bueros/thailand/07563.pdf.
[10]. Bandara v. Commercial Bank of Ceylon PLC (2015) EP/ HC/AMP/LT/APP//404/2014 Available at: https://www.academia.edu/16011953/Awarding_reinstatement_Rights_of_Outsourced_Employees_Labour_Laws_labour_Tribunal_Sri_Lanka_Banking_Business_
[11]. Bengtsson, L., and Dabhilkar, M. (2009). 'Manufacturing outsourcing and its effect on plant performance—lessons for KIBS outsourcing'. Journal of Evolutionary Economics, 19(2), 231-257.
[12]. Berg, P.V.D. (2016) 'Slaves: persons or property? The Roman law on slavery and its reception in Western Europe and its overseas territories'. ResearchGate, 63, pp. 171–188. Available at: https://www.researchgate.net/publication/317400540_Slaves_persons_or_property_The_Roman_law_on_slavery_and_its_reception_in_Western_Europe_and_its_overseas_territories [Accessed 23 September 2024].
[13]. Bernhardt, A., Batt, R., Houseman, S. and Appelbaum, E. (2016) 'Domestic outsourcing in the U.S.: a research agenda to assess trends and effects on job quality'. Future of Work Symposium, U.S. Department of Labor, Washington, DC.
[14]. Beaumont, N. and Sohal, A. (2004) 'Outsourcing in Australia', International Journal of Operations & Production Management, 24(7), pp. 688-700.
[15]. Bhagyamma, G. (2023) 'A comparative analysis of doctrinal and non-doctrinal legal research'. ILE Journal of Governance and Policy Review, pp. 88-94. Available at: https://www.researchgate.net/publication/373632259_A_COMPARATIVE_ANALYSIS_OF_DOCTRINAL_AND_NON-DOCTRINAL_LEGAL_RESEARCH#fullTextFileContent [Accessed 9 September 2024].
[16]. Bhattacharjee, B. (2019) 'Status of contract labour: A socio-legal perspective (with special reference to Odisha)'. JETIR, 6(6), pp. 204-218. Available at: https://doi.org/10.13140/RG.2.2.11355.92965 [Accessed 9 September 2024].
[17]. Blatman, M.L.C.M. (2007). XVth Meeting of European Labour Court Judges 3-4 September 2007 Bundesarbeitsgericht Erfurt, Germany. ILO. Available at: https://www.ilo.org/meetings-and-events/xvth-meeting-european-labour-court-judges-erfurt-germany [Accessed 13 Oct. 2024].
[18]. Bockerman, P. and Maliranta, M. (2013) 'Outsourcing, occupational restructuring, and employee well-being: is there a silver lining?' [Online] Available at: https://www.petribockerman.fi/bockerman%26maliranta_out_2013.pdf [Accessed 13 Oct. 2024].
[19]. Brigard Urrutia (n.d.) 'Amendments in employment outsourcing'. Available at: https://bu.com.co/en/insights/noticias/amendments-employment-outsourcing (Accessed: 30 August 2023).

[20]. Bucki, J. (2020). Ways Outsourcing Can Improve Your Business. [online] LiveAbout. Available at: https://www.liveabout.com/top-outsourcing-advantages-2533765.

[21]. Bui, T.T.H, Jambulingam, M, and Amin, M. (2022) ‘A literature review of franchisee performance: Insights for further research’, Cogent Business & Management, 9(1). doi: 10.1080/23311975.2022.2044573.

[22]. Burrell, G. and Morgan, G. (1979) Sociological Paradigms and Organizational Analysis. London: Heinemann.

[23]. Callerstig, A.-C. (2014). Making equality work: Ambiguities, conflicts and change agents in the implementation of equality policies in public sector organisations. https://www.diva-portal.org/smash/get/diva2:704692/FULLTEXT01.pdf

[24]. Carson Cumberbatch & Co. v. Nandasena (1974) 77 NLR 73 (CA).

[25]. Centre for Research on Multinational Corporations (2013) ‘Outsourcing labour - Migrant labour rights in Malaysia’s electronics industry’. Available at: https://www.somo.nl/wp-content/uploads/2013/01/Outsourcing-Labour.pdf (Accessed: 6 October 2024).

[26]. Chamdani, C., Nasution, K., Suhartono, S., and Hufron, H. (2022) ‘Legal protection for outsourced workers/laborers due to termination of employment during the contract period’. ResearchGate, 34, pp. 283-311. Available at: https://doi.org/10.47577/tssj.v34i1.7152

[27]. Chandra, R.K.S.S. (2009) ‘The Employment Relationship (Scope) in Sri Lanka’. International Labour Organization (ILO). Available at: https://ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_205382.pdf [Accessed 9 September 2024].

[28]. Civil and Commercial Code, B.E. 2468 (1925). Thailand. [online] Available at: https://www.samuiforsale.com/law-texts/thailand-civil-code-part-1.html [Accessed 7 Oct. 2024].

[29]. Claver, E., González, R., Gascó, J. L. and Llopis, J. (2002) 'IS outsourcing: reasons, reservations and success factors', Logistics Information Management, 15(5), pp. 359–372. doi: 10.1108/09576050210436138.

[30]. Collective for Economic Democratisation in Sri Lanka (2015, June 14) ‘Manpower agencies and the increase in precarious employment’. Sunday Times. Available at: https://www.sundaytimes.lk/150614/business-times/manpower-agencies-and-the-increase-in-precarious-employment-152920.html [Accessed 19 September 2024].

[31]. Constitution of the Democratic Socialist Republic of Sri Lanka 1978. Available at: https://www.parliament.lk/files/pdf/constitution.pdf [Accessed 14 Oct. 2024].

[32]. Constitution of the Republic of Indonesia 1945. Available at: https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf (Accessed: 6 October 2024).

[33]. Constitution of India 1949. Available at: https://legislative.gov.in/constitution-of-india (Accessed: 6 October 2024).

[34]. Contadores, D. e. P (2021). Discover 7 advantages of outsourcing benefits management. [online]. Available at: https://www.dpc.com.br/discover-7-advantages-of-outsourcing-benefits-management/?lang=en [Accessed 29 Sep. 2024].

[35]. Contract Labour (Regulation and Abolition) Act 1970, No. 37 of 1970. India: The Gazette of India

[36]. Cooperation within Undertakings Act (334/2007). Finland. (2007). Available at: https://shipowners.fi/wp-content/uploads/2018/06/334-2007_act_on_co-operation_within_undertakings.pdf).

[37]. Dayawansha, S.K.N.H., Wewala, W.W.M., Mahapatuna, M.D.S.A., Raajapaksha, R.P.P.S. and De Mel, W.D.H. (2022) ‘Factors Determining Outsourcing Effectiveness: with Reference to the Sri Lankan Apparel Sector’. Available at: https://www.researchgate.net/publication/366684924_Factors_Determining_Outsourcing_Effectiveness_with_Reference_to_the_Sri_Lankan_Apparel_Sector

[38]. Decree No. 55/2013/ND-CP - Labor Leasing Operation. Available at: https://nhankiet.vn/en/w45/552013NDCP--CHO-THUE-LAI-LAO-DONG.html [Accessed 9 Oct. 2024].

[39]. De Guzman, E.O., Filio, E.V., Salvanera, N.B., & Rabanal, P.N. (2019) 'Outsourcing. PHILIPPINES Law and Practice'. Available at: http://accralaw.com/wp-content/uploads/2019/05/2019-OUTSOURCING-QA-PHILIPPINES-FINAL-COPY.pdf.

[40]. Delmotte, J. and Sels, L. (2008) 'HR outsourcing: threat or opportunity?', Personnel Review, 37(5), pp. 543-563. doi: https://doi.org/10.1108/00483480810891673

[41]. De Silva, S.R. (1996). Some Concepts of Labour Law. Lake House Investments Ltd., Colombo

[42]. Dowgier, P. (2011) 'The reasons for outsourcing and its scope in restructuring an enterprise'. CORE. Available at: https://core.ac.uk/reader/48036550 [Accessed 9 September 2024].

[43]. Edvardsson, I.R., and Teitsdottir, U.D. (2015) 'Outsourcing and financial crisis: evidence from Icelandic service SMEs', Employee Relations, 37(1), pp. 30-47. doi:10.1108/ER-11-2013-0168.

[44]. Egalahewa, U. (2021) 'Contract of Employment: A Critical Analysis'. UE Chambers. Available at: https://uechambers.com/wp-content/uploads/2021/05/Contract-of-Employment-A-Critical-Analysis.pdf [Accessed 9 September 2024].

[45]. Elmore Perera v. Montague Jayawickrema 1985 1 Sri L.R 285 at p.297

[46]. Employment of Women, Young Persons, and Children Act No. 47 of 1956 (Sri Lanka) [online]. Available at: https://faolex.fao.org/docs/pdf/SRL204086.pdf [Accessed 2 November 2024].

[47]. Employees' Provident Fund Act No. 15 of 1958 (Sri Lanka). Available at: https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/laws/acts/en/epf_act.pdf

[48]. Employees' Trust Fund Act No. 46 of 1980 Sri Lanka. Available at: https://srilankalaw.lk/YearWisePdf/1980/EMPLOYEES'%20TRUST%20FUND%20ACT,%20NO.%2046%20OF%201980.pdf

[49]. Employment Act No. 265 of 1955. Malaysia.Available at: https://jtksm.mohr.gov.my/sites/default/files/2023-11/Akta%20Kerja%201955%20%28Akta%20265%29.pdf

[50]. Employment (Amendment) Act No. A1419 of 2012. Malaysia. Available at: https://www.studocu.com/my/document/multimedia-university/industrial-relations/employment-amendment-act-2012/44231317

[51]. Employment Contracts Act. Finland. (2001). Available at: https://tem.fi/documents/1410877/2918935/Employment+Contracts+Act/b0fca473-f224-46b9-974c-acd153587680 [Accessed 13 Oct. 2024].

[52]. Employment Security Act No. 141 of 1947, Japan. Available at: https://www.warnathgroup.com/wp-content/uploads/2015/03/Japan-Employment-Security-Law.pdf (Accessed: 12 October 2024).

[53]. Federal Constitution of Malaysia 1957. Available at: https://www.sprm.gov.my/admin/files/sprm/assets/pdf/penguatkuasaan/perlembagaan-persekutuan-bi.pdf (Accessed: 6 October 2024).

[54]. Fana, M., Giangregorio, L. and Villani, D. (2024) 'The outsourcing wage gap: Exploring the interplay of gender and tasks along the job distribution'. Italian Economic Journal. Available at: https://doi.org/10.1007/s40797-023-00262-2 [Accessed 9 September 2024].

[55]. Fernando, J.T.R. (2007) 'Outsourcing human resources and erosion of worker rights'. The Sunday Times. Available at: https://www.sundaytimes.lk/070930/FinancialTimes/ft307.html [Accessed 9 September 2024].

[56]. Flatworld Solutions (2019). Benefits of Outsourcing - Flatworld Solutions. [online] Flatworldsolutions.com. Available at: https://www.flatworldsolutions.com/articles/benefits-of-outsourcing.php.

[57]. Garrigues (2022) 'Labor law and outsourcing: Increased restrictions on this means of hiring personnel'. Garrigues. Available at: https://www.garrigues.com/en_GB/new/labor-law-and-outsourcing-increased-restrictions-means-hiring-personnel [Accessed 27 August 2023].

[58]. Grimshaw, D., and Miozzo, M., 2009, 'New human resource management practices in knowledge-intensive business

services firms: The case of outsourcing with staff transfer', SAGE, 62(10), pp. 1521-1550, doi:10.1177/0018726709336498.

[59]. Gugus S. Handoko and Others v. The Government of Indonesia (2011) No. 27/PUU-IX/2011. Available at: https://www.richtmann.org/journal/index.php/mjss/article/view/9943/9576.

[60]. Gunatilaka, R. and Chandrasiri, S. (2022) 'The Labour Market Implications of Sri Lanka's Multiple Crises'. International Labour Organization (ILO), p. 29. Available at: https://www.ilo.org/colombo/whatwedo/publications/WCMS_856157/lang--en/index.htm [Accessed 19 September 2024].

[61]. Gupta, A. (n.d.). Condition Of Contract Labour In India. [online] Legalserviceindia.com. Available at: https://legalserviceindia.com/legal/legal/legal/article-12840-condition-of-contract-labour-in-india.html [Accessed 6 Oct. 2024].

[62]. Gussek, L. and Wiesche, M. (2021) 'The Gig Economy: Workers, Work and Platform Perspective'. ResearchGate. Available at: https://www.researchgate.net/publication/356667176_The_Gig_Economy_Workers_Work_and_Platform_Perspective.

[63]. Hanafiah, M.H, Abdul, M.F.G, Isa, R.M, and Hamid, H.A. (2022) 'Critical success factors of franchising firms: A study on franchisors and franchisees', Administrative Sciences, 13(1), pp. 1-8. doi: 10.3390/admsci13010008.

[64]. Halim, H. A. and Che-Ha, N. (2010) 'HR outsourcing among Malaysian manufacturing companies'. Business Strategy Series, 11(6), pp. 363-370. Available at: https://doi.org/10.1108/17515631011093061 [Accessed 9 September 2024].

[65]. Halim, H.A., Ee, E., Ramayah, T., and Ahmad, N.H. (2014) 'Human Resource Outsourcing Success: Leveraging on Partnership and Service Quality', SAGE Open, 12. doi:10.1177/2158244014545475.

[66]. Harvard Workers' Center (2001) 'Outsourcing, its Discontents, and Some Solutions'.

[67]. Hassan, K.H., Ping, L.J. and Ismail, N. (2013) 'Human resource management: Labour outsourcing from Malaysian law perspective'. Prosiding Perkem VIII, Jilid 1, pp. 306-315. ISSN: 2231-962X.

[68]. Hayes, A. (2021) 'Subcontracting: How It Works, Benefits, Definition, and Taxation', Investopedia. Available at: https://www.investopedia.com/terms/s/subcontracting.asp.

[69]. Herbert Smith Freehills, 2015. Thailand: Outsourced workers' protection. Available at: https://hsfnotes.com/employment/2015/03/30/thailand-outsourced-workers-protection/ [Accessed 24 August 2023].

[70]. Hudiana, R. & Susetyo, H. (2020) 'Law and Human Right Protection of Outsourcing Labour Law Number 13 of 2003'. ResearchGate. Available at: https://doi.org/10.2991/aebmr.k.200321.026 [Accessed 6 Oct. 2024].

[71]. Hindustan Steelworks Construction Ltd. vs. Commissioner of Labour and Others (1996) [online] Available at: https://indiankanoon.org/doc/795632/ [Accessed 5 October 2024].

[72]. HROToday (2008). The European Market Update - HRO Today. [online] HRO Today. Available at: https://www.hrotoday.com/news/sourcing/the-european-market-update/ [Accessed 29 Sep. 2024].

[73]. Hutchinson, T. and Duncan, N.J. (2012) 'Defining and Describing What We Do: Doctrinal Legal Research'. Available at: https://www.researchgate.net/publication/304034393_Defining_and_Describing_What_We_Do_Doctrinal_Legal_Research [Accessed 9 September 2024].

[74]. International Organization of Employers (2022) 'Perú: New limits on outsourcing of services'. Available at:https://industrialrelationsnews.ioe-emp.org/industrial-relations-and-labour-law-march-2022/news/article/peru-new-limits-on-outsourcing-of-services

[75]. ILO (1958) 'Convention Concerning Discrimination in Respect of Employment and Occupation (No. 111)'. International Labour Organization (ILO). Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111 [Accessed 9 September 2024].

[76]. ILO (2003) 'Workplace Discrimination: A Picture of Hope and Concern'. International Labour Organization (ILO). Available at: https://www.ilo.org/publications/ilo-workplace-discrimination-picture-hope-and-concern [Accessed 3 September 2018].
[77]. ILO (2009) 'Private Employment Agencies, Temporary Agency Workers and Their Contribution to the Labour Market'. International Labour Organization (ILO). Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/meetingdocument/wcms_162740.pdf [Accessed 9 September 2024].
[78]. ILO (2016a) 'Disguised Employment / Dependent Self-Employment'. International Labour Organization (ILO). Available at: https://www.ilo.org/global/topics/non-standard-employment/WCMS_534833/lang--en/index.htm [Accessed 1 September 2023].
[79]. ILO (2016b) 'What is a Multi-Party Employment Relationship?'. International Labour Organization (ILO). Available at: http://www.ilo.org/global/topics/non-standard-employment/WCMS_534834/lang--en/index.htm [Accessed 31 August 2023].
[80]. ILO (2018) 'Situation and Gap Analysis on Malaysian Legislation, Policies and Programmes, and the ILO Forced Labour Convention and Protocol'. International Labour Organization (ILO). Available at: https://www.ilo.org/asia/projects/WCMS_650658/lang--en/index.htm [Accessed 9 September 2024].
[81]. Industrial Disputes Act No. 14 of 1947 (India)
[82]. Industrial Disputes Act No. 43 of 1950. Sri Lanka.
[83]. International Airport Authority of India v. International Air Cargo Workers' Union (2009) 13 SCC 374. Available at: https://indiankanoon.org/doc/1907493.
[84]. Ipoh City & Country Club Berhad v. Mohd Khurshaid Ramjan Din (2006) 3 ILR 1758.
[85]. Ishii, T. (2018) 'Employment conditions and emerging labour movements of non-regular workers in Japan', Asia Pacific Journal of Human Resources, 56(4), pp. 474–491. Available at: https://doi.org/10.1111/1744-7941.12177 [Accessed 12 October 2024].
[86]. Izzati, N.R. (2017) 'Improving outsourcing system in Indonesia: fixing the gap of labour regulation'. doi: https://doi.org/10.22146/jmh.28372
[87]. Japan Institute for Labour Policy and Training (2011) 'The current status and the challenges of dispatched work in Japan'. Available at: https://www.jil.go.jp/english/lsj/detailed/2011-2012/chapter2.pdf [Accessed 12 October 2024].
[88]. Jayawardena, P. (2016) 'Transforming "Manpower Employment" to Decent Work of Greater Quality'. Talking Economics. Available at: https://www.ips.lk/talkingeconomics/2016/02/19/transforming-manpower-employment-to-decent-work-of-greater-quality/ [Accessed 9 September 2024].
[89]. Jewson, N., & Mason, D. (1986). Race, employment and equal opportunities: towards a political economy and an agenda for the 1990s. Sociological Review, 34(2), 307-34
[90]. Job Creation Act, Indonesia. No. 11 of 2020. Available at: https://faolex.fao.org/docs/pdf/ins206548.pdf (Accessed: 6 October 2024).
[91]. Jumabhoy, F., Adiyasa, N., Lumsdaine, T., Lim, R. and Miao, G. (2022) 'Asia: Outsourcing'. Lexology. Available at: https://www.lexology.com/library/detail.aspx?g=2e3f6055-8ade-4cfc-9e8d-4590a22f99b9 [Accessed 9 September 2024].
[92]. Kauhanen, M. (2015) 'Temporary agency work in Finland'. [Online] Available at: https://www.slideshare.net/slideshow/temporary-agency-work-in-finland/53262553 [Accessed 13 Oct. 2024].
[93]. Keong, Y. W., Husin M. M., and Kamarudin S. (2023). Understanding Research Paradigms: A Scientific Guide. ResearchGate; Swinburne University of Technology. Available at: https://www.researchgate.net/publication/369670077_Understanding_Research_Paradigms_A_Scientific_Guide
[94]. Koirala, S. & Khan, M. (2013) 'Outsourcing financial services in Finland by small and mid-size companies'. [Online] Available at:

https://core.ac.uk/download/pdf/38099239.pdf [Accessed 13 Oct. 2024].

[95]. Kock, H., Wallo, A., Nilsson, B. and Hoglund, C. (2012) 'Outsourcing HR services: The role of human resource intermediaries'. European Journal of Training and Development, 36(8), pp. 772-790. Available at: https://doi.org/10.1108/03090591211263512 [Accessed 9 September 2024].

[96]. Labor Code of the Philippines (Presidential Decree No. 442), 1974. Available at: https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/26/25306 (Accessed: 10 October 2024).

[97]. Labour Code of Vietnam No. 10/2012/QH13 (2012). Available at: https://asean.org/wp-content/uploads/2016/08/Labor-Code-No.-10-Year-2012.pdf

[98]. Labour Protection Act, B.E. 2541 (1998) (Thailand). [online] Available at: https://www.vertic.org/media/National%20Legislation/Thailand/TH_Labor_Protection_Act.pdf [Accessed 7 Oct. 2024].

[99]. Landau, I., Mahy, P. and Mitchell, R. (2015) 'The Regulation of Non-Standard Forms of Employment in India, Indonesia and Viet Nam'. International Labour Office. Available at: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_414583.pdf [Accessed 9 September 2024].

[100]. Lair, C. D. (2019) 'Outsourcing and the risks of dependent autonomy', SAGE Open, doi:10.1177/2158244019845177.

[101]. Lebeaux, R. (2012). 'Shared services'. TechTarget. Available at: https://www.techtarget.com/searchcio/definition/Shared-services.

[102]. Liberty Global Asia (2018) 'Potential for legal liabilities and claims for unpaid wages in the palm oil industry'. Available at: https://respect.international/wp-content/uploads/2020/06/Potential-for-Legal-Liabilities-and-Claims-for-Unpaid-Wages-in-the-Palm-Oil-Industry.pdf (Accessed: 6 October 2024).

[103]. Lieke, J., Mawuntu, R., Freederik, W.A.P.G. and Maramis, R.A. (2017) 'Legal protection of labour outsourcing in Indonesia in the perspective of human rights'. Journal of Law, Policy and Globalization, 60, pp. 45-53. Available at: https://www.iiste.org/Journals/index.php/JLPG/article/download/36640/37653 [Accessed 9 September 2024].

[104]. Liff, S., & Wajcman, J. (1996). Sameness and difference revisited: which way forward for equal opportunities initiatives. Journal of Management Studies, 33(1), 79-94

[105]. Lindsay, C., Munro, A., & Wise, S. (2007). Making equalities work? Scottish trade unions' approaches to equal opportunities. Equal Opportunities International, 26(5), 465-481. Available at: https://doi.org/10.1108/02610150710756667

[106]. Luke, D. (2022, July 19) 'EXPLAINER | Sri Lanka's crisis explained in 500 words'. Theinformant247. Available at: https://theinformant247.com/sri-lanka-crisis-analysis/ [Accessed 9 September 2024].

[107]. Lutkevich, B. (2020). What is Outsourcing and How Does it Work? [online] Techtarget. Available at: https://www.techtarget.com/searchcio/definition/outsourcing.

[108]. Macaraya, B. M. (2006) 'Workers' protection in a new employment relationship. ILO'. Available at: https://ilo.org/ifpdial/areas-of-work/labour-law/WCMS_205376/lang--en/index.htm (Accessed: 10 October 2024).

[109]. Magyar, J. (2019) 'An epistemological justification of doctrinal legal research methodology'. SLS Annual Conference, University of Central Lancashire. Available at: https://www.academia.edu/39969173/An_Epistemological_Justification_of_Doctrinal_Legal_Research_Methodology [Accessed 9 September 2024].

[110]. Manager Nakiadeniya Goup v. Lanka Estate Workers 1977 C.L.W 52

[111]. Manpower Act No. 13 of 2003 (Republic of Indonesia) Available at: http://www.flevin.com/id/lgso/translations/Laws/Law%20No.%2013%20of%202003%20on%20Manpower%20(BKPM).pdf

[112]. ManpowerGroup (n.d.) Compliance-related information on temporary staffing. Available at: https://www.manpowergroup.jp/english/client/compliance-related/ [Accessed 18 May 2024].

[113]. Maroof, M.A. (2018) 'Study of Contractual Labour in India', International Journal of Trend in Scientific Research and Development, 2(3), pp. 911-915. Available at: https://www.ijtsrd.com/papers/ijtsrd11148.pdf

[114]. Maternity Benefits Ordinance No. 32 of 1939. Sri Lanka. Available at https://www.niosh.gov.lk/images/pdfs/downloads/acts_and_cerculars/maternity_benefits_ordinance_i_8.pdf

[115]. McKenzie, B. (2018) Global Outsourcing Employment Handbook. Available at: https://www.bakermckenzie.com/-/media/minisites/tmt/files/global_outsourcing_employment_handbook_2017.pdf?la=en [Accessed 24 September 2023].

[116]. Ministry of Employment and the Economy, Finland. (n.d.). Employment Contracts Act. Available at: https://tem.fi/documents/1410877/2918935/Employment+Contracts+Act/b0fca473-f224-46b9-974c-acd153587680

[117]. Moosajees Limited v. Eksath Engineru Saha Samanya Kamkaru Samithiya (1979) 1 NLR 285. Available at: https://www.lawnet.gov.lk/wp-content/uploads/2016/11/032-NLR-NLR-V-79-1-MOOSAJEES-LIMITED-Petitioner-and-EKSATH-ENGINERU-SAHA-SAMANYA-KAMKARU-SAMITHI.pdf

[118]. Murphy, T. (2003) 'Insourcing', WARD's AutoWorld, pp. 44-48.

[119]. Naguiat v. NLRC (1997) 269 SCRA 564. Available at: https://mylinecordial.com/2020/05/02/naguiat-vs-nlrc/ (Accessed: 10 October 2024).

[120]. National Labor Relations Act 1935. United States National Archives. Available at: https://www.archives.gov/milestone-documents/national-labor-relations-act [Accessed 24 October 2024].

[121]. National Wages Consultative Council Act No. 732 of 2011. Malaysia. [online] Available at: https://jtksm.mohr.gov.my/sites/default/files/2023-03/3.%20National%20Wages%20Consultative%20Council%20Act%202011.pdf

[122]. Nevogt, D. (2022). 11 Benefits of Outsourcing Work. [online] Hubstaff Blog. Available at: https://hubstaff.com/blog/benefits-outsourcing/.

[123]. Nguyen, V.Q. (2012) 'Employment subleasing: A new form of labor supply in Vietnam'. Available at: https://www.tilleke.com/wp-content/uploads/2012/08/2012_Aug_Employment_Subleasing_Vietnam.pdf [Accessed 24 September 2023].

[124]. Norman, T.J., Christodoulidou, N. and Rothenberger, M. (2014) 'Technology outsourcing in human resource activities in hospitality', Journal of Hospitality and Tourism Technology, 5(1), pp. 50-61. doi: https://doi.org/10.1108/JHTT-07-2012-0021

[125]. Nugroho, R.A., Priambada, B.S. and Sutrasno, S.A. (2020) 'Protection of outsourcing workers in the perspective of Law Number 11 of 2020 concerning job creation', Surakarta Law And Society Journal. Available at: https://ejournal.unsa.ac.id/index.php/slsj/article/download/951/690

[126]. Occupational Safety and Health Act No. 514 of 1994, Malaysia. https://umresearch.um.edu.my/wp-content/uploads/2024/05/Act-514-OCCUPATIONAL-SAFETY-AND-HEALTH-ACT-1994.pdf

[127]. Occupational Safety and Health Act (299/1958). Finland. (1958). Available at: https://www.finlex.fi/sv/laki/kaannokset/1958/en19580299_19990203.pdf [Accessed 13 Oct. 2024].

[128]. Ocktavianti, O., Cahyani, M.A.A. and Nugroho, A. (2021) 'Legal protection and fulfillment of the outsourcing workers' rights after the enactment of Law Number 11 Year 2020 Concerning Job'. International Joint Conference on Arts and Humanities 2021 (IJCAH 2021), 618, pp. 579-583. Available at: https://www.atlantis-press.com/article/125967573.pdf [Accessed 9 September 2024].

[129]. OpenLegal (2024). Navigating Legal Considerations in Outsourcing: Protecting Your Interests - OpenLegal. [online] OpenLegal. Available at: https://openlegal.com.au/navigating-legal-considerations-in-outsourcing-protecting-your-interests/ [Accessed 29 Sep. 2024].

[130]. Open University of Sri Lanka (OUSL) (1985) Constitutional Law: Block 2. Open University of Sri Lanka.
[131]. Open University of Sri Lanka: (OUSL). (1990). Labour law: block 1
[132]. Osses, T. & Kies, U. (2012) 'Employment shifts and the role of labour outsourcing in Chile's forest-based cluster'. ResearchGate, 83, pp. 210-225. Available at: https://doi.org/10.4432/0300-4112-83-210 [Accessed 9 September 2024].
[133]. Park, J.H. (1999) 'Employment situations and workers protection in Korea', Korea Labor Institute. [Online] Available at: https://ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/genericdocument/wcms_205370.pdf [Accessed 9 September 2024].
[134]. Parker, J. (2003). We're on the road to somewhere: women's groups in unions. Industrial Relations Journal, 34(2), 84-164
[135]. Patricia (2018). Advantages and Disadvantages of Outsourcing – Smart Church Management. [online] Smart Church Management. Available at: https://smartchurchmanagement.com/advantages-and-disadvantages-of-outsourcing/.
[136]. Payment of Gratuity Act No. 12 of 1983 (Sri Lanka). Available at: https://www.parliament.lk/uploads/acts/gbills/english/3120.pdf
[137]. Peiris v. Podisingho 1978 C.L.W46
[138]. Perera, N. (2020) Principles of Sri Lankan Labour Law: Justifiable Classification and Beyond. Colombo: Colombo University Press.
[139]. Philippine Bank of Communications vs. National Labor Relations Commission (1986). G.R. No. 66598. Available at: https://lawphil.net/judjuris/juri1986/dec1986/gr_66598_1986.html (Accessed: 10 October 2024).
[140]. Philippine Telegraph and Telephone Company v. NLRC (1997) 272 SCRA 596. Available at: https://lawphil.net/judjuris/juri1997/may1997/gr_118978_1997.html (Accessed: 10 October 2024).
[141]. Pillai, M. (2019) 'The application of justifiable classification in Sri Lankan labour law', Sri Lanka Journal of Legal Studies, 15(2), pp. 45-67.
[142]. Pratap, S. (2014) 'Towards a framework for performing outsourcing capability', Strategic Outsourcing: An International Journal, 7(3), pp. 226-252. Available at: https://doi.org/10.1108/SO-04-2014-0004.
[143]. Private Employment Agencies Act No. 27 of 1981. Malaysia.
[144]. Protection of Dispatched Workers Act No. 5512 of 1998. Soth Korea. Available at: https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=55096&type=part&key=40 [Accessed 9 October 2024].
[145]. Pupos, V.R.V. (2014) 'Between flexibility and security: The rise of non-standard employment in selected ASEAN countries'. ASEAN Services Employees Trade Unions Council, pp. 119-137. Available at: https://library.fes.de/pdf-files/bueros/singapur/10792.pdf [Accessed 8 Oct. 2024].
[146]. Quijano, D.D. and Lévano, M. (2022) 'Peru: Adjustments to laws on outsourcing services'. Available at: https://www.auxadi.com/blog/2022/05/19/peru-outsourcing [Accessed 21 January 2024].
[147]. Rahim, R. A., Tajuddin, M. A. B. A., Bakar, K. B. H. A., & Rahim, M. N. B. A. (2015) 'Migrant labour and issues on outsourcing system in Malaysia'. SHS Web of Conferences, 18, pp. 1-6. Available at: https://doi.org/10.1051/shsconf/20151801003 (Accessed: 6 October 2024).
[148]. Raiser, M. (2023) 'FEATURE – At least half a million Sri Lankans lost jobs in 2022 due to economic crisis - World Bank', Times Online, 28 February. Available at: https://sundaytimes.lk/online/news-online/FEATURE-At-least-half-a-million-Sri-Lankans-lost-jobs-in-2022-due-to-economic-crisis-World-Bank/2-1140928 [Accessed 19 September 2024].
[149]. Rathnayake, U.P. (2016) 'Labour outsourcing in manufacturing sector', International Conference on Human Resource Management, University of Satya Wacana. [Online] Available at: https://www.researchgate.net/publication/346658931_LABOUR_OUTSOURCING_IN_MANUFACTURING_SECTOR [Accessed 9 September 2024].
[150]. Rees, T. (1998). Mainstreaming Equality in the European Union: Education, Training and Labour Market Policies. Routledge, London
[151]. Reference for Business (2014). Outsourcing - advantage, benefits,

disadvantages, cost, Advantages of outsourcing. [online] Referenceforbusiness.com. Available at: https://www.referenceforbusiness.com/small/Op-Qu/Outsourcing.html.

[152]. Regulation No. 35 of 2021. Concerning Employment Agreement for a Specified Period of Time, Outsourcing, Working Time and Rest Time, and Termination of Employment. Government of the Republic of Indonesia Available at: https://indolabourdatabase.wordpress.com/wp-content/uploads/2021/05/government-regulation-no.-35-of-2021-on-non-permanent-work-agreement-english-version.pdf (Accessed: 6 October 2024).

[153]. Richard Peiris and Co. v. Wijesiriwardene 1962 N.L.R 233 Available at: https://www.lawnet.gov.lk/wp-content/uploads/2016/11/053-NLR-NLR-V-62-RICHARD-PIERIS-CO-LTD-Appellant-and-D.-J.-WIJESIRIWARDENA-Respondent.pdf

[154]. R.K. Panda vs. Steel Authority of India, (1994) 5 SCC 304, Supreme Court of India. Available at: https://indiankanoon.org/doc/1071315/ (Accessed: 5 October 2024).

[155]. Robinson, P. (Tish), Sibala, C., Ito, K. and Beyer, V. L. (2022) 'The deepening divide in Japanese employment: The increasing marginalization of contract workers as explained by path dependence, vested interests, and social psychology', Contemporary Japan, 34(1), pp. 13–41. Available at: https://doi.org/10.1080/18692729.2022.2028229 [Accessed 12 October 2024].

[156]. Rochadi, S. (2019) 'Labour Response to Outsourcing Policy, 'Research in Industrial Intensive Area-Indonesia'. ResearchGate. Available at: https://doi.org/10.31014/aior.1991.02.01.50 (Accessed: 6 October 2024).

[157]. Rodriguez, P. S., Vega, O. M., Espada, A. P. D. and Badillo, N. M. V. (2021) 'Mexican labor law amendment abolishes outsourcing of personnel', Ogletree Deakins, Available at: https://ogletree.com/insights/mexican-labor-law-amendment-abolishes-outsourcing-of-personnel/

[158]. Rodríguez-Soler, J. (2018) 'Outsourcing of services in France: The challenges from collective bargaining system'. [Online] Available at: https://www.researchgate.net/publication/347579723_Outsourcing_of_Services_in_France_The_Challenges_from_Collective_Bargaining_System [Accessed 9 September 2024].

[159]. Rossman, B. G., & Rallis, F. S. (1998). Learning in the field: an introduction to qualitative research. California: Sage Publications.

[160]. Row v. State of Madras 1951 A.I.R Madras at p.147 Available at: https://indiankanoon.org/doc/1448452/

[161]. Rungruangkoswang, R., 2017 'Law on Outsourcing in Hotel Business'. Master's Thesis, Graduate School of Law, Assumption University. Available at: https://repository.au.edu/server/api/core/bitstreams/44df0dce-792b-41aa-b5a6-58000e705fe2/content [Accessed 8 October 2024].

[162]. Saarinen, P. (2024) 'The role of temporary agency workers in Finnish social services: an exploratory research'. [Online] Available at: https://www.theseus.fi/bitstream/handle/10024/859554/Saarinen_Paavo.pdf?sequence=2&isAllowed=y [Accessed 13 Oct. 2024].

[163]. Sadhu, A. K. (2014) 'OUTSOURCING IS', Management for All, 1 April. Available at: https://www.management4all.org/2014/04/outsourcing-information-systems.html (Accessed: 1 May 2024).

[164]. Sakai, K., Nagata, T., Nagata, M., Mori, K., Odagami, K. and Adi, N.P. (2023) 'Inequality in workplace support for various types of precarious workers compared with permanent workers in Japan: A cross-sectional study', Journal of Occupational Health, 65(1). [Online] Available at: https://doi.org/10.1002/1348-9585.12431 [Accessed 9 September 2024].

[165]. Sako, M. (2010). 'Outsourcing versus shared services'. Communications of the ACM, 53(7), 27-29.

[166]. Sapkal, R.S. (2015) 'Labour law, enforcement and the rise of temporary contract workers: Empirical evidence from India's organised manufacturing sector'. [Online] Available at: https://doi.org/10.1007/s10657-015-9514-z [Accessed 9 September 2024].

[167]. Saloheimo, J. (2007) 'XVth Meeting of European Labour Court Judges 3-4 September 2007 Bundesarbeitsgericht Erfurt, Germany'. ILO. [Online] Available at: https://www.ilo.org/meetings-and-events/xvth-meeting-european-labour-court-judges-erfurt-germany [Accessed 13 Oct. 2024].

[168]. Sarveswaran, A. (2011) 'Who is a workman? A critical evaluation of the tests to differentiate a workman from an independent contractor in the light of judicial decisions', International Research Conference on Management and Finance, University of Colombo, Sri Lanka.

[169]. Schmillen, A.D. and Packard, T.G. (2016) 'Vietnam's Labor Market Institutions, Regulations, and Interventions: Helping People Grasp Work Opportunities in a Risky World'. World Bank Group. Available at: https://papers.ssrn.com/sol3/Delivery.cfm/7587.pdf?abstractid=2740840&mirid=1&type=2 [Accessed 9 Oct. 2024].

[170]. Serrano, M.R. (2014) 'Between Flexibility and Security: The Rise of Non-Standard Employment in Selected ASEAN Countries'. ASEAN Services Employees Trade Unions Council. Available at: https://library.fes.de/pdf-files/bueros/singapur/10792.pdf

[171]. Setiawan, I., Firmansyah, R. & Boyd, J. (2021) 'Omnibus Law' manpower regulation turns out to be mixed bag for Indonesia's employers. Abnrlaw.com. Available at: https://www.abnrlaw.com/news/omnibus-law-manpower-regulation-turns-out-to-be-mixed-bag-for-indonesias-employers (Accessed: 29 September 2023).

[172]. Shi, Y.W. (2007) 'Today's solution and tomorrow's problem: the business process outsourcing risk management puzzle', CA Management Review, 49(3), pp. 27-44.

[173]. Sheehan, C. and Cooper, B.K. (2011) 'HRM outsourcing: the impact of organisational size and HRM strategic involvement', Personnel Review, 40(6), pp. 742-760. doi: https://doi.org/10.1108/00483481111169661

[174]. Silva, H.A.R.N. (2014) 'Employee Retention Strategies: A Comparative Study of Sri Lanka Offshore Industry'. [online] Available at: https://dilum.bandara.lk/wp-content/uploads/2017/04/Thesis-Nilanga-Silva.pdf

[175]. Sim, S.C., Avvari, V.M. and Kaliannan, M. (2016) 'HR outsourcing trends in Malaysia: the undetected tiger', Strategic Outsourcing: An International Journal, 9(2), pp. 189-217. doi: https://doi.org/10.1108/SO-05-2015-0013

[176]. Singh, J., Das, D.K., Choudhury, H. and Kukreja, P. (2016) 'Law, Skills and the Creation of Jobs as 'Contract' Work in India: Exploring Survey Data to make Inferences for Labour Law Reform'. Indian Council for Research on International Economic Relations (ICRIER). Available at: https://www.econstor.eu/handle/10419/176357

[177]. Slaughter, S. and Ang, S. (1996) 'Employment outsourcing in IS', Communications of the ACM, 39(7), pp. 47–54. doi: 10.1145/233977.233994.

[178]. SLT Human Capital Solutions (Pvt) Ltd. v. All Ceylon Telecommunication Employees Union (12/2017/DSP District Court 01 of Colombo)

[179]. Sri Lanka Parliament Hansard (2015) vol. 232, 29 January. (Ravi Karunanayake, Minister for Finance).

[180]. Sri Lanka Telecom PLC v. All Employees' Union of Information and Telecommunication 273/2014/DSP (District Court 01 of Colombo),

[181]. Steel Authority of India Ltd. & Others vs. National Union Water Front Workers & Other (2001) INSC 445, Supreme Court of India. Available at: https://indiankanoon.org/doc/277653/ (Accessed: 5 October 2024).

[182]. Supiot, A. (2001) 'Beyond employment: Changes in work and the future of labour law in Europe', New York: Oxford University Press.

[183]. Tampi, J. and Voravongsakul, C. (2015) 'Thailand: Outsourced workers' protection', Lexology, 30 March. Available at: https://www.lexology.com/library/detail.aspx?g=34480741-7992-4455-842e-ad17d558aaa8#:~:text=In%202008%2C%20following%20a%20string,the%20responsibility%20of%20business%20operators (Accessed: 16 September 2023).

[184]. Termination of Employment of Workmen Act No. 45 of 1971. Sri Lanka Available at: https://www.srilankalaw.lk/revised-

International Journal of Advances in Engineering and Management (IJAEM)
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statutes/alphabetical-list-of-statutes/1285-termination-of-employment-of-workmen-special-provisions-act.html

[185]. Trade Union Act No. 21 of 2000. Indonesia Available at: https://indolabourdatabase.wordpress.com/wp-content/uploads/2017/09/uu-no-21-tahun-2000-trade-union-english.pdf (Accessed: 6 October 2024).

[186]. Trade Unions Ordinance No. 14 of 1935. Sri Lanka

[187]. Trident Malaysia Sdn Bhd v. National Union of Commercial Workers (1987) 2 ILR 190

[188]. Tsafack, E. and Parasnis, J. (2010) 'The impact of trade and outsourcing on skilled and unskilled labour in France'. Monash University. [online] Available at: https://www.researchgate.net/publication/46443116_The_Impact_of_Trade_and_Outsourcing_on_Skilled_and_Unskilled_Labour_in_France [Accessed 9 September 2024].

[189]. United Nations. (1948) 'Universal Declaration of Human Rights'. [online] Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights [Accessed 9 September 2024].

[190]. United Nations. (1966) 'International Covenant on Civil and Political Rights'. [online] Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights [Accessed 9 September 2024].

[191]. U.S. Copyright Office (2021) 'Works Made for Hire', Available at: https://www.copyright.gov/circs/circ30.pdf (Accessed: 3 May 2024).

[192]. Uttar Pradesh Rajya Vidyut Utpadan Board vs. Uttar Pradesh Vidyut Mazdoor Sangh (2009)[online] Available at: https://indiankanoon.org/doc/844022/ [Accessed 5 October 2024].

[193]. Vitasek, K. and Manrod, K. (2013) 'What Five Great Economists Can Tell Us about Outsourcing', SupplyChain247. Available at: https://www.supplychain247.com/article/what_five_great_economists_can_tell_us_about_outsourcing

[194]. Vazquez, C. A. (2023) 'IT Outsourcing Cost Savings', CodersLink, 11 May. Available at: https://coderslink.com/employers/blog/it-outsourcing-savings/ (Accessed: 1 May 2024).

[195]. Wages Board Ordinance No. 27 of 1941 (Sri Lanka). Available at: https://citizenslanka.org/wp-content/uploads/2016/02/Wages-Boards-Ordinance-No-27-of-1941-E.pd

[196]. West, M. D. (2004) 'Employment market institutions and Japanese working hours', 'SSRN Electronic Journal'. Available at: https://doi.org/10.2139/ssrn.479882 [Accessed 12 October 2024].

[197]. Woodall, J., Jackson, W.S., Newham, T., and Gurney, M. (2009) 'Making the decision to outsource human resources', Personnel Review, 38(3), pp. 236-252. Available at: https://doi.org/10.1108/00483480910943313.

[198]. Worker Dispatch Act No. 88 of 1985 (Japan). (1985) Available at: https://www.japaneselawtranslation.go.jp/en/laws/view/4014/en (Accessed: 12 October 2024).

[199]. Workmen's Compensation Ordinance No. 19 of 1934. Sri Lanka. Available at: https://labourdept.gov.lk/downloads/labour_code/44.pdf