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A Critical Legal Analysis

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# **Bilateral Labour Agreements Between Sri Lanka and Other Jurisdictions: A Critical Legal Analysis**

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*International migration is by its nature a phenomenon that is always changing, always adapting to the economic and social realities. Managing this migration in full respect of migrants' rights is challenging.<sup>1</sup>*

## **1. Introduction**

With the expansion of travel between States the incidents of migration in search of employment have become a common occurrence in the 20th and 21<sup>st</sup> centuries. This has especially happened after the second world war when the European countries were in search of cheap labour to rebuild their countries from the atrocities of war.<sup>2</sup> In sending employees of one country to another, if there was no agreement between the source country (i.e., the country sending the employees) and the host country (i.e., the country receiving the migrant workers of the source country) the employees would find them in a rather peculiar situation as they would have to manage their affairs alone in a foreign country where there is a great risk of being discriminated and being treated differently and less favourably than the employees of the host country engaged in similar occupations. To mitigate such incidents, countries have developed a tool in the form of 'bilateral labour agreements (BLA's)', which governs the terms and conditions of employees who migrate for employment to a host country. While each BLA would be unique, there are many common features that most BLA's

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<sup>1</sup> Fact Sheet No. 24 Rev.1, The International Convention on Migrant Workers and its Committee, <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet24rev.1en.pdf>, accessed on 10 January 2023.

<sup>2</sup> Adam S. Chilton and Eric A. Posner, 'Why Countries Sign Bilateral Labour Agreements' (2018) 47 Journal of Legal Studies, p. 45.

share, which include, fair treatment, non-discrimination, regulations of the conditions of labour and a dispute settlement mechanism.<sup>3</sup>

While there is a conception that BLA's are entered between wealthier countries and countries that need foreign exchange, the exact reasons for entering a BLA is not that simple to explain. Among the multiple reasons, a country may enter a BLA to facilitate the process involved between the countries involved as sending, receiving or transit countries or perhaps to stop the flow of migrant employees coming from another country to its territory, whereby it can agree to a quota with the source State. Also, a host country may enter a BLA in the hope that it will give them a better recognition in the international arena for caring about its migrant workers. However, whatever the reasons may be, from the first BLA signed apparently somewhere around 1904, the exact reason for signing a BLA still remains unclear for the most part, even today. In this context, it would be important to explore the legal ramifications that would be attached in signing a BLA from the perspectives of both the source State and the host State, as it would produce the rights and obligations of the parties involved.

Sri Lankan migrant workers are predominantly moving to Middle East countries. Accordingly, the country has entered into a number of Bilateral Labour Agreements with Middle Eastern countries. The major influx of migrant workers into the Middle East began following the oil boom which occurred in the early 1970's and the resultant high standards of the living status of the people living in these countries. The Middle Eastern countries benefited from migrant labour to fill shortages at a relatively 'cheap' price since they were sourced from developing countries in South Asia.<sup>4</sup>

The main objective of this research paper is to examine the BLAs between Sri Lanka and other selected jurisdictions and to analyse the contents of the selected BLAs from a legal perspective.

This paper examines the nature of a BLA from a legal perspective and appraise a few of Bilateral Labour Agreements entered between Sri Lanka and selected Jurisdictions considering international conventions on human rights and other relevant treaties adopted by the International Labour Organization. It briefly discusses the applicability of the relevant Sustainable Development Goals and targets under the UN 2030 Agenda.

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<sup>3</sup> *Ibid.*

<sup>4</sup> Wasantha Seneviratne, Human Rights of Migrant Women to Middle East with special reference to Sri Lanka "Migration-Issues & Trends", Vol. 33 People's Bank Economic Review (2007) 20.

## 2. Legal Analysis of Bilateral Labour Agreements

Under international law, a bilateral treaty can be identified as an ‘international agreement concluded between two subjects of international law, each possessing treaty-making capacity’.<sup>5</sup> In the same manner, a BLA can be defined as an agreement between a source State and a host State concerning the mutual exchange of employees, their rights, duties, and the obligations, which are common and reciprocal for both-countries. As bilateral treaties in general are entered by States who possess the capacity to enter into such agreements under international law, these agreements become binding upon the States who enter into such agreements subject to the terms and conditions included therein. The binding nature of a BLA can be attributed to the concept of *pacta sunt servanda* (i.e., that agreements must be honoured by the parties signing them in good faith), which is a cardinal principle of international law. Therefore, one may argue that where there is a BLA between a source and a host country, the migrant workers covered by the BLA are to be protected and to benefit from it. However, the reality could be far removed from the letter of the BLA. Therefore, entering a BLA may not provide a license for migrant workers. They are completely safe in the process of migration as a worker. Both the parties should take steps to monitor the effective compliance of the terms and conditions of the BLA by setting up a proper mechanism to oversee the implementation of the BLA in all the phases of labour migration.

When migrant employees are sent abroad, it usually occurs through private channels. In such a situation, private parties in both the source and host countries may use a signed BLA between the two countries as a reference point in initiating a memorandum of understanding (MOU) which would not be a legally binding instrument. However, as the BLA is a binding document, it will create binding obligations between the States parties. However, where a migrant employee is not accorded the conditions or the standards of employment as provided in the BLA, the employee might not be able to vindicate the rights that are assured through the BLA without the intervention of their respective countries unless the BLA itself provides for the matter. In such an instance, an aggrieved employee would obviously need the support of his/her State to vindicate the rights that are granted to him/her through a BLA. Therefore, such an employee would remain at the mercy of his country in getting the relief which she/he seeks through the provisions of the BLA. However,

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<sup>5</sup> United Nations Treaty Handbook (2012), available at <https://treaties.un.org/doc/source/publications/THB/English.pdf>

as the BLA is entered between two sovereign nations, where the bargaining powers of the source State is often inferior to that of the host State, a source States would find it rather difficult to convince and enforce the obligations of the host State. In that event, the host country would have a better standing on dictating the terms of the settlement between the two nations. Due to this reason, a source State hardly interfere to enforce the obligations of the host State, as such may agitate the host State which may result in an eventual termination of the BLA between the two countries. As such, unless there would be something compelling regarding the status of migrant employees in another country which could attract the intervention of the source State, a BLA itself may not be capable of providing direct support to an employee to vindicate his/her rights in the host State.

The status of a BLA in the host State would be another area of concern. In the event of a dispute, the migrant employee would be required to take the aid of local law enforcement agencies of the host State and ultimately may have to seek the help from a court of law. In such an instance, it would be important to look at the domestic implementation of a BLA. If one looks at the Sri Lankan situation, a bilateral treaty, which is signed by Sri Lanka with another State would not become a part of the domestic law, which could be utilized in a court of law to vindicate her/his substantive rights as guaranteed in the bilateral agreement. Article 157 of the 1978 Constitution<sup>6</sup> allows the Parliament of the country to make a bilateral agreement signed with another State concerning the development of the national economy. However, such a bilateral agreement requires the passing of it with a two thirds majority in the parliament to be made part of the law of the country. Therefore, if the Sri Lankan government signs a BLA with another country and to make it legally recognized in the country, it would have to be passed by the Parliament with a two thirds majority to make it legally enforceable under the domestic law of Sri Lanka. If not, a BLA signed between Sri Lanka and another country would not become a part of the Sri Lankan law as the country follows a dualistic approach in incorporating international law into domestic law. Therefore, the implementation and enforcement of a BLA signed by Sri Lanka could become extremely problematic indeed.

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<sup>6</sup> 1978 Constitution of the Democratic Socialist Republic of Sri Lanka



### **3. An Appraisal of Bilateral Labour Agreements between Sri Lanka and selected Jurisdictions**

Sri Lanka can be identified as a country, which relies heavily on overseas employment to bring foreign exchange to the country. It has been recorded that the foreign exchange received through remittances in Sri Lanka averaged around 507.63 USD Million from 2009 until 2022, with an all-time high of 812.70 USD Million in December of 2020.<sup>7</sup> In such circumstances the government of Sri Lanka has also taken initiatives to sign Memoranda of Understandings (MoUs) and BLAs to increase the opportunities that are provided for Sri Lankan migrant workers to go abroad and bring foreign exchange to the country. It can be observed that Sri Lanka, like many other Asian countries have preferred to sign MoUs instead of BLAs. This may be due to reasons such as the convenience of signing a MoU as opposed to a BLA, the ease at which a MoU may be re-negotiated and amended according to the changing dynamics such as economic and social needs and that they are more suitable with regard to low-skilled employees.<sup>8</sup> Regarding such MoU's and BLA's, it becomes imperative to look at the factors that would have led to signing them, key provisions in such MoUs and BLAs, how such instruments have addressed human rights pertaining to migrant workers and their impact on the sovereignty of the countries involved. Out of many MoUs and BLAs that have been signed, this paper is particularly concerned with the ones that were signed with Bahrain, Qatar, Afghanistan, Seychelles, Italy, Israel, Kingdom of Saudi Arabia, and Kuwait.

#### **3.1 Memorandum of Understanding with Bahrain**

Sri Lankan Government signed a Memorandum of Understanding (MoU) with the Government of the Kingdom of Bahrain on 23<sup>rd</sup> of April 2008 with an objective of developing their mutual ties and their desire for enhancing cooperation in the areas of labour and occupational training while adhering with the principles of equality and mutual interest<sup>9</sup>. In considering the historical background leading to the signing of such a MoU, countries in the Middle East have always had a favourable stance concerning the employees of Sri Lanka for their skills, competence, and loyalty.<sup>10</sup> Even by year 2009, there were some 40,000 migrant workers who were working in

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<sup>7</sup> <https://tradingeconomics.com/sri-lanka/remittances>, accessed on 16 January 2023.

<sup>8</sup> [https://www.jil.go.jp/foreign/event/ko\\_work/documents/2006sopemi/keynotereport1.pdf](https://www.jil.go.jp/foreign/event/ko_work/documents/2006sopemi/keynotereport1.pdf), accessed on 16 January 2023.

<sup>9</sup> Introduction to the memorandum

<sup>10</sup> Bahrain values Sri Lankan workers, available at <https://economynext.com/bahrain-values-sri-lankan-workers-46898/>, accessed on 16 January 2023.

Bahrain as migrant workers.<sup>11</sup> Among the many who have migrated, according to the Ministry of Foreign Affairs, most of the migrants from Sri Lanka are employed either as skilled or semi-skilled employees.<sup>12</sup> However, these figures may be disputed since the number of domestic workers who are employed in the Middle East would not fall under the category of skilled or semi-skilled workers.

In considering the substance of the MoU between Sri Lanka and Bahrain, the definition provided in Article 3 on an ‘employee’ requires closer attention as it relates to the nature and the type of employment of the Sri Lankan migrant workers to be employed in Bahrain. Article 3 of the MoU defines an employee as ‘all expatriate workers employed in the Kingdom of Bahrain under temporary employment contracts for a fixed period of time, following the expiry of which such employee shall leave the Kingdom to Sri Lanka or to another country.’<sup>13</sup> In considering this provision of the MoU, it can be argued that terming all the employees as temporary may be detrimental for their rights.

The MoU facilitates the employers of Bahrain to obtain the services of recruitment agencies of Sri Lanka in selecting suitable employees for their respective establishments. It is the obligation of the Sri Lankan recruitment agencies to make sure that the individual who is selected for employment must be medically fit and possesses the required skills to discharge the respective work. An employer in Bahrain has the right to place an employee so recruited on probationary period for three months. If the employee is found unsuitable, the recruiting agency in Sri Lanka is responsible to provide an alternative employee. Where an employee is selected, she/he must enter into an agreement with the employer in Bahrain in accordance with the laws and regulations that are applicable in the Kingdom of Bahrain.<sup>14</sup> Article 7 of the MoU requires that such an agreement should contain provisions relating to, ‘name of the employer, his establishment, term of the contract, type of work, agreed wage and any other details that the two parties deem appropriate to include therein’.<sup>15</sup> The employer in Bahrain is required to provide a health and accidental cover to

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<sup>11</sup> Bullied and helpless in Bahrain, [https://www.sundaytimes.lk/091004/News/nws\\_20.html](https://www.sundaytimes.lk/091004/News/nws_20.html), accessed on 16 January 2023.

<sup>12</sup> <https://mfa.gov.lk/sri-lanka-embassy-in-bahrain-conducts-an-interactive-meeting-with-foreign-recruitment-agencies/#:~:text=Bahrain%20is%20home%20to%20approximately,more%20than%2020%2D30%20years>, accessed on 16 January 2023.

<sup>13</sup> Article 3 of the MOU with Bahrain.

<sup>14</sup> Article 7 of the MOU with Bahrain.

<sup>15</sup> Article 7 uses the gender male only. This is an occasion where gender neutrality is ignored in this MOU.

the employee according to the applicable law in the Kingdom of Bahrain. The MoU provides that any dispute that may arise between a Sri Lankan employee and a Bahraini employer shall be resolved in accordance with the applicable law in the Kingdom of Bahrain.

When analysing the provisions of this MoU, it is found that it is applicable only to the private sector and the number of incidents that are covered is limited. The MoU does not directly address human rights concerns and does not include a non-discriminatory provision to guarantee the equality between the employees of Sri Lanka and Bahrain. Therefore, this lacuna might cause discrimination against the migrant workers sent by Sri Lanka. To address this omission, it is suggested that the Sri Lankan employees should not be treated in a way that is below the standards that are applicable to any other migrant employee to the minimum. Apart from the medical cover and the insurance cover, nothing is mentioned in the MOU regarding the social security of the employees migrating from Sri Lanka. Also, the MoU does not include a mechanism that helps a migrant worker from Sri Lanka to get the aid of an intervening party in resolving a dispute between them and a Bahraini employer. Including such a mechanism is an important aspect and which would have been negotiated at the time of agreeing it.

It is further noted that there is no particular provision on guaranteeing gender equality in the implementation of the MoU or any other related right. Though the provisions of the MoU have been made gender neutral, it may have an adverse impact when one considers the female employees as they would need an empowerment in a foreign land when they are vulnerable in their workplace, even if they were employed in their own country. As the agencies are authorized to select suitable candidates for employment, female employees may be subject to exploitation more than their male counterparts. The main reason for this being the vulnerability of women in comparison to men in being exploited, and the fact that more than men, women employees use documents that are sometimes fabricated, and are in more desperate need of employment than men. Therefore, it is recommended that the inclusion of a specific purpose to address gender equality of the employees involved would enhance the protection of the female migrant workers as Sri Lanka sends more female workers than male workers to Middle Eastern countries.

### **3.2 Bilateral Agreement with Qatar**

Sri Lanka has signed a BLA with the State of Qatar on 1<sup>st</sup> of January 2008. Qatar is another Middle Eastern country with a large contingency of migrant workers from Sri Lanka. In 2015 Qatar

became the most popular destination for migrant workers from Sri Lanka where an estimated 84,622 migrant employees went to Qatar in search of employment. Out of which nearly 23,000 of them were estimated to be those who are termed ‘un-skilled’.<sup>16</sup> When one looks at the above statistics, it could be inferred that many migrant workers, preferring to migrate as employees to Qatar, could have had a strong motivational factor for the government of Sri Lanka to sign this BLA with Qatar. It is also important to note that Sri Lanka opted for an agreement instead of a MoU, which indicates a more serious intention towards abiding by the provisions of the agreement by both the countries to protect the interests of both the parties involved.

The agreement mainly focuses on the regulating manpower employment in the State of Qatar and recognizing the benefits of cooperation in the field of manpower pursuant to the laws and regulations of both the countries. Unlike with the MoU with Bahrain, Article 2 of the BLA between Qatar and Sri Lanka stipulates that the recruitment of manpower employees and their employment by Qatari employers shall be governed by the laws and regulations of both the countries. The obligation of requirement also is carried out by the relevant ministry in Sri Lanka unlike the recruiting agencies that are empowered to select employees under the MoU between Sri Lanka and Bahrain. Though a Qatari employer may utilize an agent of its own through an authorized recruitment office, that too is well regulated under the BLA. This BLA also provides specific provisions stating that no recruitment agency shall receive money for selecting employees as fees or expenses which also provides additional protection from being exploited by such agencies which was also lacking in the MoU between Bahrain and Sri Lanka. The agreement between the parties should also include more detailed information pertaining to, ‘required qualifications, experience and specialization, the probable duration of contract, detailed conditions of employment, especially the wages, end of service gratuity, probationary period and facilities regarding transport and accommodation as well as medical facilities and all basic information that may enable the workers to decide on signing the employment contract’.<sup>17</sup>

Another key feature of the BLA is the requirement of the Sri Lankan government to provide knowledge about the working conditions and terms of labour regarding the prospective employment opportunities in Qatar. The governmental agencies are required to provide medical

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<sup>16</sup> Call for Protection of Sri Lankan Labour Migrant Workers in Qatar, [https://srilankachrd.org/assets/Protection\\_in\\_Qatar.pdf](https://srilankachrd.org/assets/Protection_in_Qatar.pdf), accessed on 12December 2022.

<sup>17</sup> Article 4 of the BLA between Qatar and Sri Lanka.

clearance, passports, and permission to travel. The BLA also requires that all the expenses related to traveling to and out of work be paid, including the return during the leave period as well. Regarding the contract of employment, it shall be prepared in both English and Arabic with four copies, given to both the employer and the employee and the other two with the relevant ministries in charge of implementing this BLA in both the countries. It is also included in the BLA that such an employment contract shall not be changed by the employer unless such change would result in additional benefits been granted upon the employee.

As usual, where there is any dispute regarding the terms of an individual contract of employment, such shall be resolved amicably by the parties through the involvement of the competent authority empowered by the relevant ministry in Qatar and failing which judicial proceedings may be initiated under the Qatari law.

The most significant feature of the BLA between Qatar and Sri Lanka is found in the annexed model employment contract attached to the BLA, which can be considered as setting out the minimum standards that are required to be fulfilled by a Qatari employer. According to this model contract, when an employee is found to be of unsuitable nature during the period of probation, the employer has the responsibility of bearing the expenses related to safe return of such an employee to Sri Lanka. It also provides the possibility of providing a loan facility upon request for the employee as well. The model contract stipulates the maximum number of working hours per week, which stands at 48 hours and provides provisions for the payment of overtime work. The contract itself refers to the payment of gratuity and social welfare facilities as well. It also provides for the leave holidays with pay as well.

In the realm of human rights, especially regarding the rights of migrant workers, the BLA signed between Sri Lanka and Qatar can be appreciated for recognizing and granting many of the labour rights including provisions for leave with pay, medical cover, gratuity, and social welfare. It can also be appreciated for obliging the respective governmental agencies to carry out and implement the BLA between the parties as well. This would especially help to prevent the exploitation of employees by other private agencies. The provisions regarding the settlement of disputes can also be appreciated for providing a mechanism for resolving such disputes. However, the negative aspect of the BLA can be seen in the curtailment of political and religious rights of the employees as provided in the model contract.

There are no specific provisions in the BLA which focuses on any gender perspective. Likewise, the BLA does not have a non-discriminatory clause based upon gender or any provisions for empowering the women. While paid holiday leave is mentioned in the model contract, it makes no reference to maternity leave or benefits which can be identified as a big lacuna from a gender perspective.

In considering the implications upon the sovereignty of the country by signing such a BLA, it can be said that it does not negatively affect the interest of the State of Sri Lanka and its sovereignty as many of the provisions in the BLA have appreciated the concept of sovereign equality apart for the prohibition or the curtailment of political and religious rights of the migrant workers which would obviously be in breach of the many recognized human right treaties including the Article 12 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which requires the protection of religious rights concerning migrant workers.

### **3.3 Bilateral Agreement with Afghanistan**

It may come as a surprise that Sri Lanka has signed a bilateral agreement with the Islamic Republic of Afghanistan on 6<sup>th</sup> March 2014. The initial planning for signing such an agreement took place in December of 2012 when the two foreign ministers met for a discussion where the foreign minister from Afghanistan had made a request from Sri Lanka to send in skilled and professional workers to Afghanistan to rebuild their country, especially their infrastructure.<sup>18</sup> It is important to note that the agreement which the two parties reached after these discussions focused specifically on skilled workers and professionals who would help to rebuild Afghanistan, a country affected by ravages of war occurred in the country for decades, which led to the severe destructions of their infrastructure.

As with any other bilateral agreement, the agreement between Sri Lanka and Afghanistan referred to above is also signed with the aim of mutual benefit, and its main objective lies in the recruitment of skilled professionals in Afghanistan. It is significant to note that emphasis is given to ‘skilled professional manpower’ who are to be recruited through this agreement and the main responsibility

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<sup>18</sup> Joint Communiqué Between the Democratic Socialist Republic of Sri Lanka and The Islamic Republic of Afghanistan, <https://mfa.gov.lk/joint-communicue-between-the-democratic-socialist-republic-of-sri-lanka-and-the-islamic-republic-of-afghanistan/>, accessed on 16 January 2023.

as with the agreement with Qatar is vested with the respective governments of the countries. The applications are to be called from skilled professionals to be recruited by an Afghan employer, and such employer is required to list out the expected qualifications and skills required for job opportunities. The exploitation of such recruits is prevented by incorporating a provision to the agreement between the countries, whereby any authorized agent who is to help in the process of recruitment is prohibited from receiving money from any skilled professional who may apply for employment in Afghanistan. Such provisions were also found in the agreement that was signed with the State of Qatar.

Article 3 of the agreement provides that when calling for applications such should inform the required qualifications, experience and specialization, the probable duration of contract, detailed conditions of employment especially the wages, end of service gratuity, probationary period and facilities regarding transport and accommodation as well as medical facilities and all other basic information that may enable the skilled and professional manpower to decide on signing the employment contract.<sup>19</sup> Some of the other provisions regarding the obligations of providing medical clearance, providing passports and other related documents are vested with the governmental authorities, thus reducing the exploitation of the employees. These provisions have almost become the standard, or the basic norm in signing such an agreement. Article 6 of the agreement provides that the Afghan government may repatriate any number of skilled professionals recruited from Sri Lanka, if it is found that, 'their presence in Afghanistan becomes contrary to public interest or the national security of the state'. Similar provisions were not found in the MoU between Bahrain and Sri Lanka as well as in the agreement between Qatar and Sri Lanka.

The agreement between Sri Lanka and Afghanistan requires each individual contract made between a Sri Lankan employee and an Afghan employer to be drawn in Sinhala, Dari, and English. This is a significant provision that could not be found in other agreements discussed above. This right granted under the agreement is important as an employee from Sri Lanka would much prefer to have the terms of the agreement written in Sinhala, as she/he would be able to better understand their respective rights and obligations in a language they are familiar with. In addition to this requirement, an employee is given a unilateral chance to change the place of her/his

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<sup>19</sup> Article 3 of the Bilateral Labour Agreement with Afghanistan.

employment where the employer fails to pay salaries for three months. Where such occurs, the employee has the right to find alternative employment without notifying the employer. All the other provisions of the agreement are standard, where it provides for dispute settlement by amicable means, the need for providing healthcare and medical insurance for the employees and the payment gratuity.

Although the agreement between Sri Lanka and Afghanistan are like the other agreements entered by Sri Lanka with other countries in many aspects, there are few notable differences in regard to a human rights or labour right perspective. The agreement with Afghanistan is not as strong as the one that was signed with Qatar when one considers the benefits afforded to employees. While skilled professionals are recruited under the agreement with Afghanistan, the failure to provide a model contract of employment might be detrimental to the interest of the employee. However, the requirement that the contract of employment should also be provided in Sinhala, and the fact that there are no restrictions upon the enjoyment of religious and political rights, can be appreciated for endeavouring to provide some additional support to the employees. Further to this, the agreement signed with Afghanistan does not prohibit the exercise of religious rights and political rights of the migrant workers from Sri Lanka.

The bilateral agreement with Afghanistan also does not provide any gender perspective or address any gender rights *per se*. It seems that, when these agreements were drawn between the respective countries, the primary focus has been the employment of men instead of women and as a result, provisions that are required to provide additional support and protection from a women's perspective are not included in these agreements.<sup>20</sup> It can also be seen that since, Bahrain, Qatar and Afghanistan are Islamic countries, where the perception of women being employed is not something very common in comparison to some of the other countries in the world. This stereotype might have had an influence in the absence of gender perspectives in these bilateral agreements and MoUs that were signed for recruiting labour.

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<sup>20</sup> It is mainly due to the fact that many women are employed as housemaids in Middle East countries, and sufficient attention has not been placed on them. Since most of these MoU's are about either skilled or semi-skilled occupations, women are frequently left out.



### **3.4 Bilateral Agreement with the Seychelles**

Seychelles and Sri Lanka are in the Indian Ocean. This was one of the significant reasons cited for signing a bilateral labour agreement between the countries on 21<sup>st</sup> August 2012, where the respective Presidents of the countries emphasised on the need for cooperation between the two regarding the garnering of its resources and not letting the outsiders steal their catch.<sup>21</sup> The agreement relates to the recruitment of Sri Lankan manpower employees in the Republic of Seychelles and it makes no distinction between skilled and unskilled employees, which was only visible in the agreement signed with Afghanistan. In the preamble of the agreement, it refers to an earlier agreement between the countries signed on December 23<sup>rd</sup> of 2003 regarding Economic and Technical Cooperation. The one signed in 2012 can be considered as a specific agreement deriving from the agreement in 2003.

The structure of the bilateral agreement follows the ones that were signed with Qatar and Afghanistan. Unlike with the one signed with Afghanistan, the one signed with Seychelles does not refer to skilled professional employees. The main responsibilities are again given to the respective ministries of the countries concerning the selection and the recruitment of the respective employees. The employer in the Seychelles is required to pay for the travelling expenses including the travelling expenses during the leave period too. As it was found with the agreements signed with Qatar and Afghanistan, the employer and employee should enter into a separate agreement and such agreement should include the amount of wage, working hours, holidays and other common elements found in a contract of employment. The dispute resolution must be done in an amicable manner with the aid of a nominated representative from Seychelles and where such is not possible, recourse may be made to judicial proceedings in accordance with the laws of Seychelles. The implementation and the monitoring of the agreement is vested with the respective ministries of the countries.

When one considers the gender aspects of this agreement between Sri Lanka and Seychelles, it too like all the other agreements already discussed, fails to incorporate any specific provision to deal with the matter. In the absence of any gender specific provisions, there is a strong possibility that women may be treated unequally in comparison to their male counterparts since no proactive

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<sup>21</sup> Sri Lanka, Seychelles renew strong ties, sign bilateral agreements, <https://www.ft.lk/Uncategorized/sri-lanka-seychelles-renew-strong-ties-sign-bilateral-agreements/1-105394>, accessed on 12 December 2022.

actions are made mandatory. In screening these agreements, it is also clear that the emphasis is made on recruiting male employees, though not specifically mentioned, the general wordings and the workings of the agreements do tend to indicate such an implied intention between the States.

### **3.5 Bilateral Agreement with Italy**

As indicated by the Sri Lankan embassy in Italy, more than 81000 people with Sri Lankan origin are currently in Italy who migrated there over 30 years. Sri Lankans are recognized as one of the oldest foreign communities in Italy who have been settled in Naples, Palermo, and Catania.<sup>22 23</sup> In order to improve the mechanisms of collaboration in respect of training, circular migration and integrating Sri Lankan workers in Italy, the ‘Agreement on Bilateral Cooperation on Labour Migration’ was signed in October 2011.<sup>24</sup>

This BLA focuses on strengthening the friendly relationship between the two countries in respect of employing Sri Lankans in Italy in compliance with the principles of the international law provisions concerning the rights of migrants and the fundamental rights of workers.<sup>25</sup> Article 3 provides provisions for the establishment of ‘Local Coordinating Office’ by the Sri Lankan Bureau of Foreign Employment and relevant Italian Authorities in order to foster the exchange of information, coordinate the recruitments, provide trainings and to promote the implementation of new projects activities in the framework of migration. Article 5 provides for the protection of rights of the legally working and residing nationals of the contracting parties. Article 7 states that the Italian party will positively consider the assignment of a preferential entry quota to Sri Lankans. While chapter III provides for ‘search and selection of workers’ chapter IV provides for linguistic and vocational training and internships. Furthermore, Article 15, by recognizing the importance of the improvement of professional insertion and return paths, provides that Italian party will implement circular migration programmes in collaboration with the authorized bodies and certified training bodies. Article 15 - Settlement of Disputes clause - states that the parties shall settle all

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<sup>22</sup> <http://www.embassy.nettech.it/content/italy-and-sri-lanka-sign-bilateral-agreement-labour-migration>

<sup>23</sup> Many Sri Lankan migrants chose Italy as a permanent working and living destination. This led to the creation of a large and consolidated community over the last 30 years, [http://v1.cepa.lk/content\\_images/publications/documents/48-S-Berghof%20Foundation-SL%20diaspora%20in%20Italy.pdf](http://v1.cepa.lk/content_images/publications/documents/48-S-Berghof%20Foundation-SL%20diaspora%20in%20Italy.pdf), accessed on 12 December 2022.

<sup>24</sup> <http://www.embassy.nettech.it/content/italy-and-sri-lanka-sign-bilateral-agreement-labour-migration>, accessed on 12 December 2022.

<sup>25</sup> Preamble of the BLA with Italy.

the disputes arising from the interpretation or implementation of this agreement by negotiation, which is salutary.

Article 5 of the BLA directly provides for the protection of the rights of nationals of either party who work and reside within the territory of the state parties. It indicates : “Any national of the contracting parties legally working and residing within the territory of the other party, shall receive equal treatment and full equality of rights as compared to the workers of the host country, in particular as regards work conditions, social protection, social rights and the respect of the fundamental rights of workers contemplated under the national regulations in force”. This can be recognized as the most important provision in the BLA pertaining to the rights of the workers of either party. Accordingly, Sri Lankan nationals are entitled to the equal treatment as Italians, especially in relation to work conditions, social protection, social rights, and other fundamental rights recognized by the local laws. This provision may enable Sri Lankans to enjoy very important rights, such as, non-discrimination, fair and equal pay for men and women and right to assembly and trade union rights. In addition, Article 5 may provide a room for the application of The Civil Code (*Codice civile*) to Sri Lankan nationals in Italy, which regulates the nature of employment, welfare benefits and termination.

In addition, this BLA addresses key important issues relating to the rights of the expats including exchange of information, providing preferential quotas, and providing necessary vocational training including internships. The most important provision of the BLA is the umbrella provision on ‘Protection of Rights’ which covers the protection of any right of the expats through which Sri Lankan nationals are entitled to the same rights enjoyed by the Italians.

Whereas there is not any explicit provision embodied in the BLA on the protection of the female employees, since Article 5 permits the application of rights of the Italians to Sri Lanka, women’s right to non-discrimination, equal pay and other benefits are guaranteed.

### **3.6 Bilateral Agreement with Israel**

In 1990’s, Israel opened its borders to the migrant workers to replace Palestinian workers.<sup>26</sup> As a result, expats from China, Romania, Sri Lanka, Thailand and Turkey had the opportunity to enter

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<sup>26</sup> [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101\\_COMMENT\\_ID:4057188](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:4057188), accessed on 12 December 2022.

into the Israeli job market.<sup>27</sup> Statistics reveal that there are more than 6000 Sri Lankan workers who are employed as care givers and seasonal agricultural workers in Israel.<sup>28</sup> Sri Lanka signed a BLA and an implementation protocol on 24 February 2020, with the purpose of ensuring a legal, fair and transparent recruitment process for Sri Lankans to work in specific labour market sectors in the State of Israel.<sup>29</sup>

As stated in the preamble and the Article 2 of the BLA, this agreement is concluded in order to ensure a legal, fair, and well-informed recruitment process that eliminates human trafficking, illegal migration, illegal manpower recruitment practices and illegally charging a payment as a recruitment fee. Among other things, Article 2 specifies the objectives of the agreement and clearly identifies the need of promoting and protecting labour rights of Sri Lankan workers throughout the process of recruitment, selection, placement, arrival, employment and return as a key objective of the BLA.

The Preamble further recognizes the need of recruitment and temporary employment of Sri Lankans to be done in accordance with the Israeli law in force. For instance, Article 1 states that temporary employment in a specific sector by an employer holding a valid permit issued by the Government of Israel should be done in accordance with Israeli national law, regulations, rules, procedures and resolutions. The maximum duration of such an employment is 63 months.<sup>30</sup> Article 1(6) reaffirms that reasonable and necessary actions to be taken to protect Sri Lanka's temporary workers' rights in accordance with its relevant laws and regulations. Both BLA and the implementation protocol emphasize the need of providing educational qualifications in order for employees to gain necessary skills, training and experience as required for the relevant sector.<sup>31</sup> Other provisions, such as, Article 7 provide for the establishment of 'Joint Coordination Committee' to implement the BLA and the need to exchanging information between parties. As

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<sup>27</sup> *ibid.*

<sup>28</sup> <http://www.srilankaembassyil.com/the-embassy/labour-division.html#:~:text=Currently%2C%20about%206000%20Sri%20Lankan,Sri%20Lanka%20in%20Tel%20Aviv>, accessed on 12 December 2022.

<sup>29</sup> <https://mfa.gov.lk/sri-lanka-signs-a-bilateral-agreement-with-israel-to-streamline-the-recruitment-of-sri-lankan-caregivers-to-israel/#:~:text=Sri%20Lanka%20and%20Israel%20marking,Affairs%20of%20Israel%20in%20Jerusalem>, accessed on 12 December 2022.

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[https://www.gov.il/BlobFolder/generalpage/foreign\\_workers\\_rights\\_booklets/he/foreign\\_workers\\_handbook\\_2022\\_en.pdf](https://www.gov.il/BlobFolder/generalpage/foreign_workers_rights_booklets/he/foreign_workers_handbook_2022_en.pdf), accessed on 12 December 2022.

<sup>31</sup> Article 5 of the BLA with Israel.

per Article 10, employees are required to sign a declaration whereby they undertake to comply with the conditions for legal employment and the breach of which would result in the Government of Israel to order an employee to leave Israel. According to Article 11, disputes should be settled amicably through negotiations between the parties. Further, pursuant to Article 12, disputes between employers and employees shall be subject to the exclusive jurisdiction of the courts of the State of Israel and should be resolved solely in accordance with applicable Israeli law without regard to rules concerning choice of law. When one examines the above provisions, it is apparent that the Law of Israel predominately applies to the Sri Lankan migrant workers in their country and no way to apply for the protection under our domestic law. Also, when one compares the agreements between Italy and Israel, we find the Agreement with Italy provides much more protection to the migrant employees than under the agreement with Israel, particularly in terms of their human rights protection.

Whereas the BLA does not address gender related issues explicitly, Article 2(e) of the BLA pledges to promote and protect the labour rights of Sri Lankan workers. For instance, confiscation of passport against the will of the employee is illegal.<sup>32</sup> As provided by the ‘Foreign Workers Rights Handbook’: “The National Insurance Institute (in Hebrew, Bituach Leumi) provides foreign workers with insurance in case of work injuries or maternity, as well as compensation for unpaid wages and severance pay in cases of liquidation or bankruptcy of the employer.”<sup>33</sup> It ensures a minimum pay, overtime payment and convalescence pay for employees. However, it does not pay much attention to other sensitive issues relating to gender-based rights under this BLA.

### **3.7 Bilateral Agreement with the Kingdom of Saudi Arabia**

The Kingdom of Saudi Arabia is the country holding the highest number of Sri Lankan expatriates out of which majority are domestic workers and low-skilled workers.<sup>34</sup> Having identified the importance of protecting these workers and regulating the work-related affairs, this BLA was signed in 2014. The main purpose of the agreement is to protect the rights of the domestic workers

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[https://www.gov.il/BlobFolder/generalpage/foreign\\_workers\\_rights\\_booklets/he/foreign\\_workers\\_handbook\\_2022\\_en.pdf](https://www.gov.il/BlobFolder/generalpage/foreign_workers_rights_booklets/he/foreign_workers_handbook_2022_en.pdf), accessed on 25 January 2023.

<sup>33</sup>

[https://www.gov.il/BlobFolder/generalpage/foreign\\_workers\\_rights\\_booklets/he/foreign\\_workers\\_handbook\\_2022\\_en.pdf](https://www.gov.il/BlobFolder/generalpage/foreign_workers_rights_booklets/he/foreign_workers_handbook_2022_en.pdf), accessed on 25 January 2023.

<sup>34</sup> <http://www.slbfe.lk/file.php?FID=336>, accessed on 25 January 2023.

by promoting an acceptable recruitment and deployment system. It also introduced a standard employment contract for domestic workers to guarantee the basic responsibilities of the employers.

According to Article 3 of the BLA the parties should endeavour to follow acceptable and ethical recruitment practices. Article 4 emphasizes the need of ensuring the welfare and rights of domestic workers employed in Saudi Arabia in accordance with the applicable laws, rules, and regulations. As per Article 5(5), domestic workers require to observe Saudi laws, morals, ethics, and customs while residing in the Kingdom of Saudi Arabia. This means that Sri Lankan workers should not only be governed by the laws, but also, they should obey to the non-legal morals, ethics, and customs. This may severely affect their rights. Furthermore, Article 4(3) highlights the need to ensure the rights and obligations of employers and domestic workers by setting minimum terms and conditions of employment. To this effect, the BLA introduces a 'Standard Employment Contract for Sri Lankan Domestic Workers bound for the Kingdom of Saudi Arabia.' As is the case with other BLAs, this BLA provides that disputes should be settled by both parties amicably through diplomatic channels.<sup>35</sup>

Whereas this agreement formally recognizes the rights of the domestic workers, there is not any mention of gender rights despite the large existence of Sri Lankan housemaids in Saudi Arabia. In any event, such rights are subject to the laws, ethics, morals, and customs of the Saudi Arabia which is influenced by the Shariah law. However, providing provisions for not charging or deducting from salary of the domestic worker any cost attendant to his or her recruitment and non-confiscating the passport by the employer are remarkable provisions to protect workers' rights. Furthermore, it grants the employees the right of recourse to competent authorities in case of contractual dispute in accordance with the applicable laws, rules and regulations. According to the Standard Employment Contract, disputes can be referred to the appropriate Saudi authorities for conciliation and or resolution.

Rizana, Nafeek, a Sri Lankan underaged domestic worker, sent to Saudi Arabia, whose age was fraudulently changed by the Agent who assisted the deployment process from the Sri Lankan end, was condemned to death in accordance with Shariah law, for the reason that she has allegedly caused the death of an infant whose father was her Saudi employer.<sup>36</sup> She was beheaded in 2013

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<sup>35</sup> Article 7 of the BLA between Sri Lanka and Saudi Arabia.

<sup>36</sup> <https://apmigration.iilo.org/news/who-failed-rizana-nafeek>, accessed on 10 December 2022.

despite several requests of clemency made by the Government of Sri Lanka and other international organizations.<sup>37</sup>

Saudi Arabia holds the second highest execution rates during the time that Rizana was beheaded.<sup>38</sup> Amnesty to the convicted is granted only by “forgiveness” from the victim’s family. The baby in question died due to choking of milk when she was under the care of Rizana. The baby’s family refused any forgiveness to Rizana. It is a well noted fact that the legal system of Saudi Arabia is particularly hostile to migrant workers. Translators are rarely provided during judicial proceedings which are conducted entirely in Arabic. Media has revealed that Nafeek’s original confession was said to be made under duress, and without the presence of either a lawyer or a translator.<sup>39</sup> Sri Lanka had least bargaining power in the case of Rizana in terms of appealing successfully to acquit her from the charges against her under Saudi law.<sup>40</sup>

### **3.8 MOU with Kuwait**

Kuwait is also one of the preferred destinations of the Sri Lankan workers. According to the available statistics every year nearly 50000 workers departing to Kuwait from Sri Lanka, out of which the majority are female domestic workers.<sup>41</sup> Recognizing the need of protecting the rights of these workers, Sri Lanka signed a Memorandum of Understanding (MoU) with Kuwait in 2012.<sup>42</sup>

The preamble and the Article 1 outlining the aim of the MoU state that the parties desire to promote cooperation and coordination in the field of exchange of manpower and to strengthen co-operation in the field of labour and employment and manpower development. It emphasizes that the movement and bringing of manpower should be done within the framework of existing applicable laws, rules, and regulations of each country. Article 6 provides for establishing a Joint Working Group to facilitate the MOU. Article 5 provides that “the basic conditions of employment and the rights and duties of both the employer and the employee shall be specified in the contract of

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<sup>37</sup> *ibid*

<sup>38</sup> <https://www.amnesty.org/en/death-penalty/top-5-executioners-in-2011>, During the time of the said execution happened Saudi was only second to China according to the statistics of the Amnesty International Organizations.

<sup>39</sup> <https://apmigration ilo.org/news/who-failed-rizana-nafeek>, accessed on 10 December 2022.

<sup>40</sup> <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-011-2013/>, accessed on 10 December 2022.

<sup>41</sup> <http://www.slbfe.lk/file.php?FID=336>, accessed on 10 December 2022.

<sup>42</sup> Read more at: <https://www.indiansinkuwait.com/news/Sri-Lanka-to-sign-MoU-with-Kuwait-to-protect-rights-of-migrant-workers>

employment which shall be in line with the relevant laws and regulations of the host country” This provision highlights that Sri Lankan expatriates enjoy the rights stipulated in the contract of employment created in line with the Kuwait laws. However, this MoU does not provide for specific recognition of the rights of employees nor from a gender perspective, nor does it provide a standard employment contract.

#### **4. Reflections on the rights and obligations arising from the BLAs on the State Parties**

The above sections briefly examined the BLAs entered between Sri Lanka and selected jurisdictions from a legal perspective. In analysing the contents of the said BLAs, it was noted that none of the agreements pose a general or a specific threat to the sovereignty of the country. However, some of the BLAs, such as the agreement with Qatar prohibits the enjoyment of religious and political rights of the migrant workers, which may hinder the possibility of any governmental intervention if such rights are violated. Also, the BLA between Sri Lanka and Saudi Arabia does not protect the migrant workers from the application of Sharia laws as illustrated in the case of Rizana Nafeek. In contrast, the BLA between Afghanistan and Sri Lanka, and Italy and Sri Lanka attempt to protect the rights of the migrants far greater than other BLAs discussed in this analysis.

However, when one compares the developments that have occurred regarding the protection of the rights of migrant workers at the international sphere in treaty law, customary law, and case law, the above discussed BLAs do not reflect the influence of such progressions. Particularly, international human rights law and international labour law are having a great impact on the protection of the rights of the migrant workers. The international obligations undertaken by States parties under these international instruments and other sources of law require stringent commitment and appropriate actions from them as sending, receiving or transit countries. Yet, none of these international instruments have influenced the wording and substance of BLAs from which such obligations are largely absent.

There are several international human rights treaties, which stipulate provisions to guarantee human rights protection for all or certain categories of people, such as the Universal Declaration of Human Rights of 1948, International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights of 1966 and their Protocols, UN Convention on the Rights Children of 1984 and the UN Convention on the Elimination of all Forms of Discrimination Against Women



of 1979. These treaties provide a plethora of rights for people whether they are in their country of nationality or overseas. The general protection guaranteed under these international instruments is significant to protect and promote the rights of migrant workers too. When entering into bilateral labour agreements, States parties to the above stated international instruments or similar ones, are required to pay stern consideration to the provisions and the underlying obligations. Accordingly, they should include appropriate provisions to the bilateral agreements as well to guarantee their international obligations under those instruments as States parties of them.

Apart from the above stated human rights instruments, the most important international treaty, specifically dedicated to protecting the rights of the migrant workers is the “International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990 (CRMW)”. It is the outcome of many years of discussions, reports and recommendations on the subject of migrants’ rights, adopted by the General Assembly by way of Resolution 45/158 in December 1990. The Convention includes a committee on the protection of the rights of all migrant workers and their families to monitor the effective implementation of the convention by its states parties.

This Convention mainly aims at eliminating the violations of the rights of the workers and their families in the migration process by establishing minimum standards. The requirement to submit periodic reports by the member States is crucial in ensuring that rights are upheld in accordance with their international obligations.<sup>43</sup> The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) is the mechanism established under the Convention to monitor the measures taken by the Government and their apparatus responsible for the effective implementation of the commitments under the Convention. The States parties are under an obligation to provide equitable and humane conditions for international migration as per the framework outlined in part IV of the instrument. For an example, Article 65 of the Convention requires the States parties to maintain appropriate services to deal with questions about international migration of workers and members of their families and formulate and implement policies on migration, exchange information with other States parties, provide information to

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<sup>43</sup> <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/convention-protection-rights-all-migrant-workers-and-their#:~:text=The%20International%20Convention%20on%20the,vote%20on%20December%2018%2C%201990> ., accessed on 15 February 2023.

employers and workers on policies, laws and regulations, and provide information and appropriate assistance to migrant workers. It is particularly important to note that Article 68 encourages States parties to collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. Such provisions can be included to BLAs between States to protect people being victims of human trafficking and other forms of illegal recruitment and exploitation.

The International Labour Organization (ILO) has adopted much influencing and impactful conventions, which set internationally recognized labour standards, which impose legal obligations to the States parties to protect the rights of workers including the migrant workers. Among these ILO Conventions, two conventions are particularly important and relevant to migrant workers: namely the Migration for Employment Convention (Revised), 1949 (No. 97), which is based on the principle of equal treatment of nationals and regular migrant workers in labour-related areas; and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), which aims to eliminate illegal migration and illegal employment and sets requirements for the respect of rights of migrants with an irregular status, while providing for measures to end clandestine trafficking and penalize employers of irregular migrants.<sup>44</sup>

Sri Lanka is a State party to several ILO Conventions. According to ILO sources, it is a party to 8 core ILO Conventions but not to the ILO Conventions No. 97 and 143.<sup>45</sup> Therefore, Sri Lanka has undeniable obligation to implement its treaty commitments through domestic laws as well as the BLAs signed with other countries.

In light of the above discussion, it is certain that Sri Lanka should pay highest attention to implement international obligations effectively in all the actions that it does. Therefore, in entering to BLAs with other States, it is undertaking an undeniable responsibility to uphold the commitments under those international obligations, and the said BLAs should include stringent provisions to protect the rights and interests of the migrant workers who migrate to engage in remunerated activities in those host countries, which signed the BLA with Sri Lanka.

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<sup>44</sup> <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/migrant-workers/lang-en/index.htm>, accessed on 16February 2023.

<sup>45</sup> *ibid.*

Further, all the countries are required to take necessary steps to achieve the 2030 Agenda of Sustainable Development Goals (SDGs). The 2030 Agenda for Sustainable Development recognizes that migration is a powerful driver of sustainable development goals for migrants and their communities. The ILO reiterates that the SDGs bring significant benefits in the form of skills, strengthening the labour force, investment and cultural diversity, and contributes to improving the lives of communities in their countries of origin through the transfer of skills and financial resources.<sup>46</sup> SDGs number 8 and 10 are particularly important relating to labour migration. Goal 8 requires promoting “sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all.”<sup>47</sup> The Agenda provides for a strong link between decent work and migration in Sustainable Development Goal (SDG) 8 on promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, which contains target 8:8. It aims to protect labour rights and promote safe and secure working environments of all workers, including migrant workers, particularly women migrants, and those in precarious employment. Goal 10 requires to “reduce inequality within and among countries”, which contains the target 10.7 that aims to facilitate orderly, safe, regular and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies.<sup>48</sup>

Also, the 2018 Inter-governmentally negotiated and agreed outcome of Global Compact for Safe, Orderly And Regular Migration recognizes that a “comprehensive approach is needed to optimize the overall benefits of migration, while addressing risks and challenges for individuals and communities in countries of origin, transit and destination.” This inter-Governmental outcome highlights that a single country cannot address the challenges and opportunities of the phenomenon of international migration on its own. It requires a comprehensive approach in order to facilitate safe, orderly and regular migration along with reducing the incidence and negative impact of irregular migration. The Global Compact for Migration thus emphasises the need to have a comprehensive approach through international cooperation and a combination of measures, and

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<sup>46</sup> <https://www.iom.int/migration-sustainable-development-and-2030-agenda>, accessed on 16 February 2023.

<sup>47</sup> [https://www.ilo.org/africa/areas-of-work/labour-migration/policy-frameworks/WCMS\\_671735/lang--en/index.htm](https://www.ilo.org/africa/areas-of-work/labour-migration/policy-frameworks/WCMS_671735/lang--en/index.htm), accessed on 16 February 2023.

<sup>48</sup> *ibid.*

acknowledge the shared responsibilities of the UN Member States to address each other's needs and concerns over migration.<sup>49</sup>

## **5. Conclusion**

This research paper mainly examined the BLAs entered between Sri Lanka and selected countries aiming at the smooth and efficient facilitation of the movement of migrant workers between these countries under 'regular' (as opposed to unauthorised) conditions. The above sections briefly examined the BLAs entered between Sri Lanka and selected jurisdictions, from a legal perspective. The research paper identified similarities and differences among the BLAs which were subjected to the foregoing discussion and analysis in the study. In analysing the contents of the said BLAs, it was noted that none of the agreements pose a general or a specific threat to the sovereignty of the country. Hence, it could be stated that Sri Lanka has paid careful attention to safeguard its national interests and national security in entering the BLAs with other jurisdictions. Nevertheless, it was observed that none of the above discussed agreements contain any mention of gender or gender specific provisions or agreements, which is clearly a serious impediment and a lack of respect to Sri Lanka's international obligations. It further observed that some of the BLAs do not protect the human rights and labour rights of the migrant workers as guaranteed under international human rights instruments and the treaties adopted by the International Labour Organisation. Although Sri Lanka maintains an illustrious record of being a State party to several core human rights conventions including the International Convention on the protection of the rights of all the migrant workers and the members of their families of 1990 and relevant ILO Conventions, the BLAs signed by Sri Lanka hardly stipulate stringent provisions to guarantee those rights. It is clear that the BLAs under the examination have not assured the right to equality and the freedom of non-discrimination of Sri Lankan nationals who migrate to foreign countries as workers. In this respect, it is an apparent failure on the part of Sri Lanka in effectively discharging its international obligations undertaken at the international level by being a State party to those important international treaties. The BLA between Sri Lanka and Qatar is an example that depicts the inability of Sri Lanka to ensure the enjoyment of religious and political rights of the Sri Lankan

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<sup>49</sup> Global Compact for Safe, Orderly and Regular Migration Inter-Governmentally Negotiated and Agreed Outcome of 3 July 2018, [https://refugeesmigrants.un.org/sites/default/files/180713\\_agreed\\_outcome\\_global\\_compact\\_for\\_migration.pdf](https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf), accessed on 18 February 2023.

migrant workers in Qatar, placing the Sri Lankan workers in a fragile situation in the host country. Also, the BLA between Sri Lanka and Saudi Arabia too reflects its inability to protect the migrant workers from the arbitrary application of Sharia laws to non-national workers in the host country. The tragic death of Rizana Nafeek provides a heart-breaking example to this effect as she was convicted and condemned to death due to the application of Sharia law to her case disregarding the numerous appeals made by international, regional and domestic actors who attempted to save her life by proposing to provide her the right to appeal, which is an important human right of any human being. However, as observed in the research paper, BLAs between Sri Lanka and Afghanistan and Sri Lanka and Italy demonstrate relatively better examples as those BLAs have endeavoured to protect the rights of the migrant workers far greater than other BLAs discussed in this analysis.

Despite the few satisfactory provisions included in the BLAs between Sri Lanka and other jurisdictions, which were discussed above, these BLAs do not reflect the influence of the international obligations undertaken by Sri Lanka through its membership to a several international treaties and customary law. The international obligations undertaken by States parties under the above discussed international instruments and other sources of law require stringent commitments and appropriate actions from the signatories either as sending, receiving or transit countries. Therefore, Sri Lanka must pay diligent attention to respect, protect, and fulfil the human rights of all migrants, and also its cooperation to fulfil its commitment to uphold the UN Sustainable Development Goals, regardless of their migration status, while promoting the national interests and security. BLAs are a mirror, which reflects the country's commitment to protect its own people abroad to earn remuneration for the betterment of themselves, their families, and the country at large.

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