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RATIFYING RIGHTS, REFORMING WORKPLACES: ILO CONVENTION NO. 190 AND THE FUTURE OF WORKPLACE HARASSMENT LAW IN SRI LANKA

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ABSTRACT

Sri Lanka's ratification of the ILO Violence and Harassment Convention, 2019 (No. 190) represents a significant advancement in the recognition of the right to a world of work free from violence and harassment. However, ratification alone does not ensure effective protection unless supported by comprehensive domestic implementation. This paper critically examines the extent to which Sri Lanka's existing legal framework incorporates the principles and obligations embodied in Convention No. 190. It analyses constitutional protections, criminal law provisions, labour legislation, domestic violence law, and recent judicial developments, including key Supreme Court decisions recognising workplace sexual harassment and employer obligations. The paper argues that, despite important judicial progress, Sri Lanka's current legal regime remains fragmented, reactive, and insufficiently aligned with the Convention's broader preventive and remedial framework. Significant gaps persist in relation to statutory definitions, employer prevention duties, protection of informal workers, anti-retaliation safeguards, accessible complaint mechanisms, and the employment-related consequences of domestic violence. The paper therefore proposes the enactment

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of a comprehensive Workplace Anti-Harassment and Violence Act, supported by amendments to existing labour and domestic violence legislation, specialist enforcement mechanisms, and victim-centred support services. It concludes that Sri Lanka's international commitment under Convention No. 190 can be meaningfully realised only through enforceable domestic law capable of protecting all workers across formal and informal sectors.

Keywords: ILO Convention No. 190; workplace violence and harassment; labour law reform.

INTRODUCTION:

The adoption of the Violence and Harassment Convention, 2019 (hereinafter 'C190') by the International Labour Organisation ('ILO') on 21 June 2019, alongside Recommendation No. 206, marked a watershed moment in international labour law. For the first time in history, a binding international instrument articulated the right of every person to a world of work free from violence and harassment.² C190 defines 'violence and harassment' broadly to encompass a range of unacceptable behaviours, whether physical, psychological, sexual or economic in nature, including gender-based violence and harassment.³

On 8 January 2026, Sri Lanka formally submitted its instrument of ratification of C190 at a ceremony in Colombo attended by government officials, ILO representatives, trade union leaders, and civil society stakeholders. With this step, Sri Lanka became the second country in South Asia, after Bangladesh, to ratify this landmark labour standard.⁴ The ratification followed a Cabinet decision in December 2025 approving the legal provisions necessary for implementation. Trade union leaders, whose sustained advocacy had been instrumental in achieving ratification,

²Convention Concerning the Elimination of Violence and Harassment in the World of Work (ILO Convention No 190) [2019] (hereinafter C190), Preamble.

³C190, art 1(1)(a) and (b).

⁴IndustriALL Global Union, 'Sri Lanka Ratifies ILO Convention 190 on Violence and Harassment' (IndustriALL, 14 January 2026) <<https://www.industriall-union.org>> accessed 10 March 2026.

were swift to note the unfinished work ahead. Swasthika Arulingam, President of the Ceylon Independent Workers' Union (CIWU), captured the prevailing sentiment: ratification marks only half the battle, with the enactment of a domestic Workplace Anti-Harassment Law remaining the essential next step.⁵

This essay critically analyses the extent to which the principles of C190 have been incorporated into Sri Lanka's legal regime prior to and following ratification. It proceeds in four parts: a review of the relevant Sri Lankan legislative framework and jurisprudence; an assessment of gaps in that framework measured against C190; proposals for law reform; and a brief conclusion.

SRI LANKA'S EXISTING LEGAL FRAMEWORK:

The Constitution and Fundamental Rights:

The Constitution of Sri Lanka 1978 provides the foundational rights framework applicable to employment. Article 12(1) guarantees equality before the law and equal protection of the law, and Article 12(2) prohibits discrimination on grounds including sex.⁶ Article 14(1)(g) recognises every citizen's freedom to engage in a lawful occupation, profession, trade, or business.⁷ These provisions have been invoked in the courts to address workplace harassment, particularly in the public sector, though their reach in respect of private sector employers remains limited.

The constitutional architecture became directly relevant in the landmark case of *Manohari Pelaketiya v H M Gunasekera and Others*⁸ (SC(F/R) 76/2012), in which the Supreme Court held that sustained workplace sexual harassment of a female teacher in the public sector violated her fundamental rights under Article 12(1) of the Constitution. Justice Anil Gooneratne observed that prolonged abuse and sexual

⁵ibid.

⁶Constitution of the Democratic Socialist Republic of Sri Lanka 1978, art 12(1) and (2).

⁷ibid, art 14(1)(g).

⁸*Manohari Pelaketiya v H M Gunasekera and Others* (SC(F/R) 76/2012, SCM 28 September 2016) (hereinafter *Pelaketiya*).

harassment would cause physical and mental damage to any human being, and that such conduct was incompatible with the constitutional guarantee of equal protection.⁹ The significance of *Pelaketiya* lies in its recognition of workplace harassment as a constitutional wrong a proposition entirely consistent with C190's framing of the right to a violence-free world of work as a human rights matter. However, the constitutional remedy in Article 126 is available only in respect of executive or administrative action, and therefore provides no direct remedy to private sector employees.

The Penal Code and Sexual Harassment:

The Penal Code (Ordinance No. 2 of 1883, as amended) constitutes the primary criminal law instrument relevant to workplace harassment. Section 345, inserted by the Penal Code (Amendment) Act No. 22 of 1995, criminalises sexual harassment, defined as words or actions used by a person in authority causing annoyance, insult or distress, or that intrude upon the privacy of an individual.¹⁰ Sections 364 and 365B, also introduced by the 1995 Amendment Act, criminalise serious sexual violence and grave sexual abuse respectively.¹¹ While these provisions constitute an important foundation, the criminal law route places a high burden of proof upon the victim, requires reporting to the police, and exposes complainants to protracted proceedings and potential stigma. It offers no workplace-specific remedies and does not impose any obligation upon employers to prevent or address harassment.

Notably, the judicial treatment of a related provision illustrates the creative use of existing laws to address sexual misconduct in the employment context. In *Republic of Sri Lanka v Abdul Rashak Kuthubdeen*¹², the Court of Appeal held that a public

⁹*ibid*, per Gooneratne J.

¹⁰Penal Code (Ordinance No 2 of 1883) (Sri Lanka), s 345, as amended by the Penal Code (Amendment) Act No 22 of 1995.

¹¹Penal Code (Amendment) Act No 22 of 1995 (Sri Lanka), ss 364, 365B.

¹²*Republic of Sri Lanka v Abdul Rashak Kuthubdeen* (CA No 44/94, HC Colombo B 839/93, decided 28 May 1998) [1998] 3 SLR 107 (hereinafter Kuthubdeen).

servant's demand for sexual favours as a condition for granting a transfer constituted a form of 'gratification' under the Bribery Act No. 11 of 1954, thereby criminalising quid pro quo sexual harassment within the public sector. The Anti-Corruption Act No. 9 of 2023 subsequently amended the statutory definition of gratification to expressly include sexual favours, consolidating this jurisprudential development.¹³ Nevertheless, this mechanism remains confined to the public sector and does not address the broader spectrum of workplace harassment contemplated by C190.

The Jurisprudence of the Supreme Court: Employer Obligations:

The most significant recent development in Sri Lanka's legal landscape is the Supreme Court's judgment in *SriLankan Airlines Limited v PRSE Corea*¹⁴ (SC Appeal No. 91/2017, decided 2 February 2024). The case concerned a senior flight steward who had sexually harassed a female cabin crew member on a Colombo-London flight in March 2005. Following a disciplinary inquiry, the airline terminated his services. Both the Labour Tribunal and the Negombo High Court held the dismissal to be unjust. The Supreme Court, in a three-judge bench headed by Justice Janak de Silva, set aside those decisions and upheld the termination.

The judgment is remarkable in several respects. The Court held that, as a State-owned enterprise, SriLankan Airlines was bound by the positive obligation in Article 4(d) of the Constitution to respect, secure and advance fundamental rights, including the right to engage in a lawful occupation free from sexual harassment guaranteed by Article 14(1)(g).¹⁵ The Court further held that Sri Lanka's ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) required employers to take all appropriate measures to eliminate discrimination against women in employment, including the provision of a safe

¹³Bribery Act No 11 of 1954 (Sri Lanka), s 19; Anti-Corruption Act No 9 of 2023 (Sri Lanka).

¹⁴*SriLankan Airlines Limited v PRSE Corea* (SC Appeal No 91/2017, decided 2 February 2024) (hereinafter *Corea*).

¹⁵*ibid*, per Janak de Silva J.

workplace. The Court invoked CEDAW General Recommendation No. 19, which characterises workplace sexual harassment as a form of gender-based violence.¹⁶ Crucially, the judgment established that termination is justified even for a first-time offence of sexual harassment, setting a zero-tolerance standard applicable to both the public and private sectors. The Court also notably accepted the complainant's written complaint as sufficient evidence notwithstanding her non-appearance at the Tribunal hearing, thereby acknowledging the challenges and sensitivities victims face in giving evidence.

The employer's institutional responsibility was further developed in *Kachchakaduge Frank Romeo Fernando v Brandix Apparel Solutions Limited*¹⁷ (SC Appeal No. 60/2018), where the Supreme Court held that it is an employer's duty to ensure a safe working environment free from sexual harassment. The *Brandix* judgment is significant in explicitly extending the employer's obligation to the private sector, marking a shift from a purely criminal or constitutional approach towards a duty of care framework for employers.¹⁸ Together, *Corea* and *Brandix* represent the closest approximation in existing Sri Lankan law to the employer obligation framework envisaged by Article 9 of C190. However, these obligations emerge entirely through judicial pronouncement in the absence of statutory underpinning, rendering them uncertain, inconsistently applied, and inaccessible to workers unaware of the jurisprudence.

The Prevention of Domestic Violence Act:

The Prevention of Domestic Violence Act No. 34 of 2005 ('PDVA') enables victims of domestic violence to obtain protection orders, occupation orders, and tenancy orders from the Magistrate's Court.¹⁹ Notably, C190 expressly recognises the nexus between

¹⁶ibid. The Court drew on Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 11(1) and CEDAW General Recommendation No 19.

¹⁷*Kachchakaduge Frank Romeo Fernando v Brandix Apparel Solutions Limited* (SC Appeal No 60/2018) (hereinafter *Brandix*).

¹⁸ibid, per Janak de Silva J.

¹⁹Prevention of Domestic Violence Act No 34 of 2005 (Sri Lanka), ss 2-6.

domestic violence and its impact on employment, productivity and safety.²⁰ The PDVA is, however, entirely silent on this employment dimension. There are no provisions for domestic violence leave, flexible work arrangements for victims, employer obligations to mitigate the impact of domestic violence, or referral mechanisms linking the labour and domestic violence protection systems. This gap is significant given Sri Lanka's high rates of domestic violence and its disproportionate impact on women's workforce participation.

Labour Legislation:

The Shop and Office Employees (Regulation of Employment and Remuneration) Act No. 19 of 1954 regulates conditions of employment in the private sector but contains no provisions addressing harassment or violence in the workplace.²¹ The Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 provides safeguards against arbitrary dismissal but does not address constructive dismissal arising from workplace harassment, nor does it contemplate the right to resign with compensation envisaged by Recommendation No. 206.²² The Industrial Disputes Act No. 43 of 1950 provides the primary dispute resolution framework through Labour Tribunals and conciliation, but imposes no obligations on employers with respect to harassment prevention and offers no specific remedies tailored to victims of workplace violence.²³ The Women's Charter of 1993 and the National Committee on Women Act No. 7 of 1978 provide policy commitments and an advisory mechanism respectively, but create no enforceable rights.²⁴

ASSESSMENT OF GAPS RELATIVE TO C190:

Scope of Protection:

²⁰C190, Preamble (ninth recital); C190, art 10(f).

²¹Shop and Office Employees (Regulation of Employment and Remuneration) Act No 19 of 1954 (Sri Lanka).

²²Termination of Employment of Workmen (Special Provisions) Act No 45 of 1971 (Sri Lanka), s 2.

²³Industrial Disputes Act No 43 of 1950 (Sri Lanka), ss 4, 31B.

²⁴National Committee on Women Act No 7 of 1978 (Sri Lanka), s 3.

Article 2 of C190 extends protection to employees, interns, apprentices, volunteers, jobseekers, job applicants, and workers whose employment has been terminated, across all sectors formal and informal, public and private, urban and rural.²⁵ Sri Lanka's labour legislation is substantially confined to formal sector employees. The *Pelaketiya* constitutional remedy is available only against executive or administrative action of the State. The *Corea* and *Brandix* obligations extend to private sector employers, but only in the context of disciplinary proceedings or unfair dismissal claims – they do not assist informal workers, domestic workers, jobseekers, or those who have not yet entered employment. A 2022 IFC survey found that 68% of women in nine Sri Lankan businesses surveyed had experienced some form of workplace violence or harassment, while 80% of women garment factory workers reported workplace harassment.²⁶ This empirical reality starkly underscores the breadth of the gap between current protection and the inclusive scope required by C190.

Absence of a Statutory Definition and Prohibition:

Article 1 of C190 defines 'violence and harassment' comprehensively to encompass physical, psychological, sexual and economic harm.²⁷ No Sri Lankan statute currently provides such a comprehensive definition. Section 345 of the Penal Code addresses criminal sexual harassment, but psychological harm, economic coercion, and non-sexual forms of workplace abuse remain unaddressed in any employment-specific statutory framework. C190 also requires states to adopt laws prohibiting violence and harassment in the world of work. Sri Lanka has met this requirement only partially, and almost entirely through the criminal law. No civil employment legislation expressly prohibits workplace harassment as a ground of unlawful conduct.

Employer Prevention Obligations:

²⁵C190, art 2(1).

²⁶International Finance Corporation, 'Tackling Workplace Violence and Harassment in Sri Lanka' (IFC 2022); ILO, 'Factors Affecting Women's Labour Force Participation in Sri Lanka' (ILO 2016).

²⁷C190, art 1(1)(a).

Article 9 of C190 requires states to adopt laws mandating employers to implement a workplace policy on violence and harassment, identify hazards, assess risks, and provide information and training.²⁸ While the Supreme Court in *Corea* and *Brandix* articulated a judicial duty on employers to maintain a safe and harassment-free workplace, no statute imposes positive prevention obligations on employers. There is no requirement to adopt a written anti-harassment policy, establish an internal complaints committee, conduct a risk assessment, or provide training. The absence of statutory employer obligations means that prevention is entirely voluntary in practice, with no regulatory oversight or sanctions for non-compliance.

Enforcement, Remedies and Anti-Retaliation:

Article 10 of C190 requires states to ensure easy access to effective remedies, complaint and investigation procedures, protection against retaliation, and legal, social, medical and administrative support for victims.²⁹ Recommendation No. 206 further envisions 24-hour hotlines, crisis centres, counselling services, specialised police units, and support for re-entering the labour market.³⁰ Sri Lanka's existing mechanisms fall far short. Labour Tribunal proceedings are protracted and the criminal justice route imposes a heavy burden on victims. There is no statutory protection against retaliation for complainants or witnesses, no dedicated workplace harassment hotline, and no systematic support services for victims. The sectoral divide identified in *Pelaketiya* whereby public sector workers may invoke constitutional remedies while private sector workers cannot creates an inequality of access to justice that C190 does not permit.

Domestic Violence and the Workplace Nexus:

²⁸C190, art 9.

²⁹C190, art 10(b).

³⁰Violence and Harassment Recommendation (ILO Recommendation No 206) [2019], para 17(c), (d).

Article 10(f) of C190 requires states to recognise the effects of domestic violence and mitigate its impact in the world of work.³¹ The PDVA makes no reference to employment consequences of domestic violence. Recommendation No. 206 contemplates domestic violence leave, flexible work arrangements, temporary protection against dismissal, inclusion of domestic violence in workplace risk assessments, and referral systems. None of these are mandated by Sri Lankan law. This gap is particularly acute given the documented prevalence of domestic violence and its direct effect on women's workforce participation.

The Informal Economy:

Article 2(2) of C190 applies the Convention to all sectors, including the informal economy,³² and Article 8(a) requires states to recognise the important role of public authorities in protecting informal economy workers.³³ Sri Lanka's labour regulatory framework is almost entirely directed at formal employment. The vast informal economy in which a large proportion of Sri Lanka's workforce, particularly women domestic workers, agricultural labourers, and home-based workers, is employed falls outside the reach of most protective provisions. No legal framework currently addresses violence and harassment specific to informal sector workers.

PROPOSALS FOR LAW REFORM:

Enactment of a Comprehensive Workplace Anti-Harassment Act:

The most fundamental and urgent reform, consistently called for by trade unions following ratification,³⁴ is the enactment of a standalone Workplace Anti-Harassment and Violence Act. Such legislation should adopt a comprehensive definition of 'violence and harassment' consistent with Article 1 of C190, encompassing physical, psychological, sexual and economic harm, whether a single occurrence or repeated.

³¹C190, art 10(f).

³²C190, art 2(2).

³³C190, art 8(a).

³⁴Swasthika Arulingam (President, CIWU), statement reported in IndustriALL (n 3).

The Act should extend protection to all persons within the scope of Article 2 of C190, including informal workers, domestic workers, interns, jobseekers, and those whose employment has been terminated. It should expressly prohibit all forms of workplace violence and harassment, thereby placing the judicial principles established in *Corea* and *Brandix* on a firm statutory footing applicable across all sectors.

Mandatory Employer Obligations and Internal Complaints Mechanisms:

The proposed Act should codify and expand the employer obligations recognised in *Corea* and *Brandix*, consistent with Article 9 of C190. Employers above a prescribed threshold should be required to adopt and implement a written workplace policy on violence and harassment, developed in consultation with workers and their representatives. Employers should be required to establish an internal complaints committee, conduct regular risk assessments, and provide accessible training. Non-compliance should attract civil liability and administrative penalties enforceable by the Commissioner of Labour, thereby addressing the enforcement vacuum that characterises the present regime.

Reform of Remedies and Anti-Retaliation Protections:

The TEWA and IDA should be amended to expressly recognise constructive dismissal arising from workplace violence or harassment as a ground for complaint before Labour Tribunals. Consistent with Recommendation No. 206, paragraph 14,³⁵ available remedies should include the right to resign with compensation, reinstatement, damages for psychological harm, and recovery of legal fees. The burden of proof in civil harassment proceedings should be shifted to respondents once a prima facie case is established, consistent with paragraph 16(e) of Recommendation No. 206.³⁶ Robust anti-retaliation provisions should prohibit adverse employment action against complainants, victims, witnesses and

³⁵Recommendation No 206 (n 28), para 14.

³⁶Recommendation No 206 (n 28), para 16(e).

whistle-blowers, with a reverse burden of proof applying in retaliation claims. These reforms would directly address the inequality between public and private sector workers identified in *Pelaketiya* and provide accessible civil remedies beyond the criminal justice route.

Amendment of the Prevention of Domestic Violence Act:

The PDVA should be amended to incorporate the employment dimension of domestic violence, consistent with Article 10(f) of C190 and paragraph 18 of Recommendation No. 206. Specific measures should include a statutory entitlement to paid domestic violence leave, flexible working arrangements for victims, temporary protection against dismissal, and the inclusion of domestic violence in workplace risk assessments. A statutory referral mechanism should be established to link labour inspectors and employers with domestic violence protection services.

Extension of Protection to Informal Economy Workers:

A dedicated regulatory framework should be developed under the proposed Act extending protections to informal economy workers, consistent with Articles 2 and 8 of C190. The Commissioner of Labour and relevant public authorities should be given express mandates and resources to investigate and address violence and harassment in informal sector settings. Community-based reporting mechanisms and accessible support services should be established to reduce barriers to justice for workers in precarious and unregulated employment.

Specialist Enforcement Infrastructure and Support Services:

Sri Lanka should establish a dedicated workplace harassment unit within the Department of Labour, staffed by officers trained in gender-responsive investigation, consistent with Articles 10(h) and 11 of C190 and paragraphs 20 and 21 of Recommendation No. 206. Specialist support services, including a dedicated 24-hour hotline, counselling and legal aid referral services, should be established and adequately resourced. Labour Tribunal members, judges, labour inspectors and

police officers should be required to undergo mandatory training on gender-based violence and harassment in the workplace.

CONCLUSION:

Sri Lanka's ratification of C190 on 8 January 2026 is an historic achievement, representing the culmination of years of sustained advocacy by trade unions, civil society organisations, and workers across formal and informal sectors. The jurisprudence of the Supreme Court most notably in *Pelaketiya*, *Kuthubdeen*, *Corea*, and *Brandix* has progressively recognised the constitutional and employer-based dimensions of workplace harassment, establishing important judicial foundations. Nevertheless, as union leaders have rightly observed, ratification without domestic implementation legislation is insufficient. Significant gaps persist across nearly every pillar of C190: the scope of persons protected, statutory definitions and prohibitions, mandatory employer obligations, accessible remedies, anti-retaliation protections, the domestic violence-workplace nexus, and the informal economy.

The enactment of a comprehensive Workplace Anti-Harassment and Violence Act, the amendment of the PDVA, the extension of protection to informal workers, the establishment of specialist enforcement and support infrastructure, and the reform of the remedial framework are the measures required to give substantive effect to Sri Lanka's international obligation under C190. Ratification marks the beginning, not the end, of this journey. The right to a world of work free from violence and harassment will be realised in Sri Lanka only when those international commitments are translated into enforceable law and accessible justice for every worker.

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