Globalization and Industrial Relations in Sri Lanka

1. Introduction and Background
The impact of globalization on the labour market is mediated through changes in the rate of economic growth and the changes in the composition of the production structure. Unlike the Rostowian type of structural changes with primary sector giving way to secondary and tertiary sectors, with globalization the production structure will be determined by the comparative advantage of the country. The comparative advantage will change according to natural and human resource endowments, existing infrastructure, technological capabilities, and the degree to which the domestic economy has already being exposed to international competition in the past.

The outcome of globalization for developing countries would be a decline in the share of inefficient, heavy capital-intensive industries that grew under high tariff walls and an increase in the share of labour-intensive exports reflecting the country’s comparative advantage. With decrease in government regulation and the liberalization of the economies, developing countries would expect an increased inflow of foreign capital to most profitable sectors. These sectors where domestic resource costs are internationally competitive would normally be labour-intensive given the relatively low wage costs in such economies. Greater foreign investment as a result of economic liberalization combined with increase in labour intensive production will enable developing countries to achieve higher growth rates.

Obviously, with changes occurring in the production structure according to comparative advantage through time, the industrial relations will also undergo changes with globalization. In this context, the economic growth that globalization induces is very important as employers alone cannot satisfy the workers’ needs, such as higher living standards.
Functioning of the labour market and the role of labour institutions will have to undergo various changes to face the challenges of globalization. Industrial relations will have to be radically altered in this process. These changes may not always be seen positively by the labour force. Workers may resist linking wages to productivity, banning trade unions in an Export Processing Zone, involuntary retrenchment in a privatization programme, and so on. In addition to such resistance, there may be other social dimensions emerging in the labour market where the traditional labour institutions and traditional regulations may not necessarily be in a position to handle.

2. The Link between Industrialization and Industrial Relations

Deregulation of Labour Market: Labour market deregulation is seen as an important element of the structural reform packages (a component of globalization) which are implemented to further integrate countries with the world economy. It is argued that the deregulation of the labour market is essential to adjust successfully to the global demand and supply forces. In some countries, labour market deregulations have been accompanied by a decline in trade union activity, free hiring and firing, mobility of labour from one sector to another without many problems. In other countries, the initial conditions and the political economy may be too rigid and thus impede labour market reform. Consequently, outdated systems will prevail in areas such as dispute settlements, collective bargaining, trade union laws, etc. (Section 3) and thus act as an impediment for further industrialization.

Labour Standards: The global demand for competitiveness leads entrepreneurs to search for cheap labour and adapt various cost cutting methods. Sometimes child labour could be used in the production process as it is cheap. The growth in the urban informal sector and poverty as a result of economic liberalization provides countless opportunities for children to work. Female labour is also considered cheap because by and large they are less well organized. In this process some degree of exploitation could also take place. The cost cutting strategies could lead to the negligence of safety standards of workers, non-payment of provident fund obligations, and so on (Section 4).
Impact of Multinational Corporations (MNC): Normally, the pressure under globalization for improved product quality will require an improvement in working conditions in order to achieve quality standards. Further, foreign MNC firms are generally able to offer higher wages which attracts the lower level of skilled labour. However, pressures of increasing international competitiveness and increasing competition among developing countries to attract foreign direct investment could well result in a vicious cycle which could work against improving wages and conditions of work. The Sri Lankan experience shows that it could lead to some deterioration of existing conditions (Section 5).

Privatization of Industries and Industrial Relations: In most developing countries until about the early 1980s the State was the “engine of growth”. There was a proliferation of state-owned enterprises (SOEs) in the industrial, agriculture and service sectors, and many of them were run on a non-profit basis. Most SOEs recruited labour far in excess of their requirements in the belief that one of their tasks was to create employment. Once recruited the surplus labour supply had to be carried even if it adversely affected the economic viability of the SOE. Most often, labour was recruited in the SOEs on the basis of political patronage and thus redundancies were a common phenomenon.

Privatization of SOEs implied that retrenchment of surplus labour was a possibility. Thus Trade Unions which represented the interest of the labourers have not always seen privatization positively. This is because trade unions and other worker organizations often promote work rules of various types to induce work safety and job security. Thus labour retrenchment in a privatization exercise cannot be executed without taking trade union politics into consideration. Retrenchment has to be associated with a compensation package if the political cost of restructuring is to be minimized (Section 7).

Social issues are also important in the context of industrialization. In Sri Lanka, after two decades experience with liberalization the following issues have emerged in the area of industrial relations:
(a) There is a new class of employers unfamiliar with traditions of collective bargaining, insecure in the face of competition, and fearful of challenges from labour and unions.
(b) There is new labour drawn mainly from the lower middle classes and from rural areas who are also unfamiliar with the tradition of collective bargaining. These workers have higher social aspirations and greater social mobility than their predecessors.
(c) Regime centred power blocs of which public sector unions have been a major component are being dismantled by the privatization drive. This has created tension between the government and these unions.

3. Industrial Relations System in Sri Lanka in the Context of Globalization

The impact of globalization and structural reform on the labour regulations in Sri Lanka was not very significant. Although Sri Lanka can boast of two decades of liberalization measures, they were mainly confined to the commodity markets, trade sector and the financial sector. Reform and liberalization measures made little in-roads to the labour market. This was due to the following reasons:
(a) labour in Sri Lanka consider the regulations in the labour market as achievements of long fought battles with the government in power. Any move to amend them and all attempts to do so in the past, has ended with tremendous resistance from the labour market, particularly because the trade unions in the country are strong;
(b) the workers feel that high economic growth will be translated into improvement of living standards and working condition of the workers only if the current regulatory mechanism is in place, and from this perspective also the workers resist reform, and
(c) the government feels that it is best to implement reform in the labour market when the economy is growing fast, and governments have basically postponed reforms because they felt that growth was inadequate to offset the cost of adjustments in the labour market.

The inadequate deregulation of the labour market could be observed from the discussion below.
3.1 Labour Law and Labour Protection

There are about 48 labour laws in Sri Lanka and out of them 10-15 are in practical operation. They operate in the formal sector where 3.0 million of the 5.8 million workforce are engaged in various jobs. There is also large scale evasion of labour laws, thus the actual number of workers to which labour laws practically operate are below 3.0 million.

Most of the labour laws came into operation during the period of the closed economy. The rationale of some of the laws are based on the theoretical framework of a closed economy. Thus some of the laws are not in accordance with the theoretical framework of an open market economy.

The labour laws as prevailing are not very conducive for industrial restructuring. They have contributed to dampening of entrepreneurial initiatives for innovative ventures. They have not only raised reasonable fears among law abiding employers and prospective employers regarding the wisdom of investing in some labour-intensive industry, but has also led to poor industrial relations. It could be stated that some of the stringent labour laws have led employers to regard labour in general more as a liability than an asset.

3.2 Industrial Relations

3.2.1 Trade Union Structure and Workers

(1) Sri Lanka has approximately 1000 Trade Unions. Out of these about 20 have more than 100,000 members. Out of these 1000 Trade Unions, 750 are in Government Departments where labour laws do not apply. These workers come under the establishment code. Only 30 per cent of the country's workforce is organized in Trade Unions.

(2) Universal franchise meant that the potential for considerable political power was presented to workers before solidarity on occupational lines had hardened or great spontaneous demand for organization had developed among workers. Hence the majority of unions and workers tend to look to the backing and mediation of strong politicians to win their demands.
Most of the big unions belong to a leading political party, e.g., Jathika Sevaka Sangamaya, Sri Lanka Nidahas Sevaka Sangamaya, Ceylon Workers Congress, etc. Only four of the large unions, viz., Ceylon Mercantile and Industrial and General Workers Union, Ceylon Bank Employees' Union, Government Medical Officers Union, and National Workers Congress are not affiliated to political parties. Thus, the party philosophy is superimposed on the membership of the Union. From 1960-80 Opposition parties used Trade Unions to gain political support. When Unions are controlled from outside the workplace, the attitude of the employees is conditioned by external factors which are not necessarily in the best interests of keeping cordial relations in the workplace. A case in point is where a Union mobilizes its members in a particular workplace not on an issue which concerns them but rather to express solidarity with the workers of the same Union of another workplace. During the 1950s there had been cases when employees in the Port of Colombo refused to handle tea cartons (chests) of industries which had disputes with their Trade Unions. A recent example, is the strike at the Coca Cola plant in Kaduwela (December 1996) where the workers in the Biyagama plant showed solidarity with the workers in the Kaduwela branch.

Clearly Reciprocal links between political parties and trade unions have tended to transform union leaders into agents and representatives of their affiliated parties. As a result, the objective function of the political party has assumed priority over the objectives of the mass of workers whom they claim to represent, in the leaders' scheme of things. Thus, the majority of workers are involuntarily drawn into industrial disputes initiated by their leaders whose real agenda relates to national political issues rather than improving the welfare of workers in the establishment. This raises questions about the extent to which trade union leaders genuinely represent workers, especially in a context where the former are elected by open vote by members rather than by secret ballot.

(3) Political parties when in power have typically 'rewarded' supportive unions by intervening in industrial disputes on their behalf. Interventions by government have reinforced worker expectations that politicians intercede on their behalf to win their demands. Hence existing procedures for disputes settlement and law enforcement become even less effective in achieving their objectives. Political interference in the process of enforcing the law in industrial disputes has encouraged workers and unions who indulge in violent acts against the persons and properties of their employers to
reliably expect a certain degree of leniency from the government's law enforcing machinery.

(4) Structural characteristics of the labour movement have further affected its ability to bargain with employers. Multiplicity, rivalry and factionalism have splintered Sri Lanka's trade union movement and debilitated its capacity to bargain effectively on behalf of labour.

The existence of a large number of Unions (over 1000) has led to inter-union rivalry and competition for membership. Normally, a Union's bargaining power increases with more membership. Thus, if a particular Trade Union ventures to adopt a scheme, say, to increase wages by linking them to productivity, a number of other Trade Unions would try to entice the very same members by promising the same wage increase without the added sweat. This unhealthy atmosphere has increased friction and decreased confidence between Trade Unions and employers.

Seven members are adequate to form a Trade Union in Sri Lanka. During the recent industrial unrest there were cases when Trade Unions were formed during or after the dispute. Two or three heavyweights get together and decide to form a Trade Union and other workers follow. No vote is taken and high handed tactics are used to mobilize the support of the other workers. During 1988/89 Unions were disregarded by some workers who used extra legal methods to gain their demands. Perhaps this tactic by employees assisted to change the attitude of the employers towards employees because employers preferred to deal with Unions rather than contract workers’ "action units" which used unconventional methods.

Many disputes could be avoided, especially in companies which were formerly in the public sector, if there was no Inter-Union rivalry. Unions feel compelled to assume a militant role in order to demonstrate their efficiency as compared to others operating in the same work place. The multiplicity of Trade Unions also results in workers who are not prepared to abide by instructions from their Union leaders, to find other champions, and as has happened recently, been able to find leaders from other Unions although they belong to a different Union.

Sometimes the Labour Department finds it difficult to identify the Trade Union with which it should conduct negotiations. In a recent dispute where workers climbed up a
water tower and went on a fast, a group of workers belonging to one union changed place with members of another union during the protracted fast. The Labour Department was in a dilemma in regard to which Union members they should summon for negotiations.

(5) Sri Lankan trade unions by and large remain fiercely committed to revolutionary Marxism. They hence display unrelenting hostility to the existing social and economic order, subscribe to dependency theory prevalent in the 1960s, and take as a priori confrontational relations between labour and capital. Consequently, they are inclined to resist moves towards economic liberalization, outward-orientation, the withdrawal of the state from economic activities, and re-orienting the economic policy framework towards the market.

This ideological stance has prevented the majority of unions from adapting to new economic realities and changes in government economic policy. This has diminished their ability to provide credible leadership in a changed economic environment. The political vacuum in the movement which has resulted has made it vulnerable to external influences working through cadres who pursue their demands through intimidatory tactics practiced on both workers and employers.

The nature of these problems point to the importance of weaning unions from depending on politicians (and politicians from depending on unions) to win their demands, and in enabling unions to develop into representative and accountable bargaining agents for labour. The dependence of unions on politicians to win their demands has retarded their development as effective bargaining agents for labour.

The absence of legitimate unions to discuss workers' grievances with management leaves room for the penetration of the workforce by anarchic and subversive elements. In the worst case scenario, employers can find themselves trying to negotiate with phantom posters rather than with known faces at a table, as during the JVP insurrection of the late 1980s. Moreover, so long as employers refuse to recognize and deal with unions, the latter will continue to depend on party affiliation and political patronage to win their demands. The corollary of that, as we have seen, is that they become subject to the manipulation of external political interests to the extent that union leaders become agents of political parties, who often quite literally become their paymasters. Furthermore, when unions resort to sabotage and violence, they turn to their political friends to restrain the law enforcing authorities from taking action. These factors continue to feed into the
vicious cycle that has retarded the development of the majority of unions into effective and responsible bargaining agents for labour.

3.2.2 The Right to Organize and Right to Strike

There have been several disputes in recent times regarding the recognition of Unions. The Employers’ Federation of Ceylon (EFC) has always maintained that the majority of the problems arise from a lack of appreciation of what recognition constitutes. Legal recognition flows from the Trade Unions Ordinance, but this is not the issue. As far as individual disputes are concerned, although some employers may not recognize the right of the Union to intervene, there is no difficulty as the Union could raise the matter in the Labour Department or in the Labour Tribunal if it is prepared. The issue is really in relation to demands of unions of a general nature where obviously an employer would deal with a representative Union only. In the public sector, unfortunately, the habit has grown of not talking to another Union without insisting on representative character. In the private sector, the EFC has used 40 per cent as the yardstick, but has also insisted that if a Union does not act in good faith that it would cease to enjoy its position as bargaining agent.

Obviously, one cannot bargain unless parties deal in good faith, and the arguments in favour of having a regulated but flexible approach towards Union recognition would be seen.

In the Charter, the state undertook to guarantee and protect the right of workers to form and join Trade Unions, and to organize and bargain collectively. It also stated that anti-union discrimination by employers will be made an unfair labour practice (Part 1(a)(b)). However, these clauses only guaranteed what had been agreed to and legislated for by the government both before and following the ratification of ILO Conventions No. 98 and No. 87 (ratified in 1972 and July 1995 respectively).

Legal sanction to workers’ right of association and right to bargain collectively was first granted as far back as in 1935 through the Trade Unions Ordinance which set out the procedure for establishing and registering a trade union. These rights have also been enshrined in the Constitution of Sri Lanka, which guarantees the right to establish and join a Trade Union by Article 14 (1) (d). Furthermore, the Supreme Court has held that the restriction that a worker should resign from the membership of a particular Trade Union to be eligible for promotion is an infringement on the right of freedom of
association. Judicial practice has upheld the principle that anti-union discrimination is contrary to the spirit of the law.

And yet, despite the granting of these rights by law, it was felt necessary to include these clauses in the Workers' Charter because many employers flouted, and continue to flout the law by prohibiting union formation in the workplace. This was especially the case during the previous government when labour rights were curtailed by the use of Emergency Regulations which made strikes illegal in many industries, and also by poor enforcement of labour legislation in the Export Processing Zones. This led to protests by the United States that Sri Lanka would have its General System of Preferences withdrawn (whereby Sri Lankan garments and textiles enter the US on a duty free basis) as a result of the violation of labour rights in the Export Processing Zones, where many garment exporters are located. Following this, the Government of Sri Lanka gave a commitment to the US Government that it would implement ILO Convention 98 and pass legislation banning anti-union discrimination.

3.2.3 The Recognition of Trade Unions by Employers
In the Charter, the state also undertook to 'ensure that employers recognize Trade Unions and deal with them on matters pertaining to their members' (Part 1(b)). This is easily the most controversial clause in the Charter.

In Sri Lanka, there is no legal requirement for employers to recognize trade unions for any purpose, and the relevant clause in the Workers’ Charter by no means entailed the compulsory recognition of unions. The state reserved the right to legislate for mandatory recognition of unions at a future date but, significantly, after consultations with workers’ and employers’ representatives in the National Labour Advisory Council.

Resistance and hostility by employer groups to this clause has been widespread. The exception to this rule is the Employers’ Federation of Ceylon, which has accepted the principle of recognition of unions since 1929. Nevertheless, even the Federation has indicated that it will accept the principle of mandatory recognition only if de-recognition is provided for in cases of unfair labour practices.

Opposition to this clause is due to some extent to the (at times violent) nature of industrial conflict and the politicization of the law enforcement process. These characteristics are likely to adversely influence the investment decisions of potential
investors (who are after all potential employers). It is therefore imperative that the
government take them into consideration and that compulsory recognition of unions is
accompanied by provisions that oblige union leaders to act responsibly and in a manner
conducive to trust and mutual good faith in the country's labour relations.

3.3 Employers and Industrial Relations
It can be argued equally well that it is the reluctance of employers to tolerate union
formation in their establishments and to recognize and deal with them which has
couraged the latter to depend on political allies to win their demands.

Since most Trade Unions are controlled by their parent unions that are political, some
employers suspect that there is the possibility of vital information of a firm leaking
through the employees to rival firms and other interested parties who may use such
information against the employer. Thus employers are reluctant to have a cordial dialogue
with the employees because of the fear of information leakage. The Unions justify their
outside linkages by stating that there should be a level playing field in the negotiations,
i.e., just as big industries have access to leading lawyers, Unions too should have the
same privilege, and this is sought by having affiliation to a leading political party or
influential individuals outside the Union.

After economic reforms started in 1977, the UNP government found it difficult to make
inroads to the Trade Unions, thus the government used various high handed tactics to
strengthen its own union -- Jathika Sevaka Sangamaya. However, the government failed
to weaken the strength of the traditional Trade Unions. In 1980, when there was a
massive strike the government crushed it under Emergency Regulations and sacked nearly
60,000 people from their jobs. This action substantially reduced Union militancy in the
public sector. A sense of fear was inflicted on the workers in the post-1980 period and
this although reduced strikes led to a dampening of the employer-employee relations in
many State-owned industries.

During the year 1995 there were 214 strikes. 30 per cent of these strikes took place
because the management refused to talk with the Trade Unions. The employers were
prepared to talk to the workers but not with the Trade Unions.
(a) Many employers tend to believe that the fact that they create employment should absolve them from any attendant obligations or responsibilities. Consequently, laws ensuring the statutory rights of workers are evaded on a significant scale. For example, according to the available data, only 35 per cent of registered employers comply with the provisions of the EPF Act. The number of registered employers has hardly changed since 1983 despite significant growth in the number of establishments covered by the Act.

(b) The majority of employers have a sanguine faith in their own ability to perceive, and thereafter resolve any problem which their workers may be facing. Hence many employers believe that trade unions are an unnecessary luxury for a developing country such as Sri Lanka, and therefore actively prevent their formation (the EFC is the exception to the rule).

(c) Managers see no role for unions in bringing about productivity increases, believing instead that they are an obstacle to the process. In any case, the concept of productivity is understood by them as inducing workers to work harder, not smarter.

(d) Many employers seem to think that maintaining good industrial relations on the shop or factory floor and increasing productivity levels is a matter for the government (through the repression of workers' rights and legislative reform), rather than for themselves.

(e) The majority of employers are ignorant of changing trends in management techniques the world over, and are content to remain so.

(f) Another contributory factor to employer-employee distrust is the lack of communication between blue collar workers and the executive management. Since promotions from the blue collar category to the executive levels are very rare in Sri Lanka it is difficult to promote healthy cooperation between the two groups.

(g) Due to some labour laws, employers, as stated earlier, circumvented laws to achieve industrial competitiveness. This leads to workers forming the opinion that the employer deprive them of their legitimate dues and are unreliable. Some labour laws are biased towards the employees which the employer sees with contempt. This bias is an impediment to promoting mutual cooperation between employer and employees.
3.4 Other Factors that Contribute to Aggravate Employer-Employee Relationship

(a) Attitude of the Labour Department
It was stated in the introduction that despite 17 years of liberalization in Sri Lanka there are still legacies from the past -- bodies that suited a closed market surviving in an open economy or closed market habits prevailing in an open economy. The Labour Ministry is one such institution where attitudes have not changed. It believes that its responsibility is to protect labour and that employers are normally exploitative. Its stance is inimical to the employers and has led to workers behaving with contempt towards employers. It is one of the contributory factors for the breakdown of discipline in the country.

(b) Legacies from the Past
Most secondary level education teachers are anti-free market and their views are imbibed to potential employees. Thus they come into the labour market with pre-conceived notions about industrial entrepreneurs such as their being anti-social and oppressive.

3.5 Dispute Settlement Machinery and Collective Bargaining
Appropriate machinery for the prevention and settlement of labour disputes is recognized as a *sine qua non* for effective industrial restructuring. The Industrial Disputes Act (IDA) provides for the prevention, investigation and settlement of industrial disputes and for connected/incidental matters. The IDA also specifies the methods by which the Commissioner of Labour is empowered to help settle an industrial dispute. These methods are as follows.

(a) with reference to a Collective Agreement where such an agreement is in force between employers and workmen;
(b) through conciliation at 'conference' either by the Commissioner himself or an authorized officer (usually attached to the Industrial Relations Branch in the Department of Labour); and
(c) through voluntary arbitration.

Where the parties to the dispute do not consent to reference of the dispute to an arbitrator, the Minister is empowered to refer the dispute for settlement by arbitration to an arbitrator or to a labour tribunal. The Minister can also refer any industrial dispute to an Industrial Court for settlement.
The number of industrial disputes brought to the notice of the Commissioner has remained more or less constant at an average of approximately 13,000 per annum between 1983 and 1992, apart from an unusual low of 6871 in 1985. The number of disputes referred for settlement by voluntary arbitration is relatively insignificant, most often in single digit figures. The number of disputes referred for settlement by compulsory arbitration each year, though higher, is not very much more significant. The number peaked in 1993 at 78.

3.5.1 Conciliation and Arbitration

In Sri Lanka, conciliation remains the method most widely used for settling disputes. However, the capacity of the Commissioner to provide conciliatory services for all the disputes brought to his notice seems severely constrained, principally due to the fact that the Industrial Relations Division lacks sufficient cadres of trained and experienced Labour Officers to conciliate and mediate between the two parties. Given the present strength of cadres at the Industrial Relations Division and approximately 13,000 industrial disputes per annum, each Labour Officer at the division has to handle approximately 200 disputes each year. Add to this the fact that disputes involving strikes invariably take at least 15 to 16 days of continuous conciliation to yield a settlement, it is hardly surprising that only 30 per cent of all disputes are settled by this method. Contrast with countries such as Malaysia, Singapore and The Philippines, where approximately 80 per cent of all disputes are settled by conciliation through the respective Ministries of Labour.¹

Both employers and trade unions have pointed out the inability of the division to cope with conciliation procedures to the Ministry of Labour at various times. In fact, union leaders are said to have remarked that they would rather discuss matters and seek to resolve them direct with employers or with the Employers' Federation if the employer is a member, than have the matter taken up by the Labour Department.

The proportion referred for settlement by voluntary and compulsory arbitration is insignificant. The remainder obviously end up in stale-mates. A further constraint to the use of arbitration as a means of settling disputes is that the Division has only 14 arbitrators on its panel. Since the arbitrators are paid on the basis of sittings, the financial allocation for this purpose restricts the number of arbitrations that can be held.

¹ Chiang 1986, p 25.
It has also been alleged that the Ministry has shown a reluctance in recent times to refer an industrial dispute to arbitration unless there was a clear indication that the reference would force employees back to work. This is due to the fear that if employees do not return to work then an employer could dismiss them in terms of the Industrial Disputes Act which makes the continuance of the strike after reference illegal. Thus, only the major disputes are referred for arbitration. Consequently, unsettled individual disputes drag on interminably.

3.5.2 Collective Agreements

With respect to the method of settling disputes by reference to Collective Agreements, where such agreements are in operations the constraints mentioned below limit the efficacy of such agreements in settling disputes.

Although Collective Agreements have been entered into in Sri Lanka since 1928, they are not very popular. The principal reason behind this is that very often, Trade Unions fail to honour their obligations under a Collective Agreement. The problem is compounded by the fact that although violation of the provisions of the Collective Agreement constitutes an offence under the Industrial Disputes Act (Section 40 (1) (a)), such violations have never been prosecuted by the Commissioner of Labour, who alone has the sole right to do so. At an interview on the subject with the former Commissioner, he stated that in such situations, the employer could repudiate the Collective Agreement.

This course of action is no solution to the problem, as it works as a disincentive for employers to bear the costs of working out a Collective Agreement. Further, it is likely to have an adverse impact on developing the principles of collective bargaining, which is internationally accepted by ILO Convention as the best way to negotiate terms between employers and employees. An alternative would be to take out a writ against the Commissioner of Labour for failing to perform his duty under the law, but to date, firms have been reluctant to resort to this course of action. In this regard therefore, serious consideration should be given to the suggestion made by the Employers' Federation of Ceylon that in order to secure better compliance with Collective Agreements, any party affected should be permitted to file plaint in a Magistrate's Court.

There have also been cases where the Ministry of Labour has brought pressure to bear on employers to concede to enhanced terms, disregarding the specific terms of the collective
agreements in force. When the Ministry thus imposes a political solution to a situation where the law already provides a procedure for settlement, the powers of the Commissioner and his officers are invariably undermined. Moreover, employees are thereby encouraged to by-pass and ignore the advice of their Union leaders and look to political allies for solutions.

4. International Labour Standards

All aspects in regard to labour standards have to be closely monitored and laws enforced to see to it that certain standards are maintained. In this context the role of the Labour Department is also important. Now that the WTO has linked labour standards with trade, enforcement and monitoring of labour standards have become all the more important. Below, some observations from Sri Lanka in regard to labour standards are provided.

4.1 Child Labour

Although legally no person below the age of 14 years can be employed, there are thousands of children employed in various industrial activities illegally, for example, in industries such as beedi, matches, etc. The children seek employment because of poverty, when the parents’ income is insufficient to feed all members of the family, and the parents do not consider it wrong to make their children work to supplement family income. Child labour can be eradicated only by removing poverty as all monitoring mechanisms are weak in Sri Lanka.

4.2 Industrial Safety and Health Associations

Industry safety conditions vary greatly in Sri Lanka. Generally, the situation is more favourable at newly established Board of Investment (BOI) garment factories in the EPZ, serious in smaller and older factories in general and very critical in metal works, petro-chemical plants, and large scale furniture factories. There were five major categories of safety problems that were observed during the Private Sector Assessment mission of the World Bank in 1994 (World Bank, 1995). No university or vocational institutions offers a course on industrial safety, mainly because a graduate from it will not find employment.
The Employer's Federation of Ceylon mooted a scheme for promoting Labour-Management cooperation. It is a project to be experimented by bringing in all Unions, employers, and the Safety and Health Division of the Labour Department. However, the credibility of the sponsors is of vital importance in securing the cooperation of the Trade Unions.

4.3 The failure of the Department of Labour to maintain labour standards and make sure that employers comply with labour laws
The Department's capacity to monitor and enforce labour laws is currently so weak that its continued existence appears to be a mere cosmetic measure to keep alive the facade of the Department as an enforcing agency.

Expansion of functions and coverage - In the last twenty years, the functions of the Department have expanded, its coverage has increased; meanwhile, as the commercial and industrial sectors have expanded, establishments whose labour standards require monitoring and enforcement have grown in number. However, the capacity of the Department to execute its functions has decreased both absolutely and relatively due to the following constraints.

* Cadre constraints: In 1995 the Department had no more Labour Officers in the field than it had 30 years previously.

* Financial constraints: Budgetary allocations to the Department to meet recurrent expenditures (especially under categories such as Enforcement of Labour Laws and Prosecution of Errant Employers) have declined in real terms at least since 1983; as a result, only 13 per cent of registered establishments and estates were inspected in 1993.

* Delayed justice: The speed at which errant employers are prosecuted in the Magistrate's Courts is constrained by the delays and postponements which characterize the country's judicial system.
*Poor quality of staff: The majority of Labour Officers lack experience and training. This is partly due to the post-1977 policy of recruiting individuals from the clerical service to fill 50 per cent of vacancies.

The shortage of trained and experienced staff has constrained the Department's capacity to provide conciliatory services to resolve industrial disputes. As stated earlier, only 30-40 per cent of all disputes are settled by conciliation.

5. MNCs and their Impact on Local Industry: Both Products and Labour Markets

5.1 Are foreign models transplanted in local firms?
Many managers in the Export Processing Zone (EPZ) are from Hong Kong, South Korea and Taiwan and their management style is quite different to the local style. The majority of strikes in the zone have called for the dismissal of the individual manager.

It is reported that the attitude of the marketing and production staff towards the blue collar workers is characterized by contempt and reservations as these employers feel that their respective targets cannot be met due to the attitude of employees and Unions. It is not wrong to say that in Sri Lanka the production executives have unrealistic targets mostly due to foreign training or locally-based external training. It is difficult to convince these executives to adhere to more realistic targets based on the capacity of equipment, climatic conditions, the working conditions, etc.

The management's attitude is that it is pointless to have a dialogue with the employees as they fail to understand the employer's position in regard to the day-to-day running of the firm.

5.2 Wages and working conditions in MNCs in the EPZ
Wages: although at one time the earnings of workers in the zones were relatively higher than average wages in the country, this is no longer the case. Welfare supervisors of the Samurdhi programme (Samurdhi Niyamaka) for example, earn the same salary as zone
workers for less demanding work. This has caused dissatisfaction among EPZ workers. The enforcement of labour standards are poor in the EPZ. The BOI’s administrative controls impede surprise inspections of working conditions by labour officers. Thus cases such as managers abandoning factories and leaving the country without paying EPF and ETF, night work for women, etc., are quite common in the EPZ.

Working conditions: the psychological stress caused by the appalling living conditions of the majority of FTZ workers has been well documented. These conditions and the lack of recreational facilities have contributed to poor working conditions.

5.3 EPZ and Workers Rights
Industries that are in the EPZ, and Industries which do not come under the Employers' Federation do not have Trade Unions in their work force. If employees in some of the EPZ companies attempt to form a Union or engage in any activity, which the employer or management of the industry considers detrimental to its interests, the employer would, in most cases, terminate the employment of such employee/s as soon as possible. The termination of employment is done in such a way that the employee has little power to resist or make an issue of it. Most often, the termination is done by the employer by simply giving the security gate of the Zone, the worker's/workers' identification code number or numbers and requesting the guard not to permit the dismissed worker or workers to enter the premises. The worker/s can hardly do anything about it without access to the EPZ. On the other hand, the employer is able to operate his enterprise within the security of the Zone while neglecting the grievances of the employees who were chased out.

Out of the 140 companies in the Katunayake and Biyagama Free Trade Zones, trade unions have been formed only in two companies. However, they are not recognized by the BOI. In the BOI companies, employers have stated that they would recognize Employee Councils or any worker organization other than trade unions. But the main trade unions are of the view that the Employee Councils are nothing but management-driven ‘mop councils’ and do not reflect the workers problems.
6. Important Industrial Relation Outcomes

6.1 Trends in industrial conflict, lockouts, strikes
Annex Table shows the number of strikes in the private sector. The average number of strikes per year in the non-plantation sector during the period as a whole is about 1/3 of that of the plantation sector. This situation changed after 1994. In both sectors work related demands dominate the causes, of which about 30 per cent relate to higher wages and other financial benefits. In the non-plantation (mainly, industrial) private sector, apart from issues related to financial benefits which affected about 55 per cent of strikes during 1990-1995, interdictions, other disciplinary actions, transfers and stoppage of work of employees after completion of probation or training periods have become important factors causing strikes. There is no evidence to show that problems related to non-payment of provident funds is a significant contributory factor for the upsurge in strikes.

The view that strikes are politically motivated *prima facie* does not appear to be the case in the private sector according to causal factors reported in the Labour Department. However, it could be inferred that political motives may not have been publicly expressed and may have been hidden in the work related demands. Political motives are more related to strikes in the public sector, where Unions are more directly affiliated to political parties, compared to private sector industry Unions.

6.2 Training and skill development
A developing economy has to have the skills required to complement the changing requirements in the economy. While it is true that the Sri Lankan workers are highly literate compared to many East Asian countries, there is widespread concern that the education system with its emphasis on white collar professions and public sector careers, does not cater to the needs of the market economy.

At present, State agencies run more than 3000 programmes aimed at skill upgrading -- some of them are demand-driven institutions and include in-service training. However,
there is a degree of over-lapping and duplication of skill supply, and, thus, a wastage of funds. In 1992, about Rs 4 billion was spent annually (nearly 1 per cent of GDP) for publicly-supported training programmes operated by 20 different ministries. Also, the system failed to cater to some of the crucial skill requirements of the economy.

Despite nearly two decades of economic reform the skill producing system failed to cater to the newly emerging skill requirements. Although the government has made some effort to introduce a demand-driven skill system it has not made a significant impact on the traditional skill development institutions in the country.

Firms consider Sri Lankan workers to be easily trainable; in fact, foreign investors often say that their decision to invest in Sri Lanka was based on their ability to train Sri Lankan workers. Most firms do not like to hire workers from Vocational Training programmes because (a) they are not up to date, and (b) trainees are most often selected on the basis of political patronage.

Firms have correctly complained that there is a shortage of sufficiently qualified managerial level personnel, e.g., shop floor supervisors, product and general managers, and managerial professionals in areas like finance and marketing. The public tertiary education system emphasis on liberal art studies -- when the government opened a register for unemployed graduates in early 1992, out of the 12,000 who showed up 60 per cent turned out be liberal arts graduates -- is not considered useful by the business community in Sri Lanka.

Globalization and the consequent competitive pressure has led the government to seriously consider establishing a Skill Development Fund (SDF). Such a fund has become important because as development proceeds skill requirements become firm-specific and
thus in-house training becomes the order of the day. The SDF would operate on a levy-grant system. Singapore is one country where the SDF has proved to be very effective in providing the required industrial training.

6.3 Wage system / linkages between wages and productivity

It is important to outline the wage setting mechanism in Sri Lanka in order to analyze the linkages between wage levels and productivity. Sri Lanka's labour market is relatively segmented (Rama, 1994), thus the wage determination processes and outcomes vary considerably across sectors. The informal sector is guided by changes in administered wage regulations or by prices and costs (much of this sector is characterized by self-employment). This is not the case in the formal sector where administered wage practices (minimum wages and other labour codes, collective bargaining, wage leadership) prevail, especially at the unskilled level. They are partly market driven.

There are two laws that are applicable to the formal sector. Firstly, the Wages Boards Ordinance which was enacted for the regulation of wages and other emoluments of persons employed in trades.\(^2\) The ordinance permitted the establishment of "Wages Boards" that are vested with powers to make regulations regarding wages and other terms and conditions in respect of a trade. At present, there are 37 Wages Boards for various trades. Besides the general provisions in the ordinance which relate to any trade, the Wages Boards are given the power to determine minimum wages. It is estimated that 1.5 million workers are covered by this ordinance (40 per cent of paid workforce outside the government sector [Rodrigo, undated: 22]). Secondly, the Shop and Office Employees’ Act of 1954 provides for the regulation of employment, hours of work and remuneration of persons employed in shops and offices, overtime rates, holidays, and also covers matters such as leave, maternity benefits, working conditions, and manner of payment of remuneration, etc.

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\(^2\) A “Trade” according to this ordinance includes any industry, business undertaking, occupation, profession or calling carried out or performed or exercised by an employer or worker.
Wage fixation by the government started in the early 1970s when several emergency regulations were introduced and wages were increased across the board. Whether the sectors could absorb these increases was not considered as it was meant to meet the cost of living increases. Wages Board procedures are supposed to be tripartite, i.e., representing the Union, the employer, and the nominated members of the government. But in actual practice it is not always the case, as often, decisions are made on the basis of meeting a budget requirement or complying with a directive given by the government.

There seems to be a government/public sector wage leadership over the years. Public sector wage policy is important in Sri Lanka because public sector wages comprise "wage leadership" for about 2/3 of the wage earning population who are either under Wages Boards or bi-partite collective bargaining arrangement. Wages are most often tied to cost of living and this has contributed to a wage-cost spiral with adverse effects on cost of production. World Bank (1992) points out that during 1983-88 real wages increased by 2 per cent points faster than labour productivity.

From 1969 to 1979 there had been several statutory increases given by the government and since then other increases have crept in on the basis of increases in wages offered to public servants. In 1989 and 1990 Wages Boards increased wages to keep in step with Budget proposals for the Public Sector. In 1992, wage increases offered by the Budget to public sector sparked off a demand for wage increase in the plantation sector although it was not managed by the government at that time. Wages at the national level is determined irrespective of international competitiveness. Rodrigo (undated) observes: "The wage behavioural pattern provided evidence of revisions in government sector triggering off wage demands in the private sector before the available statutory machinery for wage determination. The adjustments come typically with a time lag and the lag varies between trades" (p.35).

Many large firms have negotiated with the Employer's Federation of Ceylon to have wages increased by Rs. 2 for each additional point of the cost-of-living index. As shown
above, wages in Sri Lanka are not pushed up by Trade Unions alone. The wage determination structure has contributed to substantial wage rigidity in Sri Lanka. Links between wages and productivity are very insignificant.

6.4 Changes in Worker Participation --are new forms of direct participation evident?
The main characteristics of the labour absorption by the industrial sector: (1) female bias, (2) urban bias, and (3) underemployment.

Female Bias: The decade 1971-81 recorded a figure of 14.4 per cent increase in male employment and a 7.4 per cent increase in female employment. In contrast, from 1981-91 the increase in male employment was a mere 12.2 per cent as compared to the 68 per cent increase in female employment. The largest increments of female employment occurred in the EPZ -- 90 per cent of the employment was female. However, previously protected industries such as Beedi (local Cheroot) and Handloom which had a large representation of female employment collapsed under the new free market economy. With the latter increase in female unemployment the share of females in total unemployment also increased during the late 1980s.

Urban Bias: Employment generation by industries were concentrated heavily in the Western Province where urbanization was very high. Whatever decline in urban employment creation that was observed from 1980 to 1989 is due to increasing number of industrial self employment opportunities in non-urban areas that came after 1977 reform.

Underemployment: This problem is evident from the statistic that 80 per cent of the unemployed have an education up to or above the middle school level. 32 per cent of those who have passed the GCE Advanced Level examination and 22 per cent of those having passed the GCE Ordinary Level examination are currently in the ranks of the unemployed. Among these, the female unemployment rates are twice that of the male
rates. The greater unemployment rate shown by those with a higher education status signifies two related social points. The first is the unavailability of suitable jobs for this category - and thus they engage in casual work, *i.e.* being underemployed. The second is being voluntarily unemployed rather than be underemployed. However, the lack of an adequate social welfare system has forced some to be underemployed rather than unemployed. A substantial number of women with GCE Ordinary level examination qualifications have procured jobs in the EPZ areas and in the Middle Eastern nations as housemaids, neither of which require the academic training they had undergone. Similarly, university graduates have been accepting subordinate clerical positions due to the mismatch of the supply and demand of labour.

6.5 Changes in Work Organizations

Restrictions imposed on the Termination of Employment Act (TEA) greatly reduces the scope for job retrenchment and job creation which are essential for production restructuring and expansion. The TEA prevents any retrenchment on non-disciplinary grounds without the written consent of the displaced workers in firms with 15 or more personnel. Since consent typically requires generous severance pay, the TEA is seen as a major constraint to employment creation by the private sector.

Firms that tried to discontinue part or all of their operations without the workers’ consent have been forced to back-off by the Commissioner of Labour. The Commissioner imposes compensation amounts equivalent to several yearly wages per worker. During the review process -- which takes several years -- firms had to keep paying the wage bill. As the TEA weighs heavily against an entrepreneur having a "permanent" labour force, they engage in subcontracting activities to avoid its adverse implications. Such action encourages short-term contracts and prevents workers acquiring technological and entrepreneurial capabilities that are required for future industrial growth.
To avoid being covered by the Act many employers have chosen to be below the threshold of 15 employees. Business growth has most often taken place through adding new small establishments rather than existing establishments. This has made firms to adjust by reallocating their resources to other branches or production lines. Natural attrition was preferred as a devise to scale-down employment when severance pay was simply out of reach.

7. Privatization and Industrial Relations
7.1 Labour Retrenchment Policy
Labour redundancies were a common phenomenon in most SOEs in Sri Lanka during the late 1980s. It was caused by two factors. First, and most importantly, SOEs were largely overstaffed because employment had been given under political patronage and as a last resort to fulfilling the state’s objective of reducing unemployment. Recruitment was easiest in the semi-skilled and unskilled tiers and thus, not surprisingly, surplus labour was most common in the grades of labourers, minor staff, clerical and other allied grades rather than at the management and executive grades, and grades requiring skilled labour.

Fisbein (1992) estimates, the redundancy level in SOEs to be as high as 40-50 per cent in 1991 in the state sector in Sri Lanka (excluding plantations), which employed roughly 120,000 people. The level of redundancy in the Sri Lanka Transport Board was estimated at 6 employee per bus (the optimal ratio of employee per bus is 6.5 compared to the Sri Lanka’s 13.1; thus the additional amount is considered as redundant labour). This problem of redundant labour was identified by the Presidential Commission Report on Privatization. It was envisaged that the recommendations in this report will be the basic framework that had to be adopted to meet issues regarding surplus labour. Box 1 below, sketches the recommendations the Report gave on solving labour issues.

Subsequent to the report, two Acts were passed in parliament, and some amendments were made to the laws governing provident fund and gratuity payment as suggested in the
Neither of these Acts mentioned labour issues apart from a brief reference in one of them (Section 3.2 (c), Act. No. 23, 1987), where it was stated that those employees not absorbed in the conversion shall be compensated on such terms as determined by the Cabinet of Ministers (there was no proper discussions with the Department of Labour before enacting this legislation). There was also no reference to a non-monetary safety net in the subsequent legislation passed perhaps because there was no reference to such a package in the Presidential Commission.

Box 1: Recommendations made for handling labour issues during privatization

Retrench workers before privatization

Do not conduct involuntary retrenchment of labour

Compensation;

- Offer only a monetary compensation package, worked to a particular formula

Gratuity Rights:

- Enable employees, irrespective of age to withdraw due Provident Fund benefits on termination of employment due to privatization. (Under normal law a worker has to serve until retirement age to withdraw EPF benefits -- see Note below). This recommendation was legalized subsequently, by the Employees Provident Fund (EPF) Amendment Act No. 14 of 1992.

- Ensure that an employee does not forfeit his gratuity rights consequent to the change of employer. Thus, past service of the workers in SOEs (Public Corporations) are deemed service rendered to the new company that has taken over the business of the SOE. This recommendation was legalized subsequently, by the Payment of Gratuity (Amendment) Act.

Identify surplus workers at each staff level and offer only these workers the option to retire. If workers not in surplus wish to leave, they will be entitled only to gratuity payment.

Source: Presidential Commission on Privatization.

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3 The two acts passed by parliament in 1987: (a) Act No. 22 of 1987 which deals with the conversion of Government-Owned Business Units (GOBU) into Public Corporations or Companies; and (b) Act No. 23 of 1987 that gives legal backing to the conversion of Public Corporations into Public Companies, facilitated the general privatization process.
The problem of surplus labour was to be handled by pre-privatization retrenchment as recommended by the PCP Report. One of the most important legislations that governs employment security in the labour market in Sri Lanka is the Termination of Employment Act (1971) (TEA). The TEA applies only to the private sector, and warrants an employer with 15 or more employees, wishing to terminate services of an employee with one or more years of service on non-disciplinary grounds, to obtain the written consent of the employee or the approval of the Labour Commissioner. If the dismissal is approved, the Labour Commissioner would decide on the required compensation. It is a time consuming, cumbersome and costly procedure (Gunatilake and Kelegama, 1997).

The TEA however does not apply to Government-Owned Business Undertakings (GOBUs) or SOE\(^4\). This is because under the Sri Lankan legislation, a worker in a GOBU is not covered by any labour legislation but by the government establishment code. Thus the services of a worker of a SOE can be terminated without the specific permission of the Commissioner of Labour. A worker of a GOBU or SOE once retrenched cannot go before a Labour Tribunal to get relief (Gratuity, EPF, etc.). After conversion of a SOE under the 1987 Act No. 23 to a public company, the worker enjoys all the rights of a worker of the private sector. Therefore, although it may appear strange, workers are better protected by legislation in Sri Lanka after privatization than before.

There had been several attempts in the past to amend the adverse implications of the TEA in order to create a more efficient labour exit policy. Given the highly politicized trade union structure in Sri Lanka, none of these attempts have been successful. Thus the Commission may have considered it more prudent that the excess labour issue is fully dealt before executing the privatization programme because, as mentioned, it was easier to do so under the existing legislation.

\(^4\) All nationalized private firms under the Business Acquisition Act of 1971 were categorized as Government-Owned Business Undertakings (GOBUs). Basically they were State-Owned Enterprises with a different name.
A compensation package recommended by the Bulumulle report was offered as a package to retrench labour from SOEs. Normally severance packages offer compensation based on the years of services. But the Bulumulle package offered compensation on both years of services and years denied services. As time passed, the workers resented the Bulumulle formula and the Trade Unions totally rejected it and thus voluntary retrenchment became difficult. This was due to: (a) the trade unions found that the package was not upgraded for inflation in the economy, and (b) more attractive packages were offered at that time by the privatized companies as well as private companies. And when it came to the privatization of the Leather Products Corporation the Trade Unions refused even to bargain on the Bulumulle package. Thus the government came up with the Leather Products Company Formula which is a maximum of 50 months salary subject to an upper limit of Rs.2 1/2 lakhs in the case of Managerial Grades and Rs. 2 lakhs in the case of others. The formula found favour with the Trade Unions and it was subsequently applied for various privatization cases since early 1992.

In sum, compensation together with their EPF, ETF (Employees’ Trust Fund) and Gratuity benefits would have got an average worker a financial package of approximately 250,000 to 300,000. The majority who took the compensation packages were persons beyond the age of 45.

Retrenchment that took place during the early years of privatization were on both voluntary and involuntary. There is impressionistic evidence to state that when the government failed to remove the overstuffed labour (the number that the government had in mind) through a voluntary retrenchment package, forced retrenchment was used occasionally as this was possible under Public Corporations Act No. 22. The leading trade union at that time (Jathika Sevaka Sangamaya) resented this. Thus on 1 May 1992, the President of Sri Lanka announced that an employment guarantee for all public sector employees until they attain the age of 55. This made voluntariness in retrenchment the State policy and this put a stop to involuntary retrenchment by the State.
In accordance with the recommendation of the PCP, for some SOEs, tiers of surplus labour were identified before introducing the voluntary retrenchment package. However, if the new private owners were not satisfied with the number of people removed before privatization via the government’s compensation package, they had the option of removing the additional labour by offering a compensation package of their choice with the concurrence of the Commissioner of Labour. No specific mention was made that such removals should take place on a voluntary basis. Thus both pre-and post-privatization retrenchment took place in Sri Lanka.

In mid-1994, there was a change of government in Sri Lanka. The new regime was also committed to privatization but preferred to call it “public enterprise reform”. The new government was more friendly towards labour and it had an overwhelming support of some of the leading trade unions in the country. Thus the government did not want to engage in pre-privatization retrenchment and antagonize its support base. The policy was that no labourer should lose his/her job as a result of privatization. However, the new private owners were given the option of introducing a voluntary retrenchment package and it was specifically stated that involuntary dismissals will not be tolerated.

7.2 Privatization Consequences
The number of people retrenched as a result of privatization up to July 1994 (before the change of government) is in dispute. There are highly divergent estimates. The Labour Department puts the figure at 18,000 - 20,000 whilst the Employers’ Federation of Ceylon estimates it to be 35,000. On the other hand, the main public sector trade union the Jathika Sevaka Sangamaya claims that 50,000 of their members have been retrenched. The dispute over the number of retrenched workers is indicative of the haphazard way in which the government had conducted the retrenchment exercise, and the fact that involuntary retrenchment has taken place after privatization under private sector
ownership.  The Labour Department and other relevant government departments speak of their financial inability to monitor the process.

Given the unavailability of data, it is very difficult to find accurate information regarding the types of workers who have opted to retrench. However, the type of workers who opted to be retrenched seems to have followed a bi-modal tendency: one type of workers were those who had a dire need for the money offered by the compensation package because of high indebtedness or some other personal reason such as a wedding in the family. These workers were often semi-skilled or unskilled and felt it was advantageous in the short-run to opt for the package and leave employment.

Several such retrenched employees had claimed later that they have not found sustainable alternative sources of income. A survey done by the Sri Lanka Business Development Centre (SLBDC) in 1992, for instance, showed that most employees used compensation received to pay debts, rather than investing in income generating activity (Kelegama 1995). The other set of workers were the more skilled type, such as engineers and mechanics, who could find jobs elsewhere, relatively easily. Included in this set were workers who faced a lesser degree of financial insecurity because their spouses were employed or because they had personal wealth. Thus, for some workers, compensation seemed a ‘wind-fall’ gain whilst many others were left worse-off with no sustainable source of income, a high psychological sense of dislocation, and high susceptibility to old-age poverty since their provident fund benefits had already been dissipated.

Even when tiers of surplus labour were identified before putting the voluntary retrenchment package into operation, some workers maintained that this was discriminatory and that the option of voluntary retrenchment should be extended to all workers. However, the main opposition to targeting-tiers for retrenchment came from workers who were not targeted. Opposition came from the more skilled grade of workers

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5 There was no specific number of employees targeted as in, for example, India. Involuntary retrenchments are executed very discreetly in stages and normally little is spoken about them.
who felt they could obtain a windfall gains through the compensation packages, since they could find alternative jobs without much difficulty.

So identifying tiers of redundant labour for voluntary retrenchment was eventually dropped and across-the-board voluntary retrenchment was applied. This is why the problem of adverse selection (better workers leaving) was common in the Sri Lanka’s voluntary retrenchment process. The problem was exacerbated during pre-privatization retrenchment because SOEs were worried mainly about the *number* of people that left work, not the type. For example, during the privatization process of the bus transport system, most of the workers who opted to take the package and left were mechanics, engineers, stenographers and other skilled employees.

As stated, the compensation package offered was basically a monetary package. There was no non-monetary component to the overall compensation package. Basically, the compensation packages had a ‘fixed component’ (the pre-mature payment of the EPF/ETF benefits) and a ‘variable component’ comprising of monetary compensation. As different compensation packages were introduced, this variable component underwent various changes based on *ad-hoc* formulas and other add-ons such as encashment of leave entitlement or share gifting.
Table 7.1: Average Compensation (excluding gratuity) from 1987-1997

<table>
<thead>
<tr>
<th>Year</th>
<th>Average Compensation (excluding gratuity) in number of months salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>1987</td>
<td>17.5</td>
</tr>
<tr>
<td>1989</td>
<td>16</td>
</tr>
<tr>
<td>1991</td>
<td>45</td>
</tr>
<tr>
<td>1993</td>
<td>45</td>
</tr>
<tr>
<td>1995</td>
<td>53</td>
</tr>
<tr>
<td>1997</td>
<td>53</td>
</tr>
</tbody>
</table>

Source: Official letters to the Trade Unions from the Labour Commissioner.

One clear trend in the average value of these compensation packages was that they increased in value over time (Table 7.1). What contributed to this increase? Part of it can be attributed to inflationary tendencies. However, even if the packages were weighted for inflation, a rising trend is visible. The other more important factor then, is that the bargaining power of trade unions has increased over time. So much so, that in the case of Lanka Loha, in 1997, the total compensation paid to some workers before privatization soared to an all-time high of Rs. 500,000.

Trade union bargaining power may have strengthened partly because: (a) unionists feel that welfare losses and uncertainty incurred due to retrenchment have increased over time, and (b) because they have become avid rent-seekers, exploiting the rising marginal political costs of the government. A significant factor that contributes to the notion that the costs faced by workers are high, is the ad hoc and lackadaisical manner in which labour issues were handled during the early stages of privatization, and the lack of transparency in the privatization process itself (Kelegama, 1997). In particular, the failure of some privatization schemes have increased worker resentment to privatization. The rent seeking powers of trade unions seem to have increased due to a probable rise in the marginal political cost of the new government that took over after 1994.

What were the consequences of the pre-privatization retrenchment? Firstly, the problem of dynamic inconsistency was very visible. There is evidence to the effect that a number of privatized firms have re-hired workers with skills similar to those that left the company.
before privatization using the voluntary retrenchment package. The SOEs were worried mainly about the *number* of people that left work, not the type. The dynamic environment in which the firms operated have changed so much that the type of workers that left the firms became very essential for new operations.

Before the change of government in 1994, since dismissals after privatization were not specifically defined the private sector did not hesitate sometimes to take the most effective and easiest route for labour retrenchment. The private owners found various methods to circumvent the law in order to get rid of unwanted labour after privatization. In some cases, the post-privatization work environment was made very uncomfortable for some employees forcing them to leave. In some other cases, workers claim that false allegations were made against them, to permit uncompensated firing. A common charge is that of insubordination. As stated earlier, the TEA stipulates that the approval of the Labour Commissioner does not have to be sought under such disciplinary charges. An internal inquiry can be held and a worker can be dismissed. Of course, the worker has the right to appeal to the Labour Tribunal. However, many did not possess the legal resources to go through with an appeal and this works favourably for the employer.

8. **The Challenge of the Future**

It is clear from the above discussion that in the context of globalization there is a large “unfinished agenda” in regard to labour market reform in Sri Lanka. Pressures from globalization will compel all players of the Sri Lankan labour market, in particular, the government, to consider the following reform.

8.1 **Enhancing the Capacity of the Labour Department**

(a) A qualitative change in the capabilities of Labour Officers must be wrought within the limits of the existing cadres.

*Labour Officers' functions should be expanded from mere policing, to effective trouble-shooting and advising employers on various aspects of industrial relations;*

*The intensive training and re-training of Officers in labour law, mediation and conciliation, human resources development, ergonomics and business management.*


Donor assistance can be sought to formulate and finance the necessary training programmes.

*The Department needs to be transformed into a 'specialist department' staffed by trained specialized officers at all levels, rather than by SLAS (Sri Lanka Administrative Services) officers.

*All appointments must be made by an independent Public Services Commission, and not by either the Cabinet or by the Minister.

*All Ministerial directives should be in writing only and there should be no verbal orders.

* There should be an autonomous career structure from Labour Officer to Head of Department.

(b) Monitoring functions should be modernized with the use of new technology, such as computers. e.g. the computerization of EPF accounts should be speeded up.

8.2 Dispute Settlement

(1) The ideal process would be for a time span to be fixed between the making of a complaint to the Labour Department and a reference to arbitration, tying up the processes of arbitration and conciliation so that the whole dispute could be settled within a reasonable length of time instead of the parties having to wait for years in order to see an end to the dispute. It may also be worth looking at the possibility of establishing an Appeal Court to go into positions of dissatisfied parties within a short period of the arbitrators award so that settlement could be reached speedily.

(2) To fill the lacuna created by repudiation, an automatic mechanism may be considered for rehearing the matter if any of the parties affected so desire. Establishment of a permanent Arbitration Court instead of the present ad hoc reference mechanism is desirable.

(3) Suitable training is necessary and officers should be trained to have a better understanding of the business environment in order to enable them to take a balanced approach.

(4) The processes by which disputes are handled should adopt a more flexible and expeditious form in order to defuse tense situations.
(5) It would be of great value to explore the possibilities of listing those services as essential to the community and the maintenance of services essential to it. It would also be of great value to amend the Industrial Disputes Act to make it obligatory not to resort to trade union action without prescribed notice given to the Labour Department.

(6) There should be a democratic process and a vote taken before workers decide to go on a strike. This clause should be incorporated in the Trade Union Act.

(7) Strengthening mechanisms for conciliation and mediation

(8) Reforming the Labour Tribunal System

8.3 Possible Methods for Changing Employers’ Attitude to Employees

Establishing industrial harmony will require *substantial attitudinal changes on the part of employers towards workers and unions*. The private sector too must be weaned from depending on the Government to provide a docile and quiescent labour force. Government should implement policies to encourage employers to *invest* in better management techniques. Besides, the following factors are noteworthy.

Divulging Information: As stated, there is a reluctance on the part of the Management to divulge information which they think would help the Union to persuade its members to take a different approach towards their demands or to compromise thereon. Companies should agree on the type of information or the percentage of information that should be placed before the workers. If the workers are informed 60 per cent of the company activities, corporate plans and on accounts, there will be very little to divulge at a time of crises.

Gain Sharing Scheme: In order to prevent employees from work stoppages and to become more productive, bonuses proportional to the profits are paid by certain firms. The Sri Lankan experience shows that for gain sharing to be effective it should be accompanied by sharing of information which most employers are not prepared to do at present. As stated earlier, the mutual trust between the employer and employee is low due to the suspicion of information leakage to the parent Union and thereby to the competitors. Thus it could be stated that gain sharing could be an effective mechanism for promoting better industrial relations if the existing mistrust between the workers and the management could be rectified.
Promote Industrial Safety and Health Associations and provide better working conditions to the workers.

8.4 The Government's Role in Establishing Harmony between Employers and Employees
The present Government's efforts to seek industrial harmony through the Workers' Charter, though well meant, has run into difficulties. This is partly due to the culture of dependency which has grown between the unions and the Government on the one hand, and between employers and the Government on the other. As a result, the industrial partners have been able to shift the burden of responsibility for industrial relations on to the Government and abdicate their own duties in the process.

(a) In order that mechanisms for disputes settlement are made effective, the Government has to refrain from interfering in industrial disputes and assuming for itself the role of final arbiter.

(b) As far as this vexatious problem is concerned, Government should confine itself to reforming the industrial relations system, and stepping back from the process thereafter.

Disengagement at this point is crucial to insulating the system, as the organs of state are the instruments through which political considerations invariably seep in and weaken the institutional process.

(c) Employers and employees should be encouraged to work out their problems by themselves, rather than look to the Government for solutions. Non-interference by the Government in industrial disputes will signal that it will not be an active party to the process of bi-partism, and therefore cannot be pressured to 'take sides'. This would also insulate the Government from being vulnerable to conflicting demands by various interest groups.

The mechanisms of bi-partism should be strengthened and thereafter extended, so that the two social partners can formulate common goals and consult and work together at the industry or national level to achieve a consensus on labour-related issues.

(c) Tripartism, or the involvement of Government in this exercise, should be avoided so long as the political culture prevents it from being only a watchdog in the process.
A seemingly intractable problem may find its solution by the Government keeping its hands clean.
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Globalization and Industrial Relations in Sri Lanka*

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