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THE NATIONAL JOURNAL OF LABOUR AFFAIRS

A special issue to commemoration of the dawn of the new millennium

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FROM LABOUR TO WORK: THE GLOBAL CHALLENGE*

Guy Standing†

The century of the labouring man is coming to an end. It began with calls everywhere for the rights of labour, meaning both freedom from labour and improved conditions in jobs. For those of a radical disposition, the primary objective was freedom from labour, through drastically reducing working time or even overthrowing the labour relation altogether. For others, it meant steady reforms to secure rights within labour, or better working conditions for labourers.

In most places, the latter tendency prevailed. By the middle of the century, the main call had become the right to labour, meaning the right to have a job, captured in the term Full Employment. This was a convenient and sexist fiction, since it meant ensuring all 'working class' men had full-time wage labour. For the most part, women's work was disregarded and their involvement in the labour market was seen as 'secondary'.

With the spread of mass unemployment in the 1970s and 1980s, and with the ascendancy of the Chicago school of law and economics - an economic revolution equivalent to the Keynesian revolution of the late 1930s - the right to labour was gradually dropped. By the 1990s, the main message was that there was a *duty to labour* epitomized by talk about 'no rights without responsibilities' and the 'reciprocity principle'.

So, in a growing number of countries governments are introducing *tax credits* paid to 'families' if members are working for an income. And increasingly entitlement to state benefits is only ensured if you have laboured, and if you have done so for increasingly long periods. or if you are prepared to labour or undertake training in preparation for labour.

In the process, there has been a revival of the 19th century dichotomy of the *deserving* and *undeserving poor*. In short, by the end of the century, the emphasis had shifted to the *duty to labour*, with reforms of welfare policy tying entitlement to state benefits to the obligation to take a job or undertake training. In his respect, an irony was that the duty was being extended to women with young children.

* Excerpts from "World of Work", No. 31, 1999, I.L.O. Geneva.

† Director of the ILO's InFocus Programme on Socio - Economic Security

Yet this threefold shift - from rights of labour, through the right to labour to the duty to labour - is running up against powerful counter-trends. With globalization, technological changes and the shifting balance of bargaining strength of workers and employers, more flexible labour relations are spreading everywhere, while contrary to the expectations of 20th century policymakers employment is becoming increasingly informal. This is the case in industrialized and in developing countries. In many respects, more flexible and informal labour markets could be beneficial. But, what these changes have brought in their wake is an upsurge and global awareness of pervasive social and economic *insecurity*.

Is labour becoming a commodity?

For much of the century in many parts of the world, there were advances in seven forms of labour security, and there was an expectation that developing countries would follow in the same mould. Essentially, two labour-based models competed for supremacy as development models - state socialism and welfare state capitalism. The former collapsed from its own deficiencies, in terms of authoritarianism, centralization, and lack of economic dynamism. Underlying the latter was a model of income distribution designed to reduce income inequality in the course of economic growth. The ILO caught the mood, when in its Philadelphia Declaration it asserted in a one-line paragraph. "Labour is not a commodity." The main post-1945 trend was what was called *labour decommodification*, meaning that the labour market was expected to become less like a market for lemons, and that the price mechanism should become peripheral, or in effect the money wage should become a smaller part of total income. In many countries, there was a shift in the form of *social income* from money wages to state benefits and other non-wage benefits. Employment was based on the payment of good wages and benefits, and was thus redistributive, backed by progressive taxes, and in the background the state acting as 'employer of last resort'.

All this has gone into reverse in the last decades of the century, for reasons outlined in my book. There is *labour recommodification*. Yet the counter trends arise because more people everywhere are finding it necessary or desirable - depending on their opportunities or competencies - to combine several work activities, to move in and out of employment, to indulge in their work-based enthusiasms, and to define themselves in ways not easily captured by the labour statistics that have measured economic activity in the 20th century.

The counter-trends of flexibility and informalization are making it more ridiculous to measure work as labour in the sense used during the 20th century. For instance, the work of *caring* for others has been legitimized as work, and some countries have introduced national insurance for care or have moved to provide income compensation for carers. For too long, most of those people providing care to relatives or to others in their communities have not been regarded as working. In the future, they will be. Similarly, most of those involved in the hundreds of thousands of non-governmental civic organizations on a voluntary basis have tended to slip through the labour statisticians net. And most of those doing 'informal' work activity on an own-account basis or on some handshake basis have escaped as well.

During the century of labouring *man*, there has been a distorting ambiguity about the notion of 'labour'. The trouble began with the fact that labour means three things. For most economists, it means a 'factor of production', expended in combination with 'capital'. For many ordinary people, labour means the activity of working. And in popular imagery, labour also means workers or the 'working class'. A consequence of this treble meaning is that often political and learned discussion is conducted at cross purposes, and reality is distorted.

It does not take a genius to recognize that there is much more work going on than meets the eye. Yet the focus on official employment (labour) statistics and formal 'jobs' leads numerous sages to fret over high unemployment, "jobless growth", and so on. Of course, unemployment is important. However, what is far more important is the poverty and lack of income security among an increasingly large number of people who are working. More and more people in jobs cannot expect to receive an income on which they can live in decency. It is also clear that the income from capital has been growing enormously for many years, absolutely and relative to the income from labour. To compound the growth of functional income inequality, governments have been cutting taxes on capital, and have been cutting subsidies for labour while increasing subsidies for capital.

Globally, there has been a growth of seven forms of socio-economic insecurity - labour market, employment, job, skill, work (health and safety), income and representation insecurity. Together, these trends mark a new era of personal insecurity for numerous millions of men and women. There are several "labourist options" for rectifying these adverse trends notably welfare reforms such as "workfare", employment and wage subsidies, minimum wages and selective "social safety nets."

These make up part of the "new paternalism" that has been so influential in the 1990s, which has worrying longer term implications for socio-economic security and the pursuit of occupation.

Economically just societies in the 21st century will require a shift away from labour to work, policies to ensure basic income security and new forms of representation security, and new democratic means of redistributing income and wealth so that all groups in society can benefit from the dynamics of the modern economic system.

Only if people have effective voice, adequate income security and access to the surplus generated by economic growth will they be able to make rational choices about their working lives.

The fundamental tenet that guided the ILO throughout the 20th century is the vital need for collective *voice regulation* of economic and social affairs. Without organizations, institutions and regulations that guarantee an effective voice for the vulnerable and insecure, will any scheme for transferring income to those sections of society be sustainable? In this era of cyberspace, the Internet and distance communication, there may appear to be an historical lull in the appreciation for collective voice and action. Yet without it, the forward march of distributive justice will not resume. And history teaches us that the march will go on.

Only if people have effective voice, adequate income security and access to the surplus generated by economic growth will they be able to make rational choices about their working lives. Without a guarantee of a modest income from society, as a human right set at a level according to the capacity of that society, ordinary people will be exposed to the insecurity that gives rise to intolerance, anomic behaviour and the chilling willingness to follow extremists peddling their portions of social poison. It is this huge lesson of the 20th century that makes it essential that world leaders give the extension of socio-economic security a very high priority in the early part of the 21st century. It is why the ILO is launching, in the 2000 - 2001 biennium, an InFocus Programme on Socio-Economic Security.

In the light of a shift from labour to work - decent work, as expressed in the Director General's report of June 1999 - the international community needs to think afresh about the so-called *right to work*. This should not mean the right or duty to labour. It can only be meaningful if there is a right to refuse despicable forms of onerous labour, jobs that 'deskill', and 'makework' schemes. It can only be mean-

ingful if policies and institutions are moving in the direction of enabling everybody in society to have a right to *occupation*, to have an opportunity to develop and realize their competencies, and to define themselves through their work with a sense of dignity and pride. This in turn means finding ways of enabling people in *all* walks of life to have more autonomy, more *self-control*, so that they can pursue their own sense of occupation. This may seem almost utopian at the end of the century of labouring man, but it beckons as a great theme of the coming century, which must be made the century of decent work, when basic security becomes the right of every man, woman and child.

*This article is based on *Global Labour Flexibility: Seeking Distributive Justice* (Basingstoke and New York, Macmillan and St. Martin's press. 1999). Just Published by Guy Standing, Director of the ILO's InFocus Programme on Socio-Economic Security.

KEY ISSUES FACING CONCILIATION IN SRI LANKA

R. P. Wimalasena*

Sri Lankan experience in conciliation.

The concept of conciliation is not something alien to Sri Lanka. The ancient administration council of the villages in Sri Lanka known as "Gamsabha" or village council, conciliate disputes between the parties. The settlement of disputes in this manner was known even in the reign of King Pandukabhaya.

"Pandukabhaya, the ruler of Lanka, established the village boundaries over the whole Island of Lanka. Ever since the existence of these villages the Gamsabhavas must have existed. The court was held both in the dissawanies (villages under the rule of the dissawas) and the upper districts, and consisted of an assembly of the principal men of the village. The court met at an ambalama (resting place), or under a shady tree, or in some other central place, upon the occurrence of any civil or criminal matter, and heard cases involving debts, petty thefts, quarrels, etc.' After an inquiry into the case they settled it amicably.¹

Under the Conciliation Board Act No. 10 of 1958 the Conciliation Boards were established. They primarily settled petty disputes at village level. This Act was in operation for about two decades.

One significant feature in this Act was the exclusion of legal representatives from Conciliation Boards. The Boards were to function without application of strict provisions of the Evidence Ordinance and thereby it made more room for conciliation between the parties of the village.

The Original Industrial Disputes (Conciliation) Ordinance No. 3 of 1931 was promulgated during the period of State Council with a view to provide for investigation and settlement of Industrial Disputes. Under this law the Conciliation Boards were established for the settlement of Industrial Disputes.

In the event of existence of an Industrial Dispute or apprehension of such dispute the Controller (whose designation transformed into Commissioner of Labour subsequently) could initiate steps for the

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1 *The Use of Conciliation for Dispute Settlement. The Sri Lanka experience - M. L. Marasinghe, The International and Comparative Law Quarterly. Vol. 29 Parts 2 & 3, April - July, 1980.*

parties to the dispute to meet together by themselves or by their representatives with a view to settle the dispute amicably.

In the alternative the Controller could refer the dispute to a Conciliation Board for settlement. "Whenever an industrial dispute exists or is apprehended, the Controller may, if he thinks fit, subject to any general or special direction which he may receive from the Governor.

- (a) Take steps for the purpose of enabling the parties to the dispute to meet together by themselves or their representatives under the presidency of a chairman mutually agreed upon or nominated by the Controller or by some other person or body with a view to the amicable settlement of the dispute;
- (b) Cause inquiry to be made whether a reference of the dispute to a Board is likely to lead to a settlement; and
- (c) Whether all parties consent or not, refer the dispute to a Board for it to endeavour to effect a settlement:

Provided that if there are existing in any industry arrangements for settlement by conciliation or arbitration of disputes in such industry, made in pursuance of an agreement between organizations of employers and organizations of workmen representative respectively of substantial proportions of the employers and workmen engaged in industry, the Controller shall not, unless with the consent of both parties to the dispute or unless and until there has been a failure to obtain a settlement by means of those arrangements, refer the matter for settlement or advice in accordance with the foregoing provisions of this section"²

Conciliation Board established under the Act consisted of Chairman and one or more other members as decided by the Controller, and was appointed strictly in equal numbers to represent the parties to the dispute. The Board so constituted could sit in public or private at its direction and hear the dispute.

When an industrial dispute is referred to the Board of Conciliation by the Controller, the Board was to make every endeavour to settle the dispute expeditiously. "The Board shall, in such manner as it thinks fit and without delay, investigate the dispute and all matters affecting the merits thereof and the right settlement thereof, and in so doing may do all such things as it thinks fit for the purpose of inducing parties to come to a fair and amicable settlement of the dispute".³ Upon reaching a settlement a memorandum of settlement was to be drawn up by the

2 Section 5 of the Industrial Dispute (Conciliation) Ordinance No. 3 of 1931

3 Section 6 of the Industrial Dispute (Conciliation) Ordinance No. 3 of 1931

Board and signed by the representatives of the parties who have been duly nominated or in the absence of such parties for which the representatives have not been nominated, by the parties themselves and the Board shall send a report of the settlement together with the memorandum to the controller. The Controller upon receipt of the memorandum of settlement shall forthwith publish the same by notice in the Gazette.

A settlement which has been accepted by both parties is binding on them until the representatives of one party duly nominated in writing signifies to the Controller the intention of that party to repudiate the settlement. The Controller may publish the notice of repudiation in the Gazette.

The Board for settlement by conciliation possesses the powers of District court to summon and question the witnesses on oath and could order the production of any document deemed to be necessary.

Conciliation under the Industrial Disputes Act No. 43 of 1950

The original Industrial Disputes Ordinance as stated above was framed with a view to settle the industrial disputes by conciliation. The operation of this law lasted for two decades. The provisions relating to settlement of disputes by conciliation alone could not solve the gamut of disputes and the spate of strikes that came into being since late 1930's up to independence in 1948. Therefore the legislature felt the need for a more comprehensive law for settlement of Industrial Disputes not only by means of conciliation but also by other means, such as a mechanism for compulsory arbitration. This background paved way for new Industrial Disputes Act promulgated as Act No. 43 of 1950.

The legislature under the new Act has attempted to remedy certain problems that had arisen in 1930's and 1940's. The long title of the Act reads the legislation to provide for prevention, investigation and settlement of Industrial Disputes. Part 2 and the segment (b) of part 3 of the Act deal with Industrial Disputes and settlement of such disputes by conciliation. The Commissioner upon notice given to him or otherwise if satisfied of existence of an industrial dispute or if he apprehends such dispute, may make such inquiries into the matters and take such other steps as he may think be necessary with a view to promoting a settlement of the dispute whether by means of referred to in the Act or otherwise.

Section 3 of the Industrial Disputes Act spells out the procedural steps that should be taken by the Commissioner in the settlement of industrial disputes. The Commissioner if satisfied of existence of such industrial dispute in any industry or where he apprehends such disputes he may,

- (a) If arrangements for the settlement of disputes in that industry have made in pursuance of any arrangement between organizations representatives respectively of employers and workmen engaged in that industry, cause the industrial disputes to be referred for settlement by means of such arrangements, or
- (b) Endeavour to settle the industrial dispute by conciliation, or
- (c) Refer the industrial dispute to an authorised officer for settlement by conciliation, or
- (d) If the parties to the industrial dispute or their representatives consent, refer that dispute, by an order in writing, for settlement by arbitration to an arbitrator nominated jointly by such parties or representatives, or in the absence of such nomination to an arbitrator or body of arbitrators appointed by the Commissioner or to a Labour Tribunal.

Some of the Collective Agreements entered into between the employer and the trade unions carry clauses indicating mode of settlement of industrial disputes. Some engage in bi-partite Consultation and settle the disputes without they being referred to the Commissioner of Labour. Thus certain employers and trade unions effectively settle their disputes as set out in the Collective Agreements fulfilling the provision of section 3(1) (a) of the Act No. 43 of 1950.

I quoted hereunder are some of the prominent clauses in the Collective Agreements which have been specially designed for settlement of disputes.

"31 Dispute Procedure-

- (a) In the first instance the Union shall submit any demand on behalf of its members to the Employer of such members and give the employer at least ten (10) working days time within which to reply. If in the Union's opinion the employer's reply is unsatisfactory, the Union and the Employer shall explore the possibility of reaching a settlement.

- (b) When the Union concludes that negotiations with the Employer have been abortive it shall ask the Department of Labour to intervene and give the Department not less than ten (10) working days to arrange conference and or discussion with a view to a settlement of the dispute. Negotiations under the aegis of the Department of Labour shall then proceed until the Department reports failure.
- (c) Subject to the provisions of clause 33 hereof all disputes between the Union and the Employer, or between the parties hereto shall be settled in accordance with the provisions of the industrial Disputes Act and the regulations made thereunder.
- (d) Any party to this Agreement shall not instigate, support or engage in any unfair labour practices during the currency of this Agreement."⁴

"18. Dispute Procedure - It is agreed by and between parties that any industrial dispute that may occur between the Employer and the Union and / or the employees during the pendency of this Agreement shall be dealt with in the manner set out hereunder :

- (i) The Branch Union or the Employees shall at the outset raise such dispute with the Employer and both parties shall endeavour to reach a satisfactory settlement of the dispute through consultation.
- (ii) In the event of there being no settlement after consultation between parties, the Union shall raise the dispute with the Employer's Federation of Ceylon of which the Employer is a member and the Union and the Federation shall through consultation with all parties attempt to reach a satisfactory settlement.
- (iii) Should there be no satisfactory outcome of the attempts at settlement by the Union and the Employers' Federation of Ceylon, the Union may seek the intervention of the Commissioner of Labour to settle the dispute in accordance with the provisions of the Industrial Disputes Act.⁵

⁴ *Collective Agreement entered into on 11-01-1996 between - Associated Battery Manufactures (Ceylon) Limited and the Commercial and Industrial Workers Union. Gazette 927, 13 of 14-06-1996*

⁵ *Collective Agreement entered into on 08-12-1995 between - Corts Tootal Lanka (Pvt) Ltd and Lanka Karmantha Welanda Sevaka Sangamaya, Gazette Extra Ordinary 14-06-1996.*

The above identical clause is found in clause 10 of the Collective Agreement entered into between Ceylon Biscuits Ltd. and Lanka Karmantha Ha Welanda Sevaka Sangamaya on 03-01-1996. (Gazette 14-06-1996)

Clause relating to Trade Union Action is found in certain Collective Agreements. Clause 35 of the Collective Agreement between Premium Export (Cey) Ltd. and Ceylon Workers Congress on 28 - 12 - 1995 and Clause 37 of the Collective Agreement entered into between Premium Export (Cey) Ltd., and Ceylon Workers Congress on 28-12-1995 and Clause 33 of the Collective Agreement entered into between Premium Exports (Cey) Ltd and United Tea, Rubber and Local Produce Workers Union on 22-12-1995 carry identical provision relating to Trade Union Action.

Paragraphs (b) and (c) of section 3(1) refer to procedural steps that should be taken by the Commissioner to settle industrial disputes by conciliation by himself or by an authorised officer appointed by the Commissioner. Paragraph (d) of section 3(1) refers to voluntary arbitration which is very much related to conciliation. The underlying principle of this provision is settlement of disputes mostly by conciliation subject to intervention of a 3rd party with mutual agreement between the parties to the dispute on selection of an arbitrator. This section is somewhat similar to section 3 of the Industrial Disputes Act No. 3 of 1931.

Procedural steps to be taken by the Commissioner and the Minister are spelt out in sections 4 and 12-15 of the Act, where the attempts taken by the Commissioner have failed to conciliate the dispute. In the event the Commissioner was unable to settle the dispute by conciliation he recommends to the Minister that dispute be referred to arbitration (Compulsory) in terms of section 4 of the Act.

The experiences show that the Department of Labour had practically conciliate industrial disputes much more than the number that are referred to Compulsory Arbitration.

"During the year 1996 there were 11,508 industrial disputes. The number of disputes in the previous year was 14,510 Discussions were held by the Department in order to settle these disputes by conciliation. The outcome of the inquiries is as follows⁶

	1995	1996	1997	1998(Jan - June)
Number of Disputes of which inquiries were held	14,510	11,508	12,106	6,116
Number of disputes settled at Discussions	14,084	11,054	-	-

6 Sri Lanka Labour Gazette, Volume 49, Department of Labour -

"(a) Voluntary Arbitration

During the year 1996, 4 disputes have been referred for settlement by voluntary arbitration. 6 disputes had been referred during the previous year.

(b) Compulsory Arbitration - 37 disputes have been referred for settlement by compulsory arbitration. 60 disputes had been referred during the previous year"⁷

The procedure in settlement of industrial disputes, the duties and powers of the Commissioner or the authorised officer in this regard are described in sections 11 - 15 of the Industrial Disputes Act. It is the duty of the Commissioner of Labour where he apprehends an industrial dispute or existence of such dispute to make such inquiries into the matter in dispute and to take such other steps as he may think necessary with a view to inducing the parties to come to a fair and amicable settlement of the dispute. The Commissioner can lay down the procedure relating to the settlement of disputes. (Section 2) The Commissioner is expected to conclude the investigations on conciliation within one month. However where necessary he can extend this period. This is not mandatory but directory.

The memorandum of settlement of dispute by conciliation is expected to be drawn by the Commissioner or the Authorised officer in terms of section 12 of the Act. The memorandum is to contain the terms of settlement and the memorandum is to be signed by the both parties to the dispute or their representatives.

The Commissioner is expected to gazette every memorandum of settlement relating to an industrial dispute which in his opinion is a major dispute. The memorandum so published will come in to force on the date of its publication or such date if any as specified in that behalf. The memorandum by the parties to the dispute or by their representatives or on the date if any as may be specified in that behalf in the memorandum.

The legal effect of settlement signed by the parties under section 12 (1) is given in section 14 of the Act. The agreement so entered into is binding on the parties, trade unions, employers and workmen referred to in the settlement; and the terms of the settlement will be implied terms in the contract of employment between the employer and the workmen bound by the settlement. It is presumed that contractual dealing has been taken place in the conciliation process notwithstanding the involvement of a third party, the Commissioner of Labour acting as a conciliator. Thus the contractual liability entails on the parties to the dispute who

7. *Administration Report of the Department of Labour.*

sign the settlement. This principle was affirmed by the Court of appeal in Sri Lanka in case 86/86 before Justices T.D.G. De Alwis and Dheeraratne. The facts of the case "The petitioner states that an inquiry was held at the Labour Office, Kegalle on a complaint made by one Piyasena that he being Mahout was not paid the amount due to him for feeding the elephant which belonged to him. The dispute has settled by conciliation on 13th May 1983 to pay Rs. 9000/= to Piyasena. The petitioner alleged that the settlement entered into was forced on him by the Labour Officer. There was no repudiation made in the prescribed form. A letter was sent to the petitioner on 8th December 1983 to pay the money in two weeks or legal action will be instituted. The petitioner by application sought the settlement entered into on 13th May 1983 quashed. On behalf of the petitioner it was submitted that there was no contract of employment between the petitioner and the 2nd respondent as master and servant. Moreover it was stated that there was no industrial dispute between which the Labour Department could legally have conciliated."

The court, in this case held, "at this stage we are not disposed to act on question of jurisdiction, because the whole basis of the award against the petitioner is one of settlement. When there was settlement between parties it must be presumed that the parties were aware of all matters related to the settlement, it is averred in the petition that the settlement on 13-05-1983 is not a voluntary settlement but a forced settlement. He could have come to court by way of a writ long before. He is guilty of laches". The judgement discerns two important elements that the Judiciary recognizes a settlement duly entered into. It also establishes the fact that a *writ of certiorari* shall not lie against a settlement arrived at by parties after knowing the full facts of the settlement. It also follows that procedure not followed by parties cannot seek redress. This is to say the procedure relating to repudiation under section 15 if not followed such party cannot seek redress through court.

Procedure of repudiation of settlement entered into under section 12(1) is detailed out in section 15 of the Act. The regulations made under the Industrial Disputes Act, by notice in the Gazette No.11,688 of 02-03-1959 regulation (3) states "every notice repudiation of collective agreement, settlement or award of an arbitrator or Labour Tribunal made under this Act, shall be substantially in form A set out on in the first schedule hereto".

A valid repudiation of award or settlement has to follow the procedure steps laid down in the statute and regulations. In **Thirunavukarusu V Siriwardena and others**, Justice Wanasundara

considered the effects of the repudiation of an award in terms of section 20 of the Act. The learned judge observed, "The question that has been posed is whether or not an award once it is repudiated has the effect, as it were of wiping the slate clean so that the award and its effects will disappear altogether as if they had never existed from the inception. I must confer that I find it difficult to accept this agreement both in principle and practice. The law no doubt allows a repudiation of the award at any time after the required minimum period. What then is the effect of such repudiation? In my view, such a repudiation can have only prospective application and cannot effect any right and obligations that have already accrued to the parties and have become terms and conditions of service" 1981 - ISLR 185.

The matter of repudiation of a award drawn the attention of five Bench of Judges in **C P Sarathy V State of Madras** in India. In this case of which the Chief Justice Sri, M. Patanjali Sastri presided - the court held that the Industrial Disputes Act, is a permanent Act and the respondent prosecuted for breach of an award while it was in force and that the fact the award subsequently expired cannot affect the liability to prosecution under this Act. This is reported in 1951-LL J, Page 174

The aforesaid case law convincingly concludes that the subsequent repudiation of the award cannot exculpate the offence already one party had committed.

The necessity for conciliation has become paramount under the Industrial Disputes Act depending on the nature of the dispute and the effect of such dispute to the country at large. The Department of Labour expedite the conciliation process.

Certain parties to the industrial disputes, mostly the employer at times have refused to be at the negotiating table to discuss the dispute with the Commissioner and the Workmen or Trade Unions. The Commissioner in such situations had to pursue the employer or the employee where ever necessary to participate in the industrial dispute conference. This practice has become so important that some element of compulsion for negotiation with a view to settlement of dispute by conciliation, has set in. This process has paved way for compulsory conciliation even though such norm is not recognised by the law. Parties to the disputes are pursued to the extent that they settle the dispute through conciliation without that been referred to arbitration. In the recent past this had happened in respect of certain disputes concerned with industries which are of essential natures or disputes which long awaited for conciliation.

Settlement of industrial disputes by Arbitration

Intention of the legislature when promulgating the Industrial Disputes Act. no 43 of 1950 was while creating an effective machinery for settlement of Industrial Disputes by conciliation to establish a strong mechanism to settle such disputes by arbitration. Commissioner of Labour was to play the key role in conciliation and for arbitration, Minister of Labour is empowered to refer such disputes for arbitration. Sub Section (1) of section 4 stipulates, if Minister is of opinion that an Industrial Dispute is minor dispute he refers it by an order in writing for settlement of such dispute by arbitration to an arbitrator appointed by the Minister or to an existing Labour Tribunal. This reference is commonly known as "Compulsory Arbitration" as Minister could refer it to arbitration notwithstanding the consent of the relevant parties.

Sub - section(2) of section 4 confers power of the Minister to refer any industrial dispute (means major or minor dispute) to an industrial court for settlement.

Section 4(1) gives powers to the Minister to form an opinion whether or not the existing industrial dispute is a minor dispute and refer the minor dispute to arbitration. In reality the Commissioner of Labour as per section 2 or section 3 has to decide the existence of an industrial dispute or apprehend such dispute and report to the Minister of Labour for reference of such dispute to an arbitrator. The law doesn't stipulate nor interprets the degree of the industrial dispute to determine whether such dispute is a minor or major. However experiences show that even a minor dispute where the work force involved is less; loss to the establishment or country at large financially or otherwise not so large at the initial stage; such dispute if not settled timely it can turn to a major dispute within a day or two or space of time. Therefore any dispute in the form of a strike before that being aggravated it is prudent to settle it either by conciliation by voluntary arbitration or by compulsory arbitration timely. Recent Gas strike (1997) and Electricity strike (1997) though originated at small scale subsequently they threatened basically all major sectors of the country. Hence artificial definition of dispute to be "Major" or "Minor" can lead to adverse repercussions.

Under part III of the Industrial Dispute Act. Sub - part (C) details out the procedure in settlement of industrial disputes by arbitration. The term arbitrator includes a Labour Tribunal. Arbitrator can be a single person (authority) or body of arbitrators. The industrial dispute referred

to arbitration is to be accompanied by a statement prepared by the Commissioner setting out each of the matters which to his (Commissioner's) knowledge is in dispute between the parties. This is practically adhered to by the Commissioner.

He frames the reference in such manner to read whether the alleged denial of right or privilege (not denial of any such right or privilege accorded under statute law) is justifiable and if not what relief could be granted to the affected worker or workers. Arbitrator or panel of arbitrations upon receipt of reference by the Minister is obliged to make all such inquiries into the dispute as he (or they) considers necessary, hear such evidence as may be tendered by the parties to the dispute and thereafter make such award as may appear to him (or them) **just and equitable**. In case a dispute is referred to a Labour Tribunal under section 4(1) such labour tribunal is obliged to give priority to proceedings for the settlement of that industrial dispute. However the number of industrial disputes referred to arbitration to Labour Tribunal is marginal. Unless, otherwise expertise is required for determination of matters on termination, practically cases are not referred to Labour Tribunals by the Minister.

The award of an arbitrator is to be transmitted to the Commissioner of Labour and he will forthwith cause the award to be published in the Gazette. (Section 18) And upon such publication it will come into force on the date of the award or on such date or period specified therein. In terms section 19 every award so made by an arbitrator for the time being in force for the purposes of the Industrial Disputes Act will be binding on the parties, Trade Union, Employers and Workmen referred to in this award, and the terms of the award will become the implied terms in the contract of employment between the employers and the workmen bound by the award.

Section 20 (2) (a) refers to revocation of an award made by an arbitrator by any party. "The award to which such notice relates shall cease to have effect upon the expiration of three months immediately succeeding the month in which the notice is so received by the Commissioner or upon the expiration of twelve months from the date on which the award came into force as provided in section 18(2) whichever is the later"

It is important to note that the underlying principle for settlement of industrial disputes by conciliation is "**fair and amicable settlement**" (Section 11(1)), whereas settlement of industrial dispute by arbitrations is on **just and equitable principles** where the arbitrator is vested with powers to make an award as it may appear to him just and equitable.

The arbitrator is not bound by the procedure of Arbitration Ordinance or the procedure relating to arbitration in the Civil Procedure Code (Section 21). Nor is he bound by the rules of Evidence Ordinance.

Clarifying Industrial arbitration with Commercial arbitration, Ludwig Teller in "Labour Disputes and Collective Bargaining" (Vol 1 page 536,) has emphasised-

"Industrial Arbitration may involve the extension of an existing agreement or the making of a new one or in general the creation of new obligations or modifications of old ones while Commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements." The arbitrator vested with wide powers can make awards in relation to the dispute on just and equitable basis binding on the parties, with new obligations modifying the terms of employment where necessary.

Upon an industrial dispute referred to arbitration the parties to the dispute i.e. workers and the employer have to maintain the *status quo* prevailed upon before the dispute.

The arbitrator assumes jurisdiction only upon reference made to him either under section 3(1) (d) or section 4(1). Generally the arbitrator nor the Industrial Court have inherent absolute jurisdiction - *Shell Co. Vs. Perera* - 70NLR - 108. The powers vested with the Commissioner and the Minister under both these sections are discretionary and in good faith they are to exercise these powers. Therefore no writ can be taken to compel either the Commissioner or the Minister to refer any matter for arbitration. Minister can if necessary review the position and refer the matter for arbitration. Reference - *Aislabey Estate Vs Weerasekara*, 77 NLR - 241.

The references made to arbitrator are to comply with the law and any reference which is bad in law will enable any party to raise objections to the jurisdiction on the grounds that what has been referred to arbitration was not an industrial dispute. Also a party will have recourse to obtain writs of prohibition or *certiorari*⁸. In *Nadarajah Ltd. Vs Krishnadasan*, 78 NLR 255, where question on subsequent revocation of the order made by the Minister to arbitrator, the court held.

- (1) Where the Minister has duly made an order under section 4(1) of the Industrial Disputes Act referring an industrial dispute for settlement by arbitration he has no power to revoke the said order of reference.
- (2) The role of construction embodied in section 18 of the Interpretation Ordinance was not intended to apply to an order of reference made under Section 4 of the Industrial Disputes Act and cannot be invoked to revoke or rescind the order of reference made in terms of the Act" In this case the earlier decision in *Lever Brothers Vs Krishnadasan* which held that the Minister could revoke an order made under section 4(1) was not followed.

⁸ Reference - *State Bank of India Vs. Sundaralingam* 73 NLR 521, *Estate and Agency Company Ltd. Vs Perera* 78 NLR - 289.

Arbitral powers and functions of Labour Tribunals

Labour Tribunal acquires jurisdiction for settlement of industrial disputes by arbitration upon references made by the Commissioner or the Minister under sections 3(1) (d) or 4(1) respectively. On such reference, and in terms of section 17(1), it is mandatory that such tribunal has to give priority to the proceedings.

The Labour Tribunal, the machinery that established to grant relief to the workers in relation to industrial disputes by way of an amendment to the Industrial Dispute Act; (Amendment no. 62 of 1957) basically has a dual role to play. The tribunal has to act as an arbitrator in terms of section 17 of the Act while it performs a specific role under section 31 B on matters relating to termination and gratuities.

The powers of the Commissioner or the Minister is not fettered in making references to a Labour Tribunal and on such reference the tribunal is obliged to give priority in its proceedings. This reference is specifically dealt with under sub-part (c) on "Settlement by Arbitration" of part III of the Act. Part IV A specifically dealing with the Labour Tribunals spells out powers of Labour Tribunal under section 31 B. Section 31B (2) stipulates - Labour Tribunal to -

- a) Suspend the proceedings before the tribunal until conclusion of the discussions if discussions relating to the dispute are held between the workers and employer;
- b) Matter referred to the Tribunal if forms part of an industrial dispute referred by the Minister under section 4, dismiss the application. In terms of section (3) of section 31B the Labour Tribunal is to suspend its proceedings if-
 - (a) Inquiry under the Industrial Dispute Act. pending is similar or identical to that of matter under application, or
 - (b) Any matter the facts affecting which are in the opinion of the tribunal, facts affecting any proceedings under any other law.

Section 31 B(5) imposes a restriction that once an application is entertained by a Labour Tribunal under 31 B(1), and proceedings thereon are taken and concluded, the workmen to whom the application relates are not entitled to any other legal remedy in respect of the matter to which that application relates, and where he has first resorted to any other legal

remedy that person thereafter is not entitled to remedy under sub section.

In *Wimalasena Vs. Navaratne and two others* 2 SLR 10 the Minister's power to refer to arbitration an industrial dispute when an inquiry on such dispute was pending, in the Labour Tribunal was discussed. On behalf of the petitioner it was argued that a pending dispute could not be referred to an arbitrator and the executive (=Minister) could not be permitted to interfere in a pending proceedings of a judicial nature. The Court, in this case held that the Minister had the power to refer a dispute for settlement by arbitration under 4(1) of the Industrial Disputes Act even though an inquiry was pending in the Labour Tribunal regarding the same dispute. The reference to arbitration is a lawful exercise of the powers vested in the Minister by statute and does not amount to an interference with the pending proceeding of a judicial nature.

Issues relating to Arbitration

Certain issues relating to voluntary or compulsory arbitration will lead to prolonging industrial disputes. Basically they can be identified as

- I Issues relating to statutory provisions, and
- II Issues relating non statutory provisions

Issues relating to statutory provisions would include-

- a) Industrial disputes which can neither fall under the definition of industrial disputes nor can they treat as industrial disputes by construction.
- b) Disputes which cannot interpret under the definition but blended with violation of other statutory provisions.
- c) Disputes account for political or mass scale peoples' intervention which cannot fall within the legal framework.
- d) Procedural issues - They account for delays in references, determination of awards, prosecution in the event of non compliance of the award and enforcement of the award. The long procedure account for delayed relief to the workers.

Non Statutory issues would encompass-

- a) Inadequacy of resources to enhance the machinery of arbitration.
- b) Interference or Interventions to order of references to arbitrations

- c) Delays in clearance by government organizations for references.
- d) Trade Unions or Workers reluctance to refer industrial disputes for arbitration.
- e) Absence of limiting the time period during which a matter could be referred to arbitrations etc.

The policy of the state is to strengthen the arbitration machinery to settle industrial disputes where settlements by conciliation fails. The government is mindful of the delays and remedial measures that are to be adopted to grant relief to the people in keeping with justice. Certain obstructions and delays have become unavoidable in this process.

Training on dispute settlement by conciliation.

Sri Lanka has experienced settlement of industrial disputes by conciliation since implementation of the original Industrial Disputes Ordinance No. 3 of 1931. This mechanism was restructured under the Industrial Dispute Act No 43 of 1950. This Act was in operation for approximately half a century. However the fact remains that although we have practiced conciliation and achieved results still there is a long way to go to achieve the expected goals. Not only the Workers, Trade Unions and other Worker representative organisations but also the employer the managerial staff too have got to be educated and experienced in conciliation. "Conciliation Culture" is to be understood and developed and that should pave way for the achievement of results under conciliation.

A well planned national training programme is to be developed with state patronage to develop conciliation culture. This should be based on the pillars of tripartism. The Department of Labour and other parallel Governmental and non Governmental organizations take the lead. Training of state officials is paramount to engage in conciliation process and develop the mechanism with the partnership of the worker and the employer.

Current issues inhibiting effective training programme for conciliation could be identified as-

- Non availability of strong trade unions
- Inadequacy of resources on the part of the employers,
- Non availability of resources and a structured programme on the part of the government.
- Lack of conviction and dedication by workers and employers.

Recommendations to develop the policy to improve the system of conciliation.

One has to examine the problems presently faced by the Department of Labour and the parties concerned for the purpose of effective settlement of industrial disputes by conciliation.

- I. Conciliation in any form is based on conviction of the parties to the dispute to settle the dispute amicably. Equal strength equal competence, and equal conviction to settle the dispute are paramount in conciliation. A strong base can be built only through strong pillars that facilitate conciliation i.e. the employer, employees (Trade Unions) and the Department of Labour. Recognition of Trade Unions or employee groups, recognition of employer, confidence among the parties are very vital for effective conciliation.
- II. Environment for bi-partite or where necessary tri-partite consultation should take place to settle the dispute. Consultation acts as the basis for negotiation along which the parties can arrive at a settlement. Peaceful or friendly consultation thus immensely facilitate settlement of the dispute by conciliation. The present Industrial Disputes Act No 43 of 1950 in particular does not provide for mandatory recognition of Trade Unions or Employer for the purpose of settlement of disputes. Therefore certain parties take undue advantage of the lacuna in the law. The resulting effect is that the role of the intermediary (= conciliator) i.e. the Commissioner of Labour or the authorised officer had become difficult. He is to enforce some compulsion in conciliation and persuade for negotiation to fulfil his task. Any imbalance of the scale would lead to either compulsory conciliation or failure in conciliation which would end up in the dispute unsettled. Such situation can be remedied by way of bringing in adequate provisions to the law and also educating the parties of the validity of effective conciliatory mechanism.
- III. Other extraneous factors also contribute largely to successful conciliation. Strong Trade Unions at National and Enterprise level can built up a strong bargaining force for the workers which can bargain on equal basis with the employer.

Problems within unions, multiplicity of unions or non existence of unions at the enterprise level would negate effective conciliation. Therefore building up of strong trade unions at workplace would strengthen the dispute settlement mechanism.

Outside interference in the affairs of the establishment especially in the event of strike or unrest would make efforts in settlement difficult or futile. The remedy would be, building up of Trade Unions free from undue influence or unwarranted elements politically or otherwise which instigate the work force to unfair labour practices in order to achieve their undesirable or undemocratic objects.

IV. State policy, economic liberalization policy, privatization policy in particular etc. also would create industrial disputes perhaps which cannot be settled in terms of the Industrial Disputes Act. State intervention to settle this category of disputes has now become essential although such intervention in the past was minimal or unseen.

V. Constraints in the state machinery i.e. Department of Labour, also account for the slow progress in conciliation. Inadequacy of staff, inadequacy of supporting facilities, such as transport, adequate remuneration to officers, ill office accommodation, communication etc. account for low progress in conciliation. The state has to strengthen these facilities of the Department adequately to provide for an effective conciliation machinery that endeavours to achieve industrial peace.

VI. Procedural delays in conciliation are to be remedied by means of amendments to the law and also by re-adjustment of administrative procedure in conciliation by the Department of Labour.

VII. Training of conciliators at all levels, training of employers and employee groups and trade unions are inevitable to make the conciliatory machinery more effective. The training component which is highly inadequate is to be expanded at all levels. This is difficult but yet it is expected to carry out with state assistance and the assistance of the Trade Unions and also by other means. A well planned broad based training scheme is desirable to achieve the goals.

The different facets of remedies discussed above require a structured national programme of action to re-vitalise the conciliatory machinery now prevailing in Sri Lanka in order to render a speedy and effective conciliation of industrial disputes which is the base for industrial peace in the country.

EMPLOYED POPULATION CLASSIFIED BY INDUSTRY (MAJOR DIVISION) AND SECTOR.

Industry (Major division)	Number (Thousand)			Percentage		
	Total	Public	Private	Total	Public	Private
Total employed	5517.2	783.3	4734.0	100	14.2	85.8
Agriculture, hunting, forestry and fishing	2077.9	45.9	2032.0	37.7	0.8	36.8
Mining and quarrying	86.1	0.9	85.1	1.6	0.0	1.5
Manufacturing	837.7	22.6	815.1	15.2	0.4	14.8
Electricity, gas and water	27.9	15.4	12.5	0.5	0.3	0.2
Construction	284.6	9.1	275.5	5.2	0.2	5.0
Wholesale and retail trade and restaurants and hotels	604.9	18.7	586.1	11.0	0.3	10.6
Transport, storage and communication	276.1	54.2	221.9	5.0	1.0	4.0
Financing, insurance, real estate and business	104.6	36.7	97.9	1.9	0.0	0.0
Community, social and personal services	975.2	579.7	395.5	17.7	0.0	0.0
Activities not adequately defined	242.2	-	242.2	4.4	-	4.4

Sri Lanka Labour Force Survey 1996 (Third Quarter)

Source - Department of Census and Statistics

EMPLOYED POPULATION CLASSIFIED BY OCCUPATION (MAJOR GROUPS) AND SEX.

Occupation (Major Groups)	Number (Thousands)			Percentage		
	Total	Male	Female	Total	Male	Female
Total employed	5517.2	3880.0	1637.3	100.0	70.3	29.7
Senior Officials and Managers	65.5	55.9	9.5	1.2	1.0	0.2
Professionals	32.2	1431	179.1	5.8	2.6	3.2
Technicians and Associate Professionals	203.7	158.5	45.2	3.7	2.9	0.8
Clerks	251.0	141.7	109.3	4.5	2.6	2.0
Sales and Service workers	572.5	460.6	111.9	10.4	8.3	2.0
Skilled Agricultural and Fishery workers	1265.5	885.8	379.7	22.9	16.1	6.9
Craft and Related workers	911.8	603.3	308.5	16.5	10.9	5.6
Plant and Machine Operators and Assembler	314.9	282.3	32.6	5.7	5.1	0.6
Elementary Occupations	1515.4	1066.2	449.2	27.5	19.3	8.1
Unidentified	94.7	82.5	12.2	1.7	1.5	0.2

Sri Lanka Labour Force Survey 1996 (Third Quarter)

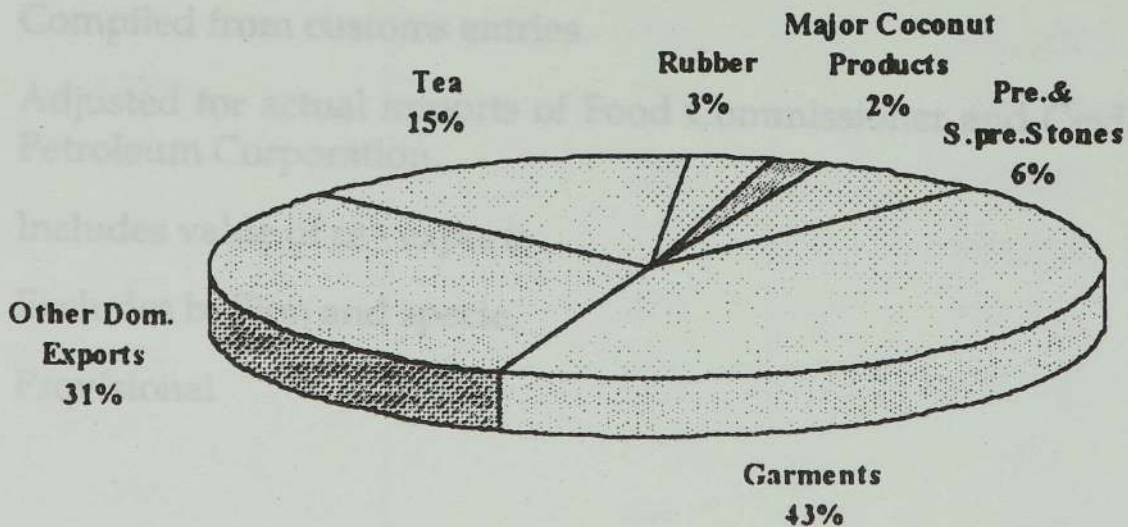
Source - Department of Census and Statistics

COMPOSITION OF EXPORTS (Rs. Mn)

Commodity	1992	1993	1994	1995	1996(1)
Tea(2)	14,893	19,911	20,964	24,638	34,067
Rubber(2)	2,960	3,086	3,582	5,713	5,753
Major Coconut products	2,829	2,029	2,696	3,750	4,692
a) Copra	188	167	199	292	327
b) Coconut Oil	105	116	188	369	143
c) Desiccated Coconut	2,372	1,585	2,088	2,859	3,999
d) Fresh Nuts	164	181	221	230	223
Garments	49,176	62,348	71,156	88,140	97,768
Precious and Semi Precious Stones	7,170	10,334	11,270	12,345	13,442
Other Domestic Exports	30,346	39,578	48,121	59,694	69,940
Total Domestic Exports	107,374	137,286	157,789	194,280	225,662
Re-Exports	135	708	870	989	1,294
Total	107,509	137,994	158,659	195,258	226,956

- 1) Provisional.
- 2) Adjusted.

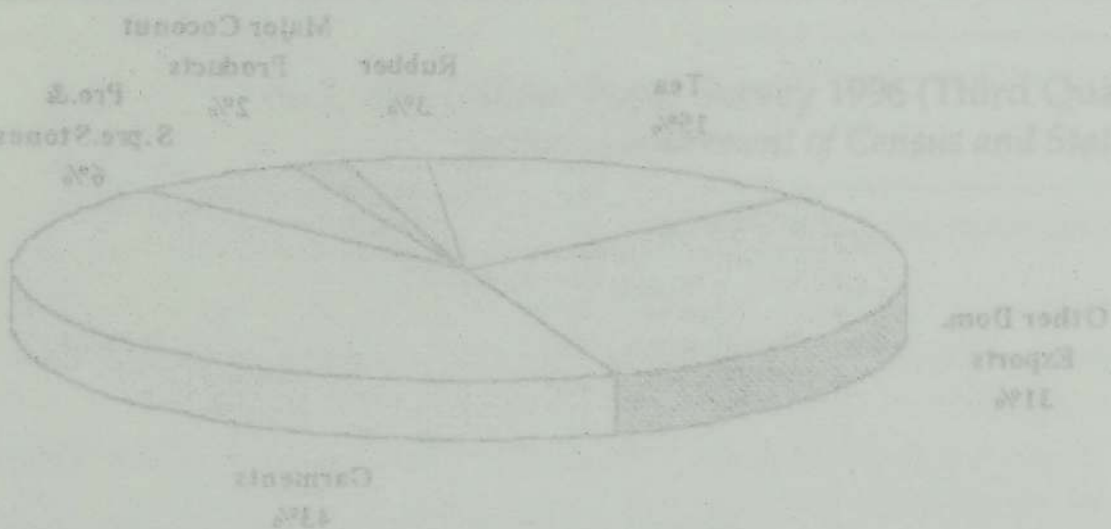
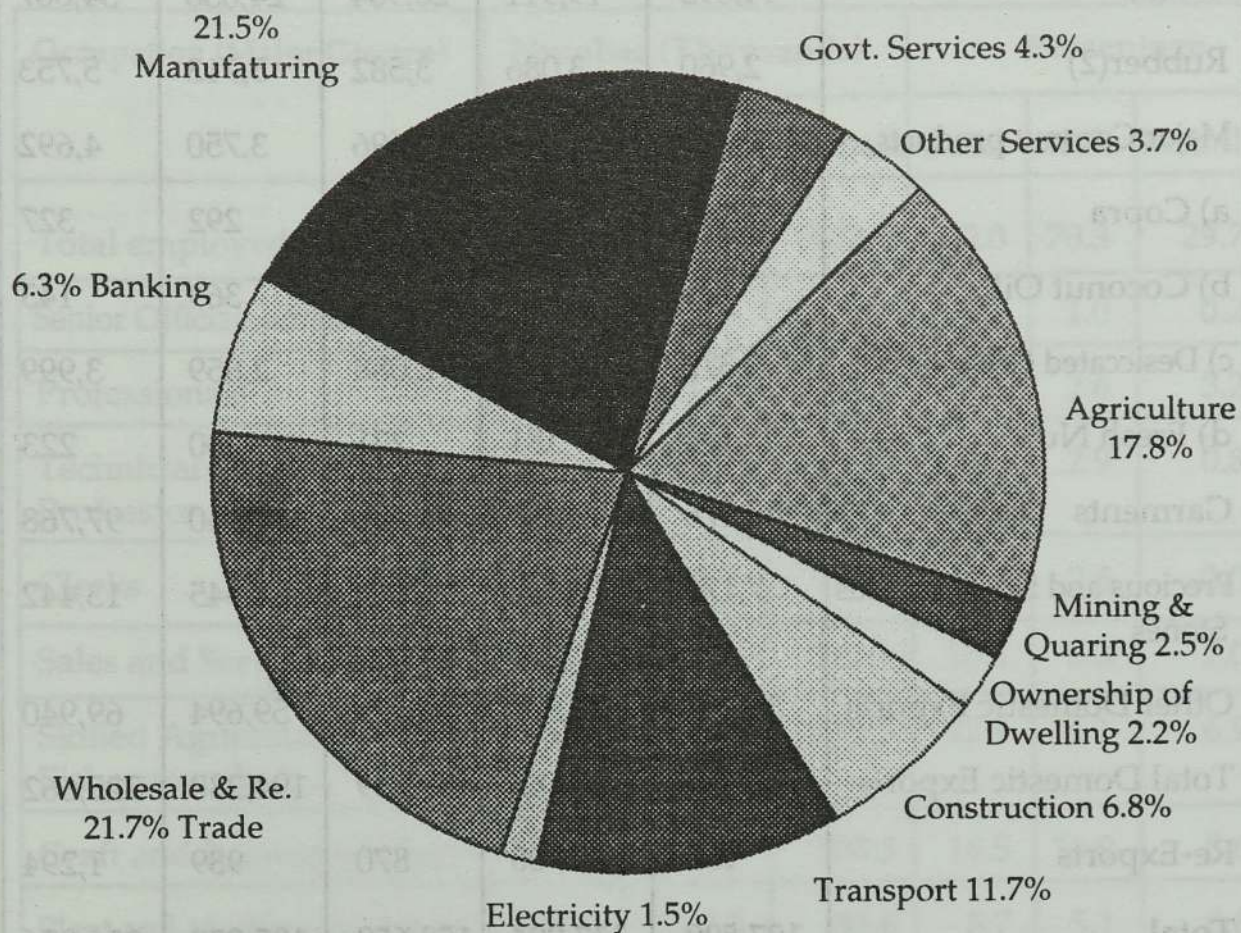
COMPOSITION (VALUE) OF EXPORTS - 1996



Source - Department of Customs and Central Bank of Sri Lanka.

Annexure 4

COMPOSITION OF GROSS DOMESTIC PRODUCT AT CONSTANT (1982) PRICES - 1997



Source - Department of Customs and Central Bank of Sri Lanka.

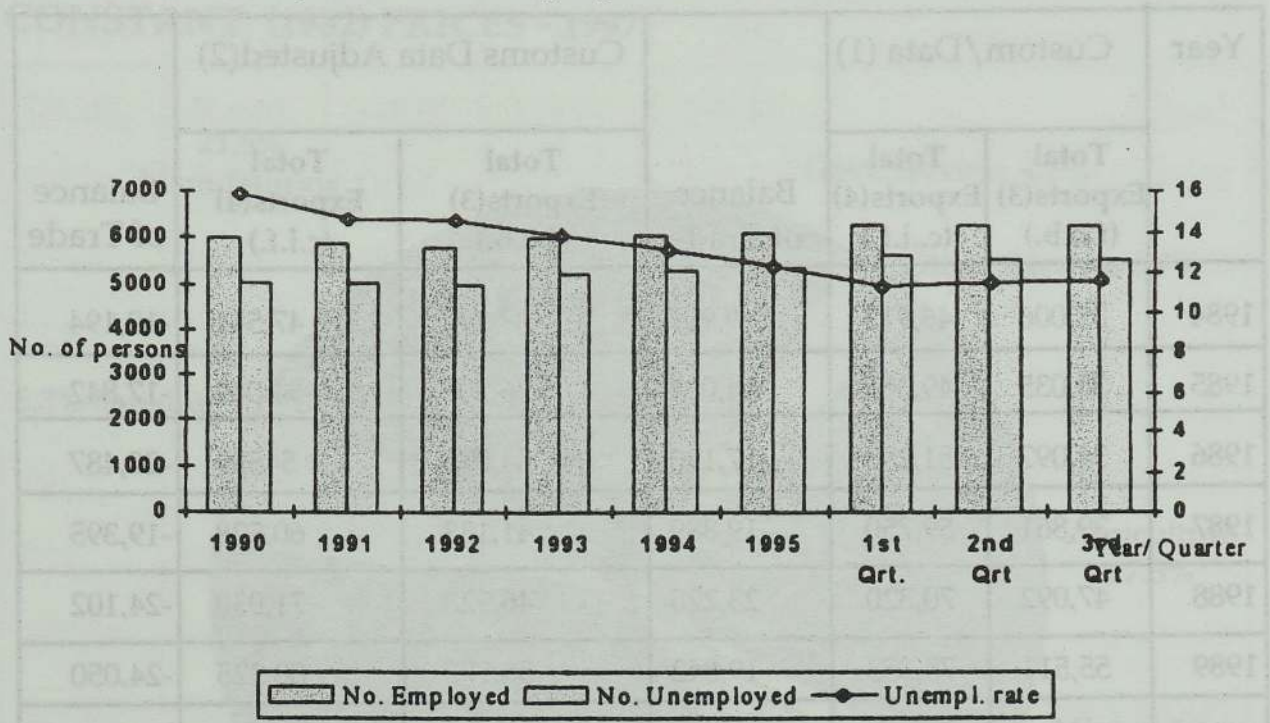
BALANCE OF TRADE (Rs. Mn)

Year	Custom/Data (1)		Balance of Trade	Customs Data Adjusted(2)		Balance of Trade
	Total Exports(3) (f.o.b.)	Total Exports(4) (c.i.f.)		Total Exports(3) (f.o.b.)	Total Exports(4) (c.i.f.)	
1984	37,006	46,913	-9,907	37,347	47,541	-10,194
1985	35,035	49,069	-14,034	36,207	54,049	-17,842
1986	34,092	51,282	-17,190	34,072	54,559	-20,487
1987	39,861	59,750	-19,889	41,133	60,528	-19,395
1988	47,092	70,320	-23,228	46,928	71,030	-24,102
1989	55,511	75,353	-19,842	56,175	80,225	-24,050
1990	76,624	105,559	-28,935	76,624	107,729	-31,105
1991	82,225	127,831	-45,606	82,225	126,643	-44,418
1992	107,509	149,780	-42,271	107,855	153,555	-45,700
1993	137,994	181,381	-43,387	137,175	193,550	-55,375
1994	158,659	221,527	-62,868	158,554	235,576	-77,022
1995	195,258	244,324	-49,066	195,092	272,200	-77,108
1996(5)	226,956	227,870	-50,851	226,801	299,424	-72,623

Source - Department of Customs and Central Bank of Sri Lanka.

- (1) Compiled from customs entries.
- (2) Adjusted for actual imports of Food Commissioner and Ceylon Petroleum Corporation.
- (3) Includes value of re - exports
- (4) Excludes bullion and specie.
- (5) Provisional

Labour Force, Number Employed and Rate of Unemployment



Source - Department of Census and Statistics

TRADE UNIONS AND TRADE UNION MEMBERSHIP (1975-1994)

Year	Trade Unions which furnished General Statement in respect of the Year ended 31st March	
	Number of Unions	Membership
1975	482	1,266,271
1976	535	1,066,429
1977	602	1,339,902
1978	485	967,795
1979	675	1,440,720
1980	456	1,337,664
1981	542	1,668,230
1982	364	1,610,564
1983	393	1,836,697
1984	313	1,806,173
1985	361	1,565,394
1986	341	1,479,128
1987	315	1,677,231
1988	198	1,496,001
1989	221	1,496,001
1990	254	904,582
1991	279	1,136,440
1992	228	884,222
1993	466	987,883
1994	645	1,613,406
1995	n.a.	n.a.
1996	n.a.	n.a.
1997	n.a.	n.a.

Source - Trade Union Division, Department of Labour

**NUMBER OF TRADE UNIONS REGISTERED/ CANCELLED/
DISSOLVED/ FUNCTIONING (1975 - 1997)**

Year	Number of Trade Unions		
	Registered During the year	Cancelled/ Dissolved during the year	Functioning at and end of the year
1975	147	171	1568
1976	195	185	1578
1977	175	117	1636
1978	102	288	1453
1979	105	223	1309
1980	95	191	1273
1981	73	147	1139
1982	73	63	1149
1983	66	108	1107
1984	63	102	1068
1985	76	187	957
1986	07	79	948
1987	77	120	903
1988	100	54	949
1989	82	27	1004
1990	83	54	1033
1991	87	143	977
1992	149	197	929
1993	153	30	1052
1994	214	59	1207
1995	214	88	1333
1996	120	39	1414
1997	137	94	1457

Source - Trade Union Division, Department of Labour.

STRIKES IN PRIVATE SECTOR INDUSTRIES, 1970-1997

Year	Plantation			Establishment		
	No. of strikes	Workers involved	No. of man days lost	No. of strikes	Workers involved	No of man days lost
1970	254	125530	1030310	86	23488	281256
1971	125	50847	273531	32	39955	239760
1972	165	52832	273717	22	2025	25152
1973	215	89393	360217	23	4263	30521
1974	75	25381	79108	16	1692	26816
1975	66	19981	66485	3	1916	17750
1976	125	50507	148968	32	6415	20621
1977	93	38018	178738	33	5645	52659
1978	126	60441	268759	22	6276	15459
1979	163	50969	238247	18	5075	55685
1980	202	75130	301671	25	3425	33544
1981	290	123214	432925	11	946	7916
1982	188	74720	323440	29	8243	65232

(Continued from Annexure 7-c)

Year	Plantation			Establishment		
	No. of strikes	Workers involved	No. of man days lost	No. of strikes	Workers involved	No of man days lost
1983	136	49863	204226	11	3277	14516
1984	213	79025	383640	17	8297	123642
1985	132	50840	160373	13	3941	9266
1986	78	36612	63958	6	721	672
1987	64	20188	42345	4	2460	2420
1988	54	14843	24300	10	5363	12202
1989	45	15072	25619	7	22771	813269
1990	308	63751	183612	8	2186	10054
1991	211	56856	99237	19	6906	9841
1992	26	47712	244703	17	2301	26688
1993	20	4559	8007	23	3321	13389
1994	121	36427	77609	103	46435	199196
1995	94	29518	82484	89	33855	211035
1996	137	50952	220131	87	24215	188736
1997	78	27383	100406	78	30249	225071

Source : Trade Union Division, Department of Labour

Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 as amended. In Retrospect and Prospects

S.H. Siripala*

Part I

Of the many protective Labour Laws operative in Sri Lanka, the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 (TEWA) as amended stand as the singular most piece of legislation which the employers, their trade unions, trade chambers and even the international organisations have agitated, either for its amendment or the total repeal, from about the late seventies, on the grounds, that the conditions under which the Act came to be enacted way back in 1971 and continuing after mid 1977, have rendered invalid under a changed environment of an open economic system¹.

The purpose of this paper is to make a balanced assessment of the value rendered by the TEWA, during the near three decades of its operation and see whether its continuance in the statute book could be validated under changed economic conditions and social policy as we step into the next millennium.

The TEWA, was enacted by the United Left Front (ULF) government, swept into power with a two - thirds majority in Parliament in May, 1970. The ULF, although it vouched for a closed inward looking economy, policy wise its manifesto did not bargain, for the enactment of such extra high labour protective legislation such as the TEWA. But was soon forced to, as a forerunner to the TEWA, declare Regulations under the Public Security Ordinance on 6th July, 1971 in Government Gazette No. 14965/12, with a view to counter the intentional embarrassment to the newly elected government, by the oppositionist employer threats of retrenchment, lay-off, and termination of employment of workmen, on grounds of lack of raw material and business losses which left the affected employees in the cold for relief under the narrow provisions of the Industrial Disputes Act No. 43 of 1950 (IDA) as amended. The Regulations were intended to control the right of the employer in 'Scheduled' employments in the private sector to terminate the services of workmen on grounds other than as a punishment imposed by way of disciplinary action. The TEWA,

* Former Advisor, Ministry of Labour, Sri Lanka

which absorbed much of the Regulations was legitimized on 28.10.1971, with retroactive effect from 21.05.1971 the date on which Emergency Regulations came into effect. In retrospect the whole exercise viewed in proper perspective may well be that the employers, by their own actions prompted and promoted the government to enact a high protective law very much to their unexpected surprise. Since its enactment, the law remained operative for nearly three decades, earning the employee admiration and the employer wrath, generating a polarized situation of employees wanting its retention and the employers its repeal. It is therefore, pertinent to examine the main provisions of the TEWA with a view to ascertaining the extent to which such provisions could be retained, amended or repealed in the light of social and economic policy changes within an open economic system.

Scheduled employments:

The legislature in its wisdom contained the operation of the law within "Scheduled employment", a concept purposely incorporated to confine the enforcement within the private sector, through a system of controls of termination of employment of workmen. This concept sought to exclude the government as employer and to include, the private sector as employer. In respect of the latter the Law had to cover a good area of the private sector. Accordingly the law defined "Scheduled employment" to mean employment in -

- (a) any trade, in respect of which a notification has been published in Gazette under Sub Section (2) of Section 6 of the Wages Boards Ordinance or an Order made under Sub Section (1) of that Section and shall include the work of any worker referred to therein, but excluded from the provisions of that order;
- (b) every shop and every office within the meaning of the Shop and Office Employees (Regulation of Employment and Remuneration) Act; or
- (c) every factory within the meaning of the Factories Ordinance.

This legislative device, very pragmatic as it was, practically covered the entirety of the private sector employees, in as much as in 39 Wages Boards, shops and offices and of factories scattered in the Island. Court interventions from time to time have ruled the inclusion of certain employees as being in scheduled employments. Thus in *Drieburg vs Kotmale Estates Ltd.*, in S.C 336/72 ruled that the Superintendent and

the Assistant Superintendent and are in Scheduled employment. Likewise in *Ceylon Clutch and Brake Linings (pvt) Ltd. vs De Mel* in S.C in 184/75 ruled that the Managing Director of a Company is in Scheduled employment and in *Free Lanka Trading Co. vs De Mel*, the S.C in 721/75 ruled that travelling sales representatives are workmen in scheduled employment. Thus the growing body of case law has heavily inclined to expand the scope of the coverage of the TEWA.

Exemption from the operation of the Act:

Although the legislature intended to afford the widest coverage possible, policy wise certain obvious reservations had to be made firstly to exclude government interests for obvious reasons and also to exclude certain workplaces, considered very small entailing enforcement difficulties. Thus Section 3(1) of the TEWA made it specific that it shall not apply -

- (a) to an employer by whom less than fifteen workmen on an average have been employed during the period of six months preceding the month in which the employer seeks to terminate the employment of a workmen; or
- (b) to the termination of employment of any workman who has been employed by an employer for a period of less than one year; or
- (c) to the termination of employment of any workman who has been employed by an employer where such termination was effected by way of retirement in accordance with the provisions of -
 - (i) any collective agreement in force at the time of such retirement or
 - (ii) any contract of employment wherein the age of retirement of such workman is expressly stipulated; or
- (d) to the Government in its capacity as employer; or
- (e) to the Government in its capacity as an employer of the Local Government Service; or
- (f) to any local authority in its capacity as an employer; or

- (g) to any Cooperative Society in its capacity as an employer; or
- (h) to any public corporation in its capacity as an employer; or
- (i) to the termination of employment of any workman who has been employed by an employer in contravention of the provision of any Law for the time being in force.

It would be seen that with experience the Law was amended to make the "Scheduled employments" more specific leaving no ambiguity. Thus in (b) the 'year' of employment which gave vexed issues of determination was defined to mean as a period of employment of not less than 180 days in a continuous period of twelve months commencing from the date of employment and termination. The amending Law, Act No. 51 of 1988, facilitated the calculation of 180 days of employment by the inclusion of the notional days viz -

- (j) every day of absence on any grounds approved by the employer.
- (ii) every day of absence due to any injury to the workman caused by an accident arising out of, and in the cause of employment.
- (iii) every day of absence due to anthrax or any occupational disease specified in Schedule (iii) of the Workmen's Compensation Ordinance.
- (iv) every day on which the employer fails to provide work for the workman;
- (v) every day of absence due to a lock out or strike that is not illegal, if such days do not in the aggregate exceed 30 days, and
- (vi) every holiday or day of absence from work to which a workman is entitled, by or under the provisions of any written law.

Termination of employment:

Subject to the exception aforementioned, the TEWA made specific provisions to secure employment of workers in Scheduled employments by, an extreme restriction imposed on the employers by Sec. 2(1), read as follows:

2 (1) No employer shall terminate the Scheduled employment of any workman without;

- (a) the prior consent in writing of the workman; or
- (b) the prior written approval of the Commissioner of Labour

It would appear that the legislature very conveniently plugged both ends of the tunnel by the legal requirement of the workman's prior written consent for termination, lay off, retrenchment and closure of workplace which under normal conditions were very hard to come by and the requirement of the prior written approval of the Commissioner of Labour, which would entail time and money. Notwithstanding the severely restricted provisions for termination of employment in Scheduled employments, the legislature by Sec. 2(4), provided a vent to the employers to terminate the workman in a Scheduled employments on disciplinary grounds and the section reads as follows:

Sec. 2(4) for the purposes of this Act, the Scheduled employment of any workman shall be deemed to be terminated by his employer for any reason whatsoever, otherwise than by reason of a punishment imposed by way of disciplinary action, the services of such workman in such employment are terminated by his employer and such termination shall be deemed to include -

- (a) non - employment of the workman in such employment by his employer, or
- (b) non - employment of the workman in such employment in consequence of the closure by his employer of any trade, industry or business.

In the initial stages of the enforcement of the law, employers sensing the facility of 'disciplinary action' tried to cash in but the Commissioner adopted a procedure to go into full inquiry to satisfy that termination was occasioned by 'disciplinary action'. In *Winter Quilts (Pvt) Ltd vs the Commissioner of Labour*, the C.A. held that protest against working conditions cannot be treated as acts of insubordination. In *St. Anthony's Hardware Stores Ltd. vs Ranjit Kumar* it was held that incompetence was not a form of misconduct³. Furthermore, the amending Act No. 51 of 1988 mandated the employer to give reasons to the employee within two working days, when the services were terminated on disciplinary grounds. By the amending Law No. 4 of 1976, termination was given a wider meaning by the inclusion of non -

employment whether temporarily or permanently, and non - employment of workman sequel to a closure of any trade industry or business. Thus it is clear that the subsequent Judicial decisions together with the amendments to the law, helped the workers in good measure the employment of an expanded scope of security of employment.

Powers and obligations of the Commissioner of Labour:

Coupled with the expanded security of employment we are faced with the vast depository of the power base in regard to non - disciplinary termination of employment; stemming from Sec. (2) of the Act which read as follows:

Sec. 2(1) No. employer shall terminate the Scheduled employment of any workman without -

- (a) the prior consent in writing of the workman; or
- (b) the prior written approval of the Commissioner.

With regard to (a), the provision is very clear and straight forward requiring the prior written consent of the workman whose termination is sought. But the fact remains, whether under all known circumstances, a workman whose employment is endangered could be lured into such prior written consent. In regard to (b) the prior written approval of the Commissioner of Labour entails the an exercise of an inquiry into the employer's application for termination in accordance with the principles of Natural Justice. On the findings of the inquiry, the Commissioner in his absolute discretion is empowered either to grant or refuse such approval. Thus it would be seen that both ends of the barrel are being sealed by the legislature throwing the employer into a hopeless situation of no escape. The Commissioner's position has been further sharpened by vesting in him the absolute discretion of deciding the terms and conditions under such approval may be granted and such terms and condition could include, quantum of gratuity and compensation. The Commissioner is obliged to conclude all inquiries within three months of the application and such decision shall not be questioned in any Court by way of writ or otherwise.

Section 6, is a parallel provision in the Act designed for a workman to seek relief, if his services have been terminated in contravention of the provisions of the Act. This relief flows from the legal provision that, "where an employer terminates the Scheduled employment, of a workman in contravention of the provisions of the

Act; such termination shall be illegal null and void, and accordingly shall have no effect whatsoever, Sec. (6).

The provision allows a terminated workman in Scheduled employment to make complaint to the Commissioner of Labour, who is obliged to inquire and on the merits of a proven illegal termination, the Commissioner shall order that the workman be continued in employment with all back wages and other legal entitlements. The Supreme Court, in several instances had upheld the Commissioners, power to reinstate workmen terminated illegally.

Under the TEWA, the Commissioner is required to deal with two types of inquiries namely, under Sec. 2, with regard two applications by employers and under Sec. 6, in respect of complaints by workman of termination of services. The holding of inquiries naturally entail the deployment of officers, met conveniently by the Commissioner's authority to delegate power to "any officer" of the Labour Department, in terms of Sec. 11(2). Accordingly, in July 1971, a unit styled this "Termination of Employment Unit" consisting of a select band of officers was established under the immediate supervision of the Deputy Commissioner, incharge of Industrial Relations Division. The officers in respect whom power was delegated ranged from the Labour Officer to the level of the Deputy Commissioner and policy wise confined to a selected few. In very rare instances District Asst. Commissioners and Labour Officers covering the Free Trade Zone were also appointed as delegated officers. The officers deployed, after due inquiry were required to make a factual report of findings with appropriate recommendations to the Commissioner who would decide on the order to be served on the employer. Upto very recent times such orders as were served on the employer did not carry the reasons for such order but after a three bench decision of the Supreme Court⁴, the Commissioner made it a point mention the reasons. Sequel to the restrictive delegation of power to a selected few, the knowledge on the law remained confined in the hands of a too few officers, the avoidance of which was not possible in view of the special nature of the legislation.

Part II

The TEWA, was in force amidst employer insistence of its amendment or the repeal for a little over two decades with no immediate prospects of a positive response save, a policy declaration by the Ministry of Industries in 15.12.1989⁵. However, it is opportune to

assess its accrued value to the society as a whole in the light of the background in which the law came to be legitimized and the benefits flow or otherwise in the face of changed economic and social conditions.

The law was enacted with the lofty objective of the prevention of wanton termination of employment, lay - off and retrenchment of workmen by employers. Additionally the amending law of 1976 empowered the Commissioner of Labour to inquire into the bona - fides of closures of workplaces, which naturally affected the employment opportunities of workmen. Therefore, the employers needing to terminate, lay - off, and retrench workmen or the closure of workplaces were required to make advance applications with supportive cogent reasons to the Commissioner of Labour, who in conformity with the rules of natural justice, proceed for inquiry to decide either to grant or refuse such permission within an obligatory time limitation of three months. Therefore, at the end of each inquiry on every application one should be able to ascertain (i) the number of workers in respect whom permission to terminate was sought (ii) the number of workers in respect of whom permission to terminate was refused or prevented (iii) the number of workers in respect of whom permission to terminate was allowed and (iv) the amount of compensation or terminal benefits awarded in respect of terminated workers. Similarly using the same yard stick the same vital information could be collected in respect of applications for lay - off, and retrenchment. As regards applications for closure, the issue of a refusal of permission is obviously awkward but certainly in the course of proceedings the inquiring officer, alive to the situation could search for alternative employment as the case may be. In the category of complaints, under Section 6 of the Act, the relevant information at the end of each inquiry would be (I) the number of purported termination of employment (ii) the number of employees reinstated with back wages and (iii) the number confirmed terminated, and (iv) the terminal benefits awarded.

On a perusal of the statistics published in the annual Administration Reports of the Commissioner of Labour, save for a very short period in the formative years the information appears to be restricted, to the number of application and complaints received and disposed of and the amounts collected by way of terminal benefits in respect of applications and complaints. Unless one goes through the files of paper which is no easy task it is not possible within the present system of statistical maintenance to ascertain the achievement of objectives desired by the law framers. Annual repetition of statistics with

no reference to the core functions and objectives of the law has no meaning and therefore, the need for a restructured system of statistical maintenance in keeping with the objectives appears to be of primary importance.

Fresh representation against the TEWA commenced sequel to certain judicial decisions which enlarged the scope of Scheduled employment. Incompetence and inefficiency being ruled as 'non disciplinary' employers found themselves saddled with no escapevent to oust an inefficient executive on whom, depend the viability of the business. A further stepped up situation could be the loss of confidence on a suspect executive. Employers believe that they need to have a free way with no legal barriers to deal with such cases. This argument appear to be based on a purely business augmentation point of view. But, from the point of view of the employees the picture could be different because in the world of commerce, especially in family owned business ventures, 'inefficiency' and 'lost confidence' could be made up, much to detriment of the employee. Modern management practices require the executives to be trained from the level of 'management trainee' to go high up in the ladder with good training to reach executive levels and to be disciplined to the core so that the need to bring to surface, inefficiency or suspicion is rendered minimal and a remote possibility. Therefore, it is submitted that the exemption of an insignificant identified category of employees from seeking relief under the TEWA goes counter to all known principles of justice and fair play.

The conduct of proceedings of inquiries held by the Commissioner of Labour and delegated officers had earned the disapproval of employers and employees due mainly to the non - adoption of a fair and uniform procedural method, in the conduct of inquiries by the officers during this attachment to the T.E. Unit.

In so far as procedure is concerned the law provides that the Commissioner, subject to the principles of natural justice, may conduct inquiries in any manner, which to him seem best adopted, extract proof and information concerning issues that arise in the course of inquiry. It would appear that the area of discretion bestowed on the Commissioner of Labour is very wide and large and with no prescribed guidelines. Delegated officers are seen to adopt different procedures very often personal to their learning and knowledge, much to the annoyance of the employers and employees whose immediate expectations are an early solution to their applications and complaints respectively. Employers have surfaced this infirmity many years back but the system appears to

be forging ahead with no remedy, snowballing with every officer appointment, upon the incumbent's transfer or retirement. It is therefore, submitted that, without recourse to rigid legalities, a procedure simple and flexible, with strict guidelines designed to avoid delays be drawn up by the authorities in association with employer and employee trade unions obtaining assistance from the Attorney-General's Department. This proposition, it is submitted could find favour with all affected parties because the system is in their own interest.

Of equal importance and associative with the need for a uniform procedure is the need to have the most appropriate officers in the T.E. Unit. The reason being that the inquiries under the TEWA assume a special status, wherein fairplay and judicious judgement of facts are necessary because the final order based on the findings has a direct bearing not only on the employment situation but also a long run effect on the economy as a whole. Thus it would be seen that best results could be derived only from an officer who had natured in the Department of Labour. Therefore, it is submitted that the basic qualifications of an officer selected needs to have a minimum of five years experience in field of industrial relations together with a good grounding of a knowledge of labour law enforcement. Viewed this way the most appropriate selectee needs to be an officer from the rank of Labour Officer above, with exceptional merit.

The uncertainty surrounding the method of calculating compensation by the Commissioner of Labour as reflected in his awards and the fact that the TEWA in working practice over many years had left no clue as to what the employer liabilities could be, appear to have earned their displeasure because it lent no support for business decisions. The reason for thrusting this issue seemed to have been prompted by the wide variance in the compensation awards, sometimes ranging from one month to five years salary. This position is understandable because businessmen are called upon to take decisions based on their assets and liabilities. But, at the sametime one must not lose sight of the fact that compensation and quantum are determined on the merits of each case, and a reference to a stray example would be misleading, designed as if it were to highlight, that the Commissioner's awards are always too excessive or too low. But at the same time one cannot discount the need to have some guidelines to facilitate the employers to be alive in business during bad times. We cannot draw up a schedule of compensation similar to the schemes found in the Workmen's Compensation Ordinance, because the exercise involves an all round or

partial loss of employment. The best results could be achieved, by a scheme of compensation drawn up by the Commissioner of Labour in consultation with the involved officers. The scheme needs to take count of the past awards and a constant review depending on the changing conditions and the awards made by other institutions in similar instances.

The claim has been made that owing to the TEWA not being flexible, potential employers and those in business intending trying their hands on new lines, shy away on grounds of possible situations of redundancy burdens during bad times. The main drive of the argument appears to be to help out a few entrepreneurs over whom there should be no disappointment. If they have the courage to commence new lines of business, invariably backed by a variety of state financial institutions it is presumed that they should have the same courage to handle labour. Moreover, if the employees are in scheduled employments the employer is at liberty, when necessary to apply for permission under the Act. If such employers are under spells of uncertainty driven to the brim of having no faith in the law, then they do not have faith in themselves either. The argument has no validity, viewed from the point of the large numbers of investors, both local and foreign who commenced business after 1977 with the backing of an open economy and still with the TEWA in force.

The delay occasioned in the disposal of cases by the Commissioner of Labour has irritated both employers and employees. In the case of applications by the employers for termination, lay - off or retrenchment, employee response for attendance at inquiries have been poor and reciprocal poor attendance are seen in employer attendance at inquiries on employee complaints. More often than not, both parties voluntarily or involuntarily indulge on postponement tactics for their own advantage and the search for the next chosen date in the pressed diaries could easily jump many weeks or months ahead. The issue gets more compounded when highly acclaimed legal luminaries are to be accommodated of consent. In the conduct of inquiries it has been noted that prime time is wasted in the correction of previous proceedings, familiarization of issues, and objection by both parties, sometimes needing a ruling by the inquiring officer who does not act instantaneously. Lack of infrastructure facilities, officers taking legitimate leave, sudden postponements occasioned by personal reasons, all lead in the same direction of much dreaded delay with no foreseeable corrective action.

As a remedial measure it may not be inopportune to submit that lack of supervision by the immediate superiors and by those above, has over the years, slowed down speed like in many a government machinery designed primarily for quick delivery. Slowed down supervision with no commitment to serve the public, prompt delay to proliferate as a way of life and the best dose of cure appears to be uninterfered strict supervision from bottom upwards. Therefore, a revamped supervision is deemed very necessary for the minimizing at least, if not the total avoidance of delay.

In as much as supervision is at zero level, there is little or no appreciation of any good work done by officers to boost up their morale as a means of quickening the disposal of cases.

Delay, as has been seen, is also due to incompetent officers, who are in such frame of mind, unable to speed up to grasp the essentials for a balanced judgement of facts. Therefore, there is an urgent need to appoint carefully selected officers, nurtured and well experienced in labour law enforcement with a proven ability for good and balanced judgement.

Last but not the least in the avoidance of delay is the need for commitment, which over the years, unfortunately had suffered due to a large number of factors reducing it to a philosophic debate covering the entire system. Commitment for avoidance of delay cannot operate in isolation because it should be necessarily a collective effort needing very strong committed leadership from above and flowing with meaning to the layers below:

The employers have proposed an upper age limit of 60 years for coverage under the TEWA but they need a proviso added that where a workmen's retirement is not in terms of a letter of appointment or a collective agreement, the employer should be free to retire a person by giving twelve months notice of retirement. A retirement at the age of 60 years seems to go against the trends of social norms. Sri Lanka has an aging population with increased life expectancy. The job taking age is late when compared with the system, about three decades ago. A large percentage of employees retiring from public services and the private sector work after retirement. The best criteria for continuance in employment appears to be the physical fitness and the capacity to work. At a time when the trend is towards and increase in this age of retirement, 60 years of an age is not the most appropriate age for statutory recognition.

Seasonal employment appears to be causing problems for employers engaged in certain trades for example, the tourist trade. The problem is mainly in the very nature of the trade over which the employers have a high dependency on the outsiders whose imposed terms, the locals are forced to accept. At the same time the industry is highly seasonal with no business during the slack seasons. Employers with much forthright have admitted the commitment of tactics in the way of avoidance of the possibility of getting trapped unawares in the 180 day rule now facilitated greatly by the 1988 amendment. Employers have suggested a total exemption of the tourist industry from the TEWA. Viewed from the point of view of the nature of the tourist trade, its dependency and the seasonal characteristics, the employer suggestions for exemption appear to be meaningful.

Based on the principle of the freedom for termination of employment of workmen and prompted by the alleged uncertainty in the awards by the Commissioner of Labour regarding compensation payable to affected employees in circumstances where the employer wishes to, reorganize, restructure or close down business, a mandatory fixed payment of compensation, sometimes referred to as a "Safety Net" has been suggested. It is expected that the fixed payment would facilitate the employer in the preparation of his budget. The employers in two of their reports published in 1994 made no attempt to explain the composition of the "fixed amount" envisaged. But it came to light that the proposed scheme entails the repeal of Sections 2 & 6 of the TEWA, considered to be pivotal to the rest of the provisions of the Act. In one proposed scheme the employers want the scheme applied only in respect of work places seeking to rationalize and in another across the board. However, the essentials of the scheme appear to be that employers wishing to terminate employees with a service period of not less than 12 months may do so for reasons other than on disciplinary grounds making some payment to include:

- (i) Gratuity under gratuity law.
- (ii) One month's wages or salary in lieu of notice or a month's written notice.
- (iii) Two weeks salary or wages for each year of service and
- (iv) Two weeks salary or wages for each year of service left upto the age of 55 years, subject to a maximum of 20 months salary or wages on account of (iii) & (iv) combined.

The scheme goes further ahead by facilitating employers who are unable to meet the fixed compensation package to apply for permission from the Commissioner of Labour under the TEWA in regard to closure of the whole or part of the business and where the employer has offered alternative employment elsewhere on terms not less favourable than the current terms and conditions of employment which offer has been rejected by the employees, the employer may terminate the employee upon a month's notice or payment in lieu, subject to the right of the employee to seek Labour Tribunal relief.

The employer document is not yet published for public exposure and comments regarding same appear to be too premature.

Part III

A worker friendly government in 1959 established Labour Tribunals empowering them to grant relief to a workmen terminated notwithstanding anything contrary to any contract of employment. Twelve years later, in 1971, a similar government enacted the Termination of Employment of Workmen (Special Provision) Act which made a total prohibition of non disciplinary termination of employment of workmen in scheduled employments without the consent of the workmen or the prior written approval of the Commissioner of Labour, who in the exercise of power is vested with absolute discretion in the determination of terms and conditions of such approvals. In the context of the Labour Tribunals already in existence, employers have maintained that there is little justification for enacting a law of termination in such wide terms⁶.

The establishment of Labour Tribunals contributed in no less a measure to reduce the incidence of all types of termination of employment. The employers had the occasion to adopt systems of practices to make sure of the grounds before they resorted to termination of employment. These practices were in the main were the issuance of letters of warning, supervision with or without payment of wages or salary, issuance of show cause letters, interdictions and finally the holding of domestic inquiries the findings of which would depend termination. Similarly the Termination of Employment of Workmen (Special Provisions) Act considerably reduced the incidences of Termination consequent upon redundancy since such terminations were more carefully scrutinized after the Act came into operations⁷. The employers were prompted to conduct themselves with responsibility in

the treatment towards labour, taking them as legitimate partners in the production process.

The provisions of the Act taken in its entirety could be said to have curtailed the employer's right to terminate at will and pleasure confirming security of service of employees. The protection it afforded on non disciplinary terminations is a unique achievement. But one must not ignore the fact that such protection is cast on the Commissioner of Labour and his delegated staff, charged with the duty of weighing the scales even, in the protection of workers whilst ensuring equal protection to the industry and the economy as a whole⁸.

As has been seen in the case of applications for termination, lay - off or retrenchment approval of same by the Commissioner Labour accompany compensatory benefits which in certain instances, the employers have claimed to be excessive. Nonetheless the protection facility of compensation expeditiously awarded for sustenance until the workman finds fresh employment is of great value and significance. Commenting on this aspect S.R. de Silva, states that "in contrast to the position prior the Act, when employees retrenched had to await an adjudication by a labour court to obtain relief, and such determinations were made long after termination was effected. Thus expeditious relief is one of the benefits employees have received under the Act."

The claim could justifiably be made that the Act has induced employers wanting to stay in business, to reorganize, using surplus labour if any into more productive lines setting a trend among employers, initially to look out to examine the feasibility of reorganization before resorting to invoke the provisions of the Act. These rationalized methods which the employers were able to adopt where possible would no doubt helped to wean out under utilization of labour.

The Commissioner of Labour during the course of his many inquiries has always resorted to conciliatory methods of settling matters before going into inquiry. Thus during times of shortages of raw materials, the Commissioner's intervention has helped to expedite supplies, helping the employers to be in business and the workers to continue in employment.

Annexure III does not provide the number of beneficiaries in respect of whom the terminal benefits were collected and therefore the amounts so collected remain only as lump amounts in respect of applications and complaints concluded. However, on an analysis of

applications and complaints received and concluded for the respective years we could have a broad insight into the broad trends. There is a noticeable general decline in the number of applications⁹ from 1971 upto 1985 and save for 1986 where the total number is 206, showing an increase of 72, over the previous year, there is a sharp decline from 1987 upto 1997. The decline for the 10 year period is more than 50 percent as compared with the period up to 1987.

The decline in the incidence of applications⁹ has been attributed to many reasons one of which was the special practices adopted by the Commissioner of Labour, who arranged for the Special Investigations Unit to inquire into applications for closures which were attended to with prompt speed and urgency. Again the application from the B.O.I. enterprises seldom needed inquiries upto the stage of making an order by the Commissioner of Labour for the reason that the Industrial Relations Department of the B.O.I. in almost all instances of applications, supported by the persuasive efforts of the officers, appropriate jobs were found within the B.O.I. Accordingly with the new placements the employers were able to withdraw their applications¹⁰.

The number of complaints has also shown a decline¹¹, with intermittent increases in between the years, but taken in its entirety over the years, there is a significant decrease again indicating that the employers are very cautious in non disciplinary terminations¹².

Part IV

The earliest public announcement of the repeal of the TEWA, was in the preamble to the proposed Employment Relation Bill, published as a White Paper on Employment Relations by the Ministry of Labour in January 1978¹³. However, the repeal did not take place despite the free economic system that followed immediately and the subsequent heat of globalization. It has survived for nearly a little over two decades since and it is left to be judged as to whether conditions favour the TEWA to be allowed a survival stay into the next century.

The most powerfully driven argument advocating the repeal of the TEWA, is that under a free economic system as opposed to the closed economy under which it was born to serve is no more with no purpose to achieve. This argument is based on many concepts that under an open economic system there could be no room for shortages of raw materials or any such feeder goods to affect industries adversely to the point of laying off or retrenchment of workers. Also the employers greatly

disturbed by the severe restrictions imposed by the Act in their freedom to terminate the workers at their will, a right they enjoyed under the common law of the country taken away, made representations urging the repeal, on the basis that freedom to terminate is a necessary concomitant to be in competitive business. However, the spate of business investments and the economic development coupled with unprecedured employment opportunities belies the contention that the Act was an inhibiting factor discouraging investment. Although there were occasional delays due to circumstances beyond control, the Commissioner of Labour and his delegated staff acted expeditiously and very fairly, that there was seldom an occasion when a Commissioner's order was set aside or altered by appellate courts to which, some of the parties, aggrieved by orders went for relief¹⁴.

Workforce reductions in undertakings are today recognized as one of the major issues of social policy and one cannot today stand in isolation to leave employer employee relations to be manipulated by a few. The common law by reason of its attitude to the implications of the right to dismiss by giving the employee a reasonable period of notice allowed excessive freedom to the employer to terminate the employee at the employer's will. Undoubtedly this sad state of insecurity of employment was acceptable many years ago when the vast majority of the workers and people in general were illiterate and devoid of electoral power. But the concept is inconsistent with the ideals of modern Socialist Democracies. Sensing the injustice, the I.L.O. way back in 1963 adopted the Recommendation 119 laying down the basic criteria, relating to the requirement of a valid reason for termination of employment of an employee, with the right to appeal against the termination, to bodies empowered to award appropriate reliefs in instances of unjustified termination, to notice periods, to severance allowances and similar forms of income assurance and to a certificate of service. This position had been greatly strengthened in 1982 by Convention 158, and Recommendation 166.

The requirement of justification for termination of employment at the initiative of the employer is the focal point of employment relation law in many countries of the world today and most countries offer legislative protection against unjustified dismissals lay-offs and retrenchment in one form or the other. In most countries the competent administrative authority or the dispute settlement body must be notified of workplace reductions in advance with often a waiting period of 30 to 90 days before an employer is permitted to reduce the workforce. The legislation of several countries require the proposed

dismissals, for whatever reason, be submitted to an authority external to the undertaking for approval. French legislation require all dismissals for economic reasons including individual dismissals, the authorization of the Director of the Labour Office. In addition, the employer is required to consult the Works Committee before seeking approval of the Director of Labour for permission. The Protection Against Dismissal Act in the Federal Republic of Germany provides for protection of individual workers against socially unwarranted dismissals. In the United Kingdom employers are required under the Employment Protection Law, to consult appropriate trade unions on proposed redundancy at least from 30 days to 3 months before the dismissals and inform the Secretary of State of Employment. In Netherlands all dismissals must be authorized by the Employment Officers.

It is very well established that most of the developed countries have schemes of unemployment insurance which allows the payment of a fixed amount commonly referred to as the "dole" upon a person being dismissed. In some of the socialist countries like the former Soviet Socialist Republic of Russia the supply of the basic needs of the citizenry was considered a prime duty of the state. In Sri Lanka, save for the very restrictive schemes like the Gratuity, Employees' Trust Fund, Employees' Provident Fund, there is no equivalent scheme whereby at least the unemployed are looked after when thrown out of employment. In this context the TEWA, could be viewed as meeting at least partially, the requirement of relief against arbitrary termination of employment.

Labour, from a status of human slavery, in its long march through immense sacrifices, bitter fights, bloodshed and even loss of life upto reaching the current status of equal partner in tripartism, still continues to remain unequal in practice. As has been very often experienced, labour when involved in industrial disputes are very often seen to be driven against the wall, because on the one hand, being out of employment they are unable to afford family sustenance and on the other, the lack of finances to go for the best of legal opinion to match the employer. Thus the workers being always thrust into playing on uneven playing fields, the TEWA has assured its worth, at least partially in bringing to the workers a measure of relief, which should stand in good stead as a potent reason for the retention of the TEWA.

During the past few years much of the adverse comments on the Termination law flowed from the failure on the part of the enforcement authority to live upto realities of a changing economic system. There

fore employers have urged that the law be made more flexible to be in competitive business. Viewed from a broad perspective it is unwise to repeal a worker protective law which stood its ground for nearly three decades. At the sametime it is very sad to note that criticism has not prompted any government to launch a searching exercise for solutions. In this context the enforcement authority realising the importance of the TEWA as a special law, needs to effect far reaching changes on lines suggested herein and even to reach beyond when necessary using well considered discretion to meet realities whilst remaining within the TEWA.

References

- 1 See annexure 1 item 6
- 2 See annexure 11 items 5 & 7
- 3 See annexure 11 items 4 & 6
- 4 See annexure 11 items 19
- 5 See annexure 1 item 8
- 6 De Silva S.R. The Contract of Employment Pg. 222 article 367
- 7 ibid Pg. 222 article 336
- 8 See annexure 1 item 5
- 9 See Figure 1
- 10 This aspect was widely discussed with Mr. Meryn Kannangara, Assistant Commissioner of Labour who was in charge of the T.E. Unit for well over 10 years.
- 11 See Figure 2
- 12 See Annexure 1 1 1 Figures are not available in respect of the year 1974
- 13 The White Paper on Employment Relations published by the Ministry of Labour in January 1978 proposed to bring out a comprehensive Law titled the Employment Relations Law, covering terms and conditions of employment in relations for all classes and categories of employments, the establishment of Employees Councils, the establishment of Employees Trust Fund and among others to repeal the TEWA.

- 14 There were only few instance where an Appellate Court set aside an Order based on facts by the Commissioner of Labour.

ANNEXURE I

Some events and literature associative with the Termination of Employment of Workmen (Special Provision) Act (TEWA)

1. Emergency (Termination of Employment of Workmen) Regulations No.1 of 1971 made by the Governor - General under the Public Security Ordinance published in Government Gazette No. 14965/12 of 6th July, 1971.
2. Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 was assented to on 18.10.1971, with retrospective effect from 21.05.1971. The Act was later amended by Law No. 4 of 1976 and Act No. 51 of 1988. For more details see Bibliography of Labour Relations in Sri Lanka Vol. 1 page 51 by S.R. Korale - Ministry of Labour.
3. The Termination of Employment Unit commonly referred to as the TE Unit was established in July 1971 under the immediate supervision of the Deputy Commissioner of Labour, Industrial Relations as a Unit in the Industrial Relations Division. Initially the unit comprised of the Deputy Commissioner, Industrial Relations, Senior Assistant Commissioner, Industrial Relations, and Assistant Commissioner and a few Labour Officers, on whom were delegated the powers of the Commissioner in terms of the Act.
4. Termination of Employment Relations in Sri Lanka - A background paper by R. Thiagarajah. Sri Lanka Labour Gazette Vol. 25, Feb. 1974. Discusses termination practices in Sri Lanka.
5. Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971. Contribution by D.P.A. Weerasinghe in Sri Lanka Labour Gazette Vol.25 (5) May,1974. The author assesses the Law in the light of experience gained by him from July,1971 to December 1973. He had published the amounts awarded as terminal benefits.
6. Letter addressed to the Secretary, Ministry of Labour by the Employers' Federation of Ceylon (EFC) dated th December, 1979 on the need for the repeal of the Termination of Employment of Work men (Special Provisions) Act No. 45 of 1971, on the basis that the conditions under which the Act was enacted no. longer existed.

7. Memorandum forwarded to the Ministry of Labour dated 03.12.1974 by the Employers' Federation of Ceylon on the need to amend the Termination of Employment ACT.
8. Policy statement issued by the Ministry of Industries dated 15.12.1989, on the need among letters, to repeal the Termination of Employment Act on the basis that the prolonged procedural inquiries frustrate both employers and employees.
9. Memorandum by the Federation of Chambers and Commerce and Industry, dated 12.09.1991. Advocates among other things the repeal of the Termination of Employment Act.
10. News report in 'Divayina', Sinhala daily of 28.02.1992 reference to a secret report of the World Bank advocating the repeal of the Termination of Employment Act.
11. News report in the Island - English daily of 08.06.1993 wherein the President of the National Chamber of Commerce, Mr. Munikundanmal urged changes in the Termination of Employment Act and the Gratuity Act.
12. Proceedings of the Seminar on "Labour and Economic Liberalization", organised by the Sri Lanka Business Development Centre at Galadari Hotel, Colombo on 8th December, 1979 Reference to the TEWA, Mr. E.F.G. Amarasinghe stated that the TEWA in the present form has serious problems despite the good reasons for retaining the Act. Mr. M.P. Galapaththi, President of the Institute of Personnel Management stated that the TEWA is to be repealed. Also see liberalization. Problems relating to Labour Laws in Sri Lanka by Mr. E.F.G. Amarasinghe.
13. Proceedings of the workshop on Labour Law Reform Conference organised by the AAFLI, in Hotel Galadari, 28th to 29th March 1994, Mr. E.F.G. Amarasinghe, on the Termination of Employment Act. Moves on to an indepth discussion on the Law relating to termination with ill effects highlighted.
14. Seminar proceedings on Reform of Labour Laws in Sri Lanka, organised by Vigil Lanka Movement Sri Lanka in association with Asian Legal Resource Centre, Hong Kong - Part VI on Termination of Employment, page 29 of the report.
15. The Employers' Federation of Ceylon 1929-1994, by Mr. E.F.G. Amarasinghe. At page 39, the author refers to the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971, as "an obstacle to the progress of the private sector". See also pages 130 - 131.

16. International Monetary Fund Staff Country Report 98/118 "On the need for Labour Market Reform" Page 54. Discusses implications of the provisions TEWA in providing labour market flexibility.
17. The "Case for Labour Market Reform in Sri Lanka" Dec. 1996 -Page 34 and observations on same by the Ministry of Labour -Page 15.
18. Seminar Proceedings of "Tripartite Seminar on Dispute Settlement, Labour Tribunal and Industrial Courts" - held in Colombo, Galadari Hotel, 8th to 10 August, 1997. Paper by Mr. E.F.G. Amarasinghe on Dispute Settlement - Employers' Perspective makes many references to the TEWA.
19. Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 as amended by Law No. 4 of 1976, and Act No. 51 of 1988, by S. Wanniarachchi in "Trade Union Centenary in Sri Lanka" published by Worker Educator Association of Sri Lanka. Discusses provisions of the Law with reference to decided cases.
20. "Law Relating to Termination of Employment in Sri Lanka" by Mr. Mervyn Kanangara in Sri Lanka Labour Gazette - Vol. 46, No. 2 Page - 9. Discusses the main provisions of the TEWA, listing cases decided by the Supreme Court and Appeal Court.
21. Text of a presentation made at the Institute of Policy Studies on 07.03.1996 by Mr. EFG. Amarasinghe, on "Labour Laws and their impact on Labour Demand", Colombo 1996 mentions five instances of adverse effects on Labour demand caused by the TEWA.
22. Labour Laws and their effects on investment in Sri Lanka by Mr. EFG. Amarasinghe. In "Employee Relations and Industrial Law in Sri Lanka", Colombo 1988 cites 8 important all effects of the TEWA on investment.
23. "Labour Laws must promotes not hinder investment" Article in the Island on 16.08.1988 refers to the TEWA. "The TEWA should be repealed and if this cannot be done it must be suitably amended to provide for a scheme of compensation to enable the employers on business."
24. 'Non disciplinary terminations' by Mr. S.R. de Silva in "Some Concepts of Labour Law" Chp. 5 Discusses the TEWA, and concludes that "having regard to the existence of the Labour Tribunals, there appears to be little justification for enacting legislation in such wide terms".
25. Employment Relation Act - Draft 11 prepared by the Task Force. Refers to the need to repeal any provision in the TEWA.

26. Chapter on "A critique of the labour Law and Industrial Relations System in Sri Lanka" page 203 in "Essays on Law, Management and Industrial Relations" by S.R. de Silva; Employers' Federation of Ceylon. Referring to TEWA the author states "Perhaps the most serious obstacle, from a business point of view, confronting an employer who seeks to rationalize his business in times of adversity is the Termination & Employment of Workmen (Special) Act No. 45 of 1971.
27. "Law Relating to Termination of Employment" by Mr. K. Wijeratnam in Understanding Labour Law page 198. Ministry of Labour - 1988 Carries an exercise on Test your knowledge on the Law of Termination of Employment and answers. Also carries two case studies with answers.
28. Law Relating to Termination of Employment in Sri Lanka by Mr. K. Wijeratnam in Sri Lanka Labour Gazette Vol. 39 No. 1 pages 4 - 10. Discusses the provisions in general with reference to decided cases.
29. Some Aspects of Labour Administration and Development in Ceylon by S.R. de Silva in Form No.1. No.1 - Journal of the Sri Lanka Foundation Institute 1982 December. Refers to the TEWA as follows: The fact that private sector is increasing rather than reducing, the member of employees is indicated by the fact that those are hardly any applications to the Commissioner of Labour under the TEWA, to terminate the services of workmen on grounds of redundancy.
30. Non disciplinary Terminations: Termination of Employment of Workmen Act in Contract of Employment page 203. By S.R. de Silva EFC Monograph 4. Among the many useful Conclusions are (1) as in the case of other legislation what really needs to be determined is how the Act works in practice. and (ii) the Statistics relating to applications by employers and complaints by the employees during 1976 - 1980 show a marked decline.
31. Termination of Employment of Workmen (Special Provision) Act No. 45 of 1971. In handbook on Labour Relations - Friedrich Ebert Stiftung (FES) 1997 pages -160 - 164 - Deals with the main provisions of the Law.

Annexure 11

Important cases decided by the Supreme Court and the Court of Appeal relating to the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 71 as amended -(TEWA)

1. Kotmale Valley Estates Company Ltd. Vs. B.J. Drieburg SC 336/72. Held that the Superintendent and the Assistant Superintendent on an estate in the Wages Board for Tea Growing and Manufacturing Trade are workman within the meaning of the TEWA.
2. Nagalingam Vs W.L.P. De Mel SC 650/74-78 NLR Pg 231. Held that the failure to make order by the authority does not vitiate the Order as the time bar is not mandatory.
3. Pakistan International Air Lines Corporation Vs Yaseen Omar. Held that the Sales Manager was within scheduled employment of the TEWA, and the burden proof fell on the defendant to show that it is entitled to invoke the protection under Sec 3(1) (a) by proving that the number of employees was less than 15. (Unreported)
4. St. Anthony's Hardware Stores Vs Ranjit Kumar CA 1461/78. 78-79 11 SLLR 06 Held that inefficiency and incompetence are not forms of misconduct.
5. Ceylon Brake and Clutch Linings (Pvt.) Ltd. Vs W.L.P. De Mel and 3 others SC184/75. Held that Mr. W.H. Wilson the 3rd respondent appointed by the company as Managing Director had a contract of service and therefore he was a workman within the provisions of the TEWA.
6. Winter Quilt (Pvt.) Ltd. Vs. the Commissioner of Labour, CA 653/85. Held that, protests against working conditions, insufficiency of wages and of overtime were not to be treated as acts of insubordination.
7. Free Lanka Trading Co. Ltd. Vs. W.L.P. De Mel SC 721/75. 79(11) NLR158 Held that technical sales representatives were workman within the meaning of the TEWA.
8. Associated Newspapers of Ceylon Ltd. Vs. the Commissioner of Labour and another. SC 359/75. Held that the workman purported to have been employed as a casual hand in fact being continuously employed throughout the year with no significant gaps was a workman within the TEWA. (Unreported)
9. Associated Newspapers Ltd. Vs. the Commissioner of Labour and another SC 386/75 Held that material facts in this case was the same as in 359/75 and that the workman was within the TEWA. (Unreported)
10. Colombo Paints Ltd. Vs. W.L.P. de Mel, P. Navaratnam, Interior Decorators and Consultants and M.R. Ranasinghe, SC 263/75 CA 3/1973.

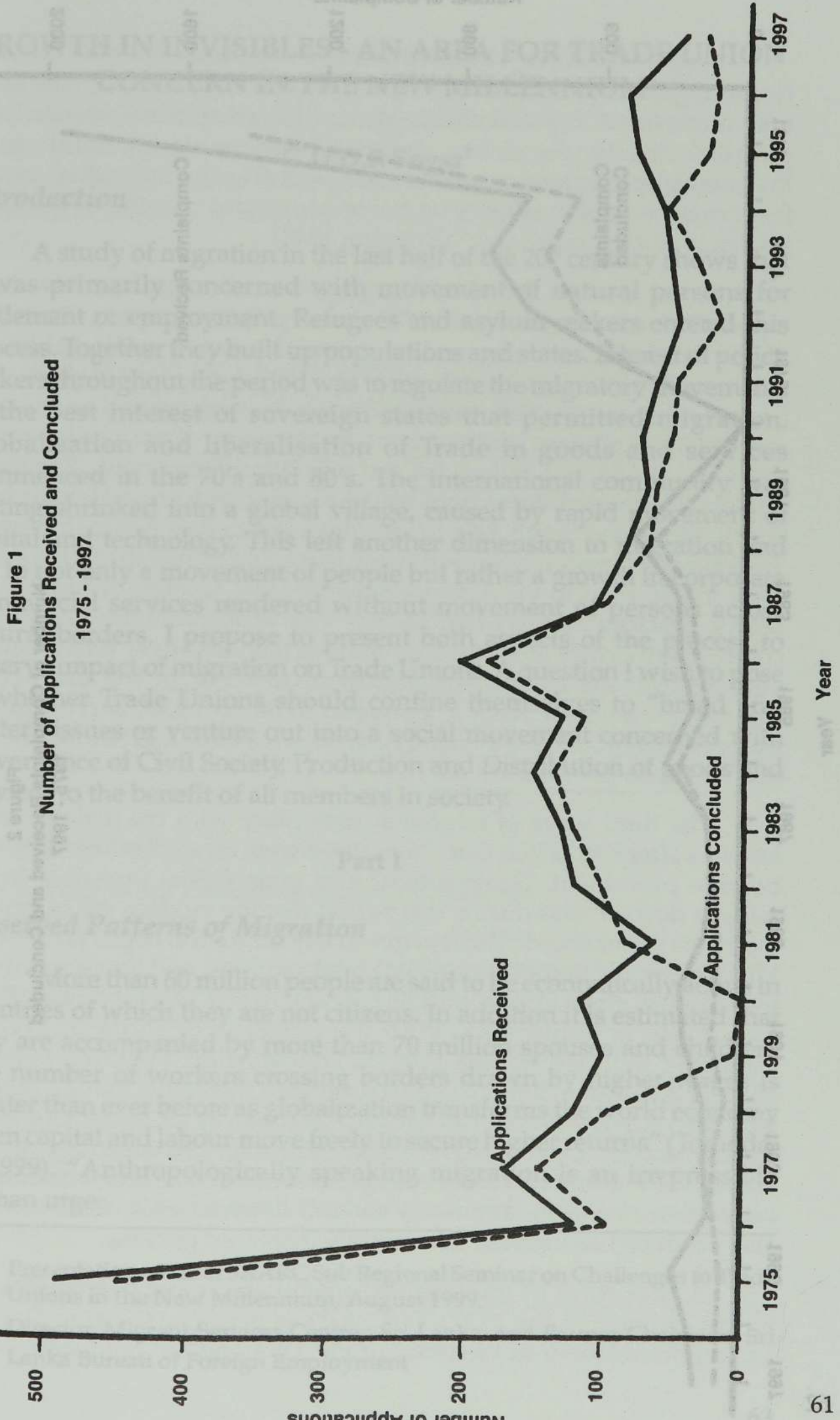
- Held by both Courts that M.R. Ranasinghe whose services were terminated by the applicant on 31.05.1971 was covered by the Emergency Regulation of 21.05.1971 and that the petitioner company is the employer.
11. Nawaloka Industries Vs. the Commissioner of Labour CA 1734/79. 76 NLR 381- 409 Held that the five workmen ordered to be reinstated by the Commissioner of Labour must be made respondents to the application and that being a fatal irregularity, the application was dismissed.
 - 12 Moosajees Ltd. Vs Eksath Engineru Saha Samauya Kamkaru Samithiya SC 945/74 - 79(11) NLR 285 Held that the Applicant Company Moosajees was the employer and Upasaka Appu the alleged contractor was in fact a company employee, who engaged the workman to do work for the company. Held that the Commissioner of Labour was empowered to make order under Sec. 6 of the TEWA.
 13. Ceylon Tobacco Co. Ltd. Vs. Ilangasingha CA 1073/80, LT 2/13050/80. Held that the provision of the Section 31B (5) of the Industrial Disputes Act operate as a statutory bar to an application being made by the 2nd respondent Ilangasingha to the Labour Tribunal for relief.
 14. Ceylon Mercantile Union Vs. de Mel NLR 76 Page 390. Held that employees in an essential service who are deemed to have vacated employment by operation of the Emergency Regulations read with Essential Services Order of 1972 are not entitled for relief under Section 6 of the TEWA.
 - 15 Hing Garments Industries Vs. the Assistant Commissioner of Labour for Writ of Certiorari 1091/81. Held that there has been noviolation of the principles of national justice and therefore the application is refused. (Unreported).
 16. Managing Director Star Press Vs. S.H. Siripala, Assistant Commissioner of Labour, the Commissioner of Labour G.D. M. Victor and 33 others. For Writ of Certiorari SC 415/78 - Application refused on the grounds that parties are absent and unrepresented. (Unreported.)
 - I7 Gunasekara Vs the Commissioner of Labour. 79(11) NLR 409. Held that the employer has terminated the Workman on disciplinary grounds.
 18. Samalanka Ltd. Vs. G. Weerakoon Commissioner of Labour K. Wijeratnam & Ceylon Federation of Trade Union. CA/622/85.Held that there is no statutory requirement to give reasons for the Commissioner 's orders.

19. W. Karunadasa Vs. Unique Gem Stores the Commissioner of Labour and M.R. Kannangara Assistant Commissioner of Labour S.C. Appeal No. 27/96 CA No 393/95 Held that national justice required that reason be given by the Commissioner of Labour in respect of his orders.
20. Browns Engineering (Pvt) Ltd. Vs. the Commissioner of Labour - I SSLR 88- Closure of business - Amount of compensation payable and assessment of compensation.
21. Balanca Diamonds Vs. G. Weerakoon and two others. CA 202/94.
Held that there was no breach of the principles of national justice in the part of the Commissioner of Labour.
22. S.D. Gunadasa Vs. G. Weerakoon and All Ceylon Commercial and Industrial Workers Union and 161 workers. CA 418/91. Held that the 1st Respondent had not arrived at a definite finding that the termination of employment was unlawful or permitted in terms of the Act. Writ of Certiorari allowed.
23. All Ceylon Commercial Industrial Workers Union and 161 others Vs. S.D. Gunadasa S.C (SLA) Application 51/94 . - Leave for special leave to appeal refused by a Bench of three judges.
24. Ceylon Printers Ltd. Paragon Ceylon Ltd. Vs. G. Weerakoon Upali Wijeweera and Eksath Kamkaru Samithiya. SC Appeal No. 19/95 with SC (SOL) LA 253/94 Held that the I st Respondent was bound to give reason for his orders.
25. Wickremasinghe Polythene Industries Vs. the Commissioner of Labour M.R. Kannangara Assistant Commissioner of Labour and W.N.R. Perera - S.C. 77/94. Held by a three bench judgement that Perera the Sales Representative was a workman within the meaning of the Termination of Employment Act.
26. Kamil A. Husen Vs. Fairline Garments Ltd., G. Weerakoon, Commissioner of Labour and M.R. Kannangara, Assistant Commissioner of Labour . SC Appeal 50/88 with CA Application 1064/87. Three bench judgement had that the termination of apparent M. Kamil A Hussen was unlawful. Judgement of CA 1064/87 set aside. Order of Commissioner restored and company is directed to reinstate employee.

27. C.M.U. Vs. Vinitha Ltd. S.C. 884/75. Held that it is not mandatory for the Commissioner of Labour to make order for reinstatement or continuance of employment upon a complaint. being made, to him under Section 6 of the TEWA.
28. Hotel Galaxy (Pvt) Ltd. Vs. G. Weerakoon and 5 others .CA 884/86 Application for the issue of Writ of Certiorari refused.
29. Lanka Machine Leasers (Pvt) Ltd. Vs. Commissioner of Labour and 31 others. CA Application 867/87. Application for the issue of Writ of Certiorari refused.
30. Directory Printing and Publishing Co. Lanka Ltd. Vs. A.D. Gunadasa, Commissioner of Labour and M.R. Kannangara, Assistant Commissioner of Labour. CA Application No. 707/95. Application for Writ of Certiorari refused.
31. Maskeliya Plantations Ltd. Vs. K. Arulanthan, Commissioner of Labour and two other C A 248/95. Held that failure to give reason was a breach of Sec. 17 of the TEWA because it was in consistent with the principles of national justice. Writ of Certiorari allowed.
32. Maskeliya Plantations Ltd. Vs. K. Arulanthan, G. Weerakoon, Commissioner of Labour and M.R. Kannangara, Assistant Commissioner of Labour SC. 422/95. Special leave to appeal refused subject to the
33. Cupid Industries Ltd. Vs. R.P. Wimalasena, Commissioner of Labour and M.R. Kannangara, Assistant Commissioner of Labour and others CA 773/85 Application for Writ of Certiorari refused.

Annexure (III)
Number of Applications and Complaints received and Concluded with
Terminal benefits from 1971-1997

Year	Applications received	Applications concluded	Complaints received	Complaints concluded	Terminal benefits awarded Rs. cts.
1971	618	467	2022	1557	659,474.000
1972	925	675	2850	1981	1,074,505.75
1973	-	-	-	-	-
1974	491	448	1953	1428	1,609,276.70
1975	121	97	621	483	256,051.55
1976	170	145	731	571	226,179.76
1977	121	97	621	483	256,051.55
1978	99	88	345	329	634,087.66
1979	118	87	387	193	501,036.73
1980	65	86	174	108	2,352,094.97
1981	120	102	311	254	22,869,914.84
1982	132	123	189	150	3,588,979.79
1983	154	136	176	137	83,660,000.64
1984	134	114	146	115	9,409,350.70
1985	206	185	218	183	6,604,305.70
1986	108	104	103	97	3,364,666.47
1987	88	71	89	68	6,155,311.97
1988	72	69	97	65	2,476,749.04
1989	75	54	173	71	12,798,972.00
1990	65	50	156	83	20,544,532.00
1991	51	20	114	46	14,004,290.00
1992	59	35	100	68	5,667,657.00
1993	62	60	95	89	188,927,651.95
1994	80	30	179	53	32,003,321.00
1995	89	25	145	56	95,722,483.00
1996	47	32	125	67	3,165,657.06
1997					



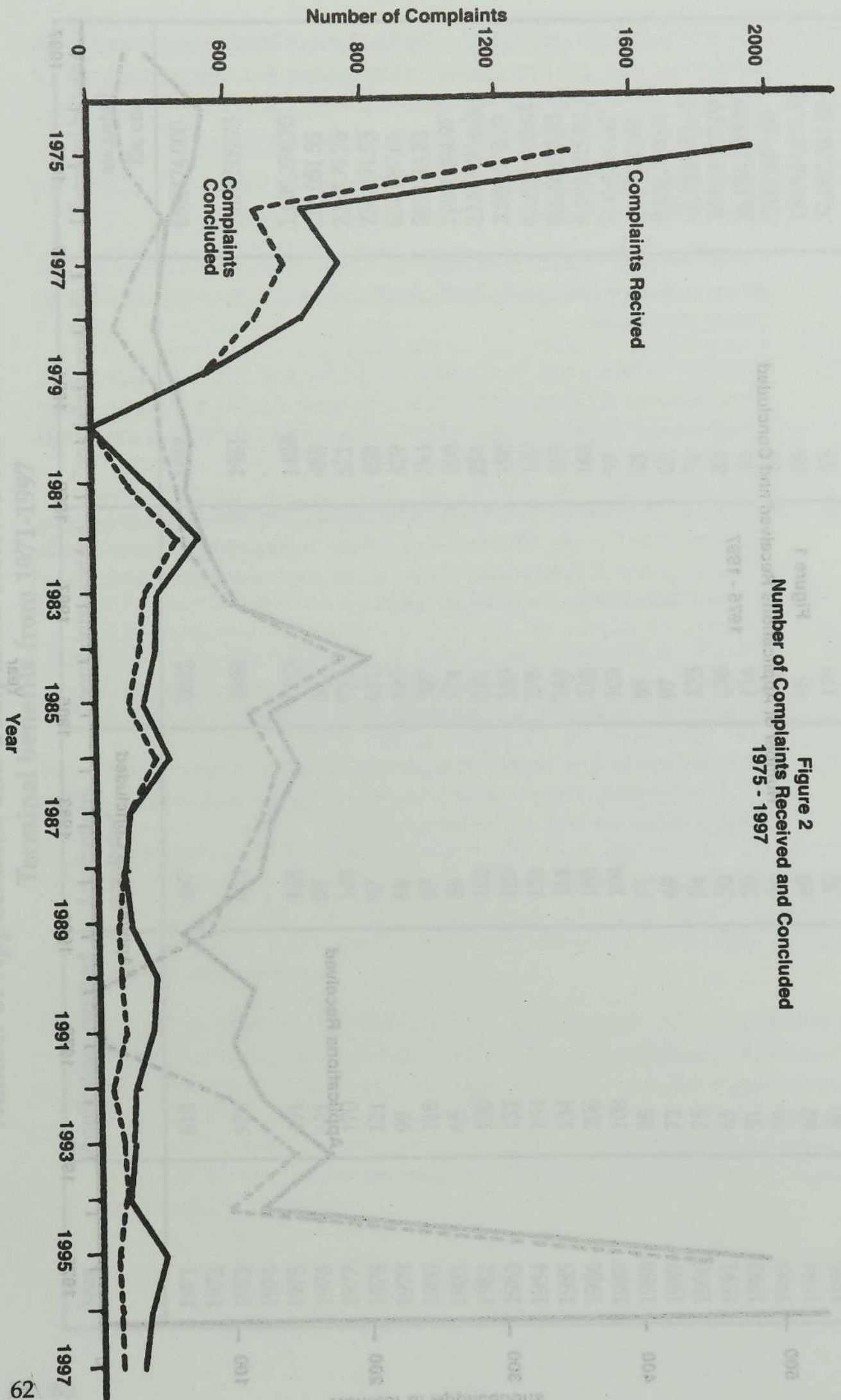


Figure 2
Number of Complaints Received and Concluded
1975 - 1997

GROWTH IN INVISIBLES - AN AREA FOR TRADE UNION CONCERN IN THE NEW MILLENNIUM*

G.D.D.P. Soysa[†]

Introduction

A study of migration in the last half of the 20th century shows that it was primarily concerned with movement of natural persons for settlement or employment. Refugees and asylum seekers entered this process. Together they built up populations and states. Interest of policy makers throughout the period was to regulate the migratory movements in the best interest of sovereign states that permitted migration. Globalisation and liberalisation of Trade in goods and services commenced in the 70's and 80's. The international community was getting shrunk into a global village, caused by rapid movement of capital and technology. This left another dimension to migration and led to not only a movement of people but rather a growth in corporate commercial services rendered without movement of persons across natural borders. I propose to present both aspects of the process to observe impact of migration on Trade Unions. A question I wish to pose is whether Trade Unions should confine themselves to "bread and butter" issues or venture out into a social movement concerned with Governance of Civil Society, Production and Distribution of goods and services to the benefit of all members in society.

Part I

Observed Patterns of Migration

"More than 60 million people are said to be economically active in countries of which they are not citizens. In addition it is estimated that they are accompanied by more than 70 million spouses and children. The number of workers crossing borders drawn by higher wages is greater than ever before as globalization transforms the world economy when capital and labour move freely to secure higher returns" (Tomoda. S, 1999). "Anthropologically speaking migration is an irrepressible human urge.

* Presentation made at SAARC Sub Regional Seminar on Challenges to Trade Unions in the New Millennium, August 1999.

† Director, Migrant Services Centre, Sri Lanka. and Former Chairman, Sri Lanka Bureau of Foreign Employment

People have always wanted to move to places with more spiritual freedom greater political liberty or higher standard of living. The more tolerant the receiving state the more attractive its spiritual freedom and political liberty, the richer it is the stronger its economic pull. Economically speaking migration represents for the individual escape from poverty and it relieves its home country of mouths to feed and bodies to clothe and shelter" (Bohning 1948).

In the modern Era, five distinct waves of migration have been noted. The first began in the 17th century. Britain, Spain, Portugal, Netherland, France, emerged as colonial powers and established colonies that provided an outlet for their expanding populations. The Second migration wave took place during the same period and was an antecedent of modern labour migration. A system of chattel slavery for the plantations and mines for the new World emerged. European Traders transported slaves from West Africa and indentured labour from South Africa and South Asia for employment in East Africa, Malaysia, Trinidad and Jamaica. It was estimated that a total of fifteen million slaves were transported to the America's before 1950. Coolies or indentured labour replaced slaves when slavery was abolished officially. British colonial authorities are estimated to have recruited over thirty million people from the Indian sub continent to work in the Caribbean, Malaysia and East Africa, Between 1800 to 1930, forty million Europeans migrated permanently overseas to North and South America and Australia (Decloities 1967).

The third wave of migration took place with the dissolution of empires after World War One. New states were created, ethnic divisions became prominent. Geographical and geopolitical impulses led to refugee flows. It was during this period that the modern era of refugee movements commenced. The fourth wave of migration began after World War Two with demolition of colonial empires and the creation of independent states in Asia, Middle East and Africa. Largest refugee flows took place in South Asia. With the partition of India in 1947 an estimated fourteen million Hindus and Muslims migrated between India and Pakistan. Refugee flows continued thereafter, though refugee movements were stronger in Africa. The break up of Soviet bloc led to internal conflicts and massive flights of people. With disintegration of empires new ethnic identities emerged and ethnic conflicts within states raised movements for autonomy and self-determination. Civil conflicts also produced an increase in internally displaced persons.

A fifth wave of international migration almost overlapping the fourth emerged in the 1950's and 1960's in response to rising demand for imported labour in Western Europe, USA and oil producing coun-

tries of the Middle East. Colonial powers desired to admit migrants from their former colonies. Britain admitted migrants from South Asia and the Caribbean. Saudi Arabia, Libya, Iraq and Persian Gulf states recruited migrant workers from Arab states in Asia and states of South Asia to meet short falls in labour force growth. Non nationals constituted a predominant majority of labour in Kuwait, Qatar, UAE and Oman. (See Table I)

Table 1

**ESTIMATES OF LABOUR FORCE GROWTH RATES
(IN GCC COUNTRIES 1995 - 2000)%**

COUNTRY	1995		1996		1997		1998		1999		2000	
	N	NN	N	NN	N	NN	N	NN	N	NN	N	NN
SAUDI ARABIA	49	51	50	50	51	48	53	47	54	46	55	45
KUWAIT	24	76	25	75	26	74	27	73	28	72	28	72
BAHRAIN	52	48	53	47	54	46	56	44	57	43	58	42
QATAR	20	80	21	79	22	78	22	78	23	77	24	76
UAE	10	90	10	90	10	90	11	89	11	89	11	89
OMAN	42	58	43	57	44	56	45	55	46	54	47	53
TOTAL FOR GCC	41	59	42	58	43	57	44	56	45	55	46	54

N = National

NN = Non National

Source : *Policies and labour demand in GCC countries*
Jawad Annani 1992

Since World War two International Migration grew in volume and changed in character. From 1745 to 1970 industrial areas of Europe, America and Australia developed and attracted large number of migrants for industrial employment. The oil price hike of the 1970's, strengthened Arab economies leading to large infrastructure development projects that enabled movements of persons to develop desert states on the basis of their oil income. In a second phase from mid 70's upto the early nineties economic motivations were predominant. With end of cold war at least 30 major armed conflicts have taken place world wide, raising the number of refugees and internally displaced persons.

Demographic impact of population growth was displayed in the annual labour force growth rates of South Asian countries leading to poverty and unemployment. This situation encouraged our migration. (See Table 2)

Table 2
AVERAGE ANNUAL LABOUR FORCE GROWTH RATES
1980 - 2010

COUNTRY	1980 - 1990	1990-2000	2000-2010
BANGLADESH	3.5%	3.6%	3.3%
INDIA	2.2%	2.1%	2.0%
NEPAL	2.4	2.7%	2.5%
PAKISTAN	3.9	3.7%	4.3%
SRI LANKA	1.5%	1.7%	1.4%

Source : Sri Lanka Foreign Employment Bureau - Research Division

Though worker flows were considered temporary, many guest workers have settled down permanently changing ethnic and religious character of host countries. The most distinctive feature of all five waves of migration outlined above is that social structure and the ethnic composition of both sending and receiving countries are undergoing change. Population movements across international boundaries have led to formation of new states. "In modern times world wide migration is to a large extent the result of globalization of world trade, communication and transportation. But not entirely. Indeed much of the world's migration today is the result of policies and actions of states that directly or indirectly encourage, induce or force their citizens to leave" (Wiener M 1995) Global migration is most closely associated with rising expectations of people in developing countries, differences in wages and employment opportunities, knowledge about opportunities elsewhere, and access to low cost transportation.

Violation of Human rights and a high incidence of violence and persecution are also a cause for migratory movements. With the information revolution, we undergo growing knowledge about the ease of entering a country and remaining there also contributes to, migration. Sovereign states impose controls over entry and decide which people to admit, how many? from where? As migration has a tendency to change ethnic composition of states issues of absorption, integration and assimilation are a major concern to authorities in receiving countries. Large number of refugee movements have compelled receiving countries to intervene with governments that violate human rights and undertake persecution of its minority population in order to stave off out ward flows.

Refugee flows worldwide show no sign of abating. List of countries producing refugees becomes long. Sri Lanka, Bhutan and Bangladesh have emerged as a source of world refugees. (See Table 3)

Table 3

**PRINCIPAL SOURCES OF THE WORLD'S REFUGEES
(End of 1992)**

Region, Country, or Ethnic Group of Origin	Number of Refugees (thousands)	Region, Country, or Ethnic Group of Origin	Number of Refugees (thousands)
Afghanistan	4,286	Iraq	125
Palestinians	2,658	Georgia	130
Former Yugoslavia	1,767	China (tibet)	128
Mozambique	1,725	Bhutan	95
Somalia	864	Vietnam	89
Ethiopia/Eritrea	834	Mali	81
Liberia	599	Moldova	80
Angola	404	Zaire	66
Azerbaijan	350	Iran	65
Burma	333	Mauritania	65
Sudan	263	Tajikistan	52
Armenia	202	Bangladesh	50
Rwanda	201	Guatemala	45
Sierra Leone	200	Laos	43
Burundi	184	Nicaragua	30
Sri Lanka	181	Chad	24
Western Sahara	165	El Salvador	22
Cambodia	148	Senegal	15

Source : U.S Committee for Refugees.

Civil conflict proceeds to displace persons internally within states. 25 million such persons were noted world wide in 1993. US committee for refugees has reported 600,000 persons being displaced due to conflict in Sri Lanka and 280,000 in India. (See Table 4)

Table 4
INTERNALLY DISPLACED PERSONS
(End of 1992)

Country	Number of Refugees (thousands)	Country	Number of Refugees (thousands)
Sudan	5,000	Rwanda	350
South Africa	4,100	Croatia	340
Mozambique	3,500	Colombia	300
Somalia	2,000	India	280
Philippines	1,000	Cyprus	265
Angola	900	Azerbaijan	216
Bosnia-Herzegovina	740	Sierra Leone	200
Ethiopia/Eritrea	600	Cambodia	199
Liberia	600	El Salvador	154
Sri Lanka	600	Guatemala	150
Afghanistan	530	Zaire	100
Burma	500-1,000	Kenya	45
Peru	500	Turkey	30
Iraq	400	Moldova	20
Lebanon	400	Georgia	15
Tajikistan	400		

Source : U.S Committee for Refugees.

Illegal migration constitutes a trouble some outcome of migration. An increased number of illegal labour flows from Bangladesh to India, from Nepal to Bhutan. Although there are number of programmes to combat illegal migration efforts of governments to penalize employers or offer amnesties have failed. Illegal flows are the result of an increase of migration networks; the removal of barriers to migration and the emergence of migration Mafia of labor recruiters who extract fees from would be migrants some times turning migrants into bonded labor and arrange for their transportation and employment abroad. In virtually every world capital the flow of people is treated with alarm.

A major concern of Europe is how to deal with a large scale inflow from the Balkans, East Europe and the third world. How to integrate millions of guest workers and their locally born children. How to cope with

growth of anti foreign political parties. These concerns are not confined to the advanced world. They are very likely to emerge in South Asia. The number of people fleeing to escape violence or persecution or to find employment or to improve their own living and of their own family members has been greater than ever before. "In many countries citizens have become fearful that they are now being invaded not by Army's or tanks but by migrants who speak other languages, worship other Gods, belong to other cultures and they fear will take their jobs, occupy their land, live off the welfare system threaten their way of life, their environment and even their polity"

Although migration is considered beneficial to senders and receivers refugee flows are regarded as a problem. Starting in the early 70's many countries have a less benign view of international migration. Governments soon found that though they have invited labour they have virtually imported people with a will of their own. This reality has compelled governments to become restrictive. And with more controls illegal migration increases, Asylum claims increase. However in future it is likely that service exports rather than labour exports will be preferred and encouraged nation states. It will induce natural persons to gain economically by remaining on their own lands than migrating.

Several efforts were made by researchers and academics to explain the dynamics of international migration. Earliest were the push pull theories, which argued that factors like demographic growth low living standards, political oppression as well as economic opportunities pushes people to migrate. Pull factors like demand for labour, availability of land, good economic opportunities, political freedom was claimed to have induced migration. This model is individualistic and emphasises an individual's decision to migrate. It cannot be proved easily that such decisions were based on a rational evaluation of cost and benefits. In practice a rational decision making process rarely takes place. Borjan attempted a model of an immigration market. (Borjan 1990) However there were several critics of this model as it failed to explain actual movements or predict future ones.

Another school of thought argued that migratory movements were the result of prior links based on colonization, political influence, trade, investments or cultural ties. Zolberg was of the view that migrations are a collective phenomena, which can be examined as a sub system of the global economic, and political system (Zolberg 1988). Others argued that migration can be understood, as a systemic outcome. "Each migratory movement is seen as a result of interacting macro and micro structures

where macro structures include world market, laws, interstate relationships and micro structures are informal networks developed by migrants to cope with migration and settlement. (Fawcet and Arnold 1989)

Informal networks include psychological adaptations, personal relationships, family and household patterns, friendship and community ties and mutual help in economic and social matters. Such informal networks bind migrants with migrants together in a complete web with social roles and interpersonal relationships. (Boyd 1989) It is claimed that such networks are a dynamic cultural response at the base of ethnic community formation and maintenance of family and group ties, which transcend national boundaries. Macro and microstructures are linked at all levels with each other.

Answers to the following questions may explain the migration process.

- What economic, social, demographic, environmental or political factors have changed immensely that people feel a need to leave there area of origin?
- What factors provide opportunities for migrants in destination areas? How do links develop between these two areas?
- What legal political economic social structures and practices exists or emerge to regulate migration and settlement?
- How do migrants turn into settlers?
- What is the effect of settlement on social structure, culture, national identity of receiving society?
- How does emigration change sending area?
- To what extent does migration lead to new linkages between sending and receiving countries?

The internal dynamics in the process of migration reveal that most migrations start with young economically active persons. They are target earners. Some return others prolong their stay or return and re-migrate. However labour migrants, permanent settlers and refugees have varying motivations and move under different conditions. All these types do reveal the impact of modernization and globalization on traditional forms of production and social relations. The distinction between economically motivated migration and politically motivated flight is often blurred.

Main type of Asian labour migration indicate movement to highly developed Western countries, contract labour to Middle East, Intra Asian labour migration, movement of highly skilled and professional workers, student migration and refugee movements. Most movements to USA, Canada and Australia developed through use of family re-union provisions. Another trend observed is the involvement of brokers, agents, lawyers and middlemen of various types who provide contact and knowledge of immigration regulations (Hugo 1990). These countries place increasing emphasis on skilled and business migrants. Whatever the status of a migrant worker he remains to be exploited unless provided protection and welfare.

Labour migration within Asia took place recently due to rapid economic growth of newly industrialized countries. High performing economies in East Asia were held up as models to the rest of the world by the World Bank. After Japan, Singapore, Hong Kong, Taiwan and South Korea set the pace for rapid export oriented growth; Malaysia, Thailand and Indonesia followed. Such growth was accompanied by increasing mobility of capital goods and labour within the region. It has been estimated that at beginning of 1980's there were over a million Asians working in other Asian countries. By middle 1997 the number increased to 6.5 million foreign workers in Japan, Korea, Malaysia, Singapore, Thailand, Hong Kong and Taiwan. However at the close of 1998 East Asia presented a landscape of economic ruin, with a currency crisis that commenced in July 1997.

Receiving countries of East Asia implemented several policies and action plans to save jobs of nationals and maintain incomes like the following: -

1. Strict enforcement of immigration laws and border controls and stiff sanctions, against migrants and their employers.
2. Repatriation of migrants
3. Amnesty programme
4. Re-deployment
5. Enforcing new requirement on employers.

The immediate impact of the crisis was:

1. Unemployment
2. Devalued currencies

3. Decline in living and working conditions
4. Wage cuts and a freeze on a minimum wage

The time has come to identify shortcomings of a strictly temporary approach adopted by governments to labour migration in the past. So long as migration is for temporary employment adequate safeguards are necessary for the protection and welfare of migrants. Against a time scale of nearly 500 years of migration how could one describe it as a temporary phenomenon and place ad hoc measures to meet challenges migration imposes. Information services available to people who desire to go abroad are incomplete or unreliable. Services to returning migrants are not properly designed or adequately provided. Re-integration measures do not provide for long term employment on return or use of earnings made through migration. In view of this situation the migration cycle continues. To end the migration cycle strategies may be devised in cooperation with NGO's Trade Unions and worker associations to build up support at grass root level, provide alternatives to migration through local employment, or self employment and as a long term strategy undertake policy measures to induce more service exports.

Scalabrini centre studied the East Asian crisis and how countries re-acted to avert a future crises. The following areas were noted:-

- Information should be treated as a public good and made readily available.
- Resources should be shifted from non-tradable to tradable sectors.
- Provision should be made for multiple skilling.
- Migration should no longer be treated as a temporary phenomenon. Regional cooperation is necessary for safe repatriation of workers. When necessary repatriation should be permitted in such a manner that it will not lead to sectional labour shortages and violation of human rights.
- Attempts should be made to promote inter country cooperation and focus on root causes.
- The study concluded " more attention should be given to policy makers and union groups who have been generally hostile towards migrant workers" (Battistella 1998)

Alternate Policies & Practices

Minister of State for Commerce in India Hon. Chidambaram in addressing a recent seminar on Invisibles said "We understand merchandise trade we understand selling and buying goods not invisibles. They are what they are - invisible intangible and therefore often not subject to full measurement but it is this sector which will grow rapidly. For a country rich in human resources this sector has tremendous potential. It need careful policy making and the selection of right instruments and right incentives to ensure promotion of international trade in services". (Chandra Prasad H.A.C. & Kapoor R 1996)

Economists are concerned with the production and exchange of goods. The service sector of an economy usually referred to as the Tertiary sector was considered almost unimportant. However in the mid 80's it emerged as an important sector in world trade. As a result of information and technology revolution that captured world attention, this sector expanded with the development of tourism, health services, shipping and financial services. It was entered for negotiation in the Uruguay Round of Trade talks . With the signing of the General Agreement on Trade in Services (GATS) service sector is being liberalised. This sector plays a significant role in the economies of developing countries. It has been growing at an annual rate of 9% in South Korea and 5-6% in India, Pakistan, Sri Lanka. It has immense potential for employment. It is eco friendly.

In the post war period 55% of GDP of Developed Market Economies was accounted for by services. The relative decline of manufacturing and the rise of services has been referred to as "de industrialisation". In the Post Uruguay round it has come under the purview of WTO. Although it is possible to estimate with some accuracy increase in world income from Trade in goods it is not possible to quantify the value or potential Trade effects of commitments in Services in the same way. Data shows that cross border Trade available in services alone account for an estimated one trillion dollars a year and that this sector is growing very fast. (Sanjeev Reddy 1996)

In 1990 developing countries earned a net income of US dollars 2.9 billion from the export of temporary labour services. This figure increases to 36.7 billion dollars if one includes total labour related income, migrant transfers and worker remittances. See Table 5 for Balance of

Payment figures for South Asian countries. In 1992 services accounted for 20% of total world trade and 30% of US exports.

Table 5

BALANCE OF PAYMENTS OF SELECTED SOUTH ASIAN COUNTRIES

	Exports of goods, services, and income (million \$)		Imports of goods, services, and income (million \$)		Current Transfers				Current account balance (million \$)		Gross international reserves (million \$)	
	1980	1995	1980	1995	Net Worker's Remittances (million \$)		Other net transfers (million \$)		1980	1995	1980	1995
Low Income Economies												
1 <i>Bangladesh</i>	976	4,292	2,622	6,747	..	..	802	1,426	-844	1,029	331	2,376
2 <i>India</i>	12,348	40,995	18,130	54,303	..	..	2,860	7,478	-2,922	-5,830	12,010	22,865
3 <i>Nepal</i>	239	1,110	368	1,592	..	..	36	108	-93	-375	272	646
4 <i>Pakistan</i>	3,011	8,403	6,042	12,758	..	..	1,895	2,390	-1,137	-1,965	1,568	2,528
5 <i>Sri Lanka</i>	1,340	4,843	2,269	6,041	152	715	121	75	-657	-546	283	2,088

Source: World Development Report 1997.

It may be noted that Net worker remittances cover payments and receipts of income by migrants who are employed or expect to be employed for more than a year in the new economy. Those derived from shorter-term stays are included as services labour income.

Service companies are compelled by competition to go global. It is harder for traditional players to increase domestic profits whereas demand for services abroad allows many to earn higher profit margins. Mac Donald's worlds largest restaurant chain has seen it's US business wilting while its international operations thrive.

Whenever transnationals move in search of niche business opportunities they raise problems for employers and Trade Unions. This is particularly so when Trade Unions are weak or do not have the capability to resist such entry. Presence of multi nationals may result in disadvantages to members of existing enterprises dislodged if entry is sought through acquisition or mergers. It may cause environmental hazards and unfair competition to small native business enterprises when set up as new enterprises. In the face of these threats Trade Unions

generally resort to political action rather than industrial action. Several successes have also been made at international level through negotiated codes of conduct and worker participation schemes. Much of the strength of international Trade Unions has surfaced in lobby groups. Internationally unions have declared an interest to impose demands on movement of capital.

Whenever service providers buy existing companies, form branch operations or set up joint ventures they provide access to a large capital base, technical expertise, marketing logistics or computer systems. As a service industry becomes global so does its labour market. A strong corporate culture may assist in retaining key staff. Issues like geographic mobility of executives homogeneity of remuneration systems, evaluation procedures and training systems become important concerns of unions.

Of 20 major labour senders Bangladesh, Pakistan and Sri Lanka in South Asia accounted for 1,531 million dollars of labour export services in 1992. European states accounted for 64,287 million dollars. Gulf states 27,641 million US dollars. USA 8,710 million dollars and Japan 6,260 million of US dollars respectively of labour import services. Though promotional efforts were under taken to promote "body shopping" and enable more persons seek overseas employment a similar emphasis has not been placed by Governments in South Asia on expanding World Trade in Commercial Services. In 1990 few developing countries accounted for 12.9% of the export of commercial services compared to 83% for developed countries. In future developing countries having a comparative advantage in a number of service industries may improve the situation as was done by some East Asian economies, who constantly upgraded quality and technical capacity of labour which enabled them to be service exporters in the region.

A general view was that developing countries have little or no comparative advantage in a world market for services. However experience shows that constant upgrading of quality and technical capacity of labour can lead developing countries to a state of potential comparative advantage in a wide variety of skill and knowledge intensive services. These include Engineering, Accounting, Legal Management Consulting, Medical, Nursing, Software Development, Data Entry Processing and Cleaning Services under taken by labour of South Asian Countries. For example the services sector is one of the fast growing sectors in the Indian Economy in recent times. Software exports registered annual average growth rate of 53.8% during 1986 - 91 against 38.4% by chemicals 30.5% by ready made Garments and 27.1 % by Leather products. (See Table 6 on top ten software exporters from India).

Services have frequently been defined as economic activities that provide time place and form utility while bringing about a change in (or) for the recipients of the service (Riddle D 1986). A local service product in this sense is an activity produced and consumed in a given place with no special relationship with international operations and may be offered by a local service provider - It may be offered as a one site family restaurant or a multinational service provider like a large insurance chain in different countries operating under different brands.

Technology will provide service providers with new competitive weapons and new products like satellite linkage, video conferencing voice image data processing mode to tap a global network of expertise. Idea in this is to enhance the key resource of the firm - knowledge - and decrease the need for more bodies to move around the world. A list of top 10 Software Exporters from India is given below. It shows a vast growth potential between 1991 to 1994.

Table 6

TOP TEN SOFTWARE EXPORTERS FROM INDIA

(Value: Rs. Crores)

	1991-92	1992-93	1993-94	% Growth
Tata Consultancy Services (TCS)	130.00	175.00	200.00	14.29
Tata Unisys	39.20	56.00	75.00	33.93
HCL Hewelett Packard				
Digital Equipment	20.60	31.78	37.10	16.74
ICIM	7.80	13.00	32.25	148.08
Silverline Industries	-	9.18	30.00	226.80
Wipro System	10.50	17.22	29.50	71.31
Pentafour Software			28.29	
& Exports	-	-	-	-
Patni Computer Systems	10.50	15.62	28.25	80.86
Infosys Technologies	7.40	12.01	27.49	128.89

Source. *Computers Today*, June 1994

Software exports according to different categories is given below:

(See Table 6 on top ten software exporters from India)

Table 7

SOFTWARE EXPORTS BREAK-UP
(Rs. Crores)

Category	1992-93	% of Total	1993-94	% of Total
On-site Services	372.24	55.10	480.58	47.08
On-site Turnkey	98.36	14.56	164.78	16.14
Off-shore Turnkey	159.69	23.64	307.72	30.15
Off-shore Package Development	42.22	6.25	67.72	6.63

Source: *Computers & Communications*, August 1994.

From the above Table 7 on software exports it is evident that there is a shift from on-site services to more off-site services. Videsh Sanchar Nigam Limited (VSNL) and Software Technology Park (STP) provided high speed (64 Kbps) data communication links to the industry. Off-shore services increased to 37% in 1993-94 from 30% in the previous year, while on-site services decreased from 70% in 1992-93 to 63% in 1993.94. This reflects that the Indian software companies are gradually increasing their share from off-site services. The gains from use of similar potential comparative advantage could be enormous. For example in Telecommunications it is estimated that in future it will create 6 million to 30 million new jobs and increase export income by US 350 million dollars. These figures exclude gains from specific labour contracts subject to immigration restrictions.

Part III

Areas for Trade Union Concern

A challenge before developing countries particularly of South Asia is to take full advantage of their actual and potential comparative advantage in several categories of service exports. For this two measures are necessary. Promotional and organisational measures should ensure efficiency and competitiveness. It calls for a favourable policy and regulations; a sound and dynamic export organisation; a Trained and flexible work force and an efficient service system. Other important requirement is the removal of restrictions on access to international markets. The possibilities are pure labour services or skill intensive services such as movement of software consultants on short visits to complement delivery of products as direct interaction with customers provides an opportunity to deliver skill intensive long distance services.

The General Agreement on Trade in Services (GATS) an integral part of Uruguay round of Trade talks, opened up a new corridor of opportunity. GATS seeks to expand World Trade in services through cross border supply and commercial presence as well as through movement of persons both as service providers and consumers. For the first time trade related movements of natural persons have been brought in to an agreed framework of multilateral disciplines and treated on par with other modes of delivery. None of this is automatic. Liberalisation commitments of developed countries cover most service sectors especially unskilled or semi skilled persons. But they shy away from lifting restrictions on entry of persons who provide personal services. The prevailing immigration laws in individual countries determine what is permitted. The gap between goals of liberalisation and depth of actual commitment is most striking as market access for such personnel was subject to a limitation in 92% of all commitments. However there is no discernible limit on providing off shore services.

As at present more predicable access open to natural persons is in senior positions in the corporate sector. Dynamic developing countries should be encouraged to pursue policies of strengthening their knowledge and skill intensive service industries in order to increase service exports through corporate and similar structures. The present commitments under GATS provides the foundation on which to build progressive liberalisation through successive rounds of negotiations. Multilateral economic and technical cooperation including the Lome convention can play a significant role in a transition period.

Other avenues of action possible are bilateral or multilateral negotiations on liberalising controls for entry or temporary stay of foreign natural persons supplying services. Developing countries have a continuing opportunity to build progressive liberalisation outcomes through successive rounds of negotiation.

The service sector shares certain characteristics in terms of product like intangibility, simultaneous production and consumption. A service product is closely linked to customer hence it has a people dimension. Staff motivation loyalty and commitment are fundamental in contributing to continuously high standards of service provision.

A current investigation of service sector resourcing revealed that though older employees had been considered a neglected human resource, service sector can effectively respond to their utilisation. Mature employees contribute in future resourcing of the service sector.

The older workers are seen as a relatively cheap and flexible human resource (Arrowsmith and Mc Goldrick 1996). They introduce balance in the labour force and assures commitment in performance.

It has been observed that "traditional hierarchical structures which have evolved since the Victorian era fail to provide the kind of support and atmosphere necessary for the development of creative responses to the challenges of a very different environment" (Watkins J 1994). A network type structure where a team is formed to resolve a specific problem dismantled when task is performed and reassembled when ever necessary provides an opportunity to restructure hierarchical patterns of management.

It is argued that a "Bureaucracy Adhocracy" model of management is best suited for service providers. Such a system would best respond to a situation of profit centres, contract workers, new business process design and help identify core professionals who will be rounded professionals with technical managerial and political skills.

A trained and flexible workforce is a pre requisite to offer skills contemplated under GATS. These developments highlight the need for effectiveness and equity of South Asia's Education system to enable higher education meet the challenges posed by globalization. Efforts have been made to remove impediments to free flow of capital, goods, services and technology. This leads to a demand for quality and quantity in the expansion of Education as well. It calls for Trade Union concern in the area of Education particularly its equity aspects where the majority of prospective workers in South Asia are entrapped in ignorance and poverty. Other issues like impact of Education on wage structure and economic growth, unemployment, education of women and increasing their knowledge and skill base, relevance of cross-fertilization with imported education systems may be addressed on a priority basis.

A new era of information technology has opened new vistas of venture for youth. How best could these resources be tapped. International schools have sprouted up all over South Asia, several are identified as "degree mills" How relevant are these? Attention of academics and professionals as well as governments in South Asia should be directed to enable them under take arrangements for a new Education Order to replace the old (Chaparawal 1999). Trade Unions should be visible in this area by providing policy advice. How does organised Trade Union Movement in South Asia respond to developments in service sector. The employees range from the uninitiated to the highly skilled or professional employees. There is room for employment

flexibility and sector employs a sizeable workforce for example it employs nearly 1/3 of the labour force in Sri Lanka. Room for collective bargaining is hardly visible. In most instances individual bargaining ensures a job contract.

Historically trade unions organised the plantation or factory worker hence a large membership of trade unions comes from these sectors. With the prominence gained by the service sector a new brand of worker has also emerged - the knowledge based worker. These tendencies explain some difficulties in organisation. Figures available for Sri Lanka show that 86 Trade Unions of Professional, Technical and allied workers had a membership of 14,768, and 53 Trade Unions of service employee's had a membership of 44,649 whereas 20 Trade Unions within the plantation sector had a membership of 384,042. (See Table 8).

Table 8

DISTRIBUTION OF TRADE UNIONS BY EMPLOYMENT CATEGORIES

Category	No. of Unions	Membership Strength
Professional, Technical & Allied Employees	86	14,768
Administrative & Managerial Employees	57	8,228
Clerical Allied Employees	71	70,106
Mercantile Employees	6	34,309
Service Employees	53	44,649
Agriculture, Animal Husbandry, Forrest Employees, Fisherman & Hunters	20	384,042
Production & Allied Employees		
Transport and Machine operators, Labourers	51	1892,19
Employees not categorized according to employment	146	138,038
TOTAL	490	883.107

Source : Administrative Report of Commissioner General of Labour 1997

Trade Unions in Sri Lanka are small. 368 unions with less than 250 members each had a total membership of 22,427, whereas 21 unions with 5000 and more members each had a total membership of 757,024. The majority of these large unions are outside the service sector. (See Table 9).

Table 9

DISTRIBUTION OF TRADE UNIONS BY STRENGTH OF MEMBERSHIP

Membership	No of Unions	Total Membership
Below 50	199	5,213
50 - 250	169	20,214
251 - 1000	69	35,856
1001 - 5000	32	64,800
5001 & Over	21	757,024
	490	883,107

Source : Administrative Report of Commissioner General of Labour 1997

Innovative Trade Unions strategies are called for in organising service sector employee's. A Trained, skilled and flexible work force is a *sine qua non* for vigorous development of the service sector. Trade Unions have a stake in Human Resources Development . They should no longer be onlookers with no concern for development issues. The picture is more striking when one considers school enrolments in South Asia with selected developing countries and as a percentage of age groups in secondary and tertiary education sectors. Developed Countries have a high percentage of age groups in secondary and tertiary sectors than low income countries in South Asia. (see Table 10) This enables developed economies to strengthen the skill base of their work force and play a lead role in providing technical and other related services. Policy makers and governments of developing countries should re-examine the continued validity of their Education policies and structures and undertake future programmes that will enable their work force to share in the gains of service exports.

Table 10

**EDUCATION - SCHOOL ENROLMENT AS A PERCENTAGE OF AGE GROUP
IN SECONDARY & TERTIARY SECTORS**

<i>Selected Developed High Income Countries</i>	Secondary				Tertiary	
	Female		Male		1980	1993
	1980	1993	1980	1993		
Germany	—	100	101	—	—	36
Denmark	104	115	105	112	28	41
Norway	96	114	92	118	26	54
Japan	94	97	92	95	31	30
U.S.A	—	97	—	98	56	81
Netherlands	90	120	95	126	29	45
France	92	107	77	104	25	50
Austria	87	104	98	109	22	43
Italy	70	82	73	81	27	37
Canada	89	103	87	104	52	103
U.K	49	94	82	91	19	37
Australia	72	86	70	83	25	42
<i>Selected Developed Low Income Countries</i>						
Bangladesh	9	12	26	26	3	—
Nepal	9	23	33	46	3	6
India	20	—	39	—	5	—
Pakistan	8	—	20	—	—	—
Sri Lanka	57	78	52	71	3	6

Source: World Development Report 1997

Available investment in education in the SAARC region and elsewhere also show that it is low for Sri Lanka and Bangladesh compared to East Asian Countries. (see Table 11) Such low investment in human resources will slow down the pace of long term earnings in service sector unless measures are taken to strengthen Education. A country that offers cheap labour remains a poor country. To overcome this situation skill formation and training should be geared to improve Human Resources and obtain a comparative advantage, go up market, identify niche employment opportunities. As watchdogs over Social issues trade unions have a definite role to call for changes in Education policy.

Table 11**INVESTMENT IN EDUCATION IN SOME SELECTED COUNTRIES**

Percentage of Age Group Enrolled in Education

Country	Private	Secondary	Tertiary
East Asian Countries			
Philippines	109	74	28
Thailand	97	33	19
Indonesia	115	38	10
SAARC Countries			
Sri Lanka	107	74	6
Bangladesh	77	19	4

Source: World Development Report, 1995 - as quoted in Economic Review, Vol 21, No 5, August 1995 :23

Increased participation of developing countries in Service Trade has important implications for migration management. As trade in Services expands, higher foreign exchange earnings and market opportunities identified will enable countries to further improve performance of Service sector. More and better jobs would be created all round and the economies would move towards an upward swing.

With prospects at home bright many who prefer to leave the country may wish to remain and any pressure for "disorderly" migration decline. As it happened in East Asian countries skilled migrants may return to their home countries. "Trade related temporary labour mobility not only enhances global economic efficiency but on balance it can also be a substitute for long term migration. Nations should give full consideration to both aspects as they engage themselves in further negotiation on Trade related movement of persons". (GOSH 1996).

Service sector in South Asian economies has expanded. GDP growth of South Asian economies has averaged 4-5 percent in the period 1982- 1995. Industry and service sectors has shown an increase particularly in the period 1990-95. While agriculture maintained its growth rate at a low 2-3 percent during the period there was a distinct growth increase in industry in Sri Lanka, Nepal, India and Bangladesh. The growth in Services is equally visible.

These changes in comparative growth or expansion in the light of liberalisation becomes clearer when we take a country situation for analysis. The Central Bank of Sri Lanka has reported that in Sri Lanka employment in agriculture sector increased by 0.8 percent in the period 1953 - 1996. The share employed in agriculture declined from 53 percent of the total in 1946 to 38 percent in 1996 and commented as follows. "The agriculture sector has become less attractive compared to the new interest available to labour force in other sectors". The relative share of labour absorption in manufacturing showed an increase from 8.6 percent in 1996 to 14.5 percent in 1996. Employment in the service sector increased from 37 percent in 1946 to 40 percent in 1996. The Central Bank observes that much domestic employment expansion came from services and construction. World Development Report reveals a distinct growth of service sectors in the economy of Sri Lanka, Nepal, Bangladesh and India.

Table 12

Growth of South Asian Economies

	GDP Growth		Sectional Growth					
	1980 To 1990	1990 To 1995	Service Sector		Agenda		Indent	
			80-90	90-95	80-90	90-95	80-90	90-95
Bangladesh	4.3	4.1	5.7	5.4	2.7	1.1	4.9	7.3
India	5.8	4.6	6.7	6.1	3.1	3.1	7.1	5.1
Nepal	4.6	5.1	4.8	7.2	4.0	1.5	6.0	9.3
Pakistan	6.3	4.6	6.8	5.0	4.3	3.4	7.3	5.7
Sri Lanka	4.2	4.8	4.7	6.3	2.2	2.4	4.6	6.5

Source: World Development Report 1997

Commercial services include financial services, a sector that expanded rapidly with liberalisation and globalisation. The situation in South Asia is portrayed by the mission statement of Vanik Incorporation Limited a Merchant Bank which started operations in 1993 with a single computer and dream of becoming the leading Merchant Bank in Sri Lanka. Vanik says "we have moved in to the large South Asian market having begun operations in Bangladesh in 1997". They intend to extend their operations to other parts of South Asia and say the South

Asian market is uncharted territory for many Sri Lankan companies. The financial services industry in South Asia is changing every year. New types of institutions emerge, new products and services are introduced. New jobs are created, this is so in related sectors like Banking, Factoring, Investment, Advisory services, Feasibility studies, Systems study, Education and Marketing services, Project monitoring and Supply services, Fund management and Secretarial services.

In Europe an experiment in regularising temporary employment has come to stay. In Netherlands 4 percent of its work force of 4.8 million work temporarily in full time jobs filling vacancies while permanent staff are away. Nearly 600 temporary employment agencies with a turn over of 9 billion Euro have emerged and the Americans have taken measures to enable full timers to absent themselves from normal occupations, in order to undertake short-term assignments locally or abroad. Labour laws often treat temporary workers who work at least one year on the same contract to become permanent employees of temping agencies. Dutch temping industry is operating out side the Netherlands with 400 units in Germany, USA and other countries. (Hans Kops 1999)

Temporary employment is one factor that emerges with the growth of an Invisible Sector within an economy. Part time employment is another development. To enable these situations to exist employment flexibility and a relaxed labour law regime is expected. These are situational responses to changes ushered in the wake of globalisation and deregulation. The last years of the 20th century witness other changes like a shift in industrial and professional distribution of jobs as well as in sex, age and geographical distribution of jobs. These environmental changes have also affected or are likely to effect organised Trade Union Movement in countries of South Asia.

Due paying membership may decline as a percentage of the labour force. Currently it is estimated at below 20% of the working population in South Asia. Political power of Trade Unions may decline with employers managing a free enterprise economic system with the support of policy makers whose desire is to produce popular remedies to satisfy political wishes. This may trample on traditionally enjoyed Trade Union rights and freedoms. Ability of Trade Unions to command respect and protection of courts may decline.

For how long will it be just and fair to claim "that a registered Trade Union does not perform functions for the public benefit and it is

an organisation established solely in the interest of its members"? Are Trade Union laws and practices relevant to the times? A more liberal concept of a Trade Union would view unions as a Social Movement for raising Quality of life of disadvantaged working communities. As service providers government agencies will need to strengthen their policies and infrastructure in Health, Education and Skills Training as well as enable professional competence's in lead areas like Medicine, Engineering, Computer and Communication Technology. Trade Unions should be a strong catalytic force to build up advocacy campaign in this area through appropriate bodies at national level. Such a broader outlook places a mediator role on unions to enable Trade Unions to be "institutions that mediate between Economic and Social Structures" (Piore M.P. 1994), an emerging responsibility of immense concern to unions in the new millennium.

(Hans Kops 1999)

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For how long will it be just and fair to claim "that a registered Trade Union does not perform functions for the public benefit and it is thus not a trade union" as per section 2(e) of the Industrial Disputes Act, 1947?

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HUMAN RESOURCES DEVELOPMENT STRATEGIES FOR IMPROVING LABOUR PRODUCTIVITY AND TOTAL FACTOR PRODUCTIVITY

Sena Thoradeniya *

1. Productivity Process

One of the biggest myths prevailing in our country about productivity is that productivity improvement is a "Programme". Not only senior management in the industry but certain people who promote productivity in different ways think that productivity improvement is a short-term programme or a project.

Before making efforts to promote productivity these productivity facilitators should understand the simple fact that Productivity improvement is a process, which evolves through incremental changes. Even if a firm makes breakthrough innovations or re-engineer the organization productivity enhancement will forge ahead as a movement with continuous improvement.

For productivity improvement a country must have a national level, sector level and enterprise level long term productivity improvement strategies. At organization or firm level productivity is a strategic issue of the organization. To implement productivity there should be a management process which is a contrast of a "programme".

If productivity improvement is treated as a programme managers and all employees will take it as any other programme which has its own life time and they may not be committed to it. It may provide short-term benefits but cannot sustain in the long-run. That is why productivity should be made a strategic issue of the organization. Productivity improvement should be established as a strategic objective of the company and be related to other strategic objectives of the organization like the market share, product design, product development and technology.

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This in turn calls for well formulated plans to manage productivity to achieve continuing long-term improvements and benefits. Hence implementing a productivity programme is not a positive response, but merely a reaction to whatever problems identified in an organization in a given time or something forced upon by outside agencies.

A productivity process is continuous. It has a strategic orientation, improvements taken as critical for its effectiveness, success and sustainability. It makes productivity a way of life and a culture of its own. It is integrated with other methods, systems, processes and practices which include human resources development strategies and practices. This involves everyone who works within the organization having full awareness of it and commitment to productivity improvement. To make it a process we must develop top management commitment, middle management commitment and also the commitment of first-line management and the workers. Management commitment at all levels is necessary to support productivity improvement through personal involvement and participation. Workforce should be continually informed about the challenges and organisational responses for such challenges and success in improving productivity through open communication. Productivity will become a key element of the responsibilities of all managers and it will be reinforced by many HRD strategies.

Commitment to improving productivity must come from the top. Without that support and commitment no firm can go far. The management must show the workers how improving productivity will have a positive impact on the company's operations and the achievement of its corporate objectives. For this it is not necessary to make elaborate arrangements or add additional mechanisms. This can be done with the existing management practices with no additional cost; But it will bring rich dividends with improved productivity, increasing profitability, competitiveness and enhancing the company image. It is only changing the way managers do their work, and their attitudes as productivity improvement is a management job, not the work of an outside consultant or a facilitator or a foreign expert. Productivity management is the job of the operating manager. Productivity process energizes the manager to innovate and continually look for better ways to do a job, making changes and improvements at every turn, increasing the effectiveness and efficiency of all.

Talking only to a few employees about productivity who lack power and authority in the organisation and asking them to practice productivity definitely do not take them to a "Productivity Shangri-La", as envisioned by some productivity promoters.

2. Importance of Human Resource Development

HRD is the responsibility of all those who manage people irrespective of the functional area or the level they occupy in the management hierarchy. Every manager has his/her own duties within the area of HRD. This will improve productivity of every individual, all functional areas and the total organisation as today's employees are considered as the most valuable resource. A manager cannot manage his/her department successfully by technical expertise alone. He or she must develop human relations skills too. Effective use of technology, systems, methods, depend on the people who use them. Unless people are developed, motivated and gainfully employed, harnessing their creativity and innovativeness and latent potential it is unlikely that productivity improvements can be made at any level.

Another farcical thing which happens in Sri Lanka associated with productivity promotion is the scant consideration given to measuring of productivity at enterprise, sectoral and national levels. Productivity is not merely talking about the virtues of Japanese "5 S" technique, or lauding the Kaizen strategies, or establishing so-called "Kavas" (Circles) without any direction or singing hosannas to a so-called "Japanese System of Management" (This statement in no way belittles the great achievements of the Japanese systems and techniques) It is very easy to preach rather than making people to understand productivity, practising and measuring productivity. We have never heard of a productivity promoter giving the rudiments of measuring productivity yet. Theories and concepts have only a cosmetic value, unless they are not implemented. Practising and measuring productivity is the most arduous task.

We have to measure productivity to know whether our productivity process is bringing us results. How we develop performance measures for every organisational unit and the total company is important. This is needed to make comparisons among units, departments and other companies and also regionally and globally, in short to measure our competitiveness. Otherwise talking about globalisation and a "borderless world" will become a mere farce. A decline in the performances is a warning signal of problems ahead.

Before we implement a productivity improvement strategy we must measure our current productivity level and continue to measure it periodically to measure the productivity growth. In this process we invariably measure the manpower productivity too.

Productivity is measured also by manpower productivity and it is a major factor in measuring Total Factor Productivity (TFP) of a firm. Many qualitative parameters like HRD interventions play a major role in improving manpower productivity of a firm. To bring about continuous improvement and in the effective utilisation of other resources like capital, materials and energy and the use of technology, systems, processes, methods, the part played by the people is very crucial. Without people we cannot use any other resource even if we have access to advanced technology, quality material and processes. Hence, quality of human material and the way we treat human capital is of paramount importance in productivity improvement.

How we improve our productivity, competitiveness and quality of jobs particularly in the face of increasing globalization is important. Business environment is changing rapidly and it is being aggravated by increasing globalization. We have to identify critical factors that affect our productivity and competitiveness at the national, sectoral and enterprise level. One such critical factor is HRD.

To meet the challenges and demands every organization need to formulate and develop effective and innovative HRD strategies and implement these strategies with the participation of every manager and employee.

3. Weaknesses in the HRM System in Sri Lanka

Still many of us have the traditional viewpoint of administration or "man management" regarding people who work in organisations and think that activities related to people at work are confined only to recruitment, selection, placement, compensation and termination or simply to "hire and fire". Other functional managers become content with what they do in their own "citadels" and they are "cocooned" in their own domains. This is not the way for keeping people productive. All managers must come out from the soft "management marshmallow" to become concerned with the direction the organisation should take in productivity.

Many managers are not exposed to other critical issues or most recent thrusts or innovative HRD strategies. How you create an

environment where employees enjoy their work and have a sense of fulfilment, a sense of oneness and increase commitment and how you reduce the distance between various categories of employees is vital for productivity improvement at firm level.

Many managers are not aware that they all have their own duties within the area of HRD. They have to redefine their roles as managers whether they treat people as a valuable resource or a cost; whether they treat them as an investment which continuously adds value to the enterprise; Whether they have taken development of people as a life-long activity.

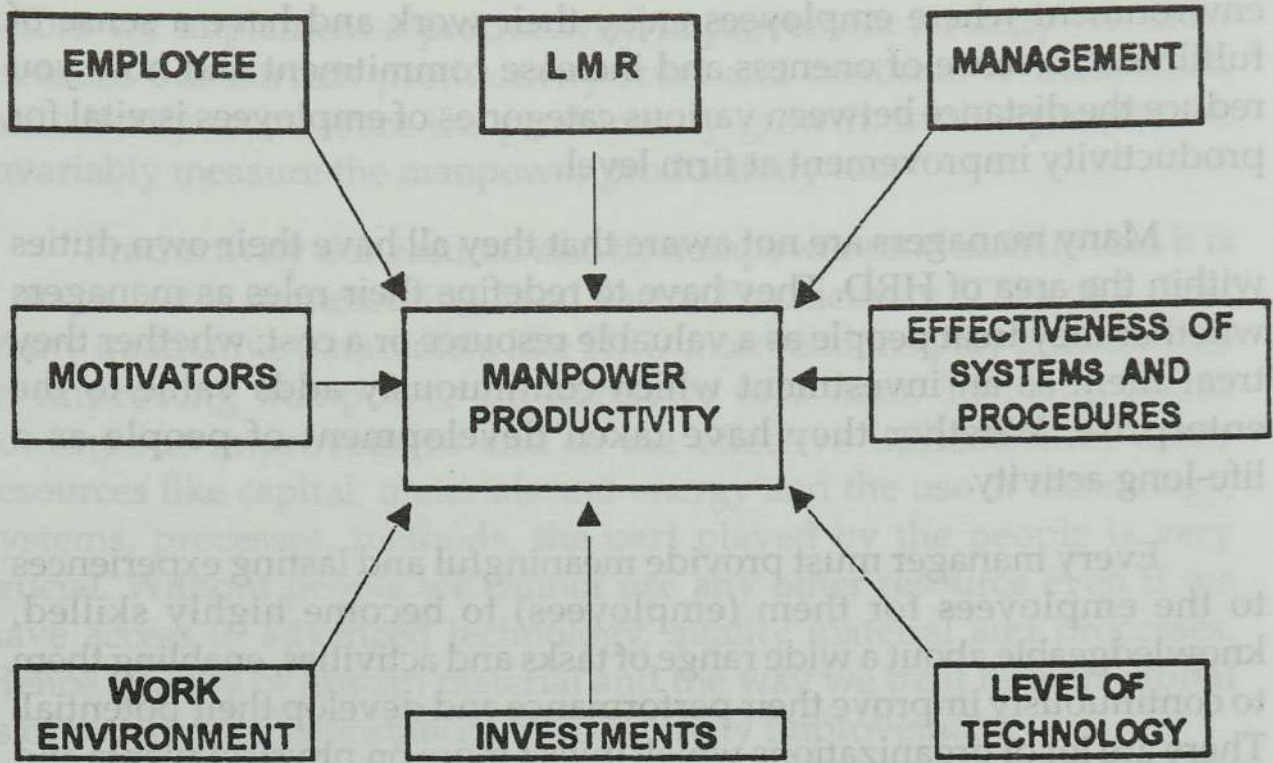
Every manager must provide meaningful and lasting experiences to the employees for them (employees) to become highly skilled, knowledgeable about a wide range of tasks and activities, enabling them to continuously improve their performance and develop their potential. There are lot of organizations which invest more on physical plants and hardware equipment but very little or nothing on the people who make the hardware perform.

A manager must be able to identify the low manpower productivity indicators and the contributions of labour productivity to TFP, and using of their skills to the optimal level, capitalising on employee skills.

There is a need to appreciate the need for an overall HRD strategy, serving the organisational vision, mission and objectives and how such a strategy can be established; whether we have HRD policies, plans and priorities; whether there is a relationship between corporate strategy and HRD strategy to have high quality, industrious dedicated, disciplined managers and employees with positive work attitudes. This is an area any manager should ponder if he is interested in productivity improvement.

4. Low Manpower Productivity Indicators

Every Manager should be able to identify low manpower productivity indicators of their organisations and their organisations areas and causes for them.



The above diagram portrays many factors which influence manpower productivity of any organization. The low manpower productivity indicators may be listed as follow:

- Excess manpower in many units
- Lack of scientifically developed manpower norms
- Lack of knowledge, skills and worker efficiency
- Negative attitudes
- Low commitment/dedication/motivation
- Lack of discipline
- Higher absenteeism/tardiness
- Waste of human efforts (unnecessary work, arduous work, excess rejects and re-work)
- Wastage of time (employees' idle time /excessive waiting time; Waiting for men, material, equipment, jobs and instructions)
- Waste of human skills/endeavours (poor selection procedures, improper placement, insufficient and lack of training, lack of communication)

- Machine breakdowns (Obsolete technology/systems/ Methods and processes)
- Effectiveness of Systems and level of technology
- Amount of investment in machine and equipment
- Excessive handling/transportation
- Inadequate or no linkage between productivity and wages and rewards
- Poor management methods (leadership, communication style, motivation, understanding group dynamics)
- Inter-union rivalry and political influence
- Poor working conditions
- Confrontational labour management relations

5. HRD STRATEGIES FOR PRODUCTIVITY IMPROVEMENT

Let us now examine in brief many of the HRD strategies available in the tool kit of a productivity manager. As these strategies stand on their own as separate topics each of them need a detailed analysis. But the availability of space does not permit us to do so. Establishing HRD strategies for productivity improvement is a process-oriented management method that can be customised to suit any organisation.

i. Develop Executive Commitment

We have stated earlier that commitment to improving productivity must come from the top. Without the support from the top any productivity improvement work cannot be initiated, implemented and sustained. The management should realize that improving productivity will have a positive impact on the company's overall performance and profitability. Getting management interested in productivity improvement may be difficult. It is actually changing the way they have done their work before.

Executive commitment will help formulate a productivity strategy and to plan, organise, assess productivity improvement work, creating worker awareness and providing for employee involvement.

The top has to lead the productivity improvement campaign, educate and train the managers and workers alike in productivity

concepts and techniques, foster a culture of open communication and team work, develop productivity improvement schemes and provide recognition to employees who participate in productivity improvement work.

Establishing a productivity management process is an effort toward change which is not an easy task. It is said that the senior management must not only raise the banner but must also lead the change becoming "trailblazers". They must also define the role of human resources in productivity improvement. Once consensus has been achieved in critical areas this must be communicated to all in the organization, by way of a Productivity Statement.

Commitment of the top management is not the end point; it is only the beginning. This must be made visible through active and visible involvement. This involvement can take many forms.

ii. Make Productivity an Activity of Every Manager's Job

Productivity improvement is a management job. Without improving productivity the company cannot grow, compete and above all else do business. Managers have to innovate and continuously look for better ways to do everything.

Better business results and prosperity of the enterprise depend on how an enterprise understands the basic concepts of productivity, imparts training in measuring and monitoring productivity and employing tools and techniques to practice productivity.

Productivity facilitates continuous growth and shows the managers areas for further growth and strengthens its competitiveness; helps managers to develop better, easier, quicker and safer means of achieving corporate objectives; enables the production of better quality goods and services and adds value; it provides a greater sales turnover, increases market share and develops a motivated, disciplined and dedicated workforce with a will for continuous improvement.

All managers must involve in productivity planning, productivity improvement, productivity measurement and productivity evaluation, the basic components of any form of productivity management. This enables management to provide employees with knowledge, skills both at individual and company level and to participate in improvement activities.

Commitment and involvement of middle management and firstline-management is also an important issue. Managers and supervisors tend to resist change. They are very much comfortable enmeshed in the "marshmallow", doing things the old way, without any training and re-training, allowing them to remain in obsolescence. Many of them complain that they have a heavy workload and say they have no time to do "additional work". But productivity improvement is not "additional work". It is an integral part of their day to day activities. In actual practice the middle managers are the persons who make everything happen. The responsibility for implementing productivity improvement lies in their hands. The middle management and supervisors join only when visible and active involvement of the top management is forthcoming.

As all managers exert a certain amount of influence over the activities of their functional areas their contributions are significant in creating a performance driven culture.

Company-wide Productivity Improvement Teams (PITs) can be established and Productivity Activists developed in this process. In this situation HRD Department has a crucial role to play and it will be charged with employee involvement efforts. When things go well a Productivity Management Function as a separate organisational entity may be created to oversee the productivity efforts. It will be a major decision that will be taken by any organisation.

iii. Ensure Excellence in Staffing

In staffing the strategy should be to get talented, ambitious and honest people, not just who have the right qualifications and experience. "Internal search" or promoting from within the company enriches the organization and motivates people. But make every effort to help all to improve and do understand the turnover problem as best employees often leave than the average. Set high performance goals and encourage risk taking; learn to uncover a "star" without looking for a "clone" of yourself (yet we have only one "Dolly"!) Today's wrong recruit is tomorrow's problem.

iv. Encourage Two-way Communication, Sharing of Information and Networking

Some still think that one-way communication in organization does not present any conflict and acceptable to all. Many people do not question because of status and power differences. The adjustment to the

receiver is the greater advantage of two-way communication. It provides better understanding for both parties. Even if there are differences of opinions, two people strongly disagreeing about something two-way communication helps them understand the nature of their differences.

Two-way communication and regular sharing of information with the employees are important for building up an environment of trust and confidence in the organisation. In productivity improvements information regarding productivity and productivity improvements, suggestions, value-added, notable achievements of individuals and teams, rewards and gainsharing schemes should be constantly shared to reinforce organisational commitment.

In countries like Japan and Singapore supervisors, managers and workers wearing the same uniform, eating in the same cafeterias and other egalitarian ways facilitate two-way communication and networking.

v. Manage and Reward Performance

One important aspect which reflects worker's performance is the way we assign people accurately to jobs and appraising performance, letting them to improve their performance. Rewards should be linked to performance. Not only performance, productivity plans and suggestions also must be rewarded. Other aspects which deserve rewarding are being a good team player, personal traits and good attendance. Reward for rewarding is increased productivity!

vi. Empower People

Among productivity improvement strategies the term delegation has become old fashioned! What is in practice now is how you empower your employees. When employees have authority to determine work methods and manage their own work it increases productivity. Those who work with better technology and know how to use the methods and systems best, can make decisions well. Empowerment is not abdicating authority. Some might think that this paves the way for anarchy, or giving the "freedom of the wild ass". But employees must be accountable to what they do. Successful managers share the load.

Empowered members get the task and the authority to do the task and hold accountability for their successful completion. The company benefits from this. Managers must rid themselves with the "Superworker

Myth". (I'm the Superworker") "Perfectionist Myth" ("I can do everything better") and the "Replacement Myth" ("an overachieving subordinate will take up my job"). There are many techniques to monitor the work of empowered workers. There is a story of a company founder testing his managers' empowering abilities by ordering them to take a two-week vacation without notice! Team members should be adequately trained to take up their supervisors' responsibilities.

vii. Utilise Right Technology

Technology should work for you, not otherwise. It is not a showpiece but a vehicle which makes jobs more easier, quicker, safer and efficient. It is not a replacement for human efforts.

viii. Eliminate Unproductive Work

Information overload, "time wasters" such as meetings, "contamination of work" by unproductive workers, bureaucracy and having "generals in their own citadels" fighting their "wars", multiple management are some examples for this. For eliminating unproductive work we must be able to master the techniques of "5' S". Unfortunately in Sri Lanka 5' S has been reduced to a "Cleaning Programme" or a "Shramadana Campaign". After "cleaning" people do not know what to do next!

ix. Restructure and Streamline Operations and Eliminate Unnecessary Motions

This is about unnecessary operations, motions and handling, unnecessary positions, management levels and obsolete practices and so-called "inspection". Efficient producers can inspect their own work.

x. Motivate and Establish Reward Schemes and Gainsharing

With global competition we need to get the best from the people. One way of doing that is through excellent human relations skills. Managers must become leaders, knowing how to lead, communicate, motivate employees and explore talent and creativity and understand group dynamics.

People must be motivated to join the organisation, perform their tasks well and exercise their creative skills at work for the organisation to be affective as managerial performance is based on the performance of subordinates. Performance is explained as a function of motivation plus (+) ability. What increases or decreases the "will to work"? This

"will" to work or motivation is elusive to many managers. Management writers in recent times advocate that the idea of motivation has been superseded by the concept of "Employee Commitment" and having a committed workforce has become the ideal. Rewards are also important as outcomes. Looking into the effect of satisfaction in performance and the effect of performance on satisfaction is also important when we develop motivation and commitment.

The improved performance must be shared. The concept of gainsharing should not be misperceived with wage increases, incentives, bonuses or profit sharing. It is based on performance or productivity, sharing with all, and long-term oriented. Gainsharing is closely associated with the concept of value-added. Wealth creation equals wealth distribution; distribution among all those who have participated in wealth creation.

xi. Provide Continuous Training, Skill Development and Multiskilling

Today skills become obsolete more frequently due to rapid changes in products, technology, systems and methods. Matching people with jobs needs training, re-training and skill development. The ability of the Japanese and Singaporean industry to grow into mercurial heights and to sophistication is mainly attributed to continuous training. Training helps to enhance knowledge, skills, attitudes and experience. It should not be forgotten that gaps in knowledge, skills (also in attitudes) exist from top to bottom. People need attitudinal training, in areas like team work, leadership, communication and human relations.

Today the concept of multiskilling is gaining much ground, preparing workers for future demands and to do multifarious activities without confining them to one activity.

xii. Encourage Small Group Activities and Team Work

Small Group Activities (SGA) contribute toward improving the information flow, coordination, efficiency and solve specific problems, which need input from different people. Inohara says that employee groups parallel corporate formal organisations on a voluntary basis. A well trained staff working together toward exceeding company goals is the competitive edge. If people and every position do not connect, team work breaks down. If you don't have the right person in the right place you cannot find the right fit. What we want to achieve in our organisations is synergy. It is said that the Egyptian plover (a bird

having a pigeon-like bill) cleans the crocodile's teeth, helping the crocodile be healthier and giving the plover a free meal! An example for synergy!

Teams out-perform individuals. Teams are more open to cross-training. Teams can bring about continuous innovation and productivity increases.

Employees who participate in problem solving and decision making become committed to their implementation. This helps in reducing resistance to change. In many organisations productivity improvement efforts are resisted. For productivity improvement all types of participative mechanisms need to be strengthened.

xiii. Implement Suggestion Schemes

Suggestions made by the workers: help to make changes, improvements and resolve work-related problems. Suggestions of the workers are normally rewarded financially even if they are not implemented. Implemented suggestions and suggestions which were able to reduce cost and waste and bring economic benefits get more rewards.

It is recorded that in 1981, 1.4 million suggestions were submitted by Toyota employees, corresponding to 30.5 per worker per year and of these 94% were accepted.

Management should not wait for suggestions from down, but must implement a mechanism for that engaging in a continuous dialogue and rewarding the workers.

xiv. Harness Innovativeness and Creativity

This recognizes the need for change and improvement. To change organisational goals, to make various decisions and problem solving, we need to be innovative and creative. Productivity improvement is a process which is completely based on this. Alvin Toffler ("Future Shock"-1970) says that if we divide the last 50,000 years into 800 lifetimes of 62 years each, we find that human race spent 650 of the lifetimes in caves; electric motors have been around for only 2 lifetimes; most of the technology has existed for a single lifetime or less. Now, innovative and creative decisions are taken and new products made more rapidly than ever. For solving problems and managing change creativity is needed. It helps to be effective, stimulate interest and in realising the full potential of people. Creative people enjoy the experiences of discovery.

They are more open to alternatives, unthreatened by new ideas, test new ideas and flexible. Habits, fear, prejudices and inertia are barriers of creativity.

Creative ideas must be implemented. Otherwise you will experience the fate of the man who made a "wheel" out of log and sat on it! He called it a "wheel" and did not know what to do with it until another person took it away to transport a load.

Akio Morita, Sony's legendary co-founder who died recently, was scorned for his innovative idea of walkman. Two decades later the walkman became the trailblazer of portable electronics and later Morita's legacy.

xv. Establish Harmonious Labour-Management Relations

Management along with the workers should be able to eliminate negative factors that hinder both industrial relations and productivity. Collective bargaining, collective agreements, joint consultations, information sharing, gainsharing and productivity-linked wages have a greater impact on productivity enhancement. Role and responsibilities of management, trade unions and workers in productivity improvement is undeniable. Productivity improvement is a labour-management relations issue to be implemented jointly. Increasing labour productivity is important as labour is used in all production and distribution activities. Productivity improvement replaces the conflict-oriented individual relations by cooperation and collaboration. The involvement of unions in productivity is vital and a basic requirement. The concept of tripartism in productivity improvement has gained ground now as state must promote productivity, formulating national level and sectoral level policies, strategies, plans and priorities which match with other economic, fiscal and trade policies.

A well organised educational and training and awareness programmes are necessary to change the prevailing attitudes towards productivity among employers, employees, trade unions and government. The role of employers and management, trade unions and employers' organisations are to be redefined to foster Labour Management Cooperation (LMC).

xvi. Improve Quality of Work and Quality of Work Life

High quality physical environment, quality of capital goods, work processes, technology, equipment and personal satisfaction and recognition, higher wages and job security, career enhancement,

positive work attitudes, skill upgradation and higher living standards are some elements in quality of work and quality life respectively. Quality work results in quality products and services. Productivity improvements raise the standard of living or offer quality life to people at large.

xvii. Build a Productivity Culture

Corporate culture has a significant impact on productivity of the firm. A positive corporate culture influences the developmental growth, new products and services and the implementation of unique management, marketing and distribution systems for higher productivity.

6. CONCLUSION

HRD strategies are necessary to meet individual's job satisfaction as well as company's business objectives. This will enhance the knowledge, skills and attitudes of people to perform their present tasks well and they will be equipped to meet higher order responsibilities and future business needs of the organization. This will make the employers more conscious in improving the products and services through better conscious workers having due regard to safety, quality, delivery and cost to achieve job efficiency and effectiveness by cultivating and nurturing a more productive work force.

The above description does not imply that productivity improvement can be brought forward by simply implementing the strategies described in the preceding sections. If we do not give much attention to foundation building having sound processes, systems, methods and technology, the HRD strategies described will have only a cosmetic value, that can be talked and extolled only in "parlours". Without building the foundation it is a futile attempt talking about gainsharing or LMC. If the processes and systems consist the foundation or the base, HRD strategies make the superstructure with LMC as its pinnacle. We must have the rigour in learning, understanding and practising the basics to go for higher order things.

Sri Lanka's first productivity endeavours were initiated by the Late Mr. Hector Kobbekaduwa with the enactment of the Agricultural Productivity Law of 1972, to maximise productivity of agricultural lands, agricultural crops and livestock. This was the time the so-called "Economic Tigers" of East Asia commenced their Productivity Campaigns. Now after 27 years, we have taken a full circle and come back to square number one and talk about productivity again. The "Economic Tigers" who emerged recently even out-perform the industrial giants in many ways !

LABOUR LAW - A GLOBAL PERSPECTIVE[†]

David Groman*

A. Labour and Labour Law - The Context

Labour legislation forms the hard core of social legislation, the latter extending to ever widening societal norms such as equality of opportunity, sustainable development, child labour to mention but a few. It concerns a human activity, work, often described as "the primary source of peoples utility" or a "noble calling". Work however responds not only to economic basic necessities it also responds to deep psychological and social needs and perceptions of the individual. Labour legislation and income security have often been hailed as two most significant legal innovations of the century.

The distinctive characteristics of labour legislation stand out prominently when compared with other branches of national legislation-health, industry or education for instance. Labour legislation is concerned with a virtually life long tense and strenuous human activity, work, by the most precious of a nation's assets - its productive labour force. The "tense and strenuous" characterisation is derived from the fact that, at least in the earlier decades, but to a substantial extent still today, the employer-employee relationship implies, *ipso facto*, subordination, hence hierarchy, submission, discipline, sanctions and rewards the application of which tends to generate pentup emotions, resentment, hostility, alienation and, at times, open conflict. Trade unions were, initially, formed to create level-playing field conditions, sort of "countervailing" power to that of the employer. The asymmetry between (organised) labour and capital contributed, in the early days, to the strong links forged between labour and politics.

[†] Excerpts from "Understanding Labour Law", Ministry of Labour, Sri Lanka (2nd Edition) (Unpublished)

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Politics was perceived to be an extra measure of redressing the inherent imbalance between the two. Collective rights served to mitigate the loss of, albeit a measure, personal freedom embedded in wage employment. Today human rights issues in wage employment has become a subject of intense public debate, often connected with perils of abuse particularly acute and morally compelling, resulting from advancing technology that exposes workers privacy and freedom in ways never experienced before; use of closed circuit TV to monitor workers movements, access to computerised personal data, are illustrations of it.

Crucial to the understanding of the significance and uniqueness of labour law is a proper appreciation of the phenomenon of subordination. Historical and technological trends are now at work and will, in all likelihood, result in the emergence of new wage work relationships in which the element of subordination is less perceptible. Indeed, increasingly, in numerous modern and emerging working environments, the element of direct subordination is exercised along lines and under circumstances which preclude the immediate and direct exercise of authority and hence of subordination. An interesting case in point is that of the public employees, the "Kings' Servants". They hold their office, to use the Sri Lankan constitution of 1978, "at pleasure" (of the President or the Cabinet Ministers). In all countries they constitute a "breed" apart exposed to rigidities and benefits that differ from those prevailing in the private sector. Their's is a special case because whilst not placed under the customary contractual basis (the legal underpinning is statutory), they are nonetheless legally dependent and subordinated to an employer. The immediate employer himself is, though, not the contracting party. Other instances of "atypical" employment, where the element of subordination is blurred are that of wage earners employed as travelling salesmen, performing artists, media personnel, advisors on a "retainer" basis to cite but a few. Equally pertinent is the case of contract labour and similar cases of outsourcing and "externalisation of jobs". If wage earners become, *de facto*, self employed upon whom subordination can't be applied, labour laws such as we know them no longer extend their relevance to them-business or commercial law takes over. The ILC is currently debating the issue of Contract Labour and new international labour legislation is planned to be adopted by the ILO in June 1998. In 1996 the International Labour Conference adopted a Convention No. 177, accompanied by a Recommendation (184) regarding Home Work based on the uniqueness of Home Work and designed to achieve as much as possible, equality of treatment between home workers and other wage earners. Labour legislation focused on

occupational safety and hygiene, vocational training is of course equally applicable to the wage and salary earners as well as to the self employed.

Probably more than any other branch of civil law, labour law is effective in creating the overall enabling framework. It also has a significant, indeed vital role to play in unlocking the potential of the social partners. But labour law can't substitute for the absence of an effective labour representation, collective bargaining, interaction and dialogue at enterprise level. Conditions of work and life, industrial relations are best translated into concrete terms by the parties engaged in the production process, or, in plain terms, in the dynamics of the enterprise.

B. Flexible Labour Market—Myth and Reality

In recent years a growing body of international and national informed public opinion has been claiming urgent and radical labour reforms with vigour rarely experienced heretofore. At all times conceiving new labour legislation aimed at an orderly re-articulation and management of the world of work, is an exercise fraught with challenges. One in which "losers" and "winners" point guns at each other. Unlike most other branches of national law, draft labour laws are thrashed out in tripartite context, often under structured tripartite frameworks, (like the Labour Advisory Board, in the case of Sri Lanka), before submission to Parliament. The profound transformation the world of work is undergoing is accompanied by claims that unreformed labour laws are bound to have an adverse impact on labour outcomes and furthermore, become an impediment to free flow of trade, many go as far as to suggest that unless matching profound reforms are introduced, (i.e. not piecemeal, fragmented revision of one or the other of the existing labour laws) existing labour legislation will inexorably impair economic efficiency at micro levels. Deregulation is advocated in support of rectifying un-intended outcomes of excessive welfare generosity (i.e. income security measures) which, so runs the argument, leads to alienating recipients of state aid from the world of work. The raging debate regarding labour flexibility, which overshadows most other proposals put forward regarding labour market reform, is particularly enlightening. The collapse of the Soviet empire exposed for all to see the dire consequences of a rigid labour market within which the hands of management were tied, mostly by archaic labour regulations and a bloated bureaucracy which resulted in stifling and defeating any attempt at modernising or enhancing the economic performance of the enterprise. In some industrialised countries persistent labour

"rigidity" is blamed for its job destroying impact and rampant unemployment-particularly affecting the "Latin" European countries, as opposed to the "Anglo-Saxon ones". The World Bank has in recent years targeted labour legislation as a priority concern and endeavours to prevail upon its client members to press ahead with thorough labour reforms. Sri Lanka is also often reported to feature high on the list of the Bank's countries in which revision of labour law is long overdue. As pointed out above, ILO's view is that myth rather than reality suggests that the spectacular economic success of the East Asian "tigers" is largely owed to the policies of labour deregulation initiated in all of these countries. Other powerful currents were at work, flexibility can hardly be considered the dominant one.

For many scholars and practitioners, reconstructed labour laws are the single most powerful enterprise countries must contemplate in their attempt to reap the rewards of the scientific and technological revolution and globalization, the latter projected as the inescapable precondition for economic growth and social progress. The ILO view, expressed in successive World Employment Reports, is that contrary to widespread interpretation, labour laws have a far lesser impact on a country's economic performance in relation to globalization than is often assumed. ILO perception is also predicated on the apprehension that deregulation serves as a mere screen masking the desired goal; dismantling of labour. Box No. 1 suggests some tentative labour legislation options regarding industrial relations.

Box No. 1

Labour Law and the Changing Industrial Relations Landscape

"Modernization of labour legislation to support these evolving policies and strategies. IR legislation and supporting institutions and rules must be continually reviewed. Labour legislation in many countries in the region reflects an outdated approach based on minimization of industrial conflict. Greater priority should be given to how legislation can be used to establish a framework for managers, workers and trade unions to pursue improved productivity and flexibility on a participative basis, while still providing appropriate protection for workers and a share in

the benefits of growth. In this process, attention must be given to who is covered by labour legislation for adequate protection to be provided to all workers they must first be covered by legislation. In many Asian countries legislation emphasizes the role of industrial workers, but rural agricultural workers, workers in domestic service, casual and contract labour workers in shops and other small businesses and special groups (child workers, workers with disabilities, foreign workers) are either excluded from the legislation or their position is ambiguous. Dispute settlement machinery (including processes and administration) also needs to be made more effective in a number of countries, emphasizing the prevention of disputes through greater workplace co-operation. Some countries in the region have already attempted to reform labour legislation in these directions in recent years and others are considering similar action. The relevant international standards should be a source of inspiration."

Extracted from Report of the Director General to the 12th Asian Regional Meeting Bangkok, December 1997.

Such a far-fetched stance, lumping fundamental and regulatory instruments together, runs counter to a country's endeavour to speed up economic growth and social progress. Left to its own devices, an unfettered labour market will not produce positive outcomes. A more cautious approach to the issue of flexibility and to revamping of labour laws is therefore warranted. Evidence on hand regarding labour market reform favouring the casualisation of the labour force, "temping" (i.e. engaging in temporary work) or early retirement schemes, might have "massaged" the open unemployment statistics—it has definitely not made a lasting contribution to enhancing quality of jobs and has furthermore, resulted in lower income levels to rising numbers of 'tempers'. In countries, like certain South Asian ones, where collective bargaining at enterprise level is not common, the result is that in the face of flexibilisation foreseen in the law itself, workers do not dispose of a mitigating, individualising and corrective instrument to cushion the hardships generated by it, even when the economic capacity to do is there. Absence of complementarity between national law and locally defined underpinnings taking the form of a collective agreement, is often mentioned as an added argument in favour of exercising circumspection and going slow on formal legal modifications/revisions.

In many developing countries and in countries in transition the national authorities are seeking labour responses to emerging complex labour issues that in earlier decades have not been recognised and tackled by labour laws. This for instance, is the case of unprotected workers in the informal urban sector, or that of domestic labour. Laws dealing with migrant workers are also a comparatively recent phenomenon and the Labour Ministry is often the only responsible government agency empowered to address issues facing migrant labour. Evidently, available Labour legislation is, to say the least, inadequate to offer solutions to workers engaged in the informal sector (as indeed for domestic labour). The search for appropriate legislative responses and for appropriate tools of implementation is consequently and on going concern.

C. From Protective to Promotional Labour Legislation

Historically labour laws were enacted with a view to, essentially, protecting the vast number of "blue collar" wage earning working people whose vulnerability was patent, at time shocking, as industrialisation, mechanisation and modernisation have rendered them innocent, ill protected and under represented victims. Hence the strong workers welfare orientation of labour legislation enacted during the years prior to and in between two world wars. The list of laws, acts and ordinances bears testimony to the protective character of the labour legislation arsenal in Sri Lanka. Perhaps the Sri Lankan Bureau of Foreign Employment Act stands out as an exception in as much as it is designed to promote employment opportunities outside Sri Lanka though. Even industrial peace was earlier on, pursued by the national labour authorities with a view to protecting the workers who stood to lose income in account of labour disputes. Rather interestingly, when the United States was considering, in the mid thirties, new labour legislation (eventually known as the Fair Labour Standards Act, 1938) designed to give concrete shape and direction to the New Deal, in the framework of which such issues as minimum pay, hours of work and child labour were debated, this legislation gave rise to fierce and often emotional confrontation between President and Congress and President and the Judiciary. At the time the slogan was that basic labour laws provided "floor" (under wages) and a "ceiling" (over hours of work). What occurred in South Korea at beginning of 1997 seems a mild tiff when compared with the degree of intensity and animosity that the New Deal labour laws in the US spawned at the time. The basically protective character of the labour legislation dating back to the early days of

this century and largely coinciding with the creation of distinct Ministries of Labour in a growing number of countries, has lost nothing of its early days pertinence.

In recent years the labour legislation pendulum had swung from a traditionally protective into a more pro-active promotional strategy focused on empowering the work force to adjust to the new challenges posed by rapid (indeed dizzying) technological progress and the opportunities thrown open by a globalized market. The international community, and ILO in the forefront, have been supporting the move to emphasise promotional policies and strategies. The recently concluded UN sponsored "summits" (Copenhagen and Beijing) have also urged the Governments to reinforce their promotional labour strategies, recalling specifically the relevant ILO promotional instruments, and give due recognition to a new vision for the world of work. Accordingly the stress is laid on turning the labour law into a "market friendly" national instrument of achieving ever greater equity and rising levels of productivity (and hence income), competitiveness and sustainability of the enterprise and the national economy.

From a largely Labour Ministry-spearheaded protective strategy, the shift to promotional labour legislation, extending to "new frontiers", and notably employment promotion, equity and environmental sustainability, brought new government stake-holders to the forefront. Increasingly, important dimensions of the complex labour legislation are embodied in legislation promoted by such "line" ministries as Vocational Training (in respect of the human resource requirements, including for initial and further training), Finance and Planning in relation to macro economic policies and programmes designed to combat unemployment and alleviate poverty. Agriculture, in relation to the introduction and use of chemical and other toxic substances, Social Security in relation to drawing a larger segment of the working population into income security schemes, Women Affairs in relation to fair practices and equity in employment and training—to mention but a few. The extent to which the Labour administration takes a meaningful part in shaping the policies and programmes initiated by these stake-holders is to a large degree determined by the outlook, ambition, prestige and capability of the labour administration itself. One outcome of the wider canvass of promoters of social legislation is that labour administration personnel have to seek knowledge about those acts, laws, ordinances and regulations (well over 100 labour enactments in Sri Lanka) in legislative texts additional to those promoted and implemented by the Labour Ministry. In his 1998 Budget Speech the

Deputy Finance Minister in Sri Lanka, specifically urged simplification of the prevailing labour laws. Labour Administrator will be well advised to draw upon decision concerning Labour contained in judicial decisions, the Court having been a source of labour legislation, as indeed of other branches of law, for a fairly long time. It may be recalled that F. D. Roosevelt, realising that the Supreme Court was standing in the way of new progressive labour legislation in the 1930 threatened to use his prerogative and appoint new judges in cases where incumbent judges refused to relinquish their seat at the age of 70. Collective agreements are yet another powerful instrument the social partners use in pushing further a field the frontiers (i.e. the benefits) of labour legislation, including Parliament.

D. Labour Laws and Tripartism-The ILO Approach

From its inception, in 1919, the ILO advocated-and practised-full and free tripartite strategies in the process of formulating international labour legislation. The so-called International labour Code now consists of some 181 Conventions and 188 recommendations-both referred to as ILO "Instruments". Whether ratified or not by Member States, these instruments have had a profound influence in shaping labour laws at country level, at times regional (i.e. in the European Union, MERCOSUR, in Southern America) and international levels (i.e. the UN itself: see art 23 of the Universal Declaration of Human Rights). The adoption of Standards culminates a long preparatory phase during which member states become thoroughly familiar with the subject matter. This in itself is a worthy contribution to the debate surrounding labour legislation. It is unparalleled by any other UN-led adoption process as is the monitoring process that follows adoption and ratification. It is interesting to observe that every time an attempt is made to regulate labour conditions in manner not entirely consistent with national labour laws, ILO's advice and experience is sought. The case of employees in Free Trade Zones has for some time now come under close scrutiny, essentially on grounds of non application of ILO's fundamental Convention No. 87, of 1948, regarding freedom of association (ratified by Sri Lanka). This basic right is also enshrined in the Constitution of Sri Lanka.

One of the (often unstated) objectives of the labour administration system is to forge a "culture" of tripartism at country level, at times carrying it into areas and institutions that do not necessarily come under the purview of the Labour Ministry: National Productivity Institutes/Centres (at times operating in the framework of

Ministry of Industry), Social Security Institutes (often times under a distinct ministry) or even vocational training (which since mid 97 no longer comes under the portfolio of the Labour Ministry in Sri Lanka-). These are examples of tripartite organs with which the labour administration system is concerned nonetheless. Often the culture of tripartism implies badgering the social partners to resolve their differences bilaterally. In certain European countries, the formation of Work Councils (the like of which, though different in substance, known in Sri Lanka as Employees Council) is designed to enhance the incidence and scope of labour involvement in the life of the enterprise. (See Box No. 2).

Box No. 2

Main Features of Works Councils in European Countries

"The works council is the main institution for participation in Europe. It is a representative body at the establishment, enterprise or group level; its members are, in principle, elected by all the workers, whether or not they belong to a trade union. Works councils have the right to be informed and consulted on matters including those relating to production and job; in some cases they have the right to participate in decision making on personnel issues. Over the last ten years, they have proliferated and their influence has increased following the adoption of legislation and also because of the growing importance attributed to qualitative factors in improving enterprise competitiveness. Greek legislation created works councils in 1988; Switzerland introduced mandatory participation in the private sector in 1994; and France, Austria and Spain have recently widened the remit of works councils. In the Netherland in April 1996 an Act respecting works councils extended worker representation to the public sector.

All the countries of continental Europe now have works councils with the exception of Sweden and Finland where it is the local trade unions that have the right to be represented in the enterprise. However, the structure, activities and decision making powers of works councils vary considerably. The matters they deal with generally exclude those already covered by employers' and trade union organisations. Their main function is co-operation and most are not authorized to initiate or to participate in strikes. Spanish legislation differs in that it authorizes councils to negotiate.

In countries where work council have clearly defined powers and functions as in Germany they serve as a forum for consultation and decision making not only on wages but also on qualitative issues such as technological change, work organisation, training and personnel policy, which can generally be dealt with most effectively at the enterprise level and which are proving to be increasingly decisive in boosting competitiveness."

Extracted from World Labour Report 1997- 98 ILO Geneva

The range of its responsibilities is derived amongst others, from the act of ratification (which is the case of Sri Lanka, since 1994) of ILO Convention No. 144, of 1976, regarding Tripartite Consultation (International Labour Standards) and reflects its articles. Article 5 of the Convention No. 150, of 1978, concerning Labour Administration also urges ratifying Members (and Sri Lanka is not yet one) "to make arrangements appropriate to national conditions to secure within the system of labour administration, consultation, co-operation and negotiation between the public authorities and the most representative organisations of employer and workers, or where appropriate, employers and workers representatives" In recent years the Governing Body of the ILO requested the Director-General to urge Member States to give particular attention to the desirability of ratifying the seven so called Priority Conventions, focusing on fundamental human rights. The accomplishment of such goal requires the full mobilisation of the national labour administration, in the first place. Sri Lanka has ratified four priority conventions to date: Nos. 29, 87, 98 and 100 concerning Forced Labour, Freedom of Association, Right to Organise and Collective Bargaining and Equal Remuneration, respectively. Sri Lanka is now seriously considering ratification of Convention No. 111 concerning Discrimination (Employment and Occupation). Box No.3 highlights the ILO perspective on the question of balance between the protective and promotional dimensions of labour legislation.

Labour Administration - The Challenge

"Overall, the challenge for labour administrations is to confront the process and impact of globalization, assess its realities and implications and adjust, change and innovate. But this must not involve an abdication of the prime objective of workers' protection. Thus pursuit of this objective will involve different but not necessarily diminished, interventions on the part of labour administrations. For the foreseeable future, this will require both national and international support for the majority of the Asian and Pacific countries."

Extracted from Report of the Director-General to the 12th Asian Regional Meeting Bangkok December 1997.

E. Labour Law - An Agenda for Tomorrow

In the light of the foregoing it might be opportune to end up with a comment on "expectations from labour law". It has been argued all along that complex labour issues, can not be simply legislated away. Whilst every piece of legislation requires capacity and resources for its optimal application and enforcement, a labour law must, additionally, assume acceptance its objective and provisions by the social partners without whose active support the law stands a poor chance of being effectively implemented. The scarce use made in Sri Lanka, for instance, for the legal provision for voluntary arbitration reflects the perception of organised labour about its usefulness, but also the structural architecture of organised labour in the country marked by little bargaining power at enterprise level. The law itself, the labour administration system or even the Courts are powerless to guarantee its proper enforcement. This is why it is so important for the labour administration system to constantly forge "strategic alliances" with the social partners.

We have also observed that the incremental growth of "atypical" employment patterns (casual, temporary, part time, contract labour, self employed, migrant labour, domestic labour, formal sector), requires innovative approaches, not necessarily, or primarily, legislative solutions, distinct from and reaching beyond the legal enabling frameworks. The decline of trade unionism, at least in terms of number of unionised dues paying members, requires mobilisation of the social partners which in

turn presupposes that the balance of power between workers and employers,(which has tilted against the first), has been set right. Experience shows that the privatisation process and generally the structural adjustment process, has been successful where trade unions and employers organisation shared with the national authorities the perceptions regarding the long term objectives of the reforms and the measures required in order to ensure that at all times they carry a "human face" and provide for adequate protection (the "Safety Net" concept) to those whose jobs and income have been directly affected by the process. (See Box No. 4).

Box No. 4

Role of Government in a Globalised Economy

Globalization requires governments to make policy changes which they may not otherwise wish to make and to that extent they have less control over economic planning. This does not necessarily mean, however, that the role of the State in IR becomes less important under globalization merely that its role is different in certain areas. Traditional but improved, interventions will be required at the policy and legislative levels to establish and enforce minimum employment standards and to provide a means of settling industrial disputes. A new emphasis will be needed on greater flexibility in enterprise-level arrangements. New forms of institutional intervention may also be required (retraining schemes job search assistance) given the types of changes taking place in the organisation of production and work at the enterprise level and the fact that there is likely to be greater mobility between jobs and enterprises."

Extracted from Report of the Director-General to the 12th Asian Regional Meeting Bangkok December 1997.

Finally, this article has laid strong emphasis on the labour law and the labour administration system capacity to reclaim much of the territory that it seems to have lost in the past few decades, in terms of recognition as a pace setter in the social debate regarding globalization, enhanced productivity, employment promotion, fairness, equity and equality and social dialogue. It should also be possible to shed the charge levelled against both, (i.e. the labour law and labour administration) namely that their relevance does not extend beyond the organised, formal and quasi "privileged" segment of labour (See Box No. 5).

Labour Administration - A Service for All

"Nevertheless, labour administrations have a very limited capacity to raise the awareness of employers, workers and the general community as to the content of laws to give advice on how to comply with legal provisions and actually to enforce laws and regulations with impartiality and commitment. They need considerable support to ensure that limited inspection resources are focused on priority areas, that inspectors are trained in enforcement procedures, that there is closer integration of the work of labour and safety inspectorates, and that an inspection culture based on service to clients social protection and professional integrity is developed."

Extracted from Report of the Director-General to the 12th Asian Region Meeting Bangkok December 1997.

Other national entities of public administration concerned with labour issues, and they are numerous, should regard the labour administration system as the beacon and shepherd, the cutting edge of the national administration in terms of addressing labour issues. The position taken, for instance, by the BOI in Sri Lanka in respect of exercising trade union freedom in the EPZs, stands to gain from the considered advice and experience of the labour administration system; such advice should be given without prejudice to the specific remit and responsibilities of the BOI. Like wise the debate on labour law should not be divorced from the debate and controversy regarding free trade, despite reluctance, expressed by many developing countries, to subscribe to the notion of a "social dimension of globalization."

Sources of Labour Market Information (LMI) in Sri Lanka

A. P. Gamini de Silva.*

1. INTRODUCTION

1.1 What is LMI ?

Need for information of the activities done by the people in a country and their expectations become important in formulating policies on the economic and the social programmes for the benefit and well being of the people by the policy makers. Information relating to economic performance of a country was generally considered to be a barometer in judging the overall social and economic standards of the people in a country. Nevertheless the macroeconomic indicators do not shed light on the problems and issues that are faced by the micro constituents of the society which are the households. To understand the factors and causes that affect the households and individuals, several other measures and indicators became intrinsically important over time. Information such as employment (details), wages and working hours, prices of consumable and the information on unemployment (duration, education and skill level of those unemployed) too became very relevant. State of the industries and their performance measured in terms of output and productivity are among many other things such as demand for labour skills and available job opportunities in the industry, which have become strategically important in the policy formulation process. The eventual transition of economic concept of development to human development concept has made such information not only inextricable but also indispensable. This domain of information has gradually gathered momentum and has now developed into a specific segment called 'Labour Market Information'.

1.2 For whom is LMI

We can identify the main users of the LMI in the country as those who are directly or indirectly involved in policy making relating to producing and moulding the labour force, or those who utilize the labour force for production / economic purposes. Falling into the first of the two categories are the institutions such as National Planning Department (NPD), Department of Labour (DOL), Human Resource Development Council (HRDC), Institute of Policy Studies (IPS), Tertiary and Voca-

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tional Education Commission (TVEC), National Apprentice and Industrial Training Authority (NAITA), Vocational Training Authority (VTA), Department of Technical Education and Training (DTET), National Youth Services Council (NYSC). Falling into the second category are : employers of the industries (all sectors), employer organizations, training organizations, and career guidance institutions. Nevertheless, the most important category is the labour force itself who need the information to make their own decisions with regard to their employment preferences.

1.3 How can LMI be used

Sri Lanka is facing the problem of educated unemployment for quite a number of years. It is true that the over - all rate of unemployment which was around 18 percent in early eighties has come down to a level of 10 percent during the recent past. However, the unemployment situation among the secondary school leavers and, up to a certain extent, among the graduates has not improved satisfactorily. Expansion of education facilities over the years have undoubtedly increased the education levels of the youth of this country, thus making available an educated labour force as inputs to the production process. Utilizing the same labour force in an efficient manner would have been the ideal opportunity for the successful regimes to achieve the goal towards a sustainable economic development in the country. Evidence show that the actors of planning for economic growth has not adequately paid attention to the effective utilization of the educated labour force of the country. Opening up of the opportunities overseas to the Sri Lankan labour force has added a new dimension to the employment issues in Sri Lanka since late seventies. Thus it is required at present to pay a lot of attention to the present labour market structure and its mechanisms which eventually demand for LMI in an unprecedented manner and degree.

It may also be necessary to mention at the outset that LMI as of today can be regarded as secondary sources of information, meaning that the information is primarily collected for some other purpose. Labour Market Information encompasses a very wide range of economic activities. In fact there is hardly any area where labour is not involved, and as such, any activity is directly or indirectly related to LMI. Nevertheless, very few attempts have been made to study and analyze the resultant LMI on a regular basis by any user. It is the objective of this paper to look into such data sources and instruments in this perspective, and to provide a basis to examine the nature and the regularity of the data collection which are available with many stake holders of the Labour Market.

2. EVOLUTION OF LMI

2.1 LMI in the past

Since the time the interest on LMI became strategically important, data has been basically organised in accordance with whether they relate to the supply of labour or demand for labour. Major source for supply of labour is concerned with the information gathered from households relating to the stock and the characteristics of the population and the labour force. Major source of demand for labour is concerned with the information generated from the establishment surveys and through other official documentation processes. It has been the assessment of the responsible policy guiding authorities such as the ILO, that there was no real shortage of data but a mere lacking of analysis of the data that were already available.

Few problems with regard to the available data were also identified in the process viz. collection of data at irregular intervals of time and infrequency, delay in releasing of information, frequent changes and inconsistencies in definitions, problems of survey coverage, and finally the lack of matching between the collection and the user requirements of the data. Over time many programmes have been implemented as funded by the international organisations (such as ILO, UNDP and ADB) where much improvements to the information process was effected. These programmes aimed at improving the basic structures of the LMI which can be explained by factors such as comprehensiveness of information, reliability of data, prompt publication and adequate dissemination of data and also the skill level of the available staff in the related institutions.

2.2 Current status of LMI

Several sources of information dealing with important and relevant labour market issues are available in Sri Lanka at present. In focus among such institutions are the following.

DCS	- Department of Census and Statistics
CBSL	- Central Bank of Sri Lanka
ME&HE	- Ministry of Education & Higher Education
DOL	- Department of Labour
SLBFE	- Sri Lanka Bureau of Foreign Employment
MOL	- Ministry of Labour
BOI	- Board of Investment

Major training providers in the public sector:

NAITA	- National Apprentice and Industrial Training Authority
NYSC	- National Youth Services Council

DTE	-Department of Technical Education
VTA	-Vocational Training Authority
ICTAD	-Institute for Construction Training and Development
TTI	-Textile Training Institute
HS	-Hotel School

Undoubtedly, DCS plays an important role in the sphere of LMI because of its major and regular surveys such as Quarterly Labour Force Survey (QLFS) and Establishment Surveys. There are always other information which supplements these. Therefore, a lot of space in this article would be allocated to DCS, though one could perceive this as 'biased'.

3. SOURCES AND INSTRUMENTS OF LMI

3.1 Department of Census and Statistics

Department of Census and Statistics (DCS) is the central organisation which is responsible for collection, compilation, processing and dissemination of information relating to socio economic situation of the people and the economy of Sri Lanka. DCS, since its inception in 1948, has undertaken the conduct of various sample surveys and compilation of economic indicators, in addition to its carrying out Census of Population and Housing commencing 1871. A brief outline of the activities done by the DCS is as follows:

- Census of Population and Housing (every 10 years - last in 1981)
- Census of Agriculture (every 10 years - last in 1982)
- Census of Industrial/(Trade) Establishments (every 10 years - last in 1983)
- Census of Public Sector Employment (every 4 years - last in 1998)
- Labour Force Survey (every quarter of the year - last in 4th quarter 1999)
- Income and Expenditure Survey (every 5 years - last in 1995/96)
- Other ad-hoc surveys (when required)
 - Demographic and Health (last in 1994)
 - Child Activity (in 1998)
 - Household Survey on Women and Children (1993)
- Compilation of National Accounts Estimates (every year)
- Compilation of CPI (every month)-
- Crop yield estimation surveys on Paddy (every season)
- Annual Survey of Industries (every year)

- Survey of Industrial Production (every year)
- Survey on Construction Industry (every year)

However, in the following sections, only the LMI related activities will be dealt with in detail.

3.1.1 Census of Population and Housing

Census of Population and Housing conducted by the DCS is undoubtedly the complete source of information on the supply of labour force by its basic demographic characteristics such as age, sex, education, literacy and by labour force and employment characteristics. The advantage of a census is that it does a complete enumeration of the population, and the data is available at smallest possible level of administrative/geographical entity which is the G.N. Division.

Information collected in the year 2001 census, as in 1981, will include data on the following:

- basic demographic data
 - age, sex, household relationships
 - ethnicity, religion, marital status
- education
 - current attendance at educational institutions
 - level of education
 - literacy by languages
- labour force data
 - labour force status (employed, unemployed, not in labour force)
 - employment status and occupation details
- migration data
 - reasons for migration and periods (local and abroad)
- basic information on reproductive health
- information of disabled persons
- housing and basic amenities

It is expected that information at G.N. Level can be released on most of the above characteristics based on the information following the

taking of the census in April 2001. It is expected to disseminate the information using Geographical Information System (GIS) facilities available in the DCS enabling the easy access and efficient use of data.

3.1.2 Demographic Survey 1994

The last census was carried out in 1981 and the information described above is available only in respect of the year 1981. Census which was due to be conducted in 1991 did not take place owing to the disturbances prevailing in the Northern and Eastern parts of the country. This lapse has led to a serious deficiency in the information system in the country. Reliable and complete data were scarce. As a remedy, DCS conducted a Demographic Survey in 1994 to provide estimates of population and labour force at Divisional Secretariat Division (DSD) level, which is the devolved unit of decentralized administration. A sample of over 92,000 Housing Units was enumerated in this survey. First of the reports published (Release 1) was a quick summary of population estimates by DSD level with rough estimates on labour force. The second report (Release 2) was on Housing and Basic amenities. It provided comprehensive estimates by DSD level. The third report (Release 3) provided estimates on frequency counts of the population and labour force by DSD level. Number of cross tabulations of data covering employment, migration and several other information was also available. Release 4 provided the information on Demographic and Housing characteristics.

3.1.3 Labour Force and Socio Economic Surveys

DCS has conducted its regular Socio economic and Labour Force surveys for a large number of years since independence. The last such combined survey was done in 1985/86. Thereafter the two aspects of the survey were dealt with separately. The Income and Expenditure Survey was conducted in 1990/91 and the Quarterly Labour Force Survey was commenced on a regular basis since 1990. The next Income and Expenditure Survey in the programme was also conducted in 1995/96. The preliminary reports are already out and the final reports are expected soon.

3.1.4 Quarterly Labour Force Survey (QLFS)

A separate labour force survey was required to monitor the level of employment and unemployment in the country, aid the process of resource allocation into different sectors, and to help policy making on a more robust manner. The Quarterly Labour Force Survey which was

commenced in 1990 is intended to provide labour force estimates only at national aggregate level, while the annual combined sample data was to provide provincial level estimates of the labour force. Here again, the survey was conducted island wide in the first quarter of 1990 and thereafter restricted only to provinces other than is the North and the East. Since the sample canvassed in the quarterly survey is not adequate to provide estimates at district level, a large sample is canvassed every five years. The first such survey was conducted in 1992 and the next followed in 1997. District level results are available for 1997 through a publication titled 'District Profile of Labour Force'. (See **Annexure 1** for list of tables)

Indeed, the QLFS has been the major source of LMI on supply of labour since 1990. It gives comprehensive information on the labour force, employed and the unemployed in the country. Data is collected on the following items of information.

- demographic characteristics of the household members
- educational attainment & current attendance in education institutions
- type and duration of technical training
- members who are abroad
- labour force status
 - employed
 - unemployed and
 - not in labour force
- employment details of employed
 - industry (four digit ISIC level)
 - occupation (four digit ISOC level)
 - sector of employment (public or private)
 - employment status
 - employer
 - employee
 - own occupied
 - unpaid family worker
 - nature of duty and experience (casual, permanent...)
 - number of hours worked
 - secondary occupation details (if available)
 - income of employees
- details of unemployed
 - duration of unemployment
 - expected occupation and wage
 - method of job search and source of assistance

Data is published in tabular form running into 27 different types of formats each quarter since 1990. First quarter 1999 is the latest available to-date. (List of tables published in the quarterly release is given in Annexure-2)

It may be noted that in arriving at the labour force status of a person, a reference period of one week (current status) is used. This has led to arguments as to the suitability of such a short period in deciding the labour force status of a person. As an alternative, a separate set of questions are included in the latter part of the questionnaire to obtain the labour force status by using a twelve month reference period (usual status).

It needs to be mentioned that certain information collected in the QLFS, such as information on technical education, has not been published by the DCS. There is hardly any evidence of using the information by any interested party to the subject. Since recently the TVEC has used the raw data files which have been analysed on technical education variables and published in their bulletin. However, such information has to be used with care since the sample data is subject to the weakness: 'more desegregated the data, lesser reliable the inferences become'.

The annual sample which was only 8000 household units upto 1996 has been increased upto 15915 units since first quarter 1996. Additional information on type of work (casual, duty shifts etc.), and underemployment has been included in the questionnaire. A list of more country specific vocational training types (2-digit code) has also been introduced for classification of vocational training data, based on the ISOC first digit classification of occupations since 1996.

3.1.5 Listing of Non Agricultural Economic Activities: 1995

Census of (Establishments in the) Industry, Trade and Services sectors is considered to be the most complete source of information available in a country on its economic activities. The Census of Industries was last conducted by the DCS in 1983. This followed the Census of Population and Housing conducted in 1981. As the next scheduled round of censuses was not undertaken, availability of up-to-date information has always been a problem.

To undertake sample surveys for estimation purposes, a reliable sampling frame or a listing of all relevant establishments needs to be available. With assistance from ICTAD, the DCS was able to attend to this task in 1995. A listing operation of all industrial and construction

activities was completed in the 'rural sector' of the island except in the North and the East. Preparation of lists of construction activities with the use of computers has been completed by the Industries Division of the DCS and provided to ICTAD. The large portion of data, which is the industrial sector, also available but not published or released due to resource problems in computerization. Once available this would provide a complete frame of industrial establishments in Sri Lanka when amalgamated with the urban sector listings, which is in a better shape than the rural sector. There would be a better scope for conducting sample surveys of establishments once the frame is available. In the meantime the summary information on the establishments are presented in 10 tabular formats and published at district level. (See Annexure 3)

Listing of Trade and Service Establishments

Outlook of the information is rather weak in these sectors when compared with the industrial sector. Preparation of a proper sampling frame has been a necessity for quite a large number of years in this sector, in view of the expansion of activities in these sectors under the liberalized economic policy scenario. Some of the important priority sectors such as Trade & Hotel, Communication Automotive and a substantial portion of the Electronic & Electrical sector, which have been identified as expanding sectors are covered under the Trade and Services sector. Listing of establishments in all districts other than in the North & East was successfully completed now by the DCS. Similar publications as in the case of industries will soon become available.

3.1.6 Annual Survey of Industries (ASI)

The survey was commenced in 1978 using a sampling frame obtained from the Ministry of Industries, Science and Technology. 1984 onwards, the frame from the Census of Industries was used. Following sectors are covered in the ASI:

- Manufacturing industries
- Mining and quarrying
- Gas, electricity and water

Survey was primarily designed to provide estimates for the computation of national accounts for Sri Lanka. Major area of data collection has been on employment and input/output information.

Among these data, following can be considered LMI related information:

- description of the industry
4 digit ISIC classification

- value of shipment, stocks and the production capacity of each commodity
- employment and earnings
 - Persons engaged by sex and their total earnings of
 - operatives (skilled and unskilled)
 - other employees
 - administrative / managerial
 - technical/supervisory
 - clerical & related
 - working proprietors & active partners
 - unpaid family workers

The survey covers the manufacturing establishments with 25 or more employees in full (approximately 3000 in 1996), and around 10% sample of establishments with employees between 5 and 25 (1200 covered in 1996 survey). The survey covers the textile and garments industry and the manufacturing sectors of the electronics and electrical industry which are relatively important for LMI. Service establishments however are not covered in this survey.

Annual publications of results up to 1998 have been completed. Useful information on salaries and wages, productivity and input - output - data is available at 4 digit ISIC industry classification level. One of the limitations seen in the earlier publications was that the sample data has not been inflated to the national level. The sample data from medium establishments were simply published limiting the scope of using data. This has however been rectified since 1998. (see **Annexure 4** for list of tables)

3.1.7 Survey of Industrial Production (SIP)

This is a similar exercise to the ASI in many respects. The objective of this survey is to produce quick estimates for the use of national accounts compilations by the DCS. The sectors covered are more or less the same as the ASI. The information on LMI is restricted to the following.

- number of employees
- wages and salaries

The information relates to January - September each year. The sample too is only 600 establishments as compared to 4200 in the ASI. There are no reports published out of the survey to-date.

3.1.8 Annual Survey of Construction Industries (ASCI) and Other Surveys

Annual survey is carried out using the sampling frame of the large contractors registered with ICTAD as in 1993. Subsequent annual surveys included the constructions that obtained the CoC (Certificate of Confirmation) from the local bodies (Municipal Councils/ Urban Councils/ Pradesheeya Sabha). Survey covers the following sectors.

- Building construction
- Highway construction
- Bridge construction
- Water supply & water work
- Irrigation of cannal development
- Reclamation of low lying area
- Other constructions

Total number of employees as at June 30 each year is collected by sex, in addition to output data, separately for public and private sector. Useful other information too is collected in the survey, which could be used to estimate the manpower utilization levels in the construction industry.

Non-response adjustments and inflation of sampling data are key factors that need to be addressed in the process. The response rate as at 1996 was 60%. The Reports for the years upto 1996 have been published by the DCS. (see Annexure 5)

Annual Survey on Construction Material Production (SCMP)

SCMP has been undertaken by DCS at the request of ICTAD, only for the year 1996. It concentrates mainly on the input - output data on material production. Total number of employees by sex and the total salaries paid within the reference period (January - June, 1995) has been collected.

This may be used as supplementary information to SCI. The listing of rural construction activities done in 1996 was used to collect data from relevant establishments.

Survey of Building Construction (SBC)

SBC has been conducted by DCS for ICTAD to gather information on output in the industry for 1996. The sampling frame prepared in 1996 was used for the selection of enumeration units for the survey. Urban sector units were covered from MC/UC, where CoC were given in the

reference period. This information could be used as bench mark data for the industry when estimating the manpower demand in the industry. SBC, in contrast to SCI, covered all small scale constructions as well. Updating the list remains a difficult task, nevertheless.

3.1.9 Census of Public and Corporation Sector Employees

Above census is taken in every four years as a regular exercise by the DCS since 1986. The 1994 survey report is already published which contains detailed information on employment in three major sectors in the public service namely the central government, provincial public service and the corporation sector. The stock of employment in the public sector is readily available with sufficient details, for planning and policy making purposes. Response by the officials has been far more satisfactory than expected. (see **Annexure 6** for the table outlines of the report).

Unfortunately, public service employment is more or less a static variable with less creation of opportunities except in the subsidized social security and services sectors such as health and education. Liberalized economic policy has made the private sector the engine of the growth and development, and hence become the giant player in the labour market. The need for the LMI network to extend its arms to the private sector as in the case of the public sector has thus become a priority.

3.2 Central Bank of Sri Lanka (CBSL)

CBSL conducts its series of Consumer Finance and Socio Economic Survey programme for purposes of obtaining direct estimates of personal income, consumption and savings in adequate detail. Data on demographic characteristics and the employment characteristics of the population as well as the type and condition of housing unit were also collected for analysis.

Access to data by other agencies has been very much restricted to the published report. For the same reason, the use of information for LMI purposes has also been poor.

CBSL had also conducted a survey on labour and land utilization in 1975. Though the survey provided useful indicators on employment, under-employment and unemployment, information has not been updated since then.

3.3 Ministry of Education and Higher Education

Ministry conducts an annual census of school enrolment. Useful information on LMI such as school enrolment statistics in higher grades classified by different subject groups etc. are collected in the census. Information on repeaters in grades and drop out statistics are also generated in the process. Data relating to teachers/pupils stock by specialization and geographical distribution is also available. (see Annexure 7)

University Grants Commission

Separate statistics could also be obtained from the University Grants Commission on graduate enrolment and output by different disciplines, on regular basis.

Department of Examination

Department of Examination has the information on the numbers sitting for each examination, on a regular basis. This, combined with the school enrolment at higher grades and the graduate enrolments would provide the profile and the magnitude of school leavers. This category represents the most important component among the Technical and Vocational Education Training seekers, who are entering the labour market is very short time.

3.4 Department of Labour (DOL)

DOL conducts its establishment survey on employment since 1971 covering establishments in the formal sector excluding government departments. The coverage of sectors in the economy is much wider than the DCS survey of ASI. While ASI covers only the manufacturing industries DOL sends its questionnaire to all registered establishments covering the industrial as well as the trade and service sector.

Major problem of the DOL survey is with regard to the list of establishments that is used. The DOL while using a list originated in 1971, annually updates it by using the new registration of establishments in the Employment Provident Fund. This is a good approach in capturing the new additions to the industry, provided the registration process is strong enough to cover the actual changes. Nevertheless, the numbers suggest a satisfactory coverage. The next major problem is with the closed down ventures. The DOL has no information as to whether a non response means non existence of the establishment or a mere inability to furnish data by the establishments. In either case an adjustment to data

is necessary. DOL does not seem to have addressed this issue adequately. The poor response rate also called for an adjustment to non response without which the information cannot be inferred meaningfully in order to take a stock of employment or to study the changing trends in employment.

The information is published annually in a tabular format giving details of information grouped by useful categories (see **Annexure 8** for list of tables). The data is processed in the DCS office. The error free data files could be obtained for making necessary adjustments to estimates and undertake further analysis of information.

Board of Investment (BOI) Data

The coverage of the BOI sector in the employment survey has nevertheless been very encouraging. The response rate within the BOI sector is very high. This would unreservedly allow the careful observation of the trends in the BOI sector far more satisfactorily than the rest of the sectors of the economy. Scope for developing manpower planning estimations in the sector is hopefully bright. DOL maintains a separate set of data on BOI.

Labour Statistics - 1995

The publication titled 'Labour Statistics' of Sri Lanka by the DOL carries a wealth of information on LMI. Number of useful indicators on LMI have been presented in the latest release which is the 1995. Continuation of the publication on a regular basis would be certainly a move to welcome. (see **Annexure 9** for list of tables)

3.5 Sri Lanka Bureau of Foreign Employment (SLBFE)

In the labour market of a country, foreign employment plays a lead role. This would set pace and direction to a segment of labour force activity in the country. The recent prospects realized in the Middle Eastern and European countries have not only relieved the pressure in the local labour market but also has helped stimulate the socio economic conditions in South Asian region, to a great extent. Though there are no regular publication released by the Bureau, wealth of information can be garnered from the records.

The SLBFE maintains a comprehensive data file in respect of migrants on their sex, marital status, country of destination and work experience and also the data on job orders from abroad. Migration data were improved since the compulsory registration of migrant worker departures was introduced in April 1995. The Bureau carries out surveys

at the international airport to cover the counts of migrants including those who do not go through the official channels in order to capture the entirety of the outflows. Some of the information has been published in the latest publication of the DOL. Improvements to the data gathering system may be effected to strengthen the system to enable the coverage of TVET needs of the foreign job seekers as well.

3.6 Sectoral Training Institutes

Attention has been paid to identify the data on LMI in relation to five important sectors of the economy as perceived by the TVET planners namely,

- Construction industry
- Hotel industry
- Automotive industry
- Textile and garments industry
- Electronics and electrical industry

Construction Industry

ICTAD is mainly responsible for the collection of data in the construction industry for purposes of training the required manpower in the industry. It has undertaken the registration of main operating firms in the industry such as building contractors and machinery and equipment hiring agents. Possession of a complete list of contractors is a definite advantage in the system when compared to other industries. The DCS has based its sample surveys on this list, in conducting data collection operation for the ICTAD. ICTAD has, with the technical support of the DCS, gathered a lot of information from the contractors as well as from the constructors in the building industry. In 1996, the DCS listed out all the construction activities in the island, excluding North and East, for ICTAD. Though this list is subject to change over time, subsequent survey operations would help estimate the necessary parameters for the industry which could be used for planning purposes for a period until next updating operation takes place.

Moratuwa University has also completed an exercise for estimating the employment parameters in the construction industry during the recent past. The results are available with ICTAD.

Reports prepared by the industry division of the DCS based on the surveys such as SCI, SCMP and SBC has been made available to the ICTAD. Though many of the data are not directly related to LMI, useful stock of information on employment and training in the industry has been generated which can be put to efficient use.

Hotel Industry

Hotel school has been the main institution responsible for providing training in the industry. Enrolment data as well as the output data is available with the school in a systematic order. The data could be retrieved for further analysis to be followed on. Several analytical studies have been initiated by the school to assess the training provided by them and the material is available for reference.

Automotive Industry

There are several organized training institutions in the industry such as the German Training Institute, Orugodawatte Automobile Training Institute. Training supply data is available in both the institutes. The publication released by these institutes divulge important information on LMI relating to the industry.

Textile and Garments Industry

Moratuwa University has a separate department handling the Textile and Garments sector industrial management activities. This has undoubtedly contributed to the technical advancements in the industry within the country. Many people who were qualified in its programmes have even secured foreign employment. Some of the tracer studies conducted by the department has shown high success rates of the graduates passed out from the faculty.

The Textile Training Institute carries out training courses for technical and supervisory levels. The training programmes conducted by the institute has met with wide recognition and support, Resource constraints have restricted the activities of the institute as in the case of many of the public sector institutes, which may need to be taken up at a suitable forum to be dealt with.

The coverage of this industry by the DCS survey (ASI) has also been satisfactory, since it covers the manufacturing industrial establishments in full. At present none of the publications have gone into the details at individual industry level. The scope for undertaking further processing of the data to meet the requirements in the sector is bright.

Electronics and Electrical Industry

This is also considered to be one of the weaker areas in respect of information on LMI. This sector in Sri Lanka resembles more to services than to industries, thus preventing these from getting into the records of

industrial establishment surveys. Many of the establishments too are falling into the informal sector. A careful establishment of a conceptual framework is a prime need for studying the LMI, within this sector.

3.7 Additional Sources of Information

Ministry of Labour (MOL)

The LMIS unit which was established in the MOL is currently obtaining information on job vacancies from the industry at DSD level. It is carrying out a matching operation on vacancies in employment for the registered unemployed. This information provides information on job demand. The extent of the coverage of industry sectors will determine the worth of the data as an indication of job demand, or demand for labour.

Tertiary & Vocational Education Training Institution

The TVEC is mandated to formulate Tertiary and Vocational Education Training (TVET) policies and coordinate the implementation of sectoral development plans. Institutional capability of the TVEC is expected to be developed to undertake the provision of recommendations to the Treasury to shape its criteria based funding system for public sector TVET.

The NAITA is expected to prepare annual reports on Vocational Training. VTA, DTE and NYSC who manage large networks of training institutions need to develop corporate plans for short and medium term. All these activities demand for sound LMI data on the supply and demand of skills and sufficient knowledge of the outcome of the training programmes.

At present the systems available to collect, tabulate and present data on training provided at the training providers are considered to be far from satisfactory. Out of the leading training providers, only the DTE is equipped with a computer based training information system. The absence of proper management information system at the TVEC has seriously reduced the accuracy, consistency and adequacy of the data on output of training agencies collected and presented by them.

Nevertheless, it is heartening to note the effort made by the TVEC in compiling, arranging and publishing the LMI on a regular note since 1997 as a result of an ILO/UNDP Project. The information as obtained from DCS, BOI, SLBFE are included in the 'Labour Market - Information Bulletin', which is a quarterly publication by the TVEC (see **Annexure 10** for list of tables). TVEC also carries out a news paper advertisement survey of employment, of which the results are included as supplementary information in the Bulletin.

4. SUMMARY AND CONCLUSIONS:

- 4.1 A lot of labour market information could be garnered from the existing sources if arrangements are made to extract, tabulate and analyse the data already available from a number of statistical activities carried out. LMI output of these surveys can be further improved through the introduction of modification to improve the survey instruments, scope and coverage, and the speedy analysis and publication of data. Activities done by the DCS and DOL needs special attention.
- 4.2 A wealth of information is available with the DCS, in QLFS, ASI, SCI, SIP in both published as well as unpublished form. Very few attempts have been made to exploit the information for LMI purposes. No attempt has been made to use the QLFS annual pooled data for any analytical purposes by the users. Tabulations of industry by occupation data can be obtained from DCS out of the sample data if the inflation and non response adjustments are made. All these aspects remain to be addressed.
- 4.3 Collection of data on demand for labour from establishments should be strengthened. Information on production, productivity, and costs should be collected with adequate details along with data on requirement of labour, unfilled vacancies etc. regularly and accurately. System should be geared to the preparation of a database which is regularly updated through collection and processing of information from households and establishments. This may be supplemented with special studies such as tracer surveys of trainees of the leading training institutes etc. in order to develop an analytical database for LMI/TVET policy and planning purposes.
- 4.4 Since many organisations are involved in collection of data on LMI in an ad-hoc basis, the need for a coordinated effort is necessary to overcome certain weaknesses arising from lack of comparability and consistency between available data. A central level coordinating and monitoring of LMI activities has become a priory concern in establishing a LMIS for Sri Lanka.
- 4.5 Institutional capability development at the agencies providing supplementary LMI needs to be attended to. Training of staff in the relevant institutions who could be made team leaders of the component activities of the LMIS is essential. Provision of necessary inputs to overcome the shortage of critical resource elements needs to be examined.

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THE CHANGING PATTERN OF FEMALE LABOUR FORCE PARTICIPATION IN SRI LANKA

Dr. A.T.P.L. Abeykoon*

Introduction

The female labour force can be defined as that part of the female population which contributes and is willing to contribute to the production of economic goods and services. Thus the female labour force includes both the employed and unemployed females in the population.

The participation of females in the labour force is influenced by a whole range of economic and social factors. Some of these factors tend to increase the participation rates of women in the labour force while others tend to depress them. In the former category can be included the increase in employment opportunities for women, opportunities for education and training, increase in age at marriage and social sanctions for female employment. In the latter can be included income of husband, number and ages of children, domestic sector wages, high unemployment rates, place of residence etc. Adequate data are not available for a systematic study of the effect of these factors on female labour force participation. However, the levels and trends in female labour force participation gives an overall cumulative indicator of both sets of factors.

2. Growth of Female Labour Force

The female labour force has grown from 570 thousand in 1946 to nearly 2.6 million or by four and half times over a period of four decades (Table 1). The average annual growth rates have fluctuated over this period due to changes in definitions and concepts of the labour force in different inquiries. The relatively high growth rate observed during 1981 to 1990 is due partly to the low estimate of the labour force in the 1981 census.

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TABLE 1
GROWTH OF FEMALE LABOUR FORCE, 1946-1990

Year	Labour Force	Average Annual Growth Rate (%)	Crude Activity Rate*
1946	57,000	-	18.2
1953	724,609	3.49	18.9
1963	715,661	-0.12	14.1
1971	1,175,670	6.30	19.1
1981	1,280,385	0.89	17.6
1990	2,596,378	8.17	16.1

Source: Censuses of Population and Labour Force Survey 1990.

* Percentage of the total population.

3. Labour Force Participation Rates

The female labour force participation rates from various censuses and surveys are presented in Table 2. It can be seen that the participation rates have declined in the age groups 10-14 and 15-19 years over the period 1946 to 1998. This is due to the increasing levels of female enrolments in education. The participation rates appear to reach a peak in the age group 20-24 years. As in more developed countries the participation rates show a bi-modal pattern. This indicates that a certain proportion of females withdraw from the labour force to fulfil their child bearing and caring responsibilities and subsequently enter the labour force. This is evident from Table 3 where it is seen that there is a significant drop in participation of married females compared to those who are single. Between 1946 and 1998 participation rates in the age group between 25 to 54 years show a continuous increase and then as expected decline in the older ages due to larger numbers withdrawing from the labour force.

TABLE 2
FEMALE LABOUR FORCE PARTICIPATION RATES
1946 - 1998

Age Group	Census 1946	Census 1953	Census 1963	Census 1971	LF&SES 1980/81*	LFS 1990	LFS 1998*
10- 14	11.8	9.8	4.1	4.1	3.1	4.6	3.7
15 - 19	24.3	27.8	24.2	26.4	20.6	26.9	20.6
20 - 24	23.8	28.7	31.4	42.2	39.0	64.0	51.7
25 - 29	26.3	28.5	30.1	39.3	36.8	58.3	51.7
30 - 34	28.8	30.2	27.4	34.8	33.9	62.3	46.5
35 - 39	31.1	32.2	28.1	32.6	35.8	55.6	53.1
40 - 44	33.1	34.6	28.5	30.9	36.1	51.8	52.6
45 - 49	33.4	35.6	29.3	29.8	33.6	47.9	44.3
50 - 54	28.4	35.9	28.1	24.5	28.3	34.5	38.8
55 - 59	32.6	34.1	17.5	16.7	21.1	31.3	30.2
60 - 64	22.8	30.1	11.4	10.5	13.8)	13.3	12.6
65 +	23.1	23.2	8.9	5.1	5.8)		

Note : The rates have been computed from the respective census and survey data.

LF & SES : Labour Force and Socio-economic Survey

LFS : Labour Force Survey

* Excludes northern and eastern provinces.

TABLE 3

LABOUR FORCE PARTICIPATION RATES OF FEMALES BY MARITAL STATUS, 1981

Age Group	Never Married	Married	Widowed Divorced or Separated
15 - 19	19.0	19.4	25.0
20 - 24	47.0	24.1	34.6
25 - 29	58.1	26.6	44.7
30 - 34	56.6	28.7	49.6
35 - 39	49.4	29.3	49.5
40 - 44	38.1	26.8	42.5
45 - 49	31.2	24.0	34.7
50 - 54	23.6	18.7	24.2
55 - 59	18.2	12.5	15.2
60 - 64	10.9	7.0	8.4
65+	6.5	4.3	3.6

Source: Census of Population, 1981.

4. Female Employment

It can be seen from Table 4 that the employed female population has increased from 652,000 to nearly 2 million or by three fold over the period 1963 to 1990. The rapid growth of female employment observed during 1981 to 1990 is partly due to the low estimate of employed populated at the 1981 census.

TABLE 4

**GROWTH OF EMPLOYED FEMALES
1963- 1990**

Year	Employed	Average Annual Growth Rate (%)
1963	652,128	-
1971	810,471	2.8
1981	870,876	0.7
1990	1,987,140	9.6

Source: Censuses of Population and Labour Force Survey 1990.

5: Employed Females by Industry

The employed female population by three broad industrial sectors, namely primary, secondary and tertiary show that the proportion of employed population in the primary sector comprising agriculture, forestry, hunting and fishing has declined from 63.5 per cent in 1963 to 43.1 per cent in 1998. As a result, employment in the secondary sector which includes mining and quarrying, manufacturing and construction has increased from 10.0 per cent to 24.8 per cent during the same period. Similarly, in the tertiary sector comprising utilities, commerce, trade, transport, storage and communications and other services has shown a steady proportionate increase in female employment from 22.9 per cent in 1963 to 30.1 per cent in 1998 (Table 5). The employed female population in 1998 was estimated at 1,932,483.

TABLE 5

**PERCENTAGE OF FEMALES EMPLOYED BY INDUSTRY
1963- 1998**

Year	Primary	Secondary	Tertiary	Unspecified	Total
1963	63.5	10.0	22.9	3.6	100.0
1971	61.9	12.6	19.9	5.6	100.0
1981	52.7	11.7	28.8	6.8	100.0
1990	54.0	22.1	28.4	4.5	100.0
1998*	43.1	24.8	30.1	2.0	100.0

Source: Census of Population and Labour Force Surveys

* Excludes the northern and eastern provinces.

6. Employed Females by Occupation

The employed female population by broad occupational groups is presented in Table 6. It can be seen that the proportion of agricultural workers has declined from 61.1 per cent in 1971 to 51.8 per cent in 1998. Similarly, blue collar workers who comprise production and related workers also show a decline from 18.7 per cent to 15.8 per cent during the same period. However, service workers which includes sales workers as well and white collar workers comprising professional, technical, managerial and clerical workers show a proportional increase during 1971 to 1998.

TABLE 6

PERCENTAGE OF FEMALES EMPLOYED
BY OCCUPATION 1971-1998

Year	Agricultural Workers	Blue Collar	Service Workers	White Collar	Total
1971	61.1	18.7	7.8	12.4	100.0
1981	52.4	19.2	8.0	20.4	100.0
1993*	52.5	19.9	7.1	20.5	100.0
1996*	51.0	19.4	9.0	20.6	100.0
1998*	51.8	15.8	11.2	21.2	100.0

Sources: *Censuses of Population and Labour Force Surveys*

* Excludes the northern and eastern provinces.

7. Employed Females by Employment Status

Female employment by employment status show that the proportion of females in the employee category has declined from 82.2 per cent in 1963 to 57.3 per cent in 1998 (Table 7). On the other hand, the proportion of unpaid family workers has increased from 6.6 per cent to 24.8 per cent during the same period. The proportion of own account workers or the self employed also show an increase from 8.9 per cent to 17.2 per cent.

TABLE 7

PERCENTAGE OF FEMALES EMPLOYED
BY EMPLOYMENT STATUS, 1963-1998

Year	Employee	Employer	Own-account Worker	Unpaid family Worker	Total
1963	82.2	0.6	8.9	6.6	100.0
1971	76.9	0.8	11.2	11.1	100.0
1981	81.3	0.8	13.3	4.6	100.0
1990	55.1	0.6	17.9	26.5	100.0
1998*	57.3	0.7	17.2	24.8	100.0

Source: Censuses of Population and Labour Force Surveys.

* Excludes the northern and eastern provinces.

8. Female Unemployment

It is evident from Table 8 that the female unemployment rate has declined over time from 31.1 per cent in 1971 to nearly 15 per cent in 1998. It is however, evident that female unemployment rates have remained consistently at a much higher rate than the overall unemployment rate.

TABLE 8

FEMALE UNEMPLOYMENT, 1971-1998

Year	Unemployed	Unemployment Rate (%)	
		Female	Both Sexes
1971	365,199	31.1	18.7
1981	409,509	32.0	17.9
1990	609,238	23.5	14.4
1998*	338,326	14.9	9.5

Sources: *Census of Population and Labour Force Surveys*

* Excludes the northern and eastern provinces

Female unemployment rates by age show that in the younger age groups female unemployment is much higher than the overall female unemployment rate (Table 9). It is however, evident that between 1981 and 1998 the unemployment rates of younger females have declined.

TABLE 9

FEMALE UNEMPLOYMENT RATES BY SELECTED AGE GROUPS 1981 AND 1998

Age Group	1981	1998*
10-14	40.8	-
15-19	51.9	28.2
20-24	50.4	40.1
25-29	38.5	22.9
All Ages	32.0	14.9

Sources: *Census of Population 1981 and Labour Force Survey 1998.*

* Excludes the northern and eastern provinces.

Female unemployment is also closely related to the level of education. Higher the educational level, lower is the prospect of finding suitable employment. It is evident from Table 10 that unemployment rates are relatively high among those who have 10 or more years of education. This is mainly due to the fact that females in general are very selective in the type of employment they seek, given their level of education.

TABLE 10

PERCENTAGE DISTRIBUTION OF UNEMPLOYED FEMALES BY LEVEL OF EDUCATION, 1981-1998

Education	1981	1990	1998*
No Schooling	3.9	1.3	0.1
Year 1-5	5.4	5.1	2.3
Year 6-10	44.8	42.2	33.7
G.C.E. (O/L)	41.9	29.5	28.4
G.C.E. (A/L) and above	4.0	21.9	35.5
Total	100.0	100.0	100.0

Sources: Census of Population 1981 and Labour Force Surveys 1990 and 1998.

* Excludes the northern and eastern provinces.

9. Provincial Profile of Female Labour Force

It is evident from Table 11 that the participation rate of females in the labour forces in the Western and North Western Provinces is relatively low. However, the employment rate of females in these two provinces in relation to their labour force is relatively high.

Female employment by industry show that Uva, North Central and Central Provinces have relatively high proportions engaged in the agricultural sector. On the other hand, Western Province show a high proportion of females working in the tertiary sector (Table 12).

TABLE 11

**FEMALE LABOUR FORCE PARTICIPATION
BY PROVINCE, 1996**

Province	Labour Force (000)	Participation Rate(%)	Employed (000)	Employment Rate(%)
Western	618	29.2	513	83.0
Central	333	33.5	275	82.6
Southern	313	33.3	242	77.3
NorthWestern	243	28.7	206	84.7
North Central	136	34.5	116	85.1
Uva	160	35.6	140	87.8
Sabaragamuwa	238	33.2	188	79.1
Total	2,041	31.6	1,680	82.3

Source: Labour Force Survey, 1996.

TABLE 12

**PERCENTAGE OF FEMALES EMPLOYED BY
INDUSTRY AND PROVINCE, 1996**

Province	Primary	Secondary	Tertiary	Total
Western	7.9	39.1	53.0	100.0
Central	60.4	14.4	25.2	100.0
Southern	53.6	21.7	24.7	100.0
North Western	44.8	27.5	27.7	100.0
North Central	65.4	10.6	24.0	100.0
Uva	76.5	5.1	18.4	100.0
Sabaragamuwa	53.4	17.9	28.7	100.0
Total	42.4	23.9	33.7	100.0

Source: Same as for Table 11.

Employment of females by occupation shows that Western Province has by far the highest proportion of females employed in white collar jobs (Table 13). The blue collar workers which comprise craft related and plant and machine operators show relatively high proportions in Western and North Western Provinces which are relatively more industrialized than the other provinces.

TABLE 13
PERCENTAGE OF FEMALES EMPLOYED BY
OCCUPATION AND PROVINCE, 1996

Province	Agricultural Workers	Blue Collar	Service Workers	White Collar	Total
Western	23.2	30.1	13.2	33.5	100.0
Central	65.5	12.9	5.1	16.5	100.0
Southern	59.5	19.1	6.1	15.3	100.0
North Western	55.4	24.6	4.5	15.5	100.0
North Central	74.0	6.4	6.3	13.3	100.0
Uva	79.8	3.2	5.8	11.2	100.0
Sabaragamuwa	61.3	14.5	7.9	16.3	100.0
Total	51.9	19.4	8.1	20.6	100.0

Source: Same as for Table 11.

Female unemployment rates are relatively high in the Southern and Sabaragamuwa Provinces. The lowest rate is observed in the Uva Province (Table 14). Unemployment rates by level of education show that the highest rate of unemployment among the educated is recorded in the Southern and North Central Provinces, while the lowest is observed in the Western Province (Table 15).

TABLE 14
FEMALE UNEMPLOYMENT BY PROVINCE, 1996

Province	Unemployed	Unemployment Rate (%)
Western	104,962	17.0
Central	58,065	17.4
Southern	71,106	22.7
North Western	37,046	15.3
North Central	20,251	14.9
Uva	19,545	12.2
Sabaragamuwa	49,888	20.9
Total	360,863	17.7

Source: Same as for Table 11.

TALBE 15
FEMALE UNEMPLOYMENT RATE BY
EDUCATIONAL LEVEL AND PROVINCE, 1996

Province	No. Schooling	Year 1-5	Year 6-11	G.C.E. & (O/L)	G.C.E. (A/L) And above
Western	1.9	5.9	17.1	20.1	20.1
Central	2.3	3.6	24.1	30.2	33.9
Southern	2.5	7.5	20.8	37.1	40.7
North Western	-	4.6	12.7	32.4	25.6
North Central	12.3	2.3	13.0	20.4	40.9
Uva	5.5	3.5	16.0	19.4	34.6
Sabaragamuwa	4.0	4.9	28.1	31.4	35.3
Total	3.3	4.7	19.0	26.2	28.3

Source: Same as for Table 11.

10. Summary and Conclusion

The female labour force in Sri Lanka has increased by more than four fold over a period of five decades since 1946. Age specific participation rates also show increased participation in the age range from 20 to 54 years. The peak level of participation is observed in the age group 20-24 years. The rising educational attainment of females have had both positive and negative influences on female participation in the labour force. While in the younger ages it has depressed participation to due increasing levels of enrolments in education, at ages above 20 years it has contributed to increased participation due to postponement of marriage as well as acquiring skills necessary for employment.

Female employment by industry and occupation show that there has been a gradual shift from agricultural employment to service sector employment. There has also been an increase in employment of unpaid family workers in recent years possibly due to the growth of small scale family based enterprises.

Female unemployment rates have declined over time. However, the unemployment rates of females are much higher than overall rates. Unemployment rates by age and level of education show that relatively high unemployment is observed among the youth and those with ten or more years of education.

Female labour participation by province show that Western and North Western provinces have relatively low participation rates. Employment by industry show that agricultural areas such as Uva, North Central and Central Provinces have high proportion of females engaged in the agricultural sector. Employment by occupation show that Western Province has by far the highest proportion of females engaged in white collar jobs. Female unemployment is relatively high in the Southern and Sabaragamuwa Provinces. Unemployment rates by level of education show that among the educated unemployment is relatively high in the Southern and North Central Provinces.

The increasing level of female participation in Sri Lanka has to be seen in a positive light. It is necessary to mobilize their labour in a productive manner for economic development. With declining fertility, eventually the population in the youth age group will decline in absolute number. This shortfall can be met by increased participation of females in the labour force. Thus the economic and manpower policies should be directed at training and productively employing females at all levels of occupation.

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