Labour Law

The Evolution of Labour Law in Sri Lanka

Tea Plantation to Free Trade Zone

R. Wearakoon

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by

R. WEERAKOON

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FOREWORD

This little book is a compendious history of labour legislation in Sri Lanka. But, as is the way of Batty Weerakoon, the presentation does not confine itself to a summary description of the varying and often contrasting contents of the laws he lists. He relates the character of the laws to the times in which they were enacted.

What emerges is the direct relation between the character of labour legislation and the dominant political forces in any given period of history. Who rules and in what circumstances is seen, not surprisingly, to weigh heavily on the character of labour legislation in any given period, determining whether such legislation is liberating or constricting or merely regulatory in relation to labour and the labour movement.

That we have been living in a constricting period since the massive electoral over-turn of 1977 is unchallengeable, save on the score that it is a disingenuous under-statement. In fact, the labour movement generally and the trade union movement particularly have been going through a repressive period in which the actual question for the trade unions has been one of survival than of advance.

It looks very much as if the political environment will have to undergo a sharp and deep-going change for the trade union movement to resume its earlier course of advance. That change must surely be reflected in a wide-ranging restoration of once-enjoyed democratic rights and freedoms, re-articulated and re-developed to accord with the needs and realities of the different world into which we would be moving.

It is impossible that the trade union movement, aiming to revive and develop, would or could stand aloof from the task of engendering the desired change—impossible, if for no other reason, because it is a change in which it has a direct interest and of which it will be a direct beneficiary. The trade union movement will therefore be one of the direct agents, and certainly not the least important agent, of the change envisaged. The process involved being basically political, the trade union movement cannot shy away from that task on that score. It will have to find the correct means of grasping the nettle of utilising political means in the interests of trade unionism's progress. The trade union movement of Sri Lanka has plenty of experience in this field to bring to the task.

COLVIN R. de SILVA.
President,
Ceylon Federation of Labour.

Colombo,
5. 9. 1986

PREFACE

This publication is a study made by me for a project organised in Thailand in November 1983 on the subject "Evolution of Labour Law in South and South-East Asia". In the countries that were studied the final phase in the evolution was seen as a position of regression. Sri Lanka telescoped into a very short period in the early 1980s this final phase which in other countries commenced over 20 years ago. Therefore the full effect of the changes in Sri Lanka had not been felt at the time this study was made in 1983. I have now revised the final chapter of that study by including the neccessary new material.

The Foreword very kindly written by Dr. Colvin R. de Silva, President of the Ceylon Federation of Labour, makes it unnecessary for me to further describe the nature of this study or its perspectives. I am glad that Dr. de Silva has authoritatively pointed out the bearing of the more recent laws in Sri Lanka on the trade union movement itself.

My debt to the writers and writings mentioned in the text is heavier than is noticed in a foot-note acknowledgement. The contribution of the Lanka Samasamaja Party to the country's labour movement since the 1930s has been crucial. In this regard I have depended to a great extent on the late Mr Leslie Goonewardene's **A Short History of the L.S.S.P.** which succinctly covers the period up to 1960. I shall not be surprised if in respect of this period there is in my text verbatim reproductions from this little book without my making any particular acknowledgement.

I must also acknowledge my debt to the excellent library maintained in Colombo by the Department of Labour. I am indebted to my friends in the Department of National Archives too.

The sections in this book on the Free Trade Zones in Sri Lanka are owed wholly to the encouragement given by the Japanese trade union organisation, **Sohyo,** to research on this subject. This research was done by the **Institute of Worker Research & Education** that has been set up by the Ceylon Federation of Labour.

My wife who has helped me with this work, and I, are glad to remember a dear friend, the late Sarath Nawana, with this book. He was in the front line of the protest movement against the more recent changes in labour law and practice.

13.09.1986. R. W.

INTRODUCTION

Legislation in respect of labour in Sri Lanka falls into 5 distinct periods—each with its own orientation. These periods and the respective orientations are as follows :—

(1) From the commencement of British rule in 1802 to 1923. This period includes the years of direct British rule which formally ended only in 1947.

It is in this period tnat a plantation economy which was a Birtish importation was established and developed. The distinct orientation of the labour legislation of the period was towards the creation of a labour force suited to plantation agriculture.

(2) The period 1923 to 1939 which was a period when British rule continued but was under the stress of the Indian Independence movement on the one hand. and on the other, the growing radicalism and militancy of an expanding working class. This was a period when legislation shifted from the sphere of the plantations—in which labour was taken for granted, to coping with an urban working class movement which was also part of the movement for the country's independence.

(3) The war and post-war period up to 1955 which includes the first years of governmental power exercised by the native bourgeoisie. The colonial pattern of the economy did not change but the tensions within it grew drawing from the ruling class increasingly repressive measures.

(4) The period 1956 to 1977 when reformist ideas influenced labour legislation. Non-colonialist (and even non-capitalist) forms of economic development were sought and this exploration had an impact on labour and the legislation that governed it. It was regarded as a period of lost years for capitalism.

(5) The period 1977 to the present day which may be described as the period of reaction and the dismantling or attempted dismantling of the positions of advantage gained by the working class from the period 1956 onwards — and even earlier. The orientation is in the direction of neo-colonialist patterns.

[CHAPTER I]

1802 to 1923—Law for Plantation Labour

In the first phase of their rule the British utilised the feudal and indigenous institution of forced labour known as Rajakariya for—

(a) public works such as road construction

(b) economic activity as in the sphere of the cinnamon trade in particular.

In the pre-British times the latter (i.e. (b) above) was a caste obligation attached to land. In 1801 the British abolished this system of land tenure and replaced it with a direct tax on the produce of the land. But it maintained the caste obligation of service with payment being made for it with wages. Although at first payment was made for services in the public works too, in 1808 there was a return to such service being treated as an unremunerated obligation. Dr. Colvin R. de Silva in his history of the time observes, " It was not at first a very heavy demand ; but its incidence so increased that, in 1828 the Colombo district alone had to provide men for nearly 20.000 working days of unpaid road repairst." In 1818 a doubt as to the legality of this system had been raised by the Judges of the Supreme Court but the matter was resolved by the Regulation made by the Governor to the effect " that the impressment for the service of Government, of all persons bound by their castes, tenure of lands, or other customs of this colony, to perform service, is and has always been legal." The regulation further dealt with the legality of the procedures including seizure and arrest which continued to be adopted up to the time of this impressment.(1)

Further adjustments in the Rajakariya system were effected by the British only in the interests of their plantation agriculture. The Statement of objectives of the Order-in-Council of 12th April 1882 which repealed the system altogether reflects on the hopes that were entertained at the time of Regulation No. 4 of

1829. It says that this Regulation made in respect of the Maritime Provinces was with the intention that " all labourers of whatever nation, caste or description, who should be *bona fide* employed in any plantation of coffee, cotton, sugar, indigo, opium or silk, or in the manufacture of the produce thereof, should be exempt from being called out in the public service during the period for which they should be so *bona fide* employed. . . ." This, it says, was with a view to encouraging agricultural speculations. The agricultural speculation mentioned, with the exception of coffee, failed to get a start in the Island. In any case these were all activities, as is seen in the case of coffee, for which indigenous labour was not available. It is only in the case of cinnamon that there is the successful drawing in of indigenous labour. This was for the reason that labour in cinnamon was part of the Rajakariya system. The compulsion under the Rajakariya system was insisted upon but labour was remunerated. In cash and kind—rice, salt, fish. The persons involved in this labour were of a caste known as the Chaliyas. In 1926 they were placed on piece-rates, paid according to quality of the cinnamon delivered, and their period of service too was reduced. These were measures perhaps meant to give these persons some measure of relief. But their plight had been described thus :

> Unfortunately, no precautions could mitigate the state of privileged servitude to which the Chaliyas were by law and tradition condemned. The labourers often came from so long a distance that they took a week to get to and from their place of employment : and as they generally had to spend another week or so in endeavouring to recover arrears of pay, at least one half, instead of one-third, of a man's time was spent in the service of Government. The peelers too had normally to serve at least eight months, instead of five and a half months, because their quotas were increased. Simultaneously, the quality of the cinnamon demanded to be produced by them was raised, and the administration of the laws compelling their service tightened, while their privileges were whittled away. Moreover, they had to endure severe hardships and the risk of endemic fever in the jungles ; in 1827 alone, of 2,100 peelers employed, over 300 died in the Kandyan jungles. Although native medical attendance was provided and pensions to families in case of death on duty, the one was inefficient

and the other insufficient ; nor were pensions given for those who grew old and debilitated in the service. At the rates fixed, few men earned more than seven rix-dollars a month although their wives and children helped : and peelers often returned empty handed after ten months work, having even sometimes pawned or sold their personal belongings. Cases were not infrequent of peelers purchasing cinnamon from Kandyans at rates higher than they received themselves, in order to avoid the long sojourn in the fever-stricken jungles : and those who could afford it, employed others to cut their share. As many Chaliyas were traders, weavers, fishermen and land-owners, their liability to service caused much loss. The punishments were in all cases corporal or, as was more usual, the exaction of a greater quantity of work. "It has been not only a painful and disagreeable but disgusting part of my duty,"said Superintendent J.W. Maitland," "to punish individuals for disobedience or neglecting to perform a task imposed on them against their inclinations : agreeable to immemorial custom, this particular caste was, and still is, liable to this employment, not being their fault but their misfortune, I feel for them and pity them. . . ."(2)

In 1832 the Government's monopoly in the cinnamon trade was abolished. With it was also abolished the Rajakariya system altogether. And it is about this time that the Island's cinnamon began to lose its place to cassia and Javanese cinnamon. The colonial Government's adjustment of the use of labour under compulsion in the cinnamon plantations always did have a clear economic motivation. In 1831 a paid labour force of 660 men was established on a voluntary principle without reference to caste. On this Dr. Colvin R. de Silva comments,

> The real reason for the measure was that the cultivation of the preserved plantations was nearly complete, the large compulsory labour force was adequate, as upkeep, not extension, was the object. (3)

The abolition of Rajakariya came in the wake of the recommendations of the Colebrook Commission. Pursuant to one of these recommendations the Colonial Government gave up its interests in planting and trade which it earlier held through monopoly or other means. The abolition of Rajakariya thus coincided with this policy change.

Although the Colonial Government had not thereafter to arrange its supply of labour for its planting activities it still had to do so for its public works—especially in the area of road construction. It had however attempted to meet this need independent of Rajakariya even when that system existed and was being used. Faced, as it was, with the reluctance of the population to engage in wage labour, the first Governor of the Island, North, raised a Pioneer Corps, mainly of Indian "coolies." This was done first on a district basis and was later made into a single Pioneer Corps and put under military discipline. This was in 1804,. By 1820 and with the commencement of the great era of road building these Pioneers were assigned to various public works in divisions of 400 to 800 men. These formed the nuclei around which the Rajakariya or customary labourers, drawn from the Districts, were grouped. (4)

The abolition of Rajakariya and the State monopolies which rested on Rajakariya labour, however modified, have been seen as an opening to the ideas of Adam Smith and Jeremy Bentham (5). The result or direction of this measure has been hailed, above all, as making possible the commercial age which the British Government was trying to usher in (6). The main feature of the new period was the growth of coffee plantations which privately owned, revolutionised the economic condition of the country (7). The expansion of the coffee plantations has been seen as phenomenal. In 1835 there were only a few European planters in the Island ; in 1848 there were 367 plantations with 60,000 acres under cultivation (8). This was also capitalism's period of primitive accumulation in the plantation sector, subjecting in the process, the most exploitable commodity, labour, to the worst stringencies. The labour necessary for the plantations came not from indigenous sources but from villages in South India. The brunt of the hardship of the period was thus borne by this immigrant South Indian labour. The scales were heavily weighted against this labour for it had to contend with planters who were also a part of the State. It has been observed that in the period immediately after about 1837 the " prospects for coffee had appeared so bright that the Governor, Sir Stewart Mackenzie (1837-1841), the Judges, the officers of the army, and about half the Civil Servants all rushed to open plantations "(9).

By 1840 the British planter had learnt his lessons in regard to Indian immigrant labour. In 1828, Barnes the Governor of the

Island, and Bird imported 150 "Tamil Coolies" who were amongst the first of their kind to come thus to the island, for work on coffee plantations. Within a year all these men deserted ([10]). These workers, when they found other planters offered more, abandoned their contracts. Civil remedy against such desertions was long drawn out and was to no purpose([11]). To remedy this situation, in 1841 the Government introduced the *Service Contracts Ordinance* No. 5 of 1841 which repealed and replaced a tentative attempt towards the same end in1840. By this Ordinance an employer was enabled to take action in criminal law against an employee who broke his contract. The objective of this Ordinance was set out as " the better regulation of Servants, Labourers and Journeyman, Artificers, under Contracts for Hire and Service." It applied to " any menial or domestic Servant or Labourer in the Service of Government, or of any person or persons." It stipulated that contracts written or verbal are assumed to be by the month except for work performed by the day, by the job or by the journey ; and was renewable from month to month except where a week's prior notice of non-renewal was given by either party. A written contract signed by both parties could be made valid for a period of one year and was terminable by one month's notice. The contract was enforced through the penal provision in Section 7 of the Ordinance. It made punishable by forfeiture of wages due for a period not exceeding one month and by imprisonment with or without hard labour for a period not exceeding three months where a Servant without reasonable cause ;—

(a)—neglected or refused to attend work

(b)—was guilty of drunkenness, disobedience of orders, insolence, gross neglect of duty or other misconduct in the service of the employer,

(c)—quit service before the expiry of the contract.

The Employer for his part was also penalised for his breach of a contract. But this was not, as in the case of an employee, by an imperative jail sentence. The employer was only fined a sum not exceeding £ 10. Imprisonment for a period not exceeding three months was only in default of the payment of the fine.

The Ordinance was weighted in favour of the planter for not only a breach of the contract, or a refusal to work, but an undefined " insolence" was also made punishable as a crime. So

was misconduct which also was not limited by a definition. Dr. K. M. de Silva in his *Indian Immigration to Ceylon—The First Phase* 1840-1855([12]) gives some contemporary observations on this aspect. The Superintendent of Police, Kandy observed that the law operated fully to the satisfaction of the employer, and that the labourer seldom availed himself of it even when it was pointed out to him and he was advised to do so. The Police Magistrate, Kandy had gone on to state that the Coolies are nearly all ignorant that any law exists for regulating agreements and further that in his ignorance the worker becomes an easy prey to his knowing and unrelenting master. William Boyd, a pioneer planter observed that his fellow planters " used their coolies with disgraceful injustice and cruelty." Governor Torrington on his arrival in the Island in 1847 was struck by the situation of labour. In a letter to Lord Gray he wrote, " I learnt that the treatment of the unfortunate coolies in the coffee estates (in some at least) has been shameful, but the planters now have begun to find out that if they do not treat them better, they will be without labour not as from their disinclination to come, but from the Indian Government preventing them."([13]) Torrington refers to his pre-occupation with the subject ever since he left England and proposes as a remedial measure the " Coolie Ordinance " which he had already tabled in the Executive Council([14]). But in two months time he writes once more to Lord Gray complaining of errors in the tabled Ordinance and says, " I should not recommend any hurried legislation on so important a subject.". ([15]) In fact no further legislation was brought and in September 1849 Torrington writes to Gray, " Plenty of coolies in the interior—and we never hear now of their being ill-treated or badly paid, and *this is due* to my having made known these facts in my despatches, for which I have been so abused." ([16]) But conditions could not have been that encouraging to the immigrant labourer for the next month Torrington writes to Gray saying that it was the continuation of martial law that kept the coolies in the country and saved the coffee crop.([17])

Coffee that went through a slump from 1847 to 1850 recovered completely by 1853 and the output steadily increased till 1870.([18])It was in this period that Government finally stepped in to assist the planter in ensuring to him a regular supply of labour. In finely balancing against each other the planters' agitation for such assistance and the *laissez faire* and free trade policies that still prevailed in England, Governor Ward set up in 1858 minimal

machinery for the regulation of the importation of such labour. Ward's Ordinance No. 15 of 1858 was cited as *Immigrant Labour Ordinance*, 1858 and was described as " An Ordinance for the regulation and promotion of immigrant labour." In its preamble it recognised that it was " expedient from the large increase of public and other works, to regulate and extend the supply of labour in this Island, and to make special provisions for the same by a fund to be created for that purpose." Four Commissioners, one of whom was a servant of the Government, were appointed to administer the Fund that was created. The powers of the Commissioners were described thus ;—

> The Commissioners shall have the management and super-intendence of all affairs, matters and things, relating to the immigration of coolies or such other labourers into Ceylon, and to the regulation and extension of the supply of labour to this Island. *Provided always*, that nothing hererin shall be taken to diminish, or interfere with the right of any private person, or company of persons to promote or occupy themselves in the immigration of coolies or other labourers into Ceylon.([19])

The Ordinance provided for ;—

(1) The appointment of Immigration Agents, to be stationed in India, and to act in India as the Agents of the Government of Ceylon, in relation to the immigration of labourers and coolies into Ceylon.

(2) The imposition of a tax on employers of coolies assessed at an amount not exeeding 3 shillings for every 120 labour days.

(3) The Commissioners to hire out, purchase or charter steamers or other vessels for the transporting of coolies, to charge for the conveying of coolies, and to make full provision for their disembarkation and orderly reception in Ceylon, and the maintenance of health in the area of disembarkation.

This Ordinance 15 of 1858 was accompanied by other legislation too meant to put the immigration of Indian labour on an orderly basis. This perhaps for the reason that there was competition for South Indian labour from Mauritius and the West Indies which provided higher wages and better medical facilities.([20]) A rectification of the existing situation was necessary in order to

cope with the need for labour both for the plantations and the Government's program for the building of roads and railways which too were meant to serve the plantations. The Service Contracts Ordinance No. 5 of 1841 was further amended by Ordinance No. 11 of 1865 which consolidated the law as prevailed up to then.

The Service Contracts Ordinance was amended four times between 1858 and 1863,([21]) and a consolidated law was brought out by Ordinance No. 11 of 1865. The Ordinance covered all categories of employees in labour grades. Written contracts between private parties were made valid for a period of three years which was an extension of the earlier one year period. Contracts made in India in accordance with the law applicable in that country were made valid in this country too. A contract duly signed was made *prima facie* evidence of the matters and things contained therein on its production in a local ccurt. No written contract was terminable before the date of its expiry except with mutual consent. Infringement of the terms of a contract was punishable under Section 11 of the Ordinance, and this was the same provision as Section 7 of the principal Ordinance it replaced.

These were provisions which gave to the planter—now in most cases a planting Company or Agency House—a greater hold on his labour force. There were further provisions of the 1865 Ordinance aimed specifically at the crimping of labour and also the misappropriation by labour recruiters of the advances paid to them for such recruitment. These were offences which invited heavy penalties. It was also made possible to transfer a Service Contract to a new proprietor or manager of an estate. The penalty for an employer's infringement of his contract was reduced from £ 10 to £ 5. Wages were made a first charge on the estate but this was not to exceed three months wages. Employers were bound to find lodging, food and medical care for their coolies, but even in this condition they were not prevented from terminating their services on the basis of frustration of contract.

This Ordinance was amended in 1884 with the intent " to provide for the speedy recovery of wages due to labourers" as announced in the preamble to the said amendment,—Ordinance No. 16 of 1884. The amendment provided for one or more labourers to sue for wages in the names of others concerned. The Attorney-General too was empowered to intervene or appear in such matter at the request of the Colonial Secretary. This was

also the period when Government made a start in the provision of medical facilities intended for labourers. Attempts were made by legislation for the provision of such facilities both in1865 and 1872. As these proved a failure more definitive arrangements were made by Ordinance No. 17 of 1880 as amended by Ordinance No. 9 of 1882. Under this legislation estates or plantations were grouped in Districts and Medical Officers were appointed by Government to each District. The medical officers had District Hospitals with Dispensaries attached to them. Medical Assistants were required to reside in the hospitals. Superintendents of estates were required ;—

(1) To maintain the line rooms on the estate in fair sanitary condition.

(2) To notify all cases of sickness on the estate and to take such steps as they may deem best for the immediate relief of the sick.

(3) To send, as prescribed, sick labourers to hospital.

(4) To send for the District Medical Officer in any case of serious illness or accident.

(5) To inform the District Medical Officer within forty-eight hours of every birth or death on the estate.

(6) To maintain a register of immigrant labourers employed on the estate, and of all immigrant labourers arriving or departing therefrom, and of all births and deaths on the estate.

(7) To supply every female employed on the estate, and giving birth thereon to a child, with sufficient food and lodging for 14 days after the birth of such child, and to take care that the female labourer be not required to work on the estate for one month, unless the District Medical Officer reports sooner that she is fit to work.

A Superintendent contravening these provisions was liable to a fine not exceeding Rs. 50/-. The Superintendening Medical Officer, whose post was created by Ordinance 9 of 1882 had the duty to ;—

(1) Visit the " Coolie lines " in the estates of the District and to see that they are maintained in proper condition.

(2) Check the health of the " coolies " periodically.

(3) Inspect the hospitals and dispensaries within his District.

By these Ordinances the Government specified for itself the task of causing " provisions to be made for the medical care of labourers employed on estates."(22) A special fund for this purpose known as the Medical Aid Fund was set up from duties levied on the plantation produce.

By 1883 coffee was in rapid decline. The area under coffee had fallen to 250,740 acres from an earlier 322,337 acres. To planting interests however, the equally rapid expansion of tea was more than sufficient compensation. From a mere 19,797 acres in 1883 tea had reached 207,413 acres in 1889 and was double that (*i.e.*, 404,575 acres) by 1897. The change was reflected in the Service Contract legislation too as it applied to immigrant labour. Ordinance No. 13 of 1889 was specific to Indian immigrant labour. It was, in a way, also specific to conditions on tea plantations where work, unlike in coffee, was non-seasonal, and labour had therefore to be continuously available. Ordinance No. 13 of 1889 as amended by Ordinance No. 7 of 1890 required that ;—

(1) The days wage be paid monthly, and within 60 days from the expiration of the month within which the wages were earned.

(2) A minimum of 6 day's work per week be provided to each worker, and that this period be paid for if the worker was available for work.

The Ordinance also enabled the deduction from wages of all advances of money made to a labourer, and the value of all food clothes, or other articles supplied to him during such period, and which the employer is not liable in law to supply him at his own, expense. It also enabled labourers jointly to sue for wages. It provided that written contracts will be governed by Ordinance 11 of 1865 which in fact was Ordinance 5 of 1841 amended.

This legislation of the last two decades of the last century set he rules for labour in the period of the further expansion of the plantations. Between 1891 and 1921 the number of immigrants and dependants increased from 235,000 to 500,000 and reached nearly 700,000 by 1931 (23). This was also a period when plantations came to be managed increasingly not by the individual planter but by the limited liability companies incorporated in England acting through Agency Houses which were better able to co-ordinate activities. The worker, on the other hand, remained completely unorganised and to a large extent alienated even

from the Kangani who, at the start of the trek to Ceylon, functioned in each immigrant group as a democratically elected leader. The law as it stood from 1865 onwards protected the planter from the " crimping " Kangani. It also protected the advance he paid, known as " Coast Allowance " to the recruiting Kangani. But the labourer continued to remain at the mercy of the Kangani who, through the truck system, recognised in the law, was able to squeeze out every penny from the labourers who were also regarded generally as his wards. Vishaka Kumari Jayawardene in her *The Rise of the Labour Movement in Ceylon*(24) characterises the bond between the Kangani and his gang of workers as one that arose from the worker's indebtedness. She lists the worst evils of this situation which of course remained despite this legislation. These included the means by which the Kangani got his gang into his debt and the methods by which the debt was unflinchingly recovered with the assistance and the blessings of the estate's manager and the prevailing law.(25) Legislation meant to directly attack these features came only in the first thirty years of the Twentieth Century, and that too, tardily.

The welfare aspect of the late Nineteenth Century legislation related only to the means of the "coolie's" transport to the estate, and to his health. These were also,and in the main, in the interests of the planter himself. But even so they had to be agitated for from as far back as the early 1840's. The Ceylon Agricultural Society which had important enough links with the top rungs of the administration in the Island wished in 1842 that the immigrant labour be afforded " inducements and facilities to come over on their own responsibility."(26) The next year they requested the provision of rudimentary welfare facilities on the trek from the coast to the planting Districts. In 1843 the Society warned the planters that, " unless some internal arrangement be made upon states, higher authorities will most assuredly intervene to compel the adoption of some system which shall exonerate the Agricultural interest of seeing the roads choked up with the sick, the dying and the dead."(27) The authorites however showed a singular lack of interest in such intervention.

When the Labour Ordinance No. 5 of 1841 (28) was originally drafted, in the period of Wilmot Horton (Governor 1831-1837), there was no significant movement of Indian immigrants to Ceylon and it was therefore meant to be no more than the introduction to Ceylon of the main principles of the English law on master and

servant(29). But when it was finally passed by the Colonial Office in 1841 the material questions in relation to immigrant labour had cropped up but found no reflection in that legislation or elsewhere. Men like Sir James Emerson Tennent were able to state the obligation of the Government to the Indian immigrant which included protection from ill-treatment, fraud and abuse, the provision of medical facilities when overtaken by illness and the insistance on " humane and becoming treatment when employed on the estates."(30) But these well balanced phrases, set down not without a feeling of humanity, were not readily translated into deeds. This was not for want of experience either. Governor Sir John Anderson who came to Ceylon just as Tennent ceased to be Colonial Secretary to the Governor of Ceylon (1850), had had a brief spell as Governor of Mauritius(1849-1850),where as in the West Indies, Evangelical interests too had involved themselves in the welfare of indentured Indian immigrant labour. But on these matters in Ceylon the English Government believed in leaving it to the Planters themselves to act in their own best interests. It was only in the 1880 s, with the growing need for a plentiful and stable labour force in the tea plantations that this long agitated for legislation got into the Statute Book. And with these items of legislation, it may be said, that the basic rules for plantation labour had been set down.

In the working of these rules labour was placed at a grave disadvantage. In the absence of his own organisations the labourer was unable to take whatever benefit there was to him in these rules. Far from struggling for his right to organise the labourer howed in these years a remarkable passivity. His plight was reflected in the recommendation of the Labour Commission appointed by Governor McCallum (1907-1916) to inquire into and report to him on " certain questions relating to Labour in this colony." Amongst the recommendations of the Commission as contained in the Governor's despatches to London are ;—

(1) That immigrant labourers including Kanganies be freed from the liability to imprisonment for debt.

(2) That the law be amended to make notice of the termination of contract given by a Kangani or an agent on a "coolie's" behalf invalid unless subsequently confirmed by the "cooly."

(3) That the law be amended to compel the monthly payment of wages due to "coolies" into their own hands : and this be paid before the expiration of the month next following that during which the said wages were earned.

In commending these proposals to the Colonial office McCallum said that an objective of these recommendations is " to restrict as far as possible the borrowing powers of the Kanganies, and to make the local money-lender and shop-keeper chary of allowing them extravagant credit. He conceded that the effect of this could be that the estates will be forced to undertake more completely the financing of their Kanganies and "coolies," but forcefully defended the recommendations by referring to the prevailing system " under which part of the capital required for the financing of the labour force is borrowed by the Kangani from one or more money-lenders at exorbitant rates of interest." He showed that, financial considerations apart, " the existing system is mischievous because it confers on the money-lender the power to compel a labour force to move from estate to estate at his pleasure in search of increased cash advances, the threat of imprisonment being something which no Kangani of good caste can possibly resist." But in these transactions the Kangani was no innocent party. This was made clear when even after the immigrant estate labourer was made immune from arrest as debtor, his plight on this score did not change. McCallum was not unaware of the Kangani's role in this and he added in his despatch :—

> Just as it is desirable as far as may be possible to remove the Kangani from the tyranny of the money-lender, so it is necessary to remove the cooly to some extent from the power of the Kangani. The latter in many instances, has in the past regarded his coolies as so many pawns to be moved hither and thither at his pleasure without any regard being paid to their wishes, conveniences or advantage. The fact that, as the law now stands, notice given by the Kangani on behalf of his coolies is legal has immensely strengthened the hand of the former".(31)

The system referred to by McCallum as the movement from estate to estate is that whereby, after the expiry of the period of the contract, the Kangani moved his gang to where he could obtain the highest money advance. This was known as the Tundu System

and what is noteworthy is that it prevailed even after the privilege of immunity from arrest on a civil debt was given to the estate labourer. The Tundu system arose from the Kangani's role as the planter's recruiting agent in India. He advanced his own money to the labour force and hawked this labour to the estate that was willing to reimburse him his expenses. After the contracted period was over the Kangani looked for the next highest advance—to defray his costs. And these costs could well have been only what the was owing to the extortionist money-lender. But invariably the Kangani too made his profit with no less severity than the money-lender. And every penny of this had to be paid by the coolie. Hence the plight of the labourers remained what it was even after the money-lender was taken off the Kangani's back in 1909. This was because the system was geared to the Kangani as the planter's recruiting agent. Attempts were made to change this situation by the appointment and maintenance of a paid planter's representative in South India for the purpose of attending to recruitment. But this, the Planters Association wished to do with financial assistance from the Government. When the proposal was debated in the Legislative Council the native planting interests—mostly engaged in Coconut—opposed the expenditure by Government on the ground that this was a measure purely for the benefit of the tea planters and that there was no obligation on the part of the Government to defray any part of the cost.(32)

The Tundu System was made illegal only in 1921.(33) This measure by itself was of little help to the labourer though it did help the planter in removing the foot-loose nature of his labour force. The labourer had to wait till 1927 for legislation that did guarantee to him, at least formally, the payment to him of his earned wages. India's Emigration Act No. 7 of 1922 however had its effect on Ceylon. *The Indian Immigrant Labour Ordinance* 1923 was a direct consequence of the said Indian legislation. Had Ceylon not come into line with the requirements of the Indian legislation there was the danger of the Ceylonese planter not getting any labour from India. Ordinance No. 1 of 1923 was cited as the *Indian Immigrant Labour Ordinance* and was a comprehensive piece of legislation on matters relating to the recruitment, transportation, upkeep and supervision of working and living conditions of Indian labour in Ceylon. It created a Department of Indian Immigrant Labour headed by a Controller of Labour and his deputies. In fact it is this Department

that has evolved into the Department of Labour which functions today in respect of all labour. The Controller and his deputies were paid out of public revenue. There was also provision for the appointment of a fit and proper person to be Emigration Commissioner for the purpose of supervising and controlling the recruitment of unskilled labourers in India with a view to despatching them to Ceylon. The Commissioner was empowered in his absolute discretion, from time to time to issue licenses to fit and proper persons entitling them to act as emigration agents for the purpose of assisting Indian immigrant labourers to emigrate to Ceylon, and all such agents were made responsible to and subject to the orders of the Emigration Commissioner. Any person who desired to obtain Indian immigrant labour was enabled to apply to the Commissioner who was free to accept or refuse the application.

The Controller, his deputies, the Medical Officer, Inspector or assistant Inspectors were empowered to enter any premises on which Indian immigrant labourers were employed and inspect the condition ;—

(a) of such labourers

(b) of their housing accommodation ; and

(c) of the means provided for the medical treatment of such labourers.(34)

The Ordinance also provided for the setting up of a Board of Indian Immigrant Labour of which the Controller was ex-officio Chairman. The Board's function was to advice the Controller in regard to matters arising under the Ordinance. The Ordinance also provided for the legal accommodation of any Agent the Indian Government might appoint for the purpose of safeguarding the interests of Indian labour in Ceylon. Such Agent was given the same powers of inspection as the Controller. There was also an Immigration Fund created by the Ordinance. The fees recovered from employers in respect of the recruitment or employment of Indian immigrant labourers and any sum voted by the legislature in aid of Indian immigration went into the Fund. The whole cost of recruiting and introducing Indian immigrant labourers into this Island including the salary of the Emigration Commissioner and his staff was to be met from this Fund.

The Ordinance declared invalid any service contract exeeding one year between an employer and an Indian immigrant labourer made before such immigrant left India. It also declared that no payment made in India to emigrate from India to Ceylon to enable such person to pay off any debt before emigrating was recoverable in any Court in Ceylon. The intention of these twin provisions was to remove the Indian immigrant worker from his semi-serf condition caused by his indebtedness to his financier.

The Department of the Controller of Indian Immigrant Labour was set up under the Ordinance in 1923. As to its working the first Controller in his report for 1924 writes," The arrangement by which the Ceylon Labour Commissioner, under the control of the Emigration Commissioner, acts as the Agency in South India supervising all recruitment for Ceylon has worked admirably."As regards the inducements in the social and economic climate prevailing in Ceylon the Controller reports, " No less than 62,474 labourers and their families returned to Ceylon, who had previously worked on estates for varying periods, which I think ends support to the conclusion that Ceylon has established a good name as an employer of labour amongst the agricultural population of South India, and is a desirable alternative to economic conditions in their own country which at best are hazardous and uncertain."

It is in this same year that the initiative was taken for further legislation in relation to the Indian immigrant labourer. The Controller states further in his report for 1924 that during this year " this Government has been in communication with the Government of India on several points which may eventually lead to legislation, *viz.*, the employment of children on estates; a proposal, to shorten the period within which the employer is legally bound to pay the monthly wages to his labour force, to seven days from the expiration of the month ; and lastly the question of estate labourers' wages. These are the matters that were finally tackled in the *Minimum Wages*(*Indian Labour*) *Ordinance No.* 27 of 1927. It may thus be said that the benefits of the legislation are also the immediate outcome of the urgent interest the Indian Government started taking in its emigrant labour to Ceylon around 1920. In his report for the year 1925 the Controller complains that the Indian Government since 1922 has been pressing for the introduction of a minimum wage for Indian labourers in Ceylon

estates. and that the Ceylon Government and the planting interests finally accepted the principle and the rate proposed by the Indian Immigration Agent but that the Indian Government later pressed for a 10% increase in the rate. The Indian Immigration Agent referred to is the Agent of the Government of India appointed under Section 8 of the Indian Immigrant Labour Ordinance No. 1 of 1923. There were some points of disagreement between the Indian Immigration Agent and the Controller of Immigration in Ceylon on matters of welfare of the Indian immigrant to Ceylon. The Controller refers to " persons hostile for political and economic reasons to the immigration of Indian labour to Ceylon", and appears to link the Indian Agent too to them. Ceylon however had no choice but to accept the Indian suggestions for the improvement of the immigrant Indian's lot because as the Controller writes in his Report for 1926, " Ceylon will need to receive on the average 100.000 Indian estate labourers annually or more, either recruits or old labourers retiring, for many years or experience a labour shortage on estates." Besides there was no serious objection on the part of Ceylon to the minimum wage demand. In this same 1926 Report the Controller writes, " In the writer's opinion the minimum wage law so long as it is properly administered by the Government will be a boon to the employers and to the less skilled labourers."

This review of the period up to 1923 might end with the comment of the Indian Agent in his Report for 1925;—

> At the present moment when the Indian labourer is beginning to be conscious of his rights, which he considers to have been secured to him by the Government of India, the improvement in his external conditions of work seems to be provokingly slow, and the partially reformed conditions of today seem to be more galling than even the tribulations of the past.

[CHAPTER II]

1923 to 1939—Coping with the Urban Worker

There is no sharp break between the period before and after 1923. From the point of view of the Indian immigrant estate worker the period, going well into the early 1930 s, were the years in the course of which the Government of India prodded the Ceylon administration to continue with the task of securing for this worker his minimal working and living conditions. After a fairly long period of gestation the Minimum Wages (Indian Labour) Ordinance was enacted in December 1927. The Ordinance decreed that in the case of a labourer paid by the day, his regular work period will extend to only nine hours including a period not exceeding one hour taken for the mid-day meal, and that any work period in excess of that will be paid at an overtime rate which shall not be less per hour than one-eighth of the minimum rates of wages fixed under the Ordinance. It prohibited the employment of any child below the age of 10 years on estate work. The Ordinance established machinery known as Estate Wages Boards for the determination of the minimum wage. The Board of Indian Immigrant labour established under Ordinance No. 1 of 1923 had the power to confirm, vary, or cancel every decision of the Estate Wages Board, or on its own motion, from time to time to fix any minimum rate of wages, or cancel those prevailing whenever the Estate Wages Board fails to do so, though requested. By the same Ordinance No. 27 of 1929 amendments were effected in the Estate Labour (Indian) Ordinance No. 13 of 1889.

These included ;—

1. The requirement that the wages earned in any month be paid before the 10th day of the succeeding month.
2. The payment directly to the labourer himself the full amount of his wages subject only to such deductions as are made legal under the Ordinance.

3. The provision that the notice of the determination of a contract is invalid unless and until the labourer has personally or in writing signified to his employer his desire to determine his contract of service.
4. The provisions for the employer's declarations and records pertaining to the due payment of wages and to the maintenance of registers (checkrolls).
5. The provision for the issue to the labourer of a certificate of discharge on his lawfully quitting the services of his employer.

The Minimum Wages legislation was the peak of Indian Immigrant Labour Legislation. It did, in obvious ways, improve the situation of the Indian immigrant labourer in accordance with proposals made as far back as 1908(35). Yet this did not solve all his problems—or even his most pressing problem—the problem of indebtedness. The Indian Agent's Report for 1936 mentions that the discharge certificate provided for in the Ordinance No. 27 of 1927 is being used by the Kangani as a means of securing his debt ! That is, the Superintendent does not issue the discharge certificate till the debt is settled. However, the economic crisis starting in the early 1930 s affected the absorption of labour on the estates. And in 1937 further labour immigration from India ceased to take palce(36).

In such a situation there could no longer be meaningful pressure from the Indian Government aimed at improving further the lot of the immigrant worker. He had now to stand on his own strength. A trade union for these workers was launched in 1931 by an Indian of the Brahmin caste, named Natesa Aiyar. It was known as the All Ceylon Estate Labour Federation. But the union had to fight against heavy odds. The economic depression was on and unemployment and wage reductions were its inevitable consequences. The Union's demands however show the nature of the problems the worker was immediately faced with. At a meeting in Hatton in May 1931 resolutions were passed protesting against the reductions, breaches of the Minimum Wages (Indian) Ordinance, and the truck-system(37). A move against the truck system was one in which there is direct confrontation with the Kangani himself for the estate shops from which things were bought by the worker were in most cases run by the Kangani. Estates preferred to leave this task to the Kangani and obliged him under the law by deducting from the wages of workmen what

they owed the shops. The Kangani was also as yet the link between the estate's management and the labour force. In a trade union's attack on the Kangani and his system it was not always possible to mobilise the worker. In his Administration Report for 1927 the Controller of Immigrant labour analysed the composition of the recruited groups that year and revealed that of 2746 groups involving 12647 labourers 1,017 groups consisted of recruits related to the recruiting Kangani and 70 groups were from the same village of the Kangani though not related to him(38). The ties between the Kangani and his gang on the estate were therefore strong. His role as creditor enhanced the Kangani's position. This fact along with the depression and the planters hostility to trade unionism were the causes for the failure of Natesa Aiyar's Union to catch on—despite its promising start.

The period after 1923 has a distinction of its own because this was the period in which the urban worker came to the fore with his trade union actions. Compared to the large number of estate workers the urban working class was infinitesimally small. The post-war economic difficulties which this worker had to face led him naturally to organisation and struggle. In December 1919 the lower grades of workers in the Railway formed their Union. This was only one sign of a disquiet that was more widely prevalent. Along with the felt need for a wage increase there was also the demand for shorter working hours. The Railway workers struck in February 1920 and the Harbour workers followed suit in March that same year. The Labour Advisory Committee that was formed by the Government in October 1919 had to go into the Railway worker's wage question whilst the strike was still on. The Committee recommended a 20% wage increase because it had to accept the fact that since 1914 there had been no wage adjustment despite the marked change in the cost of living. The harbour workers too obtained an increase through localised negotiations. The salaries issue brought out the railway locomotive workers once more and that was in 1923. They were joined by other railway workers. The workers of the Government Factory and of the Harbour Engineering Department also joined the strike. There were other demands too in addition to wages. These workers were led by A. E. Goonesinghe of the Ceylon Labour Union. The strike lasted a month and finally the workers went back to work with the Government refusing to negotiate whilst the strike was on. The Government however had to consider their demands although it dismissed 700 of the strikers. The Labour Advisory Committee which went into the demands of the

strikers made its report to the Government,and the Colonial Secretary signified acceptance of its recommendations on a number of basic and important matters. A 20%pay increase was approved. Wage increments based on length of service was the recommendation, but the basis was not accepted by the Colonial Secretary.He maintained that the question of increments should be determined by matters pertaining to merit. On the demand that there be a continuity of service despite breaks, he did not want a change in the prevailing practice in which such breaks were left out of count only where the service aggregates to over 20 years. The qualifying period for the earning of a gratuity payment was reduced from 20 to 15 years and the computation was set at 1/18th of a month's wage for each completed month of service.

The committee itself had rejected the demand for pensions and the Colonial Secretary concurred with this decision and observed that it was neither practicable nor desirable to introduce any scheme of pensions for daily paid workers. The comparatively liberal recommendations in regard to sick leave and casual leave were not accepted but the recommendations that wages be paid for 5 of the days on which the factories were closed was accepted. The 5 days were—Good Friday, Hindu & Buddhist New Year Day, Wesak, Christmas and Boxing Day. The recommendations on procedures in regard to dismissals, punishments and petitions in respect of grievances were accepted. A decision on the recommendation on overtime payments was deferred(39). The comparative readiness with which the demands of these Government workers were met can be due to the combined effect of several factors on the administration. The period saw much political and industrial unrest in India. The small urban working class in Ceylon was also one which could be mobilised for the political agitation of an emergent Ceylonese middle class that had as its objective a degree of self-rule. Even more pressing than these considerations could have been the measure of damage that could be caused to the plantation economy if unrest became endemic in such vital areas as the railways and the harbour. But it was difficult to confine benefits to only sections of the manual categories of the working class. There is therefore seen in this period an attempt to extend governmental activity to other areas of the urban working class. In 1928 a Commission was appointed to report on the desirability or otherwise of State intervention in the fixing of wages in areas outside the Government sector. The Commission which had the Controller of Labour as Chairman reported *inter alia* in favour of the introduction of Conciliation and

Minimum Wage legislation generally in Ceylon(40). The Commission observed, " In our opinion it is time that Ceylon followed the example of other countries in trying to eliminate sweated abour conditions so far as they exist in Colombo and probably in other places in the Island." Of Colombo's labour grades in general, the Commission noted, " In Colombo the unskilled labourers are often illiterate, especially in the case of the Indians, and generally ignorant and unorganised. They have not reached a stage where they are capable of organising themselves to protect and advance their own interests. They need the protection of a Labour Controller like the Indian estate labourers."(41) Apparently there was no governmental policy against labour organising itself to protect its own interests. In fact in his Report for 1926, the Controller of Labour (*Reid*) wrote in respect of estate workers, " Connected with legal and political rights are the rights of association and combination. There is no legal or other obstacle to the exercise of such rights, but there are no Indian labourers' unions or the like in Ceylon." For this reason he could not have missed the point that the Minimum Wages (Indian) Ordinance No. 27 of 1927 fulfilled a purpose policy-wise too. What was now being canvassed for the urban workers too was the same kind of legislation. In the 1928 Commission's view there was a striking difference in the respective situations of those who were as on the estates, governed by this legislation and those who were not, for the Commission went on to observe, "There is little similarity between the highly developed system of labour management on Ceylon estates and the methods generally in vogue in Colombo outside such places as the workshops of the larger engineering and other firms." Outside the Minimum Wages machinery there was little else that contributed to improved labour management on the estates and hence the reference must be to this feature. What the situation of the Colombo workers contemplated in this reference was like can be understood from the statistics given in the Commission's Report on the wage situation of the workers in the *organised* industries in Colombo. There is in the Report a break-down of the total workforce presented according to daily earnings thus ;—

Those receiving over Rupees 1/- per day	— 3595
Those receiving under Rupees 1/- per day	— 4108
Those receiving between 90 cents & Rupees 1/-	— 604
Those receiving between 80 cents & /90 cents	— 2151
Those receiving between 70 cents & /80 cents	— 1278

There was no doubt that several factors went into the final decision to introduce Minimum Wages legislation for all workers in general. The view expressed strongly by the Planters that minimum wages legislation for the estate worker only was a discriminatory step against the planting community was one such factor. So was the view that the Bill would be lost in the Legislative Council unless some provision was made for the Ceylonese worker as well.(42) Whilst these are contributory factors the purposiveness with which its desired objective is stated for the Government in the Report of 1928 is an indication that in deciding on the minimum wages issue in general the Government had in view a total conception of the plantation economy that obtained in Ceylon. Just as it was essential to conform to the Indian Government's demands in order to ensure the supply of estate labour, it was also essential to keep going in proper order the rest of the plantation economy's infrastructure. The railways and the port were essential items in this infrastructure. So was the Government Factory and the several Colombo firms big and small. As a totality this economy was distinct from the subsistence economy of the rest of the population. The initial effort of the British administration could therefore well have been to keep the plantation sector of the economy in a state of comparatively good health and immunised against the political agitation which was most likely to infect other sectors of the population.

Such agitation could draw its most vital strength from the working class, and the Colonial Administration would not have failed to see that trend particularly in the period after 1920. During this period any strike in industry easily assumed also the form of an anti-colonial demonstration. By the late 1920s the trade unions too, under the influence of the British Labour Party' showed a willingness to work without political objectives. This was seen in the proceedings of the All Ceylon Trades Union Congress in its very inaugural meeting in 1928. Though the proceedings necessarily went into several political matters there was, in the trade union field proper, the resolution that a commission consisting of an equal number of employees and trade union representatives should make recommendations regarding the right of combination, workmen's compensation, minimum wages, hours of work, arbitration courts, old age pensions, maternity benefits, and rent restriction.(43) Here is no reflection of the sharp class divisions that were revealed in the 1923 strike, nor yet what was to be revealed in the Tram Workers' strike that was to close the period in 1929(44). A. E. Goonesinghe

the key-figure in the Congress and in the Labour Union that was behind it was perhaps influenced by the more liberal ethos of the Ramsay McDonald years 1929-31. With his contempt for the self- interested middle class " moderates " of the Ceylon Reform movement he perhaps thought it possible to work out an arrangement with the Labour Government of the time for a better deal for local labour. The Collective Agreement which he entered into in June 1929 with the organisation of British commercial interests in Ceylon — the Employers Federation of Ceylon, may indicate the direction of his thinking(45). Whatever be Goonesinghe's thinking in that period the historical fact is that the political reforms effected in India and Ceylon differed in quality. Whereas by the Montagu-Chelmsford Reforms India was launched firmly on the promised road of the " progressive realization of responsible government," no parallel reform was effected in respect of Ceylon. On this the historian G. C. Mendis reflects that considering Ceylon's strategic position in relation to India and British communications with the East the British had no intention of starting Ceylon on the road to self-government. (46) In such a situation a defensive action against the rising tide of nationalism would be to insulate the plantation sector, including its peripheral and urban working class sections from the nationalist struggle.

If these were the British perspectives they soon changed. The Donoughmore Constitution established in 1931 brought the Ceylonese middle class on the path of self government and the seats of power. Their attitude to working class rights were seen in the Lake House strike of 1929(47). The Englishman too bared his teeth(48). And with the setting in of the economic depression in 1929 the accepted proposal for minimum wage legislation was shelved. The Minimum Wages (Indian) Ordinance made law in 1929 and put into operation in 1929 was also made unworkable in the conditions of the depression. What was now proposed in the expectation of unrest was legislation to control the trade unions.(49)

[CHAPTER III]

1939 to 1955—Control and Repression

The achievement, on the side of labour, of the Collective Agreement of 1929 signed by the Ceylon Employers Federation and the Ceylon Trades Union Congress was the recognition afforded to the signatory trade unions. The device of the strike was also legally recognised by the Employer in that the Employer had extracted from the Union the undertaking that its membership will not strike in the workplaces covered by the Agreement without giving the Employers Federation seven clear days notice of intention to strike. This was a far cry from the absolute prohibitions of the Service Contracts Ordinance of 1865. With its now doughty position in the urban labour field the Ceylon Trades Union Congress was unable to resist direct action in the initial phases of the economic depression. The defeat of these strikes was the result of the weakening effects the depression had on labour. In the resultant situation the minimum wages legislation that was projected to apply to workers in general was shelved. It was only the (*Industrial Disputes*) *Conciliation Ordinance* which was under discussion together with the minimum wages legislation, that was made law. This was in March 1931.

This legislation empowered—

1. The Governor to refer to a Commission appointed by him any matter relating to industry.
2. The Controller of Labour, wherever an industrial dispute exists or is apprehended,
   (a) to take steps to promote an amicable settlement between the parties :
   (b) to cause an inquiry to be made as to whether the reference of a dispute to a Board of Inquiry is likely to lead to a settlement :
   (c) to refer the dispute to a Board for settlement.

Where the Controller refers a dispute to the Board for settlement he may do so with or without the consent of the parties involved. The Board is required to inquire into any matter referred to it, with a view to arriving at a settlement before the Board. Where settlement before the Board is not possible the Board is required to make report to the Controller giving the facts of the dispute and its recommendations for a settlement. The Board is also required, where practicable to nominate representatives of the parties to the dispute for the purposes of the Ordinance. The proceeding that followed were between the Controller and the representatives of the parties nominated, as stated above, by the Board, or the parties themselves where such nomination has not been possible.

The initiators of this legislation were clearly faced with a dilemma. The disputes they had to legislate for were those between employers and workers as represented by the newly organised trade unions. Nevertheless it was not intended to recognise the trade unions in law. Hence this nomination of individuals as representatives of the parties which include the party constituted of the workers. In the definitions section " industrial dispute " did not extend to a dispute with a trade union : nor did " workman " extend to include his representative, the trade union. It was left to the parties or their representatives, nominated as given above, to accept or reject the proposed settlement. If the settlement was accepted any strike without notice of repudiation of the settlement was prohibited. In such circumstance the incitement of a worker to strike was also an offence. The strike therefore was controlled. However this was a law that recognised the strike and thus clearly moved away from the positions of the Contracts Ordinance of 1865 in which any withdrawal of labour was an offence. The employer too was penalised for acts in contravention of the accepted settlement.

This Ordinance did not provide for industrial disputes in respect of which the Board's proposed settlement was rejected by one or both parties to the dispute. In fact, for legislation that had the English Conservative Government's Trade Disputes and Trade Union Act of 1927 as a desirable model this Ordinance was surprisingly mild. The employers' anticipation had been of stringent legislation as would suit the agitation the workers engaged in. The explanation for this variance is to be found in the fact that it was a Ramsay McDonald-led Labour Government that was in office at the time relevant to the consideration of the proposed legis-

lation. Of the effect of the English Act on Ceylon's bureaucracy, Visakha Kumari Jayawardene writes, " Conservative officials in Ceylon welcomed this Act and used it as a precedent to introduce similar legislation to counteract the growing labour movement. Four draft bills were drawn up. They included a Trades Disputes Ordinance, which prohibited strikes in essential services, lightning strikes, sympathetic strikes, intimidation, and the wearing of uniforms, and a Trades Union Ordinance, which compelled trade union registration, thereby making an unregistered trade union an unlawful association. Under this Ordinance, expenditure on political objectives was controlled by a 'contracting-in' clause for trade union members. These two draft Ordinances which included many of the provisions of the British Act of 1927 were rejected by the Secretary of State for the Colonies." (50) The teeth and the venom were in these rejected draft Ordinances.

The Controller of Labour in his Report for 1932 states that an Ordinance for the Registration of Trade Unions was under consideration that year. In his 1934 report he mentions that the Standing Committee's report on the Trade Union Bill was under consideration. The Bill became law in 1935. The Ordinance requires the registration of any organisation having any of the following objects ;

1. the regulation of relations between workmen and employers, or between workmen and workmen or between employers and employers ; or
2. the imposing of restrictive conditions on the conduct of any trade or business ; or
3. the representation of either workmen or employers in trade disputes ; (51), or
4. the promotion or organisation or financing of strikes or lock-outs in any trade or industry or the provision of pay or other benefits for its members during a strike or lockout.

This by implication also makes legitimate any of these objects as the objects of a registered trade union. A trade union on registration enjoys an immunity from civil action in respect of any act done in contemplation of or in furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference of the trade, business or employment of some other person or with the right

of some other person to dispose of his capital or of his labour as he wills. This immunity extends to its officers and members. It also bars any action in tort against a trade union or its officers or members in respect of any tortious act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance of a trade dispute. It further provides that the objects of a registered trade union shall not, by reason only that they are in restraint of trade, be deemed to be unlawful so as to render any members of such trade union liable to criminal prosecution for conspiracy or otherwise or to render void or voidable any agreement or trust. These provisions were aimed at preventing the application of the English Common Law doctrines and their extensions in a manner inimical to trade union activity. On the other hand it brought in the prevailing provisions of the English trade union law in respect of expenditure of funds on political objects. Such a fund had to be separate and one to which a member could opt not to contribute.

The passing of the Trade Union Ordinance of 1935 had no significant effect immediately on the urban working class. This for the reason that the effects of the economic depression had caused even a disintegration of the trade union movement. But in the meantime with the inauguration of the Donoughmore Constitution of 1931 and the introduction of universal adult franchise a reformative concern for matters of labour was becoming evident. And to facilitate matters there was Peri Sunderam, a man associated with Indian immigrant labour, as Minister in charge of the subject of labour. In 1932 interest in a draft Workmens Compensation Ordinance, which had earlier been subjected to weighty criticism especially by the Insurance companies and therefore abandoned, was revived(52). In 1935 Factory legislation, aimed at ensuring safe work conditions in the factories came under consideration.(53) The same year the Minimum Wages(Indian Labour) Ordinance No. 27 of 1927 was amended to give legal force to the agreement with the Government of India to issue free rice to workers. This was at the height of the effects of the depression on tea when estates were put on a care and maintenance basis. In 1938 the *Shop Ordinance* was made law. It provided for the regulation of the employment of persons in shops and for the control of the hours of business in shops. It established in law an 8-hour working day and a 45-hour working week for employees of shops. It allowed for every person in or about the business of a shop, with full wages, one full holiday and one-half holiday each week. It also provided

for a paid seven day annual holiday and 14 days casual leave per year. It also provided for a fairly wide range of other concessions for shop employees. The Controller of Labour reports for that year that other legislation was also under consideration—these being for old age pensions, maternity benefits, provision of Wages Board machinery, factory legislation in respect of which it was decided to adopt the English Act, Poor Relief and measures affecting the separation of families on estates and the provison of adequate housing on estates. The Report of the Controller of Labour for 1939 mentions as legislation passed that year, the *Poor Relief Ordinance* No 30 of 1939 and the *Maternity Benefits Ordinance* No. 32 of 1939, and states that the Wages Board Bill was ready. It also reports that a draft amendment to the Industrial Disputes (Conciliation) Ordinance was being considered: and it also states that the Bombay Industrial Disputes Act of 1938 was examined but that some of its provisions were considered unsuitable for Ceylon.(54) The latter two exercises would have been the response to the widespread unrest among labour on estates, which the Report says is the " most important feature " that year. The Report gives as the causes for the unrest the anxiety in respect of security of employment, and the misgivings over attempts to introduce indigenous village labour into the estates. The Report refers to the visit of Nehru to Ceylon and his advice to estate labour that it should form its unions. And it further reports, " The Ceylon Labour Federation founded by Natesa Aiyar (Member State Council) had developed an organisation which has its agents on almost every tea estate upcountry, with offices in Hatton, Nuwara Eliya, and Badulla. The Ceylon Indian Congress which claims to be affiliated to the Indian Congress is gaining considerable influence throughout the whole of the planting districts. The Estate Workers Union(55) with its headquarters in Kandy, has been formed under the auspices of the Sama Samaja Party and has come into prominence of late."

As distinct from Natesa Aiyar of an earlier generation, and the Ceylon-Indian Congress whose leadership's appeal to the Indian estate worker was on the basis that it was of Indian origin, the Sama Samaja Party mentioned in the Report of the Controller of Labour had an avowedly Marxist leadership. The presence of three of these Marxists singly or together in the Legislature, the State Council, in the period after 1932 contributed generally to labour legislation of the time. In fact the period especially after 1935 can be seen as one in which a new leadership constituted

of these Marxists, was getting to the head of the labour movement.

Before these Marxists stepped into the plantations they had gathered considerable experience in the unionisation of the urban workers. In this task they came into active conflict with A. E. Goonesinghe and his Labour Union and in that conflict, except in the case of the Wellawatte Mills(56), Goonesinghe emerged the victor. Yet the Marxists, especially the leaders Philip Gunawardene, Dr. N. M. Perera and Dr. Colvin R de Silva(57), made their impression on the labour movement of the time. They along with several others of a socialist bent launched the Lanka Sama Samaja Party in 1935 and in its programme and demands were included the nationalisation of the means of production, distribution and exchange, the abolition of child labour, unemployment insurance, the fixed minimum wage, eight-hour day, rent restriction and slum clearance.

In 1936 with growing unemployment unionisation suffered a severe setback as a result of a marked growth of anti-Indian sentiment amongst the Sinhalese workers. Mr. Goonesinghe who had raised the anti-Indian cry in the Wellawatte Mills strike of 1932(58) made an attempt to retain his hold on labour by an anti-Indian campaign. He was assisted in this by Mr, J. L. Kotelawala (later Sir John Kotelawala) Minister of Communications and Works, who announced that he was getting rid of all Indian workers working under the Government. The racist campaign succeeded. Workers of Indian origin were employed in many city workplaces, and with division in the ranks of the workers trade unions collapsed. Even the strong Wellawatte Mills Workers Union was a casualty in this period when union organisation hit rock bottom. This was the first example of the successful use of communalism to disrupt the trade union movement.

Commencing in November 1939 a wave of spontaneous strikes spread throughout the plantations. At the start the issue generally related to such matters as a discontinuance or a transfer of a worker. But basically this was the struggle of the plantation worker to win the right of organisation. On the question of the right of association in the plantations the Controller of Labour says in his Report for 1939, " The right of association was almost universally admitted by the Superintendents but the subordinate staff and the Kanganies who presumably felt that their position was being endangered, generally encourage the Superintendent to

regard with disfavour the formation of any associations." Of the ensuing wave of strikes the Controller of Labour states thus in his Report for 1940 ;—

> Strikes had previously occurred in many districts, but many of them proved capable of settlement. However at this stage the activities of one particular Union led to outbursts of feeling resulting in breach of the law which necessitated interference by the police who by a display of tact, patience and forbearance were able to quell disorder without the need to use firearms except in one instance. Then a considerable improvement was noted. It is a matter of surmise as to which of two factors was responsible for this improvement of the labour situation. In the first place, some of the leaders of the trade union who had been particularly associated with violence and disorder were interned under the Defence of the Realm Regulations. The second feature, regarded in some circles as equally important, was the conclusion of the agreement now known as the Seven Point Agreement.

The persons interned were the leaders of the Lanka Sama Samaja Party—(LSSP),and the shooting incident referred to was in the Mool Oya Estate strike led by the LSSP. The person shot was a worker named Govindan. As a result of the agitation both within the State Council and outside, the Government was compelled to appoint a Commission of Inquiry into the incident. Dr. Colvin R. de Silva, a leader of the LSSP, who appeared for the widow of Govindan was able to make a very effective exposure of the combined role of the police and the employers of the plantation raj of the white man(59).

After Mool Oya the strike wave spread southwards toward Uva. The strikes became more prolonged with the strike at St. Andrews, Talawakelle continuing for three months. More basic demands such as for wages were increasingly raised and the workers began more and more to seek the leadership of the Sama Samajists. The highest point in the struggle was reached on Wewesse Estate where the workers set up their elected council. The Superintendent agreed to act in consultation with the Workers' Council. An armed police party that went to the estate was disarmed by the workers. It was on the orders of the Workers' Council that the rifles were returned.

The detention of the LSSP's leaders and the banning of the Party itself had an effect on the strike actions that were in progress. The Controller of Labour in his Report for 1942 views the situation with satisfaction.

He says,

> The ban of the Sama Samajist movement in the month of March and the arrest of some of its leaders and the flight of other leaders who evaded arrest, resulted in the cessation of activities of the unions sponsored by them. In consequence labour unrest created by their activities abated.

It was in this year that the Estate Employers' Federation was formed. The Seven Point Programme referred to by the Controller of Labour in his Report for 1940 was a basis for negotiation established between the Estate Employers' Federation on behalf of its members and the non-Samasamaja estate trade unions. On the success of the working of that Agreement the Controller of Labour in his Report for 1942 congratulates both parties. Of its advantages to the Unions he says, " They have secured on estates recognition of their right to make representations even where only a small percentage of the labour force are members of the union concerned.(60) And of its advantage to the Superintendents of the estates he says that, "their acceptance of the principle of negotiation in the settlement of labour disputes gave them an opportunity of assisting and guiding at an early stage of their development the activities of the trade unions, whereby they could utilize these unions for the improvement of the morale of the worker and so increase the efficiency of their undertakings."

Just at the time Government believed it had rid the Sama Samajists from the plantation sector the banned LSSP actively participated in the strike wave of the urban workers which commenced in May 1941 and affected the workers of the Colombo Harbour, Granaries, Wellawatte Spinning Mills, Gas Company, Colombo Municipality and the Colombo Fort—Mt. Lavinia bus route. These were also the War years and the Government put into operation the Defence Regulations in order to enforce its will on the industrial scene. By the Essential Services Declaration under the Defence Regulations a large number of services were declared essential services and strikes and lock-outs in these were prohibited. A special procedure was devised for the arbitration of industrial disputes by the District Judge where such dispute is

referred to him by the Controller of Labour. In respect of these procedures the Chairman of the Port Commission was also given the same powers as the Controller of Labour. The regulation also empowered the Governor to appoint Special Tribunals for arbitration purposes. Despite these regulations the Labour Commissioner's Report (the designation of Controller is changed to Commissioner) for 1945 mentions for that year 53 strikes in trade and industry outside the estates and comments that these were mostly in areas declared essential services. That year the Essential Services Order was amended to provide for compulsory arbitration. Regulations were also amended so as to empower the Governor to compel workers, through directives. Despite these regulations the end of the War saw a wave of workers strikes. In September 1945 there was a spontaneous strike of 10,000 Colombo workers who demanded to see the Board of Ministers. A prolonged tramways strike spread to the harbour and other places in November. In these initial actions, most of the workers who participated belonged to unions affiliated to the Ceylon Trade Union Federation which was led by the Ceylon Communist Party. The political line of the Communist Party had still not cleared itself from co-operation in the British war effort. As a result the effort was to get the strikers back to work on the promise of minor concessions. In November that year the LSSP led union of motor workers launched an island-wide bus strike. Dr. N. M. Perera and several other LSSP leaders were arrested and prosecuted for supporting a strike in an essential service(61). This strike was against one of the most stubbornly anti-union sections of the capitalists in Ceylon, namely the omnibus owners.

At the end of the War the LSSP and its leaders had the halo of heroes on them. Their stand against the war, their detention, a gaol break, escape to India and their participation in the struggle for India's independence held the imagination of those who were against the establishment. In the war years, their struggle, even though of a comparatively small political party driven underground and persecuted, was the most articulated expression of Ceylon's own struggle for political independence. Through its two labour federations, the Ceylon Federation of Labour in the private sector, and the Government Workers Trade Union Federation in the Government sector, it offered a strong and militant leadership to all sections of the urban working class.

In October 1946 Government workers went on strike. The railway itself and many other establishments were brought to a

complete standstill. The strike soon extended to the harbour, the Gas Company, Municipal services and several private firms. The LSSP with its control of the unions of Government workers was in effective leadership of the strike. The strike was concluded but as some of the promises given at the strike negotiations were not honoured by the Government the workers went on strike a second time in May and June 1947. The strike of the railway workers was not complete but the Government clerks came out on strike under the leadership of their union, the Government Clerical Service Union. The unions of the Communist Party-led Ceylon Trade Union Federation came out in greater strength than in the previous years. The Government and the private employers refused to negotiate. On the 5th of June a procession of several thousand strikers was proceeding from the working class suburb Kolonnawa to Colombo with Dr. N. M. Perera at its head when the Police barred its way and baton-charged it. The Police resorted to firing too and whilst several persons were injured, a Government clerk, V. Kandasamy was killed. With this act the repression was on and after a few days the strike of the Government clerks petered out. The blue-collared workers stuck out longer but in the end sections of them too returned to work. The strike was officially called off.

This strike is known as the 1947 General Strike. A Public Security Ordinance giving the Government various repressive powers was rushed through the State Council during the latter part of the strike.

These were also the last years of the working of the Donoughmore Constitution. The Ministers were in almost total control of domestic affairs. The last Governor of Ceylon under this Constitution, Sir Henry Monck-Mason Moore described the position of Governor in these years thus: "In theory he had the powers of approval or disallowance and quite trivial matters required his rubber stamp. In practice it had become difficult for him to intervene without raising an outcry out of all proportion to the importance of the points at issue. The Governor had certain powers for use only in an emergency, but apart from these he had to rely on his powers of persuasion to secure the approval of policies sponsored by His Majesty's Government. In peace time this had not had the same significance, as Ceylon had long secured a large measure of independence in the conduct of its domestic affairs. But in wartime the position was radically different, as local considerations had to be co-ordinated and if

necessary subordinated, to South-East Asian strategy as a whole.(62) One may assume that in the period of the war it was the Governor who acted even in respect of any labour unrest and that this was done in the interests of the war effort. At the time, there was in Ceylon in addition to the Governor also a Commander-in-Chief, Admiral Layton. But after the war, admittedly, it was the Ceylonese Ministers who were expected to act. And, as to how these Ministers reacted to the 1947 strike is recounted by Sir Henry thus :—

> I was in Kandy at the time and Mr. George E. de Silva (63) urged me to take immediate action. I went to Colombo and met the Ministers, who all urged me to declare a state of emergency and exercise dictatorial powers. Somehow or other they had come to know of the existence of such an instrument, though it was highly secret. I then pointed out to them that they had full powers to pass legislation of the same character in the State Council and that if they considered the time had come to take such action it was their plain duty and responsibility to take the necessary legislative action themselves. If they did so I would of course support them in every possible way and they could base their legislation on the draft in my possession. Eventually they did so, and indeed provided more severe penalties than in the original draft. It was quite obviously an attempt to leave me holding the baby if such strong action was criticised.(64)

Apparently Sir Henry did not think the strong action urged was necessary. But the panic of the Ministers was unconcealed. Hence even the stopping of the strikers procession and shooting at it despite the fact that permission had been obtained from the Police for the procession. Their panic could have been caused by a working class opposition, headed by the LSSP, that was being built up in the more urban and sea-board areas in the country. The first post-war general elections, and that under the new Soulbury Constitution, was also in 1947. In fact even Sir Henry thought that the strike was being engineered in preparation for the general election. The strike was defeated but at the 1947 general election the return of the Marxist parties in 18 out of the 95 electorates showed a strong presence.

Along with the Public Security Ordinance which armed the Government with special powers in a situation which it deems is an emergency, other measures too were taken in order to break all possibilities of a legal link between the Left political parties and

their trade unions, and the public service. In 1947 in the early period of the first Parliament, the Administrative Regulation 208 B was introduced. It placed a ban on public servants engaging in any kind of political activity. In 1948 the Trade Union Ordinance of 1935 was amended so as to place severe restrictions on trade unions of public servants. The amendment introduced into the Trade Union Ordinance an entirely new part titled, " Special Provisions applicable to Trade Unions of Public Servants." It denied registration under the Ordinance to any association of public servants unless the Rules of that association contained provisions ;—

(1) restricting eligibility for membership of the union for any office whatsoever, (whether paid or honorary, including that of patron) solely to public servants who are employed in any one specified department of Government, or in any one specified service of Government, or in any one category or class of Government servants though employed in different departments of Government ;

(2) declaring that the union shall not be affiliated to or amalgamated or federated with any other trade union, whether of public servants or otherwise ;

(3) declaring that the union shall not have any political objects or political fund as is provided for in the original Ordinance ;

The meaning of these provisions was that a trade union of public servants was denied registration if it had outsiders in its membership or as its officers, or had provision to join with other trade unions of public servants or others. And non-registration resulted in its illegality. Trade unions of public servants were also prevented from having any political objects, or even the political fund which trade unions of non-public servants were permitted to have.

All these laws were made in a period when after the defeat of 1947 the working class movement still continued to be in ebb. In the Hartal of 1953(65) the trade union initiative was minimal. The widespread nature of this demonstration planned for one day and its profound effects on the Government made the rulers amend once more the Public Security Ordinance which had already been amended in 1949. The amended law provides for the Government to put into operation that part of the Ordinance which

contains an entire system of emergency powers where, in the view of the head of the Government, a state of emergency exists. Where the relevant part comes into operation the fact of the existence or imminence, during that period, of a state of public emergency shall not be called in question in any court of law. Amongst the many purposes for which the emergency powers can be exercised is the maintenance of supplies essential to the life of the community. The emergency regulations which the authority concerned may make in this respect are those that appear to him to be necessary or expedient for the declared purpose. It was provided for these regulations or any order or rule made in pursuance of the said regulations to prevail over all other law. These regulations and orders and rules had the privilege of not being liable to question in any court of law. Under these regulations governments in Ceylon have declared at various times any and every service as essential to the life of the community(66). And under these regulations strikes, absence from the workplace, failure to perform work or carry out orders have all been declared to be deemed a vacation of post This is in addition to other and attendant penalties. A trade union or its officers can also be prosecuted under these regulations on the basis that 'they incite persons to strike etc .

An Industrial Disputes Act was made law in 1950. It is Act number 43 of that year. It incorporates most of the provisions in the Industrial Disputes (Conciliation) Ordinance No. 3 of 1931. It goes beyond conciliation and makes provision for the conciliation and the reference of any industrial dispute both to voluntary or compulsory arbitration. The Arbitration Tribunal and the Industrial Court are the bodies to which the reference is made. A District Judge too can function as Arbitrator. These bodies are required to make a just and equitable order after hearing parties.

A dispute can be referred to Arbitration or an Industrial Court both where such dispute is apprehended, and where a dispute has already arisen. In the latter case even whilst a strike is in progress the dispute involved can be referred. With such reference parties are obliged to restore the *status quo ante*—that is, if a strike is on, that strike must stop with immediate effect. The same consequence follows on the contravention of any Collective Agreement without its prior repudiation. The continuation of a strike or lockout, after such reference, is illegal and is attended with punishment. Provision is also included to enable the Minister to declare any industry an essential service. On such

declaration strikes are prohibited in such industry except after the service of a strike notice on the employer 21 days before the commencement of such strike. Trade Unions too are recognised in the disputes procedures and are penalised for any contravention of the law.

In these legislative innovations is observed an achievement that surpasses the wishes of the colonial administration when in the later 1920 s it sought the enactment of several laws as would help it cope in a repressive manner with the industrial problems of the time. That is, the Ceylonese middle-class exercising political power had the same conflict relations with labour as did the colonial administrators at a time when even the Ceylonese middle class did not, in any appreciable way, share political power. There are several reasons for this situation. Though political power changed hands the colonial structure of the economy remained unchanged. Hence the conflicts continued in the same familiar forms. The Ceylonese middle class was in the role of caretakers of a plantation economy the overwhelming portion of which was owned by the British. Ceylonese capital was to meagre to be able to make an appreciable dent in this, and hence what was seen and felt was a continuation of colonialism in its classic though outmoded form. The consequence was that there was an alienation not only of the working class but also, after the initial euphoria of political independence, of the masses in general. The Hartal of August 12th 1953, staged against the Government of the day was the earliest demonstration of this political ill-will. This political demonstration occurred despite the laws that were meant to keep the organised working class in check. In fact the Hartal showed a wholly new political manifestation. That is the linking of the struggle of the rural masses with that of the organised working class.

Apart from these laws referred to, the Government after 1947 cut off from the body politic almost the entirely of the largest component of the working class—that is, the plantation workers of Indian origin. This was done through the Citizenship Act No. 18 of 1948. Its consequence was that the great majority of these persons were denied voting rights and were rendered stateless because they were not considered citizens of India either.

[CHAPTER IV]

1956 to 1977—A Reformist Approach

The ruling United National Party (UNP) Government was defeated in the Parliamentary Elections held in 1956. Of a total of 95 seats it secured only 8. The prime cause for its debacle was its attempt to withdraw the welfare measures that had been in existence in the country from the war years. In its actions against the existing welfare features of the State the Government had fncreasingly to face a powerful political alliance of the working class and the poor masses in general. S. W. R. D. Bandaranaike, the Prime Minister in the Government that was formed in 1956 had the unenviable task of preserving the welfare measures in a situation of financial difficulties, and of containing the working class within petty-bourgeois social perspectives. He attempted to approach the matters touching the working class through effecting structutal changes in the economy. He nationalised the omnibus transport service and thereby gave to the workers employed in the sector the status of Corporation employees. He also nationalised all port services, and by these he paved the way for the subsequent nationalisation of the business of insurance and of petroleum distribution. These measures helped change not only the status of the employee but also his working conditions. The establishment of the State Corporation came to be regarded as the solution to the problems faced by the private sector employee. The Bandaranaike Government also created a large net-work of Multi-Purpose Co-operatives which gave to the Co-operative employee a greater job security and higher employment status.

The Industrial Disputes Act of 1950 with its coercive history was given an entirely new aspect when by Amendment No. 62 of 1957 a system of Labour Tribunals was incorporated in it. Under its provisions a workman or a trade union on behalf of such workman could, as of right, make application to the Labour

Tribunal for relief or redress in respect of any of the following matters ;—

(a) the termination of his service by his employer :

(b) the question whether any gratuity or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of any such benefits :

(c) such other matters relating to the terms of employment or the conditions of labour, of any workman as may be prescribed.

On such application being made the Labour Tribunal has the duty to make such inquiries as it thinks fit and to make a just and equitable order. This right to resort to a Labour Tribunal has since worked in such manner as to give to a workman a great degree of job security and to limit the employer's right to hire and fire. As we shall see, this has become a thorn in the side of the employer. It covered all employees except those of the Government. Other features that were added to the Industrial Disputes Act in that period are ;—

(1) The reference, by the Minister, of even minor disputes to arbitration :

(2) The Labour Commissioner's right to finally interpret Collective Agreements and such interpretation to bind the parties :

(3) Special procedure for adjudication in the event of an intended retrenchment :

(4) Imposition of penalties in the event of strikes and lock-outs in certain circumstances.(67)

(5) The Government's right to declare certain industries essential and the prohibition of strikes in such industries.

Another measure of far-reaching consequence was the Employees Provident Fund established by Act No. 15 of 1958. It provided for a State run provident fund scheme based on monthly contributions made by the employer and the employee. This scheme is applicable only to non-Government employees, for Government servants have enjoyed from colonial times the right to draw a pension on retirement from service.

These were items of legislation that came from the very nature of the Government. For the first time in about a quarter century

a ruling elite was displaced from its position in the Government of the country. One of the early Marxists, Philip Gunawardene was an important Minister in the early years of the Government of Mr. Bandaranaike. Though he had adopted a chauvinistic stand on the question of majority-minority community relations he did show a distinct bent for radical legislation and administrative action. As to labour, it was the President of the Government Clerical Service Union, Mr. T. B. Ilangaratne, in the time of the 1947 Strike, who was now Minister of Labour in the Government. The earlier Government's prohibition of Stay-in Strikes was repealed. The Wages Boards Ordinance was further amended in the interests of the workman. The shop and Office Employees Act([68]) was also amended. These however were amendments of a routine nature and cannot be attributed to any Government's political perspective. Very probably they were changes that were under consideration from the time of the previous Government. The Workmen's Compensation Ordinance, the Factories Ordinance and the Maternity Benefits Ordinance were also similarly amended.

It was the Government of 1970 to 1977 that in the period 1972 to 1975 nationalised the largest sector of the economy —that is, the Company owned plantations. It also attempted to introduce into the Corporations a fairly high degree of worker participation through Employees Councils. The Employees Councils became a success in the public transport system which was wholly state owned. The weakness of this innovation was that it was attempted through Cabinet decisions and not by legal enactment. Public Servants—except those at the top management —were given their political rights. The Trade Union Ordinance was amended in order to permit trade unions of public servants to join unions common to all public servants and also to federate.

In respect of the plantation sector the *Trade Union Representatives (Entry into Estates) Act* was passed in 1970. It allowed to representatives of trade unions the right of entry to estates, and the right to hold meetings too on the estates. The *Estate Quarters (Special Provisions) Act* of 1971 gave to workers security of residence on the estates([69]). *The Termination of Employment of Workers (Special Provisions) Act* of 1971 prohibited retrenchment except with the sanction of the Commissioner of Labour. In regard to disciplinary decisions involving public servants the Constitution of the country, drafted and adopted in 1972 incorporated a provision which denied to

Courts of Law jurisdiction over decisions by public servants in disciplinary matters over persons subject to their discipline. There was finality given to these decisions subject only to the right of other administrative bodies, or of the Cabinet of Ministers, to change or overrule them. In the context of that time this Constitutional provision was not objected to by public servants or their trade unions. The new Constitution of 1978 too adopted this same provision and as to how it will work out in the changed context is yet to be seen. By legislation passed in 1972 Co-operative employees too were treated as in a separate service and on matters pertaining to their contract of employment and status as employees they were made the responsibility of the Co-operative Employees' Service Commission. That law shut them out of the Labour Tribunals provided for in the Industrial Disputes Act, and the final disciplinary authority and appellate body in respect of disciplinary measures taken against them is the Co-operative Employees' Commission. The Commission consists of political appointees and the weaknesses flowing from that has invested the Commission with suspicion in regard to its independence and impartiality.

[CHAPTER V]

1977 and After the South East Asian Model

The 1970 Government which was formed under the premiership of Mrs. Sirima Bandaranaike was a coalition of the Sri Lanka Freedom Party (SLFP) led by Mrs. Bandaranaike herself, the Lanka Sama Samaja Party and the Communist Party of Sri Lanka. Whilst the latter two parties were admittedly Marxist, the SLFP basing itself wholly on the petit-bourgeoisie, had both its moments of radicalism and a strong and in-built conservatism. The Government was formed on the basis of a programme which resulted from close bargaining between the SLFP on the one side and the two Marxist parties on the other. The SLFP, one might suspect, accepted this programme and also its two allies for the reason that a world economic crisis was looming ahead. In fact the worst years of that crisis caught the Government in the period 1973-74. Shortages of essential commodities and long queues were part of the social set up. This Coalition Government ended when in 1975 Mrs. Bandaranaike dismissed the Ministers who were from the LSSP. A weakened and disunited Left faced the hustings in 1977 and the United National Party won with more than a two-thirds majority in the National State Assembly, as Parliament was known at that time.

If at this stage one reviews the achievement of the SLFP Governments since 1956 and the Coalition Government formed in 1970 the main score would be on the fact of their holding back from the country those political currents which about that time were shaping the destinies of those countries in South East Asia which in economic pattern were not much different to Sri Lanka. The adequate example of such a South East Asian country would be Malaysia. Malaysia's Trade Union Ordinance, 1959 and the Industrial Relations Act, 1967 embody provisions different from what obtained in Sri Lanka in that period—and are a pointer to the kind of labour legislation which could have

taken shape in Sri Lanka if a Government sympathetic to such legislation was in existance at the relevant time.(70) To the capitalist class the attraction for this type of legislation was already there in the kind of economy Singapore had come to sport by then.(71) However in resisting this the Bandaranaike led Governments did not seek to go beyond the Indian model. India with its strong national bourgeoisie, its industrial base, its large domestic market and its natural resources presented a context completely different from that which obtained in Sri Lanka.(72) Despite this difference these Governments followed especially the import-substitution industry arrangements which India, basing itself on its national-bourgeoisie was successfully able to adopt. The accompanying Indian labour legislation which was also adopted by Sri Lanka was of the traditional kind.(73)

The Government of 1977 established by the United National Party made no secret of the fact that in the matter of economic development and its ancillary aspects it was relying heavily on the South-East-Asian economic model, especially as represented by those countries which had flourishing Free Trade Zones. By December 1977 the Government presented to the National State Assembly a Bill to establish a Free Trade Zone just outside Colombo. The body created for this purpose was named, The Greater Colombo Economic Commission. and the Bill took this name. The area of the Commisson's authority was set out in the Bill and this constituted the area which had for quite some time been ear-marked as most suited for the country's industrial development.(74) The Commission's powers extended beyond this specified area too for it was also empowered to enter into agreements with enterprises situated outside the Zone.(75)

In respect of labour the Commission was empowered to " stipulate minimum wages to be paid to employees of any enterprise and the conditions of service of employees engaged in any enterprise. It could in the exercise of this power grant to such enterprises exemptions from the following laws (scheduled as Schedule—B) operative in the country in regard to labour (or to modify or vary their application) ;

The Wages Boards Ordinance
The Shop & Office Employees (Regulation of Employment & Remuneration) Act
The Factories Ordinance
The Trade Union Ordinance
The Maternity Benefits Ordinance

This exemption, modification or variation had to be done in accordance with such regulations as may be made by the Minister in charge of the Commission. Also within the area of authority it was the Commission and its officers, and not the Department of Labour and its officers who had the power to exercise the functions given in the laws mentioned above, and in the Workmens Compensation Ordinance.

These laws and the *Workmens' Compensation Ordinance* were included in a further schedule denoted as Schedule C. The Minister was empowered to alter these laws in applying them to the area of authority. The changes so effected in these laws were meant to be part of the Agreement entered into by the Greater Colombo Economic Commission with the investing entrepreneurs.

These provisions meant that the Free Trade Zone could be exempted from all the labour laws of this country by fiat of the Minister. And as to the Industrial Disputes Act and the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971, the Bill itself in a special section declared that these laws shall have no application to any area enterprise or licensed enterprise unless expressly provided otherwise in the Agreement entered into by such enterprise with the Commission.

This Bill was taken before the Constitutional Court (76) by the Ceylon Federation of Labour followed by a few other organisations too on the ground that the exemption granted in the Bill in respect of the labour laws of the country was discriminatory.(77) The Constitutional Court upheld this objection and as a result these " discriminatory " sections were excluded from the law that was finally presented to the National State Assembly in January, 1978.

Although the obnoxious sections were excised from the legislation that was so enacted as the *Greater Colombo Economic Commission Law,* No. 4 of 1978, the Government saw urgent need to resolve the contradiction between the possible conditions of labour within the projected Zones and the enterprises that came under the protection of the newly created Commission, and the conditions elsewhere — more particularly within the metropolis and its suburbs. In fact Mr. J. R. Jayawardene who as the Prime Minister of that time moved the second reading of the Bill in the National State Assembly

explained the need for the excised sections of the Bill as arising from the fact that this law was meant to demarcate a zone to which investors could come and "make it a robber baron's area." (78)The strategy adopted for the resolution of this contradiction was two-pronged. Firstly, great care was taken in the recruitment of employees into the enterprises within the Zone. The Agreements entered into by the Commission with each enterprise carried the stipulation that employees recruited locally to the enterprise should be from amongst those who are registered for employment with the Commission. Registration with the Commission for employment meant also a Police screening of the applicant for registration. Enterprises were also permitted to call for letters from third persons guaranteeing —

(a) the loyalty, honesty and diligence of the employee concerned ;

(b) the resignation of the employee should this be required by the enterprise ;

(c) the indemnification of the enterprise against all losses and damages suffered by the enterprise " directly or indirectly by reason of Theft, Robbery, Wilful damage, Disclosures of business secrets, betrayal, faithlessness, inefficiency, misconduct, neglect, deceit, mistakes, oversight, laziness, accident, late attendance, absence, refusal to resign or any other act whatsoever of the said employee."(79)

Reliance was not placed on this kind of brow-beating alone although it did give to the entrepreneur the assurance that his labour force was immune to whatever went on outside the Zone in the field of labour. In May 1979 the then Minister of Trade and Shipping, Mr. Lalith Aluthulathmudali, addressing a *Sri Lanka Investment Promotion Seminar* in Tokyo outlined the liberal nature of the country's labour laws and went on to state that the Greater Colombo Economic Commission could exempt from these laws any of the undertakings which entered into Agreements with it.(80) The Minister further disclosed to his audience what was then a widely suspected objective of the Government in respect of the trade unions which functioned in the country. He said, " As political influences have led to a multiplicity of trade unions in some workplaces, laws are being framed to consolidate workers' organizations to one at each workplace, with more democratic decision making producures."

What was thus on the cards was the Singaporean model of the single trade union. The Sri Lanka trade unions had on their own at various times moved towards the concept of the single trade union for they saw the strength in the resultant unity. They had approached this ideal through Joint-committees of Trade Unions which they formed at crucial times. But in the instant move they saw a strategy meant to undermine the trade unions and not to strengthen them. In the face of the trade union opposition the Government was unable to press on with the law which the Minister said was being drafted.

In the meantime in January 1978 the Government placed before the National State Assembly a Bill known as the *Employment Relations Law*. It included a section that was meant to be a consolidation of the law as it affected the contract of employment. This section adopted from existing statutes the 8 hour working day, the 45 hour working week and the regulation of wage payments. It also recognised existing practices like home-work and the iniquitous labour contract system. A radical modification of the existing law however constituted its core. It provided for the repeal of the *Termination of Employment of Workmen (Special Provisions) Act,* No. 45 of 1971 and those sections of the Industrial Disputes Act which placed restrictions on the termination of employment. The employer's right to terminate a contract of employment without asigning reasons was restored. The employer was also given the right to terminate a man's employment on the ground that he has acted " in breach of his obligations under the terms or conditions of his employment." The domestic inquiry, held by the employer on a charge against the employee was given finality : its finding was not open to question in a Labour Tribunal except where an act was done in bad faith or where the inquiry was in violation of the principles of natural justice, or where the finding was perverse on the materials adduced. Under the prevailing law these were grounds on which a party could appeal to the Court of Appeal against the finding of a Labour Tribunal. Thus, although in the law that was proposed the Labour Tribunal did continue to exist it did so only in form. The Labour Tribunals that existed at the time could as part of their order, reinstate with backwages a workman-applicant whose employment had been terminated. The proposed Law narrowed the Labour Tribunal to an appellate body which could interfere with a workman's termination of service only on a few questions of law.

The other major change proposed through the new Law related to strike action. In the prevailing law of the time strikes were legal, and no employer could terminate a workman's employment merely on the ground that he joined a strike. A workman excluded himself from this protection only where he joined a strike in circumstances in which the Industrial Disputes Act prohibits a strike. The proposed law preserved all the restrictions on strikes imposed under the Industrial Disputes Act and added to these the prohibition of strikes in services declared essential under this same law. A strike to be legal had to be one in which 21 days notice of strike is given within a total and continuous period of 30 days. This in effect is a total prohibition of strikes. These are all provisions contained in that part of the proposed law which was to come into effect immediately the law was passed. There was another part in it to be brought into operation in accordance with the decision of the Minister in charge. This part contained provisions for what was described as employee participation in management and profits. The enterprises to which these apply are to be named by the Minister from time to time. Even if the Minister brings these provisions into effect the participation in management is no more than is achieved by a trade union. The structures adopted in this part are those of the German (FRG) model for co-determination. The difference between this law and the German model can therefore be of significance. Under this law in each enterprise an Employees' Council is elected representative of all categories except managerial and administrative officers. Its general duties are to make representations to the employer ; to secure the observation of the law and the works agreement (again, a German term); to entertain worker complaints, and to negotiate on those, if need be, with the employer. These are broadly included in the prevailing law and practice in the functions of a trade union, and as with a trade union the employer is under no obligation to accept the recommendations of the Council, or to remedy its grievances.

Arbitration procedure is introduced through the setting up of a Conciliation Committee whenever the need arises. The employer and the Council are equally represented on the Committees. Its chairman can be appointed either by agreement, or that failing, by the Commissioner of Labour. This is a fusion of the conciliation procedure and the arbitration procedure of the Industrial Disputes Act. The finding of the Committee will bind all parties, and as in the Industrial Disputes Act, a strike on a matter pending before such Committee or included in the Award

of that Committee is deemed illegal. The Works Agreement referred to above takes the place of the Collective Agreement under the Industrial Disputes Act, and the same penalties as attached to a strike whilst a Collective Agreement is on are preserved for strikes during the pendency of a Works Agreement.

What is seen in the so-called " participation in management " provisions in the proposed law is a replacement, in fact, of the trade unions by the Employees' Councils. It is here that its variance from the German model becomes most telling. In the German system the Employees' Council and the Trade Union function in different spheres and the nature of their functions are separate and distinct. But here the Employees' Council displaces the work place trade union. Also, the field assigned to co-determination in the German system is of wide range. These relate to work and conduct of employees, working hours, leave, use of checking devices, industrial accidents and occupational diseases, social services, employees' accommodation, principles governing remuneration, job and bonus rates etc. In structuring, organisation and design of job, the working environment, man-power planning and training, the Council has a right of consultation with differences being resolved through conciliation committees. The employer must obtain the consent of the Works Council before engaging, grading, regrading or transferring workers. The employer must consult the Works Council before every dismissal and indicate the grounds for such dismissal. Else the dismissal is null and void. The Works Council may oppose a routine dismissal and question the grounds for the dismissal; and if in an action against such dismissal the workers' objections to the said grounds are upheld the dismissal is null and void. Labour literature has pointed out the limitations in these methods and procedures. But even with such limitations these provisions make it clear that the system envisaged in the proposed law does not in any way approximate to the German model.

Worker participation in the management of State enterprises was earlier tried out in the 1970 - 77 period. The machinery used in that experiment were Employees' Councils in production units and State corporations, and Advisory Committees in Government departments. Leslie Goonewardene, the then Minister of Communications, made clear the relationship that was expected to exist between these bodies and the trade unions in the respective work-places. In introducing the Constitutions of the Employees'

Councils to the Ceylon Transport Board he wrote in August 1970 thus ;

> At the outset I wish to point out that there is a difference between the aims of these Councils and the aims of Trade Unions. While the chief objective of a Trade Union is to protect and improve the wages and conditions of work of its members, the principal aim of an Employees' Council will be to ensure the efficient functioning of the institution or enterprise. It should not therefore be thought by anyone that an Employees' Council will be a substitute for a Trade Union.

The distinction made clear here had to be insisted on because of the deep-rooted suspicion about the device of installing Advisory bodies. Whereas in India a system of Works Committees was established by the Industrial Disputes Act of 1947, and this model was available to the makers of the Industrial Disputes Act of 1950 in this country, that machinery was not adopted for use here because of the possible resistance to it In India too the Works Committee came to be used for the purpose of side-stepping negotiations with the Trade Union.([81]) Given this experience trade unions in this country had reason to be suspicious of such machinery.

The final part of the proposed Law was legislation for the establishment of an Employees Trust Fund. It was meant to be understood as the means by which employees would collectively participate, as in Singapore, in the sphere of capital investment, and share in the profits of capitalist enterprise.

There was wide-spread opposition by trade unions to the proposed legislation. The Government thereupon proceeded to publicise the already gazetted Bill as a White Paper and to invite public discussion on it. The campaign against the proposals was unremitting. **"White Paper Black Law "** was the title given to a comprehensive study of these proposals by Dr. Colvin R. de Silva, the President of the Ceylon Federation of Labour. In the face of this opposition the Government appeared to drop its proposals. It however enacted the *Employees' Councils Act*, No. 32 of 1979 and the *Employees Trust Fund Act*, No. 46 of 1980, both of which had their source in the White Paper.

The Employees' Councils Act, No. 32 of 1979 was a revision of the White Paper proposals on the subject. With most of the

original proposals which militated against the trade unions shorn off this Act was a significant piece of legislation. It was the first law that was meant to bring into operation an advanced system of worker participation in the management of enterprises. Though it confined itself to the State sector, in form the Act appeared to have been meant for application in the private sector too. The reason for with-holding its application to the private sector was that the private sector Employer had no reason to welcome it. Although the projected Employees' Councils had no specified powers these could accrue powers to the extent the Councils exercised, and insisted upon, the rights, duties and entitlements given to them by the Act. It was open for a strong trade union to utilise the Employees' Council in such manner as to extend its own scope and influence. But there were several factors which prevented the trade unions from responding positively to the possible benefits that may have resulted from the Act. The Act was confined to the State sector and most of the the Corporations that constituted this sector were already on the block for privatisation. In the State corporations that still held their ground there had taken place a consolidation of the Government sponsored **Jathika Sevaka Sangamaya** with widespread victimisation of the membership of other trade unions(82).

The Payment of Gratuities Act No. 12 of 1983, belongs to the same category of legislation meant to modify existing law. The law which prevailed at the time of its enactment empowered Labour Tribunals to make orders in respect of gratuity, as in other matters, in keeping with justice and equity. The gratuities so awarded ranged from 2 to 6 or 8 weeks wages per year of service. The new law fixed 2 weeks wages as gratuity payment for each year of service, and limited the right of claim to persons who have worked for a continuous period of 5 years or over in any establishment which had employed 15 or more workmen on any day in the year preceding the date of the termination of service. It also amended the Industrial Disputes Act so as to take away from the Labour Tribunals the right to make orders on gratuity except in the case of persons not covered by the new law. This law suited the FTZ and allied industrialists whose labour turnover was high. These industrialists were further accomodated when, pending the formal withdrawl of Sri Lanka from adherence to the relevant I.L.O. Convention, these industrialists were permitted to roster women workers on night-work shifts.

This accommodation of the F.T.Z. and allied industrialists was part of the planned policy of the Government. The " Open Market Policy " to which the post 1977 Government was generally committed was bound to contract employment in the hitherto protected industrial sector. The policy of privatisation to which the World Bank and the I.M.F. pushed the Government was bound to have a similar effect on employment in the service sector which had come to be increasingly dominated by the State up to 1977. The new kind of industrialist targeted by the F.T.Z. had therefore to be given the best conditions to attract him away from especially the South-East Asian havens. The Government's propaganda emphasis was on the potentialities of the F.T.Z. in regard to employment creation. When in June 1980 the Greater Colombo Economic Commission (G.C.E.C.) signed the Agreements with the first two comers in the F.T.Z. in Katunayake, the Goverment controlled Ceylon Daily News of 30th June 1978 reported enthusiastically, " The two projects worth 38 million rupees are among 85 that have already been approved by the G.C.E.C." And it further carried the reported promise, " contracts for the remaining 23 projects which will generate 14,000 jobs by the end of the year will be signed within the coming week." The F.T.Z. was publicised within the country as a keen foreign exchange earner too. On the 18th of June 1982 the Director General of the G.C.E.C. announced through the Ceylon Daily News that the F.T.Z.in Katunayake had given employment to 22,000 persons with an average wage calculated at Rs. 20 per day—($ 1=Rs. 25) : that 40,000 others had gained indirect employment through the Zone each earning an average Rs. 10 per day : and that whereas the investment of the G.C.E.C. in establishing the Zone was, up to 1979 was Rs. 276.5 million, its exports reached Rs. 550 million. The Director General had added that in1982 a further Rs. 75 million will be spent on the Zone and that he expected total earnings to go up to Rs. 1050 million. He also had said that he expected a movement away from garments to electronics in the Zone and that he expected Motorola, Harris of the U.S., Woelk of West Germany and Serindo of Japan to come into the Zone. In yet another front page main story of the Ceylon Daily News of 6th June 1986 it was revealed that, " The G.C.E.C. in 7 years has recorded a 25 fold increase in export earnings from the Katunayake Zone : that " 1985 earnings from the 101 companies within the Zone totalled Rs. 3.8 billion, up from Rs. 152 million in 1979 when the first exports were made." This report gave 35,000 as the number of workers employed in the Zone and an increase in employee-

production from £ 1960 in 1979 to £ 4,100 in 1985. It also announced that the G.C.E.C.'s second Zone in Biyagama had already 7 international companies located there. These, it said, were Agio Tobacco Processing Co., which had already started production : that the project of Bradbury Wilkinson of U.K., the security printer, Far East Engineering Ltd., a West German operation, are nearing completion. It named Texlinen (Pvt.) a Pakistani-Saudi Arabian venture and a Taiwanese-Japanese collabboration as amongst the others.

These accounts though journalistic in nature are nevertheless relevant to an understanding of the background of the legislation of the time. The expectations revealed by these accounts were a factor in the determination of the labour legislation of the time and the hardness of the Government's attitude to the trade unions. But the precariousness of this type of " foot-loose " industry should have been already clear to the Government's planners. Some of the projects which were launched in the F.T.Z. with a lot of fanfare were heading for closure and in fact did close in the 1984-1986 period(83). The expected electronics industries failed to show up. And it should have been abundantly clear to all concerned that the only investors that had responded were the garments manufacture industries and that, in the face of the protectionism of the Western markets, these had reached saturation point as investments in the country. The aspect revealed by these facts bring up the possibility that there were other factors too involved in the motivation behind the new legislation.

The new Constitution of the country, made law in 1978 by the Government that assumed power the previous year, introduced a high degree of authoritarianism through the machinery of the Executive President. This authoritarianism found almost immediate reflection in the *Essential Public Services Act,* No. 61 of 1979. The Act applied to the widest range of services provided by Government departments, public Corporations, local authorities and co-operative societies. Under the Act the President of the Republic was empowered to declare any service provided by these bodies an essential service if he is of the opinion that such service is essential to the life of the community. This is a power which the chief executive could hitherto assume only under Emergency Regulations on the declaration of a State of Emergency under the Public Security Ordinance as amended by the *Public Security* (*Amendment*) Act., No. 8 of 1959. The new law had the effect of transferring into the normal law of the country these emergency powers.

At the time the *Essential Public Services Act* was made law there was a firm undertaking by the Government that it will not utilise emergency powers except in an actual state of emergency. In fact the Government had caused the deprivation of the civil rights of the former Prime Minister Mrs. Sirima Bandaranaike on the charge that she had misused emergency powers. Although the Essential Public Services Act was legislation rushed through Parliament on the eve of threatened trade union action by medical practitioners in Government service one assumed that this was intended to be legislation which in the public sector, paralleled those provisions in the Industrial Disputes Act under which a strike in the private sector could be met with the declaration that activities connected with any enterprise are essential services. But in July 1980 when the Government was faced with what was to be at most a partial strike in the public and private sectors the Government invoked Emergency Powers under the Public Security Ordinance and went on to treat about 40,000 workers who had joined the strike as persons who had vacated employment. In this instance all services in the public and private sectors were made essential services.

The Emergency Regulations that made all services essential were challenged in the Supreme Court on the ground that the President had authority under the Ordinance to declare as essential services only such services which objectively could be regarded as essential to the life of the community. The Supteme Court however held that the Ordinance left it to the competent authority, in this instance the President of the Republic, to decide what was essential and that once the decision has been made the Supreme Court had no authority to question it. The Committee on Freedom of Association set up by the I.L.O's Governing Body considered this matter. It also considered a complaint against the Essential Public Services Act of 1979—part of its report on the latter is as follows :—

> The Committee notes that the recent allegations concerning the 1979 anti-strike legislation is similar to the complainant's initial allegations examined in May 1981 concerning the anti-union nature of the Emergency Regulations passed with a view to putting an end to the July 1980 general strike. The Government at that time argued that restrictions on strike action were introduced temporarily only in essential services because the agitation could have

caused severe hardship to the community and jeopardised the Government's development efforts. The Committee notes that in its most recent communication the Government points out that the 1979 legislation can only be invoked in exceptional cases, for one month periods and subject to Parliamentary approval. While noting these safeguards against abusive application of the legislation, the Committee would nevertheless point out that the services covered by the Act might not be strictly essential in view of the criteria concerning the right to strike in the public service or essentia service. It therefore recalls that the principle whereby the right to strike may be limited or prohibited in such areas would become meaningless if the legislation defined the public service or essential services too broadly, that is to say, the prohibition should be confined to public servants acting in their capacity as agents of the public authority or to services whose interruption would endanger the life, personal safety or health of the whole or part of the population. The hospital sector and air traffic control have, for example, been considered essential, whereas banking, agricultural activities, ports, teaching, radio and television are not essential services in the strict sense of the term(84).

The Government has refused to fall in line with I.L.O. positions in respect of either the Essential Public Services Act or the sweeping Emergency Regulations. When the Government resorted to Emergency Regulations in facing the July 1980 strike it did so despite its commitment to be cautious in the use of these powers. And it did so when it was quite clear to it that the strike was a partial strike. Right from the start of the strike campaign the State Corporations and the plantations kept out of it(85). And at the very commencement of the strike the Ceylon Mercantile Union and the Bank Employees Union withdrew from it(86). In the circumstances even if the Government wished to deal with the strike in a repressive manner it had sufficient provision for this in the Essential Public Services Act, and in the Industrial Disputes Act which applied to the private sector.

Several reasons may be attributed to the Government's decision to deal with the July 1980 strike through Emergency Regulations under the Public Security Ordinance. If the freedom of association, and the freedom to form and join a trade union,

guaranteed as fundamental rights by Article 14 (1) (c) and (d) respectively, in the Republic's Constitution of 1978, were interpreted so as to include the right of trade union action too, the question might arise as to whether such action can be circumscribed by ordinary legislation such as the Essential Public Services Act and the Industrial Disputes Act. But the Constitution itself makes it clear that the exercise and operation of the said fundamental rights are subject to such restrictions as may be prescribed under the law for the time being relating to public security—which law is of course the Public Security Ordinance. A further reason would relate to the fact that the Government had failed, in the face of trade union agitation, to amend the law so as to restore to the employer the right to hire and fire—a right which, one assumes, is part of a free market economy. Hitherto even where a strike was in violation of the provisions of the Industrial Disputes Act employers showed a reluctance to treat the strike as illegal and act against the strikers. But in the new political setup they were willing to take appropriate action once the Emergency Regulations decreed that any workman who failed to report to work on a given date is deemed to have vacated his employment. A further reason is of course that the Government was not satisfied with a mere limited engagement with the more militant trade unions that were engaged in the preparation of the strike. The demands involved in the strike related to wages—an increase of Rs. 300 in the monthly wage and an enhancement of the cost of living gratuity from Rs. 2 to Rs. 5 for every unit increase in the cost of living index. These were economic demands which came in a context of financial difficulties by reason of which the World Bank and the International Monetary Fund were pushing the Government to a drastic narrowing of the welfare system that had come to being in the country over the years. An organised working class affected sharply by rising inflation, and the general mass of the people denied the welfarism they had been accustomed to could well result in an explosion that would impede the free market policies of the Government. The smashing up of the more militant section of the organised working class before it could link with a possible political struggle of the masses was so important to the Government that the conclusion that it was a thought out strategic objective cannot be resisted.

After the defeat of the July 1980 strike and the genera disarray of the militant trade unions the Government saw no need to effect any further modifications in the prevailing labour laws.

The Katunayake Free Trade Zone has stablised at a 62 per cent investment in garments manufacture which is one of the most labour intensive industries. This light industry sector both within and outside the Free Trade Zone has been so poor organisationally that the Government itself has been forcing wage increases through the Wages Boards(87). Trade Unions are certainly not encouraged within the Free Trade Zone but it is not solely for this reason that there has been no trade unions within the Zone. In fact there is no significant growth of trade unions in this sector of the industry even outside the Zone. Not only is employment security in this sector low but also the future of each garment manufacturing enterprise is itself so insecure that the workers involved, the bulk of whom are young females, do not wish to jeopardise their jobs through agitation for better wages and working and living conditions(88). Despite all the concessions that have been offered the Zones have not succeeded in attracting industries which require labour with higher skills. It is such labour that has also the capacity to seek better conditions and better wages.

The absence of significant trade union protest since July 1980 did greatly assist the Government in its policy of privatising State-owned enterprises. The National Textile Corporation was dissolved and its mills are being run by privately owned Indian extile manufacturing enterprises. The milk processing industry which was run by the National Milk Board has passed completely into private hands with Nestle's being predominant in the set-up. The omnibus services and the supply of electricity which were earlier managed by State sponsored Boards are in the process of being handed over to private sector investors. The telecommunication services and several others now being attended to by Government Departments or State Corporations or Boards are earmarked for similar changes. And multi-national agri-business has come into the more rural areas without the resistance that may have been earlier anticipated. Amongst them are Booker's, cultivating sugar in Moneragala, and Anglo-American Tobacco, increasing its cultivation of tobacco on agricultural land. These are pointers to what had been planned. Indeed it may be said that had it not been for the civil war situation that has arisen in Sri Lanka in consequence of ethnic problems the Government would have made a more determined effort to restructure the country's economic and political structure in the image of the available South-East Asian models. But the civil war situation has since April 1983 diverted the Government's attention elsewhere.

The escalated ethnic conflict has also been the justification for the maintenance of the State of Emergency under the Public Security Ordinance. These Emergency Powers were used against Bank clerks to compel them to give up a work-to-rule action they carried out in 1985. These were also used against nurses in Government hospitals, first to lock them out when they resorted to keeping away from work by tendering sick-notes, and thereafter to force them back to work. These expedients of work-to-rule action and sick-leave were unsuccessful ways of side-stepping the Emergency Regulations that prevailed. These employees were unable to take a more positive approach to the Emergency Regulations because the Governing Party's Jathika Sevaka Sangamaya too had its membership in both services. However the plantation workers were able in 1984 to successfully defy Emergency Regulations and win the strike for better wages. This they did despite the fact that the Jathika Sevaka Sangamaya's sister union on the plantations was a major union there. The Ceylon Workers' Congress led by Mr. Thondaman, a Minister in the present Government, committed itself to strike action on the workers' demands quite early in the campaign. The Jathika Sevaka Sangamaya opposed the strike to the very end but its membership joined the strike in defiance of the leadership(89). It is the success of this strike that paved the way for the *Grant of Citizenship to Stateless Persons Act No.* 5 of 1986. This Act obliges the Sri Lanka Government to confer citizenship on those plantation workers of Indian origin who had earlier been regarded as stateless in that they had not qualified for Sri Lanka citizenship under the Citizenship Act for 1948, and India too had refused to take them into that country as Indian citizens. The prevailing ethnic conflict was a major factor in winning back for these workers their citizenship rights(90).

Notes

1.—Colvin R. de Silva : *Ceylon under the British Occupation* 1795—1833
2.— do do
3.— do do
4.— do do
5.—G. C. Mendis : *Ceylon under the British*
6.— do do
7.— do do
8.— do do
9.— do do

10.—Colvin R. de Silva : *ibid*
11.—G. C. Mendis : *ibid*
12.—*Ceylon Journal of Historical & Social Studies*—Vol.—IV
13.—*Letters on Ceylon* 1846—1850 : The Administration of Viscount Torrington and the Rebellion of 1948—Edited by Dr. K. M. de Silva
14.— do do
15.— do do
16.— do do
17.— do do
18.—G. C. Mendis : *ibid*
19.—Section 19 of Ordinance 15 of 1858
20.—G. C. Mendis : *ibid*
21.—*i.e.*, by 20 of 1861 ; 15 of 1863 ; 16 of 1863
22.—*Vide* Ordinance 17 of 1880
23.—Vishaka Kumari Jayawardene : *The Rise of the Labour Movement in Ceylon*
24.—The situation is dealt with in relation to the earlier period by Dr. K. M. de Silva in his *Indian Immigration to Ceylon*—the First Phase 1840—1855—*See* note 12 above
25.—" The Kangani was the medium of all advances made to the labourers and he was often the sole debtor to the estate. It was on these men that estates were completely dependent for their labour."—K, M. de Silva : *ibid*
26.—K. M. de Silva : *ibid*
27.—K. M. de Silva: *ibid*—Quoted from the proceedings of the Ceylon Agricultural Society
28.—Sir Robert Wilmot Horton's period as Governor in Ceylon (1832-1837) was a period of reform. H. A. J. Hulugalle in his British Governors in Ceylon calls him a liberal in politics and mentions that he took a great interest in social reform. It was in his period that forced labour was abolished by an Order-in-Council issued by the King—(1832). " In the last year of his regime he introduced legislation for the registration of slaves in the Kandyan province with a view to their emancipation at a certain date."—Hulugalle : *iid*
29.—K. M. de Silva : *ibid*
30.— do
31.— do
32.—Sessional Paper No. 8 of 1908
33.—By Ordinance No. 43 of 1921
34.—Indian Immigrant Ordinance No. I of 1923.
35.—The Labour Commission of 1908.
36.—S. U. Kodikara : *Indo-Ceylon Relations since Independence*
37.—Visakha Kumari Jayawardene - *ibid*
38.—" Under the Indian rules the recruiting agent, designated in the rules applicable to Ceylon as the 'kangany,' must be an Indian of the labouring class and must have been previously employed as a labourer under the employer for whose services he desires to obtain emigrants."—Report of the Controller for Indian Immigrant Labour—for 1924.
39.—Report of the Labour Advisory Committee : Sessional Paper No. 35 of 1925.
40.—Sessional Paper No. VIII of 1928
41.— do

42.—Visakha Kumari Jayawardene : *iid*
43.— do
44.—Trams were owned and operated by the British Company, Boustead Bros.
45.—For its background *see* Visakha Kumari Jayawardene : *ibid*
46.—G. C. Mendis : *ibid*
47.—D. R. Wijewardene, the Managing Director and virtual owner of Lake House, the popular name for Associated Newspapers of Ceylon Ltd. was an office-bearer of the Ceylon National Congress and had influence through his owner ship of several national newspapers.Visakha Kumari Jayawardene in her *Rise of the Labour Movement in Ceylon* says of h m, " To Wijewardene, trade unionism was a menace that had to be fotught, and he was not prepared to recognise either the right of workers to form trade unions or the right of trade union leaders to negotiate on behalf of the workers." The trade union leader involved was A. E. Goonesinghe. One of the measures by which Wijewardene smashed the strike was by getting down linotype operators from Madras to replace workers on strike.
48.—In the strike in the British owned Times of Ceylon (1931) the employer and the Government acted together to smash the strike taking advantage of the economic depression. The 1933 strike in the British owned Galle Face Hotel was also smashed. In the case of both these strikes the Employers' Federation prevented action under the Industrial Disputes (Conciliation) Ordinance of 1931 on the plea that the Union had not acted in accordance with the Collective Agreement of 1929 by giving the requisite seven days notice of strike.
49.—Visakha Kumari Jayawardene : *ibid*
50.— do
51.—Note the extensiveness of the term " trade disputes."
52.—Controller of Labour—Report for 1932.
53.—Controller of Labour—Report for 1933.
54.—The Bombay Industrial Disputes Act (1938) with its provision for the prohibition of strikes was sponsored by the Indian National Congress. There was not in existence in Ceylon a native industrial bourgeoisie as in India—especially in Bombay. In fact Ceylon had no industrial bourgeoisie at all.
55.—*i.e.*, the Lanka Estate Workers' Union of today.
56.—The workers on strike in the Wellawatte Mills went for leadership and mediation to the nationalist lawyer H. Sri Nissanka and he in turn sent them to the young Marxist revolutionary Dr. Colvin R. de Silva who presided in the workers' meetings during the strike and later emerged as a leader of the Lanka Sama Samaja Party and as its President.
57.—Amongst these Marxists was Dr. S. A. Wickremasinghe, the first amongst them to be elected to the State Council (1931).
58.—This was against the Malayali workers who worked in many of the establishments in Colombo.
59.—The Commission was appointed because of the public outcry on the matter. It found the shooting was unjustified.
60.—One reason for this could be that the planting community saw these unions as the lesser of the two evils when they were confronted with the possibility of Marxists expanding their trade unions in the plantations.
61.—By then the war time orders against Dr. N. M. Perera and his colleagues had lapsed.
62.—H. A. J. Hulugalle : *British Governors of Ceylon.*

63.—George E. de Silva was a Minsiter in the Government of the time.

64.—H. A. J. Hulugalle : *ibid*

65.—The Hartal of August 12th 1953 was a planned one day mass protest against measures of the Government as affected the supply of essential commodities. These measures constituted the first in road into certain welfare aspects of policy which continued from the war days. It spilled over into several more days and caused the resignation of the Prime Minister Mr. Dudley Senanayake.

66.—In July 1980 the present Government declared all services as essential services. When challenged the Supreme Court held that it was competent for the President to make such declaration and that such declaration was outside the purview of Court. Yasapala v Ranil Wickremasinghe, *et-al* SC Applic 103/80

67.—The continuation of a strike or a lockout after the dispute concerned has been referred to arbitration or to an industrial court is a punishable offence. A strike etc., during the continuance of a Collective Agreement on matters covered by it is also similarly punishable. Incitement to any of the acts referred to above is also a punishable offence.

68.—Shop and Office Employees (Regulation of Employment and Remuneration) Act No.19 of1954 which replaced the earlier Shops Ordinance.

69.—Earlier an estate worker had no right of residence in his line room on the estate after the termination of his service even during the pendency of his application to a Labour Tribunal against such termination.

70.—The Malaysian Trade Unions Ordinance of 1959 went to the extent of empowering the Minister to suspend a trade union for a period of time on what are in fact indeterminable grounds. Such suspension renders the union illegal and incapable of functioning legally. It also stipulated that before a strike there should be :—

(*a*)—a secret ballot through which the consent of at least two-thirds of the membership should be obtained for the strike.

(*b*)—a seven-day notice of the strike after the secret ballot mentioned above. Other grounds on which a strike can be illegal are—where such strike is in contravention of the rules of the union, where it is on a matter covered by a directive of the Minister under the Ordinance, or where it is in contravention of any other provision of the Ordinance or any provision of any other written law.

The Ordinance has a general rule prohibiting public servants from being members of a trade union except where they are specifically exempted from the said rule. It also requires employers of statutory corporations to be members only of trade unions confined to the said corporations. It bars outsiders from holding office in trade unions. Nor can an office-bearer of a political party hold office in a trade union.

Under the Malaysian Industrial Relations Act, 1967 provision is made for the recognition of only one union in a workplace. It provides for the Minister to give recognition to a union in respect of any workplace by his fiat. It exempts from collective bargaining " pioneer enterprises " and also empowers the Minister to exempt any other industry from such bargaining. The Act makes strikes practically impossible.

71.—Such legislation will not be confined to the industrial field. The adoption of Singaporean structures would also mean the provision for an authoritarian political regime. Other legislation would relate to the establishment of mechanisms for the exploitation of cheap labour without the constraints of effective trade unionism.

72.—In the 1950s, 60s and even the 70s Sri Lanka had only a land-owning-bourgeoisie fixated in colonial patterns of investment. Even the import substitute industrialists were essentially traders, and were heavily dependent on especially Japanese industrial products.

73.—The Indian labour legislation referred to are the Industrial Employment (Standing Order) Act of 1946 and the Industrial Disputes Act of 1947.

74.—When in the 1960's the Government of the time wished to evolve policies for industrialisation, the area it chose as the " industrial estate " was Ekala which is within the persent FTZ.

75.—Any enterprise, no matter where it is situated, can qualify for FTZ privileges if it enters into an agreement with the Greater Colombo Economic Commission.

76.—The Constitutional Court was provided for by the Constitution of 1972. This Constitution was repealed and replaced by the 1978 Constitution after the present government came into being.

77.—The 1972 Constitution had provisions against discriminatory treatment —the provision that " all persons are equal before the law and are entitled to equal protection of the law." The argument against the Bill was that it denied to a class or group of persons, *viz.*, the employees of the FTZ, equal protection of the law.

78.—Hansard of 19th January, 1978.

79.—Extracted from Agreement between G.C.E.C., and Ran Mayura Garmennts and letter obtained by Katunayake Garments Ltd., respectively.

80.—Ceylon Daily News of 9-5-1979.

81.—The Indian Supreme Court in *Northbrook Jute Co., Ltd., vs. Workmen* (1960) 3 SCR 364, A.I.R. 1960 SC 879 recognised disapprovingly the existence of a strategy by which it is sought to supplant trade unions with Works Committees for the purpose of collective bargaining. Court says, "By no stretch of the imagination can it be said that the duties and functions of the Works Committee included the decision on such an important matter as the alteration in the conditions of service by rationalisation." It referred to the functions of the Works Commitee as given in the Act : " To promote measures for securing and preserving amity and good relations between the employer and workmen " is their real function and to that end they are authorised to " comment upon matters of their common concern and endeavour to compose any material difference of opinion in respect of such matters."

82.—The Employee's Council in the Kantalai Sugar Factory of the State Suga Corporation is an instance where despite intimidation non-Jathika Sevaka Sangamaya men hold key posts. But the charge is made tha the Corporation has lent itself to victimising these officials at the instance of the Government sponsored trade union.

83.—14 enterprises in the FTZ, Katunayake, wound up in the period 1984t 1986. These included Serindo, Japan, which had entered the stage of establishing itself—(Harris, U.S., sold it structures to Atlas Gloves, a labour intensive sports goods manufacturer). Others that wound up during this period are : Mita Cycles (Indian). Paradise Trimmings (for tassels), Quick Tea, International Cosmetics (which was for making plastic containers), Fantasia Socks, Jewelarts, Plymouth Rubber Industries and Gloweave Rubber, both of which wound up in 1983, Sri Lanka Cashew, Minerva Jewelry, Playboy Designs, Sama Lanka (for fishing gear), Asia Ltd., of the Birlas for canvas shores. LMK Browns changed hands. These apparently involved labour intensive industry, for employment potential was a principal factor determining the handsome tax concessions. They failed not for reasons of labour.

84.—In the period 1980 and 1985 the relevant I.L.O. Body has continuously gone in to the matter of Sri Lanka's concept of essential services and question of political strike. In both these matters this body made clear that it had reservations in accepting the Government's positions. There is however no decisive action this tri-partite body can take.

85.—The Joint Committee which spearheaded the demands had to exempt State Corporations from any action because of the victimisation and organised violence to which members of non-J.S.S. trade unions were subjected. It is despite this situation that sections of the Transport Board (buses) joined the strike mid-way. As to Government Departments it was not all Departments that were similarly affected. Railway employees came out in strength. So did the clerical cadre. The joint Committee had no relevant demand for the plantations.

86.—The Ceylon Mercantile Union was among the leadership of the Joint-Committee. But on the eve of the strike it opted out of the strike on the ground that it did not contribute to the wage demand. The fact is that at the time it was engaged in undisclosed talks with the Emp loyers' Federation on the wage issue. The Bank Employees' Union had by then already negotiated the wage issue. It followed the C.M.U. in opting out of the strike. This strengthened the Government's hand and weakened the strike. The result was that a major Union like the P.S.W. T.U.F's affiliate in the postal services too failed to join the strike although the P.S.W.T.U.F. itself was amongst the Joint-Committee Unions that called the strike.

87.—The Wages Boards being tripartite bodies the Government's representatives and the workers' representatives could together force a resolution th.ough the Boards. The last such increase got through a Wages Board for workers in the Garments manufacturing industry was in 1984. *E.g.,* the minimum wage of a Grade—III worker with over yea.s experience was raised from Rs. 545 to Rs. 585 p.m. The bulk of the workers are in this grade. This Rs. 40 incrsae was when workers under other Wages Boards got an increase of Rs. 100/- p.m. on a proposal by the Minister of Finance for a general increase of Rs. 100

88.—A *Voice of Women* (Kantha Handa) study was done in 1980. Published 1983.

89.—The Joint-Committee on this question was convened by Dr. Colvin R. de Silva, President of the Lanka Estate Workers' Union.

90.—The CWC organised a semi-strike too on the demand for citizenship. The plan was to devote the morning working hours to prayer sessions.

The author, known in the labour movement as Batty Weerakoon, is the General Secretary of the Ceylon Federation of Labour which is a major trade union in Sri Lanka. He is by profession a lawyer. His legal training, concern for the rights of labour, and practical experience in the field of labour have all contributed to make this publication a comprehensive and penetrating study of the growth of labour law in Sri Lanka. The study has closely followed the changes in the law up to date. The author's attentiveness to the changing economic and political realities in the under-developed ex-colonies in Asia has helped him also to project the likely changes that will be demanded in the immediate future in respect of the laws that govern labour in Sri Lanka.

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