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The Current Status and Evolution of Industrial Relations in Sri Lanka

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The Current Status and Evolution of Industrial Relations in Sri Lanka

Abstract
[Excerpt] Howe and Strauss (2007) propound the theory that there is a clear nexus between the significant events youth face and their attitudes in later life. This is relevant in looking at the evolution of industrial relations, especially in Sri Lanka. One could say that the historical context of Sri Lanka has played a major role in the current behaviour of management and labour—from the nationalist revival in 1956 and the culture change which gripped the country until the insurgency of 1971 which can be identified as the coming to a head of the frustrations created in relation to emancipated, educated youth who had no prospects of proper employment. The language policy introduced under the cultural revolution created a hostile divide between the English-speaking managers, who in colonial times and for several decades thereafter came from elite schools, and the 'swabasha'1 educated workers. Since the language of management and business transactions continued to be English, it was difficult for those receiving education in the local languages to claim higher positions in the private sector although often they were better technically qualified, at least on paper, than the English- peaking candidates selected. With educated youth finding that they could not access the higher echelons without English the obvious reaction was to resent the language as well as the system which used it. The policy in the government was to use the swabasha for official transactions and this led to graduates educated by local universities moving mostly into public sector management positions, seldom securing employment in the private sector. The tension created by Sinhala-educated youth not having adequate access to jobs compatible with their education led to the insurrection in 1971. The youth of that era are now mature citizens and legislators and are therefore anxious to give fair opportunity to youth coming into the labour market by helping them acquire language skills needed for employment.

Keywords
International Labour Organization, ILO, South Asia, Sri Lanka, industrial relations, wage fixing

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The Current Status and Evolution of Industrial Relations in Sri Lanka

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First published 2009

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978-92-2-122792-2 (print)
978-92-2-122793-9 (web pdf)

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Printed in India

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Part 1

Context for Industrial Relations

Howe and Strauss (2007) propound the theory that there is a clear nexus between the significant events youth face and their attitudes in later life. This is relevant in looking at the evolution of industrial relations, especially in Sri Lanka. One could say that the historical context of Sri Lanka has played a major role in the current behaviour of management and labour—from the nationalist revival in 1956 and the culture change which gripped the country until the insurgency of 1971 which can be identified as the coming to a head of the frustrations created in relation to emancipated, educated youth who had no prospects of proper employment. The language policy introduced under the cultural revolution created a hostile divide between the English-speaking managers, who in colonial times and for several decades thereafter came from elite schools, and the 'swabasha'[1] educated workers. Since the language of management and business transactions continued to be English, it was difficult for those receiving education in the local languages to claim higher positions in the private sector although often they were better technically qualified, at least on paper, than the English-speaking candidates selected. With educated youth finding that they could not access the higher echelons without English the obvious reaction was to resent the language as well as the system which used it. The policy in the government was to use the swabasha for official transactions and this led to graduates educated by local universities moving mostly into public sector management positions, seldom securing employment in the private sector. The tension created by Sinhala-educated youth not having adequate access to jobs compatible with their education led to the insurrection in 1971. The youth of that era are now mature citizens and legislators and are therefore anxious to give fair opportunity to youth coming into the labour market by helping them acquire language skills needed for employment.

A different period started in 1977 when the free market system was introduced. It produced consternation for the trade union movement which considered the change a threat and this led to a backlash culminating in the general strike of July 1980 which was crushed by emergency powers. A period of calm industrial relations followed. With the opening up of the economy, access to foreign examinations, study courses through distance learning and improvements in relation to international communications the youth saw opportunities which had not been available before. The generation which went on a general strike in 1980 was largely one used to a welfare state with little understanding of the global challenges and competitiveness so critical for the survival of a small economy which had only a primary agricultural export industry to sustain it. The youth emerging in the 1980s grew up witnessing the disaster of an insulated attitude towards education, the benefits of education outside the traditional government educational system and the vast array of new opportunities opening up for them with connectivity to the outside world. Institutes which prepare students for overseas examinations and international schools sprouted extending the range of skills to cater to new avenues of employment. Some also created opportunities for seeking foreign employment. Since there were political repercussions associated with disturbing the tertiary education system which was free, the state permitted institutes and schools to register as businesses under the Board of Investment (BOI) and to link up with foreign universities to provide access to English education. There is now a revival of interest in English as a link language which is also being encouraged officially.

[1] The indigenous languages Sinhala and Tamil which were made the national languages replacing English.

The period of turbulence caused by the war in the north and east, which became full blown in 1983, and the insurgency in the south between 1987 and 1990 'brought the country to the verge of collapse and left some 40,000–60,000 dead or missing, most of them youth.' (Hettige, Mayer & Salih, 2004) This led to a generation growing up seeing a new way of life with people being destroyed for no sensible purpose, making self-preservation a fundamental concern. The consequences perhaps have been to make this generation more individualistic.

The coming to power of the Peoples Alliance[2] in 1994 saw brakes being applied on the free enterprise system as a result of Leftist parties becoming part of the government. Privatization policies were put on hold. The period since has seen the emergence of the Janatha Vimukthi Peramuna (JVP)[3] backed unions which have now become a major force in both the public and private sectors. The JVP backed unions in the private sector have adopted a policy of enterprise level dealings backed by traditional collective agreements, although in the public sector their objectives may be seen to be politically motivated as in the case of other unions in the public sector.

1.1 A brief socio-economic overview

The *Sri Lanka Development Policy Review* (World Bank, 2004) interestingly divides the economic history of the country after independence into three distinct segments and gives the following facts in support of this demarcation:

- 1948 to 1977: A period when Sri Lanka was a textbook example of a dualistic export economy with a well established and relatively modern plantation export sector coexisting with a traditional, subsistence small-holder agricultural sector.
- 1977 to 1983: A period of trade liberalization and market reforms. Exports grew and industrial export increased its share in total exports from 14 per cent in 1977 to 78 per cent in 2000.
- 1983 onwards: Described as the 'decades of civil conflict'. The armed forces grew by 80.5 per cent during the period 1985 to 1998[4] and defence expenditure was the highest in South Asia for the period 1985 to 1998, recording a 9.9 per cent increase.

The Industrial Policy Statement of 1987 by the Ministry of Finance and Planning speaks of the vulnerability of the economy due to dependence on a 'narrow range of agricultural exports' and identifies a clear need for industrialization. Some labour relations issues are mentioned. The Strategy for Industrialization in 1989 by the Ministry of Industries went further and stated that the 'labour laws existing at present are weighted in favour of those who are already in employment and act as a disincentive to the creation of new employment.' In the *Agenda for Action* (IBRD, 1997) the government noted that although Sri Lanka's level of social development was touted to be ahead of other countries with better levels of per capita income, according to the World Bank's (1995) poverty assessment one out of five persons was still below the poverty line of US$ 1 per day. The reform agenda in 1996 foresaw the strengthening of the legal framework and its communication to the public. It also recognized the need for greater public participation in drafting new legislation. Reference was also made to the need for promoting alternative dispute settlement mechanisms (Ibid.).

[2] The Peoples Alliance which came to power in 1994 had the Sri Lanka Freedom Party as its main constituent with the Communist and other Left-oriented parties in it.
[3] The JVP has a past of indulging in insurgency but has now entered mainstream politics and has a significant presence in Parliament. It has a clear policy against market reforms.
[4] In contrast to India, where armed forces contracted by 7.2 per cent and the increase in defence expenditure reached 3 per cent.

In its policy statement entitled *Regaining Sri Lanka* (Government of Sri Lanka, 2003) the government in 2000 vowed to promote social dialogue between government, workers and employers organizations 'for the harmonious implementation of labour market reforms and to seek further improvements in labour relations, laws and regulations.'

There has been a continuing trend for state intervention on labour issues. For example, in 2005 a wage increase was mandated by the state applicable to all employers.[5] In October 2007, the President intervened to increase wages in the plantation sector despite the fact that there was a collective agreement in place. The state has created a massive gap in the minimum wages of the private sector and the public sector, which keeps placing the private sector under severe pressure to match wages to cost-of-living-oriented public sector wages without a matching return on productivity.

The annual report of the Central Bank of Sri Lanka for 2006 states that some disputes in key public sector institutions have raised concerns over maintaining industrial harmony and the need to create an environment conducive to promoting growth. Attempts to restructure government-managed utilities such as electricity, petroleum and railways have been shelved due to trade union pressure although these services are running at huge losses. The unions allege, not without justification, that the losses are due to mismanagement and the answer is in restructuring, not privatization. In the private sector, the industrial relations climate appears to have improved considerably as claimed by the same report. However, the common perception is that this change is due to better industrial relations and human resource management policies practised by enterprises which have seen the benefits of voluntary compliance with best practice (EFC/Emsolve/ILO, 2006).

The latest World Bank's *World Development Report* states that 'crime and fear of violence depress private investment' and opines that in the tourism sector alone between 1984 and 1996 the war cost the country about 12 to 23 per cent of GDP. The same report, however, mentions a fact which is heartening to Sri Lankans, namely, that young people seem to be working together with the community and without getting disillusioned by the events around them, and that they are getting involved in development work and sustainability issues (Ibid., pp 167, 225). The attitudes of the youth have perhaps changed with the sorrow they see around them as a result of the war and they accept the need for civil society to take the lead in bringing about change.

1.2 Selected statistics

The population of Sri Lanka in 2006 was estimated at 19.8 million and the labour force at 7.6 million. Workforce participation is 51.2 per cent, of which the male participation is 68.1 per cent and female participation 35.7 per cent (*Central Bank Report* 2006, Table 4.8). Of the total workforce, 13.4 per cent are employed in the public sector, 42.1 per cent in the private sector, 30.8 per cent are self-employed and 10.5 per cent are unpaid family workers, and 1.5 million persons are employed abroad (*Central Bank Report* 2006, Table 23).

The same report states that 92.3 per cent of the labour force is employed. The *Quarterly Labour Force Bulletin* published by the Department of Census and Statistics defines an employed person as one who works for pay, profit or family gain (unpaid) for one hour or more during the week before the survey. The Central Bank reports that between 2005 and 2006 unemployment dropped by 0.7 per cent.

[5] Act 35 of 2005.

Table 1.1. Family expenditure per month

(in Sri Lankan Rupees)

Year	Spending unit	Per person
1986	2,175	534
1996	8,592	2,012
2003	15,278	3,936

Source: *Central Bank Annual Report* 2006.

Table 1.2 Gini co-efficient: One month's income

Year	Spending units	Income receivers
1986	0.46	0.52
1996	0.43	0.48
2003	0.46	0.50

Source: *Central Bank Annual Report* 2006.

1.3 Employment issues in Sri Lanka

Unemployment has always been identified as an issue in Sri Lanka especially in relation to educated youth. The Dudley Seer Report (ILO, 1971) remarked that the insurrection in 1971 was caused by the failure to implement bold decisions in relation to education. According to Korale (1987) the problem began in the 1950s. He states that the primary objective of the Ten Year Plan (1959–68) was to address this issue by better utilization of manpower.

The model which was followed in the years before 1977 appears to have concentrated on the possibilities of self-employment as a substitute for wage employment. Korale (1987) suggests that although there is no firm evidence, repatriation appears to have marginally reduced the pressure on unskilled jobs in urban centres. Migration to the Middle East started in the 1970s and has now reached significant proportions. In the period 1991 to 1994, the average number of migrating workers was more than 50,000 per annum. According to the *Central Bank Report* 2006, in 2005 the number had reahed 231,290.

In 1977, the government gave high priority to job creation. In 1978, the government called upon the private sector to increase employment by 10 per cent and the Employment of Trainees (Private Sector) Law was enacted to encourage employers to recruit job seekers initially as trainees. The trainees were excluded from the operation of some laws such as the Trade Unions Ordinance, the Shop and Office Act, the Wages Boards Ordinance and any collective agreement. This was a tacit admission that the government regarded at least some of these statutes as restricted employment.

Kelegama (1992) commenting on the impact of economic liberalization on the employment structure in Sri Lanka states that employment creation declined sharply during the period 1982 to 1985 compared with the period from 1978 to 1982. He also comments that during this period (1982–85) about 50 per cent of the jobs created were in infrastructure development schemes, which were temporary.

The participation rate in the workforce for females has improved tremendously with more jobs being created in the Free Trade Zones. According to Chandra Rodrigo (1991), 85 per cent of the workers in the Free Trade Zones are female. A study by Kelegama and Wijesiri (2004) shows that in the garment factories in the principal areas of work, that is, operators,

helpers and checkers, out of 215,271 jobs only 22 were males. The 2006 *Central Bank Report* gives the labour force participation rate for females at 35.7 per cent, an improvement of more than 4 per cent when compared with the previous year.

In recent years, majority of the jobs have been created in the BOI companies, predominantly in the garment sector (*Central Bank Report* 2006, pp 51, 110; Rodrigo, 1991). According to the Central Bank the share of apparel/textile and leather products was 36 per cent of the total value of industrial production (textile and leather are a very small part of the sector). The sector also has a presence of 25.5 per cent among the companies registered under the BOI (*Central Bank Report* 2006, Table 26).

Under-employment has always been a major problem in Sri Lanka (Wijenaike, 1952). Another important phenomenon that Rodrigo points out is that based on the 1980–81 Labour Force Survey and the Consumer Finance Survey of 1986–87 there is a growing trend towards more casual and temporary employment. She states that during that period, casual employment grew from 41 per cent to 49 per cent making non-permanent workers in excess of 60 per cent of the employed labour force. This trend has been enhanced by a reluctance of employers to carry large permanent workforces for various reasons, including rigidities in the labour market. The BOI has addressed these issues through a policy guideline (circular dated 15 March 2005) on employment of casual, temporary and contract labour which sets out its commitment to 'decent work practices' and prohibits the employment of labour through labour contractors. Casual work is permitted under the circular only for work of a casual nature.

'Home workers' in the past were part of the informal economy with cottage industries in rural areas being common. However, as in developed countries, the possibility of part-time work and home-based work appears to be growing both as a reaction to labour rigidities as well as the practicalities of commuting, improved communications and the possibility (especially for women) of staying at home and being economically active. The outsourcing phenomenon has been mostly in relation to unskilled work such as janitorial services which have also become specialized services to some extent and are not treated as core activities of the business. However, one major constraint in Sri Lanka has been a lack of regular attendance at work and a problem which has confronted employers is the need to have a regular supply of labour for filling in work lines to take care of absenteeism. There is now a widespread practice to use labour suppliers to provide casual workers or to have pools of casual workers who are on standby for this purpose.

Supply chains to large organizations are usually examined very carefully by the user organization to determine whether the supplier is compliant with labour laws as this issue is now of universal concern, especially for garment exporters to the US and EU which constitutes 94 per cent of the market.

The 2006 report of the Central Bank says 'The incidence of high rates of unemployment among the educated youth while some sectors of the economy are suffering from the lack of skilled labour highlights the deficiencies in the education system.'

The policy of the government was to end the practice of hiring massive numbers into the public sector and to encourage school leavers to voluntarily adapt to private sector requirements and seek jobs there (IBRD, 1997). However, in 2005 the public sector grew once again with the absorption of 42,000 unemployed graduates and it is expected that a further 10,000 would be absorbed in 2006. (*Central Bank Report* 2006). Demonstrations on the streets in September 2007 highlighted the continuing issue of unemployed and under-employed graduates.

1.4 Socio-economic priorities of the government

Given the above background, the priorities selected by the current regime in relation to industrial relations show a mix of economic priorities based on global competitiveness with an underpinning strategy committed to social protection. The Decent Work Country Programme for 2004–2008 may be regarded as an indication of a labour relations agenda and objectives set by the government in terms of its obligations to maintain proper standards. The objectives are classified under the following headings:

- *Employment*: Implementing its National Employment and Productivity Policy.
- *Social protection*: Minimize social costs of reforms by promoting appropriate and gender sensitive social protection measures.
- *Social dialogue*: Strengthen tripartite partners to enable participation in the development and implementation of economic and social policies.

Balancing Growth and Equity in a Changing Society (ILO-MLR&FE, 2005) speaks of a new balance to be achieved. 'The Ministry of Labour Relations & Foreign Employment has a vital role to play in both the economic and social development of the nation. Its traditional labour protection perspective is now balanced by its contribution to economic development through policies and activities related to employment creation, employment promotion, productivity enhancement in all sectors, information and research, human resource planning and development, and linkages and partnerships with the country's private and corporate sector, the recognized driving force for sustained growth.'

Part 2

The Legal Framework

In 1846 the first piece of legislation on labour was promulgated in relation to immigrant labour from south India. The state intervened so that the work on the plantations could be maintained to the benefit of the owners of the plantations who were British. Since then a large body of legislation has been promulgated to protect labour and regulate industrial relations. There is also an extensive judicial system, which operates on the basis of 'binding precedents', that is, decisions of higher courts being binding on those lower in the structure.

The 1978 Constitution gave jurisdiction explicitly to the Supreme Court to deal with complaints of violation of fundamental rights. Article 12 guarantees the right to equality and Article 14 (c) and (d) specifically refer to the right to associate freely and to join a trade union. These specific fundamental rights cannot however be enforced unless the violation is by administrative or executive action, so that private sector employees cannot vindicate their rights against their employers by using the special jurisdiction of the Supreme Court.[6] It is now argued that an employee could bring a fundamental rights complaint to the district court for redress.[7] It must be noted that the Industrial Disputes Act makes the deprivation of rights relating to the freedom to join and organize trade unions and to be free of discrimination punishable offences.[8]

Sri Lanka has never been in a position to rationalize its statutes to meet the requirements of the day and to rid itself of what has become obsolete or out of line with the development goals of governments, although at different times policy statements to that effect have been uttered. The following are the more important statutes in chronological sequence. The relevant legislation is also discussed under other parts of this paper so as to have a clearer view of the application of specific provisions.

The Workmen's Compensation Ordinance 19 of 1934 which provides for the payment of compensation to workers who suffer accidents at work or suffer from occupational disease. This ordinance has been amended several times, especially to provide for reasonable compensation. A Commissioner of Workmen's Compensation is appointed for the purpose of hearing applications for relief.

The Trade Unions Ordinance 14 of 1935 provides for the registration, control and cancellation of unions. A union is expected to apply for registration within three months of its formation and the registrar can prosecute a union which operates without complying with this provision. The application has to be supported by specified documentation. The registrar has the right to refuse registration if he is satisfied that there has been no compliance with the ordinance or the objects or rules are unlawful. He could also cancel registration. A union which is prejudiced by a decision of the registrar could appeal to a district court and also appeal from an order there to the Court of Appeal.[9] The Trade Unions Ordinance covers both the public and private Sectors. Any seven persons are entitled to form a trade union. A registrar appointed under the ordinance registers, regulates and may deregister unions.

The Trade Unions Ordinance has special provisions applicable to unions in the public sector. Associations of judicial officers, police, prison officers, members of any corps established under the Agricultural Corps Ordinance (at one stage there was what was called a Land Army)

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[6] Samson *vs* Sri Lankan Airlines 2001, 1 SLR 94.
[7] See Shermila Anthony, 'Fundamental Rights: The sole and exclusive jurisdiction of the Supreme Court', , *Moot Point: Legal Review* 2001,Vol. l5, Centre for Policy Alternatives.
[8] See Act 43 of 1950.
[9] See Part iii , Trade Unions Ordinance Cap.138 Legislative Enactments.

and armed forces cannot have trade union status. The rules of a trade union of public sector employees must have restrictions regarding membership limited to a category, department service, class identified by nature of work. Although the relevant section does not speak about federations, and the relevant clause which refers to federation is the interpretation clause which enables registration of public sector unions only if they conform to restrictions set out, it has been interpreted to cover federations as well, although the government has in fact recognized the rights of public sector federations by granting paid release to officials for their official work.[10]

The Maternity Benefits Ordinance 32 of 1939 which covers all female workers other than those who are specifically provided for under the Shops & Offices Act. The leave available, which is fully paid, is 12 weeks for the first two children and six weeks for subsequent children. Feeding intervals are also provided for.

The Wages Boards Ordinance 27 of 1941 prescribes legal obligations with regard to salaries and wages of all employees, and also gives legal authority for the setting of specific Wages Boards for different trades to regulate the terms and conditions of employment of employees covered by the relevant boards as being part of the trade. The Wages Boards set up under the ordinance function on a tripartite basis, with representatives nominated by the minister and representatives of workers organizations and employers forming the boards, which sit when summoned to review the wages as well as other terms and conditions of employment. The voting follows a balanced scheme and the number of employee representatives present and the union representatives are balanced for voting purposes so that the nominated members could determine the decision at voting time. A first decision is taken after a vote and objections are called for from the public before a second and final vote is taken after considering the views of the public. At the stage of the second vote it is possible to change the original decision to meet any valid objections received. Although the composition of the board is tripartite, the appointments are made by the minister who could also remove any member of the board, thereby bringing a serious political constraint into the unbiased functioning of the Wages Boards. A criticism often made is that the boards follow government directives and are not responsive to the need of the particular trades.

These boards determine:

- Leave: annual leave is provided on an earned basis and the maximum is 14 days leave
- Weekly rest: Most Boards have fixed a shorter working day and a full weekly holiday, usually Sunday.
- Hours of work: Eight hours day and a week of 45 hours is the standard.
- Overtime rates.

Forty Wages Boards have been set up and the Labour Department has indicated that it proposes to restructure the existing boards to provide broader coverage and also to examine what new trades, industries and services need to be covered, whilst also providing for requirements of linking wages to productivity (ILO-MLR&FE, 2005).

The Factories Ordinance 45 of 1942 prescribes conditions and rules in relation to workers employed in work connected with goods being made, altered, repaired, or animals slaughtered in pursuance of a trade or for gain. The definition of a factory has been extended quite comprehensively by Section 126 of the ordinance to cover other types of work as well.

[10] Establishments Code of Sri Lanka, FES Pub. 1989, Ch xxv.

Conventions 29, 105 and 182 have been ratified. Sri Lanka has compulsory schooling till the age of 14 years. In terms of the Factories Ordinance, a Young Person is defined as a person between the ages of 14 and 18 years and special rules apply to them. Section 77 of the ordinance is worth noting, as it states that a young person who has not attained the age of 16 years shall not remain in employment in a factory after a prescribed period not exceeding seven days, unless he is examined by the authorized factory doctor and certified as fit for employment. The law was intended to scrutinize very carefully any situation where a person between 14 and 16 years was employed. Sri Lanka has no child labour in the formal sector although there is evidence of child labour in domestic service and in the informal agricultural sector.

The law in Sri Lanka in relation to safety and health is found in the Factories Ordinance which lays down conditions to be observed in workplaces specified as 'factories'. For shops and offices the relevant provisions are contained in the Shops & Offices Act. There are also provisions found in the Maternity Benefits Ordinance which have a bearing. The Women, Children & Young Persons Act also has provisions which are concerned with safety and health, such as duration of working time.

The Industrial Disputes Act 43 of 1950 is the main legislation for building a healthy industrial relations climate by minimizing major disputes whether of rights or interests, the resolution of disputes and the enforcement of decisions. There is no distinction drawn between 'rights' and 'interests' disputes, but the manner in which each is handled is distinct, as the law could be utilized to enforce 'rights' whether they flow from a statute or agreement, whereas in relation to 'interests' the approach is to conciliate and use arbitration if necessary to bring about a settlement. The most important amendment to this Act was the setting up of the Labour Tribunals in 1957.[11] The act provides for the following:

- A system of conciliation through the Labour Department. Where conciliation ends with an agreement between the parties, a memorandum of agreement would be signed by the parties which also has legal sanctity and could be enforced. In the event of conciliation not being successful, the act provides for arbitration which may be compulsory or voluntary. A reference may also be made, where the minister so decides, to an industrial court. The award of an arbitrator or an industrial court is binding subject to the possibility of a writ application where the order is perverse or on a point of law. Where a matter has been referred to arbitration or to an industrial court, a strike is illegal. So also would be a lock-out. It is often found that a dispute which may often end in a strike is finally settled by an agreement which could take the form of a collective agreement. There is also evidence of arbitration and industrial court awards leading to subsequent agreements between parties so it could be said that the Industrial Disputes Act achieves its purpose of providing a broad framework within which parties could steer depending on the situation, and rely on the Labour Department to be in a position to use its administrative powers to provide the required relief, including prosecutions when necessary.
- Collective bargaining between workers, their unions and employers and their organizations, which culminate in agreements which are accorded legal sanctity under the act. The breach of such agreements is regarded as an offence and penalties are prescribed. The refusal to bargain with a union which has representative character (40 per cent) is an offence.[12] The Industrial Disputes Act makes it illegal for an employer to discriminate or take action against a worker on the grounds of union membership

[11] Amendment no. 62 of 1957.
[12] See Section 32A, Amendment 56 of 1999.

or other reason connected with union activities.[13] On prosecution in a magistrate's court for breach of this right, an employer could be fined. However, the Industrial Disputes Act does not apply to the 'State and Government in its capacity as employer'.[14]

- The declaration of essential services by the minister.[15] If a service is declared essential a strike or lock-out which was not preceded by 21 days' notice would be illegal. The intention appears to make this a 'cooling off' period which would also enable the minister/commissioner to intervene and resolve the dispute and possibly to refer the matter to arbitration or an industrial court if such an amicable settlement is not possible.
- A procedure for retrenchment if an employer has more than 15 employees in employment. This makes notice of retrenchment obligatory providing for conciliation and arbitration where necessary. At the end of a specific period if the arbitration was not concluded, the employer could proceed to terminate the employees. (This part is now inapplicable in relation to those covered by the Termination Act referred to below.)
- The right to seek relief from a labour tribunal for termination from service. The tribunal could reinstate an employee or order compensation and/or back wages. Where gratuity has been withheld, it could be restored. An applicant should file his application for relief within three months from date of termination, but this is to be changed shortly back to six months which was the period given earlier.[16] The tribunals now function as part of the judicial system and its officers are under the Ministry of Justice. The tribunals have an equitable jurisdiction and can disregard any agreement entered into between the parties, for example, a clause which states that the employer could dismiss the employee on payment of a month's wages would be overlooked and the tribunal would look at what is just and equitable in terms of the reasons for dismissal. The Minister of Labour could also exercise his right to refer a dispute to a labour tribunal and this provision has been used often when mass terminations have taken place in relation to strikes and collective action.[17]

The Shop & Office Employees Act 19 of 1954 covers the terms and conditions applicable to the workers covered by it. It also provides for maternity benefits in relation to females in shops and offices. The act stipulates leave, holidays, intervals, overtime and also health and comfort of employees covered. Special rules are made for the employment of women and generally a woman cannot be employed before 6 a.m. or after 8 p.m. Provision is also made for remuneration tribunals to operate, but the legal provisions have not been used for over twenty-five years and have been superseded by the setting up of a Wages Board for the retail trade.

The Employment of Women, Young Persons & Children's Act 47 of 1956 regulates the employment of children, youth and women especially in relation to hours of work. Sri Lanka has ratified Convention 106 which applies only to commerce and offices. The laws of Sri Lanka in relation to hours of work, holidays and leave are in line with the norms set by the Convention. The relevant laws in relation to hours of work and holidays are the Shop & Office Employees Act and the regulations made under the Wages Boards Ordinance by the relevant Wages Boards. There are also special provisions in relation to women, children and young persons contained in

[13] Amendment no. 56 of 1999.
[14] Section 49.
[15] See Section 32
[16] Amendment 11 of 2003 made it three months, but the Labour Ministry reports that it would be changed soon.
[17] See Section 4.

the Factories Ordinance, Shop & Office Employees Act. A young person is defined as a person who is over 14 years but under 18 years of age. Special laws apply to those between 16 and 18 years. A person between 14 and 16 cannot be employed in a day for more than nine hours, and a person who is between 16 and 18 years cannot be employed for more than for 10 hours, including overtime and any interval.

Night work for women in factories, which was prohibited earlier, is now possible in terms of Act 32 of 1984. There are specified conditions to be met, which include obtaining the consent of the worker and the Commissioner of Labour. The work should not be for more than 10 days in a month and is at 1½ times the normal rate of pay.

The Employees Provident Fund Act 15 of 1958 applies to all workers and lays down rules for contribution by employers and workers and other administrative rules. Employers contribute 12 per cent and employees 8 per cent of the monthly wage which includes any cost of living allowances and incentives. Surcharges are payable for delays in payment and remittances have to be received within a month of the day on which the wages fall due. The maximum penalty is 50 per cent and after one year of default the surcharge remains static at 50 per cent, which is a weakness in the law which needs review. The law also provides for private funds and pension schemes which are administered under rules which are approved and regulated by the commissioner.

Sri Lanka's laws in relation to social security are found in the Employees Provident Fund, Gratuity Act, The Employees Trust Fund Acts, Workmen Compensation Ordinance, the Maternity Benefits Act, and the Shop & Office Employees Act, the last two dealing with maternity benefits.

By and large, it is the organized sector alone that adheres to legal requirements. The Labour Department reports that in 1980 the number of employers contributing to the EPF was 23,744, in 1995 it was 34,853 and in 2005 rose to 56,067. The number of active accounts is a mere 2.04 million although the total number of accounts stands at 8.7 million, perhaps indicating that either there has been no proper reconciliation when employees changed job or that many have left regular employment but are under age to make claims for their balances (the minimum age to withdraw balances is 55 and 50 years respectively for men and women). Every employer is compelled to contribute to EPF, save and except those who have private provident funds and pension schemes, and it has been suggested that the evasion could be as high as 60 per cent. Inspection of the smaller employers is a difficult task in view of the fact that most employers in Sri Lanka are small or in the rural sector. However, it is also an issue of a lack of awareness of the value of a provident fund; in the smaller workplaces one finds that employees themselves opt to get cash benefits upfront rather than at the end of their service, possibly because of the social environment which still encourages children as being responsible for taking care of their parents and elders in their old age. Money taken upfront also enables employees to invest in their children, in a society which is concerned about educating the young in return for cushioning in old age.

The Termination of Employment (Special Provisions) Act 45 of 1971 controls the termination of employment on grounds which are non-disciplinary and in specified 'scheduled employments'. It applies only if there are 15 or more workers in employment in the preceding 12 months prior to the date of termination. Employees should have worked for at least 180 days in the preceding 12 months. There is now a compensation formula tied to years of service ranging from 10 months up to a maximum of 48 months terminal salary, a formula which has to be followed by the commissioner. However, he has the right after inquiry to refuse permission as well. The act covers temporary lay-off as well and no formula exists for such cases. An application made by an employer is inquired into by the commissioner following rules of natural justice

before making his order which is final and conclusive. If a termination is effected by an employer without following the act, the termination is null and void and the commissioner, on a complaint made, would order the immediate reinstatement of the employee. The application by a workman complaining about the breach of the act should be made within three months but the law is now being changed to the original period which gave the workman six months to complain.[18]

The Employees Trust Fund 46 of 1980, unlike the Employees Provident Fund, has contributions only from the employer. The contribution is 3 per cent and surcharges are payable for delay.

The Payment of Gratuity Act 12 of 1983 provides for the payment of gratuity to workers who have at least five years of service irrespective of whether they are dismissed, leave or die in service, subject to the rules that if they are dismissed for fraud or causing loss, the payment could be reduced by the extent of the loss. Only employers with 15 or more workers are covered. It should be noted that workers in establishments with less than 15 employees could still seek a payment of gratuity for services from a labour tribunal.

Many of these acts/ordinances have been amended from time to time. Some of these amendments were made as a result of court decisions which identified lacunae or pointed out difficulties in interpretation.

Who is an employer? In the current context, with outsourcing being resorted to in large measure, this is a relevant question. The issue of who could be regarded as an employer was discussed in many cases. Finally the Supreme Court in Carson Cumberbatch & Co. *vs* Nandasena[19] held that an agent would not be considered an employer unless the agent had failed to make it known that he was acting as an agent and the workman therefore considered him as the employer. It had been argued that some legislation such as the Workman's Compensation Ordinance, The Shop & Office Employees Act, The Maternity Benefits Ordinance, and the Indian Immigrant Labour Ordinance defined an employer as covering managing agents and similar persons. The court took the position that these were specific extensions which enlarged the common law view and since there was no such extension in the Industrial Disputes Act one could not read such an extension into the definition.

In the CMU *vs* The Ceylon Fertilizer Corporation[20], where a large contingent of labour was employed through a co-operative society which was on paper the employer, the courts applied the 'control' and 'integration' tests and concluded that the corporation was in fact the employer. Justice Wanasundera referred to the existence 'of a tripartite situation' and concluded on the evidence that the co-operative society acted as a conduit for the transmission of wages and there were inconsistencies between the contract for the supply of labour and the actual facts which showed a great degree of control consistent with an employment relationship. The position is that the workman must have a contract of employment whether written or implied to create an employment relationship. Labour contractors are the employers of their own labour and the economic reality test applied by the courts would render them directly liable in law as employers.[21]

[18] Amendment 12 of 2003 reduced the period to three months but is now being changed back according to the Performance Report of the Labour Ministry.
[19] 1974, 77NLR73(CA).
[20] (1985) 1 SLR 401.
[21] Free Lanka Trading Co. *vs* De Mel 79-11NLR 158.

Part 3

The Actors in the Industrial Relations System

The state administers the industrial relations in the private sector, statutory bodies and public corporations through the Ministry of Labour Relations and Foreign Employment (MLR&FE), in the public sector through the Ministry of Public Administration, and in the provincial sector through the provincial administrations. The MLR&FE has had a variety of combinations in terms of functions. At one time it also had the Social Services Department under it, at another time it had the responsibility for vocational training and education, and presently is responsible for productivity and employment generation as well. However, it could be said that the current structure reflects the desire of the government to place the ministry in the forefront of driving industrial competitiveness through a focused programme which could produce industrial harmony and encourage job creation.

In order to meet the emerging demands for various services, the staff of the ministry has gradually grown over time. Currently the staff strength is over 1,000. The ministry comprises 17 divisions at the head office level entrusted with different functions and a network of regional offices comprising 12 Zonal Deputy Commissioners Offices, 36 District Labour Offices, 19 Labour Sub-Offices, and eight District Factory Inspecting Engineers Offices to carry out activities at the regional level. Despite the war conditions, it is commendable that the district offices in the north and east continue to function and co-ordinate their activities with the ministry and central office.

The following are the main activities carried out by the ministry:

- Enforcement of labour laws and settlement of industrial disputes.
- Implementation of social security schemes.
- Monitoring occupational hygiene and prevention of industrial accidents.
- Regulating employment of persons, undertaking planning and research in the field of labour, educating social partners with a view to promoting employer–employee relations.
- Labour market information services.
- Collection, compilation and dissemination of labour statistics.
- Registration of trade unions.
- Liaison with MLR&FE in fulfilling Sri Lanka's obligations as a member of the ILO.

Divisions attached to the MLR&FE:

- Labour and Foreign Employment Division
- Employment Division
- Employment Planning Division
- Career Guidance Division
- Planning, Research and Development Division
- Administration Division
- Gender Bureau

Institutions functioning under the ministry:

- Department of Labour
- Office of the Commissioner for Workmen's Compensation
- National Productivity Secretariat
- Shrama Vasana Fund Board
- Sri Lanka Bureau of Foreign Employment
- Rekiya Piyasa (employment) Project

Divisions under the Labour Department:

- Labour Standards Division
- Enforcement Division
- Special Investigation Unit
- Industrial Relations Division
- Employees' Provident Fund Division
- Industrial Safety Division
- Occupational Hygiene Division
- Women and Children's Affairs Division
- Workers' Education Division
- Human Resource Placement Division
- Planning, Research, Training and Publication Division
- Labour Statistics Division
- Administration and Establishment Division
- Finance Division
- Library and Information Division

3.1 The Industrial Relations Division

This division is entrusted with maintaining industrial peace by minimizing labour disputes and promoting employee–employer harmony within an environment of safe and decent work with the goal of developing a 'competitive and world class' workforce, the promotion of positive work ethics, better employee–employer relations ensuring social security for employees and guaranteeing harmony in the workplace using innovative approaches. The Industrial Relations Division in maintaining industrial peace intervenes in industrial disputes throughout the country. The division takes action based on the Industrial Disputes Act, the Termination of Employment Act, Trade Unions Ordinance and the Payment of Gratuity Act.

The division is divided into several units:

- The Industrial Relations Unit

- The Termination of Employment Unit
- The Trade Unions Unit
- The Industrial Courts
- The Social Dialogue and Workplace Cooperation Unit

3.1.1 The Termination of Employment Unit

This unit inquires into applications made by employers for permission to terminate on non-disciplinary grounds or for temporary layoff. The unit also handles complaints relating to alleged breaches of the act. Recently a compensation formula has been specified by regulation.

Table 3.1 Compensation formula on termination of employment

Number of years of service	Rate: No. of month's salary for each year	Maximum no. of months salary
1-4	2.5	10
5-9	2.0	20
10-19	1.5	35
20-27	1.0	43
28-37	0.5	48

The terminal salary/wage is taken for the computation. The maximum payment is 1.25 million Sri Lankan rupees and this would especially prevent executives who are also governed by the same act from receiving more by way of compensation. This has been seen as a guideline for employers and unions for purposes of negotiating voluntary severance packages as well. The tendency is for employers to negotiate based on a slightly higher amount than the compensation formula in order to effect a speedy disposal of the issue without having to go through an inquiry by the Labour Commissioner, which generally takes time and entails compliance with all monetary terms and conditions until an order is made and complied with. Often the first phase of an inquiry is for the officer holding the inquiry to attempt to bring about a settlement, which could be in the form of minimizing the numbers involved in the retrenchment and also trying to get agreement on a compensation scheme.

3.1.2 The Social Dialogue and Workplace Cooperation Unit

This unit was established under the restructuring programme and promotes dialogue and cooperation at the workplace in an effort to prevent as well as resolve conflict. The unit's work covers:

1. Preparation of policy and position papers on social dialogue and workplace cooperation.
2. Conducting workshops on social dialogue and workplace cooperation for the benefit of workers, employers and their organizations.
3. Creating public awareness through materials on social dialogue and workplace cooperation.
4. Capacity building of the stakeholders on social dialogue and workplace cooperation.

3.1.3 The Industrial Relations Unit

The Labour Department may, when a dispute is referred to it or also on its own initiative, inquire into a dispute. Usually, the first inquiry is held in a district office but could be inquired into in the Industrial Relations Unit itself if the matter is in need of urgent attention. After inquiring into the matter, the department could, through its officers, attempt to conciliate and is empowered to make its recommendation for a settlement. If the dispute is not settled by means of conciliation, the Labour Commissioner makes his report to the minister who has the authority under the Industrial Disputes Act to refer disputes to compulsory arbitration or to an industrial court. The award of an arbitrator or industrial court is binding on the parties and a writ application to a superior court can be made only on the basis of a perverse order or one which is bad in law.

3.2 Labour Statistics Division

The main function of this division is to provide current and reliable data to planners, researchers and others who utilize such information. Collection of data has suffered a great deal with the security situation in the country and is an area where improvement is palpably required.

3.2.1 Annual Employment Survey

Manufacturing, distributing and marketing establishments, both government and private, employing five or more salaried employees are covered by this survey. The relevant information is collected through a postal questionnaire. Information regarding employment is published separately regarding the state sector and the private sector belonging to the organized aspect of the economy as a whole. The Annual Employment Survey is a separate analysis under main industries and employment categories according to sex and all administrative districts.

3.2.2 Survey on the number of hours worked and earnings

The main object of this survey is to collect information regarding general earnings and the duration of work of the employees falling under various Wages Boards. This survey is done bi-annually during the months of March and September through postal mail.

3.2.3 Preparation of Minimum Wage Index

This index is prepared for the agriculture, industries, marketing and services sectors taking into consideration the minimum salary fixed under the Wages Boards and the salary revisions done during different periods.

3.2.4 Labour inspection data

Statistical reports of the inspections carried out in the field under various labour acts and ordinances by labour officers and field officers are collected quarterly and are edited in this division. In terms of the multidisciplinary approach recently adopted, the information given to the ILO suggests that inspections have intensified and 30 per cent of new workplaces have been identified and also that the master register of workplaces has been updated.[22] However, Table 3.2 seems to indicate that in 2005 there was a drop in inspections.

[22] Committee of Experts Observations 2006.

Table 3.2 Enforcement of Labour Regulations Inspections (1995–2005)

Year	Labour Inspections Conducted		Arrears of Under Payment Revealed at Inspections	
	Under Wages Boards Ordinance No.	Under Shop and Office Employees Act (No.)	Under Wages Boards Ordinance (Rs. '000)	Under Shop and Office Employees Act (Rs. '000)
1995	8,245	12,011	11,129.4	2,268.8
1996	6,790	10,065	10,440.8	1,586.8
1997	8,113	11,664	4,547.0	2,375.8
1998	8,583	13,254	8,055.9	1,508.2
1999	11,137	13,937	7,821.0	285.2
2000	9,424	12.313	7909.6	3136.3
2001	10,812	12,266	15,235.1	839.9
2002	10,890	17,385	102094.4	1914.3
2003	16,305	21,643	61052.7	432.6
2004	16,306	26,354	61,244.1	238.7
2005	11,334	18,396	18,097.1	2,113.8

Source: Department of Labour.

Many stakeholders have valuable comments regarding their perception of the other actors and the performance of the Labour Department and MLR&FE in relation to the diverse pieces of legislation implemented by these agencies.

1. There should be regulation by the state, but only to the extent that the state itself can enforce such regulations. If we have laws which are observed more in the breach (for example, Employees' Provident Fund and Employees' Trust Fund contributions) or ones which can with a little ingenuity be evaded (for example, The Termination Act by the device of casual labour, temporary work, outsourcing of core functions and fixed term contracts) they are of no relevance and the system itself gets devalued and laws are treated with scant respect. Further, the laws should provide a level playing field and lack of inspection or enforcement against small business results in unfair competition with larger businesses to their detriment. This is especially so in the service industry. It is interesting to see small businesses competing against large businesses unfairly and growing exponentially to sometimes supplant the former giants in that field.
2. Facilitation of relations is necessary. The facilitation must be by officers who change their image from that of inspectors or enforcers to one of educators for the sake of establishing a society with respect for human dignity and personal property. This is the new role which has been assumed by the Labour Department in terms of its future directions (ILO-MLR&FE, 2005). The competence of the officers both in terms of their knowledge of labour relations as well as their soft skills must be upgraded. The common feeling is that the level of competence is low due to lack of exposure to the realities of a working environment.
3. Officers need to be proactive to prevent disputes and encourage good management and worker response. The need for quality in recruitment, good conditions of service and recognition of merit are issues to be addressed urgently. In the past, the Department of Labour was considered a closed department, that is, officers would remain in the department as it was considered a specialized service, which also made it possible to ensure that promotions were given strictly on the basis of knowledge of the subject. Industrial relations is not a subject which can be learnt from books and hands-on experience is essential to produce competent officers. Commissioners of labour who have had long service in the department

were found to be more pragmatic in their approach, more approachable, persuasive and bold in their decision-making. The current practice of bringing outsiders to the topmost positions places a new entrant in a position where he cannot comprehend the respective interests of the parties and a steep learning curve confronts him. Similarly, it discourages those who are in the department and are genuinely interested in making a career in it.

4. A fourth criticism is in relation to the delays encountered in the department. The expectation is that an issue submitted to the department will be dealt with speedily and parties are disillusioned and resort to self-help when delays occur. The fact is that fewer disputes are referred to the department for intervention.

The minister is also empowered to declare essential services in terms of the Act. However, by and large, one could say that the ministry is responsible only for policy formulation and monitoring of compliance with international conventions, whilst the operation and delivery of the services under the various laws is the direct responsibility of the Labour Department. In actual terms however, when there is a politically sensitive issue such as a dispute in the plantations or banks, the minister does attempt to use his good offices to resolve the dispute.

3.3. Trade unions

Most trade unions are affiliated to a federation. A union can be formed with seven members and this causes many issues as there is always a temptation for fragmentation of unions when disagreements take place between leaders.

The All Ceylon Trade Union Congress was formed in 1928 and in 1933 the leadership changed hands. Robert Kearney (1971) states that the Marxist approach came in with this change. Party leaders became trade union leaders and, as a matter of course, the union was coloured by the beliefs of the party and effective political control was exercised. He goes on to state: 'As is often the case, in regard to Ceylon Trade Unionism, the practices established by the Marxists were generally followed by the other parties that became involved in trade unionism subsequently' (Kearney, 1971, p. 85). However, in the case of the two unions affiliated to the United National Party and the Sri Lanka Freedom Party (the two dominant political parties from independence to date), the control of the union by the respective party was overt and more dominant than in the case of the others. This position has changed since the 1980s where both the political parties have pursued more or less a common approach in economic development which depended on the efficiency of the private sector, and which in turn required an acceptance of the need to focus more on the enterprise and its competitiveness.

Wesumperuma (1982) comments that socialist leaders of the late 1930s turned to trade unionism as the main machinery to develop mass support for their parties. However, the reality is that by at least the 1970s it was clear that union membership had little to do with political affiliation and parties could not count on trade union members as a voter base, except in the plantation sector. This, one could say, was a healthy development with workers looking more to a union to resolve their employment related issues and therefore showing more concern for the workplace. Trade union leaders in the private sector have changed their original attitude of not permitting direct negotiations and dialogue at the workplace between branch committees and management, thereby helping to bring about a closer relationship at the workplace.

K.M. De Silva (2004) states that in the period 1956–64 and again in 1970–77 there was a virtual second transfer of power from the 'English-speaking elite' who had ruled the country to the 'vernacular-speaking elite'. This is pertinent to our discussion as this led to the resolution of some of the structural issues relating to unions and their democracy. There has been a significant

shift in the power balance from the 'parent union' at the national level to the 'branch union' at the enterprise level in the last two decades, which could be attributed to the use of Sinhala as the language of bargaining/dialogue and also due to the enhanced level of education of workers. E.F.G. Amerasinghe (1998) states 'Employees at the enterprise level are demanding more information from their employers. It is quite evident that the profile of the workforce has changed dramatically and the branch union official is now a match in terms of intellectual ability to many of their managers.' Table 3.3 shows trade union details for a period of ten years. The table unfortunately does not differentiate between public sector and private sector unions. However, this information used to be provided by the government and in 1975 the proportion was 975 public sector unions (62 per cent) out of a total of 1,568 unions. It would appear that there are about 600 unions active at the moment in the public sector (Amerasinghe and Ranugge, 2007).

Table 3.3 Trade unions in Sri Lanka, 1995–2005

Year	No. of unions registered during the year	No. of unions cancelled and dissolved during the year	No. of unions functioning at the end of the year	Total membership
1995	243	110	1,364	1,441,149
1996	101	37	1,428	1,264,641
1997	136	96	1,465	883,107
1998	111	14	1,581	799,821
1999	70	120	1,532	693,513
2001	147	15	51,580	433,162
2002	154	198	1,513	640,673
2003	140	130	1,523	413,485
2004	172	55	15,93	583,323
2005	129	11	1,735	385,466

Note: Fluctuation in total membership is due to poor reporting by the unions.

Source: Department of Labour

The Labour Ministry reports that annual returns are furnished by a little over 400 unions so it is difficult to make a correct assessment of how many unions are in existence in practical terms of being operative. In 1956 there were 178 trade unions registered and in 1970 the number was 1,964, a phenomenal growth. It is also interesting to note that in 1971 it dropped by 451 unions to 1,513. During this period there was a growth in trade unionism and the introduction of much of the existing labour legislation which regulates employment and industrial relations. Table 3.3 indicates that in 2005 there were 1,735 unions with 385,466 members—the highest number of unions in the 10-year period. However, the number of members in 1995 and 1996 were 1.4 million and 1.2 million respectively, indicating a downturn in membership with a higher number of unions. The Labour Department has not updated its data in relation to unions that have sent their annual returns and the *Central Bank Report* for 2006 shows that there is no available relevant data beyond 2002. In this year the number of unions was 407; in 2001 only 398 unions furnished their mandatory returns. It is therefore difficult to estimate the actual number of unions which are operative and one could surmise that it could be as low as 800 (double the number reported). The report also shows that between 1975 and 2002 the highest number of annual returns was 675 in 1975.

In May 2003 the Employers' Federation of Ceylon (EFC) published its report on a survey done among its members (table 3.4).

Table 3.4 Branches and membership of trade unions

Union	1997		2002	
	Branches	Members	Branches	Members
Ceylon Mercantile Industrial & General Workers Union (CMU)*	123	12,738	88	8,828
Inter Companies Employees Union (ICEU)	0	0	35	6,977
Sri Lanka Nidahas Sevaka Sangamaya (SLNSS)	42	8,431	16	6,101
Jathika Sevaka Sangamaya (JSS)	20	4,318	13	5,821
Ceylon Federation of Trade Unions (CFTU)	34	3,615	15	2,636
All Ceylon Commercial & Industrial Workers Union (ACCIWU)	23	2,026	16	1,192
Commercial & Industrial Workers Union (CIWU)	13	2,257	6	2,541
Ceylon Bank Employees Union (CBEU)*	11	5,160	14	23,012
Total	266	38,545	203	57,108

* The CMU and CBEU are not affiliated to any political party.

There is another survey which commenced in 2006, but this has not been concluded on account of lack of interest on part of the members, which perhaps also shows a lack of an issue regarding unionization. In 1997, 100 per cent of the members responded (405 members), but in 2002 only 382 members responded despite EFC membership having grown to around 450. The Ceylon Bank Employees Union (CBEU) has a virtual monopoly in the banking sector and has shown growth. All the other unions, barring the Inter Companies Employees Union (ICEU) which is the affiliate of the JVP, have lost ground. The total number of branch unions (which really is the key indicator because it indicates the number of unionized workplaces) shows a significant decline, especially given the increase in members of the EFC. It could be said that those who had unions responded to the survey and that those who ignored it did so because they had no union. If one leaves out the CBEU, there has been a slight increase in membership, with fewer branches, signifying the expansion of some of the companies who had unions. Generally, when unions exist and have been recognized, employees are persuaded to join on confirmation of employment.

Some supporting statistics worth attention are:

- The 382 members of the EFC who responded had 129,403 employees of whom 67,370 were in unions (the discrepancy in the total given in table 3.4 and the total here is due to the existence of some very small unions whose statistics are not found in the table. These small unions are essentially in private companies and include in-house unions as well).
- Seven of the 382 were from the public sector and had 29,300 employees, of whom 23,000 were unionized. (This means that roughly 40 per cent of the total came from seven members.)

The plantation sector was analyzed separately in the study and all the 23 companies involved responded. They employ around 300,000 persons, inclusive of about 45,000 casual workers. Of the total number (288,000) employed, 199,414 were affiliated to a trade unions in

1997, compared to 187,596 in 2002. There has thus been no significant change in the plantations. The position in relation staff unions in the plantations is also the same.[23]

The trade unions have not been successful in organizing workers within the Free Trade Zones and Export Processing Zones (EPZs) although there are a few unions active within these zones. There are also a few collective agreements in these establishments. In July 1994 the Peoples Alliance came to power with a manifesto to promulgate a Workers Charter which would guarantee trade union rights. In September 1995 the Workers Charter was announced. The significance of the charter to the unions was that they believed that it would open the doors for them to enlist workers in the EPZs through a law for the compulsory recognition of trade unions. Just before and after the elections there was much agitation by workers to set up unions (E.F.G. Amerasinghe, 1994a). In 1994 there were 144 strikes in the industrial/commercial sector, the highest for a thirty year period (Ibid.). There were many strikes in establishments which did not have recognized unions. It could be said that the amendments to the Industrial Disputes Act in 1999, which compelled employers to recognize unions, came about as a result of the Workers Charter.[24]

Guidelines are issued by the BOI for factories. They are obliged to have employee councils, which was originally seen as a method of giving workers a collective voice as a substitute to a trade union (BOI, 2002). However, as will be observed, the BOI is now clear about its position that if there is a union which has recognition, then the employer must deal with it (BOI, 2003). The Free Trade Zone Workers Union has been active in pursuing the rights of workers in the Free Trade Zones. The Solidarity Centre (2003) has stated that in practice the 1999 IDA amendment has not had the desired effect of preventing discrimination against union activists, especially in the EPZs.

3.3.1 Public sector

Obviously, the influence of politically affiliated unions is strong in this sector. If a union has an affiliation to the government in power, the tendency for increased membership for the duration of the government is inevitable. The unions are structured according to departments, units, class and category of service due to the restrictions placed on unions by the Trade Unions Ordinance.[25] This has led to a large number of unions being formed in the public sector. There are also 13 federations which include representation from all the key political parties. The Ministry of Public Administration has a dialogue with these federations as well as with 48 unions (Amerasinghe and Ranugge, 2007).

Kearney (1971) gives a valid reason for the political affiliation of unions in Sri Lanka when he opines that 'the heavy partisan commitment of Ceylonese trade unions has involved both gains and losses to the trade union movement. While some unions might serve their members occupational interests with more fidelity or vigour if they were free of partisan ties, many others would cease to exist or would be reduced to impotence without party support and assistance.'

3.3.2 Semi-government institutions

In the statutory bodies and public corporations, unionization is influenced by political considerations, taking the lead from the fact that management also has a political flavour and decisions are taken to support political interests. Recruitment is mostly on a political basis and

[23] See EFC Paper no. 14/2003 dated 21 May 2003.
[24] Act 56 of 1999.
[25] See Section 21 of the Trade Unions Ordinance.

with every change of government the political party in power usually controls the major union. The other unions would survive with less power, but often with enough support to be a major deterrent to change. In some instances it is seen that a small militant trade union can give leadership to a cause which a major union cannot espouse because of its affiliation to the government. In order to maintain its membership and to avoid criticism by members, the major union may permit its members to join in trade union action along with the small union.

Joint fronts have been forged on an ad hoc basis in order to pursue specific causes. There is also the National Association for Trade Union Research & Education (NATURE) which is registered as a non-profit company under the Companies Act and which unifies private sector and public sector unions belonging to diverse political opinions ostensibly for the common purpose of research and education. It has achieved much more than this basic objective in terms of facilitating a meeting of minds.

3.4 Employers and their organizations

3.4.1 Public service

The public service consists of the employees of the central government recruited by the Public Service Commission, that is, all island, combined and technical services (other appointments such as secretaries and heads are made by the Cabinet); employees recruited by the Provincial Public Service Commissions to serve in the provincial administrations; and employees of the 'para-statals', that is, public corporations and statutory bodies. As per the *Central Bank Report* 2006 (Table 4.11), there are 887,674 employees in central government services and 258,049 in the semi-government services, making a total of 1,145,723 million in the whole public service. It is also interesting that the executive/professional cadre of the central government service is 35.6 per cent of the total employees. There is nothing to prevent public sector bodies from joining employers' federations and some statutory bodies and government organizations have now become members.

3.4.2 Management and administration

Article 54 of the constitution mandates the President to appoint key public servants such as Supreme Court judges, the attorney general, heads of the armed forces and police, and secretaries of ministries. Article 55 of the constitution states that, subject to the constitution, the appointment, transfer, dismissal and disciplinary control of public officers is vested in the Cabinet of Ministers. This position was changed by the 17th amendment to the constitution, and these powers are now with the Public Service Commission. The powers relating to the heads of departments are still vested with the Cabinet of Ministers and the Cabinet of Ministers exercises such powers after ascertaining the views of the Public Service Commission.

The grading and designation of posts, assignment of salary scales and rates of pay and wages within the existing salary structure of the public service, the determination of allowances, fees and all other emoluments and the general terms and conditions of service are the functions of the Director of Establishments whose approval should be obtained, but it would appear that his powers have been eroded and many haphazard decisions have been taken much to the displeasure of the unions (Amerasinghe and Ranugge, 2007).

Article 57 provides for the appointment of committees of the Public Service Commission if the Cabinet so directs, and such committees or the Public Service Commission may in turn delegate powers of appointment, transfer, dismissal or disciplinary control of any category of public officer to a public officer. The sub-section to this section enables an appeal to the Public

Service Commission or committee by a public officer adversely affected by an order of dismissal, transfer or disciplinary control handed down by the officer to whom the power was delegated.

The Ministry of Public Administration is responsible for laying down policy with regard to the administration and management of personnel and there is a human resource management unit attached to it. However, it would appear that its ability to control the activities and decisions taken by other ministries is questionable, leading to indiscriminate decisions being taken in relation to recruitment, grading, promotions, etc.

3.4.3 Public corporations and statutory bodies

Each corporation or statutory institution has a board which is appointed by the minister responsible for the subject. In some institutions, the minister in charge has to make the appointments in consultation with other ministers (for example, the Industrial Development Board). A few worker directors have been appointed to boards, the first person so appointed having also served as chairman of the Leather Corporation.

The board is responsible for the key officials of the institution and for the exercise of power, control, supervision and administration of its affairs. The chief executive could hold the title of general manager, secretary general, etc.

The employees of these institutions are covered by labour legislation such as the Industrial Disputes Act similar to workers in the private sector. One exception is the Termination of Employment (Special Provisions) Act which specifically excludes them. However, in reality, the Labour Department does not intervene in any labour related issue in these institutions without the request of the minister under whom the institution functions. An exception is the right of an employee who has been dismissed to access the labour tribunals with complete freedom.

The process of privatization was virtually halted in 2002 with the current government declaring that it would not carry on with the process which had drastically reduced government involvement in industry and services. However, the government has created the State Enterprises Management Advisory (SEMA) to revamp these organizations and render them more efficient. The Central Bank in its 2006 report (Chapter 1) has pointed out that the performance of the state owned enterprises is critical to the goals of the government and that key services such as power, petroleum (80 per cent of petroleum is imported), national water supply and drainage, and railways were in the hands of state-owned enterprises. In addition 50 per cent of the banking services and 30 per cent of the bus transport was controlled by such bodies. The Central Bank notes that non-privatization of state-owned enterprises casts a burden on the managements of these institutions to become cost effective and to give the state an adequate return on its investment.

3.4.4 Private sector

Employers in the private sector can be divided into different groups.

Majority are members of the EFC which was brought about as a counter-measure to the All Ceylon Trade Union Congress (ACTUC) created by A.E. Gunasinghe. The EFC was the first registered trade union. The EFC was conceived essentially by the British who were already members of the Ceylon Chamber of Commerce but who understood the value of a specialist organization for industrial relations. They were acquainted with the benefits of structured industrial relations and imposed on the new organization the maintenance of industrial peace as a

principal activity through the use of a framework agreement with the ACTUC on dispute management and settlement. The EFC has around 500 members and about 50 per cent of the companies quoted on the Colombo Stock Exchange are also part of the EFC. Approximately 40 per cent of its members have trade unions in their workplaces. In recent times even government-owned establishments have sought membership. Most of the collective bargaining in the country is handled by the EFC which has a strong industrial relations service. (In 2006 the EFC has reported more collective agreements than the national figure given by the Labour Department.) There are also a reasonably large number of corporate entities who are in chambers and associations, many of whom are affiliated to the EFC. The members of these organizations are anxious to comply with the law which, in most cases, is seen as a strategy to encourage the loyalty of their employees rather than a legal necessity. Many chambers of commerce exist, but their mandate does not cover bargaining with unions, so technically only the EFC is accredited as an employers' organization.

Employers registered with the BOI are also a very significant group. Very few of them are members of the EFC, but they belong to their own associations, some according to their exclusive trade interests and also according to their operating zones. As far as terms and conditions within the Free Trade Zones are concerned, it could be said that terms and conditions are usually higher than the minimum laid down by the various statutes. Wages are usually in accordance with recommendations made by the BOI and the rates are reviewed periodically to ensure that they are substantially higher than the minimum. Guidelines are provided by the Industrial Relations Unit within the BOI (BOI, 2002).

The *Labour Standards & Employment Relations Manual* of the BOI (2003) is a comprehensive manual which was published to satisfy concerned parties who alleged that the BOI companies were not regulated adequately and there were certain areas of industrial relations which left much to be desired. Declaring that the BOI promotes the principles of the global compact, the manual specifically deals with the Core Labour Standards as being part of the obligations of its member enterprises. Trade union rights and collective bargaining are set out.

The success with the concept of Free Trade Zones in relation to setting up factories which are labour intensive led to an expansion which went outside the physical boundaries of the restricted zones with the BOI being created to replace the Greater Colombo Economic Commission. The expansion of the BOI led to the possibility of increasing employment opportunities for rural youth and also to develop support services spurring overall development of these areas. The 200 Garment Factory Programme in 1992 was a watershed in opening up opportunities for rural youth to access employment in industry (Kelegama and Wijesiri, 2004).

Industrial relations practices are not uniform in Free Trade Zone and non-Free Trade Zone BOI companies. This is because access for unions to workplaces outside the zones is easier. Within the zones there are security restrictions which prevent outsiders from having free access. The workers in enterprises outside the zones are more likely to establish trade unions. In these BOI companies outside the zones, collective bargaining is likely to be as in traditional companies. Collective bargaining is difficult for these employers, unless it is on the basis of work improvement and sharing of gains thereby, as the rates are determined in advance and forward contracts inhibit any improvement in wages. It is also a concern that in these export-oriented companies, the execution of orders on time is crucial to their survival. In recognition of this fact, the BOI annually, in consultation with employers, decides on a wage rate which is usually around 10 per cent higher than the national standard.

The introduction of the market economy saw the privatization of many state corporations. The new managements of privatized ventures identified as their first and foremost task the bringing

about of discipline and the introduction of satisfactory norms for performance. Usually, these organizations were low in efficiency and quality of performance. There are several trade unions in such companies, almost all of which are politically affiliated. In other words, the main union would, as a rule, be loyal to the government in power but would find it difficult to control its members who usually would be anxious to show their solidarity with their co-workers who belonged to anti-government unions. Therefore, management suffers all the worst consequences of a pluralistic trade union structure. The management, which prior to privatization has been conditioned by political thinking, now finds that to divorce itself from politics is difficult, especially considering the fact that the government still feels it has to continue to play the role of mid-wife to see that the new-born company does not do anything which would embarrass it. In many of these privatized ventures the new managements were bound by the sale agreements, undertaking there would be no involuntary retrenchment. The attitude, therefore, of the employer is to still use the government as a facilitator and not push for a totally new regime within the enterprise until such time as a culture change has taken hold. Such changes have now been experienced and collective bargaining takes place successfully in privatized organizations. In the course of the EFC/Emsolve/ILO (2006) study, one of these enterprises was studied in depth and it was discovered that the privatization had been relatively smooth because the management had been prepared to share all relevant information and also grant share ownership to employees.

The fourth category of employers could be regarded as small and medium employers who do not belong to associations or organizations and operate on the basis of being unregulated. Many of them may even be evading state taxes and are likely to deprive workers of their rights under the law. In fairness to them, there could also be lack of management competence and understanding of their basic legal obligations, with many of them possibly having started as being self-employed, building up their establishments through their own labour and dedication. Some of these employers could be paternalistic in their attitude and helpful to workers when they are in need, but may still resist fulfilling their obligations under the law especially when business is slack and cash flows are constrained. Such employers also feel that it is an affront to them personally when workers unionize.

Employers who contribute to the fund are hardly representative of the large number of employers who do business in Sri Lanka. This is a phenomenon which should be seen in relation to many statutes where businesses look to optimize their cash flows and could very well accept the payment of surcharges as financially more acceptable than being on time with their EPF payments, especially when business is slack. The large majority of employers who are not organized into federations, chambers and associations or are not registered with the BOI operate very much in uncharted territory, with little or no inspection. They resist unions and consider collective bargaining an unwarranted erosion of their right to manage. For many small employers a return on their investment implies depriving the state of taxes and employees of their legitimate benefits. They would be quick to justify their stand on the basis that employment of some kind was better than none and in a situation of oversupply of unskilled people in the labour market one could find job takers easily. It is of course evident that in most of these establishments employees are very unlikely to take collective action as they fear the employer may not continue his business if confronted with disputes, as has been known to happen. A study revealed that many employers prefer to opt for a union free environment, but have now shifted their focus from 'union avoidance' to good HR strategies which keep even unions contented, as there is better communication and a systematic approach to problem solving (EFC/Emsolve/ILO, 2006).

3.5 Industrial relations

3.5.1 Public sector

By and large the dominant reasons for change have been political. Adjustment of wages, which in a developing country is the critical factor, has been driven by a 'distinct cost of living approach' (Rodrigo, 1990). Terms and conditions of employment are governed by the Establishments Code and by financial and administrative circulars issued from time to time. Although there is a policy which can be identified in these documents, there have been many discrepancies in their application and complaints of maladministration also abound.

The weaknesses in the mechanisms for resolution of disputes has already been highlighted and the principal shortcoming is that some ministries act in an ad hoc manner purely for the purpose of resolving immediate solutions, based on the importance of the group sponsoring the issue, failing to see the overall impact of changing conditions for a select few whose bargaining power is strong (Amerasinghe and Ranugge, 2007). The lack of established mechanisms for dialogue and the absence of processes through which collective issues can be discussed, mediated on, or otherwise resolved has been the cause of many strikes. An effort is being made to address these issues (Ibid.). The President issued a circular on 19 January 2006 to various ministries and ordered the immediate introduction of special bodies for the purpose of employee involvement and review in all ministries, statutory bodies and public corporations. The objectives included the enhancement of productivity and efficiency, proper resource utilization, eradication of corruption, improvement of employee–employer relations, obtaining cooperation in management and decision making, employee development and reviewing performance. It is foreseen that the minister or the head of a department or corporation, as appropriate, would head the body and there should be a representative of each and every trade union from that ministry/department/corporation. These bodies are overseen by a Monitoring Unit in the Presidential Secretariat. However, these bodies do not seem to be active as yet in most ministries, reflecting a perennial problem in the public sector, namely, commitment to clear national goals as reflected in policy statements.

3.5.2 Semi-government institutions

With regard to industrial relations in the semi-government sector, the complex situation in these organizations is best summed up by the report of the Rajapakse Committee (A.R.B. Amerasinghe, 1971) which states: 'By and large, recruitment…is haphazard, promotions go largely by favour, and transfers are made often under various pressures. There is no set grievance procedure and the climate is ripe for poor morale.'

A.R.B. Amerasinghe (1971, p. 243), who cites many instances of trade union action in corporations, states: 'Labour disputes, as corporation employees know, have political overtones of a kind seldom found in the old private companies, since political influence through ministers and Members of Parliament frequently compels the board to act under pressure.'

Employee councils were set up in these corporations by Act 32 of 1979, but never achieved the results expected of bringing about worker participation in management, with unions never really seeing the councils as anything more than an attempt to undermine them, as they already had adequate power through political affiliation.

3.5.3 Private sector

Industrial relations have traditionally been very adversarial in the private sector. This is perhaps understandable as the government has always attempted to show that it controls the manner in which workers have to be treated by employers, intervening both in the form of legislation controlling terms and conditions of work and also by taking the lead in relation to fixing wages.[26] The possible settlement of disputes by compulsory arbitration also demonstrates this control. After 1977, which was a watershed for the economy, and the insistence of the state that the private sector was the engine of growth, many changes took place to encourage investment by the private sector but there was little change in labour policy or its administration, except in the enclaves created as Free Trade Zones where, although the law was the same, there was a measure of control over discipline both on the side of employers and workers with speedy resolution of disputes being aided by a specialized industrial relations unit within the BOI .

The rigidity of the law led to many employers seeking closer relations with workers in order to attain levels of competitiveness so necessary for their survival. Some relationships helped workers enjoy better benefits since management wished to motivate more efficiency through reward schemes. Others induced permanent workers to look after themselves and ignore issues which should have concerned them, such as the use of labour contractors and casual workers for regular work on the basis that if the permanent workforce was kept thin they could enjoy greater monetary rewards.

The current status of industrial relations in the private sector can be summarized as follows:

- Industrial relations is clearly a matter for the enterprise and there is growing awareness that unions and employers have to work out their solutions at the workplace through collective bargaining, dialogue or confrontation. (The latter they all realize is self-defeating in a competitive world.) (E.F.G. Amerasinghe, 1998).
- Unions are empowering their leaders at enterprise level to deal with issues as they surface but in organizations which have not yet seen change from a hierarchical arrangement of management to a more inclusive one, the parent union leaders need to come into the equation to put right the balance and help workers address their issues.
- Employers are using good HR practices to improve relations with workers in general and accept the benefit of systems and processes to convince workers of their fairness (EFC/Emsolve/ILO, 2006).
- Where there are no unions, employers are anxious to use good communication mechanisms, human resource management and development practices to motivate workers to cooperate and assist in making the organization viable for mutual gain.

A recent study (EFC/Emsolve/ILO, 2006) in dealing with the relevance and impact of the ownership structure on the human relations systems made the following valuable observations based on empirical evidence:

- It is a myth that multinationals provide the best HR policies and practices since one should not confuse 'monetary terms and conditions' with 'HR policy and

[26] The most recent was the intervention in a wage dispute by the President in October 2007.

practice'. It is important to look closely at conditions other than monetary based conditions and look beyond it to issues of esteem and self-actualization, as well as the practices adopted to achieve an acceptable 'intrinsic motivational system'. It was found that good HR regimes exist in indigenous enterprises, some of which are more culturally sensitive and therefore sustainable. One such area is the accessibility of the virtual owner or proprietor at all times.

- It is a weak assumption that public companies have more accountability in relation to labour conditions than private companies. In public companies the distance between shareholders and employees results in less empathy and understanding. It is stated that 'even socially responsible investors are influenced less by internal social measures than by ones external to the enterprise, e.g., the environment.'

In rural areas, more than levels of pay, the feature which is most attractive is the responsibility that the employer assumes for the employee's welfare and for the employee's family.

The government has now acknowledged the need to step back and be a facilitator as opposed to policing compliance with the laws. The Ministry of Labour Relations & Foreign Employment in its policy document *Future Directions* declares that 'Sri Lanka must improve its overall economic performance by increasing its employment opportunities, raising productivity and increasing its international competitiveness' (p. 5). The statement sets out a new approach based on dialogue, bargaining and voluntary compliance.

A study of the current situation in a cross-section of companies, which also included privatized ventures, highlighted the strategies adopted by some of the more responsible private organizations in building a healthy industrial relations climate (EFC/Emsolve/ILO, 2006). The conclusions included the following:

- The presence of unions could be positive if they focus on issues of workers at the enterprise and what is best for them.
- In 'healthy' organizations the CEO is personally interested in industrial relations and HR issues and gives good leadership. In family businesses it was seen that the involvement of a family member in industrial relations and HR issues is expected by the workers.
- Proper induction processes are key to integrating a worker and making him understand his/her place and responsibilities as well as rights.
- Processes help individuals as well as groups have regular dialogue with managers at all levels. These help resolve day to day issues which may otherwise escalate into major disputes.
- Fair and effective systems to determine terms and conditions, and to resolve grievances and disputes build relationships which are essential to overcoming mutual distrust.
- Greater flexibility in terms of skills is essential, so that workers have better employability prospects and careers.

- There is need to invest in training managers, supervisors and workers to provide them with the competence to resolve their problems through a process of reasoning and an attitude of empathy.

The industrial relations activities within workplaces registered with the BOI are closely monitored by the Industrial Relations Department of the BOI which takes steps, when necessary, to resolve any dispute which arises. Terms and conditions of employment are prescribed by the BOI (BOI, 2002). Two mass terminations in the 1990s (which unfortunately were based on emergency regulations brought in due to the war and civil disturbances in the country) engaged the attention of the US government which threatened to remove the General System of Preference (GSP) status of the nation unless the Sri Lankan government refrained from using emergency regulations to outlaw strikes which were not a threat to the security of the state. The government took steps immediately to remove the offending emergency regulations. This incident also opened the eyes of the authorities to the actual extent to which emergency powers could be used to restrict fundamental rights of workers. Recently, however, the Supreme Court intervened and gave temporary relief to the Joint Apparel Exporters Federation to enable their exports to go on at the cost of restricting trade union action taken by port workers on an issue with their own employer, the Sri Lanka Ports Authority.[27]

Garment factories which are dominated by women workers have a significantly different culture. The young females who are recruited are usually less educated than the males entering the workforce, although it is not necessarily so, as some factories report that a reason for their high turnover of workers is that some of the workers join whilst awaiting their advanced level results and leave when they secure admission to a university. In the case of males entering the industry, companies usually insist on a minimum of the GCE Ordinary level examination. For females, this requirement does not usually exist and the garment factories are usually short of labour. One could perhaps say that these females, if they did not have the opportunity of obtaining work in garment factories, would probably have carried on their traditional roles in the village, of motherhood and assisting in agriculture. The labour turnover in garment factories is high and workers tend to leave after marriage to return to their traditional roles of housewife and motherhood (Kelegama and Wijesiri, 2004). Most garment factory workers come from rural areas and those working in the zones suffer from cultural disorientation. They have problems trying to grapple with the trauma caused, which make them unlikely to be much concerned about joining others in bargaining for better terms and conditions, but nevertheless there is a certain amount of dissatisfaction especially in relation to work targets (Ibid.). Often when they cannot cope they leave and return to their villages. The garment factories in rural areas have been a very welcome change socially, and more investors could be enticed to move into rural areas if infrastructure is improved. This too is being addressed through the setting up of industrial parks.

3.5.4. Cultural issues

The EFC and ILO conducted a cross-cultural management survey in the latter part of 1997. The survey covered 20 companies and some interesting insights were provided.

- Many employers are introducing in-house bulletins, news sheets, etc., which go direct to employees in addition to giving information directly to unions in order to avoid miscommunication.
- Workers tended to be group oriented and not individualistic in decision making. A similar percentage felt that 'ego' was a problem for workers, leading to the

[27] SC FR 248/2006 JAAF vs Sri Lanka Ports Authority. The order was an interim order.

conclusion that working as a group provides the security of preserving one's dignity and saving face. Individualism may expose them to the ridicule of their peers.

- Workers are disciplined and take pride in their work.
- Union leaders favoured dialogue. In the companies surveyed the flow of regular information is reported to be as high as 90 per cent and 85 per cent have grievance procedures in place.
- Ninety per cent of the respondents indicated that workers were happy dealing with expatriate managers. In one company there was evidence to indicate that the initial reaction had been negative but with time a cooperative spirit emerged and attitudes changed.

The overall picture of the private sector and its relations is heartening, with more and more enterprises realizing that merely evading legal intervention and prosecution is not helpful in the long run if they want to be successful. Most enterprises accept the need to have a credible HR policy to retain and motivate workers.

However, in order to be competitive there is a tendency, even among the better employers, to look for measures such as outsourcing which could help give an edge to their organizations. Permanent workers and their unions are quite happy to ignore the implications of these arrangements as they focus only on their own terms and conditions, and at times even encourage the outsourcing of menial tasks. Good employers are paying attention to responsible outsourcing and supply chains, especially where they have to deal with buyers abroad. Concerns continue to exist where outsourcing is done at the cost of workers being compelled to work in violation of minimum standards set.

Part 4

Wages

The erosion of real wages is quite striking. The Minimum Wage Rate Index is given in Table 4.1.

Table 4.1 Minimum Wage Rate Index numbers (for workers in Wages Boards trades)
(1978 December = 100)

Period**		Workers in agriculture**		Workers in industry and commerce**		Workers in services**		Workers in Wages Boards trade**	
		Min. wage rate index	Real wage rate wage	Min. wage rate index	Real wage rate wage	Min. wage rate index	Real wage rate wage	Min. wage rate index	Real wage rate wage
1993		103.7	136.6	528.7	89.8	365.8	67.2	685.7	116.6
1994		821.4	128.8	555.8	87.2	431.4	67.6	712.3	111.7
1995		830.9	121.1	651.6	94.8	656.7	66.5	740.3	107.8
1996		907.9	113.9	682.8	85.9	559.7	61.3	801.7	100.7
1997		971.8	114.4	710.8	81.4	487.2	55.9	849.1	97.3
1998		1097.7	115.0	807.7	84.6	506.4	53.0	953.3	99.9
1999		1115.9	111.7	820.2	83.0	559.7	56.0	977.6	97.8
2000		1142.7	107.7	857.2	80.8	657.6	52.8	1004.4	94.0
2001		1126.5	97.1	919.6	75.9	678.0	54.3	1049.3	86.6
2002		1369.6	95.6	986.5	74.4	678.0	51.1	1126.5	84.9
2003		1382.3	98.0	1509.4	71.6	750.9	48.1	1205.2	85.4
2004		1397.7	92.2	1044.1	65.9	779.7	49.5	1233.1	81.3
2005		1527.3	90.1	1078.4	63.7	799.7	46.0	1329.7	78.5
2006		1567.1	81.6	1084.8	56.5	799.7	40.6	1357.2	70.7
2006	January	1544.1	85.9	1084.8	60.3	799.7	43.4	1341.9	94.6
2006	February	1544.1	88.1	1084.8	60.8	799.7	43.5	1341.9	74.8
2006	March	1544.1	87.8	1084.8	61.7	799.7	44.3	1341.9	74.3
2006	April	1574.5	87.2	1084.8	60.1	799.7	43.2	1362.1	75.4
2006	May	1574.6	82.8	1084.8	57.0	799.7	41.0	1362.1	71.6
2006	June	1574.7	79.7	1084.8	54.9	799.7	39.4	1362.2	68.9
2006	July	1574.9	80.7	1084.8	55.6	799.7	39.9	1362.3	69.8
2006	August	1574.8	81.0	1084.8	55.8	799.7	40.1	1362.3	70.1
2006	September	1574.8	80.2	1084.8	55.2	799.7	39.7	1362.3	69.4
2006	October	1574.8	78.7	1084.8	54.2	799.7	39.0	1362.3	68.1
2006	November	1574.9	75.4	1084.8	51.9	799.7	37.3	1362.3	65.2
2006	December	1575.0	73.7	1155.1	54.1	799.7	36.5	1375.3	64.4

Minimum Wage Rates Index Numbers, 1978 December = 100 (for workers in Wages Boards trades)

* The index numbers are calculated on fixed weights based on the numbers employed as at 31 December 1978. The wage rates used in the calculation of index numbers are minimum wages for different trades fixed by the Wages Boards.

** Annual figures shown are average of monthly figures.

A. The index refers to wage rates of tea growing and manufacturing, rubber growing and manufacturing, coconut, cocoa, cardamom and pepper growing trades only.

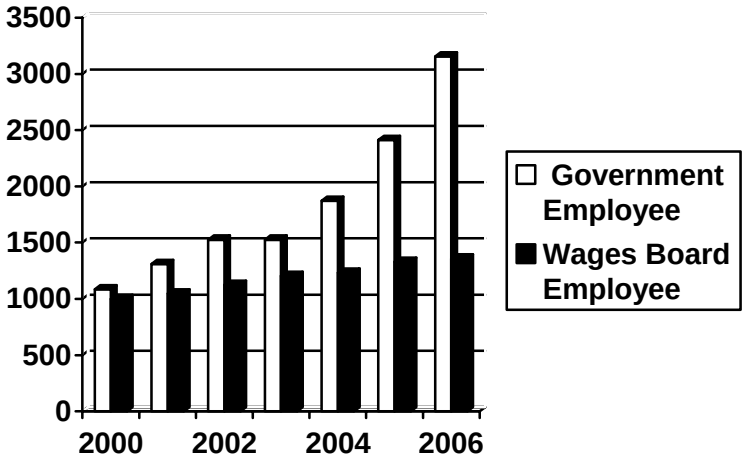
B. Includes baking, brick and tile manufacturing, coconut manufacturing, printing, textile, tyre and tube manufacturing, coir mattresses and bristle fibre export, hosiery manufacturing, engineering, garment manufacturing, match manufacturing, biscuit and confectionery, tea export and rubber export trades only.

C. This includes cinema, motor transport and nursing home trades only.

D. Combined index for workers in agriculture, in industry and commerce and in services.

Sources: Statistics Division, Department of Labour and Central Bank of Sri Lanka

Figure 4.1 Minimum Wage Levels

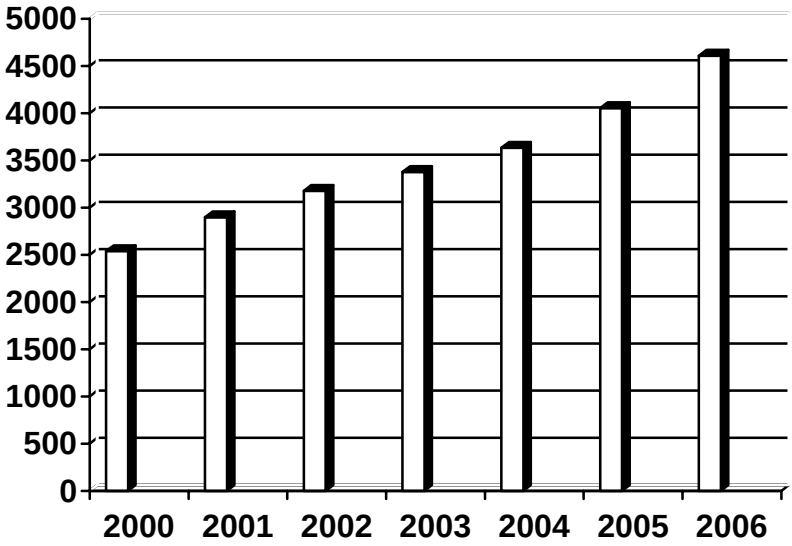


Source: *Central Bank Report* 2006

Figure 4.1 shows disparity in wage increases comparing Wages Boards categories and government employees. Among the employees covered by Wages Boards decisions, agricultural workers are the highest paid, followed by commercial/industrial employees. The lowest paid are service sector employees.

A comparison of real wages in the public sector and Wages Boards categories over the same period shows a quite dramatic deterioration in the case of private sector wages. However, many private sector workers get incentives in addition to wages.

Figure 4.2 Increase in cost of living as measured by Colombo consumers price index, in Rupees



The *Central Bank Report 2006* states that 'continuation of upward adjustments in nominal wages to compensate the negative effects of inflation has resulted in increasing real wages without commensurate improvements in productivity, particularly in the public sector…Delaying such measures further could aggravate the situation and could also spill over to the private sector wage developments, eventually affecting the competitiveness of Sri Lanka's exports in the international markets.'

Sri Lanka has a minimum wage machinery which has existed for many years.[28] In most trades the rate is fixed per month and does not permit any adjustment on the basis of output. There are a few exceptions, such as in the bristle fibre trade, where piece rates exist. There are 40 Wages Boards set up for specific trades under the Wages Board Ordinance and they take their decisions at tripartite meetings convened by the boards periodically for the purpose of reviewing wage rates. However, the position has been that these boards are more or less directed by political imperatives and are rarely summoned on the requirements of employers or workers. They seldom take note of the particular industry affected, although in industries such as hotels and garments, because of the dependence of the economy on the success of these sectors, some consideration has been given to views expressed by employers and the ministries responsible for these specific industries.

Till about the 1980s, most Wages Boards also had in addition to the basic wage a fluctuating special allowance tied to the Colombo Consumers' Price Index. The EFC persuaded the Wages Boards to consolidate these allowances and to review wages periodically to enable stable labour rates when dealing with foreign markets and processing orders which have been contracted on the basis of a specified labour cost. The increases declared are, as Rodrigo (1998) states, 'triggered off' by government-led initiatives taken in relation to the public sector.

In 1967 the government introduced a devaluation allowance and in the 1970s introduced several emergency regulations and acts to increase private sector salaries. From the 1980s, the private sector found itself faced with wage increases given to public servants being extended to them using the Wages Boards mechanism. This trend still persists. Private sector employees have not seen increases to minimum wages in step with the public sector although in many establishments wages are higher and there is a trend to add on benefits tied to productivity which are not captured by statistics. In many companies, in addition to minimum wages, there are productivity linked payments such as:

- Bonuses linked to profits/production targets.
- Incentives for exceeding norms.
- Attendance bonuses.
- Buyback of leave.
- Special increments.

In the apparel sector it is a more or less accepted practice to introduce performance linked payments so that employees may have a take home monthly payment which is considerably higher than the fixed wage. This is without overtime payments, which in some establishments is regarded by employees as a right so that they are guaranteed a higher monthly income.

[28] Wages Boards Ordinance no. 27 of 1941.

Future Directions (ILO-MLR&FE, 2005) states 'Sri Lanka's current system of Wages Boards supports a somewhat complex system for the determination of wages and working conditions in various occupational categories. It is proposed to undertake a comprehensive review of the current system with a view to simplifying arrangements, but at the same time ensuring that minimum standards apply and are respected. The National Productivity Policy refers to the need to strengthen the link between pay and productivity as part of a strategy to improve competitiveness. Any review of the current wage determination system must examine this linkage, and provide guidelines as to how productivity related pay systems might operate in practice' (p. 13).

Part 5
Collective Bargaining

5.1 Legal provisions

Sri Lanka ratified ILO Convention on the Right to Organize and Collective Bargaining, 1947 (No. 98) in 1972, long before the ratification of ILO Convention on Freedom and Protection on the Right to Organize, 1948 (No. 87) in 1995. This is explained by the restrictions on the right to organize for public servants (De Silva and Amerasinghe, 1995).

The Trade Unions Ordinance in 1935 provided protection to registered unions and made bargaining by any other unregistered group illegal. Interestingly, a publication of the BOI on industrial relations allows collective bargaining by unregistered employee councils (BOI, 2002).

The right to bargain collectively in Sri Lanka was strengthened in 1999 when it became mandatory to bargain with a union which had a 40 per cent membership. The amendment also introduced a list of unfair labour practices by employers.[29] However, the Industrial Disputes Act (Section 49) does not apply to the 'state and government in its capacity as employer'. There is therefore no legal recognition for collective agreements reached in the public sector, although according to the Trade Unions Ordinance bargaining is legally possible. Unions in the public sector have expressed their interest in engaging in collective bargaining, a mechanism that could in fact be an answer to the lack of mechanisms to address collective issues in the public sector (Amerasinghe and Ranugge, 2007). The issue of recognition of unions could be a challenge though, given the multiplicity of organizations, making it difficult to reach common positions. In this sense, the development of joint fronts in the ministries could be a positive sign towards the establishment of common bargaining positions.

The Industrial Disputes Act states that a collective agreement 'may' be tendered to the Commissioner of Labour by a party to it and the commissioner shall forthwith cause the same to be published in the gazette. However, the proviso states that the commissioner must first satisfy himself that the terms thereof are not less favourable than those applicable to other workers in same or similar industries in such district.[30]

It must be noted that where an agreement has been entered into, the employer shall also extend the same terms to other workers who are not specifically covered unless they are specifically excluded by the agreement from enjoying such benefits.[31] The exclusion obviously would have to be justifiable in order to get over any allegation of discrimination as there is an obligation to treat workers equally. For example, to deprive non-union workers of what has been negotiated by a union would be inequitable although technically legal (De Silva and Amerasinghe, 1995).

A collective agreement could be repudiated by a party by notice which is also given to the Commissioner of Labour and the agreement would cease to have effect at the end of the month following the month in which notice is given.[32]

[29] Amendment 56 of 1999.
[30] Section 6.
[31] Section 8 (2).
[32] Section 9.

Enforcement of an agreement is by the commissioner. If any party is in breach of an agreement, it is an offence but a prosecution can be launched only by the commissioner or with his permission.[33]

5.2 Collective bargaining: An historical perspective

The key reason for employers to organize themselves was for the purpose of collective bargaining, but the clear intention was to bind the unions to a period of industrial peace (E.F.G. Amerasinghe, 1994a). In 1929, the first collective agreement was signed in the Island between the EFC and the All Ceylon Trade Union Congress (ACTUC). On the side of trade unions, it may be said that collective bargaining has been seen as a periodic rallying point when workers could be made to see the importance of belonging to a union in order to secure improvements in their terms and conditions. This has led to the unfortunate conclusion by both employers and unions that collective bargaining by its very nature is confrontational.

The EFC has been advocating since the early 1990s a new approach based on a process of continuous dialogue during the period of an existing collective agreement and thereafter during negotiation, so that unions and management do not build up resistance or militancy but focus more on assessing the current situation and working together for a pragmatic and sustainable agreement for the future. Some companies have in fact benefitted from this approach and by sharing information of the experience during the last agreement they have been able to work on a responsible approach for the future.

In 1956, the Ceylon Mercantile Union (CMU), which at that time represented majority of the white collar employees in the mercantile sector, secured the first reference to an industrial court under the Industrial Disputes Act.[34] The award given formed the basis of a subsequent collective agreement signed in 1961 and has been re-negotiated periodically with minor changes and is still in force.[35] The agreement has also attained significance as a 'master agreement' which has set standards in relation to workplace procedures, terms of employment and trade union facilities. The EFC/CMU Agreement is a model for Sri Lanka and has demonstrated the efficacy of a 'no strike clause' backed up by a system of voluntary arbitration in case of a dispute. Collective agreements have seen very little deviation in terms of content and the elements covered have not seen much change although most agreements now tend to have some reference to productivity. Some agreements have widened their scope and refer to training, health and safety, promotions, transfers and welfare facilities.

For blue collar workers there have been many trade-specific collective agreements signed, commencing from the 1950s. Originally, the EFC was anxious to have standards which were uniform in selected industries and this suited the business purposes of the members although it also prevented many employers from joining the EFC as they felt that the organization catered to the interests of a class of employers who took a 'cartel' or 'protectionist' approach. The 1971 agreements covered six key trades. The companies were given a choice to decide whether they would like to be covered. However, the Minister of Labour, exercising his right to extend collective agreements across an industry, brought in Extension Orders in 1971.[36] Subsequent agreements in those trades, entered into in 1982 and 1988, were not extended by the minister. Subsequently, the companies have been able to persuade unions to negotiate at enterprise level.

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[33] See Sections 40 and 44.
[34] Industrial Disputes Act no. 43 of 1950. Industrial Disputes no.1 is also known as the Canakaratne Award.
[35] It will be found that the format is used in most agreements in Sri Lanka.
[36] Extension of collective agreements is possible under Section 10 of the Industrial Disputes Act.

Enterprise level bargaining has also had the effect of making organizations more transparent, requiring them to give necessary information to unions, which could not be done when the negotiations were for an entire trade. The new realities also helped to build better understanding between trade unions and employers. Trade unions, which were hitherto refusing to consider the individual problems of a workplace, began to have greater understanding of actual challenges confronting individual enterprises and this resulted in productivity gains for employers.

There is more appreciation of the issues of competitiveness in the course of bargaining and employers have been anxious to wean workers and unions away from considerations based on mere seniority, making skills and market forces more important in terms of wage differentials.

In enterprises where the cost of living increases were paid on a fluctuating basis, unions and employers were able to have reasonably long agreements up to around the beginning of the 1980s. For example, the EFC/CMU Agreement of 1967 survived a record 14 years during which time the Colombo Consumers Price Index rose from 112.6 points to 325 points. The Manual Workers Agreements of the EFC with the Ceylon Federation of Labour (CFL), Ceylon Federation of Trade Unions (CFTU) and the Sri Lanka Nidahas Sevaka Sangamaya (SLNSS) of 1971 lasted till 1982. However, the 1987 EFC/CMU Agreement was renewed in 1991 during which period the Colombo Consumers Price Index had shot up by 468 points.

As we saw above, the cost of living has been spiralling and unions are now reluctant to bind themselves beyond 30 months. In the plantations, the estates which were under state corporations paid wages which were higher than the minimum wage. This was not a result of collective bargaining, although it could be said that historically these estates, which belonged to British-owned companies and were managed by the agency houses based in Sri Lanka, had through the Ceylon Estate Employers Federation (CEEF) negotiated for a higher payment by entering into a collective agreement in 1967. This increased payment was on an incentive basis, which was not applicable to estates outside the CEEF. At the time of privatization of management in June 1992, the amount paid by the state corporations was higher than the minimum wage rate and this gap was further enhanced purely as a result of government pressure to make privatization palatable to the major unions in the plantations, which were also affiliated to the government at that time. During the period of state management, there was no collective bargaining as such and decisions were taken on the basis of political expediency and not on the basis of viability of the plantations. Chandra Rodrigo states: 'Broadly interpreted, the wage hikes of the 1980s are reflective, among other things, of the elevated position that the estate Tamil community had come to enjoy in the local power balance.' It is clear that up to the point of privatization there was a strong political link to wage increases as the plantations were under two state corporations, and this influence appears to still linger. At the time of privatization the minimum wage calculation had a cost of living factor which fluctuated based on the Colombo Consumers Price Index. The managements of the privatized companies were successful in persuading trade unions to agree to the removal of this payment which was causing an unbearable strain on them. The practice of negotiating wages through collective bargaining in the plantation sector is now well entrenched although the state still intervenes on thinly veiled political grounds.[37]

5.3 Current practice of collective bargaining

It could be said that collective bargaining in Sri Lanka continues to be adversarial by and large, but unions are now becoming more responsive to the needs of enterprises and are prepared to negotiate productivity gains which are shared with their members. However, the fact that the state

[37] In September 2007 the President intervened and brought about a wage hike despite the existence of a collective agreement binding the unions and the EFC plantation companies.

still intervenes to adjust minimum wages without going through the Wages Boards system hampers collective bargaining based on an enterprise's ability to pay. The new vision of the ministry appears to support a policy which would keep minimum wages as a floor with collective bargaining at enterprise level which recognizes the productivity needs of the enterprise and its ability to pay.

In 2003 the BOI announced a new policy and committed itself to the principles of the global compact, inter alia, accepting the principle of the right of employees to form and join trade unions (BOI, 2003). The policy document also recognizes collective bargaining and the right of the union to operate without discrimination against its members. However, it also lays down its commitment to promote employee councils comprising representatives chosen by the employees themselves. Among the objectives set out for the employee councils, reference is made to the representation of employees in collective bargaining, subject to the restriction that where a recognized trade union exists in the workplace, the employee council cannot bargain or represent employees in disputes. However, a union to be eligible for recognition should have 40 per cent membership.

Table 5.1 Collective agreements entered into by the EFC

Year	Number of agreements
2000	45
2001	56
2002	39
2003	39
2004	51
2005	35
2006	48
2007	51

The EFC has entered into an average of about 45 agreements per year between 2000 and 2007 (Table 5.1) and one cannot say that there has been less interest in collective agreements among the unionized companies. According to the Labour Department the number of collective agreements for 2006 was 37 and it is possible that the discrepancy in this figure with that given in Table 5.1 is due to the fact that although agreements are effective between the parties, the department is still to approve and gazette them. However, it also seems to confirm the position that outside the EFC there is little or no collective bargaining.

Not all companies provide the EFC with data on the number of workers covered. Since there is no obligation to do so, no official data exists on the number of workers covered by these collective agreements, which is unfortunate and needs to be addressed.

The EFC/Emsolve/ILO Workplace Relations study (2006) states: 'Some companies studied saw the value in collective agreements to the extent that they, by and large, freed the company from disputes, on the subject matter of such agreements for an agreed period… Some enterprises also view collective agreements as being too rigid and restrictive, apart from binding them perpetually to terms once agreed upon.'

The overall conclusion to be drawn from the analysis appears to be that the optimum benefit of collective bargaining is that it should create an environment of understanding where on a continuous basis there is dialogue which results in the better implementation of obligations, not

because it is a legal requirement but because of the intrinsic value of the relationship (Ibid.). In some instances the employer saw collective agreements as a necessary evil which was part of an adversarial system and it constitutes a challenge to change this perception by resorting to a more enlightened approach based on transparency and mutual respect, which can only come by a commitment to regular dialogue and developing a problem solving attitude.

The discussion on recognition of trade unions is inescapable when one considers collective bargaining, and the reality in the Sri Lankan context is that the adversarial nature of industrial relations needs to change if unions are to be welcomed. The unions would argue that recognition must precede any building of mutual trust and confidence—a chicken and egg situation! The need for the state to do more to make both sides respect each other and identify a common objective is clear. However, social partners could also do this through a common body such as the Association for Dialogue and Conflict Resolution (ADCOR) or the Social Dialogue Unit of the Labour Department.

5.4 Duration of the agreements

The majority of the agreements are signed for a duration of two to three years. In 2007, 27 agreements had a duration of three years, 20 agreements a duration of two years, and two agreements with a duration of only one year.

5.5 Issues bargained

In terms of content, remuneration remains the main focus of agreements, both in terms of wage increase and bonuses. Productivity-linked wages have been gradually introduced. Out of the 51 agreements signed in 2007, 12 of them include productivity-based bonuses in the form of target-based incentives, attendance bonuses or reduction of manning levels. The EFC has been very active in promoting the introduction of productivity-linked pay.

Unions do not oppose in principle the linking of remuneration to productivity, but would like to see a linkage between remuneration and cost of living as well, negatively impacted by high inflation rates in the country.

5.6 The level of collective agreements: Towards decentralization

One trend highlighted by trade unionists and employers' representatives has been the decentralization of collective bargaining. Since the 1950s the EFC and major federations of workers in the private sector have entered into sector-wide agreements. One reason for this was that the EFC was structured around trade associations which made it prudent for members to have uniform rates. These agreements covered tea export, rubber export, engineering, bristle fibre export, printing and transport sectors and in 1971 the Minister of Labour extended these agreements under the Industrial Disputes Act. Subsequently, the Supreme Court invalidated these extension orders on the basis that the minister had not extended the entirety of these agreements and had therefore exceeded his powers.[38]

In 1977 the country witnessed dramatic changes in relation to economic policy. Much of the change in thinking in relation to collective bargaining policies was driven by the EFC. The EFC was influenced by Westerns models which had changed to securing productivity gains at the enterprise level. Trade union representatives took many years to come to terms with the need to

[38] See A.F. Jones *vs* Balasubramaniam, 2 SLR 793.

decentralize bargaining and to focus on enterprise competitiveness, which was sought by companies. By the late 1980s sector-type bargaining had disappeared in the six sectors mentioned earlier. Company level agreements had been negotiated in many of the companies covered originally. These by and large followed earlier sector-type agreements, at least to the extent that the non-recurring cost of living gratuities (a payment given based on the average increase in the cost of living measured on the Colombo Consumers Price Index) and annual adjustments of wages were based on point to point increases in the Colombo Consumers Price Index. The one exception was the collective agreement covering white collar employees of the Ceylon Estate Staffs Union and the plantation workers' agreement with the major unions. These agreements cover about 250,000 to 300,000 workers. The most important reason for having such a collective agreement could be because all the estates are now being managed by private companies (they were under government corporations till 1992) and there are political as well as pragmatic considerations for having common rates for salaries/wages. Despite collective agreements covering the sector as a whole, the plantations themselves have been able to enhance their productivity with the cooperation of the plantation level unions, which has helped to mitigate the problems of world competition. At the time of privatization in 1992 the government was heavily subsidizing the plantation industry, and management expertise and tighter controls have helped the industry remain viable.

In the banking sector, in days gone by, there was an agreement between the Ceylon Bank Employees Union (CBEU) and the Ceylon Banks Association (now replaced by the Sri Lanka Banks Association [SLBA]), which covered private banks. This has also fallen apart and has been replaced by individual agreements. The Ceylon Mercantile Union (now the Ceylon Mercantile and Industrial Workers Union) has negotiated agreements since 1961 on a regular basis covering clerical, supervisory and allied staff. These agreements were preceded by the Canakeratne Award in 1956 and other awards relevant to the mercantile sector (The History of the Employers Federation, Op. cit.).

5.7 Collective bargaining and privatization

Interestingly, some trade unionists in Sri Lanka have highlighted the positive effects on industrial relations as a result of privatization. This is obviously on the premise that privatization has reduced political control on management and permitted free bargaining. Many collective agreements have been signed in privatized companies in the last 20 years and it would be true to say that often when an institution is being privatized there is already a dialogue between management and the unions regarding the possibility of entering into a collective agreement to secure the rights of employees.

5.8 Collective bargaining in the export processing zones

The emergence of collective bargaining in EPZs can be considered a highlight in terms of recent industrial relations developments not only in Sri Lanka but for the whole Asia-Pacific region. So far, four collective agreements have been signed.

The BOI activities include production of goods, assembly of components, and services, which include information processing, telecommunications, business process outsourcing (BPO), hotels, power generation, etc. As in most developing countries in Asia, Africa and Latin America, the largest share of trade is in the textiles and garment sector. Today there are 300 enterprises within the bonded zones and 1,200 establishments receiving similar benefits outside the zones (Sivananthiran, 2008). It is estimated that 12 EPZs[39] employ some 114,000 workers (Ibid.).

[39] Katunayabe, Biyagama, Koggala, Mirijjawila, Seethawaka, Horana, Kandy, Wathupitiwala, Mirigama, Malwatta, Mawathagama, Polgahawela.

Trade unions have stated that the current procedures for recognition in the existing law are unsatisfactory. The BOI guidelines state that if a union represents 40 per cent of the workforce then the union (and not the employees council) can represent the workers in collective bargaining. However if the union does not meet this minimum requirement, then the employees council can become the collective bargaining agent if authorized by at least 40 per cent of the workforce. This has put unions and employees councils in a position where they must compete for bargaining rights. There has been a recent attempt at submitting a 'joint memorandum of expression' between the Joint Apparel Associations Forum of Sri Lanka with the EFC and two prominent trade union confederations. The memorandum aims to be a joint commitment to respect ILO Core Conventions and specifically refers to Conventions 87 and 98.

Some observers see in this initiative a change of attitude of the Joint Apparel Association driven by the need to implement in law and practice these two Conventions. Concern has been expressed regarding the fate of the preferential trade concessions from the EU through its Generalized System of Preference (GSP) scheme. This affects some 7,200 local products, including apparel, which accounts for half of Sri Lanka's total export revenues. The GSP and its requirements in terms of compliance with ILO standards is becoming a main driving force for the change in the thinking of the government and exporters. It is also interesting to note that many unions are also now concerned about the possibility of jobs being lost if some sensible approach is not adopted on the issue of union rights and obligations.

Part 6
Disputes Settlement

The Industrial Disputes Act is the main legislation for maintaining industrial peace. The Commissioner of Labour and his officers are authorized by the act to make inquiries and take any steps necessary to promote a settlement of a dispute. The means available are:

- Where there is already an agreed process to be followed, to see that such procedure is adhered to.
- Endeavour to settle it by conciliation.
- Refer the matter for settlement to an authorized officer. In terms of the act this could be any person so nominated for the purpose.
- If the parties agree, to refer it to settlement by arbitration (voluntary). If the parties cannot agree on an arbitrator, the commissioner could nominate one or refer it to a labour tribunal. It could also be referred to a panel of arbitrators.[40]

Where conciliation has failed the commissioner makes his report and the minister may then refer the matter to compulsory arbitration under Section 4 of the act. The minister may also refer the matter to an industrial court. The panel of the industrial court is appointed by the President.[41]

An award of an arbitrator is binding for the period specified or for a minimum period of one year after which repudiation is possible.[42] The obligations of the bound parties lapse with the end of such period. In the case of an award, repudiation is not possible and the parties can only apply for a review during the effective period only after one year has elapsed.[43]

6.1 Disputes settlement in the public sector

Any employee aggrieved by reason of a decision of an appointing/disciplinary authority has the right to make an appeal to the Public Service Commission through his/her department and the ministry. The Public Service Commission seeks the observations of the relevant head of department on the issue but an aggrieved party cannot defend himself/herself before the Public Service Commission. Trade unions also have no right to be heard by the Public Service Commission and cannot represent members before it. Complaints of delay in finalizing disciplinary and other matters by the Public Service Commission and disciplinary authorities are common. There is no stipulated timeframe for disciplinary matters. In the case of the provincial councils and employees under them, the decisions are taken by the individual councils.

The 17th amendment to the constitution introduced a National Police Commission for police officers and an Administrative Appeals Tribunal. Public servants and police officers could make appeals against the decisions of the Public Service Commission and the National Police Commission under the Administrative Appeals Tribunal Act.[44] These remedies are not applicable to the employees of the provincial public services. No provision is made for trade unions to bring up their disputes before the Administrative Appeals Tribunal.

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[40] Section 2.
[41] See Part IV of the Act.
[42] Section 20.
[43] Section 27.
[44] No. 4 of 2002.

Public servants can also submit their individual disputes/grievances to the ombudsman and the Human Rights Commission. The decisions of these bodies do not have legal enforceability.

Fundamental rights cases are filed before the Supreme Court under Article 126 of the constitution on grounds of alleged violation of fundamental rights. Writ applications can be made to the Court of Appeal on grounds of abuse of power or failure to exercise executive authority against public officers in authority or against relevant authorities. There is also the possibility of normal civil remedies such as declaratory actions in the district court.

There is a Salaries and Cadre Commission, a permanent body, for resolving salary anomalies and cadre matters. It is reported that this commission which also has trade unionists as members, has become a means for dialogue on matters which are, or could be, contentious (Amerasinghe and Ranugge, 2007).

Since there have been many serious disputes which led to strikes, in 2003 an effort was made in consultation with unions to formulate a disputes settlement process which would give unions a greater role in participating in negotiations and presenting their positions in order to have sustainable settlements. The ILO was requested to take this initiative forward and a workshop was held in September 2007. It is clear that whatever the differences among the unions may be, they are concerned and support reforms which will help reduce disputes in the public service and advocate the introduction of independent mechanisms for dispute resolution. Some of the suggestions received and getting attention are:

- Introduce a disputes procedure where there are stages for conciliation. Where no settlement is reached, reference can be made for mediation followed by settlement by a National Arbitration Board, which should have a fixed timeframe to conclude hearings. The National Arbitration Board should comprise of eminent persons recommended by both parties and appointed based on their competence and impartiality. Reference of matters to the board is voluntary by agreement, except in the case of an essential service where the government may, after conciliation has failed, refer the matter to the board.
- A grievance procedure which helps individual employees state their complaints which could be referred to the Public Service Commission if unresolved, and where needed to the Administrative Appeals Tribunal.
- Departmental level dialogue for better transparency in terms of management decisions and understanding issues.
- Enhance the scope of the National Public Sector Salaries Commission which will be a full-time body consisting of government officials from key ministries, academics, HR practitioners and trade union representatives who will establish a policy for job grading and compensation.
- Establish a more professional Human Resources Management and Development Unit under the Ministry of Public Administration which will develop policies and guidelines applicable to the entire service.
- Establish a Research and Development Unit under the Ministry of Public Administration for collection of all relevant data relating to employee relations in the public services and for the development of personnel.

- Establish, as a matter of urgency, consultative bodies at unit, departmental and ministry levels as envisaged by the Presidential circular.

In the semi-government sector there is a tendency in the case of disputes to resort to discussions with the head or CEO, and later the minister, and if there is no settlement no remedy is available other than strike action. It has been seen that in some cases the minister has requested the Labour Ministry to attempt to resolve the issue. It is necessary that the Industrial Disputes Act be used as in the case of the private sector.

6.2 Disputes settlement in the private sector

In the private sector, the Industrial Disputes Act is the main vehicle for resolving disputes. Many companies have grievance processes and some even a disputes procedure. The EFC has built into its collective agreements disputes settlement processes and in some cases strikes on matters covered by the agreement are totally prohibited during the validity of the agreement. Many employers now see an effective disputes settlement process as being the most valuable gain through a collective agreement and by and large unions respect their undertaking to follow the agreed process.

Many employers do not agree to grant 'check-off' (deduction of union dues from the pay sheet, which is a great advantage to a union) unless the union concerned agrees to a disputes settlement procedure. This practice has been built on the premise that the employer will help the union collect its dues only if the union itself is prepared to undertake to behave in a responsible way.

The EFC has an understanding with unions that where a member has a dispute it will convene a meeting and attempt to resolve it in an amicable manner. Many disputes are resolved in this manner. Discussions turn out to be negotiations in every sense of the word, and the EFC acts as a convener relied on by both sides to facilitate a settlement which is fair. The role of the EFC is to remain neutral as far as possible in order to broker a settlement.

If an employer or a worker or his organization decides to seek the intervention of the Labour Department to resolve his/her issue, the department conciliates but is also obliged, if no settlement is reached, to make a recommendation, which is not done in most cases at present. If the dispute is not settled through conciliation, then the officer makes a report and the commissioner may decide to recommend the matter to the minister thereby referring the dispute to arbitration, which then becomes compulsory. A failure to act in accordance with an arbitrator's or industrial court award would be an offence punishable under the Industrial Disputes Act for which the Labour Department can launch a prosecution.

Disciplinary terminations in Sri Lanka result in workers seeking redress from labour tribunals within three months of their termination (as noted above this is to be changed to six months). The worker also has the right of requesting conciliation from the Labour Department. If the department is unable to resolve the dispute, it may recommend to the Minister of Labour that he should refer the dispute to compulsory arbitration within terms of the Industrial Disputes Act. The decision of the labour tribunal can be appealed in a high court, but in the case of an arbitrator's award, the remedy would be by way of writ. Labour tribunals as well as arbitrators are entitled to reinstate workers or to award compensation. These courts and tribunals have a mandate to act equitably and they may choose to disregard a written contract where equity would demand relief.

Strikes are legal in Sri Lanka except in the following cases:

- Where they are prohibited by Essential Service Orders under the Public Security Act or the Industrial Disputes Act.[45] In the case of public servants there is also the Essential Public Services Act which can be invoked.[46]
- Where it is prohibited by a valid collective agreement.[47]
- Where it is seeking an alteration of an award, labour tribunal order or in breach of a memorandum of settlement under the act.[48]

The courts have upheld the right to strike in the private sector subject only to the restrictions laid down by the Industrial Disputes Act.[49]

The statistics provided in Table 6.1 reveal that strikes in the plantations and commercial sectors do not go in tandem and that the differences may be due to the fact that bargaining takes place at different periods. It must also be borne in mind that in the commercial sector there is no common or industry-wide bargaining any longer, whereas in the plantation sector bargaining takes place for one composite agreement covering the 23 companies managing the bulk of the plantations (virtually the whole of the large plantation industry). Table 6.1 also gives a picture of an improving climate in the private sector.

Table 6.1 Strikes in private sector industries

Year	Plantation			Other*			Total		
	No. of strikes	Workers involved	Man days lost	No. of strikes	Workers involved	Man days lost	No. of strikes	Workers involved	Man days lost
1997	78	27,383	100,406	78	30,249	255,071	156	57,632	355,471
1998	63	15,468	83,319	59	27,875	181,626	122	43,343	265,145
1999	42	16,018	41,195	83	26,326	263,051	125	42,345	304,246
2000	24	8,408	23,540	63	17,450	40,941	87	25,858	64,481
2001	31	26,069	32,548	61	16,275	37,449	92	42,344	69,997
2002	43	12,068	40,086	61	15,629	30,312	104	27,717	70,350
2003	45	17,779	45,421	53	24,782	41,761	98	42,561	87,172
2004	44	15,832	40,779	46	17,514	40,321	90	33,346	81,100
2005	17	4,283	8,370	40	49,282	149,982	57	53,565	158,352
2006**	19	196,520	4,821,394	34	13,283	72,513	53	209,803	4,893,907

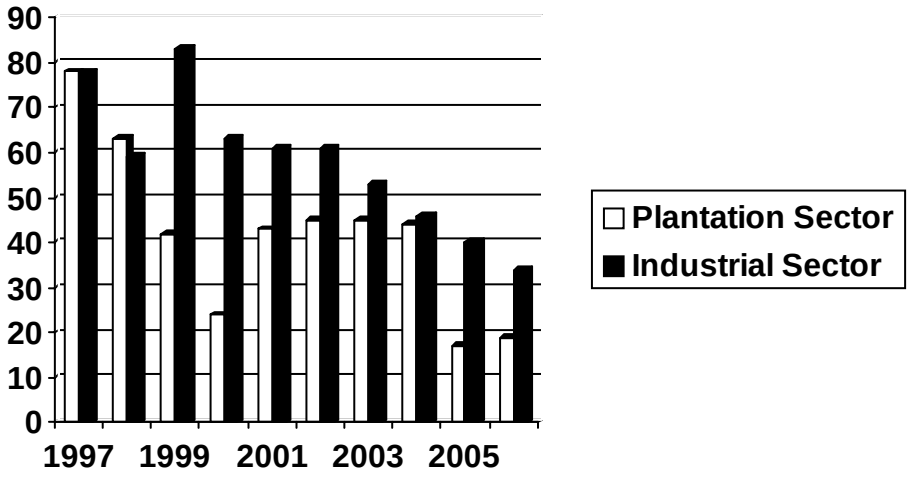
* Includes semi-government institutions and other private institutions

** Provisional

Source: Department of Labour

[45] See Part V of the Act.
[46] Act 63 of 1979.
[47] Section 40 (1) (e).
[48] Section 40 (i) (e) (f) and (fff).
[49] Rubberite Co. Ltd vs Labour Officer Negombo, 1990, 2 *SLR* 42.

Figure 6.1 Man days lost, 1997–2005



According to the Department of Labour, in the plantation sector there were 44 strikes with a loss of 40,779 man days in 2004. In 2005, there were 17 strikes with a loss of 8,370 man days, and in 2006 there were 19 strikes with a loss of 4.821 million man days. In the private sector industries, there were 46 strikes reported in 2004 with a loss of 40,321 man days, in 2005 there were 40 strikes with a loss of 149,982 man days and in 2006 there were 34 strikes with a loss of 72,513 man days.[50] Table 6.2 shows industrial disputes in Sri Lanka.

Table 6.2 Industrial disputes, 1997–2005

Year	No. of complaints	No. of cases settled	No. of cases referred to arbitration	Amount recovered by settlement (Rs. '000)
1995	14,510	14,084	66	24,677.3
1996	11,508	11,054	41	28,057.5
1997	12,106	14,542	61	15,674.9
1998	12,819	14,265	46	121,599.1
1990	13,987	13,654	75	158,346.4
2000	11,976	13,096	50	128,858.7
2001	12,638	13,706	72	138,307.0
2002	12,289	14,849	69	180,072.3
2003	12,034	11,981	53	93,069.9
2004	9,024	9,796	65	101,308.8
2005	8,077	8,491	52	273,222.1

Source: Department of Labour

According to statistics reported by the Labour Department it would appear that the number of disputes reported to the department has been dropping between 2003 and 2005 and the settlement rate exceeds the number of cases taken up. This may reflect a new trend towards settling issues directly at the enterprise level, since the statistics cover only the private sector where there has been much interest in in-house problem solving mechanisms including the

[50] *Central Bank Report* 2006

resolution of grievances by transparent processes. It could also mean that parties have lost confidence in the ability of the department to help them resolve their issues. However, there has also been a clear commitment by employers to engage unions in enterprise level dialogue with speedier results being achieved (EFC/Emsolve/ILO, 2006).

The Employment Mediation Services Centre (EMSC) was formally constituted in January 2001. Leading trade unions and many employers became members. Mediation in fact goes back centuries in Sri Lanka and is very much part of the country's pre-colonial culture (E.F.G. Amerasinghe, 2005). Amerasinghe (Ibid.) who deals with the traditional approach based on ancient texts states: 'Obviously, the expected behaviour of both master and servant is such that they should act with great understanding of their roles and that each has to bear his share of responsibility for the relationship and that care and compassion should guide each in dealing with the other.' Although not many disputes have been brought to the EMSC, the training given to enterprises in relation to techniques of problem solving has had a tremendous impact. Managers and workers who have learnt the art of using tools such as interest-based problem solving and similar approaches have changed their styles of negotiations and have acquired the ability to develop options without getting entrenched in positions which is part of the adversarial approach. EMSC has now been brought under the wing of ADCOR as a means of enlarging its scope of activity and recognizing the contribution it makes in preventing disputes. EMSC has a group of mediators and trainers who now make a vast amount of experience available to ADCOR.

Part 7
Tripartism and Social Dialogue

Structures for tripartism have existed in diverse forms, but there has been little effort to coordinate and harmonize interests and the work of social partners, or to provide them with a role for active participation at the national level.

A National Advisory Council was set up in 1989 with the objective of having a permanent consultative mechanism within the Ministry of Labour. The objectives of the council were, broadly, to consult worker and employer interests on policy matters and implementation and propose changes in labour law. The Minister of Labour who presides over the advisory council gave an assurance that all contemplated changes in labour laws, regulations and policy would be discussed in the council. The setting up of this council was also to satisfy the requirements of ILO Tripartite Consultation (International Labour Standards) Convention 1976 (no. 144) which the government has ratified.

The National Labour Advisory Council (NLAC) could have been a useful forum for bringing about better cooperation and understanding on national issues of a socio-economic nature apart from examining standards if the parties could retain their objectivity (E.F.G. Amerasinghe, 1994b). The NLAC should ideally be the body which gives the social partners an opportunity to discuss issues of national importance going beyond the work of the Labour Ministry, taking a holistic view of employment and its interface with all other ministries.

A report of a tripartite workshop held in September 1993 made some valid recommendations to the government:

- Give statutory recognition to the NLAC and make it a permanent body.
- Promote the philosophy of tripartism at national and industry levels.
- Provide for the exchange of views and ideas among the three parties relating to labour policy, legislation and other areas of mutual concern.
- Provide inputs for the formulation of a national policy and its effective implementation.
- Ensure consultation of social partners before adoption of legislation in areas of mutual concern.

The contribution of the NLAC to economic development is minimal, but with the new vision of the ministry and the challenges of enhancing productivity, the need to broaden the scope of the mandate of the NLAC is obvious. The ministry has promised to set up sub-committees and task forces to provide advice and guidance on key policy issues such as poverty reduction, labour law reform, wage determination and dispute prevention (Ibid.). The ministry utilizes its International Affairs Unit to provide secretarial back-up for the NLAC.

Several public corporations have had mechanisms for worker participation. For example, the State Engineering Corporation appointed councils to increase productivity at workplaces. Workers councils were set up in the Port Cargo Corporation, the Ceylon Transport Board and Air Ceylon. By Public Administration Circular no. 8 of 15 August 1970, the government directed all corporations to set up advisory committees consisting of employees to promote efficiency and eliminate waste. Employee councils were made obligatory by the Employees Council Act no. 32 of 1979 in public corporations and government-owned business

undertakings. The objectives of the councils included the promotion and maintenance of effective participation of employees in the affairs of the undertaking. The objective of industrial peace and ensuring productivity were also highlighted. Most of these councils had become moribund long before the privatization of the corporations had commenced. It could be said that, as a general rule, the councils did not achieve their objective of creating mutual cooperation in the efficient running of the establishments.

Worker directors have being appointed to some public corporations. S.R. de Silva has stated that there is no evidence that such appointments increased employee participation in decision making or that such appointments had any material bearing on the efficiency or otherwise of the institutions concerned.

In areas governed by the BOI (formerly Greater Colombo Economic Commission) companies are expected as a condition of licensing to set up joint employee councils. These councils are interested in matters of discipline, welfare and work organization and are now appointed by a free vote by the workers themselves. These councils are permitted to bargain collectively in the absence of unions.

Tripartism cannot be strengthened or placed on a stronger footing merely by legislation. To be effective, it must also be monitored and some degree of enforcement is also required. It is doubtful that tripartism can be thrust successfully on parties by legislative means and tripartism must be through proper dialogue which requires voluntarism. Persuasion appears to be a much better method of securing observance, considering the fact that legal inspection cannot be as efficient as will be required. Educating employers and workers to see the advantages of complying with the requirements of consultation and dialogue at all levels could produce more tangible benefits for all parties. The setting up of the Social Dialogue Unit in the Labour Department is a welcome innovation and if actively pursued could help employers and workers develop a constructive approach to problem solving.

Labour officials must change in accordance with the new policy framework of the Ministry of Labour Relations & Foreign Employment. They should be trained to take a more balanced stance and inspire confidence in employers that they are capable of helping them achieve good industrial relations.

At the enterprise level there is a desire by employers to introduce workplace cooperation mechanisms in order to enhance efficiency. The dialogue in these bodies has led to greater understanding between management and workers and to the resolution of many irritating issues. Productivity related incentives and performance related increments are becoming more acceptable to workers who see that there is a definite link between the well-being of the enterprise and themselves.

In 2004 the ILO commenced a programme for social dialogue and commissioned the drafting of a Manual for Social Dialogue.[51] The manual was discussed at a tripartite forum and it was agreed by the unions and employers that with some small alterations it could be useful for training purposes. Around the same time the Ministry of Labour also formed a Social Dialogue Unit and has adopted the document for its promotional work.

In 2005 the EU agreed to support a programme on competence building for social dialogue. The project proposal included both the development of mechanisms as well as creating competence in social partners. The project produced a large amount of training material, covering topics such as negotiating skills, sustainability and good governance, which could help

[51] The handbook was drafted by Leslie Devendra and the author.

others understand what true social dialogue entails. Material for training trainers was also prepared. A database and a website were set up and these have now been passed on to ADCOR, which was formed as an off-shoot of this project.

For tripartism to work efficiently in Sri Lanka there is a need to have unity in the trade union movement. As we have observed, one precondition for proper tripartism is the strength and stability of the parties and their independence. In Sri Lanka, politicization and multiplicity of unions is a serious drawback to proper interaction and the creation of mutual trust and confidence. The National Association for Trade Union Research & Education (NATURE) has been a brilliant initiative and through research and education unions with diverse political leanings have been brought to a common platform to engage in dialogue with employers. ADCOR is now a means of strengthening this process.

Employers too seem to be more interested in joining together to approach problems with a common front. We could therefore hope that better tripartism will prevail in the future which would lead to all parties benefitting and, in consequence, creating a more acceptable industrial relations environment. Tripartism is not a goal in itself. We have to accept tripartism as a means of proper consultation and exchange which helps all parties achieve their goals.

Part 8
Conclusions and Future of Industrial Relations

8.1 Public sector

1. It is clear that the state is concerned with the problems which exist in relation to unsettled disputes in the public sector and that there is a genuine desire to bring about a more systematic approach to resolving them. However, processes are not by themselves capable of bringing about more peace and harmony in the workplace. It is clear that trade unions are hoping that the processes which are introduced will ensure impartial investigations are held into grievances and that recommendations made for change will be implemented.
2. Trade unions hope that the state will be even-handed and fair in dealing with them and that the disparities caused by reacting to pressure from the stronger trade union groups will be eradicated. They also hope no deviations will take place in salary structures and reviews once they are decided on.
3. The proposed methods of dealing with disputes in the public sector have not confronted one of the major drawbacks in the industrial relations there. The multiplicity of trade unions and the legal basis for forcing workers to be segregated on the grounds of different services, departments, etc is self-defeating. The state must accept that unifying unions can also be a starting point for compelling workers to agree on common positions, thereby reducing the temptation for stronger groups (especially those with specialist skills) to negotiate for higher terms which break down structures. Changes in legislation will encourage unions to unify especially through national federations.
4. The need for a clear and comprehensive industrial relations policy has been identified in order to create more confidence in employees that they will be treated equally and that there will be no room for favoured groups or individuals who will be given special treatment.
5. A job evaluation process which once and for all grades various occupations, functional positions and professions scientifically will help to avoid unnecessary debates on anomalies in payment of wages. Of course there needs to be a board of review which will consider changes when they take place in relation to job functions. However, the possibility of a fair grading scheme such as in private sector enterprises, which removes anomalies, must be pursued. The process needs to be an inclusive one with consultation of all those affected.
6. The disaffection caused by ministries deviating from processes and structures which are expected to be followed is at the heart of many disputes. A firmer view needs to be taken of the requirement of uniformity and perhaps the state has to re-look at how the apolitical image of the Public Administration Ministry and Public Service Commission can be restored.
7. It is imperative that there is a strategic focus on industrial relations and perhaps the Public Administration Department needs to be under the President himself, so that its importance is always kept in mind. The vision of the ministry should be an efficient and motivated public service and any obstacle to achieving this vision must be targetted for immediate change.
8. An issue which has been brought up by trade unions is that officials and those who are called upon to resolve disputes should have the required training and the skills to make their services effective. This aspect of creating efficient mechanisms for dispute settlement and prevention needs much attention.

8.2 Semi-government services

1. In the services under the provincial councils perhaps the position is worse and there is more room for disaffection among workers as they do not have the benefit of appeals to an Administrative Appeals Tribunal which their colleagues in the central government have. Unions feel that these provincial workers should be brought under one umbrella and treated the same as central government workers.

8.3 Statutory authorities and public corporations

1. The possibility of equating them fully to the private sector and giving them free access to all remedies under the Industrial Disputes Act would satisfy the unions. The political factor needs to be removed from management decision making. Greater use of collective bargaining would be a means of bringing about better relations with unions who could be selected for this process on the basis laid down by the Industrial Disputes Act, namely, that a union should have 40 per cent of the workers in it to be eligible. In these organizations and the government services, there has been a healthy trend recently to form 'alliances' which bring many unions on one platform for negotiations, and this could be a means of forging common fronts for bargaining.

8.4 Private sector

1. In the private sector there seems to be a healthy change in terms of the strategic focus of the Ministry of Labour to be a facilitator and to lessen its role as an inspector in order to promote the social partners to work out their own solutions. The strategy is commendable but the approach will not perhaps be practical in dealing with small employers and those in the informal economy. They must be reached in some way, and obviously the resources of the department and ministry are already strained. Perhaps compulsory registration with an employers' federation or with a district chamber and delegating the supervision of the application of laws to these organizations may be a way of promoting better compliance with the law and compelling dialogue at enterprise level. *Future Directions* whilst commenting that perhaps coverage of the formal sector may be as low as 15 per cent of the workforce states 'the minsitry is aware of the need to change this situation and will take necessary steps to ensure that employment and labour services, increasingly, are available to all who seek them throughout the country.' A special group of field officers will be deployed for this purpose. The statement goes on to say that these services will not be to 'enforce the laws, but rather provide advice to a wide variety of workers and self-employed persons in both urban and rural areas' (ILO-MLR&FE, 2005).
2. As stated earlier, employers have begun to realize that they need to determine their own relationships and laws are only a means of providing a framework for behaviour. Good human resource management practices will bring about the relationships needed internally to make the organization more competitive and nationally relevant.
3. The new initiative, ADCOR, has reached out to the public sector and the linkages created could very well help to produce a new culture of employee relations, much needed in Sri Lanka which has been beset with too much antagonism and many schisms. The success of ADCOR is being watched by many as it could very well change the course of industrial relations from a confrontational to a collaborative one.

Annexure 1

ILO Conventions ratified by Sri Lanka

Convention	Ratification date	Status
C4 Night Work (Women) Convention, 1919	8 October 1951	Denounced on 16 February 1954
C5 Minimum Age (Industry) Convention, 1919	27 September 1951	Denounced on 11 February 2000
C6 Night Work of Young Persons (Industry) Convention, 1919	26 October 1950	Denounced on 16 February 1954
C7 Minimum Age (Sea) Convention, 1920	2 September 1950	Denounced on 11 February 2000
C8 Unemployment Indemnity (Shipwreck) Convention, 1920	25 April 1951	Ratified
C10 Minimum Age (Agriculture) Convention, 1921	29 November 1991	Denounced on 11 February 2000
C11 Right of Association (Agriculture) Convention, 1921	25 August 1952	Ratified
C15 Minimum Age (Trimmers and Stokers) Convention, 1921	25 April 1951	Denounced on 11 February 2000
C16 Medical Examination of Young Persons (Sea) Convention, 1921	25 April 1951	Ratified
C18 Workmen's Compensation (Occupational Diseases) Convention, 1925	17 May 1952	Ratified
C26 Minimum Wage-Fixing Machinery Convention, 1928	9 June 1971	Ratified
C29 Forced Labour Convention, 1930	5 April 1950	Ratified
C41 Night Work (Women) Convention (Revised), 1934	2 September 1950	Denounced on 31 March 1966
C45 Underground Work (Women) Convention, 1935	20 December 1950	Ratified
C58 Minimum Age (Sea) Convention (Revised), 1936	18 May 1959	Ratified
C63 Convention concerning Statistics of Wages and Hours of Work, 1938	25 August 1952	Denounced on 1 April 1993
C80 Final Articles Revision Convention, 1946	19 September 1950	Ratified
C81 Labour Inspection Convention, 1947	3 April 1956	Ratified
C87 Freedom of Association and Protection of the Right to Organize Convention, 1948	15 September 1995	Ratified
C89 Night Work (Women) Convention (Revised), 1948	31 March 1966	Denounced on 25 January 1982
C90 Night Work of Young Persons (Industry) Convention (Revised), 1948	18 May 1959	Ratified
C95 Protection of Wages Convention, 1949	27 October 1983	Ratified

Convention	Ratification date	Status
C4 Night Work (Women) Convention, 1919	8 October 1951	Denounced on 16 February 1954
C99 Minimum Wage Fixing Machinery (Agriculture) Convention, 1951	5 April 1954	Ratified
C100 Equal Remuneration Convention, 1951	1 April 1993	Ratified
C103 Maternity Protection Convention (Revised), 1952	1 April 1993	Ratified
C105 Abolition of Forced Labour Convention, 1957	7 January 2003	Ratified
C106 Weekly Rest (Commerce and Offices) Convention, 1957	27 October 1983	Ratified
C108 Seafarers' Identity Documents Convention, 1958	24 November 1995	Ratified
C110 Plantations Convention, 1958	24 April 1995	Ratified
C111 Discrimination (Employment and Occupation) Convention, 1958	27 November 1998	Ratified
C115 Radiation Protection Convention, 1960	18 June 1986	Ratified
C116 Final Articles Revision Convention, 1961	26 April 1974	Ratified
C131 Minimum Wage Fixing Convention, 1970	17 March 1975	Ratified
C135 Workers' Representatives Convention, 1971	16 November 1976	Ratified
C138 Minimum Age Convention, 1973	11 February 2000	Ratified
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	17 March 1994	Ratified
C160 Labour Statistics Convention, 1985	1 April 1993	Ratified
C182 Worst Forms of Child Labour Convention, 1999	1 March 2001	Ratified

Source: Ministry of Labour, International Division.

Annexure 2

Comments by the committee of experts on the application of conventions and recommendations

The committee of experts has intervened on the following issues:

C11 Right of Association (Agriculture) Convention: Reference has been made to the right of self-employed persons to organize adequately to protect their interests noting that they are not covered by the Trade Unions Ordinance.

C 29 Forced Labour Convention: Referred to emergency regulations and the right conferred on the President under Regulations 1 of 1989. The scope of what would be legitimate use of labour in specific situations of trade union action was discussed.

Reference was also made to the Compulsory Public Service Act 70 of 1961 which compels graduates to do public service for five years after graduation. The government has pointed out that these provisions have not in fact been used. It must be noted that university education at state institutions is free.

C 87 on Freedom of Association: Based on comments from unions, inquiries were made regarding the right to federate of public servants, the definition of essential services and organization of workers in EPZs and the due exercise of their rights.

C 100 Equal Remuneration: Comment has been made that there should be active involvement of the social partners in the implementation of the principles especially in relation to awareness raising. It has raised the issue of 'non-biased, objective criteria' being used for the assessment of the value of a job and the need to ensure upward mobility for women.

C 111 Discrimination (Employment & Occupation): The ILO had requested copies of the establishment code which guarantees non-discrimination to public servants and the National Plan of Action for Women. Information has also been sought of the functioning of the Human Rights Commission (HRC) and the Parliamentary Commissioner of Administration. A request has also been made to re-examine all the legislation which provides special protection based on gender to determine its current relevance.

C 144 on Tripartite Consultation (International Labour Standards): Comments have been made regarding the new requirements for procedures and consultations, and information sought on consultations had in relation to matters set out in Article 5.

C 90 Night Work of Young Persons (Industry): The government has been requested to continue to provide information on the practical application of the convention, especially statistics on the employment of young persons.

C 95 Protection of Wages: The government was requested to respond to a specific instance of alleged default in payment of gratuity.

C 131 on Minimum Wage Fixing: The government has responded to some specific issues raised by unions in relation to plantation wages. The ILO has expressed interest in the government's intention to broaden the coverage of the minimum wage machinery and achieving uniform standards.

C 138 Minimum Age: The government has adopted a National Plan of Action for the Children of Sri Lanka (NPA 2004–2008) in collaboration with UNICEF. Meaningful steps have been taken especially in relation to education of parents and providing publicity regarding punishment of offenders. The Minimum Wages (Indian Labour) Ordinance was amended by Act 25 of 2000 to clear all doubts that Indian plantation labour also fell in line with the rest of the country and employment of children below 14 years was prohibited. In relation to hazardous work, the government took heed of ILO advice that the law should be amended suitably and by Act 24 of 2006 the minimum age was raised to 18. Regulations have been drafted in relation to the definition of a hazardous occupation. The committee noted that according to reports provided by the Children's Affairs Division complaints received of child labour had decreased between 2000 and 2004, while the number of actions brought had increased in 2004 to 48.

C 182 Worst Forms of Child Labour: The government has amended the Penal Code by Acts 22 of 1995, 29 of 1998 and 16 of 2006 defining a child as a person under 18 years of age and imposing severe penalties for forced labour, sexual exploitation, etc. Concerns have been expressed regarding the use of children in armed conflict with complaints made by the government against the terrorists operating in Sri Lanka. The amendment of 2006 covers child soldiers as well.

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