

Reformation of Labour Laws in a Liberalized Economy with Special Reference to Sri Lanka*

The subject of Labour Law Reforms has always been controversial with national implications specially in view of the conflict of interests of the parties involved. Being a HR Practitioner, inevitably I would view this subject in the context of Industrial Relations & national priorities. It is believed that any law enacted in a democratic country should satisfy the aspirations of the stakeholders and serve the greater interests of the community. In this context, it should meet the requirements of the three social partners - Employers, Employees and the State. To quote Bentham a great political philosopher it should be geared for the greatest good of the greatest number. Labour laws have had the destructive effect of nullifying the very objective for which they are intended. It is meant to safeguard and maintain minimum standard in the labour market. However the labour laws could discourage the employers who are law-abiding and desirous of expanding their business operations.

BACKGROUND

The origin of Labour Law in Sri Lanka could be traced to mid 19th century during which period a series of labour legislation was promulgated commencing Ordinance No. 5 of 1841 to promote and encourage plantation labour and to improve their living conditions. Since then plethora of labour laws have been enacted to meet the requirements of that time in the sphere of Industrial Relations. Sri Lanka moved from a centrally planned economy to a market economy in 1977. An analysis of the labour laws enacted prior to 1977, specially during the period of closed economy 1956 - 1977 reveals following salient features:

- © Weighted towards high protection in favour employees
- © Provided irrational job security to employees thus encouraging unproductive employees.
- © Laws are enacted on political consideration.
- © Conditions and facilities granted can be increased but not easily reduced.
- © Implementation of labour laws entailed financial burden on the employer.

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Even though the economy was gradually deregulated since 1977, adequate initiatives have not been taken to effect changes in the of labour laws in order to facilitate and optimise the benefits of the Market Economy. This has created a contradictory situation in which at present 75 % of the Sri Lankan Economy is managed by the private sector whereas the labour laws have not suitably modified or changed to meet the new demands of the market economy. The successive governments have declared that the private sector is the engine of growth. However, if a conducive business environment is not created the effective operation of the private sector could be impeded, thus resulting in total breakdown the Economy. In brief the rigidity of labour laws and the restriction on the labour market discouraged investment and had adverse impact on the expansion of employment, productivity and economic growth of the country.

THE NATURE OF CURRENT LABOUR LAWS

In order to understand the nature of the current labour laws, I would refer and analyze briefly 3 pieces of important labour legislations applicable currently and this would provide an understanding of the present position.

a) Termination of Employment (Special Provision) Act. 1971

This act requires the employer to obtain prior written permission from the Commissioner General of Labour for any form of non-disciplinary termination including the closure of Business.

This act was enacted in 1970's in order to prevent retrenchment and lay off of employees in the private sector in an economic environment where there were severe restrictions on imports and foreign exchange resulting in closure of enterprises. With the emergence of an open economy in 1977, at present these reasons are not relevant and valid but still law continuous to be unchanged.

There are several obnoxious features in this legislation -

- © The Commissioner General does not need to provide reasons, which is in violation of principles of natural justice.
- © The employer requires to pay wages until the Commissioner General decides on the issue. Then, need to lay off may not exist.
- © Restructuring of Business is treated differently from a closure of Business and more generous compensation is provided thus imposing further financial burden.
- © In most occasions, the quantum of compensation ordered were beyond the capacity of the employer. It would not only affect the liquidity of the enterprise but also the future of the employees who continue in employment. Some times it has been economical to retain the services of employees rather than payment of compensation.
- © This covered all situations of non-disciplinary nature even incompetence, ill health, absenteeism thus encouraging low productivity.
- © It is ironical that final decision regarding rationalizing or the closure of the business is in the hands of the Commissioner General. This restricts the employers' ability to rationalize or restructure a business and also a disincentive to investment in labour intensive enterprises.
- © Amendment No. 51 of 1988 to the Act stipulates the requirement of obtaining permission of the Commissioner to terminate an employee who had worked more than 180 days within a period of 12 months.

This act certainly served a purpose in an era of closed economy. In a market economy the provisions of this act is counter productive and a definite disincentive to investment. It is agreed that if an employer wishes to lay off or retrench a workman, he should be made to pay a reasonable quantum of compensation without forcing him to adopt a rigorous process as prescribed by this act in seeking permission for termination of employment. Under Industrial Dispute act in India, such provision has been made available. If the employer is unable to pay such compensation, an application can be made to the Commissioner for determination.

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b) Industrial Dispute Act

This Act provides a process to prevent and settle industrial disputes through conciliation, arbitration, collective bargaining/agreement and a system of labour tribunals. It has also provided a procedure to be followed in redundancy or retrenchment but has become ineffective due to the introduction of the Termination of Employment (special provision) Act. The significance of this act is that it provides a system to resolve Industrial Disputes and to regulate Industrial Relations but ill defined procedures connected thereto have minimized its beneficial effects to the employer as well as employee.

- ⊙ Officials of the Labour Department who are entrusted with the responsibility of conciliation need a greater degree of expertise and they tend to reach compromise at the expense of the Employer.
- ⊙ Appointment of arbitrators is not done on a professional basis.
- ⊙ On many occasions, Unions have violated the provisions of the collective agreements. Even though there is a provision to take legal action for such violation, the state has failed to act effectively. Unions prefer to achieve their goals through use of strength in preference to collective bargaining. This has downgraded the value of collective bargaining in the eyes of the employer.
- ⊙ System of labour tribunals has not realized the desired objectives. This process has been slow and legalistic and the number of cases pending has increased thus causing delays in dispensing of Justice.
- ⊙ The Labour tribunals have been provided with power to reinstate dismissed employees which is an infringement on the right of the Employer. It is felt that the Employer should not be forced to take a person who does not enjoy his confidence but provide an option to pay compensation in lieu.
- ⊙ In December 1999, few days prior to the General Election, Industrial Dispute act was amended by the former Government to provide recognition to the Union by the Employer where they command 40% of membership among employees. This was done without adequate consultation with the Employer organizations. The Employers' Federation of Ceylon representing the majority of employers were never against such move but they requested a provision to de-recognize the unions adopting unfair labour practices.

c) Wages Board Ordinance

The wages board ordinance No. 27 of 1941 makes provisions relating to all Trades in regards to the payment of wages, fixing of wage

period, overtime, holidays, maintenance of wages records and their preservation and penalty for non compliance.

- ⊙ This act covers around 40 Trades and some of the provisions adversely affect productivity. For example, Sunday is a fixed week holiday for most of the trades. If employed on a Sunday the rate payable is 1 1/2 times the wage and another holiday in lieu should be given. As this holiday cannot be rostered either employee will be entitled to overtime or alternatively extra workers need be employed.
- ⊙ Majority of wages Boards had fixed time-rated wages. In certain Trades, wages are adjusted based on cost of living. On certain occasions, decisions have been taken to increase salaries for political consideration and/or due to union pressure. Such actions breed inefficiency and adversely affect productivity. Consequential high labour cost unrelated to productivity would make the product or service uncompetitive and also desists the investors from investment in labour - intensive enterprises.
- ⊙ Sec. 59 A of the Wages Board Ordinance makes the "Principal" Employer liable for non-payment of Wages, provident fund and other dues in relation to the employees of a contractor providing service to the "Principal" Employer.
 - Such legal provisions are certainly not encouraging signals for investors.

IMPACT OF LABOUR LAWS ON INDUSTRIAL RELATIONS AND THE ECONOMY

I have reviewed only three important pieces of legislation. The nature of this legislation clearly confirms even though the socio-economic environment has changed, the labour law has not been suitably modified or reformed to meet the challenges of the market economy.

These characteristics prevail in other labour legislation currently in force. In brief -

- ⊙ The labour laws are heavily weighted in favour of the employees. This has adversely affected the productivity and as a result enterprises would become less competitive.
- ⊙ The rigidity of labour laws and its over protective nature in favour of employees have imposed severe constraints on the employer. This restricts the business activity, increases the cost and discourages full employment.
- ⊙ This has an adverse impact on the economic growth which is a sine-quo-non to find solutions to poverty alleviation and unemployment which are prevalent in Sri Lanka and South Asian countries. The economic growth during the last decade was around 4% - 5%, whereas at least growth of 8% is required to meet the socio-economic demands of the emerging society.
- ⊙ The rigidity of labour laws has given a wrong

sense of confidence to the employees and the unions. This has had a positive as well as negative impact on industrial relations. Whilst it provided strength to the employees and corrected the imbalance prevailed between Employer and the Employee, ironically this strength is being used by the unproductive employees to perpetuate inefficiency. Even in such situations, it is not possible to terminate the services of inefficient employees.

- ⊙ This situation discourages the employers to comply with the law and inducing them to find ways and means to evade the effect of the law.
- ⊙ Entrepreneurs not being interested in investing in labour intensive businesses, they tend to adopt automation or other means to reduce the number of employees involved.

It is a dilemma that governments in power since independence specially after the advent of the market economy have been oblivious to the reality of this situation. This lack of concern by the government makes the independent analyst confused and astonished. Employer organizations, Trade chambers have made numerous representations emphasizing the need for labour law reforms. The response has been lukewarm and of inconsistent nature. The main reason for this lackadaisical attitude is high dependence of political parties on working population to win elections. No party is prepared to antagonize "the vote bank" for the greater interest of the nation. They could certainly take a lesson from the Singaporean leader Lee-Kuan-Yew who was very firm with the trade union leader, Mr. Suppiah who threatened the government with strike action in early 1967. He says in his autobiography "The Government could not allow any union to jeopardize Singapore's survival" That I consider was the starting point of the establishment of Modern Singapore.

APPROACH OF THE PRESENT GOVERNMENT

In 1979 the government produced a White Paper on Employment recommending reforms in the Industrial Relations System but failed to proceed beyond. The People's Alliance Government in order to keep their promises to the working class during the General Election 1994 made an attempt to enact "the Workers Charter" which was meant to strengthen further the protection cover of the workers. Due to the protest from the business community this was abandoned. The most recent attempt is the Draft National Employment policy for Sri Lanka formulated by the present United National Front Government with the overall vision for Sri Lanka "to be a provider of a globally employable, competi-

tive Human Capital" This policy paper consists of 7 initiatives and under the initiative No. 6: captioned "Partnership Re-aligned" following has been stated:

"The weak tripartite partnership among the government, employees and trade unions has been a deterrent to Sri Lanka economic growth and social progress in the past. The rigidities of our labour relations framework (our labour law framework remained essentially what is prior to 1977) and the adversarial approach of Industrial Relations Systems have generally been looked upon as negative factors in our labour market. These factors have had an adverse impact on the attraction of employment - oriented investments both foreign and local and the productivity growth of our enterprises".

As Key Strategies, following has been indicated -

"Any meaningful steps to promote productive and stable employment in Sri Lanka needs to **NECESSARILY ADDRESS THE LABOUR LAW regulatory framework towards reform to:**

- * Create an environment that is more conducive to employment oriented investment
- * Facilitate the optimum utilization of manpower

While giving due regard to internationally acclaimed labour standards

This clearly indicates the Government of Sri Lanka is fully aware of and accepted the urgent need to reform the labour laws.

The important question is,

Would the political masters have the courage of conviction to act accordingly? I do not want to be a prophet of doom but sincerely hope and pray that the tragic past would not be repeated.

RECENT LABOUR LAW REFORMS

In pursuance of the government policy enumerated above, on 07th January 2003 the Honorable Minister of Employment of Labour Mr. Mahinda Samarasinghe, presented to Parliament 3 Bills for adoption. The fundamental features of three Bills are -

A. Industrial Dispute (Hearing and Determination of Procedure) (Special Provisions) Bills

(i.) *Proceedings before Labour Tribunals* Labour Tribunal will be required to make their final orders not later than 4 months from the date of applications. Time limits have been stipulated for notices to be sent to relevant parties and

statements to be filed. To proceed with inquiries in the absence without sufficient cause of, a party and to hear applications from day to day until their conclusion. Not to permit any postponement of hearings except for exceptional reasons. Appeals against an order of LT to be made within 21 days excluding holidays. Appeals to be heard & decided within 4 months. The 04 months time limit will apply to the Supreme Court as well.

(ii.) *Proceeding under the Termination of Employment of workmen (Special provision) Act.* The Commissioner General of Labour to make order within 01 month from the date of application or complaint.

(iii.) *Proceeding before Arbitration (Voluntary or Compulsory)*

To make the order within one (1) month

(iv.) *Determination of Pending Action*

Pending inquiries before L.T. and courts of appeal are to be completed within 04 months. Pending application under the termination act and before arbitrators and Industrial Court are to be concluded within 01 month and 2 months respectively.

B. Industrial Dispute Act Amendment Bill

To reduce the time period within which an application to be made to the Labour Tribunal from 06 months to 03 months.

C. Termination of Employment Workmen (Special Provision) Bill

© Compensation payable to a workman in case of a Termination to be computed in accordance with such formula as determined by the Commissioner General of Labour.

© Requires the Commissioner to afford the Workman concerned an opportunity of being heard in respect of applications made for Termination by Employers.

© Commissioner is vested with the discretion to award compensation to an employee where in his opinion the continuation of employment of such employee is prejudicial to him.

© Period within which an employee can make a complaint under this act has been reduced from 06 months to 02 months.

When these Bills were presented in the parliament, certain amendments have been made in response to the protests made by trade unions and the Opposition Party. The copies of the legislation have not been released as yet. However this gives an indication of the extent to which the government is responsive to the trade union pressure.

CONCLUSION

We urgently need to take a fresh look at our labour laws and the Industrial Relations System. Due to historical reasons, labour law in our countries is heavily weighted towards the employees. With the emergence of the market economy we need to

amend, modify and repeal laws to meet the emerging demands of the Business World. The current labour law has not changed since 1977 despite the change over to the Market Economy and the free market economy requires private sector involvement and massive private sector investments. The current labour laws are rigid and not conducive to attract investment. They impede economic growth and as a result the economic progress of the nation is retarded. Hence, the reformation of labour law has become a critical national issue which requires the urgent attention of the government and those who are concerned with the progress of our nation. The labour law should suitably reformed to facilitate the socio-economic progress and it should be periodically reviewed to meet the emerging demands of the society within the framework of the labour standards, which are suitable for developing countries.

It is of critical importance to look after the interests of all stakeholders. The interest of employees should be safeguarded by the laws of the country. In doing so, it should not adversely affect interests of other stakeholders and the community. The collaboration of the social partners (Employers - Employees - State) is imperative to create the wealth of the nation. To achieve this objective, there should be an understanding amongst the three parties involved through consultation, consensus and compromise which would bring about a clear policy and an action plan to be implemented with a sense of urgency. A balance between social justice and economic growth would provide optimum benefits to the workers, enterprises and the nation.

In this regard, it is pertinent to quote Professor. Venkata Ratnam, a famous son of India who in his article "The role of the state in industrial relations in the era of globalization", in a ILO publication in 1997 stated - "The changing times call for radical thinking on the intent and content of labour policy. It should move away from the regulation to the facilitation; re-action to pro-action; and dispute resolution to the creation of sound industrial relations conducive to economic and social development"

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