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OBJECTIVES

The Law and Society Trust Fortnightly Review keeps the wider Law and Society community informed about the activities of the Trust, and about important events of legal interest and personalities associated with the Trust.

PRIVATIZATION - THE ARCHITECT OF CHANGE

by Chanuki Karunaratne

Privatization is a cumbersome buzzword for a political concept that has fueled the idea of free-market revolutions throughout the world. Governments all through Western Europe and in Canada, Japan, the US and elsewhere have spun off state-owned assets and functions to private industry. In Sri Lanka, the pace of privatization has picked up considerably and it has confirmed the realization by the government that public sectors represent a growing burden on national resources that they can no longer afford, economically or politically to carry. At the same time the government has come to the firm conclusion that efficiency invariably suffers in state-owned enterprises which are shielded from the full weight of other commercial pressures and which are often social and political burdens to the government. Sri Lanka's progress towards the policy of peoplisation is a reflection of a global trend - to liberalize economies and encourage the growth of private enterprises.

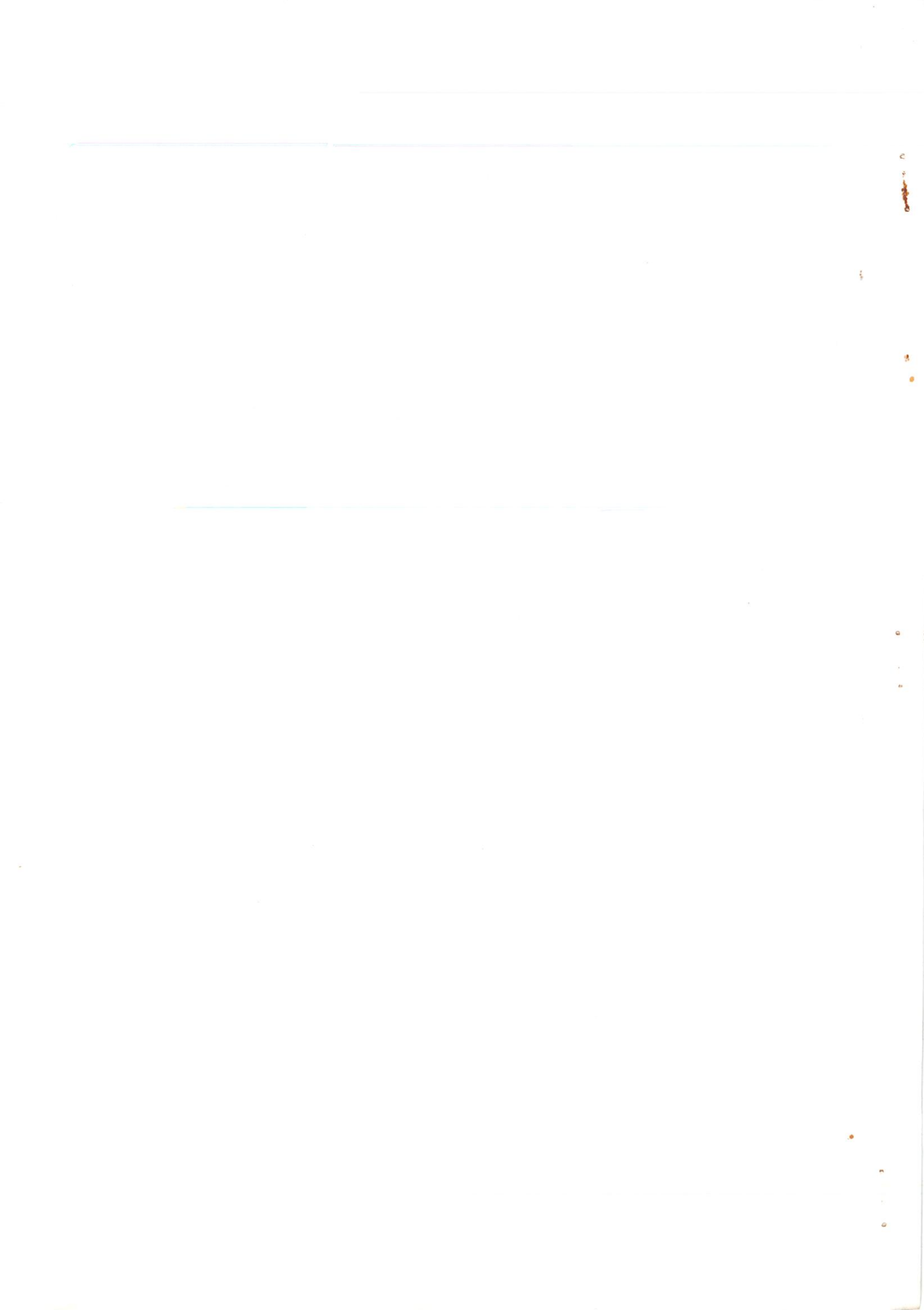
The recent handing over of 500,000 shares in the peoplised venture - United Motors - to its employees is an example of the opportunity for employee participation in and direct ownership of State enterprises. The Prime Minister stated, "In Sri Lanka the concept of peoplisation envisages participation of the people in their individual capacity in the ownership of State enterprises." While peoplisation encourages the participation of the private sector and individual citizens (including employees) "to share in the ownership of state owned enterprises, privatization envisages the transfer of ownership of state enterprises only to private institutional or corporate investors. This distinction between peoplisation and privatization is vital to the understanding of the two concepts.

The pre-1977 Government had harshly implemented "violent and hasty" import and exchange control

measures. Successive Budgets also increased taxes. In 1977, Sri Lanka emerged as the most heavily taxed country among the least developed countries." Many industrial projects taken over by the State turned out to be white elephants. The economic reforms introduced by the new Government after 1977 marked a major transformation in the economic history of Sri Lanka. Liberalisation of imports and exchange laws, abolition of price controls and monopolies employed by public enterprises, and curtailment of welfare expenditure took place. The role of state owned enterprises was sharply curtailed and the image of private enterprise boosted. A share market that had never existed was created and thrives today.

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In the strained financial and economic circumstances now prevailing in Sri Lanka – including a heavy debt problem – the State cannot be expected to continue giving handouts to subsidise the ailing State enterprises. In defending this policy, President Junius Jayewardene, the architect of Sri Lanka's liberalised economy, stated: "Plans for privatization are not part of an ideology and are not a threat to socialist or communist states or to the socialism that exists in our country. It is purely a question of survival. What is best for our people, not for ever, but for today's circumstances, environment and resources (Asian Review – March '88).

Privatization has already been implemented on a selective basis with the objective of creating a truly broad-based share owning democracy in Sri Lanka. The concept of privatization has caught the lime light in economics and politics not only in Sri Lanka, but throughout the world. Britain has privatized 20 major State enterprises, France has listed 165 for privatization, Germany, Japan, USA and Canada have done the same. In Asia the Philippines, Bangladesh, Malaysia, Singapore and Thailand have listed numerous industries for privatization.

Once implemented privatization would cause a tremendous change in corporate objectives. These are six main results based on the theory of privatization –

1. Improvement in Management efficiency and productivity.
2. Improvement of the quality of goods produced.
3. Prevention of financial drain on the economy.
4. Augmentation of government revenues and the release of greater funds for promoting development, social welfare and social services.
5. Help in creation of a new share owning democracy.
6. Increase in national revenue and help in reduction of turnover taxes and the cost of living.

The most visible justification for the urgent need of privatization in Sri Lanka has been the inefficiency of state owned enterprises. In just 3 years, State Corporations gobbled up Rs. 19,000 million – money that could have been used for national development and better welfare services. Furthermore, the civil strife dilemma has cost Sri Lanka Rs. 55 million according to the World Bank. In this strained financial environment – Privatization seems to be the only positive flicker. (Why should not the country turn the losses incurred by the State giants into profits and let the people share them?)

Privatization has been a public policy response to the ailing economy dominated by State enterprises. That is why it should be made clear that privatization does not and should not mean a loss of face to anyone wedded to any ideology whatsoever. Privatization is not a general tonic but rather a specific medicine which is expected to

go a long way in healing our economic ills and accelerating the idea of economic stability. To those sceptics who might ask "Why privatize?" we can only conclude by quoting the words of Britain's Chancellor of the Exchequer – Nigel Lawson – "The Business of Government is not the Government of Business. Going private does not cause a threat to political ideologies but rather is a remedy for the many problems inherent in State sector management."

WOMEN IN STRUGGLE: SRI LANKA 1980 TO 1986

By Sunila Abeysekera

PART I

(Parts II and III will be published in subsequent issues)

Introduction:

Growing interest in the women's movement in developing countries in the past decade, as well as a focus on 'her-story' has led to the growth of an increasing body of knowledge related to women's participation in public life in our societies. Challenging the myth of the 'subservient' and 'subjugated' Oriental woman, more and more reports and reminiscences of spirited and radical women in South Asia have emerged in the past years as a result of intensive and committed research into this neglected area of our history.

In Sri Lanka, Kumari Jayawardena's pioneering work in documenting the history of the working class movement has revealed a large number of hitherto unknown facts regarding the active role played by Sri Lankan women in the early part of the 20th century, in the anti-colonial and anti-imperialist struggle as well as in many strikes and agitation campaigns aimed at winning various rights and demands as workers. However, what becomes increasingly obvious as one tries to follow on in delving more deeply into Sri Lankan history with specific regard to women is the appalling paucity of adequate documentation and informative material regarding the period from the point of view of non-mainstream actors such as women.

This paper is the result of a combination of two aims : One is to attempt to document very recent history in terms of the participation and role of women in mass agitation campaigns; the other is an attempt to understand recent socio-economic and political developments in order to discern their specific impact on women. Emphasis will be on specific sectors of the labour force in which the participation of women is a prominent feature, while attention will also be paid to the specificity of women's responses to the challenges posed by rapid social change in present day Sri Lankan society.

The early years of women's organising in Sri Lanka

The first women's organisations in Sri Lanka seem to have been formed in the 1930s, as a part of the broader social movement against colonial domination. Organisations such as the Mahila Samiti, which were launched as a part of the anti-colonial campaign to popularise indigenous handicrafts, and other women's groups mobilised on the basis of religious affiliation, are still very much in existence today, carrying on with a specific set of activities, as set out in their original mandates. Most of the organisations of this type have a strong social service or welfarist component and undertake disaster relief work as well as the maintenance of orphanages, hospital wards and homes for the aged and the disabled.

Other women's organisations of the period had a more direct link to the working class movement and to the left political parties, and therefore had an orientation towards the achievement of social justice and social transformation. With this end in mind, they organised a large number of strikes, boycotts and public demonstrations against the colonial government of the early 20th century as well as against successive governments after Independence in 1948.

The names of women such as Emalia Hamy (of Hunupitiya), Isabella Hamy (of Wanathamulla), Fausthina Hamy and Emmy Nona form a distinctive part of the history of the early years of the trade union movement in Sri Lanka: they, among other women activists of the time, were militants in the trade union activities organised by A.E. Goonesingha. Newspapers of the time reported their participation in public meetings and demonstrations, with some referring to them as 'viragos' and 'harridans'. The presence of women in the ranks of the protestors and demonstrators is referred to in reports of the first General Strike in 1923, in the tram strike of 1929, and in the election campaign of 1931.

The role played by women in the General Strike of 1945 in which over 30,000 workers participated, is on record: on the one hand, in keeping with the traditional role of woman as 'home-maker', the women collected and cooked food for the thousands of people on strike as well as for their supporters. On the other hand, they participated in demonstrations, were arrested by the Police and, on one occasion, near the Borella junction, women demonstrators even stood up to a Police battalion in order to get a fellow woman-demonstrator released.

In the 1940s, a woman worker at Hayleys and Kennys, Ponsina Hamy, shot into the limelight by being accused of slapping a clerk and was sentenced to 3 months in prison. Mymoon Umma, a Muslim woman from Slave Island, was one of the best known public speakers of the time. In the plantation sector, K. Meenachiammal, wife of the trade unionist Natesa Aiyar, was a popular figure on public platforms, and her songs about the plight of the plantation workers were very well received.

The participation of women in 'Hartal' of 1953 and in various trade union and political struggles thereafter is recognised, but is yet to be properly documented. What is important to remember in the context of the present paper is that Sri Lankan women have played a significant role in labour agitation in the past.

The recent past

When one looks at the past two decades, one can see that in the period immediately before 1970, the same two types of women's organisations as above could be identified, in a very broad sense. One consisted of the organisations that concentrated on welfare or social service work; others had a more political orientation, but were, in the main, content to be adjuncts of major left political parties of trade unions. The influence of the 'new wave' of feminism that swept Western Europe in the 1960s had an impact on Sri Lankan women: the Vietnam war, which was then at its zenith, also contributed to provide an alternative and close at hand vision of Asian women; the participation of Vietnamese women in their country's struggle for freedom at all levels posed a strong challenge to many of the pre-conceived notions of 'Asian womanhood' that had acted as a constraint on women's participation and women's development in other countries in the Asian region.

The naming of 1975 as the International Year of Women and the naming of the Decade 1975-1985 as the UN Decade for Women, had a broad impact on women all over the world. Even in such developing countries as Sri Lanka a new interest was shown regarding the question of women and their position in society. The state responded to this interest by setting in motion the machinery that would later build up becoming a Women's Bureau, and later still a Ministry of Women's Affairs. The non-governmental agencies too focussed on aid and project assistance to women, bringing into being various criteria for evaluation that emphasised the need for women to gain benefits from development programmes and projects.

The 1970s saw economic growth in certain sectors such as tourism and garment manufacturing that were significant in terms of female employment. In the late '70s came the phenomenon of migration to the West Asian countries, with again a large number of women obtaining employment, primarily as domestic aides. The sudden influx of large numbers of women into the job market has had a tremendous impact on the society and on social structures.

It is against this background, and within this context, that one can see the emergence of several small and autonomous women's groups in Sri Lanka in the 1970s as a response to the growing needs of women all over the country who found themselves under a great deal of social and economic pressure.

The emergence of independent women's groups in the late '70s

In 1979, the first independent women's group called KANTHA HANDA (The Voice of Women) was set up. They began to print a journal in all three national languages, hold discussions and meetings, and generally agitate on issues where they felt women had been discriminated against. The women members of the All Lanka Peasants' Congress came together as the Progressive Women's front, first with a focus on the problems of poor peasant women and later on branching out to deal with broader issues of women's oppression and subordination in society. In many parts of the country, one found small groups of women coming together for discussions and for campaigns aimed at publicising the fact that women are discriminated against, which was quite a new idea at the time.

In 1982, for the first time many of these women's groups came together in a campaign for solidarity with the women workers at Polytex Garments in Ja-ela (a small town north of Colombo) who had come out on strike. The links that were built up during this period continued to grow and in 1983 the Women's Action Committee (WAC) was set up in order to coordinate the celebration of March 8 as International Women's Day. A public meeting was held at the New Town Hall in Colombo, and the fact that March 8 was Women's Day was given broad publicity through a vigorous poster campaign in Colombo and several other major towns throughout the country. The meeting was addressed by representatives from various women's groups and the slogans formed the theme of the meeting related to all sectors. In particular, the call for the release of Nirmala Nithyanandan, the only woman who was then being detained under the provisions of the Prevention of Terrorism Act, was given prominence. This becomes all the more significant when one recalls that there were not many occasions during this period when either the left political parties or trade unions came forward in public in support of the struggle of the Tamil people of Sri Lanka for self-determination.

On March 8, 1983, women members of the Communist Party of Sri Lanka and the Lanka Sama Samaja Party were driven away by the police when they called over at the American Embassy in Colombo to hand over a petition calling for nuclear disarmament and peace. Among the women taken into custody by the Police at Kollupitiya (Colombo 3) and detained for a few hours were the ex MP for Dehiwela Mount Lavinia, Vivienne Goonewardena. She was physically assaulted by the Policemen who took her into custody notwithstanding her age and ill health. (Even though she brought a law suit against the Policeman involved in the incident, and won, the judiciary was given a slap in the face on this occasion by the authorities who gave the Policeman involved, a promotion).

In 1984, members of the Women's Action Committee had to face direct confrontation with the Police in their attempt to celebrate Women's Day. Knowing that

permission for a public demonstration would not be granted, the women gathered at a public park in Colombo (the Vihara Maha Devi Park) close to the venue of the public meeting (the New Town Hall) and then began to walk, in silence and single file, carrying slogans denouncing the situation in the country and calling for justice for women in all sectors. Police broke up this march, grabbing the posters from women and tearing them up. On the same day, women members of the left parties who tried to demonstrate near Lipton's Circus in the heart of the city were also baton charged by the Police and dispersed.

Despite the spread of repression throughout the country, there was no decrease in the militancy of the women's groups. In 1985, a broad group of autonomous women's groups, led by the WAC, organised a women's day around the theme "For a Just and Fair Peace, Free of Repression". A Demonstration was organised from De Mel Park at Slave Island (Colombo 2) to the New Town Hall. A special feature of this demonstration was the participation of a large number of women university students and women workers from a broad range of trade unions. The women walked along the pavement in utter silence, two by two. At a major intersection near Town Hall, the marchers were set upon by the Police who baton charged and teargassed the demonstrators. Four women were taken into custody and detained at the Cinnamon Gardens (Colombo 7) Police Station until 9 p.m. that night. Women members of the left parties were also dispersed by the Police that year as well.

By the time March 8, 1986 came around, the situation in the country had deteriorated further and state repression against all those forces that were critical of the state and its actions had become severe. The Women's Action Committee chose 'Women Unite against Exploitation, Oppression, Repression and Insecurity' as their theme for the celebration of Women's Day this year. In past years, women had put up posters celebrating the fact that March 8 was Women's Day and announcing the activities for the day in public places, on the roadside and so on, in spite of all the fears and tensions that prevailed. However, in 1986, the Police Department informed the WAC that the poster for the year could be put up only if the words 'exploitation, oppression and repression' were excised from the text. This, however, did not prevent women from defying the order and going ahead with putting up the posters without any words being deleted. However, it was decided not to hold any public demonstration this year, due to the prevailing situation. The WAC and several other groups held a meeting at the New Town Hall, as usual. The women's groups of the left parties organised a seminar at the Public Library Hall. The Pacific and Asian Women's Forum group in Sri Lanka organised a cultural festival on the theme of 'Women's Creativity' throughout the day at the Open Air Theatre of the Vihara Maha Devi Park and at the National Art Gallery. Women University students organised a concert of songs at the John de Silva Theatre and there was also a special production of the Sinhala version of Hendrik Ibsen's play THE DOLL'S HOUSE at the

Lionel Wendt Theatre in Colombo. There were also Women's Day meetings held in Galle and Kandy, two major provincial towns. This spurt of activity around March 8 shows us that Women's Day had, within the short space of 3 years, become an established day of celebration among many different progressive groups in the Island.

The militancy displayed by these women's organisations in this period, as well as the way in which they have moved forward in theoretical understanding of the women's question, combining the issues specific to women with the issues that relate to social justice and human progress as a whole, makes it absolutely essential that they should form an integral part of any analysis of the present socio-political situation in Sri Lanka.

The situation in Sri Lanka : 1986

In 1986, Sri Lanka was facing a series of compelling crises in a number of spheres; the impact of the liberalised economic practices of the past decade were making themselves felt in several sectors, both positively and negatively, while the heightening of tensions and conflict in society had its own repercussions on the social and political environment.

Taking purely economic statistics into account, one could see that the country was registering a high rate of growth. However, it was very obvious that while certain sectors of the economy, and of the society, were benefiting from the economic policies of the government, other sectors and other social strata were being pauperised and marginalised. The protests against the cutting of food stamps that took place during the period in question shows what a large percentage of the population was affected by this curtailment of food subsidies.

In particular, our attention should be drawn to the ways in which democratic rights have been violated in this period. Given the far-reaching nature of repressive legislation that has been enacted in the past years, it is not surprising that few organisations have come forward to denounce social injustices and actively oppose those acts that infringe on the democratic and human rights of the people. At the same time we must be conscious of the fact that the ethnic conflict and the state of civil war that existed during this period was another predominant factor influencing the socio-economic and political situation, while the rapid militarisation of society led to a breakdown in 'normal' life in most part of the country, with women having to bear the brunt of the burden.

In many ways, the General Strike of July 1980 marked a turning point not only for the trade union movement in Sri Lanka but for the whole 'body politic' of the left. The state declared that over 40,000 workers would be considered as having vacated their posts by not turning up for work as requested.

The strike, which commenced in the railway yards of Ratmalana, a suburb of Colombo, on the 7th July 1980,

spread to the entire state sector within a week. According to some estimates, about 1,40,000 persons took part in this strike at its peak. But due to disunity within the ranks of the trade union movement, as well as due to the socio-political environment that prevailed at the time, by the end of July the state had successfully broken the back of the strike. From that point onwards, even trade unions that had a long and militant history covering half a century were reduced to a state of utter disarray. Even today many of the trade unions still suffer from the debilitating effects of that experience.

The specific nature of public agitation campaigns in the 1980-1986 period:

Viewed within this context, when one looks at the various ways in which the working class forces of Sri Lanka have aligned themselves in the course of struggle and action over the six years from 1980 to 1986, one can discern certain specificities which are worthy of attention. For example, there is the fact that it is not the big trade unions which have a 'glorious' past (except for the Ceylon Workers Congress) that have led successful agitation campaigns in these six years. Rather, those organisations that we saw in action have been. For the most part, 'independent' or 'autonomous' ones, ones that are not directly linked to any particular political party or trade union federation, and that represent the needs and interests of one specific sector of workers.

It is also during this period that one can see the re-emergence of militancy among sectors of the peasantry. Many organisations that work in the rural and agrarian sector, including the All Lanka Peasants' Congress, took to the path of struggle against the handing over of lands in the Moneragala District to sugar multinationals, and against the levying of a Water Tax from farmers throughout the Island.

Another positive feature of the period was the attempt of many of these smaller groups and organisations to link with other similar and like-minded groups and organisations to build solidarity networks and campaigns for the strikes and other agitational campaigns among a broader section of the population.

The fact that, at a time when the 'organised' working class, which is traditionally accepted to be the motive force of social transformation, was facing grave setbacks, independent fronts of struggle have emerged from other sectors of the so-called 'intermediate' classes - student, peasant, women and so on - is but one indication of the specific nature of the historical phase which Sri Lanka is passing through at the present juncture. Another key indicator is the re-alignment of political forces on the basis of ethnicity as well as the growth of all forms of nationalist and sometimes chauvinist consciousness as a consequence. The intention of this paper is to briefly outline the role played by women in struggle in the so-called 'unorganised' sectors with a view to understanding their specific contribution to the process of social transformation in the country.

The Peasant Sector

A major feature of the open economic policy adopted by the present government was the introduction of modernisation and capital-intensive development to the rural agricultural sector of Sri Lanka. The Mahaweli Development Scheme was 'accelerated' with a heavy infusion of foreign aid as one part of this policy, while cultivation of non-traditional cash-crops became a priority of agricultural development. In the early 1980s, there were many invitations issued by the state to foreign investors to invest in agricultural projects in the Island. It was said that in particular the government was offering large extents of land in Mannar, Moneragala and other under-developed areas, so that infrastructure development in these regions could be expanded as well. Accordingly, from 1981 onwards, there were many reports of foreign investment in the agricultural sector coming in to the country.

The struggle of the Moneragala Peasantry

The Moneragala District is one of the most under-privileged areas in the Island. The Uva-Wellassa region, as this area is commonly referred to, was famous for its prosperity in agriculture. It remains memorable in the annals of Sri Lankan history because it served as the centre of the Peasant Rebellion of 1848.

However, in later years, due to the spread of malaria, the breaking down of the ancient irrigation systems and many other factors, this region became depopulated and evolved into one of the most neglected and under-developed areas.

Although the geographical area occupied by the Moneragala District is large, with a low population in terms of that size, in fact, reservations for the Lahugala, Yala and Uda Walawe Wild Life Parks and the reservation area for the Gal Oya Settlement Scheme take up a large proportion of this area.

In 1982, under the scheme of foreign investment in the agricultural sector that was being actively promoted by the state at that time, two multinational corporations expressed an interest in the cultivation of sugar cane and the production of sugar in the Moneragala District. There had been small-scale growing of sugar cane and production of sugar in the past in Moneragala; however, the license to import sugar that was proffered to the private sector as part of the government's economic policy had dealt a death blow to local sugar producers.

By late 1982, Booker International began cultivating sugar cane to Pelawatta. At that time, there was no organised resistance to this move, due to two main reasons. One was that the lands taken over by the Pelawatta Sugar Company were for the most part uninhabited and uncultivated land. Also, at this stage, there was not much awareness about the implications of this kind of 'development' among the people living in the area or among peasant activists.

The situation changed with the news that Mehta International, another multinational, had been allocated 12,000 acres of land in Moneragala, including the stretch of virgin forest-land known as 'Haddawa'. Much of the land earmarked for this project was already occupied by peasant families. One source cited figures of 625 families in 23 villages, as being the numbers that would be affected by this land grab. The state countered by saying that many among these people were technically 'squatters' who engaged in slash and burn cultivation on State Land. But there were also families who had legal ownership of the land they lived and worked on, and who had paid taxes to the state for many years in this respect.

A further point of contention was the proposal to denude the area of the Haddawa forest and plant sugar cane in the area instead. Environmentalist opinion was that this could lead to grave consequences on the ecological balance in the region, in particular affecting ground water supplies.

Throughout 1984, the agitation and protest campaign against the handing over of land to the sugar multinationals continued to grow. In September 1984, a Solidarity Committee for the Peasants of Moneragala was formed. Whenever peasant representatives sought clarification from state officials as to whether lands would be handed over to the multinationals, the response was always non-committal; yet, one day workmen turned up on the land allocated to Mehta International to demarcate the boundaries of this area. No warning at all had been issued to those resident in the area. The men had all gone to work, and only the women and the younger children were in their homes.

In the process of marking the boundaries many trees - lime, orange and banana - were destroyed, and it was the women in particular who were affected by this unexpected onslaught on their land, because they were the home gardeners. It was the women who cultivated these fruit trees and who walked miles each way to market and back, carrying their produce in baskets which they would balance on their heads. The money they earned from the sale of this produce was what kept the home fires burning each day of the year. Thus, the destruction of their home gardens meant not only a loss of cash income for these women, but also a loss of the social independence which they gained through having access to an independent income.

Soon after this initial incident, the people of the area began to hold small village level meetings to work out a strategy for action. Their first attempt was, of course, to retain their landholdings and resist re-location in other areas. In co-operation with other organisations they began an agitation campaign, distributing leaflets, holding meetings in the major towns in the area and also coming to the capital, Colombo, in deputations to meet both state authorities and other democratic organisations to see if some intervention could be made regarding their situation.

The experiences of the Progressive Women's Front (PWF), which began working with the peasant women of Moneragala on an invitation of the All Lanka Peasants' Congress, are extremely interesting with regard to the role played by women in this agitation campaign.

At the time the women activists of the PWF went to Moneragala, they found that the peasant women there had a very low estimation of their capabilities, especially in respect of their ability to get involved in social or community activities. One of the PWF women, Sumika Perera, described her experience as follows:

"In the beginning, most of the women would not even come for the discussions we had. Even the few who did come remained silent throughout. Yet, as the question of losing their land became more or a reality with each passing day, the women developed to the point where they would say 'Let's kill and be killed, but not one inch of our land will we give up.'"

Women not only participated in circulating petitions, attending meetings and discussions and so on, but also played a leading role in actively confronting the workmen who came on to the land for surveying and demarcating boundaries. The women stood for hours, even in the pouring rain, in order to prevent the workmen from entering the precincts of the village. When threatened with the Police, all they said was 'Well, you'll have to take us all along'. There were many occasions when women who were part of a delegation to meet state officials regarding their plight were the ones who would speak out against the injustices being done to them in a most forthright manner.

By 1985, the struggle of the Moneragala peasants against the sugar multinationals had gained wide publicity internationally as well. And it also caught the attention of officials in Colombo. In response to a letter sent to the Commissioner of Parliament on Jan. 15th, 1985, a meeting was organised in Colombo between state officials and the peasant groups, as well as with officials from the multinational company involved in the case. Yet, all these attempts to resolve the issue to the satisfaction of the peasants were to no avail and Mehta International continued to go ahead with its programme for cultivating sugar cane in the Moneragala area.

In May 1985, the Moneragala police arrested a number of people who had gathered to protest against the indiscriminate 'bulldozing' of cultivated land by the hired workmen of the company. The Police also made it known that they had a list of 88 names of persons whom they sought to arrest in this regard; six of the names were of women who had played a key role in the agitation campaign. On the day that the arrested persons were to be produced in Courts, the Peasant Committees decided to surrender all the 88 persons whose names had been mentioned, to the Courts on that day. However, the company was unable to establish their right to the disputed land with any

documentary evidence, and the judge allowed bail for all those persons whose names had been called out in Court on that day, saying "I cannot order the detention of an entire village."

Kamala Adikari and Badra Wickremasinghe of the PWF describe another facet of the agitation campaign in August 1985, in the following words: "There were almost 200 people, including about 60 women. They walked over 2 miles to the place where the Company had set up its plant nurseries. As they saw the nurseries, the group began to run towards them; one mother trampled down the fence in her haste to get to the nursery area. They uprooted all the cane plants and planted banana plants in those plots instead."

Yet, all such steps were in fact ineffectual against the combined strength of the Company and the state. By September 1986, it became obvious that the peasants were fighting a losing battle. Today, most of them have become an albeit unwilling part of a process, whereby they cultivate sugar cane on a plot of land allocated to them by the Company and then sell the sugar cane back to the Company-owned sugar factory at a price determined by the Company. The traditional life-style of the people of Moneragala has been considerably altered due to these changes in their economic and productive activity.

Despite the seeming defeat of the struggle of the Moneragala peasants, the lessons one can draw from the experience are many and varied and can have a great impact on future developments in the field of popular struggle in Sri Lanka. The links and bonds created between many organisations working in the rural sector and other groups and organisations have remained and have continued to grow in other areas, and the strengthening of this solidarity network can be seen as one of the positive results of the Moneragala protest campaigns.

When one looks at the impact of the struggle on the women of Moneragala, one can see that the experiences they gained in the field of organising, mobilising and actively confronting figures of authority, as well as in the field of discussion and negotiations with officials will leave a lasting impression on them. The women of Moneragala, who were at first reluctant to even participate in a small village meeting, gained maturity, strength and self-confidence through their exposure to struggle. In the process, they learned not only about the role of women in such agitation campaigns, but went on to broader discussions regarding the questions of women's subordination and the experiences of women's struggles in other parts of the world. They also built up contacts with many other women and women's groups from different parts of the country. Today, it would be literally impossible to try to push the women of Moneragala backwards to their previous levels of unawareness and inexperience. And the store of accumulated vision and consciousness that one can find in these women today is what can carry them forward in the future.

(TO BE CONTINUED)

ENVIRONMENT AND THE COURTS

By Mario Gomez

Separate systems of courts or tribunals, to handle specific issues have now become a feature of several jurisdictions. Labour tribunals, family courts, the increasing resort to commercial arbitration, are all part of this trend which began around the middle of this century. So are the Human Rights Commissions – set up in many countries to consider human rights conflict.

These separate systems, often with a common system of appeals, have been set up in the belief that certain areas of the law require specialised adjudication. Traditional court procedures and processes have been viewed as an impediment, or as being inappropriate, to the effective resolution of conflict in these areas. Some areas of the law have also required specialised expertise, which judges have often lacked.

An example is the Family Law Act of 1975 which set up the Family Courts system in Australia. Among the ideas underlying the creation of this system, was that the area of family and marital conflict needed to be taken out of the adversary system. That the notion of a 'winner' produced by the adversary system was often fatal to relationships, which needed to go on, even after the formal legal proceeding were completed.

Other justifications were that the court proceedings were too formal and too divorced from the parties. This required that the judge shed his or her robes and wig and (literally) step down from his or her pedestal – judges now sit on the same level as the parties and counsel.

Labour law too requires that factors like the unequal power relationships that exist between employer and employee be taken into account. This required the creation of new concepts to cater to these emerging relationships.

From India comes news now, of a separate system of environmental courts. Last year, the Indian Ministry of Environment submitted a draft Environmental Bill seeking to comprehensively revamp the legal regime with regard to the environment in that country. The bill came under opposition from several quarters and has yet to be passed by Parliament.

In this issue of the LST Review, we will look at some of features of this draft bill.

The bill seeks the establishment of a new environmental regime – legal and other – in India. A regime that

would be more sensitive and more equipped, to handle and address issues of environmental and ecological destruction and degradation. The new regime has as its primary features, the creation of a system of environmental courts, an environmental commission and an environmental fund.

The bill was drafted by former Chief Justice P N Bhagwati and its roots can be traced to some of his judgements a little before he left the Supreme Court.

History

The idea of environmental courts was first mooted by Justice Bhagwati in a case which came up before the Supreme Court, a little before he retired. In *Mehta v Union of India (1987 AIR 965)*, a case involving a major leakage of oleum gas, the Indian Supreme Court noted that environmental cases threw up a whole gamut of scientific and technical issues. A lot of these issues were not capable of being resolved by the courts. Therefore Justice Bhagwati reasoned, that it might be 'desirable' to set up environmental courts on a regional basis. The court had immense difficulty in securing relevant technical expertise and therefore he suggested in the same case, the setting up of a pool of environmental experts, that would be able to advise the court when such matters arose. Some of these ideas now find expression in the new draft legislation.

Environment Courts

The draft environmental bill envisages the establishment of a network of environmental courts to deal specifically with environmental matters in every state and union territory in India. The draft provisions attempt to change the tenor of litigation as we know it. Several of the court processes and procedures that were developed in relation to Public Interest Litigation, have been incorporated in the provisions of the draft bill. These include the power to appoint commissions of inquiry, broadened rules of standing and free legal representation.

These environment courts are to consist of a President and other members. One third of the members are to consist of judicial members. The President and the judicial members are to be selected from retired or sitting members of the High Court or from among lawyers having 15 years of experience with environmental matters.

Procedure in these courts is a hybrid between the adversary and the inquisitorial. The bill permits any public spirited individual or group to bring an action before the environment court where any activity has caused or threatens to cause damage to the environment.

Actions may be instituted in the environmental courts by way of formal petition or even by addressing a letter. Such petition or letter need not be supported by a formal affidavit.

The bill also provides for free legal representation to be provided to the complainant. The expenses of the such representation are to be borne by the Environmental Commission to be established under the proposed Act.

The courts also have the power to appoint commissions of inquiry to investigate any matter pending before the court. The expenses of such commissions of inquiry are to be borne by the Environmental Commission.

The bill provides for environmental groups to intervene in any matter pending before it. The courts are given the power of using academics, social scientists and others to prepare a report for the court. This report is open to be challenged by any party.

In two provisions the Sri Lankan courts and legal profession could well copy, the bill imposes on the courts the obligation of disposing of the case as far as possible within a period of six months. If the court fails to do so, it has to give a written explanation for this failure.

Similarly, the draft bill prohibits environmental courts from adjourning cases merely because the attorney is unavailable. An exception is made when the attorney is ill.

No other court has jurisdiction to entertain a matter tried by the environmental court. However an appeal lies from a state environmental court to the National Environmental Court.

The bill imposes an obligation on parties setting up projects likely to pose an environmental threat to publish a notice in a regional paper and two national newspapers.

The notices should include the potential damage foreseen and the measures that were to be taken to control the harmful effects. The draft bill also provides for environmental groups to lodge objections with regard to the setting up of any project that is liable to cause environmental degradation.

Absolute liability is imposed on a party that is responsible for causing environmental degradation which causes death, physical or mental injury, or causes harm to property. Proof of negligence need not be established in these cases.

Where ecological or environmental destruction was the result of a series of activities and processes, then all those responsible will be held liable.

The draft act also makes provision for the channelling of fines paid by violating parties into an Environmental Fund set up under the Act.

National Environment Court

There is provision for appeals to be made to a National Environment Court consisting of at least three members. In important cases, five members would constitute a quorum. The Court would comprise of both judicial and non judicial members. The members of the Court are to be selected from an Environment Experts Pool. The Environment Experts Pool was to be appointed by the Environment Commission in consultation with the Chief Justice of India.

Environment Commission

The Environment Commission set up under the bill was to appoint members of the National Environment Court and the state environment courts.

The Commission was also to appoint an Environmental Experts Pool consisting of at least 24 members. There was also provision for a legal cell to advise public interest and environmental groups. It was also to provide free legal aid to individuals and groups who wished to initiate action in the Environmental Court.

The Environmental Courts are also given the power to request the Commission to investigate and inquire into any matter of destruction or degradation.

Environment Fund

The draft bill proposes the establishment of an environmental fund. The Central Government was given power to impose an environmental tax on certain industrial undertakings, and these monies went in to the Fund. Monies received from the fines imposed on violating parties also went in to the fund.

The New Litigation

Emerging issues require new models of litigation. The draft environmental bill is an effort to craft this new model in response to an issue that began to emerge in South Asia, no more than about 20 years ago. The bill seeks to statutorize procedures and processes which were devised as part of Social Action Litigation. The nature of litigation in common law jurisdictions, has undergone a rapid transformation since the early part of this century. The model embodied in the draft environmental bill, is a possible indication of the direction of future litigation, to be conducted in the new century.

BOOK REVIEW

by Jani de Silva

Title: Women, Works and Temple in Rural Sri Lanka

Authors: Motoyoshi Omori & Yoshiko Tanigushi

Publishers: Intermixture & Synthesis Monograph Series 2, Social Science Research Institute, International Christian University, Tokyo, 1990.

This book addresses itself to an area of perennial interest, the impact of occidental influences upon traditional norms and values that influence the lives of women in rural Sri Lanka; what is synthesized into the system and what makes for social conflict. It looks at the function of traditional institutions such as the temple, patterns of land tenure and inheritance and the caste structure; and the emergence of innovative organizations based on traditional concepts such as 'shramadana', but which are also imbued with a new individualism, ie. the co-operatives and Rural Development Societies. Finally it looks at factors such as education and waged labour, which are seen as the vehicles of the new individuals.

'Intermixture & Synthesis' are, as the writers point out, a collection of contributions compiled for academic periodicals written between 1980-88, and therefore are a group of articles arranged around selected themes rather than an integrated argument directed towards illuminating a process of social change. To this extent, a certain amount of repetitious information pertaining to socio-economic background and research design is involved, in as much as each section begins by situating itself afresh. Moreover, the first two chapters are again devoted to an introductory discussion of the intentions of the research team, methodological issues and conditions of fieldwork. The substance of the book then, is contained in Chapters 3 & 4, and it is perhaps interesting to look at these in detail.

Chapter 3, after a brief incursion into background and method moves into a general discussion about education, waged work and social welfare. The discussion of the public education system and its implications for social stratification, particularly among the rural peasant classes is indeed interesting. Educational success is seen as the single most important factor in differentiating the relatively 'well-off' from the 'ordinary people' and 'the poor' in Beralapanatara, the village in which the greatest part of the field work was conducted. While the discussion does establish the starkness of educational opportunity for those from more peripheral regions, what it does not comment on is the extent to

which it contributes towards the increased independence and autonomy of women.

On the other hand, the writers appear to feel that wage labour offers better opportunity for women to enhance their role in rural society. The most substantial discussion in this chapter is a comparison of the attitudes and work ethic of female workers in two factories ie. a tea factory and a porcelain factory situated in very different locales. Since the industrial workplace is perhaps the one arena that is furthest removed from the traditional social and economic activity of the rural peasant, it is possibly the most pertinent area to gauge the extent to which the new occidental norms have impacted on female workers. The writers argue that nevertheless, female workers had not yet developed into what could be categorised as modern labourers, for factors such as caste and family, traditional ideology concerning sexual differentiation of labour and the marriage system act as constraints.

The writers observe, quite correctly, that the traditional marriage system essentially allows for two marriage strategies; the more 'elitist' approach which accords much importance to the working capacity of the woman. Thus women factory workers, for instance would have a greater bargaining power which derives from their ability to earn a stable cash income in place of a dowry. It would appear then, that the implicit incentive to secure employment stems from the desire to find a 'good husband'. Thus in situations where management cadres are almost invariably male, despite educational achievements they may have almost no chance of promotion, but complaints of sexual discrimination are seldom heard. The workers moreover, display a great deference to established authority and widespread acceptance of the hierarchical order is evidenced in worker-management relations. Most significantly, the writers observe that the fundamental identification of female workers remain with kin/caste group rather than with colleagues in the work-place, trade unions, etc., and these conclusions seem to be amply borne out by worker response to the research questionnaire.

The final section relates to areas of conflict and co-operation. This section is divided into 3 parts, the first of which is a review of anthropological literature on Sinhalese social organisation and its base in land tenure and inheritance patterns. The next section discusses disputes on rice fields; in as much as rice has from times immemorial been the staple food of the Sinhalese and that their society and culture are inextricably linked to paddy cultivation, as Omori observes, perhaps it is not possible to study any aspect of the lives of the Sinhalese without a consideration of rice cultivation.

The main causes of disputes would appear to stem from the neglect of necessary collaboration between owner and tenant or between co-owners, on the one hand, or land inheritance patterns. Here, the imposition of modern legal ownership structures upon traditional inheritance patterns, which are based on a strong ideology of equal-distribution-of-land-among-all-issue, provide the potential for much conflict among

siblings. The situation would appear to be further compounded by the fact that traditional modes lead to the uneconomic fragmentation of the land, and the plurality of actual patterns of inheritance which obtain between different regions and among various social classes. The discussion however, is general, and is not focussed on the special constraints faced by women in getting access to their inheritance. The final part of Chapter 4 is devoted to a discussion of collaboration among the residents of Beralapanatara in Rural Development. It discusses administrative changes in the post-independence period, which created the preconditions for the emergence of the Rural Development Societies (RDS) in their present form. Special focus is given to the activities of the Uduhupitiya and Kandakumbura Society of Beralapanatara, which was very active during the period the fieldwork was conducted. Here again, discussion of their work is limited to a few paragraphs. There is then, no analysis of why in an area of relatively high levels of female employment, there appears to be a low level of mobilization among the women themselves, and their involvement in social and political activity.

Thus perhaps the most substantial aspect of this publication is the comparative study of the work ethic and behaviour pattern of female rural workers in industrial workplaces, and this work has provided analytical insights of interest to any student of social change. The discussion of conflict and co-operation however, appears to be more descriptive and general and while it does establish that modern individualistic legal codes implanted on traditional collective land tenure patterns does create potential for discord, this is clearly not a point that any observer would take issue with. Finally, the writers have conferred upon the Temple a wholly integrating and harmonising role, even while observing that in certain instances it does serve to reinforce caste cleavages; and this, it is difficult to accept in its entirety, particularly in the light of subsequent socio-political reality.

ON FRIENDSHIP :

A BUD IN BLOOM

BY SHANTHE J.R. PIERIS

*In life,
the unopened bud,
the blossoming bloom,
and the fading flower.*

*all,
are savoured, tasted and flavoured :
only on hands of supplication
Never on naily thumbs
or fists of anger.*

*For how else can we perceive :
the tear drop dew on petals?
the rainbow lustre of blooms?*

or the sinewy felt of flower-lips?

*So too in life
Relationships, things, positions,*

*all,
that we cling to
we will never possess.*

*What we hold gently,
and tenderly,
and freely,
we will never be sorry to let go..*

*For holding it thus:
Physically we part,
but in spirit, we have it still.*

*Therefore,
in the still, cool, freshness
of mine eye,
the alluring fragrance,
refreshes me still!*

JANUARY 1991 CALENDAR

9TH - 17TH JANUARY

Law & Society Trust delegates Shanthie Pieris and Asita Obeysekera attended a Paralegal Training Workshop held under the auspices of the International Commission of Jurists and the Union for Civil Liberties, in Thailand.

18TH AND 25TH JANUARY

Core-Group Meetings.

*Speaker - Professor Jay Erstling
Topic - "US Trade Policy in Relation to Intellectual Property"*

19TH JANUARY

*Symposium. 9.00 a.m. - 12.30 p.m.
Theme - The 17th Amendment to the Constitution.*

TO OUR READERS

We are grateful to readers who have written in asking that their names be retained on our mailing list.

If you have not already written to us, please note that, in view of the increasing demand for copies of the LST Fortnightly Review, we are requesting readers to let us know if they wish to remain on our mailing list.

A revised mailing list will be prepared in March 1991.