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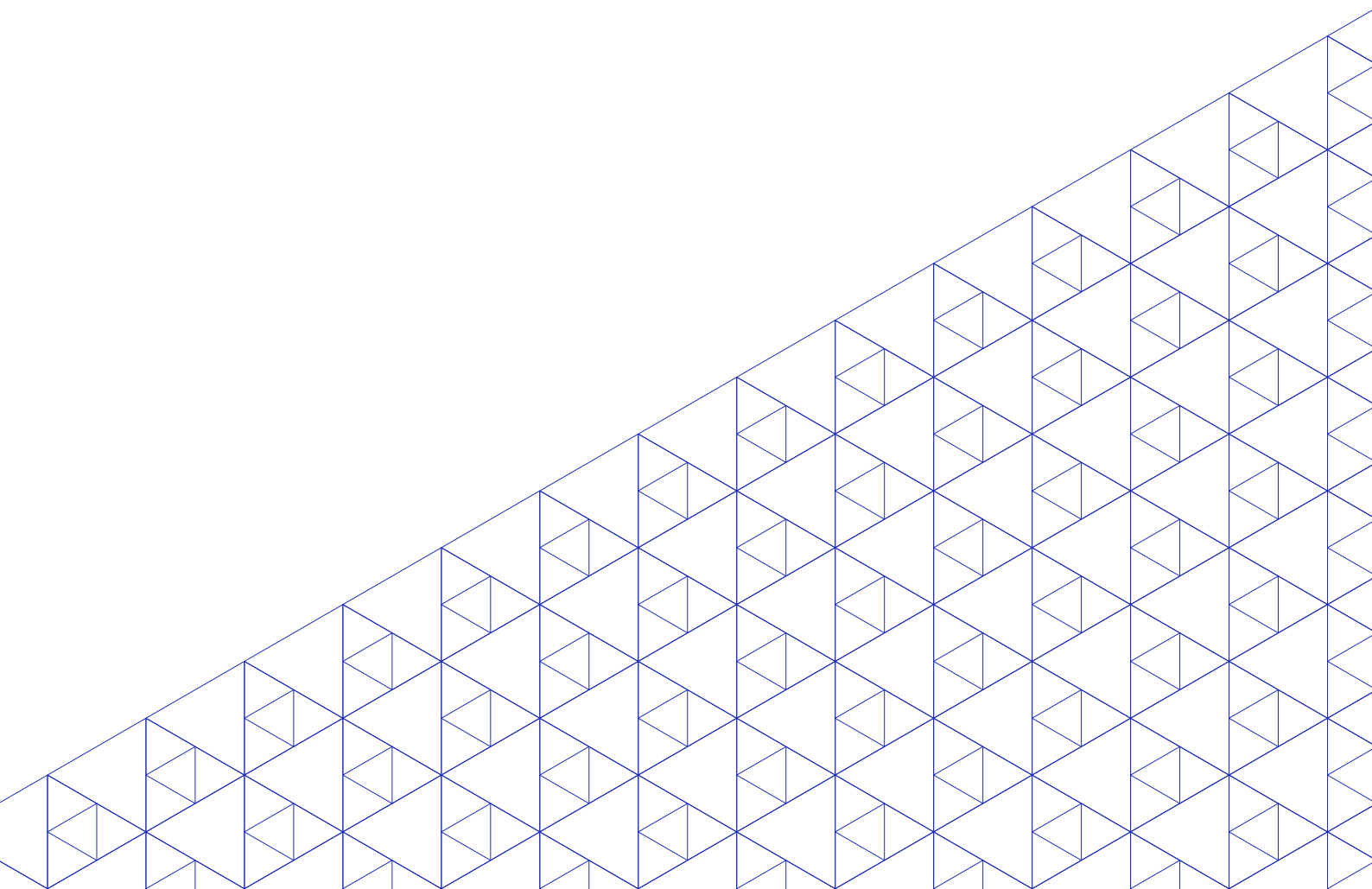
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► Social dialogue in the Public Services in South Asia

A comparative overview of the laws, institutions and practices in India, Nepal and Sri Lanka

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Abstract

While revealing new challenges for public services, the Covid-19 pandemic has also cast renewed light on the state of social dialogue and labour relations practices in many countries. But the rationale for this study also has an earlier genesis: following an ILO Governing Body decision, a Global Dialogue forum was convened in 2014 to address the impact of the financial crisis and other challenges confronting labour relations in the public services. It identified the need for further research to “enable improved responses to situations of crisis and to address obstacles in the ratification of Conventions Nos 151 and 154”.

This report is mainly based on a qualitative desk top assessment of available secondary literature and primary legal texts to describe and contrast the state of freedom of association and the right to organize and collective bargaining in the public services in India, Sri Lanka and Nepal. Public service labour relations in these three south Asian countries are found to be in flux and prone to instability while operating with moderately effective to weak social dialogue mechanisms. Although freedom of association is constitutionally enshrined for public servants, it is restricted in law and practice. Trade Unions are well established but also highly fragmented and politicized.

About the author

Alistair Smith is a former New Delhi based ILO specialist for social dialogue and labour administration where he was part of the Decent Work Country Team for South Asia. He has extensive experience in labour market governance and industrial relations at the policy and practical level. At the time of this study he was working as an independent labour researcher and consultant. He holds an M.Phil. degree in Development Studies from the University of Sussex.

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Acronyms

CEACR	The Committee of Experts on the Application of Conventions and Recommendations
CFA	Committee on the Freedom of Association
CTUO	Central Trade Union Organisations
EI	Education International
ILC	International Labour Conference
JCM	Joint Consultative Machinery
MOLE	Ministry of Labour and Employment
NJCA	National Joint Council of Action
PSI	Public Services International
PSU	Public Sector Undertakings

Executive Summary

This study was undertaken amid an unfolding Covid-19 pandemic which has cast a global spotlight on the responsiveness and capabilities of public services worldwide. While revealing new challenges and possibilities the pandemic has also highlighted ‘perennial’ issues not least being the importance of sound public service labour relations.

In many countries the Covid-19 crisis responses in public social services, especially health and education, lacked adequate consultation with organizations of so-called front-line workers, sparking protests and industrial action in many cases.

Interest in public sector labour relations has accelerated following decades of public sector reform efforts internationally and especially since the 2008 global financial crisis and the associated austerity push across many countries. The ILO General Survey (2013) on the application of the Labour Relations (Public Service) Convention, 1978 (No. 151) highlighted different approaches to public service labour relations, which speaks to the adaptability of international labour standards to national conditions.

Although the survey observed a gradual increase in the number of countries that ratified Convention No. 151, it also noted that anti-union discrimination and restrictions on collective bargaining remained persistent challenges in public services of many ILO member countries. Thus the ILO Governing Body (317th session) decided to convene a global dialogue forum on the impact of the financial crisis on collective bargaining and other challenges to the development of good labour relations in the public service. The global forum called for further research into public service labour relations, in particular to document the variety of practices and dimensions of social dialogue, especially of collective bargaining in the public services.

Pursuant to this research agenda, the purpose of this study is to provide a high-level overview of labour relations in the public services of India, Sri Lanka and Nepal. It aims to trace the main legislative aspects and institutional arrangements that underpin Freedom of Association and Social Dialogue in public services with a special focus on the civil service. The investigation follows a qualitative approach, drawing on relevant legal texts and secondary data sources to describe and contrast the legal and institutional frameworks underpinning freedom of association and the right to organize and engage in collective bargaining.

The general lack of recent research and paucity of information on public service labour relations in the South Asian context was a significant drawback for this investigation. Much of the available literature is dated, and there are also significant gaps in official data sources on public sector employment, demographic, and unionization trends. Where feasible, the desktop collection of data was supplemented by telephonic interviews with key informants. The availability of key informants was further hampered by the Covid-19 pandemic. Notwithstanding these challenges the report provides a snapshot of the legal and institutional framework for social dialogue in the three countries.

Sound labour relations in the public services is a necessary condition for any government’s ability to develop and deliver quality public services in a sustainable manner. In this regard the guidelines and principles contained in the following ILO instruments are salient:

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- Labour Relations (Public Service) Convention, 1978 (No. 151);
- Collective Bargaining Convention, 1981 (No. 154).

The special dynamics of the public services and especially the role of certain categories of workers (soldiers, police, civil servants) have been taken into account in the evolution and design of these instruments. The

ILO supervisory bodies have on various occasions noted the foundational significance of the above instruments in promoting sound labour relations in the public services.

The Asia Pacific region lags behind other regions in terms of ratification of fundamental Conventions. While good progress has been made in terms of ratification of Conventions Nos 151 and 154 in different parts of the world, the progress in the Asia Pacific region has been slow. None of the South Asian countries have ratified either Convention. Four countries in the South Asian context have ratified both Conventions Nos 87 and 98 (Bangladesh, Maldives, Pakistan and Sri Lanka). India has not ratified either of the two and Nepal has yet to ratify Convention No. 87.

Public Service labour relations in the three countries share a number of common characteristics:

The public sector has played a historically significant role in the economic development and labour market dynamics of all three countries examined. Although a relatively small fraction of overall employment, the public sector is responsible for a high percentage of formalised employment. Over the past decade, employment in public administration has increased in both Nepal and Sri Lanka. In India public sector employment has declined from historical levels while being associated with a rising trend in vacancy rates and atypical forms of employment and volunteer work.

The right to freedom of association is constitutionally guaranteed, with provisions for legal variation. The armed forces and police are legally restricted from joining trade unions in all three cases. In Sri Lanka prisons and judicial officers are also not allowed to form unions.

Public servants are in the main governed by separate laws and regulations. In Nepal public servants are excluded from the Labour Act, 2074 (2017). The recognition of public servants' trade unions and the conduct of public servants is governed by the Civil Service Act, 2049 (1993). In Sri Lanka the Trade Union Ordinance (No. 14 of 1935) regulates the registration of unions including those for public servants (excluding armed forces, police, prison and judicial officers) government workers are however excluded from the Industrial Disputes Act (No. 43 of 1950) in Sri Lanka.

In India, where labour regulation is a shared competence between the central and state legislatures, government workers are excluded from the Industrial Relations Code, 2020. The rules for public servant associations and the conduct of public servants are governed in terms of central and/or state level laws, regulations and service rules.

There are significant gaps in official data on public sector unionisation rates in the three countries. Union density estimates, however, indicate a relatively higher rate of unionisation amongst public sector workers.

The rules regulating the recognition of unions of government workers engenders fragmentation and union multiplicity along departmental and occupational category lines. Public sector trade unions also tend to have close political affiliations and use their political leverage to advance member interests.

The regulation of terms and conditions of employment are determined by legislation or executive authority. Such decisions are either guided by a committee of senior bureaucrats (Nepal) or more independent pay commissions (India, Sri Lanka) and are subject to varying modes of consultation. Such consultations on collective matters in India are institutionalized through the Joint Consultative Mechanisms at central and state level. The Civil Service Act in Nepal contemplates "collective bargaining" for lower categories of public servants while consultative processes in Sri Lanka operate in a more ad hoc and informal basis.

In all three cases, public servants are prohibited from resorting to strikes or other forms of collective action. Despite these restrictions, public service labour relations are prone to strikes and protest actions. Dispute resolution mechanisms for individual grievances are based on legalistic quasi-judicial processes and tend to be drawn out and costly.

Public sector reforms efforts in the three countries have generally been marked by weak consultation measures.

There is much scope in the South Asian context for further empirical research and development of knowledge products to promote the principles and guidelines established in Conventions Nos 151 and 154. The government of Sri Lanka has committed itself to enhancing social dialogue and dispute resolution in the public service. The devolution of power and associated decentralisation of public administration in Nepal brings new challenges but also opportunities to promote social dialogue. In India efforts to promote social dialogue in public service are best pursued at the state level. This is mainly due to the substantial variation between states and that delivery of public goods and welfare services are primarily the responsibility of state governments.

► Introduction

Background, purpose and structure

Labour relations in the public services received less academic and policy attention in the past compared to the private sector, but this situation has changed in the present century (Casale et al. 2008). Interest in public sector labour relations has accelerated following decades of public sector reform efforts internationally and especially since the financial crisis and the associated austerity push across many countries. The Covid-19 pandemic has highlighted the importance of public service labour relations and its fragility.

The fallout from the 2008 global financial crisis set the main context for the ILO General Survey in 2013 on the application of Labour Relations (Public Service) Convention, 1978 (No. 151). Against this background the ILO Governing Body (317th session) decided to hold a global dialogue forum on the impact of the financial crisis on collective bargaining and other challenges to the development of good labour relations in the public service.

The Global Dialogue Forum on Challenges to Collective Bargaining in the Public Service was thus convened in April 2014 to address the above theme in conjunction with the findings of the General Survey.

The General Survey highlighted the specificity in the national political-economic contexts which shaped the laws, institutions and practices in which public service labour relations are embedded. Notwithstanding the variety of approaches to social dialogue and the regulation of terms and conditions of employment, the survey identified the following specific challenges in many jurisdictions:

- the ineffectiveness of measures to address anti-union discrimination and interference in union affairs;
- denial of an effective right to collective bargaining in practice; and
- restrictions in terms of the scope of issues, the level of bargaining and the bargaining unit.

The Global Forum identified a need for further research, in particular to “provide countries with knowledge to improve their own practices, to enable improved responses to situations of crisis and to address obstacles in the ratification of Conventions Nos 151 and 154”.

The central plank of this research agenda thus involves documenting the variety of practices and dimensions of social dialogue in the public services with a particular focus on collective bargaining. The report contributes to the research objective by providing a high-level overview of labour relations in the public services of India, Sri Lanka and Nepal, by focusing on the main legislative aspects and institutional arrangements that underpin freedom of association and social dialogue in public administration in general.

The next section briefly elaborates on the main Conventions, definitions and principles underpinning freedom of association and collective bargaining in the public services. Part II provides a snapshot of the labour relations scenario in the public services of the three countries. Part III maps the main social dialogue structures and mechanisms for determining terms and conditions of employment in the public services focusing on civil administration. Part IV concludes with final observations.

International labour standards: Definitions and principles of social dialogue and collective bargaining in the public services

Sound public service labour relations are a necessary condition for any government’s ability to develop and deliver quality public services in a sustainable manner. It is subject to unique dynamics flowing from

its dependence on public finance and requisite accounting measures, the inherently administrative character of the employment relationship and the way it is embedded in a “comprehensive network of social relationships” (Casale et al. 2008).

The special nature of the employment relationship in the public services, its impact on the quality/efficiency of public services and its wider macro effects are major issues that have shaped the evolution and design of the main Conventions relevant to public service labour relations. This includes the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Labour Relations (Public Service) Convention, 1978 (No. 151), and Collective Bargaining Convention, 1981 (No. 154). It is worth noting that the text of the social dialogue resolution adopted at the 90th session of the ILC in 2002, expressly recalled these instruments. This resolution invited governments to enhance and promote social dialogue in “sectors where it hardly exists or is absent” - this bears special relevance to the public services.

Thus in conjunction with the ILO supervisory mechanisms these instruments have been central to the evolution and promotion of social dialogue and sound labour relations in the public services in general (Casale et al. 2008). The Committee of Experts on the Application of Conventions and Recommendations (CEACR) has on various occasions noted the relevance of social dialogue and the principles of good faith collective bargaining including the right to strike in relation to the public sector (Novitz 2017).

The Conventions Nos 87 and 98 are interrelated and mutually reinforcing. They serve as the universal foundation for sound labour relations in the private and public sectors, hence their fundamental status and widespread ratification.

Conventions Nos 151 and supplement the above two fundamental Conventions. Combined, these four instruments provide the foundational guarantees and building blocks for establishing sound labour relations in the public services in ways that are flexible and adaptable to different national environments.

The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) outlines the basic principles and elements that constitute freedom of association including:

- The right of workers and employers to establish and/or join organisations of their own choosing without needing prior authorisation;
- The right of employers’ and workers’ organisations to “freely elect their own representatives, establish their own rules and constitution and organise their administrative affairs, activities and programmes without interference from the public authorities;
- The right of employers’ and workers’ organisations to establish federal and or confederal organisations and to affiliate to international organisations;
- That requirements for trade union registration should not hinder the realization of these guarantees.

These guarantees are automatically applicable to all workers the only exceptions being the armed forces and police, who may be excluded by specific national legislation.

The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), requires that governments put in place legal or administrative safeguards to shield the employment of union members and their representatives from anti-union discrimination, and also to prevent employer domination of unions.

Freedom of association and the right to form a union is rendered superfluous if there is no protection against anti-union discrimination. This is vital in the context of public services where some categories of workers are still subject to the common law principle called the doctrine of pleasure, which grants discretionary power to dismiss, transfer or deploy a government servant at pleasure subject to specified (mainly procedural) criteria. The hierarchical/administrative nature of public administration also increases the risk of employer dominance.

The relevant authorities must also take measures to encourage the development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers organisations, with a view to regulating terms and conditions of employment by means of collective agreements. This definition clearly intends to privilege collective bargaining as the preferred method of regulating terms and conditions of employment.

In addition to allowing the possibility of excluding the armed forces and police, this Convention, specifically only excludes public servants engaged in the administration of the state from its scope of application. It also does not permit downward variation where greater protections already exist.

The Labour Relations (Public Service) Convention, 1978 (No. 151), in its preamble, notes the expanding nature of public service activities and the concomitant importance of sound labour relations in the public sector. While respecting the diversity of practices in Member States regarding the regulation of public service employment, its express intention was to address the gaps arising from narrow interpretations of Convention No. 98 by some authorities, thus effectively denying these protections to large numbers of public service employees.

Convention No. 151 applies to all persons employed by government, including those involved in civil administrative functions. It only permits exclusion by way of legislation/regulations in respect of:

- i) the armed forces and police;
- ii) "high level" employees in policymaking /managerial capacities; and
- iii) persons whose jobs require a high degree of confidentiality.

It provides a framework for sound public service labour relations by entrenching specific guarantees to protect the right to organise and measures to promote social dialogue, including collective bargaining in the public services in the following articles:

- Article 4 – Protection of employment against acts of anti-union discrimination;
- Article 5 – Protection against employer dominance and interference in public employees' organisations;
- Article 6 – The availability of facilities for employee organisation representatives;
- Article 7 – Appropriate measures to allow for the determination of terms and conditions of employment through negotiation or other methods of participation;
- Article 8 – The settlement of disputes arising from the determination of terms and conditions of employment by way of negotiation or via independent machinery using alternative dispute resolution processes;
- Article 9 – Protection of the civil and political rights required to exercise freedom of association.

The ILO defines bipartite social dialogue as a process that involves an exchange of information, consultations or negotiations between one or more employer or employers' organisation and one or more workers' organisations, without the direct involvement of government, unless government is involved in its capacity as an employer.

"Collective Bargaining is an intense bipartite form of social dialogue which involves negotiation with the intention of reaching a binding collective agreement on regulation of the working conditions and terms of employment and/or relations between workers and employers or their respective organisations" (Bordogna 2018).

Convention No. 154 is promotional in nature, it lends itself to flexible application and provides comprehensive guidance for advancing collective bargaining as a method for regulating terms and conditions of employment in private and public sector employment. It complements the flexibility in Convention No. 151 by

taking into account the special dynamics in the public service, providing leeway for the establishment of other “appropriate modalities for determining terms and conditions of employment” with the proviso that it must involve representations by workers’ organisations.

While acknowledging the flexibility inherent in Convention No. 151, the CFA ruled in relation to Convention No. 87, that “all public service workers other than those engaged in the administration of the State should enjoy collective bargaining rights, and priority should be given to collective bargaining as the means to settle disputes arising in connection with the determination of terms and conditions of employment in the public service” (ILO 2006).

In its report to the 102nd session of the ILC, the CEACR emphasized the positive aspects of collective bargaining in the public services by observing that:

“[C]ollective bargaining, far from damaging the quality of public services or being contrary to general interest, is in fact an instrument that can lead to a harmonious work environment, more effective and efficient services and, above all to decent working conditions in the public sector” (ILO 2013a).

However, effective collective bargaining cannot thrive in an environment that restricts freedom of association and the right to organise. It also requires well-developed mechanisms of dispute resolution based on negotiation and the potential resort to industrial action as well as capable actors that are committed to good faith bargaining practices.

“[Yet m]ore than 30 years after the adoption of Convention No. 151, there is still a large gap in terms of recognition of the rights it embodies: while some countries have instituted highly developed mechanisms to advance the goals embedded in Articles 7 and 8 of the Convention, other governments determine working conditions unilaterally or have not been able to implement consultation mechanisms. The lack of consultation mechanisms has played a major role in the occurrence of severe and very costly labour strife in some countries. ...In addition, the economic crisis has acted as a “stress test” both for the ability of the national systems to facilitate change and for the maturity of the parties to embrace dialogue in a creative fashion” (ILO 2014).

The Asia-Pacific region lags behind other regions in terms of ratification of fundamental Conventions. While good progress has been made in terms of ratification of Conventions Nos 151 and 154 in different parts of the world, the progress in the Asia-Pacific region has been slow. Four countries in the South Asian context have ratified both Conventions Nos 87 and 98 (Bangladesh, Maldives, Pakistan and Sri Lanka). India has not ratified either one, and Nepal has yet to ratify Convention No. 87. None of the South Asian countries have ratified either Conventions Nos 151 or 154.

► 1 Particularities of labour relations in the public service in South Asia

India

Profile of public service employment

The role of the public sector in India's economy and labour relations system remains strong despite many years of economic liberalization (Bhattacharjee and Ackers 2010; Hill 2009). As already indicated, India's labour laws are primarily geared toward a small fraction (less than 10 per cent) of the labour force, found mainly in the organized sector which includes the totality of public sector employment. Public sector employment rose rapidly since the sixties from around 7 million persons in 1960/61 to close to around 22 million persons in 1999/2000. An estimated 18 million workers were employed in the public sector in 2014 (Nagaraj 2016).¹ The railways, banking and insurance sectors dominate the share of employment in public sector undertakings/utilities at the central level. Marketing corporations and transportation utilities are significant providers of employment at the state level.

► Box 1: Expansion of Public Administration

- Soon after independence the national/federal level of government had approximately 1.4 million employees and the administrative structure was comprised of 8 secretary level posts (administrative heads of ministries/departments) and 18 departments.
- In 2000 the central government employed around 4.2 million workers, including over 100 secretaries across 80 departments. In 2010, 9.7 million persons were employed in public administration, defense, and compulsory social security; this figure dropped sharply to 7.8 million by 2019. However, the employment of women has increased consistently since 2012, although in 2019 it remained 16 per cent lower than in 2010).
- In 2010, 9.7 million persons were employed in public administration, defense, and compulsory social security; this figure dropped sharply to 7.8 million by 2019. However, the employment of women has increased consistently since 2012, although in 2019 it remained 16 per cent lower than in 2010).

Source: Venkata Ratnam 2001; ILOSTAT 2021

Over half of this workforce was employed at the State/local government level where the bulk of social service provision is delivered.

The larger State government employment share also reflects a widening of the social safety and gains in social welfare related rights and entitlement. Public Sector Undertakings (PSU) and utilities employ about 25 per cent of overall public sector employment. In 2014 close to 20 per cent of government employees were estimated to be in the employ of the central government.

About 4.7 million approved posts were recorded in central government in 2014. The number of vacant posts increased by almost 80 per cent during the period between 2006 and 2014 from around 550,000 in 2006 to 750,000 in 2014 (Ghosh and Chandrasekhar 2020). They further demonstrate that India has one of

¹ Estimates for public sector employment can vary significantly depending on which official sources are used (Nagaraj 2016).

the lowest public service employment rates in the world, employing 16 people per 1,000 population compared to countries like China (57 per 1,000 population) and Brazil (111 per 1,000 population); Norway has the highest ratio at 159 per 1,000. The rise in the number of vacant posts may have negative implications for service delivery and labour relations.

Ghosh (2020) has highlighted the overall employment loss in PSU, while noting its disproportionate impact on the lower/non-executive categories of employment. She further notes that this trend is accompanied by an increase in the number of casual and contract workers – estimated to be more than a third of the PSU employment in 2017/18. Outsourcing has risen sharply in the public services in general, especially in auxiliary activities like canteens, transport, and cleaning. Large scale precarious contract work is also evident in the welfare distribution and bus transportation sectors (Smith 2021a).

Driven by an expansion in social rights and welfare provision, the health, education and social welfare services have become heavily reliant on contract and volunteer workers.

► Box 2: Rising number of contract teachers

India's drive to expand access to education, especially primary education, has also been associated with marked increases in the number of contract teachers. Close to 15 per cent of primary school teachers were estimated to be contract teachers in 2014-15. This was almost 24 per cent in government schools in the Delhi Metropolitan District. Contract teachers have tenuous job security and earn less than the norms prescribed by the Pay Commission for their permanent counterparts.

Source: Kumari 2018

Volunteer workers have no job security or benefits and are paid an “honorarium” instead of a wage although they perform a critical public service. The scale of the reliance on “scheme workers” to deliver important primary social services is usefully illustrated by Ghosh (2021), using the example of the Integrated Child Development Scheme, involving over two million Anganwadi workers and helpers. She observes that this scheme alone constitutes more than 60 per cent of the total central government approved posts.

An important component of India's National Rural Health Mission aims to “provide every village in the country with a trained female community health activist” commonly known as an ASHA (India, National Health Mission 2021). These are woman volunteer workers chosen to be the primary interface between the village and the public health system. ASHA's promote universal immunization, they provide “first contact health care” and referral/escort services for reproductive and child healthcare. In 2020 there were approximately 900,000 volunteer workers providing services under this scheme, receiving performance-based incentives instead of a fixed salary. The scheme has been criticized for normalising gender-based occupational segregation and systematic pay inequity (Jain 2021).

Freedom of association and the right to organise in the public services

Although India is a founding member of the ILO, it has not ratified Conventions Nos 87 or 98. The guiding principles in these instruments have nonetheless had an important bearing on the Indian Constitution and the evolution of the statutory framework governing industrial relations (Aggarwal 1972). The right to freedom of association for all citizens is enshrined in the Indian Constitution as part of an enforceable bill of rights accorded to all citizens.

This includes the right to freedom of speech and expression, freedom to assemble peaceably, freedom of movement and the right to form a union or associations (Constitution, art. 19(1)(c)). The Constitution (Part IV) further stipulates normative guidelines for state policy, including on the right to a humane workplace, the right to earn a livelihood without discrimination, and the right to a living wage.

Section 33 of the Constitution empowers parliament to make laws determining the applicable extent of any of the fundamental rights to “Forces” including the following:

- a) the members of the Armed Forces; or
- b) the members of the Forces charged with the maintenance of public order; or
- c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter-intelligence; or
- d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

The armed forces and central police are covered by separate legislation which prohibits trade union membership. Individual States have also passed legislation prohibiting state level police personnel from joining trade unions.²

Notwithstanding its constitutional status, freedom of association is generally constrained in law and practice for workers in the public services.

The recently enacted Industrial Relations Code 2020 is an amalgamation and partial amendment of the former Trade Unions Act 1926, the Industrial Employment (Standing Orders) Act 1946, and the Industrial Disputes Act 1947. The Trade Unions Act 1926 prescribed the basic requirements and procedures for registration of trade unions. The Industrial Disputes Act 1947 provided for individual grievance redressal mechanisms, and “works committees” for bipartite consultation.³ It also established government administered dispute handling mechanisms for “industry disputes” including strikes and lockouts based on conciliation and adjudication based on quasi-judicial processes.⁴ The Industrial Disputes Act 1947 scope applied to industry establishments and workmen, in the private sector as well as publicly owned industrial and commercial undertakings and public utility services.⁵ The Industrial Employment (Standing Orders) Act 1946 required all employers with 100 or more workers to publish “standing orders”⁶.

The Industrial Relations Code 2020 has introduced a wider definition of “industry”; it has also substituted the term “worker” for “workmen”. The thresholds for the establishment of a grievance redressal mechanism and works committee has been increased to only apply to enterprises employing 300 or more workers. The adoption of the code by parliament in 2020 was widely criticized by trade unions for a lack of consultation and the implications of some of the amendments.

Following a recommendation by the second pay commission, the Civil Service (Recognition of Association) Rules 1959, were established in terms of article 309 of the Constitution to regulate the recognition of associations of central government employees and All India Services (Aggarwal 1972). These rules were subsequently superseded by the Civil Service (Recognition of Association) Rules 1993. The following are noteworthy in this regard:

- Membership of a Service Association is restricted to a “distinct category of Government Servants having a common interest”.

² Prior to the enactment of the [Police Forces \(Restriction of Rights\) Act 1966](#), the courts upheld the freedom of association for police personnel.

³ Applies to industrial establishments with 20 or more workers for grievance handling redress mechanisms and 100 or more workers for works committees.

⁴ Cases related to termination of employment of individual workers are deemed to be industry disputes.

⁵ State-owned industrial and commercial establishment are commonly referred to as PSU.

⁶ These are basic terms of employment related to the employment status, hours of work, leave conditions, attendance, procedures for termination, and grievance procedures. The Industrial Relations Code has also changed the threshold for standing orders to only apply to enterprises with 300 or more workers.

- A Service Association must represent at least 35 per cent of employees in a category; if only one association meets these criteria, then a second association may be recognised provided its membership is at least 15 per cent.
- Staff associations may not have outsiders on its executive or as office bearers.
- Once recognised, prior government approval is required for any amendments of the association's rules.
- Approval is required to publish any "periodical, magazine or bulletin".

The Central Civil Services (Conduct) Rules 1964 stipulates the individual and collective behaviour required of civil servants.⁷ In addition to prescribing the ethical conduct of civil servants, these rules also prohibit civil servants from resorting to strike action.⁸

Since their inception these service rules have provoked criticism regarding their constitutional validity and flouting of the guiding principles enunciated in Conventions Nos 87 and 98 (Aggarwal 1972). Similar rules have been established for state level civil administration workers, including other public servants like teachers who are not involved in administration of the State. It is beyond the scope of this study to provide an overview of the applicable state level regulations in this regard.

Public service unions

The complexity of the trade union picture in India reflects the societal complexity and the peculiarities of the country's political and economic development. Historically, a close relationship has evolved between trade unions and different political parties based on ideological orientation. Trade unions were also mainly concentrated in PSU given this sector's dominant role in the Indian economy.

Although the character of Indian trade unions is gradually changing, partially evidenced by a reorientation towards the unorganised sector and the emergence of independent unions, political unionism remains a dominant feature (Sinha 2005). Trade union membership still remains largely skewed towards PSU. Union density in India has hovered around 10 per cent since the early nineties. This is low compared to emerging economies like South Africa and Brazil. There are no reliable estimates of collective bargaining coverage available although it is assumed to be less than the estimated union density (ILO 2018).

Collective bargaining has historically been concentrated at a centralized sectoral level in large state-owned undertakings (steel, coal, railways, banks/insurance) and a few large private companies. A shift towards more decentralized bargaining in the private sector has become evident following the liberalization of the economy since the early nineties. However, this seems in the main a feature of the manufacturing sector, especially in automotive enterprises.

India has 12 central trade union organisations (CTUO's) officially recognised by the Ministry of Labour and Employment (MOLE). These central unions have affiliates operating across different economic sectors and states. According to the latest MOLE (2014) data about 11,556 unions were registered but of these only 2,534 were submitting membership returns. The total union membership was estimated to be just over 9 million workers. The number of registered unions has been on a downward trend since 2000 while the overall membership level appears more volatile. These figures do not correspond with the higher membership claimed by the central trade unions with estimates closer to 60 million (Annex). The central trade unions have established a joint trade union platform of central unions and independent federations to co-ordinate national level actions.

⁷ This includes devotion to duty, refraining from unbecoming behaviour and sexual harassment, promptness and courtesy, observance of policies, age of marriage, preservation of environment and wildlife and cultural heritage, crime prevention against women.

⁸ Clause 7(ii) specifically prevents civil servants from resorting to strike action, including go slows, mass absence or concerted casual leave and gherao. It applies to every person appointed to a central civil service post (including civilians in the Defence Service).

Employment in India's public administration reflects a pyramidal occupational structure with over 93 per cent of employees in the lower category posts (group C and group D) (Nagaraj 2016).⁹ These workers are the main source of union/association membership and also form a key voting constituency, especially at State government level. Local political dynamics and labour relations are closely inter-related especially given the restrictions on union organisation and collective bargaining in the public services as a whole.

There are no reliable figures on the number of employee associations and their membership in the public services. The global union federation Public Services International (PSI) estimates that the number of employee associations is over 11,000 (Smith 2021b). Although these associations are not required to register with the department of labour many are affiliated to one or the other of the main central trade unions. Their membership is thus very likely reflected in the overall membership statistics declared to MOLE by the CTUO's.

The Department of Personnel falls under the Ministry of Personnel, Public Grievances and Pensions, it is the lead ministry responsible for administration and coordination of the relationship with staff service associations at central government level. It oversees policy formulation and provides oversight on matters related to the recruitment, regulation of service condition, transfers and related matters.

When the Civil Service (Recognition of Association) Rules were first introduced, nine central service associations were recognised. When these rules were superseded in 1993, the new provisions allowed inter-alia for a check off system. The implementation of the service rules has not been without its challenges, even receiving parliamentary attention in a case involving the public broadcaster.¹⁰ Despite the check off system, it has been difficult to obtain data on the number and membership of recognised associations throughout the country. Anecdotal evidence suggests that the number of recognised associations at state and national level runs into the thousands.

The Confederation of Central Government Employees and Workers Association is one of the major umbrella bodies representing central government employee associations at an apex level. It participates in the National Joint Council of Action (NJCA), a loose coordinating body that speaks on behalf of central government employees. According to one news report, the NJCA represents more than 3.3 million central government employees (NDTV 2016).

The Government Employees National Confederation is another important apex body, it represents both central and state level member associations.

The following associations are affiliated to the global union federations Public Service International (PSI) and the Education International (EI):

- Indian National Municipal and Local Bodies Workers Federation (INMLBWF) - PSI;
- Karnataka State Government Employees Association (KSGEA) - PSI;
- Mumbai Mahanaga Karmachari Mahasangh (MMKM) - PSI;
- Nagpur Municipal Corporation Employees Union (NMCEU) - PSI;
- National Organisation of Government Employees (NOGE) - PSI;
- Tamil Nadu Government Officials Union (TNGOU) - PSI;
- Tamil Nadu Secretariat Association - PSI;
- United Nurses Association (UNA) - PSI;

⁹ There are four broad categories of public servant posts: Class I or Group A (gazetted senior civil servant); Class II or Group B (gazetted and non-gazetted); Class III or Group C (non-gazetted); Class IV or Group D (non-gazetted).

¹⁰ This case involved a loss in recognition status of previously recognised association at All India Radio. The associations' recognition was eventually restored following a protracted legal battle and intercession by members of parliament in 2011 (AARTE).

- Central Government Employees Association - PSI;
- All India Primary Teachers' Federation (AIPTF) - EI;
- All India Federation of Educational Associations (AIFEA) - EI;
- All India Federation of Teachers' Organisations (AFTO) - EI;
- All India Secondary Teachers' Federation (AISTF) - EI.

Nepal

Freedom of association and the right to organize in the public services

The genesis of the trade union movement in Nepal is linked to the mass strikes for improved wages and working conditions by workers in the Jute Mills circa 1947. Over the following years, workers organizations operated mainly underground with many of them playing a prominent role in the struggle against authoritarian rule (Kylloh 2008).

Sectoral and confederal level union organizations, operating clandestinely, began emerging during the late 80's-early 90's in both public and private sectors when the advent of multi-party democracy in 1990 ushered in a new era of labour relations. This period birthed the first tripartite Labour Advisory Council, the Labour Act 1992, and the Trade Union Act 1993. Nepal ratified Convention No. 98 in 1996. This "conducive" environment spurred a rapid expansion of enterprise unions and growth in union membership in different economic activities, but it was relatively short-lived. It deteriorated from 2000 onwards as political instability and civil conflict flared up again, eventually resulting in the election of a Constitutional Assembly and the abolition of the monarchy in 2008.

According to Kylloh (2008), this period also coincided with a policy push by government towards deregulation and labour market flexibility supported amongst others by the World Bank. This attempted roll back of trade union rights in 2006 generated strong labour opposition, with public service unions playing a prominent role and culminating in a decade long labour law reform process.¹¹

In 2015 the Constitutional Assembly promulgated a new constitution, enshrining the right of citizens to form unions and associations as a fundamental right. It also established a right to employment and social security for all citizens and gave "labourers" the right "to form and join trade unions and to engage in collective bargaining, in accordance with law".¹²

Nepal has ratified seven of the ILO fundamental Conventions including Convention No. 98 but is yet to ratify Convention No. 87.

An amended Labour Act was approved in 2017, as a result of a decade-long consultation process with significant ILO technical support. Its scope has been extended to include a wider spectrum of economic activities, including contract workers, domestic workers and tea plantation workers. Other significant changes include:

- Removal of the need for administrative approval prior to termination due to retrenchment or layoffs.
- Reducing the requirement to pay full salary for striking workers to 50 per cent payment;

¹¹ This tripartite social dialogue process received strong ILO technical support – it aimed to review the main labour laws in conjunction with the Social Security Laws. The Trade Union Act has yet to be amended and the Social Security Act has not yet been approved.

¹² Defined as "A labourer or worker who does physical or mental work for an employer in consideration for remuneration."

- Streamlining the dispute resolution mechanisms to include shorter timeframes for resolving collective disputes;
- The promotion of bargaining at different levels including sectoral bargaining.

Section 123(1) specifies that trade union associations may form bargaining committees and submit collective bargaining claims to employer associations in the tea plantation, construction, carpet, labour provider and transportation sectors. It also contemplates similar rights for associations of trade unions in respect of “other group[s] of manufacturers producing similar nature of goods or service providers providing similar nature of service or business as prescribed”. This provision does not draw a distinction based on the nature of ownership, and the government owned 43 enterprises in several sectors in March 2020, which contributed 13.9 per cent of total government income in 2018-19 (Ministry of Finance 2021, paras 3.68-3.69).

The new law retains the ministerial discretion to impose compulsory arbitration on parties to resolve collective disputes if mediation fails. It also has a provision forbidding strikes while the collective bargaining process is underway (Rueda 2017).

The armed forces, police, and civil employees are excluded from the provisions of the Labour Act. Article 180(b) of the Labour Act reads: “The prevailing law relating to civil service shall apply in the case of the civil service.”

The Nepali Civil Service Act 1956 was the original legal foundation on which a modern public administration system in Nepal was first built. Following the transition to a constitutional monarchy, it was superseded by the Civil Service Act 1993. This Act applies to “civil employees”, it gives expression to their freedom of association and provides for the recognition of trade unions and collective bargaining for certain categories of civil employees. However, these rights seem to have come under sporadic threat: In 2005, a special Civil Ordinance directive sought to normalize contract-based posts and revoke the right of civil employees to join trade unions. This action met stiff resistance from public service unions as well as strong international criticism. In 2018, a proposed Federal Service Bill also sought to limit trade union activity in the public service, but it also met with strong opposition. Its adoption has been delayed until 2023 (Shrestha 2021).

The Civil Service Act organizes the civil administration according to gazetted services including general administration, education, judicial, health, engineering, forest, agricultural, and miscellaneous services. Members of the civil service are recruited by the Public Service Commission and (more recently) the Provincial Service Commissions. Police and military officers are excluded from the jurisdiction of the Public Service Commission and the Civil Service Act. Civil administration posts are grouped into three broad categories across these services:

- Four classes of gazetted¹³ (executive/managerial level) posts (special; gazetted first; gazetted second; gazetted third);
- Four classes of non-gazetted (first; second; third; fourth);
- Classless posts.

The total number of civil employees was estimated to be around 80,108 in 2014, compared to earlier estimates of around 102,000.¹⁴ The gender profile is roughly 85 per cent male and 15 per cent female. This is an improvement on the 7-8 per cent female representation which existed prior to the targets introduced by the second amendment to the Civil Service Act. About 46 per cent of civil administration employees are in the general administration cadre; roughly 2 per cent in education; and about 21 per cent in health (Bajracharya and Grace 2014). This excludes the police and armed forces as well as the broader categories of workers involved in the delivery of social services like health and education.

¹³ Appointments to gazetted posts are made through the Public Service Commission(s), and are publicly announced in the official government notice or “gazette”.

¹⁴ Administrative reform commission in 1991 – proposed a reduction of posts to around 77,000.

► **Table 1. Summary of employees involved in administration of the Nepali State**

Categories of Civil Administration Posts	Males	Females	Total
Gazetted	15,983	1,971	17,954
Non-Gazetted	32,687	8,774	41,461
Classless	19,175	1,518	20,693
Total	67,845	12,263	80,108

Source: Bajracharya and Grace, 2014

Like India, the Nepali civil service is “bottom heavy” with the bulk of posts in the lower-rated occupations, which also form the main union constituency.

Section 53 of the Civil Service Act only allows employees who are in gazetted third class or lower posts to form national level trade unions. This excludes gazetted third-class employees who “work as the head of the office”. Trade unions of civil employees are further required to register with the Department of Labour and Employment Promotion.

The new Ministry of Federal Affairs and General Administration is responsible for coordination and administration under the Civil Service Act and leading policy coordination on public administration matters as well as overseeing the coordination and regulation of conditions of service of civil administration employees.

Profile of public service unions

Overall union density in Nepal grew from an estimated 6.8 per cent in 2002 to an estimated 11.9 per cent in 2015 (Rueda and Shah 2018). There are currently 10 national centres (confederations/federations) in existence. The Joint Trade Union Coordinating Committee (JTUCC) was founded as the main forum for promoting cooperation and facilitating coordinated activities between the main national centres. The three major national centres have a combined membership of over one million workers:

- The All Nepal Trade Union Federation (ANTUF) is estimated to have a membership of 400,000. It has thirty affiliate unions operating in a variety of manufacturing and service-related activities.
- The General Federation of Nepalese Trade Unions (GEFONT) has twenty affiliates representing a membership of approximately 387,418 workers. It also operates in diverse economic activities mainly in the private sector.
- The Nepal Trade Union Congress (NTUC) is the oldest confederation in the country. It claims a combined membership of 400,000 drawn from 25 affiliates in different sectors. NTUC affiliates have a relatively strong presence in the health, education and government clerical services.

According to the International Trade Union Confederation (ITUC), the Nepal Trade Union Congress (NTUC) has 425,014 members; the General Federation of Nepalese Trade Unions (GEFONT), 440,712; and the All Nepal Trade Union Federation (ANTUF), 410,317 (ITUC, 2021).

The Confederation of Nepalese Professionals is the main national body representing 24 affiliate unions in the public sector with an estimated combined membership of roughly 200,000 (Smith 2021c). It is affiliated to the World Federation of Trade Unions (WFTU). The following table highlights some of the main unions operating in the public services/administration sector.

► **Table 2. Main trade unions operating in the public services**

Count	Union	Affiliations
	Confederation of Nepalese Professionals	WFTU
	Nepal Government Employees Union	None
	Nepal Civil Service Employee's Association (NECSEA)	NTUC /PSI
	Union of Public Services (UPSN)	NTUC/PSI
	Nepal Customs and Airport Workers Union (NCAWU)	PSI
	Health Professional Organization of Nepal (HEPON)	GEFONT/PSI
	Nepal Health Volunteer Association (NHVA)	PSI
	Nepal Health Workers and Employees Union (NHWEU)	PSI
	Health Volunteer Organization of Nepal (HEVON)	PSI
	All Nepal Government, Temporary, Daily Wage, Contract Worker Union	ANTUF
	All Nepal Social Institution National Workers Forum	ANTUF
	Nepal National Teachers Association (NNTA)	EI
	National Teachers Organisation	EI

Source: Authors tabulation drawn from PSI/EI/WFTU websites

Sri Lanka

Profile of public service employment

Historically, the public sector has played an integral role in the economic development of Sri Lanka. Despite episodic attempts at privatisation, state-owned enterprises and utilities remain a significant contemporary factor in the overall economy. The share of investment in state-owned enterprises as a percentage of total investment rose sharply from 5 percent in 2011 to 15 percent in 2015 and contributed a significant 12 per cent of total GDP in 2015 (Athukorala et al. 2017).

Table 3 below shows that public sector employment has more than doubled over the period between 1968 and 2016.

► **Table 3. Total Public Sector Employment (2006-2016)**

Year	Public sector	Semi government sector ¹	Total employees
1968	303,674	115,355	419,029
1972	323,718	145,81	469,528
1980	368,849	228,531	597,38
1985	406,359	322,617	728,976
1990	421,009	279,583	700,592
1994	512,494	227,023	739,517
1998	561,163	213,789	774,952
2002	587,805	247,845	835,65
2006	626,992	226,306	853,298
2016	865,669	243,806	1,109,475

¹ The semi government refers to employees in state-owned enterprises, utilities and various regulatory bodies including the National Ports Authority.

Source: Sri Lanka Department of Census and Statistics, [Public and semi government sector employees in census years 1968-2016](#).

The total number of public sector employees constituted approximately 14.6 per cent of the labour force in 2016 (Ministry of National Policies and Economic Affairs 2017). The growth in public sector employment reflects the increased investment in state-owned enterprises as well as the decentralisation of public administration/services coupled with a significant expansion in social services. Health care personnel grew by around 500% between 1990 and 2014 (De Silva 2018). The number of nursing officers alone increased from 3,957 to 38,451 during this period. Sri Lanka is well known for its public commitment to free education. It has a low teacher-student ratio and outperforms comparable developing countries in primary and secondary schooling attainment (Dundar et al., n.d.). In its 2016 census, the Ministry of Education recorded 232,555 public school teachers.

Freedom of association and the right to organise in the public services

The right to freedom of association is enshrined in article 14 of Sri Lanka's Constitution. The country has also ratified all eight fundamental ILO Conventions. Yet freedom of association and the right to organize and collective bargaining is restricted in law and practice, especially in the public services.

The Industrial Disputes Act and the Trade Unions Ordinance of 1935 are the two main statutes governing labour relations in Sri Lanka. The Industrial Disputes Act sets out the requirements and procedures for workplace/industry recognition of trade unions, the establishment of collective bargaining rights and procedures for managing industrial disputes. It prohibits various unfair labour practices including the refusal to bargain with a representative union and acts of anti-union discrimination.

The dispute management provisions of the Industrial Disputes Act grant the authorities significant leeway to intervene in industrial disputes including limiting the use of industrial action by imposing arbitration or adjudication procedures. It also requires extended notification of strike action in sectors that have been declared as essential services.¹⁵ The provisions of the Industrial Disputes Act apply to some publicly owned enterprises and utilities but excludes employees in the public administration and the civil service.

The Trade Unions Ordinance stipulates the criteria for trade union registration including certain rules regarding the internal functioning of a union. It also empowers the registrar to refuse registration or cancel the registration if a union is deemed non-compliant with the ordinance rules or its own internal rules. The registrar must provide at least two months notice of cancellation. The decision of the registrar may be appealed at a district court within 30 days of the cancellation order. An order made by the District Court may be appealed to the Court of Appeal. A union must have a minimum of seven members to qualify for registration.

The Ordinance provides rules for the registration of trade unions of public officers. Part IV of the Act defines a public officer to include "any person in the employment of the Government of Sri Lanka, whatsoever may be the terms or duration of his employment".

The Ordinance bars the following categories of public officers from joining a trade union:

- Judicial officers;
- Members of the armed forces;
- Police officers;
- Prison officers; and
- Members of any corps established under the Agricultural Corps Ordinance.

¹⁵ The emergency laws have been used episodically to repress worker action especially in the public services (Ranaraja 2020).

In order to qualify for registration, the rules of public officer unions shall only allow for membership from a specific department, service or class/grade of employees across departments. Public sector unions are also limited to two external members holding executive office – of whom one must be elected as either the president or secretary. Furthermore, unions of peace officers and government staff officers¹⁶ are not allowed to affiliate/federate with other unions. They are also not allowed to have political objects or maintain a political fund.

Profile of public service unions

Sri Lanka has a tradition of political trade unionism and union proliferation including in its public services sector (Amerasinghe 2009; Gamage 2013). It is, however, difficult to get a reliable picture of union density and membership trends in both the private and public sectors due to inconsistencies and gaps in data collection (Ranaraja 2020).¹⁷

According to the ILO Statistical database, trade union density was around 15.3 per cent in 2016. According to the Department of Labour, 1,915 unions were registered in 2018 reflecting a total of 605,344 members. This compares to 1,815 registered unions with a total of 913,594 members in 2017. It is difficult to discern clear trends in union membership due to significant gaps in the official statistics on union membership, mainly attributable to poor data collection and the lack of adequate verification procedures (Ranaraja 2020). It is likely that union density is much higher in the public sector, probably ranging between 15 and 20 per cent. The Department of Labour in 2004 reported a total of 1,604 registered trade unions with 583,323 members of which 77 per cent were engaged in the private sector and 23 per cent in the public sector (Benson and Zhu 2010).

Sri Lanka has a number of national trade union centres, which are closely aligned to different political parties and play an important role in the political dynamics of the country. According to an ITUC (2012) report, the main four trade union centres are:

- National Trade Union Federation (NTUF) 400,000 members;
- Ceylon Workers' Congress (CWC) 190,000 members;
- National Workers' Congress (NWC) 82,972 members; and
- Sri Lanka Nidahas Sevaka Sangamaya (SLNSS) 68,000 members.

The following are some of the main unions/federations representing workers in the civil administration. Some of them are affiliated to higher-level national and international organisations:

- All Ceylon Government Clerical Service Union (ACGCSU);
- Government Clerical Service Union (GCSU);
- Confederation of Public Service Independent Trade Unions (COPSITU) - PSI;
- Public Service National Trade Union Federation (PSNTUF) - NTUF/PSI;
- Ceylon Workers' Congress (CWC) - PSI;
- Labour Officers' Association - PSI;
- Sri Lanka Accountants' Service Association - PSI;
- Progressive Public Service Trade Union Federation;

¹⁶ Staff Officers are graded civil servants in the tertiary and special grade sectors.

¹⁷ See also CEACR [Direct Request](#) (2021) regarding Convention No. 122, on gaps in labour market information.

- Sri Lanka Administrative Service Association.

The health and education sectors also have a strong union presence, some of the key unions include:

- National Health Services General Employees Union (NHSGEU) - NTUF/PSI;
- Public Services United Nurses' Union - PSI;
- All Ceylon Union of Government English Teachers, ACUGET - EI;
- All Ceylon Union of Teachers, ACUT - EI;
- All Ceylon Union of Teachers (Government) ACUT(G) - EI;
- Ceylon Tamil Teachers' Union, CTTU - EI;
- Sri Lanka Independent Teachers' Union, SLITU - EI;
- National Centre for Progressive Trade Union Federation;
- Progressive Public Service Trade Union Federation.

The proliferation of unions in Sri Lanka belies the challenge of anti-union discrimination. According to the ITUC, union busting remains a problem. The law only allows labour officials to bring anti-union discrimination cases before the magistrates' court. The CEACR in 2020 observed the ITUC concern that "anti-union discrimination and union busting remain a major problem in the country." It urged the Government of Sri Lanka to take measures to allow unions to approach the courts directly for relief in cases of anti-union discrimination (ILO 2021).

► 2 Forms of dialogue in the civil service: institutions and mechanisms

India

Central and State Pay Commissions

The Indian Constitution empowers the national and state level legislatures to make laws determining the terms and conditions of government employees. Pursuant to this, Central and State Level Pay commissions have been established to review the pay and service conditions of government employees under their purview and make appropriate recommendations to the executive. The Central Pay Commissions are established approximately every ten years under the auspices of an independent chairperson and panel of members. The terms of reference, chairperson and members are specific to each Commission.¹⁸ The First Central Pay Commission dates back to 1946 and was set up to make recommendations regarding emoluments for government workers. Since then a total of seven Central Pay Commissions have been established to address a range of issues including emoluments and minimum pay, parity, productivity and efficiency considerations (Mukarji 1997).

The recommendations of the Central Pay Commission are especially pertinent given their cascading influence on State level Pay Commissions and salary expectations in the wider economy.

The recommendations of the Central Pay Commissions have also influenced other aspects of public service labour relations and civil service reform: The Third Pay Commission for example highlighted the importance of consultation with government employees and thus recommended the establishment of a Joint Consultative Mechanism. On the question of civil service reform, the Fifth Pay Commission called for the rationalisation and the decentralisation of the civil service as well as proposing various New Public Management (NPM) measures, such as decentralisation and performance management.

The Joint Consultation and Compulsory Arbitration Scheme

Following the recommendation of the Second Pay Commission, the central government established a voluntary Scheme for Joint Consultative Machinery (JCM) and Compulsory Arbitration for Central Government employees.¹⁹ This is a mechanism to promote “harmonious relations and of securing the greatest measure of cooperation between the Government, in its capacity as employer, and the general body of its employees in matters of common concern, and with the object, further, of increasing the efficiency of the public service”.

All central government employees are affected by this scheme excluding all police personnel and Class I and Class II category employees (Class II categories in the Central Secretariat Services are, however, included). Managerial/administrative personnel in industrial establishments under central government control are also excluded. This means that roughly 95 per cent of the regular civil employees of the central government including departmentally run undertakings, like the railways and workshop/production units are covered by this scheme.

¹⁸ The First Central Pay Commission had nine members while the second had six members and the third and fourth had five members.

¹⁹ Modelled on the UK Whitley Council system for employee consultation in the civil service.

► **Table 4. The Joint Consultative Machinery: Structure & Composition**

Structure	Maximum Number of Official Representatives	Maximum Number of Staff Representatives
National Council	25	60
Ministry/Departmental Council	10	30
Office Council	5	8

Source: Author's tabulation

The JCM operates on three levels: the National Council deals with matters related to Central Government employees generally; the Departmental Council deals with matters concerning a particular ministry/department; the office/regional councils handle local issues.

Staff representatives are nominated for a three-year term and may be renominated repeatedly. The National Council staff side seats are distributed according to the size of the ministry/department. It is heavily skewed towards the Railways Ministry (26 seats), followed by the Ministry of Defence (6 seats), Department of Posts (3 seats) and Ministry of Finance (3 seats).

The JCM may “engage in consultations on all matters relating to conditions of service and work, welfare of employees and improvement of efficiency and standards of work for particular categories or grades of employees”. Similar structures exist at state level. The state of Kerala for example has a wide variety of social dialogue mechanisms including the Industrial Relations Councils which may be convened from time to time to deal with substantive matters.

Matters affecting individual employees are excluded and issues related to the recruitment, promotion and discipline are limited to matters of general principle.

The Confederation of Government Employees speaks on behalf of all central government employee associations. It has established a Joint National Action Committee (JNAC) to coordinate its activities. The JNAC plays an important role in making representations to the Central Pay Commission.

The Joint Councils are supposed to meet at least once every four months, and office councils at least every two months. Meeting agendas must be circulated at least 15 days before the meeting.

Where matters concerning pay and allowances, weekly hours of work and leave are not resolved at departmental or National Council level, it may be referred to compulsory arbitration if either party so wishes. However, only matters related to a specific class or grade of employees may be referred to a specially appointed Board of Arbitration.²⁰

The Board of Arbitration is headed by a three-person panel and falls under the administrative control of the MOLE. Its awards are binding, unless government proposes a modification, in which case the changes must be approved by parliament. By 2016 a total of 259 cases were referred and 257 decided.

In an earlier study on the functioning of the JCM, Venkata Ratnam (2001) observed that “the discussions at the JCM have helped both parties to understand each other better, come closer and work in a spirit of mutual cooperation.” He however also observed that National Council meetings didn't happen as often they should have, and that in some departments office level committees were not operative. The ability of the finance ministry to override consensus decisions reached at departmental level (where the finance ministry has representation) has been questioned by the staff side.

²⁰ The Board of Arbitration consists of three persons: One person is elected from a five-member panel nominated by the government; one person from a five-member panel nominated by staff associations and an independent chairperson appointed by the Ministry of labour.

Joint Consultative schemes modelled on the central scheme exist at state level and function with varying degrees of effectiveness. These structures lie dormant in many states where they are dependent on the political will of the state government and the influence and strength of state level unions (Smith 2021b).

Employment protection – the doctrine of pleasure

Article 311 of the Constitution prescribes the process for the dismissal/removal or reduction in rank of “persons employed in civil capacities under the Union or State.” This procedure is based on the doctrine of pleasure, and has been criticized for being open to abuse by encouraging anti-union discriminatory practices (Aggarwal 1972). In practice anti-union hostility has proven a serious challenge in both the private sector and public services (Badigannavar 2017; Smith 2021a).

The procedure applies to members of the civil service or those occupying civil posts at the central or state level as well as members of the All India Services. Such action may be taken provided that:

- A disciplining authority must not be subordinate to the original appointing authority;
- The person must be informed of the charges and an inquiry must be held in which the person is given a “reasonable opportunity to be heard”;
- The need for an inquiry may be waived by the disciplining authority on the grounds of practicality or on security grounds by the president (if a central government employee) or state governor (if a state government employee);
- In the absence of an inquiry, the decision of the disciplining authority is deemed final.

Grievances related to recruitment and conditions of service

Section 323A of the Constitution authorises parliament to establish Administrative Tribunals “to adjudicate disputes and complaints related to recruitment or conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government”.

Thus, the Central Administrative Tribunal Act 1985 established the Central Administrative Tribunal (CAT) to “promote speedy and inexpensive justice for aggrieved central government servants”. The CAT is a quasi-judicial body having original jurisdiction over recruitment- or service-related grievances of individual employees. The CAT has 15 benches operating at the principal seats of High Courts and the remaining two at Jaipur and Lucknow. These benches also hold circuit sittings at other seats of High Courts.

The aggrieved person is entitled to appear before the tribunal and the government case may be presented by departmental officers or a legal practitioner. In practice the Administrative Tribunals system appears to fall short of its expedited dispute resolution objective and seems unable to escape the same time and cost barriers that bedevil the judicial system. A case before a tribunal may take between two to three years before a decision is handed down. A controversial supreme court judgement in 1997 ruled that appeals against orders of an Administrative Tribunal may not bypass the High Court and that it shall lie before the Division Bench of the concerned High Court.

In its 272nd Report on “Assessment of the Statutory Frameworks of Tribunals in India”, the Law Commission noted the high pendency rates in these bodies (Saba 2017). It proposed various ways to improve their effectiveness including on streamlining the appeals process. In 2020 a parliamentary panel admonished the CAT for the “staggering delays in disposing cases”, noting that over “48,000 cases are still pending” and that more than half of these were pending between one and five years (Dhingra 2020).

Anecdotal evidence suggests a high propensity for protest actions including strike action amongst government employees. The restrictions on collective bargaining and the right to strike does not only affect workers involved in central civil administration. Many state level service conduct rules also prohibit strike action, including for workers involved in the provision of social services (Smith 2021a). Furthermore, following a teachers strike in 2013 the Supreme Court issued a ground-breaking ruling that “government employees had no fundamental, legal, moral, or equitable right to strike”.²¹

It is apparent that the social dialogue mechanisms and dispute resolution machinery requires improvement. Simmering grievances in an environment of weak dialogue and mistrust is bad for employee motivation and increases the risk of labour conflict. In the absence of effective social dialogue mechanisms trade unions in the public services may tend to rely more on their political leverage to serve member interests, a situation that is very evident in India (Nagaraj 2016).

The Committee on Freedom of Association (CFA) of the ILO urged the Government of India in 2004 to amend the Tamil Nadu Services rules, to grant government employees other than those involved in the administration of the state the right to collective bargaining and strike action (ILO 2004). In 2007, the government informed the CFA that the rules had been repealed but had not granted these rights to public servants (ILO 2007). The CFA later encouraged the Government of India to amend the CCS (Recognition of Service Association Rules) in line with freedom of association principles. It also reminded the government that the Office remained ready to provide technical assistance to it in its consideration of the ratification of Conventions Nos 87, 98 and 151. The GOI has defended the current rules on the basis that government employees enjoy a high level of job security and are able to join associations and that existing mechanisms for negotiation/consultation and grievance handling are adequate (ILO 2013b).

Nepal

Determination of terms and conditions of employment

According to section 27 of the Civil Service Act, 2049 (1993), a three-person committee of senior officials is mandated to review the remuneration of all civil employees and make recommendations to the government.²² The committee reviews the “dear allowance” on an annual basis and undertakes a comprehensive review of salary and other conditions/ facilities every three years. Experts and concerned stakeholders may be invited to make suggestions and inputs.

In addition, the Civil Service Act grants civil service trade unions the right to negotiate on behalf of employees in gazetted “class three” posts or below, specifically as follows:

“The authentic trade union of civil employees shall have the right to submit own professional demands and conduct social dialogue and collective bargaining at the concerned institution at the district, departmental and national levels. In the case of not forming the authentic trade union of civil employees, the trade union of civil employees formed pursuant to Sub-section (1) may conduct collective bargaining with mutual consent of each other (Section 53 (3) (b)).”

The role of the three-person salary review committee overlaps with the collective bargaining process contemplated in section 53, in respect of employees in and below gazetted “class three” posts. The implications of this in practice is unclear. The Act does not spell out which issues may be negotiated and at which level.

²¹ The Government of Tamil Nadu in 2013 invoked essential service regulations to dismiss 170,241 employees and teachers.

²² The committee is chaired by the Chief Secretary of the Government of Nepal, other members include the Secretary, Ministry of Finance, and the Secretary Ministry of General Administration. (Ministry of Federal Administration and provincial affairs).

However, the prohibition on the right to strike suggests that a weak notion of collective bargaining, more akin to consultation is intended.

Individual civil employees have the right to a hearing in case of a disciplinary action. The facts and grounds for a charge must be explained, and the employee must be given an opportunity to make representation against a sanction. The official may lodge an appeal against decision at the Administrative Court whose decision is final.

The Act is, however, silent on a dispute resolution mechanism to handle collective disputes that may arise in the context of these negotiations. Civil employees are excluded from the Labour Act and so cannot access the dispute resolution mechanisms available to workers in the private sector.

► **Box 3: The right to strike**

Civil Service Act, 2049 (1993):

Section 50. Restriction on agitation and strike: No civil employee shall perform an agitation, participate in a strike or entice anyone to perform such acts in a manner to undermine the sovereignty and integrity of the Kingdom of Nepal, the law and order situation of the country, external relations and public decency, make contempt of court, create hatred among the peoples of various castes, tribes, religions, classes, regions and communities or aid and abet any crime.

Section 51. Restriction on staging strike, detention and Gherao ["encirclement"]: No civil employee shall stage any strike or pen-down action and exert any pressure inflicting physical or mental suffering or entice other persons to commit such acts in a manner to cause hindrance or obstruction to any office or officer in the performance of the duties required by law.

As indicated in the previous section, political dynamics in Nepal cast a long shadow of labour instability on its public service labour relations. This situation is aggravated by the relatively underdeveloped structures for social dialogue, collective bargaining, and dispute resolution across the public services. The efforts to reform public services, including a strong decentralization emphasis is another significant driver of conflict. In addition, like in India there is a growing reliance on volunteer workers to deliver primary social services as illustrated by the following excerpt.

"There are currently more than 52,000 Female Community Health Volunteers [(FCHVs)] working across Nepal in rural and semi urban areas to provide safe motherhood, child health, family planning and immunization services. FCHVs do not receive a salary and are only provided with limited incentives, such as yearly clothing allowance, refreshment allowance during training and a stipend during vaccination campaigns. In total, these allowances represent less than 10% of the legal minimum wage in Nepal of NPR 9,700 (€75)" (Smith 2021b).

Sri Lanka

Public service labour relations in Sri Lanka seem susceptible to high levels of conflict. In 2017, 1,500 public administration workers participated in industrial actions for a total 8,800 workdays (ILOSTAT 2021). This has been variously attributed to a high degree of union politicization and fragmentation and inadequate social dialogue and dispute resolution mechanisms (Amerasinghe 2009; Ranaraja 2020; Thompson et al. 2014).

One of the major drawbacks in labour-management relations in the public service in Sri Lanka is [the] non-existence of an environment for social dialogue and appropriate mechanisms to prevent and settle disputes. There is no proper environment for the employees and the management to come together to learn and listen to each other in order to find mutually acceptable ways in dealing with common problems and issues (Athukorala et al. 2017; Thompson et al. 2014).

Social dialogue in the public service occurs on an ad-hoc informal basis. Depending on the nature of the issues involved, representations may be directed to the relevant head of department, ministry secretary, or department responsible for public administration, while “from time to time” the Ministry of Public Administration may have a dialogue with the main federations and unions (Amerasinghe and Ranunge 2007). Ministerial/departmental level consultations may vary depending on the leverage of the unions and or the political will of the Minister in charge. A study on the role of teacher unions in Sri Lanka found that nearly all of them continuously attempt to use political or personal connections in informal, semi-formal or formal meetings (Thomassen 2015).

The terms and conditions of service of public officials are specified in the Establishment Code. This two-volume tome is regarded by some as an “antiquated rule book” implemented in conjunction with “often inconsistent, superseding government circulars” (Thompson et al. 2014). The Ministry of Public Services, Provincial Councils and Local Government oversees its ongoing revision and updating in consultation with other ministries subject to the final approval of the Cabinet of Ministers.

The National Pay Commission (NPC) is a special agency appointed by the president to advise and support government in the formulation of a national wage policy taking into account salary and remuneration in the public and private sector. In addition to making recommendations on remuneration, it is mandated to fulfil an arbitrator role in resolving disputes related to salaries and wages as well as disputes in relation to Schemes of Recruitment/Promotion and Service Minutes. Government agencies are, however, not obliged to follow NPC recommendations (although they do in practice) (Thompson et al. 2014).²³

Article 54(1) of the Constitution established the Public Service Commission (PSC) to deal with policy and implementation of matters related to the promotion, transfer and disciplinary control of public officers. Prior to the establishment of the PSC these matters formed part of the mandate of the ministry responsible for public administration. Policy related decisions of the PSC are also subject to the authority of the cabinet ministers. The respective Provincial Service Commissions perform this function in respect of provincial government employees.²⁴ The PSC has nine members who are recommended by Parliament and appointed by the President.

The PSC has a coordinating role to ensure uniformity and equity within the public services. This includes a role in developing Schemes of Recruitment and Service Minutes that may impact on conditions of employment. However, its “decision making licence” in this regard, especially in reviewing or revoking departmental Service Minutes” and or Schemes of Recruitment”, has been called into question. Trade unions have expressed dissatisfaction “over the lack of opportunities to input into PSC processes” (Thompson et al. 2014). As a result, patronage-based appointments, politically motivated transfers and salary and grading anomalies are persistent issues and major drivers of employee grievance and instability in public service labour relations (Amerasinghe and Ranunge 2007; McCourt 2001).

The absence of expedited alternative dispute resolution mechanisms to deal with collective disputes is another major systemic weakness. Collective issues are not adequately ventilated and resolved timeously causing simmering tensions (Ranaraja 2020).

Matters related to an individual employee’s discipline or grievance are first dealt with at departmental level while the National Police Commission deals with disciplinary matters for the police. A government employee may appeal a departmental decision to the PSC or Provincial Public Service Commission as the case may be. However, government employees don’t have the right to defend a case in person and they may also not be represented by a trade union. They may appeal decisions of the PSC and the National Police

²³ The NPC is reluctant to act in its capacity as an arbitrator, preferring mediation.

²⁴ Provincial Public Service Commissions were established following the constitutional amendment in 1983 whereby certain functions and public services were decentralised to the provinces. They oversee the recruitment and training of workers employed by the provincial councils.

Commission to the Administrative Tribunals established under the Appeals Tribunal Act No. 44. This option is, however, not available to provincial public service employees, who have to lodge appeals to the district court and Supreme Court of Appeal. The denial of the right to be heard and representation is inconsistent with the laws of natural justice. The system also suffers from long delays partly due to the lack of set time frames for finalising matters (Amerasinghe 2009).

The lack of effective social dialogue in relation to public sector reform was observed by McCourt (2001):

“Previous efforts to reform – have not included consultation with unions by the Sri Lanka Administrative Service Association (SASA) (staff officers). They are assumed to be hostile to reform – ‘Delays may result if there will be greater resistance by trade unions ... for reforms and downsizing’ warned one project document (UNDP 1997) - and so they have not been formally consulted.

The unions bitterly resent this: ‘They have had no meeting formally,’ said one of them. ‘We wrote to them on this, but they didn’t reply. Our information comes from the media. There is no programme for us to give our views’. In fact the union position was complex. Certainly ACGCU was unequivocally opposed to compulsory redundancies, but it was open to a reduction in the size of the civil service through natural wastage, blaming overstaffing on the inability of politicians to resist the temptation of finding jobs for their supporters.”

In 2020, the CEACR requested the government to take the necessary measures to ensure the right to collective bargaining for public servants who are not directly involved in the administration of the state (ILO 2021). In its 2018 observation, the CEACR noted that the Industrial Disputes Act excludes public servants and that “a mechanism for dispute prevention and settlement in the public sector was being developed with technical assistance from the ILO.”²⁵ The committee also urged the government to amend the Trade Union Ordinance to allow government staff officers to join federations and confederation of their choosing and to allow first level organizations to organize to cover more than one ministry or department in the public service (ILO 2019).

The need to strengthen social dialogue mechanisms in the Sri Lankan public service has been acknowledged at the highest official level. In 2006, a presidential directive urged all ministries, statutory bodies, and public corporation to establish special employee consultative mechanisms to, *inter-alia*, “improve employee relations and enhance productivity and efficiency”. Although progress in this regard has been very slow, there are some encouraging signs that this process is being resuscitated, like the current joint Ministry of Health/WHO/ILO alternative dispute resolution pilot project underway in the health sector (Smith 2021d).

²⁵ A process to establish this mechanism was reinitiated in 2021.

► Conclusion

The three countries share several commonalities:

- Freedom of association is constitutionally guaranteed for public service workers but curtailed in law and practice for certain categories of public servants;
- The right to join a trade union is legally prohibited in respect of the armed forces and police;
- The autonomy of public service trade unions is restricted in law and practice albeit in different ways;
- Anti-union discrimination is prevalent;
- The regulation of terms and conditions of employment are determined by legislation or executive authority with varying modes of consultation, but consultative mechanisms tend to lie dormant or function in an ad-hoc manner;
- For most public servants the right to strike is prohibited in law or by using essential service regulations, yet public services labour relations are adversarial and prone to strike action;
- Dispute resolution mechanisms are not effective and are based on costly time-consuming quasi-judicial processes;
- Trade unions rely heavily on political relationships to advance their members' interests;
- Outsourcing and contract labour has increased significantly, especially in India and Nepal;
- The lack of effective social dialogue is an obstacle to cooperation on public administration reform and modernization/decentralization of service delivery;
- There are significant gaps in official labour market information systems.

India

Although India has not ratified Conventions Nos 87 and 98, the guiding principles of these instruments have some resonance in the legal-institutional framework governing its public service labour relations. The federal nature of governance places a huge responsibility on state level/local institutions in terms of public service delivery. Concerted efforts to promote the principles in Conventions Nos 87 and 98 as well as 151 and 154 are best undertaken at state level.

The joint consultative mechanism plays an important role, but its role could be further enhanced. The role and impact of the Board of Arbitration needs further study as a possible model for dispute resolution. Further analysis and evaluation of the joint consultative mechanism and its state level equivalents may provide a useful starting point for further effort to enhance social dialogue in the public services at the national and state level.

The rapid growth and reliance on “scheme workers” to deliver basic social services presents a challenge but also a significant opportunity for collaboration between trade unions and government.

Nepal

The restructuring of the federal public administration faces resistance and would benefit from more social dialogue on the preparation of the Federal Service Bill. There may be scope for technical cooperation to develop adequate machinery for dispute resolution mechanisms to deal with interest disputes in the public service. The current ratification priorities determined by the social partners do not include Conventions Nos 87, 151 or 154. The One-UN approach is vital to ensure integrated technical support. The UNDP has

provided technical support for re-structuring the public administration and readying it for “federalized” service delivery. The role of worker organizations and social dialogue needs more attention in the problem assessment and theory of change (Bajracharya and Grace 2014).

Sri Lanka

The resuscitation of efforts to develop an effective dispute prevention and resolution mechanism in the public sector is encouraging and may open up scope for promotional activities on Convention No. 151. Further research into this area may help to illuminate further possibilities for promotional work and make a strong “policy case” for more structured social dialogue mechanisms in the public services. More precise mapping of the union membership, and surveys of employee perceptions and concerns may be a good starting point to improve consultative mechanisms.

Annex

► **Annex Table 1. Registered trade unions and union membership in India**

Year	No. Registered	No. Submitting returns	Membership (Thousand)
2000	66056	7253	5420
2001	66624	6531	5873
2002	68544	7812	6973
2003	74649	7258	6277
2004	74403	5252	3397
2005	78465	8317	8719
2006	88440	8471	8960
2007	95783	7408	7877
2008	84642	9709	9574
2009	22284	3861	6480
2010	19376	2937	5097
2011	10264*	2769	7421
2012	16768*	4785	9182
2013	11556	2534	3231
2014	12486*	4359	7885

* : Data pertains to responding State/ UTs only.

Source: India, Ministry of Labour and Employment, 2014.

► **Annex Table 2. Top nine trade unions of India**

No.	Trade Union	Year Established	H. Q.	Political Affiliation	Membership (Million)
1.	All India Trade Union Congress (AITUC)	1920	New Delhi	CPI	14.2
2.	Indian National Trade Union Congress (INTUC)	May 3, 1947	New Delhi	Indian National Congress	33.3
3.	Bhartiya Mazdoor Sangh (BMS)	July 27, 1955	New Delhi	BJP	17.1
4.	Centre for Indian Trade Unions (CITU)	1970	New Delhi	CPM	5.7
5.	Hind Mazdoor Sabha (HMS)	Dec. 24, 1948	New Delhi	Samajvadi	9.1
6.	All India United Trade Union Centre (AIUTUC)	April 26-27, 1958	Kolkata	Socialist Unity Centre of India (Marxist)	4.7
7.	Self Employed Women's Association of India (SEWA)	1972	Ahmedabad		1.3
8.	Trade Union Coordination Centre (TUCC)	1970	NA	AIFB	1.6
9.	All India Central Council of Trade Unions (AICCTU)	May 1989	NA	CPI (M-L)	2.5

Source: Jagran Josh, 2017.

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