

## **Critical Evaluation of the Effectiveness of the Retirement Benefit Schemes in Labour Legislations of Sri Lanka**

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### **Abstract**

Retirement can be considered as the most-evidence junction in life where someone decides to permanently leave the workforce behind. According to the right based theory, the state is obliged to look after individuals of the country, and particularly this includes retired elders who contributed their labour, energy and knowledge towards the economy of a country during their young age. The International Labor Organization (ILO) also requires that member countries should secure to the persons protected under the provisions of old-age benefit. However, this has become a difficult task with a recent trend of the aging of the population where the life expectancy of people has grown up. Sri Lanka also has taken some of the steps to enable a few legislations to address this issue of retirement benefits. In this context the main objective of this study was to critically evaluate the effectiveness of the existing labour legislations in Sri Lanka which discusses the retirement benefits. Special attention has been given to the recovery procedure of default payments under Employees Provident Fund Act, Employees Trust Fund Act and Payment of Gratuity Act. Apart from the discussion of the private and semi-government sphere, the researcher specifically dealt with the retirement benefits legislation on university employees by comparing it with the legislations applicable to other sectors. This research study utilized the qualitative methodology where the researcher studied, analyzed, and synthesized a variety of legal documents such as international conventions, legislations, case laws, books, and journal articles. Finally, the research reveals that the retirement benefits mentioned in all three major legislations do not support the state to ease the burden of looking after the old aged people and it is totally shifted to the youngsters of their families. This study fills the lacuna of having a comprehensive legal analysis pertaining to the area of retirement benefits in Sri Lanka including the state university sector by suggesting how the laws should be amended to fill the gaps in the existing law.

**Keywords:** Elderly people, Contributory pension scheme, Retirement benefits.

### **INTRODUCTION**

Retirement benefit scheme in a country can be described as an indicator of a sound labour legislation system. It is a duty of a state to look after the elderly people who contributed their labour, energy and knowledge towards the economy of a country during their young age. Right to a decent standard of living and state assistance in the event of old age has been accepted as a fundamental right in some countries.<sup>10</sup> International Labour Organization (ILO) also requires that member countries should

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<sup>10</sup>Section 28 of the Constitution of Estonia.

secure to persons protected under the provisions of old-age benefit.<sup>11</sup> This duty of governments has become a difficult task with recent trend of aging of population. Life expectancy of people has grown up for many reasons putting a heavy burden on governments to look after them. Many countries including Sri Lanka has taken steps to raise the age of retirement by few more years to ease this burden a little. However, it is not advisable to put the whole burden on the governments regarding providing retirement benefits. What governments can do is to share the responsibility with employers and employees in the way that balances the interests of above three parties namely employer, employee, and the state. This can only be done through a sound labour legislation system.

In Sri Lanka we can identify two types of retirement benefit schemes applicable to public sector employees and private sector employees including semi-government sector. While the public sector employees enjoy non-contributory pension scheme, the retirement benefits of the others are covered by three major legislations namely Employees Provident Fund Act (EPF Act)<sup>12</sup>, Employees Trust Fund Act (ETF Act)<sup>13</sup> and Payment of Gratuity Act<sup>14</sup>. By using the authority given under EPF Act<sup>15</sup> approved provident funds and approved contributory pension schemes have also been established by certain institutions including state universities. Apart from this, there are certain ad-hoc pension schemes introduced to certain kind of professions such as farmers, fishermen, media personnel and self-employed persons. It is expected by this research to discuss matters concerning whether these retirement benefit schemes applicable to private and semi-government sector including university employees are effectively implemented by balancing the interests of employer, employee and the state and whether they adequately cover the old age contingencies. Also, it is expected to identify drawbacks of these schemes and suggest solutions to overcome them.

In this context, this study poses the research problems of as to what extend the retirement benefits are protected in Sri Lankan labour legislations and what are the differences between private sector, public sector and state university sector in relation to applicability of retirement benefits legislations in Sri Lanka?

## **METHODOLOGY**

This study used the qualitative methodology since it is particularly well suited for analyzing the types of evidence, and developing the types of arguments, we generally see in law reviews (Linos, K, and Melissa “n.d”). Further, the qualitative methodology can be justified as it specifically designed to

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<sup>11</sup>Article 14, *C128-Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)* (no date). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NODE:CON,en,C128,/Document](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NODE:CON,en,C128,/Document) (Accessed: 05 August 2020).

<sup>12</sup> Employees Provident Fund Act, No.15 of 1958 as amended.

<sup>13</sup> Employees Trust Fund Act, No. 46 of 1983 as amended.

<sup>14</sup> Payment of Gratuity Act, No. 12 of 1983 as amended.

<sup>15</sup> Section 27(1) of the Employees Provident Fund Act

study these interdependencies of different legal materials. Under that, in this study the author studied, analyzed, and synthesized a variety of legal documents such as international conventions, International Labour Organization regulations, constitutional provisions, legislations, case laws and journal articles to build up arguments.

## **DISCUSSION**

### **Employees Provident Fund Act**

EPF Act can be described as the main legislation applicable in Sri Lanka regarding retirement benefits of private sector and semi-government sector employees. While the implementation part of this the Act is administered by the Labour Department, the Central Bank administers the financial aspect of it by maintaining fund, collecting monthly contributions, maintaining individual accounts, investing the fund's assets and making payments to employees on application. Almost all the employees of the formal working sector except public sector employees are covered by this Act. Under the provisions of this Act, employees of the covered employment are entitled to receive a lump sum at their retirement through a fund which is built up from the contributions made by both the employer and employee. At present while employee should contribute 8% of their monthly earnings to the fund during the continuance of their employment, the employer should contribute 12% on behalf of each of their employees.<sup>16</sup> Accordingly, we can see a shared liability here between the employer and employee. Since the employer is always considered to be the economically stronger party, it is justifiable to put the higher percentage of contribution on the employer. According to the welfare state policy, states are expected to protect the interests of employees who are considered to have less bargaining power than the employers. States attempt to achieve this responsibility through legislations. However, legislations should be imposed in a way that balances the interests of all three parties namely employer, employee, and the state. Commissioner of Labour, representing the state plays a major role in implementing liabilities put on the employer under this Act.

It is important to discuss matters regarding recovery procedure of default payments since this is a place where we can measure the effectiveness of the implementation of this Act. Section 17, 38(1) and 38(2) are the applicable provisions in this regard. According to these provisions labour commissioner's initial attempt to recover default payments should be through the District Court by applying the summary procedure.<sup>17</sup> If the commissioner is of the opinion that recovery under Section 17 is inexpedient, then he should issue a certificate on default payments to the District Court and

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<sup>16</sup> Section 10 of the Employees Provident Fund Act.

<sup>17</sup> Section 17 of the Employees Provident Fund Act

obtain a writ of execution for the same by seizure and sale of defaulter's property.<sup>18</sup> If the full amount due could not be recovered by seizure and sale, then the commissioner can take steps to recover the balance due through the Magistrate Court.<sup>19</sup> However it appears most of the labour officers resort to the final option i.e. to go to the Magistrate Court first. Although there was an early judgment justifying the same<sup>20</sup> the said judgment was overruled by the Supreme Court in the case of *Dayawathi vs. Commissioner General of Labour*.<sup>21</sup> In this judgment it was clearly stated that the Commissioner General of Labour cannot recover dues through the Magistrate Court under Section 38(2) without attempting to recover the same through the District Court first as stipulated in Section 17 and 38(1). Although these provisions were there in the EPF Act, until this judgment, there was no clear interpretation for the same. With this judgment the disadvantage situation prevailed against the employer was corrected by bringing the Act in to its normalcy.

It is doubt whether this Act is success at providing retirement benefits in the sense that the retirement benefits should support the contingency period of old aged people. The main drawback of EPF system of Sri Lanka is benefits are given as a lump sum and there is no mechanism to convert the lump sum into an annuity or a pension. ILO Diagnostic Assessment and Issues Studies (August 2003) has identified three main problems in EPF system in Sri Lanka namely, relatively low replacement level, absence of mechanism to convert the lump sum in to a pension and having a certain level of evasion which it is difficult to counter (Woodall, 2009). Further, Woodall (2009) pointed out that, when retirements benefits are given as a lump sum there is a tendency of investing it by employees in assets, productive goods or social activities such as weddings rather than save it for their day today expenses. This tendency is more in Asian Countries than other countries since social interactions are high in these countries. A research done in Malaysia which has a similar EPF system as in Sri Lanka, shows that many workers depend on wholly on their full withdrawn EPF savings and such money lasted only a few years during their retirement. (Hassan et al., 2016). This is not a feature of a sound retirement benefit scheme. To get the expected results from a retirement benefit scheme, retirees should get a periodical income to meet their day to day expenses. Article 17 of ILO Convention 128<sup>22</sup> also requires that periodical payments should be made as old age benefits. According to the principles of social insurance, provident fund is not an ideal substitute for pension (Goswami “n.d”). In Sri Lanka this situation is much more serious on one hand since there is no mechanism to convert

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<sup>18</sup> Section 38(1) of the Employees Provident Fund Act PF Act.

<sup>19</sup> Section 38(2) of the Employees Provident Fund Act.

<sup>20</sup> *Messrs Narthupana Tea & Rubber Estate vs. The Commissioner of Labour* (SC 510/74 decided on 13.03.1978).

<sup>21</sup> *Dayawathi vs. Commissioner General of Labour* (SC/FR 241/08 decided on 10.06.2009)

<sup>22</sup> *C128-Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)* (no date). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55\\_TYPE,P55\\_LANG,P55\\_DOCUMENT,P55\\_NOD E:CON,en,C128,/Document](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:55:0::NO::P55_TYPE,P55_LANG,P55_DOCUMENT,P55_NOD E:CON,en,C128,/Document) (Accessed: 05 August 2020).

EPF in to a monthly annuity and on the other hand Sri Lankan EPF Act permits the employee to assign or charge the contributions lying to the credit of his individual account in the fund with certain stipulated money lending institutions against a loan given for housing purposes.<sup>23</sup> Accordingly, even the lump sum an employee is getting at his retirement, is reduced considerably, leaving the retiree no means of income. No doubt this loan facility is a benefit given to the employees but since it is against the objectives of a retirement benefit scheme, it should be considered as a loophole in this Act.

Employers and employees of covered employment under EPF Act are allowed to make contributions towards private provident funds with the approval of the Commissioner of Labour which give more benefits than EPF, established under the EPF Act.<sup>24</sup> Members of such an approved provident fund could draw the amount lying in credit to his individual account at any time he ceases to be employed under the particular employer, disregard of his age. Accordingly, it cannot be considered as a feature of a good retirement benefit scheme since it does not address the contingencies of old age. ILO Convention 128 also requires that pension systems should be administered by public institutions. But in the meantime, it does not prohibit the creation of supplementary private pension schemes.

Some countries that depended on provident funds earlier as retirement benefits have moved forward by converting a part of it into a pension scheme. For instance, in India the employer contribution to the EPF has been diverted to a pension scheme referred to as Employees Pension Scheme (EPS) while the employee contribution continues to be credited to EPF. Although a mass protest was occurred at the time of introduction of this new EPS system in India, the ILO recognizes it as a great achievement and suggests a similar approach in Sri Lanka also (Woodall, 2009). In 2011, Sri Lankan government attempted to introduce a pension scheme for private sector but failed due to a mass protest. It seems the protest was reasonable since there were many loopholes in it. Sunil in 2011<sup>25</sup> pointed out the big criticism on the proposed bill that ‘the purpose of the legislation is not to provide decent pensions for private sector workers, but to introduce a form of compulsory saving, design to inject money in to the stock market and other forms of private investments’.

Another place where attention should be drawn in EPF Act is the age at which the benefits are given. Under the normal circumstances, benefits are given, as a lump sum, once the employee is ceased to be employed and if a male, attains the age of 55 years or if a female attains the age of 50 years.<sup>26</sup> Recently the government rose the age of retirement of the public sector employees by few more years.

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<sup>23</sup> Section 22 of Employees Provident Fund Act

<sup>24</sup> Section 27 of Employees Provident Fund Act to be read with Employees (Special Provisions) Law No. 6 of 1975 as amended by Employees (Special Provisions) (Amendment) Act No. 55 of 2009.

<sup>25</sup> Sunil, W.A, (2011) Sri Lankan Government to reintroduce amended pension bill available at <http://www.wsws.org/articles/2011/jun2011/slpb-j09.shtml> [Accessed 15 September 2020].

<sup>26</sup> Section 23(1) of Employees Provident Fund Act

Accordingly, age of retirement of the public sector employees except some few categories such as university academics, is considered as 60 while 55 will be considered as the optional age of retirement. Although there is no stipulated age of retirement for the private sector employees, with increased life expectancy, people tend to work at least up to the age of 60. However so far, the EPF Act has not considered this social phenomenon of ageing of population and steps should be taken to amend the Act in order to increase the age at which the benefits are given. It would be an indirect influence on people to work few more years, giving a kind of relief to government from the burden of looking after the retirees.

### **Employees Trust Fund Act**

Employees Trust Fund is also considered as a retirement benefit scheme in Sri Lanka. One of the objectives of ETF is to provide non-contributory benefit to employees on retirement.<sup>27</sup> Here the employee does not have to contribute to the fund but the employer is required to contribute on behalf of the employee, amount equivalent 3% of monthly earnings of employee. The administration, management and control of the fund are vested with a separate board established under the Act namely ETF Board. Accordingly, the Labour Department does not have any involvement in it. Under the ETF Act also the mode of recovery of defaulted dues is identical with the provisions in this regard in EPF Act.<sup>28</sup> Therefore the judgment of *Dayawathi vs. Commissioner General of Labour*<sup>29</sup> would be applicable to the ETF Act too.

There are certain loopholes in the ETF Act when looking into the retirement benefit aspects. The Act cannot be considered as a good retirement benefit scheme for many reasons. One such reason is that as in EPF system, here too benefits are paid as a lump sum at the termination of employment. The situation is further worsened since the ETF Act does not stipulate an age limit and at any time an employee is ceased to be employed under a particular employer, he is entitled to receive the benefits subject to maintaining a five years gap between two such withdrawals.<sup>30</sup> Another loophole is non-coverage of informal sector employees such as domestic workers. Even though provisions are available under section 18 of the ETF Act to self employed persons to become contributors to the fund, it is not compulsory. On the other hand, when considering relatively low interest rate available under the fund, such employees can obtain more benefits if a savings account is maintained instead of contributing to the fund.

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<sup>27</sup> Section 7c of the Employees Provident Fund Act

<sup>28</sup> Sections 28(1),28(2) and 28(3) of the Employees Trust Fund Act.

<sup>29</sup> *Dayawathi vs. Commissioner General of Labour* (SC/FR 241/08 decided on 10.06.2009)

<sup>30</sup> Section 23 of the Employees Provident Fund Act

## Payment of Gratuity Act

It has long been accepted principle that employees should be made a payment by the employer when they retire or ceased to be employed, as a gratitude for the work they have done. At present this social requirement has been legalized in Sri Lanka by Payment of Gratuity Act. Accordingly, a workman who worked five completed years under an employer who employed fifteen or more workmen on any day during the period of 12 months immediately preceding the termination of services of such workman is entitled to receive a gratuity computed in accordance with the said Act.<sup>31</sup> Administration of this Act is vested with the Labour Department and hence complaints with regard to non-payment of gratuity should be referred to the Commissioner of Labour who thereupon inquire in to the matter and take action to recover the same through the Magistrate Court. Before this Act was enacted, jurisdiction regarding non-payment of gratuity was vested with the Labour Tribunal. However, as a result of amending Section 31B(1)(b) of the Industrial Dispute Act<sup>32</sup> (IDA) by Section 17 of the Payment of Gratuity Act, at present, Labour Tribunals have jurisdiction to inquire in to matters which do not fall under Payment of Gratuity Act, namely the instances where the number of workmen who have been employed by a particular employer is less than 15. This diversion of employees in to two categories based on the number of workmen employed under the employer and putting them under two jurisdictions, makes the recovery procedure of gratuity complicated. Since this provision of the Payment of Gratuity Act, there is a general misunderstanding that employers who employ less than 15 workmen are not liable to pay gratuity. When analyzing the two jurisdictions vested under Payment of Gratuity Act and Industrial Dispute Act, it is obvious that the jurisdiction of Labour Tribunals under IDA is wider. Labour Commissioner, through the Magistrate can recover only the gratuity due legally on a workman. However, since the Labour Tribunals are empowered to give orders based on just and equitable principle,<sup>33</sup> its ability to make orders on gratuity issues are not confined to legal entitlements. According to Section 31B(1)(b) of the Industrial Dispute Act, relief or redress can be sought from a Labour Tribunal regarding, 'the question whether any gratuity or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of any such benefits, where such workman has been employed in any industry employed less than 15 workmen on any date during the period of twelve months preceding the termination of the services of the workman who makes the application or in respect of whom the application is made to the tribunal'<sup>34</sup>

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<sup>31</sup> Section 5(1) of the Payment of Gratuity Act.

<sup>32</sup> Industrial Dispute Act No. 43 of 1950.

<sup>33</sup> See Section 31 C (1) of the Industrial Dispute Act.

<sup>34</sup> Section 31B(1)(b) of the Industrial Dispute Act.

Courts have interpreted the term 'are due' in this Section to mean both whether legally due or due on just and equitable ground.<sup>35</sup> Accordingly, Labour Tribunals have more power with this regard than the Labour Commissioner.

However, under the Industrial Disputes Act, the workman must make an application for claiming gratuity within six months of his termination. Thereafter he will have to undergo a time-consuming court proceeding to get an order. But under the Payment of Gratuity Act the employer is liable to pay gratuity within 30 days of termination of the employee without demand. Default payments are also recovered by way of summary procedure. Based on the above facts, it is suggested that all gratuity issues should be brought under the purview of Gratuity Act instead of implementing two-fold jurisdictions for similar matters. Accordingly, both the Industrial Disputes Act and the Payment of Gratuity Act should be amended to accommodate this requirement.

According to the matters discussed above, non-coverage of informal sector employees, low replacement level and non-protection of inflation risk stand as common loopholes in EPF, ETF and Gratuity system in Sri Lanka. However, those three legislations have introduced a speedy recovery procedure to recover default payments by way of summary procedure. Therefore, the harassments to be faced when enforcing the provisions of those legislations are minimal.

### **Contributory Pension Schemes**

Although the informal sector employees are not covered by the above mentioned three legislations, there are some contributory pension schemes existing in Sri Lanka applicable to farmers<sup>36</sup>, fishermen<sup>37</sup>, media personnel<sup>38</sup> and self-employed persons<sup>39</sup>. While Farmers and Fishermen Pension Schemes are administered by the Agricultural and Agrarian Insurance Board, Media Personnel's Scheme and Self-Employed Persons Scheme are administered by the Social Security Board. However the monthly payments given as pension under those systems are very low that they cannot be considered as sufficient at all.<sup>40</sup> And also by now, most of these schemes have faced with a big difficulty in paying benefits since the benefit payments have exceeded the contributions. Thus, the current social security has failed to provide adequate income security for a large share of elderly. (Ganga, n.d.) Apart from administrative deficits, aging of population can be described as the main

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<sup>35</sup> *United Engineering Workers Union Vs. Devanayagam* 69 NLR 289 at 300.

<sup>36</sup> Farmers Pension and Social Security Benefit Scheme Act No. 12 of 1987.

<sup>37</sup> Fishermen Pension and Social Security Benefit Scheme, 1990.

<sup>38</sup> Social Security Benefit Scheme for Media Personnel Act No. 29 of 2006.

<sup>39</sup> Pension and Social Security Benefit Scheme for Self Employed, 1996 Introduced under Social Security Board Act.

<sup>40</sup> Under farmers and fishermen pension scheme monthly pension available is varied between Rs. 4,167/- and Rs.1000/- depend on the age at which the person became the member.

reason for this situation. Accordingly, these schemes are also cannot be considered as successful retirement benefits and need a thorough revision.

## **RETIREMENT BENEFITS OF THE STATE UNIVERSITY EMPLOYEES**

State universities in this country are considered as public corporations within the ambit of Article 170 of the Constitution and hence they fall under semi-government sector.<sup>41</sup> University employees in this country enjoy four types of retirement benefits. While they are covered under ETF Act and Gratuity Act in a similar way of applying those Acts to private sector employees, universities have a private provident fund called 'University Provident Fund' (UPF) on their own which has more benefits than the benefits stipulated under the EPF Act and also there is a contributory pension scheme for university employees. The University Grants Commission is the administrator of both these funds.

### **University Provident Fund (UPF)**

While the legal authority for establishments of the UPF has been derived from Chapter XII of the Universities Act No. 16 of 1978, the UPF Ordinance No.01 of 2015 deals with the administration of the fund.

UPF is more beneficial than the EPF in the sense that the employer and employee contributions to the fund in the EPF Act are 12% and 8% respectively of the total monthly earnings of the employee concerned and as per UPF, it is 15% and 10%. However, in 1999, the University Grants Commission went on in establishing a contributory pension scheme for the university employees by diverting 8% out of employer contribution of 15% to UPF into the newly established pension scheme<sup>42</sup>. Thus, the employer contribution to UPF is now limited to 7%. Under the EPF Act, the minimum contribution by the employer shall be 12% of the total monthly earnings of the employee, but the above situation of the university system would not be a legal issue as the EPF Act has recognized both the 'approved provident funds' and 'approved contributory pension schemes' in equal level<sup>43</sup>.

When establishing approved provident funds or approved contributory pension schemes, EPF Act requires them to be established in a way that satisfies the prescribed minimum requirements under the EPF Act.<sup>44</sup> This means the minimum requirements under the EPF Act to be satisfied though more and above benefits can be granted. Under EPF Act, the term 'total monthly earnings' has been interpreted to include all kind of allowances paid to employees. For instance, if free meals are

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<sup>41</sup> University Grants Commission Circular No. 69 dated 03.04.1980.

<sup>42</sup> University Grants Commission Circular No. 747 dated 10.06.1999.

<sup>43</sup> Part IV of the EPF Act.

<sup>44</sup> Section 27(1)&(2) of the EPF Act and Section 89 of the Universities Act No. 16 of 1978.

provided to employees, the monetary value of such meals also should be considered.<sup>45</sup> However, in the university system, certain allowances paid to employees namely 20% monthly allowance given under UGC Circular No. 03/2018 and research allowance are not considered for UPF and pension scheme. In terms of interpretations given for the term “earnings” in the EPF Act, cost of living allowance, special living allowance and other similar allowances shall be counted for EPF. In terms of Section 89 of the Universities Act, the interpretation given for “earning” in the EPF Act is applicable for UPF also. Since the research allowance is paid to the certain category of university employees in order to encourage them to engage in more and more research activities, it is not meant to be a living allowance; hence it cannot be counted for Provident Fund and Trust Fund. However, 20% monthly allowance is paid to all the university staff and by its nature, it can be considered as a living allowance; hence not counting of this allowance for Provident Fund and Trust Fund is a violation of the requirements of EPF and ETF Acts.

When considering the effectiveness of the UPF system as a retirement benefit scheme, certain drawbacks can be identified. Firstly, there is no minimum age limit for the UPF release, and the employee can obtain his or her UPF as a lump sum at any age he or she ceases to be employed. This is something contrary to the retirement benefit concept since it does not address the old age contingencies.

Moreover, members of the UPF are entitled to obtain a loan facility from the employer against the UPF. This loan is obtainable up to a maximum of 65% of the UPF balance.<sup>46</sup> Although it is a benefit given to the employees, it cannot be considered as a good feature of a retirement benefit scheme since the employer is entitled to recover the unsettled loans at the retirement of the employee from the UPF leaving the employee with only 35% as retirement benefit.

Section 94 of the Universities Act deals with the deductions that could be made prior to payment of provident fund. Accordingly, the losses or damages sustained by the university by reason of dishonesty or negligence of a contributor, payments due on any loan taken by the contributor and the dues under any bond & agreement executed by the contributor under the provision of which he agrees to deduct from UPF can be deducted at the time when fund is released.<sup>47</sup> Although it seems these provisions are fair when considering the employer’s point of view, it is entirely against the retirement benefit concept. These provisions give unnecessary authority to the employer to touch upon the provident fund of the employee. On one hand section 96 of the Universities Act prohibits of attach, sequester, or seize the money lying to the credit of a contributor of UPF in execution of the decree

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<sup>45</sup> Section 10(1)&(2) of the EPF Act.

<sup>46</sup> Finance Circular letter No. 06/2007 issued by the University Grants Commission.

<sup>47</sup> Section 94(a)(b)(c) of the Universities Act. No. 16 of 1978.

or process of any Court. On the other hand, section 94(a) permits the employer to recover losses or damages caused by the employee by reason of dishonesty or negligence. Accordingly, it is a requirement to have proved such losses or damages at an inquiry held against the contributor to recover them from his or her UPF. One could argue that it is reasonable to recover losses or damages caused to the employer by the employee by reason of dishonesty or negligence from his or her UPF, but when we compare this condition with the EPF Act, there is no such stipulation there. Accordingly, the EPF Act is very strong here. Therefore, it is suggested that there should be another mechanism to recover such losses or damages caused to the employer without touching upon the retirement benefits of the university employee.

### **University Pension Scheme**

Establishments of a contributory pension scheme can be considered as a good move of the retirement benefits of the university system. The legal authority for a pension scheme has been derived from Section 97 of the Universities Act. Even though this section has provided legal provision for preparation of a separate Ordinance for the regulation, administration, and the management of such a pension scheme, to date, there is no such an Ordinance has been gazette. UGC Circular 747 stands as the main circular in this regard. Therefore, at the outset, it is suggested to make an Ordinance regarding university pension scheme by the UGC. In addition, there are certain drawbacks of the scheme which need to be revised.

As per clause 4.1.2 of the UGC Circular No.747, on death of a pensioner, 50% of the pension will be paid to the widow or widower and the balance 50% will be equally divided and paid to the children until they reach 18 years of age. Accordingly, if there are no children or no children under 18 years, the widow or widower should be entitled to get the 100% of the pension but in practice, such widow or widower gets only 50% and the balance 50% remain unpaid. Since this is a contributory pension scheme, it is unfair and unlawful of not paying the 100% pension to the widow or widower. Although the aging of population is a great hindrance to sustainability of any pension scheme, the common phenomenon in Sri Lanka is the age gap between a husband and a wife is not much. Therefore, there is no logic behind why the widow or widower cannot be paid 100% pension if the pensioner can be paid 100%. Also, it is hard to believe that a pensioner will have children under 18 years. In this circumstance the widow or widower will not get the amount even his or her spouse contributed for the pension. Therefore, it is suggested to include provisions in this regard for payment of 100% of the pension to widow or widower of a pensioner if there are no children or no children under 18 years old. This can be done by amending the UGC Circular 747 until an Ordinance is made.

Further, the Circular 747 stipulates that the university pension scheme to be reviewed once in every three years and benefits available to contributions of new employees to be suitably amended following such review. However, it seems that no such effective review has been done since the monthly payment rate stands the same.

## CONCLUSION

Although retirement benefits are provided to private and semi-government sector employees under three major legislations in Sri Lanka, none of them will support the state to ease the burden of looking after the old, aged people. At present government also does not provide any financial support to old, aged people in Sri Lanka like some other developed countries do, and whole burden of looking after them has been shifted to the youngsters of their families. In this context, it is suggested that a pension scheme applicable to the private and semi-government sector employees should be created in a way that they could get a periodical income, without reducing the benefits presently available under the EPF, ETF and Payment of Gratuities Acts. Contributory pension schemes developed so far are proved to be futile except the pension scheme of the university system. However, the pension scheme of the university system also needs a thorough revision to address the drawbacks pointed out in this paper.

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