



THE RIGHT TO ORGANISE OR THE RIGHT TO TALK?

Workers' agency in Indian garment factories

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ABBREVIATIONS

ACAS	Advisory Conciliatory and Arbitration Service (United Kingdom)
AITUC	All India Trade Union Confederation
ARISA	Advocating Rights in South Asia
BMS	Bhartiya Mazdoor Sangh
CBA	Collective Bargaining Agreement
CITU	Centre of Indian Trade Unions
CTUO	Central trade union organisation
ETI	Ethical Trading Initiative
FACB	Freedom of association and the right to collective bargaining
FoA	Freedom of Association
FSP	Factory Support Programme
GATWU	Garment and Textiles Worker Union
GLU	Garment Labour Union
HMS	Hind Mazdoor Sabha
ILC	Indian Labour Conference
ILO	International Labour Organisation
INTUC	Indian Trade Union Congress
KGWU	Karnataka Garment Workers Union (sometimes abbreviated as KOOGWU)
LROs	Labour rights organisations
MSI	Multi-Stakeholder-Initiative
NGO	Non-governmental Organisation
PC	Participation Committee (Bangladesh)
STITCH	Sustainable Textile Initiative: Together for Change

EXECUTIVE SUMMARY

This paper examines the role of Works Committees (WCs), a legally mandated structure in Indian factories with more than 100 workers. It asks if WCs have a role in promoting the internationally recognised right of workers to form and join trade unions - known as Freedom of association (FoA).

The paper examines the basis and meaning of FoA, and the relationship between FoA and another concept, social dialogue, which is not defined in international law. For the purposes of this paper, we use the ILO working definition, which is “all types of negotiation, consultation or information sharing among representatives of governments, employers and workers on issues of common interest relating to economic and social policy”¹.

Through a literature review, the paper examines the law on WCs, along with their historical development. It reviews contemporary practice, especially through the lens of projects undertaken by brands and civil society organisations (CSOs).

The evidence leads to the conclusion that WCs can be a useful mechanism for raising and resolving workers’ problems; however, they do not seem, as a matter of course, to lead to the formation of workers’ unions - or the exercise of their FoA rights.

Drawing from the review of the available evidence on FoA and WCs, the paper offers recommendations for different stakeholders (brands, multistakeholder initiatives (MSIs), suppliers, civil society, trade unions, and auditors) to improve the functioning of WCs and some tentative suggestions on how workers can be supported to unionise.

RECOMMENDATIONS FOR BRANDS AND MULTI STAKEHOLDER INITIATIVES

Brands could emphasise the business case for WCs and play a proactive role in ensuring that proper elections are held so that the members of the WC are fully representative of workers, particularly of women workers. WCs could be improved through the worker members being recognised as workers’ representatives in between meetings, helping to resolve workers’

problems on a day-to-day basis; this would mean that the WCs could spend more time discussing factory wide issues when they meet.

Sourcing companies/MSIs need to encourage suppliers to follow best practice in establishing the WCs, including independent, transparent elections. These processes should be auditable.

Civil society organisations that are engaged in supporting sourcing companies in projects that promote WCs should follow these principles as well.

The elections to WCs need to recognise the gender composition of the workforce.

The worker members of the WC need to be able to meet as a group independently of management at least once in a month, and before and after the WC meetings, and report back to workers. WC could meet more often, certainly in the initial year, at least once a month.

The women worker-members of the WC also need to have the opportunity to meet as a group independently of management and their male colleagues.

The worker members of WC need to be able to function as a problem-solving channel for workers on a daily basis.

RECOMMENDATIONS FOR TRADE UNIONS

Trade unions, where they have supporters inside factories (these workers usually keep their support for trade unions a secret, to avoid being dismissed), can encourage them to stand for election to WCs, and provide support. In the existing anti-union climate, this work will necessarily remain “low key”.

RECOMMENDATIONS FOR AUDITORS

Auditors should not see problems discussed by WCs as non-compliances in the factory. Rather, auditing should seek to establish the effectiveness of the WC as a problem-solving mechanism.

Auditors need to be aware that any other type of committee or forum established by employers cannot

¹The ILO definition is not found in any international labour standard, and this “working definition” appeared in the late 1990s. There has been no specific legislation in India on social dialogue, nor any court rulings dealing with the concept.

meet the standard set by ILO Convention No. 135. Only structures established by law, or through collective bargaining, meet the ILO standard. If employers promote other structures this may well be evidence of non-compliance with code of conduct requirements regarding freedom of association.

Auditors seem to have limited understanding about industrial relations. They need training to better understand the international human rights standards, and what to look for in auditing. Audit companies and sourcing companies should consider how this can be organised.

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INTRODUCTION

As unionisation levels in the Indian garment industry are very low - below 5% (Lopez: 2023), the lack of trade unions has been identified as an area of concern, through the due diligence of Dutch brands and other brands, sourcing from India.²

Many brands, multi-stakeholder initiatives (MSIs) and civil society organisations (CSOs) concerned with workers' rights have seen WCs as a possible substitute to trade unions, filling the gap until trade unions emerge. As a legal requirement, they can be audited.³ Projects have been developed to support attempts to establish WCs in Indian garment factories.⁴ As explained in detail below, these committees are legally mandated, joint worker-management structures in factories employing 100+ workers.

The intent of this paper is to clarify FoA as a human right and shed light on WCs as mechanisms for social dialogue and workers' representation in the garment industry in India. On that basis, the paper aims to explore the relations, linkages and possible progressions between functioning WCs and FoA.

This paper is focussed mainly on India, and unless specifically mentioned otherwise, all references to the law and industrial relations are to India. It refers to the experience in Bangladesh of similar committees for a comparative perspective.

The structure of the paper is as follows:

Section 1 reviews the meaning of the term "freedom of association" and the linked right to collective bargaining. These rights are realised collectively through trade unions.⁵

Section 2 examines the concept of joint worker-management committees. WCs in India, a key focus of this paper, are a form of this. The section also examines "social dialogue" and its relationship with FoA and collective bargaining.

Section 3 provides a brief overview of FoA and collective bargaining in India with an account of trade unions in the garment sector.

Section 4 examines the law on and history of WCs, the joint committee structure in India, which this paper examines in detail, including an assessment of the implications of the new Industrial Relations Code, 2020 (yet to be operationalised in states at the time of this writing) for the WCs.

It also reviews the information and insights about WCs from a number of key informants and tries to distil the experience from some projects and lessons learned.

Section 5 discusses whether WCs can lead to FoA.

Section 6 offers some general conclusions.

Section 7 makes some recommendations.

At the end of the paper, there is a brief research note on the methods used and key informants interviewed in researching this paper.

An appendix provides more detailed definitions of terms used.

² This paper concentrates on the garment industry, narrowly defined as the production of garments in cutting fabric, assembling clothes, and finishing, and does not consider "upstream" activities such as textile manufacture.

³ Although it should be noted that some audit reports state that factories are "compliant" with the freedom of association clauses in the codes of conduct used by brands, if there is a WC. This is not correct.

⁴ A similar approach has been seen in Bangladesh, where the Participation Committees (PC), a similar structure to WCs is a legal requirement.

⁵ Broadly, some rights apply to individuals, such as the right to a fair trial: these are called individual rights. Others apply to groups of people, and these are called collective rights. The right to join a trade union could be seen as an individual right; the right to form a trade union and the right to collective bargaining as collective rights.

SECTION 1: FREEDOM OF ASSOCIATION AS A HUMAN RIGHT

The foundational text for human rights is the Universal Declaration of Human Rights (UDHR), adopted in 1948. In Article 20, it is stated that “Everyone has the right to freedom of peaceful assembly and association.”

This includes any type of organisation or society. One of the hallmarks of totalitarian societies is state control of all institutions including churches, youth clubs and conservation organisations; all are subordinated to the state. So, the right to association is fundamental to preserve freedom.

This right is also found, for example, in the United States, where the First Amendment to the Constitution guarantees the right to freedom of association, along with the freedom of speech, religion, and the press.

The UDHR singles out one kind of organisation for special protection regarding freedom of association in Article 23: trade unions. It says: “Everyone has the right to form and to join trade unions for the protection of his interests.”

This right has been developed and codified by the International Labour Organisation (ILO), as a United Nations (UN) specialised agency with a mandate in the UN system, through a series of international labour standards and judicial decisions.

Freedom of association refers to the right of workers and employers to create and join organisations of their choice freely and without fear of reprisal or interference. This includes the right to establish and affiliate to confederations and international organisations. Linked to freedom of association is the right to collective bargaining, which allows workers to negotiate their working conditions freely with their employers.

These rights apply to all workers without exception, except the police and armed forces. The use of the term “workers” rather than “employees” means that these rights are not dependant on the existence of formal employment contracts. This is important to note, as many workers in garment factories in India are employed through “non-standard” mechanisms, including labour sub-contracting.

The ILO views freedom of association as an enabling right. “The rights to organize and to bargain collectively are enabling rights that make it possible to promote democracy, sound labour market governance and decent conditions at work.” (ILO, 2008). A person cannot enjoy human rights unless there is an environment conducive to the exercise of those rights. In the context of a garment factory, there needs to be an environment where a worker can raise questions about, for example, their wages. A trade union enables an individual worker to have a voice to raise those questions and to exercise their rights.

If workers cannot combine together, then the realisation of other rights, such as minimum wages, or safety and health at work is more difficult. In the absence of enforcement of labour laws by government inspectors, a key possibility of realising rights is through collective voice of workers.

Trade unions have the right to establish and join federations and confederations, which must also enjoy the same rights. For example, a company-based garment workers’ union must be free to affiliate to a sectoral/national union or federation and to a national trade union centre. The ILO conventions also provide for the right to affiliate with international organisations.

Workers’ organisations have the right to draw up their own rules and elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes. Public authorities must refrain from any interference that would restrict this right or its lawful exercise.

While it is generally to the advantage of workers (and their employers) to avoid too many organisations representing workers in the workplace, the employer (or government) cannot insist that workers are members of a particular trade union.

Employers are also prohibited from preventing workers from belonging to the union of their choice, but trade unions must be free to decide their own democratic rules and may refuse to accept an application to join if, for example, it does not organise members in that sector.

Workers must be protected against acts of anti-union discrimination, including refusal to employ them because of their trade union membership, or dismissal or any other prejudice or penalty because of their trade union membership or activities.

Employers must not interfere in, seek to control, dominate, or finance the formation, constitution, administration, elections or other activities of a trade union or seek to establish non-independent rival bodies.

COLLECTIVE REPRESENTATION AND COLLECTIVE BARGAINING

Freedom of association on its own may not be an enabling human right unless trade unions are able to represent workers. Simply belonging to a trade union in the workplace is insufficient to protect workers' human rights, even if the employer does not try to prevent workers joining.

A trade union representing its members includes defending workers if management wants to discipline them. Or putting forward the worker's case if they have a grievance against their employer. It also includes representing members through collective bargaining.

Collective bargaining is defined in ILO Convention No. 154⁶ which refers to:

all negotiations between an employer, a group of employers or one or more employers' organisations on the one hand, and one or more workers' organisations on the other, for one or more of the following purposes:

- a. *Determining working conditions and terms of employment*
- b. *Regulating relations between employers and workers*

Typical issues on the bargaining agenda include wages, working time, training, occupational health and safety and equal treatment.

The objective of these negotiations is to arrive at a collective agreement that regulates terms and conditions of employment. Collective agreements may also cover issues like how discipline and grievance matters are dealt with.

Collective bargaining involves a process of joint decision making that helps to build trust and mutual respect between the parties and enhance the quality of labour relations.

Collective bargaining should result in a Collective Bargaining Agreement (CBA), sometimes called simply a collective agreement. CBAs are a compromise between what the workers - through their union - want, and what the employer wants to give.

Freedom of association and the right to collective bargaining (FACB) are recognised as universal human rights in several international labour conventions that, in international law, have the status of international treaties. Please see the appendix for more details of the relevant treaties and conventions.

Box 1: The importance of "association"

The protection of the right to associate freely with others has philosophical roots dating back to at least the 19th century and is not confined to trade unionists.

Trade unionism is based on the principle that full individual development can take place only in association with others. As an individual, one is limited in what one can try to do, what one can achieve. Through joint action and mutual responsibility, one can achieve more, especially by increasing one's collective influence in the market and before governments.

⁶The full text can be found at: Convention C154 - Collective Bargaining Convention, 1981 (No. 154) (ilo.org)

SECTION 2: JOINT WORKER-MANAGEMENT COMMITTEES AND SOCIAL DIALOGUE

Joint worker-management committees have existed in workplaces for about 100 years (Kaufman 2004). Initially set up by managements as a mechanism for improving worker engagement, and solving problems, they have no legal basis in the US, and only in the UK since the European Union influenced legislation.

In distinction from freedom of association. And there is no human right to elect representatives to structures such as WCs; there is no human right to engage in social dialogue. There is no ILO Convention dealing with the subject.

Therefore, there are no standard constitutions or guidelines for such committees.⁷

In these structures, which can exist alongside trade unions, or exist in the absence of trade unions, workers discuss issues with management. There may be legislation prescribing the method of appointment or election, the range of topics to be discussed, the powers etc of these committees, or this can be decided at the discretion of management.

Here, we need to examine the concept of social dialogue which the ILO defines as:

all types of negotiation, consultation or information sharing among representatives of governments, employers and workers, or between those of employers and workers on issues of common interest relating to economic and social policy (Arigo & Casale, 2003).

So, who are these “representatives of workers” in the ILO’s definition of social dialogue? ILO Convention No. 135⁸ on worker representatives provides a definition:

Article 3

For the purpose of this Convention the term workers’ representatives means persons who are recognised as such under national law or practice, whether they are --

- (a) trade union representatives, namely, representatives designated or elected by trade unions or by members of such unions; or
- (b) elected representatives, namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned. (my emphasis)

So, representatives of workers include both trade union and non-trade-union representatives.

However, there is an important distinction.

The convention goes on to state (in Article 5):

Where there exist in the same undertaking both trade union representatives and elected representatives, appropriate measures shall be taken, wherever necessary, to ensure that the existence of elected representatives is not used to undermine the position of the trade unions concerned or their representatives and to encourage co-operation on all relevant matters between the elected representatives and the trade unions concerned and their representatives (ILO, 1971).

There has been a problem with joint committees or other ad hoc structures purporting to represent workers being used by employers to “agree” on terms and conditions. The ILO supervisory machinery has dealt with such cases for years and have made it very clear that collective bargaining can only be undertaken by workers organisations and not workers representatives, however they are elected (ILO, 2006).

Freedom of association and the right to collective bargaining are thus one sub-set within social dialogue. Indeed, trade unions would regard collective bargaining as the “gold standard” or the best possible version of social dialogue.

⁷ Within the European Union (EU), there are legally mandated structures and a framework for how individual member states must establish them. But this is only for EU member states.

⁸ The full text can be found at: Convention C135 - Workers' Representatives Convention, 1971 (No. 135) (ilo.org)

TRADE UNIONS AND WORKPLACE COMMITTEES: SUMMARISING THE DIFFERENCES

Managements have complete control over joint structures, such as works committees in India. They decide when elections will be held. They can manipulate the election process to ensure that candidates they prefer are elected. They can control when and how often meetings take place, and the agenda of the meetings.

On the other hand, in a trade union, the management has no role in/control over these activities. It is the trade union which determines when its internal elections take place, etc. Trade unions are institutions that are ultimately under the control of workers; this is not to say that trade unions are perfect, but to point out the fundamental difference between joint worker-management structures, such as the WCs, and trade unions. It is difficult for workers to exercise any agency through a WC.

Table 1: Some key differences between trade unions and WCs

	TRADE UNION	WC (OR SIMILAR STRUCTURE)
Formed by	Workers	Management, who initiate election
Legal status	A legal person, an entity that can enter into contracts, etc.	Does not have status of legal person
Funding	Member subscriptions	No funding
Governance	Constitution, members will choose officers and committee and decide policy	Committee in theory reaches decisions together (management and workers). The worker members do not decide alone - they have no autonomy
Lifespan	Union continues as long as members want	Re-elected every few years
Collective bargaining, and signing collective bargaining agreements	Only trade unions can do this	Cannot negotiate or sign CBAs
Meet independently	Union can hold its own meetings	Worker members cannot, as of right, meet on their own.

SECTION 3: FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING IN INDIA

The Constitution of India, adopted in 1949 (although discussions about the Constitution began before the UDHR was adopted), guarantees the right to freedom of association in Article 19:⁹

- (1) All citizens shall have the right–**
- (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;
 - (c) to form associations or unions

The ILO conventions that codify FACB have not been ratified by India,¹⁰ and restrictions to workers ability to organise trade unions exist in practice. India scores 5 on the index of global workers' rights prepared annually by the International Trade Union Confederation (ITUC), where 5 is the worst possible rating (ITUC, 2023).

Under existing law, there is no automatic recognition of a trade union, even if it has been officially registered; compulsory recognition of trade unions by employers was proposed by the National Commission on Labour in 1969, but this recommendation was never acted upon (Government of India, 1969).

Both Part 1 and 2 of the Industrial Disputes Act, 1947 speak of "recognised unions" and "certification of a bargaining representative", but the Act does not prescribe procedures for recognition and certification. The Trade Union Act, 1926 deals only with registration (Gopalakrishnan, 2009).

There is no central statutory enactment in India regarding the recognition of trade unions. In most Indian states, except Andhra Pradesh, Gujarat, Madhya Pradesh, Maharashtra, Rajasthan and Bengal, there are also no state enactments regarding the recognition of trade unions.¹¹

In practice, this has resulted in employers ignoring or by-passing representative unions and entering "agreements or settlements" with employer-established trade unions or individual workers.

This is in contrast to Bangladesh, where registration leads automatically to the right to represent workers and negotiate CBAs.

The new Industrial Relations Code, 2020,¹² does seem to provide for recognition for collective bargaining:¹³

14. (1) There shall be a negotiating union or a negotiating council, as the case may be, in an industrial establishment having registered Trade Union for negotiating with the employer of the industrial establishment, on such matters as may be prescribed.

(2) Where only one Trade Union of workers registered under the provisions of this Chapter is functioning in an industrial establishment, then, the employer of such industrial establishment shall, subject to such criteria as may be prescribed, recognise such Trade Union as sole negotiating union of the workers.

(7) The facilities to be provided by industrial establishment to a negotiating union or negotiating council shall be such as may be prescribed.

It is possible that, when the new code does come into force, Indian trade unions will be able to use this provision to leverage representation and compel employers to engage in collective bargaining. This potential change has not been widely discussed.¹⁴

TRADE UNIONS IN INDIA

It is difficult to be precise about the number of trade unions in India, as the national statistics depend upon returns submitted by states. A number of registered trade unions do not submit their annual returns, so it is possible that they may be inactive.

⁹The text of article 19 can be found at: Article 19: Protection of certain rights regarding freedom of Speech, etc. Constitution of India

¹⁰See the appendix for a list of the conventions.

¹¹These states are not major hubs for garment manufacturing.

¹²See Box 2 on labour law changes.

¹³The full text can be found at: IR as Passed by Lok Sabha (labour.gov.in)

¹⁴A brief discussion can be found at <https://www.amsshardul.com/insight/with-new-industrial-relations-code-what-does-the-future-look-like-for-indias-trade-unions/>

For the 2019 government report on trade unions, only 16 states/union territories reported.¹⁵ The total number of registered trade unions was 11,124 – for those 16 states and union territories only, so the actual number must have been higher. The data is not disaggregated, so we do not know how many trade unions are registered in the garment industry (Labour Bureau, 2022).¹⁶

Using credible national sample data, it has been estimated that aggregate trade union membership in India increased from about 55.4 million in 1993-1994 to 73.5 million in 2011-2012. Annual growth in membership appears to be sustained, and the growth rates for women workers and for precarious workers exceeds the average rate of growth of union membership (Badigannavar, 2021). Most trade unions are workplace based. A union is often registered as the “XYZ employees union” or equivalent in a vernacular language.

A registrar of trade unions at state level issues the registration certificate.¹⁷ The trade union making the application has to supply a list of the members (with signatures), and it is commonly alleged that staff in the office of the registrar provide the list of names to the employer, who then takes punitive action against those workers who have signed.

Around half of India’s trade unions are affiliated to national trade union centres, or confederations,¹⁸ known in India as central trade union organisations (CTUOs) such as the All India Trades Union Congress (AITUC), founded 1921, linked to the Communist Party of India (CPI); the Indian National Trades Union Congress (INTUC), linked to the Congress(I), founded 1947; the Hind Mazdoor Sabha (HMS), now independent, founded 1948; the Centre of Indian Trade Unions (CITU) linked to the Communist Party of India Marxist (CPI(M)), founded 1970; Bhartiya Mazdoor Sangh (BMS) linked to the Rashtriya Swayamsevak Sangh (RSS) and through that, to the BJP. There are 12 officially recognised central trade union organisations including the Self-Employed Womens’ association (SEWA).

The majority of unions are small, with average membership of below 1,000 (Labour Bureau 2022). They

can combine into industrial federations, which are linked to CTUOs. For most large industries, particularly those with a large public sector, there is centralised national collective bargaining – for example in the steel and coal industries. The employers’ side will comprise public and private sector employers. The central trade unions usually submit separate ‘Charter of Demands’ although the final agreements are common to all.

According to one source, most of the trade union members in India are from two states – Kerala (32%) and Assam (25%). Kerala and Assam together have only 5% of the total workforce in India, but they have 57% of the trade union members in the country. This seems unlikely, but the statistic indicates how data about trade unions is unreliable (Bhaskaran, 2020).

The available literature does not seem to provide a consensus on whether India’s trade unions are growing or declining. It is clear, however, that the trade union movement is fragmented, and that organising a union is very difficult, with employers generally strongly opposed to unionisation, and the state supporting employers.

TRADE UNIONS IN THE GARMENT SECTOR

Historically, textile mills were mainly in the private sector, and unionised, with sectoral collective bargaining, at state level. The CTUOs would coordinate their “Charter of Demands” which would be placed before an employers’ organisation or organisations, such as the Southern India Mills Association. These relatively high levels of unionisation were undermined from the 1980s onwards by decentralising to much smaller units and the use of contract labour.¹⁹

In contrast, the unionisation rate in garment factories had always been very low, less than 5%, even in Bengaluru, which is generally recognised as the cluster with the highest unionisation rate (Lopez 2023). In Tiruppur, trade unions stated that only three factories had a trade union presence.²⁰ While there have been attempts to establish trade unions in the other major cluster, the National Capital Region (NCR) around Delhi, currently there is no record of a union existing.

¹⁵India is a federal union comprising 28 states and 8 union territories.

¹⁶Different data has been prepared in a report published by the Friedrich Ebert Foundation, and the conclusion was that trade unions are weak, and declining. (Ulyer & Ghosh, 2022).

¹⁷Exceptions exist for trade unions covering a workplace that may spread across a number of states, for example zonal railways.

¹⁸For an explanation of these terms, see <https://www.tuc.org.uk/international-trade-union-structures>

¹⁹Areas dominated by unionised mills simply closed down. See Breman, Jan & Shah, Partiv, Working in the Mill No More (2004) for a moving account of this process in Ahmedabad.

²⁰Information shared by local union leaders with the author at a consultation held in Tiruppur in February 2022.

The majority of workers in the RMG sector are precarious, without proof of employment status; many are migrants from other states within India, brought to the production clusters through labour contractors, who are very powerful intermediaries. The labour turnover rate is very high; one key informant estimated up to 70% in NCR and Tiruppur.

The very widespread and ubiquitous incidence of gender-based violence and harassment, or the threat of it, also deters women, especially 'lower caste' women, from raising their voices and organising (Business and Human Rights, 2022). The pressures on young women in the sector are extreme and can have tragic outcomes.²¹ Another tactic by some employers is to tell the families of unmarried women that they are being "spoilt" by associating with men in trade unions, and thus damage their marriage prospects. The expectation being that their families will then police the young women's behaviour.²² These factors make any kind of organising by women more difficult.

Workers, and workers' representatives, are concerned to keep "on the right side" of the labour contractors – and setting up a trade union would certainly be seen as unacceptable. If a labour contractor supply to several workplaces, all the factory management has to do is to ask the contractor to move a worker who shows signs of asking questions about their rights to a different factory.

The effect of the precarious nature of work, is to reduce the basis for solidarity between workers, who will rely more on caste or geographic identity as the basis for mutual support.

Despite these obstacles, city or state-wide sectoral trade unions have been successfully established in Bengaluru: the Garment Labour Union (GLU); Karnataka Garment Workers Union (KOOGU) and the Garment & Textile Workers' Union (GATWU). They have built a membership base in various factories and established an informal dialogue relationship with management to address workers' grievances. Through these kinds of interventions, GATWU, for example, has stopped particularly abusive practices of penalising workers for

not achieving production targets, such as public shaming or verbal and physical abuse.

These unions have negotiated collective bargaining agreements in a number of factories and secured re-instatement of workers who have been dismissed for union activities and obtained back pay and benefits (Lopez, 2023), (China Labour Bulletin, 2022).

Similar successful garment sector trade unions have been established in Tamil Nadu, notably the Garment and Fashion Workers Union (GAFWU), based in Chennai (Dutta, 2021) Another example is the Tamil Nadu Textile and Common Labour Union, based in Dindigul, another garment producing centre in Tamil Nadu, that was part of a coalition that campaigned against an H&M supplier; the campaign led to the significant Dindigul agreement (ILRF, 2022).

These unions have mobilised on a community basis and have focussed on women workers issues. This strategy has been successful in Kerala, although in different sectors (Velayudhan, 2020).

It may be relevant that all the examples mentioned here are in south India, where, while acknowledging the levels of exploitation and discrimination faced by women, their situation is better than that of their sisters in north India.²³

It is interesting to note the 2016 protests in the State of Karnataka against the government's proposals to change the rules about Provident Funds; these are a form of savings for workers and the government's plans would have made it more difficult for all workers, including women, to access their money. The point here is that the protest action was not aimed against employers, but the central government. It was "safer" to protest against a government policy than for a group to protest against individual employers. All three active trade unions were involved in the protest.²⁴ Despite the very widespread support for the protests, numbering tens of thousands, no substantial increase in membership of the trade unions has been reported (People's Union for Civil Liberties, 2017).

²¹See [Why are young women workers killing themselves in India?](https://ethicaltrade.org/) | Ethical Trading Initiative (ethicaltrade.org)

²²I am grateful to Indira Saxena, former national women's organiser of Hind Mazdoor Sabha, for explaining this tactic of employers to me.

²³See <https://scroll.in/article/975151/why-do-women-in-south-india-have-more-freedom-than-their-northern-sisters>

²⁴See "How a newspaper article triggered EPF flash strike in Bengaluru" | Explained News - The Indian Express

SECTION 4: JOINT WORKER-MANAGEMENT COMMITTEES IN INDIA: THE CASE OF THE WORKS COMMITTEE

In several countries, there exists the second type of worker representative envisaged by ILO Convention No. 135, who sits on a joint management worker committee. In India, this includes the WC, which only exists in the formal sector of the economy.²⁵

There is no specific law on WCs. It is contained as a provision in legislation dealing with industrial relations, viz., the Industrial Disputes Act, 1947:²⁶

3. Works Committee.- (1) in every establishment in which one hundred or more workmen are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute in the prescribed manner a Works Committee consisting of representatives of employers and workmen engaged in the establishment so however that the number of representatives of workmen on the Committee shall not be less than the number of representatives of the employer. The representatives of the workmen shall be chosen in the prescribed manner from among the workmen engaged in the establishment and in consultation with their trade union, if any, registered under the Indian Trade Unions Act, 1926 (16 of 1926).

(2) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workmen and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

Detailed rules need to be made by the state government. In the case of Tamil Nadu, for example the rules deal entirely with the procedure for elections to the committee. There is no reference at all to the functions – what the committee will actually do (Government of Tamil Nadu, 1958).

The wording in the Industrial Relations Code, 2020 is almost identical:²⁷

3. (1) In the case of any industrial establishment in which one hundred or more workers are employed or have been employed on any day in the preceding twelve months, the appropriate Government may by general or special order require the employer to constitute a WC, in such manner as may be prescribed, consisting of representatives of employer and workers engaged in the establishment:

Provided that the number of representatives of workers in such Committee shall not be less than the number of representatives of the employer.

(2) The representatives of the workers shall be chosen, in such manner as may be prescribed, from among the workers engaged in the establishment and in consultation with their Trade Union, if any, registered in accordance with the provisions of section 9.

(3) It shall be the duty of the Works Committee to promote measures for securing and preserving amity and good relations between the employer and workers and, to that end, to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters.

So, the impact on WCs of the Industrial Relations Code, 2020, when it comes into force, would be negligible.

²⁵There are two other structures in Indian labour law, outside the scope of this paper: The Grievance Redressal Committee, which should be set up in any factory with 20+ workers; and the Safety Committee, which is usually only a requirement in larger factories, or factories with hazardous processes.

²⁶The full text can be found at: THE INDUSTRIAL DISPUTES ACT, 1947 (labour.gov.in)

²⁷The Industrial Relations Code abolishes and replaces the Industrial Disputes Act, 1947; the Trade Unions Act, 1926; and the Industrial Employment (Standing Orders) Act, 1946. A link to the text of the code is given in a previous section.

Box 2: Labour law reform process in India

We present here a brief review of important developments in Indian labour law.

There were previously at least 44 central labour laws, and the government has been committed to “streamlining” the numerous laws into four “codes”. These changes were initially seen to be primarily aimed at improving India’s rank in the World Bank’s “Ease of Doing Business” index where India’s position had slipped from to 142 in 2014-15 (out of 189 countries).

The Doing Business methodology regarding labour regulations was criticized by the International Trade Union Confederation because it favoured flexible employment regulations. In early Doing Business reports, the easier it was to dismiss a worker for economic reasons in a country, the more its rankings improved.

The Employing Workers index was revised in Doing Business 2018 to be in full compliance with the 188 International Labour Organization conventions. It has subsequently been completely removed from the rankings, so whatever the Indian government has done on labour law reform will not actually improve its rankings.

In the 2020 monsoon session of the Indian Parliament, three new laws dealing with labour issues were approved and received the presidential assent. This was in addition to the Code on Wages, approved in 2019. At the time of writing, these four labour codes have not come into force. Following the General Election held in April-June 2024, it is expected that the codes will be rolled out, possibly as early as 2025.

The four codes consolidate 29 existing labour laws into:

- The Code on Wages, 2019
- The Occupational Safety, Health and Working Conditions Code, 2020
- The Industrial Relations Code, 2020
- The Code on Social Security, 2020

Some significant labour laws have been left outside this process of streamlining and consolidation. For example, the laws on the prevention of bonded labour and child labour and the Sexual Harassment of Women at Workplace (Prevention Prohibition and Redressal) Act, 2013, which is not considered as labour law.

WORKS COMMITTEES IN THE HISTORY OF INDIAN INDUSTRIAL RELATIONS

The literature on WCs in India is sometimes not accurate. One, otherwise thoughtful, study of workplace relations states, “some firms have workers’ committees that do not have the legal status of unions, but they perform nearly all functions of unions” (Das, 2010). As the discussion underneath makes clear, the functions are very different.

The role of WCs has evolved over time, and a historical treatment offers a useful perspective. The origin of these committees in India goes back to the early 1920s, and the Royal Commission on Labour in India recommended them in its report of 1931.

As mentioned above, WCs became law in 1947, with the adoption of the Industrial Disputes Act.

Some Indian trade unionists have been concerned that WCs (and similar structures) have been misused by employers, and represented as equivalent to, or a proxy for, trade unions, and their outcomes as equivalent to collective bargaining.²⁸

There is a historical basis for this concern. In the past, attempts were made by employers to represent that WCs could undertake collective bargaining.

Using an Indian case law search engine (<https://www.casemine.com/>) a number of cases involving WCs were

²⁸For example, Just Solutions undertook a survey of local level trade union leaders in Tiruppur in 2021. The majority were hostile to WCs (and similar structures), because they were seen as undermining trade unions.

found. The majority were disputes about the election procedures followed. In some cases, trade unions had gone to the courts, complaining that management had organised elections, to by-pass the trade union in setting up the committee. This was a deliberate use of WCs as an alternative to, or to weaken, trade unions. The majority of these cases date from the 1950s and 1960s.

The trade unions got the matter discussed at the Indian Labour Conference (ILC), a tripartite forum which is supposed to be an authoritative source for labour issues. The ILC in 1959²⁹ agreed on two lists:

List of items which Works Committees will normally deal with:

1. Conditions of work, such as ventilation, lighting, temperature and sanitation, including latrines, and urinals
2. Amenities, such as drinking, water, canteen, dining rooms, crashes, restrooms, medical and health services
3. Safety and accident prevention, occupational diseases and protective equipment
4. Adjustment of festival and National holiday
5. Administration of welfare and fine funds
6. Educational and recreational activities, such as libraries, reading rooms, cinema, sports, games, picnic, parties, community, welfare, and celebrations
7. Promotion of thrift and savings
8. Implementation and review of decisions arrived at meetings of Works Committee

List of items which the Works Committees will not normally deal with:

1. Wages and allowances
2. Bonus and profit-sharing schemes
3. Rationalisation and matters concerned with fixation of workload
4. Matters connected with the fixation of standard labour force
5. Programs of planning and development
6. Matters connected with retrenchment and layoff
7. Victimisation for trade union activities
8. Provident, fund, gratuity, schemes, and other retirement benefits
9. Quantum of leave international festival holidays

10. Incentive schemes

11. Housing and transport services

ILC recommendations are not legally binding, but the clear consensus was that the WCs could not deal with issues normally dealt with through collective bargaining. The trade unions also used the legal route, and the issue went all the way to the Supreme Court, which gave a very clear judgment:

The language used by the legislature makes it clear that the Works Committee was not intended to supplant or supersede the unions for the purpose of collective bargaining; they are not authorised to consider substantial changes in the conditions of service; the task is only to smooth away friction that might rise between the workmen and the management and day-to-day work. By no stretch of imagination can it be said that the functions of the Works Committee include the decision on such an important matter as alteration in the conditions of service (North Brook Jute Company Ltd and other others versus workmen, Supreme Court of India, March 23, 1960).

This judgement is in accordance with ILO principles.

Another use of WC was in large public sector workplaces, where there was intense competition between trade unions and WCs, elections could become an arena of competition.³⁰

The strategy of using WC to undermine a strong factory-based trade union seems to be no longer pursued by management, as the role and influence of trade unions has declined drastically since the 1970s, particularly following the watershed Bombay textile workers strike of 1982/3.

In this century, the trade union avoidance strategies followed by employers include the widespread use of contract labour, outright violence by management thugs, and mass sackings. The state is unambiguously on the side of management in these cases. A case study would be disputes at Maruti in Haryana (Deshpande 2023).³¹

³⁰Bagaram Tulpule, a trade union leader who became the Managing Director of Durgapur steel plant in the 1970s noted, "it became a regular feature of the place that while the INTUC affiliated Hindustan Steelworkers Union continued to be the recognised union, the periodic WC elections invariably resulted in sweeping victories for the Communist led Hindustan Steel Employees Union." (Tulpule 1976).

³¹A lengthy history of conflict between an independent union and management (which had sponsored a union seen as "yellow" by workers), over the issues of unequal benefits for permanent and contract workers, resulted in July 2012, in violence in the factory which left fifty managers injured and one dead. Many workers were charged and remained in prison without trial for many years. The police and state machinery took the side of management throughout the dispute.

THE DOG THAT DOES NOT BARK? WORKS COMMITTEES TODAY

Recent literature contains very few references to WCs and usually only to mention that they are not active, even where they exist.

In a study of Industrial Relations in West Bengal, Sen refers to WCs in passing, and observes that “the main industries where this body still exists are the jute and engineering industries, that too without holding regular elections. Very few other industries even constitute such bodies. In others, they may have existed at one time, but have fallen into disuse” (Sen, 2009).

In a 2019 study of industrial relations in the RMG cluster in Gurugram, “all workers interviewed, except one, were unaware of the existence of Works Committees or grievance redressal committees, and said that on joining, no one had informed them about them. All workers felt that the existence of such committees was of no use to them since ‘there is no point of speaking to the management. They will just make a fool out of the worker’” (Sehgal, 2018, page 21).

Cornell University, in a survey supported by Mondiaal FNV, and using data from Fair Wear Foundation audits, and interviews, notes (Pratap, 2021):

Compliance with these dialogue provisions (Works Committees etc) is rarely observed. Only in the factories that undergo frequent social audits by brands or third parties, does management maintain documentation of Committees. This is reflected in findings of Fair Wear Foundation audits (Fair Wear 2019) and also revealed in stakeholder interviews.

Several NGOs and trade unions have strived to make these committees function. Multi Stakeholder Initiative Tamil Nadu (MSI-TN) has focused on facilitating the formation of committees and been partly successful. In some garment factories, grievances are now reaching the committees, however, the extent to which the committees play a role in grievance redressal is yet to be seen. Overall, the committees mainly exist only on paper and are not functional. (My emphasis). The Garment Labor Union (GLU) advises its union members to get elected in the committees, raise grievances, and in so doing make the committees functional. Some union committee members have been elected in the

committees but have not been able to achieve any success yet in making them functional.

An ILO study reaches a similar conclusion, and also quotes the Fair Wear Foundation:

The 1947 Industrial Disputes Act provides for the establishment of a Works Committee ...for any factory with 100 or more workers and a grievance redressal committee for factories with 20 or more workers. However, audits conducted by Fair Wear Foundation between 2012 and 2015, found that there was no functional grievance mechanism available in 79% of factories in north India and 64% in south India. Where the committees did exist, they were employer dominated in spite of being composed of both workers and employers. Discussions in these committees were also limited to minor issues (for example broken toilet taps), rather than the larger issues of low wages, overtime, and sexual harassment. (ILO, 2017)

We would expect employers to avoid allowing workers to raise these issues in any forum. Doing so would imply that discussion involving workers was legitimate rather than the issue being solely in the hands of the employer.

In a review of how workers' disputes were resolved in 75 cases, in three RMG clusters, WCs were not mentioned even once; admittedly, these cases usually involved termination of employment, which appears in the list of topics not to be discussed by WCs (Mezzadri 2023).

PROJECT EXPERIENCE³²

For some years, multi-stakeholder initiatives, like the FairWear Foundation, and the Ethical Trading Initiative, as well as large brands, have promoted the setting up of WCs in supplier factories in the garment sector.

³²This section is based on interviews with colleagues from Civedep and Paradigm Shift, two organisations that supported factories in setting up works committees and then delivered training for workers and managers. This was supplemented, in some cases, by written information

Box 3: Project experience

Factory Support Programme (September 2020 - February 2024)

The Factory Support Programme aimed to improve working conditions in the readymade garment supply chain of participating Dutch companies in India by improving dialogue between workers and management and strengthening grievance mechanisms at factory level.

The Netherlands Enterprise Agency provided financial support to the Factory Support Programme.

This included implementation of programmes on worker-management committees in factories in the supply chain of participating companies. Over the lifetime of FSP, there were a number of programme partners including Dutch brands (EK Fashion, Fabienne Chapot, Erve Europe, The Sting Companies, WE Fashion, O'Neill and Prénatal) as well as their suppliers and buying agents, implementing partners in India (SAVE, Cividep and Paradigm Shift) as well as Arisa and Mondiaal FNV.

STITCH (JANUARY 2021 - DECEMBER 2025)

STITCH is active in garment-producing countries across Asia, including Bangladesh, Cambodia, India, Indonesia, Myanmar, and Vietnam, as well as in the Middle East and North Africa (MENA) region.

STITCH consortium has 6 partners:

2 labour rights organisations: CDI in Vietnam and Cividep in India

2 Dutch unions: CNV Internationaal and Mondiaal FNV

2 multi stakeholder initiatives: Ethical Trading Initiative and Fair Wear

The Dutch Ministry of Foreign Affairs provides financial support and is a strategic partner.

The partners aspire to an industry where garment workers can exercise their right to freedom of association, and access safe and properly paid work. STITCH envisages workplaces where workers, of which 75% are women, feel free to speak out, collectivise, and bargain for better working conditions.

The Factory Support Programme has worked in non-unionised factories in three clusters: Tiruppur, National Capital Region and Bengaluru. None of the factories had a trade union present.

A common feature of these interventions has been the initial reluctance of supplier factories to engage. Management did not seem to understand the value of a system which allows them to understand and respond to workers' concerns. There are some indications that this has changed, in at least a few cases.

Different approaches have been followed in different clusters. In some factories, the strategy has been to put in place the pre-conditions for elections to WCs (and sometimes other statutory committees); and provide training to management and the elected worker representatives. Elections were organised to ensure that all departments were represented on the committee. In two factories, the strategy was different: there was a focus on dialogue as a trust building exercise, between management and a group of workers selected by management. In these factories, there has not been any attempt to resolve problems, but to concentrate on developing capacity to discuss and respond to issues.

The training process itself frequently revealed issues that audits had failed to do including excessive working hours, non-payment of overtime (which should be compensated at 2x the normal rate).³³

A concern has been ensuring representation of women. In Bangladesh, the percentage of women elected to the Participation Committees must be the same as the percentage of women in the factory. No such provision exists in India.

The implementing partners have managed to persuade management to agree that women workers were fully represented in the structures.

At the same time as supporting WCs, the projects were assisting the establishment of Internal Committees, the structures mandated by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This has provided the opportunity of a much more open discussion of the issue, and increased the confidence of women to raise their voices about cases when they occur.

In the factories where the Factory Support Programme has been implemented, elected worker members of WCs were pleased to have the opportunity to try to solve their co-workers' problems; but they were also conscious of the unequal power relationship with the employers, and consequences of speaking out too strongly.

³³This was also the case in Bangladesh. For example, this writer was training a group of workers from a Participation Committee in Dhaka, and it became clear that the factory never gave maternity leave which is a right under the law. The factory supplied a major European brand and had been often audited

Sometimes, worker members of WCs have contacted trainers outside training events or outside working hours to talk about problems. In these “safe” contexts, they talk more frankly about the violations of labour law, and the possibilities of raising these outside the factory, but they are also acutely aware of the dangers of doing this.

DO WORKS COMMITTEES HELP TO SOLVE WORKERS’ PROBLEMS?

The WCs supported by the Factory Support Programme have not been in existence for very long, but reports do indicate that they have been helpful in resolving a number of problems.

The committees do have a legal basis. Once the process of elections and meetings starts, it can develop a dynamic not completely under the control of management. In some cases, management do appreciate the value of a mechanism that gives them valuable insights into how workers are feeling. Workers report problems to the people they have elected, or the elected committee members seek out and listen to their colleagues. Issues are fed back to managers.

In one factory, in Tiruppur, through the WC it became clear that workers were taking unauthorised absence because they had to visit the Provident fund office or banks to check about Provident fund status or payment of their salary. The factory took steps to appoint dedicated HR staff to resolve these issues. It is useful to note that as well as helping workers with their problems, this also reduced absenteeism. The factory calculated that absenteeism was reduced by about 40% (down to 10/13 percent from 18-23 percent). Labour turnover also decreased. This seems remarkable in the short time frame of a few months that the project was operating. These figures are from the factory management, so need to be given some credence.

In another factory, the management agreed to recruit migrant contract workers as permanent workers.

In another case, workers complained through the WC that a supervisor was allocating work unfairly. The WC discussions lead to HR in the factory ensuring that there was fair and equal allocation amongst workers. This could be an important improvement in workers’ conditions. Allocation of work can be used by supervisors as a way of, pressuring, female workers for sexual favours.

In one factory there had been a noticeable improvement in atmosphere, and there could be conversations about grievances. This is an important step forward, because if management recognise that there can be grievances and problems that need to be solved and that they need to listen to workers.

These examples are interesting because structures such as WCs have been criticised as only dealing with dirty toilets or drinking water, as just being a kind of suggestion box. The issues raised in these examples are more substantial; indeed, they go beyond the list of topics drawn up by the ILC, mentioned in a previous section.

It does seem that wages, working hours, social security and other substantial issues have been discussed, in some WCs even though these subjects are supposed to be out of their scope. These subjects would be precisely the issues that a trade union would raise. It has been suggested (by a key informant) that it is seen as legitimate to raise these issues if the context is a complaint that the legal standards are not being followed.

A common theme reported by project staff is that once workers do have the opportunity to raise issues through the WCs (and the Internal Committees), they use the opportunity. If management is receptive, and willing to listen, this increases workers’ confidence. Perhaps what we are seeing here is management, in their own mind, holding a “darbar”. Workers come with a grievance, management listens, and can choose what to do in response. This is not based on any rules, just that management decides. Historically, rulers in South Asia would hold gatherings where anybody could raise their grievances. In India today, different officials and organisations still hold darbars.³⁴

EXPERIENCE FROM BANGLADESH

The experience of programmes in India does indicate a possible positive role for WCs as a mechanism for raising and resolving workers problems. Experience in Bangladesh is similar. In a very detailed study of the operation of two Participation Committees (PCs), they had become the most favoured mechanisms for workers to raise problems – the biggest being verbal abuse. The study concluded that although PCs role as a representative body that can resolve pressing collective concerns for workers was limited, “workers’ positive perceptions about the PC indicate that it does perhaps fulfil a valuable function – it helps overcome a general gap in communication between management and workers” (Afros, 2022, page 26).

³⁴See, for example, <https://indianexpress.com/article/cities/delhi/arvind-kejriwal-holds-first-janta-darbar-after-becoming-cm/>

However, the same author also concludes from a literature review covering several Asian countries, although not India, that “Existing studies have demonstrated that similar factory-based committees in global supply

chains are largely ineffective towards representing workers’ collective concerns especially in the absence of strong union support” (Afros, 2022, page 8).

Box 4: A comparative study - Works Committees in India and Participation Committees in Bangladesh

A structure similar to the WC exists in Bangladesh, the Participation Committee (PC). The Bangladesh Labour Code provides a more elaborate role for the committee.³⁵

Section 206 (1) states: The functions of the participation committee shall be to inculcate and develop sense of belonging and workers commitment and, in particular-

- a) to endeavour to promote mutual trust, understanding and co-operation between the employer and the workers;
- b) to ensure application of labour laws;
- c) to foster a sense of discipline and to improve and maintain safety, occupational health and working condition;
- d) to encourage vocational training, workers education and family welfare training;
- e) to adopt measures for improvement of welfare services for the workers and their families;
- f) to fulfil production target, improve productivity, reduce production cost and wastes and raise quality of products.

The amendment to Bangladesh Labour Act (BLA) in 2013³⁶ introduced a new clause in Section 202, namely:

Section 205 (6KA): If there is no trade union in any establishment, workers representatives in the participation committee shall conduct the activities related to workers interests till a trade union is formed in that establishment.

However, workers’ representatives on PC were given no additional powers, and this clause is not justiciable; it is therefore, quite meaningless. The law is quite clear that the Participation Committee (PC) cannot be a trade union.

Before the Rana Plaza tragedy, the PCs were not usually in existence, and the employers’ organisation, the BGMEA, was on record as opposing elections for the workers’ representatives on the committees.

Following Rana Plaza, large brands, and the Ethical Trading Initiatives of UK, Denmark and Norway promoted elections to Participation Committees, and comprehensive training programmes for workers and management. Together, several hundred factories have been through these programmes. (Disclosure: this writer was involved in a number of these programmes).

Workers’ representatives received training on the skills needed to represent workers, and to take part in meetings; labour law; grievance handling; sexual harassment; wages and benefits.

From a management perspective, the PCs delivered business benefits, reducing labour turnover, reducing unauthorised absenteeism, and improving worker morale. An unexpected outcome claimed in one programme) was improved quality.

Factories where workers have taken the initiative to move from the PC to setting up a trade union have been “very rare” - statistically negligible.

Trade unions are successfully registered, but observers believe that these are in many cases, “yellow” unions, established by management and under management control, or are ineffective and cannot conclude collective bargaining agreements.

Key informants report that, without pressure from brands, the PCs have become formalised, meeting infrequently, and management ignore decisions they do not like. Workers’ representatives who become vocal are sidelined or dismissed.

³⁵The full text of the Bangladesh Labour Act can be found at <https://mccibd.org/wp-content/uploads/2021/09/Bangladesh-Labour-Act-2006-English-Upto-2018.pdf>

³⁶See <https://www.refworld.org/legal/legislation/natlegbod/2013/en/122778>

SECTION 5: DO WORKS COMMITTEES LEAD TO FREEDOM OF ASSOCIATION?

We do not yet have enough experience to reach a firm conclusion on whether WCs established in project activities have, or could, lead to workers forming trade unions. Key informants for this paper think it is unlikely. Research for this paper has not found any examples where this has happened.

Similar committees in Bangladesh do not seem to have resulted in more trade unions being registered.³⁷ A comprehensive study of trade unions in the RMG sector made no mention of Participation Committees as a route to unionisation (Hossain and Akter, 2022). In 2023, a total of 20 proposed unions supported by IndustriALL's Bangladesh affiliates filed for registration, out of which only two applications were approved (IndustriALL, 2023). Concern has been expressed by the US Congress and Human Rights Watch that "yellow unions",³⁸ set up and controlled by management, have been established and that these cast doubt on the trade union registration figures claimed by the Government of Bangladesh. Again, there is no mention of Participation Committees (HRW, 2023).

For WCs to lead to unionisation, we can hypothesise that three conditions would be necessary:

- a. A group of workers, the members of the committee, decide to organise the union. They would be the core of the new union's leadership. They would need the information, confidence and contacts needed to prepare them to form a trade union. Some of this might come through the training.
- b. At least 10% of the workforce would need to sign the application to register the union. This would be permanent workers - contract workers would not be eligible. Workers would need to feel confident enough to stand up to management hostility.
- c. Ideally, management would need to be neutral. If management were strongly against the union, they could victimise the leadership.

For these three conditions to be met, is rare. In most cases where a trade union has developed it has been

out of a struggle - often a spontaneous action by a group of workers, sparked off by a particularly bad action by a supervisor.

THE UNION REPRESENTATION GAP

It is useful to examine the concept of the union representation gap which is defined as how many non-union workers would prefer to be represented by a union if given a choice (Freeman, 1999). If we knew how many workers wanted to join a trade union, and were prevented from doing so, and why, this might help in identifying what actions could remove the obstacles, or what factors could help. Most literature on the union representation gap is based on research in English speaking countries such as the USA (where the gap is nearly 50%), UK and New Zealand. We do not have data on any union representation gap in India.

One possible cause of any union representation gap in India is that many workers have no knowledge about trade unions and are not aware of what they could do to help workers in solving problems. Given the decline in trade union influence in recent decades, and their virtual disappearance from the public sphere, and the shrinking space for trade unions to organise, many workers will never come across a trade union. They will have even less possibility of understanding the concept let alone the value, of collective bargaining.

For women workers in particular, the male domination of many of the traditional trade unions, and their poor record of gender bargaining, or historic failure in taking up gender-based violence and harassment, may make them seem irrelevant or unattractive.

The effectiveness of trade unions also varies enormously. In Tiruppur, researchers sought to identify 25 cases where workers had sought relief following dismissal or similar problems. They approached local union federations and two "shared that they had not taken up any cases to the labour department". Another federation shared only one case. "It was very difficult to

³⁷Information from key informants, and this writer's experience of projects in Bangladesh involving 600+ factories.

³⁸The term "yellow" union means a union under the control of management; sometimes they are referred to as "company unions". The term originates from the French *Fédération Nationale des Jaunes de France* ("National Federation of the Yellows of France"), created in 1902. The yellow colour was adopted by workers who did not join strike action.

collect even 25 cases, as the trend of filing cases for disputes is very low in the Tiruppur garment industries. Trade unions had very poor documentation and could hardly share any documents even for the few cases where they had represented workers” (READ 2023, page 4). According to local leaders, from the CTUOs, there are only three factories where there is an effective trade union presence, in the sense that they are local units of the CTUOs (information at a Workshop in March 2022). There are some locally based Tiruppur trade unions, not affiliated with the CTUOs.

So, it is possible that in some clusters, even if workers wanted to move on from WCs to creating a trade union and were willing to risk the hostile reaction from employers, they would not have any local trade unions to serve as a model, or to provide help. Workers’ expectations have increased in recent decades, and traditional unions have not responded to this. They tend to emphasise wages and do not organise or campaign around other issues. The gap left by trade unions has been filled in many cases by NGOs, often categorised as labour rights organisations (LROs) or labour support organisations (LSOs). These are much easier for brands to relate to; they have websites, they reply to emails, and the language they use is more modern. Trade unions tend to be very backward in using IT, and usually use language that appears very old fashioned.

Trade unions have also grown out of LROs; in Bengaluru, a LRO was the incubator for the Garment and Textile Workers Union (GATWU), one of three locally based garment sector trade unions (López 2023).

GENDER EQUALITY AND FREEDOM OF ASSOCIATION

It is for workers themselves to form trade unions. They are a manifestation of worker agency. WCs are not established as an initiative of workers, or even by management but have been set up as a result of an external initiative. So, it would perhaps be surprising if they led to trade unions being formed.

So, what interventions could support union organising efforts in the RMG sector?

The gender issue is central to any discussion. Women workers participation in the traditional trade unions is low, and leadership remains male dominated. These unions generally do not take up women workers issues (Dash 2019).

It is striking to note that the examples mentioned in this paper of unions based in south India, are either women led, or take up very actively, women workers’ issues, including issues not seen by traditional unions as workers’ issues at all - for example domestic violence.

The evidence from the successful unions in Bengaluru, Dindigul and Chennai, would seem to indicate that factors that encourage women workers unionisation include women leaders; women-only membership; the union prioritises women workers issues; and community organising.

Some writers have suggested that establishing “safe spaces” could be particularly valuable for women workers (Downey, 2020). The ILO’s Work in Freedom programme analysed the concept and experience of workers’ centres and concluded that they could be valuable - especially for vulnerable workers, including migrant workers, and other precarious workers. Centres are established in the community and designed to be accessible to all (Bosc, 2020).

Box 5: Worker centres

A worker centre is a place of workers, for workers and ideally managed by workers, although this may vary depending on legal restrictions and possibilities. Worker centres are meant to uphold a core set of principles, including but not limited to:

- freedom of movement, enabling workers to freely enter and exit the centre at will during opening hours;
- freedom of association, enabling workers to meet among themselves, network and confer about worker related issues including worker rights;
- non-discrimination, allowing workers to be in a space that is deliberately free of any form of prejudice;
- self-governance, enabling the delivery of services that strive to respond to worker demands; and
- facilitating access to legal remedy.

(Bosc, 2020)

The existing trade unions in India, with long traditions of organising and bargaining, could review their strategies for organising garment workers, particularly by learning from some of the successful efforts discussed in this paper, where women led, or women focused unions have been established in Karnataka and Tamil

Nadu. All the major CTUOs in India have attempted to organize workers in the informal sector (Dhamodhrana & Alagumalai, 2016). Workers in the RMG sector are no more difficult to organise. With carefully targeted

support, and choosing issues of real concern to workers, such as livelihood, gender-based violence and harassment, there may be possibilities of developing trade unions.

Photo: iStock/xavierarnau



SECTION 6: CONCLUSIONS

Workers in garment factories, including those in global supply chains, experience severe levels of exploitation including precarious employment, wage theft, arbitrary dismissal, denial of leave, and gender-based violence and harassment.

The crucial enabling rights which could help them overcome some of these challenges - the right to form and join trade unions and engage in collective bargaining - are in practice unavailable to most workers, because of employer and government opposition. In this respect, workers in the garment industry are no different from most Indian workers.

Without trade union representation, workers search for any channel or institution to help with their problems.

Works committees might provide a structure to help workers with their everyday problems - if they functioned properly or were allowed to function properly by factory management. They would also help factories, as they are a system for improved worker management communication.

The experience of the FSP is that the WCs have been able to resolve some workers problems and that they have provided a forum for dialogue between workers' representatives and management. What is not clear is whether management are prepared to continue to support WCs when the interest of brands is not sustained.

Worker members of the committees are pleased to have the opportunity to help their fellow workers, and at the same time, help the factory. But they are also very conscious of the limits to what they can say. They are always aware that management may see a worker who becomes too vocal as being a "troublemaker", which would result in victimisation, and losing their job.

The best tool for helping workers resolve their problems, and for improving their lives more generally - through negotiating better wages and benefits - is a trade union. Employers in the Indian RMG industry have resisted unionisation. The "density" rate (the percentage of workers in a given industrial sector) is thought to be less than 5% in the Indian garment industry.

Where a trade union is not present, the WC structures, if working properly, could improve workers' lives. But they could also be a space for workers to organise and to get trained, leading to stronger unions. The committees can introduce workers to a possibility of which they may not have been aware - that of being able to engage the employer in a discussion/negotiation on matters connected to their conditions of work. WC members would come into contact with discussions about workers' rights, and trade unions. They will have gained confidence in talking with managers and in representing workers. They will have learned about the law, codes of conduct and supply chains.

Some workers would see the benefits of a trade union, as an independent structure, able to bargain. They will approach some of their colleagues and build up support, before starting the official process of registering a union.

There seem to be no examples of this happening from the projects discussed in this paper, or in any of the literature. This is not to say that it might not happen in the future.

Almost all examples of WCs are the result of initiatives by brands. Suppliers do not set up WCs on their own initiative. There is no evidence that the labour administration of state governments has ever resulted in employers establishing a works committee.

Trade unions need to maximise the possibilities of working in these structures. It has been reported that in Bengaluru, trade unions encourage their members to get elected to the WCs and use them as a forum to address workers' problems. These members are operating "underground", and so not known to management as union activists.³⁹

Because these workers (and the trade unions) fear victimisation if it becomes known that they are union activists, there is naturally no documentation about this strategy. This approach is well worth pursuing. Even if it does not result in trade unions being formed, it could contribute to the WCs being more effective.

³⁹These workers are sometimes known as "solidarity members" of a union.



Photo: iStock/triloks

The current scenario then, is one where WCs exist, where there is pressure from outside, such as customers, and they can, depending on how well they work - which is under management control - help resolve workers' problems. They can discuss "core" issues such as wages or bonus, but only if management agree. The danger is that they become forums for discussing water and toilets.

As WCs are completely under management control, they provide limited, if any, space for incubating collective organisations (trade unions) or becoming a forum for worker agency.

This leads to a discussion about the circumstances that can lead to trade unions being formed or strengthened. The evidence from examples from south India would indicate that trade unions led by women, and/or with a strong focus on women workers' issues, and organising in the community as well as the workplace, can be established. In the hostile anti trade union environment in India, this is an achievement.

SECTION 7: RECOMMENDATIONS

HOW COULD WORKS COMMITTEES BE IMPROVED?

WCs seem to be a useful mechanism for solving some workers' problems. If they are to remain as part of the strategy followed by brands and multi stakeholder initiatives, there are a number of improvements that are desirable and could help to make them more effective as a mechanism for resolving workers problems and potentially, advancing workers empowerment.

These recommendations are aimed at brands and MSIs when they engage with factories and discuss the implementation of WCs.

FOR BRANDS/SOURCING COMPANIES (AND MSIS WHEN THEY PROMOTE WORKS COMMITTEES)

When working properly, WCs will help resolve workplace problems, and this will lead to business benefits, including lower labour turnover, less unauthorised absenteeism and less conflict at work. When engaging with suppliers, sourcing companies/MSIs need to emphasise the importance of WCs as a form of worker management engagement and problem solving, and how WCs will improve the supplier's business. Sourcing companies could work with suppliers to establish and monitor key performance indicators, such as labour turnover, that would demonstrate the value of well-functioning WCs.

Sourcing companies/MSIs need to encourage suppliers to follow best practice in establishing the committees, including independent, transparent elections. These processes should be auditable. Suppliers will need training, to understand the legal requirements; and what the buyers/MSIs are asking for.

The elections to WC need to recognise the gender composition of the workforce. In Bangladesh, the numbers of women members of the participation committee must be in the same proportion as the number of women workers in the factory. This practice needs to be followed with WCs in India.

WCs could meet more often, certainly in the initial year, at least once a month.

The worker members of the WC need to be able to meet as a group independently of management at least once in a month, and before and after the WC meetings and report back to workers.

The women worker-members of the WC also need to have the opportunity to meet as a group independently of management and their male colleagues.

The worker members of WCs need to be able to function as a problem-solving channel for workers on a daily basis. After all, workers want problems resolved soon – and do not want to wait months for a committee meeting. Small problems resolved quickly are less likely to become big issues or lead to grumbling and resentment on the shopfloor. This would mean them becoming more like the “shop steward” that exists, for example in the UK, USA or South Africa. They would continue in their normal job in the workplace. Some adjustment may be necessary for them to leave their work to deal with the urgent issues, but this would be the exception. There should be an agreed, written protocol governing these cases which is approved by the WC and instructions needs to be given to supervisors in this regard.

FOR TRADE UNIONS

Trade unions, where they have supporters inside factories (these workers usually keep their support for trade unions a secret, to avoid being dismissed), can encourage them to stand for election to WCs, and provide support. In the existing anti-union climate, this work will necessarily remain “low key”.

FOR AUDITORS

A major tool used by sourcing companies is social auditing. However, it has been reported that social auditors record the problems discussed at committees and use these as evidence of non-compliance by factories. So, factory management inevitably use strategies to ensure that issues are not recorded, so “everything is OK, there are no problem.”

We therefore recommend that sourcing companies, when commissioning social audits, take steps to ensure instructions to the auditors follow a different approach:

Auditors should audit the effectiveness and functioning of the WCs. Instructions to auditors should make it clear that they should not see problems discussed by WCs as non-compliances in the factory. Any factory will inevitably have problems and issues. The point is, what system(s) are in place to help resolve them? What we need to establish is the effectiveness of the systems for dealing with those problems. The WC is one such mechanism.

Auditors need to be aware that any other type of committee or forum established by employers cannot meet the standard set by ILO Convention No. 135. Only structures established by law, or through collective bargaining, meet the ILO standard. If employers promote other structures this may well be evidence of non-compliance with code of conduct requirements regarding freedom of association.

Auditors seem to have limited understanding about industrial relations. They need training to better understand the international human rights standards, and what to look for in auditing. Audit companies and sourcing companies should consider how this can be organised.

At the same time, the existence of WCs should not be reported as compliance with clauses in codes of conduct regarding freedom of association. Auditors will require training about this approach.

This point will become more important in the future. Freedom of association and the right to collective bargaining, as fundamental human rights, will form part of the due diligence by European Union based companies under national legislation or the EU directive on corporate sustainability due diligence. Following a vote in favour in the European Parliament in April 2024, the directive was finally adopted in May 2024. Larger companies based in the EU, will have legal requirements to carry out human rights due diligence (HRDD) and should take note that their due diligence will need to include the twin rights of freedom of association AND the right to collective bargaining; and that these rights do not include joint management -worker committees. The existence of such committees should not be taken as meaning that a factory is complying with the fundamental rights.

RESEARCH NOTE

The main sources of information for this paper were:

A literature review, using a Boolean parameter of Google Scholar, JSTOR and academia.edu. The main search was for “Works Committee”.

One difficulty with the results from the searches is the very common practice in Indian organisations to have a structure called a “working committee”. So, nearly any article or book dealing with the history of Indian politics, and the 20th century will refer to the working committee of the Indian National Congress and will come up in the search results.

A large number of returns to the searches were references to human resource websites, which simply restated the legal provisions regarding WCs.

Nevertheless, I do feel confident that a sufficient percentage of the relevant academic literature has been identified. The problem is that very few articles or books examine the practical functioning of work committees. There is a striking lack of scholarship about enterprise level industrial relations including joint labour management bodies at the enterprise level; this reflects the fact that the structure is not used.

KEY INFORMANTS

The paper benefitted from a number of interviews with key informants and/or comments on earlier drafts. Of course, none of these individuals, or the institutions that they are associated with, are responsible for the views expressed in this paper.

Nilambar Bhuinya, Paradigm Shift
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APPENDIX:

FREEDOM OF ASSOCIATION, COLLECTIVE BARGAINING AND SOCIAL DIALOGUE - SOME DEFINITIONS

COLLECTIVE AGREEMENTS

- 1 For the purpose of this Recommendation, the term collective agreements means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.
- 2 Nothing in the present definition should be interpreted as implying the recognition of any association of workers established, dominated or financed by employers or their representatives.

ILO Collective Agreements Recommendation 1951 (No. 91)

COLLECTIVE BARGAINING

The term collective bargaining means all negotiations between employers and/or employers' organizations on the one hand, and workers' organizations on the other, for:

- 1 determining working conditions and terms of employment; and/or
- 2 regulating relations between employers and workers; and/or
- 3 regulating relations between employers or their organizations and a workers' organization or workers' organizations."

ILO Collective Bargaining Convention, 1981 (No. 154)

Collective bargaining is a human right, according to the ILO, enshrined in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). This is a right that can only be exercised collectively.

CONSULTATION

"The process by which management and employees or their representatives jointly examine and discuss issues of mutual concern. It involves managers actively seeking and then taking account of the views of employees, either directly or through their representatives, before

making a decision. Meaningful consultation depends on those being consulted having adequate information and time to consider it, but merely providing information does not constitute consultation."

Consultation by the employer with worker representatives should involve:

- a consultation when the proposals are still at a formative stage;
- b adequate information on which to respond;
- c adequate time in which to respond and
- d conscientious consideration of the response.'

Source: UK court ruling, quoted in *Employee Representatives: Challenges and changes in the workplace*, Policy Discussion Paper published by the Advisory, Conciliation and Arbitration Service (ACAS), a tripartite UK based organisation.

FREEDOM OF ASSOCIATION

The right of workers and employers to form or join organisations of their own choosing, without interference. This right is often linked with the right to collective bargaining. This right is expressed through a number of international labour conventions:

[Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#)

[Workers' Representatives Convention, 1971 \(No. 135\)](#)
[Workers' Representatives Recommendation, 1971 \(No. 143\)](#)

[Rural Workers' Organisations Convention, 1975 \(No. 141\)](#)

[Rural Workers' Organisations Recommendation, 1975 \(No. 149\)](#)

[Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#)

[Labour Relations \(Public Service\) Convention, 1978 \(No. 151\)](#)

[Labour Relations \(Public Service\) Recommendation, 1978 \(No. 159\)](#)

[Collective Bargaining Convention, 1981 \(No. 154\)](#)

[Collective Bargaining Recommendation, 1981 \(No. 163\)](#)

[Collective Agreements Recommendation, 1951 \(No. 91\)](#)

FREEDOM OF ASSOCIATION AND THE RIGHT TO COLLECTIVE BARGAINING (FACB)

This term brings together the two rights, as they should normally be exercised together.

LABOUR LAW

A body of legal rules which regulates the relationship between:

- an employer and a worker
- an employer and workers
- employer(s) and trade unions representing workers
- employers' organization and trade unions
- the state, employers, workers, unions and employer organizations

Source: ILO

LABOUR RELATIONS

Collective relations between employers and employees, between employers and trade unions, or between employers, unions and the government.

Source: ILO

NEGOTIATING

Negotiating in terms of the law, means that employees, employee representatives discuss matters together to reach agreement.

Source: ACAS *Informing and consulting at work*, www.acas.org.uk, accessed 20th January 2024.

A give and take process between two or more parties (each with its own aims, needs, and viewpoints) seeking to discover a common ground and reach an agreement to settle a matter of mutual concern or resolve a conflict.

Source: <http://www.businessdictionary.com/definition/negotiation.html#ixzz3bgUX00VL>

SOCIAL DIALOGUE

All types of negotiation, consultation or information sharing among representatives of governments, employers and workers, or between those of employers and workers on issues of common interest relating to economic and social policy.

Source: ILO

WORKERS' REPRESENTATIVES & TRADE UNION REPRESENTATIVES

"The function of representing the interests of, or speaking for, the workers of a given enterprise."

Workers' representatives means persons who are recognised as such under national law or practice, whether they are:

- a trade union representatives, namely representatives designated or elected by trade unions or by the members of such unions; or
- b elected representatives, namely representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognised as the exclusive prerogative of trade unions in the country concerned.

National laws or regulations, collective agreements, arbitration awards or court decisions may determine the type or types of workers' representatives which shall be entitled to the protection and facilities provided for in this Convention.

ILO Workers' Representatives Convention, 1971 (No. 135)

WHERE TO FIND DEFINITIONS

The ILO thesaurus provides definitions of many terms, and can be found at [ILO Thesaurus \(ILO Library\)](#)

