

**THE ROLE OF TRADE UNIONS IN PROTECTING RIGHTS OF LABOURERS  
IN THE READYMADE GARMENTS (RMG) SECTOR OF BANGLADESH:  
A COMPARATIVE ANALYSIS OF BANGLADESH, CHINESE AND  
INDIAN LAWS\***

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**Abstract**

With the 6.5% share of Readymade Garments (RMG) in the global market, the RMG industry is not only the second-largest industry in the world but is also the leading revenue-earning industry of Bangladesh. In the Fiscal Year 2017-2018, this sector generated the income totaling US\$ 30.614 billion, which accounted for 83.49% of the total export value of Bangladesh. Unfortunately, the number of trade unions in the RMG industry in Bangladesh remains far from satisfaction. The reason behind this poor presence of trade unions in this business principally lies in the deficiency of the Bangladesh labour law regarding the establishment and activities of trade unions.

In effect, following its ratification of the relevant Conventions of the International Labour Organization (ILO), Bangladesh is obligated to put forth in its labour law a level of protection in conformity with the requirements of

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the ILO Conventions. However, the required level of protection has not been envisioned as far as the legal recognition of trade unions is concerned.

This paper points out inadequacy and shortcomings of Bangladesh labour law in relation to trade unionism in comparison to legal requirements in the ILO conventions concerned as well as in the Chinese and Indian legal frameworks in this sphere. Through such comparative study, this paper recommends practical solutions to legal deficiencies in Bangladesh labour law, with a view to bringing Bangladesh labour law in line with internationally recognized standards as at the very least contemplated by the ILO conventions and thereby affording labourers with reasonable protection in their voluntary and independent establishment of and participation in trade unions.

**Keywords:** Trade Union, Readymade Garments, Bangladesh Labour Act, International Labour Organization Conventions.

## 1. Introduction

### 1.1 General Concept of Trade Union

Conflict between employers and labourers is a very common phenomenon in every industry. To solve this, a trade union is considered a platform to hear the voices of the labourers affected, and collective bargaining is a method of negotiation between two parties. Trade unions are a legal association made up of a group of labourers or owners to mutually establish corporate objectives. The core role of the trade union of labourers is to ensure better rights and wages, working conditions, working hours, workplace safety and other benefits for the workers through negotiations. In this regard, collective bargaining is the most preferable method for these types of negotiations. Usually, trade unions have their own set of rules to help it function and discuss lawfully. In general, trade unions deal with three relationships. The first is between labourers and labourers. The second is between labourers and employers, and the last is between employers and employers.<sup>1</sup> The concept of trade unionism first arose in the United Kingdom in the 18<sup>th</sup> century when the industrial revolution took place. At first, the unskilled and semi-skilled labourers were forced to work for long hours with low wages. As a result, several disputes arose, where labourers came together to resolve the conflicts between the laborers and the owners. Consequently, the labourers started to benefit from the trade unionism activities through collective bargaining actions. In the 1900<sup>th</sup> century, the concept of trade unions has spread all over the world.<sup>2</sup>

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<sup>1</sup> Abu Hena, Mostofa Kamal, Hassan Faruk Al Imran, *Labour Law in Bangladesh: Doctrine, Theory and Practice* (Muhit Publications, February 2018) 273

<sup>2</sup> Trades Union Congress, 'A Short History of British Trade Unionism' (T.U.C. London, 1947)

<http://collections.mun.ca/PDFs/radical/AShortHistoryofBritishTradeUnionism.pdf>

accessed 11 September 2018

## 1.2 Trade Unions in RMG of Bangladesh

It is worth mentioning that Bangladesh is a densely populated (1,015 inhabitants per square kilometer) agro-based country with around half of the working population living in rural areas. In the late 1970s, its economic focus started to shift from the agrarian to the industrial, involving particularly the textile and apparel enterprises.

Initially, there were 384 garments factories in Bangladesh during 1984 to 1985, and the number increased to 2182 in the next 10 years. According to a report of Bangladesh Garments Manufacturers and Exporters Association (BGMEA), over 2017 to 2018, there were 4560 garments factories in Bangladesh with 4 million laborers, of which 80% were women.<sup>3</sup> The number stayed in the second position after China's, which is the largest garment exporter in the world. The RMG export is the highest earner in Bangladesh, where in the financial year 2017-2018, it earned US\$ 30.614 billion, which was 83.49% of the total export rates of Bangladesh.<sup>4</sup>

Some of the major industrial accidents that happened in Bangladesh between 2012 and 2013 have worldwide affected the image of the country, regarding the labourers' safety. This has pushed the whole RMG industry to new challenges. Several countries sourcing RMG from Bangladesh as well as many experts raised multiple queries as to the movement of the trade union and the labourers' right of collective bargaining, specifically the country's low standard of these in the RMG sector.

In 2012, there were only 132 trade unions in the Bangladesh's RMG sector, and since 2017, merely a total of 644 Trade Unions have been

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<sup>3</sup> Bangladesh Garments Manufacturers and Exporters Association, 'Trade Information' (BGMEA, 12 May 2019) <<https://www.bgmea.com.bd/home/pages/tradeinformation>> accessed 12 December 2018

<sup>4</sup> Naimul Haq, 'Bangladesh's Garment Industry Boom Leaving Workers Behind' *Inter Press Service* (USA, 09 February 2018) <<http://www.ipsnews.net/2018/02/bangladeshs-garment-industry-boom-leaving-workers-behind/>> accessed 15 December 2018

registered there.<sup>5</sup> Considering the total number of RMG factories, such number of trade unions remain low.

## **2. Legal Problems in Bangladesh Labour Law**

This report focuses on some legal problems considered to be obstacles to the formation of trade unions and the labourers' right of collective bargaining in the RMG sector of Bangladesh. The weaknesses in the legal framework related to these issues are given below:

### **2.1 Required Membership of Trade Union**

The formation of trade unionism in Bangladesh is very restricted under the Bangladesh's labour laws. As stated in Section 22 (b) of the Bangladesh Labour (Amendment) Act 2018, to register a new trade union, at least 20% of the entire amount of labourers is required as a member.<sup>6</sup> In practice, the 20% of total labourers cannot be gathered because Section 193 of the Bangladesh Labour Act, 2006 does not allow a worker to enroll to be a member of more than one union at the same time,<sup>7</sup> which contradicts the idea of the trade unionism's freedom.

### **2.2 Alternative Way of Trade Union**

The Bangladesh Labour Act, 2006 provides an alternative way, called Participation Committee. According to Section 205, the Committee shall run

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<sup>5</sup> European Commission, 'Implementation of the Bangladesh Compact Technical Status Report' (October 2017)

<[http://trade.ec.europa.eu/doclib/docs/2017/october/tradoc\\_156343.pdf](http://trade.ec.europa.eu/doclib/docs/2017/october/tradoc_156343.pdf)> accessed 15 December 2018

<sup>6</sup> Bangladesh Labour (Amendment) Act 2018, s 22(b)

<[https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative\\_information/aafe70e2\\_3742\\_445c\\_a3f6\\_de7f057538cc/Labour\\_Law\(Amendment\)2018.pdf](https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative_information/aafe70e2_3742_445c_a3f6_de7f057538cc/Labour_Law(Amendment)2018.pdf)> accessed 15 November 2018

<sup>7</sup> The Bangladesh Labour Act 2006, s 193

<[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=76402](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76402)> accessed 23 October 2018

activities related to laborers' interests in the case there is no trade union or until a trade union is formed.<sup>8</sup> The Committee must be established with representatives of both the labourers and owners to work together for the benefits of labourers. In practice, it is not possible to protect labourers' rights properly since the representative of the employer is present in the same committee. Additionally, no time limit is mentioned in this Act to create a trade union in any industries, so the owner can easily ignore the formation of a trade union and instead rely on the Participation Committee.

### **2.3 Termination of Labourers' Employment**

Under Section 11(3) of the Bangladesh Labour (Amendment) Act, 2013, termination of a labourer's employment due to misconduct is easy to do. The employer can terminate any labourers' employment at any time without any notice or compensation under this Section.<sup>9</sup> The concern over this provision is that employers may abuse the law to menace laborers whenever the labourers try to claim their rights against the employers while the labourers are always under fear of losing their jobs.

### **2.4 Lawful Strike**

According to Section 33 of the Bangladesh Labour (Amendment) Act 2018, at least 51% members of the entire trade union members are able to do a lawful strike.<sup>10</sup> Nonetheless, practically it is rarely possible to do so.

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<sup>8</sup> The Bangladesh Labour Act 2006, s 205

<[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=76402](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76402)> accessed 23 October 2018

<sup>9</sup> Bangladesh Labour (Amendment) Act 2013, s 11(3)

<<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94286/110640/F482588609/BGD94286%20Eng.pdf>> accessed 23 October 2018

<sup>10</sup> Bangladesh Labour (Amendment) Act 2018, s 33

<[https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative\\_information/aafe70e2\\_3742\\_445c\\_a3f6\\_de7f057538cc/Labour\\_Law\(Amendment\)2018.pdf](https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative_information/aafe70e2_3742_445c_a3f6_de7f057538cc/Labour_Law(Amendment)2018.pdf)> accessed 15 November 2018

### **3. Trade Unions and Collective Bargaining under the ILO**

#### **3.1 Nature of Trade Unions under the ILO Conventions (no. 87)**

According to the ILO Convention no. 87, a trade union is not an organization only for the labourers but also for the employers. In this regard, both employers and labourers should be able to exercise their rights collectively without any interferences. Moreover, the right to establish a trade union by the laborers or by the employers should be on the basis of impartiality. More importantly, the formation has to be flexible where the labourers and the employers should have full freedom to choose, join and leave the union it whenever they want. Trade unions should have adequate rights to maintain their own separate rules of association in order to pursue their administrative activities and to freely elect their representatives. Also, trade unions should have the right to appoint a legal assistant to deal with any legal proceedings, and shall have the right to connect with national or international federations, confederations or any other organizations of labourers and employers. There should not be any unreasonable restrictions or interferences in their activities, in which case the governments have to take any measures to guarantee that both laborers and employers can exercise their right to organize independently.<sup>11</sup>

#### **3.2 Nature of Collective Bargaining under the ILO Conventions (no. 98)**

To effectively conduct the activities of trade unions, methods of negotiation are essential. To this end, collective bargaining is the best way for negotiation among the labourers and the employers. According to the Convention no. 98, there should not be any discrimination among the labourers who have joined a trade union and those who have not. Every

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<sup>11</sup> International Labour Organization, 'Freedom of Association and Protection of the Right to Organize Convention, 1948' (No. 87)

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C087](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C087)> accessed 7 October 2018

labourer should have equal rights regardless of their association with trade union. Labourers must have their rights to join and leave any trade unions voluntarily. Conversely, no one can dismiss any labourers or employers due to their involvement in the union's activities.

The interference by the third party in the establishment and administrative activities of a trade union should be prevented. In addition, dominating the trade union of labourers or employers by supporting or controlling it through financial provisions or other facilities must be prohibited as well. To ensure these prohibitions, the national laws should be effective enough to develop or utilize the mechanism of independent negotiations between the employers and labourers.<sup>12</sup>

#### **4. Legal Framework of Foreign Countries' Laws and Legal Problems**

##### **4.1 People's Republic of China**

China is one of the largest country in the world with a population of 1.42 billion. It is located in East Asia and is bordered by 14 countries.<sup>13</sup> In 1995, China achieved the 1<sup>st</sup> rank for export of textiles and garments in the world, and since then it has been maintaining this position. Every year China exports goods worth around 1.2 billion USD. According to the China National Garment Association (CNGA), there are more than 100,000 garment industrials in China and more than 10 million workers there.<sup>14</sup> In 2017, China

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<sup>12</sup> International Labour Organization, 'Right to Organize and Collective Bargaining Convention, 1949 (No. 98)' [https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_ILO\\_CODE:C098](https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C098) accessed 7 October 2018

<sup>13</sup> World Population Review, 'China Population 2019' (Demographics, Maps, Graphs) <http://worldpopulationreview.com/countries/china-population/> accessed 13 February 2019

<sup>14</sup> Professor Dr. Engr. AyubNabi Khan & Md. RashedUllah, 'Export Scenario Between Bangladesh and China: Opportunities of Bangladesh in RMG Sector' (2017) 13(28)



earned 158.4 billion USD as a top exporter country with 34.9% shares of the global market.<sup>15</sup>

#### **4.1.1 Provisions of the Chinese Laws regarding Legal Problems**

##### **4.1.1.1 Required Membership of Trade Union**

According to Article 10 of the Trade Union Law, the trade union of an enterprise, public institution, or government organ with 25 members or so shall establish a basic-level trade union committee. However, if the members are fewer than 25, such committee may be formed separately, or be established by the members of 2 units or more.<sup>16</sup>

##### **4.1.1.2 Alternative Way of Trade Union**

There is no alternative organization or committee of the trade union in China. According to Article 3 of the Trade Union Law of China, all labourers doing physical or mental work in enterprises, both in private and public within Chinese territory who earn their living primarily from wages shall have the right to participate in and form trade union organizations pursuant to the law, regardless of their nationalities, races, sexes, occupations, religious beliefs or educations. No organization or individual may hinder them from doing so.<sup>17</sup>

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<<https://eujournal.org/index.php/esj/article/view/10060/9550>> accessed 13 February 2019

<sup>15</sup> Dr. Sheng Lu, 'WTO Reports World Textile and Apparel Trade in 2017' (FASH455 Global Apparel & Textile Trade and Sourcing, 2017)

<<https://shenglufashion.com/2018/08/16/wto-reports-world-textile-and-apparel-trade-in-2017/>> accessed 16 February 2019

<sup>16</sup> Trade Union Law of the People's Republic of China (Amendment) 2009, art 10

<<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/30352/118793/F1165849917/CHN30352%202.pdf>> accessed 21 February 2019

<sup>17</sup> Trade Union Law of the People's Republic of China (Amendment) 2009, art 3

<<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/30352/118793/F1165849917/CHN30352%202.pdf>> accessed 21 February 2019

#### 4.1.1.3 Termination of Labourers' Employment

Termination of any workers' employment in China is not easy under the Labour Law of China, according to Chapter 3 of this Act, there must be a valid agreement between a laborer and an employer.

This agreement shall be terminated by the employer unit only under specific grounds such as an expiration of the contract's term, mutual termination and any proves of serious legal offenses by the worker.<sup>18</sup>

#### 4.1.1.4 Lawful Strike

In China, the present scenario of lawful labour strike is in critical situation. There is no law banning labour's strike, but at the same time there is no law permitting it. So, under criminal or civil prosecution, the participants of a strike are not protected. In spite of this legal risk, labour strikes still occur frequently in the territory of China. According to a Hong Kong based NGO, named China Labour Bulletin, there were 2,600 strikes taking place in 2016.<sup>19</sup>

### 4.2 Republic of India

India is another largest country in the world with a population of 1.3 billion and an area of 3.1 million sq. km.<sup>20</sup> India holds the 4<sup>th</sup> position in RMG sector with 18 billion USD garment exports,<sup>21</sup> which is 4.1% shares in

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<sup>18</sup> ibid ch 3.

<sup>19</sup> Dr. Stefan Brehm, 'Collective Bargaining: New Hope for China's Workers?' (Institute for Security & Development Policy, 31 March 2017) <<http://isdpeu/publication/collective-bargaining-new-hope-china/>> accessed 21 February 2019

<sup>20</sup> 'India Country Profile' *BBC News* (London, 18 February 2019) <<https://www.bbc.com/news/world-south-asia-12557384>> accessed 3 March 2019

<sup>21</sup> 'Bangladesh remains 2<sup>nd</sup> largest RMG exporter accounting 6.5% Market Share' *Textile Today* (Bangladesh, 7 August 2018) <<https://www.textiletoday.com.bd/bd-remains-2nd-largest-rmg-exporter-accounting-6-5-percent/>> accessed 3 March 2019

the global clothing market. In 2017, RMG sector of India contributed 2% to the GDP and 15% to total exports earnings of India.<sup>22</sup>

#### **4.2.1 Provisions of the Indian Laws and Legal Problems**

##### **4.2.1.1 Required Membership of Trade Union**

Under Section 9A of the Trade Unions (Amendment) Act, 2001, minimum requirement for membership of a trade union shall continually have not less than 10% (ten percent) or one hundred of the workmen, whichever is less. In this respect, a minimum of 7 members thereof must also be engaged or employed in an establishment or industry with which the union is connected.<sup>23</sup>

In addition, according to Section 24 of the Trade Union Act 1926, if minimum number of trade union members is less than required, any two or more registered trade unions may become amalgamated together as one trade union with or without dissolution or division of the funds of such trade unions or either or any of them.<sup>24</sup>

##### **4.2.1.2 Alternative Way of Trade Union**

It is not permitted under any laws of India to establish any alternative committee or organization instead of a trade union. Every labourer has the right to organize and join a trade union with a view to making their voices heard in a cooperative way against any violation of labourers' rights.<sup>25</sup>

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<sup>22</sup> India Brand Equity Foundation, 'Apparel And Garment Industry And Exports' (December, 2018) <<https://www.ibef.org/exports/apparel-industry-india.aspx>> accessed 3 March 2019

<sup>23</sup> The Trade Unions (Amendment) Act 2001, s 9A  
<[http://nclcil.in/infobank/act/The\\_trade\\_unions\\_\(amendment\)act\\_2001.pdf](http://nclcil.in/infobank/act/The_trade_unions_(amendment)act_2001.pdf)> accessed 10 March 2019

<sup>24</sup> *ibid* s 24.

<sup>25</sup> *ibid*.

#### 4.2.1.3 Termination of Labourers' Employment

According to Section 25N of the Industrial Disputes Act, 1947, any worker, who has been in continuous working for more than 1 year, can be only laid off by the permission of a suitable government officer. Additionally, in the case of termination, the employer must provide a 3-month notice with a valid reason therefor, and also have to pay 15-day remuneration that the employer should have received regularly for each year during the employment.<sup>26</sup>

#### 4.2.1.4 Lawful Strike

According to Section 23 of the Industrial Disputes Act, 1947, no workman who is employed in any industrial establishment shall go on strike if it is in breach of contract. Furthermore, no employer of any such workman shall declare a lock-out during:

(a) the pendency of conciliation proceedings before a Board and seven days after the conclusion of such proceedings;

(b) the pendency of proceedings before a Labour Court, Tribunal or National Tribunal including two months after the conclusion of such proceedings;

(bb) the pendency of arbitration proceedings before an arbitrator and two months after the conclusion of such proceedings; or

(c) any period in which a settlement or award is in operation, with respect to any of the matters covered by the settlement or award.<sup>27</sup>

From above, it is obvious that there are some limitations regarding the right to strike under Indian labour laws. However, there remain some valid and lawful specific approaches to exercise such right.

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<sup>26</sup> The Industrial Disputes Act 1947, s 25N

<[https://labour.gov.in/sites/default/files/THEINDUSTRIALDISPUTES\\_ACT1947\\_0.pdf](https://labour.gov.in/sites/default/files/THEINDUSTRIALDISPUTES_ACT1947_0.pdf)>  
accessed 10 March 2019

<sup>27</sup> The Industrial Disputes Act 1947, s 23

<[https://labour.gov.in/sites/default/files/THEINDUSTRIALDISPUTES\\_ACT1947\\_0.pdf](https://labour.gov.in/sites/default/files/THEINDUSTRIALDISPUTES_ACT1947_0.pdf)>  
accessed 10 March 2019

## 5. Analysis

Owing to the worldwide modernization, clothing and textile have become a vital contributor in the world trade. In 2017, the industry shared 6% in the entire international trade of readymade products in the world.<sup>28</sup>

Regarding RMG industries, China, India, and Bangladesh are the largest exporter countries. According to the World Trade Organization (WTO), of the global market share of clothing in 2017, China held 37.1% while Bangladesh and India held 6.5% and 4.1%, respectively.<sup>29</sup>

Even though RMG manufacturing is modernized, human resources are still essential for this sector. The three mentioned countries are known for cheap labour. Bangladesh is a densely populated small country in South Asia, yet it holds the 2<sup>nd</sup> position in RMG sector in the global market. From the expert's view, Bangladesh could someday be the 1<sup>st</sup> in RMG sector, if it can improve the current situation and overcome some social and legal problems.

Though Bangladesh has cheaper labour than China and India, it sometimes cannot maintain a good quality of product and fails to deliver goods within the agreed time. The main reason for this failure is labour unrest, and it happens due to violation of their rights by the employers. The establishment of a trade union is not easy in Bangladesh because of some complications in the legal regulations. Therefore, most of the employers can easily violate the labourers' rights.

Even as a member of ILO, Bangladesh still fails to implement the Conventions in connection with 'Freedom of Association' and 'Right to Organize and Collective Bargaining'. On the other hand, China and India both have their own laws regarding trade unions in accordance with the ILO

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<sup>28</sup> World Trade Organization (WTO), 'World Trade Statistical Review 2018' (ch 2, 11) <[https://www.wto.org/english/res\\_e/statis\\_e/wts2018\\_e/wts2018\\_e.pdf](https://www.wto.org/english/res_e/statis_e/wts2018_e/wts2018_e.pdf)> accessed 15 May 2019

<sup>29</sup> Dr. Sheng Lu (n 15).

conventions. This is despite that India has never ratified the ILO Conventions.<sup>30</sup>

This research paper provides a comparative analysis between Chinese, Indian and Bangladeshi laws regarding their legal problems as follows:

First of all, according to Section 22 (b) of the Bangladesh Labour (Amendment) Act, 2018, to establish a new trade union, the minimum membership requirement is 20%.<sup>31</sup> Furthermore, Section 193 of the Bangladesh Labour Act, 2006 also prescribes a bar for a worker to enroll in several trade unions at the same time.<sup>32</sup> Apparently, it is difficult occasionally to gather the required minimum members in order to establish a trade union. This provision therefore violates the rights of laborers to join trade union independently without any interference, which is not pursuant to ILO Conventions.

Conversely, the minimum required membership is at least 25 members in China and 10% in India while both countries' laws provide an opportunity to merge two or more trade unions if they fail to gather the minimum membership to establish a new trade union.

Secondly, the Bangladesh Labour Act, 2006 has introduced an alternative way of trade union, called Participation Committee. According to Section 205 thereof, in the case where there is no trade union or until trade

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<sup>30</sup> Delhi, 'ILO Fundamental Conventions: India ratified six out of the eight core/fundamental International Labour Organisation (ILO) Conventions' *Business Standard* (India, 25 July 2017) <[https://www.business-standard.com/article/government-press-release/ilo-fundamental-conventions-india-ratified-six-out-of-the-eight-core-117072400725\\_1.html](https://www.business-standard.com/article/government-press-release/ilo-fundamental-conventions-india-ratified-six-out-of-the-eight-core-117072400725_1.html)> accessed 7 March 2019

<sup>31</sup> Bangladesh Labour (Amendment) Act 2018, s 22(b) <[https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative\\_information/aafe70e2\\_3742\\_445c\\_a3f6\\_de7f057538cc/Labour\\_Law\(Amendment\)2018.pdf](https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative_information/aafe70e2_3742_445c_a3f6_de7f057538cc/Labour_Law(Amendment)2018.pdf)> accessed 15 November 2018

<sup>32</sup> The Bangladesh Labour Act 2006, s 193 <[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=76402](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76402)> accessed 23 October 2018

union is formed, the participation committee shall run activities regarding laborers' rights.<sup>33</sup> Additionally, no time limit is mentioned in this Act to create a trade union in any industry, in which case the employers most of the time rely on this provision to avoid a formation of a trade union. In China and India, there is no other choice apart from the trade unions, which helps maintain labourers' rights there.

Thirdly, dismissing a labourer for misconduct is another concern for the Bangladeshi labourers. Under Section 11(3) of the Bangladesh Labour (Amendment) Act, 2013,<sup>34</sup> it is easy to, without any prior notice or compensation, terminate any labourer's employment due to misconduct. Thus, when a labourer attempts to claim their rights against the employers, they abuse this provision to dismiss the labourer. This makes it harder for labourers to make their voices heard. Under the laws of China and India, termination of labourer's employment is difficult to do. In China, there must be a written contract between the employers and labourers, and the termination is permissible only for some grounds such as expiration of the contract, mutual agreement or any serious legal offenses proved against the workers. In India, a labourer can be dismissed only with the permission of a suitable government officer, and the employer has to mention a valid reason of such termination on the 3-month notice and has to pay the compensation.

The last but not least, labourers usually go for a strike as an optional measure to claim their rights when collective bargaining fails,. However, most of the countries do not allow the labour to initiate a strike. In Bangladesh, under Section 33 of the Bangladesh Labour (Amendment) Law

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<sup>33</sup> The Bangladesh Labour Act 2006, s 205

<[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=76402](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76402)> accessed 23 October 2018

<sup>34</sup> Bangladesh Labour (Amendment) Act 2013, s 11(3)

<<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94286/110640/F482588609/BGD94286%20Eng.pdf>> accessed 23 October 2018

2018,<sup>35</sup> a valid strike is only permissible with 51% members of trade union. Like Bangladesh, China also restricts the right to strike. Under the Trade Union Law of China, strike of laborers is banned. Yet, in 2016, there were 2,600 labour strikes occurring there.<sup>36</sup> The situation of labour strikes in India is better than China and Bangladesh. Under the Industrial Disputes Act, 1947, India allows a labour's strike with some conditions. Strikes falling out of scope of such conditions are permissible. The practices of trade unions in China and India are not perfect, but are still better than Bangladesh. China and India are the most populated countries in the world, and they employ their population to improve their economy. Previously, the labourers of China and India were uneducated and unskilled, but they have been gradually educated and trained. This has made the laborers' safety, health, wages, and living standard of China and India better than Bangladesh's.

To resolve the legal problems regarding labours, Bangladesh should adopt certain provisions identical to those of China and India despite the differences in their legal systems.

## **6. Conclusion and Recommendation**

In the industrial era, labourers are a very crucial part of a business. The improvement of the working conditions can increase their productivities. However, employers in developing countries fail to achieve this long-term goal and usually violate the rights of the labourers. To protect the labourers' rights and to make their voice heard, the concept of trade union and collective bargaining has been introduced.

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<sup>35</sup> Bangladesh Labour (Amendment) Act 2018, s 33  
<[https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative\\_information/aafe70e2\\_3742\\_445c\\_a3f6\\_de7f057538cc/Labour\\_Law\(Amendment\)2018.pdf](https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative_information/aafe70e2_3742_445c_a3f6_de7f057538cc/Labour_Law(Amendment)2018.pdf)>  
accessed 15 November 2018

<sup>36</sup> Dr. Stefan Brehm, 'Collective Bargaining: New Hope for China's Workers?' (Institute for Security & Development Policy, 31 March 2017)  
<<http://isdsp.eu/publication/collective-bargaining-new-hope-china/>> accessed 21 February 2019



The study has shown that strong trade unionism might be beneficial for both labourers and employers. The trade union is a proper platform for the underprivileged laborers, where they can make their voices effectively heard against the employers. To support trade unionism, the national legal framework has to be robustly supportive.

However, legal provisions in each country are not well-organized to support trade union, which might be harmful to the economy of the country. Economist has pointed out that trade union activities with interferences by third party could be unhealthy for the businesses. So, the legal system of any country should provide reasonable assistances for the owners and the laborers. The Bangladesh Labour Act, as of now, is still incompetent to ensure the labourers' rights and benefits. Thus, Bangladesh should focus on those rigid provisions, which are not supportive of trade union formation and their activities.

In this paper, some recommendations are made to remove the weaknesses of legal framework related to trade unionism and collective bargaining through amending the Bangladesh Labour Act, 2006. The suggestions are given below:

To begin, the requirement of minimum members to register a new trade union, which is 20% members of total workers (Section 22 (b) of the Bangladesh Labour (Amendment) Act 2018<sup>37</sup>), contradicts the provision of ILO convention no. 87. By this convention, the formation of a trade union has to be flexible and unconditional, and in order to establish the union, it should require only a small number of members. To make the labour laws of Bangladesh in accordance with the ILO Conventions, this requirement of minimum members to register a new trade union should be less strict. On the other hand, the barrier for a worker to enroll in several trade unions at

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<sup>37</sup> Bangladesh Labour (Amendment) Act 2018, s 22(b)

<[https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative\\_information/aafe70e2\\_3742\\_445c\\_a3f6\\_de7f057538cc/Labour\\_Law\(Amendment\)2018.pdf](https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative_information/aafe70e2_3742_445c_a3f6_de7f057538cc/Labour_Law(Amendment)2018.pdf)>  
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the same time (under Section 193 of the Bangladesh Labour Act, 2006<sup>38</sup>) should be eliminated. Additionally, provisions permitting merging two or more trade unions if they fail to gather the required member to set up a new trade union should also be adopted.

Besides, the Bangladesh Labour Act, 2006, provides an alternative way of a trade union, which is called Participation Committee. According to Section 205, where there is no trade union and until trade union is formed, this committee shall run activities regarding labourers' rights.<sup>39</sup> Additionally, no time limit is mentioned in this Act to create a trade union in any industry. To solve this, a timeframe therefor must be prescribed under this Act.

In addition, termination of the labourer's employment due to misconduct, under Section 11 (3) of the Bangladesh Labour (Amendment) Act, 2013,<sup>40</sup> must be amended. Like India, Bangladesh can add a new provision stating that for dismissing a laborer who has worked more than a year, the dismissed laborer should be given some compensation, and the employer should also seek the permission of government officer in order to justify the reason of dismissing.

Finally, in order to initiate a strike, the trade union members have to submit a notice with 51% members' signature through a collective bargaining agent under Section 33 of the Bangladesh Labour (Amendment) Law 2018.<sup>41</sup> This requirement should be more flexible to ensure the workers

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<sup>38</sup> The Bangladesh Labour Act 2006, s 193

<[http://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=76402](http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=76402)> accessed 23 October 2018

<sup>39</sup> *ibid* s 205.

<sup>40</sup> Bangladesh Labour (Amendment) Act 2013, s 11(3)

<<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/94286/110640/F482588609/BGD94286%20Eng.pdf>> accessed 23 October 2018

<sup>41</sup> Bangladesh Labour (Amendment) Act 2018, s 33

<[https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative\\_infor](https://mole.portal.gov.bd/sites/default/files/files/mole.portal.gov.bd/legislative_infor)

rights thereof. The signatures of the laborers should also be gathered confidentially.

Through the amendment of the Bangladesh Labour Act, by eliminating the provisions which prevent the formation of a trade union and restrict its activities, this Act will be in accordance with the ILO Conventions. It will also achieve the international standard, which will help attract foreign importers to Readymade Garments sector of Bangladesh, contributing to the long-run success of the industry.

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