



# Beyond tradition roles: examining the role of trade unions as a key stakeholder in business and governance

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## Introduction

The value of trade unionism is paramount to amplifying individual voices among employees when it comes to matters that affect their pay and benefits, work time, health and safety and welfare. Trade unions in India have indeed played a major role in this regard – through collective bargaining, such unions have ensured basic entitlements for represented employees and put a check on arbitrary adverse changes to employment terms. However, trade unions can play a role that is far superior to this – one that involves them becoming a key stakeholder in corporate governance and demanding consultation on critical corporate decisions that ultimately impact work, workplace and workforce. In this article, we discuss the following: trade union membership trends in recent times in India, particularly addressing why there is a decline in unionism; the roles of trade unions which are not yet explored in India even as other jurisdictions are already moving forward in recognising such roles at least in part; and an examination of the legal regime that currently exists in India and which requires an overhaul to confer greater rights and responsibilities on unions.

## Understanding trade union membership trends in recent times

In the dynamic arena of labour relations, trade unions are grappling with an array of challenges that threaten their traditional roles and relevance. The relentless march of technology, alongside the ever-shifting landscape of market forces, has rendered conventional approaches obsolete, necessitating a fundamental re-evaluation of trade unions' operational strategies. Failure to adapt to these evolving dynamics diminishes their efficacy and, ultimately, results in their inability to resonate with the workforce.

Most articles discussing a decline in trade union membership in India attribute such decline to a rapidly increasing services sector (compared to the manufacturing sector), privatisation and non-permanent models of work (such as fixed term employment and engagement of contract labour).<sup>[1]</sup> However, there are a few interesting studies that point to a deeper problem – the massive politicisation of union activities, trade union leaders being outsiders and not interested in the interests of the workers, lack of communication between union leadership and the workers, mismatch between the new generation of workers and the agenda of the trade union and the failure on the part of the union to understand the need to have a performance based work culture.<sup>[2]</sup> The affiliation with political parties, in particular, is a notable feature of Indian trade unions. While this association provides trade unions with political leverage, it also shackles them to partisan agendas, diluting their autonomy and impeding impartial representation of workers' interests. This confluence of politics, leadership dynamics influenced by external forces, and a lack of operational expertise in union leadership exacerbates the challenges confronting trade unions. Often helmed by individuals lacking the necessary expertise or firsthand knowledge of industrial operations, trade unions struggle to navigate the intricacies of effective representation and advocacy.

## Revisiting the role of trade unions in business decisions

Trade unions have historically wielded significant influence in shaping workplace dynamics through negotiations by way of collective bargaining agreements. These agreements, addressing critical facets such as shift timings, working hours, leave entitlements, wages, incentives and safety protocols have served as the bedrock of industrial relations globally, including in India. However, with the ascent of the services sector and the prevailing trend of downsizing, the evolving business landscape necessitates that trade unions adapt to confront the challenges of contemporary workplaces.

By broadening their focus beyond traditional bargaining issues and embracing innovative forms of engagement, trade unions can effectively address emerging challenges. This approach entails not only negotiating traditional employment terms but also actively participating in strategic decision-making in matters such as mass redundancies, business transfers, intra-company transfers and lay-offs, ensuring that workers' interests are adequately represented in all facets of employment. Similarly, there lies a great opportunity for trade unions to work with employers in developing policies and practices that promote a safe, healthy and inclusive workplace.

In numerous jurisdictions, recent legislative reforms have sought to redefine the role of trade unions in corporate governance and industrial relations. For instance, China's Revised Company Law,<sup>[3]</sup> which took effect on 1 July 2024, heralds significant reforms in democratic corporate governance. This legislation mandates the establishment of a workers' assembly in all companies, irrespective of size or ownership structure. Notably, the revised Company Law also stipulates that companies with 300 employees or more must include employee representatives on their boards of directors, who in turn will be elected through a workers' assembly. Moreover, opinions from the company's trade union and suggestions from the workers' assembly must be heeded during deliberations on major issues, including restructuring, dissolution and bankruptcy.

Similarly, Romania has enacted a new law on collective bargaining and social dialogue, known as Law 367/2022, effective 25 December 2022.<sup>[4]</sup> This legislation introduced several provisions aimed at bolstering the role of trade unions in negotiating terms and conditions of employment. Significant developments include the requirement for company-level collective bargaining, applicable to employers with a minimum of ten employees and a reduced threshold for union recognition at the company level to 35 per cent of employees. Additionally, the framework requires employers to invite employees in a consultation process regarding critical decisions that may impact the work and work relations such as business transfer, mergers and acquisitions and unit closures.

These legislative advancements symbolise a widespread recognition of the evolving landscape of work and highlight the critical need for trade unions to recalibrate their strategies to adeptly represent workers' interests in the modern business environment.

## Legal regime in India: retaining the traditional role of the trade union

### Collective bargaining

One of the glaring deficiencies in the legal framework governing trade unions in India is the absence of express provisions conferring collective bargaining rights upon them at the Central level despite the enactment of the Trade Unions Act 1926 ('TU Act'), which laid the groundwork for union formation and registration. Few states including Andhra Pradesh, Kerala, Maharashtra, Madhya Pradesh, Odisha and West Bengal have laws conferring the status of a 'recognised union' to a trade union (thus giving them the right to collective bargaining) provided it meets certain requirements such as registration under the TU Act and workers' representation up to a certain percentage of the overall workforce. However, even so, the rights conferred on the recognised trade union are limited, such as the right to (a) collect sums payable by employee-members to the union on the work premises; (b) hold discussions with the employer at the workplace as regards grievances of employee-members; and (c) represent an employee in an internal disciplinary inquiry. The legislative reading indicates that the purpose of conferring some of these rights is prevention of industrial dispute rather than having a larger consultative regime where a recognised union is involved as a key stakeholder in corporate actions.

### Grievance redressal

The law on industrial relations in India, namely, the Industrial Disputes Act 1947 notably envisages the creation of a grievance redressal mechanism regarding the terms and conditions of employment of non-managerial and non-supervisory employees. It further provides that such mechanism shall be in the form of a grievance redressal committee that will have an equal number of employer and workmen representatives. Aside from the obvious limitation of the law in terms of its applicability to only 'workmen', the provision in question also states that the requirement of setting up the above-mentioned committee is not required where there is an established grievance redressal mechanism, without mandating that such an alternative mechanism should be equally effective in terms of workforce representation.

### Occupational safety

When it comes to occupational safety, the role of trade unions/employee representatives is scattered across different laws and is limited in scope. For instance, under the Factories Act 1948 (a central law that applies to manufacturing establishments), the employer is required to form a safety committee with equal representatives of workers and the employer particularly where the factory is involved in a hazardous process or otherwise uses hazardous substances. Similarly, for commercial establishments that are regulated by state-specific laws when it comes to occupational safety, only limited states (such as Maharashtra) envisage the creation of a health, safety and welfare committee comprising employer and employee representatives. Even so, the role of such a committee is often limited to dealing with specific matters (for instance, in Maharashtra, the committee can examine whether there are potential hazards or defects at the workplace, conduct annual healthcare or wellness camps and create awareness about contagious diseases, epidemics or natural disasters), without a larger role to recommend actions for promoting a safe and healthy workplace.

### Diversity and inclusion

The relatively new laws that deal with equal employment opportunities, such as the Rights of Persons with Disabilities Act 2016 and the Transgender Persons (Protection of Rights) Act 2019, presented a good opportunity for the government to enact laws that envisage the role of trade unions in facilitating an inclusive workplace. However, these laws mainly require employers to formulate an equal opportunity policy and appoint liaison/complaints officer to deal with grievances and complaints of the protected employees, without the involvement of trade unions/employee representatives in monitoring compliance and recommending actions towards prevention of discrimination and provision of reasonable accommodation in the workplace.

### Upcoming labour regime

The upcoming regime in the form of four labour codes on wages, social security, industrial relations and occupational safety and working conditions, respectively, do not overhaul the legal regime significantly when it comes to involvement of trade unions as a key stakeholder in business decisions and corporate governance. The two noteworthy changes that are relevant to the present discussions are (1) mandatory constitution of a grievance redressal committee involving employer and employee representation; and (2) recognition of the right of a trade union (negotiating union/negotiating council) to collectively bargain with the employer, but these provisions also largely cater to the traditional role of the trade union in terms of negotiation and settlement of employment terms and prevention and resolution of industrial disputes.

## Concluding remarks

The above discussion, inter alia, intended to present opportunities where trade unions can play an important role in addressing the interests of the workforce beyond negotiation on traditional matters such as pay and employment benefits. However, as the article suggests, any successful endeavours in building an environment where trade unions in India function in a holistic manner require considerable overhaul of the legislative regime and the attitude of trade unions and other employee representatives. A failure in this effort has the possibility of resulting in a further decline of unionism, which in turn would continue to perpetuate the problem India has faced for a significant time now – the unequal bargaining dynamic between the employer and the employee.

### Notes

[1] S Panda, 'Why labour unions are on the decline' *Businessline*, 14 July 2021, [www.thehindubusinessline.com/opinion/why-labour-unions-are-on-the-decline/article35327641.ece](http://www.thehindubusinessline.com/opinion/why-labour-unions-are-on-the-decline/article35327641.ece) accessed 25 July 2024.

[2] D K Srivastava, 'Trade Union Response to Declining Membership Base: Best Practices from Mumbai Based Trade Unions' (April 2006) 41(4) *Indian Journal of Industrial Relations*.

[3] China's Revised Company Law, [www.npc.gov.cn/npc/c2/c30834/202312/t20231229\\_433999.html](http://www.npc.gov.cn/npc/c2/c30834/202312/t20231229_433999.html) accessed 24 July 2024.

[4] Law 367/2022, <https://legislatie.just.ro/Public/DetaliuDocument/262989> accessed 24 July 2024.