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TRADE UNION RIGHTS UNDER ILO STANDARDS: COMPARATIVE PERSPECTIVES FROM BANGLADESH AND SRI LANKA IN LIGHT OF BANGLADESH'S NEW LABOUR LAW REFORMS

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ABSTRACT

Presently, Trade Unions (TUs) constitute a significant institutional mechanism through which workers collectively protect and advance their economic, social and labour interests. The rights associated with TU organisation include freedom of association and collective bargaining, which together constitute one of the five categories of fundamental principles and rights at work recognised under the International Labour Organisation's (ILO) Declaration on Fundamental Principles and Rights at Work, as amended in 2022. These principles are reflected in ILO Conventions Nos. 87 and 98. This article adopts a doctrinal and comparative study on the extent of the compliance of the Conventions by the Sri Lankan and Bangladeshi legal frameworks. Particularly, it assesses this in light of the 2026 Bangladesh Labour Act Amendment, which contains several progressive provisions in relation to TUs. The article finds that although both jurisdictions have ratified ILO Conventions Nos. 87 and 98 and incorporated important protections into their domestic legal frameworks, certain legislative restrictions continue to raise concerns regarding their full conformity with international labour standards. In particular, the numerical requirements governing TU registration in Bangladesh and collective bargaining recognition in Sri Lanka may restrict the effective exercise of freedom of association and collective bargaining. Accordingly, further legislative reforms remain necessary to strengthen the practical protection of these rights.

Keywords: Comparative Labour Law; Trade Union Rights; Freedom of Association; Collective Bargaining; ILO Conventions Nos 87 and 98; Bangladesh Labour Act; Sri Lanka; Labour Law

INTRODUCTION

A Trade Union (TU) comprises employees who have come together for the purpose of dealing with their employer.[1] TUs can be considered as the principal institutions of the working class in capitalistic societies.[2] The origin of TUs can be traced back to the 18th century, during which the Industrial Revolution in Europe brought major socioeconomic changes due to the rapid change in working conditions.[3] As factories were established, large numbers of workers were employed, often under poor conditions, with long working hours,

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1. R Wayne Mondy and Robert M Noe, *Human Resource Management* (9th edn, Pearson Prentice Hall 2005).

2. Richard B Freeman and James L Medoff, *What Do Unions Do?* (Basic Books 1984).

3. Kusalakumara Jayendra Fernando, 'Trade Unions and Their Impact on Productivity: A Review of Sri Lankan Context from 1995 To 2015' (2020) 10 Sri Lankan Journal of Human Resource Management.

low wages and unsafe workplaces. Workers who faced such difficulties began to organise collectively to demand fair wages and better working conditions as individual workers had little bargaining power, which led them to form TUs.[4]

Presently, the right to form and join TUs is recognised as a fundamental human and labour right. Article 23(4) of the Universal Declaration of Human Rights (UDHR) provides that everyone has the right to form and join TUs for the protection of their interests. Similarly, several ILO Conventions provide for the rights associated with TUs. These international standards have guided many countries in developing legislation that protects the right to organise and participate in TUs.[5]

This article adopts a doctrinal and comparative methodology to examine the protection of TU rights in Bangladesh and Sri Lanka in light of ILO Conventions Nos. 87 and 98. The analysis draws upon international labour instruments, domestic constitutional and statutory provisions, and the observations and principles developed by the ILO. The comparison adopts a most-similar-systems design: Bangladesh and Sri Lanka are both South Asian common-law States that have ratified Conventions Nos. 87 and 98 and share a broadly similar statutory architecture but differ in the stringency of their numerical thresholds. It is structured around six fixed dimensions — constitutional and statutory recognition; eligibility to establish and join trade unions; registration and membership requirements; organisational autonomy and group establishments; collective bargaining recognition; and protection against anti-union discrimination — each assessed against the ILO standards.

PART I: ILO STANDARDS AND TRADE UNIONS AS A HUMAN RIGHT

Freedom of Association and Collective Bargaining

Having been established immediately after the first World War, the International Labour Organisation (ILO) is the primary international body concerned with the promotion and enforcement of international labour rights and standards.[6] Freedom of association is a fundamental principle of the ILO and constitutes a cornerstone of workers' and employers' rights. It encompasses the right of workers and employers to freely establish and join organisations of their choice for the purpose of promoting and protecting their occupational and economic interests, without undue interference from the State or from one another.[7] The right extends to the informal economy as well, despite the absence of a conventional contract of employment. Further, it should be protected and guaranteed by the State irrespective of an individual's occupation, sex, colour, race, religion, nationality or political opinion.[8]

4. Fernando (n 3).

5. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III), art 23(4); ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (adopted 18 June 1998, amended 2022) para 2.

6. Patrick Macklem, 'The Right to Bargain Collectively in International Law: Workers' Right, Human Right, International Right?' in Philip Alston (ed), *Labour Rights as Human Rights* (Oxford University Press 2005).

7. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III), art 23(4); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), art 2; International Labour Office, Freedom of Association and Collective Bargaining: General Survey of the Reports on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No 98) (International Labour Conference, 81st Session, Report III (Part 4B), ILO 1994).

8. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), art 2.

Freedom of association allows for collective bargaining by members. Collective bargaining is the voluntary process through which employers or their organisations and TUs, or workers' representatives, negotiate matters concerning their employment relationship.[9] Such matters may include wages, working hours, employment conditions and other workplace issues. The principal objective of the process is to facilitate dialogue between workers and employers and to reach mutually acceptable collective agreements governing the terms and conditions of employment.[10] The ILO states that there should be effective recognition of the right to collective bargaining. Accordingly, a fundamental requirement is that workers' organisations should remain independent of employers and employers' organisations, allowing them to proceed without undue influence.[11]

The principle of freedom of association was recognised in the ILO's constitutional framework from its establishment in 1919. Its significance was subsequently reaffirmed in the Declaration of Philadelphia, adopted in 1944 and incorporated into the ILO Constitution in 1946.[12] Accordingly, Article III stated that "*The Conference recognises the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve:... (e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures.*"[13]

Strengthening this further, the ILO Convention on Freedom of Association and Protection of the Right to Organise (No 87) was adopted in 1948. Article 2 of the ILO Convention No 87 provides that "*Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation*.", thus assuring that it is a universal right for any worker. The only exceptions have been listed in Article 9 in relation to the armed forces and the police, giving due consideration to national security of each State.[14] The right is defined and established through Article 3, which states that "*Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.*"[15]

The ILO Convention on the Right to Organise and Bargain Collectively (No 98) was subsequently adopted in 1949. Article 1 of Convention No 98 states that "*1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. 2. Such protection shall apply more particularly in respect of acts calculated to-- (a) make the employment of a worker subject to the condition that he shall not join a*

9. Collective Bargaining Convention, 1981 (No 154), art 2.

10. Right to Organise and Collective Bargaining Convention, 1949 (No 98), art 4.

11. Right to Organise and Collective Bargaining Convention, 1949 (No 98), art 2.

12. Patrick Macklem, 'The Right to Bargain Collectively in International Law: Workers' Right, Human Right, International Right?' in Philip Alston (ed), *Labour Rights as Human Rights* (Oxford University Press 2005); International Labour Organisation, 'The Declaration of Philadelphia – 75 Years' (*International Labour Organization*, 10 May 2019) <https://www.ilo.org/resource/news/declaration-philadelphia-%E2%80%93-75-years> accessed 10 August 2026.

13. Declaration of Philadelphia, adopted at the 26th Session of the International Labour Conference, Philadelphia, United States of America, May 1944.

14. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87).

15. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87).

union or shall relinquish trade union membership; (b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours."[16] Furthermore, Article 4 of Convention No 98 requires States to take measures appropriate to national conditions to encourage and promote machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to regulating terms and conditions of employment through collective agreements.[17]

The ILO Committee on Freedom of Association has recognised collective bargaining as a fundamental aspect of the principle of freedom of association.[18] The international community's recognition of these principles was further affirmed through the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998 and subsequently amended in 2022. Paragraph 2 of the Declaration identifies five categories of fundamental principles and rights at work, including freedom of association and the effective recognition of the right to collective bargaining. The corresponding fundamental Conventions, including Conventions Nos. 87 and 98, are identified in the Annex to the Declaration.[19] In addition to the specific Conventions adopted by the ILO, Articles 26 to 34 of its Constitution provide for a complaint procedure in the event of non-compliance of a ratified Convention by a member State.[20]

Apart from the ILO's explicit conventions which directly address the right to association and collective bargaining, the Universal Declaration of Human Rights (UDHR)[21] also recognised the right to freedom of association and the right to form and join TUs in Articles 20(1)[22] and 23(4)[23] respectively. Accordingly, Article 20(1) reads "*Everyone has the right to freedom of peaceful assembly and association,"* and Article 23(4) reads "*Everyone has the right to form and to join trade unions for the protection of his interests."* Further, Article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESR) also recognises *inter alia* the right to form and join TUs and the right of TUs function freely. Accordingly, Article 8 of the ICESCR requires States parties to protect the right of every person to establish and join a TU of their choice for the protection of their economic and social interests. It further recognises the right of TUs to establish or join national and international federations and requires States to ensure that TUs are able to function independently and freely. The provision also recognises the right to strike, subject to the applicable laws of the State. However, these rights may be subject only to restrictions that are established by law and necessary in a democratic society for reasons

16. Right to Organise and Collective Bargaining Convention, 1949 (No 98).

17. Right to Organise and Collective Bargaining Convention, 1949 (No 98).

18. International Labour Office, Geneva, 'Freedom of Association. Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO' (International Labour Organization 2006) <https://www.ilo.org/sites/default/files/wcmsp5/groups/public/%40ed_norm/%40normes/documents/publication/wcms_090632.pdf> accessed 10 August 2026.

19. ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (adopted 18 June 1998, amended 2022) para 2 and Annex.

20. Constitution of the International Labour Organization.

21. The Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 December 1948.

22. The Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 December 1948.

23. The Universal Declaration of Human Rights proclaimed by the United Nations General Assembly in Paris on 10 December 1948.

such as national security, public order, or the protection of the rights and freedoms of others. Lawful restrictions may also be imposed on members of the armed forces, police and public administration. Importantly, Article 8 does not permit States Parties to the ILO Convention concerning Freedom of Association and Protection of the Right to Organise to adopt or apply measures that undermine the guarantees established under that Convention.[24]

Thus, in light of such developments in the international legal framework governing the right to form a TU, Macklem notes that labour rights such as the right to bargain collectively are direct influencing factors of economic globalisation and thus are components of global governance at present.[25]

Trade Union Rights as Fundamental Human Rights

TU freedom constitutes an expression of the broader right to freedom of association within the employment context and encompasses both individual and collective dimensions.[26] The individual dimension protects the freedom of workers to establish and join organisations of their own choosing, while the collective dimension protects the capacity of those organisations to determine their constitutions, elect their representatives, administer their affairs and formulate their programmes independently. These protections are reflected in Articles 2 and 3 of ILO Convention No 87 as well.[27]

Further, freedom of association and the effective recognition of the right to collective bargaining are regarded as fundamental rights[28] because they are essential to the protection of human dignity, workers' interests and democratic participation. These rights have been embedded in the ILO Constitution since 1919, reflecting their longstanding importance within the international labour rights framework. Freedom of association is also closely connected to other fundamental freedoms, including freedom of expression, freedom of assembly, freedom of the press and the right to participate in democratic processes. Thus, providing the foundation for meaningful representation and democratic governance by enabling individuals to organise, express collective interests and participate in decisions affecting their lives.

The fundamental character of these rights was further affirmed through the ILO Declaration on Fundamental Principles and Rights at Work, adopted in 1998 and amended in 2022. Freedom of association and the effective recognition of the right to collective bargaining together constitute one of the five categories of fundamental principles and rights at work recognised under the amended Declaration. Furthermore, all ILO Member States have an obligation to respect, promote and realise these principles in good faith, irrespective of whether they have ratified the corresponding fundamental Conventions.[29] This obligation arises from their membership in the ILO and reflects the fundamental status of these principles within the international labour

24. International Covenant on Economic, Social and Cultural Rights.

25. Patrick Macklem, 'The Right to Bargain Collectively in International Law: Workers' Right, Human Right, International Right?' in Philip Alston (ed), *Labour Rights as Human Rights* (Oxford University Press 2005).

26. Kacey Mordecai, 'The Fundamental Human Rights to Trade Union Freedom, Collective Bargaining and to Strike in the Americas' (2022) 8 International Labour Rights Case Law 163 <https://doi.org/10.1163/24056901-08020015> accessed 12 August 2026.

27. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), arts 2–3.

28. Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III), arts 19–20 and 23(4).

29. ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (n 19) para 2.

standards framework. Accordingly, freedom of association and collective bargaining are not merely statutory or contractual employment rights. They constitute fundamental human rights at work, forming an essential foundation for social justice, decent work and democratic participation.

Trade Unions as Tool of Advancement of Human Rights

TUs also play a significant role in the protection and advancement of human rights, particularly economic, social and cultural rights, as well as the right to equality and freedom from discrimination. TUs contribute to the protection of workers' rights through collective bargaining, negotiations with employers and collective action to address the inherent imbalance of bargaining power between individual workers and employers.[30] This collective strength enables workers to advocate more effectively for fair wages, safe working conditions, equal treatment and other employment rights, while also providing a mechanism through which employers may be held accountable for violations of workers' rights.

Further, historically TUs have contributed to broader movements for social justice and legislative reform, advocating for governments and employers to recognise, respect and protect workers' human rights.[31] Through collective mobilisation and participation in policy debates, unions have influenced the adoption and reform of labour laws and contributed to the development of stronger legal protections for workers. Thus, TUs function not merely as representatives of workplace interests but also as important actors in the advancement of social and economic rights.

TUs also have a longstanding tradition of solidarity with broader human rights and social justice movements. Their involvement in campaigns concerning racial equality, anti-discrimination, political freedom and other social causes demonstrates that trade unionism is closely connected to wider struggles for equality and justice.[32] Thus, the protection of workers' rights cannot be viewed in isolation from the broader human rights framework.

PART II: ANALYSING THE RIGHT THROUGH THE SELECTED JURISDICTIONAL FRAMEWORKS

Bangladesh Trade Union Legal Framework

Prior to the Amendment

Trade unionism in the region dates back to the Indian Trade Union Act of 1926, which first granted unions immunity from civil and criminal liability. In modern Bangladesh, the Constitution guarantees freedom of association as a fundamental right.[33] Before the 2026 reforms, the primary governing statutes of the labour sector were the Bangladesh Labour Act, 2006 (BLA), and the Bangladesh Export Processing Zones (EPZ) Labour Act, 2019.

30. Amnesty International, 'What Do Trade Unions Have to Do with Human Rights?' (*Amnesty International*, 27 January 2025) <https://www.amnesty.org/en/latest/campaigns/2025/01/what-do-trade-unions-have-to-do-with-human-rights/> accessed 12 August 2026.

31. Amnesty International, 'What Do Trade Unions Have to Do with Human Rights?' (*Amnesty International*, 27 January 2025) <https://www.amnesty.org/en/latest/campaigns/2025/01/what-do-trade-unions-have-to-do-with-human-rights/> accessed 12 August 2026.

32. Amnesty International, 'What Do Trade Unions Have to Do with Human Rights?' (*Amnesty International*, 27 January 2025) <https://www.amnesty.org/en/latest/campaigns/2025/01/what-do-trade-unions-have-to-do-with-human-rights/> accessed 12 August 2026.

33. Indian Trade Unions Act 1926; Constitution of the People's Republic of Bangladesh (1972), art 38.

The Constitution of Bangladesh provides the fundamental legal basis for freedom of association and the formation of organisations by workers and employers. Article 38 guarantees every citizen the right to form associations or unions, subject to reasonable restrictions imposed by law in the interests of morality or public order. However, this right does not extend to associations or unions established for purposes that undermine religious, social or communal harmony, promote discrimination on grounds such as religion, race, caste, sex, place of birth or language, organise terrorist or militant activities, or pursue objectives inconsistent with the Constitution.[34] Accordingly, Article 38 establishes the constitutional foundation for freedom of association, including participation in TUs, subject to the limitations prescribed by the Constitution. These constitutional guarantees establish the normative foundation upon which the statutory framework governing TUs and labour rights in Bangladesh is developed.

The BLA establishes the statutory framework for the formation, registration and functioning of TUs. Section 176 recognises the right of workers to establish and join TUs of their choice for regulating relations between workers and employers or among workers themselves. Correspondingly, employers are entitled to establish and join organisations for regulating relations with workers or among employers.[35] The BLA further permits TUs and employers' organisations to establish and join federations and affiliate with international organisations.[36] It also recognises their organisational autonomy by permitting them to formulate constitutions and rules, elect representatives, administer their affairs and determine their programmes.[37] Accordingly, the provision incorporates important elements of freedom of association, although their exercise remains subject to the wider statutory framework.

The protection afforded by the BLA has historically been subject to limitations concerning its personal and sectoral scope. Prior to the 2026 amendments, the statutory definition of a worker did not generally encompass persons primarily engaged in managerial or administrative functions. Consequently, such personnel were not afforded the same statutory rights to establish or join workers' TUs under Chapter XIII of the Act.[38] Furthermore, certain categories of workers, including home-based workers, EPZ workers and persons employed in particular public-sector and agricultural activities, have historically been subject to exclusions or different regulatory arrangements. These limitations raise concerns regarding the universality and practical accessibility of freedom of association.

The BLA historically prescribed different membership requirements for TUs formed within individual establishments and those formed across groups of establishments. Although section 179(2) originally required a TU formed within an individual establishment to represent at least 30% of its workforce, the BLA Amendment Act 2018 reduced this requirement to 20%.[39] Section 183(6) separately governed the registration of TUs formed across groups of establishments and historically prescribed a membership requirement of 30% of the combined workforce. This requirement was subsequently addressed by the 2026 legislative amendments, which substituted

34. Constitution of the People's Republic of Bangladesh, Art 38.

35. Bangladesh Labour Act 2006, s 176(a)–(b).

36. Bangladesh Labour Act 2006, s 176(c).

37. Bangladesh Labour Act 2006, s 176(d).

38. Bangladesh Labour Act 2006, ss 2(65) and 175.

39. Bangladesh Labour Act 2006, s 179(2), as amended by the Bangladesh Labour (Amendment) Act 2018.

a fixed minimum of 20 members for the percentage-based requirement.[40] Notwithstanding the reduction in the threshold, the requirements continued to raise concerns regarding the effective enjoyment of freedom of association, particularly in larger establishments where securing the necessary number of members could present practical difficulties. Such requirements may therefore constitute barriers to TU formation and warrant examination in light of ILO Convention No 87.

Further, workers employed in Bangladesh's EPZs have historically been governed by a separate statutory framework under the Bangladesh Export Processing Zones Labour Act 2019. Instead of providing the same TU structure applicable under the general BLA, it establishes a Workers' Welfare Associations (WWAs) as a mechanism for worker representation.[41] This separate regulatory arrangement raises questions regarding the extent to which EPZ workers enjoy equivalent protections for freedom of association and collective bargaining under ILO Conventions Nos. 87 and 98.

Thus, although the BLA 2006 formally recognised the right to form and join TUs, restrictions concerning statutory coverage, membership requirements and sectoral exclusions limited the practical enjoyment of that right. Consequently, workers in Bangladesh continued to face barriers to the effective exercise of freedom of association and collective bargaining, notwithstanding the protections recognised under Chapter XIII of the BLA and ILO Conventions Nos. 87 and 98. These limitations provide an important context for assessing the significance of Bangladesh's subsequent labour law reforms.[42]

After the 2026 Amendment

The reforms to the BLA 2006 emerged against a background of sustained international scrutiny and domestic political developments. In 2019, several workers' delegates to the 108th Session of the International Labour Conference submitted a complaint under Article 26 of the ILO Constitution alleging Bangladesh's non-observance of Conventions Nos. 81, 87 and 98. The complaint was declared receivable by the ILO Governing Body on 7 November 2019, which subsequently called for a time-bound roadmap to address the outstanding issues.[43] The resulting roadmap for 2021–2026 established a framework for monitoring legislative and institutional reforms. However, the complaint remained pending, with the Governing Body deferring further action at its March 2026 session.[44]

The reform process must also be understood in the context of other developments. The political transition of August 2024 and the establishment of an interim government created a renewed opportunity to

40. Bangladesh Labour Act 2006, s 183(6) (historical text); Bangladesh Labour (Amendment) Act 2026, s 38(b).

41. Bangladesh Export Processing Zones Labour Act 2019, ss 93–100 and 119.

42. Bangladesh Labour Act 2006, ss 2(65), 175, 179(2) and 183(6); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), art 2.

43. International Labour Organization, 'Reports of the Officers of the Governing Body: First Report—Complaint concerning Non-observance by Bangladesh of Conventions Nos 81, 87 and 98' (29 October 2019) GB.337/INS/13/1; ILO Governing Body, 'Decision on the Complaint concerning Non-observance by Bangladesh of Conventions Nos 81, 87 and 98' (7 November 2019) GB.337/INS/13/1/Decision.

44. ILO Governing Body, 'Decision concerning the Report by the Government of Bangladesh on Progress Made in the Implementation of the Road Map' (30 March 2026) GB.356/INS/11(Rev.2)/Decision, paras (a)–(d).

advance labour law reform.[45] In addition, the European Union's enhanced engagement with Bangladesh under the Generalised Scheme of Preferences provided further incentives for strengthening labour standards.[46] These developments, together with the ILO's supervisory engagement and tripartite consultations, formed the broader context of the Bangladesh Labour (Amendment) Ordinance 2025, promulgated on 17 November 2025, which preceded the enactment of the Bangladesh Labour (Amendment) Act 2026 (Act No 43 of 2026) on 10 April 2026.[47] Accordingly, the reforms are more appropriately understood as emerging from overlapping international, economic and domestic pressures rather than being attributed exclusively to the Article 26 complaint.

A notable development is the revised definition of "*worker*" under section 175(1), for the purposes of Chapter XIII on TUs, which extends coverage to self-employed workers and individuals engaged through digital labour platforms. Although the inclusion of platform workers reflects the changing nature of contemporary employment relationships, their selective recognition within the TUs chapter, rather than within the general scope of the Act, creates a fragmented regulatory framework and may result in inconsistencies in the protection afforded to these workers.[48]

The amendments also introduced changes to the statutory framework governing TU organisation. The revised definition of a "*trade union*" under section 2(15) expressly includes TU federations and confederations, thereby recognising these organisations within the statutory framework.[49] Separately, section 175(2) permits persons performing administrative, supervisory or managerial functions to establish associations or societies for the protection of their interests.[50] Read together with section 2(49)(b), these provisions recognise distinct forms of workplace association. However, the ability of non-worker personnel to establish separate associations should not be equated with the full range of TU rights available to workers under Chapter XIII. Accordingly, while the amendments broaden the statutory recognition of different organisational structures, the extent of protection afforded to each category requires separate consideration under Article 2 of ILO Convention No 87.[51]

The 2026 amendments also introduced significant changes to the framework governing collective bargaining. The revised definition of a collective bargaining agent under section 2(52) encompasses TUs, federations and confederations representing workers at establishment, group-establishment, sectoral, national

45. ILO Governing Body, 'Decision concerning the Report by the Government of Bangladesh on Progress Made in the Implementation of the Road Map' (5 November 2024) GB.352/INS/14(Rev.2)/Decision; European Commission, 'EU Enhanced Engagement with Three Everything But Arms Beneficiary Countries: Bangladesh, Cambodia and Myanmar' (16 July 2026) SWD(2026) 185.

46. European Commission, 'EU Enhanced Engagement with Three Everything But Arms Beneficiary Countries: Bangladesh, Cambodia and Myanmar' (16 July 2026) SWD(2026) 185.

47. International Labour Organization, 'Landmark Ratifications in Bangladesh towards a Future of Work with Safe and Healthy Environments, Free from Violence and Harassment' (20 November 2025).

48. A.K.M. Nasim, 'A Game Changer? Evaluating Bangladesh's Labour Reform' [2026] Asian Labour Review <https://labourreview.org/a-game-changer/> accessed 12 August 2026.

49. Bangladesh Labour (Amendment) Act 2026 (Act No 43 of 2026), s 4(e).

50. Bangladesh Labour (Amendment) Act 2026, s 32; see also s 2(49)(b).

51. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), art 2.

and other levels.[52] Further, the newly inserted section 203A permits federations and confederations to request collective bargaining with employers' organisations at sectoral, national and other levels. The provision also requires the receiving organisation to respond in writing within ten days, while allowing the parties to determine the procedure and timeframe for negotiating collective agreements through mutual agreement.[53] These changes extend the statutory recognition of collective bargaining beyond individual establishments and represent a development towards the promotion of voluntary collective bargaining under Article 4 of ILO Convention No 98.[54] Nevertheless, the obligation to respond does not necessarily require the parties to reach an agreement, and the practical effectiveness of the provision will depend on their willingness and ability to engage in negotiations.

Another particularly significant area of reform concerns the requirements for the formation and registration of TUs. Although a minimum of 20 workers may jointly apply for registration, the amended framework establishes a tiered membership requirement based on the total workforce of the establishment. For establishments employing between 20 and 300 workers, a minimum of 20 members is required; for those employing between 301 and 500 workers, at least 40 members are required; for establishments employing between 501 and 1,500 workers, the minimum is 100 members; for those employing between 1,501 and 3,000 workers, the minimum is 300 members; and for establishments with more than 3,000 workers, the minimum is 400 members.[55] Furthermore, section 179(5), as amended, limits the number of TUs that may be registered within an establishment or group of establishments to three for each category specified under the provision.[56]

The amended framework also modifies the requirements governing TUs formed across groups of establishments. Under section 183(1) of the BLA, a group of establishments is treated as a single establishment for TU formation, thereby preventing the establishment of separate TUs within its constituent establishments. Section 183(2) provides for the grouping of smaller establishments operating within a specified area and industry, while section 183(3) extends this arrangement to specified industries irrespective of the number of workers employed.[57] The 2026 amendment replaced the previous 30 per cent membership requirement under section 183(6) with a fixed minimum of 20 members and repealed section 184, which had separately regulated TU registration in civil aviation establishments.[58] Although the reduced membership requirement may facilitate collective organisation across establishments, the continuing prohibition against separate unions within constituent establishments restricts workers' organisational choices. Accordingly, the group-establishment

52. Bangladesh Labour (Amendment) Act 2026 (Act No 43 of 2026), s 4(n).

53. Bangladesh Labour (Amendment) Act 2026, s 49.

54. Right to Organise and Collective Bargaining Convention, 1949 (No 98), art 4.

55. Bangladesh Labour Act 2006, s 179(2), 179(5), as amended by the Bangladesh Labour (Amendment) Act 2026, s 35.

56. Bangladesh Labour Act 2006, s 179(5), as amended by the Bangladesh Labour (Amendment) Act 2026, s 35.

57. Bangladesh Labour Act 2006 (Act No 42 of 2006), s 183(1)–(3).

58. Bangladesh Labour (Amendment) Act 2026 (Act No 43 of 2026), ss 38–39.

regime has a dual effect as it liberalises access to registration while retaining structural limitations on freedom of association and raising questions regarding its compatibility with Article 2 of ILO Convention No 87.[59]

However, even though the revised structure symbolises a significant liberalisation of the requirements for union formation, closer examination reveals potentially problematic discontinuities at the thresholds. The arbitrary division of thresholds may produce disproportionately high membership requirements and, consequently, undermine the objective of facilitating the formation of TUs and promoting effective freedom of association.[60] It also strengthens protection against anti-TU discrimination by imposing clearer restrictions on employer interference in TU activities.[61] This is accompanied by amendments to section 195(1), which expressly prohibit blacklisting and additional forms of employer interference and retaliation, while section 196A extends the protection against anti-union discrimination. Significantly, the newly inserted section 196B empowers the Director General to direct employers to discontinue specified unfair labour practices and, where workers have suffered harm, to order restoration of the loss and financial compensation.[62] These provisions strengthen the available statutory protections against conduct capable of discouraging TU participation, reflecting the objectives of Articles 1 and 2 of Convention No 98. However, their effectiveness will ultimately depend upon enforcement and the accessibility of the prescribed remedies.

The amendments further strengthened the statutory framework addressing anti-union discrimination and employer interference. Section 2(78) introduces a definition of blacklisting, covering the creation of lists or databases intended to prevent former workers from obtaining subsequent employment.[63] That definition complements the prohibitions on blacklisting and employer interference under sections 195(1) and 196A, and the remedy under section 196B, discussed above.[64]

Sri Lankan Trade Union Framework

Sri Lanka's TU framework is principally governed by the Constitution of 1978, the Trade Unions Ordinance No 14 of 1935 and the Industrial Disputes Act No 43 of 1950, as amended. Sri Lanka ratified ILO Convention No 87 on 15 September 1995 and Convention No 98 on 13 December 1972.[65] Articles 14(1)(c)

59. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), art 2; International Labour Office, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (5th revised edn, ILO 2006).

60. A.K.M. Nasim, 'A Game Changer? Evaluating Bangladesh's Labour Reform' [2026] Asian Labour Review <https://labourreview.org/a-game-changer/> accessed 12 August 2026.

61. UNI Global Union, 'New Labour Law in Bangladesh a Game Changer for Worker Rights' (*UNI Global Union*, 15 April 2026) <https://uniglobalunion.org/news/new-labour-law-in-bangladesh-a-game-changer-for-worker-rights/> accessed 12 August 2026.

62. Bangladesh Labour Act 2006, ss 195(1), 196A(1) and 196B, as amended by the Bangladesh Labour (Amendment) Act 2026, ss 44–46.

63. Bangladesh Labour (Amendment) Act 2026, s 4(□).

64. Bangladesh Labour (Amendment) Act 2026, s 46.

65. International Labour Organization, 'Ratifications for Sri Lanka'.

and 14(1)(d) of the Constitution respectively guarantee freedom of association and the freedom to form and join a TU, subject to the restrictions permitted under Article 15.[66]

Under section 9(1) of the TUs Ordinance, an application for registration must be signed by at least seven members, while section 10 provides for registration where the applicable statutory requirements have been satisfied.[67] The Industrial Disputes (Amendment) Act No 56 of 1999 introduced section 32A, prohibiting specified unfair labour practices by employers. In particular, paragraphs (a)-(c) prohibit conditions of employment restricting TU membership, dismissal solely on account of TU membership or activities, and inducements intended to discourage union participation. Paragraphs (d) and (e) prohibit preventing workers from forming or supporting TUs and interfering with union activities. Paragraph (f) further protects workers and TU office-bearers against dismissal or disciplinary action for specified statements made in good faith or in connection with industrial disputes.[68]

These protections must also be considered in light of Sri Lankan judicial decisions. In *Lake House Employees Union and Others v Associated Newspapers of Ceylon Ltd and Others*, the Supreme Court considered allegations concerning restrictions on TU communications and their relationship with constitutional freedoms. However, the application was dismissed as time-barred, without a substantive determination of the alleged violations.[69] The decision therefore illustrates the importance of procedural requirements in the enforcement of TU-related fundamental rights.

More directly, in *Free Trade Zones & General Services Employees Union and Others v Commissioner General of Labour and Others*, the Court of Appeal dismissed a challenge to the Commissioner of Labour's circular prescribing the procedure for conducting a poll under section 32A(g), holding that the circular was not ultra vires the Commissioner's power to conduct the poll. The decision confirms that the statutory threshold is administered through a formal representativity poll, but it does not address the compatibility of the threshold itself with Article 4 of Convention No 98.[70]

Section 32A(g) of the Industrial Disputes Act further prohibits employers from refusing to bargain with a TU representing at least 40% of the workers on whose behalf it seeks to negotiate. Where membership is disputed, the Commissioner of Labour or an authorised officer may conduct a workplace poll to determine whether the threshold is satisfied.[71] Although the provision establishes a statutory obligation to bargain with sufficiently representative unions, the ILO Committee of Experts on the Application of Conventions and

66. Constitution of the Democratic Socialist Republic of Sri Lanka (1978), arts 14(1)(c)–(d), 15.

67. Trade Unions Ordinance No 14 of 1935, ss 9(1), 10.

68. Industrial Disputes Act No 43 of 1950, s 32A(a)–(f).

69. Lake House Employees Union and Others v Associated Newspapers of Ceylon Ltd and Others SC (FR) Application No 637/2009 (Supreme Court of Sri Lanka, 17 December 2014).

70. Free Trade Zones & General Services Employees Union and Others v Commissioner General of Labour and Others CA (Writ) Application No 327/2013 (Court of Appeal, 20 May 2020).

71. Industrial Disputes Act No 43 of 1950, s 32A(g); Right to Organise and Collective Bargaining Convention, 1949 (No 98), art 4.

Recommendations has repeatedly expressed concern that the threshold may obstruct the development of free and voluntary collective bargaining under Article 4 of Convention No 98.[72]

In its observation adopted in 2025 and published in 2026, the Committee reiterated its request for the Government to review section 32A(g) and consider arrangements allowing existing unions, separately or jointly, to negotiate at least on behalf of their members where no organisation satisfies the prescribed threshold.[73] The Committee has also previously raised concerns regarding the effectiveness and timeliness of procedures addressing anti-union discrimination.[74] These observations demonstrate that the existence of statutory protections does not necessarily establish their effective implementation or full conformity with Convention No 98.

Comparative Analysis

The legal frameworks governing TU rights in Bangladesh and Sri Lanka demonstrate both similarities and differences in their approaches to freedom of association and collective bargaining. Although both countries have ratified ILO Conventions Nos. 87 and 98 and incorporated corresponding protections into domestic legislation, the extent to which workers can exercise these rights is influenced by different statutory requirements. The following comparison examines six dimensions to assess these differences against international labour standards.

Constitutional and Statutory Recognition

Both jurisdictions recognise freedom of association as a constitutionally protected right. Article 14(1)(d) of the Sri Lankan Constitution expressly guarantees the freedom to form and join a TU[75], whereas Article 38 of the Bangladesh Constitution recognises the broader freedom to form associations or unions, subject to prescribed constitutional restrictions.[76] Nevertheless, section 176 of the BLA 2006 expressly recognises the right of workers to establish and join TUs of their own choosing.[77] Therefore, although Sri Lanka provides more explicit constitutional recognition of TU rights, Bangladesh also establishes statutory protection for their exercise. The distinction between the two frameworks consequently lies not in the absence of legal recognition but in the scope of protection and the conditions imposed upon workers seeking to exercise these rights.

Eligibility to Establish and Join TUs

In Bangladesh, the 2026 amendment expanded the definition of a 'worker' for the purposes of Chapter XIII of the Labour Act to include self-employed workers, persons engaged on a daily or temporary basis and individuals working through digital labour platforms. However, section 175(1) continues to exclude certain

72. International Labour Organization, 'Trade Union Representativity for Collective Bargaining in Sri Lanka' (29 October 2019).

73. ILO Committee of Experts on the Application of Conventions and Recommendations, 'Observation concerning Sri Lanka, Right to Organise and Collective Bargaining Convention, 1949 (No 98)' (adopted 2025, published 114th International Labour Conference session, 2026).

74. ILO Committee of Experts on the Application of Conventions and Recommendations, 'Observation concerning Sri Lanka, Convention No 98' (adopted 2021, published 110th International Labour Conference session, 2022).

75. Constitution of the Democratic Socialist Republic of Sri Lanka (1978).

76. Constitution of the People's Republic of Bangladesh (1972).

77. Bangladesh Labour Act 2006 (Act No 42 of 2006), s 176(a)–(d), as amended.

categories, including security personnel, firefighting staff and confidential assistants. Section 175(2) separately permits persons performing administrative, supervisory or managerial functions to establish associations for the protection of their interests.[78] On the other hand, Sri Lanka's Constitution recognises the right of any citizen to form and join TUs. The TU Ordinance establishes the statutory framework governing their registration and operation. However, particular restrictions apply to public officers' TUs under Part IV of the Ordinance[79] while informal workers are automatically excluded due to lack of explicit recognition. Thus, Bangladesh's recent reforms demonstrate an attempt to extend associational rights to persons engaged in non-traditional forms of employment. Nevertheless, the separate treatment of particular occupational categories raises questions concerning the universality of freedom of association under Article 2 of Convention No 87. Similarly, the protections recognised in Sri Lanka must be practically considered alongside the statutory restrictions applicable to particular categories of workers.

TU Registration and Membership Requirements

Bangladesh and Sri Lanka differ considerably in their numerical requirements for TU registration. Under section 9(1) of the Sri Lankan Trade Unions Ordinance, an application for registration must be signed by at least seven members.[80] In contrast, section 179(2) of the BLA, as amended in 2026, prescribes a tiered membership requirement ranging from 20 to 400 members, depending on the total workforce of the establishment.[81] On the other hand, Sri Lanka adopts a comparatively lower numerical requirement for TU registration, whereas Bangladesh maintains a more demanding system linked to establishment size. This distinction illustrates the different legislative approaches adopted by the two jurisdictions in regulating access to TU organisation. However, the relative accessibility of registration does not necessarily determine the extent to which registered TUs can effectively exercise their collective bargaining rights.

Organisational Autonomy and Group Establishments

Organisational autonomy constitutes an essential element of freedom of association under Article 3 of Convention No 87. In Bangladesh, section 183 of BLA governs the formation of TUs across groups of establishments. Under subsections (1) and (3), establishments falling within the prescribed framework may be treated as a group for TU purposes, while separate unions cannot be formed within constituent establishments covered by the group arrangement. The 2026 amendments replaced the previous percentage-based membership requirement under section 183(6) with a fixed minimum of 20 members and repealed section 184.[82]

While the revised minimum requirement may facilitate registration across groups of establishments, the restriction on forming separate unions within constituent establishments potentially limits workers' freedom to establish organisations corresponding to their particular workplace interests. Therefore, the group-establishment framework presents both facilitating and restrictive features, requiring assessment against the organisational freedom protected under Convention No 87.

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78. Bangladesh Labour (Amendment) Act 2026.

79. Trade Unions Ordinance, ss 20–21.

80. Trade Unions Ordinance, ss 9–10.

81. Bangladesh Labour (Amendment) Act 2026, s 35(b).

82. Bangladesh Labour (Amendment) Act 2026, ss 38–39.

In Sri Lanka, the TUs Ordinance provides a general framework for the establishment and registration of TUs without imposing an equivalent statutory group-establishment structure.[83] Accordingly, the Bangladeshi framework involves more specific legislative regulation of the organisational structures through which workers may exercise their associational rights.

Collective Bargaining Recognition

A further distinction concerns the regulation of collective bargaining. In Sri Lanka, section 32A(g) of the Industrial Disputes Act prohibits an employer from refusing to bargain with a TU representing at least 40% of the workers on whose behalf it seeks to negotiate.[84] Although the provision creates a statutory obligation to bargain where the prescribed representativity requirement is satisfied, the ILO Committee of Experts on the Application of Conventions and Recommendations has repeatedly expressed concern that the threshold is excessively high and may hinder the promotion of free and voluntary collective bargaining.[85]

Bangladesh, by contrast, regulates collective bargaining through the collective bargaining agent framework established under the BLA. The 2026 amendments further introduced section 203A, permitting eligible federations and confederations representing workers at sectoral, national or other levels to request collective bargaining with employers' organisations.[86] This development broadens the potential institutional scope of bargaining beyond individual establishments.

Accordingly, while Sri Lanka's principal concern relates to the level of representativity required to trigger the statutory obligation to bargain, Bangladesh's amended framework offers additional bargaining mechanisms while retaining requirements governing union registration and representation. Both approaches must be assessed against Article 4 of Convention No 98, which requires measures appropriate to national conditions to encourage and promote voluntary collective bargaining.

Protection Against Anti-Union Discrimination and Employer Interference

Both jurisdictions have introduced legislative protections against anti-union discrimination and employer interference. In Sri Lanka, section 32A of the Industrial Disputes Act prohibits specified unfair labour practices, including dismissals connected with TU membership, interference with TU activities and inducements intended to discourage TU participation.[87] Similarly, the BLA prohibits unfair labour practices and anti-union discrimination. The 2026 amendment strengthened the relevant framework through amendments to sections 195 and 196A and the introduction of section 196B. The latter empowers the Director General to direct an employer to discontinue specified unfair labour practices and, where workers have suffered harm, to order restoration of the loss and financial compensation.[88] Thus, these legislative protections reflect the objectives of Articles 1 and 2 of Convention No 98. Nevertheless, their effectiveness depends upon the

83. Trade Unions Ordinance, ss 2, 8–10.

84. Industrial Disputes Act No 43 of 1950, s 32A(g).

85. International Labour Organization, 'Trade Union Representativity for Collective Bargaining in Sri Lanka' (29 October 2019).

86. Bangladesh Labour (Amendment) Act 2026, s 49.

87. Industrial Disputes Act No 43 of 1950 (Sri Lanka), s 32A(a)–(f); Right to Organise and Collective Bargaining Convention, 1949 (No 98), arts 1–2.

88. Bangladesh Labour (Amendment) Act 2026, ss 44–46; Right to Organise and Collective Bargaining Convention, 1949 (No 98), arts 1–2.

accessibility of enforcement mechanisms and the availability of appropriate remedies. Consequently, the existence of statutory prohibitions alone is insufficient to demonstrate the effective protection of TU rights in either jurisdiction.

Comparative Findings

The comparison reveals that Bangladesh and Sri Lanka recognise freedom of association and collective bargaining but impose different legal conditions upon their exercise. Sri Lanka provides a relatively accessible numerical registration requirement and express constitutional recognition of the freedom to form and join TUs. Nevertheless, its 40% collective bargaining recognition threshold remains a significant concern under Convention No 98. Bangladesh's 2026 reforms have broadened associational coverage, reduced certain registration barriers and introduced additional mechanisms for collective bargaining. However, its tiered membership requirements and restrictions affecting constituent establishments within groups continue to raise concerns under Convention No 87.

Compliance with ILO Standards

The incorporation of freedom of association and collective bargaining into domestic legislation does not necessarily establish full compliance with ILO Conventions Nos. 87 and 98. Article 2 of Convention No 87 guarantees workers the right to establish and join organisations of their own choosing without previous authorisation, while Article 4 of Convention No 98 requires measures appropriate to national conditions to encourage and promote voluntary collective bargaining. In light of this, the compatibility of domestic laws with the Conventions must be assessed not merely through formal recognition of rights but also by taking into consideration the restrictions that are imposed.[89]

In the Bangladesh context, the 2026 amendment introduced a tiered membership requirement for TU registration under section 179(2) of the BLA 2006. While this revised framework represents a departure from the previous percentage-based requirements, certain thresholds may continue to create practical difficulties. For instance, the requirement of 20 members in establishments employing 20 workers effectively requires the participation of the entire workforce. The ILO Committee on Freedom of Association has recognised that minimum membership requirements are not inherently incompatible with Convention No 87, provided they are reasonable and do not hinder the establishment of workers' organisations.[90] Even though the Committee has previously regarded a minimum requirement of 20 members as not excessive in itself, the practical implications of such a requirement must be considered in the context of the size and structure of the establishments concerned.[91] The 20-worker case is therefore difficult to reconcile with the requirement that thresholds be reasonable: it demands unanimity in the smallest establishments and becomes progressively less demanding as the workforce grows, so that the rule is most restrictive where unions are weakest. That structure raises a serious question of conformity with Article 2 of Convention No 87, notwithstanding the reduction in the headline thresholds.

On the other hand, section 32A(g) of the Industrial Disputes Act of Sri Lanka establishes a 40% membership threshold for requiring an employer to engage in collective bargaining with a TU. The ILO

89. Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87), art 2; Right to Organise and Collective Bargaining Convention, 1949 (No 98), art 4.

90. International Labour Office, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (5th revised edn, ILO 2006) para 283–289.

91. International Labour Office (n 90) paras 287, 292.

Committee of Experts on the Application of Conventions and Recommendations has repeatedly expressed concerns on that the threshold is excessively high and may hinder the promotion and development of free and voluntary collective bargaining under Article 4 of Convention No 98.[92] The Committee has also requested the Government to consider enabling existing unions, separately or jointly, to negotiate at least on behalf of their members where no organisation satisfies the prescribed threshold.[93]

Therefore, while both jurisdictions have recognised freedom of association and collective bargaining through their domestic legal frameworks, the continued operation of numerical thresholds raises concerns regarding their full conformity with international labour standards. Although these restrictions do not necessarily establish non-compliance in every respect, they demonstrate that ratification and legislative recognition must be distinguished from substantive compliance, which requires consideration of the accessibility and effectiveness of these rights in practice.

CONCLUSION

In conclusion, both Bangladesh and Sri Lanka formally recognise freedom of association and collective bargaining, but the legal barriers affecting these rights differ. In Sri Lanka, the comparatively accessible TU registration framework coexists with a 40% threshold for compulsory collective bargaining recognition, which has attracted concern from the ILO supervisory bodies. In Bangladesh, the 2026 reforms broaden certain associational and bargaining opportunities, while tiered registration requirements and group-establishment restrictions continue to raise questions about organisational accessibility. These findings demonstrate that ratification and statutory recognition alone do not establish full conformity with ILO Conventions Nos. 87 and 98. Further review of representativity thresholds, organisational restrictions and the practical availability of remedies is therefore necessary in both jurisdictions.

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93. ILO Committee of Experts on the Application of Conventions and Recommendations, *Observation concerning Sri Lanka, Convention No 98* (2026); International Labour Office, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (5th revised edn, ILO 2006) paras 974–978.

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