

# Collective voice without collective bargaining: Women workers negotiating labour rights in Sri Lanka's apparel industry

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## **Declaration**

I, Achalie Monaliza Kumarage, declare that except where acknowledged in the text, this dissertation is my original work, undertaken under the supervision of Professor Miranda Forsyth. It has not been submitted for a higher degree at any other university or institution.

Achalie Monaliza Kumarage

02.10.2024

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## Abstract

This dissertation responds to the question of how women workers use their voice to negotiate their labour rights in Sri Lanka's apparel industry. The conventional tools of labour law, such as unionising and collective bargaining, have been considered key mechanisms for worker rights negotiations, but appear increasingly weakened in Sri Lanka's apparel industry today. These conventional mechanisms pre-suppose institutional support for their effective implementation and often have to filter through political, social and industrial orders which, sometimes, make them ineffective at the ground level. This was most felt during the COVID-19 pandemic. Such erosions of worker rights leave women workers particularly vulnerable in the labour-intensive apparel industry, where they are both a majority of the workforce and arguably seen as docile contributors to the manufacturing process.

Adopting a socio-legal approach, this research is executed as a qualitative study examining three multi-level case studies from Sri Lanka's apparel industry in the pandemic and post-pandemic times. I develop the case studies through semi-structured interviews with women workers, worker representative organisations and a range of non-state and state actors at local, national, regional and international levels. Significantly, interviews allow women workers to speak directly about their experiences, consistent with feminist methods.

The dissertation argues that women workers in Sri Lanka's apparel industry action non-conventional forms of worker voice in negotiating their worker rights. I use networked regulation and governance as the primary analytical lens, in tandem with perspectives from Transnational Feminist Movements. Using these frames, I examine the circumstances in which worker networks, activated by grassroots-level women's labour organisations, can strengthen workers' bargaining power, empower workers to exert influence as 'regulators' (i.e. as contributors to net regulatory processes and outcomes) and act as a check on employer accountability in ensuring worker rights across the apparel supply chain. I find potential and significant constraining forces that affect the exercise of agency and self-empowerment. The dissertation demonstrates dynamic regulatory webs – worker networks that transcend conventional labour law framings of worker voice – and how workers legitimise such interventions in actioning 'collective voice' where collective bargaining is absent or weak. I conceptualise Sri Lanka's apparel industry as a semi-autonomous social and governance field. The industry has its own multiple sources and vectors of rule-making power, primarily exercised by employers and state regulators within the industry spaces, but also influenced by the rules and norms outside the conventional governance field that are often relied on by workers and their representatives to legitimise labour claims. In the face of political, social, industrial and gendered challenges, women workers push back and influence regulatory decision-making through these transnational networks and advocacy.

The dissertation makes an original contribution to the study of worker voice in apparel supply chains and advances scholarly understanding of networked regulation, by suggesting a framework to understand regulation by workers through non-conventional voice mechanisms. It also sheds light on women's labour activism in the industry and how they use different legal and normative frameworks to gain the maximum leverage to influence regulatory decision-making in complex apparel supply chains.

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## Chapter 1: Introduction

### 1.1 Understanding the problem

Nimmi starts her work shift at 7.30 in the morning. She is a shop floor worker at a garment factory in the south of Sri Lanka. Her shift usually goes until 5.45 in the evening. Some days, Nimmi is just about to clock off when the factory suddenly asks her to stay on and do overtime till 9.30 pm. 'How can we so suddenly stay on till 9.30 pm when we have to do so much at home? But workers agree because they are helpless,'<sup>1</sup> she said.

Leela's factory is situated in a remote town in the west close to Colombo, Sri Lanka's commercial capital. In October 2020 there was a massive COVID outbreak within her factory. The factory did not initially respond to their reports of illness, forcing the workers to continue to work after short breaks in the sick room and return to their hometowns, not knowing that they carried the virus:

Our factory is in a small town and not inside a zone [an Export Processing Zone]. Our managers said that the factory runs, with little profit, to give opportunities to workers and the villagers. They said if we revolt for petty problems these factories will close down and that we will lose everything.<sup>2</sup>

Sita works in a garment factory opened in 2012 in Kilinochchi, a former civil war-affected town in the north of Sri Lanka. When asked about the opportunity for her to bargain with the management she said,

Women workers expressing their voice together is a good thing. But I saw it only in the movies, not in real life. There are lots of barriers for expressing voice such as cultures, family and backward perceptions/ beliefs on a woman's role.<sup>3</sup>

All three experiences quoted above spring from conditions that curtail worker voice and power and indicate control by the employers and others. Although they point to repression of workers' ability to negotiate their conditions it does not mean that women

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<sup>1</sup> Interview with Nimmi, shop-floor worker in a garment factory in the Koggala Export Processing Zone, Sri Lanka, held 20.03.2022.

<sup>2</sup> Interview with Leela, shop-floor worker in a garment factory in a remote town in the Western Province, Sri Lanka, held 05.09.2021.

<sup>3</sup> Interview with Sita, shop-floor worker in a garment factory in Kilinochchi in the north of Sri Lanka, held 19.09.2021.

workers are silent and simply docile. Women workers recognised the importance of voice and the power attributed to the expression of voice during field interviews for this study.

Mala said, ‘Haven’t you heard? If you do not speak up even the dogs will drag you away.’<sup>4</sup> Mala is a garment factory worker and a newly appointed co-president of a national-level trade union — the Free Trade Zone and General Services Employees Union (FTZ&GSEU). She believes that it is important for her and her fellow women workers to have a say in work-related matters that affect them. Other workers also echoed that when workers silently tolerate everything the factory management pulls the strings to dominate workers.<sup>5</sup> However, speaking up comes with costs. Mala recently lost her job due to factory closure as a result of US trade sanctions on the company which owned her factory<sup>6</sup> and she is unable to secure another factory job because she is marked as a trade union woman and blacklisted among employers.<sup>7</sup>

Worker voice is typically associated with official avenues such as trade unions that exercise collective bargaining power and the ability to enter into collective agreements with employers.<sup>8</sup> As such, collective bargaining is recognised as a powerful tool at the hands of workers to negotiate fair and safe working conditions.<sup>9</sup> However, less than 10 percent of workers are covered by a trade union in all sectors in Sri Lanka,<sup>10</sup> and in the apparel industry this percentage is even less. Women workers who make up 80 percent of the workforce of Sri Lanka’s apparel industry<sup>11</sup> are considered a ‘source of

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<sup>4</sup> Interview with Mala, shop-floor worker in a garment factory in Ja-Ela in the Western Province, Sri Lanka, held 15.04.2022.

<sup>5</sup> For instance, during another interview, Rita shared ‘If you speak fearlessly no one will challenge you. If you silently tolerate everything, the factory (management) will pull the strings (dominate you)!’: Interview with Rita, shop-floor worker in a garment factory in the Katunayake Export Processing Zone, held 27.03.2022.

<sup>6</sup> A discussion on Chinese-owned factory closure could be found in Shyamain Wickramasingha, ‘International sanctions and increased vulnerabilities of supply chain workers: Polytex Garments Limited factory closure in Sri Lanka’, *Business in Development, Business and Development Studies, Copenhagen Business School* (Blog post, 30 June 2023), <<https://cbds.cbs.dk/international-sanctions-and-increased-vulnerabilities-of-supply-chain-workers-polytex-garments-limited-factory-closure-in-sri-lanka/>>.

<sup>7</sup> Interview with Mala, shop-floor worker in a garment factory in Ja-Ela in the Western Province, Sri Lanka, held 15.04.2022.

<sup>8</sup> Alan Bogg and Tonia Novitz, ‘Investigating Voice at Work’ (2012) 33(3) *Comparative Labor Law & Policy Journal* 323, 324.

<sup>9</sup> Alan Bogg and Tonia Novitz, ‘The Purpose and Techniques of Voice’ in Alan Bogg and Tonia Novitz (eds), *Voices at work: continuity and change in the common law world* (Oxford University Press, 2014) 3-7.

<sup>10</sup> ‘Workers and Employers Organisations in Sri Lanka and the Maldives’ (Web page, 2014) <<https://www.ilo.org/colombo/areasofwork/workers-and-employers-organizations/lang--en/index.htm>>; Ranaraja explains that the ‘relative size and strength of individual trade unions have decreased in a decade between 2000–2016: Shyamali Ranaraja, *Opportunities and Challenges in Formation and Functioning of Trade Unions in Sri Lanka* (Report, International Labour Organisation 2020) 8.

<sup>11</sup> ‘Closing gender gaps: GEAR drives progress for women in Sri Lanka’s apparel industry’ *Better Work* (Web page, 18 August 2023) <<https://betterwork.org/closing-gender-gaps-gear-drives-progress-for-women-in-sri-lankas-apparel-industry/>>; Export Development Board Sri Lanka, *Industry Capability Report: Sri Lankan Apparel Sector* (Report, January 2024) 3.

industrial peace'.<sup>12</sup> This suggests that they are disinterested in trade union action that disrupts production. Women's representation in the existing trade unions and national policy forums where labour rights are discussed and negotiated is lacking,<sup>13</sup> which I further discuss in section 1.3 below.

Conventional accounts of collective labour bargaining pre-suppose institutional support for mechanisms such as unions, which are increasingly absent in settings such as Sri Lanka's garment industry. The industry is located in an economy with an authoritarian political overlay, and buffered from the national legal system by special regulations applicable to export industries, which I expand on in section 1.3 and in Chapter 4. International labour standards are also filtered from these national and local regulatory systems. As I discuss in Chapter 4, the international labour standards and industry standards on worker voice in apparel supply chains theoretically apply to Sri Lanka, but often do not extend to women workers in practice.

In these circumstances, this dissertation explores how women workers in Sri Lanka's apparel industry negotiate their labour rights. What is the 'speak[ing] up' that workers like Mala refer to? How is that 'voice' actioned in the repressive conditions that Nimmi, Leela and Sita explain above? Instead of being limited to the official laws on labour negotiations, collective bargaining and trade unionism, the dissertation is guided by a socio-legal approach in understanding what voice means for women workers, how it is actioned and its effects more broadly set in the law-practice gap. By exploring the types of worker voice not captured by the enabling laws and policies, the dissertation constructs knowledge on how women workers organise at the grassroots level of globalised apparel supply chains and the ability of their 'voice' to shape events and the decision-making in the industry.

The dissertation draws on empirical data, organised under three case studies outlined in section 1.5 and explained in Chapter 3, using regulatory theory to consider these different forms of worker voice. Insights from Transnational Feminist Movements

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<sup>12</sup> Prema-Chandra Athukorala, 'Export Expansion in a Changing Global Order: Challenging Times for Post Conflict Sri Lanka' in Dushni Weerakoon and Sisira Jayasuriya (eds), *Managing Domestic and International Challenges and Opportunities in the Post Conflict Development, Lessons from Sri Lanka* (Springer, 2019) 163.

<sup>13</sup> 'Exclusion of women from National Labour Advisory Council comes under fire', *Daily Financial Times* (Sri Lanka, 29 May 2023) <<https://www.ft.lk/front-page/Exclusion-of-women-from-National-Labour-Advisory-Council-comes-under-fire/44-748864>>; The first women's trade union that was to be registered could not be registered, despite public announcement. However, they still operate as a civil society organisation: Feizal, 'Sri Lanka's first women's trade union close to registration' *Business Times* (Sri Lanka, 2 August 2015), <<https://www.sundaytimes.lk/150802/business-times/sri-lankas-first-womens-trade-union-close-to-registration-159044.html>>.

theory and theories around semi-autonomous social fields augment the regulatory analysis, constructing details on women workers' voice and how it plays out in creating the intended influence by the workers. The dissertation finally draws conclusions and limitations, in Chapters 8, on the ability of ordinary shop floor workers like Mala, Nimmi, Leela and Sita and their worker representatives to influence labour regulation and governance in Sri Lanka, functions that are typically performed by powerful and rich actors such as states and multinational corporations.

## 1.2 Definitions

### 1.2.1 Worker voice and collective voice of women workers

This dissertation centres around 'collective voice' of women workers. Collective voice, that I define and discuss below, is constructed on worker voice.

Worker voice, for this research, means the purposeful expression of voice by apparel industry workers and their representatives to negotiate their rights when violated or at stake. Worker voice has elements of representation, organisation and negotiation.<sup>14</sup> It is conventionally associated with formal labour law mechanisms such as trade unionism, collective bargaining, strikes and other industrial action primarily aiming to bargain with employers or the state.<sup>15</sup> Worker voice in industrial relations is recognised as informal and discretionary communication by an employee of a concern, suggestion, information or an idea about problems or opinions about work-related issues to managers or others who are able to take appropriate action.<sup>16</sup> The conceptualisation of worker voice in this dissertation goes beyond this conventional understanding in order to reflect the reality of women workers in Sri Lanka.

In this dissertation, I examine worker voice as a phenomenon capable of directly, or through others, influencing local, national and international actors. These actors range from employers and the state to actors at the transnational level such as global fashion brands, international investors and international organisations that finance business, like the International Finance Corporation (IFC), to demand action for issues impacting workers. This understanding goes beyond the conventional expression 'worker voice'

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<sup>14</sup> Bogg and Novitz (n 9) 5.

<sup>15</sup> In their research Bogg and Novitz focus on legal mechanisms for manifesting worker voice: Bogg and Novitz (n 8) 324.

<sup>16</sup> Elizabeth W. Morrison, 'Employee Voice Behavior: Integration and Directions for Future Research' (2011) 5(1) *The Academy of Management Annals* 373, 373-412; S. Tangirala, & R. Ramanujam, 'Employee silence on critical work issues: The cross-level effects of procedural justice climate' (2008) 61(1) *Personnel Psychology* 37, 37-68.

which focuses on the formal labour bargaining mechanisms like trade unions and collective bargaining negotiations and agreements.

Empirical chapters in this dissertation illustrate a collective form of worker voice in how women workers action voice in pathways outside the formal mechanisms for worker voice and representation. I call this non-conventional form of worker voice, the 'collective voice' of women workers. The shift from worker voice in collective bargaining to collective voice occurs partly because of the constrained access to autonomous channels of worker voice (e.g. trade unions and collective bargaining) for women workers in Sri Lanka's apparel industry. Collective voice can be used as a frame to explain how worker voice can evolve into transnational networks of advocacy through which women workers amplify issues and make regulatory influence.

I understand collective voice as having three key attributes: collective, representative and dynamic, as illustrated in Chapters 5, 6 and 7. First, *collective* means that voice is actioned by a group of workers which entails a power that unites them in a shared identity; therefore, in contrast to the isolated individual reporting mechanisms, this form connotes solidarity and support for the workers who voice labour rights violations. Second, *representative* means that it is more advantageous for marginalised groups such as women workers and informal workers who are often excluded by formal labour bargaining mechanisms, because collective voice feeds into broader civic and social demands without being limited to a single workplace or an industry. And third, *dynamic* means that collective voice has the ability to invoke support from allies across local, national and international levels in how it is legitimised, to exert regulatory power beyond a single workplace. Workers leverage transnational norms, such as human rights, to legitimise their claims expressed through non-conventional pathways and use a transnationally connected network to demand justice for rights violations and workplace issues.

The term 'collective voice' has been used previously in industrial relations work. Samantha Gunawardana, examining worker voice in Sri Lanka's Export Processing Zones (EPZs),<sup>17</sup> uses 'collective voice' to differentiate a group of workers voicing their demands in their daily social interactions as opposed to individuals doing so.<sup>18</sup> She

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<sup>17</sup> EPZs are the demarcated industrial zones of Sri Lanka that I discuss in detail in section 4.2.1 of this dissertation.

<sup>18</sup> See Samantha Gunawardana, 'Reframing Employee Voice: A Case Study in Sri Lanka's Export Processing Zones' (2014) 28(3) *Work Employment and Society* 452.

uses the concept for distinguishing instances of activism by worker groups at the factory level and to emphasise collectivism as a 'strong sense of shared identity among workers, based on friendship and solidarity'.<sup>19</sup> My definition, emerging from the data for this study, includes two additional elements that help me to explore the regulatory potential of worker voice: representativeness and dynamism. The analysis of the collective voice of workers, therefore, points to other possibilities and modes of actioning worker voice, beyond the conventional understanding of worker voice in labour law or industrial relations senses. At the same time, I explore worker voice organising at a broader scale at the national and transnational levels, beyond one factory.

The framing of collective voice is also better representative of what women workers and women activists experience at the ground level. The dissertation recognises the gendered experiences and structural discrimination against women workers as well as women labour advocates who try to infiltrate formal labour leadership and bargaining spaces. The ability of collective voice to feed into broader civic and social objectives outside the workplace is important for these women. Therefore, this framing is more useful for representing how women unite and navigate through additional gendered hurdles to amplify their voice and seek redress. Further, going beyond the friction between women workers and male factory managers, the framing also enables to explore tensions between women labour advocates as well as their male allies, that I closely discuss in sections 4.3, 4.4, 5.2 and 7.3. This analysis allows more accurately to represent the diverse experiences of women in labour advocacy and leadership.

Finally, my understanding of collective voice points to the regulatory influence of workers who aim to create impact or change. Collective voice is driven by the purpose of effecting change and better outcomes for women workers. This research treats collective voice as a form of regulation or regulatory intervention<sup>20</sup> that enables workers to influence regulatory decision-making that affects labour in apparel supply chains. Regulatory influence does not necessarily only mean outcomes in the form of big wins such as new laws, structural changes (e.g. unions in every factory), or victory in a major court case against the employer or international fashion brand. Given the reality in which women workers in Sri Lanka action voice, every small gain towards attaining big outcomes matters. The reality is that there are massive power imbalances

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<sup>19</sup> Gunawardana (n 18) 462.

<sup>20</sup> John Braithwaite and Peter Drahos, *Global Business Regulation* (Cambridge University Press, 2000) 35, 612.

between the workers, especially women, and employers and the state (that I discuss using empirical evidence in Chapter 4), repressive socio-political conditions in locations such as Sri Lanka (outlined in section 1.3), and costly risks (i.e. job loss and jeopardised chances of re-hiring) that workers have to bear as a result of their resistance. Therefore, regulatory influence or contribution can also mean having a labour complaint formally accepted, the support and solidarity of other influential national and international institutions, and the heightened awareness and mobilisation at the grassroots level — all exert pressure on the decision-making of the powerful actors to take worker claims seriously and act upon them. This contributes to shaping the behaviour of regulatory actors and influencing regulation, which I discuss using my data in the case studies.

### 1.2.2 What does it mean to regulate?

‘Regulation’ in this dissertation means intervening and participating to influence and shape the behaviour of actors and organisations, and the flow of events. Acts of regulation are not limited to those of the state. Julia Black defines regulation as ‘the intentional activity of attempting to control, order or influence the behaviour of others’,<sup>21</sup> with the purpose of producing broad and identified outcomes. Concurring with Black’s definition, Braithwaite, Coglianese and Levi-Faur explain regulation as ‘steering the flow of events and behaviour’.<sup>22</sup> Extending on this idea, Koop and Lodge claim that regulation is performed by way of intentional ‘intervention in the behaviour or activities’<sup>23</sup> of individuals or groups to effect change.<sup>24</sup> Braithwaite, Coglianese and Levi-Faur identify the importance of regulation through its impact on people’s lives.<sup>25</sup> They note that ‘bad regulation can do terrible damage’, whereas good regulation can ‘emancipate the lives of ordinary people’.<sup>26</sup> This conceptualisation sets up regulation as an important function that directly affects the lives of people and communities.

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<sup>21</sup> Julia Black, ‘Critical Reflections on Regulation’ [2002] 27 *Australian Journal of Legal Philosophy* 1, 25; The definition is more recently used by Shelly Marshall in her book on labour regulation of informal workers: Shelly Marshall, *Living Wage: Regulatory Solutions to Informal and Precarious Work in Global Supply Chains* (Oxford University Press, 2019) 23.

<sup>22</sup> John Braithwaite, Cary Coglianese and David Levi-Faur, ‘Editors’ Introduction: Can Regulation and Governance make a Difference?’ (2002) 1(1) *Journal of Regulation and Governance* 1, 4.

<sup>23</sup> C. Koop and M. Lodge, ‘What is Regulation? An Interdisciplinary Concept Analysis’ (2027) 11(1) *Regulation and Governance* 95, 97.

<sup>24</sup> Koop and Lodge conclude that the conception of regulation is abstract due to the high variation of ‘manifestations referred to as regulation.’ They explore the concept of regulation in 101 studies from different disciplines and conclude that there is a shared conception of regulation across studies which is ‘intentional intervention of the activities of a target population’: Koop and Lodge (n 23) 104.

<sup>25</sup> Braithwaite, Coglianese and Levi-Faur (n 22) 4.

<sup>26</sup> *Ibid* 4.

Based on the above definitions, I identify regulation as an intentional act that can be direct or indirect, that is orchestrated through like-minded social (or other) groups in a network, which can shape or influence behaviour and can be carried out by a range of different actors including state and non-state. This conceptualisation, therefore, links with non-conventional forms of regulation performed by actors other than the state. I develop the idea that regulation is an act and not just the kind of rules and guidelines that one finds 'in the books.'<sup>27</sup> Therefore, labour regulation for this dissertation is not limited to mere formal law or rule application.<sup>28</sup> Instead, it focuses on how regulation unfolds alongside the formal rule-based order, and /or when the rules and related formal institutions stop working as intended. It follows from this broader conceptualisation of 'regulation' that, for example, when women workers are influencing the net regulatory process or outcome through their voice and agency, they too are 'regulators' within the plural regulatory scene.

Governance is closely interrelated with regulation. I understand regulation as a subset of governance along with two additional elements – providing and distributing – with regulation forming the large sub-set out of the three.<sup>29</sup> This accords with Braithwaite, Coglianesi and Levi-Faur's definition.<sup>30</sup> In recent labour studies literature, scholars identify how the 'government' has shifted to 'governance', and that it means 'something complementary rather than substitutive of the nation state'.<sup>31</sup> Regulation and, as an extension, governance can occur at the local, national, regional, international and transnational levels.<sup>32</sup> By discussing regulation, I am also drawing in governance as a natural extension of the act of regulation.

This broad conceptualisation of regulation enables me to examine regulation beyond the state. Even private and non-state actors can perform regulation in anticipation of changed outcomes for them. Lange and Haines have previously explored the regulatory capacity of the social sphere (and non-state actors) as it links with states

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<sup>27</sup> Bronwen Morgan and Karen Yeung discuss the legal perspective on regulation by viewing the law as an instrument to achieve collective goals for effective problem-solving. This approach goes beyond the black letter law that centres around the state-made rules, hierarchy and rules that attempt to shape behaviour by command: See Bronwen Morgan and Karen Yeung, *An Introduction to Law and Regulation Text and Materials* (Cambridge University Press, 2012) 4-5.

<sup>28</sup> For instance, Bob Hepple discusses labour regulation through domestic and international standard-setting by way of law and rule enforcement, adopting a top-down approach in his book which is in contrast to the bottom-up law in context that I adopt in this study: Cf Bob Hepple, *Labour Laws and Global Trade* (Bloomsbury Publishing, 2005) 1-24.

<sup>29</sup> Braithwaite, Coglianesi and Levi-Faur (n 22) 3.

<sup>30</sup> *Ibid* 3.

<sup>31</sup> Guglielmo Meardi and Paul Marginson, 'Global labour governance: potential and limits of an emerging perspective' (2014) 28(4) *Work, Employment and Society* 651, 654.

<sup>32</sup> Marshall (n 21) 23.

and markets.<sup>33</sup> With an emphasis on 'harnessing the regulatory capacity of the social sphere,'<sup>34</sup> they recognise the importance of civil society in the regulation of social and economic risks posed by and for business activity. However, their conceptualisation focuses on civil society and consumer movements. In this dissertation, I expand the conceptualisation to examine the actions of workers, the labour movement and actors who prioritise labour rights and work with labour. Based on case studies in Chapters 5, 6 and 7, I illustrate different instances of regulation beyond the state with regard to the apparel industry labour, focusing on: who does it, what forms it takes and how it is done.

Further, regulatory analysis has practical implications. Black explains how it can enable 'policymakers to consider a wide range of different configurations of the state, market, community, associations and networks to deliver public policy goals'.<sup>35</sup> Therefore a regulatory analysis can have broad and practical implications for how labour organises and influences the decision making by the states and employers.

### 1.3 Choice of Sri Lanka as the research location

Sri Lanka represents an important location for this research. The apparel industry has economic significance as the largest export income generator, nationally. The industry accounts for 48 percent of the country's total exports.<sup>36</sup> It employs 15 percent of Sri Lanka's total workforce.<sup>37</sup> The apparel industry also has an important impact on the female workforce of Sri Lanka. It employs one in seven women in the country, comprising Sri Lanka's largest female workforce.<sup>38</sup> This is when the overall economic participation of women has remained 35 percent or lower in the past decade.<sup>39</sup>

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<sup>33</sup> Bettina Lange and Fiona Haines, 'Regulatory Transformations: An Introduction' in Bettina Lange, Fiona Haines and Dania Thomas (eds), *Regulatory Transformations: Rethinking Economy-Society Interactions* (Hart Publishing, 2015) 1-28.

<sup>34</sup> *Ibid* 2.

<sup>35</sup> Black (n 21) 10.

<sup>36</sup> Apparel industry's total contribution to Sri Lanka's export income is computed to be 45 percent since 2021 surpassing the contribution of the tourism industry: Export Development Board of Sri Lanka, 'Sri Lanka's Merchandise Exports – Apparel Export Performance', *Sri Lanka Export Development Board* (Web page, November 2023) <<https://www.srilankabusiness.com/apparel/about/export-performance.html>>.

<sup>37</sup> Industry Capability Report: Sri Lankan Apparel Sector 2024 (n 11) 3; Sri Lanka Apparel, 'An Industry Misunderstood – Sri Lankan Apparel's tale of resilience & global leadership' *Joint Apparel Association Forum Sri Lanka* (JAAFSL) (Web page, 13 November 2020) <<https://www.srilankaapparel.com/an-industry-misunderstood-sri-lankan-apparels-tale-of-resilience-global-leadership/>>.

<sup>38</sup> James Jackson, Jason Judd and Christian Viegelaahn, *The supply chain ripple effect: How Covid-19 is affecting garment workers and factories in Asia and the Pacific* (ILO Research Brief, October 2020) 2.

<sup>39</sup> Central Bank of Sri Lanka, *Annual Report 2022* (Central Bank Annual Report, 2022) 96.

As mentioned in section 1.1, although women form the majority in this workforce, women's representation in the existing trade unions and national policy forums where labour rights are discussed and negotiated is lacking. They are considered important in maintaining 'industrial peace'.<sup>40</sup> While there are no official statistics available, reports claim, 'based on anecdotal information', that only about '35 percent of Trade Union members are women'.<sup>41</sup> Currently women are underrepresented in trade union leadership positions.<sup>42</sup> Further, there are no women representatives in the peak national tripartite body, the National Labour Advisory Council (NLAC), consisting of employers' organisations, labour unions and the state.<sup>43</sup> This body is set up for consultation and negotiation of the national laws and policies, and international labour obligations.<sup>44</sup> I draw on these standards, also using empirical data, in Chapters 4 and 5. While section 4.3 discusses why women workers are underrepresented in Sri Lanka's union movement, including gendered stereotypes, power dynamics in social relations, fear and intimidation, the case study chapters (5, 6 and 7) further draw out hidden and non-obvious barriers for women workers.

Sri Lanka is located in a strategic maritime centre in the Indian Ocean.<sup>45</sup> Figure 1.1 indicates Sri Lanka's geographical location in South Asia (right image) and the nine administrative provinces in the country (left image). The apparel industry is spread across the country including the former civil war-affected areas in the north and the east. Demographically, the Sinhalese community<sup>46</sup> lives in the south and the Tamil community<sup>47</sup> is concentrated in the north and the east. This distribution is similar to the composition of the apparel industry labour force, subject to domestic labour migration.

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<sup>40</sup> Athukorala (n 12) 163.

<sup>41</sup> Manori Vitharana, 'From membership to leadership ... Obstacles facing women in becoming trade union leaders' (2014) 24 (320) *Law and Society Trust Review* as cited in Ranaraja (n 10) 26.

<sup>42</sup> Ranaraja (n 10), 24, 26.

<sup>43</sup> 'Exclusion of women from National Labour Advisory Council comes under fire' *Daily Financial Times* (Colombo, 29 May 2023) <<https://www.ft.lk/front-page/Exclusion-of-women-from-National-Labour-Advisory-Council-comes-under-fire/44-748864>>; The state denies gender-based discrimination stating that it incorporates the 'voice of most representative trade unions: 'Labour Ministry says no gender-based discrimination in NLAC selection' *Daily Financial Times* (Colombo, 5 June 2023) <<https://www.ft.lk/front-page/Labour-Ministry-says-no-gender-based-discrimination-in-NLAC-selection/44-749116>>.

<sup>44</sup> 'National Labour Advisory Council', *Ministry of Labour and Foreign Employment* (Web page, 05 February 2024) <<https://labourmin.gov.lk/national-labour-advisory-council/>>.

<sup>45</sup> Silk Roads Program, 'Did you know?: Sri Lankan Harbour Cities and the Maritime Silk Roads' *UNESCO* (Web page, January 2024) <<https://en.unesco.org/silkroad/content/did-you-know-sri-lankan-harbour-cities-and-maritime-silk-roads>>.

<sup>46</sup> Sinhalese population accounts for 74.9 percent of the total population (based on the latest available statistics from the national census in 2012): Department of Census and Statistics Sri Lanka, *Statistical Pocketbook* (2023) 8.

<sup>47</sup> Tamil population accounts for 11.2 percent of the total population: See *Statistical Pocketbook* (n 46) 8.



studies have raised red flags on freedom of association and workers' ability to bargain their rights.<sup>53</sup>

After Sri Lanka ended its 30-year civil war in 2009, the industry spread to the north and the east of the country, aiming to develop these former war-affected areas. Writing about the post-conflict areas and the apparel industry, Kanchana Ruwanpura describes how the apparel industry was offered to the community as a patch over the wounds caused by decades of ethnic civil war.<sup>54</sup> Goger and Ruwanpura discuss how 'leaving the war at the (factory) door' was a naïve management approach that did not address complicated social and humane issues.<sup>55</sup> Some such issues included recruiting workers with military assistance,<sup>56</sup> managers not trained to respond to episodes resulting from workers' war time experiences<sup>57</sup> and the dividing language barrier between Sinhalese managers and Tamil workers.<sup>58</sup> The intersection of gender and ethnicity is indeed a critical factor in analysing labour leadership dynamics. Tamil women, who are already navigating the complexities of gendered expectations within their own communities, face additional layers of marginalisation in asserting themselves in the labour movement and leadership. These layers of marginalisation underscores the need to consider gender and ethnic identities that shape the experiences of Tamil women workers in infiltrating formal labour institutions and the movement. I unpack these dynamics in sections 4.4.1 and 4.4.2.

In the south, worker voice and freedom of association have been repressed for many years.<sup>59</sup> A recent example is the government's attempt to change the established savings schemes for workers in the 2000s without consulting workers.<sup>60</sup> This proposal

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<sup>53</sup> See especially, Kanchana N. Ruwanpura, 'The Weakest Link? Union, freedom of association and ethical codes: A case study from a factory setting in Sri Lanka' (2015) 16(1) *Ethnography* 118, 118-141; IndustriAll Global Union and Solidarity Centre 'Overworked and underpaid: Sri Lanka's garment workers left hanging by a thread', *American Center for International Labour Solidarity* (Web report, October 2001) <[https://www.solidaritycenter.org/wp-content/uploads/2021/11/Workplace-Issues-in-the-Sri-Lanka-Garment-Sector.10.2021.FINAL\\_.pdf](https://www.solidaritycenter.org/wp-content/uploads/2021/11/Workplace-Issues-in-the-Sri-Lanka-Garment-Sector.10.2021.FINAL_.pdf)>.

<sup>54</sup> Kanchana Ruwanpura, 'From War to Work: Ethicality Amid Post-war Trauma' in Ruwanpura (n 50) 124-142.

<sup>55</sup> Annelies Goger and Kanchana N. Ruwanpura, *Ethical Reconstruction? Primitive Accumulation in the Apparel Sector of Eastern Sri Lanka* (International Centre for Ethnic Studies, Research Paper No. 14, October 2014) 14-15.

<sup>56</sup> Ruwanpura (n 50) 128.

<sup>57</sup> Goger and Ruwanpura (n 55) 15.

<sup>58</sup> See also the discussion in Chapter 3 of this dissertation.

<sup>59</sup> Lance Compa, 'The Struggle for Worker Rights in Sri Lanka: A Report by the Solidarity Centre', *American Center for International Labour Solidarity* (Web report, 2003) 9 <<https://www.solidaritycenter.org/wp-content/uploads/2019/07/Sri-Lanka.The-Struggle-for-Worker-Rights-in-Sri-Lanka.2003.pdf>>.

<sup>60</sup> A major proposed reform was to change the withdrawing conditions for Employees Provident Fund (EPF) and gratuity of private sector workers: Political Editor, 'Workers' Crisis: Stitch in time would have saved life', *Sunday Times* (Colombo, 05 June 2011) <<https://www.sundaytimes.lk/110605/Columns/political.html>>.

was ultimately abandoned amidst worker protests and the death of a worker as a result of police shooting during a labour protest in the Katunayake EPZ.<sup>61</sup>

Most recently the COVID-19 pandemic and the ongoing economic crisis have taken a severe toll on apparel worker rights with further repression of their voice.<sup>62</sup> Scholars claim that the pandemic 'reinforced existing structural inequalities within the (global) industry, with workers disproportionately impacted across multi-mediated global production networks'.<sup>63</sup> My case studies, focusing on pandemic-era labour rights violations and workers' efforts to resist the impacts, unpack this.

Further, the current economic crisis in Sri Lanka, the worst economic crisis since the country's independence,<sup>64</sup> has had a disproportionate effect on the apparel workers.<sup>65</sup> The economic crisis in Sri Lanka resulted in surging food prices, scarcity of essential items such as fuel and cooking gas and rising inflation,<sup>66</sup> further entrenching the structural inequalities. There is also an increasing pressure on the apparel industry to contribute to the economic development of the country. This has aggravated the pressure on the apparel workforce, not just in terms of work conditions but also with reduced benefits, capital flight and factory closure, job security and job loss.<sup>67</sup>

On top of this, freedom of association and worker voice are threatened<sup>68</sup> by the political instability that has marked the past few years. The proposed legislation on anti-

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<sup>61</sup> Leon Berenger, 'Fear and fury: Aftermath of FTZ worker's killing', *Sunday Times* (Colombo, 05 June 2011) <[https://sundaytimes.lk/110605/News/nws\\_10.html](https://sundaytimes.lk/110605/News/nws_10.html)>.

<sup>62</sup> Shihara Maduwage, 'The Disproportionate Impact of Covid-19 on Women in Sri Lanka', *Daily Financial Times* (Colombo, 5 November 2020) <<https://www.ft.lk/columns/The-disproportionate-impact-of-COVID-19-on-women-in-Sri-Lanka/4-708456>>; Asia Floor Wage Alliance, *Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains* (Report, July 2021).

<sup>63</sup> Taylor Brydges and Mary Hanlon, 'Garment worker rights and the fashion industry's response to COVID-19' (2020) 10(2) *Dialogues in Human Geography* 195, 195–198.

<sup>64</sup> 'Timeline of Sri Lanka's worst economic crisis since independence', *Al Jazeera* (Online news, 13 April 2022) <<https://www.aljazeera.com/news/2022/4/13/timeline-of-sri-lankas-worst-economic-crisis-since-independence>>.

<sup>65</sup> Shyamain Wickramasingha, 'International sanctions and increased vulnerabilities of supply chain workers: Polytex Garments Limited factory closure in Sri Lanka', *Business in Development blogs, the Centre for Business in Development* (Blog, 30 June 2023) <<https://cbds.cbs.dk/international-sanctions-and-increased-vulnerabilities-of-supply-chain-workers-polytex-garments-limited-factory-closure-in-sri-lanka/>>.

<sup>66</sup> Sri Lanka had a record high inflation that peaked at 70 percent in September 2022: Central Bank of Sri Lanka, 'CCPI based headline inflation recorded 66 percent in October 2022, reversing its continued increasing trend since October 2021' *Statistics Department – CBSL* (Media Release, 31 October 2022).

<sup>67</sup> Dimuthu Attanayake, 'Sri Lanka garment workers face job losses as factories lose to Bangladesh amid slowdown', *South China Morning Post* (Online news, 14 May 2023) <[https://www.scmp.com/week-asia/economics/article/3220304/sri-lanka-garment-workers-face-job-losses-factories-lose-bangladesh-amid-slowdown?campaign=3220304&module=perpetual\\_scroll\\_0&pgtype=article](https://www.scmp.com/week-asia/economics/article/3220304/sri-lanka-garment-workers-face-job-losses-factories-lose-bangladesh-amid-slowdown?campaign=3220304&module=perpetual_scroll_0&pgtype=article)>.

<sup>68</sup> Saroj Pathirana, 'Concerns as Sri Lanka arrests top protest leader Joseph Stalin', *Al Jazeera* (Online news, 4 August 2022) <<https://www.aljazeera.com/news/2022/8/4/concerns-as-sri-lanka-arrests-top-protest-leader-joseph-stalin>>.

terrorism<sup>69</sup> and online safety<sup>70</sup> indirectly controls or can criminalise civil society and trade unions' abilities to voice, organise and protest worker rights violations. For instance, prevention of terrorism laws<sup>71</sup> have historically been abused and misused by the state against trade union action and leaders in Sri Lanka.<sup>72</sup> Currently, the government has proposed a new Anti-Terrorism Act to amend the existing temporary laws to prevent terrorism.<sup>73</sup> The public debate on this proposed Act is centered on its risks to labour activists and trade union functions such as strikes which could be penalised as a 'threat to national security'.<sup>74</sup> Similar provisions in the previous temporary law for prevention of terrorism were used to arrest and penalise trade union leaders and workers who engaged in trade union action and protests.<sup>75</sup> These realities collectively make Sri Lanka an important case study for exploring women workers' ability to negotiate their rights. This is because actors find voice and agency even when many avenues for them are closed.

## 1.4 Women apparel workers' voice: What do we know so far?

As a socio-legal study examining the collective voice of women workers, this dissertation draws from several bodies of scholarship including labour law and

<sup>69</sup> Rebecca Root, 'Freedom of expression: Sri Lanka's "overbroad" draft terrorism law threatens human rights', *International Bar Association: The global voice of the legal profession* (Website, 2 June 2023) <<https://www.ibanet.org/Sri-Lanka-overbroad-draft-terrorism-law-threatens-human-rights>>; Human Rights Watch, 'Sri Lanka: Reject New Counterterrorism Bill Proposed Law Breaks Government Pledge to End Abuse' (Web page, 7 April 2023) <<https://www.hrw.org/news/2023/04/07/sri-lanka-reject-new-counterterrorism-bill>>.

<sup>70</sup> Staff reporter, 'CPA challenges Sri Lanka's Online Safety Bill', *News First* (Online news page, Colombo, 12 October 2023) <<https://www.newsfirst.lk/2023/10/12/cpa-challenges-sri-lanka-s-online-safety-bill/>>; Centre for Policy Alternatives Sri Lanka, 'Statement on the Proposed Online Safety Bill' (Online Statement, 4 October 2023) <<https://www.cpalanka.org/statement-on-the-proposed-online-safety-bill/>>.

<sup>71</sup> *Prevention of Terrorism (Temporary Provisions) Act* (Sri Lanka), No. 48 of 1979.

<sup>72</sup> See case law in which the court, in different occasions, has held that the *Prevention of Terrorism Act* and the *Public Security Ordinance* of Sri Lanka are completely beyond the scrutiny of the courts: *Joseph Perera Alias Bruten Perera v. The Attorney-General and Others* [1992] 1 Sri Lanka Law Reports 199 (Supreme Court of Sri Lanka); *Moosajees Ltd v. Arthurs and Others* [2004] (1) Sri Lanka Law Reports 1 199 (Supreme Court of Sri Lanka); International Commission of Jurists, *Authority without Accountability: The Crisis of Impunity in Sri Lanka* (Report, November 2012) 26.

<sup>73</sup> The Gazette of the Democratic Socialist Republic of Sri Lanka, 'Anti-Terrorism Bill' (Proposed legislation, 17 March 2023) <[http://documents.gov.lk/files/bill/2023/3/304-2023\\_E.pdf](http://documents.gov.lk/files/bill/2023/3/304-2023_E.pdf)>; Previously, on many occasions *Prevention of Terrorism Laws (temporary) Act* of 1979 has been quoted as jeopardising worker and trade union rights – See ILO Committee on Freedom of Association Report in which the committee requests to be kept informed of development: Committee on Freedom of Association, 'Complaints Presented by The Ceylon Federation of Labour, The World Federation of Trade Unions and Several Other Trade Union Organisations Against The Government of Sri Lanka', *International Labour Organisation* (Report No. 230, November 1983) clause 358 <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID:2900428](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:2900428)>.

<sup>74</sup> Section 20(1)(f) in the draft *Anti-Terrorism Bill* – which reads as 'An act or an illegal omission referred to in subsection (1) shall be (f) causing serious obstruction or damage to or interference with essential services or supplies or with any critical infrastructure or logistic facility associated with any essential service or supply.' This can result from a trade union action such as a strike: *Anti-Terrorism (Draft) Bill* of Sri Lanka (n 73).

<sup>75</sup> Pani Wijesiriwardena, 'Sri Lankan trade unions launch bogus campaign against Wickremesinghe's anti-terror bill', *World Socialist Web Site* (Web page, 10 April 2023) <<https://www.wsws.org/en/articles/2023/04/11/izjh-a11.html>>.

industrial relations, regulatory theory, anthropology and feminist theory which I expand on in Chapter 2. Feminist scholars and feminist anthropologists have examined the experiences of 'Third World' factory workers with a focus on women's economic contribution, their agency and power in work settings. I build on these analyses focusing on women workers' collective voice and its regulatory potential.

Women's hiring in labour-intensive industries, including the apparel sector, is historically portrayed in feminist scholarship through two common narratives. The first narrative critiques the capitalist notions of including women in the economy that are couched in expressions such as 'productive femininity'<sup>76</sup> and 'slender, nimble fingered' women.<sup>77</sup> Early literature that focuses on these ideas associates women workers from the Third World as exploited and dispensable in capitalist industrial settings.<sup>78</sup> The second narrative is a response to the first where feminist scholars critically engage with ideas such as cheap, 'docile' and 'dexterous' Third World woman workers<sup>79</sup> and 'feminised cheap labour'.<sup>80</sup> They argue that it is too convenient to assume that women more readily accept exploitative labour conditions due to their docility or because they have succumbed to economic pressure.<sup>81</sup> This framing of submissive workers seems 'deceptively comprehensive and assured'.<sup>82</sup> Feminist literature, primarily in ethnography and anthropology, advances the idea that women resist and rise against the gendered and structural discrimination in industrial settings.<sup>83</sup> For instance, scholars such as Salzinger and Wright, based on their fieldwork in Mexico and China, highlight instances of women workers' responses and reactions to gender-based discrimination at the factory level.<sup>84</sup> Some of these responses even extend to women's organising in social movements to combat violence that has claimed the lives of women at the community level.<sup>85</sup> These analyses are grounded in women's experiences, culture of the place and different forms of resistance inside and outside their factories.

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<sup>76</sup> Leslie Salzinger, *Genders in production: Making workers in Mexico's global factories* (University of California Press, 2003) 51.

<sup>77</sup> Diane Elson and Ruth Pearson, 'Nimble fingers make cheap workers: An analysis of women's employment in Third World export manufacturing' (1981) 7 *Feminist Review* (Spring) 87, 87.

<sup>78</sup> Wendy Chapkis and Cynthia Enloe (eds), *Of Common Cloth* (Transnational Institute Amsterdam 1983); June Nash and Maria Patricia Fernandez-Kelly, *Women, Men and the International Division of Labour* (State University of New York Press Albany, 1983).

<sup>79</sup> Melissa W. Wright, *Disposable Women and Other Myths of Global Capitalism* (Routledge, 2007) 98.

<sup>80</sup> Salzinger (n 76) 1.

<sup>81</sup> Ibid 156

<sup>82</sup> Ibid 164.

<sup>83</sup> A. Ong, 'The Gender and Labour Politics of Postmodernity' [1991] 20 *Annual Review of Anthropology* 279, 279-309; M. B. Mills 'Gender and inequality in the global labour force' [2003] 32 *Annual Review of Anthropology* 41, 41-62.

<sup>84</sup> See Wright (n 79) and Salzinger (n 76).

<sup>85</sup> Wright (n 79) 151-170.

Beyond the concerning narratives around the exploitative, extractive and disposable nature of factory work, there are also considerations of the potential benefits for women in terms of economic empowerment, productivity and value. Some studies examine the limitations as well as opportunities where women have access to industrial waged labour which translates into increasing women's labour force participation and combatting poverty.<sup>86</sup> Nevertheless, political economy scholars also argue that such economic development and structural adjustments could shift developing countries from 'aid-dependence' to 'trade-dependence'.<sup>87</sup> For instance, when countries lose investors or preferential quotas to access international markets in the global north, this can result in reduced supply to international markets and factory closure which can ultimately affect the job security and economic prospects of workers.

Several feminist scholars researching South Asia argue that, despite their contextualised economic benefits, the industries do not essentially promise the best working conditions or the sole solution for women's poverty and economic problems. On that basis, feminist scholars further explore women workers in South Asia's apparel industry in the light of women workers' autonomy and agency.<sup>88</sup> Considering Bangladesh's apparel industry, Dina Siddiqi argues that factory work could be the less evil of the employment options a poor woman may have in specific settings (compared to, for instance, mining or sex work), but women in such work are not simply docile.<sup>89</sup> Further, Naila Kabeer and others advance the idea that women workers exercise agency at work as well as in their life outside the factory.<sup>90</sup> Kabeer argues that women's organisations that 'lack structural power traditionally associated with the trade union movement' use advocacy networks and social movements to pursue 'soft power strategies' such as 'persuasion and influence, making skillful use of information, symbols, leverage and accountability politics'.<sup>91</sup> Similarly, in India women workers experience compounding obstacles in the form of gender, caste, poverty, access to

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<sup>86</sup> Naila Kabeer and Simeen Mahmud, 'Globalization, gender and poverty: Bangladeshi women workers in export and local markets' (2003) 16(1) *Journal of International Development* 93, 93-109; P. Paul-Majumder and A. Begum, *The gender impacts of growth of export-oriented manufacturing in Bangladesh* (The Bangladesh Institute of Development Studies for the World Bank, 2000).

<sup>87</sup> Rehman Sobhan 'The Shift from Aid Dependence to Trade Dependence' *Weekly Holiday, 39<sup>th</sup> Anniversary Edition* (October 31, 2003).

<sup>88</sup> Dina M. Siddiqi, 'Do Bangladeshi factory workers need saving? Sisterhood in the post-sweatshop era' [2009] 91 *Feminist Review* 154, 154-174; Naila Kabeer, *The Power to Choose: Bangladeshi Garment Workers in London and Dhaka* (Verso, London 2002).

<sup>89</sup> Siddiqi (n 88) 161

<sup>90</sup> F. Azim, 'Feminist struggles in Bangladesh' [2005] 80 *Feminist Review* 194, 194-197. Kabeer (n 86).

<sup>91</sup> Naila Kabeer, 'Women workers and the politics of claims making: The local and the global' (2018) 49(3) *Development and Change* 759, 762.

health and education and social security, etc. In the face of these obstacles, women garment workers still resist the idea of their disposability and vulnerable conditions to express agency by organising politically.<sup>92</sup>

I now turn to examining the related literature on Sri Lanka. To begin with, economics literature on Sri Lanka's apparel industry considers a majority of women workers an 'important source of industrial peace'.<sup>93</sup> This is deeply problematic given the power disparity between the employers and the workers. Worker experiences quoted at the start of this chapter speak to the pressure on workers when they are silenced.

I identify three different themes in literature specifically on Sri Lankan women apparel workers: (1) ethnographic works on globalisation, gendered labour and factory workers; (2) sociology and geography works that focus on worker representation in the formal labour movement; and (3) interdisciplinary works that choose to focus on informal and unorganised pathways through which workers express voice. The first category of scholarship closely portrays the stories of the workers. It focuses on how workers defy gender stereotypes in industrial settings. Caitrin Lynch<sup>94</sup> and Sandya Hewamanne<sup>95</sup> discuss how gender is manifested and performed on the factory floor and outside, e.g. in boarding houses. Lynch and Hewamanne, focusing on Sri Lankan women workers, discuss how 'factory girls' interact with the social stigma that marks them. Stigma cannot stop these women being independent, productive and carrying on their day-to-day life.<sup>96</sup> For instance, Hewamanne discusses how women workers later become entrepreneurs setting up their own small businesses.<sup>97</sup> The second category focuses on worker representation in the formal labour movement.<sup>98</sup>

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<sup>92</sup> Madhumita Dutta, 'Becoming 'active labour protestors': women workers organising in India's garment export factories' (2021) 18(8) *Globalisations: Labour conflicts in the global south* 1420, 1420-1435.

<sup>93</sup> Athukorala (n 12) 163.

<sup>94</sup> Caitrin Lynch, *Juki Girls, Good Girls: Gender and Cultural Politics in Sri Lanka's Global Garment Industry*, (Ithaca; London Cornell University Press, 2007).

<sup>95</sup> Sandya Hewamanne, *Stitching Identities in a Free Trade Zone: Gender and Politics in Sri Lanka* (University of Pennsylvania Press 2008) 52-91.

<sup>96</sup> Lynch (n 78) 19-20.

<sup>97</sup> Sandya Hewamanne, *Restitching Identities in Rural Sri Lanka Gender, Neoliberalism, and the Politics of Contentment* (University of Pennsylvania Press, 2020).

<sup>98</sup> Kumari Jayawardena, *The rise of the labor movement in Ceylon* (Duke University Press, 1972); Ruwanpura (n 16); Samantha Gunawardana, 'Emerging economies, freedom of association and collective bargaining for women workers in export-oriented manufacturing' in A. Wilkinson, T. Dundon, J. Donaghey, & A. J. S. Colvin (eds), *The Routledge Companion to Employment Relations* (Routledge, 1st edn, 2018) 372, 372-386; Janaka S. Biyanwila, *The Labour Movement in the Global South: Trade unions in Sri Lanka* (Routledge, 2011) 139, 139-163.

Ruwanpura,<sup>99</sup> Gunawardana<sup>100</sup> and Biyanwila,<sup>101</sup> for instance, discuss this aspect of women's activism alongside male worker representatives and trade union leaders examining the strong affiliation of the Women's Centre with the Free Trade Zone General Services Employees Union (FTZ&GSEU).

Finally, interdisciplinary works on women workers' voice agency focus on the inadequacy of the formal bargaining mechanisms and other ways in which women resist. Gunawardana and Hewamanne in their studies discuss how women workers individually or in small groups express their resistance and displeasure within and outside the factories.<sup>102</sup> Hewamanne draws on incidents of resistance at the factory floor by individual workers such as standing up to supervisor aggression and management rules, e.g. rules that impose on workers to eat with cutlery instead with their hands as they are used to.<sup>103</sup> Gunawardana, more broadly, focuses on worker organising and has previously conceptualised grassroots activism by workers led by trade unions and women's labour organisations in the 2000s.<sup>104</sup> With a focus on labour activism in and around the EPZs in Sri Lanka, this analysis outlines strong transnational labour alliances that strengthen grassroots labour campaigns<sup>105</sup> and the commitment of women's labour organisations in driving mobilisation and those networks.<sup>106</sup> Additionally, the study highlights that women 'engaged in different modes of resistance', e.g. self organising at the factory level, debunking the common belief among managers that women 'lacked the acumen to organise.'<sup>107</sup> The case studies for this dissertation build on how an ongoing combination of such alliances and women's labour organisations can support sustainable organising of women workers at the grassroots level.

This dissertation shares, with the previous works, the themes of gendered discrimination, how women respond to it, and how they resist and rise to exercise their

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<sup>99</sup> Kanchana Ruwanpura, 'Women Workers in the apparel sector: a three decade (r)-evolution of feminist contributions?' (2011) 11(3) *Progress in Development Studies* 197, 197-203.

<sup>100</sup> Samantha Jayasekara Gunawardana, 'Struggle, Perseverance and Organization in Sri Lankas Export Processing Zones' in Kate Bronfenbrenner (ed) *Global Unions: Challenging Transnational Capital through Cross-Border Campaigns* (Cornell University Press, 2007) 78, 91-94.

<sup>101</sup> Biyanwila (n 98) 144-145.

<sup>102</sup> Samantha Gunawardana, 'Gendered Depletion in Export-Processing Zones Progress in Political Economy (PPE)' (2019) 26(4) *Social Politics* 538, 538-560; Hewamanne (n 95).

<sup>103</sup> Hewamanne (n 95) 61-70.

<sup>104</sup> Samantha J. Gunawardana, 'What does transnational organising and solidarity mean for Sri Lankan free trade zone women workers' in Andreas Bielber and Ingemar Lindberg (eds), *Global Restructuring, Labour and the Challenges for Transnational Solidarity* (Taylor and Francis Group, 2010) 87, 89-94; Gunawardana (n 100) 78-98, 82-85.

<sup>105</sup> *Ibid* 89-98.

<sup>106</sup> *Ibid* 91-93.

<sup>107</sup> *Ibid* (n 100) 99.

agency. My work differs from the previous studies, that I considered, in four ways: (1) It analyses the purposeful and organised expression of voice by women workers collectively, without being limited to factory-level individual or isolated group responses or factories in the EPZs; (2) It captures worker voice outside the formal labour bargaining institutions such as trade unions; (3) It examines the scale of organisation of women's labour networks that surpass the grassroots and the national levels to reach regional or transnational levels; (4) The analysis advances to explore the regulatory potential of collective voice of women workers. The final point has not been explored by previous literature on women apparel workers in Sri Lanka and outside. Therefore, the dissertation makes an original contribution extending previous scholarship to elucidate how grassroots organising and transnational linkages can gain women workers regulatory influence.

## 1.5 Approach to studying women apparel workers' collective voice in this dissertation

In order to answer the research problem 'How do women workers action voice to negotiate their rights in Sri Lanka's apparel industry?', the dissertation focuses on how women express voice collectively and how they draw support from a transnational network. This analysis also advances our understanding of how women workers legitimise that expression of voice by drawing support from and bonding with other actors outside the local level in accessing these transnational networks.

### 1.5.1 Research Questions

The ensuing chapters of this dissertation address the following sub-questions:

1. What are the formal mechanisms for expressing voice to negotiate worker rights in Sri Lanka's apparel industry?
2. What non-conventional forms of voice were and are visible in pandemic and post-pandemic Sri Lanka in the three selected case studies?
3. How do women workers legitimise the expression of their voice in the case studies?

The dissertation's discussion on women's labour negotiation capacity commences with the formal voice mechanisms in the apparel industry and empirical evidence on their use and effect. It then turns to the case studies through which I answer research questions 2 and 3, leading to a synthesis of findings in the conclusion. The three

instrumental case studies from Sri Lanka's apparel industry chosen for the dissertation, that I explain in Chapter 3, focus on three major transnational labour campaigns from the past four years, concerning three key labour issues: (1) the struggle for a violence and harassment free world of work; (2) the campaign against wage theft; (3) negotiating safe workspaces and work-related health and safety. I build these case studies using responses from the relevant stakeholders including women workers, women's labour organisations, trade unions, employer representatives, state regulators, activists, and representatives from regional and international labour and civil society organisations. The dissertation uses an interdisciplinary conceptual framework based on regulatory theory augmented by Transnational Feminist Movements and semi-autonomous social fields, discussed in Chapter 2, to explore the problem.

This dissertation demonstrates how, often excluded from spaces of labour bargaining where worker voice is enabled formally, women workers in Sri Lanka's apparel industry action non-conventional forms of collective voice in negotiating their rights. They do so by influencing regulatory decision-making strategically, at the local, national or transnational levels, to change conditions of work or workplace practices. In the face of legal, political, social, industrial and gendered challenges, women workers push back primarily through strategic action and forming transnational networks activated by grassroots-level women's organisations. Collective voice, often expressed through non-conventional pathways such as transnational labour campaigns and strategic complaints, is legitimised using different norms, legal and other, that gain women workers the best leverage in harnessing power through their networks to create the necessary regulatory pressure and influence. These non-conventional forms of collective voice supplement and support formal mechanisms such as trade unions to be effective with strong links to women workers.

The key purpose of this dissertation is to analyse how women workers action voice when the formal and policy frameworks for labour bargaining on the books do not operate in practice, as presumed by the law and policy makers. I conclude that ineffective formal voice mechanisms do not mean silence. Rather, the dissertation draws attention to an informal transnational network, orchestrated by women workers and their grassroots organisations, that seeks to influence the regulators in the globalised apparel supply chains. These women's labour networks seek positive change in the form of just wages and improved labour conditions. Beyond this, the findings also tell a story of the power and agency of women workers in seeking the

accountability of corporations for causing or maintaining unjust conditions. Transnational linkages and networks aid grassroots women workers to influence regulatory actors across the supply chain without limiting to their local employers. Through these networks, they demand regulatory change at the national and transnational levels as well, change that may have policy implications for other garment manufacturing countries in South and Southeast Asia. Collective voice is not without limitations, which I unpack in Chapters 2 and 8.

The dissertation makes an original contribution to the study of worker voice in apparel supply chains by suggesting an inter-disciplinary framework to understand regulation by workers through non-conventional voice mechanisms. It also sheds light on women's labour activism in the apparel industry and how they use different legal and normative frameworks to gain the maximum leverage to influence regulatory decision-making in complex apparel supply chains. Further, the analysis in this dissertation builds upon the scholarly understanding of networked regulation and governance as not just a function performed by the state and other wealthy and powerful actors such as companies. It provides an empirical example of how actors such as women workers who are considered less powerful can also have regulatory influence and shape the behaviour and decision-making of other regulatory actors, through influential networks.

## 1.6 Chapter outline

The next two chapters introduce the key conceptual and theoretical framings, and the methods for the discussion that ensues in the following five chapters of the dissertation. Chapter 2 introduces networked regulation and governance as the key analytical lens, supplemented by Transnational Feminist Movements. The conceptual framework allows me to analyse the non-conventional forms of collective voice through which women workers attempt to negotiate their labour rights. Chapter 2 also sets up Sally Falk Moore's semi-autonomous social field as a conceptual framework that allows me to trace the complexity of global apparel supply chains. It helps to understand the influence of the legal norms generated within and outside the industry and how those are used by different actors within the industry, especially women workers, to enhance their negotiation power and to network.

Chapter 3 discusses the methodology and methods of the dissertation. There, I discuss how a feminist approach not only augments the capabilities of networked regulation,

but also informs the research methods that enable women workers to directly speak about their own experiences.

Chapter 4 introduces the background of worker voice in Sri Lanka's apparel industry and the social, political and economic overlay that it operates against. It briefly chronicles the history of labour bargaining, formal law and policy for labour bargaining in the apparel industry and outlines the regulators across the globalised supply chain. The discussion draws from the semi-autonomous social fields conceptualisation I outlined in Chapter 2. This chapter also captures special challenges posed to the workers during the pandemic and Sri Lanka's economic crisis.

The empirical chapters of this dissertation, Chapters 5, 6 and 7, each focus on a different transnational case study of worker voice. Chapter 5 is based on gender-based violence and harassment, Chapter 6 focuses on the pandemic-induced wage theft claims, and Chapter 7 discusses workplace health and safety with a focus on COVID-19 outbreaks inside garment factories that gave rise to a national wave of COVID in Sri Lanka. These chapters also explore the different normative framings engaged by workers to leverage their claims.

Finally, Chapter 8 is the conclusion of the dissertation. It summarises the findings in light of the research problem and reconnects them with the key argument of the dissertation. By offering grounded insights into how women workers overcome the challenges of negotiating their rights and having their collective voice heard, the dissertation concludes that the absence of formal voice mechanisms does not mean that women workers are silent or docile. This chapter analyses transnational networks harnessed by women workers and grassroots women's labour organisations that operate as webs of influence. The analysis draws out a dynamic regulatory structure, alongside formal mechanisms through which women workers seek to influence the regulatory decision-making in negotiating their labour rights. This chapter also reiterates the importance of transnational norms and advocacy structures that enable women's voice at the ground level. The discussion ends by suggesting future directions for the study. Through Sri Lanka's example, the dissertation offers insights to re-thinking labour organising for women workers to have a broader applicability.

## **Chapter 2: Conceptual framework**

### **2.1 Introduction**

This chapter discusses and expands upon existing scholarship on worker voice and describes the different veins of literature that contribute to the conceptual framework of my dissertation. The collective voice of women workers, which I define in Chapter 1 as the purposeful expression of voice by women workers with attributes of collectivism, representativeness and dynamism, is understood as a tool in the hands of women workers that can have regulatory influence. This is because, through collective voice, women workers ultimately aim to, and sometimes do, influence and shape or change the behaviour of others such as of employers, whose decisions ultimately impact their lives at work and outside.

The chapter develops in three parts. In Part 1, I explain labour law and industrial relations objectives and continuing attempts to institutionalise worker voice and why they have failed to facilitate women workers' voice in Sri Lanka. This helps to highlight why fresh thinking is needed in understanding how women workers negotiate their labour rights and with what effect. Part 2 commences with a brief overview of early approaches to labour regulation in the apparel industry and how they largely excluded worker voice. I show how my networked regulation and governance framework is broadened, connecting it with Transnational Feminist Movements (TFM) and semi-autonomous social field lenses. This enables me to capture the informal but organised forms through which women workers action their voice. In Part 3, I summarise the interdisciplinary framework. Part 4 further clarifies the scope of the dissertation and elaborates on my thinking behind the chosen interdisciplinary framework.

### **2.2 Part 1: Labour bargaining and worker voice: Labour law and industrial relations approach to analysing labour rights bargaining**

Labour law and industrial relations are cognate disciplines that offer considerable insights into worker voice and labour bargaining. Recent labour law and industrial relations literature highlights the challenges faced by conventional labour bargaining mechanisms in offering an equal playing field for workers to negotiate their labour

rights. These challenges range from depleting numbers of trade unions,<sup>108</sup> increasingly complex power imbalances between employers and workers,<sup>109</sup> and sex-based domination or the exclusion of women from the autonomous labour bargaining spaces.<sup>110</sup>

Labour law and industrial relations research on labour rights bargaining demonstrate strong connections and corresponding trends to each other. Labour law scholarship largely focuses on legal questions and formal institutions and scholars often draw on empirical research to supplement doctrinal analysis. Similarly, industrial relations scholarship uses labour law research in support of more formal dimensions of regulating industrial affairs, mostly focusing on the role of unions, collective bargaining and related institutions and policies.<sup>111</sup> Despite their focus on these formal mechanisms, both labour law and industrial relations scholars advocate for the need to have a broader focus and definition of labour and industrial relations, that goes beyond a single disciplinary focus, in order to make a significant contribution to advancing worker rights.<sup>112</sup>

### 2.2.1 Labour law approach to studying worker voice

Many scholars have recognised labour law to be a distinctive field compared to other areas of law for a range of reasons: labour law is often produced through unconventional legal processes (e.g. collective bargaining), sometimes pronounced by private parties (i.e. as agreed by employers and employees), in the form of norms rather than laws through non-legal, socio-political means (i.e. negotiating), and enforced and adjudicated by persons other than judges, within forums outside the

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<sup>108</sup> Frances Raday, 'The Decline of Union Power – Structural Inevitability or Policy Choice?' in Joanne Conaghan, Richard Michael Fischl and Karl Klare (eds), *Labour Law in an Era of Globalisation: Transformative practices and possibilities* (Oxford University Press, 2002) 353-377; Eric Tucker, 'Law and the Decline and Uncertain Future of Strikes' in Alan Bogg and Tonia Novitz (eds), *Voices at Work: Continuity and Change in the Common Law World* (Oxford University Press, 2014), 455-473.

<sup>109</sup> Elizabeth W. Morrison, 'Employee Voice and Silence' [2014] 1 *Annual Review of Organisational Psychology and Organisational Behaviours* 173, 183-187.

<sup>110</sup> ILO-ICFTU Survey, *The Role of Trade Unions in Promoting Gender Equality and Protecting Vulnerable Women Workers* (ILO Geneva Report, 1999), 26; L. J. B. Hayes, 'Women's Voice' and Equal Pay: Judicial Regard for the Gendering of Collective Bargaining' in Alan Bogg and Tonia Novitz (eds), *Voices at Work: continuity and change in the common law world*, (Oxford University Press, 2014) 35-54.

<sup>111</sup> Thomas Kochan, 'What is Distinctive about Industrial Relations Research?' in George Strauss and Keith Whitfield (eds), *Researching the World of Work: Strategies and Methods in Studying Industrial Relations* (Cornell University Press, 1998), 31-46.

<sup>112</sup> See Bogg and Novitz (n 9) 3-30; Kochan (n 111), 31-45; Raymond Hogler states developments in labour history and labour law may have an important influence on the future direction of industrial relations: See Raymond Hogler, 'Labour History and Critical Labour Law: An interdisciplinary approach to workers' control' (1989) 30(2) *Labor History* 165, 165-192.

conventional courts system (i.e. through labour tribunals).<sup>113</sup> Labour law, therefore, is a body of legal and non-legal rules that governs employment relations and one that is steered largely by non-legal institutions and actors.

Studies explore labour law's evolution around worker protection aiming to safeguard labour rights, mitigate power imbalances and level the class difference between workers and employers.<sup>114</sup> Addressing power imbalances was crucial for fair and effective collective bargaining. Labour law as a 'compound discipline' has been able to engage in these broad discussions by integrating perspectives from other fields such as sociology, economics, political theory and ethics.<sup>115</sup> A key mechanism to remedy the power imbalance was autonomous forms of worker voice expressed formally through workplace negotiations and collective bargaining. Autonomous forms of worker representation were not merely a vehicle of negotiating working and living conditions, but also a way of being involved in the workplace democracy and its regulation. In that vein, Ruth Dukes discusses the need to strengthen the freedom of the worker as the desired intervention to appropriately limit the employers' capacity to dictate terms without consulting the workers.<sup>116</sup> Dukes further explains collective bargaining and other forms of collective representation as means of pushing democracy from the public sphere to the private.<sup>117</sup>

While labour law was founded on the idea of protecting interests of the workers, scholars have identified blunted worker protections during the post-World War II years.<sup>118</sup> Two main streams of ideas can be observed. One stream made conservative claims that 'glorified' the formal institutions and obscured their repressive labour practices and regimes.<sup>119</sup> The second stream consisted of critical scholars who largely came from social sciences and industrial relations backgrounds. Scholars from this second stream have repeatedly raised skepticism about the law's ability to influence social behaviour at different points in history of labour law scholarship. Khan Freund,

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<sup>113</sup> Harry Arthurs, 'Labour Law after Labour' (2011) *Comparative Research in Law & Political Economy*, Research Paper No. 15/2011, 13-29, 13-16.

<sup>114</sup> H. Collins, 'Labour Law as a Vocation' [1989] 105 *Law Quarterly Review* 468, 468-84; Ruth Dukes 'Critical Labour Law: Then and Now' in Emiliios Christodoulidis, Ruth Dukes and Marco Goldoni (eds), *Research Handbook on Critical Legal Theory* (Edward Elgar, 2019) 345, 345, 347; Karl Klare, 'On Ruth Dukes, The labour constitution: the enduring idea of labour law' (2018) 9(2) *Jurisprudence* 402, 402-407.

<sup>115</sup> Bogg and Novitz (n 9) 30.

<sup>116</sup> Dukes (n 114) 351.

<sup>117</sup> *Ibid* 346.

<sup>118</sup> Arthurs (n 113) 19.

<sup>119</sup> David Beatty, 'Labour Law in a Nutshell: The Influence of a Casebook' (1996) 75(1) *Canadian Bar Review* 35, 35-67; See Richard Hyman, 'Pluralism, Procedural Consensus, Collective Bargaining' (1978) 16(1) *British Journal of Industrial Relations* 16, 16-40.

who was an early influence on this branch of critical labour law, argued that legal norms must be backed by social sanctions, such as organised labour that works as an oppositional force through consultation and negotiation, for them to be effective.<sup>120</sup> Critical labour law scholarship that emerged in the 1970s and 1980s began to challenge conservative scholars asking hard questions about the power disparities at workplaces and justice for workers.<sup>121</sup>

Critical labour law scholars also highlight how the formal labour institutions like trade unions increasingly failed to safeguard the interests of specific groups of workers, such as women and racial and ethnic minorities.<sup>122</sup> Gender is an important consideration that remains under-explored in labour and industrial relations scholarship, with a few notable exceptions such as Gillian Lester, Joanne Conaghan, Ana Avendano, Ruth Dukes, Tonia Novtiz and Virginia Montavalau whose work I discuss in this chapter and chapter 5. An awareness of gendered experience can broaden union agendas to focus on aspects that they usually do not table in collective bargaining such as parental benefits, violence and harassment at work, and childcare.<sup>123</sup> Scholars identify how this 'lack of sensitivity' and obliviousness to the needs of different worker groups can impact the 'associational power' of unions when these groups of workers are alienated and form other coalitions.<sup>124</sup>

The changing fabric of labour globally poses several challenges to labour law's approach of facilitating worker voice through trade unions and collective bargaining. There is a noticeable decrease in trade union membership, collective bargaining and industrial action across the world. Bogg and Novitz discuss this erosion in the context of Europe, North America and Australia.<sup>125</sup> They quote several reasons for the decline including fragmented worker constituencies, changing political consensus on collective agency being the fundamental unit of industrial relations, decentralised bargaining rights and the emergence of mediation and management based on individualised

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<sup>120</sup> Otto Kahn-Freund, 'Legal Framework' in A. Flanders and H.A. Clegg, *The System of Industrial Relations in Great Britain* (Blackwell 1954).

<sup>121</sup> J Conaghan, 'The invisibility of women in labour law – Gender neutrality in model building' (1986) 14(3–4) *International Journal of Sociology of Law* 377.

<sup>122</sup> J Conaghan, 'Labour Law and feminist method' (2017) 33(1) *International Journal of Comparative Labour Law* 93, 105; Raday (n 108) 355.

<sup>123</sup> Ana Avendano states, 'Unions have a mixed record when it comes to fighting sexual harassment, especially in cases that involve harassment by union members': Ana Avendaño, 'Sexual Harassment in the Workplace: Where Were the Unions?' (2018) 43(4) *Labour Studies Journal* 245, 248.

<sup>124</sup> Bjarke Refslund and Jens Arnholtz, 'Power resource theory revisited: The perils and promises for understanding contemporary labour politics' (2021) 43(4) *Economic and Industrial Democracy* 1958.

<sup>125</sup> Bogg and Novitz (n 9) 4-31

labour standards and rights.<sup>126</sup> In this context, although labour law still has a role to play in terms of traditional forms of labour bargaining, it cannot capture or regulate worker voice taking place outside the conventional mechanisms.

In the case of Sri Lanka, many of these reasons are present, pointing to a weak institutional mechanism to enable worker voice and effective labour bargaining. Primarily there is a noticeable decrease in unionising across sectors and apparel industry collective bargaining agreements over the past three decades.<sup>127</sup> Other reasons include strong support for investors in the face of national economic hardships, employer power and autonomy, dwindling state capacity to manage and monitor industrial spaces (e.g. inadequate resources and staff to conduct in-depth periodic surveys and audits) and politicisation of labour unions. These reasons undermine labour's autonomy and access to the available institutions (e.g. trade unions and the NLAC) and mechanisms (e.g. collective bargaining) to negotiate labour rights. I discuss these political, economic and social realities alongside the apparel industry's formal labour bargaining mechanisms in Chapter 4.

### 2.2.2 Industrial relations approach to studying worker voice

The industrial relations approach to labour bargaining has primarily developed on the question of how much 'say' employees should have in running a business and what forms should this 'voice' take.<sup>128</sup> The answer to this question varied depending on whether the scholars envisioned employers and employees as a part of a team with a common purpose, or whether they understood these groups to be characterised by competing interests and tensions. As such, industrial relations scholarship adopts at least three different approaches to examining worker voice:<sup>129</sup> First, '*employee involvement*' where the management involves workers to attain shared goals. However, the mechanisms are management initiated with a controlled degree of voluntary employee participation. Second, a '*workers' control*' approach which is considered radical by capitalist business organisations. There is also a risk of these initiatives being co-opted by capitalist organisations using models such as employee cooperatives and councils. Third, '*representative participation*' is a path between

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<sup>126</sup> Ibid 27-31.

<sup>127</sup> Shyamali Ranaraja, *Emerging Trends in Employee Participation in Sri Lanka* (ILO Working Paper No. 46, January 2013) 12-17.

<sup>128</sup> Stewart Johnstone and Peter Ackers, 'Introduction: Employee Voice – The Key Question for Contemporary Employment Relations' in Stewart Johnstone and Peter Ackers (eds), *Finding a voice at Work? New perspectives on employment relations* (Oxford University Press, 2015) 1-21.

<sup>129</sup> Ibid 2-4.

employee involvement and workers' control.<sup>130</sup> It recognises the different interests of employers and employees and aspires for workers, management and unions to potentially work together. This model closely imitates the tripartism that involves employers, workers and the state advocated by labour law scholars, the state is the key missing element here in mediating the interests of employers and workers.

Industrial relations research adopts an inward-looking approach that focuses on a single workplace or an industry. Mainstream industrial relations scholars typically ask questions that primarily explore worker, management and union relations that do not demand broad socially grounded research methods.<sup>131</sup> However, recently some industrial relations scholars have sought to broaden the scope of research beyond union–management relations and adopt research methods outside its conventional approaches.<sup>132</sup> This position recognises the importance of organised labour for attaining a competitive advantage in complex product markets without limiting it to a single workplace. This newer industrial relations literature, therefore, seeks to expand on its level of analysis without limiting to a single workplace, with comparative coverage of countries and multimethod research without emphasis on quantitative research.<sup>133</sup> In line with this development, industrial relations scholars acknowledge the value of using interdisciplinary research methods, although this is still not common. Industrial relations research has willingly combined with labour law. Nevertheless, in asking new and broad questions about work and the impact of formal legal norms, scholars propose going beyond the legal formalism of labour law and adopting critical and sociological approaches.<sup>134</sup>

Another limitation in analysis through an industrial relations perspective, similar to the labour law approach discussed above, is that it is often gender neutral and unable to capture the discrimination and experience of women workers. Therefore, formal industrial relations mechanisms have proven to be less impactful in empowering women workers and their voice, unless they 'go beyond an agreement to add "women's

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<sup>130</sup> Johnstone and Ackers (n 128) 1-21; Stewart Johnstone and Adrian Wilkinson, 'Employee voice, partnership and performance' in George Saridakis and Cary L. Cooper (eds), *How can HR drive growth?* (Edward Elgar Publishing Limited, 2013) 141, 141-169.

<sup>131</sup> George Strauss and Keith Whitfield, 'Research Methods in Industrial Relations' in George Strauss and Keith Whitfield (eds), *Researching the World of Work: Strategies and Methods in Studying Industrial Relations* (Cornell University Press, 2018) 5-29.

<sup>132</sup> *Ibid.*, 227-251.

<sup>133</sup> *Ibid.*

<sup>134</sup> Suzanne Hammond and Paul Ronfeldt, 'Legal Methods: Asking New Questions about Law and the World of Work' in George Strauss and Keith Whitfield (eds), *Researching the World of Work: Strategies and Methods in Studying Industrial Relations* (Cornell University Press 2018) 227-238.

issues” to the research agenda’.<sup>135</sup> Offering a critical perspective on worker voice in labour and industrial relations mechanisms, feminist studies highlight the lack of female participation and leadership and exclusion of women workers from the labour bargaining processes and spaces, which I expand on in Part 2 below.

The scholarship reviewed above also raises new questions such as what kind of labour rights bargaining initiatives can occur in environments with repressed worker voice? How do groups excluded from the formal bargaining spaces, such as women workers, voice their concerns and with what effect? What can we observe at the ground level in industries such as apparel with complex global supply chains? These questions map on to the research sub-questions of this study listed in section 1.5 in the previous chapter. In particular, questions 2 and 3 aim to shed light on the ground-level initiatives by women workers in response to being excluded from the formal bargaining spaces. It is to answer these questions that I turn to regulatory theory.

## 2.3 Part 2: Theoretical framework of the dissertation

### 2.3.1 Regulatory theory in the framework

I defined regulation in Chapter 1 as an intentional act or intervention that influences or shapes the behaviour of other actors and the flow of the events. This definition identifies regulation as an act that can be carried out by a range of actors including the state and social and civil society groups such as workers. As I discuss below, existing studies explored regulatory schemes and innovations in the apparel industry and show that they should change to represent worker experiences and include the voices of labour. I apply these ideas in constructing the theoretical framework for studying women workers in Sri Lanka’s apparel industry.

#### 2.3.1.1. Early regulatory approaches in managing industrial relations in the apparel industry

Since the globalisation of apparel supply chains, there has been more attention and push to regulate them by the consumers and civil society. With consumer protests in the global north in the late 1990s, there was pressure on international buyers and fashion brands to safeguard labour rights in their supply chains.<sup>136</sup> These initiated an

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<sup>135</sup> Judy Wajcman, ‘Feminism Facing Industrial Relations in Britain’ (2002) 38(2) *British Journal of Industrial Relations* 183, 183.

<sup>136</sup> Kitty Krupat, ‘Rethinking the Sweatshop: A Conversation About United Students Against Sweatshops (USAS) with Charles Eaton, Marion Traub-Werner, and Evelyn Zepeda’ (2002) 61 (Spring) *International Labor and*

academic discussion on codes and monitoring in the garment industry in 1990s and the early 2000s.<sup>137</sup> Different regulatory initiatives in the form of monitoring mechanisms resulted from negotiations between activists and corporations.<sup>138</sup> One approach based on monitoring mechanisms ranged from private and commercial to independent monitoring and multi-stakeholder initiatives. Monitoring through private regulation emerged in multiple ways: by the companies themselves hiring internal staff such as compliance officers, by commercial firms that externally performed the job of monitoring and by independent monitoring organisations that had access to workers, through which companies could apply for accreditation. An example of commercial monitoring is the US Department of Labour (DOL) program of sanctions against brands who used violating contractors.<sup>139</sup> Later on, private regulation evolved into semi-private models such as the OECD Guidelines for Multinational Enterprises code and the United Nations Global Compact.<sup>140</sup> Scholars argue that there is great opportunity for these private regulatory mechanisms to be a public relations ploy,<sup>141</sup> unless there are processes for independent monitoring, transparent reporting and strong enforcement and complaint mechanisms.<sup>142</sup>

Another regulatory approach was the emergence of buyer-driven production processes that allowed consumers to influence labour regulation in supply chains.<sup>143</sup> Although these were progressive developments at the time, these models of regulation were in reality managed and run by the employers.<sup>144</sup> They largely overlooked the workers, their agency and voice, and their role and stakes in the industrial process.

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*Working-Class History* 112, 112-127; Martin Van Der Werf, 'Anti-Sweatshop Groups Find It Difficult to Turn Campus Idealism into Real Change' (2001) 47(17) *The Chronicle of Higher Education* 5.

<sup>137</sup> Jill Esbenshade, 'Review of Private Regulation' (2012) 6(7) *Sociology Compass* 541, 541-556; US Office of Child Labor, Forced Labor, and Human Trafficking, 'The Apparel Industry and Codes of Conduct: A Solution to the International Child Labor Problem?' (Report, 1996); Jean-Paul Sajhau, 'Business Ethics in the Textile, Clothing and Footwear (TCF) Industries' *Corporate Codes of Conduct – ILO* (A general overview of codes of conduct, 1997) SAP 2.60/WP.110 < <https://core.ac.uk/download/pdf/5119826.pdf>>; Pamela Varley (ed), *The Sweatshop Quandary, Corporate Responsibility on the Global Frontier* (Investor Responsibility Centre Washington DC, 1998); Jill Esbenshade, 'Codes of Conduct: Challenges and Opportunities for Workers' Rights' (2004) 31(3) *Social Justice* 40, 40-59.

<sup>138</sup> Esbenshade (n 137) 542-547.

<sup>139</sup> Esbenshade (n 137) 543.

<sup>140</sup> D. Wells 'Too Weak for the Job: Corporate Codes of Conduct, Non-Governmental Organizations and the Regulation of International Labour Standards' [2007] 7 *Global Social Policy* 51, 51-74.

<sup>141</sup> Henry Frundt, 'Unions Wrestle With Corporate Codes of Conduct' (2004) 7(4) (Spring) *Working USA* 36, 36-69; Denis G. Arnold and Laura P. Hartman 'Worker Rights and low Wage Industrialization: How to Avoid Sweatshops' (2006) 28(3) *Human Rights Quarterly* 676, 676-700.

<sup>142</sup> Frundt (n 141).

<sup>143</sup> Gary Gereffi 'The Organization of Buyer-Driven Commodity Chains' in Gary Gereffi and Miguel Korzeniewicz (eds), *Commodity Chains and Global Capitalism* (Westport, CT Greenwood Press, 1994), 95-122; Jill Esbenshade, *Monitoring Sweatshops: Workers, Consumers, and the Global Apparel Industry* (Philadelphia, PA, Temple University Press, 2004).

<sup>144</sup> Esbenshade (n 137).

These private regulatory models often did not empower workers and their voice. Scholars such as Dara O'Rourke highlighted how the involvement of local labour actors is a crucial element of effectiveness of these mechanisms.<sup>145</sup> Similarly, Jill Esbenshade has argued that independent monitoring mechanisms attempt to fill a void in labour rights enforcement, but they cannot substitute for state enforcement and the workers' active participation and organising.<sup>146</sup> She suggested that real change for workers is possible (a) if the monitoring mechanisms prioritise workers' freedom of association and collective bargaining rather than simply focusing on working conditions and (b) by eliminating the lack of leverage held by workers as a result of their factories being short-term partners or contractors in business.<sup>147</sup>

The literature makes clear that regulation in globalised supply chains, including the apparel industry, has evolved beyond simple compliance and monitoring mechanisms. Monitoring and compliance, in fact, are mechanisms that are available for powerful and resource-rich actors in the industry such as the employers, fashion brands and the states who get to set those standards. Sometimes transnational non-governmental organisations manage these systems in collaboration with fashion brands and employers. Nevertheless, workers are often remote from these processes. This has propelled workers and their representatives to organise and form alliances as a counterforce to these collaborations of employers and international buyers. These alliances need a more dynamic regulatory approach than private or self-regulation which is described as more suitable for employers given the resources that they can invest in the processes. Therefore, this dissertation turns to an approach grounded in networked regulation and governance to analyse how women workers and the grassroots labour organisations in Sri Lanka influence regulation in apparel supply chains.

### 2.3.2 Regulation and governance by networks for understanding influential webs of actors

This dissertation uses the concept of regulation and governance by networks to study the collective voice of women workers as a form of regulation. In Chapter 1, I defined collective voice as holding three attributes: collective, representative and dynamic.

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<sup>145</sup> D. O'Rourke, 'Multi-Stakeholder Regulation: Privatizing or Socializing Global Labor Standards?' [2006] 34 *World Development* 899, 899-918.

<sup>146</sup> Esbenshade (n 132) 550.

<sup>147</sup> Jill Esbenshade, 'Going Up Against the Global Economy: New Developments in the Anti-Sweatshop Movement' [2008] 34 *Critical Sociology* 453, 453-70.

Significantly, collective voice is driven by the purpose of effecting change and better outcomes for women workers.

Networks are a way to collectively intervene in regulation in order to resist, influence, demand, coerce and create change.<sup>148</sup> Networked regulation is premised on the idea of having ‘connected strands of weak or strong influence or control’ and holding ‘one or more such strands at their disposal’<sup>149</sup> in creating influence. Braithwaite and Drahos also theorise that networked partners can unite in the form of counter-forces that can observe and control non-compliant behaviour.<sup>150</sup> Networks are a strategy through which weak actors create regulatory and governance opportunities.<sup>151</sup>

Networked governance extends ideas of networked regulation by offering tools to examine how relatively weak actors, such as workers, can organise to overwhelm the greater powers.<sup>152</sup> As such, networks regulate and seek to govern focusing on broad-based, overarching principles focusing on key intersections between various government and non-government actors, especially in contexts where state regulatory actors appear weak.<sup>153</sup> Such broad-based principles include ideas of non-dominance, separation of powers and accountability.

Regulatory scholars highlight that networks have *democratic* appeal. This idea is deeply rooted in the way these networks are composed and operate with delegated power with no single centre of power, which resonates with the concept of democracy.<sup>154</sup> In terms of composition, networked regulation extends the idea that committed civil society and other actor groups can bring about positive change within the current economic system.<sup>155</sup> Networked actors vary and may include civil society organisations, trade unions, academics and expert groups and even transnational

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<sup>148</sup> Braithwaite and Drahos (n 20) 7.

<sup>149</sup> Peter Drahos, ‘Regulatory globalisation’ in Peter Drahos (ed), *Regulatory Theory, Foundations and Applications* (ANU Press, 2017) 258.

<sup>150</sup> Braithwaite and Drahos (n 20) 612; Drahos (n 149) 260-261.

<sup>151</sup> In international politics, Margaret Keck and Kathryn Sikkink use a similar conceptualisation termed ‘transnational advocacy networks.’ These are networks of many different types of non-state actors, alongside states, such as activists, scientists and experts, that have different involvement, influences and pressure, transnationally, to represent and resolve issues: See generally, Margaret Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Cornell University Press 1998).

<sup>152</sup> John Braithwaite, Hilary Charlesworth and Aderito Soares, *Networked Governance of Freedom and Tyranny: Peace in Timor-Leste* (ANU E-Press, 2012) 7-8.

<sup>153</sup> John Braithwaite, *Regulatory Capitalism: How it works, Ideas for making it work better* (Edward Elgar Publishing, 2008) 94-100.

<sup>154</sup> Braithwaite and Drahos (n 20) 237.

<sup>155</sup> Tim Conner and Fiona Haines, ‘Networked regulation as a solution to human rights abuse in global supply chains? The case of trade union rights violations by Indonesian sports shoe manufacturers’ (2013) 17(2) *Theoretical Criminology* 198.

organisations. This is opposed to more conventional networks that include states, businesses and transnational organisations.

Lange and Haines explore the regulatory capacity of a social sphere as it links with states and markets,<sup>156</sup> that I discussed above. This conceptualisation also feeds into the idea of multiple regulatory actors approaching the issues from different points of view. Composition of these networks from the social sphere can be further explained through a more relevant example to my case studies in this dissertation.

Braithwaite and Drahos note the decline of the labour movement owing to capitalist market tendencies in the nineteenth and twentieth centuries. Market deregulation weakened trade unions<sup>157</sup> and, in the recent past, union busting and dwindling worker support due to myriad reasons have resulted in this decline. In a context of repression of unions and voice and activism of women, other forces such as the civil society and especially organisations led by women started to emerge in developing contexts such as Sri Lanka.<sup>158</sup>

Networks include *diverse actors and are organised in different forms* which further the idea of democracy. As Braithwaite, Charlesworth and Soares advance, networks can enable weak actors to 'overwhelm great powers,'<sup>159</sup> especially in contexts where state regulatory actors appear weak.<sup>160</sup> Their insights draw from a case study of the regulatory power of human rights networks which made Timor-Leste's independence possible in 2002. In that example, organised networks that were built on human rights claims drew wide support transnationally and demonstrated how a system of checks and balances over a government could be established by mobilising networks.<sup>161</sup> These scholars explain that not all nodes within a network will be equally strong and powerful. However, this disparity can sometimes work for the weak within one network, allowing them to prevail over the strong by harnessing the network.<sup>162</sup> Braithwaite, Charlesworth and Soares discuss how arbitrary power, which they call 'the greatest

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<sup>156</sup> Lange and Haines (n 33) 3-7.

<sup>157</sup> Braithwaite and Drahos (n 20) 230-231.

<sup>158</sup> Kumudini Rosa, 'Women Workers' Strategies of Organising and Resistance in the Sri Lankan Free Trade Zone (FTZ) (1990) 10(1) *South Asia Bulletin* 33, 33-42; Janaka Biyanwila, 'Women workers organizing in the Free Trade Zones: Collective action and community' in Gillan, M., Pokrant, B. (eds), *Trade, Labour and Transformation of Community in Asia* (Palgrave Macmillan, 2009) 182; Gunawardana (n 98) 375-376.

<sup>159</sup> Braithwaite, Charlesworth and Soares (n 152) xi.

<sup>160</sup> Braithwaite (147) 94-100.

<sup>161</sup> Braithwaite, Charlesworth and Soares (n 152) 364.

<sup>162</sup> See Hilary Charlesworth, 'Regulatory perspective on the international human rights system' in Peter Drahos (ed), *Regulatory Theory, Foundations and Applications* (ANU Press, 2017) 357-373, 362.

risk to human freedom', can be checked and balanced through the influence of civic endeavours such as women's networks.<sup>163</sup> The case studies in this dissertation discussed in Chapters 5, 6 and 7 illustrate how women workers and their allies organise and utilise networks to recruit support and leverage power. As much as it is a strength, diverse identities, visions and motivations of actors within the network create a volatile network with several points of vulnerability. A typical example is how worker and civil society networks and employer networks as oppositional systems target each other's pressure points.

Networks are *functional*. This means that networks form to attain practical ends and adapt as needed to exert influence. They form as a practical solution or a reaction to overcome challenges posed by formal legal and policy barriers in my research, and operate as a functional whole. First, the plural actors in a network, through coordination, reconcile differences in view of better outcomes for all and come together as a system. Braithwaite, Charlesworth and Soares claim that networked governance entails 'plural actors linked by coordinating dialogue that constitutes both interdependence and sufficient autonomy for different nodes of the network.'<sup>164</sup> As such, this dissertation rests on the premise that regulation is polycentric, decentered, plural and networked with multiple defenders demanding accountability at multiple levels.<sup>165</sup> They converge for a common purpose.

Braithwaite<sup>166</sup> and Braithwaite and Drahos<sup>167</sup> discuss how *weak actors create opportunities* for them through alternative models of regulation — webs of influence — outside the standard or set forms of regulation. The scholars expand on this idea by identifying resistance and oppositional networks in non-state regulation.<sup>168</sup> While Braithwaite advances the idea of connected law enforcement networks, Braithwaite and Drahos discuss 'webs of influence' in explaining how business regulation unfolds in a globalised and connected world. Using 13 case studies in their book, Braithwaite and Drahos discuss 'webs of influence' by states and business actors.<sup>169</sup> Civil society and social or labour networks intervene in the activities of these webs of influence. Further, webs of influence are divided into 'webs of coercion' and 'dialogic webs'.<sup>170</sup>

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<sup>163</sup> Braithwaite, Charlesworth and Soares (n 152) 263-277.

<sup>164</sup> Ibid xii.

<sup>165</sup> Ibid.

<sup>166</sup> Braithwaite (n 153).

<sup>167</sup> Braithwaite and Drahos (n 20) 7.

<sup>168</sup> Ibid 15-26.

<sup>169</sup> Ibid 551-553.

<sup>170</sup> Ibid 553-559.

Non-state actors such as labour and non-governmental organisations prefer webs of dialogue, which are persuasive rather than controlling, as these dialogic webs can entertain ‘interventions’ to attain global regulatory change and better outcomes for them.<sup>171</sup> For instance, a strategy used by dialogic webs is naming and shaming. By contrast, webs of coercion impose *reward* or *coercion* and can be power and resource intensive, so can be out of reach for weak actors.<sup>172</sup> While I adopt the idea of webs of influence in my analysis, my case studies explore webs that are more than merely persuasive but do not meet the high threshold of coercion. The focus is on a type of web that demonstrates qualities of both coercion and persuasion but stands in between the two categorisations. Additionally, it shows how weak actors can use the strategy of ‘generating power externalities through networks’.<sup>173</sup> Intervention in the process of regulation (by conventional regulators) is an opportunity for relatively weak actors, similar to resistance or oppositional networks discussed previously, to create change in the regulatory order.<sup>174</sup>

Networked regulation is also identified as *a new form of governance*. Scholars recognise that networks may be a form of co-regulation which can work alongside state regulation.<sup>175</sup> The networked form of regulation employs a range of different strategies that are multi-faceted, simultaneously deployed or sequential, and even indirect.<sup>176</sup> For instance, regulation can be indirect in instances where informal norms regulate work arrangements. Informal norms and institutions hold the power to affect, complement or even undermine formal labour laws. Petra Mahy considers the role of informal norms in relation to informal workers,<sup>177</sup> and I explore, through my conceptualisation of collective voice, how informal norms and institutions have the potential to affect and complement formal law. I discuss informal norms and institutions below. Further, since regulation can occur in multiple sites ranging from local, national and transnational levels, the networks appear polycentric.<sup>178</sup> Notably, the regulatory approach enables a broad examination of links, alliances and interdependencies across the industrial, national and transnational levels. This is unlike more institutionalised and localised

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<sup>171</sup> Braithwaite and Drahos (n 20) 553.

<sup>172</sup> Ibid 553.

<sup>173</sup> Ibid 87.

<sup>174</sup> On another occasion Drahos elaborates on four strategies for intervention by weaker regulatory actors such as the non-governmental organisations to demand compliance and better standards from business actors: Drahos (n 149) 261-262.

<sup>175</sup> Marshall (n 21) 23-24.

<sup>176</sup> Ibid 23.

<sup>177</sup> Petra Mahy, ‘The functional approach in comparative socio-legal research: reflections based on a study of plural work regulation in Australia and Indonesia’ (2016) 12(4) *International Journal of Law in Context* 420, 420-421.

<sup>178</sup> Julia Black, ‘Constructing and Contesting Legitimacy’ (2008) 2(2) *Regulation and Governance* 137, 140.

approaches such as human resource management mechanisms that concern one workplace or an industry. These management mechanisms can be largely isolating and therefore undermine the collective power of labour.

Although underutilised, a networked regulation and governance lens offers great potential to examine the regulatory influence created by typically weak actors such as women workers, who do not act in an official regulatory capacity and are not typically identified as 'regulators'. As I illustrated in the discussion above, the literature often examines regulation by the state or state agencies and sometimes corporate actors and even consumers. I use the characteristics of networks unpacked above to theorise how women workers in Sri Lanka's apparel industry can exercise regulatory influence and power. This theorising has not been used to understand labour regulation in industrial settings of South Asia before. In that sense, this dissertation extends the utility of networked regulation to the apparel industry in Sri Lanka to examine the ground reality of informal labour bargaining.

Building on previous literature, I focus on resistance and oppositional networks by non-state actors, which goes beyond mere intervention. My case studies offer insights into linkages, coordination and influence to support this analysis. These studies also illustrate the potential progress towards attaining labour goals, rather than perpetual clashes between oppositional networks. Further, using a highly decentered approach to regulation, this analysis highlights that regulation can occur at local, national and global levels and across levels, even by non-state actors such as unions and civil society. For instance, a civil society network of non-governmental organisations and trade unions can coordinate for advocacy, although they do not conventionally fall into the same category due to differences of purpose. The point is that these diverse actors need to be linked by coordinating dialogue that constitutes both interdependence and sufficient autonomy for different nodes of the network to check and balance other nodes of power.<sup>179</sup> These diverse and decentered networks of capacity and accountability are linked to every layer of subnational, national and international hierarchy.<sup>180</sup>

Just like a functional ecosystem, labour networks *enrol resources and members in strengthening their overall system* capacity and power. Networked regulation,

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<sup>179</sup> Braithwaite, Charlesworth and Soares (n 152) xii.

<sup>180</sup> Ibid xii.

therefore, enables me to discuss how at the micro-level of networks, even individuals or individual nodes have the power to enrol major actors such as the states and businesses. The literature identifies this as a strength of global business networks as well as civic and advocacy networks.<sup>181</sup> Making a related argument, Braithwaite and Drahos, through their case studies on business regulation, illustrate how individuals such as state regulators and activists see themselves as ‘deft puppeteers’, rather than ‘passive puppets’, who are capable of moving strings and moving big players.<sup>182</sup> These supportive aspects are crucial for network sustainability and impact. Some such support functions include resource sharing, advocacy across levels, and amplifying messages, funding, knowledge and expertise sharing, training, and rights awareness campaigns. Such support is crucial for networks of weak actors to maximise their power and leverage. I illustrate this in Chapter 8 by tying together the different themes in Chapters 5, 6 and 7.

Overall, regulation and governance through networks is not without limitations. These limitations flow from the same inherent characteristics of networks such as democratic and functional discussed above. Julia Black identifies some more challenges springing from plural laws such as fragmentation of norms and issues of representation which I elaborate on in section 2.3.4 below.<sup>183</sup>

Being coalitions of linked actors, these networks face challenges such as fragmentation and problems of coordination. The network, therefore, is highly reliant on the coordinated dialogue between actors and the shared vision, and any differences in objectives, motivations and visions may impair the harmony within the network. On the other hand, due to the distinctive nature of these nodes, they will not have identical concerns or strategies and may face tensions. Therefore, Braithwaite, Charlesworth and Soares argue that ‘the strength and success of a network, indeed, depend on the management of dissonance among nodes.’<sup>184</sup> In the case of networks of feminist organisations that work for equality and empowerment of women, their strong feminist objectives and ethos can form a strong foundation in uniting different local, national and regional actors and organisations.<sup>185</sup>

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<sup>181</sup> Braithwaite and Drahos (n 20) 501-504.

<sup>182</sup> Braithwaite and Drahos (n 20) 495.

<sup>183</sup> Black (178) 140-141; Sabino Cassese ‘Administrative Law without the State? The Challenge of Global Regulation’ [2005] 37 *New York University Journal of International Law and Politics* 663, 663-694.

<sup>184</sup> Braithwaite, Charlesworth and Soares (n 152) 362.

<sup>185</sup> Rawwida Baksh and Wendy Harcourt, ‘Introduction: Rethinking knowledge, power, and social change’ in Rawwida Baksh and Wendy Harcourt, *The Oxford Handbook of Transnational Feminist Movements* (Oxford University Press, 2015) 1, 1-47.

Further, complex inter-dependencies such as funding-dependency and competition for resources can make weak actors even more vulnerable. For instance, local grassroots-level civil society organisations often rely on funding to sustain their labour agendas. The autonomy of the weak actors may be influenced or even threatened by powerful and rich transnational actors providing funding and resources. One way to avoid this is to have an identified set of principles through which these actors can understand their roles and the scope and limits of their interactions. Further on this point, Braithwaite and Drahos state, 'attempts by developing countries and NGOs to exercise influence by organising independently of the business-dominated epistemic communities have failed.'<sup>186</sup> However, one way to compensate this is by joining the public masses in powerful nations.<sup>187</sup>

Moreover, there is a question about the sustainability of these networked efforts. This is because, in most cases, networks emerge in an ad hoc manner as a response to an injustice at the grassroots level. Unless the actors are strongly motivated and invested in the cause, there is a threat to the continuation of the campaign, advocacy and the network. An interesting query to explore is whether the connections between actors in a network can survive even after the network has attained the desired outcome, or if the objectives seem unattainable.

Finally, labour networks are not essentially limited to formal industrial spaces. Networks can also be dedicated to better outcomes for informal workers, although informal workers are out of the scope of this study. The focus on formal workers (as opposed to informal and agency workers) and networks that include them in this dissertation was a deliberate decision because of their entitlement to access formal mechanisms for rights bargaining. As this study examines what happens when such mechanisms are ineffective, this focus helps to capture the experiences of formal workers. This focus helps to closely examine what workers resort to when the formal labour bargaining mechanisms do not function to attain the objectives and principles that form their foundation.

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<sup>186</sup> Braithwaite and Drahos (n 20) 31.

<sup>187</sup> Ibid 31.

### 2.3.3 Transnational Feminist Movements

Gender shapes the dynamics and motivations of networks. Although largely under-explored in regulatory scholarship, gender is a vital element that shapes regulatory and governance outcomes for specific groups, such as women workers. In Part 1 of this chapter, I discussed that even labour law and industrial relations approaches to worker voice often overlook the experiences of women workers.

In one of the few regulatory studies that focus on gender, Braithwaite, Charlesworth and Soares discussed ad-hoc governance arrangements by women's networks through which women sought to regain their suppressed autonomy and control in patriarchal dominated Indonesian-occupied Timor.<sup>188</sup> As I discussed above, one aspect of this study focused on women's networks in peacebuilding in East Timor. Employing a gendered lens, this study examined how networks enabled women to claim spaces such as political parties, fight gender stereotypes and cultural practices in rural areas and campaign to demand accountability for violence when Timor was under occupation. Their analysis of women's networks also extended to cover international support for local campaigns steered by local women's groups.<sup>189</sup> Although only part of a bigger project on networked governance, this study of Timorese women's organisations demonstrates the potential of networked regulation and governance to engage with oppressive gender dynamics in regulation.

My dissertation combines networked regulation and governance with a feminist lens to explicitly focus on and critically engage with the unique gendered marginalisation and discrimination that women experience in mitigating those injustices. The supporting lens through which I illustrate how gender works in networks is Transnational Feminist Movements (TFM). Valentine Moghadam introduces TFM as a framework that 'brings together women from three or more countries around a specific set of grievances and goals such as women's human rights'.<sup>190</sup> TFM scholarship chooses to draw on a long tradition of feminist movements and its larger subset of women's movements.<sup>191</sup> TFM revolves around cross-border coalescence in furthering shared values of women's rights and gender equality.

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<sup>188</sup> Braithwaite, Charlesworth and Soares (n 152) 276-277.

<sup>189</sup> Braithwaite, Charlesworth and Soares (n 152) 276-277.

<sup>190</sup> Valentine M. Moghadam, 'Transnational Feminist Activism and Movement Building' in Rawwida Baksh and Wendy Harcourt (eds), *The Oxford Handbook of Transnational Feminist Movements* (Oxford University Press, 2015) 53, 56.

<sup>191</sup> See generally, Myra Ferree and Carol McClurg Mueller, 'Feminism and Women's Movement: A Global Perspective' in David Snow, Sarah Soule and Hanspeter Kriesi (eds), *Blackwell Companion to Social Movements* (Blackwell Publishing, 2004), 576-607.

TFM applies to a range of coordinated efforts by women that appear formal or informal and different in their level of organising and impact. Rawwida Baksh and Wendy Harcourt describe TFM as ‘a fluid coalescence of organisations, networks, coalitions, campaigns, analysis, advocacy and actions that politicise women’s rights and gender equality issues beyond the nations state.’<sup>192</sup> Their fluid structure and their transnational engagement places these movements at a particularly advantageous position to be agile, adapt and evolve. Further, the TFM literature identifies several strategies deployed by transnational feminist networks ranging from grassroots organising, research and analysis, lobbying, public advocacy and education, coalition building, humanitarian action, international solidarity and public protests.<sup>193</sup>

TFM as a theory is committed to building understanding of women’s organising for feminist causes from the grassroots to the global. Developed by global south feminists, the theory ‘comes from the ground up, reflecting the feminist commitment to self-awareness and reflexivity, generating new knowledge, building organisations and movements and transforming the society and the world’.<sup>194</sup> Therefore, as a lens it enables researchers to explore cross-border regulations while closely observing their own localities. This also means that TFM can engage with micro-levels of a network at the grassroots level and, at the same time, understand the broader implications of grassroots organising. For instance, Majorie Mnilinyi states how advances in theory and activism, in the context of TFM, are only possible through participatory action research and working with grassroots activists in understanding the world and how to change it.<sup>195</sup> Interestingly, diverse locations, interests and perspectives of the feminist scholars who engage with this theory can lead them to different understandings of it.

In sum, TFMs are fluid and non-hierarchical in structure which resonates with the rationale of democratic and functional elements in the networked regulation discussion above. In its application, TFM examines globalised processes, targets the neoliberal economic policy agenda and is cautious of the dangers of autocratic power. As a critical lens aiming for transnational solidarity, TFM emphasises women’s human rights<sup>196</sup> by

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<sup>192</sup> Baksh and Harcourt (n 185) 4.

<sup>193</sup> Valentine M. Moghadam, *Globalisation and Social Movements: Islam, Feminism and the Global Justice Movement* (Rowman and Littlefield publishers, 2<sup>nd</sup> edn, 2013).

<sup>194</sup> Baksh and Harcourt (n 185) 2.

<sup>195</sup> Majorie Mnilinyi, ‘Transformative Feminism in Tanzania: Animation and Grassroots Women’ Struggles for Land and Livelihoods’ in Rawwida Baksh and Wendy Harcourt, *The Oxford Handbook of Transnational Feminist Movements* (Oxford University Press, 2015) 510.

<sup>196</sup> Moghadam (n 190) 54-57.

(a) closely following the feminist praxis and alliance building and (b) engaging with women's organising in complex structures such as the globalised apparel supply chains and the multiple strategies in responding to different forms of discrimination.<sup>197</sup>

In addition to the above two points, TFM's focus on gender and women's rights, their ability to engage with micro levels and the fluid, non-hierarchical structure have important implications for my dissertation. This theory is particularly helpful in observing the grassroots-level organising by women workers and how a series of actions by grassroots women workers and groups that network across levels can feed into a growing feminist movement. The end goal of this networking process, as discussed above, is solidarity in negotiating rights-based outcomes for women workers.

Significantly, TFM is focused on power and structural change that are beneficial for women. However, this theory does not extend to make regulatory claims about women's organising and collective action. By combining TFM with networked regulation, my study contributes to an extended understanding of women's organising as regulation and their regulatory influence on others. Therefore, the study focuses on women's labour networks in elucidating how their collective voice could be regulatory, in what instances and with what effect. Put differently, how do these networks change and shape the behaviour of other conventional regulators in the apparel industry such as the employers and the state?

In order to make regulatory influence on formal actors, these women's networks have to speak the language of the regulators. By this I mean that the labour claims that women's networks make need to be supported by drawing upon existing legal or policy standards. In this study, I refer to this process as 'legitimising'. Legitimising plays an important role in the regulatory effect of informal labour claims by social groups such as women workers. I analyse this through Sally Falk Moore's semi-autonomous social fields drawn from legal anthropology.

#### 2.3.4 Semi-autonomous social field as a lens to examine norm use in labour claims

Regulatory and governance networks legitimise and advocate their claims using a variety of legal and other norms. The choice of legal or normative framings helps actors or actor networks to make an intended regulatory effect or impact. Braithwaite and

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<sup>197</sup> Baksh and Harcourt (n 185) 11.

Drahos discuss how clever framing of a debate or the choice of a model can ‘give weak actors a decisive advantage over the strong’.<sup>198</sup> This also suggests that weak actors can make use of the complexity and normative plurality present in industrial settings for their advantage.

The normative plurality that governs industrial settings offers a range of potential norms through which actors can seek to legitimise their claims. Industrial pluralism means that multiple legal and non-legal normative systems co-exist. Ruth Dukes, writing on ‘industrial pluralism’, illustrates that the system of collective bargaining is a source of legal pluralism within the industrial context. Collective bargaining as a mechanism offers labour and management an opportunity to ‘sit together and legislate the rules under which the workplace will be governed.’<sup>199</sup> By this, the parties can exclude the application of other norms that may be relevant. As such, industrial pluralism offers the flexibility for employers and employees to set the rules, by agreement. For instance, an agreement could state specific rules that suit the time such as the peak season and conditions such as high consumer demand. Some scholars such as Philip Alston analyse this plurality as a threat rather than a strength for the survival of labour standards;<sup>200</sup> however, the debate on this is not settled.

Industrial pluralism can be both advantageous and disadvantageous for women workers. Within the industrial space, the employers with state support set the rules that serve their interests the best. Although workers can demand changes to these rules through negotiations, women are excluded from those autonomous labour negotiation spaces. It is important to consider how women workers navigate the power differences and exclusion and influence regulatory decision-making. Here, it is important to ask what normative framings offer them the most advantage to further labour claims and demand justice.

Sally Falk Moore’s conceptualisation of semi-autonomous social fields, drawn from legal anthropology, is a useful lens through which legitimising labour claims of women can be further analysed.<sup>201</sup> This lens combines well with networked regulation and governance in examining various alliances and networks within, outside and across

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<sup>198</sup> Braithwaite and Drahos (n 20) 32.

<sup>199</sup> Katherine Ven Wezel Stone, ‘The post-war paradigm in American Labour Law’ (1981) 93(7) *The Yale Law Journal* 1514; 1518-1525.

<sup>200</sup> Philip Alston ‘Core Labour Standards and the Transformation of the International Labour Rights Regime’ (2004) 15(3) *European Journal of International Law* 457, 457-521.

<sup>201</sup> Sally Falk Moore, *Law as Process, An Anthropological Approach* (Routledge and Keagan Paul 1978), 54-81.

the apparel supply chains. Further it shares with TFM the (a) analysis of power structures and (b) norm usage by actors.

This conceptualisation distinguishes the apparel industry as a semi-autonomous social and a governance field. Moore explains that a semi-autonomous social field ‘has rule making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can and does affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance.’<sup>202</sup> Here, the concept of law encompasses a ‘complex aggregation of principles, norms, ideas, rules, practices... backed by political power and legitimacy.’<sup>203</sup> Semi-autonomous social fields has been used in other studies that examine negotiations taking place outside formal and judicial procedures and to study how different norms and practices bind specific groups living within complex societies.<sup>204</sup>

In her book, *Law as Process*, Moore takes the example of the garment industry in New York, as a semi-autonomous social field, to show how the concept works, with its internal and external links and how all norms intermesh in the activities of the industry during a year. Today’s industry is different from what Moore saw in the 1960s, due to the off-shoring of factories and globalisation of the apparel supply chains with many actors and complex relationships across an internationalised supply chain. This conceptualisation is useful for this study to understand what laws and rules offer the most leverage for women workers to action and amplify their voice. In addition to the plural norms that were already in place, more established transnational human rights and labour rights frameworks today have drawn attention to labour rights and business (private actor) responsibility.<sup>205</sup> Figure 2.1 below captures this conceptualisation. It illustrates how Sri Lanka’s apparel industry and its globalised supply chain (the yellow strip), as a semi-autonomous social field that governs itself, is enmeshed within a larger social matrix (that I indicate with the dotted line), and different normative orders at the industry, at national (the green square) and international (the orange square)

<sup>202</sup> Sally Falk Moore, ‘Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study’ (1973) 7(4) *Law and Society Review* 719, 720.

<sup>203</sup> Moore (n 201) 54-55.

<sup>204</sup> Arzoo Osanloo, *Forgiveness Work: Mercy, Law, and Victims’ Rights in Iran* (Princeton University Press, 2020) 4-5.

<sup>205</sup> For example, see the *United Nations Guiding Principles on Business and Human Rights for States, business, civil society, and other relevant stakeholders*, 5 August 2014, A/69/263; Michael K Addo, ‘The Reality of the United Nations Guiding Principles on Business and Human Rights’ (2014) 14(1) *Human Rights Law Review* 133, 133-147; For a more focused discussion on the transformative potential of the Business and Human Rights regime see David Birchall, ‘Any Act, Any Harm, to Anyone: The Transformative Potential of “Human Rights Impacts” under the UN Guiding Principles on Business and Human Rights’ [2019] 1 *University of Oxford Human Rights Hub Journal* 120.

levels. The apparel industry actors draw on these different normative orders, such as special regulations for the industry, national laws, international conventions and other social and normative orders (e.g. gender stereotypes) to influence labour regulation within the social field of the apparel industry.

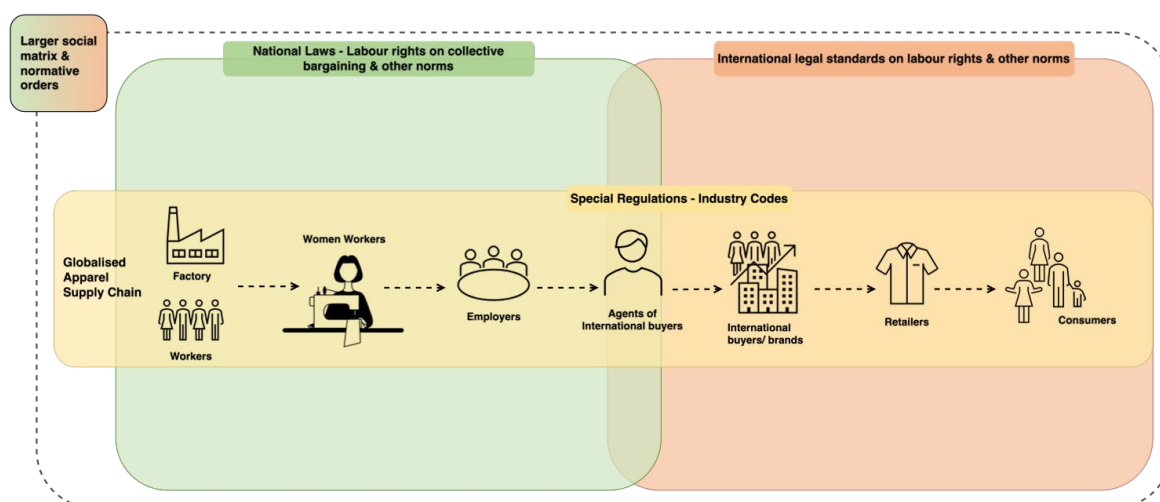


Figure 2.1: Apparel industry as a semi-autonomous social field (Diagram created by the author).

In this study, I advance the idea of legitimising through three key points. First, I show how a selected legal or normative framing can unite actors with similar visions and values. I discussed previously under networked regulation how plural actors need to coordinate through dialogue. Their choice of legal or other norms and framing of the issue help them make strategic moves to recruit or combine with other actors to form networks. For example, feminist norms connect women's organisations and regional and international actors driven by similar ethos.

Second, the choice of legal or normative framing helps actors or actor networks to make an intended regulatory effect. Regulatory scholars discuss this through concepts such as the use of principles in business settings<sup>206</sup> and choosing the favourable interpretation of law when the state law and customary law, applicable to the same matter, clash.<sup>207</sup> On the point of principle usage, scholars argue that using principle in transnational business regulatory networks is common because the national laws of different states at transnational discussions and negotiations simply cannot help.<sup>208</sup>

<sup>206</sup> Braithwaite and Drahos (n 20) 29.

<sup>207</sup> Braithwaite, Charlesworth and Soares (n 152) 218-220.

<sup>208</sup> Braithwaite and Drahos (n 20) 29-30.

For instance, in trade agreements, actors draw on principles such as transparency and other principles like the 'national treatment' and the 'most favoured nation'. Nevertheless, at the national and industry-level settings there is opportunity to use national laws and other available regulations that offer the best leverage for workers.

Third, following Moore, I highlight rights awareness as key for organisation and mobilisation.<sup>209</sup> Moore explains, through her discussion on the garment industry as a self-regulating social field with plural rules, that many rules become operative 'when people inside the affected social fields are in a position to threaten or press for enforcement.'<sup>210</sup> In order to have this effect, people 'must be aware of their rights and sufficiently organized and independent to reach and mobilise the coercive force of government in order to have this effect'.<sup>211</sup> In the same vein, Miranda Forsyth highlights that people's awareness of the law is crucial for the 'activation' of the law's 'instrumental power'.<sup>212</sup> Actors' understanding of the law is often manifested in their behaviour. Forsyth discusses this idea through an example of regulating sorcery accusation in the Pacific Island countries including Papua New Guinea and Vanuatu. Here she explains how the community's awareness of updated laws has a direct bearing on the use and efficacy of law reforms. Further, she focuses on the importance of the ground-level networks of activists who disseminate the law to the communities, 'thus making it [the law] an actual force in their lives.'<sup>213</sup> I further discuss the awareness of the rules in the case study chapters to understand its impact on the success of collective voice as a regulatory tool.

Finally, the application of this theory is limited in my study as it is not an anthropological exploration, but one that utilises a theory developed through Moore's anthropological work to shed light on norm usage for labour organising by women apparel workers.

## 2.4 Part 3: Situating my dissertation in inter-disciplinary scholarship

In examining the collective voice of women workers in Sri Lanka's apparel industry, I propose to draw from an interdisciplinary theoretical framework. The study sits at the intersection of four bodies of scholarship that I discussed above: (1) labour law and

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<sup>209</sup> Moore (n 201) 55.

<sup>210</sup> Moore (n 202) 744.

<sup>211</sup> Ibid 744.

<sup>212</sup> Forsyth explains that 'Activation is a concept broader than enactment, gazettal, implementation, enforcement, or even information sharing or awareness raising, typically used in a positivist understanding of how the instrumental power of statute has effect.': Miranda Forsyth, 'Activating' the powers of law in the South Pacific' (2018) *Development Bulletin* 140, 142.

<sup>213</sup> Ibid 143.

industrial relations, (2) regulatory theory, (3) feminist theory and (4) legal anthropology. The study engages with four themes where the above disciplinary fields interact: (1) women workers, (2) informal pathways for worker voice made possible by industrial pluralism, (3) networked regulation and (4) regulation by labour which represents regulatory influence of networks harnessed by women workers. This intersection portrayed in Figure 2.2 below shows the location from where the dissertation is going to make an intellectual contribution. However, it is not the objective of my study to contribute equally to each of these selected theories. While the dissertation constructs its key framework based on the themes from these four fields, the contribution of the dissertation is primarily to regulatory theory.

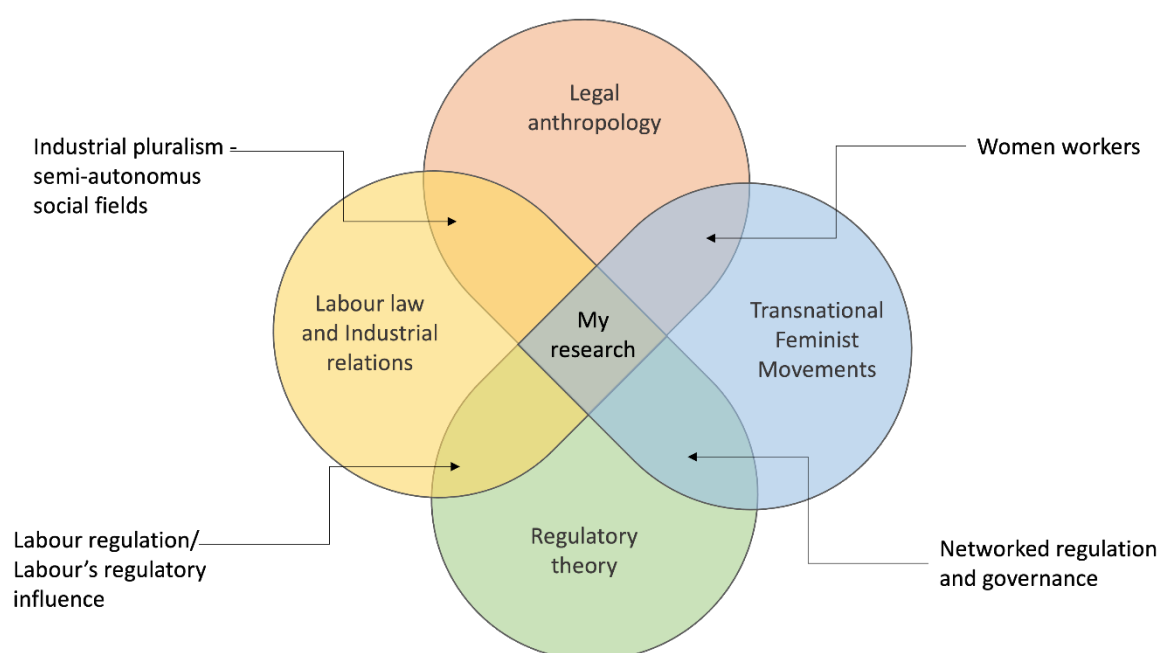


Figure 2.2: Situating my dissertation in the interdisciplinary literature and themes flowing from the bodies of literature (Diagram generated by the author).

As discussed in Part 1 of this chapter, worker voice is an established area of research in labour law and industrial relations scholarship. The two fields examine worker voice in the context of organisation, representation, negotiation and related institutions and policies. However, both fields have remained within the doctrinal and formal investigation of worker voice without (a) an evaluation of its potential outside the established formal institutions and mechanisms and (b) its broader implications for making regulatory change beyond one workplace or industry. Nevertheless, literature in both areas, which I discussed in Parts 1 and 2, has come to recognise the

importance of exploring worker voice beyond the respective disciplinary limitations, given the decline in the formal collective mechanisms for labour bargaining.

Part 2 of this chapter explained that early regulatory scholarship recognised the inadequacy of private and semi-private regulatory models. These early approaches based on monitoring mechanisms and self-regulation by businesses disempower labour and its voice in work settings. Crises such as the pandemic have further challenged the capabilities of these conventional mechanisms of worker voice in labour and industrial law as well as self-regulation. I describe the impacts of the crisis on worker voice more closely in Chapter 1.

The interdisciplinary conceptual framework described here offers a new direction to think about how women workers organise, network and harness power to influence labour regulation in apparel supply chains. This framework serves two purposes: first, it sheds light on how women workers seek to organise and negotiate their labour rights when excluded from the formal labour bargaining mechanisms. Second, in doing so, it further explores whether and to what extent women workers influence the regulation of the apparel industry in how they choose to express voice. The three case studies in this dissertation discuss how women workers organise and strategise to influence other regulatory actors in apparel supply chains, for better outcomes for workers at the factory level.

The conceptual framework outlined here aims to utilise the capabilities of regulatory scholarship to capture ground-level approaches to regulation and governance. For this purpose, the framework is enhanced by TFM drawn from feminist ideology to unpack gender dynamics, and the semi-autonomous social field lens from legal anthropology to understand the use of different normative framings around collective voice. In sum, this conceptual framework helps me with the analytical dimensions of the dissertation, which are examining the: (1) composition of networks to action collective voice, (2) issues and the related events, actions and reactions that form a part of the range of responses aiming for change, (3) norms that help the individuals and groups to unite and guide their strategic reactions.

## 2.5 Part 4: Scope of this dissertation: What the dissertation does not do

Worker voice and workers organising have been widely researched in other fields such as social movements in the socio-legal scholarship and business and human rights. However, in carving out a new direction to explore women workers' voice and its regulatory potential, this dissertation does not engage with these areas and theorising for the reasons discussed below.

### ***Social movements theory***

Similar to regulatory theory, social movements theory from the socio-legal scholarship focuses on 'sustained organizational efforts to change the structure of society or the distribution of society's resources'.<sup>214</sup> While committed to a range of purposes, social movements have the common purposes of change through social reform and law reform. The conventional view of social movements especially is set on a 'unidirectional' process of social movements securing law reform in order to bring about social change.<sup>215</sup> Handler, examining social movements in the USA, argues that reform groups, primarily lawyers, serving a range of clients including blacks, the poor, and environment and consumer interests all connect through the common thread of wanting 'more of society's good for their clients'.<sup>216</sup> He expands on a range of methods adopted by the 'reformers' such as advocacy, law reform activity directed at the state, strengthening the adversary system and reforming the government, and how law reformers can increase the power of the client groups.<sup>217</sup>

While most social movements literature emphasises law reform for social change, some recent literature engages with broader conceptualisations of social movements and examines social change through means other than law reform,<sup>218</sup> and ideas of how reformers can mobilise outside the established political and institutional

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<sup>214</sup> Cary Coglianese, 'Social Movements, Law, and Society: The Institutionalization of the Environmental Movement Source' (2001) 150(1) *University of Pennsylvania Law Review* 85, 85-118; Also see Mario Diani, 'The Concept of Social Movements' (1992) 40(1) *The Sociological Review* 1; John D. McCarthy & Mayer N. Zald, 'Resource Mobilization and Social Movements: A Partial Theory' (1977) 82(6) *American Journal of Sociology* 1212, 1217-18.

<sup>215</sup> Joel F. Handler, *Social Movements and the Legal System: A Theory of Law Reform and Social Change* (Academic Press, New York 1978).

<sup>216</sup> Handler (214) 2.

<sup>217</sup> *Ibid*, 2-5.

<sup>218</sup> Coglianese, expanding on the conventional emphasis on law reform, looks at other dimensions such as effecting change through means other than law reform, how society's changing values and public opinion can feed back into the legal system which can enhance the implementation of legislation and how law reform efforts themselves can have an impact on public opinion lending legitimacy to the claims advanced by social movements: Coglianese (n 214) 85-118.

channels.<sup>219</sup> Similarly, social movements research in socio-legal scholarship explores organised labour, union and civil society alliances in strengthening collective action and has evolved to broaden its analysis without being limited to the conventional class-based networks.<sup>220</sup> This theory has been used to discuss recent social phenomena such as the Black Lives Matter (BLM) and Occupy Wall Street movements that grew out of the global economic collapse, the complicity of political elites and mismanagement and failures of economic policy.<sup>221</sup>

Scholarship that discusses social movements theory in the global south often points to this reality of (a) how social movements literature has been oriented to the analysis of movements in the global north, and (b) uses criteria derived from 'Northern experience'.<sup>222</sup> Applications of this theory further suggest a geographically and substantively broader political base, being global in its orientation and outcomes based on sustained social movement activity.<sup>223</sup> Literature highlights that the global south experience is very different although there is common desire to mobilise towards a collective goal. Observations in the global south settings include several differences such as differences in state reaction in terms of attainment of denied rights, reversing adverse state policy and movements which are consequences of rights.<sup>224</sup> In addition, sustained social movement activity could look very different when groups take advantage of small moments of resistance and advocacy which will eventually form a part of the process towards the so-called sustained social activity.

Analysing women workers in Sri Lanka through this lens might be appealing but this study, through its qualitative data, shows that there is no formal organised labour rights movement. I argue in Chapter 4 that the formal labour union movement in Sri Lanka is limited in its scope and unable to operate freely in the EPZs or in the national-level forums. The case studies in this dissertation illustrate that 'organisation' at the grassroots level is informal and invisible, sometimes not specific to that location or to

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<sup>219</sup> Hank Johnston, *What is a Social Movement* (Polity Press, 2014).

<sup>220</sup> Jurgen Grote and Claudius Wagemann, *Social Movement and Organised Labour: Passions and Interests* (Taylor and Francis Group, 2018), 1-17.

<sup>221</sup> Johnston (n 219).

<sup>222</sup> Lisa Thompson and Chris Tapscott, 'Introduction: mobilisation and social movements in the south - the challenges of inclusive governance' in Lisa Thompson and Chris Tapscott (eds), *Citizenship and social movements perspectives from the global south* (Zed Books, London and New York 2010), 1-34.

<sup>223</sup> Ibid 1-2.

<sup>224</sup> Ranjita Mohanty, 'Contesting development, reinventing democracy: grassroots social movements in India' in Lisa Thompson and Chris Tapscott (eds), *Citizenship and social movements perspectives from the global south* (Zed Books, London and New York 2010) 239-259; Zia Rahman and Tom Langford 'The limitations of global social movement unionism as emancipatory labour strategy in majority world countries' (2010) 6(1) *Journal of the Society for Socialist Studies* 45, 45-64.

one worker cohort. The dissertation therefore focuses on the tools and methods used by women workers to influence the environment that affect most workers in more atomic ways. And whilst I find and argue in Chapters 5, 6 and 7 that women workers express voice in many different ways, voice is not the same as social movements. Therefore, in order to find and make visible that voice, I use the framing device of regulatory networks, also borrowing from TFM and semi-autonomous social fields.

### ***Business and human rights***

Although my research shares objectives of strengthening human rights and corporate accountability, it does not employ a business and human rights analysis. The business and human rights field has evolved with a focus on businesses. Initially connecting corporations with human rights, it aimed to shed light on how businesses should engage with human rights.<sup>225</sup> For instance, the UN policy framework and guidelines are ‘intended to ensure coherence, efficiency, and transparency in formal UN-business relationships’<sup>226</sup>. The field is now expanding to regulate corporate conduct with the involvement of other stakeholders including states and civil society.<sup>227</sup> Other common themes of business and human rights such as weak laws and enforcement, soft law and stakeholder-led initiatives<sup>228</sup> overlap with those pursued in this dissertation. Nevertheless, since the focus of this conceptualisation is on corporate responsibility and multi-stakeholder initiatives, it takes away the focus from the grassroots-led initiatives by women workers for challenging corporate misconduct and human rights violations.

Business and human rights scholarship identify the need to enforce national laws and regulations and new practices. Until then, the worker protests in areas such as raising the minimum wage will continue. There is also emphasis on vigilant civil society comprising worker organisations ‘acting as watchdogs, whistleblowers, negotiators, organisers and citizens’ for effective implementation of the rules.<sup>229</sup> This suggests the need to better align the objectives and the role of civil society and worker organisations

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<sup>225</sup> Dorothee Baumann-Pauly and Justine Nolan, *Business and Human Rights: From Principles to Practice* (Taylor and Francis Group, 2016) 31-32.

<sup>226</sup> Jolyon Ford, *Regulating Business for Peace: The United Nations, the private sector, and post-conflict recovery* (Cambridge University Press, 2015) 55.

<sup>227</sup> Chris Jochnick and Louis Bickford, ‘The role of civil society in business and human rights’ in Baumann-Pauly and Nolan (n 225) 191; Barbara Shailor, ‘Workers’ rights in the business and human rights movements’, in Baumann-Pauly and Nolan (n 225) 194-200.

<sup>228</sup> Surya Deva, ‘Bhopal: the saga continues 31 years on’ in Dorothee Baumann-Pauly and Justine Nolan (eds), *Business and Human Rights: From Principles to Practice* (Taylor and Francis Group, 2016) 22-26; Justine Nolan, ‘Rana Plaza: the collapse of a factory in Bangladesh and its ramifications for the global garment industry’, in Baumann-Pauly and Nolan (n 225) 27-29.

<sup>229</sup> Baumann-Pauly and Nolan (n 225) 27.

in relation to businesses, and that business and human rights solutions have a long way to go in further exploring cooperative mechanisms.

Initiatives that make claims on corporate accountability and human rights due diligence do not always include business and state actors. In fact, business and human rights scholars acknowledge that labour and civil society groups, in order to engage with companies, 'must constantly choose between adversarial and collaborative tactics'<sup>230</sup> and that human rights, such as the right to organise and bargain collectively, 'will always be contested'<sup>231</sup> due to the clashing interests of the business and labour groups. As illustrated by the data in this study, due to the massive power differences at the ground level, most such labour-led initiatives in Sri Lanka arise and grow as a counter-power to corporate power. These social and labour forces, therefore, challenge corporate conduct and related state obligations from outside the formal structures. In addition, sometimes labour and social groups organise separately when their objectives significantly diverge from what the corporations desire and deem suitable for them. The initiatives that I focus on in this research are alliances that do not include businesses as these networks and alliances have the worker interests at the centre and seek to hold businesses accountable. Therefore, I use regulatory and feminist lenses that enable me to highlight the power and impact of women workers' collective voice better, and they may or may not be a part of a network with businesses and corporate actors.

## 2.6 Conclusion

In this chapter, I discussed how different bodies of scholarship examine labour rights bargaining and how the institutions and the scholarly critiques have evolved over time. I showed that the inadequacy of the formal bargaining mechanisms laid out by labour law and industrial relations to protect women workers in Sri Lanka has resulted in women workers inventing informal methods to negotiate their risks and rights at work. Old regulatory frameworks that sought to localise labour regulation have not succeeded in resolving workers' ability to action voice and negotiate their rights. It further explains the scope of the theoretical framework.

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<sup>230</sup> Jochnick and Bickford (n 227) 190.

<sup>231</sup> Barbara Shailor, 'Workers' rights in the business and human rights movement' in Baumann-Pauly and Nolan (n 225) 199.

I proposed an interdisciplinary conceptual framework for analysing emerging forms of labour bargaining by women workers in Sri Lanka's apparel industry which aims to capture the regulatory potential of women workers' collective voice. The conceptual framework aids my discussion of how worker voice organises at the local, national and transnational level with a focus on gender. It also takes into account the complex dynamics of evolved and globalised apparel supply chains and how these informal regulatory forms invented by workers target different pressure points in their complex structure.

The next chapter focuses closely on the methodology of this study. Thereafter, the case study chapters will adopt the framework introduced here to further evaluate the effect and the regulatory impact of collective voice as a regulatory tool.

## Chapter 3: Methodology and methods for studying women workers' collective voice

### 3.1 Introduction

This chapter discusses how I implement my research in exploring labour rights negotiation by women workers in Sri Lanka's apparel industry. The dissertation aims to answer the three sub-questions that I outlined in section 1.5 in Chapter 1.

Researching labour rights negotiations by women workers in Sri Lanka's apparel industry requires building of empirical knowledge of women workers' voice.<sup>232</sup> A core aim of my research was also to understand whether, and if so how, women workers exert regulatory influence and impact decision-making, through their voice, in spaces where they are not generally viewed as formal regulators. In the previous chapter, I explained the theoretical framework for this analysis based on regulation and governance through networks, augmented by Transnational Feminist Movements (TFM) and insights from semi-autonomous social fields. These theoretical lenses particularly combine well because they connect with the large umbrella of socio-legal research, which informs the methodology for this research.

This chapter is developed in two parts. In Part 1, I discuss my research methodology in connection with a socio-legal approach to doing research and how it combines with feminist methodology to capture the experiences of women workers. Part 1, further, outlines my positionality and unpacks my connection with this study. Part 2 discusses the case study method and its implementation. Although some of these methods are clearly intertwined and are used alongside each other, I have separated them in the structure for clarity. As a continuation of Part 2, I explain the data analysis, methodological limitations and how I managed these challenges.

### 3.2 Methodology for studying women workers' collective voice

The grounded exploration of women workers' collective voice in this dissertation requires going beyond the conventional doctrinal analysis to understand law in action,

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<sup>232</sup> Cotterrell explains that socio-legal inquiry requires that legal or social knowledge 'must be grounded in empirical observation': Roger Cotterrell, 'Why must legal ideas be interpreted sociologically?' (1998) 25(2) *Journal of Law and Society* 171, 191; Also see Lisa Webley, 'The why and how to of conducting a socio-legal empirical research project' in Naomi Cruetzfeldt, Marc Mason and Kirsten McConnachie (eds), *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge, 1<sup>st</sup> edn, 2019) 58-69.

from the ground up. The research is designed as a qualitative study in the interpretivist tradition<sup>233</sup> to explore three case studies from Sri Lanka. This design is composed of a socio-legal methodology enhanced by feminist methodology to construct knowledge based on grounded and derived data.<sup>234</sup>

### 3.2.1 Socio-legal approach

A *socio-legal approach* goes beyond the formal laws and official mechanisms to deeply engage with social inequalities and other realities. It recognises that ‘law and legal institutions are studied as a social phenomenon’ because ‘law does not operate independent of its environment.’<sup>235</sup> Creutzfeldt, Mason and McConnachie identify this approach as a ‘way of seeing’ and ‘of recognizing the mutually constitutive relationship between law and society’.<sup>236</sup> While a socio-legal enquiry can give rise to a diversity of approaches, these approaches are unified by the generative outcomes produced by the relationship between ‘law’ and ‘society.’<sup>237</sup> As such, scholars describe socio-legal research as studying the gap between law on the books and law in action,<sup>238</sup> and as an attempt to ‘extend established methods of legal thought in new, relatively unfamiliar ways’.<sup>239</sup> Scholars highlight how a socio-legal approach ‘listens closely and with some humility to the unheard voices of ordinary people, who are most significantly affected by law and legal institutions.’<sup>240</sup> This is especially because it critically assesses law’s role and impact on ordinary lives of people which aligns well with the purpose of this research discussed in Chapter 1.

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<sup>233</sup> Interpretivism is premised on the thinking that knowledge and reality are socially or discursively constructed; See P. Furlong and D. Marsh, ‘A skin not a sweater: ontology and epistemology in political science’ in Marsh and Stoker (eds), *Theory and Method in Political Science* (Palgrave Macmillan, 3<sup>rd</sup> edn, 2010).

<sup>234</sup> Donna Haraway, ‘Situated knowledges: The science question in feminism and the privilege of partial perspective’ (1988) 14(3) *Feminist Studies* 575, 575–599; Also see Dragos Simandan for a framework that she proposes in order to help thinking analytically and precisely about the situatedness of knowledge claims. She postulates that one’s knowledge is inevitably incomplete and situated because information about the world always reaches us through a channel that is constituted by four epistemic gaps: ‘(1) ‘possible worlds versus realized world’, (2) ‘realized world versus witnessed situation’, (3) ‘witnessed situation versus remembered situation’, and (4) ‘remembered situation versus confessed situation’, ‘Revisiting positionality and the thesis of situated knowledge’: at Dragos Simandan, ‘Revisiting positionality and the thesis of situated knowledge’ (2019) 9(2) *Dialogues in Human Geography* 127, 127-219.

<sup>235</sup> Lynette Chua, David Engel and Sida Liu, *The Asian Law and Society Reader* (Cambridge University Press, 2023) 3.

<sup>236</sup> Naomi Creutzfeldt, Marc Mason and Kirsten McConnachie, *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge, 1<sup>st</sup> edn, 2019) 4.

<sup>237</sup> *Ibid* 3-8.

<sup>238</sup> Roscoe Pound, ‘Law in books and law in action’ [1910] 44 *American Law Review* 12; R. Abel, ‘Law and Society: Project and practice’ (2010) 6(1) *Annual Review of Law and Social Science* 1, 1-23.

<sup>239</sup> R. Cotterrell, ‘Trusting in Law: Legal and Moral Concepts of Trust’ [1993] 46 *Current Legal Problems* 75, 75–95.

<sup>240</sup> Chua, Engel and Liu (n 235) 5.

Empirical enquiry is at the centre of this approach. Socio-legal research aims to provide a 'useful real-world assessment of legal doctrine'.<sup>241</sup> This means that socio-legal theories are derived from the real world, rather than from normative analysis. Therefore, scholars engage with people and everyday affairs. On the other hand, sociology scholars working on the sociology of law also emphasise the limitations of normative sociology,<sup>242</sup> or the conceptual examination. On that basis, they focus on the 'study of *social action* as it pertains to legal events'.<sup>243</sup> Sociologists also believe that the sociology of law can advance sociology beyond normative research through empirical work.<sup>244</sup> Strong connections with activists, practitioners and policymakers foreground the social sphere in understanding how the law and official mechanisms work and how and whether they should be changed. The socio-legal approach therefore requires the use of methods such as field interviews and observations, which I have employed in this study.

The dissertation is centered on the lived experience of women workers. Women's lived experiences, in this dissertation, means the reality in which women workers live, their social, economic and personal experiences and the effects of law on their status as workers when they interact with formal bargaining mechanisms and spaces set out by the law. As such, lived experience is subjective for each worker. I further build on this in section 3.2.2 below. Focus on their experience enables a close examination of the role of law in reinforcing gendered subjectivities and exclusion of women from these formal labour bargaining mechanisms and spaces. For this purpose, labour negotiation has to be explored beyond the laws and the related rules.<sup>245</sup>

Socio-legal methodology enables constructing what transpires at the ground level in order to meaningfully engage with the implementation of the law. In doing this, socio-legal research encourages cross-pollination and interdisciplinary examination to engage with other disciplines on the effect and the impact of law.<sup>246</sup> Socio-legal

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<sup>241</sup> Chua, Engel and Liu (n 235) 4.

<sup>242</sup> Clive Grace and Philip Wilkinson, *Sociological Inquiry and Legal Phenomena* (Collier Macmillan, London 1978) 4-44.

<sup>243</sup> Grace and Wilkinson (242) 1.

<sup>244</sup> Grace and Wilkinson (242) 43-44.

<sup>245</sup> Legal research has now evolved from a point where it was professional practice-oriented, to examine legal issues empirically. Legal research as well as training at the law school increasingly incorporate experience from the real world and critical reflection about the legal rules and practice. Banakar and Travers observe that this has changed on the basis that the perception now is lawyers should do more than merely use legal rules: Reza Banakar and Max Travers, *Theory and Method in Socio-legal Research* (Hart Publishing, 2005) 19-21.

<sup>246</sup> Some early scholars argued that law does not have its own methodology and therefore borrowed methodologies from other disciplines. This is because of law's professional focus, or attention to professional demands of legal practice: J.B. Balking, 'Interdisciplinarity as Colonization' (1996) 53(1) *Washington and Lee Law Review* 949, 949-970.

research offers flexibility to adopt a variety of theoretical stances and methodological approaches.<sup>247</sup> Socio-legal researchers use ‘cross disciplinary boundaries, to expand and mix mindsets, and to combine methods and theories.’<sup>248</sup> Creutzfeldt describes that this is clear in the way that empirical analysis of social problems is carried out using numerous methods and theories.<sup>249</sup> This approach, especially in this dissertation, helps to understand and theorise the law–practice gap in labour bargaining with a focus on workers in that process. This approach does not view law as ‘an autonomous force to which society is subjected.’<sup>250</sup> Instead, it is shaped by broader social, political and economic relations and the context.<sup>251</sup>

Further, the cross-disciplinary connection and engagement between law, politics and economics in the socio-legal approach is a resourceful academic tool to analyse and understand moments of crisis. Scholars point out how, in the USA, socio-legal research emerged at a moment ‘when social activism and post-war prosperity coincided to foster hope for progressive social change.’<sup>252</sup> This agility and sensitivity is especially important in implementing my own research during the pandemic and an economic crisis<sup>253</sup> and what this could mean for women workers.<sup>254</sup>

Finally, socio-legal methodology can engage with the question of how formally gender-neutral laws translate into action. Gender neutral laws entail objective legal standards that do not appear to favour or discriminate against any gender. However, in implementation, they could have gendered effects disadvantageous for a group, like women workers. This dissertation engages with objective standards like workers’ right to collective bargaining and question their ability to promote and empower women workers in their factories and at the national-level forums. I discuss this further in section 3.2.2 below, alongside feminist methodology.

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<sup>247</sup> Creutzfeldt, Marc Mason and Kirsten McConnachie (n 236) 11.

<sup>248</sup> Naomi Creutzfeldt, ‘Traditions of studying the social and the legal’ in (n 236) 10.

<sup>249</sup> Ibid 11.

<sup>250</sup> Darren O’Donovan, Socio-Legal methodology: Conceptual underpinnings, justifications and practical pitfalls in Laura Cahillane and Jennifer Schweppe (eds), *Legal Research Methods: Principles and Practicalities* (Clarus Press 2016).

<sup>251</sup> Ibid.

<sup>252</sup> Creutzfeldt, Marc Mason and Kirsten McConnachie (n 236) 4-5.

<sup>253</sup> Alia Chughtai, Rehana Thowfeek and Mariam Ali, ‘Infographic: Sri Lanka’s economic crisis and political turmoil’ *AlJazeera* (News Online, 7 April 2022) at <<https://www.aljazeera.com/news/2022/4/7/infographic-sri-lankas-economic-crisis-and-political-turmoil>>.

<sup>254</sup> Shyamain Wickramasingha, ‘Crisis mode in the Sri Lankan apparel industry: a closer look at the implications for firms and workers’ *Business in Development blogs, the Centre for Business in Development* (Blog, 8 March 2023) <<https://cbds.cbs.dk/crisis-mode-in-the-sri-lankan-apparel-industry-a-closer-look-at-the-implications-for-firms-and-workers/>>.

The socio-legal approach combines well with feminist methodology to enhance and shed light on the gendered experiences of women workers. Socio-legal practices can guide deep engagement with context, the richness of details and qualitative input from a range of stakeholders in making grounded claims. Feminist methodology complements this prompt to go beyond the formal sphere and consider the experiences of weak actors in order to uncover structural injustices and inequalities that they face.

### 3.2.2 Gender focus influenced by feminist methodology

I place women workers' experiences and voices at the centre of this study. Therefore, *feminist methodology* further informs how I have employed different research methods for this dissertation. Rosemary Hunter, highlighting the 'strong affinity' between feminist scholarship and socio-legal scholarship, explains that both are concerned with the social experience and effects of law, and that both reject the 'separation thesis',<sup>255</sup> which she describes as 'the notion that law operates according to its own internal logic, autonomously from society.'<sup>256</sup> Accordingly, feminist methodology can co-exist and complements socio-legal methodology.

Feminist socio-legal studies emerged from an established line of scholarship.<sup>257</sup> They are motivated in understanding 'the operations of gendered power relations and the role of law in perpetuating, reinforcing and ameliorating those power relations.'<sup>258</sup> This also means that they are interested in capturing how women penetrate patriarchal structures that exclude them. Therefore, feminist studies distinguish women workers and their experiences from the general category of workers.<sup>259</sup> Through these understandings, scholars using feminist knowledge aspire to effect change and transform structures that are oppressive, discriminatory and unjust.

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<sup>255</sup> Rosemary Hunter, 'Feminist Approaches to Socio-legal Studies' in Naomi Creutzfeldt, Marc Mason and Kirsten McConnachie, *Routledge Handbook of Socio-Legal Theory and Methods* (Routledge, 1st edn, 2019), 260-270, 260.

<sup>256</sup> Hunter (n 255) 260.

<sup>257</sup> Literature that discusses law's failure to respond to women's experience: See R Graycar and J Morgan, *The Hidden Gender of Law* (Federation Press, 2<sup>nd</sup> edn, Sydney, 2002); For law constructing and reinforcing gendered subjectivities: See M Enright, J McCandless and A O'Donoghue (eds), *Northern/ Irish Feminist Judgements: Judges' Troubles and the Gendered Politics of Identity* (Oxford Hart, 2017); C Smart, *Feminism and the Power of Law* (Routledge, London 1989); Also see Katharine Bartlett, 'Feminist Legal Methods', in D. Kelly Weisberg (ed), *Feminist Legal Theory: Foundation* (Temple University Press Philadelphia 1993) 550-570.

<sup>258</sup> Hunter (n 254) 269.

<sup>259</sup> Lester, Gillian, 'Toward the Feminization of Collective Bargaining Law' (1991) 36 *McGill Law Journal* 1182.

South Asian literature on apparel workers employs these feminist discussions of identity and structural injustices. Scholars researching the apparel industries in Bangladesh and Sri Lanka discuss how the structural, identity and representation-related realities further hinder women's access to forums and mechanisms through which they can negotiate their rights.<sup>260</sup> Alamghir, in her analysis of women's (mis)representation and (non)recognition in Bangladesh's apparel industry, claims that women factory workers are not represented in the so-called 'inclusive approaches to governance' within local labour governance structures.<sup>261</sup> She discusses how women workers were not represented or recognised in the enacting and implementation of important work regulations and compliance codes such as Bangladesh's Accord for Fire and Building Safety and the Alliance for Bangladesh Worker Safety. Further, she identifies the 'approaches of representation' or other possible forms of representation for women apparel workers as future pathways of research.<sup>262</sup>

The feminist school of thought has guided 'doing research' into more grounded and critical pathways and was constructed as a response to positivism-centred examinations of the world.<sup>263</sup> The feminist methodology, therefore, complements the socio-legal approach to uncover the structural, identity and representation-related barriers that women workers need to overcome. Feminist methodology primarily challenges the subject-object distance that was deemed essential for scientific research in the past. The feminist approach does not necessarily detach itself but is an agent that attaches meaning to actions. In doing so, feminist scholars also ensure that their biases will not colour their knowledge claims. As such, feminists employ cross-disciplinary thinking and inclusive, experiential, and socially relevant approaches to doing research.<sup>264</sup> At the same time, a feminist approach closely connects with the context of an enquiry. In line with the critical theorists, feminist approaches combine context and experience as a means of uncovering new knowledge. This is due to the belief that existing ideologies maintain the status quo which constrains researchers from producing new knowledge.<sup>265</sup>

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<sup>260</sup> See, e.g., Kanishka Jayawardena, 'On the Burden of being-qua-non-being' in Alison Pullen and Carl Rhodes (eds), *The Routledge Companion to Ethics, Politics and Organisations* (Routledge, 2015), 150-161.

<sup>261</sup> Fahreen Alamghir and Ozan N. Alakavuklar, 'Compliance Codes and Women Workers' (Mis)representation and (Non) recognition in the Apparel Industry of Bangladesh' (2020) 165(2) *Journal of Business Ethics* 295, 295-310.

<sup>262</sup> *Ibid* 308.

<sup>263</sup> See generally Kumari Jayawardena, *Feminism and Nationalism in the Third World* (Verso 1986).

<sup>264</sup> Joyce McCarl Nielsen, *Feminist Research Methods* (Routledge, 1<sup>st</sup> edn, 1990) 6.

<sup>265</sup> See generally, R. Bernstein, *Beyond Objectivism and Relativism: Science, Hermeneutics and Praxis* (University of Pennsylvania Press 1983).

Feminist legal scholars have developed methods guided by the feminist methodology, such as consciousness raising and ‘asking the women question’.<sup>266</sup> Justification for this is to differentiate the feminist approach from the existing research methods, as existing methods recreate the same unjust power structures and practices.<sup>267</sup> For example, Katherine Bartlett explains how ‘asking the woman question’ enables researchers to examine the failure of laws and policies through taking into account the experiences and values more typically held by women and how the neutral standards might disadvantage women.<sup>268</sup> The objective of raising the question is to expose how seemingly neutral standards may be non-neutral, how they operate and how they may be corrected. Similar to the socio-legal approach, the purpose here is to identify the general worker voice mechanisms and examine them through a gender lens to understand if women workers have the same level of access and representation within these formal worker voice mechanisms.

Field interviews, described below, allowed women workers to speak directly about their experience of equity, safety and security as workers, consistent with feminist methods. Connected to what was discussed above, these experiences also captured underlying connections to injustices and gendered experiences during a pandemic, a period of national dislocation and economic crisis in Sri Lanka.

### 3.2.3 Positionality: Connection of my own journey and experience with the study

This research connects with my life and experiences in more than one way. My positionality as an insider as well as an outsider and my access to the industry shaped my decisions about the methodological approach and access to the field.

Growing up in a suburb close to Colombo, the capital of Sri Lanka, I lived in a society that emphasised the economic benefits of the apparel industry and talked selectively and little about the workers. Since childhood, ‘garment girls’ were not an unusual sight for me. Close to our home, at the time, there was a garment factory that I used to pass every day during my commute from home to school and back. I could see nothing beyond the factory’s high walls and the tall gates, except swarms of workers – mostly young women – walking through the gates at the crack of dawn and pouring out as the

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<sup>266</sup> Katharine Bartlett, ‘Feminist Legal Methods’, in D. Kelly Weisberg (ed), *Feminist Legal Theory: Foundation* (Temple University Press Philadelphia, 1993) 550, 550-570.

<sup>267</sup> See Audrey Lorde, ‘The Master’s Tools will never dismantle the master’s house’ in Cherrie Moraga and Gloria Anzaldua (eds), *This Bridge Called My Back: Writings by radical women of colour* (Third Woman Press, 3<sup>rd</sup> edn, 2002) 94, 94-101.

<sup>268</sup> Bartlett (n 266) 551.

night approached. In the early 2000s, on Sri Lankan television, there were efforts to change the negative attitudes and stereotypes about garment women. An old popular song from this period carried the chorus, 'Like a mother, full of noble qualities – do not stigmatise the garment-worker-sister.' Yet, this did little to shift the stigma that is captured in the term 'Juki girl', explored in Lynch's ethnographic study of Sri Lanka's women garment workers.<sup>269</sup> The name is believed to have originated from the Juki machines that garment factories use and the machine operators are generally young girls. It is a 'derogatory nickname' used in a negative light to objectify women workers and imply that they hold loose morals.<sup>270</sup> Later research by Hewamanne makes similar claims.<sup>271</sup> This literature discuss how global production is localised and women's struggles over modernisation, nationalism and the changing culture and expectations around their role in society. Poverty and new economic opportunities further complicate the dynamic for women.

Although more women participate in the apparel industry work now than in the early 2000s, anecdotally we see very little change to the social stigmatisation and belittling of apparel industry women workers. This attitude translates into how women are treated in activism, at leadership levels and more generally their access to rights.

My own role as an 'insider' as well as an 'outsider' stands out prominently in this research.<sup>272</sup> With my father joining the industry as a human resources manager (in the early 2000s), several factories that he worked in and their workers became central to my life as a child. In his role, he had direct interactions with workers on a daily basis. I recall instances where he mentioned how he had to dismiss workers for their affiliations with 'outside organisations' (typically trade unions) because their influence caused trouble inside the factory. As I grew older and with my father leaving the industry, I became more distant from those ground realities. As an undergraduate student in Colombo, I was more invested in *law on the books* on trade unions and freedom of association. Later on, teaching at the Faculty of Law in Colombo and working with civil society organisations that focused on rural and urban women re-ignited my interest in *law in action* (or how it plays out in the society) and the experiences of women. The PhD research offered me the time and tools to revisit my life experiences with apparel

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<sup>269</sup> Lynch (n 94) 22.

<sup>270</sup> In her book, Lynch captures how women factory workers are called different derogatory nicknames such as 'Juki girls (*Juki kello*), Juki pieces (*Juki Kali*), Garment pieces (*Garment baduwa*)' by 'making them seem like nothing more than things or pieces of dry goods': Lynch (n 94) 10.

<sup>271</sup> Hewamanne (n 95) 187-198; Hewamanne (n 97).

<sup>272</sup> Merriam, Sharan B., et al., 'Power and positionality: Negotiating insider/outsider status within and across cultures' (2001) 20(5) *International Journal of Lifelong Education* 405, 415.

workers and to examine the relevance of the law to their experiences, rights and life at work.

Additionally, reflexivity helped to strengthen my own awareness and commitment to good research.<sup>273</sup> I carefully considered my privileges in terms of social class and status as a lawyer and an academic in Sri Lanka, potential biases that I may possess from my previous life and work experiences and my affiliations with some civil society organisations and activists in implementing fieldwork and analysing data. I kept my findings and analysis theoretically bound and informed by reflexive practice to enhance the value my 'insider-outsider' positionality brought into this project.

My insider status as a Sri Lankan and a legal researcher who has lived and worked in Sri Lanka, my local knowledge, being a native Sinhalese speaker, and being part of legal and women's networks were critical in terms of access to my interview respondents. Access to the research field and interview respondents has been increasingly acknowledged as important and decisive in research methodology over the years.<sup>274</sup> However, access brings in other considerations such as power dynamics and therefore should be carefully weighed in research implementation. I was also conscious of my outsider status to the apparel industry as well as to the lived experiences of the women workers in garment factories, that I discuss below. I was an outsider to their world and also to labour bargaining in the apparel industry.

### 3.3 Methods

#### 3.3.1 Case studies

This dissertation is developed through three case studies. Each case focuses on a different labour campaign around worker rights violations in apparel factories in Sri Lanka between 2020 and 2023. Although the issues in the case studies are all related to the pandemic and partially pandemic-induced, the underlying issues have proven to be endemic to the industry for a long period of time.<sup>275</sup> The case studies also reflect the pandemic's effect as well as the impact of Sri Lanka's economic crisis on the voice of women workers and industrial relations. They are campaigns connected across

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<sup>273</sup> Farhana Sultana, 'Reflexivity, Positionality and Participatory Ethics: Negotiating Fieldwork Dilemmas in International Research' (2007) 6(3) *International Journal for Critical Geographies* 374, 376-382.

<sup>274</sup> Juliane Riese, 'What is "access" in the context of qualitative research?' (2018) 19(6) *Qualitative Research* 669, 669-684.

<sup>275</sup> Kumudini Rosa, 'Strategies of Organisation and Resistance: Women Workers in Sri Lankan Free Trade Zones' [2012] *Capital & Class* 27, 27.

grassroots, national and transnational levels, and involve different labour and civil society actors that I interview to build the case studies. Table 3.1 below explains the three case studies and the labour campaigns, the scale at which the campaign operates, and the actors involved.

Table 3.1: Details of the case studies.

Case study	Scale of network	Actors involved (Interviewed)
Struggle for violence and harassment free world of work	Transnational to grassroots Grassroots to national	Women workers, women's organisations, trade unions, activists and lawyers, state officials from the labour department, ILO official from the Asia regional office
Campaign against wage theft	Grassroots to transnational	Women workers, women's organisations, trade unions, activists and lawyers, state officials from the labour department
Negotiating safe and healthy workspaces	Grassroots to transnational Transnational to national and local	Women workers, women's organisations, trade unions, activists and lawyers, state officials, regional labour collectives, ILO official from the Asia regional office

It is important to note that the case studies are 'instrumental' case studies, according to the case study categorisation of Robert Stake. This means that I choose a case to gain insight into a particular issue.<sup>276</sup> In other words, the cases that I have chosen are specific and they are each instrumental in understanding a general problem. I employ the case study method to develop thick descriptions of the three chosen issues and use inductive reasoning to understand worker rights negotiation, which is the phenomenon under study.<sup>277</sup>

Robert Yin explains that the value of the case study method is in its ability to drive 'in-depth understanding' of the real-world context.<sup>278</sup> Such an assessment is also in line

<sup>276</sup> Robert E. Stake, *The art of case study research* (Sage Publications, 1995), 3-4; Helen Simons 'Case Study Research: In-Depth Understanding Context' in Patricia Leavy (ed), *Oxford Handbook of Qualitative Research* (Oxford University Press, 2014) 459.

<sup>277</sup> J W Willis, *Foundations of Qualitative Research: Interpretive and Critical Approaches* (Sage, 2007) 239-240.

<sup>278</sup> Robert Yin, 'Case Study Methods' in H. Cooper (ed), *APA Handbook of Research Methods in Psychology* (Vol. 2. 2012), 141-155, 142.

with the aims of the sociolegal approach informed by feminist methodology that I explained above. Yin explains that a case study's closeness 'aims to produce an invaluable but complex understanding' that can produce 'new knowledge about real-world behaviour.'<sup>279</sup> The case study method suits this research because: (1) It allows for thick descriptions of grounded data about the experiences of the workers, directly from them and their representatives; (2) It is instrumental to developing an understanding of the big picture or the system, while also allowing microscopic examination of individual entities within the system;<sup>280</sup> (3) It can be guided by a hypothesis but at the same time leave sufficient leeway for grounded and /or abductive experimentation as well.<sup>281</sup>

Geographically, the sites were chosen due to the relevance of the campaigns to the issue of labour rights and the representativeness of the workers including Sinhalese and Tamil workers.

Figure 3.2 below is a map of Sri Lanka with the nine provinces of the country marked in different colours. The white borderlines further divide the map into 25 administrative districts. In connection to the background of Sri Lanka that I discussed in section 1.3 of Chapter 1, the light green and the dark blue provinces in the north and the east of Sri Lanka, respectively, were the former war-affected areas. Factories in these areas attract a large population of Tamil workers as the communities residing in those areas are predominantly Tamil. I have included flags to mark where I conducted interviews. The interview locations include several factories in the Western province including those in two EPZs (Katunayake and Biyagama), factories in the south covering one EPZ (Koggala), an industrial park in Kandy and factories in the east (Batticaloa) and the north (Kilinochchi, Vavuniya and Puthukudiyirippu).<sup>282</sup>

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<sup>279</sup> Ibid 142.

<sup>280</sup> Marshall (n 21) 40-42.

<sup>281</sup> Stefan Timmermans and Iddo Tavory, 'Theory Construction in Qualitative Research: From Grounded Theory to Abductive Analysis' (2012) 30(3) *Sociological* 167, 167-186; Iddo Tavory & Stefan Timmermans, 'Abductive Analysis and Grounded Theory' in Antony Bryant & Kathy Charmaz (eds), *The SAGE Handbook of Current Developments in Grounded Theory* (SAGE Research Methods, 2020) 532-546.

<sup>282</sup> See Appendix B for geographical locations and factories covered in interviews.

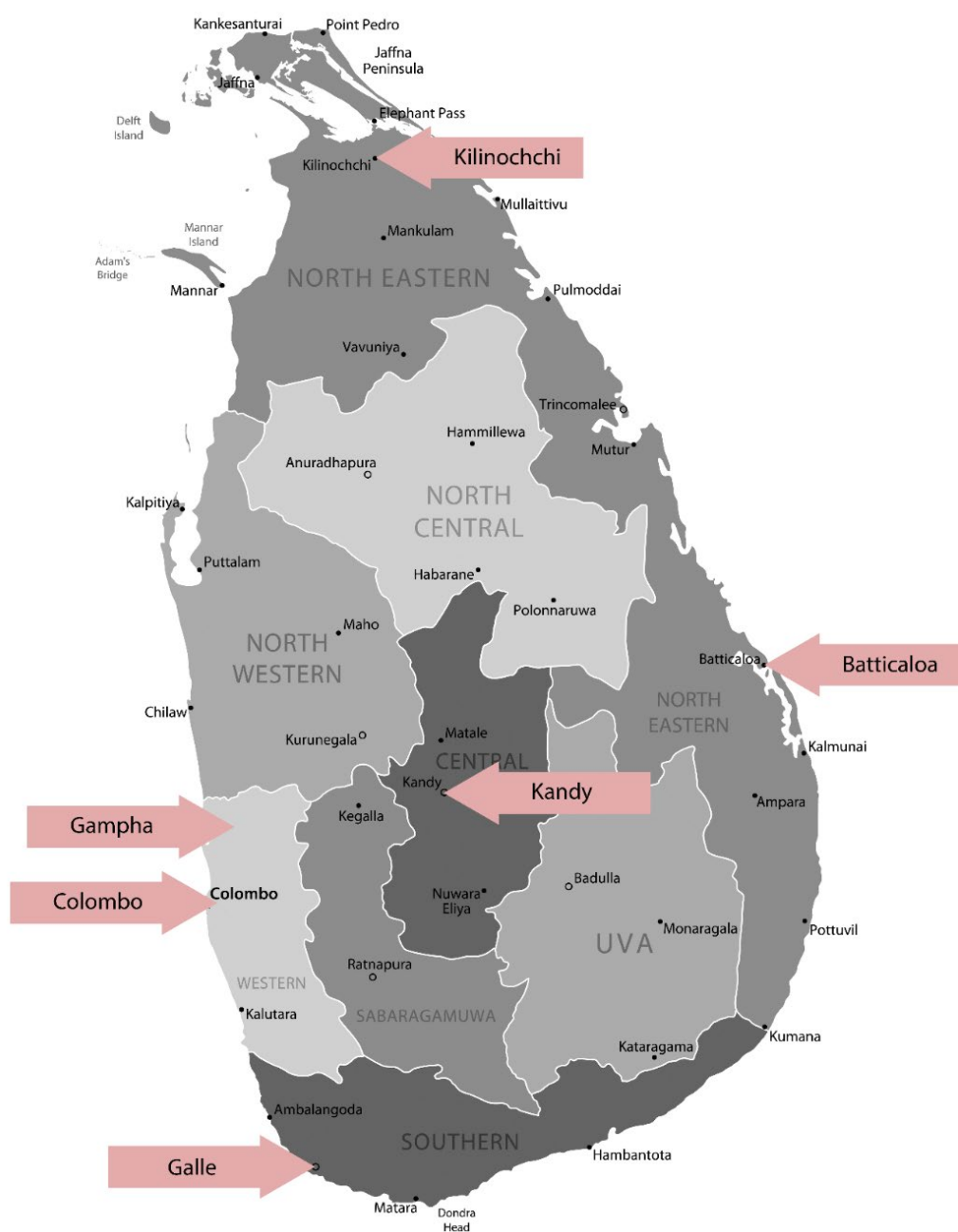


Figure 3.1: Interview locations marked on a map of Sri Lanka.

### 3.3.2 Case study selection

I considered several factors in selecting the case studies. The purpose of the case studies is to construct knowledge on worker rights negotiation through voice, the use of plurality of norms for legitimising labour claims and the regulatory effect of such action by examining three specific issues. Shelly Marshall argues that case studies designed for observing and comparing regulatory responses can be set in contrast to the traditional case study selection methods based on statistics. Examining informal labour regulation in her research, she states that ‘the value of observing the operation

of different methods of regulating work could be privileged over the benefits of commensurability'.<sup>283</sup> As such, my dissertation is driven by three qualitative case studies. Further, I have chosen multiple case studies, rather than a single study and also multiple interviews with respondents that feed into each of the case studies. Yin states that there is no correct formula for determining the number of cases, but that, where there are more cases considered, there is greater confidence and certainty.<sup>284</sup> Multiple case studies make comparison possible, even within the same context.

The case studies diverge primarily in their focus on different issues around which workers organise and action voice. This also differs in terms of the scale of worker networks. The two cases on wage rights and negotiating safe and healthy workspaces consider a labour network that spans from the grassroots to transnational level, whereas the struggle for a violence and harassment free world of work is more inward looking with transnational to grassroots dynamics for worker organising. These differences enable me to examine the variety of actors that can be employed for labour causes and the different pressure points and appropriate strategies in gaining the maximum leverage for women workers depending on the nature of the case. Chapter 5, 6 and 7 discuss each case study with a focus on collective voice of women workers, norm usage and the regulatory effect of collective voice.

### 3.3.3 Case study implementation: Field interviews

The three case studies were implemented by way of participant interviews. I conducted participant interviews in two stages (See Appendix A). I first carried out participant interviews from May–December 2021, remotely, at the height of the COVID-19 pandemic and lockdowns in Sri Lanka. The second stage was in-person from March–April 2022 in Sri Lanka during the early stages of the country's economic crisis and the political and social upheaval. The complex and volatile circumstances at the time, which were beyond my control, determined the duration for the in-person interviews. I describe these circumstances in this section as well as 3.3.4 below.

Altogether, I conducted 77 semi-structured interviews across the three case studies. I interviewed 45 women workers from over 20 factories, with at least two workers from the same factory for triangulation purposes. In addition, 32 other interviews were with a range of other stakeholders such as women's organisations, trade unions, employer

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<sup>283</sup> Marshall (n 21) 41.

<sup>284</sup> Yin (n 278) 146.

representatives, academics, activists, and representatives of international organisations who work in this space. While I expand on the remote and onsite interview methods later in this section, I have summarised the interview stages and related details in Table 3.2 below.

*Table 3.2: Interview design and implementation.*

<b>Type of field-interviews</b>	<b>Type of interviews</b>	<b>Participants</b>	<b>Purposes</b>
Phase 1 June 2021 – February 2022	General: Remote interviews during the pandemic (42)	Women workers (18), leaders of women’s organisations (7) trade union leaders (7), activists and lawyers (4), Regional & ILO officials (4) & employers (2)	Primary data gathering to understand how women workers action voice
Phase 2 March – April 2022	Focused: In-person interviews with chosen new participants from previously interviewed groups & participant groups who cannot be accessed remotely (35)	Women workers (27), trade union leaders (2), activists and lawyers (2), officers from the Department of Labour and Board of Investment (3), officers from the ILO Sri Lanka mission (1) & others	For field observations and data triangulation

### 3.3.3.1 The range and recruitment of interview participants, their locations and research ethics

My aim in selecting interview participants for each case study was their relevance as well as to cover a range of workplace and labour bargaining experiences relevant to the issues discussed in my case studies.<sup>285</sup> Rather than being focused on a statistically representative sample of interview participants, it was important to have a diverse range of empirical accounts that contributed to build on the case studies of the dissertation. Some campaigns that I discuss in my empirical case studies, e.g. the wage theft case and negotiating work-related safety case, concerned a number of specific factories, and therefore it was important to hear workers from those factories.

<sup>285</sup> See Appendix A for an expanded version of interview-related statistics and other details.

In addition to the general reflections on fieldwork here, I briefly describe the relevant fieldwork at the outset of each case study in Chapters 5, 6 and 7.

I approached the women workers with special attention to the factories they worked at, their location, their ethnicity, their involvement with worker representative organisations or trade unions among other things. The idea was to also have a diverse group of women workers who had a connection to the ongoing campaigns in my case studies. The fact that these campaigns were organised externally (external to factories) by external labour organisations and national-level trade unions, and not by specific factories, made the recruitment process more complex. Unlike some of the previous studies on garment workers in Sri Lanka, I recruited interview participants using multiple methods. Although a majority of workers were recruited through worker organisations and through snowballing through them, close to 20 workers were connected through personal contacts, unrelated to labour organisations. About 24 women workers were recruited through labour organisations and, out of them, seven women were trade union members and 17 were members of women's labour organisations which were civil society organisations. I explain the difference between trade unions and women's labour organisations and their fluid identity in section 4.3 in Chapter 4. Although all workers emphasised the need for independent labour representation for them at workplaces, this division in the sample of women workers brought in a range of diverse opinions about worker organisations and their service to women workers.

The apparel industry is scattered across the country without limiting itself to EPZs. For instance, whether a factory was in or outside an EPZ had an impact on workers' ability to bargain with the employers. At the same time, the ethnic composition of the workforce differed depending on where the factories were located. Sri Lanka's north and east have relatively new factories that opened up after the country's civil war that ended in 2009. Therefore, it was important to hear from the Tamil workers in the north of Sri Lanka because of their experience in negotiating labour rights in a particularly precarious setting in these new factories set up in the post-conflict areas which still have a military presence and a large number of Sinhalese people from the south in the managerial positions.<sup>286</sup> The workers represented Sinhalese and Tamil populations from factories in and around four export processing zones in Sri Lanka, Katunayaka,

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<sup>286</sup> Kanchana Ruwanpura, 'Militarized Capitalism? The Apparel Industry's Role in Scripting a Post-War National Identity in Sri Lanka' 50(2) *Antipode* 425, 425-446.

Biyagama, Koggala and Kandy. Kilinochchi in the north and Batticaloa in the east were deliberately included to hear the voices of Tamil workers. This was to ensure that I covered a range of labour rights negotiation experiences from different factory set ups, as well as to cover locations, such as the east and remote areas (e.g. Minuwangoda) that were not covered in previous studies on garment workers in Sri Lanka.<sup>287</sup> The work culture and experience of workers differ depending on where the factory is located.

Worker interviews were conducted in Sinhalese and Tamil languages. While I conducted the Sinhalese interviews with workers, I received language interpretation assistance with all the Tamil interviews.

Table 3.3 below outlines the range of different interview respondents, their key characteristics and the corresponding total number interviewed in each category. Some interview respondents belong to more than one category in the table, e.g. the total number of women workers are captured in the first category as well as in the 'ethnic diversity of workers' category under Sinhalese or Tamil. It illustrates the different apparel industry groups represented in the fieldwork for this study, without demarcating them by case study as I discuss that separately in the **case** study chapters.

*Table 3.3: Interviews to illustrate the range and diversity of interview participants.*

Type of respondent	Interviewees – by key characteristics	Numbers
All participants	Total number of interviews	77
Women workers	Machine operators and shop floor workers	45
	Members of women's labour organisations (17) /Trade Unions (7)	24
	Agency (manpower) workers	6
Worker organisations	Trade Unions	9
	Women's organisations (civil society organisations)	5
Worker locations	Export Processing Zones covered (out of total 11)	4
	Areas in the north and east	4
	Rural south	3

<sup>287</sup> See my discussion in Chapter 1, section 1.4 above.

	Factories covered (including manpower workers)	20+
Ethnic diversity of workers	Tamil	15
	Sinhalese	27
State officials	Board of Investment Sri Lanka	2
	Labour Department	2
Legal professionals	Legal practitioners/ activists	4
Employer representatives	Representing the Employers' Federation, apparel owners and employers at the ILO South Asia	3
Representatives from Regional and International organisations	Regional organisations and ILO	3

### ***Ensuring the safety of interview participants***

I followed several methods to ensure the safety and security of my interview participants. Given that any research on the garment industry at that time in Sri Lanka was controversial due to the pandemic-related lockdowns and the worsening economic crisis, access was a key consideration as well. Some of the key concerns around accessing workers and other interview participants such as activists and state regulators posed risks. Some other concerns resulted from the pressures on the industry to support the collapsing economy, capital flight and losing investors, race to the bottom that pressure workers and civilian and labour protests across the country.

In engaging with the experiences of women factory workers and others, guided by both socio-legal and feminist approaches, it was important to consider the implications of these interviews for my research participants. In addition to other standard methods followed by researchers during the interview process, such as arranging a safe space preferred by the participant, this study had to undergo a rigorous ethics process and approval before its implementation. For this purpose, I developed a comprehensive research implementation plan, identifying potential risks for all my interview participants, especially women workers. Given the economic and other vulnerabilities

of different participant groups for my study such as women workers, activists and state regulators, I identified methods to protect their identities. Further, I de-identified some participant identities in the dissertation. I use a unique pseudonym representing a Sri Lankan female name from their real ethnic identity (e.g. Sinhalese or Tamil) for each woman worker. Anonymity for my dissertation means that the respondent will not be traceable from the data presented about them,<sup>288</sup> which significantly mitigates the economic and social risks for them such as loss of employment and related risks. I offered the option of anonymity to all my interview participants, even from other participant groups. While some of the respondents preferred to be named in the dissertation, such as women labour leaders, union leaders and activists, some others, such as state regulators, preferred not to be identified by their names and designations.

### 3.3.4 In-person and remote interviews and field observations

Through participant interviews I engaged with interview respondents and made field observations. I explain the process of my remote and in-person field interviews with a focus on the format, organising interviews and safety of the participants. Field observations were useful for at least two purposes. They helped me understand what workers explained, e.g. conditions within the EPZs, and what the previous ethnographic studies on Sri Lanka's apparel workers discussed, in context.

The format of the interviews was the same for both in-person and remote interviews. All participants spent 60–90 minutes of one-on-one conversation. The length of the interviews allowed time and space to get sufficiently comfortable and for the workers to develop a good rapport with me. The semi-structured nature allowed leeway for participants to bring in related experiences, personal insights and their own opinions; for instance, many women workers shared what the government should or should not do for women workers in the apparel industry. The first hurdle in both remote and in-person interviews with all participant groups was establishing trust and ensuring their safety and confidentiality. In achieving this, it was helpful to have approached the participants through mutual contacts and trusted sources, such as labour organisations or managers of their factories. Before the interview, I had an initial telephone conversation with all my research participants to introduce myself, connect with them

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<sup>288</sup> Anonymising data, according to scholars, is a complex process in which researchers balance two competing priorities: protection of participant identities and maintaining the value and integrity of the data. In my research, I aimed to manage these priorities in anonymizing interview participants. Changing names and other direct identifiers such as the location is just the first step; For a discussion on this process: See Benjamin Saunders, Jenny Kitzinger, and Celia Kitzinger, 'Anonymising interview data: challenges and compromise in practice' (2014) 15(5) *Qualitative Research* 616, 616-632.

and arrange the interview. All interviews were conducted with the consent of the participants and were recorded and transcribed for data analysis purposes. All women workers received a mobile (phone) data top-up card for their time and participation in my interviews.

Scholars increasingly examine different dimensions of participant interviews. Some pre-pandemic literature analysed interviews as an adaptive method. Duggan identified how interviews could be 'increasingly constituted by digital technologies'<sup>289</sup> which signals the potential use of remote interviews for times like the pandemic. During the pandemic researchers explored the possibility of conducting interviews using various modes of communication. For example, telephone and Zoom communication were useful interview methods that helped scholars overcome barriers posed by travel restrictions and social distancing.<sup>290</sup> Some of this literature discusses digital ethnography which is not a method that I use in this dissertation. However, the chronicled experiences and evaluations of remote interviews in these studies were helpful for me to prepare for the telephone and Zoom interviews for this dissertation.

I used safe and end-to-end encrypted platforms such as Zoom and WhatsApp and followed a range of safety precautions for interviews such as closed Zoom meetings and dedicated Zoom links for each interview. Telephone conversation is a method that scholars have adopted in the pre-pandemic times to connect with rural communities and others.<sup>291</sup> While some older workers needed assistance, it was easy to connect with women workers on WhatsApp as it is a platform that they use in their daily interactions with family, friends and workplaces. For instance, during the pandemic, some factories used WhatsApp groups as a communication platform to send out notices to their workers about factory rosters and reporting to work. For other remote interviews, I used Zoom or WhatsApp depending on the participant's presence.

Scholars discuss the importance of technology to connect with interview respondents in sites that may otherwise be inaccessible. This was an important consideration given

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<sup>289</sup> M Duggan, 'Questioning digital ethnography in an era of ubiquitous computing (2017) 11(5) *Geography Compass* (online); Also see P Hanna and S Mwale, 'I am not with you, yet I am': virtual face-to-face interviews, in V Braun, V Clarke and D Gray (eds), *Collecting Qualitative Data: A Practical Guide to Textual, Media and Virtual Techniques* (Cambridge University Press, 2017) 256-274.

<sup>290</sup> L Gray, G Wong-Wylie, G Rempel et al., 'Expanding qualitative research interviewing strategies: Zoom video communication' (2020) 25(5) *The Qualitative Report* 1292, 1292-1301; Christine Hine, 'Lockdown fieldwork', The Blog of Department of Sociology at the University of Surrey (Blog, 2020) <<https://blogs.surrey.ac.uk/sociology/2020/04/02/lockdown-fieldwork/>>.

<sup>291</sup> Amanda Holt, 'Using the telephone for narrative interviewing: a research note' (2010) 10(1) *Qualitative Research* 113, 113-121.

that phase 1 of fieldwork (outlined in table 3.3 above) for this study began during the pandemic, travel restrictions, social distancing and other challenges that made in-person interviews impossible. While the opinion on research relations on digital platforms is divided, most scholars support remote fieldwork through digital technologies as a method to navigate through field sites when access is limited or restricted.<sup>292</sup> It is a helpful medium to forge ethical and trusting relationships remotely.<sup>293</sup> For instance, literature describes digital spaces as an effective mode for connecting with participants and conducting interviews during times of natural disasters such as tornados and the COVID-19 pandemic.<sup>294</sup> In my case, I found interviews via the telephone a productive method for the reasons of access and safety of my research participants.

During my WhatsApp (phone) interviews with women workers I observed that they appreciated the convenience to speak at a time of their choice and in a space they preferred. That degree of control that they had in scheduling the phone conversation contributed positively to our relationship and rapport. Further, the extent of identifiability that comes with a telephone call where the workers did not have to show their faces (although they submitted their personal information like name, gender, age, name of the factory for the interview) was beneficial given the sensitive and volatile environment at the time in which apparel industry workers chose to participate in my interviews. This sense of security was specifically instrumental in the few interviews I had with women workers from factories where there were COVID outbreaks as that issue had become highly political at the time. A compelling reason to have overcome the digital barrier between me and interview participants was my native Sinhalese (and to have had a Tamil interpreter from the same area in Sri Lanka as most Tamil workers), my familiarity with the culture, and previous in-person interactions with women workers. Further, some women workers even shared deeply personal experiences and opinions with me such as Wimala's statement below that she shared with me at the end of her interview. This was after she had reflected on how she became a garment worker to financially support her parents and siblings and her experiences at different garment factories over a period of years.

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<sup>292</sup> Jaymelee Kim, Sierra Williams, Erin Eldrige and Amanda Reinke, 'Digitally shaped ethnographic relationships during a global pandemic and beyond' (2023) 23(1) *Qualitative Research* 509, 509-844; Dorinda't Hart, 'Covid times make "deep listening" explicit: changing the space between interviewer and participant' (2021) 23(2) *Qualitative Research* 306, 306-322.

<sup>293</sup> K Fox and V Gracia, 'Social distancing and ethnography: strategies for social contact and interviews with Latinx diasporic populations during COVID-19' (2021) 43(2) *Practicing Anthropology* 51, 51-55.

<sup>294</sup> Kim, Williams, Eldrige and Reinke (n 292) 809-824.

I always thought I would never send my child to work at a garment factory... When you say 'garment worker' there is no social acceptance. I suffered a lot in my previous job at a different garment factory.<sup>295</sup>

The in-person interviews with women workers and labour leaders were an interesting shift from the digital spaces that I was used to from the previous phase. While in-person interviews had a different dynamic, I felt that a majority of workers opened up less and it was hard for me to control the timing of the interviews. Nevertheless, the connections that I made with the women workers in in-person interviews are deeper and more sustainable. Some of the workers still send me a good morning message on WhatsApp. Further, in-person interviews were essential for some of my participant categories such as state officials. It was impossible to access state officials remotely because of the political instability in the country at the time and the compounding pressure of that and the economic crisis on the public service. My presence for interviews in their offices was reassuring for them. Officers were especially cautious and some of them even preferred me not to record their interviews but asked I take notes of what they said. In such circumstances, it is hard to fully replace or substitute in-person interviews.

### ***Timing of in-person interviews***

I conducted in-person field interviews in Sri Lanka as soon as travelling was permitted after COVID-19 travel restrictions. The second phase of interviews between March and April 2022 was shaped by the circumstances at the time globally and in Sri Lanka. While I travelled as soon as the borders opened, I had to conclude fieldwork due to the escalating economic crisis and people's protests at the time in Sri Lanka. It was getting increasingly difficult to conduct interviews due to several reasons. Workers got more anxious as they started to feel the repercussions of the economic crisis such as factory closures and job loss. Other interview participants such as state officials were cautious because of social and political instability at the time. This was the time during which the major people's protest in Colombo and the occupation of the Presidential Secretariate by people was just starting. During fieldwork, I observed smaller demonstrations and protests including some in which women workers participated scattered across the country, including just outside the Katunayake EPZ.

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<sup>295</sup> Interview with Wimala, shop-floor worker from the South of Sri Lanka interview held 30.11.2021.

On top of that, there was a fuel and electricity crisis. As a result, I had to wait in fuel queues for an average of 4–5 hours to pump fuel for my field visits and experienced multiple interruptions to the electricity supply with some power cuts lasting for close to 3 hours. The situation got much worse after April, where the waiting time in fuel queues escalated to close to 18 hours and power interruptions during a day, collectively, lasted for an average of 6 hours. Nevertheless, during this period I conducted 35 interviews with women workers, trade union leaders and officials from state departments such as the Department of Labour and the Board of Investment. I travelled to Colombo, Biyagama, Katunayake in the Western Province of Sri Lanka, Koggala in the south and Kilinochchi in the north to conduct interviews.

### ***Field observations***

Socio-legal literature attributes an important place for field observations as they add social science rigour to legal and political analysis. Field observations form a part of studying the law's impact 'empirically', in assessing the law–practice gap that I discussed above.<sup>296</sup> In socio-legal research, scholars make in-person observations of sites of 'legal engagement' such as courts, lawyer's offices, law clinics, etc.<sup>297</sup> These observations are used to the extent that they help to answer the research questions each study explores.<sup>298</sup> It is noteworthy that field observations in this sense are not the same as in social sciences, e.g. anthropology, where the 'observer participates in the daily life of the people under study ... over some length of time'.<sup>299</sup>

In my study, the primary objective of field observations was to understand what workers shared in its context. I made observations during, before or after interviews. Especially with in-person interviews, visiting the places where workers lived and worked (e.g. EPZs) helped me to get a better understanding of what workers and other participants such as women's organisations shared with me about their life and experiences. For instance, women's organisations spoke about connecting with workers by having their offices close to workers' boarding places. I conducted several interviews at these offices of women's organisations located inside or near workers' boarding places. I interviewed one woman worker inside her roadside fruit stall that she had to open following an unfair dismissal at her factory. And at the time her termination of

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<sup>296</sup> Carrie Menkel-Meadow, 'Use and Abuse of Socio-legal Studies' in Creutzfeldt, Marc Mason and Kirsten McConnachie (n 214) 35-55.

<sup>297</sup> Webley (n 232) 63.

<sup>298</sup> Ibid 64.

<sup>299</sup> H. Becker and B Geer 'Participant Observations and Interviewing: A Comparison' (1957) 16(3) *Human Organisation Journal of the Society of Applied Anthropology* 28, 28-32.

employment inquiry was ongoing. These observations enhanced my engagement with research participants and added to the depth of data interpretation in the case study chapters.

Further, being present in these spaces helped me to contextualise knowledge from previous ethnographic studies on Sri Lanka's apparel workers, discussed in Chapter 1.<sup>300</sup> For instance, visiting the free trade zones made me realise how exclusive the zones were with guarded entrances and tight security, and needing approval or a pass to enter the zone. Street harassment and verbal abuse was a common experience for any woman walking on the street around these zones. I also had the opportunity to visit workers' boarding places, union offices, some factories inside and outside EPZs as well as state departments which exposed me to different spaces the workers occupy and in which they organise.

### 3.4 Data analysis

In analysing data, I remained close to the data as guided by my research methodologies but abstracted data using my theoretical framework. Although I explain this process below as a linear and straightforward process, in reality, was an iterative process with me revisiting my research questions, design and the initial data collection every step of the way.

I translated and transcribed the interviews verbatim before analysis. Tamil interviews were translated and transcribed with research assistance from the language interpreter. I used a data analysing software, Nvivo, for the initial detailed coding of my interviews. The initial coding process was primarily descriptive. During this stage, using Nvivo, I generated a list of approximately 90 codes directly respond to my research question. These codes were derived from the responses of interview participants as reflected in the transcripts. The list involved codes ranging from worker voice as an instrument of power and influence to awareness (of women workers) of labour rights. This list of descriptive codes served as the foundation for focused coding, where I read the code in the context of the relevant statements in the interview transcripts to cluster codes. I took the focused coding and theme development out of the software and performed these manually with pen and paper.

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<sup>300</sup> In particular Samanthi Gunawardana's description of EPZs as carceral spaces and Hewamanne's stories about life in the worker boarding places around the EPZs: See Samanthi Gunawardana, 'Gendered Depletion in Export-Processing Zones Progress in Political Economy (PPE)' (2019), 26(4) *Social Politics* 538, 538-560; and Hewamanne (n 95).

Through focused coding, I initially identified 10 codes including worker rights and normative framings, gendered experiences (e.g. challenges specific to women workers, female representation in trade unions), control and worker agency, labour organisations (and their agendas), status (being trade union /civil society organisation), the 'label' garment workers, links between labour organisations /representatives, norms that bind networks, spaces that workers / labour organisations occupy and workers' power to influence). These detailed codes were further narrowed down to five codes which are: labour rights and other normative framings, agency and influence by women workers, gendered experiences of women workers, types of labour organisations and labour networks. I used this code structure to construct the analysis of chapters 4, 5 6 and 7 of the dissertation.

At this point, I considered them with the theoretical framework of the dissertation explained in Chapter 2. This involved grouping together the most significant categories to develop broad themes. Using the focused codes, I drew out the five key themes for the study: webs of influence, the role of collective voice, use of normative framings, gendered experience of women workers and collective voice as regulation, discussed in Chapter 8.

### 3.5 Methodological limitations

I reflect on methodological constraints here with the intention of briefly explaining the measures adopted to overcome them. First, the case study approach helped me to gain a rich understanding of the context that I am studying. However, the crisis period during which my fieldwork was conducted may have had an effect on its findings. As discussed in Chapter 1 and in this chapter, I encountered several fieldwork-implementation-related constraints due to the pandemic-induced travel restrictions and the economic crisis in Sri Lanka. I offer details of these challenges and how I organised field interviews around them in section 3.3.3, which focuses on case study implementation.

I do not seek universal findings or make generalised claims from the selected case studies.<sup>301</sup> Nevertheless, literature provides guidance for generalising claims by

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<sup>301</sup> Some of the old criticism on qualitative research is included in: Robert Yin, *Case study research: Design and methods* (Sage Publications, 1989).

generalising to a theory which means providing evidence that supports that theory.<sup>302</sup> This form of analytic generalisation is different to certain other quantitative generalisation methods such as generalising from sample to population. Although I discuss the implications of my findings broadly in the Conclusion chapter, I do not claim that the findings of my case studies will be true for different issues and in different countries with unique industrial, social and political composition. Social sciences literature, however, advances the idea that analytic generalisations may be possible under certain specific and similar conditions to the case studies or conditions considered.<sup>303</sup>

Further, the 'methodological self-awareness'<sup>304</sup> that I have aimed to demonstrate through this chapter has helped me to mitigate the biases that can arise from my insider-outsider position and my previous experiences in designing fieldwork and participant interviews. Collier and Mahoney describe focused analysis on case studies as a way to overcome this.<sup>305</sup> I have discussed each of these points, respectively, in detail above under positionality and the 'Case study implementation: Field interviews sections. These sections outlined the measures I adopted to mitigate biases flowing into the research design and the analysis in this dissertation. Further, this point connects back with the above discussion on producing thick descriptions using case studies.

### 3.6 Conclusion

This chapter has outlined a socio-legal methodology that guided my data collection and interpretation in this research. Informed by the feminist methodology, the methodological framework allows me to capture grassroots-level organising, strategising and networking of apparel workers, with a special focus on the gendered dynamics and experiences of women workers and women labour leaders. As such, the methods help to construct and analyse grounded knowledge from the data in case studies.

Chapter 4 explores the question 'What are the formal mechanisms for expressing voice to negotiate worker rights in Sri Lanka's apparel industry?'. I discuss the existing legal

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<sup>302</sup> William Firestone, 'Alternative Arguments for Generalising from Data as Applied to Qualitative Research' (1993) 22(4) *Educational Researcher* 4, 16-23.

<sup>303</sup> *Ibid* 17.

<sup>304</sup> David Collier and James Mahoney, 'Insights and Pitfalls Selection Bias in Qualitative Research' (1996) 49 *World Politics* 56, 56.

<sup>305</sup> *Ibid* 64.

and other norms that enable worker voice in the apparel industry and how and whether those norms translate into practice in line with my socio-legal enquiry. Drawing on recent examples, it discusses the current background of the industry and explains why women workers have to organise through informal pathways. The key themes from Chapter 4 are then illustrated in the case studies, discussed in Chapters 5, 6 and 7.

## **Chapter 4: Official worker voice mechanisms and how they translate into practice**

### **4.1 Introduction**

This chapter discusses the question: What are the formal mechanisms through which the apparel industry workers can action their voice to bargain labour rights? The chapter outlines the multiple formal legal and policy frameworks introduced to enable worker voice and labour bargaining of women apparel workers in Sri Lanka and how they are implemented in practice.

Forming the foreground to the analysis in the case studies of this dissertation, this chapter complements the case study chapters in three ways. First, it clarifies the formal legal and policy framework so that collective voice, which is informal and fluid, can be distinguished. Second, it offers empirical insights from worker experience to understand the law–practice gap in worker voice mechanisms. Third, it acts as a foundation to understand the background to labour rights negotiation of women apparel workers in Sri Lanka more broadly by offering explanations on why they had to organise outside the formal labour bargaining structures. The discussion in this chapter also connects with section 1.3 in Chapter 1, where I discuss the choice of Sri Lanka as the research location and the background for worker voice.

The chapter is organised in three parts. I first discuss the official bargaining mechanisms and ‘who regulates’ Sri Lanka’s apparel industry. Part 1 builds on the conventional understanding of formal labour bargaining mechanisms in Sri Lanka’s legal and policy framework, and special regulations relevant to the apparel industry. It also discusses who holds the power to formally regulate labour in the industry and offers a conceptual framework to understand the many regulators and multiple norms applicable to worker voice in the apparel industry. Part 2 draws out gender as an important dimension in worker voice mechanisms. It focuses on women workers and their interactions with the formal labour bargaining mechanisms. In Part 3, I draw on empirical data from interviews with women workers. It describes women workers’ experiences with formal labour bargaining mechanisms to highlight the law–practice gap in the area and their interactions with other grassroots labour organisations. Finally, the chapter considers worker responses to labour bargaining from a practical point of view.

## 4.2 Part 1: Official labour bargaining mechanisms and who regulates labour

The formal institutional framework for worker representation in Sri Lanka offers multiple official pathways for labour bargaining. However, the implementation of these bargaining mechanisms and workers' access to them are conditioned by the industry, location and other social factors including gender. This section outlines the formal hard and soft law and policy instruments relevant to labour bargaining in the apparel industry, but it does not aim to cover every aspect of the formal labour bargaining legal regime in Sri Lanka.

Sri Lanka's law and policy, along with its international obligations, lays down an official framework for labour bargaining in the apparel industry. This framework is based on the foundational principle of freedom of association and freedom to form and join a trade union enshrined in Article 14(1)(c) and (d) of the Constitution.<sup>306</sup> The key laws that are instrumental to formal labour representation and collective bargaining in any industry, including apparel, are the *Trade Unions Ordinance* No. 14 of 1935 (TU Ordinance) and the *Industrial Disputes Act* No. 43 of 1950 (ID Act). The Sri Lankan laws are enforced by the Department of Labour under the leadership of the Commissioner of Labour to strengthen the autonomy of labour bargaining and the interests of workers. These laws resemble the trade union and industrial disputes law in other former British colonies in South Asia such as India<sup>307</sup> and Pakistan.<sup>308</sup> Post-independence countries in South Asia such as Bangladesh got new labour codes as recently as 2013.<sup>309</sup>

On the face of it these laws provide a structure to protect all workers, including women apparel workers. Nevertheless, several studies<sup>310</sup> and reports<sup>311</sup> have highlighted that

<sup>306</sup> *The Constitution of the Democratic Socialist Republic of Sri Lanka*, 1978 (Sri Lanka).

<sup>307</sup> *Trade Unions Act* of 1926 (India).

<sup>308</sup> Pakistan enacted its new *Industrial Relations Ordinance* in 2002. Unlike its predecessor, it incorporates the rights language, especially in recognising the legitimacy and powers of trade unions: *Industrial Relations Ordinance* 2002 (Pakistan).

<sup>309</sup> Bangladesh's new labour code passed in 2013 includes 87 sections of amendments concentrated on boosting workers' rights to its 2006 Act, including better access to freedom of association – including the right to form trade unions, and improving occupational health and safety conditions: *The Bangladesh Labour Act* No. 30 of 2013.

<sup>310</sup> Ranaraja (n 10).

<sup>311</sup> Vidura Prabath Munasinghe, *Trade unions and export processing zone workers* (Law and Society Trust, Sri Lanka, Report, 2021); Country Profile – Sri Lanka, 'Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Sri Lanka, Observation (CEACR)' *International Labour Organisation (ILO)* (Web page, published 110th ILC session, 2022)

<[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4121962,103172,Sri%20Lanka,2021](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4121962,103172,Sri%20Lanka,2021)>.

this framework is unable to support autonomous worker representation, collective bargaining and unfair labour practices against workers and their representatives.

The TU Ordinance and the ID Act were initially designed as labour management tools, providing a few basic-level protections for workers. For instance, the preamble of the TU Ordinance states that it 'provide[s] for the registrations and control of trade unions.'<sup>312</sup> At a time when Sri Lanka had a strong worker movement, but an even more powerful and influential employers' union, these laws seemed more invested in the protection of business interests. Even today, their approach appears to be 'formal' in the sense of being a minimum of interference with the operating conditions of work and the employer-worker relationships. Similar arguments have been advanced by Indian and Pakistani labour law scholars.<sup>313</sup>

While the TU Ordinance of Sri Lanka enshrines powers and privileges for all registered trade unions, they can be hard for workers to access due to several constraints. Some examples are the high legal thresholds for registration in order to be entitled to the powers and privileges. In Sri Lanka, the TU Ordinance primarily stipulates rules on registration, rights, privileges and immunities under the ordinance<sup>314</sup> so that unions can function as an autonomous bargaining entity for workers. Part V of the Ordinance outlines the 'rights and liabilities of trade unions' including immunity from civil and tortious acts, collection of membership dues and the power to bargain. However, the ordinance and the subsequent amendments do not incorporate a strong implementation mechanism that will enable trade unions to effectively exercise their rights, privileges and immunities.

A key barrier to free and voluntary collective bargaining is the threshold of 40 percent labour membership that a trade union requires to have bargaining access to the employer.<sup>315</sup> If the percentage is lower, employers can refuse to bargain. Multiple

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<sup>312</sup> *Trade Unions Ordinance* No. 14 of 1935 (Sri Lanka) – Preamble to the statute.

<sup>313</sup> See, Achin Chakraborty, Subhanil Chowdhury, Supurna Banerjee and Zaad Mahmood, 'Collective Bargaining in India' in *Limits of Bargaining Capital, Labour and the State in Contemporary India* (Cambridge University Press, 2019), 14-25.

<sup>314</sup> A trade union, according to the ordinance, means 'any association or combination of workmen or employers, whether temporary or permanent, having among its objects one or more of the following objects: the regulation of relations between workmen and employers, or between workmen and workmen or between employers and employers; or (b) the imposing of restrictive conditions on the conduct of any trade or business; or (c) the representation of either workmen or employers in trade disputes; or (d) the promotion or organization or financing of strikes or lock-outs in any trade or industry or the provision of pay or other benefits for its members during a strike or lock-out, and includes any federation of two or more trade unions': Section 2, TU Ordinance (Sri Lanka).

<sup>315</sup> An employer shall refuse to bargain with a trade union that has in its membership not less than 40 percent of the workers on whose behalf the trade union seeks to bargain; International Trade Unions Collective (IUTC) has

reports have shown that this threshold is excessive and should be lower, as the threshold percentage should effectively promote the development of free and voluntary collective bargaining.<sup>316</sup> Most trade unions that are organised at the grassroots level near factories and EPZs, dedicated to represent issues of specific industries like apparels, cannot meet this percentage due to union busting by employers and workers' fear of employer opposition and job security.<sup>317</sup> However, neither the employers nor the major trade unions have agreed to reduce the threshold. Employers believe that it would create more divisions in the workplace, and some major national-level politically affiliated trade unions argue that it could dilute the trade union representation and bargaining power.<sup>318</sup> As a fall-back option for workers, international labour directives provide that if there is no union representing the required percentage to be designated as the collective bargaining agent, the existing unions should be given the possibility, jointly or separately, to bargain collectively, at least on behalf of their own members.<sup>319</sup>

The ID Act was passed to regulate implementation steps in workplace dispute settlement and unfair labour practices that the TU Ordinance did not adequately address. The ID Act is crucial in the area of worker voice, as it offers safeguards against 'unfair labour practices' by both the workers and employers. Sri Lanka's unfair labour practices against trade unions have been flagged, including by the International Labour Commission (ILC) directives.<sup>320</sup> In addition to blacklisting trade union leaders and members from workplaces, worker representatives have also raised concerns about them not being consulted prior to drafting amendments to the labour laws.<sup>321</sup> Several proposals have been made to further strengthen the system against unfair labour practices. For instance, ILC observations propose that the ID Act should be amended to enable victims of anti-union discrimination to complain to the courts.<sup>322</sup>

There are several other shortcomings of the system. Politicisation of trade unions and political parties utilising unions for political objectives is a major accusation raised by

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referred to cases where companies have refused to bargain with unions that meet the 40 percent membership threshold and identify it as a cause for low labour bargaining: Section 32(A)(g), ID Act.

<sup>316</sup> Ranaraja (n 10), 14-16.

<sup>317</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021. Ranaraja (n 10) 15.

<sup>318</sup> Country Profile – Sri Lanka, 'Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Sri Lanka, Observation (CEACR)' *International Labour Organisation* (ILO) (Web page, published 110th ILC session, 2022)

<[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4121962,103172,Sri%20Lanka,2021](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4121962,103172,Sri%20Lanka,2021)>.

<sup>319</sup> Ibid.

<sup>320</sup> ILO Right to Organise and Collective Bargaining Convention Observations 2022 (n 318).

<sup>321</sup> Ruwanpura (n 50) 79-90.

<sup>322</sup> ILO Right to Organise and Collective Bargaining Convention Observations 2022 (n 318).

employers especially.<sup>323</sup> For instance, the TU Ordinance by design permits the constitution of a separate political fund which can grow from member as well as non-member contributions.<sup>324</sup> While these measures offer trade unions some political leverage the provisions have been misused by political parties to grow their supporter base and to campaign.<sup>325</sup> Such misappropriations have resulted in damaging the credibility of labour unions. Further, Sri Lankan labour laws applying to the apparel sector are observed to be anti-union by design.<sup>326</sup> States pursuing export-oriented industrialisation strategies have curtailed, suppressed or just not enforced collective labour rights as they viewed trade unions and collective bargaining as a source of inflexibility that would diminish competitive advantage.<sup>327</sup>

From a sociological perspective, the literature on Sri Lanka's industrial history captures a 'hostile (class) divide' between the managers from an English-speaking elite background and the *swabhasha*-educated<sup>328</sup> workers.<sup>329</sup> Although the provisions have been amended several times in the years after independence, colonial principles and influence are still quite foundational to how these laws are implemented and enforced at work settings. One example is the employers' trade union, the Employers' Federation of Ceylon (EFC), which is one of the first unions in post-colonial Sri Lanka, dominating the collective bargaining process by managing and facilitating it, even today. Another example is the degree of control that the state has retained over trade union registration system. It is the discretion of the National Registrar of trade unions to regulate and even refuse registration under the TU Ordinance,<sup>330</sup> which takes away power from the workers. In addition to these shortcomings, as discussed in Chapter 1, women workers are under-represented at the leadership level of trade unions and national labour bargaining forums such as the NLAC.

Imitating the tripartite labour negotiations framework advanced by the International Labour Organization (ILO), this framework theoretically sets up autonomous tripartite bargaining that aims to mitigate the power gap between the employers and the

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<sup>323</sup> Samantha Gunawardana and Janaka Biyanwila, 'Trade unions in Sri Lanka: Beyond party politics' in John Benson and Ying Zhu, *Trade Unions in Asia: An Economic and sociological analysis* (Routledge, 2008) 184-186.

<sup>324</sup> Section 47, TU Ordinance (Sri Lanka).

<sup>325</sup> Ranaraja (n 10), 11-12.

<sup>326</sup> Biyanwila (n 98) 55-88.

<sup>327</sup> Gunawardana (n 98) 372-386.

<sup>328</sup> Educated in the national languages of Sri Lanka, Sinhalese and Tamil.

<sup>329</sup> Franklyn Amerasinghe, 'The Current Status and Evolution of Industrial Relations in Sri Lanka' *International Labour Organisation* (Working Paper online, 2009) 1 <[https://www.ilo.org/asia/publications/WCMS\\_117549/lang-en/index.htm](https://www.ilo.org/asia/publications/WCMS_117549/lang-en/index.htm)>.

<sup>330</sup> See sections 10,12,14,15, 18 and original sections 20, 21 and 22 of the TU Ordinance (Sri Lanka).

employees, by also including the state.<sup>331</sup> With the national law-making and enforcement power within this framework, the state is the principal regulator. Employers also hold significant economic and political power through the private ownership of business, and through wealth and resources. The ability to make workplace rules, influence special regulations for industries and the decision-making power on the implementation of special regulations place employers in a strong regulatory position. The tripartite mechanism means that the workers are also a party to labour negotiation through trade unions. Nevertheless, the weak bargaining power of trade unions has been historically disadvantageous to workers in all industries, which I discuss in the next section.

#### 4.2.1 Labour negotiations in the apparel industry and who regulates

An ongoing concern of workers is worker representation in the Export Processing Zones (EPZs).<sup>332</sup> EPZs are a typical example of a site within which other forms of worker voice not stipulated by the law are permitted to exist. This is by way of special regulations operative within the zone that can stipulate special mechanisms. This also meant that EPZs had a specific regulatory style in managing labour relations which the apparel factories adopted as well. In 1978, when Sri Lanka's economy was liberalised, the government set up the EPZs.<sup>333</sup> Industries regulated by the Board of Investment (BOI) Sri Lanka, including apparel, sponsored by foreign investment had several benefits including tariff concessions<sup>334</sup> for manufacturers, and the concentration of factories to selected parts of the country. All EPZs and industrial parks are currently located in the south of Sri Lanka. Although there are no operative EPZs in the north and the east of Sri Lanka, apparel factories have been set up from 2013, since the end of the civil war.<sup>335</sup> Sri Lanka currently has 259 apparel companies.<sup>336</sup> According to recent statistics, 76 apparel factories are located within the zones, but there is a

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<sup>331</sup> The tripartite system is central to the practice of the International Labour Organisation (ILO) and sets out the representative organisations of employers, employees and the states to effectively consult on all matters related to labour. ILO passed the Tripartite Consultation Convention of 1976 as the governance convention to set standards on the operation of this framework: Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

<sup>332</sup> ILO Right to Organise and Collective Bargaining Convention Observations (n 318).

<sup>333</sup> Fifteen EPZs and Industrial Parks are: Mawathagama, Polgahawela, Bingiriya, Mirigama, Malwatta, Katunayake, Biyagama, Horana, Wagawatta IP, Wagawatta EPZ, Koggala, Kandy, Wathupitiwala, Seethawaka, Hambantota and Mirijjawila with Eravur under construction: Statistics provided by the Board of Investment of Sri Lanka during fieldwork for this study (March 2022) and Board of Investment of Sri Lanka, *Annual Report 2021* (Report, 2021) 19.

<sup>334</sup> Prema-Chandra Athukorala and Sarath Rajapatirana, 'Liberalization and Industrial Transformation: Sri Lanka in International Perspective' (2000) 48(3) *Economic Development and Cultural Change* 543, 550.

<sup>335</sup> Fibre2fashion News Desk, 'Apparel factory gets ready in Sri Lankan war-torn area' *Fibre2fashion* (India, 20 February 2013) <[https://www.fibre2fashion.com/news/apparel-news/newsdetails.aspx?news\\_id=121297](https://www.fibre2fashion.com/news/apparel-news/newsdetails.aspx?news_id=121297)>.

<sup>336</sup> Statistics provided by the Board of Investment (BOI) of Sri Lanka during fieldwork in March 2022.

majority of 183 operating outside the zones.<sup>337</sup> Nevertheless, the same rules on worker representation apply to all factories, regardless of the location, as they all come under the BOI regulations.<sup>338</sup>

The government, in the early 1990s, declared that the entire country could be considered as a free trade zone<sup>339</sup> as the factories set up with foreign investment spilled over to different areas in the country (outside the EPZs). As a result, all the apparel factories in the country came under special regulations that exempt them from having labour representation stipulated by the law. Accordingly, the Greater Colombo Economic Commission (GCEC), which is the previous key regulator of foreign investment, zones and export industries, formed the Joint Consultative Committees (JCCs) and promoted the structure as an alternative to trade unions in all industries under their purview. JCCs were succeeded by the Employees' Councils<sup>340</sup> introduced under BOI guidelines in 2004.<sup>341</sup>

Employees' councils are enterprise or factory-level bipartite forums for employers and workers to discuss conditions related to work.<sup>342</sup> Similar to trade unions, they have elected representatives of workers but do not possess the privileges of unions and collective bargaining power. The concept of 'employees' councils' is similar to the 'works councils' in Europe.<sup>343</sup> Although it is a preferred system in some parts of the world, with Europe being its biggest advocate, it has not been effective in Sri Lanka's apparel industry for several reasons. The primary reason is that it is organised and controlled by the employers with little space for the autonomy and power of the workers.

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<sup>337</sup> Ibid.

<sup>338</sup> 'Industrial and Labour Relations', *Board of Investment of Sri Lanka* (Web page, 05 February 2024) <<https://investsrilanka.com/industrial-labour-relations/>>

<sup>339</sup> Prema-Chandra Athukorala and Raveen Ekanayake, 'Repositioning the global apparel value chain in the post-multi-fibre arrangement era in Jayant Menon and T. N. Srinivasan (eds), *Integrating South and East Asia Economics of Regional Cooperation and Development* (Asian Development Bank and the Oxford University Press 2018) 150-151.

<sup>340</sup> The structure was revised in 1994.

<sup>341</sup> *Guidelines for the formation & operation of employees' councils*, Board of Investment of Sri Lanka (Policy document, 31.03.2004) <<https://investsrilanka.com/wp-content/uploads/2021/02/Employees-Councils-8.pdf>>.

<sup>342</sup> See *ibid*; Also discussed during Interview with Ravi Peiris, Senior Specialist, Employers' Activities, Bureau for Employers' Activities (ACT/EMP), Decent Work Team for South Asia, International Labour Organisation (ILO) held on 15.12.2021.

<sup>343</sup> A works council is a popular model of an employee consultative committee, introduced in the European union. The council represents workers and acts as a medium connecting and communicating workers and the management; for an academic analysis of European works councils, undertaken in four countries (France, the UK, Italy, Germany) and representatives of national and European trade unions and European Institutions: See Wolfgang Lecher, Hans-Wolfgang Platzer, Klaus-Peter Weiner, *European Works Councils: Negotiated Europeanisation: Between Statutory Framework and Social Dynamics* (Routledge Business and Economics 2005), 1-2.

Clause 15.2 of the BOI Manual is interpreted by the employers to mean that in the absence of factory-level trade unions, employees' councils may submit claims and resolve disputes on behalf of the workers.<sup>344</sup> Many employers prefer to have employees' councils in their factories as an employer-picked legitimate alternative for trade unions. These councils, in theory, consist of elected representatives of workers and representatives of management. During the field interviews, unions<sup>345</sup> and workers<sup>346</sup> claimed that they are employer-sponsored. Unlike trade unions which collect 'check off' (membership fees) for their expenditure, the employees' councils are funded by the employers. Employers also organise elections of office bearers. Workers claimed that they cannot raise genuine workplace issues at these forums as they fear being identified and losing their job.<sup>347</sup> Some apparel workers join national-level trade unions as the rules (e.g. BOI Manual) do not prohibit this. Trade unions attempt, through mobilisation of scarce resources, to attain some power and representation of apparel workers, but they are far too weak<sup>348</sup> to compete with these 'yellow unions' (employer-friendly unions).<sup>349</sup>

Employers and the state argue that the definition of a trade union incorporates 'any association' or 'any combination' of workers which enables any type of worker organisation such as a worker council or any organisation to seek registration (provided that they quote one or more of the objectives in their rules of association).<sup>350</sup> However, so far there are no collective agreements negotiated by entities other than trade unions. The employees' councils are not bargaining agents like trade unions, which also means that the councils alone cannot enter into collective bargaining agreements. In this context, the International Labour Commission (ILC) of the ILO has raised 'concern' about collective bargaining in EPZs in their annual observations.<sup>351</sup> There is no clear data available on the number of collective agreements concluded by

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<sup>344</sup> ILO raises the co-option of employees' councils to trade unions as a concern Sri Lanka: at International Labour Organisation (ILO) Country Profile – Sri Lanka, 'Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Observation (CEACR)', Comments by the Supervisory Body (Web page, published 111<sup>th</sup> ILC session, 2023),

<[https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P11110\\_COUNTRY\\_ID,P11110\\_COUNTRY\\_NAME,P11110\\_COMMENT\\_YEAR:4309660,103172,Sri%20Lanka,2022](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P11110_COUNTRY_ID,P11110_COUNTRY_NAME,P11110_COMMENT_YEAR:4309660,103172,Sri%20Lanka,2022)>.

<sup>345</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021 and Interview with Wasantha Samarasinghe, President, Inter Company Employees' Union, held 31.10.2021.

<sup>346</sup> Interview with Chandni, a shop-floor worker in a garment factory in the Katunayake Export Processing Zone, Sri Lanka, held 27.10.2021.

<sup>347</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021.

<sup>348</sup> Ruwanpura (n 53) 118-141.

<sup>349</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021.

<sup>350</sup> Ranaraja (n 10) 13.

<sup>351</sup> ILO Right to Organise and Collective Bargaining Convention Observations 2022 (n 318).

trade unions in the EPZs in the clothing and textile sectors, and the number of workers covered by them in comparison with the total number of workers employed in this sector.<sup>352</sup> Trade unions, which are an autonomous form of negotiating labour rights by way of agreement and collective bargaining, have been co-opted and employees' councils have taken the place of labour negotiations by trade unions.

Further, employers, during interviews, stated that there is a majority of women as office-bearers in the factory-level employees' councils.<sup>353</sup> In Part 3 of this chapter I discuss women workers' claims about employees' council elections, negotiations and functions, describing how these units are closely controlled by employers and are therefore non-autonomous.<sup>354</sup> The under-representation of women workers in the existing autonomous forms of bargaining (discussed in section 1.3 in Chapter 1) is concerning, as they are over-represented in spaces which do not seem to accord them sufficient power to influence the decision making in the industry.

#### 4.2.2 Conceptualising official labour bargaining in the apparel industry

From the discussion above, it appears that the apparel industry has the ability to make its own rules in regulating worker voice. Employers and the state play a dominant role as the key regulators of the industry, with trade unions, and especially women workers, holding limited power to influence how labour is managed and treated. Although the national legal framework and international soft law instruments like the ILO Conventions<sup>355</sup> set out an autonomous structure for labour bargaining through trade unions, the rules set up by the industry have substituted them with alternative models that are less powerful and favourable for workers, such as the employees' councils. Andrea Garnero in her study stated, 'Institutions, even more those regulating relations between the management and the workforce, depend not only on written laws but on decades of practice and trust that cannot be easily or quickly changed by policymakers.'<sup>356</sup> In Sri Lanka's apparel industry, it appears that the workers do not

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<sup>352</sup> ILO Right to Organise and Collective Bargaining Convention Observations 2023 (n 344).

<sup>353</sup> Interview with Vajira Ellepola, Director General, Employers' Federation of Ceylon (EFC), interview held 05.01.2022.

<sup>354</sup> Additionally, Ranaraja claims that 'The employer provides incentives and benefits to workers that join an Employees' Council (EC) or other such association in order to make it less attractive for workers to continue in the membership of the trade union; the latest such association is termed the "Direct Communication Committee" and these groups are used to undermine the position of unions.': Ranaraja (n 10) 15.

<sup>355</sup> ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

<sup>356</sup> Andrea Garnero, 'What We Do and Don't Know About Worker Representation on Boards' *Harvard Business Review* (6 September 2018) <<https://hbr.org/2018/09/what-we-do-and-dont-know-about-worker-representation-on-boards>>.

have much influence in the negotiation process with employers. Additionally, I discussed, in section 1.3 of Chapter 1 that the state represses worker voice through various tools including anti-terrorism laws and social media regulation.

During interviews, two male trade union leaders of two of the old and leading national labour unions (that also represent apparel workers) shared their position on the workers' ability to influence the decision making.

Joint Secretary of the Free Trade Zones & General Services Employees Union (FTZ&GSEU), Anton Marcus, said,

This is the issue – there is no point in having the laws and departments. When the law is at the discretion of the powerful, it does not accord the intended protection to the repressed [like the workers].<sup>357</sup>

In another interview, Wasantha Samarasinghe, the President of the Intercompany Workers' Union, a national-level union that represents the private sector employees in Sri Lanka, said,

What I am saying is that the laws are there for show, but the employers are doing what they want. Where bargaining power is strong workers resolve problems – either through political power or through strike – otherwise there is no protection for workers through the law.<sup>358</sup>

A common theme that arises from these quotations and my other interviews with labour and civil society leaders is that there is a gap between the existing laws and regulations in the books and the practice on the ground. Nevertheless, Wasantha Samarasinghe's quotation above indicates that some influence could be had through political power or trade union involvement. In this context, it is important to find out how workers fill this gap and how workers are able to bargain in practice.

Although the rules that directly govern worker representation within the apparel industry constrain workers' ability to effectively participate in labour regulation, it appears that they can allude to the legal and regulatory framework outside the industry, e.g. through trade union action with the support of national-level unions. This can be

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<sup>357</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021.

<sup>358</sup> Interview with Wasantha Samarasinghe, President, Inter Company Employees' Union, held 31.10.2021.

explained through the semi-autonomous social field lens. In Chapter 2, I conceptualised Sri Lanka's apparel industry as a semi-autonomous social and governance field and discussed complexities in terms of rule implementation. The semi-autonomous social field is embedded into a larger social matrix which 'can and does affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance.'<sup>359</sup> The discussion in section 2.3.4 also focused on how this complex system with multiple layers has led to industrial pluralism with several norms applying to regulate functions within the apparel industry, such as worker representation at the factory level. Below, in Figure 4.1, I add in the actors who are outsiders to the industry (industry being the yellow strip), operating at the national (the green square) and international levels (the orange square), but can influence labour regulation within the industry. In my case study chapters I further examine how women workers and their representatives engage with the different normative orders (national laws, international law, etc.), and use industrial pluralism, to legitimise their intervention.

This chapter draws in evidence of implementation gaps affecting women workers' voice in 4.2.1 and Part 3. Prior to that, I draw out the situation of women workers and discuss below.

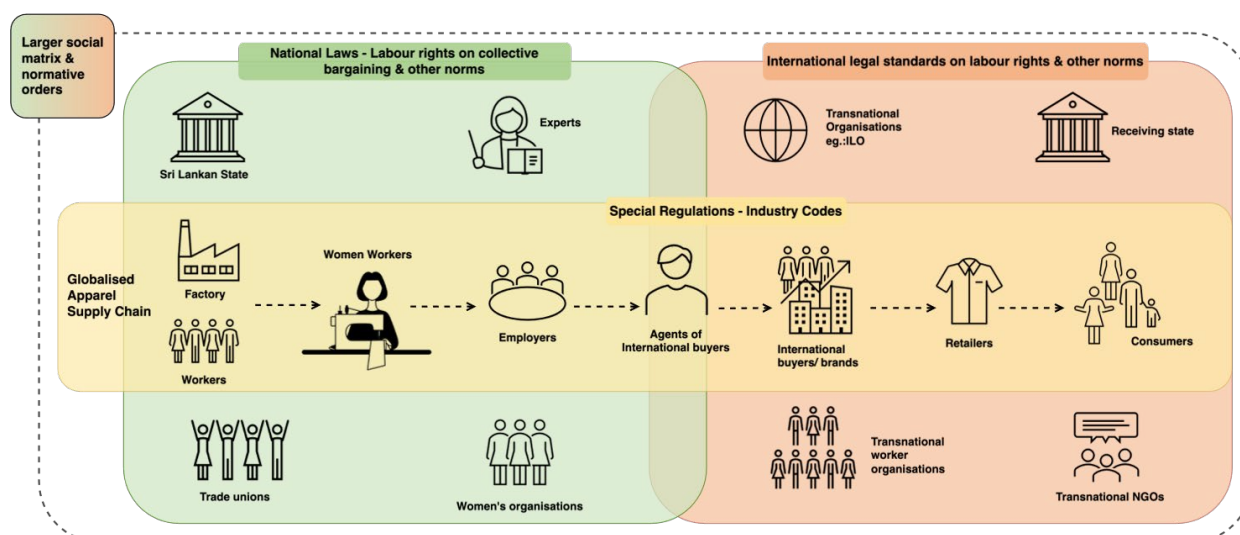


Figure 4.1: Conceptualising the apparel supply chain through semi-autonomous social fields lens (diagram created by the author).

### 4.3 Part 2: Women workers and labour bargaining

In Sri Lanka, gendered discrimination is an added dimension that makes it harder for women workers to be vocal about their demands. From the discussion above, with the

<sup>359</sup> Moore (n 202) 720.

bargaining power of the trade unions weakening, women workers' ability to influence regulation appears extremely grim. As discussed under section 1.3 in Chapter 1, women are not adequately represented in the membership and leadership in the trade unions and at the national-level labour bargaining forums. There is anecdotal data that women form only about 35 percent of the total trade union membership.<sup>360</sup> It is also significant that the Department of Labour in Sri Lanka does not collect gender segregated statistics of trade union membership.<sup>361</sup>

Worker movement and women's activism in the apparel industry have been largely recorded by social scientists.<sup>362</sup> In the 19<sup>th</sup> century, Sri Lanka had an active labour movement with the involvement of women representing the working class.<sup>363</sup> Kumari Jayawardena illustrated how working women in the coffee plantations and the sorting and packing factories were part of this movement.<sup>364</sup> While struggles for equality in education, suffrage and political rights were steered by middle-class women, Jayawardena explained that the labour movement received the support of working-class women and daily wage-earning women workers.<sup>365</sup>

Literature on women workers in EPZs in Sri Lanka records that they enjoyed their new-found identity as industry workers, but were disengaged from formal autonomous labour negotiation mechanisms such as trade unions. Writing on the women workers in the newly established EPZs in the 1980s, Kumudini Rosa discussed how the factory jobs were a way to earn a wage, but also offered women workers opportunities to assume a new social identity and develop 'a sense of responsibility, co-operation and solidarity with other women.'<sup>366</sup> However, scholars point to a disengagement of women workers with trade unions. For instance, Gunawardana noted that 'male dominated trade unions ... historically exclude[ed] women and women's interests'<sup>367</sup> and 'where unions did exist, collective agreements excluded issues pertinent to women.'<sup>368</sup> Biyanwila's research describes that women's struggles, particularly in the EPZs, are

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<sup>360</sup> Ranaraja (n 41).

<sup>361</sup> Interview with the Trade Union Division of the Department of Labour, Sri Lanka, held 29.03.2022.

<sup>362</sup> See *Struggle for Political and Franchise Rights, struggles of working women, and women in the Left Movement (of Sri Lanka)* in Jayawardena (n 263); See Political Editor, 'Workers' Crisis: Stitch in time would have saved life' *The Sunday Times* (Colombo, 05 June 2011 <<https://www.sundaytimes.lk/110605/Columns/political.html>>).

<sup>363</sup> Jayawardena (n 263), 116.

<sup>364</sup> Jayawardena (n 263), 116.

<sup>365</sup> Jayawardena (n 263), 116-120.

<sup>366</sup> Rosa (n 275) 27- 28.

<sup>367</sup> Gunawardana (n 98) 373.

<sup>368</sup> Gunawardana (n 98) 375.

shaped by ‘the social construction of gender in a particular place and a space.’<sup>369</sup> Therefore, the EPZs brought a large number of women workers together. Nevertheless, the mere presence of women workers in those spaces was insufficient to integrate them into the official labour collectives such as the trade unions.

The mainstream trade unions, for a prolonged period of time, closed their doors to women workers, and women activists. Biyanwila examined how even the mainstream unions, for a prolonged time, ‘neglected organizing young women,’<sup>370</sup> which alienated them from the mainstream, male-led trade unions and the labour movement itself. This resonates with the reality in other South Asian countries. Farheen Alamghir explored the challenges confronted by women labour leaders and women factory workers in navigating capitalist structures and the culture in representing their rights in the Dhaka-based Bangladeshi apparel industry. She described that several gendered and structural barriers such as women’s perceived identities combined to hinder their agency and representation.<sup>371</sup>

Gendered social realities including gender roles, stereotypes and expectations around women also determine what women can and cannot do and what spaces, e.g. public spaces, that they can and cannot occupy. This also reflects the general status of the Sri Lankan society where women are excluded from the important decision-making forums, e.g. women’s representation in the Parliament is at 5 percent.<sup>372</sup> This is what Sita, who I cited in Chapter 1, echoed in her opinion about barriers to speaking up and demanding justice or rights. Vidyamali Samarasinghe in her study of women workers in Sri Lanka illustrates that, through their contributions in the manufacturing industries and domestic work abroad, ‘women play a leading role in providing the essential labour component’ in the Sri Lankan economy.<sup>373</sup> Nevertheless, they are not represented at the decision-making levels of these industries, including the apparel industry.

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<sup>369</sup> Biyanwila (n 158) 182.

<sup>370</sup> Ibid 189.

<sup>371</sup> Farheen Alamghir and Ozan N. Alakavuklar, ‘Compliance Codes and Women Workers’ (Mis)representation and (Non)recognition in the Apparel Industry of Bangladesh’ (2020) 165(2) *Journal of Business Ethics* 295, 295-310.

<sup>372</sup> Shehara Athukorala, Supriya Ramanathan, Meredith Applegate and Sarah Bibler, *Women’s Political Representation in Sri Lanka: Electoral System Analysis and Recommendations* (White Paper for International Foundation for Electoral Systems, September 2021), 10.

<sup>373</sup> Vidyamali Samarasinghe, ‘The feminization of foreign currency earnings: Women’s labour in Sri Lanka’ (1998) 32(Spring) *The Journal of Developing Areas* 303, 321; The highest amount of foreign remittances to Sri Lanka was from the Middle East (USD million 1,936): Department of Census and Statistics, Sri Lanka, 2023; The Middle Eastern countries such as Kuwait, Saudi Arabia, Oman, UAE, Qatar and Bahrain attract the highest number of females for low-skilled and domestic house keeping assistant jobs (65,293 in official records): Sri Lanka Bureau of Foreign Employment, *Statistics* (Report, 2022).

Another point is that when involved in the mainstream labour movement, women's identity and common experiences that disproportionately affect women workers do not often get highlighted. Sunila Abeysekera, a renowned Sri Lankan activist and a journalist – in her preface to a book on women's activism in the Labour Movement in Sri Lanka – once wrote that, 'in general, women's labour activism constantly oscillates between their identity as women and as workers /labourers, but it always gravitates towards their identity (in general) as workers.'<sup>374</sup> Abeysekera observed that women's gender identity is often diluted in mainstream labour struggles of male-led unions. She opined that Sri Lankan women's labour activists should focus more closely and advocate on issues that women workers face because they are women, such as gender-based violence and exploitation.<sup>375</sup>

Early literature documented different forms of women organising in EPZs including women's labour organisations. Studying women workers in Sri Lanka's Katunayake EPZ, Kumudini Rosa analysed that women's groups took risks in organising and that 'new and more organizational forms and methods have evolved'<sup>376</sup> in that restrictive social context. In addition to the personal and spontaneous forms of organising workers, women's groups and community-based organisations had been a source of alliance and support for women workers since the 1980s. These civil society organisations and collectives were de facto trade unions for women workers who were reluctant to take the risk of forming or joining a trade union. During my interview, Chamila Thushari, Coordinator of Dabindu Collective – a grassroots women's labour organisation serving apparel and other factory workers – mentioned that they started as a civil society organisation representing EPZ workers in the 1980s, due to the threat to trade unions.<sup>377</sup> Using the anti-terrorism law regime to penalise trade union activists is an ongoing threat to trade union activists in Sri Lanka as I discussed in Chapter 1.<sup>378</sup> Forming civil society organisations dedicated to labour rights and the welfare of women workers is an example of how women found alternate pathways to withstand challenges from the state and employers to curtail their voice.

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<sup>374</sup> Sunila Abeysekera, Preface in Padmini Weerasooriya and Chandra Devanarayana, *Our Journey Thus Far* (A publication of the Women's Centre, Ja-Ela, Sri Lanka, 2006), 12.

<sup>375</sup> *Ibid*, 12.

<sup>376</sup> Rosa (n 348) 28.

<sup>377</sup> Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

<sup>378</sup> See ILO Committee on Freedom of Association Report in which the committee requests to be kept informed of development: ILO Freedom of Association cases, Report No. 230, Case No. 1003 (Sri Lanka, November 1983), clause 358

<[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002\\_COMPLAINT\\_TEXT\\_ID:2900428](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002_COMPLAINT_TEXT_ID:2900428)>.

An increasing number of women's labour organisations have emerged in the space of worker representation during the past three decades.<sup>379</sup> These women's organisations that represent apparel industry workers were founded with the specific mission of empowering workers, with a vested interest in women workers. Among my interview respondents, I spoke to at least six of such organisations including the Dabindu Collective, Women's Centre, Stand Up Movement, Revolutionary Existence for Human Development (RED), Shramabhimani and the Centre for Working Women. Their programs and work are all oriented towards women workers, increasingly focused on empowering women workers, labour rights advocacy and literacy that I discuss in Chapters 5, 6 and 7. For instance, the Women's Centre, in their mandate, express that their work targets women workers in developing their educational, economic, social, vocational and artistic skills.<sup>380</sup> These organisations are civil society organisations led and run by women and have more proactively represented women workers during COVID-19 pandemic.<sup>381</sup> Their emerging presence in Sri Lanka has been documented, especially near EPZs, in Rosa<sup>382</sup> and Biyanwila's<sup>383</sup> works. Scholars like Ruwanpura identify how women's organisations partner with trade unions and sometimes get overshadowed by the mainstream national-level trade unions.<sup>384</sup> Women's organisations have strong ties with grassroots-level women workers useful for trade unions and, more broadly, labour organising.

Significantly, most of the women's labour organisations are led by women labour leaders who have lived the life of factory workers previously. For instance, Ashila Dandeniya from the Stand Up Movement, Chandra Devanarayan from RED, Padmini Weerasooriya from the Women's Centre and Lalitha Dedduwa Kumara from the Textile, Garment and Clothing Workers Union (TGCWU), a recently founded women-led union, have all been former factory workers. The experiences and the service of these women are akin to a source of strength and support that sustain these organisations and their associated network. Their role, in that sense, can be best

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<sup>379</sup> Similar observations have been made by Merry in the context of campaigns for land ownership in Nigeria, indigenous rights in Mexico and equal marriage rights in Papua New Guinea: Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' in Rene Provost and Colleen Sheppard (eds), *Dialogues on Human Rights and Legal Pluralism* (Springer, 2012) 207-228.

<sup>380</sup> Padmini Weerasooriya and Chandra Devanarayana, *Our Journey Thus Far* (A publication of the Women's Centre, Ja-Ela, Sri Lanka, 2006) 74-75.

<sup>381</sup> Brandix cluster and activism by women workers: at 'Voices from the Field: Reprisals and Repression of Garment Worker Unions and Workers Organizations', *Global Labour Justice and International Labour Rights Forum with Asia Floor Wage Alliance* (Web report, April 2022)

<[https://issuu.com/asiafloorwageallianceafwa/docs/voices-from-the-field\\_-\\_reprisals-and-repression-of](https://issuu.com/asiafloorwageallianceafwa/docs/voices-from-the-field_-_reprisals-and-repression-of)>.

<sup>382</sup> Biyanwila (n 158).

<sup>383</sup> Rosa (158).

<sup>384</sup> Ruwanpura (n 50), 71-94.

described through the metaphor of ‘mother trees’. The mother trees, in Suzanne Simard’s forestry research, are ‘the majestic hubs at the centre of forest communication, protection, and sentience.’<sup>385</sup> Simard discovers that mother trees ‘pass their wisdom to their kin, generation after generation, sharing the knowledge of what helps and what harms, who is friend or foe, and how to adapt and survive in an ever-changing landscape.’<sup>386</sup> Similarly, the women leaders who founded these organisations have been crucial to the establishment, development and sustainment of these organisations. While they can relate to workers’ lives through their previous experiences at the factories, they also hold the wisdom to read the employers, and to link with allies. This wisdom and passion fuels women workers’ networks and the networks that they are a part of.

Women’s labour organisations and centres have withstood the resistance to establish themselves at the grassroots level. At the same time, they have forged links with regional and international labour alliances like the Asia Floor Wage Alliance (AFWA) and the Clean Clothes Campaign. Although the activism and service of women’s labour organisations date back over three decades, some of these women’s organisations such as the Dabindu Collective and the Stand Up Movement registered as trade unions within the last four years.<sup>387</sup> I revisit this discussion in the last section of this chapter which explains worker responses and challenges to rights bargaining at the factory-level. Then, I closely build on the work and activism of women’s labour organisations in the case study chapters in the context of labour networks.

#### 4.4 Part 3: Studying the law–practice gap on labour bargaining in the apparel industry: Worker responses on rights bargaining at the factory level

During interviews with the 45 women workers for this study, workers commented on their experiences with employees’ councils as well as trade unions and other labour organisations. This section discusses worker experiences with the different rights bargaining pathways. The interview sample for this study included workers from the south as well as from five factories in the north and one factory in the east.<sup>388</sup>

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<sup>385</sup> Suzanne Simard, *Finding the Mother Tree: Discovering the Wisdom of the Forest* (Alfred A. Knopf, New York 2021), 5.

<sup>386</sup> Simard (n 385) 5.

<sup>387</sup> Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021 and Interview with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021.

<sup>388</sup> See Appendix B – ‘Factories covered in interviews’.

Therefore, this section also examines if worker experience with the employees' councils is similar or different in the north and the south of Sri Lanka.

#### 4.4.1 Labour bargaining experience of workers in the south

There is a body of previous research on labour representation and trade union activism in the EPZs of Sri Lanka,<sup>389</sup> yet there is no analysis on employees' councils.<sup>390</sup> Biyanwila, analysing the recognition of trade unions in EPZs since 1999, argued that EPZs are 'grounded in an anti-union culture maintained by the state and employers.'<sup>391</sup> Gunawardana discussed how the required 'labour flexibility for emerging economies to attract foreign investment' has made collective labour rights and trade unions undesirable.<sup>392</sup> Ruwanpura argued that the labour struggles by trade unions and worker representatives in and around EPZs never received the recognition that they should, as they contributed to improve the labour standards of the apparel industry through hard-fought struggles.<sup>393</sup> Nevertheless, these studies do not capture the labour experience in the employees' council system. Employees' councils are important for this study because the employers claim that there is a majority of women workers in these councils holding leadership positions as office bearers.<sup>394</sup> I unpack women workers' experiences with employees' councils below.

Out of the 45 workers interviewed for this study, about 85 percent of the workers thought that the employees' councils within the factory were unhelpful. Employees' councils are organised and funded by employers and do not have regular elections to appoint office bearers in most factories. Chandi said,

There is one nominated from every line at the factory but officers like our production manager do not like to send a girl who can talk fearlessly. So, they secretly ask their friendly workers in the line to send someone who is acquiescent.<sup>395</sup>

There is a paper circulated prior to the monthly council meetings in which the workers can anonymously write the issues that they have faced to be taken up for discussion

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<sup>389</sup> Biyanwila (n 98) 139-161; Biyanwila and Gunawardana (n 323) 177-199; Rosa (n 158).

<sup>390</sup> Ranaraja discusses that in EPZs, across all industries, there were 129 employees' councils for 258 enterprises in operation: Shyamali Ranaraja, *Emerging Trends in Employee Participation in Sri Lanka* (ILO Working Paper No. 46, January 2013) 17.

<sup>391</sup> Biyanwila (n 98) 139.

<sup>392</sup> Gunawardana (n 98) 372-386.

<sup>393</sup> Ruwanpura (n 50) 71-94.

<sup>394</sup> Interview with Yohan Lawrance, Secretary of the Joint Apparel Association Forum (JAAF), held 1.12.2021.

<sup>395</sup> Interview with Chandi, a shop-floor worker from a garment factory in the Katunayake EPZ, south of Sri Lanka, held on 27.10.2021.

at the meeting. Commenting on the process, Leela, who has been the secretary of her factory's employees' council, said that they can only discuss matters such as canteen food, transport and sometimes wages and allowances. She said, 'There is a mini meeting during which issues are filtered and some chosen issues are taken up at the employees' council meeting'. Commenting on employees' councils, Leela said,

To talk honestly when we have an issue, there are instances that we cannot really report it, because who wrote what can be identified as they issue one paper per line [on the factory floor]. Some line leaders are very partial to the management, especially when they want to be promoted; they help to identify too. That paper – issues in there – makes it to the very top of the company. Therefore, workers are scared to write some of their issues.<sup>396</sup>

In these circumstances, women workers shared their experiences with trade unions and other organisations as well. About half of my interview sample (22 workers) were recruited via trade unions and women's organisations. These workers spoke about their affiliations more openly than others. Some of the women workers said that they approached a trade union when there was a workplace issue like non-payment of bonus.<sup>397</sup> Two women workers said that they were keen to learn about their labour rights and be leaders and therefore befriended other workers who were members and became members of trade unions.<sup>398</sup>

Others shared that they connected better with women's labour organisations. This was due to many reasons such as: ability to approach the women leaders for advice and discuss confidential matters, receive training on useful areas like labour rights, connect with other like-minded women in other factories, use the facilities like libraries and to access pandemic-era economic assistance like rations (food grants). Two women from one factory located in the south but far away from any of the EPZs said that they are not part of any union or women's organisations. One of them said, 'we would like to join labour organisations but they do not come to the areas where we are.'<sup>399</sup> The limitation here is that labour activism by organisations is mostly prominent around EPZs, although they visit other areas of the country such as the north. EPZs attract a

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<sup>396</sup> Interview with Leela, a shop-floor worker from a garment factory in the remote south of Sri Lanka, held on 05.09.2021.

<sup>397</sup> Interview with Chandi, a shop-floor worker in a garment factory in the Katunayake EPZ, held 27.10.2021.

<sup>398</sup> Interview with Mala (n 4) and Interview with Saduni, a worker in a garment factory in the Koggala Export Processing Zone, Sri Lanka, held 07.04.2022.

<sup>399</sup> Interviews with Dilmu and Kia, shop-floor workers from a garment factory in a town near Colombo (close to Biyagama EPZ), held 21.08.2021.

dense population of workers and setting up offices close to these zones is a strategic move by trade unions and women's organisations to easily connect with a large number of members.

#### 4.4.2 Labour bargaining experience of workers in the north

Factories in the north and the east were opened from 2013 following the civil war, as discussed above. As a result, labour rights, bargaining and association are new to the workers in these factories. Therefore, the interview responses more generally focused on labour activism rather than on employees' councils in those factories. This could be for several reasons: workers' ignorance, lack of information or being uninterested in learning about the employees' councils in their factory or that the employees' council has been replaced by Human Resources Management practices that include individual reporting mechanisms such as open-door policies (easy access to the human resources manager) and grievance reporting mechanisms.<sup>400</sup> In Chapter 1, I discussed how economic development was offered to the communities in the north and east as a patch over the wounds caused by decades of ethnic civil war.<sup>401</sup> With reference to worker experience in these areas in their study, Goger and Ruwanpura suggest that the transition was tough on the workers.<sup>402</sup> There were no effective mechanisms for assisting workers to cope with wartime trauma or with the tough, target-driven management style at the new garment factories. Life outside the factory was also marked by a heavy military presence in the areas where the women lived and by memories of the combat, loss and injury of family members.<sup>403</sup>

When I carried out worker interviews for the study in the north and the east between October 2021 and April 2022, trade unions and other labour organisations had a presence in the area. To begin with, the trade unions and labour organisations from the south had partnered with the civil society organisations in the north and the east and have commenced labour advocacy in these areas.<sup>404</sup> Worker representatives shared that the invitation for them to link with workers came from the workers

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<sup>400</sup> For a brief discussion on human resource management approaches to worker voice, see generally Gunawardana (n 19) 460.

<sup>401</sup> Ruwanpura discusses details of this in her chapter on 'From War to Work: Ethicality Amid Post-war Trauma': Ruwanpura (n 50), 124-142.

<sup>402</sup> Goger and Ruwanpura (n 55) 1-23.

<sup>403</sup> Ibid.

<sup>404</sup> Interview with Sylvester Jayakody, General Secretary, Ceylon Mercantile Industrial & General Workers Union (CMU), held 04.04.2022; Interview with Padmini Weerasooriya, Director, Women's Centre Sri Lanka, held 30.09.2021; Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

themselves who were interested to learn about their labour rights.<sup>405</sup> A civil society activist from Kilinochchi, in the north, said that the support of the labour organisations from the south was important for them as the local organisations in the north and east were in the process of raising their funds and resources and were invested in the post-conflict resettlement and reparation-related work.<sup>406</sup> Workers expressed worry but at the same time support for labour activism and labour organisations.

During interviews, most Tamil workers in the north expressed fear of being associated with a labour union. Laxana said, 'Garment factories are new to our area. Generally, people's livelihood in our area is agriculture.'<sup>407</sup> Explaining this view, the Dabindu Collective shared that workers prefer garment jobs over farming as they offer a stable income and other benefits.<sup>408</sup> On top of that, there are about 10 apparel factories in the north and the east.<sup>409</sup> Therefore factory jobs are hard to come by in those areas. Meno, another worker from Kilinochchi said, 'I think we are just workers, so we must stay within our limits.'<sup>410</sup> Although Meno did not explain 'stay within our limits', interviews with other workers clarified that the limits are often set by their managers in the factory. Laxana explained that her 'managers do not like such organisations' but, as workers, they support organisations secretly. Wasu shared how her managers scolded her for supporting labour organisations 'who are working to destroy us.'<sup>411</sup> This points to the distrust between the employers and the labour organisations in the area, exacerbated by the divisions and distrust generated by the civil war.

Worker reservations about joining labour organisations linked with job security as well. 'There are strong connections between the factories in this area [Kilinochchi, in the north]. If we are dismissed from one factory, we will not be recruited by the others too.' Shiva shared that she was dismissed for her involvement with Dabindu Collective and that she strategically waited until the management changed to secure her second chance at the factory.<sup>412</sup> This shows the repercussions of disobeying factory

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<sup>405</sup> Interview with Sylvester Jayakody, General Secretary, Ceylon Mercantile Industrial & General Workers Union (CMU), held 04.04.2022; Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

<sup>406</sup> Ushanthini, civil society and labour activist based in Kilinochchi in the north of Sri Lanka, interview held, 20.03.2022.

<sup>407</sup> Interview with Laxana a shop-floor worker of a garment factory in the north of Sri Lanka, held 20.03.2022.

<sup>408</sup> Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

<sup>409</sup> For this study, I interviewed workers from 6 factories in the north and the east; There are only 10 factories in the north and the east (including those under construction): Industry Capability Report: Sri Lankan Apparel Sector 2024 (n 11) 3.

<sup>410</sup> Interview with Meno, a shop-floor worker of a garment factory in the north of Sri Lanka, held 20.03.2022.

<sup>411</sup> Interview with Wasu, a shop-floor worker in a garment factory in the north of Sri Lanka, held 27.03.2022.

<sup>412</sup> Interview with Shiva, a shop-floor worker in a garment factory in the north of Sri Lanka, held 20.03.2022.

management. It also points to the hardships and the costs women workers have to bear, if they choose to be affiliated with labour organisations.

From my research, there appears to be a growing support base amongst women workers in the north and the east for grassroots women's labour organisations. Women workers connected with women's labour organisations for a range of reasons. Some workers found it inspiring to learn labour rights and be a part of such organisations. Shiva said, 'labour organisations must work in the factories to empower our rights and encourage us.'<sup>413</sup> Nila from a factory in the east shared an experience of protesting for their bonus in April 2021 and how the workers organised a factory-level strike.<sup>414</sup> She said that unity among workers 'is our strength.'<sup>415</sup> Workers seem to have faith in each other's collective support. Kavi identified the link with a women's labour organisation as a means for her to socialise. She said, 'I don't know the society well. I am always with my family at home. So, I want to come out of that little world that is why I participate in sessions conducted by Dabindu.'<sup>416</sup> It flows from these accounts by women workers in the north and east that there is an emerging faith in the power of workers and organising, although there still is evident fear of repercussions and worry about job security. This resonates with Sunila Abeysekera's observation, quoted above in section 4.3, that women's gender identity is often diluted in mainstream labour struggles of male-led unions and how women's labour activists should focus more closely and advocate on issues that women workers face because they are women.

#### 4.4.3 The law–practice gap: Discussion of different pathways for worker voice in the apparel industry

The discussion in the preceding three parts of this chapter points to several threads connected with the law–practice gap in women workers' voice in Sri Lanka's apparel industry. In Part 1, I discussed the formal labour bargaining framework in the apparel industry and the applicable legal and policy rules. While trade unions were the designated entity for labour representation and bargaining by the rules, their presence has weakened in the face of opposition by the state and employers. I ended that section by conceptualising the different normative orders discussed in relation to the apparel industry and the multiple actors relevant to worker voice, using the semi-

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<sup>413</sup> Ibid.

<sup>414</sup> Interview with Nila, a shop-floor worker in a garment factory in the east of Sri Lanka, held 21.08.2021.

<sup>415</sup> Ibid.

<sup>416</sup> Interview with Kavi, a shop-floor worker in a garment factory in the north of Sri Lanka, held 20.03.2022.

autonomous social field lens. Part 2 was a discussion of women workers' engagement in labour bargaining. With reference to the literature, I unpacked that women workers have been excluded from trade unions for a range of reasons including gender expectations in general and the reluctance of trade unions to support women in trade union membership and leadership positions. Here, I also examined other studies that captured women using other means to organise, such as registering as civil society organisations. These organisations engage in advocacy and activism representing women workers, sometimes alongside trade unions. In Part 3, I focused on how women workers experienced being a part of employees' councils, promoted by the employers. Employees' councils, from the experiences of women workers, did not accord the women sufficient autonomy and power to negotiate their rights with the employers.

Several important themes can be drawn from this discussion. First, there are multiple systems of norms and rules applicable to apparel industry worker voice and labour negotiations, such as special regulations for EPZs, national laws and international standards. Second, the apparel industry can be interpreted as a separate field, located within a larger social matrix that can influence the behaviour within the industry. Third, there appears to be autonomous (e.g. trade unions), as well as non-autonomous worker voice mechanisms (e.g. employees' councils), created by the different normative systems. Fourth, there are labour entities such as women's labour organisations which cannot be categorised at this point of the study without further data and analysis.

## 4.5 Conclusion

This chapter chronicled the law–practice gap in relation to the formal labour bargaining mechanisms and what workers can access and rely on to negotiate their rights at the ground level. It discussed the relevant voice mechanisms 'on the books' (in other words, in law and policy) and how the employers and the state predominantly exercise regulatory power in implementing these mechanisms. I illustrated the different applicable legal and policy orders in this discussion using the semi-autonomous social field lens.

The chapter also surveyed, using previous studies, how women workers have increasingly organised and connected outside these formal voice mechanisms. Drawing out women workers from the general cohort of apparel industry workers, I

discussed that they face disproportionate discrimination due to industry practices and that their experience as workers is shaped and conditioned by societal expectations on gender. From the interview responses of women workers, it is clear that their experience is different and needs further analysis.

The discussion of women workers' experience with different voice mechanisms also highlights the importance of closely analysing the gender dimensions in worker voice. The discussion based on previous literature and interview data explained the informal ways that women organise to overcome challenges and constraints on labour bargaining. In this process of women workers' engagement with informal labour negotiating pathways, in filling the existing law–practice gap, women's labour organisations play a notable role. In the next three chapters, which are also the case study chapters of this dissertation, I closely focus on women workers engaging in labour rights negotiation outside the conventional bargaining spaces, how they organise, what norms they use and the impact of such organising.

## Chapter 5: Negotiating gender-based violence and harassment at work

### 5.1 Introduction

Devils<sup>417</sup>

Go to the front  
Move to the back  
Alight from the front door  
Make way from the middle  
Orders of the conductor devil  
In the bus  
Rubbing on me  
Whispering in my ear  
Inviting me to run away  
Devils devils everywhere

Pestering me at the boarding  
these devils  
Looting my treasured earnings  
these devils  
Murmuring romantic yearnings  
these 'marvelous' devils  
Sucking my life out and abandon  
these dancing devils

When I go to the market  
the devils are there  
At the factory  
the devils scold me  
Everywhere in the zone [export processing zone]  
Devils devils devils

Let us all unite  
to chase away these devils!

–Chanda

Chanda is a woman worker at a factory located within the Biyagama Export Processing Zone (EPZ) in the west of Sri Lanka. The poem is a vivid expression of her daily struggles with harassment as a woman, inside and outside the garment factory. The

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<sup>417</sup> This poem titled 'Yakku' (Devils) was written by a woman factory worker and published in a monthly periodical (June 2019) done by a local woman-led trade union – Textile Garment and Clothing Workers Union (TGCWU) in Sri Lanka. The poem was translated by me from Sinhalese to English and used here with permission from TGCWU. Special thanks to Mamta Sachan Kumar (PhD Candidate at ANU) for her feedback on the translation of the poem.

metaphor of ‘devils’ in the poem, which refers to the harassers, is tightly combined with the local culture in Sri Lanka. Traditional ‘devil dancing’ or *Yakku natima /thovil* is a ritual performed in rural Sri Lanka by exorcists to ward off ailments caused by evil spirits.<sup>418</sup> Devils in these rituals, enacted by masked dancers dancing to the beat of native drums interacting with the exorcist, symbolise the different ailments that affect the good health and fortune of people. It is, therefore, an appropriate symbol of the evils of sexual violence and harassment that Chanda refers to. This poem is not a mere narration of instances of harassment she faces as a garment worker. Its power lies in Chanda’s invitation for others to unite in fighting it.

Coincidentally, in June 2019 when this poem was published, the International Labour Organisation’s (ILO) Violence and Harassment Convention came into force.<sup>419</sup> Like Chanda, women workers had expressed their concerns over violence and harassment through different means, including poetry, before the Convention came into effect. The convention focused on defining violence and harassment in the world of work broadly and empowering workers to claim a broad range of rights, not limited by employment status (e.g. contracts) or the conventional narrow framing of employer authority (e.g. employer title, contractual relationships). Adoption of the Convention in 2019 at the International Labour Conference triggered advocacy and carved out spaces for worker voice on this issue at the grassroots level in Sri Lanka, post-2019. By January 2020, worker organisations in Sri Lanka – with women’s organisations taking the lead – started a campaign to urge the Sri Lankan government to ratify the convention and legislate. The campaign, which I discuss below, continued during and after the pandemic.

This chapter seeks to answer the question ‘What non-conventional forms of worker voice were and are visible in pandemic and post-pandemic Sri Lanka?’ The previous chapter explored the formal legal structure for collective bargaining and the social, political and gendered background against which it operates. Being the first case study of the dissertation, this chapter focuses on the campaign for the ratification of ILO’s Convention 190 (C-190) in Sri Lanka. C-190 is the newest international labour standard

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<sup>418</sup> Lakna Harindi and Mahesh Hapugoda, ‘The Traditional Devil Dancing (Thovil) and Its Healing Capacity: Exorcism and Catharsis as a Psycho-Therapeutic Experience’ in Malcolm Cooper, Athula Gnanapala, MSM Aslam and Iran Ratnayake, *The Emergence and Future of Health Tourism in the Asia Pacific Region* (Cambridge Scholars Publishing, London, 2023) 235, 235-247.

<sup>419</sup> ILO News, ‘ILO Violence and Harassment Convention will enter into force in June 2021’ *International Labour Organization Newsroom* (Web page, 25 June 2020) <[https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_749148/lang-en/index.htm#:~:text=Adopted%20by%20the%20International%20Labour,Together%20with%20Recommendation%20No.](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_749148/lang-en/index.htm#:~:text=Adopted%20by%20the%20International%20Labour,Together%20with%20Recommendation%20No.)>.

on violence and harassment in the world of work.<sup>420</sup> The purpose of the chapter is to construct an understanding of violence and harassment experienced by women apparel workers and grassroots labour responses in fighting it. In contrast to the case studies discussed in the following chapters, this case study shows how international soft law standards and transnational advocacy were utilised through grassroots activism to influence labour regulation in the apparel industry. The other two chapters examine grassroots to transnational networks, in particular the linkages and advocacy. This chapter specifically focuses on the use of collective voice against work-related violence and harassment to demand legal and policy change and redress for workers. While violence and harassment at work is a broad concept,<sup>421</sup> this case study focuses on gendered experiences drawing on the rich data derived from the personal experiences of workers who identify as women.

This chapter is developed in three parts. First, the chapter explains the background to the case study using literature and empirical data on women workers' experiences of violence and harassment in Sri Lanka. It also outlines the existing formal regulatory framework on gender-based violence at work in Sri Lanka and why it has failed to protect women workers. Part 2 discusses the C-190 campaign and the collective voice of women workers in it. Part 3 discusses how the collective voice of women workers is organised as webs of influence around this issue at the local, national and transnational levels. It concludes with a discussion of the effect and impact of collective voice and the limitations of the networks that action collective voice in this case study.

### 5.1.1 Fieldwork for this case study

This case study draws from interviews with a range of participants. The experiences of women workers and women's labour organisations lay the foundation for this chapter. While about 39 women workers out of 45 that I interviewed shared comments on violence and harassment related to work, the chapter primarily draws from 16 interviews in which women workers shared experiences and incidents that connect strongly with the collective voice of women apparel workers. This includes six interviews with Tamil workers and ten interviews with Sinhalese workers. At the time, all Sinhalese workers and some Tamil workers had attended training and awareness sessions on violence and harassment in the world of work related to the new C-190.

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<sup>420</sup> ILO Violence and Harassment Convention, 2019 (No. 190).

<sup>421</sup> That includes people from different gender identities.

As explained in Chapter 3, these interviews were conducted both remotely and by in-person interviews conducted in 2021 and 2022.

Women's labour organisations and unions played a major role in the labour campaign that I discuss in the chapter. Therefore, seven interviews with women labour leaders from those organisations are key to the discussion and the analysis in this chapter. I use an interview with the Employer's Federation of Ceylon (EFC) to present the employer's view on C-190's ratification in Sri Lanka. Further, in order to build on C-190 campaign's regional and international dimensions, I draw from three interviews with regional and transnational labour organisations such as the Solidarity Centre, Asia Floor Wage Alliance (AFWA) and the International Labour Organisation's (ILO) Decent Work Team for South Asia.

## 5.2 Part 1: Background to this case study

Gender-based violence at the workplace and outside has been identified by the International Trade Union Confederation (ITUC) as 'one of the most tolerated violations of workers' human rights.'<sup>422</sup> Women workers are disproportionately prone to this form of violence at the workplace and outside.<sup>423</sup> In South Asia, significantly low female labour force participation<sup>424</sup> is partially attributed to workplace and work-related violence and harassment, including on public transportation on the way to work and in public spaces.<sup>425</sup> As I discussed in Chapter 4, with weak worker voice and representation in industrial spaces, women workers are less likely to challenge violence and harassment.<sup>426</sup> The purpose of this brief background that draws from literature specifically relevant to Sri Lanka's issue of violence and harassment, is to offer a description of different types and experiences of gendered violence and harassment that affect country's women workers.

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<sup>422</sup> International Trade Union Confederation (ITUC), 'Gender-Based Violence at Work #RatifyC190 for a World of Work Free from Violence and Harassment', *Issues: gender-based violence at work* (Web page, June 2020) <<https://www.ituc-csi.org/GBV>>.

<sup>423</sup> Ibid.

<sup>424</sup> Sri Lanka's women's workforce participation is 34.5 percent and has remained below 35 percent for a decade now: Central Bank of Sri Lanka Annual Report 2022 (n 39).

<sup>425</sup> Jennifer Solotaroff, George Joseph, Anne Kuriakose, Jayati Sethi, *Getting to Work – Unlocking Women's Potential in Sri Lanka's Labour* (World Bank Report, 2020) 72; Maria Beatriz Orlando, Rohini P. Pandezuma, Quresh, 'Sexual harassment in South Asia: What recent data tells us' *World bank Blogs* (Blog, 25 November 2020)

<<https://blogs.worldbank.org/endpovertyinsouthasia/sexual-harassment-south-asia-what-recent-data-tells-us>>.

<sup>426</sup> The first women's trade union that was to be registered could not be registered; See Feizal, 'Sri Lanka's first women's trade union close to registration' *Business Times* (Colombo, 2 August 2015)

<<https://www.sundaytimes.lk/150802/business-times/sri-lankas-first-womens-trade-union-close-to-registration-159044.html>>.

Violence and harassment were concerning pre-COVID-19 and alarmingly increased in the world of work in South Asia during the pandemic.<sup>427</sup> For instance, in January 2021, Jeyasre Kathiravel, a 20-year-old Dalit woman and a worker of a Tamil Nadu garment factory in India, was found dead on farmland near her family home.<sup>428</sup> She was, allegedly, raped and killed by her supervisor from the garment factory, who is now in jail awaiting trial.<sup>429</sup> Her family and co-workers had shared that she was harassed previously by the supervisor at the factory but no one had complained due to fear of job loss.<sup>430</sup> Although this seemed like an isolated incident that happened in India, labour advocates from other Asian garment-producing countries including Sri Lanka were worried that any progress achieved in this area could be reversed due to the pandemic.<sup>431</sup> During fieldwork for this study, Sri Lankan women-led labour organisations expressed the same worries. Their C-190 campaign had just begun in early 2020, when the pandemic hit.

Garment factory workers are often associated with various social and gender stereotypes, making them easy targets of violence and harassment. Scholars point out how violence against and harassment of women workers do not attract sanction as the stigma around women factory workers is that they are regarded as ‘easy’, ‘immoral’ and objectified.<sup>432</sup> Researching EPZ women workers, Sandya Hewamanne claims that her fieldwork showed that ‘street vendors, shopkeepers, bus conductors, and even policemen often referred to FTZ (Free Trade Zone) working women as whores.’<sup>433</sup> In my own experience during fieldwork, walking on the streets outside the Katunayake

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<sup>427</sup> ILO-Decent Work in Garment Supply Chains Asia, *Promising practices, experiences and lessons learned in eliminating gender inequality in the garment sector in Asia* (ILO Report, 04 February 2022) 4, 12; Tansy Hoskins, ‘Violence against women garment workers increased during pandemic’ *Open Democracy* (Blog, 18 February 2022) <<https://www.opendemocracy.net/en/5050/violence-against-women-garment-workers-increased-during-pandemic/>>; International Labour Organisation, ‘COVID-19 and the world of work’ (Web page, November 2023) <<https://www.ilo.org/global/topics/coronavirus/lang--en/index.htm>>.

<sup>428</sup> Annie Kelly, ‘H&M pledges to end shop-floor sexual violence in India after worker killed’ *The Guardian* (England, 1 April 2022) <<https://www.theguardian.com/global-development/2022/apr/01/hm-pledges-to-end-shopfloor-sexual-violence-in-india-after-worker-killed-jeyasre-kathiravel>>.

<sup>429</sup> Ibid.

<sup>430</sup> Annie Kelly, ‘Murder, rape and abuse in Asia’s factories: the true price of fast fashion’ *The Guardian* (England 2 May 2022) <<https://www.theguardian.com/global-development/2022/may/22/murder-rape-and-abuse-in-asia-factories-the-true-price-of-uk-fast-fashion-jeyasre-kathiravel>>.

<sup>431</sup> Annie Kelly, ‘Fashion’s dirty secret: how sexual assault took hold in jeans factories’ *The Guardian* (England 20 August 2020) <<https://www.theguardian.com/news/2020/aug/20/fashion-industry-jeans-lesotho-garment-factory-workers-sexual-violence>>.

<sup>432</sup> Hewamanne discusses the perception of how women should try and avoid being considered ‘loose’, ‘provocative’ or ‘promiscuous’: See Hewamanne (n 95) 168; In a more cultural sense associated with sexual purity and virginity, in Sri Lanka, multiple partners /affairs are deemed ‘immoral’ or ‘promiscuous’ conduct for women: Malathi De Alwis, ‘The production and embodiment of respectability: Gendered demeanours in Colonial Ceylon’ in M. Roberts (ed), *Sri Lanka: Collective identities revisited* (Marga Institute, 1997) 105, 105–144.

<sup>433</sup> Sandya Hewamanne, ‘“City of Whores” Nationalism, Development, and Global Garment Workers in Sri Lanka’ (2008) 26(2) *Social Text* 95 35, 35.

EPZ with other women workers, no woman (including me) was spared from street harassment and verbal abuse by some male pedestrians and three-wheeler drivers.

Many scholars have attempted to capture how various social norms and stereotypes result in violence and harassment. Hewamanne, in a different study, discusses that women workers bear the brunt of the friction between the complex social dynamics in Sri Lanka, especially expectations on gender roles (i.e. women's role as mothers and home-makers), and the localisation of global industries.<sup>434</sup> Additionally, she observes how women workers respond to violence through creative moves, jest and differential consciousness — what she calls 'identity moves'.<sup>435</sup>

Some studies illustrate how women themselves make an effort to retaliate against such injustice. Caitrin Lynch discusses the 'Juki girl stigma'<sup>436</sup> which 'tarnishes many female garment workers with a reputation for engaging in what is considered inappropriate moral behaviour.'<sup>437</sup> She argues that Third World factory labourers are not simply victims or agents and moves to discussing the 'complicated subject production' in which factory workers engage with.<sup>438</sup> A similar analysis of gender performance and production is presented in its complexity in Leslie Salzinger<sup>439</sup> and Melissa Wright's<sup>440</sup> work on factory workers.

Sandya Hewamanne's 'Stitching Identities in a Free Trade Zone: Gender and Politics in Sri Lanka' narrates stories of female migrant workers (domestic migrants) in (multinational-owned) garment factories in the EPZs.<sup>441</sup> Hewamanne studies women at the intersection of gender, class and sexuality with a focus on identity-related discrimination.<sup>442</sup> She makes an important contribution to our understanding of how women consciously make and embrace their identity as EPZ workers.

Samanthi Gunawardana discusses women workers in the apparel industry in terms of their immobility and their unique struggles. Gunawardana draws an analogy between

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<sup>434</sup> Sandya Hewamanne, 'Surveillance by Another Name: The Modern Slavery Act, Global Factory Workers, and Part-Time Sex Work in Sri Lanka' (2020) 45 (3) *Journal of Women in Culture and Society* 653, 653-677.

<sup>435</sup> Hewamanne (n 195).

<sup>436</sup> See my discussion of the term 'Juki girls' in section 3.2.3 in Chapter 3.

<sup>437</sup> Lynch describes inappropriate moral behaviour as concerns centred on 'sexuality, from premarital or extramarital sex to, at the extreme, prostitution': Lynch (n 94) 22.

<sup>438</sup> Lynch (n 94) 23.

<sup>439</sup> Salzinger (n 76).

<sup>440</sup> Wright (n 79).

<sup>441</sup> Hewamanne (n 95).

<sup>442</sup> Sandya Hewamanne, *Sri Lanka's Global Factory Workers: (un) Disciplined Desires and Sexual Struggles in a Post-Colonial Society* (Routledge, 2016).

'carceral spaces' and the highly secured environment at EPZs.<sup>443</sup> She identifies factories as sites where social reproduction (biological reproduction — labour, unpaid work and reproduction of culture and ideology that stabilises dominant social relations) intersects with '(im)mobility' in EPZs.<sup>444</sup> She observes how the factories regulate the bodies of women workers through rules and strict disciplinary mechanisms such as shifts, set breaks and partaking of water and food at the workplace. Gunawardana notes how high levels of patience and discipline are required by workers. For instance, 'if they appear to be impatient or ask repeated questions of Human Resources personnel, they are deemed as demanding and impatient, and hence, unsuitable for factory work.'<sup>445</sup> She suggests that interpersonal care and social reproduction are used by women workers to resist '(im)mobility and dispossession.'<sup>446</sup>

Adikaram discusses how culture shapes perceptions on social and sexual behaviours at workplaces and influences the interpretation of workplace sexual harassment.<sup>447</sup> Exploring broader social norms in the space of cyber bullying, Adikaram and Ratnayake claim stereotypes, societal norms and beliefs are mostly based on ethnic and religious undertones and mean that 'harassment and violence and aggression towards women as compared to men are high in Sri Lanka.'<sup>448</sup> In this context, Savitri Goonesekere highlights that 'although there continue to be reports of wide-spread gender-based violence in Sri Lanka, social stigma continues to curtail reporting, and remedies and support mechanisms are still limited.'<sup>449</sup> I discuss these issues with the formal mechanisms and procedures in section 5.2.3.

### 5.2.1 The spectrum of violence and harassment experienced by women workers

Here, I engage with my qualitative data to build on the narratives and discussions of violence and harassment against women workers discussed in the previous section. The aim is to make space for the voices and experiences of women workers and

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<sup>443</sup> Samantha Gunawardana, 'Gendered Depletion in Export-Processing Zones Progress in Political Economy (PPE)' (2019), 26(4) *Social Politics* 538, 538-560.

<sup>444</sup> Ibid 539.

<sup>445</sup> Gunawardana (n 443) 549.

<sup>446</sup> Ibid 556.

<sup>447</sup> Arosha S Adikaram, "'Good women" and "bad women" how socialization of gendered behavioural norms influences Sri Lankan working women's interpretation of sexual harassment at workplaces' (2014) 1(1) *South Asian Journal of Human Resources Management* 45, 45-65.

<sup>448</sup> Arosha S. Adikaram and R.M.K.D. Ratnayake, 'Attacked Gender Identities: The Enigma of Cyber Bullying' in Premilla D'Cruz, Ernesto Noronha, Avina Mendonca (eds), *Asian Perspectives on Workplace Bullying and Harassment* (Springer, 2021) 153-180.

<sup>449</sup> Savitri Goonesekera, 'Compendium on Law, gender-based violence and reproductive rights', *United Nations Population Fund* (Report, 2017) 6.

understand how violence and harassment is perpetrated, why, in what forms, and how the workers respond to them. The purpose of this chapter is not to engage with the full spectrum of violence and harassment against women and delve deeply into the intersectionality in relation to the diverse backgrounds of women workers; nevertheless, it is important to outline that context in order to understand the ways in which women workers rise against abuse and repression.

### 5.2.1.1 Harassment at the workplace

It flows from the worker interviews that the most obvious form of harassment at workplace in the apparel industry includes actions committed by the supervisor or a superior towards their subordinate. Such actions sometimes may not seem gendered. However, they appear to spring from deep gender biases. During an interview, a former manager of a leading apparel company in Sri Lanka said that ‘A manager will not think twice to berate a female machine operator [compared with], for instance, a male mechanic [working in the factory].’<sup>450</sup> He added, ‘I think it is cultural and a result of the power gap between a woman worker from the shop floor and a manager who is usually a man.’<sup>451</sup> This is an indication that harassment can have subtle gendered nuances.

Some of the senior managers are retired military officers and execute their job in a regimented fashion with rigorous and severe rules.<sup>452</sup> In the case of Tamil workers the presence of former military officials as their senior managers is an additional level of intimidation and pressure that links to their war-time experiences. I discussed this aspect in detail in section 1.3 in Chapter 1.

Harsh and inhumane treatment is a common experience during the peak season for orders. Ruwanpura described how workers often felt overworked, especially during the peak demand season, which she claims is a violation of an ethical code.<sup>453</sup> Referring to abusive behaviour, Maggie, a worker also from Katunayake EPZ, said, ‘Those days [during the peak season], the supervisors used to hit us with t-shirts when workers did not meet targets and the workers cried.’<sup>454</sup> Further, Wasu, a worker from a factory in

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<sup>450</sup> Interview with former Manager, Apparel factory in the Kandy Export Processing Zone in the Central Province of Sri Lanka, held 20.10.2021.

<sup>451</sup> Ibid.

<sup>452</sup> Ruwanpura (n 50) 115.

<sup>453</sup> Ruwanpura (n 50) 112-114.

<sup>454</sup> Interview with Maggie, a shop-floor worker in a garment factory in the Katunayake Export Processing Zone, Sri Lanka, held 27.03.2022.

the north, explained how her caring responsibilities as the woman in her house can get in the way of work obligations. She shared,

In the morning, we have to get up early and cook for our children and also have to catch the transport at a set time. If we are late the transport won't wait for us. So, we have to access public transport to go to work. Happened to me several times. They scold us so much and they won't respect us as human beings. If we are late, they will deduct fifty rupees [AUD 0.25] for each 1 hour. And if we get later than 9.45am, they give us salary for a half day.<sup>455</sup>

As is evident from the above material, harsh and inhumane treatment can involve a combination of supervisor aggression, verbal abuse and harassment.

During interviews, workers often mentioned they were verbally abused by a senior or a supervisor. Chandi, a worker from a factory in the Katunayake EPZ, said, 'The way the management speaks is deplorable. We address them as "Miss and Sir", but they do not return that respect to us. They call us various animal names – dog, donkey – they say "Ask that donkey to come".'<sup>456</sup>

Workers also shared their experiences of being penalised by supervisors for not agreeing to sexual advances. Sharing her experience Nita said, 'I was very uncomfortable and uneasy at that time as I was scared that the man would find a minor fault in my work and will take me to the bosses. He accused and scolded me many times on the factory floor because I did not bend to his request.'<sup>457</sup>

Commenting on balancing work with caring responsibilities Saduni from a rural factory in the south said, 'When we used to finish our shift at the factory late, the husbands of some workers brought their children to the factory and left them with a bag of clothes at the security post. Women are expected to fend for the children.'<sup>458</sup>

Although not reported in my interviews, other ethnographic work reports co-worker aggression, e.g. male co-workers on the women workers. Factories adopt various

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<sup>455</sup> Interview with Wasu, a shop-floor worker in a garment factory in the north of Sri Lanka, held 27.03.2022.

<sup>456</sup> Interview with Chandi, a shop-floor worker in a garment factory in the Katunayake Export Processing Zone, Sri Lanka, held 27.10.2021.

<sup>457</sup> Interview with Nita, a shop-floor worker in a garment factory in the Biyagama Export Processing Zone, Sri Lanka, held 05.09.2021.

<sup>458</sup> Interview with Saduni, a shop-floor worker in a garment factory in the Koggala Export Processing Zone, Sri Lanka, held 07.04.2022.

measures to control this. One worker shared, 'At the factory men and women are separated at the canteen etc. That is how they control harassment to girls.'<sup>459</sup> This signals a tendency to resort to an easy fix rather than addressing a deep-rooted systemic problem on harassment that needs to be solved through education and training.

### 5.2.1.2 Sexual harassment during the commute to work

Harassment outside the workplace is conventionally not deemed as workplace-related violence and harassment. In a progressive attempt to expand the scope of the definition internationally, C-190 counts incidents of violence and harassment during the daily commute to work, work-related trips, communication, employer-provided accommodation and both public and private spaces of work, including domestic spaces.<sup>460</sup>

Many workers live in boarding houses clustered around the EPZs. They shared that routes that women workers usually take to travel to or from boarding houses are frequented by male aggressors. Dilani from the Biyagama Zone said, 'We could not walk on the street, could not go to the market on the way, they'd say things using names of vegetables.'<sup>461</sup> Laxana, a Tamil worker from the north shared street harassment they face on their commute to home after the night shift. She said, 'after completing work at 9.30 pm, and walk home from the bus stop, some drunkards follow and undress. We complained to Human Resources [of the factory]. They arranged for some police and army personnel to be assigned in that area.'<sup>462</sup>

Further, two workers spoke of instances of sexual abuse inside office transport when a woman was the last passenger.<sup>463</sup> During interviews, women workers shared how women factory workers still bear the brunt of the 'juki-girl stigma', that I discussed above and in Chapter 3, which make these experiences a part of their daily struggles. Stigma makes women factory workers easy targets of street harassment and gender-based harassment during the commute to work and in public transport. Nila, who works in a garment factory in the north said, 'People in our area view women garment workers

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<sup>459</sup> Interview with Chami, a shop-floor worker in a garment factory in the rural south of Sri Lanka, held 05.09.2021.

<sup>460</sup> ILO C-190 (n 420) Articles 2 and 3.

<sup>461</sup> Interview with Dilani, a shop-floor worker in a garment factory in the Biyagama EPZ of Sri Lanka, held 20.03.2022.

<sup>462</sup> Interview with Shiva, a shop-floor worker in a garment factory in the north of Sri Lanka, held 20.03.2022.

<sup>463</sup> Two interview participants from the North, Laxana and Shiva, shopfloor workers in a garment factory in the north of Sri Lanka, held 20.03.2022.

as immoral. We work for our families, but it is disappointing to learn that even some family members still think like that.’<sup>464</sup>

Workers shared that street harassment and related behaviour is somewhat controlled in the areas around the Katunyake and Biyagama EPZs. These are little pockets where women’s labour organisations have set up their offices and work to create awareness among women workers and the neighbours about street harassment.

### 5.2.1.3 Harassment based on digital content posted related to work

Three workers spoke of facing workplace harassment due to content published on social media. Shiva, a woman worker from a factory in the north shared how she was dismissed because of an interview she gave to a civil society organisation which was posted on Facebook. She said, ‘The factory suspended me for a long period — it was for about two years. I approached Labour Department. They told me to request the factory again, but the factory refused to appoint me. Then I re-joined when the management changed.’<sup>465</sup> Shiva said, as a consequence of her activism, she could not secure a job with another factory in the area until the management changed, as she was blacklisted. A similar incident was reported in Cambodia during COVID, when a Cambodian women worker was jailed for sharing on Facebook her factory’s plan to dismiss workers.<sup>466</sup> Although blacklisting is not a direct form of harassment that is captured by the laws, workers in the north suffer severely from being blacklisted as there are only a handful of factories from where they can get a job.

Esha shared how she and her fellow women workers created a Facebook group by the name of their factory union to share information and how the management questioned her and other workers as they suspected those involved with the union were carrying on a Facebook campaign against the factory.<sup>467</sup>

### 5.2.2 Intersectionality and the experiences of violence and harassment at work

Gender is only one aspect that makes women workers more prone to violence and harassment. Several other identity and social factors combine to place women working

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<sup>464</sup> Interview with Nila, a shop-floor worker in a garment factory in the east of Sri Lanka, held 21.08.2021.

<sup>465</sup> Interview with Shiva, a shop-floor worker in a garment factory in the north of Sri Lanka, held 20.03.2022.

<sup>466</sup> Annie Kelly and Harriet Grant, ‘Jailed for a Facebook post: garment workers’ rights at risk during Covid-19’ *The Guardian* (Cambodia, 16 June 2020) <<https://www.theguardian.com/global-development/2020/jun/16/jailed-for-a-facebook-post-garment-workers-rights-at-risk-during-covid-19>>.

<sup>467</sup> Interview with Esha, worker in a garment factory in the Katunayake Export Processing Zone, Sri Lanka, held 05.09.2021.

in garment factories at neglected points of intersection, such as age, migrant status, education, social class, etc.<sup>468</sup> From a practical perspective, the ILO observes that ‘gender-based violence and harassment are prevalent in the garment sector where the majority of workers are young, women and /or migrants.’<sup>469</sup> Additionally, in a post-war context such as Sri Lanka, ethnicity makes a person more prone to violence and harassment, as I discuss below.

A rich body of ethnographic and social science literature reveals multiple identity and societal ‘categories’ that intersect to make apparel industry workers vulnerable.<sup>470</sup> Feminist scholars explain that violence and material inequalities are rooted in social relations defined by different categories that form the identity of women.<sup>471</sup> Leslie McCaull discusses how researchers manage ‘categories’, recognising the importance of understanding and deconstructing the normative assumptions of race, class and gender to create positive social change.<sup>472</sup>

In examining how women workers negotiate their right to a violence and harassment-free world of work, I cannot overlook the inherent differences among women workers in Sri Lanka and how those (1) place workers at a disadvantaged point of intersection and (2) impact their right to negotiate safe and violence and harassment-free workspaces. Analysing several studies on apparel workers in Sri Lanka, Ruwanpura observes, ‘young women workers in the apparel sector ... are deeply enmeshed in the larger sociopolitical landscape – and this too has a bearing on the extent that their

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<sup>468</sup> McCall (n 407) 1771-1800; Also see Sumi Cho, Kimberle Crenshaw and Leslie McCall, ‘Toward a Field of Intersectionality Studies: Theory, Application and Praxis’ (2013) 38(4) *Signs: Journal of Women in Culture and Society* 785, 785-810.

<sup>469</sup> Promising Practices, Experiences and Lessons Learned in eliminating gender inequality in the garment sector in Asia Report (n 427) 3.

<sup>470</sup> Capitalist notions of including women in the economy couched in different expressions such as ‘productive femininity’ and ‘slender, nimble-fingered’ women were criticised by feminist scholars Diane Elson and Ruth Pearson: Elson and Pearson (n 77) 87–107; Also see Ruwanpura (n 99); Salzinger (n 76), 51; Wright (n 79).

<sup>471</sup> Kimberle Crenshaw, ‘Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics’ (1989) *University of Chicago Legal Forum* 139–67; Kimberle Crenshaw, ‘Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color’, (1991) 43 *Stanford Law Review* 6, 1241–79.

<sup>472</sup> McCall discusses how feminist intersectionality research can take three forms as a methodology and an approach: 1) Anticategorical (as denoted by the name – demonstrates fluid determinations of subjects and structures as fixed categories ‘simplify social fictions that produce inequalities in the process of producing differences’), 2) intracategorical (authors focus on particular social groups at neglected points of intersection- to reveal the complexity of lived experience within such groups) and 3) intercategorical (researchers adopt existing analytical categories to map relationships of inequality among social groups and changing configurations of inequality along multiple and conflating dimensions). The first and the third are the two extremes of a continuum for doing intersectionality research and intracategorical complexity is placed in the middle: See Leslie McCall, ‘The Complexity of Intersectionality’ (2005) 30(3) *Signs* 1771, 1773.

identities are mediated',<sup>473</sup> and labour is 'interlaced with gender, ethnic and political ideologies.'<sup>474</sup>

Tamil workers, migrant workers and agency workers (informal workers) shared their experiences of harassment, often not captured by regulations on work-related harassment. It is important to note that some workers sit at a neglected intersection of several of the above explained factors. An example is Tamil workers from the north of Sri Lanka who migrate to work in the EPZs in the south.

### 5.2.2.1. Tamil workers

Tamil workers are placed in a difficult position in newly opened factories in the post-war areas in the north of Sri Lanka. As Ruwanpura explains in her chapter 'From war to work', offering industrial development in the north after the war, was more like a compromise for unresolved reconciliation efforts.<sup>475</sup> Tamil workers also migrate to the EPZs in the south looking for better jobs and wages. In addition to the northern Tamils, there are also estate-Tamil workers who migrate to garment factories in the western province from the central province.

Capturing the story of Tamil workers in the north, Chamila Thushari from Dabindu Collective, a women's labour organisation which has worked in the space for 30 years, said,

After the war, although the conversations started around civil-war related disappearances, land and house ownership there was no discussion over the garment factories that had opened in those areas. The sons and daughters of the families in those areas are those who work at these factories. Their job is extremely important for them — their education was disrupted by the war, and they have lived in [military] camps for years. Some families are female-headed households. Some marry at 18 and then have children and divorce around 22 years and are left alone to fend for their families and children. Their situation is pathetic. There are no other secure job opportunities for them.<sup>476</sup>

During interviews, most Tamil women workers mentioned that the management at their factories in the north is Sinhalese and that there remain communication issues. Even

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<sup>473</sup> Ruwanpura (n 50), 20.

<sup>474</sup> *ibid.*

<sup>475</sup> Ruwanpura (n 50) 124-140.

<sup>476</sup> Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

among the Tamil workers working at EPZs in the south, the language barrier persists. Pointing to this Ashila Dandeniya, Executive Director of the Stand Up Movement, a women-led civil society organisation dedicated to women workers and registered as a trade union in 2021, said,

When Tamil workers come to Katunayake they have problems. They cannot read their pay slip as it is in English or in Sinhalese and when they go to shops to buy and do not speak the language they get scolded from the vendors - they say that they cannot waste time. They do not have places of worship. Even when they go to the bank, if they write in Tamil they are asked to write in English.<sup>477</sup>

Now, all the large-scale factories in Sri Lanka issue the pay slips and other documents for workers in Tamil. This is an achievement of labour advocacy and the positive commitment of businesses. However, not all mid-level factories can afford this practice.<sup>478</sup>

#### 5.2.2.2. Migrant workers

High worker turnover in garment factories has resulted in recruiting workers from villages, and from the north after the war.<sup>479</sup> A significant minority of workers, therefore, are Tamil women from the north and central parts of Sri Lanka. They migrate because of scarcity of jobs in their hometowns, and factories in the south pay more to workers.<sup>480</sup> In a previous study Samantha Gunawardana examined different socio-economic reasons that compel poor women to migrate to work in EPZs.<sup>481</sup> Some of these workers stay at factory-supervised hostels while the rest lodge in private boarding places around the zones.

Explaining why migrant workers were excluded from the COVID-19 relief funds provided by the government, the Director of Revolutionary Existence for Human Development (RED), a women workers' labour organisation located near the Katunayake EPZ, said,

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<sup>477</sup> Interview with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021.

<sup>478</sup> Interview with Ruwi, shop-floor worker in a garment factory in a town in the Western province of Sri Lanka, held 21.08.2021.

<sup>479</sup> Hewamanne (n 433).

<sup>480</sup> Interview with Sugath Rajapaksha, Coordinator, Shramabhimani women's organisation, held 20.10.2021.

<sup>481</sup> Samantha Gunawardana, "To Finish, We Must Finish": Everyday Practices of Depletion in Sri Lankan Export-Processing Zones' (2016) 13(6) *Feminist Global Political Economies of the Everyday* 861, 861-875.

Migrant workers did not get any relief, not even the LKR5000 (AUD23.03) provided in the government COVID assistance plan. This is because they were not residents of this electorate. Also, no member of Parliament sees these women as their voters so no support from the MPs to change the rules on this.<sup>482</sup>

Adding to the precarity migrant workers face in the zones, Chamila Thushari from Dabindu Collective said,

There is no sustainable program to address issues that concern migrant worker women. Gender-based violence forums in the Divisional Secretary (DS) level are only limited to the respective divisions. They have no idea of what is happening at the EPZ level. Women workers in the apparel industry often get neglected by DSs as they are not permanent residents in that Division. They do not care how these workers live in the area. These workers have migrated as there are no organised programs in their home divisions to manage employment opportunities.<sup>483</sup>

From these interviews, we can glean that the administrative framework of Sri Lanka does not support worker migration, which puts women migrant workers at risk. Migrant workers fall through the gaps in this administrative system. COVID exposed yet another way migrant women workers are insecure not just in terms of work but also in social security and access to state assistance during the crisis. They do not have a safety net from the industry, nor from the state.

### 5.2.2.3. Agency workers

Agency workers are daily wage workers who are allotted to factories through a 'manpower agency', depending on the labour requirement. According to Hewamanne, it is estimated that 30,000–35,000 workers in the apparel sector are recruited by manpower agencies.<sup>484</sup> These workers form a part of the informal workforce labouring in the garment factories that supply to international fashion brands.

Although these informal workers are outside the scope of my dissertation, I discuss their experiences here for two reasons. First, agency workers point to an often-neglected dimension in workplace violence and harassment discussions, and second,

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<sup>482</sup> Interview with Chandra Devanarayana, Executive Director, RED organisation, held 15.08.2021.

<sup>483</sup> Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

<sup>484</sup> Sandya Hewamanne, 'Pandemic, Lockdown and Modern Slavery among Sri Lanka's Global Assembly Line Workers' (2021) 22(1) *Journal of International Women's Studies* 54, 57.

women's organisations included them in training and advocacy.<sup>485</sup> Additionally, C-190 covers violence and harassment against informal workers.<sup>486</sup> I interviewed six agency workers for this study.

These workers are not registered anywhere formally as workers except with the agency on the days when they work, and the manpower agencies are not regulated or monitored by any authority. Among employers, there is a general reluctance to assume any responsibility for these workers even though the large factories utilise their labour daily.

Informality adds an extra layer of disadvantage, not just to their safety and protection from harassment but altogether as a worker in general. An agency worker, Champa, explaining their precarity, said,

When you are a permanent worker you have a safety net — they [employers] take responsibility for what happens at the workplace but when we go as manpower workers, there is no protection or compensation, for instance, there are workers who have had workplace accidents and they have to seek medical assistance from their own salaries.<sup>487</sup>

According to Amita, manpower workers are often subject to harassment as others know there won't be consequences at the factories or via agencies for such action. Amita said,

They treat us like we are from another planet ... They distinguish us as 'manpower group' and the treatment that we get is so demeaning. It is like we are at their mercy. We do not get food from the factory like the permanent workers. We get 'stepmotherly treatment'. We have to work like cattle.<sup>488</sup>

Agency workers' situation was especially concerning during the pandemic. Ashila from the Stand Up Movement said, 'They did not have work so no income. And some women

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<sup>485</sup> Ruwanpura examines the hardships of agency workers in Sri Lanka during Covid-19; See Kanchana N Ruwanpura, 'Frayed social safety: Social networks, stigma, and COVID-19 – The case of Sri Lankan garment workers' (2023), 41(7) *Environment and Planning C: Politics and Space* 1317, 1317-1332.

<sup>486</sup> The C-190 protects a range of persons other than those who may traditionally be considered or defined as employees in national law – persons in training, including interns and apprentices: ILO C-190 (n 420) Article 2.

<sup>487</sup> Interview with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021.

<sup>488</sup> Interview with Champa, an agency worker in garment factories in and around Katunayake and Biyagama EPZs of Sri Lanka, held 07.04.2022.

workers were left behind by their husbands and had to live on the streets'.<sup>489</sup> The Stand Up Movement in their advocacy focuses on women sex workers and they shared that some women agency workers engage in sex work as they are not always guaranteed work shifts at factories. This is a way for them to have another income source. Further, a report finds that women agency workers are paid less than their male colleagues. In 2020, a woman agency worker in an apparel factory was paid LKR900 (AUD4.40) a day, whereas a male agency worker collected LKR1000 (AUD4.89).<sup>490</sup>

Empirical responses allude to different intersecting social and identity factors that make some groups of workers more prone to harassment and violence than others. The reality is that the universal international standards or national legal provisions do not essentially capture or respond to this.<sup>491</sup> In these circumstances, as alluded to in the responses, the worker voice mechanisms provided by the law are inaccessible to most women.

### 5.2.3 Formal legal framework for regulating violence and harassment at work and its limitations

Work-related violence and harassment are problems that are not unique to Sri Lanka. In a work context, harassment and violence impact on the quality of employment, and the wellbeing of employees, and impose costs on organisations. Therefore, most countries have a formal legal framework that typically regulates violence and harassment at work.<sup>492</sup>

Although Sri Lanka has legal provisions on work-related violence and harassment, they remain largely inaccessible to women workers. Sri Lanka's direct legal response to harassment in the workplace is through section 345 of the *Penal Code Amendment Act No. 22 of 1995*. This section is a gender-neutral provision that covers a range of offences related to sexual harassment including verbal and non-verbal. Any case occurring from it sets a high criminal standard — beyond reasonable doubt — and women workers have to pursue their case in the criminal justice system. There are

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<sup>489</sup> Interview with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021.

<sup>490</sup> Asia Floor Wage Alliance, 'A stitch in time saved none: How fashion brands fueled violence in the Factory and Beyond' (Report, December 2021) 44.

<sup>491</sup> Hewamanne (n 442) 65.

<sup>492</sup> Conceptually, emanating from anti-discrimination laws, harassment and violence have assumed their own place in law and litigation. Different regions of the world approached violence and harassment at different times in history: See Gabrielle S. Friedman and James Q. Whitman, 'The European Transformation of Harassment Law: Discrimination Versus Dignity' (2003) 9(2) *Columbia Journal of European Law* 241; Susan Sturm, 'Second Generation Employment Discrimination: A Structural Approach' (2011) 101 *Columbia Law Review* 459, 459-465.

also litigation and related costs involved that a woman worker cannot afford from their salary.

Furthermore, although the Sri Lankan Constitution upholds the right to equality and non-discrimination in Article 12 as a protected Fundamental Right<sup>493</sup> it is out of reach for women workers. Fundamental rights cases are filed before the highest judicial forum in Sri Lanka — the Supreme Court — and there are significant costs for filing a case, e.g. attorney fees and having to travel to Colombo on court days. In a recent fundamental rights case before Sri Lanka's Supreme Court, a public school teacher received compensation for her interdiction by the Education Ministry for speaking about sexual harassment at work to the media.<sup>494</sup> However, the case did not examine the violence and harassment aspect. Nevertheless in its reasoning, the court acknowledged psychological harm and also referred to Sri Lanka's obligations under CEDAW and women's rights, and held 'affirmative rights referred cannot be restricted or limited by the provisions of Establishment Code [applicable to public sector employees in Sri Lanka].'<sup>495</sup> The court noted that 'sexual harassment or workplace stress and strain occasioned by oppressive and burdensome conduct under colour of executive office would be an infringement of the fundamental rights of the petitioner.'<sup>496</sup> Despite the recognition, the case has still not been followed by a Sri Lankan court in a work-related gender-based violence and harassment matter to strengthen judicial precedent on workplace sexual violence and harassment.

Further, the fundamental rights regime is difficult to access for an ordinary worker like a woman working in a garment factory without strong support from labour representatives.

Apart from these litigation-related challenges, women workers also face procedural challenges ranging from access to the remedies in the criminal, labour law and organisational procedures for dispute resolution. During an interview with the Women's Centre Sri Lanka, Padmini Weerasooriya shared an example of where a woman worker did not receive any assistance during a factory-level inquiry into a sexual harassment issue.<sup>497</sup> Despite being promised that the woman shop-floor worker would

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<sup>493</sup> *The Constitution of Sri Lanka*, Article 12(2) provides that 'No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds'.

<sup>494</sup> *Manohari Pelaketiya v. Secretary, Ministry of Education* (2012) SC (FR) 76/2012, SC Minutes 28 September 2016, 16 (Decision by the Supreme Court of Sri Lanka).

<sup>495</sup> *Ibid.*

<sup>496</sup> *Ibid.*

<sup>497</sup> Interview with Padmini Weerasooriya, Director, Women's Centre Sri Lanka, held on 30.09.2021.

have the assistance of a friend or a counsellor during her inquiry, the management had just called in the worker, the male preparator and a male lawyer. The woman worker, eventually, has withdrawn her complaint.

Currently, the industrial disputes and other related labour legislation is silent on the procedure for such inquiries. Law reform in the context of the garment industry in the simplest form would be to reform the Industrial Disputes Act of Sri Lanka to introduce a clear process for labour officers from Sri Lanka's Department of Labour to handle violence and harassment-related cases. Lawyers that I interviewed also explained that the redress offered through legal avenues is inaccessible to women<sup>498</sup> due to reasons such as having to initiate a complaint with the police who lack training and sympathy for women complainants.<sup>499</sup>

Previous studies find that women hardly lodge police complaints of violence and harassment and tend to seek redress via other avenues.<sup>500</sup> During interviews, women's labour organisations confirmed this and elaborated on the reasons such as having to explain the incident to be let in from the gate at the police station, non-availability of female officers after-hours (to report incidents during workers' night shift) and insensitive approach of officers to victims who come to report cases.<sup>501</sup> Instead of complaining, women workers approach places like *Mithuru Piyasa/Natpu Nilayam*, which translates into 'friendly home', which is a service point usually hosted in government hospitals to provide dedicated services to adult survivors of sexual and gender-based violence and domestic violence.<sup>502</sup> There is one located near the Katunayake EPZ. Chamila Thushari from Dabindu Collective shared that these services are coordinated by the Divisional Secretariats (DS) and not having adequate gender representation at the DS level undermines their ability to identify and address issues affecting women workers.<sup>503</sup> A new draft law in Sri Lanka now proposes to

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<sup>498</sup> Interview with Swasthika Arulingam, Lawyer and activist, held on 08.08.2021 and Interview with Lakmali Hemachandra, Lawyer and activist, conducted on 10.09.2021.

<sup>499</sup> Shyamali Ranaraja, 'Gap Analysis of Sri Lankan Law in Relation to The Convention Concerning the Elimination of Violence and Harassment in the World of Work (C-190)' (Report by National Seafarers Union Sri Lanka, 2020), 12-13.

<sup>500</sup> M. M. Karunarathne, 'Sexual Harassment at Sri Lankan Workplaces, and its Legal Remedy' (2015) 20 *Nivedini – Journal of Gender Studies* (published by Women's Education and Research Centre [WERC], Colombo) 44, 44-45.

<sup>501</sup> Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

<sup>502</sup> National Guideline for First Contact Point Health Care Providers (2019), <https://srilanka.unfpa.org/sites/default/files/pub-pdf/National%20Guidelines%20Booklet.pdf>.

<sup>503</sup> Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

introduce gender sub-units at the DS level which can strengthen the C-190 campaign as well.<sup>504</sup>

### 5.3 Part 2: C-190 campaign and the collective voice of women workers

In a work context, harassment and violence impact the quality of employment, wellbeing of employees and impose costs on organisations when that quality drops. For instance, the ILO identifies violence and harassment as a barrier to moving towards its primary goal of promoting decent working conditions for all workers.<sup>505</sup> Since C-190 is new, there is only a few studies that explore its effect and impact at the country or regional levels. Globally, there is a growing body of literature on these new standards.

In this part of the Chapter, I will closely explore the effects of C-190 on the workers and their collective voice at the national and grassroots levels, with a focus on the campaign around the Convention.

#### 5.3.1 What is C-190?

The ILO's C-190 sets a new framework to prevent, remedy and eliminate violence and harassment at work. As the first international labour standard to address violence and harassment in the world of work,<sup>506</sup> it holds an important place in setting the international standard. Its implications for the local and national levels, for settings such as Sri Lanka's apparel industry, must be explored closely. The focus of this chapter remains on the opportunities for worker voice and therefore will not extend to discuss the individual Articles in the Convention.<sup>507</sup>

The ILO adopted C-190 in June 2019. It came into force from 25 June 2021 onwards. Thirty-six countries in the world have ratified and enforced the convention so far, although in some countries such as Australia, Germany, Belgium, France, Norway and Canada the Convention is signed but still not in force.<sup>508</sup> In March of 2021 the Sri

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<sup>504</sup> Proposed *Gender Equality Act* (Sri Lanka) 2023, draft: 15 December 2022.

<sup>505</sup> ILO C-190 (n 420) Preamble.

<sup>506</sup> International Labour Organisation, 'Australia ratifies Convention No.190 on Violence and Harassment at work and Convention No.138 on Minimum Age', *Labour Standards* (Web page, 14 June 2023) <[https://www.ilo.org/global/standards/WCMS\\_885238/lang--en/index.htm](https://www.ilo.org/global/standards/WCMS_885238/lang--en/index.htm)>.

<sup>507</sup> For a comprehensive discussion on C-190 and implications for Sri Lanka's labour laws: See Shyamali Ranaraja, 'ILO Convention on Violence and Harassment Convention, 2019 and its implications for Sri Lanka's labour law' (2021/2022) XXVI *The Bar Association Law Journal* (Sri Lanka) 145.

<sup>508</sup> Ratifications of C190 – Violence and Harassment Convention (No. 190) 2019 (Web page, January 2024) <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:3999810](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:3999810)>.

Lankan Cabinet voted that Sri Lanka should sign the convention, and Sri Lanka's Minister of Labour stated that 'After the implementation of this, it is the responsibility of the trade unions to increase the efficiency and productivity of the work world.'<sup>509</sup> However, no action has been taken to sign the Convention or to propose a draft law in the Parliament since the Cabinet approval.

Although Sri Lanka has still not ratified the convention, its provisions can have a strong policy influence on the decision-making of the state and apparel industry regulators for several reasons. Some such reasons are Sri Lanka's strong interest in maintaining its reputation as an ethical garment-sourcing hub among its competitors, and the workers' ability to leverage the new provisions for advocacy and remedies for violations. As I discussed in Chapter 1 (section 1.3), Sri Lanka's re-branding as an ethical sourcing hub helped it retain its market share of global apparel after losing its preferential access to Western markets through agreements such as the Multi-Fiber agreement. Therefore, adherence to new international standards such as C-190, which have drawn support from countries in Europe, can have a significant impact on Sri Lanka's continued access to those markets. I also discuss how the new standards will impact on labour mobilisation and the use of the new standards below.

C-190, as a legal and standard-setting framework, aims to broaden the scope of the concept of violence and harassment in the world of work. Under the Convention, the concept of violence and harassment has evolved into an expansive undertaking for the states, employers, worker representatives as well as workers themselves (in relation to co-workers). 'Violence and harassment' has been defined as a 'range of unacceptable behaviours and practices or threats' which could be one-time or occur repeatedly and result in or could likely result in 'physical, psychological, sexual or economic harm, and includes gender-based violence and harassment'.<sup>510</sup> Protection extends to harassment linked to social identities across worker types ranging from trainees to permanent workers and even informal workers and across public, private and other sectors<sup>511</sup> – recognising the risks for workers at disadvantageous intersections. The scope of this 'right to world of work free from violence and

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<sup>509</sup> Ishara Gamage, 'Cabinet approves ILO C190 Convention' *Ceylon Today* (Colombo, 23 March 2021) <<https://ceylontoday.lk/news/cabinet-approves-ilo-c190-convention>>.

<sup>510</sup> ILO C-190 (n 420) Article 1.

<sup>511</sup> Premilla D'Cruz, Ernesto Noronha, Avina Mendonca & Ranna Bhatt, 'Engaging with the East: Showcasing Workplace Bullying in Asia in Premilla D'Cruz, Ernesto Noronha and Avina Mendonca (eds), *Asian Perspectives on Workplace Bullying and Harassment* (Springer, 2021), 3.

harassment, including gender-based violence<sup>512</sup> expands to spaces inside as well as outside the workplace including the commute to and from work, work-related travel, communication and employer-provided accommodation.<sup>513</sup>

Employers claim that the C-190 provisions encompass an unreasonable burden on them. This is primarily on the basis that it covers areas that employers do not have direct control over, such as an employee's commute to work and actions committed by their managerial employees against the company codes.<sup>514</sup> During interviews, employer representatives said that there is no clear agreement on these obligations which is why the convention is still not ratified in Sri Lanka.<sup>515</sup>

### 5.3.2 Forms of collective voice of women apparel workers during the C-190 campaign

At the ground level, workers' response to C-190 was organised across multiple strategies aiming to attain different ends. This campaign began in 2020 with the advocacy by the women's labour organisations and women-led trade unions, at the grassroots-level, and national-level trade unions and other local and transnational organisations joining to support and amplify the message. My fieldwork engaged with five women-led women's labour organisations: Dabindu Collective, Women's Centre, Stand Up Movement, RED and Shramabhimani Centre; and two women-led trade unions: TGCWU and the National Workers' Congress (NWC) who steered the ground-level campaign. Other national-level trade unions such as FTZ&GSEU and Ceylon Mercantile Union (CMU) participated and supported.

The underlying purpose of the campaign was to urge the government to pass national laws to regulate violence and harassment at work. There was also the aim to build awareness and rights sensitisation among women workers and their labour leaders. The labour campaign on C-190 included strategies such as discussions at the National Labour Advisory Council (NLAC), training sessions for trade union and civil society leaders, knowledge sharing and training for women factory workers, and linking up with

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<sup>512</sup> ILO C-190 (n 420) Preamble.

<sup>513</sup> ILO C-190 (n 420) Article 2 and 3.

<sup>514</sup> International Organisation of Employers (IOE), *Guide on Violence and Harassment* (Report, October 2019).

<sup>515</sup> Shared by employer representatives from the EFC and JAAF, Sri Lanka during interviews: Interview with Yohan Lawrance, Secretary of the Joint Apparel Association Forum, held 1.12.2021; Interview with Vajira Ellepola, Director General, Employers' Federation of Ceylon (EFC), held 05.01.2022.

employers and state actors to push for law and policy reforms. Noticeably, these efforts were led by women's labour organisations.

### 5.3.2.1. Labour campaign around the ratification of the convention at the national level

The adoption of C-190 internationally had an important effect on worker voice at Sri Lanka's grassroots and national levels in accordance with the C-190. It meant that labour organisations could utilise the new international standards to carve out spaces and opportunities to fight gender-based violence and harassment at work.<sup>516</sup> I unpack the different responses by women workers and their allies through national-level advocacy, discussions in the labour rights bargaining forums, and training and awareness sessions between 2020 and 2023, which brought workers together to fight violence and harassment.

A key strategy of labour representatives was to raise the ratification of C-190 at the NLAC, which is the peak national forum for tripartite labour policy and issues negotiation.<sup>517</sup> This was an important forum to engage the state and employers with law and policy reforms and reiterate issues on gender-based violence and harassment for workers. Women's labour advocates believed that the issue should have been taken up at the NLAC level long before the discussions around C-190 as it was not a new issue.<sup>518</sup> Although raising the issue at NLAC was a win for the workers and representatives, the women labour representatives were not too hopeful of the agenda progressing beyond the discussions. Reflecting on a C-190 discussion at NLAC, Swasthika Arulingam, a lawyer and the newly appointed President of the Commercial and the Industrial Workers' Union (CIWU), said,

I was appointed only one month ago, and I attended a monthly meeting where C-190 and workplace harassment in industries were taken up. I did not observe an interest [among trade union representatives] in contributing to that. I was not allowed to speak; the men were talking and it was almost like ... very flippant.<sup>519</sup>

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<sup>516</sup> Koliev argues that the ILO standards can shape domestic labour regulations already during the preparatory process of new conventions by exchange and dialogue between the member states through elite socialisation and domestic mobilisation: Faradj Koliev, 'Promoting international labour standards: The ILO and national labour regulations' (2022) 24(2) *The British Journal of Politics and International Relations* 361.

<sup>517</sup> 'Campaign for ratification of C-190 continues', *Industrial Global Union* (Web page, 10 March 2023) <<https://www.industrial-union.org/campaign-for-ratification-of-c190-continues>>.

<sup>518</sup> Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

<sup>519</sup> Interview with Swasthika Arulingam, Lawyer and activist, held 08.08.2021.

Swasthika is the first and the only woman labour representative appointed to the NLC in January 2020, but was removed by the Labour Department and Minister in last year's reappointment round.<sup>520</sup> Her reflection also points to the importance of having more women representatives in these forums where important deliberations that affect a majority of women workers are made. At the NLAC, out of the 14 worker representative unions, Swasthika was the only woman representative. She was also removed during the 2023 appointment of new worker representatives to NLAC by the Minister of Labour, leaving no women labour representatives on this forum.<sup>521</sup>

Women's labour organisations, such as the Dabindu Collective and Women's Centre, linked up with the Women Parliamentarians' Caucus of Sri Lanka to push for law reform related to C-190 at the Parliamentary level. Multiple sessions with the Caucus offered the labour representatives an opportunity to discuss and provide insight into gender-based violence and harassment in the private and state sectors, including the garment industry.<sup>522</sup> Women's labour organisations proposed reforms to the existing laws based on experiences of women workers and sought clarifications on the procedure (e.g. violence and harassment complaints) that is already in place, to change them to address the issues encountered by women workers.<sup>523</sup>

Linked to these ongoing efforts by labour organisations, women labour leaders raised at least three major points of concern related to harassment and violence-free workplaces. These points connect with the inadequacy of some of the formal bargaining institutions and processes. They were (1) Harassment not sufficiently incorporated into collective bargaining agreements, (2) Allegations of harassment within trade unions and (3) Concerningly low women representation in trade unions and union leadership as trade union leaders negotiate these agreements and shape behaviour within their organisations.

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<sup>520</sup> 'Exclusion of women from National Labour Advisory Council comes under fire' *Daily Financial Times* (Colombo, 29 May 2023), <<https://www.ft.lk/front-page/Exclusion-of-women-from-National-Labour-Advisory-Council-comes-under-fire/44-748864>>.

<sup>521</sup> 'Exclusion of women from National Labour Advisory Council comes under fire', *Daily Financial Times Sri Lanka* (29 May 2023) <<https://www.ft.lk/front-page/Exclusion-of-women-from-National-Labour-Advisory-Council-comes-under-fire/44-748864>>.

<sup>522</sup> 'Following knowledge sharing sessions were conducted via Zoom technology in coordination with Civil Society Organizations', *Women Parliamentarians' Caucus Sri Lanka* (Web page, 26 January 2021) <<https://slwpc.org/achievements-of-the-women-parliamentarians-caucus-in-the-ninth-parliament-of-sri-lanka/>>.

<sup>523</sup> Interview with Padmini Weerasooriya, Director Women's Centre Sri Lanka, held on 30.09.2021 and Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

The women labour leaders that I interviewed stated that the existing male-led trade unions have not done enough to combat gender-based violence and harassment at work. One of the key realities that point to this inadequacy is what is incorporated in the collective agreements negotiated between trade union leaders and employers. Currently, the collective agreements do not include workplace violence and harassment-related clauses.<sup>524</sup> Collective agreements typically incorporate clauses on work hours, overtime, leave, salaries, promotions, transfers, trade union action and dispute resolution among other related matters. This, unfortunately, excludes the violence and harassment experienced by women workers from a vital labour bargaining tool at the hands of workers.

Amali Kalupahana, the newly elected General Secretary of the National Workers' Congress (NWC) — a national level trade union — and the first woman to hold that position, believes that the trade unions did not raise this issue because sexual harassment and abuse exist within unions.<sup>525</sup> Ana Avendano, in the context of America, writes, 'Unions have a mixed record when it comes to fighting sexual harassment, especially in cases that involve harassment by union members.'<sup>526</sup> During her interview, Amali said that their union has assisted women workers abused or harassed within male-led trade unions.<sup>527</sup> Therefore, alongside the right legal standards, she highlighted the importance of having a gender balance at the trade union leadership level and training women labour leaders and members which could greatly help in fighting this cause within trade unions themselves.

Further, women's experiences are excluded as a result of women not being a part of the negotiation discussions. Women are underrepresented in union leadership. For instance, I discussed above women not being nominated to NLAC representing unions. Not having women labour representatives at the leadership level of trade unions and important forums like NLAC results in not giving serious consideration to issues that disproportionately affect women workers. Further, unions quote several points as reasons for not having enough women as office bearers. Some of them are the non-availability of women workers to attend union meetings, the low education

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<sup>524</sup> Interview with Amali Kalupahana, General Secretary of the National Workers' Congress (NWC), held 23.10.2021; Interview with Sylvester Jayakody, General Secretary – Ceylon Mercantile Industrial & General Workers Union (CMU), held 04.04.2022.

<sup>525</sup> Interview with Amali Kalupahana, General Secretary of the National Workers' Congress (NWC), held 23.10.2021.

<sup>526</sup> Ana Avendaño, 'Sexual Harassment in the Workplace: Where Were the Unions?' (2018) 43(4) *Labour Studies Journal* 245, 245-262.

<sup>527</sup> Interview with Amali Kalupahana, General Secretary of the National Workers' Congress (NWC), held 23.10.2021.

levels of garment worker women and their fluency in English to bargain in forums that comprise employers.<sup>528</sup> This is an indication that the unions can do better to train their women members and nominate women to attend these forums, so that they can claim the privileges the trade union leaders enjoy in attending bargaining forums on behalf of the unions.

### 5.3.2.2. Collective voice forming through training and advocacy

The introduction of C-190 opened pathways for grassroots-level dialogues and mobilisation on violence and harassment. Attention to the Convention at the national level was an opening for women's organisations and unions to more officially raise and discuss labour issues related to violence and harassment in public forums, unlike before. This also resulted in two major initiatives: to train labour leaders and to raise awareness on violence and harassment among women factory workers. Another important aspect was that grassroots organisations could apply for international funding based on C-190 to facilitate awareness sessions for women factory workers.

Dialogues and training for labour leaders proved to be a vital step, given their role in labour negotiating spaces. Both male and women trade union and civil society leaders attended dialogues and training on C-190, run by labour law experts and lawyers. Women labour leaders including leaders of civil society women's labour organisations said that the forums were valuable in interacting with their peers and identifying a strategy around C-190.<sup>529</sup> These forums were organised by regional and international labour organisations such as the Solidarity Centre and the Asia Floor Wage Alliance (AFWA). I discuss the role of these transnational organisations in more detail below.

A key barrier to advocating for higher standards and protection against gender-based violence and harassment is the lack of awareness and recognition of violence and harassment as offences among women workers. Chandi, a shop-floor worker, said, 'Most factory women think that sexual advances and aggression by supervisors is a part of the job.'<sup>530</sup> Leaders of women's labour organisations stated that they find it

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<sup>528</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021 and Interview with Wasantha Samarasinghe, President, Inter Company Employees' Union, held 31.10.2021.

<sup>529</sup> Interview with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021 and Interview with Lalitha Dedduwa Kumara, Chief Organiser of the Textile Garment and Clothing Workers Union (TGCWU) of Sri Lanka on 10.08.2021.

<sup>530</sup> Interview with Chandi, a shop-floor worker in a garment factory in the Katunayake Export Processing Zone, Sri Lanka, held 27.10.2021.

particularly difficult to get women workers to share violence and harassment-related incidents at work, partly because it is normalised and that women workers do not understand such behaviour could amount to violence or harassment.<sup>531</sup> Women workers' experience and participation in advocacy were crucial for understanding the depth of the problem. This acceptance of violence and harassment as a part of their job poses a major impediment to advancing the need to advocate for effective legal standards.<sup>532</sup> Therefore, awareness sessions and the collection of input from women workers are key for the new standards to be impactful at the factory level.

The close ties that women's organisations had with women workers helped to draw crowds to these sessions. Women workers found the training sessions useful in several ways. Sandi, who is a member of a grassroots women's organisation alluded to this point during interviews:

When something happens at my factory, I understand what is good to be raised as an issue and what is not. They (Stand Up Movement) trained me to identify sexual harassment issues and how to deal with them. Through that, I became very confident and started speaking up at work when I understood that something was not right.<sup>533</sup>

From Sandi's experience, rights awareness imparted at the sessions for women workers proves to be useful. In addition to knowledge, the sessions seem to have instilled confidence in women workers to use their voice.

Several women's organisations individually and collectively conducted over 20 C-190 workshops in 2021 and 2022 to raise awareness among women workers at the grassroots level in Sri Lanka.<sup>534</sup> These workshops were organised by women's labour organisations, namely, Women's Centre, Dabindu Collective, RED, Stand Up Movement and Shramabhimani and a women-led trade union Textile, Garment and

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<sup>531</sup> Interview with Lalitha Dedduwa Kumara, Chief Organiser of the Textile Garment and Clothing Workers Union (TGCWU) of Sri Lanka on 10.08.2021 and 28.03.2022.

<sup>532</sup> Martha Nussbaum discusses that violence and the threat of violence can affect a woman's ability to have a meaningful relationship with the world, enjoy leisure and can greatly influence the ability to 'participate in politics, seek employment and to enjoy a rewarding work life': Martha C. Nussbaum, 'Women's Bodies: Violence, Security, Capabilities' (2005) 6(2) *Journal of Human Development* 167, 173.

<sup>533</sup> Interview with Sandi, a shop-floor worker in a garment factory in Katunayake, Sri Lanka interview conducted on 08.11.2021.

<sup>534</sup> Based on the information received during fieldwork from Women's Centre (04.04.2022), Dabindu Collective (10.08.2021), RED (15.08.2021), Stand Up Movement (12.09.2021) and Shramabhimani (10.09.2021) and a women-led trade union Textile, Garment and Clothing Workers' Union (TGCWU) (10.08.2021).

Clothing Workers' Union (TGCWU) in Katunayake, Biyagama, Koggala in the south and Vavuniya and Kilinochchi in the north.<sup>535</sup>

Further, some women's organisations used different pathways to enable worker voice on this issue. For instance, the Stand Up Movement launched a mobile phone application to report violence and harassment-related incidents.<sup>536</sup> The application is akin to a helpline that offers affected EPZ workers advice and suggestions on support services that they can access. This application has reached over 100 downloads since its launch in April 2023.<sup>537</sup>

The training and awareness sessions were resource-intensive. The local labour organisations such as women's labour organisations employed project funding sourced from transnational organisations and collectives. This was not a straightforward pathway that was available to them previously. In this sense, the grassroots organisations leveraged the new official C-190 standards to secure funding and resources to create awareness and impart knowledge to labour leaders as well as women workers.

### 5.3.2.3. National and transnational linkages: Connecting with experts and international organisations

The support of transnational and regional labour organisations/coalitions was prominent in this case study. As discussed in the previous section, they offered an important supporting role to local labour-led initiatives. Transnational organisations such as the Solidarity Centre and Asia-based labour collectives such as AFWA have had a long-term presence in empowering and supporting Sri Lankan workers. It is important to note that these organisations offer a facilitation role at the local level while grassroots organisations steer mobilisation and advocacy at the country level. These organisations have been particularly instrumental in imparting knowledge and facilitating training and awareness sessions on C-190 in Sri Lanka.<sup>538</sup> Adopting a critical approach to such a role, Shyamali Ranaraja mentioned during interviews that sometimes the local organisations wait for international actors to step in to start initiatives.<sup>539</sup>

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<sup>535</sup> Ibid.

<sup>536</sup> 'Wave App by Stand Up Movement Lanka' (Twitter post, 12 June 2023) <<https://twitter.com/LankaStandup/status/166798016928877729>>.

<sup>537</sup> Mobile app analytics – Wave App (Google Play, 12 February 2024) <<https://play.google.com/store/apps/details?id=com.wavesumlk.wave>>.

<sup>538</sup> See, for instance, A stitch in time saved no one report 2021 (490).

<sup>539</sup> Interview with Shyamali Ranaraja, Lawyer and ILO independent expert for Sri Lanka, held 05.10.2021.

In this case study, C-190 acted as a bridge that linked the Solidarity Centre and AFWA with the grassroots women's labour organisations and the national-level trade unions. These organisations, for instance, provided technology such as Zoom to organise the dialogues, technology and technical assistance for training labour leaders and funding to conduct awareness sessions for workers. The links with transnational organisations led to pooling resources from them with local expertise, experience and influence of the local labour organisations, creating a mutually beneficial relationship.

C-190 has an important normative element in linking these diverse local actors with regional and transnational organisations in this campaign. The standards particularly helped to forge the connection between the grassroots labour organisations and transnational organisations as a common ground on which they could develop a collective agenda to fight violence and harassment that women apparel workers experienced. C-190 as the first international standard on violence and harassment in the world of work not only offered legitimacy through a legal framing for worker claims but also helped forge links and shaped the different roles that the grassroots labour organisations and the transnational organisations played in their interactions and projects. Therefore, through C-190's normative framework, the organisations could come together to attain a common vision in rolling out and implementing the international legal standards at the national and grassroots level for the benefit of women apparel workers.

Shyamali Ranaraja, who is a labour lawyer and an ILO independent expert for Sri Lanka shared that this 'C-190 coalition [of trade unions, women's labour organisations and transnational labour rights organisations] is working very well.'<sup>540</sup> Shyamali, who is a trainer for labour leaders on C-190 standards, identified this as a strong example of unions and women's labour organisations uniting for an important labour issue impacting workers.

Further, experts like Shyamali and Swasthika (whose interview data I used above to discuss NLAC discussions on C-190) are both lawyers by profession and work closely with local labour organisations and transnational organisations. For instance, Shyamali was a resource person for training and facilitating dialogues for labour leaders on C-190. The presence of these professionals in labour rights campaigns is prominent for

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<sup>540</sup> Interview with Shyamali Ranaraja, Lawyer and ILO independent expert for Sri Lanka, held 05.10.2021.

the role that they play in empowering and amplifying worker voice. The presence and participation of these women lawyers in the C-190 campaign could be summarised in two points:

1. *Direct participation in the union movement* – assuming prominent roles in the trade union movement as leaders and office bearers. For instance, Swathika Arulingam is the President of Commercial and Industrial Workers' Union (CIWU) and a representative at NLAC nominated by the trade unions.
2. *Indirect participation through advisory, research and intellectual leadership for worker organising* – being the translators of the law and policy to the workers at the grassroots level, e.g. working closely as trainers, directors or advisors of civil society organisations.

With its key attributes of collective, representative and dynamic, collective voice of women workers in this case study is organised in multiple ways. This is necessary because formal labour bargaining tools, such as collective bargaining, have failed to recognise and address violence and harassment. Therefore, collective voice has emerged through informal pathways: first, at the grassroots level, women's organisations imparted the standards to women workers by way of awareness creation. Second, it emerged through networked efforts of women's labour organisations in advocating the necessity of C-190 provisions to the women's parliamentary caucus. Third, in the joint-efforts between trade unions and women's labour organisations by way of labour representative dialogues and exchanges on strategy to ratify C-190 in Sri Lanka. In Figure 5.1 below, I illustrate these different forms of collective voice and who women workers link up with to action collective voice. In the next section, I focus more closely on labour networks in the context of the C-190 campaign. Having discussed collective voice in its different forms, I describe the ways in which collective voice works as a combining force to link women workers with women's organisations at the grassroots level and how they grow into larger 'webs of influence'. I also explore how these networks target chosen pressure points in order to influence regulatory decision-making.

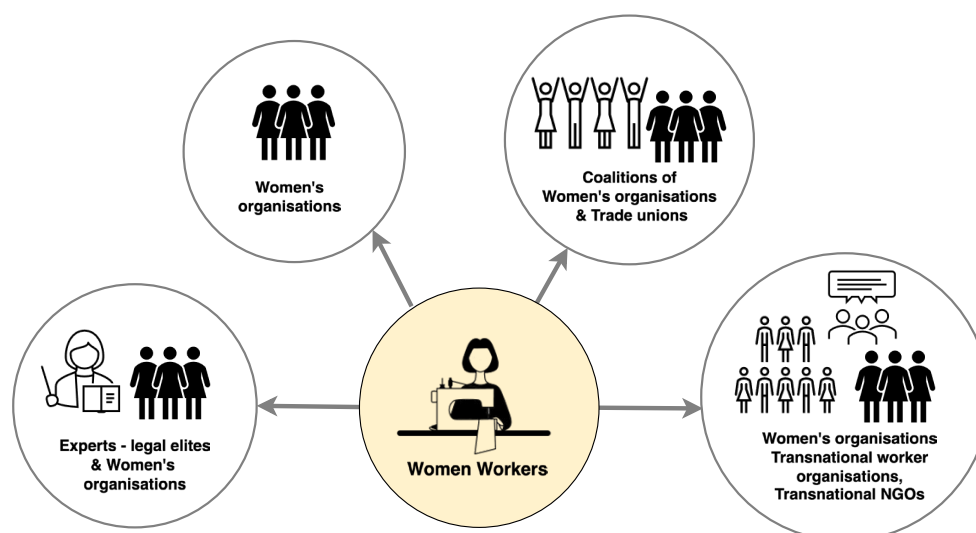


Figure 5.1: Collective voice in various forms in the C-190 campaign.

#### 5.4 Part 3: Women's advocacy networks in the C-190 campaign

The discussion above explored the collective voice of women workers in spaces outside the formal labour bargaining mechanisms. As seen in the previous sections of this chapter, an issue that disproportionately affects women workers, violence and harassment at work, has not drawn sufficient attention from the law and policymakers, employers and trade unions. Harnessing the new normative standards in C-190, grassroots women's labour organisations carved out spaces for advocacy and linked with others to form networks. Here I discuss this by linking them with theoretical insights from networked regulation and governance and TFM. I also consider the normative leverage of C-190 to further understand the operation of the labour networks.

In essence, this case study organised as a number of grassroots initiatives for advocacy, awareness and demands for law reform following C-190, as described in Part 2. Therefore, the network grew around C-190 advocacy as a network that spanned the grassroots and the national levels in Sri Lanka. The strategy was to utilise international standards to urge the government to pass national legislation and change the impunity of employers for violence and harassment experienced concerning work or work-related activities. Therefore, the efforts of the grassroots labour organisations aimed to influence employer behaviour and, most importantly, legislators to push for law reform. In Table 5.1 I summarise the scale, strategy and influence of the worker network in this case study, before the discussion.

*Table 5.1: Summary of the key features that enabled regulatory influence by the workers in the C-190 campaign.*

<b>Case Study</b>	<b>Scale of network</b>	<b>Strategy</b>	<b>Regulatory influence</b>
Struggle for violence and harassment-free world of work	Transnational to grassroots Grassroots to national	Use of international standards to push for national laws on violence and harassment in the world of work	Employers for accountability and the state for law reform

#### 5.4.1 Women workers, labour organisations and the formation and functions of 'webs of influence'

This case study portrays important webs or networks forming at the grassroots, national and transnational levels. These networks are important for their diversity of participating actors, their diverse agendas and the common vision to fight violence and harassment. In the light of my empirical discussion in Part 2, I focus on different links in these networks such as ties between women workers and women's labour organisations, and then examine the different advocacy networks. The purpose of this analysis is to examine the influence of these connections and the networks.

##### 5.4.1.1. Grassroots labour ties: Women workers and women's organisations

Weaving women workers into the 'webs of influence' by labour organisations is an important focus in this case study. As the key group affected by violence and harassment at work, it is crucial that their voices are heard and that they actively participate in the campaign. Women workers linked up with the C-190 campaign in multiple ways. The most important was their participation in the training and awareness sessions on violence and harassment at work. Women's labour organisations leveraged their ongoing close ties with women apparel workers in getting them to attend the sessions.<sup>541</sup>

Rights awareness drives labour mobilisation, activism and the use of legal and other standards for lodging claims.<sup>542</sup> In this sense, these awareness sessions organised by women's labour organisations for women apparel workers, which I discussed above, are central to the C-190 campaign. The sessions drew in support from workers for C-

<sup>541</sup> Interview with Chandra Devanarayana, Executive Director, RED organisation, held 15.08.2021.

<sup>542</sup> Chua, Engel and Liu (n 235) 5.

190 standards to be law in Sri Lanka. Workers shared their factory-level experiences during these awareness sessions. Dilini, during interviews, said that after she became aware of her rights against violence and harassment at work, she and her co-workers 'secretly approach women's organisations' as they believed that the women labour leaders advise and support their issues with confidentiality.<sup>543</sup> This points to a positive tendency of growing support for the cause as well as the women workers' support for a growing body of linked collective voice.

Women workers were keen to attend the training sessions organised by women's labour organisations for knowledge as well as for socialising. Workers contributed to organising some sessions and distributed leaflets and handouts educating their colleagues about violence and harassment at work. In these activities, I drew out aspects of companionship and ties forged through common experiences from interview data.

During interviews, Sandi, who is a garment worker in the Katunayake EPZ, said,

Working in the zone is very isolating for most of us who come from far away villages. We have to manage everything on our own here. When we return to the boarding house after work or on our off days, we are lonely. Being a member of the Stand Up Movement helped me connect with other women like me and find friends. When I have free time, I join to distribute leaflets to workers on issues like sexual harassment. I have learnt a lot through the campaigns and have matured a lot since I first came to the Katunayake.<sup>544</sup>

Sandi described her relationship with a women's organisation as companionship and strength. Kajini, a machine operator in a factory in the north of Sri Lanka, stated during interviews that 'I learnt about my rights from my co-workers.'<sup>545</sup> Further, Siva said, 'having women coming together like this is a strength to us.'<sup>546</sup>

Women workers also said that they are drawn to women's labour organisations for traits that the other labour representatives such as trade unions do not hold, such as

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<sup>543</sup> Interview with Dilini, a shop-floor worker in a garment factory in the Katunayake EPZ of Sri Lanka, held 27.03.2022.

<sup>544</sup> Interview with Sandi, a shop-floor worker in a garment factory located within the Katunayake EPZ, Sri Lanka, held 08.11.2021.

<sup>545</sup> Interview with Kajini, a shop-floor worker from a factory in Kilinochchi, north of Sri Lanka, held 21.03.2022.

<sup>546</sup> Interview with Siva, a shop-floor worker from a factory in Kilinochchi, north of Sri Lanka, held 21.03.2022.

female leadership, a personal touch, care and ongoing connection instead of a one-off transactional relationship.

#### 5.4.1.2. Labour networks as ‘webs of influence’

In both networked regulation and TFM, discussed in Chapter 2, organising at the grassroots level is considered central to effecting change. Labour networks in this case study took multiple forms. In the empirical discussion above, I referred to four types of labour advocacy networks: (1) networks of women’s organisations, (2) networks of women’s organisations and trade unions, (3) women’s organisations and national-level institutions, (4) women’s organisations, trade unions and transnational labour alliances and other networks. These different networks and alliances aim to influence specific chosen ‘pressure points’ related to eliminating violence and harassment related to work that I discuss below.

Under the first category of networks of women’s organisations, in this case study, I observed only a few collaborations compared to other case studies, e.g. Chapter 7 – negotiating workplace health and safety is centred on a strong women’s coalition. This was mainly because the women’s organisations were keen to curate awareness programs for their membership as individual sessions. It was also an opportunity to bond with members or to recruit new members. Some organisations such as the Stand Up Movement organised awareness sessions for transgender workers, apart from their sessions for women workers (and men). Therefore, the organisations mostly worked in isolation, except when they came together for national-level consultations for institutions like the Women’s Parliamentary Caucus.

The coalition between women’s organisations and the Women’s Parliamentary Caucus is an important collaboration. As discussed in Part 2, through this network, women’s labour organisations had the opportunity to directly represent their members and share input from them on violence and harassment in their world of work. The ability to access members of the Parliament was an important steppingstone to contribute to the national dialogue and the campaign to push for C-190 ratification. This link was an important influence on the Cabinet decision to sign C-190. Accordingly, women’s labour networks were a crucial driving force of the national and grassroots level labour initiatives on the new C-190. As discussed in section 4.3 in Chapter 4 women’s organisations and labour leaders performed a function akin to ‘mother trees’. These organisations performed important functions, that I explain using women workers’

experiences in section 5.3 above, in extending support to women affected by violence and harassment at work, sharing stories and grief, raising awareness, providing leadership in conversations and, most importantly, pushing for important legal and policy changes for making safe and better workplaces for women in the apparel industry. Their shared values such as support, representation, proactive action and acting for the interests of women workers, brought these workers and organisations together. Such practices and ethos laid the foundation for combining with like-minded associations such as the Women's Parliamentary Caucus.

The large network of women's organisations and trade unions in this case study, organised as a national-level network, fueled the national labour dialogues and the labour campaign urging the government to ratify C-190. Here, the input from grassroots women's organisations pushed the campaign to incorporate practical solutions and a worker-centred approach in law and policy reform as well. This link was also useful in sensitising male trade union leaders to have more women in their committees and leadership roles. Even though in this case study women's labour organisations networked with trade unions, large and continuing networks of women's organisations and trade unions are atypical. Such networks are mostly cause-based, primarily due to the ideological differences between these organisations and their firm divisions springing from the status of being civil society organisations and trade unions being formal labour bargaining representatives.<sup>547</sup> Nevertheless, there are some women's organisations and trade unions, with apparel industry workers as members, that often closely collaborate. For instance, the Women's Centre typically collaborates with the FTZ&GSEU,<sup>548</sup> the Ceylon Mercantile Union (CMU) joins TGCWU,<sup>549</sup> and NWC have their own women's wing which functions as a women's labour organisation.<sup>550</sup>

Finally, the transnational network — comprised of women's organisations, trade unions and transnational labour alliances — is important for this case study for several reasons. Worker organisations use transnational networks to (a) acquire resources and expertise and (b) to strategically leverage worker rights across supply chains to the international level, e.g. campaigns against international fashion brands for violating

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<sup>547</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021.

<sup>548</sup> Ibid.

<sup>549</sup> Interview with Sylvester Jayakody, General Secretary – Ceylon Mercantile Industrial & General Workers Union (CMU), held 04.04.2022.

<sup>550</sup> Interview with Amali Kalupahana, General Secretary of the National Workers' Congress (NWC), held 23.10.2021.

worker rights in the global south manufacturing destinations. This is a two-way relationship. In Part 2, I discussed how the transnational organisations played a role in resource sharing and amplifying the voice of the local and national labour organisations.

Further, some transnational labour campaigns directly involved local labour organisations in their governance as well. For instance, Sri Lankan trade unions and women's groups are affiliated with international labour collectives such as IndustriAll, the Clean Clothes Campaign and Labour Behind the Label and some grassroots organisations such as the Women's Centre holds board positions with the Clean Clothes Campaign and have been members since 1982. This offers local and grassroots organisations important connections and platforms to amplify when an issue or injustice does not get resolved at the local level. Further, lawyers worked closely with worker organisations and other civil society actors to provide the necessary expertise and intellectual assistance, which made the transnational network effective. I covered this point in the previous section.

Several key points flow from this discussion of how the different labour networks are organised and operated in this case study. These four types of networks were diverse and consisted of diverse actors with different power, status, expertise and agendas. Nevertheless, they were all combined through coordinated dialogue fighting for a common mission which was primarily to push for C-19 ratification. Braithwaite, Charlesworth and Soares claim that networked governance entails 'plural actors linked by coordinating dialogue that constitutes both interdependence and sufficient autonomy for different nodes of the network.'<sup>551</sup> Accordingly, actors in the networks were interdependent but there was a sufficient degree of autonomy for them to carry out their own agenda as well, e.g. women's organisations organising multiple sessions for different worker groups. Finally, these different networks targeted multiple pressure points that I have discussed in the descriptions. The effect of these pressure points enabled the different labour actors including the trade unions and, significantly, women's organisations – being unofficial labour representatives (unlike the registered trade unions) to function as co-regulators alongside the state and employers in regulating violence and harassment in the world of work.

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<sup>551</sup> Braithwaite, Charlesworth and Soares (n 152) xii.

Notably, these different webs of actors are not official networks brought together by formal rules and, therefore, can dissolve when they have achieved their goal.

#### 5.4.2 Regulatory influence by women workers and their representatives

In this case study, women workers, through their labour representatives, influenced important changes at the national as well as international levels. Compared to other two case studies discussed in Chapters 6 and 7, this case study has fewer transnational collaborations and collaborations broadly between women's labour organisations, trade unions and other regional and transnational labour organisations. However, its importance remains significant at the national and grassroots levels. In that sense, it is focused more on creating awareness at the grassroots level and pushing for law reforms at the national level. Although the outcomes are small, with ongoing advocacy they represent important changes.

The Cabinet approval for ratification of C-190, which I discussed in section 5.3.1, was a significant development at the national level resulting from the advocacy by women's labour organisations and networks that included allies. Advocacy at the national level as well as links with institutions like the Women's Parliamentary Caucus were instrumental in creating influence over this deliberation by the Cabinet. Worker organisations now await the signing of the Convention and its ratification as national law by Sri Lanka's Parliament.

As discussed, at the grassroots levels, the campaign and advocacy generated important change; in particular, by creating awareness of violence and harassment at work among women workers and empowering them to voice, act and seek the necessary support. I have discussed the responses from women workers on how they identify violence and harassment at work and seek support. This will positively contribute to the implementation of the standards at the factory level to change the circumstances for women workers.

Finally, employers have responded to the labour advocacy network by reflecting on the employer obligations under the convention. This response is an indication of the influence of the labour advocacy campaign on the employers. Local apparel employers in Sri Lanka have joined forces with a transnational initiative by the International Organisation of Employers (IOE) to deliberate on their obligations once C-190 comes into effect as a law. The Employers Federation of Ceylon (EFC), responding to the C-

190 Convention during interviews for this study, claimed that they are concerned that the liability on employers is overly broad regarding incidents of violence and harassment related to work, outside the workplace.<sup>552</sup> Vajira Ellepola, Director General of the EFC shared,

The convention has reference to incidents that happen outside the workplace. Making the employer liable for those incidents is a serious concern for us. Ratifying on that basis is an issue for the employer because it is beyond their control. Apart from that we agree with the core principles which should be adhered to and implemented.<sup>553</sup>

A transnational organisation of employers has issued a report with similar concerns.<sup>554</sup> In the report, employers suggest that the implementation of certain provisions in C-190 should be flexible. Flexibility is indicated in the Convention provisions with qualifiers such as 'where appropriate', 'in accordance with the national policy and practice', and 'so far as is reasonably practicable'.<sup>555</sup> Employers also propose that if governments want well-considered action that goes beyond simply ratifying the convention, governments should adopt a well-considered action plan rather than 'reactive ratification'.<sup>556</sup> Employers are currently blocking the ratification and calling for limiting the responsibility of employers and for separate definitions of violence and harassment at the national-level and the recognition of employers as subjects of violence.<sup>557</sup> Therefore the labour campaign needs to sustain and grow in power and size for the Convention to be ratified and adopted as law in countries like Sri Lanka.

#### 5.4.3 C-190 as an important normative framework

The normative power of C-190 carved out the national-level spaces and platforms and local-level initiatives. C-190 norms offered legitimacy to local organisations' activities and a basis for labour organisations to advocate, link with other actors as well as to put pressure on specific targeted points in the system, which I discussed above. C-190 was a normative framework outside the social field of the apparel industry that was set at the international level.

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<sup>552</sup> Interview with Vajira Ellepola, Director General, Employers' Federation of Ceylon (EFC), held 05.01.2022.

<sup>553</sup> Ibid.

<sup>554</sup> Report of the International Organisation of Employers (n 514).

<sup>555</sup> Ibid 2

<sup>556</sup> Ibid 3.

<sup>557</sup> Ibid 3.

Although Sri Lanka has not yet ratified the convention, its provisions have a strong policy influence on the decision-making of the apparel industry regulators including the state and employers. This is due to Sri Lanka being a member country of the ILO. The gender-focused international norms resonated with national actors such as the Women's Parliamentary Caucus of Sri Lanka. Therefore, the new international norms had a combining effect that brought together like-minded, similarly motivated actors to network.

Further, the labour networks draw on national legal standards to highlight the need to revise them in line with international standards. This indicates that new international soft law norms can offer legitimate points of intervention to make changes in the formal legal structures.

C-190 had an important impact at the national level in Sri Lanka on the state as well as the employers. This is evident from the state's undertaking to ratify the convention<sup>558</sup> as well as the responses of the employers.

The C-190 labour campaign, although an example of how women workers can influence labour regulation in the apparel industry, is not without its challenges. The key hurdle is the ratification of C-190 with an effective procedure laid out formally for its implementation. Nevertheless, it cannot guarantee structural changes such as the change of workplace culture, gender stereotypes and change of people's attitudes towards gender-based violence and harassment. Additionally, employers are already organising to limit the scope of C-190, and are advocating flexibility, effectively watering it down. Nevertheless, structural change may be possible through education and training of workers and labour leaders. Therefore, the awareness sessions in this case study should be an ongoing effort that updates as change starts unfolding.

While resource sharing in this case study was a boon, there could be instances when it can be a bane for grassroots organisations. Sandya Hewamanne argues that most civil society organisations working around EPZs are funding-dependent, which can shape their agenda on advocacy.<sup>559</sup> She explains that the utility of Western funding could be conditioned by the cultural, religious and moral expectations of the funding

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<sup>558</sup> Chaminda Perera, 'Sri Lanka to ratify ILO Convention against workplace violence, harassment', *Daily News* (Colombo, 10 March 2022).

<sup>559</sup> Hewamanne (n 433) 55.

agencies.<sup>560</sup> For instance, if funding comes from a faith-based international organisation, these expectations may influence the grassroots-level agenda on advocacy around issues like gender-based violence and harassment. This is a challenge for women's organisations to overcome by clarifying their objectives and vision in serving and advocating for women workers' labour rights.

## 5.5 Conclusion

This case study was significant for its focus on how international legal regimes could strengthen grassroots struggles. The chapter deconstructed the category of 'women workers' and made visible how women workers are at an intersection of disadvantage, who represent their voice and how they strategise to exercise collective voice.

Actors who are usually regulated, such as workers in apparel supply chains, assume power and agency through their own networks and form a part of the larger regulatory network that drives these industries. In Part 3, the chapter recognised patterns of an existing regulatory structure that has emerged in the form of a multi-scale network. It discussed the need for an ongoing effective violence and harassment response regulatory mechanism. In examining how workers regulate work-related violence and harassment, it highlighted the limits of the rule-enforcement regulatory approach and recognised a proactive bottom-up regulatory structure that has evolved in response to injustices that workers face at the ground level.

The discussion demonstrated evidence of a de-centered regulatory approach that involved multiple actors and actor webs. As it flows from the analysis, such structures appear more accountable and effective in safeguarding the rights of the more vulnerable segments who are part of such networks. The case study that formed the basis of this chapter cut across regulatory tiers, scales and levels including local, national and transnational.

Unlike the other two case studies discussed in the next two chapters, this case study allowed me to unpack characteristics that often go unnoticed in the treatment of workers as a 'generic' category. Treating the workforce as a homogenous body undermines specific challenges that workers may have to face because of their diverse identities, being women, young, migrant or /and Tamil. The pandemic has contributed

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<sup>560</sup> Ibid 55-56.

to both highlighting and undermining grievances in this space. Many instances of violence and harassment were highlighted but, due to social distancing and challenges in organising, e.g. workers being called on a roster basis, and other difficulties such as health and wages at stake), the workers' campaign to urge ratification of C-190 had to take the back seat in several instances. The awareness campaigns continue, so it is expected to pick up once the threat of COVID-19 reduces and economic and political instability is reduced in Sri Lanka.

The next two chapters will explore how workers negotiate for equitable wages and safe and healthy workplace conditions. They will closely focus on who advocates for women workers, their purpose, and strategies in norm adoption to strengthen the collective voice of women workers.

## Chapter 6: Negotiating wage injustices and wage theft

### 6.1 Introduction

Chandi is a Juki machine operator at a garment factory in the Katunayake Export Processing Zone in Sri Lanka. Since March 2020, for several months that year, Chandi and her fellow workers experienced pandemic-induced wage cuts. As a result, they underwent many hardships. Like Chandi, workers at 35 other manufacturing factories in Sri Lanka faced unpaid wages, forced resignations and wage deductions during COVID in 2020.<sup>561</sup> Participating in my field interviews, Chandi described the wage cuts and their impact on workers:

During the lockdown period, workers who earlier earned LKR40,000 (AUD 191.10) only received LKR9,500 (AUD 45.39) as salary [per month]. We could not survive with that money.... We needed to pay the boarding fees, send kids to school, pay vehicle leases, loan interests, and instalments for pawned gold jewellery... We had bought food and household goods on credit. We covered all this [payments] with the little money we got. In the end, when we received only LKR9500 we had no fallback option.<sup>562</sup>

Labour organisations specifically categorise the non-payment of workers' entitled salary, during the pandemic, as wage theft.<sup>563</sup> All 45 women workers that I interviewed for this research believed that even in normal times, before the pandemic, their wage did not reflect the time and effort invested in their job. Whereas the entry-level salary of a machine operator at a garment factory (on average) varies from LKR20,000-25,000 (AUD97.88 - 119.44) per month,<sup>564</sup> the living wage for an apparel worker in Sri

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<sup>561</sup> 'Sri Lanka: Workers at 35 factories face unpaid wages, forced resignations & wage deductions during COVID-19' (Web article, 2 June 2020) *Business and Human Rights Resource Centre* <<https://www.business-humanrights.org/en/latest-news/sri-lanka-workers-at-35-factories-face-unpaid-wages-forced-resignations-wage-deductions-during-covid-19/>>.

<sup>562</sup> Interview with Chandi, a shop-floor worker in a garment factory in the Katunayake Export Processing Zone (EPZ), Sri Lanka, held 27.10.2021.

<sup>563</sup> Asia Floor Wage Alliance, 'Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains' (Report, July 2021), 25 <[Money Heist: COVID-19 Wage Theft in Global Garment Supply Chains – Asia Floor Wage Alliance](https://www.asiafloorwage.org/en/2021/07/25/money-heist-covid-19-wage-theft-in-global-garment-supply-chains/)>.

<sup>564</sup> Based on interviews with Human Resources Managers and worker organisations: Interviews with two former Human Resources Managers of apparel factories in the Kandy Industrial Park in the Central Province of Sri Lanka, held 20.10.2021 and a mid-level apparel factory in a remote town in Sri Lanka, held 20.03.2021; Sugath Rajapaksha, Co-ordinator, Shramabhimani Centre – a Women's Labour Organisations, interview held 25.09.2021.

Lanka for 2022 is calculated to be LKR94,400 (AUD450.99) per month by labour organisations.<sup>565</sup>

This chapter is centred on a case study about wage injustices at the shop-floor level of Sri Lanka's apparel industry. It explores how women workers in Sri Lanka's apparel industry actioned collective voice to negotiate worker rights during the pandemic and post-pandemic times, and how they legitimised the expression of their voice in making their wage-related claims. In doing so, this chapter captures the experiences of women apparel workers during the COVID-19 pandemic and how they chose to respond to wage injustices in the absence of effective collective bargaining mechanisms. The purpose of this examination is to understand the compounding consequences of wage-related injustices on women apparel workers and their use of collective voice to influence regulators and decision-makers to demand their rights.

Underpayment or non-payment of wages is recognised as wage injustice that amounts to wage theft. Wage theft occurs when the employer does not pay the worker the minimum amount or allowances or entitlements that are outlined in the contract of employment or the agreement that they work under.<sup>566</sup> Wage theft is not limited to non-payment or paying a lesser amount than what the workers are entitled to as wages. Although this case study closely examines a pandemic example of wage theft, the issue of low wages, non-payment of wages and paying workers below the national minimum wage persisted even before the pandemic, hidden under the layers of global production chains.<sup>567</sup> Kumudini Rosa, studying women apparel workers in Sri Lanka, noted wage injustices in 1990. She observed that 'The inadequacy of their regular wage to meet living costs for the month forces many women to work long overtime hours, holiday and even Sundays.'<sup>568</sup> International worker coalitions claim that buyers or brands from the global north were liable for the non-payment of full wages /allowances /other entitlements of workers in garment factories in the global south as

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<sup>565</sup> Latest Asia Floor Wage released in 2022, *Asia Floor Wage Association (AFWA)* (Web page, 2022) <[https://asia.floorwage.org/living-wage/calculating-a-living-wage/#:~:text=Asia%20Floor%20Wage%202022%20%3D%201600%20PPP%24%20per%20month&text=\\*Some%20countries%20have%20seen%20high,under%2Drepresentation%20in%20these%20cases](https://asia.floorwage.org/living-wage/calculating-a-living-wage/#:~:text=Asia%20Floor%20Wage%202022%20%3D%201600%20PPP%24%20per%20month&text=*Some%20countries%20have%20seen%20high,under%2Drepresentation%20in%20these%20cases)>.

<sup>566</sup> See 'What is Wage Theft?' *Wagetheft.net.au* – *Supportah network* (Web page, July 2023) <<https://wagetheft.net.au/what-is-wage-theft/>>.

<sup>567</sup> For instance, 1000 garment workers in Cambodia went on a strike over unpaid wages and benefits in January 2020. It took more than a year for worker salaries to be paid after selling the factory's assets: See Khy Sovuthy, 'Workers hope for an end to year-long Kandal factories closure dispute, *Cambodian Journalists Alliance Association* (Cambodia, 4 December 2020) <<https://cambojanews.com/workers-hope-for-an-end-to-year-long-kandal-factories-closure-dispute/>>; Khy Sovuthy, 'After more than a year, workers at two factories receive compensation,' *Cambodian Journalists Alliance Association* (Cambodia, 13 February 2021) <<https://cambojanews.com/workers-of-two-factories-receive-compensation-after-more-than-one-year-ago/>>.

<sup>568</sup> Rosa (n 158) 36.

such non-payment is a direct consequence of the actions of these global companies and brands.<sup>569</sup>

Wage theft also includes other forms of injustices through which employers unduly benefit, e.g. not paying the entitled benefits, not paying overtime, not providing legally stipulated breaks, non-payment of or incorrect calculations of compensation for lay-offs and not giving workers statutory leave.<sup>570</sup> Wage theft is not only a loss for workers, but also has a detrimental impact on the overall economy of a country. Therefore, countries in the global north have introduced laws to regulate this matter. There are claims on non-implementation of existing laws in the global south countries in general.<sup>571</sup> Sri Lanka currently does not have direct legal provisions regulating wage theft.

This chapter is organised in three parts: Part 1 illustrates the background of wage theft claims and wage theft in the context of the apparel supply chain with a focus on Sri Lanka. Then, in Part 2, the chapter discusses activism around wage theft in the pandemic and post-pandemic time and aims to understand how activism by workers was strategised during the pandemic to influence regulation. Finally, in Part 3, the chapter ends with a focus on accountability and how an emerging regulatory order, activated by the workers, demands accountability and just wages from stakeholders across the apparel supply chain.

Although wage-related injustices impact all workers across sectors, the chapter examines how the injustices affect women workers in the apparel supply chains differently. In addition to being at the very bottom of the supply chains, gendered discrimination specifically places women workers at a disadvantage as shop-floor workers. Adding to the vulnerability of women workers were pandemic and economic crisis-related risks. During interviews, workers shared extreme concerns about job security and in some cases of securing the family income as the sole breadwinners of their families.

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<sup>569</sup> Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains Report 2021 (n 563); Asia Floor Wage Alliance, 'Big Fashion & Wall Street Cash In on Wage Theft' (Report, February 2023) <<https://asia.floorwage.org/reports/big-fashion-wall-street-cash-in-on-wage-theft/>>.

<sup>570</sup> Irene Nikoloudakis and Stephen Ranieri, 'Criminalising "Wage Theft" in Australia: A proposed regulatory model' (2023) *UNSW Law Journal* 46(4) 1134, 1135.

<sup>571</sup> Advocacy Unified Network, 'Addressing Labor Law Violations in the Global South' (Web page, 23 May 2023) <<https://aunetwork.org/addressing-labor-law-violations-in-the-global-south/>>.

### 6.1.1 Fieldwork for this case study

While all 45 women workers interviewed for this research shared their experiences related to wage injustices before, during and after the pandemic, some interviews were more directly relevant to the forms of collective voice discussed in this chapter. Some women workers within the group of 45 interviewees mobilised on the issue of wage theft and even became claimants for two wage theft complaints that are discussed here. In this chapter, therefore, I specifically draw on the voices of eight women workers who raised wage-related injustices in four different factories located in the western and southern provinces of Sri Lanka. Moreover, I draw qualitative data from interviews with two women's organisations that are the main complainants in the ongoing wage theft complaints as of November 2023, and five women labour activists who are local stakeholders of a transnational campaign against wage theft by 20 Asian garment sector unions. I also use interview data with trade unions, a regional worker collective, employer representatives and state regulators from the Department of Labour in Sri Lanka.

To further bolster the findings, I use data directly linked to the mass retrenchment of workers and wage theft claims from reports compiled with the participation of the local and grassroots labour organisations in Sri Lanka between March and May as well as November–December 2020. The reports are based on a survey of 192 Sri Lankan apparel workers (with 72 percent of women workers) from 11 garment factories in the Katunayake, Biyagama and Koggala EPZs.<sup>572</sup>

## 6.2 Part 1: Background to the study: Exploring responses to wage theft using formal labour bargaining

Chandi and 21 other workers from their garment factory are complainants to an inquiry into their factory's non-payment of wages and compensation during the pandemic and the factory closure. Their complaint was filed with the Industrial Disputes Division of Sri Lanka's Labour Department against their local companies and international buyers as joint employers, initially in January 2021.<sup>573</sup> The workers claimed that international buyers have benefited from their work for a number of years and should be considered joint employers in this complaint, alongside their factory. Another group of workers from

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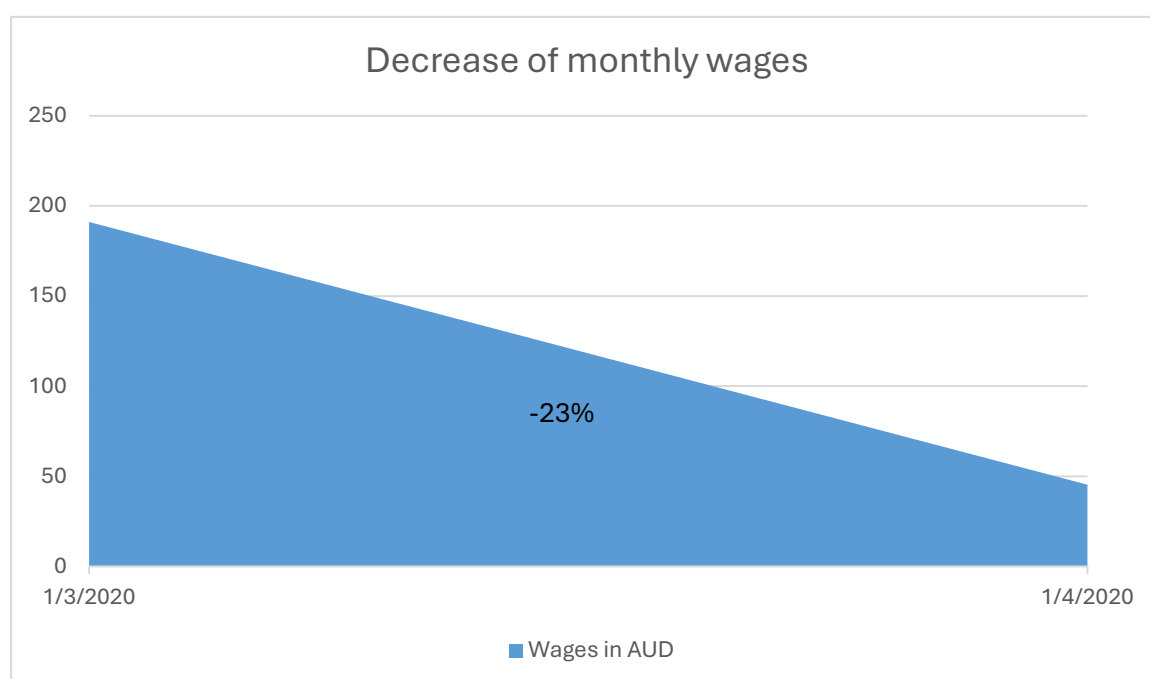
<sup>572</sup> Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains Report 2021 (n 563) 11-19, 19; Big Fashion & Wall Street Cash In on Wage Theft Report (n 569).

<sup>573</sup> Interview with Lalitha Dedduwa Kumara, Chief Organiser of the Textile Garment and Clothing Workers Union (TGCWU) of Sri Lanka, held 25.03.2022.

a different factory followed with a second complaint. Accordingly, two groups of apparel workers lodged complaints of joint-employer liability for non-payment of wages and compensation and other related matters with the Industrial Relations Division of Sri Lanka's Labour Department.<sup>574</sup> These complaints break new ground in trying joint-employer liability in global supply chains and wage theft in Sri Lanka.

These complaints set a precedent for two key reasons: first, in exploring the connection of international buyers and fashion brands as joint employers of local apparel workers as claimed by worker representatives; second, in utilising the industrial disputes mechanism in the absence of dedicated laws and procedures to combat wage theft.

Figure 6.1 below indicates the steep decline in monthly wages within a month, during the initial months of the pandemic, based on worker interviews for this study. The decrease made it hard for shop-floor workers to cope with inflation and fulfil their basic needs, which I elaborate on below.



*Figure 6.1: Monthly wage decrease: 23 percent decrease of wages according to worker testimonies.*

<sup>574</sup> Two complaints jointly taken up under the complaint number IR/M/11/2021, originally filed with the Industrial Relations Division of the Department of Labour Sri Lanka; Interview with Swasthika Arulingam, lawyer and activist, held on 08.08.2021.

### 6.2.1 Wage deductions during the pandemic: Experiences of women workers

Several workers like Chandī, during interviews, said that their salaries were cut significantly. Dinali, a garment worker from Koggala EPZ in Sri Lanka's south, said that in her factory, workers had to undergo significant wage cuts and those who got paid about LKR35,000 (AUD171.27) (with overtime pay) 'received LKR14,500 as salary.'<sup>575</sup> Three workers from large-scale factories in the north shared that they received a basic salary of LKR10,000 (AUD48.93) for three months during COVID, even though they did not report to work.<sup>576</sup> The period relevant to these wage injustices is between March and December of 2020, as portrayed in Figure 6.2. After April, workers were called in to work based on a roster system with the expectation that the factories could then maintain social distancing.

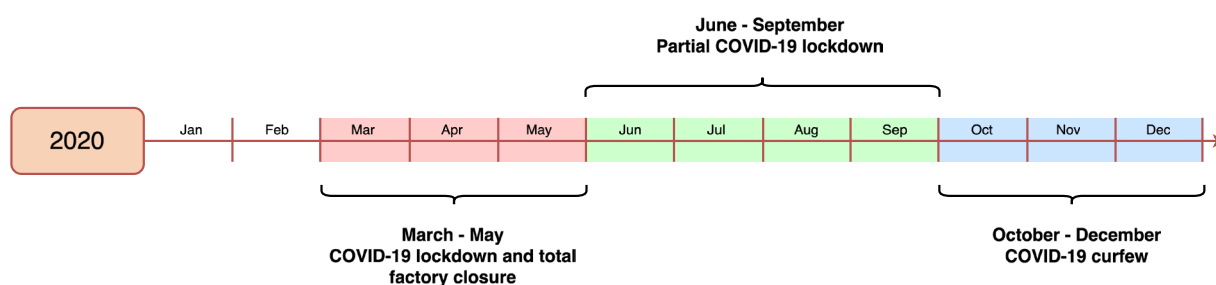


Figure 6.2: Timeline of factory closure in Sri Lanka in 2020.

During this time, some workers were terminated and offered new contracts. Tekla, a woman worker from Koggala EPZ, shared how workers in her factory who returned to work after COVID were asked to start with a new employee number.<sup>577</sup> She believed this was unfair to the workers as they would be considered as new workers for their provident funds that employers contributed to, under the new numbers. She said that the workers fought and continued with their old numbers.<sup>578</sup>

Workers and worker organisations mentioned that the target (the number of pieces a worker has to complete within a day to be eligible for a financial incentive of about LKR2,500–AUD12.29) remained unchanged despite reduced hours. Nimmi said,

<sup>575</sup> Interview with Dinali, a shop-floor worker in a garment factory in the Koggala Export Processing Zone, Sri Lanka, held 27.03.2023.

<sup>576</sup> Interview with Kajini, a shop-floor worker from a factory in Kilinochchi, north of Sri Lanka, held 21.03.2022, interview with Selvi, a shop-floor worker in a garment factory in the north of Sri Lanka, held 21.03.2022 and interview with Laxana a shop-floor worker of a garment factory in the north of Sri Lanka, held 20.03.2022.

<sup>577</sup> Interview with Tekla, a shop-floor worker in a garment factory in the Koggala Export Processing Zone, Sri Lanka, held 27.03.2023.

<sup>578</sup> Interview with Tekla, a shop-floor worker in a garment factory in the Koggala Export Processing Zone, Sri Lanka, held 27.03.2023.

'There is no incentive paid to us, but they [factory management] encourage us to meet the target.'<sup>579</sup> Two workers mentioned that, although this was the case, the factories did not let workers overly exceed the target and controlled the number of pieces produced after meeting the target, to control production cost. In other words, this meant that the employers did not have to pay the workers extra. Factories use various strategies of control like assigning a different style to a line (of workers) every time they finish one style, so that the worker efficiency cannot rise with having to familiarise themselves with a new style every time.<sup>580</sup>

During these interviews, workers shared that all the allowances that they were usually paid in addition to their basic salary, such as efficiency allowances, were stopped, and the attendance allowance (a financial incentive paid for full attendance at work) was cut off in half after the pandemic.<sup>581</sup> Workers could not meet the monthly expenses with this amount. Tekla said, 'we can get a sufficient salary to survive if we only work very hard. We work the whole month and work in the nights as well to collect a salary that is barely enough to survive.'<sup>582</sup> A labour lawyer and a committee member of the women-led Textile Garment and Clothing Workers' Union (TGCWU), Lakmali Hemachandra, explained that overtime pay and allowances are crucial for apparel workers as they account for over half of a worker's total monthly income.<sup>583</sup> Two managers from large-scale and mid-level garment factories described that the worker allowances ranging from attendance, efficiency, food etc. could be equivalent to the basic salary and overtime pay amounts to about half of the basic salary.<sup>584</sup> Accordingly, allowances and overtime could collectively amount to about 60 percent of a worker's total monthly salary. Even during ordinary times, workers did not receive a sufficient salary to cover their living expenses. Therefore, it was tough for workers to bear this sudden salary cut during the pandemic, with the rising inflation rates exacerbated by the economic crisis.

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<sup>579</sup> Interview with Nimmi, a shop-floor worker in a garment factory in the Koggala Export Processing Zone, Sri Lanka, held 20.03.2023.

<sup>580</sup> Ibid; Interview with Tekla, a shop-floor worker in a garment factory in the Koggala Export Processing Zone, Sri Lanka, held 27.03.2023.

<sup>581</sup> Interview with Chandhi, a shop-floor worker in a garment factory in the Katunayake Export Processing Zone, Sri Lanka, held 27.10.2021; Interview with Chami, a shop-floor worker in a garment factory in a remote town in the Western Province of Sri Lanka, held 05.09.2021.

<sup>582</sup> Interview with Tekla, a shop-floor worker in a garment factory in the Koggala Export Processing Zone, Sri Lanka, held 27.03.2023.

<sup>583</sup> Interview with Lakmali Hemachandra, Lawyer and activist, conducted on 10.09.2021.

<sup>584</sup> Interviews with two former Human Resources Managers of apparel factories in the Kandy Industrial Park in the Central Province of Sri Lanka, held 20.10.2021 and a mid-level apparel factory in a remote town in Sri Lanka, held 20.03.2021.

These wage cuts had compounding effects on women workers who were the sole breadwinners and providers for their families. Sandi's hometown is in Anuradhapura, in the north-central part of Sri Lanka, and she is a migrant worker in Katunayake. She said that the salary was not sufficient for her to send any home. 'I have seven sisters and five brothers. My mother is not employed, and my father is a farmer and he cannot provide for the entire family. That is why I am here,'<sup>585</sup> she stated. The government offered COVID relief of LKR5,000 (AUD24.47) for low-income persons but Sandi did not qualify for this as she was a migrant and not a resident of the Division which administered the fund for its residents. Further, Dinali's husband is a fisherman and does not have work for six months a year. Hers is 'the sole income for the family of three children during that time'.<sup>586</sup> Therefore, these wage cuts, allowance and overtime slashes had an invisible cost that women workers had to absorb.

### 6.2.2 Collective bargaining agreement to prorate worker wages during the pandemic

Networked collective bargaining and tripartite agreements do not always translate into the envisioned goals. When collective bargaining is ineffective, it can place vulnerable women workers at risk. One such example is a tripartite agreement by the apparel industry stakeholders to prorate worker wages in Sri Lanka during the pandemic.<sup>587</sup> When COVID-19 was rampant within the EPZs in particular, several factories across Sri Lanka closed down or opted for mass worker retrenchment.<sup>588</sup> In order to mediate the situation and prevent job loss of workers, apparel industry stakeholders including the national-level trade unions entered into a tripartite agreement.<sup>589</sup> During the early stages of the pandemic, the Ministry of Labour, the Employer's Federation of Ceylon (EFC) and some national-level trade unions entered into a collective agreement regarding payment of wages. The agreement was for employers to,

apportion and pay wages for the days worked based on the basic salary, and for the days not worked (days on the bench without any work) wages will be apportioned

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<sup>585</sup> Interview with Sandi, a shop-floor worker in a garment factory located within the Katunayake EPZ, Sri Lanka, held 08.11.2021.

<sup>586</sup> Interview with Dinali, worker in a garment factory in the Koggala Export Processing Zone, Sri Lanka, held 27.03.2023.

<sup>587</sup> ILO, 'Tripartite Agreement Reached to Pro-rate Wages Based on Varied Levels of Deployment' (Website, 08 May 2020), [https://www.ilo.org/global/docs/WCMS\\_751871/lang-en/index.htm](https://www.ilo.org/global/docs/WCMS_751871/lang-en/index.htm).

<sup>588</sup> Sunimallee Dias, 'Apparel industry to lay off 30% workforce' *The Sunday Times* (Colombo 05 April 2020) <<https://www.sundaytimes.lk/200405/business-times/apparel-industry-to-lay-off-30-workforce-399059.html>>.

<sup>589</sup> Tripartite Agreement Reached to Pro-rate Wages Based on Varied Levels of Deployment (n 587).

and paid either at the rate of 50% of the basic wage or LKR14,500 [AUD 70.79], whichever is the highest.<sup>590</sup>

This agreement was effective during COVID-19 health and travel restrictions, aiming to ensure the continuity of business and prevent retrenchment /lay-off of workers. Nevertheless, at the factory-level workers and their representatives claimed that it was used to slash their wages.

Many of the issues were evident in my field interviews. Worker organisations confirmed that workers such as Chandi received less than the statutory national minimum wage, a violation of the national law. Some factories used the collective bargaining agreement to pay workers even less than the agreed LKR14,500 (AUD70.79). Nimmi further explained her experience of work and low wages during COVID:

In 2020, during COVID, we were paid LKR9000 [AUD 44.05] for six months. We even worked on the New Year's festival day [14<sup>th</sup> April] that year. We were paid our monthly salary every 1.5 months during that time. Workers got the payslip after a few days from the pay day. Then they could not remember to trace the salary then. The factory deducted the salary [allowances], and the workers did not really notice it.<sup>591</sup>

Lalitha Dedduwa Kumara, Chief Organiser of TGCWU said, 'Some factories had paid LKR9,500 (AUD46.50) to workers. We filed a complaint against the factory for the workers to claim the balance between LKR9,500 (AUD46.50) and LKR14,000 (AUD68.52).'<sup>592</sup> She further said that workers from a garment factory in Katunayake filed 13 labour tribunal applications in the Negombo Labour Tribunal (near Katunayake). 'They had to withdraw the cases as the Judge held that it was a matter that needed to be negotiated at the Labour Department,' she added.<sup>593</sup> These workers are now complainants to a wage theft complaint filed by TGCWU that I discuss in Part 2.

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<sup>590</sup> The Scheme of the Tripartite Agreement as conveyed by the Employers' Federation of Ceylon Circular No. 31/2020 available at <<https://employers.lk/resources/>>.

<sup>591</sup> Interview with Nimmi, a shop-floor worker in a garment factory in the Koggala Export Processing Zone, Sri Lanka, held 20.03.2023.

<sup>592</sup> Interview with Lalitha Dedduwa Kumara, Chief Organiser of the Textile Garment and Clothing Workers Union (TGCWU) of Sri Lanka, held 25.03.2022.

<sup>593</sup> Ibid.

Later, local labour lawyers argued that this ad-hoc agreement had no legal basis for two reasons: (1) it was signed by the parties but has not been formalised in any manner (such as being gazetted), while it seeks to vary existing employment law making it impossible to hold any party accountable; (2) it seeks to change existing employment contracts of workers, employment laws such as the Wages Board Ordinance and the National Minimum Wage of Workers Act and is silent on matters such as inability of employer to pay.<sup>594</sup> The agreement became inoperative in June 2021, about a year after its implementation in May 2020.<sup>595</sup>

Further, women's organisations and new women-led trade unions questioned the origins of this agreement, highlighting the lack of worker representation in its negotiation. They suggested that there was not sufficient representation of workers, especially of women workers, and that the negotiations only involved a few leading trade unions.<sup>596</sup> When official labour bargaining was ineffective in this manner, the women's organisations resorted to other pathways to demand justice for wage violations by the employers.

### 6.2.3 Regulating wage theft through the formal legal framework

Inequitable wages and wage-related injustices have been at the centre of worker action and advocacy, globally, for over a decade<sup>597</sup> but scholarship around wage theft is relatively recent. Moreover, scholarship and legal and policy responses to wage theft remain noticeably underdeveloped in Asian countries. Scholars, mostly with a focus on America, discuss aspects such as the causes of wage theft,<sup>598</sup> the failure of the current enforcement regimes<sup>599</sup> and regulating wage theft.<sup>600</sup>

<sup>594</sup> Rohan Dunuwille and Rhadeena de Alwis, 'Is the 'Agreement' between the Minister of Labour, The Employer's Federation of Ceylon and other Unions valid?' *The American Chamber of Commerce in Sri Lanka* (Web article, 2021), 2-3, <<http://aequitaslegal.lk/wp-content/uploads/2020/05/COVID-Agreement-EFC.pdf>>.

<sup>595</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021.

<sup>596</sup> Interview with Lalitha Dedduwa Kumara, Chief Organiser of the Textile Garment and Clothing Workers Union (TGCWU) of Sri Lanka, held 25.03.2022 and interview with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021.

<sup>597</sup> For example, see, Ruth Milkman, Ana Luz González, and Victor Narro, *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-wage Workers* (UCLA Institute for Research on Labour and Employment Report, 2010) <<https://escholarship.org/uc/item/5jt7n9gx>>; Benjamin Wallace-Wells, 'How the Minimum-Wage Movement Entered the Mainstream' *New Yorker* (New York, Mar 31 2016), <<https://www.newyorker.com/news/benjamin-wallace-wells/how-the-minimum-wage-movement-entered-the-mainstream>>.

<sup>598</sup> Stephen Clibborn, 'Australian industrial relations in 2019: The year wage theft went mainstream' (2020) 62(3) *Journal of Industrial Relations* 331, 331-340.

<sup>599</sup> Nicole Hallett, 'The Problem of Wage Theft' (2018) 37(1) *Yale Law & Policy Review* 93, 94.

<sup>600</sup> Jennifer Lee and Annie Smith, 'Regulating Wage Theft' (2019) 94(2) *Washington Law Review* 759.

Setting a minimum wage is the first step in regulating wage theft. That in itself cannot address the full extent of the issue of unjust wages.<sup>601</sup> Sri Lanka does not have dedicated wage theft laws<sup>602</sup> unlike the USA<sup>603</sup> or Australia.<sup>604</sup> All countries in Asia, including Sri Lanka, have a stipulated statutory minimum wage.<sup>605</sup> Sri Lanka, in fact, boasts of paying a higher than the minimum wage for apparel industry workers. The apparel industry minimum wage for a skilled machine operator is LKR13,550 per month (AUD65.36)<sup>606</sup> whereas the national minimum wage is a fraction lower at LKR12,500 per month (AUD60.29).<sup>607</sup> This minimum wage for the industry, however, is relatively low compared to other sectors and the gains of the industry as the highest export earning industry in the country.

However, rules around minimum wages are only part of what is needed to address wage theft. The ILO in its Global Wage Report 2020–2021 suggests that a minimum wage can help to reduce wage and income inequality only if the following factors also exist: effectiveness of timely reforms, adequacy of implementation measures and characteristics of wage earners and their ability to bargain.<sup>608</sup> Non-compliance, the level at which the minimum wage is set (setting it too low will not protect workers and their families), and too infrequent amendments to minimum wage laws that do not reflect inflation, etc. determine its impact on inequality.<sup>609</sup> In Sri Lanka, minimum wage law revisions are infrequent and currently do not reflect inflation. I discussed above the gap of close to LKR70,000 (AUD331.55) between the minimum wage for an apparel worker in Sri Lanka and the living wage that will help them achieve a better quality of life. The ILO, therefore, emphasises how deciding the minimum wage must be done with the full participation of all stakeholders by way of evidence-based negotiations.<sup>610</sup>

<sup>601</sup> Hallett (n 599); Lee and Smith (n 600).

<sup>602</sup> However, there are criminal penalties for the non-payment of wages and the contribution from the employers to a worker's Employees Provident Fund (EPF) and the employee trust fund (ETF); *Employees Provident Fund Act No. 15 of 1958* (Sri Lanka) and *Employees' Trust Fund Act No. 46 of 1980* (Sri Lanka).

<sup>603</sup> For instance, Assembly Bill 1003 by state lawmakers in 2021, in California, criminalises wage theft by adding a provision to the Penal Code; This law establishes that intentional theft of wages or tips is punishable as theft: *California Assembly Bill 1003 (2021–2022, Regular Session)*.

<sup>604</sup> See for instance, intentional underpayment of wages, including by making wage theft is a criminal offence and attracts significant civil penalties under the Fair Work Act: *Fair Work Act 2009* (Cth, Australia), s 325, s.326; A new Amendment in 2003 permits only employee-authorized deductions: *Fair Work Legislation Amendment (Protecting Worker Entitlements) Act 2023* (Cth, Australia).

<sup>605</sup> *Global Wage Report 2020–21: Wages and minimum wages in the time of COVID-19* (Report, International Labour Office, Geneva, 2020), 62.

<sup>606</sup> The total amounts to LKR17,050 with two additional budgetary allocations: *The Wages Boards Ordinance*, in the Gazette Extraordinary of The Democratic Socialist Republic of Sri Lanka (07.01.2022), 9A <[https://labourdept.gov.lk/images/PDF\\_upload/ExtraGazettes/2261-75\\_e.pdf](https://labourdept.gov.lk/images/PDF_upload/ExtraGazettes/2261-75_e.pdf)>.

<sup>607</sup> The *National Minimum Wage of Workers Amendment Act No. 16 of 2021* (Sri Lanka); LKR16,000 with two budgetary allocations.

<sup>608</sup> ILO Global Wage Report 2020–21 (n 605) 60–158.

<sup>609</sup> Ibid 98.

<sup>610</sup> ILO Global Wage Report 2020–21 (n 605) 65.

Further, the ILO report shares that the impacts of the pandemic on total wages fell differently on lower-paid workers and on men and women.<sup>611</sup> Women in low-paid jobs were disproportionately impacted.

In addition to the ILO, other studies discuss different strategies to combat wage theft. More broadly analysing the issue of wage theft, a US-based study<sup>612</sup> reveals that the most common strategies to regulate wage theft fall into five categories: '(1) authorise worker complaints; (2) create or enhance penalties; (3) regulate information; (4) strengthen anti-retaliation protections; and (5) expand employer liability'.<sup>613</sup> While all these strategies are crucial in battling wage theft from various angles, the first barrier for vulnerable workers is accessing these mechanisms. This reality is crucial to my case study which focuses on women workers at the factory level.

Even if the laws are in place, wage rights claiming and accessing rights enforcement mechanisms can be difficult for different worker groups. Lee and Smith note how complaining may not be an option for vulnerable workers.<sup>614</sup> Legal consciousness scholar Susan Silbey notes how claiming rights may be 'easier to bear for those who have many forms and volumes of capital' but is 'a heavier, often disabling burden that reinscribes disadvantage for those with less.'<sup>615</sup> I observed this in women workers' responses to questions on the payment of wages during the pandemic, discussed below.

Worker voice is crucial to hold employers and the state accountable under the laws or rules flowing from collective agreements. Scholars identify that 'energised worker movements' are key to drive the state to act on promoting the rights of low wage workers.<sup>616</sup> This is not to completely rule out the role of legislation. Given Sri Lanka's political economy discussed in Chapter 1 section 1.3 and Chapter 4, a combined strategy, involving litigation, advocacy and other related pathways, is needed to strengthen the existing rules and to address wage injustices faced by low-paid women workers.

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<sup>611</sup> Ibid 27.

<sup>612</sup> The first comprehensive survey and critical analysis of state and local laws enacted over roughly the past decade through a compilation of 141 state and local laws in the USA; See Lee and Smith (n 600).

<sup>613</sup> Lee and Smith (n 600) 762.

<sup>614</sup> Ibid 762.

<sup>615</sup> Susan Silbey, 'After legal consciousness' [2005] 1 *Annual Review of Law Social Science* 323, 354.

<sup>616</sup> Lee and Smith (n 600) 761.

### 6.3 Part 2: A worm's eye view to negotiating wage injustices in Sri Lanka's apparel industry

On the first day of every new year, our management welcomes workers with elaborate speeches on how we are all like family. But our factory closed down in the early months of the pandemic and we were left without jobs. I would like to ask how anyone could abandon their family during difficult times.<sup>617</sup>

Like Latha, whose opinion I quote above, over 1400 Sri Lankan apparel workers, largely women, were affected by lay-offs, partial payment or non-payment of wages and non-payment of benefits in early 2020. This section presents the ground reality of wage theft using findings from field interviews.

In Part 1, I discussed how women workers had to undergo a chain of hardships due to not receiving a living wage and timely wages. These hardships include an inability to afford nutritious food or provide for their families, and defaulted loan instalments. Having to borrow fast cash from loan sharks made women even more vulnerable.<sup>618</sup>

These vulnerabilities relate to both economic and social reproduction costs. During an interview, one worker shared that these hardships prompted her to join my interview and share what is happening at her workplace.<sup>619</sup> Therefore both the wage theft complaints and the advocacy and support network around it are important for women workers. The fact that these women are located in the global south, far away from the international centres where international and national standards on wage rights and worker voice emanate from, makes a transnational network more important.

Worker wages are more likely to absorb 'downward competitive pressure' in attaining a competitive market price for manufactured goods than other costs<sup>620</sup> in the global value chains.<sup>621</sup> Wages are directly influenced by the purchasing practices of buyers with their suppliers, and imbalances of power and lack of information for workers which leave them dependent on employers. Buyers, in fact, possess more decision-making power than suppliers, and workers remain largely absent from any bargaining in this

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<sup>617</sup> Interview with Latha, worker in a garment factory in the Western Province, Sri Lanka, held 27.09.2021.

<sup>618</sup> Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains Report 2021 (n 563) 37.

<sup>619</sup> Interview with Selvi, a shop-floor worker in a garment factory located in the north, Sri Lanka, held 08.10.2021.

<sup>620</sup> Such as material, transport or energy; See Joint Ethical Trading Initiatives (JETI), *Living Wages in Global Supply Chains A new agenda for business* (Report, 2015), 23.

<sup>621</sup> See *Living Wages in Global Supply Chains A new agenda for business report* (620); Mark Starmanns, Conditions of Work and Employment Series, 'Purchasing practices and low wages in global supply chains: Empirical cases from the garment industry', *Inclusive Labour Markets, Labour Relations and Working Conditions Branch* (No. 86, 2017, International Labour Office – Geneva), 5.

equation.<sup>622</sup> Scholars have identified the issue of wage theft as one with serious impacts on the working poor, yet the issue has received little attention from law and policy makers.<sup>623</sup> In this case study, workers action collective voice through two different pathways: wage theft campaign and wage theft complaints.

### 6.3.1 Wage theft campaign

While advocacy around wage theft was ongoing, Sri Lankan women-led labour unions and organisations – the Stand Up Movement and the Textile Garment and Clothing Workers Union (TGCWU) – lodged two complaints with the Labour Commissioner for an inquiry into non-payment of worker wages and bonuses, and mass retrenchments without adequate compensation in two factories, Hirdaramani Mercury Apparel (Pvt) Ltd and Smart Shirts Lanka Ltd in Katunayake, Sri Lanka. These complaints were filed as joint liability claims against the local employers as well as their international buyers for labour rights violation during the pandemic. The organisation alleged that brands such as Levi Strauss & Co., PVH Corp., ASICS, Columbia Sportswear Company, and G-III Apparel Group Ltd pulled out their orders.<sup>624</sup> The local wage theft campaign by grassroots women's organisations, trade unions and regional labour alliances called these 'irresponsible purchasing practices' by the fashion brands resulting in 'unfair labour practices' which had 'human rights impacts on workers'.<sup>625</sup>

Over 1400 garment workers, predominantly low-income earning women workers, of two factories were directly affected.<sup>626</sup> The workers claimed that they were paid their wages when one factory shut down in April 2020 during the first countrywide lockdown.<sup>627</sup> Workers who had a period of service less than 6 months with the factory

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<sup>622</sup> Living Wages in Global Supply Chains A new agenda for business report (620) 23; D. Vaughan-Whitehead and L. Pinedo, *Purchasing practices and working conditions in global supply chains: Global Survey results* (ILO Policy brief no10, 2017) <[http://www.ilo.org/travail/info/fs/WCMS\\_556336/lang--en/index.htm](http://www.ilo.org/travail/info/fs/WCMS_556336/lang--en/index.htm)>. Also, quoted in Starmanns (n 621), 5.

<sup>623</sup> Hallett (n 599) 93.

<sup>624</sup> Interviews with Lalitha Dedduwa Kumara, Chief Organiser of the Textile Garment and Clothing Workers Union (TGCWU) of Sri Lanka in 10.08.2021 and 28.03.2022; Interview with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021; and Interview with Abiramy Sivaloganathan, South Asia Coordinator, the Asia Floor Wage Alliance, held 10.08.2021.

<sup>625</sup> Asia Floor Wage Alliance, 'Global Fashion Brands Levi Strauss & Co., PVH Corp., ASICS, Columbia Sportswear Company, G-III Apparel Group Ltd. and their Supplier Hirdaramani-Mercury Apparel in Sri Lanka face legal complaint under Sri Lankan laws over labour rights violations during Covid-19 period' (Media Release, 2 March 2021) <<https://www.business-humanrights.org/de/neuste-meldungen/sri-lanka-unions-file-legal-complaint-against-global-fashion-brands-their-supplier-over-wage-severance-violations-after-buyers-pull-orders-during-covid-19/>>.

<sup>626</sup> Asia Floor Wage Alliance, 'Sri Lankan Labour Commissioner has ordered an inquiry into a complaint filed by labour unions against the irresponsible purchasing practices of global fashion brands' (Media Release, 19 April 2021).

<sup>627</sup> Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains Report 2021 (n 563) 19-40.

were all terminated without compensation.<sup>628</sup> Another batch of workers was terminated between May and September 2020, allegedly without adequate compensation.<sup>629</sup> When the workers reported back to work in May 2020, the production targets that were given, according to workers, were impossible to meet and they received only the basic wages with no over-time or bonus payments.<sup>630</sup> Those who had been with the factory for over one year were offered the option either to accept compensation and leave the job or to transfer to another factory of their group. The worker representatives claimed that 'since there was no opportunity to choose where they would be transferred to workers, who had been working for long years were forced to leave the factory without full compensation'.<sup>631</sup>

Worker representatives also claimed that in calculating the compensation amount, the date of termination considered was April 2020, although different workers resigned at different time periods even after that. As a result, 'workers who completed 5 years of employment after April 2020, lost their gratuity payments,' they added.<sup>632</sup> Although the management had indicated the factory would close down, some factories re-opened for production with only 400 workers in January 2022, after closing down in September 2021. Worker representatives suspect that the factory closure during COVID was a strategy for mass retrenchments, and evasion of payment of full wages and benefits to workers.<sup>633</sup> Labour alliances highlight how, in this process, the global fashion brands as 'buyers' maintain distance from the suppliers, thereby evading their legal obligations towards workers.<sup>634</sup>

The logic of the wage theft claims was that the supplier is fully dependent on the brands financially and that the brands have overarching power over the supply chain at all stages including worker performance and their wages. AFWA identify this as 'a concealed relationship of control'.<sup>635</sup> Worker organisations argue that the industry

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<sup>628</sup> Asia Floor Wage Alliance Media Release (02 March 2021) (n 625).

<sup>629</sup> Ibid; Also see Asia Floor Wage Alliance, 'Joint employer liability legal strategy – Legal Brief' (Report, July 2021) <<https://asia.floorwage.org/covid/joint-employer-liability-legal-strategy-holding-global-apparel-brands-legally-liable-for-labour-rights-violations-in-their-supply-chains-in-asia/>> 23.

<sup>630</sup> Ibid; Interview with Chandi, worker in a garment factory in the Katunayake Export Processing Zone, Sri Lanka, held 27.10.2021.

<sup>631</sup> Interview with Lalitha Dedduwa Kumara, Chief Organiser of the Textile Garment and Clothing Workers Union (TGCWU) of Sri Lanka on 28.03.2021; Asia Floor Wage Alliance Media Release (02 March 2021) (n 560); Abiramy Sivaloganathan, South Asia Coordinator, the Asia Floor Wage Alliance, held 10.08.2021 and 04.04.2022.

<sup>632</sup> Asia Floor Wage Alliance Media Release (02 March 2021) (n 625).

<sup>633</sup> Interview with Lalitha Dedduwa Kumara, Chief Organiser of the Textile Garment and Clothing Workers Union (TGCWU) of Sri Lanka on 10.08.2021 and 28.03.2022.

<sup>634</sup> Joint employer liability legal strategy – Legal Brief (n 629).

<sup>635</sup> Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains Report 2021 (n 563); Joint employer liability legal strategy – Legal Brief (n 629).

norms on employer–employee relationship should be extended to joint employer liability.<sup>636</sup> This effectively means that the international buyers cannot have impunity for non-payment of worker wages in off-shore manufacturing facilities. During the pandemic, in particular, suppliers in host countries were unable to pay their workers. This was partially owing to buyers' decisions to cancel orders or ask for discounts. Therefore, the workers collectively claim that the buyers, who still have recorded noticeable profits in the second half of 2020, need to be held accountable too.

Supply chain exploitations thus occur due to a significant governance gap in interactions within the chain. As a result, neither the domestic law (of buying and even supplying countries) nor international law appears to regulate the buyer's corporate activity.<sup>637</sup>

The complainants in these cases explained that irresponsible purchasing practices of global fashion brands have caused several months of extreme hardship to workers employed in the two factories specifically. Added to this were strenuous working conditions including risks that the workers faced during the pandemic time, e.g. risk of infection. In the complaints, the complainants have urged the Labour Commissioner 'to hold the brands jointly liable for compensating the economic loss suffered by the workers.'<sup>638</sup> Swasthika Arulingam, counsel for these joint complaints, stated that 'It is for the first time that an inquiry will be conducted within the national jurisdiction of garment production countries into the actions of global fashion brands that led to adverse impacts for workers in their supply chains.'<sup>639</sup>

The Labour Commissioner accepted the complaints for further investigation in April 2021<sup>640</sup> During my recent interactions with the claimants, I learnt that the case has now been directed for arbitration under the Industrial Disputes Act of Sri Lanka.<sup>641</sup> Claimants shared the view that the 'employers are more powerful than the state' but that they remain hopeful about the prospect of a remedy through the national labour law apparatus before seeking remedies provided by international law.<sup>642</sup> These

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<sup>636</sup> Joint employer liability legal strategy – Legal Brief (n 629).

<sup>637</sup> Galit Sarfaty, 'Supply Chains and Logistics', *The Routledge Handbook of Law and Society* (Routledge, 2021), 229.

<sup>638</sup> Interview with Swasthika Arulingam, Lawyer and activist, held on 08.08.2021.

<sup>639</sup> *Ibid.*

<sup>640</sup> Interview with Abiramy Sivaloganathan, South Asia Coordinator, the Asia Floor Wage Alliance, held 10.08.2021. Asia Floor Wage Alliance Media Release (19 April 2021) (n 560).

<sup>641</sup> Industrial Disputes Act (Sri Lanka), s 3(1)(c) or 4(1).

<sup>642</sup> Interview with Lalitha Dedduwa Kumara, Chief Organiser of the Textile Garment and Clothing Workers Union (TGCWU) of Sri Lanka in 10.08.2021 and 28.03.2022.

complaints are referred by the Department of Labour in Sri Lanka for arbitration which is ongoing.

### 6.3.2 Wage theft complaints

In the wake of the pandemic in 2020, Sri Lanka was forced into several lockdowns, just like other garment industry hubs in South Asia. This had severe impacts on the garment industry and the workers. Several factories across Sri Lanka closed down or opted for mass worker retrenchment.<sup>643</sup> During interviews, a representative from Asia Floor Wage Alliance, an Asia-based labour collective, mentioned that ‘the closure of the factory was a strategy for mass retrenchments, and evasion of payment of full wages and benefits, when facing reduced orders from the brands.’ Asia Floor Wage Alliance (AFWA) facilitates and supports the Wage Theft campaign in the South and Southeast Asian countries. AFWA is an international alliance consisting of labour organisations in garment-producing countries including Bangladesh, Cambodia, India, Indonesia, Pakistan and Sri Lanka with partners in Europe and the USA.<sup>644</sup> Five Sri Lankan women-led labour organisations and trade unions,<sup>645</sup> which are partners of AFWA, are members of this campaign among other unions.

The factories that initially could not operate under lockdown conditions started opening up in May 2020. Although this ensured an uninterrupted supply of products to meet the demands of international buyers, it had negative impacts on workers. Apparel workers at one point were recognised as an ‘essential service’ and therefore exempted from COVID restrictions in the country.<sup>646</sup> This meant that the workers risked their life under unsafe health conditions at the workplace and while travelling to work. The number of workers who were called into work per shift was reduced significantly due to social distancing requirements, but this was not reflected in a change in the daily production target.<sup>647</sup> While the daily targets remained the same as pre-pandemic times, worker wages and all their allowances were slashed.

In addition to non-payment or partial payment of wages, AFWA reported underpayment of overtime, non-payment of overdue overtime and non-payment or partial payment of bonuses for Sri Lankan apparel workers which are also forms of wage theft.<sup>648</sup>

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<sup>643</sup> Dias (n 525).

<sup>644</sup> Asia Floor Wage Alliance, ‘about us’ (Web page, 04.12.2023) <<https://asia.floorwage.org/about-afwa/>>.

<sup>645</sup> Dabindu Collective, RED, Stand Up Movement, TGCWU and Shramabhimani Centre.

<sup>646</sup> Ecotextile News, ‘Sri Lankan Industry Reassures Garment Workers’ (Web page, 23.08.2021).

<sup>647</sup> Worker interviews conducted with Sri Lankan apparel workers in May-December 2021 and March-April 2022.

<sup>648</sup> Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains Report 2021 (n 563) 31-33.

Confirming this, during my field interviews, Sandi from a garment factory in the Katunayake EPZ shared that their bonus payment for December 2020 was delayed until a local trade union interfered, set up a union within the factory and negotiated on behalf of the workers.<sup>649</sup>

A year into the pandemic, worker organisations started to flag wage injustices in apparel supply chains and how the nonpayment of wages or salary cuts led to significant hardships for workers. The already dysfunctional bargaining mechanisms for the industry led to the formation of a tripartite agreement, that I discussed in Part 1, which was later noted to have 'no legal basis'.<sup>650</sup> Reports covering the wage theft campaign in Asia explore the compounding effects of wage theft on shop-floor workers in Sri Lanka, which are often obscured. Their key findings reveal the heightened vulnerability of this workforce: during the period of non-payment or reduced payment of wages workers did not have enough savings even to survive short lay-off periods of one month without '1) reducing consumption; 2) incurring debt or buying essentials with deferred payments, or 3) liquidating assets.'<sup>651</sup>

Sri Lankan women workers' organisations and other trade unions joined a global campaign against international fashion brands who abandoned workers during a difficult time. About 200 organisations worldwide and Asiawide launched this global campaign against fashion brands to hold these international buyers accountable for the economic plight of apparel workers in their sourcing countries.<sup>652</sup> They focused on brands and retailers that had refused to pay the dues,<sup>653</sup> cancelled their orders including those completed as well as those in mid-production,<sup>654</sup> and those that used the decreased consumer demand for clothing during the pandemic to solicit even lower prices from manufacturers and suppliers.<sup>655</sup> They highlighted that these strategies had enabled some of the big apparel brands such as Amazon<sup>656</sup> to have return to

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<sup>649</sup> Interview with Sandi, a shop-floor worker in a garment factory located within the Katunayake EPZ, Sri Lanka, held 08.11.2021.

<sup>650</sup> See the discussion in section 4.2 of Dunuwille and de Alwis (n 594).

<sup>651</sup> Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains Report 2021 (n 563) 33.

<sup>652</sup> Clean Clothes Campaign 'Workers Suffer While Fashion brands' Profit Return' (Web page, 12.03.2021) <[https://cleanclothes.org/news/2021/workers-suffer-while-fashion-brands-profits-return->](https://cleanclothes.org/news/2021/workers-suffer-while-fashion-brands-profits-return-).

<sup>653</sup> Ibid.

<sup>654</sup> Worker Rights Consortium, *Farce majeure: How global apparel brands are using the COVID-19 pandemic to stiff suppliers and abandon workers* (European Center for Constitutional and Human Rights (ECCHR) Policy Paper, September 2020) <[https://www.ecchr.eu/fileadmin/ECCHR\\_PP\\_FARCE\\_MAJEURE.pdf](https://www.ecchr.eu/fileadmin/ECCHR_PP_FARCE_MAJEURE.pdf)>.

<sup>655</sup> Ninia Reza and Jean Jacques Du Plessis, 'The Garment Industry in Bangladesh, Corporate Social Responsibility of Multinational Corporations, and The Impact of COVID-19' (2022) 9 *Asian Journal of Law and Society*, 255–285.

<sup>656</sup> ResearchFDI, 'Amazon Profits Increased Nearly 200% Since Start of Covid-19 Pandemic' (Blog post, 6 January 2021) <<https://researchfdi.com/amazon-covid-19-pandemic-profits/>>.

profitability. Their wage theft claims were based on the idea of joint-employer liability of these fashion brands for the plight of the workers.

Sri Lankan workers, along with trade unions and organisations, led several campaigns to urge action on the part of brands such as Amazon, Nike and Next. Among these are the #payyourworkers petition<sup>657</sup> and Money Heist – COVID-19 Wage Theft in Global Garment Supply Chains.<sup>658</sup> The extent of the campaigns was significant – over 200 unions and civil society organisations and groups from over 40 countries joined in solidarity on this cause.<sup>659</sup> The range of actors involved those from local grassroots women's groups, worker unions, regional trade union alliances and international organisations and networks such as the Clean Clothes Campaign. The campaign legitimised their labour claims based on the international human rights norms including the right to adequate wages and secure employment.<sup>660</sup>

The labour alliance involved in this campaign has now lodged a complaint, at the international level. Eighteen garment worker unions in five countries including India, Sri Lanka, Cambodia, Pakistan and Bangladesh have joined this complaint against Nike before the US National Contact Point for the OECD Guidelines for Responsible Business Conduct at the US State Department for violating the OECD guidelines on wage justice.<sup>661</sup> The labour alliance claims that the brands including Nike, Levi's and VF Corp and companies have violated workers' wage rights and profited from the stolen wages of apparel workers in the manufacturing countries and used that money towards share buybacks.<sup>662</sup> This complaint is pending.<sup>663</sup>

The wage theft campaign is a significant labour milestone in Sri Lanka, highlighting a previously uncontested issue of joint-employer liability. The campaign created awareness of this issue, shone a spotlight on worker struggles at the local level and fostered transnational alliances that gave rise to a bottom-up force against wage injustices. I discuss the regulatory influence of these worker initiatives in Part 3 below.

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<sup>657</sup> *Amazon, Nike and Next: It's Time to Pay Your Workers* (Pay your Workers Organization, online petition, 2021) <<https://www.payyourworkers.org/petition>>.

<sup>658</sup> Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains Report 2021 (n 563).

<sup>659</sup> Clean Clothes Campaign news, 'Workers suffer while fashion brands' profits return' (Web page, 12.03.2021) <<https://cleanclothes.org/news/2021/workers-suffer-while-fashion-brands-profits-return->>>.

<sup>660</sup> Money Heist: Covid-19 Wage Theft in Global Garment Supply Chains Report 2021 (n 563) 5.

<sup>661</sup> Asia Floor Wage Alliance, 'Stop Nike, Levi's & VF Corp from Funneling Stolen Pandemic Wages Towards Buybacks' (Web page, 12.03.2023) <<https://asia.floorwage.org/fightheist/>>.

<sup>662</sup> Big Fashion & Wall Street Cash In on Wage Theft Report (n 569) 2-4.

<sup>663</sup> Abiramy Sivaloganathan, South Asia Coordinator, Asia Floor Wage Alliance, held 04.04.2022.

### 6.3.3 Collective voice of women workers in wage theft claims

The discussion in this section shows that women workers and their representatives took the lead in actioning collective voice in two ways. First, the wage theft complaints were filed in Sri Lanka and then the local organisations and unions joined the larger labour alliance which advocates on the issue of wage theft of garment workers during the pandemic.

In the first instance, the role of women workers is prominent. The two complaints are filed by two women-led and newly registered trade unions: TGCWU and Stand Up Movement. These organisations have worked for apparel workers previously for over 10 years as women's labour organisations. Their women leaders, Lalitha and Ashila, are both former shop-floor workers at garment factories. A majority of the complainants in these cases are also women workers.<sup>664</sup> These claims of joint-employer liability drawing in the accountability of global fashion brands are significant as they are unprecedented in the labour history of Sri Lanka. I discuss this in connection to an interview with the officers from the Department of Labour in Sri Lanka in Part 3.

In the second instance, the global campaign is an alliance of grassroots labour organisations in 20 garment sector unions in the global south garment manufacturing countries: Cambodia, Indonesia, Pakistan, India and Sri Lanka. As I discussed above, in Sri Lanka, the local alliance consists of six local garment sector labour organisations and trade unions out of which five are women-led organisations. This campaign, at the international level, is supported by transnational labour alliances and civil society organisations such as the Asia Floor Wage Alliance (AFWA) and Global Labour Justice (GLJ). I illustrate these ways in which collective voice is organised in this case study in Figure 6.3.

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<sup>664</sup> Interviews with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021 and Lalitha Dedduwa Kumara, Chief Organiser of the Textile Garment and Clothing Workers Union (TGCWU) of Sri Lanka on 10.08.2021.

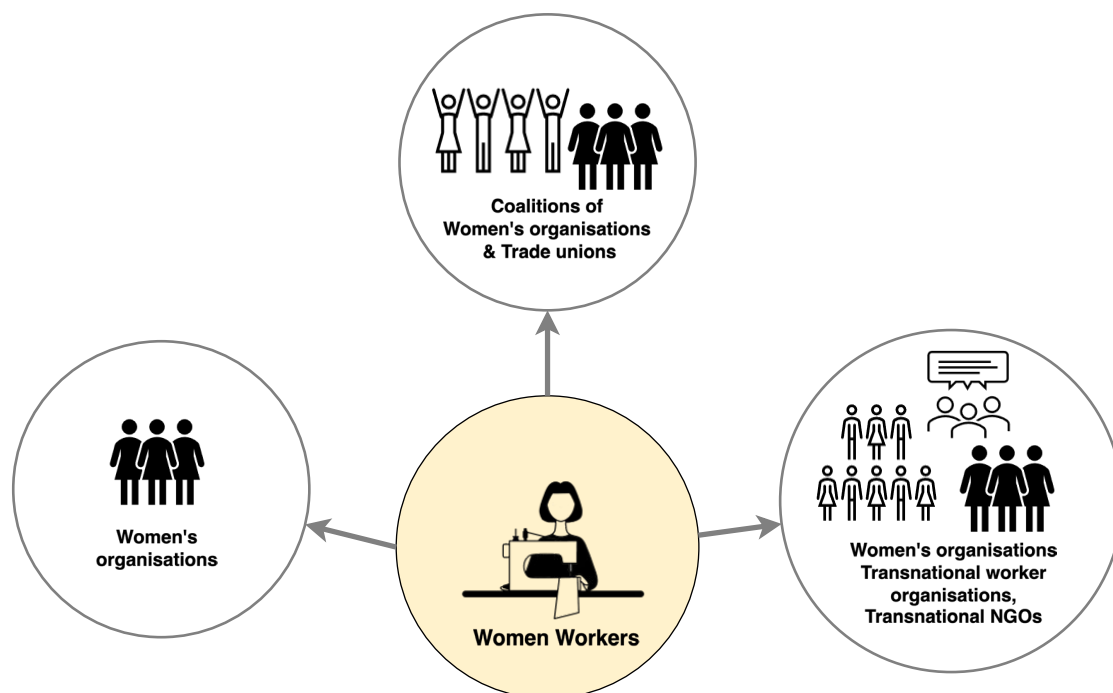


Figure 6.3: Collective voice in various forms in the wage theft complaints and campaign.

#### 6.4 Part 3: 'In search of cheap wages, capital roams around the world': Collective voice to influence wage theft regulation

Neoliberalism means that when wages go up here, they move to a cheaper place. They don't care what happens to the people who used to work here. That beautiful name of 'flexibilisation' is in fact brutal and violent. It may just be another name for being fired, for poverty, for murder, and for degrading human value. In search of cheap wages, capital roams around the world.<sup>665</sup>

This quotation is extracted from a book by the Korean author Ji-Young, in which she chronicles the tragic story of SsangYoung Motors worker retrenchments and the worker suicides that followed.<sup>666</sup> The extract highlights the structural injustices of supply chains that frustrate workers at the lowest levels of the supply chain. This case study illustrates there is resistance instead of submission to these structural injustices.

<sup>665</sup> Ji-YoungGong (2012), 163, translated and quoted in Hae Yeon Choo, 'Layoffs are murder, but they are also everyday life' in Didier Fassin and Axel Honneth (eds), *Crisis Under Critique: How People Assess, Transform, And Respond to Critical Situations* (New Directions in Critical Theory Columbia University Press, 2022) 83.

<sup>666</sup> Choi Jae-bong, literature correspondent, 'New book chronicles Ssangyong workers' tragic saga' *Hankyoreh* (Web page, 08.08.2012) <[https://english.hani.co.kr/arti/english\\_edition/e\\_national/546217.html](https://english.hani.co.kr/arti/english_edition/e_national/546217.html)>.

I analyse the examples of workers navigating wage injustices and examine workers' contribution in regulation, using the theoretical lenses below. This is with a view to considering different forms of collective voice and the dynamic regulatory structure that is emerging from the ground-level, and to understand how women workers organise and legitimise their claims within and outside the apparel industry.

#### 6.4.1 Supply chain model, norm setting and structural injustices: Is there a way out for workers?

The supply chain model facilitates various forms of exploitation of its workforce. This links back to the conceptualisation of the globalised apparel supply chain as 'a world unto its own' in the light of semi-autonomous social field theory in Chapters 2 and 3. The industry has its own rule and norm-making ability which significantly weakens the position of the workers when they cannot effectively participate in that rule making process. When there are no effective and accessible avenues for redress even outside this industrial world, workers must bear the toll. Worker advocates claim that this structure is created purposely to maintain 'persistently low and exploitative wages which fall far short of meeting the most basic needs of garment workers and their families ... despite brand commitments on living wages.'<sup>667</sup> I presented evidence of this structure in explaining how wage theft in apparel supply chains is not limited to the pandemic times and has been an issue long before then.

Supply chain exploitations occur due to a 'significant governance gap' in interactions of actors within them. This gap is caused by the massive power imbalance between workers and employers and the ineffective formal labour bargaining mechanisms. The governance gap obscures the flow of information and the complexity obscures accountability. Shop-floor workers do not receive adequate information about their rights and entitlements. During interviews with workers, it was clear that the most crucial piece of information communicated to women workers is the daily targets and their efficiency. In my interviews with women's organisations, they shared how educating workers about their rights is a priority in their agenda for mobilising. This echoes work by scholars such as Shannon Gleeson and Abel Valenzuela who highlight the importance of worker organisations for capacity building and support.<sup>668</sup>

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<sup>667</sup> Business and Human Rights Centre, *Wage theft and pandemic profits: The right to a living wage for garment workers* (Report, March 2021) 19 <[Wage theft and pandemic profits: The right to a living wage for garment workers - Business & Human Rights Resource Centre \(business-humanrights.org\)](https://www.business-humanrights.org/en/latest/wp-content/uploads/2021/03/Wage-theft-and-pandemic-profits-The-right-to-a-living-wage-for-garment-workers-Business-&-Human-Rights-Resource-Centre-business-humanrights.org/)>.

<sup>668</sup> Importance of worker centres and community-based organisations; See Shannon Gleeson, 'From Rights to Claims: The Role of Civil Society in Making Rights Real for Vulnerable Workers' (2009) 43(3) *Law and Society Review* 669, 689-90; Abel Valenzuela Jr., Nik Theodore, Edwin Melendez and Ana Luz Gonzalez, *On the Corner: Day Labour in the United States* (Report, January 2006) 25.

Supply chain complexities also obscure the links between employers and employees and who benefits and profits from whose work. My apparel industry-social matrix diagram (Figure 4.1) in Chapter 4 is an attempt to illustrate this complexity. Transnational supply chains are such that they pass on accountability through contract to the most direct employer; for instance, the local supplier who is the local employer of workers. As such, there is no concept of linked employment relationships across local, national and international levels. In this context, I discussed the difficulty in filing a joint employer liability claim against international buyers and fashion brands in Part 2 above. As a result, the domestic law (of buying and even supplying countries) and international law do not appear to regulate corporate activity.<sup>669</sup> Therefore it is hard to attribute responsibility to actors, such as international buyers and brands, who benefit the most out of the industry transactions.

In the issue of wage injustices considered here, formal voice mechanisms stipulated 'on the books' should, ideally, be useful for the workers, allowing them to resist and re-shape wage regulation within the social field of the apparel supply chain. However, this did not transpire as anticipated. Cooney et al. writes that 'the impact of regulatory interventions in the field of labour law (within Asia) is likely to be considerably less predictable than in the west.'<sup>670</sup> Hence, the strategic intervention by workers through transnational networks and complaints (explained in Part 2).

In combatting structural injustices related to wages, human rights framing appears as an important tool.<sup>671</sup> The right to just and equitable remuneration and wages features prominently in how wage theft complaints were filed as well as how the advocacy network was organised. The transnational campaign on wage theft derived legitimacy from the international human rights normative framework. For instance, while grassroots women's labour organisations drew from the common law principle of joint-employer liability, the transnational wage theft campaign was organised around human rights violations, specifically, the right to adequate wages and secure employment.<sup>672</sup>

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<sup>669</sup> Sarfaty (n 637) 229.

<sup>670</sup> Sean Cooney, Tim Lindsey, Richard Mitchell and Ying Zhu, 'Labour Law and Labour Market Regulation in East Asian States: Problem and Issues for comparative Inquiry in Sean Cooney, Tim Lindsey, Richard Mitchell and Ying Zhu (eds), *Labour Law and Market Regulation in East Asia: Themes and Issues in Comparative Law* (Routledge, London 2002) 1-26.

<sup>671</sup> See for an explanation of the use of the human rights regime by the ILO in the context of labour rights violations: ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations – Equality of opportunity and treatment* (International Labour Office, Geneva, Report III, 2022) 76

<[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_836653.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_836653.pdf)>.

<sup>672</sup> Money Heist Report (n 561) 5.

These are examples of how workers used other normative frameworks, outside the rules directly applicable to the industry, to leverage their collective voice.

This analysis highlights how grassroots labour organisations that are motivated to empower workers and transnational worker networks committed to common goals and justice are crucial. It is in the presence of this support system, as discussed in Part 2, that workers were empowered to access different forms of worker voice in order to redress wage injustices, when collective bargaining was ineffective.

#### 6.4.2 Networked governance in the wage theft campaign and complaints: Regulatory influence by women workers and their representatives

This chapter examined two attempts by Sri Lankan apparel workers to negotiate just wages during the pandemic. While they are both examples of different possibilities of how law translates into practice, they exemplify different dynamics of power, autonomy and collaborations and the potential of collective voice of women workers.

The key regulatory aspects of this case study could be summarised in relation to its transnational scale, strategy to create influence and the influence that it had on apparel industry stakeholders, as shown below in Table 6.1.

*Table 6.1: Summary of the key features that enabled regulatory influence by the workers in the wage theft campaign and complaints.*

<b>Case Study</b>	<b>Scale of network</b>	<b>Strategy</b>	<b>Regulatory influence</b>
Campaign against wage injustices during the pandemic	Grassroots to transnational	Use of local (Department of Labour – Sri Lanka) and international complaint mechanisms (OECD Guidelines)	Employers and international fashion brands for accountability

Networked governance, TFM and supply change complexities are relevant in understanding the strategies adopted by women workers in Sri Lankan garment factories to address wage theft. Governance scholarship critiques the ‘command and control’ style wage theft regulation which sets ineffective laws and standards due to

insufficient resources to compel regulated organisations and actors to comply.<sup>673</sup> My previous example of the ad-hoc tripartite agreement illustrates how an agreement that was introduced to resolve a problem could not succeed due to two key reasons: (1) inadequate labour representation and power to influence the employers at the negotiation process; and (2) the lack of resources for employers to even manage a lower wage for workers during the pandemic. It was then that the women workers and their representatives resorted to other pathways to pursue justice and results, including collective advocacy and expanding the litigation strategy to joint-employer liability rather than targeting just their local employer. I explored how their actions have regulatory influence on the state, local employers and international buyers. While I discuss the facts of the case study in the next section, here I unpack how networked governance, TFM and supply chain complexities are relevant in understanding the analysis.

Networked governance is an important lens to analyse this issue for its scope to capture workers' use of formal complaint mechanisms to seek redress as well as what makes it possible for women apparel workers to have access to those mechanisms. The idea of networked governance focuses on the actions of the weak in this industrial relations dynamic and identifies the significance of local, regional and international groups working together for a common goal of fighting wage injustices. Following Braithwaite, Charlesworth and Soares,<sup>674</sup> I suggest that networked governance offers a model of creative persistence, an array of strategies to demand justice for wage theft and the necessary support for vulnerable workers to step up and enter formal justice pathways. Support is imperative for governance networks driven by grassroots labour organisations to persist and grow. In this case study, for the wage theft complaints to be filed, advocacy by workers and the transnational network that I discuss laid a strong foundation.

Socio-legal scholars who study rights enforcement strategies discuss how members of more marginalised groups are less likely to seek remedy through the formal legal system.<sup>675</sup> Therefore filing a wage theft complaint as a first step is hard for a shop-floor worker on their own. Wofford's findings reveal that filing a complaint depends on an

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<sup>673</sup> Jason M. Solomon, 'Law and Governance in the 21st Century Regulatory State' (2008) 86 *Texas Law Review* 819, 822.

<sup>674</sup> Braithwaite, Charlesworth and Soare (n 152) 263.

<sup>675</sup> Claire B. Wofford, 'The Effect of Gender and Relational Distance on Plaintiff Decision Making in the Litigation Process (2017) 51(4) *Law and Society Review* 966, 967-968.

'individual's location in the social hierarchy.'<sup>676</sup> Unless with the support of labour representatives, a woman worker alone may not raise a claim. In addition to their weak power position, there are several other practical hurdles that women workers have to overcome. More specifically, Felsteiner, Abel and Sarat identify challenges around 'naming, blaming and claiming' aspects of a complaint that an aggrieved party has to establish.<sup>677</sup> Often in the case of women workers it is hard for them to identify a wage problem.<sup>678</sup> In contrast, in my case study, a majority of women workers were aware that they were deprived of their rightful wage. In fact, they felt the wage reductions in having to cut down their daily expenses. Their problem was 'blaming' the employer due to either loyalty or job security related worries.<sup>679</sup> Esha, for instance, a shop-floor worker, shared how her income, even if it is only the basic salary, is crucial during the pandemic to feed her parents and siblings at home.

Further, the complexity of the globalised apparel supply chain can lead to several confusions in naming the employers, as wage theft complaints use a strategy of expanded liability. In this case study the labour representative argued that the decisions of international buyers have a direct impact on the workers and, therefore, should be considered joint-employers. It is on this basis that they filed joint-employer liability claims.

What flows from this discussion is that collective voice has an impact in the sense of effectively launching demands for just wages. Findings from other studies confirm this. Lee and Smith in their research on regulatory approaches to wage theft argue that 'worker movements can push agencies to reconceive of their approach and make existing anti-wage theft strategies more effective'.<sup>680</sup> They claim that efficacy can be attained by (a) differentiating between employers, (b) increasing cooperation with employer networks and worker organisations.<sup>681</sup> This harnessing power enabled the wage theft campaign to progress from the complaint stage.

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<sup>676</sup> Wofford (n 675) 967.

<sup>677</sup> William Felsteiner, Richard Abel and Austin Sarat, 'The Emergence and Transformation of Disputes: Naming, Blaming and Claiming' (1981) 15(3/4) *Law and Society Review* 631, 631.

<sup>678</sup> Charlotte Alexander and Arthi Prasad in their study identified a higher number of workers to have had wage theft problems when only a lower number had claimed to have issues; see Charlotte Alexander and Arthi Prasad, 'Bottom Up Workplace Law Enforcement: An Empirical Analysis' [2014] 89 *Indiana Law Journal* 1069, 1085.

<sup>679</sup> Interview with Esha, a shop-floor worker in a garment factory in Minuwangoda, Western Province of Sri Lanka, held 05.09.2021.

<sup>680</sup> Lee and Smith (600) 764.

<sup>681</sup> Lee and Smith (600) 764.

In relation to wage theft complaints in Sri Lanka, the strategic wage theft complaints illustrate how workers leverage power through transnational actor networks. In Sri Lanka, the wage theft complaints have been successful in coming through the labour process and being referred to arbitration, without simply being dismissed at the outset. Even though during interviews with officers from the Labour Department of Sri Lanka they suggested that holding international fashion brands accountable will only be possible if the brands are prosecuted in their own jurisdictions,<sup>682</sup> the international movement on wage theft complaints has proved that there is some hope for Sri Lankan workers. However, to successfully move from complaints to action and implementation, there needs to be international state-level consensus on accountability of international buyers for the rights violations of shop-floor workers for their brands.

In the case study, complaints by Sri Lankan unions combine with a bigger transnational joint employer-liability movement. This matter collectively involves other wage theft complaints by worker organisations in eight destinations including Bangladesh and Asian and African countries.<sup>683</sup> These complaints have strong similarities to Sri Lanka's cases. In all eight cases, over 9,000 workers have not been paid the full amount of their wages. The complaints concern 16 international brands that the workers stitch for.<sup>684</sup> On a positive note, three brands (H&M, Next and New Look) 'have indicated that they are engaging directly with local unions, worker representatives or labour groups involved in the cases.'<sup>685</sup> Therefore, Sri Lankan apparel worker representatives can draw inspiration from this and remain hopeful.

### 6.4.3 Advocacy network on wage theft

Having a labour advocacy network was instrumental in lodging the wage theft complaints. The transnational network included workers, trade unions, women's and civil society organisations and regional and transnational labour coalitions all demanding justice for unpaid workers.

This example resonates with regulatory scholarship that highlights how the support of or regulation by private and social actors is critical for the success of any regulatory regime, not just governmental regulation. Writing on the idea of advocacy networks,

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<sup>682</sup> Field interviews conducted with the officers of the Legal Division of the Department of Labour, Sri Lanka, held 27.03.2022.

<sup>683</sup> Wage theft and pandemic profits report (n 667) 18-23.

<sup>684</sup> Ibid 4.

<sup>685</sup> Ibid 4.

Lange and Haines explore the regulatory capacity of a social sphere as it links with states and markets. With an emphasis on 'harnessing the social power' they recognise the importance of civil society for the regulation of social and economic risks posed by and for business activity.<sup>686</sup> In that same vein, I argue that women apparel workers can assume such power by harnessing influence and resources across the globalised labour networks. The transnational advocacy network on wage theft where local and transnational labour organisations participated in exposing wage injustices in apparel supply chains is a solid example of this.

In their book *Global Business Regulation* Braithwaite and Drahos map 'dense webs of influence' that influence a global regulatory regime by calling relevant actors in business and the state to comply with the standards.<sup>687</sup> Describing how these webs of influence could be 'webs of dialogue, coercion and/or, rewards', Peter Drahos states that webs of influence 'offers a more fine-grained explanation of how power is used within such networks to secure regulatory outcomes and bring about institutional change.'<sup>688</sup> In this case study, the value of this advocacy network is in providing the necessary attention, education, resources and power to the workers to press official complaints against the powerful employers and fashion brands.

Further, Forsyth's analysis on how different regulatory orders enable or disable agency and power of different stakeholders, and reflect on different institutional realities and underlying values and principles is important here.<sup>689</sup> I discuss this in combination with women's labour activism below.

#### 6.4.4 Adding women to labour networks

It is particularly interesting how women appear in this network, given the gender stereotypes, culture and social expectations around the role of women. Shanti Dairiam, a Malaysian feminist, in her analysis of culture and stereotyping in feminist struggles, discusses how only having the right rules in place will not result in change, although rules are essential. She states how individuals must have the capacity to take advantage of the opportunities that the laws offer. Nevertheless, culture conditions how women are positioned to take action to their best advantage in the same way as

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<sup>686</sup> Lange and Haines (n 33) 1-27.

<sup>687</sup> Braithwaite and Drahos (n 20), 13-14.

<sup>688</sup> Drahos (n 149) 15

<sup>689</sup> Miranda Forsyth, *A Bird That Flies with Two Wings: Kastom and state justice systems in Vanuatu* (ANU Press 2009); Miranda Forsyth, 'Legal pluralism: The regulation of traditional medicine in the Cook Islands' in Peter Drahos ed, *Regulatory Theory* (ANU Press, 1st ed, 2017).

men.<sup>690</sup> She discusses how this limits women's options in public life and leads to structural inequality. In this case study, gender struggles and the culture of excluding women from seeking legal pathways for redress feature prominently. I expand on this in the context of wage theft complaints and the campaign to shed light on the struggles of women workers in harnessing labour networks.

A gender lens is significant for this case study for two reasons. First, the case concerns a disproportionate number of women workers. Second, it captures the resistance by women labour leaders and women workers who go against the stereotypes of docile and less-troublesome workers, a framing of women workers that I discussed in Chapter 2. We saw also in Chapter 4 that women are generally excluded from the formal labour bargaining mechanisms and have to rely on alternate forms of voice to negotiate their rights, which I call collective voice. This case study provides rich data about the involvement of women workers and their representatives (such as women's organisations and a handful of women trade union leaders) under governance networks.

Women's solidarity in this case study can be analysed in two ways: first, it dispels the myth that women need saving by others.<sup>691</sup> At the same time, my analysis does not undermine the value of cooperation from feminist and non-feminist organisations and actors to make these wage theft advocacy networks possible. Second, it documents links to feminist as well as other goals that drive the campaign.

In relation to the first point, the lodging of the wage theft complaints by two women labour leaders and their unions appears interesting and unconventional. This not only signals the capacity of these women leaders to initiate a labour claim without the support of male trade unions, but also evinces their ability to garner the support of the workers. For instance, signing up a list of claimants for a wage theft complaint is hard due to the various barriers to grassroots-level labour organising. The network is an example of women workers' and women labour leaders' willingness to work collaboratively alongside conventional labour institutions such as male-led trade unions.

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<sup>690</sup> Shanti Dairiam, 'CEDAW, Gender and Culture' in Rawwida Baksh and Wendy Harcourt (eds), *The Oxford Handbook of Transnational Feminist Movements* (Oxford University Press, 2015) 371.

<sup>691</sup> See Linda Carty and Chandra Mohanty 'Mapping Transnational Feminist Engagement: Neoliberalism and Politics of Solidarity' in Rawwida Baksh and Wendy Harcourt, *The Oxford Handbook of Transnational Feminist Movements* (Oxford University Press, 2015) 91.

Second, a feminist vision and similar values is key for feminist movements to solidify. The extent to which feminist values link some actors in the network cannot be overlooked. For instance, the two women's unions that lodged the wage theft complaint are a part of a local feminist labour network. At the same time, AFWA, a regional labour collective, is also driven by, among other labour values, feminist values, and is committed to empowering women workers and their organisations in Sri Lanka and the region.<sup>692</sup>

This case study differs from the other case studies for the different strategies adopted by the worker organisations and in how they utilise the global regulatory structure to protect the interests of the apparel workers based in Sri Lanka. It is similar to other case studies for the prominent role played by women's labour organisations, newly established women-led unions and women labour leaders, as discussed in Parts 2 and 3 above.

#### 6.4.5 Regulatory influence by women workers and their representatives in this case study

Regulatory influence in this case study could be first evaluated at the national level. As mentioned in Part 2, joint-employer liability claims filed by the women's labour unions and organisations mark an important milestone. This action pushes the limits of the national labour law by demanding that the authorities need to consider the power over the apparel brands and re-consider their connection to factory workers in Sri Lanka. The fact that these complaints are referred to arbitration shows that the claims had a legitimate basis. During the hearings it will influence how we perceive joint-employer liability in the context of globalised apparel supply chains.

Worker organisations use transnational networks to (a) acquire resources and expertise and (b) to strategically leverage worker rights across supply chains to the international level, e.g. campaigns against international fashion brands for violating worker rights in the global south manufacturing destinations. Nevertheless, it has had slow progress like other labour campaigns. Compared to the effort invested by the worker organisations and the patience of the workers, the progress is frustratingly slow.

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<sup>692</sup> Interview with Abiramy Sivaloganathan, South Asia Coordinator, the Asia Floor Wage Alliance, held 10.08.2021.

At the global scale, the ability of collective voice to have regulatory influence on the behaviour of the brands remains partially positive. Since the pandemic-related wage theft campaign is still progressing, we can look at other examples to understand potential regulatory influence. Brands such as Boohoo have been silent about paying their workers a living wage, despite a 2019 Parliamentary inquiry by the Environmental Audit Committee in the United Kingdom as well as demands by consumers and international labour organisations such as Labour Behind the Label.<sup>693</sup> On the other hand, another international brand, Patagonia has committed to implement a living wage. Patagonia amended its Supplier Workplace Code of Conduct to reflect this commitment and to assist local suppliers to fulfill it.<sup>694</sup> This signals potential for change by labour campaigns and committed labour networks.

The key limitation in this case study is procedural barriers for filing labour claims. Although the workers have filed wage theft claims at the national level in Sri Lanka, it took two years since 2021, for the case to be referred for arbitration in 2023. This poses a major challenge in making progress with labour complaints and the litigation process. During the time between the incident, lodgment of the complaint and a possible resolution, there is a major time gap within which many things in workers' lives could change including their employment status. Therefore, elongated enquiry and litigation periods should be reformed in the interests of the workers in order to offer timely solutions to labour issues.

## 6.5 Conclusion

The case study presented in this chapter illustrated two pathways in which women workers actioned collective voice to negotiate their wage rights during the COVID-19 pandemic in 2020. It then traced how women workers organised to seek redress to wage injustices in a system where collective labour bargaining was ineffective.

The chapter discussed how the effective implementation of labour rights and negotiation is often regarded as necessary step to ensure just wages and regulate wage theft. While regulating wage theft in the global north countries takes different forms from rules to enforcement mechanisms, the chapter highlighted how Sri Lanka does not have dedicated wage theft laws. Women workers must battle to safeguard

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<sup>693</sup> Wage theft and pandemic profits report (n 667) 22.

<sup>694</sup> Patagonia, 'Supplier Workplace Code of Conduct', Clause VII  
<[https://eu.patagonia.com/on/demandware.static/-/Library-Sites-PatagoniaShared/default/dwa5177359/PDF-US/Patagonia\\_COC\\_English\\_02\\_13.pdf](https://eu.patagonia.com/on/demandware.static/-/Library-Sites-PatagoniaShared/default/dwa5177359/PDF-US/Patagonia_COC_English_02_13.pdf)>.

their right to just wages in this context through other pathways such as wage theft complaints and labour advocacy networks. The discussion focused on the other forms of collective worker voice when the official labour bargaining mechanisms do not offer solutions.

I discussed how having the right rules is important, but the rules will be ineffective without committed labour activists and advocates who support workers to enforce their rights. It examined how during the pandemic labour representatives in Sri Lanka responded to and filed labour complaints on wage theft. Even though this is a single act at the national level, the advocacy and the campaign around it has the potential to translate into legal and policy interventions in the area to prevent future wage injustices in Sri Lanka. Similarly, advocacy on the complaints can act as deterrence for companies in other sectors and manufacturing industries within the country.

The chapter finally focused on the complexity of apparel supply chains and how that can pose barriers to rights claiming. I discussed the importance of labour networks in actioning collective voice. As a minor theme, I discussed how different norms and rights framing can allow workers to gain influence in wage theft regulation. Human rights framing is crucial to attract the attention of the consumers as well as the international fashion brands. As a key focus, I also considered how women workers participated in labour organising and rights claiming. Here key considerations were using gender as a lens and understanding how structural injustices can further discriminate against women in the issue of wage injustices. The analysis of wage theft complaints and the advocacy networks shows that women workers have the potential to influence employers, states and international buyers with the right leadership and purposeful and organised transnational support networks.

The next chapter examines the last instrumental case study of this dissertation. It examines the collective voice of women workers in navigating safety and health violations in workspaces.

## Chapter 7: Negotiating safe and healthy workspaces

### 7.1 Introduction

On 3 October 2020, a woman worker employed at Brandix Minuwangoda in Sri Lanka was reported to have contracted COVID-19.<sup>695</sup> About 950 out of 1400 workers were affected by the virus which they contracted at this factory.<sup>696</sup> During an interview for this study, Leela, a worker from this factory, and a former member of the factory's employees' council, shared her experience as a shop-floor worker:

Before the COVID outbreak occurred most of our girls [women workers] complained that they had headaches, and they kept their heads on the machines... We did not know what it was initially, we did not suspect it to be COVID; we thought it was viral fever. There were so many sick girls and there was no one to take care of them /to attend to them but they were required to perform and cover their daily target. They took short breaks and then got back to stitching.<sup>697</sup>

Her statement points to how the COVID-19 pandemic was a time when factory workers worked under precarious conditions to sustain the global supply chain, as well as workers' inability to effectively negotiate their work conditions and leave.

During the pandemic in 2020, Sri Lanka's apparel industry, alongside their textile and other orders, shifted to producing Personal Protective Equipment (PPE) to meet the surging global demand and to remain profitable. This was after a period of shutdown in April 2020 which had a significant blow on the production and future sustainability of the factories.<sup>698</sup> Literature and other sources highlight how, from February–June 2020, Sri Lanka's PPE production was second only to China.<sup>699</sup> Harshi from the Brandix Minuwangoda factory stated how workers had to continue to complete a PPE order despite being sick. 'At that time, we were doing a mask order. We were told to work for

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<sup>695</sup> Interview with Leela, a shop-floor worker from the Brandix Minuwangoda Factory, held 05.09.2021.

<sup>696</sup> Witnesses testifying before the Magistrate's Court of Minuwangoda declared the numbers based on PCR testing for all workers at the Brandix Minuwangoda Factory between, 4<sup>th</sup> and 5<sup>th</sup> October 2020. Testing was conducted by the Office of the Director of Health Services, Gampaha, Sri Lanka. Case B/12355/20 [2021], Magistrate's Court – Minuwangoda, Sri Lanka, Clause 6.

<sup>697</sup> Interview with shop-floor worker Leela from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

<sup>698</sup> ILO Sectoral Report, *COVID-19 and the textiles, clothing, leather and footwear industries* (ILO brief, 8 April 2020).

<sup>699</sup> Kanchana N Ruwanpura and Muttukrishna Sarvananthan, 'CoVID-19 and Sri Lanka: From Outlier to Uniformity?' (2021) *University of Edinburgh Repository*, 4; Kanchana N Ruwanpura, COVID-19 Exposes Faultlines in Sri Lanka's Apparels Sector', *Jamhoo* (Blog post, 28 Jul 2023)

<<https://www.jamhoo.org/read/covid-19-exposes-faultlines-in-sri-lankas-apparels-sector>>.

our country, so workers who were not seriously ill had Panadol and continued to work.’<sup>700</sup>

Leela’s and Harshi’s experiences resonated with those of other workers, from different factories in and around Colombo, Sri Lanka that I discuss in this chapter.<sup>701</sup> Further, it was confirmed that the virus spread outside the factory to the community when a secondary cluster of this outbreak emerged from a local fish market.<sup>702</sup> Labour organisations claim that the outbreak resulted in a countrywide second wave of COVID-19.<sup>703</sup>

This chapter examines how women workers negotiated their right to workplace health and safety by demanding better working conditions during this incident. The case study focuses on a mass COVID-19 outbreak at the Brandix Minuwangoda factory and unpacks health and safety-related incidents at other garment factories during the COVID-19 pandemic. Following the outbreak, there were two national-level investigations and a private inquiry with workers organising in different ways to leverage pressure on the company to comply with work health and safety measures and effective reporting and rights negotiation mechanisms for workers.

This case study is significant for multiple reasons: first, for its impact on the workers as well as the larger population of Sri Lanka and the lack of response from the duty bearers such as the company and the state. It outlines a law–practice gap in Sri Lanka’s legal and regulatory framework on occupational diseases in factories including those in the apparel industry. Second, it shows how the worker advocacy and network invoked the global financial governance regime, outside the international labour governance framework, to improve corporate accountability. Third, the case study provides a new lens on the collective voice of women workers and its regulatory influence by examining the actions taken by workers and labour representatives, their advocacy, their transnational coalitions, and the pressure points they targeted in drawing attention to this issue. It differs from the other two case studies for the different strategies workers adopted in actioning collective voice: in this case study, workers

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<sup>700</sup> Interview with shop-floor worker Harshi from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

<sup>701</sup> Interview with Sandi, a shop-floor worker in a garment factory located within the Katunayake EPZ, Sri Lanka, held 08.11.2021.

<sup>702</sup> Chathuranga Samarawickrama, ‘Peliyagoda Fish Market cluster; the largest secondary cluster: Dr Samaraweera’ *Daily Mirror* (Colombo, 23 October 2020) <[https://www.dailymirror.lk/breaking\\_news/Peliyagoda-Fish-Market-cluster-the-largest-secondary-cluster-Dr-Samaraweera/108-198570](https://www.dailymirror.lk/breaking_news/Peliyagoda-Fish-Market-cluster-the-largest-secondary-cluster-Dr-Samaraweera/108-198570)>.

<sup>703</sup> War on Want News and Analysis, ‘Garment Workers on The Frontline of the pandemic: Outbreak in Sri Lanka’ (Web page, 15.10.2020) <<https://waronwant.org/news-analysis/garment-workers-frontline-pandemic-outbreak-sri-lanka>>.

leveraged the global corporate governance structure to hold corporate actors accountable for their actions. Accordingly, the chapter explores how the pandemic prompted women workers to resist and respond to health and safety rights violations in factories, what channels they used to negotiate their right to safe and healthy workspaces, and what implications this had for workers making regulatory influence across apparel supply chains.

Following this incident, there were reports of several subsequent COVID-19 outbreaks in other garment factories in Sri Lanka. Given that the Brandix Minuwangoda factory belongs to one of the two largest apparel companies in Sri Lanka, how the company handled it and the worker responses are important considerations in this case study. Further, the case study represents a process initiated by workers at the factory level extending to transnational complaints and a labour campaign around it. Although the complaints at the transnational level are still in progress, the process leading up to the official lodgment of the complaint at the International Financial Corporation (IFC), including various complaints at the national level in Sri Lanka, advocacy and the transnational campaign, demonstrates several milestones attained by workers and labour organisations in this case study.

This chapter is structured in three parts. In Part 1 I offer a brief background to the case study. Part 2 describes the facts of the case study in detail and the actions taken by the workers. Finally, in Part 3, I analyse the data to draw findings on collective voice in this case study. The chapter develops as an assessment of labour networks' successes and disappointments in claiming the right to health and safety at work. It concludes with some key observations about the possibilities and limitations of negotiating workplace health and safety outside official labour bargaining mechanisms in globalised apparel supply chains during a pandemic.

### 7.1.1 Fieldwork for this case study

This case study is based on 25 interviews with different categories of interview respondents. This includes a total number of 12 worker interviews, among them six women workers from the Brandix company that owns the Minuwangoda factory, where the COVID outbreak happened.<sup>704</sup> Out of this, two workers were from the Minuwangoda factory itself. I also conducted interviews with four women's organisations and one trade union which led the grassroots to transnational campaign.

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<sup>704</sup> See Appendix B.

Four other trade union leaders who supported the campaign were also my interview respondents. These accounts of worker representatives were supplemented by one interview with a regional labour coalition that the local organisations partnered with.

In order to understand the employers' point of view, I use an interview with the Employers' Federation of Ceylon (EFC). I have used company annual reports and other sources to further supplement the employers' approach to this issue. I draw from interviews with two state officials from Sri Lanka's Department of Labour. These two interviews offered insights into an investigation led by the Department. Finally, interviews with lawyers and activists describe their experiences of this incident and the related transnational campaign on this matter.

The interviews were a mix of in-person and remote. All interviews were conducted during 2021 and 2022. All worker interviews were phone interviews due to health-related and political risks for the workers and their fear of reprisal, which I describe in Chapter 3. I have used pseudonyms for them throughout the chapter. Further, I have anonymised the state officials upon their request.

## 7.2 Part 1: Exploring responses to work health and safety breaches during the pandemic and labour bargaining

Effective implementation of health and safety guidelines in work contexts should have drawn the attention of both the employers and the state long before COVID-19. With increasing reports on health and safety in factory settings during the pandemic and pockets of worker resistance, it was an opportune moment for labour representatives to advocate for workplace health and safety rights. In this section, I describe the worker experiences during COVID-19 outbreaks in factories, an ineffective formal regulatory framework for managing a mass COVID-19 outbreak and its effects on women workers, and what prompted women workers to resist and respond to health and safety rights violations in factories.

### 7.2.1 Background to the case study

Following a major COVID-19 outbreak in the Brandix Minuwangoda factory, there were outbreaks in several other factories across the country that affected many workers.<sup>705</sup>

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<sup>705</sup> Human Rights Watch, 'Sri Lanka: Protect Garment Workers' Rights During Pandemic: Compromised Safety, Pay Cuts, Representatives Threatened' (Web page, 12 July 2021) <<https://www.hrw.org/news/2021/07/12/sri-lanka-protect-garment-workers-rights-during-pandemic>>.

During Sri Lanka's lockdown in March and April of 2020, manufacturers could function with the approval of the relevant authorities.<sup>706</sup> While the Ministry of Health issued instructions on COVID-safe practices under the Operational Guidelines on Preparedness and Response for Outbreak for Work Settings,<sup>707</sup> the implementation of the guidelines was left to the factories. As a result, most factories prioritised production over the health and safety of workers.<sup>708</sup> In these circumstances, garment workers were treated as essential workers who were expected to report to the factory, even during COVID-19 social distancing and other restrictions.<sup>709</sup>

The Brandix Minuwangoda factory, is one of 23 factories belonging to a multinational company with Sri Lankan ownership. In operation for the past 50 years,<sup>710</sup> Brandix owns apparel-producing factories in Sri Lanka, India, Bangladesh, Haiti and Cambodia. Its major supplier destinations are the USA, Europe, UK, China and Japan.<sup>711</sup> Brandix group employs over 53,000 workers across the various countries, stitching active wear, casual wear, intimate wear, loungewear and nightwear,<sup>712</sup> and claims to be the largest employer in Sri Lanka's export sector,<sup>713</sup> with a majority of women workers in the workforce. Therefore, the company's economic contribution as well as its power over the state and workers is significant.

The factory is located in a small suburb called Minuwangoda in the Gampaha District of the Western Province of Sri Lanka. As it is remotely located and not within an Export Processing Zone (EPZ), the factory is embedded into the village and the livelihoods of the villagers who either work at the factory or provide goods and services to the factory or its employees, e.g. by setting up boarding houses and road-side grocery shops. Workers boarded in Minuwangoda, working in the factory, travelled back home and unknowingly carried the virus to their families in various towns across Sri Lanka and

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<sup>706</sup> For the Garment factories located inside EPZs, The Board of Investment (BOI) Sri Lanka assisted the companies in obtaining relevant approvals from the authorities. BOI also provided assistance to adhere to the health regulations and operational guidelines: Information provided by the Research and Policy Advocacy Department, Board of Investment (BOI) Sri Lanka during fieldwork in March 2022.

<sup>707</sup> Operational Guidelines on Preparedness and Response for Covid-19 Outbreak for Work Settings (Interim Guidance, 17 April 2020)

<[http://eohfs.health.gov.lk/occupational/images/2020/Workplace\\_COVID\\_guideline\\_for\\_web\\_20200320.pdf](http://eohfs.health.gov.lk/occupational/images/2020/Workplace_COVID_guideline_for_web_20200320.pdf)>.

<sup>708</sup> Human Rights Watch Sri Lanka: Protect Garment Workers' Rights (n 595).

<sup>709</sup> Subhangi M. K, Herath, *The Impact of The Covid-19 Pandemic on Women Garment Workers in Sri Lanka's Free Trade Zones (FTZS) Business and Human Rights Asia* (Report, 2022) 10.

<sup>710</sup> Brandix, About Us (Company website, 2022) <[https://careers.brandix.com/content/About-Brandix/?locale=en\\_US](https://careers.brandix.com/content/About-Brandix/?locale=en_US)>

<sup>711</sup> Brandix, *Sustainability Report 2020–2021* (Company Annual Report, 2021) 11 <<https://brandix.com/images/brandix-sustainability-report-2020-21.pdf>>

<sup>712</sup> Brandix, Products and Solutions (Company website, 2022) <<https://brandix.com/inspired-solutions/what-we-do/apparel-manufacture>>.

<sup>713</sup> Brandix, Careers (Company website, 2022) <<https://brandix.com/inspired-people/careers/current-openings>>.

the community in the vicinity, including a local fish market.<sup>714</sup> The incident drew the attention of the authorities as a matter of national concern. This outbreak was also significant for its impact on the larger population of Sri Lanka as it happened just as Sri Lankans were resuming their normal life following a lockdown that ended in May 2020.<sup>715</sup> This outbreak preceded many other outbreaks that happened later in factories located within the Katunayake EPZ and other zones.

Reports revealed that the workers from the factory 'were experiencing respiratory issues from 20<sup>th</sup> September,'<sup>716</sup> before the first case was detected in October 2020.<sup>717</sup> According to Leela who I quoted above, workers' symptoms and complaints of illness were overlooked by the management.

The workers from the Brandix Minuwangoda factory shared with me that the management did not pay attention to their repeated complaints and that the workers 'had been under pressure to finish a large order at the time.'<sup>718</sup> This account was echoed by many women workers from the factory who spoke to the media at the time as well.<sup>719</sup> Harshi, a woman worker from the factory, mentioned that the managers did not permit them to go home or to consult a doctor at the hospital; instead, they were 'sent to the sick room where the workers were given Panadol [paracetamol] and asked to rest'.<sup>720</sup> Leela said, 'Our bosses consulted doctors, but did not permit us to leave work early to see the doctor.'<sup>721</sup> Worker complaints through the existing management channels received no response from the factory managers at the time.

Workers from other factories in the nearby Katunayake EPZ shared some of the similar hardships they underwent due to the spread of COVID to their factories. Chandi spoke

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<sup>714</sup> Smriti Daniel, A Pillar of Sri Lanka's Economy, Garment Workers Ostracised After A Covid Outbreak At A Factory, *Huffpost* (Online news, 15 November 2020) <<https://www.huffpost.com/archive/in/entry/sri-lankas-garment-factory-workers-coronavirus-pandemic-in-5fae6868c5b6b363336975a2>>.

<sup>715</sup> Jamila Hussain, "'Brandix did not manufacture COVID. Our 'girls' are going through hell' – Brandix management", *Daily Mirror* (Colombo, 19 October 2022) <<https://www.dailymirror.lk/news-features/Brandix-did-not-manufacture-COVID-Our-girls-are-going-through-hell-brandix-management/131-198173>>.

<sup>716</sup> Zulfick Farzan, 'Divulapitiya apparel worker NOT origin of Minuwangoda Brandix cluster', *News First* (Colombo, 07 October 2021) <<https://www.newsfirst.lk/2020/10/07/divulapitiya-apparel-worker-not-origin-of-minuwangoda-brandix-cluster/>>.

<sup>717</sup> Asia Floor Wage Alliance (AFWA) and Global Labour Justice – International Labour Rights Forum (GLJ-ILRF), *Voices from the Field: Reprisals and repression of garment worker unions and worker organizations during Covid-19 in Sri Lanka* (Report, 11 April 2022), 9 <<https://asia.floorwage.org/reports/voices-from-the-field-reprisals-and-repression-of-garment-worker-unions-and-workers-organizations-during-covid-19-in-sri-lanka/>>.

<sup>718</sup> *Voices from the Field* report (n 717) 11.

<sup>719</sup> Shihar Aneez, 'Garment workers on front line of Sri Lanka Coronavirus outbreak', *Reuters* (online, 4 November 2020) <<https://www.reuters.com/article/idUSKBN27K08Y>>.

<sup>720</sup> Interview with shop-floor worker Harshi from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

<sup>721</sup> Interview with shop-floor worker Leela from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

about how the workforce in her factory was reduced during the pandemic, using the pandemic-induced constraints as the reason. She said,

When the pandemic started, our management started saying that there was no sufficient production and that it was too costly, and too many workers. One time, they laid off two workers with compensation and delegated the work of four to two workers. Since 2018 the management had compiled a 'compensation list' and removed workers. It is during these removals that COVID happened. Workers who had worked for less than 6 months did not receive compensation.

Labour organisations claimed unfair dismissal and advocated for compensation for workers, as was raised by Chandu, in relation to wage theft claims discussed in section 5.3.1 of Chapter 5.

On top of job loss, low pay and economic hardships caused by the pandemic women workers especially had to bear stigma and harassment.<sup>722</sup> The first woman worker identified with COVID-19 from the Brandix Minuwangoda factory was harassed online as well as offline. Sri Lanka's Chief Epidemiologist, later addressing the media, confirmed that patient-zero, a woman worker at Brandix, who the media identified, was not the origin of the cluster.<sup>723</sup> The worker had already received blame for spreading the virus from her village community by then.<sup>724</sup> Harshi, referring to the plight of this woman worker, said,

There was a lot of stories circulating about her that she was immoral and the virus was sexually transmitted to her. The truth wasn't that. All of us got it and it wasn't that all of us slept around. With all that media fabricated about her, she was angry at the factory and the management.<sup>725</sup>

Further, her family had to face backlash because of this.<sup>726</sup> Her husband explained to the media that she was a committed worker and tried to apply for leave when she had

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<sup>722</sup> Shyamain Wickramasingha and Geert De Neve, 'The Collective Working Body: Rethinking Apparel Workers' Health and Well-being during the COVID-19 Pandemic in Sri Lanka' (2022) 13(3) *Global Labour Journal* 322.

<sup>723</sup> Zulfick Farzan, 'Divulapitiya apparel worker NOT origin of Minuwangoda Brandix cluster', *News First* 07 Oct 2021, <<https://www.newsfirst.lk/2020/10/07/divulapitiya-apparel-worker-not-origin-of-minuwangoda-brandix-cluster/>>.

<sup>724</sup> 'Social Media Ruined Us – Husband of Minuwangoda Brandix Factory Worker', *Daily Mirror* (Colombo, 14 October 2020) <<https://www.dailymirror.lk/news-features/%E2%80%9CSocial-media-ruined-us%E2%80%9D---husband-of-Minuwangoda-Brandix-factory-worker/131-197859>>.

<sup>725</sup> Interview with shop-floor worker Harshi, from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

<sup>726</sup> 'Social Media Ruined Us' – Husband of Minuwangoda Brandix Factory Worker' (n 613).

fever but 'the company management did not approve her leave.'<sup>727</sup> He had also shared that it is hard for them to bear damaging and hurtful social media publicity about his wife. This was a hidden cost of the factory outbreak that the apparel worker had to bear on her own.

The outbreak had a broader impact, beyond the Brandix Minuwangoda factory. At the time, women apparel workers were already stigmatised as there was fear that they could carry the virus and spread to others. There had already been several other COVID-19 outbreaks in garment factories in the Katunayake EPZs. This stigma and fear were instrumentalised by various individuals to harass women garment workers. The stigmatisation of garment factory women, which previous literature discussed,<sup>728</sup> had resurfaced during this outbreak and, as a result, women workers especially faced many difficulties on top of pandemic hardships.<sup>729</sup> During interviews for this study, women workers stated that migrant workers could not return to their homes in different parts of Sri Lanka due to resistance and harassment by their neighbours against garment women.<sup>730</sup> Some apparel workers were blamed, threatened, and verbally harassed in public places such as grocery shops and vaccine centres.<sup>731</sup> Therefore, public awareness and empathetic understanding of factory outbreaks was necessary.

Other women workers from the factories discussed their fears of spreading the virus to their loved ones. Ratna from the Katunayake EPZ shared, 'At that time, I was boarded at a house of someone whom I knew. When I got a positive PCR test report, I was so worried that the children and old people in that house will catch COVID from me.'<sup>732</sup> Therefore, contracting the virus meant that it could spread to their family and loved ones. Women workers lived with this burden.

Worker organisations highlighted how the existing workplace grievance handling and reporting mechanisms were ineffective in addressing workplace COVID-19-related grievances and complaints.<sup>733</sup> Complaints were tied to sick leave and lack of effective

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<sup>727</sup> Social Media Ruined Us' – Husband of Minuwangoda Brandix Factory Worker' (n 726).

<sup>728</sup> Lynch (n 94), Hewamanne (n 95).

<sup>729</sup> Wickramasignha and DeNeve (n 722) 322-339.

<sup>730</sup> Interview with Rani, a shop-floor worker from the Biyagama EPZ, held 11.09.2021; Also see Hearth (n 597) 10-11.

<sup>731</sup> Interview with Champa, an agency worker in garment factories in and around Katunayake and Biyagama EPZs of Sri Lanka, held 07.04.2022; Interview with Sandi, shop-floor worker in a garment factory located within the Katunayake EPZ, Sri Lanka, held 08.11.2021.

<sup>732</sup> Interview with Ratna, a shop-floor worker from a factory located within the Katunayake EPZ, Sri Lanka, held 05.09.2021.

<sup>733</sup> Voices from the Field report (n 717) 6.

protective gear, e.g. surgical masks as opposed to cloth masks for shop-floor workers. Not having bargaining power and the leverage to negotiate pandemic-related health and safety risks, most shop-floor workers in factories absorbed these shocks. As a consequence, they experienced economic loss, and risks related to both their physical and mental health such as fear, stigma and helplessness. The need for job security and income for their family to survive the pandemic kept them going to the factories.

## 7.2.2 Work health and safety rights negotiations during COVID-19 under the existing regulatory framework: The law–practice gap

It is important to consider this incident alongside the formal legal and regulatory framework governing health and safety in factories in Sri Lanka, to understand the rights and remedies that were available for workers to negotiate without having to assume risks at work. An outbreak like this would typically fall under workplace health and safety or occupational injury law. However: (a) the existing legal provisions on occupational safety in Sri Lanka did not directly cover viruses like COVID creating a gap in the law; (b) this left no leverage for workers to negotiate with their employers for being affected by COVID-19, in a system where collective bargaining is weak. Therefore, the workers could not use the existing bargaining mechanisms to negotiate their right to workplace health and safety.

An occupational disease is a type of ‘occupational injury’ resulting from a work-related accident. The ILO standards define an occupational disease as ‘any disease contracted as a result of an exposure to risk factors arising from work activity.’<sup>734</sup> The diseases are known to arise out of exposure to substances and dangerous conditions in employment.<sup>735</sup> The identification of diseases as occupational is for the purpose of their prevention and compensation. In most South Asian countries including Sri Lanka, India and Pakistan, occupational health and safety legislation dates back to the 1930s during British rule and colonialism, which signals a need for law reform.<sup>736</sup>

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<sup>734</sup> Two main elements are present in the definition of occupational disease: 1) the causal relationship between exposure in a specific working environment or work activity and a specific disease; and 2) the fact that the disease occurs among a group of exposed persons with a frequency above the average morbidity of the rest of the population: International Labour Organisation, *Diagnostic and exposure criteria for occupational diseases: Guidance notes for diagnosis and prevention of the diseases in the ILO list of occupational diseases* (Report, revised 2010).

<sup>735</sup> *The Employment Injury Benefits Recommendation 1964* (No. 121) (Sri Lanka), paragraph 6(1)

<sup>736</sup> E.g. *Factories Act, 1934* (Act XXV of 1934) and *Employer's Liability Act 1938* (No. 24 of 1938) of India and *Factories Act, 1934* (XXV of 1934) and *Fatal Accidents Act 1855* (No. 13 of 1855) of Pakistan.

On point (a) above, Sri Lanka does not have a national standard for workplace health and safety for workplace injury compensation for workers.<sup>737</sup> On top of that, the two key pieces of legislation that are usually drawn upon for redress and compensation for workplace injury did not cover COVID-19. The national legal and regulatory framework for workplace health and safety in the apparel industry comprises the Factories Ordinance No. 45 of 1942, Workmen's Compensation Act No. 19 of 1934 and the related policy framework. This legislation succeeded the occupational health and safety legal framework which was first drawn up in 1912 with the Medical Wants Ordinance. This previous law laid down focused directions for medical wants of the labourers in the plantations and estates of colonial Sri Lanka.<sup>738</sup>

The Factories Ordinance of Sri Lanka<sup>739</sup> provides for health safety and welfare at the workplace and industrial diseases in its Parts V and VI, but the law does not cover outbreaks of diseases inside factories. Sections 51–58 in Part V of the Factories Ordinance cover substances and incidents such as dust and fumes, gas and vapour, vibrations, white phosphorus, weight and noise. These are primarily directions to the employer in maintaining the factory site. Section 63(1) of Part VI identifies, in a closed clause, an industrial disease as a chemical poisoning contracted in a factory.<sup>740</sup> Identification of an industrial disease can trigger a process of inspection by a medical practitioner,<sup>741</sup> investigations under the Criminal Procedure Code of Sri Lanka,<sup>742</sup> a formal investigation ordered by the Minister of Labour<sup>743</sup> or an order for investigation to a factory doctor.<sup>744</sup> Further, the broader policy framework entrusts the National Institute of Occupational Safety and Health as the policy arm under the Ministry of Labour and Trade Union Relations of Sri Lanka. However, the institution only 'empowers' stakeholders through training and awareness, with limited intervention in occupational health and safety violations.<sup>745</sup> Therefore, none of these provisions could capture a COVID-19 outbreak at factories.

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<sup>737</sup> ILO country Office for Sri Lanka and the Maldives, *In-depth Assessment of Employment Injury Compensation Arrangements in Sri Lanka* (Web report, 2016) <[www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms\\_636599.pdf](http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_636599.pdf)>.

<sup>738</sup> *An Ordinance to Consolidate and Amend The Law Relating To The Medical Wants of Labourers in Planting Districts* No. 9 of 1912 (Sri Lanka).

<sup>739</sup> *Factories Ordinance* No. 45 of 1942 (Sri Lanka).

<sup>740</sup> Factories Ordinance, s.63 – 'lead, phosphorus, arsenical or mercurial poisoning, or anthrax, contracted in any factory'.

<sup>741</sup> Factories Ordinance (Sri Lanka), s. 63.

<sup>742</sup> Factories Ordinance (Sri Lanka), s. 64.

<sup>743</sup> Factories Ordinance (Sri Lanka), s. 65.

<sup>744</sup> Factories Ordinance (Sri Lanka), s. 66.

<sup>745</sup> National Institute of Occupational Safety and Health – Statutory Board Under the Minister of Labour and Trade Union Relations (Web page 2023) <[https://www.niosh.gov.lk/index.php?option=com\\_content&view=article&id=4&Itemid=124&lang=en](https://www.niosh.gov.lk/index.php?option=com_content&view=article&id=4&Itemid=124&lang=en)>.

On the other hand, compensation for workplace injury in Sri Lanka is based on employer liability under the *Workmen's Compensation Act* of 1934. In section 4, the Act outlines employers' liability to pay compensation for specific diseases contracted by a worker described under its schedule 3.<sup>746</sup> This schedule provides for specific diseases caused by gases and chemicals but does not capture biohazards and viruses such as COVID-19. The workplace compensation scheme has not been updated for the last 11 years (except for non-substantial changes such as updated costs and age) and may have contributed to this gap. Further, the Act does not have an open provision that could be interpreted to cover a disease like COVID-19.

During interviews, state officials from the Department of Labour in Sri Lanka explained that, in relation to the Brandix outbreak, they could not initiate a legal complaint on the COVID-19 outbreaks against the company, because no law or statutory provision could form the basis for a complaint or litigation against the company.<sup>747</sup> They further explained this as the reason for action against the company by the state having to be limited to two national-level investigations that I explain below.

It was not only in Sri Lanka that COVID-19 revealed gaps in the regulatory frameworks governing worker health and safety. Internationally, COVID-19 compelled health authorities around the world to re-think how they defined occupational injuries and diseases. COVID-19 was outside the legal framework of many countries for occupational health and safety and caused a gap in employer accountability and workers' ability to seek redress when COVID-19 outbreaks at factories started impacting the workers and their families.

The approach taken by transnational standard-setting organisations was to observe the state practice or how the states were going to deal with it before declaring COVID-19 to be an occupational disease. The EU Advisory Committee on Safety and Health at Work (ACSH) reached an agreement on the need to recognise COVID-19 as an occupational disease in health and social care and in domiciliary assistance and, in a pandemic context, in sectors where there is an outbreak in activities with a proven risk of infection.<sup>748</sup> This agreement, they declared, 'is a strong political signal to recognise

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<sup>746</sup> *Workmen's Compensation Ordinance* (Sri Lanka) as amended in 1990, Schedule I; *Workmen's Compensation (Amendment) Act* No.10 of 2022 (Sri Lanka), s. 26.

<sup>747</sup> Interviews with the officers from the Legal and Special Investigations Division, Department of Labour in Sri Lanka, held 31.03.2022.

<sup>748</sup> European Commission, 'Member States, workers and employers agree on the need to recognise COVID-19 as an occupational disease' (Media release, 19 May 2022) <[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_3117](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3117)>.

the impact of COVID-19 on workers and acknowledge the crucial contribution of people working in health and social care, as well as other jobs that carry a higher risk of contracting COVID-19.<sup>749</sup> Australia, Canada and China also recognised COVID-19 as an occupational disease, subject to evidence of infection through a job role.

In February 2021, the International Labour Organization (ILO), observing state practice, declared that COVID-19, if contracted as a result of work, could be treated as an employment injury.<sup>750</sup> This meant that the workers were entitled to health care and, to the extent that they were incapacitated for work, to cash benefits or compensation.<sup>751</sup> The benefits and compensation could be claimed by their dependent family members in case of the death of the worker. However, these did not translate into action in Sri Lanka's context. The Ministry of Health guideline on preparedness and response to COVID-19 outbreak for work settings<sup>752</sup> mentioned above did not extend to liability and redress. While the operational guideline had clear health and safety guidelines for protection and prevention of spread, it delegated the action to individual workplaces and factories. In individual workplaces, workers reported that there were no official mechanisms to report their COVID-related grievances. The workplace COVID-19 control process was managed by employers with no role for the trade unions and worker organisations, even when they had members from the relevant factories.<sup>753</sup>

### 7.2.3 Initial investigations on the incident: No closure to worker complaints

Given the magnitude of the Brandix COVID cluster and associated outbreaks, there were three investigations into this outbreak: (1) an investigation ordered by the Attorney General of Sri Lanka (AG) and led by the police; (2) an investigation ordered by the Minister of Labour led by the Special Investigations Unit of the Labour Department; (3) an investigation initiated by Brandix itself. These were initiated amidst advocacy by women's labour organisations and trade unions to draw attention to this issue. However, these investigations did not yield any satisfactory outcomes for the workers.

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<sup>749</sup> Ibid.

<sup>750</sup> Under the scope of the *Employment Injury Benefits Convention* No. 121 1964 (Sri Lanka) and *ILO Social Security (Minimum Standards) Convention*, 1952 (No. 102).

<sup>751</sup> As set out in the ILO Conventions: *Employment Injury Benefits Convention*, 1964 (C-121) and *Social Security (Minimum Standards) Convention*, 1952 (C-102).

<sup>752</sup> Operational Guidelines on COVID response Sri Lanka (n 707).

<sup>753</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021; and Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

First, the AG ordered an investigation into the matter, given its magnitude and the impact on the workers as well as the general public.<sup>754</sup> The AG directed the Superintendent of Sri Lanka Police to investigate and report if this outbreak 'endangered human life.'<sup>755</sup> Accordingly, the investigation began on the 9<sup>th</sup> of November 2020. Records indicated that, at the time, over 1068 workers were infected by the virus.<sup>756</sup> The purpose of this investigation was to find out (a) how the workers at Brandix contracted the virus, (b) has the negligence or recklessness of the management and their agents of Brandix been a direct cause for this large number of workers to contract COVID?, (c) has the negligence or recklessness (carelessness) of any doctors in-charge of this workplace or state officers appointed for inspection been a cause for this virus to spread across the country?, (d) was there a connection between this COVID cluster and the clusters in the Peliyagoda fish market and the hotel where the airline crews take lodgings? The Magistrate's Court of Minuwangoda heard this matter.<sup>757</sup>

During the investigations, public health officials shared that the virus started spreading inside the factory six weeks before the first case was identified on 04 October 2020.<sup>758</sup> The virus was a different variant from what was discovered in other parts of the country at the time. Court proceedings ended in July of 2021 on the advice of the AG that there was 'no evidentiary basis to file a criminal charge against any of the parties'.<sup>759</sup> Several newspapers reported that despite strict travel restrictions, the company chartered flights from August to September and brought in Sri Lankan expats from Vishakhapatnam factories in India to continue operations in Sri Lanka.<sup>760</sup> The company had said that they took precautions such as PCR testing, quarantine, temperature checks and not calling in those who were sick.<sup>761</sup> On the other hand, worker

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<sup>754</sup> *Code of Criminal Procedure Act* No. 15 of 1979 (Sri Lanka), s 393(2) states the 'Powers of the Attorney General': 'The Attorney-General shall give advice, whether on application or on his own initiative to State Departments, public officers, officers of the police and officers in corporations in any criminal matter of importance or difficulty'.

<sup>755</sup> Extracted from a certified copy of the case record obtained from the Magistrate's Court, where the Magistrate ordered the Attorney General to conduct an investigation into the Brandix Covid outbreak in the record dated 24.12.2020: Case B/12355/20 [2021], Magistrate's Court – Minuwangoda, Sri Lanka.

<sup>756</sup> Case B/12355/20 (n 619), paragraph 3.

<sup>757</sup> Case B/12355/20 (n 619), paragraph 3.

<sup>758</sup> Case B/12355/20 (n 619), paragraph 6.

<sup>759</sup> Motion dated July 2021 filed with the Minuwangoda Magistrate's Court, Sri Lanka: at Case B/12355/20 (n 619).

<sup>760</sup> Nishantha Kumara Bandara, 'Workers who fainted had water sprinkled on their faces and had to work again' *Daily Mirror Online*, Sri Lanka (Colombo, 14 October 2020) <<https://www.dailymirror.lk/News-Features/Workers-who-fainted-had-water-sprinkled-on-their-faces-and-had-to-work-again/131-197861>>; News and Analysis at War on Want (n 703).

<sup>761</sup> Jamila Hussain (n 715).

organisations claim that the 'Brandix management cautiously avoided answering' how the Brandix Minuwangoda factory became the origin of the COVID wave.<sup>762</sup>

Second, the Minister of Labour ordered another investigation as a result of a decision made at the National Labour Advisory Council (NLAC) of Sri Lanka, initiated by the trade unions.<sup>763</sup> This investigation was undertaken by the Department of Labour's Special Investigation Unit. It came to an end in late 2021 with the findings presented to the Minister of Labour and guidelines issued to Brandix for compliance. The company claims to have implemented 'extensive measures to ensure the wellbeing of (their) employees.'<sup>764</sup> The investigation was stopped on the basis that the company complied and significantly changed its practices.<sup>765</sup> The findings of the Labour Department's report were not made public, even for the trade unions to understand the extent of injustice caused to the workers.<sup>766</sup>

The third investigation was internal and initiated by the company itself.<sup>767</sup> Brandix claimed to have cooperated with the AG's investigation with over 500 employees questioned, and therefore halted their internal investigation.<sup>768</sup> Representing the point of view of the employers, the Employers' Federation of Ceylon (EFC) said that 'everything cannot be solved legally, so there must be cooperation and understanding.'<sup>769</sup> The employers believed that the matter should be resolved 'based on an understanding of the employers and the employees of the factory in order to avoid serious impacts on the business'.<sup>770</sup> Nevertheless, labour organisations shared that there was not sufficient trust between the parties to cooperate at that point, which I elaborate on in section 3.2.

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<sup>762</sup> Letter to the Chairman of the Presidential Taskforce on Covid-19 from FTZ&GSEU signed by Anton Marcus, Joint Secretary: see News and Analysis at War on Want (n 703).

<sup>763</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021.

<sup>764</sup> 'This included the following: (i) setting up a 24x7 call centre and a service desk for supporting the needs of our employees and their families (this included external service providers and their families); (ii) providing housing to employees who were unable to return home for the duration of their quarantine; (iii) distributing essential goods packs to affected employees and their families; (iv) providing transportation logistics for our employees and Associates and their close contacts across hospitals; (v) setting up of quarantine centres islandwide; and (vi) addressing mental health concerns through counselling and support': See Brandix Sustainability Report 2020–2021 (n 711) 59.

<sup>765</sup> Interviews with the officers from the Special Investigations Division, Department of Labour in Sri Lanka, held 31.03.2022.

<sup>766</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021.

<sup>767</sup> Shihar Aneez (n 719).

<sup>768</sup> Brandix Sustainability Report 2020–2021 (n 711) 60.

<sup>769</sup> Interview with Vajira Ellepola, Director General, Employers' Federation of Ceylon (EFC), interview held 05.01.2022.

<sup>770</sup> Ibid.

Interestingly, Brandix has excluded its Minuwangoda factory, where this COVID outbreak happened, from its 2021/2022 Annual Report.<sup>771</sup> The annual report, which the company calls the ‘Sustainability Report,’ is prepared for ‘informing its [The Brandix Group of Companies] stakeholders regarding the ongoing improvements to the Company’s sustainability performance in the areas of Environmental, Social and Governance (ESG)’. The justification given for excluding the Minuwangoda factory was that the factory is part of a joint venture partnership ‘with functional control maintained by’ who they claim is ‘the partner entity’.<sup>772</sup> However, in the previous year’s report, the company shared information on the ‘resource optimization’ at the Minuwangoda factory and referred to it as ‘our Minuwangoda factory.’<sup>773</sup> This conflicting position adopted towards the Minuwangoda factory in the two reports implies an attempt to leave out updates of the factory altogether from its Annual Report. This is when the company could have, instead, taken the opportunity to inform its shareholders how the working conditions and labour bargaining at the factory had changed or improved as a result of the COVID outbreak at the factory, if any change was made at all.

### 7.3 Part 2: A grassroots to transnational view of negotiating work health and safety during the pandemic by Sri Lanka’s apparel workers

Workplace health and safety have been at the centre of global workplace regulations and reforms for many decades.<sup>774</sup> Nevertheless, the ability to negotiate many of these protections is still not available to workers, and a majority of women workers, in apparel manufacturing countries including Sri Lanka. Instead, economic interests are prioritised over labour rights, especially during a crisis.

In Sri Lanka, as discussed in Chapter 4, workers do not have protection in the form of labour representation as those mechanisms have been replaced by employer-friendly regulatory structures such as employees’ councils. After many years of labour advocacy on workplace health and safety and freedom of association, it took the pandemic for these issues in the system to re-surface. The strategies of local labour

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<sup>771</sup> Brandix Sustainability Report 2020–2021 (n 711) 2.

<sup>772</sup> Ibid 2.

<sup>773</sup> Ibid 21.

<sup>774</sup> A major discussion on working environments being safe and healthy commenced with the banning of white phosphorous in the matchmaking industry. This process led to the Stockholm Declaration and the action plan that centered on environmental assessment, management and measures to assess and manage activities at the national and international levels, at the first world conference on the human environment in 1972: See UN Environment and sustainable development, ‘UN Conference on the Human Environment, 5-16 June 1972, Stockholm’, *United Nations Conferences* (Web page) <<https://www.un.org/en/conferences/environment/stockholm1972>>.

organisations helped to raise corporate accountability claims through transnational labour networks.

This section discusses interview data involving two grassroots labour initiatives that grew into transnational campaigns aiming at labour rights negotiation. Significantly, women's labour organisations in Sri Lanka initiated both of these campaigns. Part 2, building on the discussion in Chapter 4, first focuses on the failure of the factory-level labour bargaining mechanisms before unpacking the advocacy campaign on the Brandix COVID-19 outbreak and the larger labour campaign and activism around a complaint using the corporate governance structure.

### 7.3.1 Failure of employees' councils to safeguard workplace health and safety rights

Before Brandix Minuwangoda workers approached labour organisations outside their factory and resorted to other pathways, they complained to the factory employees' council, which is the internal bargaining forum that had been set up and facilitated by the factory. However, it did not yield successful results due to employer control.

Like most apparel factories, Brandix factories have employees' councils and no trade unions. Although some Brandix workers are connected with national-level unions, those unions do not have the power to bargain and negotiate with Brandix management as they do not constitute the required 40 percent membership threshold for bargaining, which I described in section 4.2 in Chapter 4. Therefore, the company does not recognise unions. A report by women's labour organisations on this incident highlights that workers' inability to escalate grievances regarding COVID-19 protocol violations directly contributed to the Brandix COVID-19 outbreak.<sup>775</sup>

Autonomous worker representation and bargaining are meant to shield workers from inhumane management and careless approaches to controlling workers at the factory level. In the case of the Brandix COVID-19 outbreak, the factory employees' council could only do the very minimum due to being under the control of management and being isolated from the rest of the labour movement.

Leela told me that it was to the employees' council members that several women workers first reported their illness. Upon being informed by the employees' council representatives, the management had not taken any action. She said, 'Our managers

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<sup>775</sup> Voices from the Field report (n 717).

did not do anything. They will not act even if something bigger happens. The managers had gone to see the doctor the previous day.' Harshi said, 'we are ordinary /insignificant workers (*podu minissu*), we cannot expect quick responses from the management when we complain.'<sup>776</sup> She inferred that their weak power position as workers in a single workplace did not offer them a bargaining advantage at the employees' council negotiations. Leela explained how the workers and employees' council members got together and complained about the situation in the factory with several seriously ill workers to the Ja-Ela and Colombo Labour Department offices. She said the Department officials then may have connected with the management to take appropriate actions.<sup>777</sup>

Brandix designates employees' councils as their 'primary channel of communication' between the Group Management and Non-Executive Employees.<sup>778</sup> Although each plant has its own council, these units are factory-focused and are not linked in any manner.<sup>779</sup> The 'main task of the employees' council is to ensure that internal disputes are settled efficiently with minimum disruption to the routine work schedule,<sup>780</sup> and the issues that generally get taken up at this forum are workplace productivity related. In the company's Annual Report for 2019/2020, before the pandemic, Brandix claims,

Since its initial implementation in 2005, the Employees' Council system has worked exceedingly well with no need for collective bargaining agreements across any of our operations in Sri Lanka, India or Bangladesh. Furthermore, no Brandix operations have been found to have violated the employee's rights regarding freedom of association or collective bargaining.<sup>781</sup>

The factories, further, offer other grievance and dispute handling mechanisms such as open-door policies, surveys and skip-level (between employees' direct supervisor and manager) meetings, along with an official pathway to escalate complaints through the Manager /Supervisor to the Human Resources Manager, Company CEO and Corporate HR.<sup>782</sup> If the complaint does not get resolved or the solution is unsatisfactory, the individual worker has the option to elevate it to the ombudsman.

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<sup>776</sup> Interview with shop-floor worker Harshi from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

<sup>777</sup> Interview with shop-floor worker Leela from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

<sup>778</sup> Brandix Sustainability Report 2020–2021 (n 711) 45.

<sup>779</sup> Interview with shopfloor worker Harshi from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021; Interview with shopfloor worker Leela from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

<sup>780</sup> Brandix Sustainability Report 2020–2021 (n 711) 45.

<sup>781</sup> Brandix Sustainability Report 2020–2021 (n 711) 46.

<sup>782</sup> Brandix Sustainability Report 2020-2021 (n 711) 14, 46.

Workers, on the other hand, found employees' councils problematic and non-independent. While the reasons for this varied, a key concern was that the mechanism was organised and facilitated by the employer. Leela, for instance, also quoted in Chapter 4, described why they could not report and discuss all the labour issues, due to employer scrutiny. As we saw in Chapter 4, Brandix workers also shared that employees' council members can be partial to the management and not act in the interest of workers and that the issues that workers submit get screened by the human resources managers at a pre-employees' council meeting stage.<sup>783</sup>

In the Brandix Minuwangoda case especially, workers reported that the factory management at the time of the COVID-19 outbreak was 'inhumane'.<sup>784</sup> When the workers reported sick, the management asked them to take Panadol and continue to work.<sup>785</sup> Leela and Harshi stated that workers had complained about the factory management. The Factory Manager was changed after the COVID-19 outbreak at the factory. The Labour Department stated that the change of the general manager and others and the appointment of new managers was one of the measures taken by the factory to significantly change procedures at the factory following the COVID-19 investigation.<sup>786</sup> It worked in the factory's favour.

When they did not receive assistance from the factory management, the workers reached out to outside women's organisations and labour unions.<sup>787</sup> These organisations then started a countrywide advocacy program on the matter, demanding prompt action from the management and justice for the workers.<sup>788</sup> Specifically, the campaign and worker complaints called for a review of internal labour grievance handling and bargaining mechanisms at the factory including the employees' council, preferred by the employers. Nevertheless, there was hesitancy among women workers to openly join and be members of trade unions or set up a factory-level trade union as well. The reasons quoted by the women workers were job security, having financial

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<sup>783</sup> Interview with Leela, a shop-floor worker from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

<sup>784</sup> Ibid; and Interview with shopfloor worker Harshi, from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

<sup>785</sup> Interview with Leela, from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

<sup>786</sup> Interviews with the officers from the Special Investigations Division, Department of Labour in Sri Lanka, held 31.03.2022.

<sup>787</sup> See the statement by Women's Centre: at News and Analysis at War on Want (n 703).

<sup>788</sup> See generally, Voices from the Field report (n 717).

independence because of their factory job, no time to commit to trade unions and like to solve internal issues internally.<sup>789</sup>

### 7.3.2 Advocacy campaign by grassroots women's organisations

The labour advocacy campaign around the Brandix COVID-19 outbreak was initially launched at the national level by three grassroots women's labour organisations: Dabindu Collective, Stand Up Movement and RED. The Women's Centre, another women's labour organisation, carried out its own advocacy campaign together with the trade union FTZ&GSEU. Later, the local campaign grew into a larger network of Asia regional and transnational organisations. The activism at the national level was particularly crucial in bringing the struggles of the Brandix workers to the attention of the higher management of the company and the state. Women's labour organisations were the first to connect with Brandix Minuwangoda workers, including the agency workers who temporarily worked at Brandix at the time.<sup>790</sup>

Dabindu Collective, RED and Stand Up Movement, all women-led labour organisations, held a press briefing on the Brandix COVID outbreak which was the initial public act of resistance to what was happening inside the factory.<sup>791</sup> This was a strategy to draw the attention of the company, expecting that there would be steps taken to address the situation with better outcomes for workers. Ashila from the Stand Up Movement said, 'It was not a time when anyone dared to do a press briefing – we spoke openly to send out a clear message. Even the place that hosted this briefing had to face issues'.<sup>792</sup> She said that they were not alone and that they had support from other women lawyers and worker organisations. Following this briefing and the campaign, the national-level inquiries that I described in Part 1 were initiated.

Following this press conference, for the first time in history, Brandix invited women's labour organisations to a meeting with their management to discuss worker claims against Brandix. A participant at this meeting, Ashila Dandeniya, recalled how the meeting was held in a big board-room with an army of professionals and

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<sup>789</sup> Interview with shopfloor worker Harshi from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021; Interview with Esha, worker in a garment factory in the Katunayake Export Processing Zone, Sri Lanka, held 05.09.2021; Interview with shopfloor worker Meena from a factory in the north of Sri Lanka, held 20.03.2022.

<sup>790</sup> Latest Covid-19 Update in Sri Lanka in the '2nd Statement issued by Women's Centre': at News and Analysis at War on Want (n 703); Interview with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021.

<sup>791</sup> Voices from the Field report (n 717) 12; Economy Next, 'Ensure impartiality of Brandix internal inquiry, worker rights collective requests BOI' (Online news, 15.10.2020) <<https://economynext.com/ensure-impartiality-of-brandix-internal-inquiry-worker-rights-collective-requests-boi-74811/>>.

<sup>792</sup> Interview with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021.

representatives of the company on one side of the table and a few women labour activists, women labour leaders and some trade union leaders on the other side of the table, where she sat, representing the workers.

Our connection broke after about two meetings because we did not agree with their proposals, and they understood that they could not control us the way they want. I do not think we can sit together and come into an agreement anymore, there is no trust developed between us.<sup>793</sup>

Chamila Thushari from Dabindu Collective, who also attended the meeting, said,

The workers contracted the virus because they were working at the factory at the time. When all the other workplaces were closed the factories were open as the economy had to be salvaged. The companies have earned profit in the last year but still they cut the benefits for the workers.<sup>794</sup>

She said when the workers were taken for quarantine, workers called up the women's organisations and reported several issues, including being taken out of their districts of residence /boarding for quarantining.

These meetings came to an abrupt end. This is another signal of the massive power difference between the employers and the workers, showing how the employers can initiate and end things within the industry. Lakmali Hemachandra, a lawyer and a committee member of TGCWU, who attended the meetings, described the power dynamics at the discussion table. Her reflections from the meeting were,

Employers are very smart and they have a lot of resources, legal assistance and other influences that workers do not have. Brandix was really impacted by the media campaign and international complaints filed by worker organisations. Employers started attacking the credibility of women's labour organisations for they lacked the structure the trade unions have. This is how they stopped engaging with women's labour organisations.<sup>795</sup>

The advocacy campaign came with costs to the hosting organisations which faced backlash from both the company and the state. Chamila Thushari from Dabindu

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<sup>793</sup> Interview with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021.

<sup>794</sup> Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

<sup>795</sup> Interview with Lakmali Hemachandra, lawyer and activist, conducted on 10.09.2021.

Collective said that she received a phone call on 08 April 2021, the next day after their first media conference. The call was from the Group Head of Administration at the Brandix company, who is a retired military officer questioning about the media conference.<sup>796</sup>

Another key outcome of this campaign was a research report and associated events organised by women's organisations.<sup>797</sup> The report, 'Voices from the Field' describes the incident from the point of view of women workers and their demands to Brandix. Here, they refer to 'human rights violations' by the military during quarantine,<sup>798</sup> 'cruel, inhumane and degrading treatment' in a complaint filed with Sri Lanka's Human Rights Commission,<sup>799</sup> and the need to protect workers' 'right to freedom of association' by the factory and others.<sup>800</sup> Further, it led to a complaint filed with Sri Lanka's Human Rights Commission by the three women's organisations.<sup>801</sup>

This campaign not only addressed corporate accountability. Women labour leadership also drew out an important element of social stigma suffered by several garment women workers at the time. As discussed in Part 1, the woman worker who was first diagnosed with COVID-19 from the factory endured backlash for spreading COVID and also for being 'presumably' immoral. Similarly, women workers from Brandix said that they could not wear the Brandix t-shirt outside the factory during that time as they would get, similarly, verbally harassed on the streets.<sup>802</sup> Women workers from other factories in the Katunayake EPZ said that they got verbally harassed in vaccination centres.<sup>803</sup>

This series of incidents illustrates the importance of grassroots activism to initiate a broader movement on issues impacting women, described by the Transnational Feminist Movements lens that I discuss in Part 3.<sup>804</sup> This series of events led the labour organisations to launch a bigger campaign by drawing in the support of regional and transnational organisations.

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<sup>796</sup> Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

<sup>797</sup> Voices from the Field report (n 717).

<sup>798</sup> Ibid 8.

<sup>799</sup> Ibid 12.

<sup>800</sup> Ibid 15.

<sup>801</sup> Ibid 12.

<sup>802</sup> Interview with Leela, a shop-floor worker from the Brandix Minuwangoda Factory, Sri Lanka, held 05.09.2021.

<sup>803</sup> Interview with Chandi, a shop-floor worker in a garment factory in the Katunayake Export Processing Zone, Sri Lanka, held 27.10.2021 and Interview with Sandi, a shop-floor worker in a garment factory located within the Katunayake EPZ, Sri Lanka, held 08.11.2021.

<sup>804</sup> Moghadam (n 190).

### 7.3.3 Leveraging the global corporate governance regime by workers: The complaint to the IFC

The grassroots campaign on the Brandix COVID outbreak spilled over to the regional and transnational level as the national investigations slowed down. In March 2023, six labour unions and women's labour organisations<sup>805</sup> networked with the Asia Floor Wage Alliance (AFWA), an Asia-based regional labour organisation, to broaden the outreach of the national campaign. This coalition also linked with an international labour and civil society organisation based in the USA called Global Labor Justice (GLJ) to push the agenda further. The objective was to (a) demand accountability for the Brandix COVID-19 outbreak and its impact on the workers (b) establish freedom of association within Brandix factories across the country and (c) condemn the state and military backlash against local labour organisations.<sup>806</sup>

This labour network leveraged the governance principles of the International Finance Corporation (IFC) to pressure Brandix regarding their demands. IFC is an institution under the World Bank, which under their mandate provides loan facilities to the private sector industries in developing countries.<sup>807</sup> IFC, at the time, had a proposed USD50 million loan to Brandix Lanka ready for IFC board consideration in early 2021.<sup>808</sup> The worker complaint from Sri Lanka to the IFC, requested the IFC to 'revise the Environmental & Social Action Plan for Project 44341 in light of the Brandix COVID-19 outbreak in order to ensure the possibility of compliance with IFC Performance Standard 2.'<sup>809</sup> Performance Standard 2 is ensuring workers' rights to safe and healthy workplaces as well as freedom of association. As such, the worker representatives also highlight the impact of the COVID-19 outbreak in the Brandix factory, and the continuing public investigations 'with no public updates about the status of such investigations.'<sup>810</sup> During interviews, a representative of AFWA stated that the loan facility was to fund the company's medium and long term working capital which included the employment of non-executive staff of which 93 percent are women.<sup>811</sup>

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<sup>805</sup> The six local organisations involved in this campaign are women's labour organisations and trade unions: Stand Up Movement, Dabindu Collective, RED organization, Ceylon Mercantile Union (CMU), Commercial and Industrial Workers Union (CIWU) and National Union of Seafarers (NUSS).

<sup>806</sup> Voices from the Field report (n 717) 3.

<sup>807</sup> International Finance Corporation – World Bank Group, 'What we do' (Web page, 2023) <<https://www.ifc.org/en/what-we-do>>.

<sup>808</sup> Voices from the Field report (n 717) 1.

<sup>809</sup> Global Labor Justice – International Labour Rights Forum (GLJ-ILRF), *Brief: IFC Investment in Brandix Lanka LTD* (Policy brief, 25 March 2021) 1 <<https://globallaborjustice.org/wp-content/uploads/2021/03/2021.03.25-Brief-re-Brandix-IFC-complaint-PROOFED.pdf>>.

<sup>810</sup> Ibid 1.

<sup>811</sup> IFC Project Information & Data Portal, 'Brandix Apparel Limited', IFC Project information and Data Portal (Web page, 20 August 2021) <<https://disclosures.ifc.org/project-detail/ESRS/44341/brandix-apparel-limited>>.

The aim of the transnational labour network was to highlight a major gap in IFC's due diligence related to risk assessment and Environmental and Social Action Plan measures by not taking into account the COVID outbreak at Brandix Minuwangoda and its impact.<sup>812</sup>

The complaint to the IFC is an important strategy by the local labour organisations in Sri Lanka. They turned to the IFC when workers did not receive redress through local investigations. It was a moment when a transnational labour network intervened with a transnational capitalist network that included apparel companies and international capital lending organisations such as the IFC. I theorise this in Part 3.

During interviews for this research, leaders from the Sri Lankan labour organisations still hoped for outcomes of the local investigations. Anton Marcus, Joint Secretary of FTZ&GSEU, discussed the necessity for the reports of the national-level inquiries. He has testified at the investigation conducted by the Department of Labour:

If they released the report the factory will not receive the loan, so they have hidden the report ... Workers now do not come forward to say anything about this report. Even we cannot reveal anything that the workers testified, because if anything is to happen to the workers no one can really cover them.<sup>813</sup>

Pointing to the importance of having autonomous worker representation mechanisms in place, Anton said, 'but if they had a trade union, we would definitely mobilise our members. Workers are scared to come forward as they do not have an assurance that this will protect their lives and jobs.'<sup>814</sup>

Women's labour organisations shared how difficult it has become to organise with the workers' hesitance to voice their workplace health and safety-related grievances at the factory. They believed that this was because of the impending loan facility that the company hopes they will receive from the IFC. Ashila from the Stand Up Movement shared,

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<sup>812</sup> Interview with Abiramy Sivaloganathan, South Asia Coordinator, the Asia Floor Wage Alliance, held 10.08.2021; *Voices from the Field* report (n 717) 4.

<sup>813</sup> Interview with Anton Marcus, Joint Secretary, Free Trade Zones & General Services Employees Union (FTZ&GSEU), held 30.10.2021.

<sup>814</sup> *Ibid.*

Due to the IFC loan, the factories have made an informal announcement through lines, supervisors and others that workers should not give any information out. Therefore, it is so difficult for us to get any information.... The workers have been told that the factory will have to be closed if anyone speaks about the incident. By now the workers are reluctant to give information because of this.<sup>815</sup>

Both points raised by Anton and Ashila demonstrate repressed freedom of association and the oppressive structure within which workers are trapped, unable to negotiate their rights. Without autonomous voice mechanisms such as unions, their only fallback option was collective voice.

I illustrate how collective voice was organised in this case study in Figure 7.1 below. The national advocacy campaign linked with the grassroots illustrates strong links and initiatives by women’s labour organisations as well as an alliance of the Women’s Centre with a trade union – FTZ&GSEU. The international complaint was a result of an alliance between women’s labour organisations and trade unions in Sri Lanka. In order to seek resources and support to file the claim, these labour organisations linked with an international civil society organisation which is the Global Labour Justice and AFWA, a regional labour alliance for Asia that I discussed above.

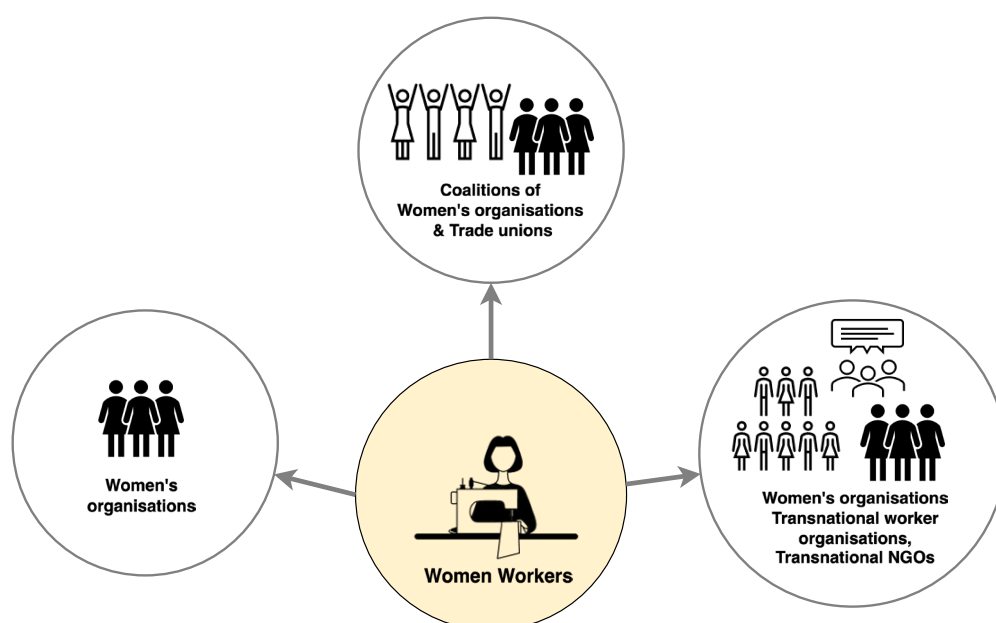


Figure 7.1: Collective voice in various forms in the campaign and complaints on work health and safety.

<sup>815</sup> Interview with Ashila Dandeniya, Executive Director of the Stand Up Movement, held 12.09.2021.

## 7.4 Part 3: Collective voice to influence better workplace health and safety for apparel workers

I often get a pain in my chest  
The supervisor asks me to go to the sick room  
I can stay there for a quarter of an hour  
I come back and sit at the machine.’

The other day I fell sick,  
But I was not allowed to leave the factory  
I know that one day I will have to work  
Even through sickness  
I will surely fall dead, at ... [name of the factory] ... Garments

– ‘Life’ by Manike, a poem written for the Free Trade Zone Newspaper in 1990<sup>816</sup>

Manike’s poem, from which I have extracted a portion above, alludes to the underlying problems in the apparel factories in Sri Lanka since decades ago. Although health and safety conditions in the factories have improved over the years, they do not appear effective enough to address the shortcomings, loopholes and reckless management approach and power imbalances to regulating labour in the factories. Additionally, worker voice mechanisms have not evolved to respond to these shortcomings.

As discussed at the start of the chapter, the industry had shifted to making PPE during the pandemic and was already making a profit from it. The industry, in its agility, shifted to a more convenient and profitable business model during the pandemic and utilised women workers in that. Ruwanpura connects this with the ‘malleability of industrial capital’ where capital shape-shifts for its own advantage.<sup>817</sup>

The Brandix COVID-19 outbreak was an opportunity that women workers, grassroots women’s labour organisations and their allies utilised to amplify the injustice and pressurise the management to change their existing practices. The key regulatory aspects of this case study discussed so far can be summarised in terms of the scale

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<sup>816</sup> This is part of a poem quoted in: Kumudini Rosa in Kumudini Rosa, ‘Women Workers’ Strategies of Organising and Resistance in the Sri Lankan Free Trade Zone (FTZ) (1990) 10(1) *South Asia Bulletin* 33, 41.

<sup>817</sup> Ruwanpura (n 699).

of the network, strategies adopted by workers and regulatory influence on different conventional regulators, as illustrated in Table 7.1 below.

*Table 7.1: Summary of the key features that enabled regulatory influence by the workers in the campaign and complaints on work health and safety.*

<b>Case Study</b>	<b>Scale of network</b>	<b>Strategy</b>	<b>Regulatory influence</b>
Negotiating safe and healthy workspaces	Grassroots to transnational Transnational to national - employer (the IFC complaint)	Use of transnational commercial loan facility conditions for businesses	Via international organisation (IFC) on employers and the state

The case study is an example of women workers influencing labour regulation related to long-overlooked health and safety standards in the apparel industry which I unpack in the next two sub-sections.

#### 7.4.1 Transnational labour networks and how labour shapes regulation

The transnational labour networks that I consider in this case study can be analysed in two ways: first, as a national advocacy campaign linked with the grassroots that grew into a transnational force in drawing attention to a local labour issue. Second, the transnational labour network draws attention to the potential of such a network to act as a counter-force to another oppositional network, such as a global corporate network, raising checks and balances on power and accountability. Braithwaite and Drahos highlight that networks are a way to collectively intervene in order to resist, influence, demand, coerce and create change.<sup>818</sup> Networked regulation is premised on the idea of having networked partners in the form of counter-forces that can observe and control behaviour of those partners.<sup>819</sup> In the same vein, Clausen argues that multi-layered campaigns of civil society actors could challenge the position of state and transnational authorities such as the European Union.<sup>820</sup> The case study that I discuss in this chapter illustrates how these oppositional networks develop and interact as counter-forces in holding actors accountable. I unpack two key strategies of labour organisations and

<sup>818</sup> Braithwaite and Drahos (n 20) 7.

<sup>819</sup> Braithwaite and Drahos (n 20) 228-234.

<sup>820</sup> Paul Clausen, 'Glyphosate: The European Controversy – A Review of Civil Society and Regulatory Failures' (2019) 4(2) *Business and Human Rights Journal* 351, 353.

what influences they had on potentially changing the policies and practices at the ground level. The process has just been launched, and it requires continuous commitment of labour and civil society actors.

On the first point above, this case study shows how transnational labour networks can form in the absence of effective local labour bargaining mechanisms. It is a pragmatic response that arises in a background where worker voice and labour bargaining are restricted through co-opting and non-effective employees' councils. The network helps to channel the collective voice of women's labour organisations in Sri Lanka's context. The national-level trade unions united to achieve justice for apparel workers of which a majority are women. Collective voice, as it appears in its multiple forms in this case study, is informal but dynamic and effective and recruits the support of national and transnational-level actors such as regional and transnational labour collectives and allies. Therefore, the network arises out of necessity and is a functional force responding to the needs of the grassroots labour issues.

Second, the transnational labour network in this case study is a counter-force to networks of business actors composed of corporate and international capitalist institutions such as the IFC. I briefly outlined above Braithwaite and Drahos' conceptualisation of oppositional networks that can target each other's pressure points.<sup>821</sup> The transnational labour network in this case study acts as an oppositional network to transnational corporate governance networks comprised of IFC and private sector businesses. The idea here is to collectively intervene by actions of resistance, influence, demand, coerce and create change. I discuss, in Part 2, the different ways and strategies the transnational labour network used in its complaint to the IFC to create change in the labour regulation practice of the Brandix company. By this, women workers, through their representatives, exercised a regulatory function.

Transnational Feminist Movements theory (TFM) has significant implications for this case study as it contributes to analyse this case in different angles. TFM scholars recognise grassroots organising, research and analysis, lobbying public advocacy and education as an important element in weaving in a transnational network of support.<sup>822</sup> The transnational network in this case study evolved with the initiation of the grassroots women's organisations who led advocacy programs at the local and national levels

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<sup>821</sup> Braithwaite and Drahos (n 20), 228-234.

<sup>822</sup> Valentine Moghadam, *Globalisation and Social Movements: Islam, Feminism and the Global Justice Movement* (Rowman and Littlefield, 2<sup>nd</sup> edn, 2013).

and who connected national-level trade unions with aggrieved women workers in Brandix as well as other factories where there were COVID outbreaks.

The press conference, by women's labour organisations, was to announce to the public the situation at the Brandix Minuwangoda factory and the hardships workers had to endure. This was a strategy to draw the attention of the company expecting that there would be steps taken to address the situation with better outcomes for workers. The strong influence this had on employers is clear by the fact that employers invited these women's labour organisations for meetings, which I discussed in Part 2. Further, at this first media conference, they had an attendee from the Ministry of (Mass) Media who 'accused them of cancelling the loan and threatening Brandix'.<sup>823</sup> However, they continued to network with other unions and take forward the complaints to the IFC.

These women's labour organisations denied that they intended to deprive Brandix of the loan facility from the IFC and said that they had three reasonable demands. These were: (a) respect freedom of association, (b) end employment of ex-military officials (c) engage in dialogue with women-led trade unions and workers' organisations.<sup>824</sup> Although there was no substantial outcome from these meetings, women's organisations felt that their advocacy and work had an impact in the sense that it was the compelling reason for the management to invite them, and not male-led trade unions, to the discussion table. I further discuss the regulatory influence of their actions in section 7.4.3.

#### 7.4.2 Human rights as an important normative framework in this case study

The case study is also an instance where workers and their organisations reached out of the social field of the apparel industry to draw in the norms that could offer them the best leverage. In the absence of legal provisions, it is important to consider what normative framings workers adopted to gain the maximum possible leverage.<sup>825</sup>

This case study is an instance where workers did not have favourable legal provisions within the social field of the apparel industry to negotiate their rights, receive compensation or demand corporate accountability. Instead, workers during interviews drew in the moral obligations of an employer to redress a workplace injury while worker

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<sup>823</sup> Voices from the Field report (n 717) 14.

<sup>824</sup> Ibid 16.

<sup>825</sup> Moore (n 201) 54-81.

representative organisations launched an international campaign based on governance and transnational and policy standards related to corporate accountability. Therefore, both workers and labour organisations drew on norms outside the apparel industry legal and regulatory framework to influence the behaviour of their employers.

ILO standards such as Convention 89 and 91 on freedom of association, and the IFC loan conditions, were two such regimes that workers utilised to demand action from employers. These international obligations formed a part of the national policy and therefore were useful for labour representatives in their public campaigns and the complaint to the IFC. Worker representatives drew on IFC policy standards on labour rights protection by businesses to lodge a complaint at the transnational level. This happened after several inconclusive national-level inquiries. Therefore, policy norms offered worker representatives an extended space to advocate for and lodge the complaint at the transnational level.

I discussed in Part 2 that the human rights normative framings were useful in the media briefing of the women's labour organisations, 'Voices from the Field' report and the women workers' complaint to the Human Rights Commission (regarding this outbreak and the violation of workplace health and safety rights). In the media conferences and public discussions of women's organisations, which I discussed above, there was an emphasis on human rights standards to draw attention of the company. This is captured in the 'Voices from the Field' report published by labour organisations. Here they refer to 'human rights violations' by the military during quarantine,<sup>826</sup> 'cruel, inhumane and degrading treatment' in a complaint filed with Sri Lanka's Human Rights Commission,<sup>827</sup> and the need to protect workers' 'right to freedom of association' by the factory and others.<sup>828</sup> The human rights normative framing was instrumental to lodge complaints at forums like the Human Rights Commission and linking with international civil society and labour rights organisations like Global Labor Justice.

The ability to draw from multiple normative frameworks contributes to empower workers in their reality. In workers' context, there are very few options at their disposal to bargain and complain at the industry level.

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<sup>826</sup> Voices from the Field report (n 717) 8.

<sup>827</sup> Ibid 12.

<sup>828</sup> Ibid 15.

### 7.4.3 Regulatory influence by women workers and their representatives in this case study

It is important to consider what regulatory change that collective voice brought about in this case study. The national-level investigations ended without revealing the findings to the public which suggests the impact may not be significant. However, the work and commitment of women workers and women's organisations in this case cannot be overlooked as they played a crucial role in this labour network, amidst backlash. TFM theory highlights the importance of grassroots organising for transnational networks to succeed.<sup>829</sup> This case study offers an example of the commitment and organising of grassroots feminist labour organisations and their influence in bringing together a diverse transnational labour network.

As discussed in Part 2 of this chapter, women's organisations were the first to openly speak on the Brandix COVID outbreak in the media. They also led the advocacy program connecting the workers from grassroots to trade unions and international organisations. As a result they had two meetings with Brandix to explore pathways of justice for affected workers, which I described above.

Due to the advocacy by women's labour organisations and the negative reputation for Brandix, the company was also compelled to take measures to salvage its public image. It actively participated in the national COVID management efforts after the incident, making big donations for the purchase of vaccines and also providing its factories to be converted to quarantine centres.<sup>830</sup> For instance, Brandix Green garment factory in Seeduwa of the Western Province of Sri Lanka was converted into a temporary quarantine centre of 1200 beds.<sup>831</sup>

This campaign was impactful in getting the company to comply with the investigations by the Labour Department. During interviews with the officials of the Labour Department, they said that the investigation by them was stopped as the company

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<sup>829</sup> Ranjita Mohanty, 'Contesting development, reinventing democracy: grassroots social movements in India' in Lisa Thompson and Chris Tapscott (eds), *Citizenship and social movements perspectives from the global south* (Zed Books, London and New York 2010) 239-259.

<sup>830</sup> 'Brandix donates essential medical equipment to support treatment of COVID-19 patients across communities', *Sunday Island Online* (Colombo, 27.08.2021) <<https://island.lk/brandix-donates-essential-medical-equipment-to-support-treatment-of-covid-19-patients-across-communities/>> and 'Brandix Associates give back to hospitals in fight against COVID-19' *Sunday Island Online* (Colombo, 27.08.2021) <<https://island.lk/brandix-associates-give-back-to-hospitals-in-fight-against-covid-19/>>.

<sup>831</sup> Political Editor, 'New wave of COVID-19: Critical time for Sri Lanka' *The Sunday Times* (Colombo, 09.05.2021) <<https://www.sundaytimes.lk/210509/columns/new-wave-of-covid-19-critical-time-for-sl-442972.html>>.

made changes in their practice.<sup>832</sup> Some such changes include changing the management of the Brandix factory, bearing all costs for worker quarantine, and offering paid leave for workers. Nevertheless, the company has a long way to go in ensuring labour bargaining rights and freedom of association. As discussed in Part 2 of this chapter, the company considers that employees' councils serve the purpose of labour bargaining within the company, when they did not in the case of the Minuwangoda factory.

Further, the labour representatives stated that they urged for the reports of investigations to be released but it fell on deaf ears. Chandra Devanarayana, the Executive Director of RED Organisation, said, 'we asked for the national investigation reports at both of those meetings even from Brandix, and they said they did not have it.'<sup>833</sup> Despite the noticeable effort invested by worker organisations, they could not get their complaints officially addressed in the investigation by the Attorney General or the Labour Department investigation. The research report and associated events organised by women's organisations was a way to express their frustration at the national labour investigation mechanisms.<sup>834</sup>

Additionally, in 2022, there were new national-level efforts, in partnership with transnational organisations like the ILO, to strengthen labour–management dialogue. This new program runs under the ILO's Better Work program, and the ILO identified the program as 'ambitious', aiming to 'improve workplace cooperation and worker–manager dialogue.'<sup>835</sup> This program specifically aims to address occupational safety and health, gender, and skill development of women workers, which were demands raised by women workers in their advocacy program in the Brandix case.<sup>836</sup>

Further to activism and strategising in this case, women's organisations are exploring the possibility of introducing a social security scheme for women workers to support them in instances such as these.<sup>837</sup> In connection to this, compensation and support for workers during injury and workplace insurance are not mandatory in Sri Lanka.<sup>838</sup> The current system is an 'employer liability scheme' where the employer needs to bear

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<sup>832</sup> Interviews with the officers from the Special Investigations Division, Department of Labour in Sri Lanka, held 31.03.2022.

<sup>833</sup> Interview with Chandra Devanarayana, Executive Director, RED organisation, held 15.08.2021.

<sup>834</sup> Voices from the Field report (n717).

<sup>835</sup> ILO in Sri Lanka, 'Better Work partners with Sri Lankan industry stakeholders' (ILO Media release, 06 February 2022) <[https://www.ilo.org/colombo/info/pub/pr/WCMS\\_836482/lang--en/index.htm](https://www.ilo.org/colombo/info/pub/pr/WCMS_836482/lang--en/index.htm)>.

<sup>836</sup> Voices from the Field report (n 717).

<sup>837</sup> Interview with Chamila Thushari, Coordinator, Dabindu Collective Sri Lanka, held 10.08.2021.

<sup>838</sup> Factories Ordinance No. 45 of 1942 (Sri Lanka).

the full cost of compensation for workplace injuries depending on the degree of the injury. The state's non-involvement is justified on the basis of the existing free state health-care system that already delivers the required services. Therefore, to further strengthen workers' health and safety, an effective social security scheme for all workers is important. It can, especially, act as a safety net for women in low-paying jobs as in the apparel industry.

Finally, the case study demonstrated the engagement of different labour and non-labour regimes by worker representatives to influence their employers. It finally resulted in initiating a nationwide program that runs under the ILO's Better Work program aiming to address occupational safety and health, and gender and skill development of women workers as highlighted in this section. These were demands raised by women workers in their advocacy program in this case study.

## 7.5 Conclusion

This chapter discussed how women workers negotiated their right to workplace health and safety during the COVID-19 pandemic. Focusing on a mass COVID-19 outbreak at the Brandix Minuwangoda apparel factory, this chapter offered a bottom-up view of labour organising to raise corporate accountability and influence employers to safeguard labour rights of health and safety at work as well as freedom of association.

The case study demonstrated how grassroots labour organises, in the absence of effective formal worker voice mechanisms, to demand workplace health and safety, using collective voice, even during a crucial time like the pandemic. Worker testimonies discussed in this chapter highlighted the importance of intervention and representation at this time.

This case study also includes a critique of the formal legal system for regulating workplace health and safety at factories in Sri Lanka. It highlights important gaps in the system. Although a legal framework on occupational health and safety exists in Sri Lanka, there had not been a comprehensive assessment of it until the pandemic put it to the test. Periodic inspections by the national labour department and annual self-reporting by companies proved to be insufficient to guarantee effective responses to work health and safety complaints by the workers during the pandemic.

The discussion highlighted how regulation can take place by networks that link up with regional and transnational labour actors, as well as the corporate governance regimes that could support labour causes. Finally, this case study builds on the themes of how the networks of women workers seek to influence regulation by way of building networks, recruiting support and resources from outside international and regional organisations, strategising and the creative employment of global norms in their fight for better workplace health and safety standards for women workers at the grassroots level in Sri Lanka.

## Chapter 8: Conclusion

### 8.1 Grassroots and dandelions: Collective voice and change from the bottom-up

Organising at the grassroots level is a massive challenge for us. We [the workers] are speaking here from the grassroots. Our opinion is that there is only limited impact when women at the top organise. Our biggest challenge is to understand how to empower and organise women at the bottom.<sup>839</sup>

Mala, whom I quoted in Chapter 1, expressed her conviction that women workers need a voice. Starting as a shop-floor worker and now a new trade union leader, she shared the importance of empowering women workers at the grassroots level. As mentioned in Chapter 1, Mala lost her factory job on 31 June 2022 due to factory closure and she currently remains unemployed and blacklisted among employers as a troublemaking trade union woman. Nevertheless, she has not stopped being a labour activist and continues to work with a national-level trade union.

With the voices of women apparel workers at its centre, this dissertation provided a bottom-up analysis of the problem of how women workers action voice to negotiate their rights in Sri Lanka's apparel industry. Going beyond the conventional understanding of worker voice in labour law and industrial relations literature, the dissertation offered a socio-legal analysis of women workers' ability to influence apparel supply chain regulation and governance through collective voice. While worker voice, typically, embodies elements of representation, organisation and negotiation, it is conventionally associated with mechanisms such as trade unionism, collective bargaining, strikes and other industrial action. My in-depth qualitative study showed that the expression of collective voice often occurs outside these formal processes, actioned through non-conventional channels by women's labour organisations, alliances of labour representatives including women's organisations and transnational networks of women's organisations, trade unions and other labour and civil society organisations.

In apparel supply chains, collective voice is not limited to mere protest or resistance. It serves as a form of regulation, a means through which workers can influence the

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<sup>839</sup> Interview with Mala, a shop-floor worker in a garment factory in Ja-Ela in the Western Province, Sri Lanka, held 15.04.2022.

behaviour and the decision-making of other regulatory actors in the global apparel supply chains such as employers, the state, international buyers and fashion brands. We saw this demonstrated in the case studies in multiple forms: as strategic labour complaints, invoking the corporate governance standards such as those that condition eligibility for business loans, transnational advocacy, awareness creation and empowering women workers at the grassroots level.

The dissertation unpacked the research problem by way of three sub-questions: (1) What are the formal mechanisms for expressing voice to negotiate worker rights in Sri Lanka's apparel industry? (2) What non-conventional forms of voice are visible in pandemic and post-pandemic Sri Lanka in the three selected case studies? (3) How do women workers legitimise the expression of their voice in the case studies? I engaged with networked regulation and governance and TFM theory in drawing these findings. Three instrumental case studies elucidated how women workers link and network to action collective voice through non-conventional labour negotiation pathways, and examined what methods and strategies they adopted, whose support they recruited, and what regulatory impact or influence such action attracted.

This concluding chapter first outlines the summary of the key findings and engages in a discussion. It then explores the implications of this research and its limitations. I conclude the dissertation with some discussion of potential future directions and pathways for future work in this area.

As a segue to the next section, I share a thought from Amali Kalupahana – a new woman trade union leader, whom I introduced in Chapter 4 – on how women's organising can create influence in the labour movement:

What I believe is that it is important for us to unite as the representatives of women workers ... We have to be like dandelions. It does not matter where the seed germinates, what is important is spreading the message across. That is how, as women labour activists, we should think about networking.<sup>840</sup>

I elaborate on this idea through findings and the collective voice of women workers in the next section.

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<sup>840</sup> Interview with Amali Kalupahana, General Secretary of the National Workers' Congress (NWC), held 23.10.2021.

## 8.2 Collective voice of women workers: Summary of the key findings

This dissertation demonstrates that, often excluded from spaces of labour bargaining where worker voice is enabled formally, women workers in Sri Lanka's apparel industry, nevertheless, action non-conventional forms of collective voice in negotiating their rights. They do so by influencing the regulatory decision-making strategically, at the local, national or transnational levels, to change conditions of work or workplace practices.

In the face of legal, political, social, industrial and gendered challenges, women workers push back primarily through strategic action and forming transnational networks primarily activated by grassroots-level women's labour organisations. Collective voice, often expressed through non-conventional pathways, is legitimised using different norms, legal and other, that gain women workers the best leverage in harnessing power through their networks to create the necessary regulatory pressure and influence. In Chapter 1, I defined collective voice to hold three key attributes: (a) collectivism, (b) representativeness, and (c) dynamism. It is a phenomenon capable of directly (or through others) influencing and shaping the behaviour of local and national actors, such as employers and the state, as well as other actors at the transnational level, such as global fashion brands, international investors and international organisations that finance business. These non-conventional forms of collective voice supplement and support formal mechanisms, such as trade unions, and their effectiveness rests on their strong links to women workers.

In order to construct knowledge on labour organising, I began the study by mapping the formal legal and policy framework around worker voice. Although my training as a lawyer led me to the law in the books and doctrinal law first, that survey was essential to understand if worker voice exists outside those formally constructed conduits. Accordingly, the **first research sub-question** aimed to build an understanding of the formal labour bargaining mechanisms and a critique of them in **Chapter 4**. This discussion alongside a background to the apparel industry, also supplementing the brief background in section 1.3 in Chapter 1, constructed an in-depth understanding of supply chain complexities and the resulting lack of accessibility of labour rights bargaining mechanisms for women workers.

The key finding in relation to the legal and policy framework is that labour bargaining in Sri Lanka's apparel industry is primarily organised at the enterprise level. Garment

factories usually have employees' councils, established by a policy of Sri Lanka's Board of Investment (BOI). Employees' Councils are organised and facilitated by the employers and, therefore, are non-autonomous and different to a trade union, with no tangible power for collective bargaining. These forums have a majority representation of women workers; nevertheless, 85 percent of my interview participants claimed that employees' councils are ineffective in openly negotiating workplace conditions. Although there is an option for each enterprise or factory to have a trade union, this is rare. I used the empirical data in Chapter 4 to show that employees' councils are not accessible to women workers at the shop-floor level. The national trade union laws, therefore, do not translate at the enterprise level of the apparel industry. Even at the national level, the overall trade union representation, not limited to the apparel industry, is less than 10 percent, which indicates how constrained worker voice across the industry is. This is an example where multiple legal and policy regimes in industrial pluralism play out to ultimately deprive workers of access to autonomous forms of formal labour bargaining. Women workers are also under-represented in both the leadership as well as membership at all national-level trade unions and labour rights and policy negotiation institutions like the National Labour Advisory Council (NLAC). Therefore, employees' councils in their factories, human resources practices and even trade unions are not completely successful in representing women workers' voice.

I employed Sally Falk Moore's concept of semi-autonomous social fields, which I discuss in Chapter 2, to make sense of this complexity. One could argue that the apparel industry and its associated supply chain function as a world unto its own, with the ability to make its own rules, formal and informal, for governing the industry. I illustrated that the employers, buyers and brands in fact regulate labour at the factories directly and indirectly through their standard-setting and decision-making. However, the industry is part of a larger complex governance matrix with plural industrial and governance norms, both national and international, and multiple outside actors influencing what happens along the supply chain. The actors who can influence the industry, and therefore regulate it, vary from the state, state regulators, national-level trade unions and international labour and civil society actors and others. Notably, these actors have different levels of control and influence over labour regulation in the industry. This is relevant to my overall argument, developed through the case studies, that one key set of actors also making regulatory contributions are the women workers themselves.

In Chapter 4, I also examined which actors the formal mechanisms empower as regulators. I showed that the globalised nature of the apparel industry (being a part of a global supply chain) makes the regulatory landscape complex. Chapter 4 considered these functions against the background they operated in with empirical data from some actors such as male trade union leaders.

This complexity means that legal and policy standards for worker voice filter through layers of social, political and industry regulations and can be ineffective, creating a disadvantage for workers and a law–practice gap. However, complexity can also create opportunity. I found that different groups within the ‘social field’ of the apparel industry, such as women workers, can use different normative frameworks to gain leverage for their causes and also to link with other actors and form networks with influence.

Based on these points I argue that, although the negotiating power of women workers in the formal labour bargaining forums for the industry can be weak, compared to some of the other actors such as their male counterparts in the national-level trade unions, normative pluralism can also offer an advantage to them. I use the case studies to examine this. Figure 8.1 below shows this complexity and how Sri Lanka’s industry is intermeshed into a globalised apparel supply chain. It also illustrates the intersecting normative frameworks applicable and the connections between different actors within and outside the industry and who are located to access them in the most effective way.

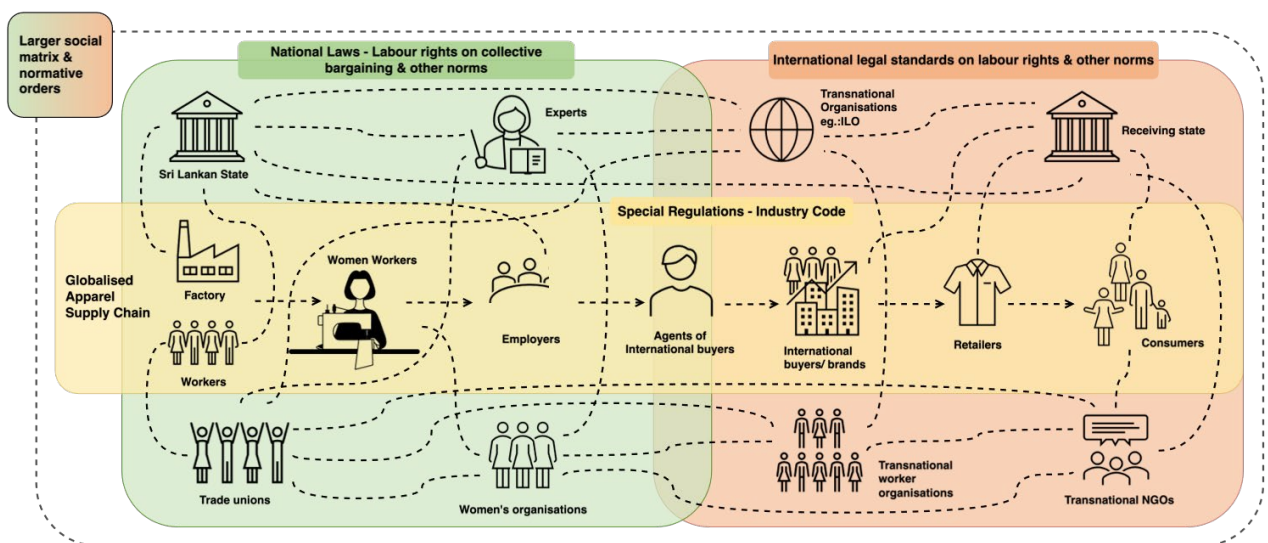


Figure 8.1: Sri Lanka’s apparel industry as a semi-autonomous social field and the connections between actors.

In **Chapters 5, 6 and 7** I explored the **second and third sub-questions**: What non-conventional forms of rights negotiations are emerging in the pandemic and post-pandemic Sri Lanka? And how do women workers legitimise the expression of their voice in the case studies? Each of the three case studies focused on three prominent issues that affected all apparel workers, and especially women workers who are the majority in the affected group. They were instrumental case studies that allowed me to closely examine the collective voice of women workers in each instance. Under each case study, I paid attention to how collective voice was organised, who actioned collective voice, the scale of the network/s, strategies used by women workers, the use of different norms to advance their claims and what regulatory impacts they had.

In the first case study on violence and harassment in the world of work, in **Chapter 5**, worker voice was organised in a transnational to grassroots dynamic with the grassroots linking back to the transnational network. The women's organisations used international standards recently formulated by the ILO under its Convention 190, to carve out spaces to voice concerns and urge the Parliament to amend the laws to include an expansive definition of violence and harassment in the world of work and accessible remedies for women workers. Here, I discussed how Sri Lanka does not have any civil or labour law provisions to directly regulate violence and harassment at the workplace and how the general remedies are inaccessible for women apparel workers. The empirical data evinced that women workers are a non-homogenous group that are placed at a neglected point of intersection that make them more vulnerable to offenders and aggressors. The new international Convention gave the advocacy and activism by grassroots-level women's organisations and women-led trade unions new energy, space and legitimacy. They leverage the new normative framework to access and influence the key regulators and to educate and empower women workers. The regulatory influence by women workers and their representatives, in this case study, was aimed at the Sri Lankan state and involved urging law reform as well as employer accountability for work-related violence and harassment. I discussed regulatory influence by women workers in forming alliances with the national institutions like the Women's Parliamentary Caucus and other transnational organisations such as the Solidarity Centre for recruiting support and resources. As a result of this advocacy and activism, the state has given an undertaking to sign the Convention, while the employers have also joined the discussions to raise their reservations<sup>841</sup> about signing and ratifying this Convention.

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<sup>841</sup> IOE Report 2019 (n 514).

Next, in the wage theft case in **Chapter 6**, I observed how women workers' collective voice was organised in a grassroots to transnational network. Harnessed by women's organisations at the ground level, the network aimed to pressure employers and international fashion brands who are the buyers of Sri Lankan apparels as joint-employers of workers. This transnational network comprises women's labour organisations and trade unions. Being a global south-led campaign, it is linked with regional trade unions and organisations from other garment manufacturing hubs in Asia and regional labour collectives. Internationally, think tanks and civil society organisations based in the global north countries have strategised to amplify the message of the groups and support their advocacy to hold international buyers and fashion brands accountable. This campaign has employed advocacy as well as strategic litigation /complaints and legal claims on the accountability of fashion brands as joint employers. This campaign was successful in opening up a new legal debate, which is joint-employer liability of international buyers, to address wage theft in Asian garment factories. However, in pursuing a solution, the complainants have to go through a labour arbitration mechanism. In terms of regulatory influence, the progress attained with the complaints being formally accepted by state authorities and the international labour network seems small. However, it is an important acknowledgement of long-ignored wage issues of apparel workers which put joint-employer liability on the agenda. In that sense, they are significant wins for women workers.

Finally, **Chapter 7** explored how women sought to negotiate safe and healthy workspaces during a massive COVID-19 outbreak. I focused, in particular, on worker experiences in the Brandix Minuwangoda factory. Here, I demonstrated how women's labour organisations sought to demand redress for workers and raised corporate accountability claims against their local employers and the state for intentionally exposing workers to dangerous work conditions during COVID-19, and letting the disease spread beyond the factory to the larger community outside. This was an instance in which the country's laws, such as the Factories Ordinance, did not provide the necessary legal protection, creating a law-practice gap. The national investigations did not deliver any results to the workers or the general public. Action in this case was twofold: comprising a transnational labour advocacy campaign and a complaint to the International Finance Corporation (IFC) to exert pressure on the company to make necessary changes at the ground level. Worker representatives, led by women's labour organisations, invoked global human rights norms to hold corporate actors

accountable. The IFC complaint, initiated by grassroots women's organisations with the support of trade unions and a transnational network, leveraged the IFC's sustainable financing conditions for international money lending to exert pressure on the local company as they had qualified for an IFC loan at the time. Therefore, this case study focused on a global governance regime and a labour strategy that the other two case studies did not capture. In this case study, women workers and their representatives influenced regulators in multiple ways. Primarily, the activism by workers and women's labour organisations prompted the factory to change its management and comply with the recommendations of the Labour Department. More generally, transnational advocacy efforts resulted in an ILO-sponsored national initiative to revamp work health and safety policies and practices and labour bargaining between workers and employers in Sri Lanka.

Table 8.1 below summarises the analysis of the three case studies, identifying the scale of the network, the strategy used and at whom the regulatory influence was directed. It also shows how women workers connected with grassroots-level women's organisations, which, in turn, harnessed a multi-level and multi-scale network, recruiting regional and transnational actors or their support or involvement in that network.

*Table 8.1: Summary of the key features that enabled regulatory influence by the workers in the case studies.*

<b>Case study</b>	<b>Scale of network</b>	<b>Strategy</b>	<b>Regulatory influence on</b>
Struggle for violence and harassment-free world of work	Transnational to grassroots Grassroots to national	Use of international standards to push for national laws on violence and harassment in the world of work	Employers for accountability and the state for law reform
Campaign against wage injustices	Grassroots to transnational	Use of local (Department of Labour – Sri Lanka) and international complaint mechanisms (OECD Guidelines)	Local employers and international fashion brands for accountability

Negotiating safe and healthy workspaces	Grassroots to transnational  Transnational to grassroots (the IFC complaint)	Use of transnational commercial loan facility conditions for businesses	Via international organisation (IFC) on employers and the state
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Taken together, the case studies capture the multiple strategies adopted by workers and their representatives. Collective voice organised in different forms ranging from strategic complaints /litigation, training and empowering women workers, linking with national and transnational institutions and forming women workers’ alliances and networks with others such as national-level trade unions, regional labour alliances, transnational civil society organisations, lawyers and experts. I summarise these multiple forms of collective voice in Figure 8.2 below.

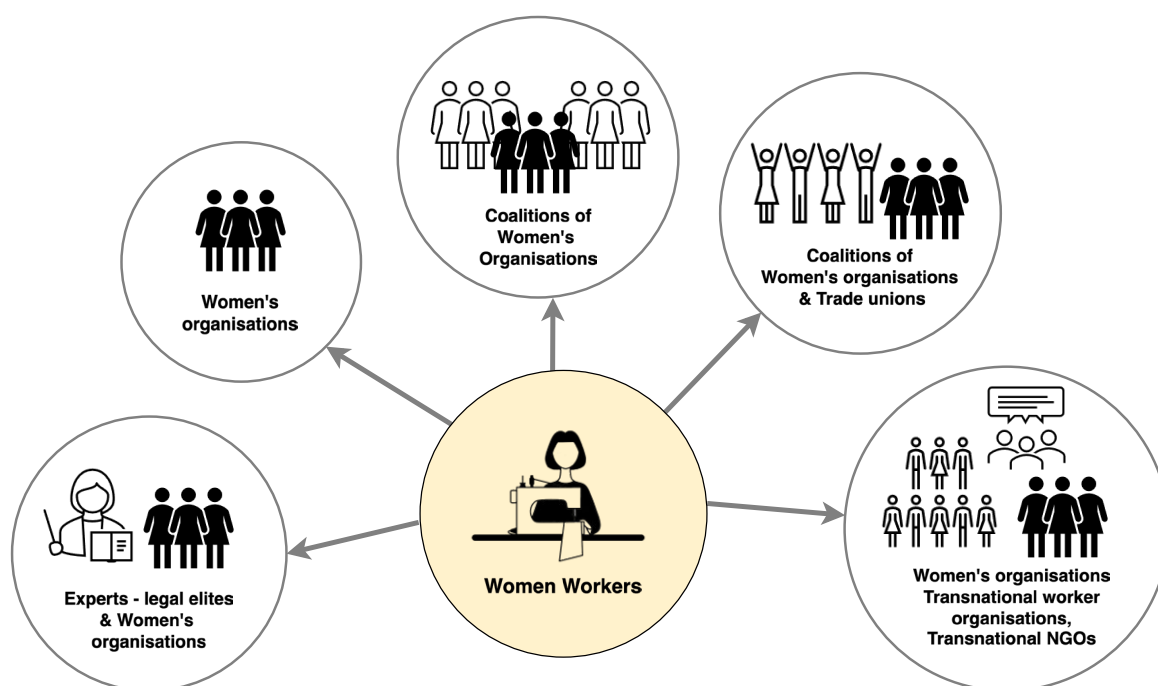


Figure 8.2: Collective voice in various forms: Summary of case study findings.

Significantly, these efforts were led by women labour leaders and activists who connected women's lived experiences with national and international campaigns aiming for better outcomes for them. I highlighted how women's labour organisations lacked the formal rights and privileges that trade unions have and how women's trade unions have been excluded from the national-level labour rights and policy bargaining forums. Therefore, they action collective voice, outside traditional channels, as a way to influence conventional regulators and infiltrate their existing power structures.

As discussed in case studies, the women workers use different strategies and normative framings to help them to target different pressure points in a range of regulators. In terms of regulatory influence, I discussed how small but multiple gains in the three case studies contribute towards better outcomes for women workers. In these Sri Lanka-focused case studies worker activism takes place in a context of (a) massive power imbalances between the women workers and employers and the state, (b) repressive socio-political conditions in the location that limit their freedom of speech and association, and (c) crippling risks (i.e. job loss and jeopardised chances of re-hiring) that workers have to bear as a result of their resistance.

Further, the dissertation analysed collective voice as a dynamic force. Linking back to the conceptualisation of collective voice in Chapter 1, dynamism gives collective voice the agility and power that it needs to make regulatory impacts. Finally, collective voice gains legitimacy by drawing upon different norms. I discussed above how this is crucial for the labour strategy as well as to make the intended impact by strategically targeting the right stakeholder.

## 8.3 Themes and implications of the key findings

### 8.3.1 Themes

The findings can be summarised under five key themes.

First, a key theme is that labour networks are 'webs of influence'. All three of these case studies reveal power exerted through labour networks organised at different scales. Three features of these networks are significant: first, the networks, although adopting different strategies and methods to negotiate worker rights, infiltrate formal governance spaces and draw upon norms. This ensures that the outcomes are not limited to advocacy and result in tangible results for workers. Second, these networks develop as webs of influence to target different governance actors in anticipation of

different regulatory outcomes for workers. For instance, in the three case studies the networks were directed towards different targets: local employers, international fashion brands, the state and empowering women workers at the grassroots level. These networks and coalitions show that even small actors like women workers can have influence over great powers such as multinational corporations and the state. Third, the networks are examples of strong grassroots to transnational synergies that involved multiple actors who exercised a sufficient level of autonomy but were coordinated through a common dialogue and shared values and principles to create regulatory impact.

The second key theme is the role of the collective voice in filling, at least partially, the law–practice gap. Through the case studies, I observed an emerging dynamic structure as bolstering the existing worker voice mechanisms such as trade unions, rather than replacing them. I do not argue that collective voice and its different forms are the only sustainable way to win labour claims, or that they should replace freedom of association and the associated formal worker voice mechanisms. Instead, I argue that, in the absence of effective implementation of these voice mechanisms, collective voice has emerged as a strong informal alternative or supplement and a safety net, especially for women workers. In that sense, these networks can act as a supporting system to strengthen worker voice and support official entities such as trade unions when they are repressed and ineffective under specific local social, political and economic circumstances. However, this is not to suggest that such networks in themselves can be a sustainable or sufficient source of remedy for lack of women’s representation in the formal bargaining spaces. The labour networks that I examined have their own limitations and constraining forces which I discussed in Chapter 2 and, case study chapters, and summarise in section 8.4 below.

The third key theme is the choice of different normative framings to target specific pressure points in strategic labour activism. In the case studies, worker representatives framed their claims using different normative regimes including human rights, labour rights, common law on joint employer liability, corporate responsibility, principles on loan conditions for businesses, and a feminist approach to discrimination. The choice of normative framing was crucial for two reasons: first to create regulatory influence, and second to combine with other actors in network formation.

On the first point, I illustrated how different norms gained different kinds of leverage for labour networks in my case studies. The use of human rights norms in this context

holds great importance. In Chapter 5, women's labour organisations leveraged the C-190 as an international rights standard to demand the state to reform laws at the national level in Sri Lanka. Additionally, in Chapter 7, the global corporate financing conditions of the IFC that include human rights protection by businesses, i.e. freedom of association and right to collective bargaining for workers, were instrumental in pressuring the Brandix company at the local level in Sri Lanka. The choice of normative framings gained labour organisations the desired leverage in the case studies for making influence, however small it was.

On the second point, Sandhya Pahuja recognises the political potential of human rights that can go beyond mere legal regulation. I engage with this in relation to how labour organisations combine and form networks in furthering a labour cause through human rights normative framings. This potential of human rights offers three key advantages for women's labour networks. First, it is a combining force to bring like-minded organisations together. Human rights claims can resonate with the agenda of other regional and transnational actors, compelling them to join and support grassroots labour causes. For example, the labour campaign in Chapter 6 centred on the international human rights framings around the right to adequate remuneration and wages, with labour claims filed by local organisations in eight destinations in Asia and Africa. In addition, this campaign brought together a transnational network of 200 labour organisations internationally. This is an example of how normative frameworks can unify actors who are different and geographically distant but similarly motivated on human rights of workers.

Second, claims about gender equality and non-discrimination also draw from feminist norms for women's organisations to combine and work together. An example is local women's labour organisations in Sri Lanka similarly motivated to support women workers, namely Dabindu Collective, RED and Stand Up Movement, planning their annual labour agenda together and connecting with regional feminist organisations. Third, human rights-based claims draw more attention and response from the duty bearers such as employers and even international fashion brands, who often deny their connections to local-level employment and operations at factories. For instance, wage theft, in addition to being a labour contract violation, also has the potential to subject a country to Universal Periodic Review by the UN Human Rights Commission under the human rights obligations.

Insufficient rights awareness at the ground level undermines this potential of rights framings in worker claims. I discussed this using an analogy by Amali Kalupahana – a woman trade union leader – where she equated trade unions to temple priests. She meant they are the medium between the devotee (the worker) and the god (the employer /state) who communicates worker claims using appropriate rights language and shares the response with workers. Currently, lack of rights awareness creates a big gap between mobilising and empowering women workers. One reason why male-led trade unions dominate women workers is this knowledge gap – where trade unions possess the knowledge and can negotiate worker rights with suitable forums whereas the women workers are ignorant on this and submit to the power of union leaders. Women workers shared how they have become aware of their rights through training and interactions with women’s organisations. Sandi reflected on her experience: ‘It was very helpful to understand my own workplace. When something happened at my factory, I understood how to identify issues and how to deal with them.’<sup>842</sup> As discussed in Chapter 7, amongst other benefits, this offers confidence to shop-floor workers.

The fourth key theme is the gendered experience in this analysis and the importance of collective voice for women workers. It takes several forms. First, I argue that collective voice is especially important for women workers. In Chapter 5 I illustrated the diversity among women workers which makes representation for women even more crucial. As established from my data in the case studies, although excluded from the formal labour bargaining mechanisms, women workers have exerted power through informal channels. While all three case studies examined rights violations that disproportionately affect women workers, they also showed that women workers are not silent, docile or simply contributors to industrial peace. They are active, vocal, strategic and committed to labour rights. Second, the important role played by women’s organisations cannot simply be overlooked. As discussed in case study chapters, women’s organisations are key in driving collective voice and safeguarding the interests of women workers and addressing issues that affect them.

The fifth and final theme is collective voice as regulation. The ability of women workers to negotiate their labour rights, to create change at the ground level and garner the support and strategies needed to do so are all important aspects of this analysis. I have explored different ways in which women workers orchestrated change for

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<sup>842</sup> Interview with Sandi, a shop-floor worker in a garment factory in Katunayake, Sri Lanka interview conducted on 08.11.2021.

themselves. As mentioned above, these may not appear to be major victories but they are still achievements. Small gains can eventually lead to better and more respectful work environments, better pay and better working conditions for women workers at the factory level. The role and commitment of women in driving that change has emerged as central. In that sense, women workers of Sri Lanka's apparel industry exercise regulatory influence in their exercise of collective voice.

### 8.3.2 Implications of the key findings

The dissertation extends understandings of networked regulation and governance. I engage with a flipped framework of networked governance that can be distinguished from previous networked regulation and governance literature that focuses on the state and business corporations. Therefore, my approach differs for its focus on grassroots labour organisations and how women apparel workers seek to create regulatory influence by building networks from the bottom-up. I supplemented the networked regulation and governance lens with insights from the TFM theory in order to make gender-based differences more visible and to analyse women workers in labour bargaining.

Networked governance entails that a diverse range of actors, even comparatively weak in power, connected through coordinated dialogue can check and balance the powers of other nodes in a regulatory network.<sup>843</sup> These diverse actors are both interdependent but maintain a sufficient degree of autonomy. In this dissertation, I have developed the regulatory 'webs of influence' concept and explored how networks can be driven by grassroots labour organisations. This analysis makes the webs of influence framework useful in representing and safeguarding the interests of vulnerable and marginalised groups such as the women workers. Although women are a majority in numbers, their numerical power is weakened by ineffective labour representative mechanisms and gender norms that further constrain them. The use of feminist theory helps to mitigate the neutral approach in networked regulation that does not account for power relations. As such, it highlights how gendered groups, such as women workers, devise their own networks to overcome instances of gendered discrimination which lead to creating grounded, diverse and equitable networks.

The combined use of networked regulation and governance with TFM in this dissertation extends the analytical utility of TFM as a lens as well. TFM, typically, is

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<sup>843</sup> Braithwaite, Charlesworth and Soares (n 152).

focused on change through activism rather than influencing regulation. While I use TFM to closely focus on how women workers organise at the grassroots level, I develop this analysis to also capture how women workers' advocacy and campaigns aim to shape the behaviour and the decision-making of other regulators in the global apparel supply chains, and thereby exert regulatory influence through their collective voice.

Further, TFM conceptualisation captures women's movements that span across countries. However, the theory emphasises the importance of grassroots labour organising in order for the transnational movement to thrive.<sup>844</sup> Therefore TFM scholars closely examine localities and women's organising in those prior to connecting them across countries and to the international layer. For instance, Moghadam, writing about transnational feminist networks from a global south perspective, claimed networking across national, regional and international borders in support of specific grassroots struggles leads to achieve feminist goals, and such links are crucial to intersectional networking and movement building at the grassroots level.<sup>845</sup> In this dissertation, I closely focus on the local layer of the network, while also examining how it is connected to national and transnational layers and how change is transmitted both ways – from grassroots to transnational as well as from transnational to grassroots. For instance, the wage theft case study is an example for the former and the gender-based violence and harassment is an example for the latter.

The grassroots focus helps to closely follow activism at the local level to elucidate the important foundation that it lays for the transnational campaign and the local-transnational synergies. For instance, previous scholarship explored the value of women's labour networks in negotiating safe working conditions in the apparel industry.<sup>846</sup> This approach emphasises 'the benefits of engaging in locally-focused but transnationally coordinated' action.<sup>847</sup> My analysis therefore focuses on how grassroots organisations identify issues, connect with women workers and recruit support from regional and transnational organisations in order to forge these transnational networks. I draw on comparisons between South Asian countries in different chapters such as Chapters 6 and 7.

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<sup>844</sup> Moghadam (n 190) 53-57.

<sup>845</sup> Ibid 53-57.

<sup>846</sup> Angela Hale and Jane Wills, 'Women Working Worldwide: transnational networks, corporate social responsibility and action research' (2007) 7(4) *Global Networks* 383, 383-502.

<sup>847</sup> Ibid 454.

The use of norms and normative frameworks is an important consideration for network building as well as creating targeted regulatory influence. I conceptualised the apparel industry, in Chapters 2 and 4, as a semi-autonomous social field which could be influenced by multiple normative frameworks outside the industry.<sup>848</sup> In Chapters 5, 6 and 7 I demonstrated the use of norms for legitimising collective voice. During interviews, grassroots women's organisations that represent women workers in the apparel industry discussed with me how different norms, such as human rights, national labour standards, common law on joint-employer liability and feminist ethos and gendered claims helped them achieve different outcomes by pressuring regulators. Such norms were thus a resource or an instrument for grassroots labour organisations in connecting and networking with other actors and allies such as regional and transnational organisations, to form networks at a larger scale to exert pressure on regulatory decision-making. Whereas the existing scholarship in labour law and industrial relations, discussed in Chapter 2, examines labour bargaining and worker voice enabled by the formal legal mechanisms, my dissertation offered a framework to understand how women workers use the said normative plurality that applies to the apparel industry labour regulation in legitimising their collective voice to pressure specific regulators, such as employers and the state.

#### 8.4 What lies ahead: Limitations, questions and future directions

This dissertation raises important questions that may require attention in furthering collective voice as a framing for women's labour activism. Prior to that discussion, I address some of the limitations of this study below.

This study originated and developed during the pandemic. So naturally the focus of the study is also on labour activism during the pandemic. One could question if this is a limitation and if the framing of collective voice is only useful in times of crisis. Although this is a valid concern, I have demonstrated through the case studies that collective voice of women workers has been present for a long time and was highlighted due to exacerbated labour conditions in garment factories during the pandemic. Therefore, collective voice cannot be reduced to the fruit of crisis or as a force only feasible in pandemic times. As discussed in Chapter 4, non-conventional attempts to voice and fight labour repression in Sri Lanka began three decades ago. With crippled freedom of association, controlling labour policies and backlash against women activists since

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<sup>848</sup> Moore (n 201).

the 1980s, women co-opted other forms of organising, seemingly less provocative for authorities and their competing male labour advocates, than trade unions. During the pandemic, the workers confronted old issues of violence and harassment, unsafe workplaces and wage theft with a new pandemic-themed face. Collective voice, therefore, grew into a force during the pandemic through past innovations and strategies of the workers. Considering these reasons, I state that collective voice will remain relevant in the present and the future of labour networks and worker rights negotiations.

My analysis outlines collective voice as an informal, ad-hoc but dynamic and influential structure that has implications for the power of the women workers. Legal scholars often argue that rules and institutions matter in sustaining positive change and good practices. However, I argue that the movement often precedes the rules. This is for two reasons: first rules cannot foresee and address every injustice and second, rules only successfully work in conducive environments. I outlined how both of these elements are absent in Sri Lanka from time to time: unexpected incidents occur such as the pandemic, and authoritarian laws can undermine the effective implementation of rights. Therefore, this dynamic structure offers value to resolve issues. What is most valuable about this ad-hoc, informal structure that I call collective voice is that it is able to bring about sustainable change by pushing for law and policy reform.

These networks that I discuss in my case studies are not without their own limitations. Being coalitions, networks encounter fragmentation and problems of coordination. For instance, in all three case studies, coalitions of women's organisations, united in their strong feminist objectives and ethos, acted as a preliminary foundation for the larger networks. However, other actors in the larger network, such as the national-level trade unions, may not share the same objectives or values although they come together for different reasons such as the magnitude of the issue, impact on the larger national workforce and public attention. In Chapter 5, I demonstrated how violence and harassment are issues that could have been taken up by the male-led trade unions long before the C-190, if there was the will and support. The support of other organisations, such as trade unions, is important in my case studies in strengthening collective voice to create the desired regulatory impact and influence.

Braithwaite, Charlesworth and Soares argue that ‘the strength and success of a network ... depend on the management of dissonance among nodes.’<sup>849</sup> Therefore, a coordinated dialogue among all actors is crucial for the success and continuity of the network. Further, complex inter-dependencies such as funding-dependency and competition for resources can make weak actors even more vulnerable. For instance, in Chapter 5, I discussed how funding from religious or faith-based aid organisations can influence and shape the agenda of grassroots women’s labour organisations.<sup>850</sup> One way to mitigate such influence is to have a strong vision for the organisation consisting of guiding principles.

Moreover, the informal workforce forms an important discussion on Sri Lanka’s apparel industry. However, due to the detailed focus on the issues of women workers in the formal sector, this research does not cover informal workers in its scope. Nevertheless, collective voice in its dynamic, collective and representative form is a relevant framing for the voice of informal workers as well. There is scope to explore the informal workers and how their activism can create regulatory influence in a future project.

Labour rights, governance gaps and networked efforts to resolve labour-related injustices collectively pose important issues that require prompt action and solutions. This is especially crucial, as discussed previously in Chapters 1 and 4 in a context where trade unions and worker bargaining power are declining. There have been efforts to deliberate new pathways to organise and regulate business actors in various ways. Social movements<sup>851</sup> and business and human rights<sup>852</sup> scholarship increasingly lead the discussion on this. Regulatory theory shows great potential in contributing to these discussions.

It was the key purpose of this dissertation to examine, through empirical work, how women workers, who are often excluded from the formal labour negotiation pathways in an already broken system, create regulatory influence, through collective voice, over

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<sup>849</sup> Braithwaite, Charlesworth and Soares (n 152) 362.

<sup>850</sup> For a more detailed discussion on this: See Hewamanne (n 433) 42-55.

<sup>851</sup> Tu Phoung Nguyen, ‘Labour Law and (In)justice in Workers’ Letters in Vietnam,’ 5(1) *Asian Journal of Law and Society* 25, 25-47.

<sup>852</sup> Surya Deva and Pushkar Anand, ‘A Global South Perspective on Labour Rights and Supply Chains for a Post-Growth World’ in Nicolas Bueno, Beryl ter Haar and Nuna Zekić (eds), *Labour Law Utopias: Post-Growth and Post-Productive Work Approaches* (Oxford University Press 2024 forthcoming); Dorothee Baumann-Pauly, Justine Nolan, Aret van Heerden and Michael Samway, ‘Industry-Specific Multi-Stakeholder Initiatives That Govern Corporate Human Rights Standards: Legitimacy assessments of the Fair Labor Association and the Global Network Initiative’ *J Bus Ethics* (published online, 2017) <[https://cclg.rutgers.edu/wp-content/uploads/Industry-Specific-Multi-Stakeholder-Initiatives\\_Dorothee-Baumann-Pauly.pdf](https://cclg.rutgers.edu/wp-content/uploads/Industry-Specific-Multi-Stakeholder-Initiatives_Dorothee-Baumann-Pauly.pdf)>.

business and state actors. In light of this purpose and the discussion in this dissertation, I highlight future directions below.

- a) Understand the implications of this dynamic informal structure on the formal pathways for negotiations and the future of labour bargaining:

As illustrated in the case studies, my analysis of the networked efforts of women workers helped to map a dynamic and informal governance structure in the space of labour bargaining. Collective voice has three key attributes of dynamic, linked and coordinated. This structure is supplementing the currently ineffective formal system of bargaining. Although it is informal, temporary and mostly purpose-driven, it has proven to be influential. Therefore, in the context of women workers and their rights, it is worthwhile to think beyond the traditional trade unions for a more representative, plural system of labour bargaining and labour policy negotiations. Therefore, this structure cannot be simply overlooked as a temporary alliance that unites from time to time. These plural actors are able to come together due to their long-term agendas and understandings. The network, therefore, pushes for more formal involvement of multiple stakeholders, including grassroots women's organisations representing workers, in labour bargaining.

- b) Importance of exploring the use of networked regulation and governance for supply chain regulation to identify more sustainable pathways for formal negotiations for women workers:

In connection with my previous point, I propose to consider networked efforts in re-thinking new mechanisms for labour bargaining. In the context of Australia, it has been highlighted how, in the pandemic and post-pandemic times, trade unions have achieved 'isolated wins'.<sup>853</sup> Especially in the context of Sri Lanka and South Asia where there is civic and democratic rights erosion, discussed in detail in Chapters 1 and 4, the participation of a network of actors is more powerful as opposed to activism by single entities and collectives of weak trade unions. Networks of actors appear more representative, resourceful and resilient.

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<sup>853</sup> Mihajla Gavin, 'Unions and collective bargaining in Australia in 2021' (2022) 64(3) *Journal of Industrial Relations* 362, 362-379.

- c) Wage theft, workplace health and safety, and gender-based violence in the world of work are new directions that law and policy reforms in Sri Lanka as well as South Asia should explore further:

This dissertation illustrates three areas, in the case studies, that call for law and policy reform. These reforms should be shaped by the experiences of the apparel workers. Consultative and focused discussions on law reform should be conducted with the active participation of all workers, especially women workers and their representatives. This is often overlooked or their contribution is undermined in such forums. Therefore, more conscious and deliberate efforts for law reform should emerge from consultative and participatory processes.

Overall, my dissertation offers a fresh perspective in analysing grassroots labour activism through regulatory theory combined with TFM and semi-autonomous social fields. Findings from this dissertation on collective voice of women workers are relevant to informing a larger discourse on regulatory networks and regulatory influence outside the state apparatus. International governance spaces of all kinds are often inhabited by powerful and rich actors such as the states and multinational corporations. My dissertation is a reminder that women workers, who are often considered weak, docile and excluded from regulation and governance even at the local level, with the support of motivated allies and through purposeful networks, can influence regulation through their collective voice.

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