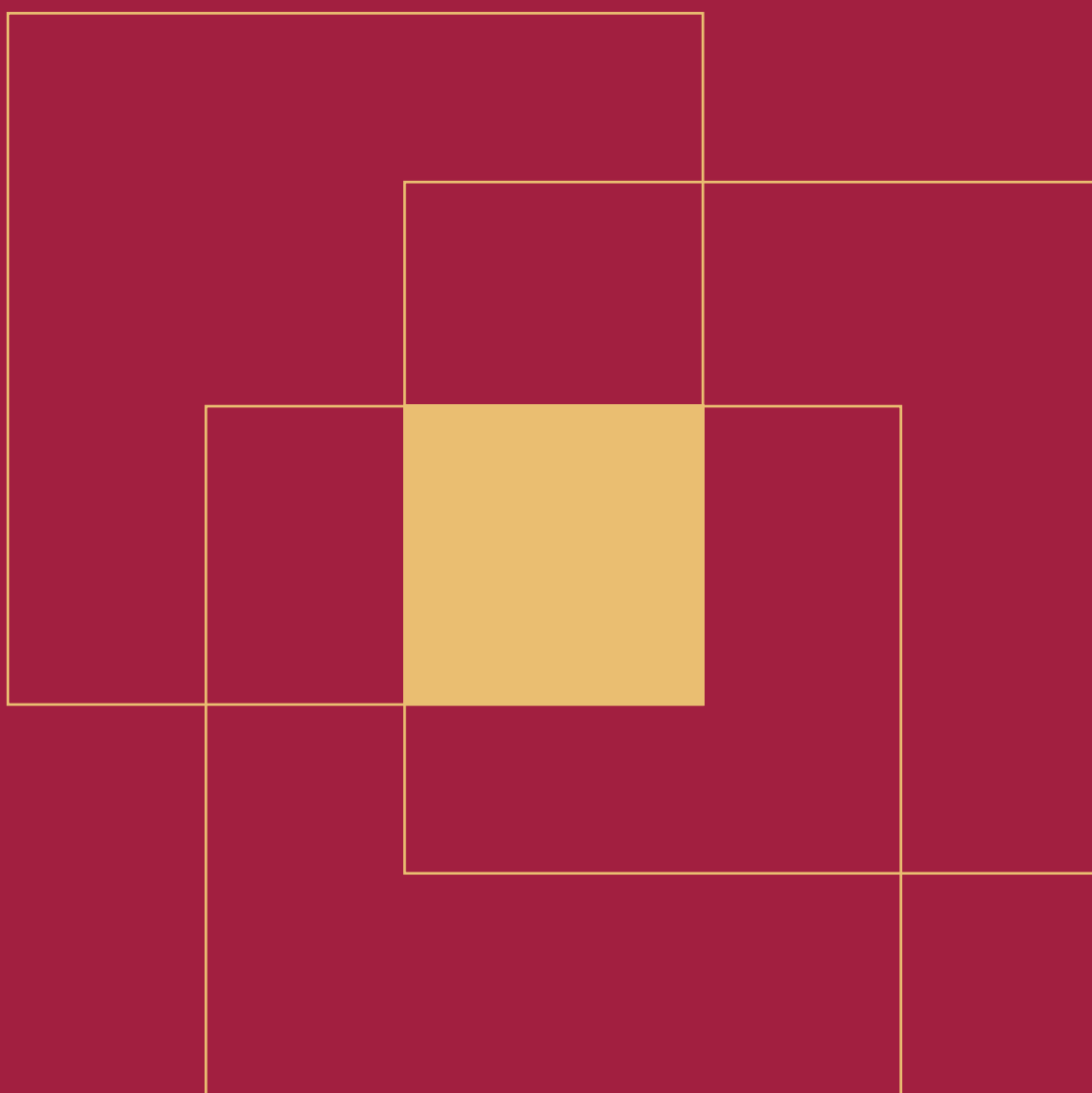




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A REVIEW OF INDUSTRIAL RELATIONS IN THE GARMENT SECTOR IN GURUGRAM



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A REVIEW OF INDUSTRIAL RELATIONS IN THE GARMENT SECTOR IN GURUGRAM

Rakhi Sehgal

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List of Abbreviations

ALC	Assistant labour commissioner
CCC	Clean Clothes Campaign
CLC	Chief labour commissioner
DIPP	Department of Industrial Policy and Promotion
DLC	Deputy labour commissioner
ESI	Employees' State Insurance
ESMA	Essential Services Maintenance Act
ETI	Ethical Trading Initiative
FIR	First Information Report
GAWU	Garment and Allied Workers Union
HMSI	Honda Motorcycle and Scooter India Pvt Ltd
HR	Human resources
HRM	Human resource management
IAS	Indian Administrative Service
IC	Internal committee
ILO	International Labour Organization
IS&H	Industrial safety and health
IT/ITES	Information technology and information technology-enabled services
JLC	Joint labour commissioner
LBL	Labour Behind the Label
LC	Labour commissioner
LI	Labour inspector
MEM	Mazdoor Ekta Manch
MNC	Multinational company
MSIL	Maruti Suzuki India Ltd
MWU	Modelama Workers' Union
NCL	National Commission on Labour
PF	Provident Fund
PTUR	Punjab Trade Union Regulations, 1927
PUCL	People's Union for Civil Liberties
PUDR	People's Union for Democratic Rights

SDM	Sub-divisional magistrate
SEZ	Special economic zone
SLD	Society for Labour and Development
ULP	Unfair labour practice
UWC	United Workers Congress

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Foreword

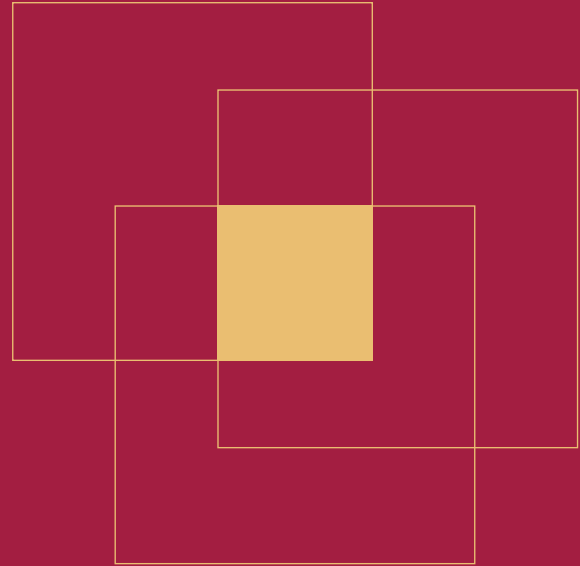
Industrial relations shed light on the development challenges of specific occupational sectors and the locations in which they are documented. The peaceful resolution of labour disputes underpins decent work and sustainable development, and tension and violence foster an environment that is un conducive to sustainable business and decent work. Industrial relations in the suburban areas of the Indian capital can also shed light on the extent and quality of the structural transformation of the Indian economy. Better industrial relations offer the possibility for agrarian reforms and for the contraction of employment in the agricultural sector to be counter-balanced with high-quality employment alternatives in the national capital region. However, the opposite indicates that the sector will need to overcome the identified challenges in order to grow in a significant manner. The purpose of this report is to shed light on such challenges in order to find solutions that may help in improving development processes in Gurugram's garment sector and prospects for decent work. While Gurugram is one of the most industrialized areas in the country, this report will show that there is room to improve its industrial relations and human development.

An important characteristic of much of Gurugram's workforce is that it consists of first-, second- and third-generation migrant workers from other parts of the country. In other words, the story of its industrial relations can also be analysed in connection with the experiences of its workers in their respective areas of origin. However, this is not the objective of this report – other studies have been written about it. Histories of circular labour migration trajectories are variable and include rising and waning periods of migratory movements along recurrent pathways. They depend on histories of agrarian change, histories of labour relations and other factors that affect migratory movements for work. This particular study focuses on industrial relations. It fills an important gap in the study of industrial relations in Gurugram. While some information may appear dated in light of the newly adopted labour codes, the COVID-19-related reduction of the garment sector and its impact on the workforce pose significant new challenges that can only be overcome if one reviews the lessons of the past. I hope that this report will help in making sure those lessons are not forgotten.

Igor Bosc

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Introduction



Gurugram, in the state of Haryana, has the third highest per capita income in India and nearly 250 Fortune 500 financial and manufacturing companies. The Gurugram manufacturing hub near Delhi has been rocked by anti-worker violence several times, but recent incidents stand out and signal a shift that needs to be understood.

Over the past half a decade or so, seven major labour-ignited incidents of violence have erupted at Gurugram-based garment export houses.¹ Of these, three occurred in the period 2014–15, the most ironic fact being that they occurred at the bigger factories. An editorial in an industry newsletter was titled “Are we tackling labour issues responsibly...?”² and opened with the lines, “The number of worker-related violence [sic] is disturbingly on the increase in the garment export industry in the Delhi-NCR region. Over the last few years, big names like Viva Global, CTA Apparels, Modelama and Orient Craft have witnessed angry workers pelting stones and destroying property leading to riot-like situations, halting work and calling for immediate management intervention for damage control. In all cases the situation could have been averted”.

‘The garment industries of the National Capital Region, spread across Gurugram, Faridabad and Noida, contribute more than 28% of India’s total exports; and of this the largest contribution is from the 2,500 manufacturing units of Udyog Vihar.

These units, says Darlie Koshy, director general of AEPC, make higher-end “fashion” garments for companies such as Gap Inc., JCPenny Co. Inc., Ivy Co., etc.

Among them they employ around 200,000 workers, and are always on the lookout for more.’

– Jain 2010

¹ See, for example, Sanjay Yadav 2014 and Aggarwal 2018.

² *Apparel Online India* 2015.

Orient Craft, the biggest garment export manufacturer in Gurugram, has faced three instances of violent protests by workers in the last few years. On 19 June 2015,³ around 1,000 workers employed at Orient Craft attacked the management staff, set fire to the fabric store inside the plant, and torched several vehicles after they heard (incorrectly, as it turned out) that four workers had been electrocuted in a lift in the plant that morning. The protesting workers clashed with the police that had been called in and 250 workers were arrested and charged with attempt to murder. Police were deployed at the plant for several days thereafter. This was the third such protest at Orient Craft in three years.⁴

On 28 March 2014 (Agarwal 2018), a worker in the tailoring department of Orient Craft collapsed suddenly while seated in front of the electronic sewing machine. He died by the time he was taken to hospital. According to the police, Sunil died of a heart attack but his co-workers believed that he had died of electrocution. Orient Craft workers gathered in large numbers outside the factory gate after Sunil was taken away to the hospital. When they realized that Sunil had died, they were angry and demanded that his body be returned to them. The police responded with a lathi charge and tear gas shells and the workers pelted bricks and stones at the police officials. Nearly two dozen people, both workers and policemen, were injured in the clashes. The next day, 29 March 2014, workers gathered outside the factory gate again, to protest. The police again dispersed them with a lathi charge and tear gas shells.

In 2012, workers entered into a violent altercation with a contractor of Orient Craft after Naseem Ahmed, a worker in the hosiery unit, was stabbed in the arm with a pair of scissors by Harinder Singh, a labour contractor hired by the company. In protest, the workers torched vehicles. The violence escalated after the police resorted to a lathi charge. Ten employees and two policemen ended up in hospital; eleven workers were held.

In another factory, on 12 February 2015,⁵ over a thousand workers from Richa Garments, its sister concern Gaurav International, and neighbouring garment factories went on a rampage after hearing that a contract worker, Sammi Chand, had died after being beaten by company security guards two days earlier, for reporting to work 15 minutes late and having an altercation with the guards. The protesting workers set fire to some parts of the factory as well as to some vehicles.

In yet another case, in 2011, Rabban, a worker at Modelama Exports, died of electrocution (Agarwal 2018). He had been working overtime during the night of 15–16 January and was on a 21-hour shift. He had finished 17 hours of work and had been stitching continuously for the previous two and a half hours. Exhausted from sitting on the stool for such a long spell with no break, at around 3 a.m., he came into contact with an electric wire and died instantly. His body was immediately removed and was never found again. Thereafter, his family too could not be located. A two-day protest organised by the workers had little result.

In 2010, Viva Global⁶ started terminating workers who had formed a union and started employing contract workers through a contractor instead. It started calling in armed private security to the shop floor to threaten the workers with physical violence. Around 45 workers were locked out in the presence of police and the private security. One morning when workers reported for work, the private security, hired by the management and the contractor, started beating workers to intimidate them into leaving, as the company was trying to enforce an illegal lockout against unionized workers. The workers protested against the illegal lockout for several days in front of the company gate, and demanded reinstatement.

3 Anumeha Yadav 2015.

4 Anumeha Yadav 2015 and Tiwari 2015.

5 *Hindustan Times* 2015.

6 Chamberlain 2010.

During this protest, the private security continued to attack the protesting workers with clubs, canes, and sticks. Women were also targeted and physically assaulted. During these attacks, Anwar Ansari, a worker and union member, was abducted and held for 14 hours, during which time he was blindfolded, tied to a chair and beaten. He was later released but told to leave the area or he would be killed.

These are not isolated cases in the NCR, and neither is garment manufacturing the only affected sector. Violence erupted at the Manesar plant of Maruti Suzuki India Ltd. (MSIL) on 18 July 2012, in which a manager was killed and 147 workers arbitrarily incarcerated for nearly three years. In 2005, there was a brutal lathi charge, arbitrary arrest of 400 workers, and incarceration of 63 workers of Honda Motorcycle and Scooter India Pvt. Ltd. (HMSI), along with their lawyers and supporters.

In 2008, a protest over the dismissal of 125 workers turned violent at Graziano in Greater Noida and the CEO was killed, for which 136 workers were jailed. A case was filed under the National Security Act 1980 against 6 workers, while 64 faced charges of murder and attempt to murder, with bail denied. In 2009, Ajit Yadav, a worker at Rico Auto in Gurugram, was killed by goons hired by the company, but no company supervisor or manager was arrested or charged. In 2010, a manager died at Allied Nippon in Sahibabad when violence broke out because management tried to stop a strike by firing several rounds of bullets in the clutch wiring department to intimidate the workers. At Classic Golf Resort in Gurugram, 50–60 workers were incarcerated and charged with attempt to murder for trying to form a union. Over the last two years, three incidents of protest by garment workers at Orient Craft in Gurugram have turned violent. In 2013, numerous workers in Noida were randomly arrested and incarcerated for extended periods in two separate incidents at a 3Cs construction site, with additional mass arrests of protesting workers during the national strike of 2013.

What all these incidents have in common is the failure of the industrial relations system to provide a space for the articulation and resolution of worker grievances, leaving workers with no choice but to protest publicly and sometimes violently. The Haryana government's Department of Labour seems to be missing in these crucial moments, leaving it to the company (and its private security contractors) and the police department to handle the situation, although the labour department has powers under Section 10 of the Industrial Disputes Act to take suo moto cognisance of impending and existing industrial disputes and to intervene.

Recent incidents, especially in the automobile manufacturing sector of Gurugram, such as the one at MSIL (the 2011–2012 workers' unrest) are reminiscent of the 1998 "negotiations" between the management of Pashupati Spinning and Weaving Mill at Dharuhera in Rewari District of Haryana bordering Gurugram District, when the police were called to every meeting between the management and the union. Ultimately, on 19 February 1998, in an unprovoked firing by the police, ordered by the Sub-Divisional Magistrate (SDM), two workers were killed and scores injured. Many workers were beaten and injured again the next day, on 20 February 1998, for protesting the violence and killings. As noted by a fact-finding report by the People's Union for Democratic Rights (PUDR)⁷ that same year, even though "Industrial disputes do not fall under the jurisdiction of the district police", the police were deployed routinely "as a private army of the management" in negotiations, to smash unions, to deal with workers' go-slow agitations, to enforce illegal lockouts, to kidnap workers and union leaders, and to show them as arrested later, by implicating them in false cases.

Although Haryana has a longstanding history of repression and anti-worker violence, going back to the clashes in the Faridabad–Ballabgarh belt in the 1970s and the above-recounted incident at Pashupati Mill

7 People's Union for Democratic Rights 1998.

in the late 1990s, since 2011–12 the role of the different government agencies has seen a marked shift that requires a close examination. Increasingly, it appears that the state's industrial relations framework is unable to respond except through violence to labour's attempts to raise their grievances and to emerge as rights-bearing citizens demanding an equal voice at the negotiating table. This study attempts to understand this conundrum and suggest steps that can be taken to establish an effective, inclusive and democratic industrial relations system.

Rationale of study

The purpose of the study is to understand industrial relations and labour conflicts by focusing on the garment industry in the Gurugram industrial area. While much has been written about the violence that rocked the Maruti Suzuki plant in Manesar in 2012, we lack a deeper analysis of the situation in the garment sector and what these incidents signify for the industrial landscape and, indeed, for the changing labour relationship between industrial actors and the state in general and in Gurugram in particular.

The garment industry is continuously facing restructuring and market pressures (Chan, 2013), which are transmitted to workers in the form of insecure and precarious employment, poor working conditions and lack of communication with management, contractors and the labour department. As the garment industry in Gurugram has grown by leaps and bounds, employment relations have become increasingly complicated and obfuscated, with a seemingly non-existent system of industrial relations and ad hoc resolution (if any) of conflicts.

The state's industrial relations framework seems unable to respond effectively. The labour conciliation mechanism has been eviscerated through reductions in funding and manpower and by long drawn-out proceedings followed by delays in referring matters to the industrial tribunal for adjudication. In addition, the "ease of doing business" initiatives of the government have further reduced the role of the labour department, particularly in conducting factory inspections to check violations of the laws.

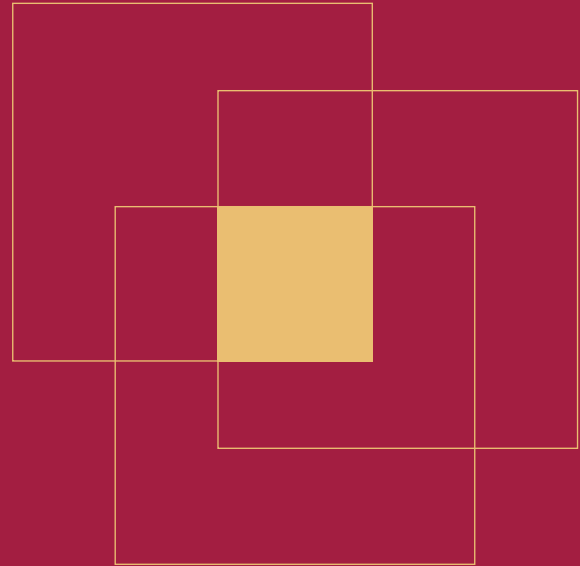
Instead, we see a pattern of violent reactions to trivial issues and industrial disputes being converted into law-and-order problems, for which police intervention is requested by management and given with alacrity by district administrations. An industrial relations framework that once "fulfilled the function of providing employees with a collective voice, and unions with the means to establish standardized terms and conditions of employment not only within an enterprise but also across an industry, and sometimes across an economy" (de Silva 1997) has been weakened and destroyed.

Without democratic industrial relations that allow workers to participate in dialogue with management and the labour department, this situation will not improve. It is imperative that the industrial relations system in Haryana, especially in the industrial belt of Gurugram, becomes democratic, based on state-led and state-mediated social dialogue. To move in that direction, a study of the evolution and functioning of the extant industrial relations system in Gurugram is important.

Before we turn to a detailed examination of the industrial relations system of Haryana, especially the Gurugram manufacturing belt, the study briefly discusses the trends within the industrial relations systems in past years and the limits that the extant system of industrial relations may be coming up against. The following section examines some of the major grievances of workers and presents their view as well as the view of the labour department officials who are tasked with the responsibility of ensuring implementation and enforcement of labour laws and are mandated to ensure justice, workers' welfare and dignified employment. The last section discusses the administrative organization of the labour department

– both the labour wing and the factory wing – as well as the roles of different labour officers as designated under various labour laws. The purpose of this section is twofold – firstly to understand the administrative organization of the labour department and secondly to delineate the actual working of the department as experienced by workers, unions and lawyers in Gurugram. This section could even be used as a module for information-sharing and legal rights training purposes.

Industrial relations in an era of globalization



Since the late 1980s and accelerating rapidly thereafter, there has been a shift in focus from social justice, equity and balance of power between employers and employees to enterprise efficiency, innovation, technology, skills, productivity and reduction of costs as bases of competitiveness, and hence a correlated shift from a collective industrial relations system (national, industry, union-level) to enterprise-based human resource management (HRM).⁸ Developments at both the global and national levels have led to fundamental transformations in the economy, industry and industrial relations. While global changes in the aftermath of the oil crisis of the 1970s are well documented, it is important to recall that the Indian economy was in crisis after the 1970s, following two wars and successive droughts in the 1960s, which led to a considerable slowing of industrial growth. Sengupta and Sett (2006, p. 210) point out that “the process of labour adjustment at the enterprise level commenced in India roughly from the mid-seventies”. They also add (2006, p. 215) that the “shift in the balance of power in favour of employers, in the face of economic adversity or product market competition and associated crisis in unionism, is not a uniquely Indian phenomenon”, and several studies have documented this trend in both developing and developed countries. However, Sengupta and Sett go on to argue that “what is unique about the Indian experience is the way democratically elected governments used their enormous discretionary powers under the industrial statutes and subverted the functioning of dispute resolution machinery to further their narrow political interests. In the process, growth of genuine trade union power base was stifled.”

8 Mishra and Narayanan 2011. Also see Sen 2011 and 1997 and Sengupta and Sett 2006.

Saini (2007, p. 663) too notes that “Today, state’s priorities are more focused on efficiency, higher growth in GDP, and foreign direct investment rather than social justice. The present state of apparent cooperation in industrial relations is symptomatic partly of a covert pressure on workers of the state’s indifference to their cause.”

Similarly, Sen (1997, p. 355) had earlier noted that the “dominant change in industrial relations in India has been the change in government role, with not only a tilt towards management/employer, but a progressive disengagement in industrial relations, particularly compared to the earlier actively interventionist role”, leading to a “reassertion of managerial power in the workplace and the assumption of managerial initiative in industrial relations”. She goes on to identify various industrial relations patterns, from union avoidance and subcontracting as strategies to acquire greater managerial control over the labour process to the introduction of HRM as a way of de-institutionalising labour–management relations.

While the overwhelming role of the state has been noted by many scholars, there is very little discussion of other ways in which political intervention in industrial disputes plays out. Sengupta and Sett (2006, p. 215) highlight three avenues of political intervention – “calculated use of police force, conciliation proceedings and discriminatory use of power of reference of the disputes for adjudication”. Even less discussed or studied is the manner in which companies, especially multinational companies (MNCs) influence state response. Sen (2011) notes several examples of companies lobbying the state government, especially in Haryana, to not allow unionization. In fact, she concludes that the “Haryana government’s solicitousness for industries’ concerns” has in fact led to the enlargement of the disputes from “company disputes into industry-wide movements” (Sen 2011, p. 382).

Given the diversity in India, industrial relations have to be able to address a range of sectors, types of work and enterprises, ranging from small workshops and home-based work that form the end of the subcontracting chains in the unorganized sector, with a less skilled and less educated workforce, to small and medium enterprises operating with small capital, small margins, and a small workforce with some literacy and skills, to large enterprises and MNCs producing, for example, sophisticated engineering goods with an educated and skilled workforce, to the service sector, which again ranges from micro and small enterprises to large MNCs. Thus, the principles guiding industrial relations have to be based on some universal guiding principles, and in the case of India, this is the Constitution, especially Part 4 of the Constitution, and Articles 38, 41, 43 and 43A, even when addressing a range of employment arrangements and contracts and enterprise-specific conditions, which can be defined and addressed/regulated through the industrial employment standing orders.

Employers in India have been seeking to fragment and disperse employment relationships in ways that take more and more workers out of the ambit of labour law protections and transform them into unregulated, market-driven, commercial relationships or contracts for service, that is a transformation from contract of service (employer–employee relationship) to contract for service (applies to independent contractors) (Sengupta and Sett 2006). This is unfortunate in a country like India, which is ranked the second most unequal society in the world (behind Russia),⁹ where skill and literacy levels are low and the balance of power between employers and workers is for the most part extremely skewed in a context of social systems based on hierarchy and respect for authority, and a general culture that does not promote consultation and free communication.

With a non-functioning industrial relations system that most workers perceive to either be broken or

9 *Economic Times* 2016.

working in the employers' interests, it is no wonder then that conflicts and clashes are rising, even if the industrial relations statistics of strikes and lockouts do not adequately capture and reflect many of these low-level conflicts, which are more common today than ever before. That some of these low-level conflicts erupt with much force and even violence, and that they disrupt industry and destabilize the region or sector should come as no surprise.

However, what is surprising is that in a country where the national unemployment rate was 5 per cent in 2015–16 (4.3 per cent for men, 8.7 per cent for women)¹⁰ and youth unemployment was 12.9 per cent (age group 18–29 years),¹¹ and where the national government has been emphasizing employment generation as an urgent goal, announcing initiatives such as Make in India and Skilling India to put India onto a path of higher-level industrialization, the trajectory of labour reforms announced is simultaneously making it harder for workers to access their rights, equity and social justice. Rather than reforming the country's industrial relations system to make it more democratic and effective at handling conflicts that are bound to emerge in a situation where the primary source of Indian competitive advantage in manufacturing and many services is cheap labour (more than innovation, productivity and value-added or efficient infrastructure), there is a curious transformation, a marginalization of the role of the labour department in preventing, addressing and resolving industrial conflicts.¹²

Citing the state's dominating role in the industrial relations system as a justification for demanding the withdrawal of the state without evolving a strong collective bargaining system and ensuring freedom of association and recognition of trade unions by employers would be counterproductive; the imbalance of power between employers and workers would only increase and perhaps lead to more volatility and conflict (Sengupta and Sett 2006).

There appears to be a national goal of improving the ease of doing business, but this should not be at the cost of labour and industrial relations governance, a view voiced even by a senior labour officer interviewed in Gurugram. The Business Reform Action Plan of the national government covers the main labour laws, namely the Factories Act, 1948; the Minimum Wages Act, 1948; the Payment of Wages Act, 1936; the Contract Labour (Regulation & Abolition) Act, 1970; the Payment of Bonus Act, 1965; the Payment of Gratuity Act, 1972; the Maternity Benefit Act, 1961; the Child Labour (Prohibition & Regulation) Act, 1986; and the Shops & Commercial Establishments Act, 1958.

It is common knowledge that conflicts are rising due to labour exploitation and rampant labour law violations, as voiced by workers and trade unions, and even acknowledged by the Principal Resident Commissioner, Haryana Government, in a letter to the Joint Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions (dated 1 January 2016).¹³ Yet, instead of strengthening the labour law enforcement machinery, state governments, including Haryana's, have introduced self-certification by employers in manufacturing establishments, without any system of checks regarding the authenticity of the information provided in the self-certification, with no mechanism to take cognizance of workers' voices, concerns, complaints or representations.

Trade unions support the goal of ease of doing business by combining the many compliance reports that establishments have to file, but do not support the self-certification element as it does not have a system of checks. The rapidity with which such changes are being enacted by state governments is evident from the fact that in October 2016, Haryana occupied the sixth slot in the ease of doing business index, based

10 Mint 2016.

11 Nanoosh Kumar 2015.

12 Interview with a senior labour officer of Haryana.

13 See section titled 'Labour Wing' on p.3 of the document: <http://www.darpg.gov.in/sites/default/files/Haryana.pdf>.

on the degree of implementation of the 340-point Business Reform Action Plan¹⁴ of the Department of Industrial Policy and Promotion (DIPP), a marked improvement from 2015, when Haryana ranked 14 with a score of 40.66 per cent. Within just one year, in 2016 the state moved up to the “Leaders” category from the “Acceleration required” category of 2015. It implemented a single-window system for state-level regulatory and fiscal incentive approvals. The online single-window system has a provision for filing applications, payments, status tracking, online scrutiny, and approval of applications. The officials of the body/bureau have also been given powers to grant approvals.¹⁵ Haryana further implemented environment and labour reforms. These changes provide 24/7 e-access to businesses to apply online, track applications, file returns and statements, and get online permissions under various acts and regulations. The state also implemented a number of inspection reforms with regard to labour, tax and environment-related compliances to help businesses comply with inspection requirements in a user-friendly manner. To bring in transparency, the state has also published comprehensive procedures and checklists for various inspections and has implemented online systems for allocation of inspectors to increase the efficiency and effectiveness of the procedure.

Alongside these changes, the central and state governments are undertaking an exercise to “reform” labour laws. Haryana has been at the forefront of such labour law reforms. In August 2016, the Haryana State Assembly passed four bills suggesting the following amendments:

1. The Industrial Disputes (Haryana Amendment) Bill, 2016 proposes to allow industrial units with up to 300 workers to shut down and lay off without government permission.
2. The Contract Labour (Regulation and Abolition) Haryana Amendment Bill, 2016 proposes to do away with the condition of registration for industrial establishments employing up to 50 workers.
3. The Payment of Wages (Haryana Amendment) Bill, 2016 proposes to remove the existing wage limit stipulated under this Act, which is 18,000 Indian rupees per month. This is to enable employees with wages at a higher rate to take their claims to the statutory authority in case of delayed payment of wages or illegal deduction from their wages.
4. The Factories (Haryana Amendment) Bill, 2016 proposes to enable factories that have 20 workers with the aid of power and 40 workers without the aid of power to be exempted from the definition of the Factories Act, 1948.

These proposed changes have agitated workers and trade unions, who feel that they are detrimental to the interests of workers, who are already suffering due to lax implementation and non-implementation of existing labour laws that offer some protection to workers. In addition, there is another change that is underway that bedevils industrial relations, especially in the manufacturing sector. Saini (2007, p. 653) argues that employers are increasingly trying to shift from different types of plurality models to types of unitarist industrial relations or repressive pluralism, adopting policies of some kind of “no-union model” or “weak union model”. Thus, he argues “employers are coming [down] heavily on labour’s efforts towards unionisation as they believe that trade unions adversely obstruct managerial autonomy.”

The ability of workers to form unions is itself declining with the rising use of contract, casual, part-time and ad hoc workers and with a general hardening stance of labour and general administration towards worker grievances and union formation in the context of competitiveness to attract investors and investment. Nowhere is this more evident than in Haryana, especially in the industrial belt stretching across Gurugram–Manesar–Dharuhera, from the Delhi border to the Rajasthan border.

¹⁴ *International Business Times* 2016.

¹⁵ Annual Report 2016–17: https://dipp.gov.in/sites/default/files/AnnualReport_Eng_2016-17_0.pdf.

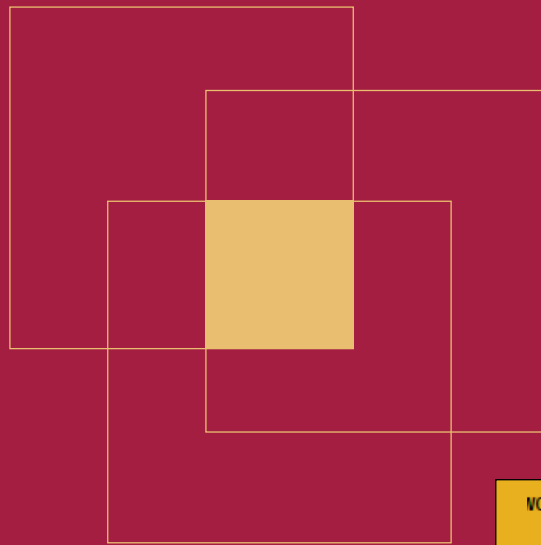
What is even more troubling is the fact that garment workers in this industrial belt are primarily illiterate or semi-literate rural migrants, with the numbers of Dalit and minority workers being higher than the national level and the number of women workers being far lower than in other garment clusters.¹⁶

The next section delves into the major issues facing the garment industry in the Gurugram industrial belt and examines the issues from the viewpoints of workers and the labour department.¹⁷

16 Prasad (n.d.)

17 We were not able to speak to any garment company management for this study.

Major grievances and violations in the garment sector in Gurugram



There are numerous studies documenting the extremely poor conditions in the garment sector¹⁸ worldwide, including in India. This section attempts to examine some of the major grievances of workers and present their view as well as the view of the labour department officials who are tasked with the responsibility of ensuring implementation and enforcement of labour laws and are mandated to ensure justice, workers' welfare and dignified employment. The focus in this section is deliberately limited to the factory and does not extend to workers' experience in labour courts and industrial tribunals, since the factory is the primary arena for ensuring healthy and democratic functioning of industrial relations. This section is not an exhaustive review of grievances in the garment industry in Gurugram. Rather, it presents a few key grievances from the perspectives of workers, union organizers and labour department officials to illustrate the gap in perception and understanding of grievances and in order to identify ways in which the industrial relations framework is functioning or barely functioning in the garment sector in a major garment hub.



18 For example, PUDR 2015a; PUCL et al. 2016, Gross 2014.

Delay in payment, wage theft and non-payment of minimum wages

Section 5 of the Payment of Wages Act 1936 prescribes that workers should be paid their wages by the seventh of every month. However, as is widely documented and common knowledge, this standard is rarely adhered to. In addition, many workers are not paid even the minimum wages fixed by state governments. Often, the minimum wage for unskilled work is paid even to skilled workers by misclassifying their job profile. Wage theft in other forms is also rampant, such as non-payment of the statutory double wage rate for overtime work and non-deposit of Employees' State Insurance (ESI) and Provident Fund (PF) deductions.

Four workers¹⁹ interviewed had resigned from Company S due to late payment of their salaries. They reported that "salary was always delayed at this company by 5–6 days, but recently the salary was getting delayed by 2–3 months". The workers also reported that another unit owned by the same company had shut down over continuous delays in wage payments. Worker B had worked as a supervisor for two years in this company and should have been paid at least Rs 9,000–10,000 as a skilled worker, but was being paid far less. He did not have any PF savings.

The four workers also reported that they frequently dealt with small issues, such as not being able to take a break and fights between co-workers or with supervisors, as well as bigger issues, such as not

Wild goose chase to recover dues

SS, who worked without an appointment letter and had only an ID card with the company name on it, shared that on 2 April 2014 he and his wife went back to his village for two months. He was aware that on his return he might not get his old job back. But he informed his "in-charge" and left anyway, without taking his wages for the month of March. Upon return, he went back to Company M and was told, as he had expected, that there was no work. To clear his dues, he then submitted a resignation letter, but the manager refused to sign it. His wife's dues were cleared. He went back the next day and the manager directed him to the personnel department. The personnel department asked him to return the next day. Although they finally signed the resignation letter the next day, they refused to let him submit it and instead told him to return a month later. He pleaded that he required the money and therefore wanted this process to be speedy. A great deal of back-and-forth between different managers followed, all of whom, he felt, were making a mockery of his case, asking him to keep returning on following days and redirecting him to different people. Finally, his resignation was accepted, but they then made him run around for his arrears for another month. Finally, on 19 July 2014, the in-charge in another unit of the same company, who was also involved in the case, refused to pay him the money. After this, with legal help from the Garment and Allied Workers Union (GAWU), his case was filed for conciliation.

At the level of conciliation, the process took a while because it got entangled with the disputes that had arisen after the termination of the union members in Company M. The company was completely antagonistic, and although they were willing to pay the workers all their dues, they were not willing to reinstate them, whereas GAWU's demand was for reinstatement. Hence, although SS did not want to be reinstated but just wanted his money, the management was not willing to settle with him due to the general unrest in the company. Finally, after 6–7 months and 4–5 dates with the conciliation officer, he finally got his wages for the month of March 2014 and the money for the unused leaves that was due to him.

¹⁹ Names of interviewees (both workers and labour department officials) have been withheld at their request. Names of companies have also not been included, so as to avoid targeting specific companies when these practices are widespread in the industry. The assistance provided by Ananya Basu in conducting the field interviews is gratefully acknowledged. The interviews were conducted in Hindi and the English translations have been provided by Ananya Basu.

receiving their salaries on time, by taking the issue to their immediate senior or supervisor. If the senior worker/supervisor was unable to handle the matter, he would indicate the next person to be contacted within the company. However, most workers rarely took the matter beyond this step for fear of victimization and reprisals. Their view was that the company was aware of these problems but did not want to address them, and so would penalize any worker who attempted to bring the problems to their attention.

When asked if, on joining, anyone from the company briefed them about company policies and grievance redressal systems, all four workers said, “No one speaks to us about anything like that. Only the work is explained to us.”

The problem with wages was also put to an assistant labour commissioner at the Mini Secretariat in Gurugram. His reply was that “There is no issue with wages” since “companies need to comply with buyer standards” and therefore “every worker receives minimum wages, even the workers hired through contract workers”.

Protests by garment workers over implementation of minimum wages,²⁰ revised minimum pay-scales, underpayment due to mis-classification of skills, non-payment of the statutory double rate for overtime work, forced overtime, delays in payments, harassment to collect arrears, inability to raise complaints and disputes due to extreme vulnerability – none of these grievances find any recognition in the understanding of a frontline labour officer who would be among the first to come into contact with workers.

Similarly, the deputy labour commissioner (DLC) did not see wages as an issue of dispute in the garment industry, saying, “Salary is market-governed. All over Gurugram, except for maybe some small companies in remote areas, everyone gets a minimum wage of 9000 rupees, and for overtime payment we are trying to ensure that everyone gets double rate and that the stipulated hours are not exceeded.”

Apart from the irony of the fact that the minimum wage or floor wage, below which wages should not fall, has become the maximum wage and this is justified by some labour officers in the name of market forces, the perception of the DLC and the assistant labour commissioner is also at odds with that of the state government itself. In a letter²¹ dated 1 January 2016 from the Principal Resident Commissioner, Haryana Govt, Haryana Bhawan to the Joint Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, on the Transparent Inspection Policy of the Haryana Labour Dept, Point 1, on page 2 on the Labour Wing states, “The violation of labour laws is a basic cause of labour unrest ... The major issue in the complaints is the non-entry of names of workers on the muster roll. The second is non-payment of minimum wages and other violations under the Minimum Wages Act, 1948.”

Table 1: Total monthly earnings in garment factories in Udyog Vihar including overtime (as reported by a worker)

Department	Designation	Monthly earnings (in rupees)
Sampling	Helper	6 500
	Tailor	9 500–10 500
	Cutting master	15 000
	Pattern master	35 000–46 000
Cutting	Helper	6 500
	Cutting master	15 000
	Master tailor (one of the cutting masters)	15 000
Production	Tailor	250–270 (per day)
	Supervisor	15 000
Finishing	Helper	6 500
	General checker	7 500–8 000
	Measurement checker	7 500–8 000
	Final checker	7 500–8 000
	Supervisor or finishing in-charge	15 000

Source: PUDR (2015), *Tailor-Made Lives*, p.10.

²⁰ Youth ki Awaz 2016; Abhimanyu Singh 2016.

²¹ Government of Haryana 2016a.

The gap between the ground reality and the perception of frontline labour officers as well as the gap in understanding between different parts of the state government both need to be addressed.

Permanent/seasonal work, no leave, illegal terminations

Section 25F of the Industrial Disputes Act, 1947 requires employers to provide one month's notice in writing prior to retrenchment. In addition, the burden of proof rests with the employer to show that the workman has not completed 240 days of service (*Director, Fisheries Terminal Division v. Bhikubhai Meghajibhai Chavda*, AIR 2010 SC 1236).

However, it is common knowledge that workers are not given any appointment letters, ID cards or proof of employment. Two workers interviewed were formerly at Company M, which was rocked by violent protests, and both workers had also worked with several other garment manufacturing companies in the Gurugram area over the course of three years since they first migrated from Madhya Pradesh to Gurugram in search of work. One of them, SS, reported that Company M did not give him an appointment letter but the ID card he was given had the company's name on it. Two other companies he worked with did give him appointment letters, however, this was meaningless since he was let go of by the companies every 5–6 months, once the peak season in the garment industry had ended. This was true even in Company R, where the personnel manager of the company had interviewed him and he was even given an appointment letter. Many other workers were also fired but none knew how to fight for their jobs, and so many of them went back to their villages for a few months, only to return to seek work during the peak season. Worker SS shared that once he got married and brought his wife to live in Kapasheda, located on the Delhi–Gurugram border, he had no choice but to stop going back to his village after each firing, and to stick around for some form of employment to make ends meet.

The three assistant labour commissioners (ALCs) interviewed did report that the dispute that they most frequently have to address involves workers returning from leave to find themselves out of work. But they were of the view that the workers mostly leave the job voluntarily for “personal reasons” and then, upon coming back, find themselves out of work. ALC1 said, “In such cases, we do of course ensure that they get their full and final and are not left without their due wages.” According to ALC1, “The problem is that it is ‘shifting labour’. You can't call it illegal termination actually.” Thus, in the view of ALC1, there appears to be no room for leave, duly applied for and approved by company supervisors.

The real meaning of “permanent worker”

SA worked at Company X&Y for a year before the incident. He was initially told that after three months he would be made permanent. However, this did not happen formally, although he was told that his PF and ESI were being deducted and that that in itself was an indicator of permanency. His ID card remained unchanged. On account of illness, he requested a ten-day leave to go home, which he was initially granted. However, the day before his leave commenced, SA was told verbally (only) by his supervisor that his leave was cancelled because of work pressure. SA went home anyway and returned three days later than initially planned. Upon his return, he was told by his supervisor that his ID card been suspended and that he would not be allowed to work in the company anymore.

SA refused to leave and went to the personnel manager. The personnel manager asked him to resign and gave him a pre-written resignation letter to sign. The letter was typed in Hindi and claimed that the worker was resigning because of personal reasons. SA refused to sign this, stating that it wasn't true. Instead, he drew up

his own letter of resignation with the help of a co-worker, stating the facts of the entire incident, and submitted it to the Human Resources (HR) department. This letter wasn't accepted by the department and he was told to sign on a blank sheet. When he refused to sign, he was told to leave and come back after ten days. After ten days, SA was told that he would get his dues only after he submitted a resignation letter on the terms of the company. SA refused, and this back-and-forth continued for around a month and a half. SA would approach the personnel manager and the manager would refuse to pay his dues. The decision to file for a dispute claim was made after he approached a local workers' support organization, Mazdoor Ekta Manch (MEM), and the GAWU.

However, at the time of conciliation, there was no representation from the company. On the first date for conciliation, the personnel head appeared and excused himself on the pretext that he had no idea of the matter. Thus, a second date was taken. But on the second date, no one appeared to represent the company. The conciliation officer then advised SA to appeal to the labour court. Even at the labour court, after attending the first few dates, the company representatives stopped attending the trial. SA shares that thereafter, "I am not sure what exactly happened, but my lawyer told me that the judgement has been given. But now the problem is that the original company where I worked does not exist anymore. It has relocated and has also changed its name. So we are unable to track the company and its owner. I have heard that it has changed its name from X&Y to XandY and is in Khandsa now. But we don't know how exactly to track down the owner."

It was also difficult to prove that SA was a worker in the company as the only formal recognition in the absence of a joining letter is the ID card that workers receive. However, SA's card had no details except for a photo and a number. Finally, the only way he could establish that he was a worker in X&Y was through his forms for applying for a bank account. These bore the company stamp. As he still hadn't submitted these papers, they could be used during the trial.

SA says, "I didn't approach the labour department directly because I had no idea about how these things are done. Many workers do go directly to the department, but they get fooled by the officials. We are generally not entirely aware of our rights and legal entitlements. So many times, the officer will pretend to settle the dispute and give the worker some settlement, but actually the worker was probably legally entitled to a lot more. A friend of mine had gone individually to court. He had appointed a private lawyer to fight his case, and the lawyer kept taking money from him and the dates for trial kept getting extended. This went on for around 5-6 years. And ultimately he lost the case."

Another worker chimed in, "The management is very clever. The lawyer representing the worker will be bought over by the company and the worker will obviously have no idea. And in front of the judge the lawyer will make the worker answer questions that might have certain implications, and then when the judgement is in favour of the company, the lawyer will turn around and explain to the worker that whatever he said to the court about his own issues was the reason he didn't win the case."

ALC3 admitted that "the biggest challenge is that there is no documentation" or evidence like appointment letters and paper trails, and went on to say that "there is nothing in the law that says that an appointment letter has to be provided. Other things, like providing a pay slip, maintaining records and muster, all are all compulsory. But appointment letter is not. So anyway, we can't understand if the worker has been fired or has resigned on his own." Although he acknowledged that the problem of lack of evidence is a challenge in almost all sectors, especially with the increasing use of contract labour, he felt it was very acute in the garment industry given the vulnerability of the workers. In addition, he cited the issue of lack of record-keeping in the garment sector, saying, "They don't maintain any records. The factory might want 20 tailors today, so they will call a contractor to provide them with 20 tailors. They

Objectives

- To implement labour laws for ensuring basic statutory working conditions and labour standards.
- To maintain and foster industrial peace and harmony.
- To ensure and promote industrial safety and health.
- To eliminate employment of all forms of child labour.
- To ensure social justice with productivity and growth of industry.
- To provide and promote labour welfare measures for enhancing the quality of life of the work force.
- To create ever-improving conditions for women workers by following policies, which take into account their special needs at the workplace.
- To continuously strengthen and facilitate the functioning of the Labour Courts for adjudication of industrial disputes and claims.

Source: <http://hrylabour.gov.in/content/cms/OA>

Vision

The Labour Department understands the needs of transparency and to minimize, wherever possible, to eliminate the discretionary powers of the officers in implementation of the Labour Laws. To achieve this vision, the Labour Department has formulated and ...published the policies like Transparent Inspection, Self Certification and Third-Party Certification. The delivery of Citizen-Centric Services through e-service is going to help in harnessing the maximum benefits of these policies. The Citizen-Centric Services of the Labour Department have been brought under the ambit of the Right to Service Act, 2014 so that applicant gets his rightful service in stipulated time period.

Source: <http://hrylabour.gov.in/content/cms/MTA>

will come and work and the company will just write that for four days 20 tailors worked. Then after those four days, the tailors will go somewhere else. If something has happened in the first company, then there is no record to hold the employer liable.” However, ALC3 went on to put the onus on the workers, saying, “They need to be educated and aware of their own rights. They don’t approach us because they don’t know their rights.” Regarding the responsibility of the labour department to ensure that workers’ rights are not violated, ALC3 was insistent that it is the responsibility of union leaders to ensure that workers’ rights are not violated.

It appears that frontline labour officers do not see a role for the labour department in enforcing labour laws, statutory rights and standards, and social justice. This is contrary to the objectives listed on the Haryana Labour Department website, although it appears to be in line with the department’s vision “to minimize, wherever possible, to eliminate the discretionary powers of the officers in implementation of the Labour Law.” [See box on objectives and vision.]

ALC1 was also of the view that it is the fabricators who most often are under no pressure to comply with labour laws, since they do not face the buyers’ inspections and audits. A compelling question that should arise then is about the role of the labour department in ensuring the rights of workers employed in fabricator workshops, if that is where the violations are occurring in the view of a labour department

“In Company M, the reason for unionising among workers was this basic fact that they did not have a space to air their grievances, especially on issues like physical violence, which was very common. Managers would hit workers, slap them, kick them and subject them to extreme physical abuse quite often. Workers could not protest against it because the top management would behave this way with them. Where would they file complaints? And so, gradually they decided that one way to address this would be to form a union, so that they could build a collective force.

But right after the union file was sent for registration, someone from the labour department leaked the names of the workers in the file to the management. The management retaliated by firing or transferring workers. And while they did this, they also used it to threaten other workers, saying that they will also meet the same fate if they try to unionise. This way, they broke the union completely. Had the union been formed, workers might have been able to use that space to fight for their rights and resolve disputes. But the company did not let that happen either.”

– Union organizer

official. Instead, more and more manufacturing establishments are being taken out of the purview of labour laws through the various labour reforms currently proposed or implemented in some states, aimed at promoting ease of doing business and generating employment. Another question that these observations raise is whether the labour department has shifted the responsibility for ensuring compliance in the manufacturing establishments to buyers and brands and to social auditors ensuring compliance with the voluntary codes framed by the buyers. Whatever may be the understanding at the state level of the labour department, or even at higher levels, of labour officials, our interviews reveal the understanding of frontline labour officials and the perspectives that shape the discharge of their responsibilities.

ALC1 felt that “fabricators don’t have work all year round. They get work during peak season and hire workers, and after the work is over they let the workers go. It is the workers who don’t understand and label it illegal termination”. ALC2 was of a similar view. When asked about workers being employed via contractors and therefore not being able to claim permanency or statutory rights, he stated, “This happens because of the nature of the garment industry. Labour laws can’t do anything about it. The work is seasonal.” ALC3 distinguished between the bigger companies and smaller companies. He was of the view that bigger companies work systematically and that work is not seasonal in their factories but it is “a big problem” in smaller companies. Yet, all three ALCs gave the impression that they did not consider this to be a major issue in the garment industry since “workers find work elsewhere in any case” – even though this is the major issue highlighted by all the workers and union activists interviewed for this study. This gap in perception needs to be addressed, because increasingly, it is the suspension, termination, refusal of work without explanation, or seemingly arbitrary denial of leave that is the starting point of many spontaneous protests in the region.

Works committees, grievance redressal systems

Section 9C of the Industrial Disputes Act, 1947 mandates that “every industrial establishment employing twenty or more workmen shall have one or more Grievance Redressal Committee for the resolution of disputes arising out of individual grievances.” Part VII of the Industrial Disputes (Central) Rules, 1957 lays out the composition of and procedure for the setting up of works committees.

Worker to petty contractor

One of the workers, AK, among the four workers at Company X&Y, had transitioned to working as a petty contractor for the last three years, but he did this without any paperwork between the companies and him. He was working as a floor-in-charge when his supervisor asked him to bring in more workers, which is how he slowly evolved into a petty contractor. He reported that he was owed 50,000 rupees by Company X&Y for the piece-rate work provided, and this included the payment he had to make to other workers who worked in the company as his workers. AK shared that the only proof he had that the company owed him money was a slip with a company manager's signature for the amount of work done and submitted by AK and his workers, and the amount due.

On being asked if the company kept any records of the workers he brought to work in the company, AK shared that the company does not keep records but he keeps an attendance register with the number of pieces made by each worker. He also said that most companies don't keep any records and don't even give ID cards to such workers. He shared that "only registered contractors provide ID cards, and companies like these don't want to employ registered contractors because that would mean that they have to follow more laws".

The ALCs claimed that all garment companies under their respective jurisdiction had functioning works committees and adequate grievance redressal committees which workers could approach easily. When pressed for documentary evidence, ALC2 merely replied, "Yes, I'm sure they must be working. In fact, that is also, I assume, a reason due to which we receive few complaints." ALC3 did admit however that workers fear that they might be fired for raising complaints, but added that this should be addressed as "many times it is a baseless fear". However, none of the ALCs offered any information on what proactive role, if any, the labour department was playing to address these so-called baseless fears and to promote dispute resolution at the level of factory works committees or grievance redressal committees.

ALC3 also pointed out that "the biggest malpractice is the employment of this contract labour against the Contract Labour Abolition Act – around 90 per cent of the employees are not permanent," implying therefore that it is not a surprise that most of the disputes that come to the labour department are about terminations, particularly about what workers understand as "illegal terminations". He added that there was failure of dispute resolution within the workplace because there is no intent from the company's side to acknowledge the workers as its own.

The issue of works committees and grievance redressal committees was also discussed with one of the DLCs. According to the DLC, "For all the committees the management is required to put up notices on its premises with information about the committee, its role, its composition and how to approach it." When asked what steps are taken by the labour department to ensure this, all the DLC had to offer was, "I haven't received any grievances from any workers."

"In one instance in Company M, a worker had given an interview to Al Jazeera on the violations faced by him in the factory. After this, his overtime work was stopped. As his salary was low and not enough to sustain his family, the money from overtime work was crucial. The management thought that this would force him to quit. But he didn't quit and went on working there while we filed for unfair labour practice to the conciliation officer and got his overtime duty back for him. So even talking about the issues they face is very risky for the workers."

– Union organizer

On the other hand, all workers interviewed, except one, were unaware of the existence of works committees or grievance redressal committees, and said that on joining, no one had informed them about them. All workers felt that the existence of such committees was of no use to them since “there is no point of speaking to the management. They will just make a fool out of the worker.”

One worker, who had worked in a company that was rocked by violent protests, said that in all the companies he had worked in he had never heard of works committees or grievance redressal committees, except in Company R, where they were told that there were different committees “like works committee, safety committee, a committee for addressing problems arising with women, and a few more. But it was only told to us. I didn’t really see it functioning.” He went on to add, “In no company are there mechanisms for actually complaining. No one will raise any issue. We work overtime for four hours, but don’t get double for all the hours, we are also forced to do it and cannot say no, we cannot say no to working on Sundays. There are lots of issues but no one complains. And no one can also say no to any of the demands of the company. If they try to, they are terminated or thrashed.” This may be the reason why the labour department is not getting any complaints from the workers.

The works committee of a specific company was discussed with the DLC, who claimed that it is one of the best in the sector. When told that workers from that company have reported that in their view the works committee is “just a management tool and elections are not democratic”, and that workers feel they are not represented properly, the DLC at first said that “unions will say anything”, but when pressed admitted that “it could be that their internal working is not that good. If workers are saying these things, then it must be true, but then they can come and tell the labour department about this. How can we act if we don’t know?”

According to a union organizer interviewed, workers’ ignorance of their rights is the biggest challenge. “Most of them think this is the way a workplace functions.” When they do manage to raise their voice, they are intimidated, and when that doesn’t work, the worker will be terminated. But the termination is disguised, so it is difficult to fight it, says the union organizer. “They will overload the worker with excessive targets and then either throw him/her out because he/she can’t produce the target in the time given, or they will be terminated whenever the worker makes even a slight mistake in production.”

The labour department seems to be of the view that since workers are not complaining, all must be well inside the garment companies, while on the other hand, the workers appear to have little knowledge, faith or trust that their grievances will be heard and addressed either by the company or by the labour department. The cost of raising a complaint is often immediate and too high – loss of job and/or victimization, and possibly even a thrashing. So most often, workers will take the complaint up to their supervisor, but if it does not get resolved at this stage, the complaint does not go further and remains unaddressed, often leading to simmering resentment.

Factory inspections

The Factories Act, 1948 and the accompanying state rules²² provide for a robust factory inspection system. However, the recently introduced labour reforms, both central and state, seek to overhaul this system.

SS, who has been working in Gurugram for over 10 years, shares his experience: “In almost all the companies I have worked in, the day before the inspection we are all told what to say to the inspectors if they ask us anything. In Company M, the HR manager and sometimes other senior management people

²² The Punjab Factory Rules, 1952 as applicable in the State of Haryana can be found at http://hrylabour.gov.in/content/labour_laws.

Flexibility in existing labour, inspection and environmental reforms

Labour

- Limit of workers under Retrenchment, Lay-Off & Closure Limit under the Industrial Disputes Act 1947 raised from 100 to 300
- Increase in overtime working hours from 50 hrs/quarter to 50 hrs/month
- Number of contract labour for applicability of Contract Labour Act 1970 to be increased to 100
- Amendment to allow women to work in night shifts is under consideration
- Self-certification for compliance management; no checking/inspection
- Self-regulation by companies for working hours
- Only state to have clear guidelines for night-time working hours
- Web enablement of all services – registrations, certifications, payments

Inspection

- 5% random selection for inspection in a year
- Inspections to be done after 5 years
- No ad-hoc inspections except for cases in which violation is there or complaint has been filed
- Selection of units for inspections shall be determined based on nature of hazard, time period since last inspection and number of workers
- 15 days prior notice of inspection indicating that of team members [sic]
- Inspection report to be prepared and uploaded within 72 hours

Environment

- Certifications valid for 5 years for Red category and 10 years for Orange & Green category industries
- NOC and consent to establish not required for industries in Green and Non-Red category
- Inspection required only for consent to operate
- Online monitoring for regular updates; inspection only in cases of specific incidents
- 14 private labs recognized for renewal inspections
- Web enablement to file consent to establish, consent to operate, fee payment and downloading certificates
- NOC on self-declaration for all categories of industries

Grievance redressal and dispute resolution

- Creation of policy implementation, monitoring & grievance redressal structure
- Enterprise Assistance Group – correction plan to detect stress and corrective plan

Source: <http://www.pravasiharyanadivas.in/wp-content/uploads/2016/12/Sector-Profile-Pharmaceuticals-and-Chemicals.pdf> and <http://www.pravasiharyanadivas.in/wp-content/uploads/2016/12/Sector-Profile-Footwear.pdf>. Last Accessed on 26 June 2017.

will come to the shopfloor and stand on a stool to address the workers. We are told what to say – that we don't work on Sundays or that we never have night duties, that there are committees for workers. However, I have worked in Company M over a period of ten years in total, but I have never known of any committees. Safety equipment like gloves and masks will all be given to us on that day; we receive low targets that day. Everything will be made out to be perfect.”

“Anyone who complains is thrown out and also physically assaulted. Everyone’s scared because of that. I had heard that once, long back, a woman worker had complained and she was later fired. Many times, some worker tells the inspector, ‘If I tell you anything now, I will be in the line of fire while you will be gone.’ In such situations, the inspector extends his/her support and gives the worker a contact number. But later on, when trying to reach the inspector on that number, it has been found to not exist.”

“Anyway, when inspectors come, they mostly go directly to the HR room and sit with them and then leave. No one really comes to the floor to speak to the workers. Once or twice, maybe when buyer audits happen, then the compliance officer might speak to one or two workers.”

According to AK, on the day of the inspection, “illegal” workers – “workers that the company has no record of” – will be gotten rid of, and only those who are on the company rolls will be allowed to come in and work. “And these particular workers are all trained on what to say. All department workers go through this training. I myself have gone through these trainings. In fact, it is in these trainings that most workers actually get to know what the correct provisions are. We are told that we should tell them we get x amount of money and x number of leaves. So then we realize that we should actually be getting these things.”

SS adds, “In some instances, workers are told to say, if asked, that they’ve joined the company on that day and it’s their first day of work.” Also, “the company locks up the old records and registers and shows new ones to the inspectors. The moment a worker is questioned by the inspector, the personnel department fixes their record. So the inspector is shown the cooked-up register.”

The DLC shared that the labour department is aware of the “all-is-well” spectacle companies create for inspections but also feels that “this is a challenge” because the department bases its reports on what the workers tell them and on evidence – both of which are hard to come by.

While on the one hand, the workers’ experiences with factory inspections are extremely unsatisfactory, the Haryana Government has formulated a Transparent Inspection Policy²³ as part of the Ease of Doing Business initiative and the Haryana Enterprise Promotion Policy 2015, whereby all factories located in special economic zones (SEZs) and small-scale factories having valid licenses, engaged in non-hazardous manufacturing processes and opting for self-certification will be exempt from inspections. Other manufacturing establishments that fall under the purview of inspections will face random inspections once in five years and a computerized random selection of units will be done each month. The establishment will be given a 15-day notice of inspection, and inspection reports will be uploaded on the labour department’s website within 72 hours. The criteria for choice of units for inspection will be a “minimum level of wages or the excessive use of contract labour. So the inspections will be less in number and very selective.”

When asked about the self-certification and transparent inspection policy, the DLC shared that not a single manufacturing establishment had signed up for self-certification so far. The reason could be that it would require “submitting an affidavit claiming there is no violation [of labour laws]. This is completely different, as this then holds the company criminally liable in case a violation is found. Therefore, I don’t think companies will take this up very happily.”

Regarding the Transparent Inspection Policy, the DLC felt that unnecessary hype was created about an “inspector raj”²⁴ that was resented by industries, and instead of an having an “inspection process as a way

23 Government of Haryana 2016b.

24 *The Hindu* 2016; Nanda 2014.

of ensuring fair working conditions for all, it is seen as an impediment to the ‘ease of doing business’.”

The transparent inspection policy notification says that in case the third-party audit²⁵ flags a violation, the labour department will give the company time to rectify it. For repeated offenders then, there seems to be no punishment – they can continue to work and continue to flout rules until the violations are flagged in the next inspection, when again the company will be given time to rectify violations. However, according to the DLC, the labour department “does not want to immediately prosecute management. It might happen that the management violated a rule by mistake. So we want to give them a second chance and educate them. If after that the company still continues to flout the rules, then they will be prosecuted.” However, the DLC is not convinced about the new policy, since the element of surprise has been eliminated and a 15-day notice will be given to a company about an upcoming inspection, thus creating incentive for “the company to hide everything and put its best foot forward.”

The DLC also added that in case there was a complaint against a company that was exempted from inspection, the labour department would step in to inspect, and in case the company had submitted a third-party audit report, that too would be questioned in light the complaint. However, the DLC added that since these schemes are yet to take off, “nothing has happened yet, so we are yet to see how this pans out.”

However, according to the DLC, the new inspection policy is still being worked out and inspection reports are yet to be uploaded on the labour department’s website. In addition, when asked about the third-party audits allowed under the new inspection scheme, the DLC was unsure about the policy decisions, if any, on this issue, but opined that these audit reports would not be public documents and the labour department would simply act if the report indicated any violations.

Domestic enquiry

Domestic inquiries are rare in the garment industry, where the majority of the workforce is not on the company muster roll and does not have the status of an employee. However, in those few cases where an employer–employee relationship is established or acknowledged, and domestic enquiry is held before suspension or termination, the experience of union leaders and lawyers who advise the workers is far from encouraging. A union organizer shares that whenever they have tried to organize a union in a garment factory and management got wind of it, workers have been dismissed without due process. “No chargesheet, no domestic enquiry. Just summary dismissal.” This has happened even in cases where a

Domestic enquiry is not considered a legal requirement under the Industrial Disputes Act, or other substantive laws such as the Factories Act and the Mines Act, but has been provided under the standing orders to be framed in the Industrial Employment (Standing Order Act) 1946. As a result, it is now well established that such standing orders have the force of law and constitute statutory terms of employment. The case law established over time has made it obligatory for employers to hold a fair and just enquiry to prove misconduct before awarding any serious punishment. Dismissal of an employee without holding a fair and just domestic enquiry amounts to a violation of the principles of natural justice and is frowned upon by the labour courts/industrial tribunals, and adverse conclusions may be drawn against the employer not holding a domestic enquiry, so much so that the dismissal without holding a domestic enquiry is deemed to be illegal.

Source: All India Punjab National Bank Staff Federation (n.d.)

²⁵ Government of Haryana 2016c.

demand notice has been submitted to management and therefore management cannot legally take any action against the workers without notifying the concerned authorities.

In the few cases where domestic inquiries have been instituted, a lawyer shares that “formalities defined by the standing order are never followed. Management appoints the officer, so even the pretence of neutrality is dispensed with.” He goes on to add that it is a struggle for workers to get a copy of the original complaint on the basis of which the chargesheet is served. It is a struggle to have the proceedings of the domestic enquiry read out (to the mostly illiterate workers) before they sign it. Usually, the enquiry officer intimidates them into signing it without knowing if the proceedings have correctly documented the workers’ deposition. The enquiry is held off-site, so that securing leave and a travel allowance for fellow workers to testify as witnesses becomes an issue, especially as management applies the no-work-no-pay rule, so co-workers lose their wages if they have to take time off to travel to a site outside the factory to testify. Engaging in a domestic inquiry requires some amount of skill and awareness of one’s rights and principles of natural justice, among other things. Most workers are intimidated by the process, which they feel is biased against them in any case and therefore not worthwhile.

Occupational safety and health

Although much of the unrest in the garment sector in recent times has been sparked by accidents such as electrocution and fingers getting cut off or by fatalities from exhaustion and overwork, the Haryana Government does not report any accident statistics or occupational safety and health statistics.²⁶

Most workers report that in the garment industry workers are made to sign on several blank sheets of paper at the time of joining. In case of accidents, a letter is fabricated on such signed blank sheets in the name of the worker, stating that the particular accident did not take place in the factory but outside the factory, and hence the factory is not liable. Sometimes, contractors will pay a few thousand rupees and send the worker home to the village.

PUDR fact-finding reports have documented some such instances (p.6, *Tailor-Made Lives*²⁷).

“Accidents are not uncommon. Accidents and incidents of workers’ rage are testimony to the vulnerable and precarious lives of those employed in a sector, which makes a significant contribution to India’s economy,” the report said. However, the lack of reporting, of reliable statistics, of access to workmen’s compensation or medical care under ESI, of intimidation to not report an accident, non-fatal or fatal, are serious lacunae that need to be addressed.

Equally important are the occupational health aspects of garment production that seem to be ignored. Fabric dust and attendant respiratory ailments, strained eyes, backs and legs due to long hours of detailed work done while standing, urinary tract infections due to severely restricted bathroom and water breaks, unsafe wiring of electric machines, lack of exhaust fans, to name only a few, find no mention in the work of the labour department, and no worker reported being able to have these issues addressed. Most often, the only redressal appears to be termination of employment if a complaint is raised. The poor health of the workers who live in cramped and unhygienic quarters and who cannot afford a healthy and nutritious diet²⁸ is further compromised due to unhealthy and unsafe working conditions.

²⁶ Government of India 2001.

²⁷ Also see Bhatnagar 2015, Kumar 2015, PUDR 2015, Sharma 2016, Handique 2009.

²⁸ See Indian Social Institute and Society for Labour & Development 2009.

Table 2: Selected incidents/accidents in the garment units of Udyog Vihar

Date	Incident	Company	Source
13 May 2010	Two workers collapse and fall unconscious during the night shift.	Sargam Export, Plot 153, Udyog Vihar, Phase 1, Gurugram	https://gurgaonworkersnews.wordpress.com/gurgaonworkersnews-no-930/
August 2010	Strike, tripartite agreement between management and workers, lockout, attack on workers by company goons, some workers abducted, some missing at the time	Viva Global	https://sanhati.com/-excerpted/2757/#st-hash.4tYmlrWa.dpuf
17 January 2011	Death of Rabban, a worker, due to electrocution (see page 2)	Modelama Exports, Plot 105–106 Sector 20, Udyog Vihar Phase 1, Gurugram, Haryana	https://gurgaonworkersnews.wordpress.com/gurgaonworkersnews-no-935/#fnref4
19 March 2012	Over 2,000 workers attacked, pelted stones, set vehicles on fire in response to the news of a worker being attacked with a pair of scissors by a labour contractor	Orient Craft	https://kafila.online/2012/04/09/gurgaon-workers-damned-if-they-do-damned-if-they-dont-anumeha-yadav/
28 March 2014	Death of Sunil, a worker, due to electrocution (see page 2)	Orient Craft	http://sanhati.com/articles/9560/

Violence at the workplace²⁹

Many workers complain of a hostile working environment in which physical, verbal and psychological abuse are a means of exercising managerial control and pushing workers to deliver impossible hourly production targets. This is often one of the compelling reasons for workers to think about unionization in spite of the enormous risk and cost it entails. Women complain of being humiliated by male supervisors and being subjected to sexual harassment or being denied overtime work or leave if they reject the male supervisors' overtures. Women who spoke to NDTV reporters about sexual harassment³⁰ were fired after the programme aired. Many took their final settlement and left, while others approached the State Women's Commission with the help of Nari Shakti Manch, a Gurugram-based women workers' platform, and under pressure a few women workers were reinstated but with a severe warning.

An International Labour Organization (ILO) report (2015) on the working conditions in the garment industry in India captures the daily experience:

There appears to be a widespread culture of disrespect of workers by their supervisors. Only one-fifth of all current workers say they have never seen or heard about any threats or abuses in their factory. Verbal abuse, use of bad and insulting language, and scolding were most commonly reported, followed by being forced to work when unwell, physical violence, beatings or having pieces of cloth

²⁹ Chamberlain 2012, Ashraf 2016, Munshi 2012, PUCL et al. 2016, SLD 2014.

³⁰ Jain 2016.

thrown at them, and a number say they have witnessed or been locked in the workplace. Sexual violence or harassment of women is reported by one in ten of all workers but nearly one in five women. There is thus abundant evidence of workers, of both sexes but especially women, being subject to threats and penalties during the employment phase, and of working under duress.

A major instance of violence that occurred in one of the units of the biggest garment manufacturing company in the Gurugram industrial belt started with a guard stopping a worker from entering the factory because he was ten minutes late. When he protested, he was beaten up by the security guard and some company managerial employees. When the workers heard about this, they broke into a spontaneous protest that turned violent, with several injured, burnt vehicles, and damaged factory buildings and property. A culture of petty power, impunity, lack of respect and dignity for workers, and use of physical coercion and force to discipline the workforce appears to prevail in the garment manufacturing factories as experienced by workers.

In a similar incident, a worker was late reporting to work because he had stopped to buy medicine, since he was feeling unwell after having done overtime the previous night. In the scuffle that ensued with the guard, the worker was beaten until he was unconscious. In the aftermath, there were rumours that the worker had died, resulting in violent protests by fellow workers. Many of these incidents are like a pressure cooker bursting, with all the pent-up anger and resentment needing to find an outlet and in the process destroying anything in their way. The industry newsletter editorial cited in the introduction correctly identifies much of this as needless violence. The question “Are we handling labour issues responsibly?” is a valid one that the industry needs to grapple with and address by putting in place adequate systems to treat labour fairly and with dignity, where workers feel comfortable raising their grievances with the trust that they will be handled fairly and respectfully.

Freedom of association

In the estimates of union organizers, among the foremost reasons for disputes in the Gurugram manufacturing belt is the issue of union formation. To begin with, widespread precarious employment in the garment industry is a huge challenge for unionization in the industry. The few fledgling attempts at union formation have been met with fierce management resistance, including union-busting practices and unfair labour practices (ULPs) that victimize workers attempting to organize. These violations have not been addressed by the labour department, leading workers to see the department as biased and even pro-management. In addition, workers often cite the anti-union, hostile attitude that exists right from the labour inspector to the ministerial level to justify their view of the labour department as being biased. Public statements³¹ by the Labour Minister and Chief Minister of the state in the conflict over union formation at the Maruti Suzuki India Ltd. plant in Manesar, where both declared that they would not allow union formation by Maruti workers, are testimony to the anti-union stance of the state government and the labour department.

However, in spite of the hostile environment, workers continue to repose faith in unions and take great personal risks to establish unions.³² In each case,³³ workers were victimized and union formation was scuttled. See Tables 1–4 documenting the struggles of the workers of Modelama to register a union and the ULPs of the management that followed.

31 Akbar 2011, *Business Standard* 2013.

32 See Gross (2014), pp. 11–28.

33 See for example, conflicts at Viva Global and Modelama: *Faridabad Majdoor Samachar* (2010), Menon (2013), Clean Clothes Campaign (2014) and Jobs with Justice (2014).

When asked about the absence of unions in the garment industry in the Gurugram manufacturing belt, the DLC was of the view that since unions are corrupt, they do not find any traction with the workers. In any case, he said, “there is no need for unions in the industry. The major demand of unions is for raising wages. If you look at the garment industry, most companies will not be able to pay more than minimum wages. So even if you form a union, what will they demand?” Moreover, “in a scenario where wages are competitive and the companies are complying with buyer standards as well as the different Indian laws, where is the need for a union? I’m not saying that a union shouldn’t be established. I am just saying there doesn’t seem to be a need.”

This logic appears to percolate through the labour department and the state government itself. Annexure 5 of the Haryana Government Enterprise Promotion Policy 2015, on Labour Reforms, states that the information technology and information technology-enabled services (IT/ITES), electronics, auto, and textile industries are to be declared public utilities under the Industrial Disputes Act. This would effectively curtail the right to strike of the workers through the invocation of the Essential Services Maintenance Act (ESMA).

The Industrial Disputes Act already gives the government the power to prohibit a lockout or strike during pendency of conciliation or if it apprehends a threat to public welfare. Thus, invocation of ESMA, according to Shyam Sundar (2012), is the replacement of the “colonial logic” of control with the “logic of globalisation” “that strives to maintain uninterrupted economic services and a conducive climate to attract capital.” He sees it as an “escapist strategy to brush aside the responsibility to ensure negotiations and dialogue to resolve the grievances and industrial disputes.” He explains that “While ESMA bans only a few industrial actions of the employers like lockouts and lay-offs, it prohibits strikes, refusal to work overtime, and ‘any other conduct’ by workers which affects work in any essential service.”

This is extremely worrisome, especially in an industry such as garment manufacturing, where the balance of power between management and workers is extremely lopsided in favour of management.

The Government of India too has not ratified ILO conventions 87 and 98 guaranteeing freedom of association and collective bargaining.

Modelama Workers’ Union³⁴

Established in 1979, Modelama Export Ltd is a leading manufacturer and exporter of woven garments – outerwear, ladies’ tops, dresses, kids’ wear, men’s shirts, scarves, ponchos, and so on. It has seven manufacturing units with a capacity of producing 25,000 pieces daily, employing 6000 workers. The company supplies to brands such as Marshalls, Nordstrom, Sears, Abercrombie & Fitch, Banana Republic, Bloomingdales, J.C. Penney, Gap and Next. In 2012, with the help of GAWU, the workers of three units of the company filed an application to register a union, with a membership of 200 workers. Soon thereafter, management of the company illegally terminated 14 union members (forceful resignation) and transferred three union members to distant factories. Workers protested for reinstatement of their colleagues and recognition of their union, Modelama Workers’ Union (MWU). The union also sought international help from the Clean Clothes Campaign (CCC) and United Workers Congress (UWC) to contact the management of Gap and Next to take action against the victimization of the union members. Several years later, the dispute was still pending. A similar story is reported from sister concerns Richa and Gaurav International, as well as Viva Global.

³⁴ Sequence of events constructed from Gross (2014), United Workers Congress (2013).

Table 3: MWU dispute**Sequence of events and actors involved**

Date	Incident	Actors involved
31 July 2012	Collective demand notice filed by 5 union members against illegal lockout from 31 July 2012.	Forum: Labour-cum-conciliation officer, Circle 1 Union members: Ms Shakuntala, Ms Leela, Ms Ruby, Ms Anuj, Ms Baby
19 December 2012	MWU files for registration.	Registrar of Trade Unions
January–February 2013	Modelama management retaliates by illegally firing and transferring union members to different units. Management uses coercion tactics to forcibly make employees sign on blank sheets of paper, later used as resignation letters.	Modelama HR Manager, Sunil Yadav Modelama management employee, Arvind Sangwan
February 2013–August 2014	Union files complaints against illegal termination of employees and ULPs followed by Modelama management.	Modelama Management Labour-cum-conciliation officer, Circle 1 MWU
November 2014	MWU files a complaint to the ILO against the Government of India for violation of Freedom of Association and Right to Organise in Modelama Exports, in Udyog Vihar in Gurugram district of Haryana State in India.	
(Date unclear)	Impactt undertakes a study into allegations of labour violations in Modelama factories following a newspaper article by the <i>Sun</i> . Five of the allegations are found to be true, including harassment of union members by the management, verbal abuse, extremely long working hours exceeding legal limits, and restrictions on workers' usage of toilets.	
8 December 2015	All stakeholders hold meeting to discuss issues of illegal termination and ongoing ULPs. Supergroup, following previous independent discussions with Modelama management, commits to overseeing mediation processes between the MWU and the management. This would be done through a mediator suggested by Ethical Trading Initiative (ETI) and IndustriALL collectively and finalised after consent from MWU and LBL. A mediation meeting at the end of January is decided on.	Carly Thomas, Ethical Trading Manager, Supergroup Superdry's Indian counterpart, Nivedita Sinha, General Manager Superdry, India Sumit, Quality Head Representatives from ETI, Impactt, MWU, GAWU and Labour Behind the Label (LBL)
9 March 2016	Meeting between appointed mediator Sudershan Rao and GAWU leads to creation of a demand charter	Sudershan Rao MWU Gen Sec, Ashok Kumar, Ms Shakuntala and Mr Sunil Kumar Anannya Bhattacharjee, President, GAWU Monalisa Singh, Legal Advisor, GAWU

Table 4: Unfair labour practices/victimization of workers by Modelama management after workers filed application for registration of MWU³⁵

Sl.	Date	Union member	Date and issue	Details of incident
1	8 January 2013	Ashok Kumar, General Secretary, MWU	Illegal transfer	Physical force was used to make Kumar sign a transfer letter at the behest of the then HR Manager Sunil Yadav, after which he was moved to Modelama's factory site in Manesar, which is approximately 30 kilometres (approximately 18 miles) from the Udyog Vihar plant.
2.	11 January 2013	Sarvan, office bearer	Illegal termination	Sarvan was compelled to sign on a document, which was a resignation letter.
3.	11 January 2013	Murari Prasad, office bearer	Illegal termination	Prasad was also forced to sign on a document, which was a resignation letter.
4	12 January 2013	Grijesh Kumar, union member, MWU	Illegal termination	Illegally terminated. Prior to this incident, a show cause notice was issued to Kumar for inappropriate behaviour with a superior, a charge he contested heavily. This false charge was the basis for firing him.
5	14 January 2013 (Date of issue of gate pass to another plant)	Vinod, Treasurer, MWU	Illegal transfer	Also forcibly transferred to Manesar. Intimidated by 8–10 people in the presence of Sunil Yadav, he was compelled to sign the transfer letter.
.6	14 January 2013 (Date of issue of gate pass to another plant)	Hemnarayan, office bearer, MWU	Illegal transfer	Forcibly transferred to the Okhla plant, which is about 29 kilometres from the Udyog Vihar plant. Intimidated by 8–10 people in the presence of Sunil Yadav, he was compelled to sign the transfer letter.
7	18 January 2013	Pramod, union member, MWU	Illegal termination	Pramod was compelled to stand in Yadav's cabin till he agreed to sign a resignation letter. Pramod stood there for over six hours.
8	24 January 2013	Brijesh, union member, MWU	Illegal termination	Brijesh was summoned by Yadav and compelled to sign a resignation letter. He was not allowed to communicate with any other worker and was forced to leave the premises.
9	25 January 2013	Shishupal, union member, MWU	Illegal termination	Shishupal was treated in the same fashion as Brijesh – summoned by Yadav, he was compelled to sign a resignation letter. He was not allowed to communicate with any other worker and was forced to leave the premises.
10	25 January 2013	Ramnath, union member, MWU	Illegal termination	Even after appraising the then Managing Director about pressure being placed on him to resign, Ramnath, who had worked with Modelama for over a decade, was physically restrained and forced to sign a resignation letter. Arvind Sangwan, who was overseeing this illegal exercise, also threatened to file a false police case, that is a First Information Report (FIR), against him, accusing him of stealing raw materials from the factory premises.

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Sl.	Date	Union member	Date and issue	Details of incident
11	25 January 2013	Ashutosh, union member, MWU	Denial of seniority, followed by termination	After returning from leave, Ashutosh was given the status of a new employee and was later terminated.
12	25 January 2013	Rajendera, union member, MWU	Illegal termination	Rajendra, who had completed his period as trainee and was about to be promoted to a tailor's position, was illegally terminated by being coerced into signing a resignation letter.
13	28 January 2013	Manju, union member, MWU	Illegal termination	Manju was forced to resign by the management.
14	28 January 2013	Bramhanand, office bearer, MWU	Illegal termination	Yadav, with the help of his colleagues, compelled Bramhanand to resign by signing a resignation letter.
15	28 January 2013	Ranjeet, union member, MWU	Illegal termination	Ranjeet was coerced into signing a resignation letter by Yadav, who also instructed the security personnel to not allow him inside the factory gates.

Table 5: Illegal termination complaints filed by MWU

Sl. No.	Date	Complainant	Forum	Nature of complaint
1	31 July 2012	Ms Shakuntala, Ms Leela, Ms Ruby, Ms Anuj, Ms Baby	Labour-cum-Conciliation Officer, Circle 1	Collective Demand Notice filed by 5 union members against illegal lockout from 31 July 2012
2	07 February 2013	Ranjeet Kumar	Modelama management	Illegal termination and ULP on 28 January 2013 by compelling him to sign on documents of whose nature he had no information. Later these were used as his resignation letter.
3	27 February 2013	Ramnath	Labour-cum-Conciliation Officer, Circle 1	Illegal termination on 25 January 2013 by forcibly taking his signatures on a set of documents without him being informed about their content. Having worked at Modelama for over a decade, Ramanth was told he was being fired for being an active union member.
4	27 February 2013	Rajendra Prasad	Labour-cum-Conciliation Officer, Circle 1	Illegal termination on 25 January 2013 by forcibly taking his signatures on a resignation letter, even as Prasad was waiting for a promotion, having completed his training as a tailor and successfully taking an exam.
5	13 August 2013	Dinesh Kumar	Labour-cum-Conciliation Officer, Circle 1	Illegal termination on 13 August 2013 on grounds of availing leave (about which the company already had intimation).
6	27 June 2014	Ms Sunita, tailor	Labour-cum-Conciliation Officer, Circle 1	Illegal termination on 27 June 2014 without any grounds.
7	14 August 2014	Santosh Kumar	Labour-cum-Conciliation Officer, Circle 1	Illegal termination on 14 August 2014 without payment of wages earned and due.

Table 6: ULP complaints filed by MWU

Sl. No.	Date	Complainant	Authority	Nature of complaint
1	20 September 2012	MWU	Labour-cum-Conciliation Officer, Circle 1	ULP – threats to fire union members, illegal locking out of 5 union members, allowing 1 union member Anuj Devi to rejoin but only as a new employee
2	09 January 2013	MWU	Labour-cum-Conciliation Officer, Circle 1	ULP – transfer of union's office bearers Hemraj Jha and Vinod Kumar
3	21 January 2013	Pramod Kumar, union member	Labour-cum-Conciliation Officer, Circle 1	Additional application WRT to ULP filed on 9 January 2013 detailing forced signatures on resignation letter
4	21 January 2013	Girjesh Kumar, union member	Labour-cum-Conciliation Officer, Circle 1	Additional application WRT to ULP filed on 9 January 2013 detailing illegal termination and misuse of discretionary powers by Modelama Management
5	07 February 2013	Manju Devi, union member	Labour-cum-Conciliation Officer, Circle 1	ULP – illegally terminated after signatures were forcibly taken on blank documents, after she returned from sanctioned leave
6	31 December 2014	Sanjay Kumar, union member	Labour-cum-Conciliation Officer, Circle 1	Illegal termination – reinstated after intervention from the union and brands
7	31 December 2014	Nanakchand, union member	Labour-cum-Conciliation Officer, Circle 1	Illegal termination – also reinstated after intervention from the union and brands

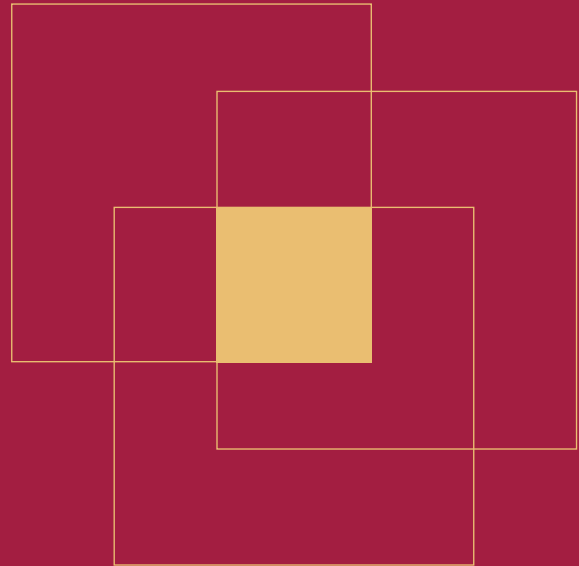
A union organizer with GAWU shares that the Modelama workers wanted to unionize because there was no space for them to share their grievances, especially on issues of physical violence, which was very common. Management “would hit workers, slap them, kick them and subject them to extreme physical abuse quite often. Workers could not protest because if top management was behaving like this with them, to whom do they take their complaints? So the workers gradually decided that one way to address these issues would be to form a union and build a collective force.” Although the workers tried hard to unionize and stood up to intimidation, threats, transfers, various forms of victimization and ULPs, “the company managed to break the union,” says the union organizer. In addition, to ensure that workers wouldn't start organizing again, the company started hiring more contract workers and kept changing the contactors, so that no record could be maintained and no contractor would be engaged for a long period of time. They can do this, says the union organizer, because “the companies do not engage registered contractors. Anyone turns into a contractor without undergoing any legal process or registration”.

Another response to the unionizing effort of the workers and the intervention of the company's buyers was to form a works committee to resolve workers' grievances. However, the union organizer says, “this committee was formed without any notification to the workers. Management appointed a few of their favoured workers and formed a committee, which is of no use.”

A woman worker who was employed in Modelama for two years as a thread-cutter shared that “the company has a few women workers whom they favour by giving extra leave, more money for overtime and so on, and these workers return the favour by being the face of workers to the outside world, like inspectors and compliance officers. They present an all-is-well picture.” In addition she added, “when we were protesting, these workers attacked us and tried to force us to disperse, and filed false complaints saying that we were trying to stop them from entering the factory, whereas we were only protesting peacefully and it was these workers who attacked us at the behest of the company management.”

The next section discusses the administrative organization of the labour department – both the labour wing and the factory wing, as well as the role of different labour officers as designated under various labour laws. The purpose of this section is twofold – one is to understand the administrative organization of the labour department and the second is to delineate the actual working of the department as experienced by workers, unions and lawyers in Gurugram. This section could even be used as a module for information sharing and legal rights training purposes.

Haryana's Labour Department



The Department of Labour, Haryana, which was formed in November 1966, when Haryana became an independent state, is similar to Punjab's labour department. The three-level administrative structure is headed by the State Labour Minister, while the Principal Secretary/Chief Secretary heads the secretariat and the Labour Commissioner heads the directorate.

The State Labour Minister is appointed by the state government, and he is the political head of the labour department and is accountable to the state legislature. The Principal Secretary is an Indian Administrative Service (IAS) officer and the administrative head of the state labour department. The Labour Commissioner is also an IAS officer and is the final authority under the labour laws administered by the labour department. Labour policies are formulated by the state government and the labour secretariat, while the labour department, headed by the Labour Commissioner, is responsible for the enforcement and implementation of all labour policies, schemes and laws, as well as for redressal of industrial disputes.

There is further division of work within the labour department. The Factory Wing is responsible primarily for compliance with the Factories Act 1948 and for the safety, health and welfare of labour. The Administrative Wing, which includes the District Attorney's office, and the Labour Wing are tasked with industrial relations and enforcement of labour laws.

Administrative set-up of the Labour Wing, Department of Labour, Haryana

- Labour Commissioner
- Additional Labour Commissioner – NCR and Gurugram, Administration
- Additional Labour Commissioner
- Joint Labour Commissioner
- Deputy Labour Commissioners – one per five districts (Hissar, Panchkula, Rohtak, Panipat and Faridabad), two in Gurugram district
- Assistant Labour Commissioners (eight in Gurugram district; four to seven in other districts)
- Labour Inspectors, 1–18 (three in each circle)
- Welfare Officer (Women)

Of the 21 districts in Haryana, 18 have some presence of the Labour Department. All 18 districts have at least one Labour Inspector (LI). Thirteen districts have at least one Assistant Labour Commissioner.³⁶ Seven Deputy Labour Commissioners (DLCs) oversee 31 Assistant Labour Commissioners and two women's welfare officers.³⁷

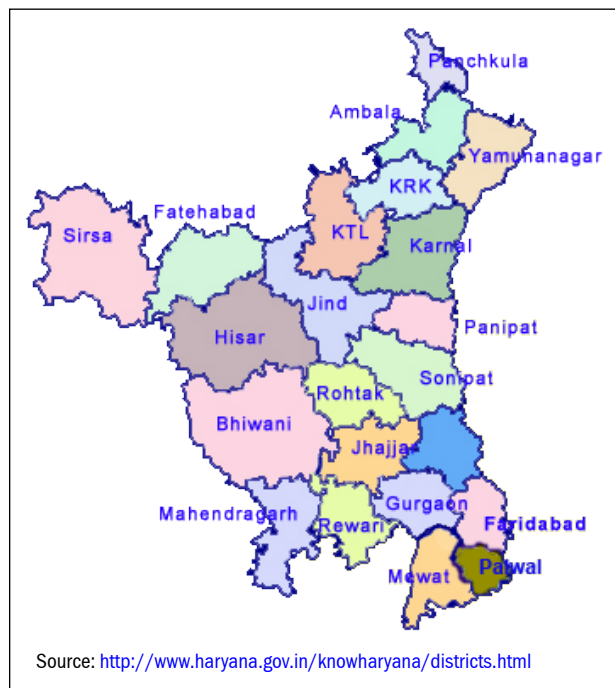
One Joint Labour Commissioner (JLC) is supposed to oversee the seven DLCs while reporting to the Additional Labour Commissioner. However, the administrative setup does not list any JLC. On the other hand, the organizational structure shows that there is an Additional Labour Commissioner for NCR and Gurugram, and while the administrative setup lists this as DLC-NCR & Gurugram, an Additional Labour Commissioner NCR and Gurugram has in fact been appointed and was interviewed for this study.

Functions of the Labour Wing:

- enforcement and implementation of labour laws, policies and schemes
- conciliation
- adjudication of disputes
- social security and welfare of workers
- trade union registration

Administrative set-up of the Factory Wing, Department of Labour, Haryana

The Factory Wing of the labour department has one Additional Chief Inspector of Factories – NCR & Gurugram, located in Gurugram; one Joint Director, also located in Gurugram; and



³⁶ Information on the organizational structure and the administrative set-up available on the Haryana Department of Labour website does not match other available information, perhaps due to vacancies. For example, the organizational chart shows that Panipat should have two ALCs, but the administrative set-up lists only one.

³⁷ According to the administrative set-up information on the Haryana Department of Labour website, these posts seem to be vacant.

six Deputy Directors in Faridabad, Ambala and Gurugram. There are 18 Assistant Directors (Industrial Safety & Health) against a sanctioned strength of 21 and 6 Assistant Directors (Industrial Health & Chemical) against a sanctioned strength of 11.

Functions of the Factory Wing

- registration of new factories under the Factories Act, 1948
- issuing of new licenses and their renewal every year
- periodic inspections of the factories, initiating prosecution of defaulting managements
- processing of building plans of new/existing factories, special scrutiny of establishments manufacturing or dealing with hazardous materials
- investigation of fatal/serious accidents, initiating prosecution of defaulting managements
- enquiry/approval of onsite/offsite emergency plans and safety audits
- investigation of complaints from unions/workers regarding non-implementation of labour laws, the Factories Act, 1948 and Haryana Factory Rules
- investigation of fire/explosion/gas leakage incidents
- enforcement of provisions of new rules under the Environment Protection Act, such as those relating to the manufacture, storage and import of hazardous chemicals
- enforcement of Major Accident Hazard Control Rules, 1993 in chemical industries
- visits to factories to investigate occupational diseases caused to workers and organize medical examination of the workers

Industrial safety wing

The most contentious issue in conducting the inspection is selection of the establishment/unit by adopting the predetermined criteria. It has been decided that each manufacturing unit shall be categorized in three groups based upon the level of hazards involved as enumerated in the laws i.e. (i) Major accident hazardous, (ii) Hazardous, (iii) Non-hazardous. The selections of units for inspection shall be determined taking into account the nature of hazard in the industry the time period since last inspection and number of workers employed. Such list of industries will be reviewed quarterly for addition/deletion of units found to be sensitive in terms of industrial relations/unrest, complaints received against some industries etc. The periodicity of inspection shall be in accordance to the following criteria: - a) Every MAH unit shall be inspected once in a year. b) All the Hazardous units involving risk of fire, explosion and toxic release are to be inspected once in every two-year. c) The rest of the units, which are non-hazardous are to be inspected once in every five year.

– Haryana Transparent Inspection Policy

According to a Planning Commission document on occupational safety and health, “in every state, Inspectorate of Factories is established, which enforces the State Factories Rules and other labour-related statutes such as the Child Labour (Prohibition and Regulation) Act, 1986; the Maternity Benefit Act, 1961; the Workmen’s Compensation Act, 1923, as relating to factories. Factory inspectors are appointed at local and district levels for enforcing the provisions of these statutes. The Inspectorates of Factories are also staffed with specialists in the field of occupational health and industrial hygiene at headquarters to extend support to field inspectors” (Government of India 2001, p. 78).

On the status of occupational safety and health in factories, the Planning Commission Report states, “Two important statistical measures for injuries are (i) Frequency Rate and (ii) Incidence Rate. The Frequency Rate is calculated by dividing the total number of injuries by corresponding number of man-days worked in lakhs. The incidence rate is calculated by dividing the injuries by average daily employment in thousands. The statistics are based on injuries reported in the annual returns submitted by States/UTs.” (*Ibid.*, p. 79).

“At present there is no agency or department of the Govt. of India exclusively dealing with matters of Occupational Safety & Health. DGFASLI is dealing with safety and health issues of workers employed in factories and ports, DGMS deals with various issues of OSH mines and other departments under the Ministry of Labour deals with OSH issues in different sectors such as Chief Labour Commissioner (CLC) for construction sector. There is no agency to cover the safety and health of workers in unorganized sectors. Therefore, there is a need for an apex body at national level to deal with matters connected with safety and health of workers in all sectors of economy. This body may be designated as National Commission on Occupational Safety & Health which will assist the Govt. of India in the implementation of the National Policy on Occupational Safety & Health.” (*Ibid.*, p. 81)

Hon'ble Labour Minister, Govt, Haryana

Additional Chief Secretary / Principal Secretary to Govt. of Haryana Labour Department

Labour Commissioner & Secretary, Labour Department, Government of Haryana



The Citizen's Charter

According to the Citizen's Charter³⁸ (2005, p.5), the Haryana Labour Department listed the following services, vision and goals.

CITIZEN'S CHARTER

OUR SERVICES

- Industrial relations and enforcement of labour laws in the state.
- Safety, health and welfare of labour.
- Social security of labour.
- Policy relating to child and women labour.
- Adjudication of industrial disputes through Industrial Tribunals-cum-Labour Courts.
- Labour statistics.
- Provide information through Haryana Labour Journal and other publications.

OUR VISION

- Commitment to the concerns of children and elimination of child labour from hazardous sectors.
- Formulation of a coherent policy about Occupational Safety and Health of the workers.
- Inspections by State Industrial Relations Machinery to be relief oriented.
- Creation of a welfare fund under the Punjab Labour Welfare Fund Act and launching various schemes for the welfare of industrial workers.
- Improve delivery of service by IT enablement through transparent procedures and processes.
- Spread the reach of social security to the organized and unorganized sector workers.

OUR GOAL

- Introduction of self certification in respect of enforcement of various labour laws.
- Protection and promotion of interests of all the workers and improvement in the work culture and productivity.
- Rationalization of the existing state labour laws in tune with the future labour market needs.
- To ensure Safety and Health in the industry.
- Elimination of Inspector Raj.
- To ensure the interest of Child Labour/Bonded Labour/Inter-State Migrant Labour and Motor Transport Workers in the State.

Source: Author's archives. This document is no longer available on the Haryana Labour Department website.

³⁸ A citizen's charter is a document that outlines the service commitment of a government department for providing quality, high-standard services within a specified timeframe with utmost transparency and accountability. It usually includes mechanisms for grievance redressal. For more information, see https://goicharters.nic.in/public/website/home_

Today the department website lists the following mission³⁹ and objectives:⁴⁰

Mission: To work towards creating an atmosphere wherein both workers and management perform their legally laid down roles, which will, in turn, contribute to the economic growth of the State.

Objectives:

- To implement labour laws for ensuring basic statutory working conditions and labour standards.
- To maintain and foster industrial peace and harmony.
- To ensure and promote industrial safety and health.
- To eliminate employment of all forms of child labour.
- To ensure social justice with productivity and growth of industry.
- To provide and promote labour welfare measures for enhancing the quality of life of the work force.
- To create ever-improving conditions for women workers by following policies, which take into account their special needs at the workplace.
- To continuously strengthen and facilitate the functioning of the Labour Courts for adjudication of industrial disputes and claims.

The current citizen's charter⁴¹ lists the responsibilities of the relevant authorities under the various labour acts. It is reproduced below.

Table 7: Identification and listing of various citizen services rendered by the departments/ organizations under their administrative control

The following is the schedule of the maximum time for disposal of cases under various labour laws by the field officers in their respective jurisdiction.

Sr. No.	Subject matter	Officer/Official	Time schedule	Person to be contacted in case of any grievance
IN FIELD OFFICES				
I. Labour Inspectors				
1.	Registration of shops/commercial establishments under the Punjab Shops & Commercial Establishments Act and rules made thereunder	Labour Inspector	Not more than 15 days from the date of receipt of the papers complete in all respects.	Deputy Labour Commissioner
2.	Implementation of awards/settlement under the Industrial Dispute Act, 1947 and Rules	Labour Inspector	Not more than two months after the date of enforceability of the award.	Labour Officer/Deputy Labour Commissioner
3.	Disposal of complaints under various labour laws i.e. Payment of Wages Act, Minimum Wages Act, National and Festival Holidays Act, Payment of Gratuity Act, Payment of Bonus Act, Shops, and Commercial Establishments Act, Equal Remuneration Act, Contract Labour (R&A) Act and the rules made under the respective enactments	Labour Inspector	Not more than one month	Labour Officer/Deputy Labour Commissioner

39 Labour Department, Haryana: <http://hrylabour.gov.in/content/cms/OQ>

40 Labour Department, Haryana: <http://hrylabour.gov.in/content/cms/OA>

41 Labour Department, Haryana: <http://hrylabour.gov.in/staticdocs/labourActpdfdocs/citizen.pdf>

Sr. No.	Subject matter	Officer/Official	Time schedule	Person to be contacted in case of any grievance
II. Labour-cum-Conciliation Officers/Welfare Officer (Women)				
1.	Cases under section 2-A of the Industrial Disputes Act, 1947 & rules regarding termination/retranchment/discharge/dismissal	Labour-cum-Conciliation Officer	Not more than three months	Deputy Labour Commissioner
2.	Quasi-judicial claim cases under the Workmen's Compensation Act, Payment of Wages Act, Minimum Wages Act, Payment of Gratuity Act and Equal Remuneration Act and the rules made under the respective enactments	Labour-cum-Conciliation Officer and specified authority under the relevant act	Not more than two years except in the case of claims under the Workman Compensation Act, where the time period shall not be more than two years.	Deputy Labour Commissioner/Labour Commissioner.
3.	Implementation of awards/settlement under the Industrial Dispute Act, 1947 & Rules	Labour-cum-Conciliation Officer	Not more than one month	Deputy Labour Commissioner
4.	Disposal of complaints under various labour enactments i.e. Payment of Wages Act, Minimum Wages Act, National and Festival Holidays Act, Payment of Gratuity Act, Payment of Bonus Act, Shop and Commercial Establishments Act, Equal Remuneration Act, Contract Labour (R&A) Act, Maternity Benefit Act and the rules made thereunder	Labour-cum-Conciliation Officer/Welfare Officer (Women)	Not more than two month	Deputy Labour Commissioner
III. Deputy Labour Commissioners				
1.	Cases under section 2(K) of the industrial Disputes Act & Rules – disputes of collective nature containing various demands pertaining to conditions of employment	Deputy Labour Commissioner	Not more than six months – extendable by another 3 months on the request of both the parties	Joint Labour Commissioner/Labour Commissioner
2.	Publication of awards received from the Industrial Tribunal/Labour Court	Deputy Labour Commissioner	Not more than two weeks	Joint Labour Commissioner/Labour Commissioner
3.	Disposal of quasi-judicial cases under the Payment of Gratuity Act and Rules	Deputy Labour Commissioner-cum-Appellate Authority	Not more than six months	Labour Commissioner
IV. Assistant Director, (IS&H) in their respective jurisdiction				
1.	Maternity Benefit Act and Rules	Assistant Director, Industrial Safety & Health	Not more than two months	Deputy Director/Chief Inspector of Factories
2.	Implementation of the provisions of the Factories Act, Maternity Benefit Act and the rules framed thereunder/ complaints received relating to the Act/ Rules; disposal of application received for factory building plan approval/ registration/licencing under the Factories Act, 1948	Assistant Director, Industrial Safety & Health	Not more than seven days	Deputy Director/Chief Inspector of Factories

Sr. No.	Subject matter	Officer/Official	Time schedule	Person to be contacted in case of any grievance
V. Deputy Director, Industrial Safety and Health in their respective jurisdictions				
1.	Implementation of provisions of the Factories Act, Maternity Benefit Act and the rules framed under/complaints received relating to the Act/rules	Assistant Director, Industrial Safety & Health	Not more than two months	Addl. Chief Inspector of Factories/Chief Inspector Factories
2.	Disposal of application received for factory building plan approval/ registration/licencing under the Factories Act, 1948	Assistant Director, Industrial Safety & Health	Not more than seven days	Addl. Chief Inspector of Factories/Chief Inspector Factories
VI. Assistant Director, Industrial Health and certifying surgeon in their respective jurisdictions				
1.	Implementation of the provisions of the Factories Act and the rules framed thereunder/complaints received relating to the Act/rules, relating to industrial health/complaints under the Maternity Benefit Act	Assistant Director, Industrial Health and certifying surgeon	Not more than three months	Deputy Director (IH)/Chief Inspector of Factories
VII. Assistant Director, Industrial Health and certifying surgeon in their respective jurisdictions				
1.	Implementation of the provisions of the Factories Act and the rules framed thereunder/complaints received relating to the Act/rules, relating to industrial health/complaints under the Maternity Benefit Act	Deputy Director (IH)	Not more than two months	Addl. Chief Inspector of Factories/Chief Inspector Factories
AT THE HEADQUARTERS				
Labour Wing				
1.	INDSTRIAL DISPUTES ACT 1947 & RULES	Joint Labour Commissioner	Not more than 60 days from the date of receipt of report from the field officers	Labour Commissioner
	i) Demand notice under Section 2A-Disputes regarding discharge/ termination/retrenchment/dismissal	Joint Labour Commissioner	Not more than three months from the date of receipt of report from the field officers	Labour Commissioner
	ii) Demand notice under Section 2(k)-Disputes regarding discharge/ termination/retrenchment/dismissal	Joint Labour Commissioner	Not more than three months	Labour Commissioner
	iii) Complaints regarding ULPs & other miscellaneous matters under Section 25-T of the above Act & rules	Joint Labour Commissioner	Not more than two months	Labour Commissioner
2.	Complaints cases under E.S.I. Act & Rules, EPF Act & Rules, Workmen's Compensation Act & Rules/Payment of Gratuity Act & Rules regarding non-payment of compensation etc.	Joint Labour Commissioner	Not more than two months	Labour Commissioner
3.	Industrial Employment (Standing Orders) Act and rules – Certification of Standing orders in respect of industrial workers	Joint Labour Commissioner and certifying officer	Not more than two months	Labour Commissioner

Sr. No.	Subject matter	Officer/Official	Time schedule	Person to be contacted in case of any grievance
4.	Trade Unions Act and rules – registration of trade unions	Joint Labour Commissioner and Additional Registrar, Trade Unions/Registrar Trade Unions	Not more than four months	Labour Commissioner and Registrar Trade Union
5.	Contract Labour (R & A) Act and rules – issuing of registration certificate/ license/amendments in registration certificate and renewal of license	Joint Labour Commissioner	Not more than two months	Labour Commissioner
6.	Motor Transport Workers Act and rules – issuance of registration certificate	Joint Labour Commissioner	Not more than one month	Labour Commissioner
7.	Cases under the Minimum Wages Act, Payment of Wages Act, Equal Remuneration Act, Payment of Bonus Act and rules made under respective enactments in respect of non-payment of wages, non-payment of minimum rates of wages, delayed wages, non-payment of equal wages for equal work and non-payment of bonus	Joint Labour Commissioner	Not more than three months	Labour Commissioner
8.	Implementation of Awards – Issuance of recovery certificate & prosecution cases under the Industrial Disputes Act and rules/orders/settlement	Deputy Labour Commissioner	Not more than three months	Labour Commissioner
9.	Child Labour (P & R) Act and Rules- Cases/Complaints and other action pertaining to children	Deputy Labour Commissioner	Not more than two months	Labour Commissioner
10.	Bonded Labour System (Abolition) Act and Rules – Constitution of Vigilance Committees/holding of meeting of the state-level steering committee on bonded labour/miscellaneous matters pertaining to bonded labour	Deputy Labour Commissioner	Not more than two months	Labour Commissioner
11.	Punjab Shops & Commercial Establishments Act 1958 and rules – cases regarding exemptions/fixation of opening and closing day/complaints	Deputy Labour Commissioner	Not more than two months	Labour Commissioner
12.	Complaints under the Punjab Industrial Establishments (National and Festival Holidays, Casual and Sick Leave) Act, 1965 and rules	Deputy Labour Commissioner	Not more than one month	Labour Commissioner
13.	Punjab Labour Welfare Fund Act and Rules – disposal of applications received under the welfare schemes	Senior Accounts Officer	Not more than two months	Welfare Commissionr

Sr. No.	Subject matter	Officer/Official	Time schedule	Person to be contacted in case of any grievance
Factory Wing				
1.	Factories Act, 1948 & rules – approval of factory building plans	Labour Commissioner cum Chief Inspector of Factories	Not more than 60 days from receipt of papers complete in all respects	Chief Inspector of Factories/Labour Commissioner
2.	Cases regarding grant/renewal of license	Labour Commissioner cum Chief Inspector of Factories	Not more than 15 days from receipt of papers complete in all respects	Chief Inspector of Factories
3.	Cases under the Maternity Benefit Act and rules	Labour Commissioner cum Chief Inspector of Factories	Not more than six months	Chief Inspector of Factories

Authorities under the Act⁴²

This information is useful for workers, unions and their representatives to be familiar with in order to be able to make applications as required and raise complaints and industrial disputes. The officer highlighted in the table below is the highest authority to take action under each specific law.⁴³

Name of the Act	Labour Commissioner (LC)	Joint Labour Commissioner (JLC)	Dy. Labour Commissioner (DLC)	Labour Officer-cum-Conciliation Officer (Asst.LC)
Contract Labour Act	Registering & licensing officer	Inspector	Inspector	Inspector
Trade Union Act 1926	Registrar	Additional Registrar	—	—
Industrial Disputes Act 1947	Conciliation Officer	Chief Conciliation Officer	Conciliation Officer	Conciliation Officer
Payment of Wages Act	Inspector	Inspector	Inspector	Authority/Inspector
Minimum Wages Act	Inspector	Inspector	Inspector	Authority/Inspector
Inter-state Migrant Act	Registering & licensing authority	Inspector	Inspector	Inspector
Maternity Benefit Act	Inspector	Inspector	Inspector	Inspector
Motor Transport Workers Act	Chief Inspector	Inspector	Inspector	Inspector
Child Labour Act	Inspector	Inspector	Inspector	Inspector
Payment of Bonus Act	Inspector	Inspector	Inspector	Inspector
Working Journalists Act	Inspector	Inspector	Inspector	Inspector
Payment of Gratuity Act	Inspector	Inspector	Appellate Authority/Inspector	Controlling authority/Inspector
Equal Remuneration Act	Appellate authority	Inspector	Inspector	Authority/Inspector
Sales Promotion Employees Act	Inspector	Inspector	Inspector	Inspector
Punjab Shops & Commercial Establishments Act	Inspector	Inspector	Inspector	Competent authority for sanctioning prosecutions
Workmen's Compensation Act	—	—	—	Commissioner
Industrial Employment (Standing Orders) Act	Inspector	Certifying officer	—	Inspector
National & Festival Holidays Act	Inspector	Inspector	—	Inspector
Bonded Labour Act	—	—	—	—
Fund Act	Welfare Commissioner	Inspector	Inspector	Inspector

⁴² Tables created by Advocate Gunjan Singh.

⁴³ Labour Department, Haryana: <http://hrylabour.gov.in/content/cms/MTE>

Factory Wing

Sr.No	Name of the Act	Labour Commissioner	Addl. Labour Commissioner	Dy. Director (IS&H)	Sr. Asst		Medical Officer	Certifying Surgeon
					Director (IS&H)	Asst Director (IS&H)		
1.	Factories Act	CIF	ACIF	Inspector	Inspector	Inspector	Inspector	Inspector

Note: CIF = Chief Inspector of Factories; ACIF = Additional Chief Inspector of Factories; IS&H = Industrial Safety and Health

Labour standards

This table lists the standards of employment, the relevant acts and their provisions ensuring such standards, and the authorities responsible for ensuring their compliance.⁴⁴ In the last column, a timeframe is also provided for the disposal of complaints/claims, based on information available in various documents of the Haryana Labour Department. This information is useful for workers, unions and their representatives in order to be able to make applications as required, raise complaints and industrial disputes, and seek redressal within the timeframe mandated by the government.

Standard	Name of the act(s)	Relevant section(s)	Responsible authority (disposal time)
Wages	Minimum Wages Act, 1948	S.12 – payment of minimum rate of wages; wages based upon skill	Complaints before LI (1 month)→Asst. LC→DLC
		Rule 26(2) – issuance of wage slip in Form XI	
		Section 20(2) – claim for payment of minimum wages within 6 months; later too, if delay is justified	
	Payment of Wages Act, 1948	Section 5 – payment of wages on 7th day of every month	Authority is ALC (order is final, no appeal)
		Section 15(2) – claim for payment of wages within 12 months from the date payment is due; later too, if delay is justified	
		Section 15(3) – claim before the authority	Claim for non-payment of wages in lieu of leave can be filed before ALC under Section 15(2) of the Payment of Wages Act, 1936 [This claim can also be made under Section 82 of Factories Act, 1948]
	Factories Act, 1948	Section 59(1) – extra wages for overtime; twice the ordinary rate of wages	
	Equal Remuneration Act, 1976	Section 4 – equal remuneration for men and women for work of the same or similar nature	Authority is ALC (3 months); appeal before civil judge (junior division)
		Section 7(1)(a) – complaints regarding contravention of the Act	
		Section 7(1)(b) – claim regarding non-payment of equal wages to men and women for the same or similar work	Claim can be filed before ALC for non-payment of wages [under Section 7(4) of the Act]

44 Research assistance provided by, and tables created by, Advocate Gunjan Singh.

Note: LI = Labour Inspector; Asst. LC = Assistant Labour Commissioner; DLC = Deputy Labour Commissioner; JLC = Joint Labour Commissioner; ALC = Additional Labour Commissioner; LC = Labour Commissioner; IS&H = Industrial Safety and Health; CIF = Chief Inspector of Factories; ACIF = Additional Chief Inspector of Factories

Standard	Name of the act(s)	Relevant section(s)	Responsible authority (disposal time)
	Contract Labour (Regulation and Abolition) Act, 1970	Section 21 – responsibility for payment of wages; first of contractor, then of principal employer	Complaints before LI (1 month); ALC (2 months); DLC-LC (appellate authority)
		Rule 25 (iv) – contract workers should not be paid less than the minimum rate of wages	
		Rule 25(v)(a) – where contract workers perform work that is the same as or similar to regular work, they are entitled to equal wages	Complaints before LI (one month); ALC (2 months); DLC LC
Leave	Factories Act, 1948	Section 52(1) – paid weekly off	
		Section 79(1) – annual paid leave; one day for every 20 days of work	
Working hours	Factories Act, 1948	Section 51 – weekly hours, not more than 48 hours in any week	Assistant Director (IS&H), not more than 2 months; Deputy Director (IS&H); ALC and ACIF; CIF
		Section 54 – daily hours, not more than 9 hours in any day	
Proof of employment	Minimum Wages Act, 1948	Section 18 – maintenance of records and registers	Complaints before LI, ALC (2 months)
		Rule 26 (2) – wage slip in Form XI to be issued to every employee	
		Rule 26(5) – maintenance of muster rolls/ attendance records	
Safety and health	Factories Act, 1948	Chapter 3 and 4 – safety and health of workers	Assistant Director (IS&H), not more than 2 months; Deputy Director (IS&H); ALC and ACIF; Labour Commissioner; CIF
Welfare of workers	Factories Act, 1948	Chapter V	Assistant Director (IS&H), not more than 2 months; Deputy Director (IS&H); ALC and ACIF; Labour Commissioner; CIF
	Contract Labour (Regulation and Abolition) Act, 1970	Section 16-21 – welfare and health of contract workers	
Bonus	Payment of Bonus Act, 1965	Section 2 (13) – employee defined, salary not exceeding 21,000 rupees	ALC (not more than two months); DLC-JLC (not more than 1 month); LC
		Section 8 – eligibility for bonus (one who has not worked less than 30 days in that year)	
		Section 10 – payment of minimum bonus, 8.33% of the annual salary/wage	
		Section 16 – applicable to establishments only after five years	
		Section 19 – time limit for payment of bonus; bonus should be paid in cash within 8 months from the close of the accounting year	

Standard	Name of the act(s)	Relevant section(s)	Responsible authority (disposal time)
		Section 22 – reference of the dispute; any dispute regarding bonus will be treated as if it is an industrial dispute within the meaning of section 2(k) of the ID Act	
		Section 30 – cognizance of offences; judicial magistrate first class	
Prevention of sexual harassment at workplace	Sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	Section 4 – IC; every employer should have an Internal Committee (IC) at all units	Complaint to IC/LC; Inquiry, report of findings (within 10 days after completion of inquiry) to the parties; Action within 60 days after getting recommendations; Appeal within 90 days of the recommendations (in case person aggrieved from the recommendation or non-implementation of the recommendation)
		Section 5 – Local Committee (LC) in every district	
		Section 9 – complaint of sexual harassment	Where there is no IC, complaint can be filed before LC directly
		Section 10 – conciliation; no monetary settlement shall be made	
		Section 11 – inquiry into the complaint by IC or LC where no conciliation possible	
		Section 26 – penalty for non-compliance INR 50,000	
Inter-state migrant workers standards	Inter-state Migrant Workmen's Act, 1979	Section 1 (4) – applies to every establishment or contractor where five or more inter-state migrant workmen are employed in the preceding 12 months	ALC, DLC, JLC (inspectors); LC (registering/licensing authority)
		Section 2(3)(e) – “inter-state migrant workman” means any person who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such establishment	
		Section 6 – prohibition of employment of inter-state migrant workmen without registration; no principal employer can employ inter-state migrant workmen unless certificate of registration is obtained	

Standard	Name of the act(s)	Relevant section(s)	Responsible authority (disposal time)
		Section 8 – licensing of contractors; no contractor shall employ inter-state migrant workmen unless certificate of registration is obtained	
		Section 12 – duties of contractors; issue passbook; details of workmen	
		Chapter V (Section 13 to 19) – wages, allowances and other benefits to inter-state workmen	
		Section 25 – punishment for contravention of the Act: imprisonment for one year and fine	
		Rule 58 – legal aid to migrant workers	

Social security benefits⁴⁵

Rights/benefits	Name of the act(s)	Relevant section(s)	Responsible authority (disposal time)
Maternity benefits (since the wage ceiling for the Employees' State Insurance Corporation has been raised to INR 21,000 from INR 15,000, garment sector workers will be governed by provisions of the ESI Act)	Maternity Benefit Act, 1961	Section 5 - right to payment of maternity benefits; wages for maternity leave	ALC (2 months); DLC, JLC, LC (inspectors, not more than 6 months)
	Employment State Insurance Act, 1948	Section 6 - notice of claim for maternity benefit; 12 weeks pre-natal and post-natal	Appeal against the order can be filed within thirty days and order passed in appeal shall be final [Section 17(3)(4)]
		Section 11 - nursery breaks; two breaks, each of 15 minutes	
		Section 17(1) and Section 23 - complaint by women or by any member of a trade union before inspector or judicial magistrate first class	Complaint for non-compliance can be filed before judicial magistrate first class
		Section 17 (2) - inquiry and order	
Compensation in case of injury/accident		Section 50 of ESI Act and Rule 56 of ESI (Central Rules) - maternity benefit (same as the provisions of Maternity Benefits Act, 1961)	
	Workman Compensation Act, 1923	Section 53 of ESI Act, 1948 - Workmen Compensation Act doesn't apply where workman is covered under ESI Act	ALC (commissioner under the Act) can pass order within reasonable time; appeal (Section 30) against the order of the commissioner lies before the High Court
	and		
	Employment State Insurance Act, 1948	Section 3(1) - personal injury caused to a workman by accident arising out of and in the course of his employment	Can claim damages either before commissioner or civil court as damages through civil suit [(Section 3(5))]
		Section 10(1) - claim to be made within two years of accident or within three years of death	
		Section 12 - principal employer liable for compensation in case where worker is employed through contractor	

Rights/benefits	Name of the act(s)	Relevant section(s)	Responsible authority (disposal time)
Payment of gratuity	The Payment of Gratuity Act	Section 4(1) – one who has rendered continuous service for not less than five years Section 4(2) – 15 days average salary for every completed year of service; last drawn salary Section 7(3) – to be paid within 30 days of becoming payable	ALC (controlling authority, 2 months); DLC (appellate authority, 6 months) Section 8 – recovery of gratuity; where an application is made before controlling authority against failure of payment, he/she can order recovery through collector Section 11 – where no recovery could be made, complaint before judicial magistrate first class can be filed Appeal against the order of the controlling authority can be filed within sixty days [Section 7(7)]; order of appellate authority shall be final
Provident Fund contribution	The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and The Employees' Provident Funds Scheme	Section 2(f) – excluded employee; wage ceiling is now INR 15,000,⁴⁶ earlier INR 6,500 Section 6 – employee's contribution 12% of the basic wage and employer's contribution 12% (8.33% to pension fund and 3.67% to Provident Fund)	Inspectors – Assistant PF Commissioner, Regional PF Commissioner (appellate authority), Additional Central PF Commissioner Section 13 – power of inspectors: ensures compliance with the Act Section 14 – penalties: in case of default in employee's contribution by employer; one year's imprisonment and fine
Employment insurance in case of sickness, maternity, disablement or injury	The Employees' State Insurance Act, 1948	Section 2(12) – applies to all factories where 10 or more persons are employed (with aid of power) or where 20 or more are employed (without aid of power) Section 38 – all employees to be insured Chapter V Section 46 to 51 – sickness, maternity and disablement benefit Rule 50 – wage limit for coverage is now INR 21,000⁴⁷ Rule 51 – rates of contribution; employee's contribution 1.75 % of employee's wage; employer's contribution 4.75% of employee's wage	Medical Board (Section 54) – medical appeal tribunal (appeal within 3 months) [Rule 20A]; appeal to Employees' Insurance Court [Rule 20B]

⁴⁶ EPFO, Present Rates of Contribution: http://www.epfindia.com/site_docs/PDFs/MiscPDFs/ContributionRate.pdf

⁴⁷ *Economic Times*, 2016.

Labour rights⁴⁸

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
Right to freedom of association/ right to form trade union	Constitution of India	Article 19(1)(c) – right to join an association or union	JLC (additional registrar, trade union), not more than 4 months;	Rule 3 – application for registration before registrar (labour commissioner) in Form A	Though there is provision under the Act to challenge the refusal order of a registrar, there is no safeguard under the law to address a delay in passing of the order by the registrar; however, the ILO has recommended time-bound registration of trade unions; Industrial Bill, 2016 provides for compulsory registration within 4 months
	Trade Union Act, 1926	Section 2(h) – definition of trade union: any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions	Labour Commissioner (registrar)	Citizen's Charter ⁴⁹ provides that the subject matter relating to trade union registration shall be disposed of within 4 months by the JLC; in case of any grievance, one can raise the issue before the labour commissioner	
	and			Section 11 provides for appeal:	
	The Punjab Trade Union Regulations, 1927 (PTUR)	Section 4 – mode of registration; seven or more members can apply for registration Section 11 – appeal before industrial tribunal/labour court against the refusal order		Section 11 (1) – appeal against the refusal order of the registrar can be made before industrial tribunal Section 11(2) – industrial tribunal can pass the order directing the registrar to issue a certificate of registration Section 11(4) – right to appeal to the High Court against the order of the industrial tribunal	

⁴⁸ Research assistance provided by, and table created by, Advocate Gunjan Singh.

⁴⁹ Labour Department, Haryana: <http://hrylabour.gov.in/staticdocs/labourActpdfdocs/citizen.pdf>

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
Right to bargain collectively	Industrial Disputes Act, 1947 and Industrial Disputes (Punjab) Rules, 1957	The Supreme Court defines collective bargaining as “the technique by which dispute as to conditions of employment is resolved amicably by agreement rather than coercion”⁵⁰ Schedule V of IDA, Item (15) – refusing to bargain collectively amounts to unfair labour practices Section 2(p) of IDA – “settlement” defined	DLC (not more than 6 months, extendable by another 3 months on request of both parties); JLC	Stages of collective bargaining: Charter of demands – includes issues relating to wages, bonuses, working hours, benefits, allowances, terms of employment, holidays Once charter of demands is presented, collective bargaining proceeds in two ways: (1) Negotiation between employer and workman which results in a bipartite settlement under Section 18(1); it is binding on both parties; ‘settlement’ as defined under Section 2(p) (2) Conciliation which results in a tripartite settlement under Section 18 (3); it is binding on all parties Rule 58 – memorandum of settlement shall be in Form H (3) If neither negotiation nor conciliation bear results, then an industrial dispute can be raised under section 2(k) of IDA before the DLC or An Unfair Labour Practice (ULP) complaint can be filed before the ALC, which can further be adjudicated by the labour court (4) Adjudication – where no settlement is possible either by way of negotiation or conciliation, such a matter is referred to the labour	

50 Karol Leather Karamchari Sangathan v. Liberty Footwear Company, (1989) 4 SCC 448.

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
				commissioner by the ALC/DLC, who, after considering the facts, may refer it for adjudication to the labour court Consent awards are agreements reached while a dispute is pending before a compulsory adjudicatory authority, and incorporated into the authority's award; even though the agreement is reached voluntarily, it becomes part of the binding award pronounced by the authority constituted for the purpose	
Right to strike	Industrial Disputes Act, 1947 and The Industrial Disputes (Punjab) Rules, 1958	Section 2(q) – “strike” is defined as a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal, under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment Section 22 – notice of strike Section 23 – general prohibition on strike and lockout Section 10(3) and 10A(4A) – appropriate government can prohibit continuance of any strike in connection to a dispute where reference has been made Section 24(2) – where strike has already commenced at the time of reference of the pursuant dispute, it is not illegal	ALC (not more than 3 months); DLC (not more than 6 months, extendable by another 3 months, if both parties agree); JLC (not more than 90 days from the date of receipt of report from field office)	Notice of strike – section 22(1)(a); notice of strike should be given at least six weeks before striking Rule 70 – notice of strike should be given in Form L 22(1)(b) – employees can go on strike after 14 days of giving notice 22(3) – no notice is necessary where strike is already in existence Section 23 – no strike can be carried out during pendency of conciliation proceedings or pendency of proceedings before labour court and after conclusion of 7 days of proceedings or 2 months respectively Note: Where there exists any dispute, the same can be raised before the ALC, then after conciliation, and where conciliation fails, the appropriate government, after considering the failure report, may send it to the labour court for adjudication	The Supreme Court held that workers are only entitled to wages if the strike is legal and justified ⁵¹

51 Crompton Greaves Ltd. v. Its Workmen (AIR 1978 SC 1489) at para 4.

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
Right of workmen to raise an industrial dispute	Industrial Disputes Act, 1947 and The Industrial Disputes (Punjab) Rules, 1958	Section 2(k) – industrial disputes defined	ALC (not more than 3 months);	Rule 10A – demand notice can be raised by workmen before ALC	The conciliation before ALC is often delayed by more than 3 months
		Conciliation before ALC – Section 12(2) of IDA provides for investigation of dispute	DLC (not more than 6 months);	Conciliation before ALC or DLC-Rule 12 – conciliation officer to conduct proceedings expeditiously	
		Section 12(4) and 12(6) – where conciliation fails, ALC to send failure report to the appropriate government within 14 days	JLC (not more than 90 days from the date of receipt of report from field office);	Conciliation should be finished within 3 months before ALC and 6 months before DLC, extendable by another 3 months, if both parties agree to it; JLC to conduct proceedings in not more than three months from the date of receipt of report from the field officers ⁵²	
		Section 12(5) and 10(1) (c) – after considering failure report, government may make a reference to labour court; else, it shall record and communicate to the parties concerned	LC		
		Section 10(2A) of IDA – order referring an industrial dispute to the labour court shall specify the time period		Section 12(4) and 12(6) – where conciliation fails, ALC to send failure report to the appropriate government within 14 days	
		Section 11A – power of labour court to adjudicate the dispute		Adjudication in labour court – Rule 10-B(3) – labour court shall ordinarily fix the date for first hearing of the dispute within six weeks of the date on which it was referred for adjudication	
		Section 17 – publication of award			
		Section 11(10) – execution of award; labour court shall transmit the award to a civil court and such civil court shall execute the award		It may, for reasons to be recorded in writing, fix a later date for the first hearing of the dispute	
		Section 29 – penalty for breach of settlement or award		Publication of Award ⁵³ – DLC shall publish the award passed by the labour court within 14 days of the receipt	
				Implementation of awards ⁵⁴ – LI shall implement the award within not more than	

⁵² Labour Department, Haryana: http://hrylabour.gov.in/page.php?module=citizen_chater

⁵³ Ibid.

⁵⁴ Ibid.

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
				two months after the date of enforceability of the award; ALC in not more than two months; DLC in not more than three months Prosecution in case of failure to implement the award – DLC shall initiate prosecution proceedings in not more than three months after the date of enforceability of award Recovery of money due from an employer – application for recovery of money due as per the award can be in form K-1, provided under Rule 61A, as per the provisions of Section 33 C(1)	
Right of an individual workman in case of discharge, dismissal, retrenchment or termination to raise an industrial dispute	Industrial Disputes Act, 1947 and The Industrial Disputes (Punjab) Rules, 1958	Section 2(A) of IDA – dismissal and so on of an individual workman to be deemed to be an industrial dispute Conciliation before ALC – Section 12(2) of IDA provides for investigation of dispute Section 12(4) and 12(6) – where conciliation fails, ALC to send failure report to the appropriate government within 14 days Section 12(5) and Section 10(1)(c) of IDA – power of appropriate government to make reference Note: Section 2A(2) – individual workman may make an application direct to the labour court for adjudication of the dispute after the expiry of 45 days from the date he/she has made the application to the conciliation officer	ALC (not more than 3 months); DLC and JLC (not more than 60 days from the date of receipt of report from the field office); LC	Rule 10A – demand notice can be raised by workmen before ALC Conciliation – Rule 12 – ALC shall conduct the proceedings expeditiously Maximum time for disposal to not exceed 3 months in Haryana (Citizen's Charter) To be held before ALC (3 months), and then, in case of grievance, to be forwarded to DLC At headquarters, JLC can conduct conciliation and, in case of any grievance, LC can conduct conciliation Adjudication – after reference from the appropriate government, labour court shall adjudicate the claim/ dispute within six weeks from the date it received the reference	Conciliation Section 12 (6) of IDA provides for submission of report of conciliation proceedings within fourteen days, whereas the Haryana Citizen's Charter provides for three months; in actual practice, this takes around 6–12 months Section 10B (11) of Industrial Disputes (Central) Rules, 1957 provides that awards should be ordinarily submitted within a period of three months; in actual practice, this takes years to conclude

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
		Section 10(2A) of IDA – an order referring an industrial dispute to the labour court shall specify the time period		Award – appropriate government shall publish the award passed by the labour court within 14 days of receipt Recovery of money due from an employer – Section 33 C(1) and Rule 61 A – an application can be made in form K-1 Execution of award – Section 11(10) – labour court shall transmit the award to a civil court and such civil court shall execute the award Penalty for committing breach of award – Section 29 – any person who commits breach of award that is binding on him shall be punishable	
Right to claim compensation in case of retrenchment	Industrial Disputes Act, 1947 and The Industrial Disputes (Punjab) Rules, 1958	Section 25F – condition precedent to retrenchment of workmen Section 25 B – continuous service defined; workmen should be in continuous service for not less than one year Section 25G – procedure for retrenchment Section 25H – re-employment of retrenched workmen; retrenched workers should be given priority over other workers in case of re-employment Special Provision (Ch-V B) – Section 25N – applies to establishments where more than 100 workers are employed; provides for condition precedent to retrenchment of workmen employed in these industries	ALC	Rule 75 – notice of retrenchment shall be sent to ALC within three days from the date on which notice is given to the workman in Form P Section 25F – one-month notice should be given or one month's payment in lieu of notice Retrenchment compensation shall be equivalent to 15 days' average pay for every completed year of service Procedure for retrenchment – principle of "last come, first go" should be applied during retrenchment Maintenance of seniority list of workmen, Rule 76 – every employer shall prepare a list of workmen where retrenchment is contemplated, according	While retrenching workers, industries in Gurugram often do a full and final settlement for workmen, which results in termination of services

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
				to their seniority, and shall paste this list at a conspicuous place at least seven days before the actual date of retrenchment Note: Every dispute regarding retrenchment compensation shall be within the meaning of industrial dispute under section 2(k) of IDA	
Right to claim compensation in case of transfer	Industrial Disputes Act, 1947 and The Industrial Disputes (Punjab) Rules, 1958	Section 25 FF – compensation to workmen in case of transfer of undertaking in accordance with the provisions of Section 25F	ALC	Retrenchment compensation – in cases where establishment is transferred in violation of provisions of Section 25FF, workmen can file claims for retrenchment compensation in accordance with the provisions under section 25F Note: Every dispute regarding retrenchment compensation shall be within the meaning of industrial dispute under section 2(k) of IDA	
Right to claim compensation in case of closure	Industrial Disputes Act, 1947 and The Industrial Disputes (Punjab) Rules, 1958	Section 25 FFF – compensation to workmen in case of closure of undertaking in accordance with the provisions of section 25F Section 25FFA – sixty days' notice to be given of intention to close down any undertaking For establishments under Chapter VB: Section 250 – procedure for closing down an undertaking (where more than 100 workers are employed)	ALC	Retrenchment compensation – in cases where establishment is closed in violation of provisions of Section 25FFF, workmen can file claims for retrenchment compensation in accordance with the provisions under section 25F Notice of intention of closing down – employer shall serve at least sixty days before the date on which the intended closure is to become effective; notice in Form Q to the ALC For establishments under Chapter VB:	

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
				Rule 75B – notice under section 250(1) shall be given in Form QA Rule 75C – establishments shall apply in Form QB for prior permission at least ninety days before the date on which the intended closure is to become effective Note: Every dispute regarding retrenchment compensation shall be within the meaning of industrial dispute under section 2(k) of IDA	
Right of protected workmen	Industrial Disputes Act, 1947 and The Industrial Disputes (Punjab) Rules, 1958	Explanation to Section 33(3) – a “protected workman”, in relation to an establishment, means a workman who, being [a member of the executive or other office bearer] of a registered trade union connected with the establishment, is recognized as such in accordance with rules made in this behalf Section 33 (3) – no action against protected workmen during pendency of any proceedings Section 33(4) – number of protected workmen who can be recognized	ALC – LC	Rule 61 – every regd. trade union shall communicate to the employer before 30th April the list of protected workmen 61(2) – employer within 15 days shall communicate to the union in writing list of recognized workmen 61(4) – any dispute regarding recognition of “protected workmen” shall be referred to the ALC for decision Appeal against the decision of ALC can be raised before Labour Commissioner	
Conditions of service to remain unchanged	Industrial Disputes Act, 1947 and The Industrial Disputes (Punjab) Rules, 1958	Section 9A – notice of change; no employer shall effect any change in the conditions of service in respect of any matter specified in the Fourth Schedule without giving notice of the change and within 21 days of giving such notice to the workmen Section 33(1) and (2) – conditions of service to remain unchanged during pendency of proceedings	ALC (not more than 3 months); DLC (not more than 6 months, extendable by another 3 months, if both parties agree to it); JLC (not more than 90 days from the date	Rule 34 – notice of change; employer intending to effect any change in the conditions of service shall give notice in Form E Note: Every dispute regarding change in condition of service shall be within the meaning of industrial dispute under section 2(k) of IDA Rule 59 – every complaint under section 33A shall be	

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
		Section 33A – special provisions for adjudication as to whether conditions of service and so on changed during pendency of proceedings	of receipt of report from field office)	presented in triplicate in Form I Section 33A (a) – complaint regarding change in condition of service during the pendency of proceedings may be made before ALC Section 33A(b) – where a complaint is made to the labour court under section 33A, labour court shall adjudicate the complaint as if it were a dispute referred to it by the appropriate government and shall submit its award	
Right of contract workers to seek declaration of contract as sham and bogus, and seek regularization	The Industrial Disputes Act, 1947	Section 2(k) – industrial dispute means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any persons Section 10(1)(c) – where the appropriate government is of the opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing, refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a labour court for adjudication	ALC (not more than 3 months); DLC (not more than 6 months, extendable by another 3 months, if both parties agree to it); JLC (not more than 90 days from the date of receipt of report from field office)	Rule 10A – demand notice by workman can be raised before ALC Conciliation Section 12(4) and 12(6) – where conciliation fails, ALC shall send failure report to the appropriate government within 14 days Section 12(5) and 10(1)(c) – after considering failure report, appropriate government may make a reference to labour court; where it doesn't make reference, it shall record and communicate to the parties concerned Labour court – the labour court shall adjudicate whether the contract was sham and bogus or not, and if prayed for regularization, it can order the same	Uma Devi's case ⁵⁵ deals in detail with the principles involved in regularization of contract workers

55 Secretary, State of Karnataka and Others v. Umadevi (3) and Others.

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
Right of contract worker to seek prohibition of employment of contract labour	Contract Labour (Regulation and Abolition) Act, 1970	Section 10(1) – prohibition of employment of contract labour after consultation with the state board Section 10(2) – the appropriate government can prohibit employment of contract labour in an establishment considering relevant factors, such as: • whether work is incidental to or necessary for the industry • whether it is of perennial nature • whether it is done ordinarily through regular workmen in that establishment or establishment similar thereto • whether it is sufficient to employ a considerable number of full-time workmen	Secretary, Department of Labour, Haryana and State Contract Labour Board	Application for prohibition of contract work under Section 10 can be filed before Secretary, Department of Labour, Haryana Secretary in consultation with Contract Labour Advisory Board may prohibit, by notification in the official gazette, employment of contract labour in any process, operation or other work in any establishment	
Right of contract workers to claim parity of wages	Contract Labour (Regulation and Abolition) Act, 1970	Rule 25(v)(a) – where the workman employed by the contractor performs the same or similar kind of work as the workmen directly employed by the principal employer, the wage rates and other conditions of service shall be the same as applicable to the workmen directly employed by the principal employer	LI, ALC, DLC	Complaints can be filed before LI (not more than 1 month), then the ALC (not more than two months) and then the DLC Claims regarding wages can be raised under section 15(2) of Payment of Wages Act, 1936 before ALC	State of Punjab vs Jagjit Singh deals with the principle of parity of wages
Right of workers to claim bonus proportionate to profit	Payment of Bonus Act, 1965 and The Industrial Disputes Act, 1947	Section 8 – eligibility for bonus; every employee who has worked for not less than 30 working days in that year is entitled to bonus Section 10 – minimum bonus; 8.33% of the salary or wage earned by the employee during that year Section 11 – payment of maximum bonus (20%)	LI, ALC (not more than 3 months); DLC (not more than 6 months, extendable by another 3 months, if both parties agree to it);	A complaint regarding non-payment of bonus can be filed before LI, then ALC, and further before DLC and JLC Note: Every dispute regarding retrenchment compensation shall be within the meaning of industrial dispute under section 2(k) of IDA	

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
		Section 22 - reference of dispute under the Act	JLC (not more than 90 days from the date of receipt of report from field office)	Adjudication – labour court shall adjudicate dispute regarding payment of bonus	
Right to claim subsistence allowance	Industrial Employment Standing Orders Act, 1946 and The Industrial Employment (Standing Orders) Punjab Rules, 1949	Section 10 A - payment of subsistence allowance (1) where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance: (a) at the rate of 50% of the wages which the workman was entitled to immediately preceding the date of such suspension, for the first 90 days of suspension (b) at the rate of 75% of such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings against such workman is not directly attributable to the conduct of such workman	Industrial tribunal-cum-labour court	Section 20(2) (b) of Model Standing Orders ⁵⁶ – payment of subsistence allowance: for first 60 days, 50% of the wages; beyond 60 days, 75% of the wages Section 10 A (2) – If any dispute arises regarding the subsistence allowance payable to a workman, the workman or the employer concerned may refer the dispute to the labour court, and the labour court to which the dispute is so referred shall, after giving the parties an opportunity to be heard, decide the dispute; such decision shall be final and binding on the parties	Haryana rules in terms of payment of subsistence allowance are more beneficial than the provisions of the Central Act as they provide for 75% of wages after 60 days of suspension, whereas the Central Act provides this after 90 days
Right to fair trial and enquiry (domestic enquiry)	The Industrial Employment (Standing Orders) Punjab Rules, 1949	Rule 20 (2) (a) ⁵⁷ – disciplinary action of misconduct; service of a workman cannot be terminated without conducting domestic enquiry Right to get chargesheet – within 1 week from the date of suspension Right to be assisted by a fellow workman or a member of the trade union	Industrial tribunal-cum-labour court or Civil judge (junior division)	Domestic enquiry should be conducted in the manner prescribed under Rule 20(2) Fact-finding enquiry – where any misconduct by a workman is reported, the employer should conduct a fact-finding enquiry to ascertain whether there exists a prima facie case against the delinquent worker, following which a chargesheet can be issued or the worker can be suspended	If there is violation of the principles of natural justice while conducting a domestic enquiry, the matter can be adjudicated by a civil judge; however, if the enquiry is completed, its legality can only be adjudicated by the industrial tribunal

⁵⁶ Model Standing Orders are under Schedule 1 of The Industrial Employment (Standing Orders), Punjab Rules, 1949.

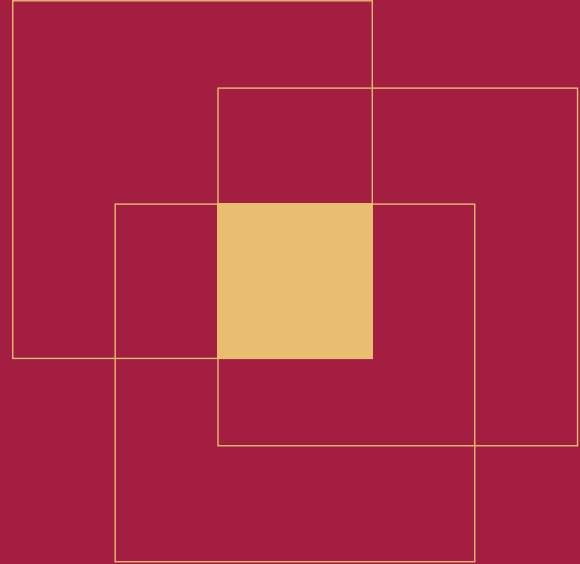
⁵⁷ Ibid.

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
				Suspension – where the employer contemplates disciplinary proceedings against the workman, he/she shall be placed under suspension; where the employee is to be suspended prior to holding of enquiry, it would be appropriate to mention “pending enquiry into the charge framed against you, you are suspended from pay and duty”; at no stage before the issue of final orders should there be any indication that management has pre-determined the outcome of the case Chargesheet – within a week from the date of suspension, the workman shall be served the chargesheet, which should set out the details of the alleged misconduct, the name of the enquiry officers and the place of enquiry; the charge should be specific and clear, and never vague; it should include: • name of the person charged • employee number • address • date, time and place of occurrence • narration of the misconduct alleged • relevant clause and specific act of misconduct under the standing orders/ settlement	

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
				• call for an explanation within a stipulated time • a copy of the written report, if the charge rests on a written report Service of chargesheet – workman should be given the chargesheet in front of a witness; if he refuses to receive it, it shall be pasted on the notice board and shall be deemed to have been served to him; alternatively, the chargesheet can be sent by registered post; if it still remains un-served, it is necessary that the charge is published in two newspapers, one in English and another in the local language, that have a large circulation Right of hearing – workman shall be given an opportunity to explain the circumstances alleged against him (principle of natural justice) Right to be assisted – workman may be assisted by another workman of his choice or by an office bearer of a trade union of which he is a member Right to call witness – the chargesheeted employee has the right to call a witness in support of his case; if the delinquent cites witnesses who are his fellow employees, arrangement should be made by the enquiry officer to procure them; if the witnesses cited	

Right(s)	Name of the act	Relevant provision(s)	Authorities responsible and timeframe	Process flowchart	Remarks
				are outsiders over whom the employer has no control, it is the responsibility of the delinquent alone to present them at the enquiry Right to cross-examination – where prosecution relies upon a witness in support of their charge, the chargesheeted employee shall have the right to cross-examine them Language of proceedings – proceedings of the enquiry shall be recorded in Hindi or English or as preferred by the workman Note: The enquiry officer should restrict himself to the findings and should not suggest any punishment	

Conclusion



The narratives in this study offer us many insights into the poor functioning of industrial relations in the Gurugram manufacturing belt and particularly in the garment industry, where the nature of production and precarious and undignified employment have become structural impediments to healthy industrial relations. The increasing flexibility and informalization of employment, combined with the non-implementation of labour laws, already act as disciplining forces on labour. Thus, the increasing trend of transforming industrial disputes into law-and-order issues and relying on the policing functions of state rather than its role as a neutral arbiter and conciliator is a worrying change that requires the immediate attention of all actors involved, especially the government.

It is important to recall the Law Commission Report of 1987 on “Forum for National Uniformity in Labour Adjudication” (Report 122), which points our attention to an often overlooked aspect of labour law, namely that “the Industrial Disputes Act, 1947 was not enacted as a measure of socio-economic justice but it was in fact a law-and-order measure” (Section 2.1). The context being, as the report goes on to elucidate, that “industrial relations are...not a matter between employers and employees alone but a vital concern of the community, which may be expressed in measures for the protection of its larger interest” (Section 2.1).

As has been noted by many researchers, the genesis of the Industrial Disputes Act lies in Rule 81A of the Defence of India Rules 1942 under British colonial rule, of which it is almost an exact replica. It was intended as a measure to *control labour* and industrial unrest to ensure uninterrupted production during the Second World War (Saini 2014). However, nearly a quarter century later, in independent India, in what can be considered to be the labour-friendly era of the Nehruvian welfare state, when discussing the recommendation of the National Commission on Labour (NCL) 1969 to confer “autonomy on the labour dispute processing forums (industrial relations commissions) from the state apparatus...state

ministers called by the central government to debate the NCL's recommendations vehemently opposed any autonomy to these bodies, as it *considered labour relations to be matters of law and order*" (Saini 1999, emphasis added).

Indeed, the Indian state's ambivalent response to labour can be discerned in the tension between the provisions of the Constitution that seek to transform labour from "being a factor of production to partner in industry" (Law Commission, Report 122, 2.4) and the enormous powers centralized in the State to intervene in labour matters and treat them as law-and-order issues.

Sankaran (2007) notes the "curious mix of criminal and civil remedies" in the labour laws of South Asia, inherited from the British law of master and servant, which is the foundation for much of the present labour law in the region.

As the incidents recounted in this study demonstrate, workers in the garment export industry are even more vulnerable and work outside the pale of labour laws, in onerous and hazardous working conditions, without employment contracts, and are therefore rendered invisible to the state, the labour department and formal conciliation processes. Denied recourse to formal grievance redressal systems that refuse to recognize them as workers, garment workers in Gurugram (and one can add here construction workers too) resort to "spontaneous" outbursts of anger, often violent, to force managements and state authorities to pay attention to their grievances. Their precarious employment and work conditions, as well as their low skill set, make unionization extremely challenging, and even more difficult in a repressive labour regime where even the more organized auto sector workers are unable to break the state-capital link to force a rebalancing of power.

The threat of violence and breach of rights is now apprehended by workers even in peaceful times and during the course of routine industrial negotiations. The spectre of violence as a tool of intimidation and control is increasingly practised by employers and the state, who justify it by invoking labour "mobs" that are characterized as inherently being violent and running amok, with or without seeming provocation.

An alternate reading of these instances of disputes, violence and conflict illustrates a failure of the state and of the conciliation mechanisms of the labour department in ensuring course correction after violent incidents and conflicts. This failure is especially noteworthy given the enormous powers that the Indian state has accrued to itself for intervening in industrial relations.

Saini's studies (1994, 1995, 1999) show that the "state has endorsed disciplining process of managements with phenomenal lawless methods, both by remaining a mute witness and even by active abetment. It never enforced even the symbolic protection available to unions by way of prosecution of managements for ULPs. Not a single case of such prosecution was noticeable, whether or not unions involved were allies of the party in power." In fact, Saini (1999) argues that, "The IDA [Industrial Disputes Act] model in India has enabled employers to effectively use their political power through the structural contradiction of the IDA framework, as a resource for their own dominance. They used it as a legitimator of the practice of authoritarianism, fraud, and even tyranny on workers seeking redefinition of labour relations. It also enabled them to forge alliances for legitimation of structures and processes of power dispensation." Even the legal scholar Upendra Baxi charges the Indian State with being a saboteur of labour laws (noted in Saini 1999).

Many scholars and activists point out that the "structural framework to support collective bargaining" is missing in the current industrial relations framework. This lacuna is compounded by recent political and economic changes that have weakened the bargaining power of labour.

Pointing to the extreme exploitation in contemporary manufacturing, Sampath (2012) argued that prevention of recurrences of such violence as witnessed at Maruti Suzuki in 2012 depends on industrialists' acknowledgement of the context of the violence:

When your profits go up by 2,200 per cent over nine years (MSIL's from 2001/02 to 2010/11), when your CEO's pay goes up by 419 per cent over four years (MSILCEO's from 2007/08 to 2010/11), when you get a 400 per cent increase in productivity with just a 65 per cent increase in your workforce (from 1992–2000), when your workers' real wages increase by just 5.5 per cent when the consumer price index rose by 50 per cent (2007–11) (figures as reported by the researchers Prasenjit Bose and Sourindra Ghosh in *The Hindu*), when a worker can lose nearly half his salary for taking a couple of days leave in a month – you have a situation that free market economists are programmed not to register: extreme exploitation.

Such a system of “extreme exploitation” necessitates a repressive apparatus founded on an armed police force, the securitization of society, and the criminalization of dissent and protest – be they workers demanding their rights, citizens resisting development-induced displacement, or tribals and Adivasis resisting corporate takeover of their natural resource commons and eviction from their historical habitats.

If increasing securitization of industrial spaces becomes the norm along with criminalization of labour, it does not bode well for the future of industrial relations in the country.

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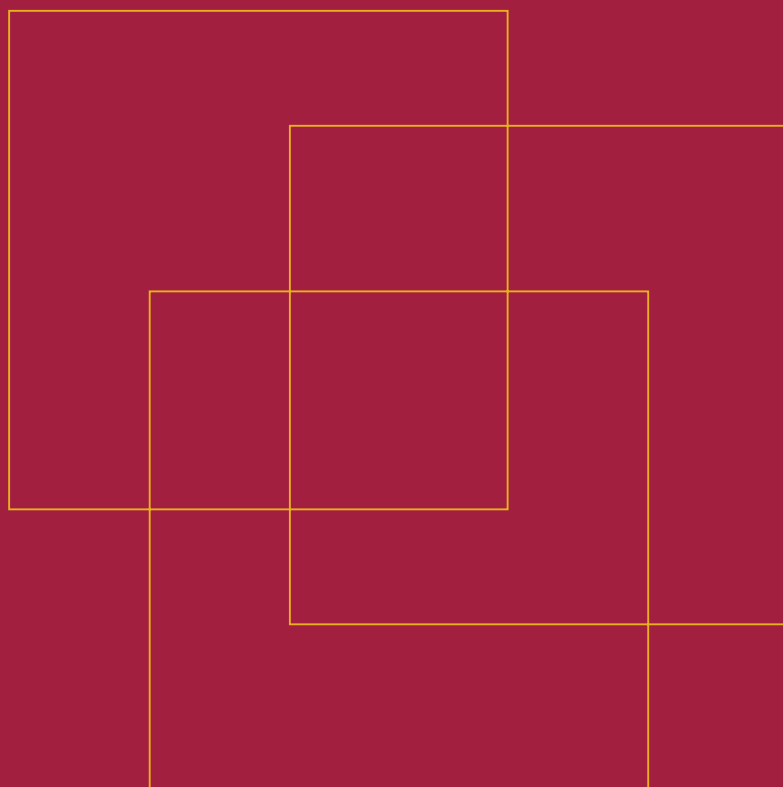
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