

The Garment Industry in Bangalore
A Critical Analysis of Adherence of Labour Standards and Solutions

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INTRODUCTION

The researcher has chosen to work on the rights and entitlements of workers in the garment industry. This is due to the fact that while the garment industry is one of the biggest sources of export¹, with the considerable and rapid increase in growth² (much of it over the last four decades), there has been a corresponding *race to the bottom* insofar as labour standards and wages are concerned. The very natures of employer-employee relationships have undergone drastic changes. What further needs to be brought to notice is that even production systems have undergone changes due to the phenomenon of Globalization and Liberalization of the Indian Economy.

The workers employed in the garment industry usually comprise of unskilled or semi-skilled workers. A point that is interesting and needs specific mention is the fact that the majority of workers in the garment factories, especially at Bangalore, comprise of women. These women usually hail from the rural areas around Bangalore and in most cases are not conversant with their rights as workers in factories.

Several Non Governmental Organizations are involved actively in educating the workers as to their labour rights and in educating the women in particular as to their rights against sexual and verbal harassment and maternity benefits. One such NGO that the researcher has interacted with extensively is Civil Initiatives for Development and Peace, India (CIVIDEP)³. The main issues that have been thrown up and which the Researcher intends to tackle in the course of this paper are the issues of labour standards, the lack of adherence by the producers to legislations applicable to the garment industry, such as the Minimum Wages Act, the Employee State Insurance Act and the Factories Act etc., and the suggestions that have arisen on how best to deal with the situation as was discussed in a workshop attended by the Researcher as part of a student delegation that entailed interaction between student delegates, worker

¹ Figures estimate that India's ready made industry contributes around 16% of total export earnings and is the largest net foreign exchange earner for the country.

² Garment exports have risen from a mere \$2 million in 1960-61 to \$696 million in 1980-1981 and further to \$2236 million in 1990-1991 and almost doubled to \$4765 in 1999-2000. cf: "Issues of Concern to Workers in the Ready made Garment Sector and Some Aspects of CIVIDEP's Intervention": *Orientation Programme on Labour Rights for Students and Activists*, conducted by CIVIDEP at the Indian Social Institute on the 12th of November, 2005.

³ Civil Initiatives for Development and Peace-India is an organization committed to safeguard the labour rights of workers, especially those in the unorganized sector and women workers.

representatives and members of NGO s and followed up in the course of research for this paper.

However, at the very outset, to be able to holistically understand the magnitude and the cause of changes in the Indian Scenario insofar as the garment industry is concerned, it would be essential to have a brief look at global supply chain mechanisms as they operate worldwide and to locate the domestic manufacturer and his employees in the same.

RESEARCH METHODOLOGY

Aims and Objectives:

The main aims of the project are as follows:

1. The paper essentially seeks to bring out the effect of the all-encompassing phenomenon of Globalization and supply chain mechanisms on workers and on women in particular, in so far as employment, working conditions and job opportunities are concerned.
2. Through this critique the researcher would like to examine whether the advent of Globalization has been beneficial or detrimental to the rights of workers and women workers and how effective the domestic legislative framework is in safeguarding women's rights.

Scope, focus and limitations of the project:

The scope of the research project has been the role of the state and its mechanisms in ensuring labour standards and the effect of supply chain mechanisms and subcontracting on the garment industry, specifically in Bangalore. Time, numerous conflicting sources and the lack of the knowledge of Kannada have been the important limitations. Another important limitation has been the general nature of most of the resources pertaining to the topic. The researcher has however endeavored to make the project as specific as possible and substantially sustain her hypothesis.

Research Questions:

All through the project, the following questions are being addressed to which answers found form the base of the project.

1. If and in what manner has the State and the International structures through its mechanisms and policies perpetuated subjugation of women?
2. What has been the role of legislations in ensuring rights of garment workers? Has the state in adopting the globalization model in fact lead to an increased level of subjugation of garment workers in general and women garment workers in particular?
3. In what manner within work and working conditions and employment conditions as opportunities can it be said that supply chain mechanisms have adversely affected worker s rights and to what extent?

4. What have been the solutions suggested that can be attained by students and NGO s working in tandem with worker organizations?

Sources of data:

The researcher has mainly relied upon secondary sources such as books and articles. However the main crux of the researcher's work stems from the interactions that she has had with workers and NGO s in Bangalore.

Methods of analysis:

This project uses both the analytical and descriptive methods.

The Analytical method is used widely throughout this project while examining the role of the state, its various mechanisms (legislature, judiciary, executive) and the international economic regime in fostering the subjugation of rights of garment workers and specifically women garment workers in a Globalized economy. Descriptive method is also used in this project to give illustrations and instances of subjugation being perpetuated by the sub contractors and manufacturers.

References and style of footnoting:

All references are cited and a uniform style of footnoting has been followed throughout the project, acknowledging the respective sources that have been used.

Globalization, the National Economy and Garment Worker's Rights: Bane or Boon

Globalization is said to entail the change in social, economic and political structures in recent times leading to the creation of a "one world" concept. Globalization deals with processes that not only cross national boundaries or link states but which rely on worldwide flow of capital, communications and manufactured goods from region to region. This also represents a situation of uniformization of internal articulations and construction of societal meanings⁴.

Specific Aspects related to the Garment Sector:

The specific aspects of Globalization that have affected the lot of the garment worker can be summed up easily through the following relations. At the very outset, the entire garment manufacturing industry started to be shifted from Europe and the United States to Asian countries from the 1970s onwards. Initially it was Japan which led the industry especially since textile and garment industry were considered as the engine for growth and this was subsequently picked up by other Asian countries attempting to emulate Japan's success on the economic front. In fact even smaller African countries picked up this model devoting and relying on garment manufacturing for as much as 77% of their Gross National Product on an average. It was after the 2nd World War that Japan was sought to be curtailed and hence production shifted to centres such as Hong Kong and South East Asia.

For India in particular, instruments such as the Multi Fibre Arrangement (MFA), later the Agreement in Textiles and Clothings (ATC) proved to be a big boon inasmuch as it provided for quotas⁵ in favour of the developing countries in export markets. In the end 2004, the ATC came to an end, after the Uruguay Round of negotiations, and it led to a system of free competition and integration under the World Trade Organization. While, this state of matters had skeptics fearing that the abolition of quotas would benefit only China, Indian textile exports had shot up by 20% in April-August, 2005. In fact it is stated that the quantity shipped must have risen even faster since the prices

⁴ R.S.Seth, *Globalization, Culture and Women's Development* (Jaipur: Rawat Pub., 1999) at p. 11.

⁵ The quota system essentially entailed that manufacturers in least developed countries could freely export, while for manufacturers in highly developed jurisdictions, there were artificial barriers created.

have fallen by 10%. Thus, statistics indicate that the output of textile and garment products rose 23.2% in April and 37.6% in June. Needless to say this itself has resulted in an increased demand for labour in the garment manufacturing sector and hence it is not unusual for a single large company (such as Gokaldas Exports) to provide as many as 39,000 jobs! However, this also of course means that other companies are also seeking ways and means of getting around labour laws and still employing lacs of people by further outsourcing production to satellite companies in textile parks⁶.

Diminishing Role of Trade Unions:

What is further ironic is that traditional institutions that have sought to protect worker rights on at least a local basis, ie: the Trade Unions, have taken a back seat to the new emerging doctrine of "Social Correctness". The European Countries have invented this doctrine of non-acceptability of carrying on liberal trade relations with any country failing to provide its workers with "adequate social protection". Countries which fail to meet their standards are said to be engaging in "social dumping", which essentially entails a reduction of costs. This, of course, leads to a subsequent undercutting of the countries that have engaged in providing social protection and hence has higher costs of production to bear. In light of this attempt at universalization of worker welfare and rights, the Trade Unions fade into the background and have to accede to the North's systems of labor correctness, retrenchments, employment, work place regulations etc.⁷ However, in practical terms what the diminishing of the role of the Trade Unions has lead to, when seen in light of the fact that industries such as apparel, footwear and textiles have moved away their production from developed to developing countries to take advantage of lower wages, has been a steady spiraling down of wages. It has in fact been acknowledged that there is evidence that suggests that globalization is leading to a downward pressure on wages in developed as well as developing countries insofar as "unskilled and semi-skilled" (which is the category in which garment workers fall) workers are concerned⁸.

⁶ S.S.A.Ayer, "Saved By the Uruguay Round", *Times of India* (13th November,2005) at p. 6.

⁷ M.Limaye, "Globalization and the Third World", 32(21) *Mainstream*, 1994 at p. 5.

⁸ C.A.Williams, "Corporate Social Responsibility in an Era of Economic Globalization", *U.C.Davis Law Review*, 2002 cf: www.westlaw.com. In developed countries this downward spiral exists due to the fact that unskilled and semi skilled labour is rapidly being outsourced to countries with lower wages and poor labour protection, safety and well being mechanisms. The developing countries in the meantime are using the leverage of having the lowest wages to be paid amongst each other to attract Foreign Investment in their country. A case in point is that of

Issues of SAP s and Technology:

Garment manufacturers are consistently upgrading their technology in their units to ensure better productivity.⁹ Moreover, while technology might seem to create newer jobs for women, the jobs are based on exclusion and expulsion as is made evident below:

1. The women who get the new jobs are not the ones who had lost their jobs. The new women are typically young, single and highly qualified.
2. The vast majority of the new jobs go to the non-unionized work forces while the jobs lost belonged to the unionized women workers.
3. New technologies bring with them health hazards which women are ill equipped to deal with and which are also not accounted for in existing legislations¹⁰.

Thus, on the whole, it is evident that the process of Globalization is one that has processes of structural changes at the macro economic level influencing and in certain cases, determining, the micro economic conditions and domestic decisions and policy objectives. Whether the process of Globalization has in any manner affected or determined the legislations and their implementation and interpretation thereof by the Courts with respect to the garment industry is sought to be studied by the researcher in the paper.

Governmental Safeguards by way of Legislation

The garment industry in Karnataka is the employer of the largest number of women workers in Karnataka, after the beedi industry. While the garment industry in Karnataka is considerably better organized vis-à-vis other centres of garment manufacture and production, the garment industry is notably infamous for its means and mechanisms for getting around quota regulations and other legal provisions and hence whatever data is provided at the very outset is to be treated with caution and wariness. Moreover, in the 788 garment manufacturing units out of which 729 are located in Bangalore, the total

Cambodia, where the Minimum Wages Legislation is actually being used to keep the wages down to the minimum that it can be kept, so as to attract foreign investment.

⁹ <http://www.imadr.org/pub/web/hanochi.html>.

¹⁰ S.Mitter, "The Search for a New Paradigm for Women's Work," 3(1) *Gender, Technology and Development*, 1999 at p. 9.

number of workers working statewide is said to be 1,53,978 out of which as many as 1,46,835 alone are working in units in Bangalore. To get an approximation of the dependency of this industry on women workers, the statistics which state that out of the 1,10,019 women workers engaged in this industry in Karnataka, 1,03,039 are located in Bangalore should be sufficient to drive home the point.¹¹ What must be brought to notice and specifically highlighted is the fact that though the above figures are official statistics, there could be many more contract and casual workers who have *not* been accounted for in the estimates.

Mr Jayaram has been involved in the garment industry in Bangalore as a worker for the last 21 years. He has also been involved in the work of a Non Governmental Organization called Cividep as an activist and medium between the NGO and workers in his factory. This dual role play forms much of the basis in this recorded relation of his experience of the labour standards in garment factories. In his experience, till about the 1960's, the garment industry in Bangalore was typified by small units and industries. To the best of his knowledge, in around 1974, India exported Rs 1.7 million worth in garments.

In 1974 after the Multi Fibre Agreement, the exports from India increased drastically to the Rs.83,000 crore that India exports today. Major fallout of the MFA and globalization in general was the fact that Multi National Companies (MNC's), decided to set up base in India by contracting out and havening them further sub contracting their manufacturing requirements for garments to Indian manufacturers.

Thus, the Indian manufacturers, which earlier owned units which were small and functional and which used to be functional and autonomous in their functioning became consistently larger, more diversified and professional and directly dependant on the MNC s for directions and cost estimations. The very nature of these firms changed from one where the employer employee relationship was shaped by personal rapports directly between the highest echelons to one that became core professional in so much as labour standards and working conditions were concerned to one which became largely like sweat shops where due to the simple economics of demand and supply mechanisms, labour was largely dispensable and hence able to employed at rates even below minimum wages in certain instances on agreements which did not have a written manifestation. In fact at the very outset there was no appointment letter issued to the

Indian Social Institute on the 12th of November, 2005.

workers. Moreover, provisions for retirement benefits, provident funds etc. were not provided for and also could not be demanded for easily in most cases due to the absence of a written appointment letter and also the fact that the workers in the garment manufacturing sector are not organized as trade unions due to it being largely an unorganized sector.

In the meantime, due to the increase in competition that India and Indian manufacturers face from countries such as China, Cambodia, Indonesia etc as well as domestic competition between manufacturing sectors such as between Bangalore and Chennai, there has been an increased work load on the workers. Hence workers are expected to produce as many as 150 garments an hour while the number of garments that can actually be comfortably produced by a worker would at a maximum be of 50 garments an hour. Mr Jayaram further complained of the harsh treatment meted out by supervisors who were employed specifically for the purpose of egging employees on to attain their targets. When asked for solutions to the problems and to the lack of legal recourses undertaken by the workers to the infringement of the rights of the employees by the employers, the solution the Mr Jayaram thought best was legally educating the workers as to their basic rights and entitlements under the Factories Act, The Contract Labour Act, The Minimum Wages Act, the Maternity Benefits Act etc.

At the very outset it must be recognized that Art.2(7) of the United Nations Charter states that matters within the domestic jurisdiction of a state do not fall within the UN enforcement jurisdiction. Hence, regulation by a nation of its labour force and garment factories are clearly within its jurisdiction and hence within the boundaries of its domestic regulations. Hence, while the International Labour Organization has conventions on forced labour, Minimum Wage Fixing Convention and Fixed Hours Convention, what must be remembered here is that in India, like in most staunchly autonomous countries, the ILO is reluctant to interfere in the actual enforcement of the above conventions. India does have corresponding legislations, insofar as most of the conventions are concerned¹². Here the researcher has listed what legislations the Government has passed in order to ensure that Workers in the Garment industry are not exploited and are sufficiently recompensed for their services. The legal remedies for any worker stem from the following basic legislations:

¹² India has however, not ratified the ILO conventions in 1937, 1957 and 1973 regarding forced labour and minimum age standards for industry, but India is a member of the ILO.

1. The Factories Act, 1948:

The main objectives of this legislation are to essentially ensure that the interests of workmen are protected and that there are better conditions of work for the workmen. Moreover, the legislation also seeks to provide for better conditions of work by way of safe and healthy work conditions inside factories¹³ and further bring about uniformity in the number of working hours and leave with wages. Thus, the Factories Act provides for stringent measures such as setting the maximum number of working hours at 9 hrs per day and 48 hours per week which can only be exceeded with the Chief Inspector's approval¹⁴. The legislation provides for welfare measures such as crèches in factories where more than 30 women are employed as well as mandatory first aid facilities and provision of canteens in undertakings employing more than 250 workers¹⁵. The legislation also specifically provides for a *Register* of adult workers, which is to be maintained by the manager of the factory and which is to show the name of each adult worker in the factory as well as the nature of his work etc.¹⁶ This is brought to special notice since this register is an important document while computing gratuities and pension benefits as well as acknowledgement of the worker being in the employment of the manufacturing unit¹⁷.

2. The Minimum Wages Act, 1948:

While the Minimum Wages Act has been revised several times (namely in 1950, 1953 and 1963), the basic aim of the legislation is to provide detailed guidelines for the minimum wages that are to be paid to workers as also to discover violations of minimum wage laws.¹⁸ The legislation in furtherance of the same provides for specific penalties for certain offences and has provisions for imprisonment and fine for defaulters of the same. Thus the legislation provides for wages for overtime¹⁹, payment of minimum rates of wages²⁰, penalties for certain offences²¹ etc. Different states have

¹³ S.7 A (2): General Duties of the Occupier. *See also* S.7 B : General Duties of the Manufacturer. *See also* Chapter IV of the Factories Act.

¹⁴ Chapter VI, Factories Act, 1948: Working Hours of Adults.

¹⁵ Chapter V, Factories Act, 1948 : Welfare.

¹⁶ S.62, Factories Act, 1948.

¹⁷ H.L.Kumar, *Employer's Rights under Labour Law* (New Delhi: Universal Publishing House, 1997) at p.132.

¹⁸ S.B.Rao, *The Law and Practice on Minimum Wages Act, 1998* (Allahabad: Law Pub House, 1999) at p. 12.

¹⁹ S.14, Minimum Wages Act, 1948.

²⁰ S. 12, Minimum Wages Act, 1948.

made amendments to the basic legislation; however Karnataka follows much the same basic provisions of the Minimum Wages Act with little deviation.

3. The Industrial Disputes Act, 1947:

The IDA is a legislation that is mainly concerned with conflict resolution and which aims at providing workers and management with a machinery that will provide a just and equitable solution to conflicts through means of negotiation and conciliation and hence attain its aims of attaining industrial peace and economic justice²². While the import of such legislation lies in the provisions of conciliation and mechanisms for dispute redressal, there are also provisions under the legislation that provide for compensation for workers who have been retrenched.

4. The Employee State Insurance Act, 1948:

The ESI is a legislation whose basic purpose is to provide for certain benefits to employees in case of sickness, maternity and "employment injury". It states in its scope that it applies to all industries except "seasonal industries". The legislation clearly provides that the employer is not to dismiss or punish an employee through a period of sickness or in any way reduce or discharge through the period of maternity benefit.²³ The employee during his period of sickness is entitled to medical benefits as well as cash benefits equal to about half his/her daily wage per day for a period of 56 days per year.²⁴ Moreover, the legislation provides for the hospitals that the employee is entitled to access as under the ESI legislation. These hospitals are by and large those established and maintained by the Corporation²⁵ and the provision of medical treatment is by the State Government²⁶.

5. The Maternity Benefit Act, 1961:

The MB Act can be read somewhat in consonance with the provisions of the ESI legislation. It provides for establishing a benefit of pregnant workers average daily wages during their absence 6 weeks before and 6 weeks after giving of birth or

²¹ S.22, Minimum Wages Act, 1948.

²² O.P.Malhotra, *Law of Industrial Disputes* (Bombay: N.M.Tripathi Ltd., 1985) at p.10.

²³ S.73(1), Employee's State Insurance Act, 1948.

²⁴ *A.S.Hakka v. Maharashtra Small Scale Industrial Development Corporation*, 1996 LLR 249.

²⁵ S.59, Employee's State Insurance Act, 1948.

²⁶ S.58, Employee's State Insurance Act, 1948.

miscarriage. The daily rate of maternity benefit is calculated as according to Rule 56(5) of the ESI (Central) Rules Act. This legislation further and very importantly protects pregnant workers from being dismissed through their maternity period. If the employer has failed to provide the worker with medical care, then the legislation places the onus on the employer to ensure that a medical stipend is provided to the worker by the employer. The mother is also allowed 2 nursing breaks through her period of work a day.

Ground Realities: Reality and Legality

Needless to say and as mentioned before, it is in the enforcement of the above legislations that the problems arise. The Government, in the very first place, does not have adequate resources to ensure that the inspections and the visits are carried out, effectively and regularly. This leaves as much as 90% of the India labour work force not subject to Indian labour laws and leaves the lot of Indian workers in the hands of non governmental entities.²⁷ What essentially then summarizes the problems that are being faced by the workers in the garment industry are essentially two pronged:

1. Lack of enforcement of Labour Laws
2. The inherent inability of placing the Garment Workers (by using their manner of employment and nature of work as a method) into any fixed category: hence the gaps in laws relating to garment workers.

In furtherance of the above two problems, in conversation with the workers, Garment Worker organizations (such as *Munnade*) and NGO 's as well as visits to certain factories, the researcher culled and collated in brief the basic problems that are being faced by the garment workers.

- ***Sub-Contracting:***

The majority of the problems in enforcement arise from the fact that the garment industry is typically characterized by "sub contracting". It is estimated that of all the activities that take place in the stages of manufacturing a garment, it is the manufacture of garments on these factories that actually provide for the most labour intensive processes and the most sub contracted out. Thus, while the design and the

²⁷ M.J.Monte, "Corporate Factory/ Supply Monitoring Programmes and the failure of International Law in Regulating Indian Factory Conditions", *Brooklyn Journal of International Law* (2001) cf. www.westlaw.com.

retail takes place at different levels of the production chain, contractors are involved in facilitating the basic aspects such as sewing and assembling apparel.

The sub contractors are usually under intense pressure to ensure that the garments are produced on time²⁸ The production of these garments are done under strict quality control and with very high specifications as to standards and also with an emphasis on uniformity and standardization.²⁹

Moreover, there is intense competition in so far as cost cutting is concerned and as mentioned before, it is this emphasis on keeping down costs that creates incentives in the minds of manufacturers to push their labourers to extreme limits and to flout all labour laws.³⁰ Talks with workers in the factories revealed that the floor managers or the supervisors expressly were told to prod the workers to attain the targets set by the manufacturers on an hour by hour basis. This authority vested in them lead the supervisors to engage in acts of sexual harassment as well as verbal taunting and harassment.

- ***Identity, Wages and Benefits:***

The nature of the industry is such that due to the excess of supply insofar as labour is concerned, there is no fixed demand and supply of labour.³¹ As a result of this, there is usually an adverse bargaining power for the worker and she is inclined to accept whatever task is given to her in the industry and in whatever conditions she is made to work in. Moreover, since at the very outset, there is no appointment letter issued to her, there is no proof as such of employment on which she can base her rights and remunerations on termination of her services which is a very regular feature in this sector.³²

Further more, since the MNC's endeavour at all times is to capitalize on the profits and maximize them, the costs and contract price of the manufacturer's is much lower than

²⁸ Which in itself is no mean task. Fashion earlier would change once a year at most. Today however there are as many as 4 seasons of fashion working on stringent deadlines that are to be met.

²⁹ J.Breman, *The Making and Unmaking of an Industry Working Class: Study down to the bottom of the labour hierarchy in Ahmedabad, India* (Amsterdam: Amsterdam University Press, 2004) at p.228.

³⁰ D.Hayashi, "Preventing Human Rights Abuses in the US Garment Industry: A proposed Amendment to the Fair labour Standards Act", 17 *Yale J. Intl Law* 1992 at p.201.

³¹ L.K.Deshpande, "Labour Flexibility in India", 44(3) *The Indian Journal of Labour Economics*, 2001 at p. 231.

³² H.L.Kumar, "Appointment Letter: A Gateway to Good Relations", *Labour Journal* (2001) at p.209.

that of a corresponding manufacturer in a developed country. As a result of this low contract price in the hands of the manufacturer at the very outset, the manufacturer in turn in endeavouring to maximize his profits, lowers the wages paid out to his workers. It is thus not unusual for workers to be working at less than minimum wages and without any entitlement or expectation of pensions, or benefits or paid overtime etc³³.

The very fact of the matter is that workers are not given a status in the industry and hence as such are not registered with an identity. Thus, for instance, the term of the employment, which could otherwise have been proved by the attendance register (which is provided for under the Factories Act as mentioned before) or by the issuance of an Identity card is undetermined and not ascertainable due to the lack of this documentary evidence. In fact in talks with a worker, by name Ratnamma, she informed us of the fact that the supervisor had called her after a year of service and asked her to go on leave for a week and a half, and to come back after that. In this time, upon her return, all traces of her having worked in the factory were completely wiped out and she was enrolled as a fresh worker and her documentation begun from scratch. This according to most civil society organizations is a clever ploy used by the manufacturers to get around the payment of gratuities³⁴ and pension benefits that arise from having workers regularly employed in their service.³⁵

Moreover, while the ESI legislation has grand notions of ensuring worker health and welfare by providing for access to government hospitals and regular check ups and a first aid box in factories, again the divorce between the reality and the legality is stark. In the very first place, workers were completely unaware of the existence of such legislation. Moreover, the Workers who were aware of such provisions and had endeavoured to make use of it, complained that government hospitals were not adequately staffed or equipped and in most cases to get admitted to the hospital

³³ K.Srinivasan, *India's Textile Industry: A socio-Economic Analysis* (Coimbatore: South India Textile Research Association, 1984) at p. 32. To be noted is that S.59 of the Factories Act is clearly on this point and stresses on a worker being paid wages at twice his ordinary rate in respect of overtime work.

³⁴ R.Prasad, "Gratuities" *Labour Journal* (2002) at p.139. *See also* : The Payment of Gratuity Act, 1972 which specifically provides for a statutory right to gratuity to all employees who have rendered 5 years of continuous service . Hence S.2 A of the legislation is of import on this point.

³⁵ H.L.Kumar, "An Employee Cannot be Sacked Even if He/She Overstays the Leave", 2001 *Labour Law Journal* at p.61.

required enormous amounts of bribes and pleading. The doctor who is expected to come to the factories for check ups was also lax in his visits and women complained that he did not even touch them to understand what kind of ailments they were suffering from and in fact in turn asked them for money as “donations”. The factories visited by the researcher revealed that there were no first aid facilities and the medical first aid box was sparsely furnished if present. Moreover, the workers were not allowed access to the contents of the box!

- ***Lack of Adequate and Suitable legal Remedies:***

It is also submitted that in the lack of an existence of a joint liability between the top rung garment manufacturers and the sub contracted manufacturers, there seems to be a complete lacuna, insofar as accountability is concerned, to the garment worker.³⁶ As a result of this whenever, in the rare instances, there is an enforcement and subsequent penalization of the sub contractors by the domestic government, they find easy ways to evade the penalties and the enforcement of the regulations and laws they are bound under by merely closing down their business or by declaring bankruptcy. Moreover, there is usually no mechanism by which labourers can claim from successor businesses and hence the sub contracted manufacturer of garments is usually a small, family run business run on little or none best management practices. The sub contractors, in their endeavour to maximize their profits, end up having as many workers as is possible in one factory which leads to overcrowding and has in past instances lead to cases of suffocation and collapse of workers. The workers are in fact, placed under so much pressure to work and meet their production deadlines set by the management that the researcher heard of many instances when workers confessed that they had stopped drinking water through the day, in spite of the heat, because it would waste as much as ten minutes of their time to use the toilet facilities after!

Another point of major concern was the fact that while the Supreme Court has in the past been perceived as sympathetic to the cause of the workers, there has been perceived a difference in the attitude by India Courts to cases filed by garment workers and their representatives, which has been accounted to the emphasis of the Indian

³⁶ R.Balakrishnan, *The Hidden Assembly line: Gender Dynamics of Sub-Contracted Work in a Global Economy* (Connecticut: Kumarian Press, 2002) at p.35.

Government on attracting Foreign Direct Investments and retain foreign corporations as customers. It must be remembered that there is no organization of labour and garment workers in the form of a Trade Union like in other organized sectors. Hence most of the cases filed by the garment workers against their employers are filed in an individual capacity. Hence, upon losing their case, the garment workers are unable to comprehend what other forum they can approach, and it is highly demoralizing for the rest of the garment workers as well.

Even the previous labour friendly decisions of the Supreme Court are not being enforced. Thus cases such as that of *Phillips India v. Labour Court*³⁷, which laid down compensation for overtime work as double that of wages for work done in ordinary hours, as well as the norms laid down in the case of *Unnichogi v. State of Kerala*³⁸, which laid down certain basic norms regarding the minimum food requirements, rent and clothing etc in the calculation of the minimum wage and the payment of this wage by the employer, as well as the case of *Indian Iron and Steel Company Ltd. v. Workmen*³⁹ where it was held that there have to be grounds met for the termination of workmen and termination cannot be done in an arbitrary manner. While it is the management that determines what constitutes major misconduct within its standing orders which are sufficient for the dismissal of the worker, on the whole there must be no discrimination nor must any unfair labour practices and also dismissal be in accordance to the principles of Natural Justice.

Kantaamma works in a garment factory in Bangalore. She starts her day at 8.30 in the morning and she states that even if she is a minute late, she is not allowed inside the factory for an hour to two hours and she is made to forfeit her wages for the time she has not been allowed inside. To compensate for the loss of time she is further made to work overtime and hence often her day finishes at 9, 9.30 at night. Kantaamma complains of their being no job security. Every day she goes to work fearing that she will be dismissed on a trivial issue. She has not been issued basic facilities like and ID card and when asked about pensions, she laughs.

She also recounts an incident when another woman worker protested at being cramped up in the factory, and was summarily dismissed. Hence, she feels that Trade Unions are also no answer to the problem unless specifically looked into and enforced by the Labour Ministry. She pleades ignorance as to what her rights and liabilities could possibly be under the various labour legislations. However, now she is rapidly getting involved in the work of Munnade and is involved in the printing of their news letter

- ***Gender Specific Problems:***

While most of the problems faced by the male workers are any how faced by the female garment workers, there are certain gender specific vulnerabilities that women face by mere virtue of their gender. Women employed in the garment sector are usually between the age group of 18-40 years. Women do not only have to face harassment at work but also at home in the form of domestic violence and hence have no support structures to bolster them. A considerable number of women workers are migrants from neighbouring towns in and around Bangalore and from the drought prone districts in North Karnataka. Hence, when made to do overtime, and when made to work hours as late as 9 to 10 at night, they have to make their way to their homes alone or by buses since connecting trains to the suburbs stop functioning at around five thirty. When the Women's Commission has attempted to intervene, there have been situations when the woman has been subjected to further verbal and sexual abuse at the factory. Pregnant women and mothers have complained of the fact that during their pregnancy they received little or no support from the management and in fact on the contrary were severely harassed as to their "bloated condition", their reduced productivity and their inefficiency due to their condition. Artiamma, a young garment worker aged about 32 years in fact recounted a horrifying tale of how she had suffered

a miscarriage due to the high stress levels that pervaded the garment manufacturing factory and the constant pressure placed on her to reach the production targets.

Ms. Githa is a member of Munnade (which means “The Forward Movement”) and is a garment worker. She related a story of horrifying verbal abuse and sexual harassment at the previous garment factory where she worked at the hands of the supervisor (Mr.Krishnaswamy). Ms. Githa mustered up courage and with a small group of women filed a case in court as to the verbal abuses and the sexual harassment she had been subject to. No committee to look into her complaint had been established at the factory and hence for her the court was an extreme measure that she took after garnering support from CIVIDEP.

Ms Githa was awarded Rs.30,000 in damages, but soon she had to leave her work at the garment factory on account of the owner of the unit making threatening remarks to her for the litigation. She has also approached and appealed to the High Court for a higher compensation, since according to her the amount awarded to her has been insufficient.

She has since joined another factory and while the work conditions are no better here, there is a lower level of abuse and harassment and hence she is happier at her new workplace than she was at the old one.

Searching for Solutions to the Quagmire

The basic problems identified by the Researcher after discussions with sub contractors, NGO s and garment workers is the lack of legal literacy and lack of basic awareness of rights and entitlements. The other major problem that is being faced by the garment workers is the fact that in the status that they occupy, they are not specifically provided with any legislation. They are also not unionized and are in fact, in every fight for a right functioning as individuals weaken their bargaining power considerably.

At the very outset at the macro level, one of the solutions placed forth is that there should be an inter linkage of the manufacturer with the sub contractor and the welfare aspects of the legislations applicable in the developed world be made applicable to the sub contractors as well. How this was to be done was debated over a considerable period of time since at the governmental level it was highly unlikely that there would be much of a policy change and moreover the whole bargaining equations of the governments form the North and those from the South are based on diverse frameworks and on different agendas.

One way in which the manufacturer and the retailer could be linked to the sub contractor was to further popularize methods of consumer awareness and participation in the process of consumption. This has happened before successfully in many instances, the most famous being the boycotting of products from Nike⁴⁰. However there is also the risk of an adverse publicity affecting the garment workers themselves to such an extent that it compromises their livelihood when the sub contractors are laid off by the MNC s for violation of labour standards.⁴¹ However it must also be remembered that campaigns such as the "Clean Clothes campaign"⁴² as well as the "Ethical Trading Initiative" have actually worked as they have highlighted problems facing workers in the garment industry.

⁴⁰ A.A.Gormley, "The Underground Exposed: the United States Corporation s Use of Sweat Shops Abroad and the Abuse of Women", *Suffolk Transnational Law Review*, 2001 cf. www.westlaw.com.

⁴¹ B.Frey, "The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights", 6 *Minn. J.Global Trade* at p.154 (1997). Another fact situation in point is that of the beedi manufacturer's from Mysore who suffered great losses and had to retrench thousands of workers when the American Student Association in various colleges in the United States protested at the violation of the labour regulations in the manufacture of the beedis. Beedis were intially very popular in American Universities and considered as a cheaper alternative to established cigarette brands such as "Lucky Strikes" and "Malboros".

⁴² <http://www.cleanclothes.org/>.

Hence, before protests based on ethical grounds are made by the consumers, safeguards should be ensured for protests and its purpose. Herein lies the difficulty.

Measures such as "Social Audit", "Company Codes", "'Independent' consultants hired by companies to survey labour practices", and "Multi Stakeholder Initiatives", have also been tried in the past. Again the question of vested interests does tend to creep when analyzing the motive and interest behind some of the interest behind upholding labour rights in developing countries. Moreover, most of the information generated through these means is not always accurate. For instance, consultants when **hired** to review labour practices in Corporations are evidently not independent at the very outset by the very nature of them being paid to review these practices⁴³. Multi stakeholder initiatives are initiatives taken by Western NGO s in tandem with local NGO s with involvement by Trade Unions as well. Though this seems like a viable option for most other workers to represent their rights in the international fora, the question arises that should represent the right of the garment workers in the absence of trade unions. Moreover, even social audits have been shown to have failed in the garment sector since, researchers found that workers and their organizations are often marginalized in the social audit process and don't participate due to which the reality in the workplace is missed. Moreover Workers reported being interviewed in front of management and therefore too frightened to reveal workplaces problems, being bypassed by the auditors completely, or other irregularities in the interview process. The study which was conducted by the Cleans Clothes Campaign in India, Bangladesh, China, Kenya, Pakistan etc. found that social audits were often superficial and sloppy and conducted by Global firms whose staff is generally untrained and sloppy.⁴⁴

A micro level solution to the entire situation can be that the NGO s instead of always raising demands to the management, constructively work towards collecting data and research illustrate that better work conditions and regular pay would increase loyalty and productivity. Loyalty would further ensure that workers stuck on to their jobs, increasing experience and hence efficiency at it. Hence, both the purposes would be

⁴³ D.Cassel, "Corporate Initiatives: A Second Human Rights Revolution", 19 *Fordham Journal Of International Law Journal* , 1996 at p.1970.

⁴⁴ http://www.cleanclothes.org/publications/quick_fix_pr.htm.

served. For this NGO s could tie up with students and volunteers who have a background in management to collate data and present it to the sub contractors.

Legal literacy is another essential aspect that deserves note. The NGOs have already endeavoured to associate themselves with law students to spread legal awareness amongst the garment workers. To this effect institutions like the National Law School of India University, Bangalore and its students and student associations could conduct basic legal literacy camps outside factories or in a particular designated place on Sundays when workers have a holiday. Moreover, importantly, even representatives from NGOs could be trained in law, so that in their interactions with the workers, they represent to the workers the legal position and the remedies that they have on violation of their rights as well as the benefits that they are entitled to.

Of great importance is the fact that not only do the workers need to be skilled in labour rights, but also should have knowledge about laws they can seek recourse in when it comes to sexual harassment ,verbal harassment and in times of pregnancy. All in all, it can be concluded that as its stands there are lots of lacunae in the law that stand in the way of ensuring the rights and benefits to garment workers. In light if the fact that the garment manufacturing industry is such a large contributor to foreign exchange and is one of the largest employers of workers in India⁴⁵, it is about time that the Government took active measures in this regard and passed a legislation that could involve both the employers and the employees as well as the Main Manufacturer and Retailer of the products in liabilities and benefits. Legislation on the lines of the United States Fair Labour Act would be welcome but one adapted to Indian Conditions and with specific provisions for women garment workers.

⁴⁵ S.C.Srinivastava, *Industrial Relations and Labour Laws* (Delhi: Vikas Pub. House, 1996) at 556.

BIBLIOGRAPHY

Articles:

1. A.A.Gormley, "The Underground Exposed: the United States Corporation's Use of Sweat Shops Abroad and the Abuse of Women", *Suffolk Transnational Law Review*, 2001 *cf.* www.westlaw.com.
2. B.Frey, "The Legal and Ethical Responsibilities of Transnational Corporations in the Protection of International Human Rights", 6 *Minn. J.Global Trade* at p.154 (1997).
3. C.A.Williams, "Corporate Social Responsibility in an Era of Economic Globalization", *U.C.Davis Law Review*, 2002 *cf.* www.westlaw.com.
4. C.Raghavan, "Globalization Model means Uneven Development", 34(31) *Mainstream*, 1996 at p.9.
5. D.Cassel, "Corporate Initiatives: A Second Human Rights Revolution", 19 *Fordham Journal Of International Law Journal*, 1996 at p.1970.
6. D.Hayashi, "Preventing Human Rights Abuses in the US Garment Industry: A proposed Amendment to the Fair labour Standards Act", 17 *Yale J. Intl Law* 1992 at p.201.
7. H.L.Kumar, "An Employee Cannot be Sacked Even if He/She Overstays the Leave", 2001 *Labour Law Journal* at p.61.
8. H.L.Kumar, "Appointment Letter: A Gateway to Good Relations", *Labour Journal* (2001) at p.209.
9. L.K.Deshpande, "Labour Flexibility in India", 44(3) *The Indian Journal of Labour Economics*, 2001 at p. 231.
- 10.M.J.Monte, "Corporate Factory/ Supply Monitoring Programmes and the failure of International Law in Regulating Indian Factory Conditions", *Brooklyn Journal of International Law* (2001) *cf.* www.westlaw.com.
- 11.M.Limaye, "Globalization and the Third World", 32(21) *Mainstream*, 1994 at p. 5.
- 12.R.Jhabvala, "Minimum Wages Based on Worker's Needs", 33(10) *EPW*, 1998 at p.501.
- 13.R.Prasad, "Gratuities" *Labour Journal* (2002) at p.139.
- 14.R.Ray, "Quo Vadis Globalization?" 38(15) *Mainstream*, 2000 at p. 8.

15. S.Mitter, "The Search for a New Paradigm for Women's Work," 3(1) *Gender, Technology and Development*, 1999 at p. 9.
16. S.S.A.Ayer, "Saved By the Uruguay Round", *Times of India* (13th November,2005) at p. 6.
17. V.Shiva, "Globalization, Gandhi and Swadeshi", 36(23) *Mainstream*, 1998 at p.13.

BOOKS:

1. E.Kofman, *Globalization: Theory and Practise* (New York: Continuum, 2003) at p. 125.
2. H.L.Kumar, *Employer's Rights under Labour Law* (New Delhi: Universal Publishing House, 1997) at p.132.
3. J.Breman, *The Making and Unmaking of an Industry Working Class: Study down to the bottom of the labour hierarchy in Ahmedabad, India* (Amsterdam: Amsterdam University Press, 2004) at p.228.
4. K.Srinivasan, *India's Textile Industry: A socio-Economic Analysis* (Coimbatore: South India Textile Research Association, 1984) at p. 32.
5. N.Menon, *Gender and Politics in India* (Delhi: OUP, 1999)at p. 148.
6. O.P.Malhotra, *Law of Industrial Disputes* (Bombay: N.M.Tripathi Ltd., 1985) at p.10.
7. R.Balakrishnan, *The Hidden Assembly line: Gender Dynamics of Sub-Contracted Work in a Global Economy* (Connecticut: Kumarian Press, 2002) at p.35.
8. R.S.Seth, *Globalization, Culture and Women's Development* (Jaipur: Rawat Pub., 1999) at p. 11.
9. S.B.Rao, *The Law and Practice on Minimum Wages Act, 1998* (Allahabad: Law Pub House, 1999) at p. 12.
10. S.C.Srinivastava, *Industrial Relations and Labour Laws* (Delhi: Vikas Pub. House, 1996) at 556.

WEBSITES:

1. <http://www.imadr.org/pub/web/hanochi.html>.
2. http://www.cleanclothes.org/publications/quick_fix_pr.htm.
3. <http://www.cleanclothes.org/>.

MISCELLANEOUS:

1. "Issues of Concern to Workers in the Ready made Garment Sector and Some Aspects of CIVIDEP's Intervention": *Orientation Programme on Labour Rights for Students and Activists*, conducted by CIVIDEP at the Indian Social Institute on the 12th of November, 2005.