

# **RECOGNISING WOMEN WORKERS AND ISSUES AT WORK IN INDIA**

## **FREEDOM FROM VIOLENCE FOR WOMEN GARMENT WORKERS IN THE WORLD OF WORK**

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**IDRC**

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## Introduction

The garment and apparel sector supply chains are dominated by the labour of women workers of developing countries. Evidence based research and reports in the last decade have outlined the nature of exploitation, poor working conditions, non-implementation of labour laws and weak trade union membership of women workers who are primarily migrants in these factories. There are also increasing reports of sexual harassment and violence faced by women workers not only within the factory but also outside of the workspace – while commuting to work, in the public sphere, within communities where they reside and inside their homes. Adding to this are challenges with regard to accountability of codes of conduct which govern global supply chains, and the role of brands in ensuring fair labour practices across the entire supply chain.

This paper attempts to understand the gender dimension of the apparel manufacturing sector in India especially looking at women's role within the factories, experiences of women within the industry, prevalence of gendered exploitation and sexual harassment. It also maps policies and laws that impact the workers directly. Furthermore it examines how these issues have been addressed within movements – women's, trade union, and human rights movements (with a focus on horizontal and vertical occupational segregation, issues of working conditions, crèche, maternity benefits, equal wages, interventions on sexual harassment at workplace for women etc.), building a case for learnings which can be adopted for sustainable and fair practices ensuring dignity of labour and violence free workspaces for millions of women workers in the garment sector in India.

Part of the larger project, “Labouring Women And Violence: Building Workplaces Free Violence” in India, Bangladesh and Cambodia, this paper provides a context to the empirical research work conducted in Gurgaon, Haryana, India in 2017-2018. The paper aims to contextualise issues of women and work specifically those linked to women workers in the ready-made export garment industry in India based on analysis of trends from relevant secondary literature, specifically in the last decade.

## **Section 1:**

### **Garment Industry and Women's Work**

This section discusses the nature of the garment industry and women's work within the sector. It also provides trends and analysis from grey literature to substantiate the prevalence and cause of exploitation, various kinds of violence including sexual harassment faced by women workers within the garment industry.

Women's work in India has been undervalued, underestimated and seldom recognised. Often women's work is considered secondary to her primary work i.e., restricted to unpaid household work and care work of the elderly and children within the household. Policy discourse in India in the 1950s and 1960s considered women's work only in terms of gendered assumptions and gendered roles. With the *Towards Equality Report* (1974) and the *Shramshakti Report* (1988) for the first time women's labour and contribution to the economy was ascertained. Over the years while the women's movement and feminist scholarship has played an important role in fleshing out an intersectional understanding of women as workers, the trade union movement has faced challenges in organising women workers, nurturing their leadership, and adopting their specific needs and demands as part of the trade union agenda.

Garment is one of the industries providing an avenue for women's wage work, particularly for a specific category of worker – first time wage earner, migrant from rural locales, with low skills, low education etc. As the garment industry is one of the largest employment generation industries after agriculture it is well known that the government protects it from 'over/regulation' with lax implementation of various labour laws and limitations of recognising issues of women workers within the scope of labour regulations.

In terms of work industrial work and in factories, women share some workplace issues with men (e.g. wages, benefits, working conditions, health and safety etc.) while other issues are specific to them as workers (e.g. maternity benefits, discrimination in terms of wage payment and promotions, skill training, sexual harassment at the workplace). Along with this, women workers have issues linked to social reproduction responsibilities such as childcare and caring for others. Often there is stigma attached to certain work in specific sectors where women workers have to navigate class, caste, and gendered assumptions. The ecosystem of household, community, market, and state has been overtly playing an important role in building gendered restrictions and prototype of women and work. Women as workers have also been subjected to years of discrimination based on gender, gender based violence, as well as patriarchal control over their reproductive rights and other human rights.

The International Labour Organisation (ILO) in 2009 passed a resolution to recognise the impacts of gender based violence on women’s autonomy, dignity and safety at work<sup>1</sup>. This resolution for the first time called for policies, legislations and other measures to address the same. A decade of campaigning by global trade unions led to workers, governments, and employers recognising violence at the workplace as an issue and eventually led to the adoption of the ILO Convention on Violence and Harassment 2019<sup>2</sup> (King 2019).

The Convention recognises violence in the world of work as a “human rights violation, threat to equal opportunities and unacceptable and incompatible with decent work” (ILO 2019).

The Convention resulted from four years of consultations with governments, trade unions, experts, and employers along with civil society groups in the backdrop of the global uproar on violence against women in several spheres as part of the #MeToo movement. Additionally there have been several reports and global evidence based research on trade unions playing an effective role in bargaining for changes for workers at workplace including the issue of violence and harassment at work. Global strategies used by trade unions have been collective agreements, workplaces policies and negotiations, documentation of case studies, and campaigns for awareness building. One of the notable evidence which formed a part of International Labour Conference 2018 to develop a standard setting on violence against men and women in the work of work has been the documentation of trade union perspectives and action led globally by the ILO (ILO 2017b).

## **Garment sector**

The garment industry is a major employer throughout most of the developing world. In 2015, while the global trade in apparel stood at USD 439 billion, it contributed USD 16 billion in India’s exports the same year (Technopak 2018). In 2017, the industry turnover in India was USD 150 billion, of which USD 36 billion was from exports (FWF 2019). 12% of export earnings are generated by the garment industry (Ministry of Textile 2020), while the textile sector as a whole contributes 14 per cent to industrial production, 4 percent to the gross domestic product and 27 percent to the foreign exchange inflows. (IBEF n.d.).

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<sup>1</sup> Resolution concerning gender equality at the heart of decent work - ILC 2009, [https://www.ilo.org/gender/Events/WCMS\\_187671/lang--en/index.htm](https://www.ilo.org/gender/Events/WCMS_187671/lang--en/index.htm)

<sup>2</sup> C190 - Violence and Harassment Convention, 2019 (No. 190), [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C190](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190)

The garment supplies for Organisation for Economic Co-operation and Development (OECD) countries such as United States, Canada, Australia, and Europe come from developing countries in the global south (India, Bangladesh, China, Vietnam, Indonesia, Pakistan, and Cambodia) and South America (PUCL Karnataka 2016). South Asia, like other emerging economies, has provided 'flexible' and low cost labour for the manufacturing companies of the garment industry, which are part of the global value chain. (ILO 2015; Elson and Pearson 1981). The export manufacturing factories are part of the formal organised sector (with registered factories/companies) however the workforce is informalised i.e., without formal employment contracts, low wages, poor conditions of work, forced labour, inadequate access to social security, and poor levels of unionisation (ILO 2017; FWF 2019), gendered division of tasks within the factory along with gender based discrimination and harassment. Additionally, some of the supply chain may extend to workshops, fabrication units, and even homebased work which lie in the informal sector and outside the realm of regulation.

As per the Economic Survey of India 2018-19, the unorganised sector employs 93% of the total workforce and 95% of women workers are engaged in this sector (GCNI and Deloitte 2019). Like their counterparts in the unorganised sector, women workers in the organised sector are also engaged in the lowest, hardest and the most informalised occupations and tasks. This is the context of situating women workers in the supply chain of the garment industry.

The manufacturing sector constitutes the single largest occupation for the female workforce, mainly in urban areas (45 lakh), of which 20 lakhs are textile and garment workers (Mazumdar and Neetha 2020). In India garment clusters are present in the National Capital Region (NCR), Ludhiana and Kanpur in north India; Kolkata in eastern India; Mumbai and Gujarat in western India; and Chennai, Bengaluru, and Tirupur in the South (LIPS Sedane et. al. 2015). The northern belt caters to specific markets and produces more niche items of clothing while the southern centres are mostly geared towards export markets and produce more 'basic' apparel like t-shirts, jackets, shirts, and trousers (Mezzadri and Srivastava 2015; Mezzadri 2016). In 2012, the industrial clusters of Gurgaon, Bangalore and Tirupur combined accounted for 55-60 percent of total exports in garments from India (SLD 2013c).

The Ready Made Garment (RMG) export sector in factory-based industry is labour intensive (first generation industrial workers mostly migrants from within and outside states) (ILO 2015; Gross 2014). The sector is the biggest employment provider after agriculture in India. It is estimated that this rapidly growing sector will employ 2.14 core workers by 2022 (Perfect Sourcing 2019). According to the recent figures, around 45 million people are directly employed in India's textile and clothing sectors and 60% are women workers (Sisters for Change and Munnade 2016). The rates of

participation of female workers in garment industry show a great difference between the centres in north and east India and in south India. South India shows greater ‘feminisation’ of labour, but this feminisation is driven by cost minimisation through lower wages, as well as expectation of women being ‘obedient workers’ who do not cause any trouble to the authorities through unionisation (Mezzadri 2017). However it is not the only reason for greater number of women workers in south Indian garment factories as cultural factors also play a large role as well. It is well known that the gender order in northern India is more conservative and more restrictive of women’s mobility outside the home.

The garment sector in the NCR has industrial, formal- and informal factory-based, and non-factory based, workshop and home-based units (Mezzadri 2014; FWF 2019). The garment factories in the NCR region are located in Gurgaon, Faridabad, Noida, and Okhla; mostly characterised by non-enforcement of labour laws. There is a mix of recruitment and payment systems to engage workers in the NCR and most are recruited through labour contractors and/or work on piece-rate basis in sweatshops and factories. Different parts of the NCR have differentiated migration streams with earlier streams of migrants mostly coming from Uttar Pradesh and Bihar, while more recently they are also coming from other states such as West Bengal, Odisha and Madhya Pradesh. According to the Fair Wear Foundation report in 2019, these migrant workers are mostly from marginalised communities (Scheduled Castes, Scheduled Tribes and Muslims) and women workers mostly migrate with their families and live in communities close to the factories.

As most workers are migrants employed on contractual basis with no formal employment contract and low skill requirements on the production shop floor, it has been a challenge for the traditional trade unions to organise them. The global supply chain in garment industry is largely controlled by the brands. Since it is a buyer driven supply chain, the growing anger against the exploitative conditions of workplace including sexual exploitation of women workers, has forced the brands to respond to these issues. The brands have been trying to adopt certain codes of conduct at various production units, however these are voluntary and not legally binding. Gross concludes that “[T]his corporate-controlled governance system largely excludes local unions and has failed to ensure the implementation of labour rights, especially of freedom of association.” (Gross 2014, p.37)

While employers responsible for executing orders from international fashion brands have mostly signed the ‘code of conduct’ agreements for fair, equitable working conditions and terms of employment; however in practice these are not enforced (HRW 2019). It is well known that when brand audits happen or when buyers visit for inspection, workers are handpicked and tutored by the management to interact with the auditors and inspectors (PUCL Karnataka et. al. 2016). Often the design of the

audits does not capture the issue of sexual harassment or gender based violence on the shop floor (HRW 2019). The evidence of inhumane working conditions, unfair terms of employment, the non-accountability of brands and factory management, and experiences of violence faced by women garment workers (in the garb of labour disciplining for obtaining the target production) on the factory shop floors are increasingly being brought to notice by civil society groups and trade unions.

### **Women's work and issues within the garment sector**

Gender based discrimination at the societal level and within the household is reflected in the gender based discrimination at the workplace. To understand the extent of this discrimination, it is important to understand women's position as that of being triply exploited i.e. as women, as women workers, as women workers within the informal sector in India. This is compounded by additional vulnerabilities based on caste, religion, region, marital status, education, skills, sexuality, disability, migration status etc. The intersecting vulnerabilities exacerbated by current socio-economic and political conditions also increases the risk of violence at the workplace, within the household, place of residence, travel to and from work, as well as during recruitment.

The gender division of tasks witnessed in the garment industry is an extension of the prevailing gendered division of labour in local cultures, society at large, and within families. Whenever a job is exclusively and predominantly done by women, it becomes classified as being 'less skilled' and of 'low value'. Even when women are qualified to undertake so called 'male jobs' they are often categorised as 'low skilled workers' and receive lower wages (Banerjee 1985). Thus, most women serve as a cheap labour reserve to supplement male labour and keep wages down (Elson et. al. 1997). Women engage in 'unskilled' work because they enter the job market already determined as 'inferior bearers of labour' rather than them engaging in 'unskilled' jobs (Hensman 1996; National Commission for Enterprises in the Unorganised Sector 1985; Ghosh 1996).

Patriarchy plays an important role in wage determination along with social attitudes and gender norms, which impose constraints and make women especially vulnerable. With the massive incorporation of women into the labour force, gender subordination is no longer defined solely on the basis of subordination to men in the home, but also on the limitations to gender equality in the workplace and in the state policies. Thus the shift from "private to public patriarchy" reinforces control on women (Elson et. al. 1997).

In the discourse of women and work there are multiple sets of controls impinging on women ranging from control over labour (both within the household and outside), type of work contract, means of production, output, proceeds of the output, income, skills, etc. (Rathgeb 1990). In other words women workers have practically no

control over their conditions of work, starting from the process of undertaking the work till the proceeds of the work are received and consumed. There might be structural constraints, which are specifically linked to the informal sector, such as the contractual and casual nature of work, insecurity in terms of employment and income associated with flexible labour. But even within this sector, the women workers, just by virtue of being women, constitute a section that is further marginalised and exploited.

Mezzadri locates the ‘primary raw material’ in the body of the sweatshop worker. It is because the body of the worker behaves in many ways similar to that of the clothes that they generate. The finished good is produced as much from the cloth and thread as from the body of the one making it, and similarly commodified. The social position of labour is important in both its commodification and exploitation. The corporatisation of production processes has been unsuccessful in addressing these problems and has only solidified the social ‘relations of domination’ at the workplace. In factories, workers are categorised according to their gender, age, migrant status, caste and so on, in a reflection of their positioning in the social ladder (Mezzadri 2017). This then determines the kind of work they get and the wages they can demand. The large presence of women workers must be put in this context – their entry into the workplace results in the reproduction of the same vulnerabilities, which they seek to escape through economic activity. And it takes much effort to overcome some of these vulnerabilities.

Mezzadri ties the health and safety issues in garment factories to the larger ecosystem of labour movement in a globalised capitalist system of production (Mezzadri 2017). The women garment workers lack basic facilities (access to clean drinking water, lack of clean toilets), lack transport facilities, poor crèche facilities, lack medical facilities, face prohibitions on communication with anyone outside the factory, and are given defective safety equipments leading to health risks of workers in the long and short term. Often they are not allowed adequate breaks during menstruation; restrictions in terms of 15-20 minutes in the entire work day for lunch; and mothers were prohibited from visiting their children in crèches (where they exist) even during designated break hours or lunch time. (PUCL Karnataka 2016).

The percentage of female workers employed in the garment industry in Delhi NCR is low, and those that are employed are largely in low-paid and unskilled jobs such as thread cutting (lowest paid job in the industry). In Gurgaon, for example, only 10-25% machine operators are female and they are rarely promoted. Virtually all supervisors are male, and the reasons for this discrimination given by factory management include – that women do not have leadership qualities or skills to be a supervisor or that female workers do not aspire for higher positions themselves. Women are the first to be terminated in the lean season, which causes a break in

service hampering their ability to qualify for gratuity that requires five years of continuous service. Even when women are assigned to a skilled position, they are categorised as semi-skilled in terms of payroll as a means of wage theft. While male workers are employed until 40-45 years of age, women are often dismissed upon reaching 35 years citing their inability to keep up with production targets. In general workers are not even paid minimum wages and women workers are not paid maternity benefits as most of them stop working in the 5<sup>th</sup> or 6<sup>th</sup> month of their pregnancies due to harassment they face (terminated due to pregnancies, no facilities for crèches, forced to work as home based work) (FWF 2019).

Nari Shakti Manch and Global Production Network (GPN) studies report increased health issues among female workers caused by low income levels, poor nutrition, additional burden of household chores, excessive working hours and overtime, high production targets inadequate ventilation and sanitation facilities in factories (cited in FWF India Study 2019). There has been ethnographic documentation of lives of women factory workers – where their day starts at 4 am and ends at 12 midnight with an average of 11-12 hours in the factory. The entire workday entails unpaid household work such as cooking, cleaning, taking care of family chores, travelling to the factory and back, 11-12 hour workday, back home again to engage in cooking and cleaning (PUCL Karnataka 2016). Social stigma is also attached to women stepping out for work as well as notions of sexuality attached to overtime, working late hours, night shifts especially in the garment sector in north India (SLD 2014). Additionally, notions of ‘respectability’ and ‘honour’ are attached to societal ideals of morality.

The inherent structure and power dynamics within the garment factory system of production is intrinsically linked to the poor working conditions and exploitation of workers (PUCL Karnataka 2016). This in turn is linked to onerous contractual terms and exploitative pricing practised by brands (FWF 2019; SLD 2013a; SLD 2013b). The experience of women factory workers is seen as “production of torture” (PUCL Karnataka 2016), going beyond the day-to-day experiences of violations and violence within the factories and often in the larger context of oppression of class and caste of workers.

### **Gender based violence and sexual harassment in the garment sector**

Violence against women and girls as well as gender based violence is one of the most widespread violations of human rights. It includes physical, sexual, emotional, psychological and economic abuse, and it cuts across boundaries of age, class, caste, education status, marital status, gender, race, culture, and geography. It is all pervasive and often occurs inside the home, in public (on the streets, in schools, the workplace, in farm fields, refugee camps, police stations, other government institutions), and during conflicts and crises. It has many manifestations – from the

most universally prevalent forms of domestic and sexual violence, to harmful practices such as sati, dowry, killings in the name of honour, acid attacks, witch hunting, sexual harassment, child sexual abuse, trafficking, child marriage, and sex selective abortion. Other than these the violence perpetuated by development, displacement, communal violence are also some of the concerns India is grappling with. Overall, gender based violence is rooted in regressive gender norms and discrimination against women and girls in patriarchal societies.

*“Violence in the world of work is a human rights issue... an appropriate approach towards eliminating violence at work implies targeting the root causes of discriminating practice.”*

– General Secretary, International Organization of Employers.

In India, data on violence against women as reported by the National Crimes Record Bureau shows that the reported rate of cognizable crimes against women (crime per 100,000 women) increased from 14.7 in 2006 to 55.2 in 2016, while the number of rapes reported increased from 19,348 to 36,881. Also, 28.8 percent of ever-married women reported experience of physical and/or sexual violence by husband (current or previous) (NFHS-4 2015-16). It is to be noted that in India, as seen elsewhere, most cases of violence are not reported due to reasons of stigma or non-recognition of violence in the first place. Thus the available data and statistics often do not capture the extent and depth of the issues and specifically that of violence.

The nature and extent of gender based violence stems from unequal power dynamics and is intersectional in nature based on the gender, gender expression, caste, class, region, and religion. The gendered nature of violence within the workplace is characterised by unequal power dynamics in the factory floors, discriminatory wages, type and nature of work (precarious, unskilled) and non-compliance to laws specific to women workers – sexual harassment, maternity benefit, social security, equal remuneration, availability of crèches etc.).

There is prevalence of widespread labour exploitation and abuse (verbal, forced to work when unwell, physical violence) in the RMG sector. An ILO study in 2015 which maps conditions of work for workers highlights the denial of basic human rights of workers, pointing towards the prevalence of “forced labour, sex-based discrimination, health and safety issues, absence of respect and dignity for workers” (ILO 2015). Kinds of harassment women workers face range from mental harassment (feeling of humiliation and threat), verbal harassment (mostly misogynist and sexist in nature), refusal to grant earned leave, creating fear amongst workers, physical violence, harassment of pregnant workers, singling out and targeting assertive women, sexual harassment, financial exploitation, creation of hostile work environment, failure to pay overtime for work done, denying promotions, frequent threats of dismissal from work, harassment and victimisation due to attempts to form

a union or membership in trade unions (PUCL Karnataka 2016). In the southern India there is high prevalence of sexual harassment against women migrants who stay in hostels (ILO 2015).

The prevalence of violence faced by women garment sector workers in export factories in India is glaring: 1 in 14 women garment workers have experienced physical violence; 1 in 7 women garment workers have been raped or forced to commit a sexual act; 80 percent of women garment workers report their health and safety at risk because of inhumane working conditions; 43 percent of women workers are not given maternity leave; 3.6 percent of reported cases of violence resulted in action by factory or police and no criminal charges were brought against perpetrators (Sisters for Change and Munnade 2016). Along with this there are high percentages of cases of being insulted, humiliated, intimidated, threatened, forced to watch pornography, threatened with termination of employment and refusal of payment of entitlements or social security by the perpetrators who are mostly supervisors and floor in-charge (Sisters for Change and Munnade 2016).

Women workers in the garment export factories internalise sexually coloured remarks from their line managers and supervisors (male workers) as ‘jokes’ that they have to put up with in their everyday work on the shop floor. Along with verbal abuse there is physical abuse wherein they are inappropriately touched (often claimed to be ‘accidental’) on the pretext of showing them how the work needs to be executed. For women workers the ‘normalisation’ of abuse meted out to them in the factory floors is often linked to the years of abuse they have been subjected to within their homes and communities (FWF 2019).

Once women workers start unionising and resisting, they are punished for being assertive and demanding their rights. Mezzadri gives an example of how garment companies in Bangalore started to hire unmarried younger women as workers instead of married women as a response to the latter’s presence in union strikes. If women are seen as obedient, then unmarried young women are more so. This further allowed the companies to pay even lower wages (Mezzadri 2017). In Bangalore, the practice of seating younger women separately from older women, on different factory floors, makes them more susceptible to abuse. Sexist stereotypes such as women being able to sit for longer or needing to urinate less have been utilised to manufacture the image of the subservient female workers (Mezzadri 2017). Often young rural women can sustain their jobs only if they are sexually available to the contractors, supervisors and line managers – “there is immense sexual coercion, intimidation they face on a day to day basis” (SLD 2014).

Instances of lodging complaints or articulation of dissent are discouraged, shunned or disbelieved and have resulted in job loss. The negotiation of sexual harassment goes

far beyond the factory gates, into the public spaces, with constructed notions of working women being 'impure' and 'morally wrong' women. The fear of retaliation outside the workplace also deters women from raising complaints against sexual harassment (SLD 2014). Additionally there are several drivers of violence and harassment which affects women's inability to react and report instances of violence: vulnerable and precarious nature of work; lack of institutional human resources to tackle such issues; no trust in complaint procedures and processes; culture of workplace violence; difficulty in monitoring levels of abuse; poor implementation of laws; power dynamics with supervisors etc. (Morris et. al. 2019). In addition to this there is victim blaming and the overarching poverty-driven necessity to earn a livelihood. These drivers of violence are important to note for contextualising women's standpoint and context.

Research points out that redressal mechanisms and safeguards against harassment within the work places are mostly dysfunctional. Where the mechanisms are somewhat in place, the human resource departments most often sides with management and perpetrators (supervisors, floor managers) rather than addressing workers' grievances and welfare. Often there is fear of backlash, retaliation, loss of job and risk of further harassment if they complain formally. Most factory management and companies do not comply with the law on sexual harassment and do not hold awareness generation trainings, publicize the members of the internal complaints committee etc. (PUCL Karnataka 2016). In addition there is limited awareness of functional workers' committee or trade unions amongst workers (ILO 2015).

Factory audits fail to capture the rights violations such as those affecting freedom of association and discrimination (Egels-Zanden 2015). The audits conducted by Fair Wear Foundation between 2012 and 2015 shows that the grievance committee discussions were mostly on minor issues rather than issues of conditions of work and terms of employment (FWF 2016). Workers are increasingly raising community-based issues such as health, sanitation, water, housing, education etc. However these are pertinent issues which encompass the overall socio-economic conditions of workers and are not 'minor' in that sense.

Young rural migrant women, often sole wage earners for their families, are targeted by male managers who enjoy impunity and exploit their vulnerable economic status (Sisters for Change and Munnade 2016). This is also reflected in the findings from empirical research which establishes that recruitment is sexualised as young 'attractive' girls are given more preference in comparison to older/'less attractive' but much experienced women workers.

## Learning from empirical research

Fieldwork research was undertaken in the year 2017-18, in Gurgaon as part of the project “Labouring Women and Violence: Building Workplaces Free of Violence”. The objective of the research was to understand how impunity is shaped on the shop floor and how community cultural norms influence gender interactions on the shop floor as well as the construction of gendered labour discrimination and disciplining regimes in the factories given that recruitment is kinship based and supervisors are from similar backgrounds and communities.

Caste, religion, gender structures regulate recruitment, contractual conditions for employment (Mezzadri 2017 and study findings) and policing women’s sexuality in case she is late from work or willing to work at lower than market rates. ‘Young, beautiful attractive’ women are given preference in hiring as compared to older women. Recruitment practices are discriminating towards older women, as younger women are perceived to be more efficient and in ‘demand’. In fact, while older men are seen as experienced, older women with similar or more experience are seen as no longer being productive!

Respondents felt a certain kind of compulsion to be working in the garment factories. Reasons for paid employment are largely to support household income. Women respondents spoke of ‘majboori’ or compulsion as the main factor to seek paid work. Yet the decision to work in the factories lies not with women themselves but mostly with the male members of the family. Sexuality is controlled by restricted mobility, access and usage of phone (by which women can inform regarding overtime – failing which, results in domestic violence).

Researchers found that the most common first point of entry into the labour market is through immediate or extended family; neighbours; contractors; at the factory gate; and skill training centres; and subject to control of fathers, husbands, and sons. Sampling, stitching of collars cuffs and other more skilled parts of garment, washing, pressing – are all considered skilled work and are reserved for men. The empirical research found that only 3 out of 65 tasks mapped in a garment factory, are assigned to women in Gurgaon. Women workers are largely engaged in thread cutting and in handwork or embroidery and only a very small percentage of women work in the tailoring department. Neither do they have provisions for skilling-up on the job in order to be considered for the higher paying jobs.

As most other studies have already highlighted, the risk of reporting cases of harassment is linked to job loss, which often deters workers from reporting cases. Majority of the respondents in the field research were unaware of the provisions under the law on prevention of sexual harassment. It was recommended by the empirical research report that the sexual harassment law should be brought under the Labour

Department (or in joint jurisdiction of the ministries of labour and women and child development) to enable complainants to access the law more easily and effectively as sexual harassment complaints usually result in victimisation and unfair labour practices such as transfer or termination of employment. In some factories cases of sexual harassment were reported by the workers (with the help of union activists) to some foreign brands and buyers and after which action was taken in the particular case as well as compulsory training on labour rights, grievance redressal on sexual harassment was put in place. The Apparel Export Promotion Council (AEPC) collaborated with Marks and Spencers, the British High Commission, garment brands and factories, between 2016-2019 to conduct trainings with management, staff and workers of garment factories addressing Gender Based Violence at the workplace.

Regarding other laws and their flaws in implementation the study findings also highlighted there being cases where Employees State Insurance (ESI) and Provident Fund (PF) being deducted but not deposited in the accounts of workers, while piece-rated workers, daily wage workers and contract workers who form the bulk of the workforce are denied these statutory rights with impunity, since their precarious employment condition robs them of the ability to resist and make demands.

It goes without saying that these are violations of both national laws and international obligations of the Indian government.

## **Section 2:**

### **Laws and Policies**

This section outlines international conventions, covenants, declarations, Indian laws and policies which the state is signatory to and obligated towards, with respect to protecting the rights of workers and with specific reference to women workers in the world of work, as well as addressing violence at workplaces. In this context two policies – one on night work for women workers and the other on addressing sexual harassment at workplace have been discussed in greater detail.

#### **International laws and policies**

The UN Declaration on Violence against Women 1993 defines violence as domestic violence, non-spousal violence, violence from traditional cultural practices, trafficking, violence perpetrated by the state and other forms in addition to nature of violence experienced by women in the economic realm of work by specifically mentioning sexual harassment and intimidation at work (United Nations 1993).

India has ratified various international conventions and human rights instruments committing to gender equality and women's economic empowerment. Some of the issues like decent work, equal access to economic opportunities and assets, equal pay for equal work, redistribution of unpaid work (care and domestic), working with trade unions and partnerships with the private sector are also reflected in obligations and commitments under Sustainable Development Goals.<sup>3</sup>

The Convention on Elimination of All Forms of Violence Against Women (CEDAW) advocates for equal rights and non-discrimination in all spheres economic, social, cultural, civic and political for women as well as establishes state obligations to guarantee these rights. Article 11 of CEDAW requires the state to take appropriate measures to eliminate discrimination against women in the sphere of employment (by promoting right to work, right to job security, right to promotion, right to equal remuneration, equal treatment of work of equal value, right to social security, right to paid leave, right to protection of health and safety etc.). Further it determines non-discrimination on the grounds of marriage or maternity (CEDAW 1979). Sexual harassment at workplace is seen as a human rights violation by CEDAW and CEDAW is cited in the introduction of the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 [also referred to as the POSH Act].

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<sup>3</sup> India has ratified the following ILO's core conventions: Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182). There are in total 47 ILO Conventions ratified by India. For more information see: <https://labour.gov.in/lcandilasdivision/india-ilo>

In 1966 India adopted and ratified the International Covenant on Economic, Social Cultural Rights that obligates states to take appropriate measures to address sexual harassment at workplace. However the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was legislated only in 2013, forty-seven years after India ratified the International Covenant and sixteen years after Vishaka Guidelines were promulgated by the Indian Supreme Court in 1997.

The ILO has various conventions promoting equality of opportunity and equal treatment, and non-discrimination (C155-Occupational Safety and Health Convention; C161-Occupational Health Services Convention). The ILO has also enacted a number of nonbinding instruments with provisions on sexual harassment at work (International Labour Conference Resolution (ILCR) 1985 on equal opportunity and equal treatment for men and women in employment; the 1991 ILCR concerning ILO action for women workers; and the 2003 ILO Governing Body Code of Practice on workplace violence in services sectors).

Until 2019, even the ILO did not recognise sexual harassment and violence at the workplace as a core labour rights violation. This meant that multinational corporations (MNCs) adopting voluntary codes of labour practice, governing their operations and suppliers worldwide, who drew heavily on the ILO-defined core labour rights did not pay attention to these violations by companies, national governments and MNCs.

Finally in 2019, the ILO Convention 190 and Recommendation 206 was adopted, recognising the right to violence and harassment free workplaces and guaranteeing terms and conditions of work for all reflective of dignity, safety and decent work. It recognises two forms of sexual harassment – quid pro quo and creation of intimidating and humiliating environment for the person subject to sexual harassment. Article 1 of the Convention defines “violence and harassment” in the world of work as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. (ILO Violence and Harassment Convention 190, 2019). India is yet to ratify this Convention and the Convention is yet to come into force as only three countries have ratified it so far (Fiji, Uruguay, and Namibia).

### **Laws and policies in India**

There are specific labour laws focussing on conditions of work and regulations of employment in India, however for the purposes of this research only few relevant laws have been mentioned. The labour codes, in the form of a basic law, are grounded

in labour standards such as minimum wages, maximum hours of work, minimum standards of safety and health at workplace.

The Equal Remuneration Act, 1975 guarantees equal wages to men and women workers for same or similar nature of work. The Act clearly states that there should be no discrimination permissible in recruitment and conditions of work except where employment of women is prohibited by law. In India, due to inherent discrimination and gender division of labour, often work assigned to both sexes is different. Thus, this condition helps the employers to evade the provisions under the Equal Remuneration Act, 1976, which prohibits gender discrimination based on wage payment for 'similar nature of work'. However many argue that this should also include 'work of equal value' as per the ILO's Equal Remuneration Convention, 1951; the European Union Law; and Article 141 of the European Commission (Abraham et. al. 2014).

The Minimum Wages Act, 1948, guarantees minimum wages to workers involved in wage work, home-work, piece-rated work; time rated work but excludes the self-employed. According to the Act minimum rates of wages may be fixed by the hour, day, month, or by such other wage period as applicable. The minimum wage is not uniform since it varies from one employment to another and the government can fix a different minimum wage for different industries or same industries in different places. It is applicable to agricultural, non-agricultural, rural, and urban workers. The minimum wage, rather than mere subsistence wage, was meant to enable the worker to provide for their family not merely the bare essentials of food, clothing, and shelter but also for education of children, health needs, social security, insurance etc. However this is only in the spirit of the legislature and in reality many workers do not receive minimum wages. The lack of adequate number of inspectors for checking the application of minimum wages, especially in unorganised sector, has often been argued to be responsible for poor implementation of the Minimum Wages Act (Papola et. al. 2008) in India. In the garment industry, unions in all three clusters, i.e. in the states of Haryana, Tamil Nadu and Karnataka, have filed cases in the respective High Courts for revision and/or effective implementation of minimum wages and in each case, the garment industry has opposed it vehemently and argued for exception citing incapability to pay enhanced minimum wages fixed by the government. Given the famous judgement of Justice P.N. Bhagwati in 1982 in *People's Union for Democratic Rights vs Union of India and Others*, whereby non-payment of minimum wages was made equivalent to bonded labour, the violation of minimum wages by garment industry owners should be prosecuted, but governments continue to turn a blind eye. The recently legislated Code on Wages prescribes a statutory national floor level minimum wage for the country which is to be determined by a Board, and no state can have their minimum wage less than this floor wage. The current floor wage is only advisory as a result of which in certain states minimum wages are less than the

floor wage which is pegged at INR 176 per day (Sarathi Ray 2017).

The Employees State Insurance (ESI) Act of 1948 provides employees of factories and establishments financial relief towards maternity, sickness, disablement and medical benefits. Under this Act, women workers covered can claim maternity benefit (up to 70 percent of their salary). However, very few women are able to claim benefits under this act. Most women in the factories of Gurgaon are either fired or harassed into leaving, once their pregnancy is evident. Employers also find ways to fudge data submitted to the ESI Corporation (ESIC) in order to deny maternity benefits to pregnant workers.

According to the ILO (2015), “[F]ewer than four in ten current workers had received a written employment contract, and less than half of them fully or partially understood its content” (p. 11) which means that the majority of the workers in the garment industry have no formal employment contract (FWF 2019) and therefore the informal terms of employment means that they are not part of the formal employment regime.

The Unorganised Workers’ Social Security Act, 2008, provides for the formulation of welfare schemes by the Centre and State for the benefit on unorganised sector workers. Unorganised Sector is defined in Section 2(l) of the Act as “an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten”. Unorganised worker is defined in Section 2(m) of the Act as “a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act.”

Garment workers employed in export apparel manufacturing units should be covered by the Acts mentioned in Schedule II, namely legislations for workmen's compensation, industrial disputes, ESI, PF, maternity and gratuity, by way of being employed in industries that fall under the jurisdiction of these legislations, and therefore do not fit the definition of ‘unorganised worker’ even though the reality of being able to access statutory rights is very different. Apart from small fabrication units and home based garment work, most garment workers without formal employment contracts employed in registered units in the organized sector would not qualify for the benefits of this Act.

The Factories Act, 1948, covering factories provides safeguard for workers to protect health, safety, and conditions at work. The Act lays down provisions for safety, health and welfare of workers entailing hours of work including intervals for rest, provision for overtime, leaves, lighting, ventilation, crèches, canteens, restrooms, and prohibits night work for women. However, recent amendments allow work in night shift by women in certain sectors including the Special Economic Zone (SEZ), IT sector and

Textiles (PIB n.d.). This is subject to the condition that the employers shall be obligated to provide adequate safeguards in the workplace, and arrange for transportation from the factory premises to their residence. However both garment sector employers and workers shared in the field research study that in the Gurgaon garment industry women are not allowed to work beyond 8 pm as employers do not wish to incur the extra cost of providing safe working conditions (i.e. deployment of additional security, including women security officers or women supervisors) or safe transportation at the end of the night shift (Sehgal and Lahiri 2021). The Act also makes provision for maternity leave with wages for a period of 12 weeks. It provides for factories with more than 30 women to maintain crèche and offer breaks for mothers. These provisions remain on paper and are inaccessible for the majority of the women workers employed in factories, and this is especially true for the precariously employed women garment workers.

Workers in factories of NCR routinely work extended hours up to 9-10 hours (instead of 8 hours as mandated by the Factories Act) and additional overtime of 5-6 hours over normal working hours without compliance with the statutory rate of double the rate of pay. Also minimum wages in India for garment workers is the lowest amongst the top garment exporting countries in the world (ILO 2017a; FWF 2016). Literature shows compensation in the Indian garment industry was INR 4,268 as compared to the required living wage of INR 16,123.4. (ILO 2017a). There is low inspection of factories and women workers not receiving minimum wages was much higher than male workers even if they did the same low paying unskilled jobs as male workers. On a comparative scale the NCR region has much lower compliance to minimum wages than in Tirupur (ILO 2017a). The widespread deployment of contractual labour in the NCR has led to dilution of accountability of employers towards workers (Klaveren 2016; SLD 2013a).

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 aims at addressing exploitation of workers by contractors who recruit them for work outside the State. This Act is applicable to any establishment, which hires five or more inter-state migrant workers. Additionally this Act has provisions for equality and non-discrimination for inter-state migrant workers in terms of wage rates, basis of wage payments, holidays, hours of work, and other conditions and terms of employment. Wages paid to the inter-state migrant workers should comply with the minimum wages legislation and are to be payable only in cash. The state government can make rules for this Act. As few enterprises usually register under this Act, consequently contractors have not been issued licenses. Also the record of prosecution and dispute resolution has been very weak. Migrant workers do not possess passbooks for their identity proof, which leads to challenges in implementation (National Commission for Enterprises in the Unorganized Sector 2007).

The recent national lockdown due to the Covid-19 pandemic demonstrated the fallout of the weak or no implementation of this Act (Sinha 2020). It was correctly pointed out that the “full and proper implementation of this law would have meant that state governments had complete details of inter-state migrant workmen coming through contractors within their states. While this would still leave out migrants who move across states on their own, a large segment would be automatically registered due to the requirements of the Act. States would consequently have been better prepared to take steps to protect such workmen during this lockdown. However, almost no state seems to have implemented this law in letter and spirit” (Krishnan et. al. 2020).

There are specific policies, which provide enabling conditions for women workers in the world of work. The Protection of Women against Sexual Harassment at Workplace Act, 2013 [POSH Act] seeks to provide every woman, irrespective of age or employment status safe and secure environment free from sexual harassment by laying down a redressal mechanism and obligations on the employer for its effective implementation. This is a civil law; however it is the discretion of the individual to take up the case within the criminal justice system as well (GOI 2015). This Act covers all women, irrespective of their age or employment status to prevent, prohibit and redress cases against sexual harassment at workplaces (both in public and private sector, whether organised or unorganised). It mandates formation of Internal Complaints Committee (ICC/IC) and Local Complaints Committee (LCC/LC) to redress complaints. All workplaces employing 10 or more employees are mandated to constitute an IC. Complaints from workplaces employing less than 10 workers or when the complaint is filed against the employer the case comes under the jurisdiction of the LC. A complaint of sexual harassment can be filed within a time limit of three months. Under the Act an employer is liable to a fine of INR 50,000 in case of violation of their duties.

The Act mandates responsibility on every employer to create an environment, which is free from sexual harassment. Under the purview of the Act, employers (including government) are required to organise workshops and awareness programmes at regular intervals for sensitising the employees about the provision of this legislation (GOI 2015). However several studies have pointed out there are many problems both with the legislation as well as with its implementation (Sarpotdar 2016; Bhatt 2019; Bhavila 2017). The field research also confirms low level of awareness among women workers about this law, challenges in implementation specific to the garment industry, lack of trust in employers to use the law in a fair manner, stigma associated with sexual violence and fear of losing their job as some deterrents to women reporting sexual harassment or seeking access to justice under this law.

Working women’s hostel scheme was launched in 2017 under the aegis of the Ministry of Women and Child Development (MWCD) to fulfil the housing

requirements of working women with special provisions for children to be housed in these hostels along with day care centre (WCD n.d.). Prior to this the government had introduced a central government scheme on working women's hostel in 1972-73 in cities, small towns with specific eligibility criteria for working women. However, working class women from garment industries are not found to be availing of working women's hostels either because they migrate with families or because their low wages are not adequate to avail of the hostel facilities or they are unaware of the facilities which are geared towards women workers with stable incomes.

Rajiv Gandhi National Crèche scheme was started for the children of working mothers, which provides day care facilities to children in the age group of 0-6 years from families with monthly income of less than INR 12,000. The scheme also provides services such as supplementary nutrition, health care inputs like immunization, polio drops, basic growth monitoring and recreation to such children. This scheme is being implemented in partnership with non-governmental organisations in many states. According to the Five-Year Strategic Plan document (2011-2016) of the MWCD, only 22,599 crèches are functional even though the requirement is much higher, but no estimates are available (GOI 2016), this leads to weak and ineffective implementation on ground. The number of crèches in the country has declined significantly since 2017 when the funding of the scheme changed. Earlier the central government supported with 90% of the funds, but after 2017 this came down to 60% funds. The field research team did not find any garment workers availing of this scheme, nor did they find any such crèches operating in the villages near industrial areas in Gurugram district.

The Maternity Benefit (Amendment) Act, 1961 was amended in 2017. This Act has provisions for women with paid leave during maternity period. The amendment covers establishments employing 10 or more workers working for at least eighty days in the year immediately preceding the expected delivery date. The amendment extends paid maternity leave (26 weeks) for women employees with less than two surviving children, from the original 12 weeks. Women adopting a child below three months of age, or "commissioning mothers" have been provided 12 weeks of maternity leave. The act also mandates a crèche for establishments employing 50 or more employees. The amendment excludes informal sector women workers, who constitute 93% of India's workforce (PIB 2015). In the garment industry in Gurugram district, either the pregnant worker is fired on some pretext or claims for maternity benefits are not honoured because of fudged data given by companies to the ESI, whereby the pregnant worker is shown to be ineligible for the benefit due to inadequate number of days worked. A study by Society for Labour and Development shows that maternity leave for one month without pay is given to women workers in some Tier 1 factories of Gurugram but overall women workers who are pregnant are forced to resign or fired by the employers (SLD 2013b).

## Recognising Women as Workers, Recognising Women's Work

The Indian State's conceptualisation of development, and women's empowerment from the late 1960s till date, has always been in contention with the ideological premises of the women's movement (Buch 1998). The five-year plan documents have no mention of women as workers. On the other hand, the first five-year plan reiterated 'women's legitimate role in the family'. The second plan mentioned safeguarding women workers from industrial hazards with a protective/patriarchal tone. In the third plan, there was no mention of women as workers in the chapters on employment, personal requirements, training programmes and labour policy. The only mention was on imparting training to women for family planning (Safa 1996). There was immense criticism from the women's movement with regard to women's role in the community development programmes initiated by the government. The Committee on Status of Women in India highlighted the specific issues and question of invisibility of women workers in the economy for the first time.

Historically therefore, in the policy discourse, in 1974 the *Towards Equality* report of the Committee on the Status of Women in India brought the issue of women as workers to the forefront to show how women were at the margins of the development and planning processes. The report highlighted socio-economic categories of women workers, limitations of data, trends in women's economic participation – specific to the organised and the unorganised sector in India (GOI M. O. 1974). The 1970s was declared the United Nations decade for women. In the 1980s the focus on women in the economy began with emphasis on income generation and microcredit along with shifts in macroeconomic policy priorities. The two decades in a sense saw a growing emphasis on situating women and work in the discourse of economic development.

The *Shramshakti* Report of the National Commission on Self-Employed Women and Women in the Informal Sector in 1988 highlighted the vulnerabilities and low bargaining power of women workers who formed majority of the informal economy (GOI 1988). The 1990s formed a watershed period of globalisation and structural adjustment programs leading to economic reforms and used private enterprise as a strategy. Women bore the brunt of the devastating impacts of liberalisation and structural adjustment programmes as government welfare receded with vulnerabilities of working class especially those of working class women increased manifolds. The Women's Component Plan which was initiated in the Seventh Five Year Plan was adopted in the Ninth Five Year Plan period (1997-2002) and funds were earmarked for women in the schemes run by all Ministries/Departments that were perceived to be "women related – education, health" and thereby recognised that prioritising financial resources for programmes/schemes for women is critical for women's empowerment (Das and Mishra 2006). With 'women's empowerment' becoming the buzzword in the policy circles the core understanding of empowerment was somewhat lost in

gendered assumptions. Gender Budgeting has been instituted in India since 2007 for adequate budgetary allocations/commitments for women's development. Although earmarked funds have been allocated for gender initiatives after years of civil society activism much more needs to be done to increase the allocations as well as monitor and evaluate the nature of allocations and spending.

The National Policy for the Empowerment of Women, 2001 had a chapter on women and economy urging redesigning and implementing macro-economic and social policies to encourage socio-economic development of women as producers and workers both in the formal and informal sectors. The National Mission for Empowerment of Women was based on the principles of the National Policy for the Empowerment of Women to build convergence of schemes and policies geared towards gender equality however the Mission was subsumed under the Ministry of Women and Child Development as soon as the political mandate shifted from the UPA II to the NDA government after national elections in 2014.

The Eleventh Plan (2007-2012) saw two shifts in planning and policy making – for the first time there was articulation of rights for women and the discourse of empowerment and agency for women as workers was established. The Report on the Status of Women in India, 2015 by the High-Level Committee on the Status of Women also reiterated this policy framework. This was followed by the current discourse of 'Gender mainstreaming' across sectors undertaken for the first time in four domains (GOI 2018) – skilling, entrepreneurship, microfinance for rural livelihoods, labour law reforms. The skill ecosystem and thrust towards entrepreneurship for women by the government has led to increase in stereotyping occupations for women (e.g. tailoring, food processing, beauty parlours etc.) rather than women starting initiatives challenging existing norms around gender based occupational segregation (Thakur and Mitra 2019).

The draft National Policy for Women 2016 by the Ministry of Women and Child Development, has mentioned the need for skill development especially for women entrepreneurs. The issues of women's unpaid work, care work, gender wage gap, migration linked to women's workforce participation, effective implementation of gender specific labour laws (maternity benefit, sexual harassment act etc.), need for child care and flexitime to enhance women's participation in the workforce have been mentioned as key focus areas under the section of women and economy. The policy reiterates the need to create an enabling environment by building working women's hostels, drinking water and toilet provisions, infrastructure in terms of lighting and safety linked to travel to and from work (GOI 2016). However progressive policies such as these, which have been finalised after rounds of consultations with women's groups, unions and other stakeholders, are still waiting to become formalised as they still exist only in the draft form.

In the policy discourse of women and work in India, inclusion and mainstreaming of gender have been promoted by several government programmes.<sup>4</sup> Other than these, in India there are policies directed at women's economic empowerment focusing on livelihood options through wage employment and promoting entrepreneurship.<sup>5</sup> These policies have been geared towards enhancing employability, education, health, skills and livelihood for women however they are based on gendered assumptions and have faced challenges in ground level implementation (Pal et. al. 2020). Most women migrant workers cannot avail of the government policies and schemes due to lack of documentation, for instance.

The International Conference of Labour Statisticians' (ICLS) definition of work traditionally excluded activities undertaken by households that produce services for their own final use (i.e. unpaid household service work performed by household members or by volunteers) (ILO 2013). This valuation was critical to visibilise the unpaid work by women. Time Use Surveys gained momentum after the United Nations Fourth World Women's Conference, in 1995 to primarily develop an approach to account for value of non-market household production by estimating the value of time spent on undertaking unpaid work. In 2019, India launched its second nationwide Time Use Survey to collect data in the non-market non-System of National Accounts (SNA) activities, for proper quantification of the economic contribution of women in national economy. The first was a pilot in six states of the country in 1998.<sup>6</sup>

Despite challenges in methodology and data collection the survey results in 2019 confirm very low paid work participation of women in the age group of 15-59 at 20.6 per cent with a continuing sharp decline in the rural economy. This is in sharp comparison to men in the same age group engaged in paid work (70 per cent). In the age group (15-59), 94 per cent of women are engaged in unpaid activity (household work and care work) compared to one fifth of men in the age group for the same activity (Chandrashekar and Ghosh 2020). Further "In rural areas, women spend nearly six and a half hours every day in unpaid activities, and in urban areas slightly more than six hours. In urban areas, the difference between women's and men's unpaid work time is nearly three and a half times...when it comes to working for others in unpaid ways – men spend only 7 per cent of their daily time on this while women spend 17 per cent, or two-and-a-half times more than men." (Chandrashekar

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<sup>4</sup> Mahatma Gandhi National Rural Employment Guarantee Scheme, 2005; the Right to Free and Compulsory Education; National Rural Health Mission; National Rural Livelihood Mission; National Skill Development Mission.

<sup>5</sup> Pradhan Mantri Kaushal Vikas Yojana; National Policy for skill development and Entrepreneurship 2015; Support to Training and Employment Programme for Women; Mahatma Gandhi National Rural Employment Guarantee Scheme, 2005.

<sup>6</sup> For more information please refer to:  
<http://www.icsrdataservice.in/datarepository/index.php/catalog/142/overview>

and Ghosh 2020). There is a glaring gender gap in unpaid work and the authors reiterate the need for understanding time poverty for women to be addressed at the policy level.

## Changes in labour law regime in India

The recent labour law reforms in India have consolidated 44 labour laws into four codes: Industrial relations; Wages; Social Security; and Occupational Safety, Health and Working Conditions. Trade Unions have opposed these reforms for many reasons, chief among them being that the reforms are anti-worker, weaken existing legal protections, make access to justice harder, and tilt the balance of power towards employers.

The new Labour Codes 2020 were formulated without proper stakeholder consultations at a time when India faced its worst recession in decades with high levels of rates of unemployment. Social Dialogue with government recognised Central Trade Unions has broken down, with no meeting of the Indian Labour Conference held since July 2015. Unorganised sector worker's unions in particular, have critiqued the Codes as they are not inclusive of rights and entitlements such as social security provisioning for migrants, self-employed, home-based workers, workers in micro and small enterprises and domestic workers (Working People's Charter 2020).

The Occupational Safety, Health and Working Conditions Code (OSHWCC) 2020 does not cover the agricultural industry, informal workers (in small mines, hotels and eating places, machinery repairs, construction etc.) and informal workers in organised sector (e.g. Information technology and Information Technology Enabled Services, digital platforms, e-commerce) (Jamwal 2020). The definition of "workers" in the Industrial Relations Code 2020 is not inclusive of newer categories of workers like those in the gig/platform economy, IT workers, those employed in start-ups and medium and small scale enterprises, self-employed workers, home-based workers, unorganised and informal sector workers, plantation workers etc. This code, due to non-requirement of furnishing of standing orders, gives companies the right to introduce arbitrary conditions for workers (Working People's Charter 2020). The threshold for standing orders, has been increased from 100 to 300 workers, therefore a lot of firms will fall outside the ambit of the law. As such "doing away with standing orders for firms with less than 300 workers, which will essentially cover most firms, is tantamount to watering down the basic rights of workers in most organisations, affecting their bargaining power" (The Indian Express 2020; Srivastava 2020).

For the garment workers, changing jobs is sometimes the only way to register protest although there have been some strikes in the sector. However, with the Industrial Relations Code requiring unions to give a 60-day notice to strike and the notice automatically invoking conciliation and at the same time making a strike during

conciliation illegal, garment workers will be left with no avenues of collective bargaining especially in a scenario where union density is extremely low in the sector. The Code on Wages does not have apprentices in its purview, this will adversely impact minimum wages of ‘sumangali’ workers who work as apprentices in the garment industry specifically in Tamil Nadu ( Mazumdar et. al. 2020).

Dewan (2020) recently examined the new Labour Codes through a feminist lens since women are “primarily informal, own account and self-employed workers and are typically and simultaneously employed in fluid multiple economic activities that more often than not integrate paid, under-paid, unpaid and unpaid care work.” (p. 2)

The author argues that these developments have to be contextualised keeping the extremely low rates of workforce participation for women<sup>7</sup> and structural changes in the economy for the last decade (e.g. procedural changes in labour administration curtailing inspections; legislative and executive changes at increasing flexible employment relations; restructuring principles of social security for workers; and imposing restraints on registration of trade unions etc). The recent changes in the labour law regime has been undertaken by the government in the garb of ‘rationalisation’ and ‘ease of doing business’, however these changes have diluted labour rights through the processes mentioned above.

Home based workers and domestic workers have been excluded from the Codes on Wages, and Occupational Safety, Health and Working conditions code (OSHWCC) however they have been included in the Code on Social Security (Dewan 2020). Under the code on social security the provisions as per the amendments of the Maternity Benefit Act, 2017 stands unchanged however it reiterates that these are specifically for organised sector workers thus excluding home based and domestic workers in the unorganised sector. With respect to unorganised sector workers, the conditional cash transfers upon institutional deliveries under the Janani Suraksha Yojana or the Model Welfare Scheme for Construction Workers of the central government stands as was. In the OSHWCC some of the health related conditions for crèches have been removed. With regard to night work for women workers the Code fails to assign accountability of employers for putting in place appropriate measures

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<sup>7</sup> The period between 2010-11 and 2017-18 has seen the Urban Female Work Force Participation rates have fallen from 24.8 to 17.5 per cent. In the same period the unemployment rate has doubled (Dewan 2020). For more information refer to:

(i) IWWAGE, Trends in Women’s Workforce Participation in India, [https://iwwage.org/resource-workparticipation/#:~:text=More%20than%2060%20percent%20of,52%20percent%20in%20self%20Deployment](https://iwwage.org/resource-workparticipation/#:~:text=More%20than%2060%20percent%20of,52%20percent%20in%20self%20Deployment;);

(ii) Periodic Labour Force Survey 2017-18, Government of India, [http://mospi.nic.in/sites/default/files/publication\\_reports/Annual%20Report%2C%20PLFS%202017-18\\_31052019.pdf?download=1](http://mospi.nic.in/sites/default/files/publication_reports/Annual%20Report%2C%20PLFS%202017-18_31052019.pdf?download=1);

(iii) Labour force Participation Rate Female ( % of female population ages 15 +) (Modeled ILO estimates India), World Bank Data, <https://data.worldbank.org/indicator/SL.TLF.CACT.FE.ZS?locations=IN>

towards nightshifts. The Code puts the onus on worker and her “consent” to undertake the same. Many have argued that economic distress and not consent and choice drives these women in the informal economies to undertake work in the night shifts (Rajalakshmi 2020).

Another contentious issue with the codes is that it puts the onus of workers’ safety on the contractors and not the principal employers, hence leading to non-accountability for big corporations and principal employers for bad working conditions, or loss of life at work. Apart from this it is not clear how the contractor’s accountability would be enforced given that most contractors to big corporations are supplying labour that works on the premises of the principal employer and therefore it would not be in the sphere of authority of the contractor to ensure safe premises as that responsibility lies with the owner of the premises, i.e. the principal employer. The provisions for fines, penalties and prosecution within these codes are either unspecified or justiciable by a court/appropriate government, weakening employer accountability. The changes to Industrial Relations Code, specifically the provisions regarding formation of unions will likely make it more difficult to register unions in the unorganised sector making it even more challenging for domestic workers and home-based workers (Mazumdar et. al. 2020).

The Prevention of Sexual Harassment of Women at the Workplace Act 2013 did not come under the purview of the labour law reforms (Dewan 2020). The implementation of the Act falls under the Ministry of Women and Child Development, however the Ministry of Labour and Employment (MoLE) should also be part of the enforcement of the law as the inspections under labour laws falls under the purview of MoLE.

Additionally, India needs to adopt a “gender responsive, inclusive, and integrated strategy” to align national law specifically addressing sexual harassment at workplace with the Convention on Violence and Harassment 2019 (HRW 2020). In addition to effective enforcement of the law, there is need for publishing evidence based research data on sexual harassment at workplace – cases filed and resolved; undertake special measure to reduce the risk of violence and harassment and lastly engage all stakeholders (state governments, civil society groups, women’s rights groups, individual experts, trade unions, private sector etc.) in consultations for better implementation of the existing legislation.

## Specific policies for women workers applicable to the garment sector

### Law on addressing sexual harassment at workplace

In 2019, the Chief Justice of India (CJI) was accused of sexual harassment by a woman employed as a junior court assistant at the Supreme Court. The complaint was referred to an in-house committee consisting of three judges including two female judges (and the CJI, here accused, as well) but not including any external members as required under POSH Act. The complainant was not allowed to bring her lawyer to the committee proceedings and her request for information on the committee's procedures was denied. Consequently, the complainant withdrew from the proceedings. The panel cleared the CJI of any accusations, and denied access to the report of the detailed findings to the complainant.

In the last few years, the public discourse in India has seen debates on cases of sexual harassment at workplace where the perpetrator was a reputed journalist, a retired judge of a high court, a renowned climate change activist leading one of the biggest think tanks. Later the #MeToo movement has yet again taken up the issue of sexual harassment at workplace and impunity in various fields of print and communications media; educational institutions; and nonprofit sector. However for millions of women workers engaged in the unorganised sector (workers in factories, malls, private hospitals, manufacturing units, construction sites, private mines, agricultural workers, street vendors, domestic workers, sex workers) the issue of sexual harassment is a stark reality with limited remedies and challenges in implementation of the law on sexual harassment in India today.

The women's movement has played an important role in instituting this law. In 1992, Bhanwari Devi, who worked as a *saathin* (volunteer/social worker) as part of the Women's Development Project in Rajasthan against child marriages, was gang raped by five upper caste men, who were later acquitted in 1995. Till date no justice has been done to her. However, in 1997, given the demands from the women's movement, the court came out with the Vishaka Guidelines on sexual harassment at the workplace. It took a more than a decade-long struggle for the movement to get the POSH Act of 2013 passed. Drawn from the Vishaka Guidelines the POSH Act draws upon Article 14 (fundamental right to equality and equal protection of the law); Article 15 (non-discrimination on grounds of sex); Article 19 (fundamental freedoms); Article 21 (right to life and liberty); and Article 42 (state to guarantee just and humane conditions of work) of the Constitution of India.

The Justice Verma Committee constituted after the brutal gang rape and murder of Jyoti Pandey in 2012, aimed to bring about changes in the criminal law in India and had provided recommendations for the POSH Bill 2012. However these recommendations were not reflected in the Act passed in December 2013. The

Justice Verma committee had mentioned that the POSH bill does not resonate with the spirit of the Vishaka Guidelines. It had recommended an independent employment tribunal to receive and process the complaints rather than the internal committees which were composed of internal members; deletion of section 10 on conciliation between the respondent and the complainant; deletion of section 14 of the Bill (now the Act) on punishing the complainant women if found to have filed a “false”/“malicious” complaint.

According to data published by the Ministry of Women and Child Development, the number of cases of sexual harassment in the workplace registered in India increased from 371 cases in 2014 to 570 in 2017 (GOI 2018). Complaints of sexual harassment in the workplace filed by 44 Nifty companies increased slightly for the first time in three years, leading to a debate over whether awareness has improved, or such cases in the past were underreported (Somvanshi 2018).

Several studies highlight the absence of Internal Committees (ICs) or the dismal state of ICs at various workplaces. For example, Sarpotdar in her study found that many firms in Mumbai did not form an IC or when they did, the organisations did not take women’s complaints seriously (Sarpotdar 2016). A Right to Information study in 2018 by the Martha Farrell Foundation found poor implementation of the provisions of the Sexual Harassment at Workplace Act (Bhatt 2019).

In another study Bhavila and Beegom (2017) found that the ICs were constituted as mandated by the law with both external and internal members, however, women (even the Chairperson), were afraid of asserting themselves against senior male members of the committee. Overall, economic vulnerability, stigma, isolation, family pressures, lack of job security, are significant reasons why women do not lodge complaints against sexual harassment (Aravind 2017).

Studies from 1997 to 2013 show poor implementation of the POSH Act and under reporting of cases (Sarpotdar 2016; Marathe 2020). Sarpotdar argues that there is limited awareness on existence and functioning of Local Committee (LCs) as mandated by the POSH Act in India, further this is linked to reasons for low reportage of sexual harassment on one hand and passive approach taken by the LCs in redressal of cases on the other hand (Sarpotdar 2020). Additionally the challenges in effective implementation are also linked to no budget earmarked towards the implementation for instance committee members are not provided travel fees in some cases. On the other hand women still find it difficult to report due to stigma, fear of consequences, long, tedious processes of the justice system, and no confidence in the complaints mechanism process (Marathe 2020).

The Ministry of Women and Child Development in 2017 started an online complaint management system called SHe-Box, for registering complaints on sexual harassment

at workplace. In 2018 the government constituted a Group of Ministers to examine legal and institutional frameworks to deal with cases of sexual harassment at workplace, however this was re-constituted after the 2019 Lok Sabha elections (GOI 2018). Additionally the Ministry has identified a pool of resource institutions/experts to provide capacity building training, workshops on addressing sexual harassment at workplace (GOI 2015).

Even with these interventions in place, Human Rights Watch highlights the limited government intervention towards implementation of the Act especially in the informal/unorganised sector in India (HRW 2019 and 2020). As mentioned in section 1 of this paper, the prevalence of sexual harassment in the RMG industry is rampant. Many reports have highlighted the lack of awareness of the POSH Act among the workers and many instances of women workers being forced to quit or accept unbearably exploitative working conditions within the industry (Sisters for Change and Munnade 2016; ILO 2017b; FWF 2019).

### **Provision for night work for women workers**

The Factories Act, prohibited night work for women between 10 pm to 5 am. It also allowed the time between 6 am to 7 pm for women to be allowed to work in factories. The prohibition for women workers working in night shifts was in contradiction to the provision of their right to equality of opportunity and treatment as per constitutional rights.

Over the years, the position in international law, regarding the question of whether night work was linked to it being detrimental to the health and welfare of women workers. The ILO Conventions (No. 89, No. 171) have shifted from blanket ban position to that which recognises that all work in night shifts need not be detrimental to the health of the woman.

Based on this premise, for the first time in 2005, the amendment to the Factories Act was proposed which envisaged adequate safeguards by the employer for women to be able to work in night shifts. However the process of amendment was delayed.<sup>8</sup> In 2000 the Madras High Courts recommended removal of the prohibition of night work for women in India. These recommendations demanded measures to be adopted by every employer namely, to prevent any incidents of sexual harassment at the workplace, and mechanism to record and reconcile complaints, with a complaints committee headed by a woman, and with women constituting half of the members. It

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<sup>8</sup> There was an expert committee formed to expedite the process of amendment to the Factories Act in 2011, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=106116>

However there hasn't been any follow up action on that front. Then there was an amendment in 2016 which gave the states the right to equally make rules/ amendments to the Factories Act, <https://prsindia.org/billtrack/the-factories-amendment-bill-2016>.

also recommended night-shifts to be given to women in groups, no less than 10; separate work sheds; canteen and transport facilities; additional paid leave on menstruation days; proper working conditions; resting hours between shifts; and “employers should send fortnightly reports to the inspector of factories about night shifts including any unwanted incident and also to the local police station.” (The Associated Chambers of Commerce and Industry of India 2005).



**Source:** <https://scroll.in>

Based on these recommendations, along with those of women’s organisation, the National Commission for Labour, and the Standing Committee on Labour and Welfare, the Factories Act 1948 was amended in keeping with ILO Protocol of 1990. The amendment envisages that the employer ensures occupational safety and adequate protections to the women employed.

The amendment mentions “equal opportunity for women workers, adequate protection of their dignity, honour and safety,” however how is ‘dignity’ and ‘honour’ guaranteed and protected under the amendment is unclear. The changes as prescribed by the amendment still holds in the labour codes instituted in India in 2020 however the responsibility of the employer to provide for safety/safe transportation to the nearest place of the women workers residence has not been mentioned. In the Occupational Safety, Health and Working Conditions Code the provision of night work for women is mentioned under “special provisions relating to employment of women”.

The factory rules in some states (Karnataka, Tamil Nadu, Haryana, and Uttar Pradesh) already have these provisions (FWF 2019). The government of Karnataka issued a notification in 2019, allowing for women to work in night shifts, provided that employers ensure safety measures (Balasubramanian 2020). The government in its notification clarifies the non-compulsory nature of the provision, which requires the consent of the women workers in order to implement a night shift. In spite of legislative changes, in some states such as Haryana, garment sector employers continue to deny work to women during night shifts citing extra burden to provide safeguards and security to women on the shopfloor as well as during their commute (Sehgal and Lahiri 2021).

### **Section 3:**

## **Role of movements in addressing issues of women and work**

This section maps the trajectory of several movements (women's movement, human rights movement and trade union movement) to understand the scope of engagement of these movements with issues of women and work, specific to addressing labour rights violations and sexual harassment at workplace. The section also presents some reflections on current challenges and provides recommendations for specific stakeholders (brands, managements, and government) as well as some examples from effective initiatives on building violence free workplaces for women workers.

In India there has not been a tradition of deep cooperation between these movements nor a tradition of undertaking joint campaigns to simultaneously address the gender, labour, civil liberties, and human rights aspects of gender based issues in the world of work. Neither have the movements tried to break the institutional silos that prevent holistic redressal of rights violations. For example, the National Human Rights Commission has time and again rejected applications and petitions where human rights of workers and union leaders have been violated, on the pretext that the complaints fall under the purview of labour rights and not human rights. In 2016, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association criticised the “artificial distinction” between labour and human rights, saying “Labour rights are human rights, and the ability to exercise these rights in the workplace is prerequisite for workers to enjoy a broad range of other rights, whether economic, social, cultural, political or otherwise.”<sup>9</sup>

### **Women's movements**

Women's movements in India have evolved as issue-based and heterogeneous movements. These movements have over time incorporated different issues, weaving together a holistic understanding of discrimination faced by women in the socio-economic and political spheres and at both macro and micro levels. It is generally understood in three distinct time periods or “waves” (Shah and Gandhi 1992). The first wave can be said to have begun with the mass mobilisation of women during the Indian Independence Movement prior to 1947. After Independence, for over a decade, there was a lull in political activity by women. The period from the late 1960s was the second wave, with a resurgence of political activity. In Maharashtra, the United Women's Anti Price-Rise Front, formed in 1973 by socialists and communists, rapidly became a mass women's movement for consumer protection. The movement spread and linked up with the students' agitation against corruption in Gujarat, and became a massive middle class movement, which soon shifted its focus to an overall critique of the Indian State (Kumar 1993). Brutal police repression and the declaration

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<sup>9</sup> See <http://freeassembly.net/reports/workers-rights/>

of the National Emergency in 1975 crushed the struggle.

The third wave had a specific feminist focus. There was the growth of the 'autonomous' women's groups in towns and cities in the 1980s, without party affiliations or formal hierarchical structures, although individual members often had party connections. However, feminists within autonomous groups pointed out that left parties and trade unions were as patriarchal as other bodies and so it was necessary to stay independent while allying on a broad platform. These new city-based groups dominated feminist campaigns during this period. There were nation-wide campaigns on dowry and rape, and women's resource centres were set up in several cities (Kumar 1993).

Taking this notion of 'waves' into the late 1980s and further, we may note the emergence of a new feature, which transformed the landscape of the women's movements. This was the large-scale availability of funding, both from the government and international sources. Hereafter, many 'autonomous' groups became funded non-governmental organisations and got co-opted by donor driven agendas. Since the 1980s, there has been a large-scale co-option of feminist rhetoric by the state and 'empowerment of women' is a slogan commonly used in government documents.

This growing statism and NGO-isation of the women's movements has been noted within the movement itself, often leading to contentious debates. In the 1990s, another feature of significance was the formation of a common platform, which emerged at the national level with the women's wings of national level political parties as its members. It comprised of the All India Democratic Women's Association, All India Women's Conference, National Federation of Indian Women, Mahila Dakshata Samiti and three national level women's organisations, i.e. the Young Women's Christian Association, the Joint Women's Programme and the Centre for Women's Development Studies. They formed the seven sisters of the women's movement. This collaborative effort has gone a long way in bringing issues like the Bill on reservations for women in Parliament to the forefront (Menon 1999; John 1996).

The women's movements have consciously created space for discussions and debates on varied issues: discrimination against women (manifested in female foeticide, female infanticide, low sex ratio, higher level of illiteracy); violence against women (e.g. child marriage, dowry, sati, custodial rape, rape/sexual assault, domestic violence, killings in the name of honour, communal violence, state induced violence); articulation of dissent against policies adopted by the state (the period of Emergency 1975-77, population policies, policies of globalisation, liberalisation, development projects which led to massive displacement, state led communal violence/riots, mass incarcerations of civil rights activists, impunity given to perpetrators of violence); political participation in various people's rights movements and reservations for women in local governing

bodies and parliament; basic rights (right to live, shelter, water, food, health, reproductive health, and work). The movements fought for women's right to property, inheritance, custody etc.

In the 2000s and in the present times women's movements have grappled with questions regarding forms of organising, leadership within the movement, regional grass roots movements organising dalits, disabled, queer, muslims, young women, domestic workers, and sex workers. The discourse shifted from that of violence against women to gender-based violence. The notions of consent, coercion, and state as a dominant, oppressive, patriarchal perpetrator have been constantly in the forefront of debates within the movement. Many of the issues within the movement had intrinsic linkages with demands for legislative changes over the years.

The issues linked to women in the world of work and right to work has also seen many distinctive struggles over the years,<sup>10</sup> however the interventions have been sporadic and issue based rather than being taken up in a sustained manner.

Overall though the women's movements provided intersectional feminist frameworks and scholarship to understand the nuances within the political paradigm of women and work in India, the movements have not been able to critically capture the issues of working class women and their struggles or play a role in such struggles.

### **Trade union movement**

In India 'Bombay Mill hands Association' was formed in 1890 and the first organised union (Madras Labour Union) was formed in the textile industry in 1918 (Singh 1934). The pre-independence period saw various struggles by the working class in general and textile workers in particular (Bipan et. al. 2016).

The significant development in the trade union history of India is the formation of the All India Trade Union Congress (AITUC) in 1920. AITUC led the way for many other peasant and worker unions to emerge. This union had the backing of the then Congress Party, left and other political ideologies. The leaders and members of the AITUC were also from various political ideologies. The major split in the trade union movement took place in 1970, when Centre for Indian Trade Unions (CITU) was formed by the Communist Party of India-Marxist (CPI-M) (Bipan et.al. 2016). Since

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<sup>10</sup> Some of the issues are linked to women workers in the unorganised sector; migration and women's work; questioning stereotypical role of women as 'secondary earners' and gender roles in different sectors (private sector/ public sector/state/ market/household) and their interlinkages; critique of globalisation and structural adjustment policies; inclusion of women's work in national data accounting; demand for equal pay, minimum wages, equitable terms and conditions of work, maternity benefit, provisions for crèches, right to organise and collective bargaining; accounting for and redistributing women's unpaid care and domestic work; and struggle against sexual harassment at the workplace.

then major central unions have emerged, mobilising workers while protecting and promoting their interests: Bharatiya Mazdoor Sangh (BMS); Indian National Trade Union Congress (INTUC); Hind Mazdoor Sabha (HMS); All India United Trade Union Centre (AIUTUC) – formerly UTUC (LS); Trade Union Co-ordination Centre (TUCC); Self Employed Women’s Association (SEWA); All India Central Council of Trade Unions (AICCTU); Labour Progressive Federation (LPF); United Trade Union Congress (UTUC); and National Front of Indian Trade Unions – Dhanbad (NFITU-DHN). There was also the emergence of regional trade unions affiliated to regional political parties: Labour Progressive Federation (LPF) by Dravida Munetra Kazhagham (DMK) and Anna Tholizhalar Sangan by All India Anna Dravida Munetra Kazhagham (AIADMK) in Tamil Nadu and the Bharatiya Kamgar Sena of Shiv Sena in Maharashtra (Bhowmik 2009).

There has been evidence of the trade union movement in India being overtly driven by political agendas of the political parties, which have led to growth of independent labour unions and NGOs that work for labour welfare for workers in unions without political affiliations (Sinha 2002). Furthermore traditional unions have discriminated in terms of caste, communal and religious grounds with low representation of women and absence of women’s issues as part of the agenda and struggles of the labour movement. The situation is the same for Scheduled Castes and Scheduled Tribe workers in the organised sector national trade unions. The issues pertaining to women workers taken up by unions have been restricted to the right to maternity benefit, provision of crèche, night work for women workers etc. (Bhowmik 2009).

The Self-Employed Women’s Association (SEWA) formed in 1972 is a trade union of women workers (home-based, self-employed) working in the informal/unorganised sector of the Indian economy. The garment industry also has a large population of women engaged in home-based piece rate work. SEWA works in 10 states in India, and over the years has influenced policies, norms, and practices at the local, national, regional, and international levels. It is a pioneering leader of the international labour, women’s rights, and microfinance movements, and is a member of the International Trade Union Confederation (ITUC) (Chen et al 2015). In international policy discourse, SEWA played an important role in formulation of the ILO Convention on Home-Work in 1996.

In the garment sector, in terms of collective bargaining, trade unions are rare within the factories, and the atmosphere within the workplaces are not conducive to organising as there is rampant and summary dismissal of assertive workers involved in trade unions. Additionally, in Delhi NCR due to the dominance of contract workers, and hostility of employers and state governments towards union formation, unionisation of garment workers has been particularly difficult. Also research points

out low levels of awareness among garment workers regarding trade unions (FWF 2016; ILO 2017a).

Historically in early days the garment sector mainly supplied to the domestic market. Neo-liberal economic policy changes in the 1990s paved the way for this sector to integrate with the world market. In fact, the Indian garment industry expanded at an unprecedented growth in the post-reform period, and is currently in the 7th position in garment export worldwide (ILO 2017a). This also brought major changes in the way labour was regulated (Ghosh 1996). New forms of flexible labour and contractual work along with migration have brought new challenges for trade unions. Traditional unions have hardly made inroads in the garment industry, where flexibility and labour informalisation makes it very difficult to organise them (Mezzadri 2012; Mezzadri et. al. 2015).

Though in general, there has been low density of unions in the garment sector across India, in a few clusters union activities are slightly better organised compared to others. In Bengaluru, independent unions such as Garment and Textile Workers Union (GATWU), Garment Labour Union (GLU), and Karnataka Garment Workers Union (KOOGU KGWU) along with India National Trade Union congress (INTUC) have been somewhat successful in organising factory workers (Ganguly 2013).

There have been newer forms of unions that have been successful in organising garment workers. Since, there is a hostile environment in the factory spaces, they have initially established contact in workers residential areas rather than the workplace. To attain new members, GATWU has changed its older strategy of direct efforts of unionisation (e.g. talking to women outside the factory gates or locating them in their homes) to locating women leaders on shopfloors who in turn communicate the importance of collective action to other women workers (Roy Chowdhury 2018).

In Bangalore, some unions started with helping workers to form self help groups to get micro finance. Then they went on to address issues like domestic violence, housing and education. Later after the establishment of contact and earning the trust of the workers, they were unionised to form GATWU. Garment and Fashion Workers Union (GAFWU) has instituted similar strategies in Chennai. They establish contact through various legal awareness campaigns on workers rights such as housing, basic amenities and even labour rights (Gross 2014). Once workers become union members, the union's work with them focuses on labour issues. These unions directly contact international pressure groups and networks to implement labour rights within the local manufacturing units along with state, labour departments, and courts when such issues arise. Large numbers of women workers are part of these unions due to

their special focus on women's needs at both factory and community level (Mezzadri 2012).

Unions have been actively engaged in struggles and campaigns on issues of minimum wages, unfair labour practices, sexual harassment at workplace, issues associated with wage theft – late payment, pay-slips not given, incorrect payment of overtime, non-payment of wages, wages not paid according to workers' skill, illegal deductions (e.g., Provident Fund and ESI deducted but not deposited, women paid less than men) (Asian Floor Wage Alliance 2014).

Evidence shows that the most effective way to counter retaliation on filing of sexual harassment complaint is formation of trade union so that workers together can face the consequences (Kashyap 2019). For instance, in 2019 the police were forced to register a case of sexual harassment in Bengaluru, after 200 women workers of the Export Apparels LLP launched protest along with the intervention of Karnataka Garment Workers Union (KOOGU KGWU). Prior to this many other cases of complaint filed by the women workers of factory against sexual harassment were ignored. However, in this case, a case was registered against the General Manager “under Sections 506 (criminal intimidation), 504 (intentional insult with intent to provoke breach of the peace), 323 (voluntarily causing hurt) and 354 (sexual harassment) of the IPC” (The Hindu 2019). Further, to prepare workers against sexual harassment, unions have taken help of NGOs to train the workers. There is also a feeling among the union leaders that women supervisors may help in reducing sexual harassment. This is especially important in the garment industry where three quarter of the workers are women in southern India and less than a quarter of the workers are women in northern India.

In Tirupur, central trade unions have been successful in negotiating minimum wages for the workers and initiatives like the Tirupur Tripartite Trade Agreement 2007-2010 provided for staggered wage increases (LIPS Sedane et. al. 2015). However, implementation of these wage agreements has been patchy. Internationally unions such as International Trade Union Confederation-Asia Pacific (ITUC-AP) have raised gender issues and specifically the issue of sexual harassment in the global supply chain and have played an important role in advocacy efforts towards campaigning for the passage of ILO convention 190 on violence and harassment in the world of work for women workers.

In the garment sector, there is a massive disparity in living wages estimated by the Asia Floor Wage Alliance (AFWA), the minimum wages set by the Centre, those assigned by the state (FWF 2019) and what the workers eventually receive as wages. The AFWA consists of trade unions, NGOs and labour rights activists from different garment exporting countries in the Asia region. The AFWA has established one figure

of wages in Asia based on purchasing power parity. The floor wage has to be calculated for the family as a unit. Living wage is to support workers and their families enjoy human rights to food, housing, education, and clothing, social security and gain economic independence. Using a common formula based on consumption needs, AFWA has determined an industry-wide living wage for garment industries keeping these in mind: 50 percent of the wages to go towards food (based on 3000 calories a day for every adult), 40 percent on housing, clothing, travel, children's education and healthcare expenses, 10 percent towards leisure and savings (AFWA 2017).

These initiatives have shown slow progress but are important in building up resistance and challenge against the longstanding as well as evolving structural inequities of the global supply chain.

### **Human Rights Movement**

In India the human rights movement finds its inception during the Emergency era of 1975-77, which saw large-scale state led regressive policies (population control) and curbing critical thinking as well as culture of protests by unwarranted detentions and arrests. This was also the time when civil liberties organisations like the People's Union for Civil Liberties (PUCL) working around issues of human rights violations, mobilising public opinion by mass demonstrations and using the legal machinery to fight for the rights of the marginalised came into being. At the national level the PUCL, People's Union for Civil Liberties and Democratic Rights (PUCLDR) and Chhatra Yuva Sangharsh Vahini were leading the struggle on human rights and civil liberties.

There was a split in PUCL in 1981 and the People's Union of Democratic Rights (PUDR) was formed, working on issues of human and civil rights, access to equitable resources, gender equality, rights of political prisoners, peasant communities, as well as caste and communal oppression. The Coordination of Democratic Rights Organisations (CDRO), formed in 2007, a coalition of around 20 civil and democratic rights organisations from across India, worked on issues of unlawful arrests of human rights defenders, police brutality, and repeal of draconian laws used by the state machinery to repress the civil rights movements and voices of the marginalised.

In India in the last few decades have witnessed human rights violations specifically targeting the most vulnerable and marginalised (poor, Muslim, Dalit, disabled, women, Adivasis, children, sexual minorities etc.) communities. The issues have been intrinsically linked to identity politics and human rights violations, suppression of freedom of expression, forced displacements, custodial violence, unlawful detentions, censorship, bodily integrity etc.

Some human rights and civil liberties groups have worked on specific issues of workers' rights. In 1982, the iconic ruling by the Supreme Court came in the case of *People's Union for Democratic Rights Vs Union of India* whereby the Court ruled that payments made to workers lower than the minimum wages should be considered as "forced labour". Force is also interpreted as exploitation faced by workers from weaker economic backgrounds who have no choice but to be engaged in such work arrangements. In the garment industry, one of the examples of forced exploited labour of young girls has been the workers engaged under the Sumangali scheme in Tamil Nadu. Young girls in the age group of (14-21) years are recruited (from various districts of Tamil Nadu and neighbouring states from marginalised communities) by contractors from villages to come to cities to work in factories for a fixed contractual period often three years and a lump sum amount of money is paid at the end of that period usually amounting to INR 30,000-50,000. This money is to be used for purposes of dowry hence the name 'Sumangali' meaning 'soon to be married young girl'. The exploitation the girls face range from withheld payment, forced labour, violence and restriction on movements etc. Under Indian laws they are supposed to be apprentices and not be given overtime, however these young workers are made to work 12-15 hours in a day (ILO 2017a).

The PUDR through various fact finding reports and campaigns has consistently raised awareness on workers' rights and working conditions.<sup>11</sup> In the garment industry of Bangalore in the context of widespread human rights violations and abuses many activists, civil rights groups and human rights groups have come with a fact finding report "Production of Torture" in 2016. This is one of the reports which has brought the harsh realities of the women workers in shop floor especially with regard to prevalence of sexual harassment at workplace and extremely challenging conditions of work.

While the judicial battles and fact-finding reports are extremely important contributions and solidarity in the struggle for labour rights, joint campaigns and struggles may help in elevating and amplifying fights for labour rights and result in meaningful change.

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<sup>11</sup> For example, see <https://pucl.org/articlelist/Working%20Class/press-statements> and <https://pucl.org/articlelist/Working%20Class>. On the garment industry see, (i) <https://pucl.org/tailor-made-lives-accidents-and-discontent-among-garment-industry-workers-udyog-vihar-haryana>, (ii) <https://pucl.org/trapped-death-deaths-fire-garment-factory-vishwas-nagar>, (iii) <https://pucl.org/behind-label-condition-leather-garment-workers-delhi>, (iv) <https://pucl.org/workers-death-and-working-lives-accident-virgo-washing-co-okhla-industrial-estate>, and (v) <https://pucl.org/sites/default/files/2019-02/Resources%20of%20hope-fashion%20team.pdf> For PUCL, see <http://www.pucl.org/sites/default/files/PUCLmay2017.pdf>, & <http://www.pucl.org/press-statements/pucl-condemns-unjustified-cancellation-1g-workers-union>.

## Section 4: Challenges and gaps

India has officially entered recession with human development index – 130 of 189 countries (UNDP 2018); Gender Inequality Index Rank – 127 of 160 countries (UNDP 2018); Global Gender Gap Index – 108 of 149 countries (World Economic Forum 2018) and Labour Force Participation rate for women consistently declining from 31.79 percent in 2005 to 20.33 percent in 2020 (World Bank 2021). These indicators, along with rising rates of gender based violence, are important to foreground before we map out some specific challenges of the garment sector and the issue of women and work.

The nature and structure of the garment industry defines the precarious nature of work characterised by no *employee-employer* relationship, extremely exploitative conditions and terms of employment, weak trade union associations, no social security benefits, non-existing safety and occupational health provisioning. The regime of labour laws and protection of workers' rights are not applicable to this segment of the workforce (barring some provisions). In addition to this the caste, kinship, class regional dynamics influence recruitment of piece rate workers through corrupt and non-transparent contractors. The prevalence of violence at workplace in factories has been established in the last decade through numerous fact-finding reports and research studies. The vulnerabilities of women workers linked to violence is not restricted to the workplace but is experienced in everyday levels of violations and gender based discrimination in transit to work, at work, at home and in communities.

Issues of violence and work for women in the world of work cannot be tackled only through the lens of legislative reforms. There is a need for an intersectional lens of initiatives, which are tackling the issues but not restricting the interventions at the factory level. Since gender-based discrimination is all pervasive within the structure of the state, market, communities and families it is important to undertake an integrative model of interventions where women factory workers themselves come up with what works to address the issue of sexual harassment at the workplace. Oftentimes interventions and initiatives are driven by a narrow focus of tackling the issue at the factory level without getting into the root cause of the problem.

Due to the nature of the industry collective bargaining and women's participation in trade unions especially within factory setups have been limited. The national trade unions only recently have taken up the issue of women's representation within unions and it was only in 2017 that AITUC elected its first female general secretary after many years of struggle to make unions more inclusive to voice specific concerns of women workers.

In 2016, demonetisation of about 86 percent of common currency was announced by the government to ostensibly address issues of money laundering, black money and terrorism. This put the small and medium factories, specifically those that paid workers in cash in very challenging situations. The Centre for Monitoring of Indian Economy (CMIE) published its survey in 2018, presenting three grim findings: at least 3.5 million jobs were lost; labour force itself shrank by 15 million; women, an already vulnerable part of the workforce, were worse hit than men (Surjewala 2018).

COVID-19 is a health and humanitarian crisis with specific social, economic impacts, which the most vulnerable communities have been subjected to. The gendered impact of high unemployment rate, growing economic recession (Wearden and Jolly 2020), lack of water, sanitation, burden of unpaid domestic and care work along with risks of domestic violence, has been evident under COVID-19. Several countries globally have reported increased cases of domestic violence and the United Nations has called this phenomenon the “shadow pandemic” (UN Women 2020).

The World Health Organization declared COVID-19 a pandemic on 11 March 2020 (Cucinotta and Vanelli 2020). Globally, 1.6 out of 2 billion people working in the informal economy have been impacted by the COVID-19 crisis (ILO n.d.). Along with the challenge of loss of work/livelihoods, poor households struggling with poverty and survival issues are unable to adhere to the directive of "social distancing" as they live in overcrowded conditions. India has seen the largest numbers in reverse migration of labour due to job loss and sudden lockdowns, leading to deaths and harsh consequences (Nair 2020). An economic package was announced by the government, however workers in the unorganised sectors were the worst hit as most of them have lost their jobs and livelihood options.

For daily wage earners, as lockdown proceeded, work was scarce. This is further pushing the vulnerable workers towards more social and economic disparities. A study conducted by the Society for Labour and Development (SLD) in 2020, with telephonic interviews of 100 garment workers in Delhi NCR and Tirupur, Tamil Nadu during the lockdown found that “of the 100 workers, only 19 received any payment either in the form of encashing earned leave or advance payments – made on condition that the payment will be deducted from the overtime work that the workers will undertake in future”. The government has set up digital payment systems, however this has had operational challenges.

The global garment sector has been facing the adverse impacts of the COVID-19 on lives and livelihoods. India experienced a 57 percent drop in wages in the garment industry (ILO 2020). Apparel brands are cancelling or postponing orders and delaying payments leading to suppliers laying off or suspending workers without benefits. Output losses and insufficient liquidity in many sectors have created a high risk of large-scale layoffs (FWF 2020).

## Section 5: Recommendations

*“A more holistic approach is required: from employers changing their systems; brands to consider the impact of purchasing practices (and use influence to support supplier capacity building and public policy change); governments to effectively legislate and enforce (in line with provisions of recent ILO Convention 190); unions to be given freedom of association, with women well represented; employers and governments held accountable and action taken to engage men and boys and address social norms in communities” (Morris et. al., 2019).*

### For Management

- Enforce a zero-tolerance policy on verbal abuse, threats, sexual harassment and all forms of violence at work
- Create a violence free and safe environment for women in factory floors along with compliance with labour laws towards decent work with equitable terms of employment and conditions of work for women
- Training with all stakeholders (management, supervisors, workers) within the factories on how to address sexual harassment
- Train members of the Internal Committees and also ensure trainings for all workers is conducted on a periodic basis not on one time basis
- Integrate members of the community in initiatives at the factory level to address sexual harassment at workplace
- Effective monitoring of the POSH Act by defining responsibilities for monitoring and method of conducting compliance audits and ensure proper functioning of Internal Committees
- Create Action Plans for monitoring compliance as well as plans to help women cope with sexual harassment at workplace (Sisters for Change and Munnade 2016)
- Extend the period of filing complaints beyond three months (as stipulated by the law) to six months (FWF 2019)

### For Brands

Campaigns to ensure brands' and suppliers' accountability in aligning with human rights of workers in the global supply chains

- At the factory level ensure better management systems and processes to respond and address issues of workers in addition to the issue of sexual harassment
- Code of Conduct to be drafted with regard to behaviour at work and terms and conditions at work

## For Research Institutions

- Evidence based research studies on non-compliance of labour laws within organised/informal/unorganised sectors in India, women's role within factories as part of trade unions towards collective bargaining on various issues of women and work
- Evidence based research studies on violence and harassment so that the effectiveness of impact of initiatives can be measured and evaluated

## For Governments

- Ratify the ILO Convention 190 on violence and harassment, 2019 and take steps towards effective implementation of the POSH Act especially in the unorganised sector
- Treat cases of sexual harassment at workplace as a labour rights and a human rights issue along with it being a women's right issue. As per the law the Ministry of Women and Child Development is the implementing body for this law, however there has to be effective convergence and functional collaboration with the Ministry of Labour and Employment with regard to redressal of cases
- Create a high level cross-ministerial working group for effective implementation of the POSH Act (Sisters for Change and Munnade 2016)
- For effective implementation of the POSH Act undertake a nation and state-wide audit of the Local Committees on their membership composition, types of cases handled, time taken to resolve each case, details of awareness raising campaigns, trainings on the POSH Act organised by the management
- Ensure effective functioning of the Local and Internal Committees by carrying out inspections, factory visits and providing remedies for the complainant
- Publish data on number of cases filed by the Internal and the Local Committees and resolutions undertaken to resolve them
- Generate adequate budgets and infrastructural support for effective functioning of Local Committees as mandated by the POSH Act
- Additionally towards awareness generation the government should document the composition, nature of complaints received and action taken
- Workers should be guaranteed their right to organise, factory management should recognise established trade unions and be ready to engage with them in social dialogue and collective bargaining (ILO 2015)
- Trainings on effective implementation of the POSH Act can be done by National Legal Services Authority (Sisters for Change and Munnade 2016)

## Learning from Best Practices

Fear Wear Foundation is engaged in several programs to address the issue of sexual harassment at the workplace. Women's Safety at Work is an online platform that uses data from projects in India and Bangladesh to identify key risks faced by women garment workers which often leads to workplace violence. The platform also lists

measures to help improve women's working conditions such as the creation of anti-harassment committees (FWF n.d.).

In 2011, the *Preventing Workplace Violence* project was launched as a partnership between Indian and Bangladeshi garment factories, European clothing brands, governments, civil society organisations and trade unions in Europe and Asia piloting new ways to address and redress causes of workplace violence. The first step of the program was to fully implement laws on preventing violence against women in the workplace in garment factories with the help of local NGOs in both countries. The initiative showed positive outcomes – factories are allowing training for workers and all levels of management on the importance of treating women better, several anti-harassment committees and telephone helplines have been established, more women are speaking up about the issues they face and factories are responding to these issues. Apart from this, all workers can also use Fair Wear Foundation's 24/7 hotline that receives complaints from workers and third parties on violations of any of the Code of Labour Practices. Training of workers includes: knowledge on how to use the systems provided for by law, outline of anti-harassment laws and information on helplines. Training is also given to senior management to explain the project, secure their buy-in and explain how a functional complaints process can lead to lower worker turnover and better productivity. Local NGOs and trade unions provide support and counselling when needed (FWF n.d.).

Adoption of learnings from best practices such as legally binding agreement in Lesotho garment factories to end gender based violence by including independent organisation/body to investigate issues, provide remedies, creating a code of conduct for systems for reporting abuse, involving garment workers in creating, implementing and monitoring the code (Connell 2019) should be referred to. In addition to this lessons from initiatives by Sisters for Change and Munnade (legal capacity building with women garment workers and union members); Collaboration of Fair Wear Foundation, CVN International, Mondial FNV (partnership for transformation for garment supply chains); BSR Her Respect initiative building skills and awareness of workers and managers); IndustriALL (supporting unions on strengthening processes and trainings) should be used for further work and advocacy to address sexual harassment at workplace (Morris et. al. 2019).

The Apparel Export Promotion Council (AEPC) and Marks and Spencers initiated their program "POWER" on gender equality, workplace training for women factory workers with an element on sexual harassment at work, grievance redressal as well as required compliance institutional mechanism in factories as per the POSH Act 2013 (Perfect Sourcing 2019). The STOP model developed by CARE Cambodia with support of the Australian government promotes organisational changes in factories to better respond and prevents sexual harassment. The Cambodia *Made by Women* and

*Better Work* is working towards promoting gender equality in the garment industry. Since 2016, CARE's *Made by Women Initiative* ensures decent work and violence free rights at work for women workers in the garment industry (CARE 2019).

Other initiatives on skill training and sustainable employment in the value chain by UN Women and Welspun India (access to clean drinking water to garment sector workers); CARE Water.org and the Institute for Sustainable communities (finance digital wages program to influence the way in which women factory workers receive their wages and change family dynamics); Business for Social Responsibility's HER finance (program on life skills, technical training and support in workforce and procedures to support women in the global apparel industry); Personal Advancement and Career Enhancement – P.A.C.E. of GAP Inc. (build agency of women workers in collaboration between brands, suppliers and NGOs), ILO's Better Work initiative (PS 2019) are also noteworthy. These initiatives focus on prevention rather than response to violence and women in the world of work. Many of these organisations are part of the *Empower@Work* collaborative (CARE 2019) to advance economic empowerment of women workers along with bringing about changes in gender sensitive business practices within the policy discourse.

## Section 6: Conclusion

*Sexual harassment is a constant feature mentioned by many women workers, from vulgar and insulting comments, to unwanted touching and beating.*

– AFWA (2014, p. 90).

The prevalence of systematic exploitation, harassment, coercion, sexual harassment, punishment, and humiliation of garment workers is evident from several fact finding reports. The documented evidence of adverse conditions of work, terms of employment and precarious nature of work co-exists with labour regulatory mechanisms and legislations which are fraught with implementation challenges in India. These challenges mostly pertain to inability towards effective enforcement, unwillingness of employers to comply, low levels of unionisation of women workers, inconsistencies and labour insensitive provisions within the labour codes recently introduced.

In India the issue of sexual harassment at workplace and in the world of work for women is not addressed by labour inspection regimes of labour laws which fall under the purview of the Ministry of Labour and Employment. There is a need to include provisions as per the POSH act (currently within the purview of the Ministry of Women and Child Development) within the labour regime for adequately creating safe environment against violence and harassment as underlined by ILO Convention 190.

The larger structural issues such as drivers of declining workforce participation for women; regressive gender norms reflective of misogynist patriarchal societies, families, state policies; migration, kinship ties linked to exploitative terms of wage employment; negotiating child birth, unpaid domestic and care work have governed the complex multi-layered realities of women workers. Evidence shows that the violence experienced by them at the workplace is an extension of the violence at the household level and within communities.

It has taken decades of scholarships, struggles, campaigns and protests from several movements to establish and recognise women as workers and issues of women at work within the often gender blind designs of policies and labour legislatures in India.

It is important to contextualise the issue of violence in the world of work for women workers through the intersecting lens of labour rights, human rights, and women's rights. Keeping the women garment workers at the centre of interventions, brands, employers, trade unions, governments, multilateral bodies, and funders should engage in dialogues and collective actions to be able to design effective strategies which specifically address the issues of working conditions, terms of employment, freedom of association and collective bargaining, harassment and sexual harassment in the world of work.

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