Workshop on ILO Instruments on Ending Violence and Harassment in the World of Work

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Cividep India
Workers' Rights & Corporate Accountability
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1. INTRODUCTION AND OPENING REMARKS

The workshop began with a round of introductions of the organizers and individual participants. Cividep’s work across different sectors including the garment, electronics, leather and plantation sectors was briefly discussed. Details of Cividep’s experiences of working with garment factory workers in Bangalore were shared, along with the challenges faced in relation to addressing violence and harassment issues at the workplace, including the fact that a vast number of sexual harassment cases go unreported. The gaps in implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was brought up in this context. The significance and possible ramifications of the proposed reforms to the labour law regime was also highlighted.

The workshop was divided into four sessions, intended at discussing and exploring the implications of the proposed instrument(s) from the perspective of various stakeholders. There was representation from trade unions, civil society organizations, former government officials, multi-stakeholder initiatives (MSIs), academics, and activists, from different parts of the country. The sessions were designed as panel discussions, each of which was followed by a brief round of questions and comments from participants.
2. SESSION 1: OVERVIEW OF ILO MECHANISMS AND THE PROPOSED INSTRUMENT

The initial session consisted of an overview of ILO mechanisms and the formal processes involved in their functioning. The speaker, a trade unionist who had been involved with the proposed instrument(s), began by clarifying the distinction between Conventions and Recommendations. She briefly described the tripartite consultative process whereby an Instrument is tabled at the outset for consideration, following which a draft is prepared on the subject and shared for comments. A final draft of the Instrument is then prepared for the annual International Labour Conference (ILC), where ratification by 2/3rd of the members makes it a legally binding Convention, while Recommendations serve as broad guidelines which are not open for ratification and therefore not binding on member states.

The various stages of development of this particular Instrument were then traced, with the nuances and arduousness of the negotiation process also being highlighted. In Oct-Nov 2015, the Instrument was first tabled as an agenda item on ‘violence against women and men in the world of work’ during the 325th session of the ILO governing body. Reference was made to the SDG 8.5 (promising full and productive employment and decent work), which served as a background to the whole process, and in shaping the physical, psychological and other aspects of violence and harassment sought to be covered by this Instrument.

In a meeting of experts during the 328th session of the Governing Body in Oct-Nov 2016, the word ‘harassment’ was incorporated into the title. Some key issues that came up over the course of consultations, during evolution of the White Report to the Brown Report, and finally to the Blue Report for the upcoming ILC in June 2019, were brought up. Inclusion of different categories of workers from formal/informal sectors, from public/private enterprises, inclusion of sexual minorities and other vulnerable groups such as migrants, domestic workers, etc., was also addressed during the consultative process. The use of the phrase ‘world of work’ in the draft Instrument was a point of contention, with employers’ representatives preferring the word ‘workplace’. The original phrase was retained, in order to ensure inclusion of different categories of workers regardless of employment type/status, and to maintain a broad interpretation of what constitutes a workspace or ‘during the course of work’. Concerns surrounding monitoring systems, effective redressal mechanisms and clarity of rights of different stakeholders, were also highlighted.
3. SESSION 2: RECENT DEVELOPMENTS, BROWN AND BLUE REPORTS: PANEL DISCUSSION

The panel discussion explored recent developments relating to the Instrument in the Indian context, while focusing specifically on the key changes that had been incorporated into the recent Blue Report from the previous Brown Report version in 2018. The stance of the Indian government and of prominent trade unions, and the various obstacles and issues that came up during deliberations on the Instrument, were also summarized.

The session began with a trade unionist speaking about the lack of a proper consultative process between the Indian government and trade unions before going to the ILO, with representation of different trade unions being inadequate. A problematic issue was the stance of the government that domestic violence could not be included within the sphere of workplace violence. Another panelist representing an NGO, emphasized the significance of the Convention and Recommendations for trade unions across South Asia, given that participation of South-Asian governments in ILO processes has historically been quite low. The issue of gender-based violence was brought up through a short info-graphic video, which highlighted the huge number of working women across South Asia. The video addressed a few salient features of the proposed
Instrument, such as equating violence/harassment at the workplace to human rights violations, the use of the phrase ‘world of work’ being a major point of contention, and clarifying what constitutes gender-based violence. Some of the changes introduced in the Blue Report from the Brown Report were highlighted, such as incorporation of work-related communications enabled by information and communication technology, which was missing in earlier drafts. The scope of applicability of the Instrument has been widened in the Blue Report, with the phrase ‘so far as practicable’ being added to ‘when commuting to and fro from work’. This aspect had left a lot of scope for interpretation in earlier drafts, and limited the applicability and coverage of the instrument. Some issues of concern that remain were pointed out—such as the absence of a clear definition of employers, placing the burden of proof on the perpetrator(s) keeping in mind power hierarchies in the workspace, lack of time limit for implementation by member states, and lack of statistical data across different sectors to inform policy direction and focus.

Another trade unionist on the panel commented on how worker interests have gradually been compromised since 2008 within the ILO. It was pointed out that governments remain the most important perpetrators of violence on employees/workers, with a recent example of police intervention on a workers’ strike at a Daikin factory in Neemrana, Rajasthan being cited to illustrate this point. In that case, the police had declared the strike to be illegal in Neemrana, Rajasthan being cited to illustrate this point. In that case, the police had declared the strike to be illegal by classifying the manufacturing of air conditioners at the factory as a ‘public utility’, in order to bypass the legal framework prescribing that trade union activity and industrial disputes cannot amount to a ‘criminal offense’. Some of the issues discussed and unanimously agreed upon by the central trade unions, in relation to the Instrument, were then listed. The incorporation of domestic violence within the scope of Article 2, the inclusion of ‘workplace-related matters’ under the definition of workplace (to cover situations such as violence in public spaces by management-hired thugs, for instance) in Article 3, and the removal of Article 4 altogether on grounds that it provides scope for misuse in listing out victims and perpetrators, were brought up. Regarding monitoring mechanisms and collection of data, it was pointed out that Article 7 must include pregnant women, and prevention mechanisms must include ‘law enforcing machinery’, and Article 10 must specifically include within its ambit public authorities and state agencies, while imposing and clarifying obligations with respect to enforcement.

It was suggested that inspection mechanism in the informal sector should be included in the Instrument. In this context, reference was made to the proposed labour reforms and the move towards abolishing the inspection regime and introducing self-certification by companies for enforcing compliance with law. It was emphasized that trade
unions have been strongly opposing this move, and clarified the stance of the ILO office in India on this subject, that labour laws could be reformed or amended only so long as they do not violate ILO Conventions. The requirement of inspection with and without notice, as per the Labour Inspection Convention, 1947 (No.81), cannot be contravened by national laws. Recent examples of industrial accidents in the Delhi-NCR region were cited, to make the point that industrial accidents should also be covered within the Instrument. The issue of burden of proof being historically on the victim in cases of workplace harassment was reiterated, and it was suggested that the clause should be removed. The strategy often employed by companies to transfer employees as punishment, or simply to brush a complaint under the carpet without scope for redressal, was highlighted and it was proposed that temporary or permanent transfer of employees should only be done with consent of the victim. The speaker concluded by opining that a strong workers movement would be the predominant factor in changing the status quo. The session concluded with an advocate on the panel suggesting possible strategies, such as organizing ‘trigger days’ for ensuring an effective campaign to protect interests of especially vulnerable groups, such as domestic workers, for instance.

3.1. Comments/Q&A

1. It was pointed out that the current inspection mechanism is also plagued by systemic issues of corruption and bribery, and ineffective implementation. There is a need to address these gaps if inspection system is to continue.

2. Possible overlap between the proposed Instrument and existing laws relating to domestic violence in India was discussed, along with whether the gig economy and multinational companies are included within the proposed Instrument.

The panelists responded that the proposed Instrument would apply to multinational entities as well, and could operate alongside and in addition to the Domestic Violence Act of 2005.

3. It was suggested that the aspect of ‘humiliation’, perpetuated over a sustained period, should be incorporated within the ambit of violence and harassment, to address the question of dignity that is covered under the Article 21 of the Constitution of India (Right to Life).

4. It was observed that in the ILO, provisions often get sidelined as Recommendations, or are left to be dealt with under the framework of ‘national law and arrangements’, to avoid binding obligations to be ratified by member states as part of a Convention.
The panel discussion delved into experiences of trade unions, and of former officials from labour authorities, in dealing with issues of violence and harassment across various sectors and regions in the country. The implications of the proposed Instrument on existing national legislation, and whether it could translate to meaningful impact for workers on the ground, were also addressed.

The session began a former government official sharing his experiences of dealing with employers in the plantation, brick kiln, and hospitality industries. Conditions of employment in these sectors are often deplorable, with various forms of harassment and violence being commonplace. Workers are often placed in situations of semi-bondage in the plantation and brick kiln industry, working for years on end at extremely low wages without any entitlements/benefits or job security. Specific reference was made to a case where employees of a renowned club in Bangalore, who worked as caretakers for race horses, were routinely beaten up and verbally abused as a matter of course. Examples were cited as well, of exploitative working and living conditions for hotel workers, among others. The lack of significant sanction/punishment for employers who dismiss workers without justifiable cause was highlighted. The landmark case of Shambhu Nath Mukherjee was cited as an example of the inequity and power imbalance that characterize judicial mechanisms in this country. In that case, an individual workman who had been ‘automatically struck off the rolls’ by the management, had waged a losing battle
for twelve years at various levels of court, and was already deceased when he finally got a favourable decree in the Supreme Court. Justice Krishna Iyer’s quote, that ‘the law barks at all but bites only the poor, the powerless, the illiterate, the ignorant’, was referred to in this context. Doubts were expressed that even if the proposed Instrument were to be ratified, it is by no means certain whether it would contribute to betterment of conditions for workers.

Another panelist, a former advisor to the government, spoke about how the proposed Instrument provides recognition to the universality of violence and harassment in the world of work. On the question of ratification, past experience makes it likely that the Instrument will be ratified by the government, although a lot depends on the political scenario following election results. The historical trajectory and evolution of industrial relations mechanisms in India was addressed, with specific reference to the suggested scrapping of Chapter V-B of the Industrial Disputes Act, a move that did not see the light of day. It was then suggested by the panelist that the house send a recommendation to the government for adoption of two Conventions, namely the Right to Organise and Collective Bargaining Convention (No.98) and the Freedom of Association and Protection of the Right to Organise Convention (No.87), which have not been ratified till date by India.

A trade unionist closely involved with women working in Bangalore’s garment sector for over 15 years, shared that there is a lack of proper infrastructure to support collective bargaining, and it is common for worker-leaders to face targeting and harassment from company management, hired goons, and even police. Their own women-led union had received little support from mainstream trade unions during the initial days, facing various obstacles in organizing workers and negotiating with employers and government. The ineffective implementation of the 2013 Act on sexual harassment at the workplace was also brought up, and the fact that despite constitution of Internal Complaint Committees (ICCs), prescribed procedures are not followed during investigation. There is a significant gap between the law on paper, and actual implementation on the ground. There is also confusion on the extent to which responsibilities lie between the Labour Department and the Women’s Commission. Given these factors, and the prevalence of harassment faced by women at the workplace, the importance of the proposed Instrument cannot be understated.

Another panelist representing a central trade union, spoke about the increased relevance of the proposed Instrument, particularly against the context of the current political regime, as well as technological shifts and the move towards automation in various industries. It was suggested that national trade unions should make a concerted effort to push for adoption of Conventions 87 and 98, and work together with civil society organizations to ensure collective bargaining for all categories of workers across sectors.
Instances of sexual harassment rarely get reported, and justice is done in even fewer cases. Recent allegations against the former Chief Justice and against KPS Gill, and how the complaints were dealt with, were cited to illustrate this point.

An independent labour rights practitioner on the panel, then described her personal journey from being a trade unionist to becoming a legal representative for women workers, without being a lawyer herself. From her experience, she said that legislation is no replacement for organizing, and it is essential for trade unions to come together and assert needs of workers in a unified manner. The need for empowering workers to participate in organizing was stressed upon, seeing that most trade unions are still represented by lawyers, academicians, and NGOs. Given the complexity of bureaucratic processes within the ILO or even within the Indian government, it was suggested that national and international unions, along with civil society organisations, should be working at four levels. Firstly, within trade unions, a shift away from ‘tokenistic representation’ of women at the leadership level was suggested, towards ensuring higher participation and representation. Secondly, at the employer level, CSR could be utilized in pushing for higher proportion of women employees in the workforce. Thirdly, increased participation could be endorsed for at the political level through advocacy and mobilizing opinion. Fourthly, at the government level, greater accountability in implementation of laws should be pushed for, and it was suggested that the Ministry of Labour and Employment should not remain a state ministry but be made a union ministry.

4.1. Comments/Q&A

1. Concerns were expressed about terminology used and nuances of interpretation for international instruments. It was pointed out that terminology is often dominated and influenced by European experiences, and it is important to consider cultural and national contexts in understanding and applying these terms.

2. The need for sensitization and awareness of developments relating to the Instrument, among workers at the shop floor level, and within trade unions and NGOs, was also expressed.
SESSION 4: ACADEMIC AND CIVIL SOCIETY PERSPECTIVES ON THE INSTRUMENT: PANEL DISCUSSION

The final panel discussion incorporated perspectives of civil society, multi-stakeholder initiatives (MSIs) and academics, on the proposed Instrument. Topics covered included forms of violence and harassment within various levels of supply chains, focus areas that need to be prioritized, and strategies to address issues of gender-based violence as well as caste-based discrimination.

The session began with the moderator emphasizing the requirement for organizational and institutional changes at the ground level, for addressing issues of sexual harassment and gender-based violence. One of the panelists, an academic with a background in law and economics, spoke about the importance of jurisprudence and the need to understand mechanisms from the perspective of how a judge would interpret and apply laws. It was suggested that care-workers, and young workers between ages 14 to 18 years, have to be covered within legislative frameworks. A clear definition of what comprises ‘work’, and the need for monitoring by external agencies from civil society as is the case for child-related legislations, was also brought up. The fact that various important legislations are gender-neutral and hence limited in their scope was highlighted, and it was suggested that gender-specific provisions should be incorporated.
into industry-based laws and women-specific laws should be displayed on the Shram Suvidha portal.

Another panelist representing an MSI briefly introduced the strategies they employ in pushing companies and business associations towards improve purchasing policies, by supporting them in providing better conditions at the shop-floor level and within various rungs of the supply chain. While speaking about the work they do in training management and supervisor-level staff, the importance of adopting a balanced view between employers and employees to encourage companies to become members, and to recognize and combat violence and harassment at different levels of the supply chain, was expressed. The tendency for critical provisions often getting sidelined into Recommendations in the ILO process, was also highlighted. Another MSI representative spoke about strategies of working towards fair working practices, including running helplines for workers and acting as third-party investigators in instances of complaints. It was mentioned that brands are rarely serious about looking at different levels of supply chain management, with complaints usually taken up only by higher management. It is therefore important for lower tiers of supply chains to be transparent and accountable, and included within the scope of investigations. Given that targeting of worker representatives is quite frequent in the garment sector, the need for collective bargaining with a special focus on worker leaders, was reiterated. For adequate representation of women to be achieved, it was suggested that reservation for women should be made mandatory, and an approach of intersectionality be taken up for inclusion of sexual minorities within regulatory frameworks.

A representative from an NGO based in Tamil Nadu drew attention to the composition of workforce in the textile industry, and the reality that 60-70 per cent of workers are Dalits. This is a situation that emerged only in the 1990s, as previously Dalits were mainly employed in sanitation-related jobs within textile mills until the 1960s. The role played by caste dynamics in workplace discrimination was highlighted, and the fact that higher management is largely dominated by persons from upper castes. Reference was made to suicide rates among Dalits, often attributable to abysmal working conditions, and it was suggested in that context that ‘negligence’ by employers should be included within the purview of ‘harassment’.

5.1. Comments/Q&A

1. It was pointed out that factories usually do not recognize workers as ‘employees’, but instead as ‘contract workers’, ‘trainees’ or ‘students’. The discussion that followed addressed issues ranging from overemphasis on laws, with most factories having ineffective or dysfunctional internal grievance mechanisms, to the risk of backlash towards women for reporting cases of sexual harassment. The need for inclusion of women in supervisory roles on the shop-floor, and importance of training supervisors and building awareness among workers, also came up.
2. A couple of positive measures taken up in different states were brought up, such as the implementation of the ‘right to sit’ within the Kerala Shops and Commercial Establishments Act, as well as provisions allowing the Women’s Commission to conduct a public hearing for cases relating to sexual harassment, or the civil society to take suo moto action in registering complaints on sexual harassment in Tamil Nadu.

3. It was observed that it is often the case when an instrument is ratified in the ILO, implementation is largely left to enforcement agencies. The obstacles in implementation of laws was discussed in the Indian context, particularly given the difference between de facto and de jure in South Asian countries.

4. The relation between the trade union movement and the women’s movement was addressed, along with possible implications of upcoming election results and the problem of over-dependence on political regimes.

5. Towards the end of the session, the need for collaboration and building consensus among different stakeholders was emphasized, given that this is an issue that affects workers all over the globe. It was acknowledged that ensuring that provisions of the Instrument are effectively implemented, and translate to meaningful change for workers on the ground, would be critical.
6. CONCLUDING REMARKS

During the closing remarks by a speaker from Cividep, reference was made to a scholar Johan Galtung, who said that an expanded definition of 'violence' is required for an expanded understanding of 'peace', and peace is not just an absence of direct violence, given that social structures of race, gender, class, caste, and capital, act as a barrier towards the realization of an individual's potential. Invoking Foucalt, it was pointed out that the factory has always been a place of punishment and disciplining of workers’ bodies and minds. The present context is attributable to the receding of state from its responsibilities, the spatiotemporal design of work which is antithetical to organizing, and the all-pervasive culture of power, hierarchy and distance within the workplace. The need for organizing and effective representation among the workforce was reaffirmed, and forming alliances and building solidarity and support among like-minded people was identified as being critical.

Note: The Violence and Harassment Convention (No.190) 2019, and Violence and Harassment Recommendation (No.206) 2019, were adopted by delegates at the Centenary International Labour Conference, conducted in June this year at Geneva. The Convention will enter into force 12 months after member States have ratified it. The Recommendation, which is not legally binding, provides guidelines on how the Convention could be applied. Further information can be accessed at (https://www.ilo.org/ilc/ILCSessions/108/media-centre/news/WCMS_711321/lang--en/index.htm)
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