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SEXUAL HARASSMENT: AN INSIGHT INTO THE INDIAN GARMENT INDUSTRY



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1. INTRODUCTION

In almost every field of economic activity, women form a substantial part of the workforce. This has been exacerbated by economic pressures, increased globalization and shifting social structures. This has inevitably resulted in an increase in the number of working women. Unfortunately many women now have to work under the most disadvantageous service conditions and in certain establishments are the victims of sexual harassment and violence.

Never is this more prevalent than within the expanding garment industry in India where the workforce usually comprise of unskilled or semi-skilled workers and where the majority of workers in the garment factories are women. Working conditions in garment factories are notoriously dehumanizing for all workers, with typically long working hours for very low pay. The Indian textile industry is the second largest employer after agriculture in the country and contributes to 17 per cent of the country's exports. Furthermore the Indian textile industry is estimated to grow to a whopping 115 billion dollars by the year 2012.¹ In Karnataka the garment industry is the largest employment provider next to the beedi industry and a majority of the garment manufacturing units are located in Bangalore City.² According to GATWU³ there are estimated to be around 400,000 women working in the garment industry in Bangalore working across roughly 1200 big, small and medium-sized factories.

In most factories, predominately young women are recruited and hired for garment work precisely because of social perceptions about their skills, abilities, female temperament, and duty to obey male superiors. Not only are female workers cheaper than male workers but in the eyes of the boss, a



“good” garment worker is docile, tireless, and naturally suited to performing repetitive work with her hands. These social perceptions are enshrined within the mindset of many workers and assist bosses in subjugating their employees and placing them on a lower status.

Conditions on the factory floor have always been strained, with workers being pressurized into meeting high production targets. Often this pressure manifests in both verbal and

¹ Statistics available with the Federation of Indian Chambers of Commerce and Industry (FICCI)

² The Hindu (2003). “Garment Factory Workers Deserve a Better Deal”, September 28.

³ The Garment and Textile Workers Union is a workers union set up specifically for workers in the garment and textiles industry and was established in 2006 by people who worked the garments industry.

physical abuse directed towards the worker with many workers citing that it is almost a daily and common affair to be subjected to vulgar or crass language from their supervisors (who are often employed specifically for the purpose of getting employees to reach their targets). Meanwhile, increasing competition from countries such as China, Cambodia and Indonesia as well as domestic competition between manufacturing sectors such as between Bangalore and Chennai, has led to an increased work load with workers expected to produce an extortionate amount of garments.

Perhaps the most common yet pervasive experience of garment workers is that of sexual harassment incurred at the workplace. This can take place in many forms but ultimately has the result of demeaning the worker and violating her personal freedom and dignity in which she has a right to work. As will be discussed below, many workers suffer in silence and thus



the cycle of abuse continues. The legislative framework governing sexual harassment in India has been of little use to women, particularly within the garment industry. Furthermore the lack of clarification on the interaction between current labour law rights and the criminal sanctions under the Indian Penal Code has only proved to undermine any progressive change being made.

Although there is legislation in the pipeline to try and reconcile these differences, it is questionable just how effective this will prove to be, particularly when you account for the fact that there are often other determining factors influencing many women's decision to remain silent.

According to the latest Indian National Crime Record Bureau Crime Report for 2008 a total of 12,214 sexual harassment cases were reported in the country during the year showing an increase of 11.5 per cent as compared to the previous year (10,950). The 5-year trend analysis showed an increase of 14.7 per cent over the average of 2003 – 2007. The Crime Report shows that in 2008 the conviction rate for sexual harassment cases was 50.5 per cent (4,128 convictions out of 8,169 cases in which trial were completed). In addition there were 1,025 cases registered under the Indecent Representation of Women (Prohibition) Act which shows a decline of 36.7 per cent over the average of five years (2003-2007) and 14.6 per cent over 2007 (1,200). These figures must be treated with caution as they do not provide a breakdown of the type of women who make a report. Notoriously women in the garment sector and other women found working in the unorganized sector tend not to file a report and yet often they are the most vulnerable class of women. Although it is

encouraging that more cases are being reported, greater effort still needs to be made to ensure that more women across all fields feel safe enough to report such incidences and have confidence that the judicial system will enforce proper justice.

A number of women's organizations and NGO's have worked tirelessly at trying to address these issues of violence and harassment at the workplace, however fundamental change is unlikely to happen overnight, nor will it happen if the legislature continues to drag its feet in bringing in a comprehensive law. This report will look into the reasons why many of these garment workers feel uncomfortable in filing a complaint and seeking compensation. It will not only review the legal barriers but touch upon the cultural and social attitudes which still prevail within society towards the issue of sex and sexuality. Additionally it will take a comprehensive look at the legislative framework currently in place, review the likely impact of forthcoming legislation and provide an analysis of what further work needs to be undertaken to ensure the protection of garment workers against harassment.

2. SEXUAL HARRASSMENT – THE LAW

What constitutes sexual harassment usually differs marginally from country to country although will largely be framed by international conventions and laws that are directly applicable within the country. Broadly speaking sexual harassment is a form of sex discrimination commonly projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones whether directly or by implication, particularly when submission to or rejection of such a conduct by the female employee effects the employment of the female employee and unreasonably interferes with her work performance and has the effect of creating an intimidating or hostile working environment for her.

Although the legislative framework is being implemented incrementally within India to deal with the increased sexual harassment cases being reported, one of the major critiques has been that it is still not sufficiently extensive or effective enough to encourage the sizeable proportion of women, particularly within the unorganized sector, to bring a complaint against their aggressors. Nevertheless it is still important to highlight the legal position as it currently stands in light of the seminal ruling in the case of *Vishaka and Others v. Rajasthan* in 1997, as well as review the potential changes arising from the sexual harassment bill currently under review and due to be tabled to Parliament shortly.

2.1. Protection under International Law

It is well established that human rights and fundamental freedoms are the birth rights of all individuals and should be protected and promoted by Governments at all costs. The preamble to the Charter of the United Nations explicitly makes reference to equal rights between men and women. The fact that sexual harassment violates the right to just and

favourable conditions has also been recognised by the United Nations in the Universal Declaration of Human Rights. Furthermore all major international human rights instruments have included sex as one of the grounds upon which States should not discriminate against. This includes (amongst others):

- a) **The United Nations Convention of Elimination of all forms of Discrimination Against Women (CEDAW)** – this convention prohibits discrimination in employment and calls upon member states to take all appropriate measures to eliminate discrimination against women in the workplace so as to ensure equality of men and women.⁴
- b) **The Vienna Declaration and Programme of Action (1993) (VDPA)**⁵ – recognizes that sexual harassment is a practice which is incompatible with human dignity and aims to work towards the elimination of violence against women in both the public and the private life

2.2. The Indian Constitution

Sexual harassment of a woman in the workplace is also considered to be a gross violation of the fundamental rights guaranteed under Part III of the Constitution of India (the **Constitution**). Therefore each such act results in the violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty.' Such a violation can therefore be remedied under Art. 32 and Art 226 for the enforcement of these fundamental rights of women. Accordingly sexual harassment also violates the victims' fundamental right under Art. 19 (1(g)) to practice any profession or to carry out any occupation, trade or business.

2.3. Sexual Harassment pre Vishaka

Prior to 1997, the only recourse female workers experiencing sexual harassment at the workplace had was to take criminal action under the Indian Penal Code through provisions that either:

- a) penalized acts of an obscene nature;
- b) insulted and outraged the modesty of a woman; or
- c) through the indecent representation of women through any form of publication.

Furthermore, workplaces and employers did not have accountability towards safety and security of their female employees. The main criticisms levied at this remedy were that

⁴ CEDAW Part III, Article 11

⁵ VDPA Part I, Article 18

the criminal courts were not deemed to be either efficient or accessible enough for women to successfully bring a claim of sexual harassment. Moreover the burden of proof placed on women was too high and it was difficult to prove instances of harassment. Lastly the interpretation of some of these provisions was left to the discretion of the police officer.

2.4. Vishaka v Rajasthan

2.4.1. Background

This landmark judgement arose on a petition seeking enforcement of the fundamental rights of working women. It was brought as a class action by social activists and NGO's resulting from the alleged brutal gang rape of a female social worker in Rajasthan who had been trying to prevent the occurrence of a child marriage. It was a landmark event as sexual harassment at the workplace was legally recognised for the first time as a systematic and gender based discrimination, violating fundamental rights of gender equality and the right to life and liberty. The Court acknowledged that present civil and penal laws in India did not adequately provide for specific protection of women from sexual harassment in the work place and that enactment of such legislation would take considerable time. The Court therefore set out guidelines on sexual harassment in the workplace (the "**Guidelines**") and declared the Guidelines as constituting the law of the land until further action was taken by the legislature.

2.4.2. Definition of sexual harassment and scope of the Guidelines

The case was seminal because not only did it lay down the Guidelines prescribing sexual harassment at the workplace and other institutions, but it also provided a definition of sexual harassment, something which up to this point had been absent within Indian criminal law. The Supreme Court also observed that gender equality includes protection from sexual harassment. Therefore according to the Supreme's Court Order sexual harassment is:

Any unwelcome:

- a) Physical contact and advances.
- b) Demand or request for sexual favour.
- c) Sexually coloured remarks.
- d) Display of pornography.
- e) Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

Non-verbal conduct includes making unwelcome sexual gestures, suggestive or obscene letter, notes or invitations, displaying of sexually evocative objects or pictures/pornography, cartoons or postures, indecent exposure in the workplace.

Verbal conduct means making or using sexually explicit language, derogatory comments, remarks/jokes about women's bodies, suggestions and hints, graphic comments with sexual overtones, and/or jokes, pressure for dates, obscene phone calls and making verbal sexual advances or propositions.

Physical conduct relates to touching/brushing against a co-worker, assault, impeding or blocking movements, leaning over, invading a person's space or physical touch/contact.

More specifically the Court held that such conduct would constitute discrimination if a woman has reasonable grounds to believe that objecting to the conduct would disadvantage her in terms of her recruitment or promotion or if it creates a hostile work environment. Furthermore acts amounting to sexual harassment also include objectionable acts in the workplace that either humiliate the woman or threaten her health and safety.

The Guidelines are applicable to all Government and private sector organizations, hospitals, universities and other responsible person. It is also applicable to all working women whether drawing salary, honorarium, or working in a voluntary capacity, whether in Government, public or private enterprise.

2.4.3. The Guidelines

In the absence of enacted law for effective enforcement of basic human rights and gender equality the Supreme Court laid down the following guidelines:

Duty of the Employer

- a) It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment.

Preventive steps

- b) All employers or persons in charge of a workplace should take appropriate steps to prevent sexual harassment of women employees, for example:
 - i. **Express prohibition** of sexual harassment (as defined above) at the workplace should be notified, published and circulated in appropriate ways.
 - ii. **Appropriate work conditions** should be provided in respect of work leisure, health and hygiene to further ensure there is no hostile environment towards women at the workplace.

- iii. The rules and regulations of **government and public sector bodies** relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- iv. As regards **private employers**, steps should be taken to include the aforesaid prohibitions in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946

Criminal Proceedings

- c) Where the conduct constituting sexual harassment amounts to a specific offence under the Indian Penal Code or any other law, the employer shall initiate proceedings in accordance with the relevant law and file a complaint with the authorities.
- d) Complainant and witnesses **should not be victimized or discriminated** against while dealing with complaints.

Complaint Mechanism

- e) Where the conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.
- f) An appropriate **complaint mechanism** should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure a **time bound** treatment of complaints.

Complaints Committee

- g) The complaint mechanism, referred to above, should be adequate to provide, where necessary, a **Complaints Committee**, a special counselor or other support service, including the maintenance of **confidentiality**. The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either an NGO or other body who is familiar with the issue of sexual harassment. The function of this committee would be formal redressal of complaints of sexual harassment and the arbitration of crises arising out of incidents of sexual harassment and assault.
- h) The Complaints Committee must make an annual report to the government body concerned of all the complaints and actions taken by them.

Third Party Harassment

- i) Where sexual harassment takes place as a result of the act or omission of a third party or outsider, then the employer or person in charge must take all necessary and reasonable steps to assist the aggrieved person in terms of support and preventive action.

Workers' Initiative

- j) Employees should be allowed to raise issues of sexual harassment at a workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee meetings.

Awareness

- k) Awareness of the rights of female employees should be created in particular by prominently notifying the Guidelines (and any appropriate legislation when enacted on the subject) in a suitable manner.

2.4.4. What are the main criticisms of these Guidelines?

In the years immediately after the Vishaka ruling, there has been some confusion over the application of the Guidelines. In particular:

- a) Evidence drawn from limited information available suggests that by and large, employers have not taken much initiative in constituting a Complaint's Committee and little data about how these committees function is available and thus redress for women still remains difficult to access. Moreover data collected has shown that workplaces usually constitute Complaint Committees only after intervention by some external body. Furthermore even where Complaint Committees are established, studies show that meetings are generally not held regularly and records are not kept.
- b) Entrenched patriarchal attitudes have prevailed and have therefore prevented sexual harassment from being seen as a serious offence in many workplaces.
- c) The vagueness of the Guidelines on the internal grievance mechanism has left organisations with a great deal of room to manipulate the process.
- d) Workers in the unorganised sector (who make up the majority of the female workforce) are largely left outside the remit of the Guidelines and therefore lack a formal system to deal with sexual harassment in the workplace.
- e) While labour laws provide safeguards which protect an employee from termination or any other discrimination during the course of any dispute, these safeguards do not extend to cases of disputes relating to sexual harassment.

This means that women are often reluctant to bring a claim for fear of the repercussions.

2.5. Chopra (*better known as the APEC judgment*)

2.5.1. Background

In the first major decision after the Vishaka judgment, the Supreme Court decided to broaden the scope of the sexual harassment test. In the AEPC (Apparel Export Promotion Council) v. A.K. Chopra (1999) decision the complainant was the private secretary to the chairman of the company. She complained after he had tried to molest her on several occasions. After a departmental inquiry the Chairman was dismissed, however he challenged the order through the courts, arguing that he had never actually touched the complainant. The High Court held that 'trying' to molest a female employee was not the same as actually molesting her and that the Chairman's conduct could not therefore be impugned. The company therefore appealed to the Supreme Court.

The main questions considered by the Supreme Court were as follows:

- (i) Does the action of a superior against a female employee, which is against moral sanctions and does not withstand the test of decency and morality, amount to sexual harassment?
- (ii) Is physical contact an essential ingredient of the charge?

2.5.2. What was the Supreme Court decision?

The court accepted the definition of sexual harassment as laid out in Vishaka. However, it went on to determine the content of the sexual harassment, holding that 'any action or gesture which, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual harassment'.

The court further held that the 'victim's testimony' must be evaluated against the backdrop of the entire case, thus adopting a test of reasonableness that seems to be based on the victim's perspective. Further they went on to say that the conduct of the Chairman in trying to sit next to the complainant and to touch her, despite her protests, constituted 'unwelcome sexually determined behaviour' on his part and was an attempt to 'outrage her modesty'. His behaviour was against 'moral sanctions' and did not withstand the test of 'decency and modesty' and amounted to unwelcome sexual advances. Together, his actions constituted sexual harassment. Therefore even a failed attempt to molest a colleague can amount to an act of sexual harassment punishable by dismissal.

As with Vishaka the Supreme Court observed that “In cases involving Human Rights, the Courts must be alive to the International conventions and instruments as far as possible to give effect to the principles contained therein – such as CEDAW.”

2.6. Criminal laws

There are certain sections of the **Indian Penal Code** that can be applicable in cases of sexual harassment and which may therefore constitute a criminal offence under Indian law. These are:

- a) **Section 294** - ‘Whoever, to the annoyance of others:
 - i. does any obscene act in any public place; or
 - ii. sings, recites and utters any obscene songs, ballads or words, in or near any public space,shall be punished with imprisonment of either description for a term that may extend to three months, or with fine, or with both.’
- b) **Section 354** – ‘Whoever assaults or uses criminal force on any woman, intending to outrage her modesty or knowing it likely that he will thereby outrage her modesty, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.
- c) **Section 509** - ‘Whoever, intending to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture is seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.’

Under the **Indecent Representation of Women (Prohibition) Act (1987)** if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing the “indecent representation of women”, they are liable for a minimum sentence of two years. Furthermore under section 7 (Offences by Companies), if an offence has been committed by a company then every person, who at the time the offence was committed, was in charge of, or responsible to the company for the conduct of the business of the company, as well as the company itself, will be deemed guilty of the offence and will be proceeded against and punished accordingly.

2.7. Labour Laws

The Industrial Employment (Standing Orders) Act 1946

Under the Industrial Employment (Standing Orders) Act 1946 employers are required to formally define the conditions of employment and to make the said conditions known to the workmen employed by them. Under recent amendments to the act, the term sexual harassment has now been defined. Furthermore in light of the Vishaka

judgment, private employers have to include express prohibition of sexual harassment in the Standing Order.

2.8. Codes of Conduct

A code of conduct (also known as a code of labour practices, charter or guidelines) is a document outlining the basic rights and minimum standards a corporation pledges to respect—or is asked to respect—in its relations with workers, communities and the environment, throughout its supply chain and for all workers regardless of status. Model codes of conduct, setting standards to which companies should adhere, have been developed, usually by NGOs and trade unions. Company codes vary in content. Criticism levied at some company codes is that many still exclude the right to organize and to a living wage, make no reference to ILO standards, lack any clear system of implementation, monitoring or verification and are used more for PR purposes or in response to public exposure about the plight of garment workers rather than as an instrument to enforce labour standards.⁶

2.9. National Commission for women and the Proposed Bills for Sexual Harassment in the Workplace

2.9.1. The National Commission for Women

Since the landmark judgement of the Supreme Court in Vishaka followed by Apparel Export Promotion Council v. A.K Chopra (1999) were pronounced the National Commission of Women (**NCW**) has taken some measures to give effect to the directives issued by the Supreme Court. The NCW are a statutory and autonomous body constituted by the Government of India to secure justice for women, safeguard their rights and promote women's empowerment. Sexual harassment of women in the workplace has been one of their focal points in pursuing their goals of gender equality and female empowerment.

2.9.2. The NCW Code of Conduct

In 1998 the NCW formulated a voluntary Code of Conduct (the "**Code**") which was intended to promote the well being of all women employees at the workplace. The Code was designed to be quite simple in its application in order to be understood by everyone. In many respects the Code goes much further than what has been prescribed in the Guidelines. For example the definition of sexual harassment is expanded to include acts such as eve teasing and innuendos and taunts. In addition there is an

⁶ The Clean Clothes Campaign (CCC) has called for companies to adopt the CCC model code which can be found at <http://www.cleanclothes.org/codes/ccccode.htm>

express provision specifying that male employees shall not outrage or insult the modesty of a female employee at the workplace. In addition greater details are provided with respects to the operation of the Complaint's Committee.

2.9.3. The current status of the sexual harassment bill

The bill on "Protection of Women against Sexual Harassment at workplace" (the "**Bill**") was initially drafted back in 2007 and came after the former Protection against Sexual Harassment of Women Bill 2005 was scrapped after being deemed too wide in scope and thus difficult to implement. Instead the new Bill focuses specifically on sexual harassment at the workplace. The Bill was prepared after hard struggles by women rights groups to replace the vague Guidelines and has been subject to much consultation to ensure prompt justice to the aggrieved women and to widen the applicability and enhance the consequences for non-compliance. It was expected to be tabled in Parliament in the session beginning 26 July 2010.

The Bill recognizes the fundamental right of a woman to gender equality under Art. 14 of the Constitution and the right to life and live with dignity under Art. 21 of the Constitution which includes a right to a safe environment free from sexual harassment. Once the Bill becomes law it will lay down a uniform procedure for conducting enquiries into complaints of sexual harassment across a very wide range of employers including the Government, armed forces, private organized sector as well as the unorganized sector. Some of the key principles and objectives resulting from the current draft of the Bill include the following:

- a) The Bill envisages that every workplace, whether organized or unorganized, should have a forum to take up complaints pertaining to sexual harassment. It also includes a new clause which defines 'aggrieved women,' thereby bringing students, research scholars, patients and women in the "unorganized sector" within the ambit of the sexual harassment law.
- b) One of the main criticisms of the Guidelines was that they did not extend to the unorganized sector where the employer-employee relationship is not fixed. The Bill goes some way to remedy this by making a specific provision for the inclusion of the unorganized sector through the setting up of a Local Complaints Committee (LCC) which is to act as a redressal mechanism outside of the workplace. An LCC would be set up whenever it was not possible to set up an Internal Complaints Committee and would be set up by the district officer at the block level. The unorganized sector has been defined as a workplace owned by an individual or a group having less than 10 employees. "The Bill provides for the mandatory district-level LLC to investigate sexual harassment complaints, especially registered by women working in the unorganized sector.

- c) The Court can impose a fine of no less than Rs 10,000 on any workplace which fails to constitute either an Internal Complaints Committee or LCC (if applicable) or which fails to initiate action within a reasonable time upon a complaint being lodged alleging sexual assault.
- d) The Bill provides for conciliation, failing which the accused (if proved guilty through an inquiry) would be required to pay compensation, to be calculated on the basis of physical and mental trauma caused to the victim.
- e) Whereas under the Guidelines it is the responsibility of the employer to initiate appropriate action if the conduct amounts to a specific offence under the Indian Penal Code, under the proposed Bill the duty to initiate appropriate action lies with either the appropriate authority, the member of the committee or the local officer who receives the complaint.
- f) The Bill provides the complainant with the opportunity to seek mediation to resolve the matter at first instance before a more formal complaint is submitted.
- g) The Bill also provides greater detail and clarification with respects of the roles and duties of the inquiry committees and provides the framework and timeframe in which the complaint must be dealt within. Accordingly employers will have to conduct an enquiry within 90 days of receiving a complaint. Furthermore if the enquiry confirms that sexual harassment has taken place then the employer has to take action against the accused within three months.
- h) Where the defendant employed in a workplace or organization holds a senior position as head of the workplace or is the employer or is the person in charge of the workplace concerned, the appropriate Government shall appoint an ad hoc committee headed by a chairperson who shall be senior in rank and status to the defendant or provide the option to the complainant to lodge the complaint with the local complaint committee.

2.9.4. *Current issues with the Bill*

There have been a number of criticisms lobbied at the current draft of the Bill. For example:

- a) In April 2010 a group of NGOs working for men's rights demanded that the Bill be made gender neutral to also protect men being harassed at the workplace. The NGOs under the banner of 'Save Indian Family Foundation' said the draft Bill should be discarded and a fresh gender neutral draft should be prepared.
- b) It has been argued that the Bill acts contrary to safeguarding the complainant as it includes a provision which penalizes the complainant if the committee concludes that the allegation made is false or malicious. It has been contended

that the inclusion of such a provision creates the opportunity for employers to manipulate the committee and may also dissuade women from making complaints due to the fear that they will be penalized.

- c) The Bill only deals with working women and therefore excludes women who get sexually harassed outside of the workplace and outside working hours.
- d) There is also some doubt whether the Bill is applicable to minors in the workplace as the term '*aggrieved woman*' is defined as a woman employee and thus leads to uncertainty as to whether this is applicable to child workers.
- e) As mentioned previously there is the inclusion of a provision dealing with the formation of an LCC to be set up by the district officer at the block level to deal with workers in the unorganized sector. However another criticism that has been lobbied at the current draft is that the Bill is still largely couched in terms of the organized sector establishments. One of the suggestions put forward is that the '*Duties of the Employer*' should be extended to be the '*Duties of the Employer/District Officer.*' In addition it has been recommended that LLC's should have a scheduled caste/scheduled tribe member.
- f) Another minor criticism of the current draft is that the provision that deals with the confidentiality of the identity of the woman may actually work against her. This is because no provision has been included to inform the woman about the progress of the enquiry. Therefore it has been suggested that the provision be amended so as to ensure that a copy of the of the complaint enquiry report and the recommendations of the committee are made available to the victim upon her request on completion of proceedings.

3. LIFE ON THE FACTORY FLOOR



In Bangalore more than two-thirds of the garment workers are women and most hail from rural areas around Bangalore. Discussions with a sample of these workers provided some very candid details about the nature of life on the factory floor. Although it was apparent that the treatment afforded to workers varied from factory to factory, what was consistent was the fact that the use of verbal and physical scolding as well as other forms of harassment was common in all factories with many women stating that it occurred everyday and affected almost all women. Many of those interviewed cited production targets issues being the main course

of why they were the subject to crude terms such as “dog” and “pig” being directed to them, however others specified that they had often been harassed for no reason.

When asked specifically about sexual harassment there appeared to be a differentiation in response between the unionized and the non-unionized members. Broadly speaking women who belonged to a union had more awareness about the different types of actions that constitute sexual harassment i.e. distribution of sexually graphic imagery, physical touching and inappropriate comments. Non-unionized workers in general seemed to be a lot more reluctant to discuss the issue openly and shied away from providing specific examples despite alluding to the fact that such harassment was commonplace within their workplace.

What was clear in nearly all accounts was the fact that many of these women have almost become de-sensitized to the matter and see harassment as forming part of the



job role which just has to be dealt with. Accordingly the character of the individual woman will largely determine whether she decides to either stand up to management, continue to suffer in silence or indeed seek employment elsewhere. Workers also commented that supervisors would generally tend to target those women who they deemed to be weak and less confident and

would subject these women to constant verbal abuse. Nevertheless most of the women cited that as this issue is faced in almost all factories and is so commonplace, that it seems unnecessary to lodge complaints against all incidences that arise.

When asked about the key challenges presently facing garment workers, the majority of women responded that meeting production targets and receiving adequate wages were the key issues they felt needing addressing. They viewed the role of the union as helping to negotiate lower targets and ensuring that they received at least minimum wage. Harassment was also cited as another challenge faced with some of the women suggesting that real change can only arise if more NGO's and women's organizations take a more pro-active role and become more engaged with the matter.

Case Study 1

Anu is a 21y/o garment worker in Bangalore. Earlier this year she suffered sexual harassment when her Production Manager (PM) continuously offered her an increased salary and better role if she in turn provided him with sexual favours. He told her he would maintain secrecy and no one would come to know. This went on for over a month. Therefore she started trying to avoid him and escape from his view when leaving the factory. In response to this he started taking revenge on her by giving her high production targets. He also continuously changed her job role everyday meaning she couldn't settle and as a result of her performance she was repeatedly reprimanded. He also kept shifting her from batch to batch and would also shout at her unnecessarily for very small reasons and would take her to the PM cabin. She considered leaving the job but out of the blue he was offered a role in another factory and has since left. She did not report the issue although she did discuss the matter with a representative of Munnade. She has not suffered from any similar incident since he left.

4. WHO BEARS RESPONSIBILITY?

4.1. Which bodies are involved?

So just who is responsible for initiating criminal proceedings if a sexual harassment complaint is lodged? To some extent this is the million-dollar question and arguably the lack of clarification on this matter has been one of the components as to why little development has taken place with respects to sexual harassment laws in India. The implementation of the Guidelines did little to provide much clarity and therefore what has arisen is that in the few sexual harassment cases that do arise, there will be the simultaneous involvement of a number of bodies including (amongst others), the Labour Department, the Police and various women's organizations such as the NCW. All of which are fighting for their own agenda. Under the current law there is still no clear-cut guidance as to who is ultimately responsible for initiating such proceedings and thus workers are disadvantaged because, unless they have received training as a result of trade union membership, they are unlikely to know the correct procedure for seeking redressal.

As it stands the Labour Department will only step in if there has been a termination of employment or any conditions of employment have been altered due to the sexual harassment and thus it will be taken up as an industrial dispute. Accordingly any such compensation received will be limited only to those losses suffered as a result of the

termination and will not be extended to cover any additional losses resulting from the act of sexual harassment. The police will only enter the picture if the victim lodges a complaint under the relevant provision of the Indian Penal Code. However according to V.P Rukmini - the General Secretary of GATWU, the police are often reluctant to follow-up on cases if an individual woman files a complaint and will only be pro-active if there is the backing of a union. It is widely thought that this is due to the police being worried about unions taking action in the form of protests outside of police stations, if the matter is not followed-up. Garment workers have however reported that in some cases where the police have come to investigate a matter further, a deal has normally been struck internally between the police and management and the complaint has not been fully investigated, nor has adequate punishment been enforced against the wrongdoer.

4.2. Enforcement of other labour laws

This issue of lack of enforcement is not new for garment workers and an almost similar picture is replicated within the labour laws that are directly applicable to this group of workers i.e. the Factories Act 1948, the Minimum Wage Act 1948 and the Industrial Disputes Act 1947. The Government, in the very first place, does not have adequate resources to ensure that the inspections and the visits are carried out, effectively and regularly. This leaves a large

proportion of the India labour work force not subject to Indian labour laws and leaves the lot of Indian workers in the hands of non-governmental entities. One of the reasons touted for this flouting of labour laws is the fact that intense competition has led to the need for cost-cutting. It is this emphasis on keeping down costs that has created



incentives for manufacturers to push their labourers to extreme limits and to flout all labour laws.⁷ Discussions with workers in the factories revealed that the floor managers or the supervisors expressly were told to prod the workers to attain the targets set by the manufacturers on an hour by hour basis. These vested powers have led some supervisors to engage in more severe acts of sexual harassment as well as verbal taunting and physical harassment of workers.

⁷ D.Hayashi, "Preventing Human Rights Abuses in the US Garment Industry: A proposed Amendment to the Fair labour Standards Act", 17 *Yale J. Intl Law* 1992 at p.201.

Mr. G Manjumath the Deputy Labour Commissioner for Karnataka contends that the resources available within the Labour Department are limited and therefore in order to address this matter of harassment in the workplace a separate wing has to be created within the Labour Department where people who are sensitized to the matter can deal with such cases separately. Whether this ever comes to fruition is unknown but as yet no formal discussions have taken place suggesting such a proposal.

5. CULTURAL AND SOCIAL ATTITUDES

5.1. The status of women in India

Despite the fact that the Constitution recognizes women as legal citizens with equal rights as men, this viewpoint has not been widely accepted, especially within the male dominant society where patriarchal attitudes still prevail to the detriment of Indian women. As well as the domestic chores that many women have to undertake, increased globalization and shifting social structures have meant that women are also often overworked in the workplace often to the detriment of their health and well-being. India is a society where the male is greatly revered. Therefore women, especially the young girls, get very little respect and standing. This is an attitude that is prevalent almost from the outset with discrimination between boys and girls happening even as infants. Mr. Manjunath further states that ‘the status of women in India has always been deemed to be inferior unlike developed countries such as the USA and UK. The woman is always viewed as a secondary citizen.’ He therefore believes that cultural changes and shifts in attitudes in society will be needed in order to make any fundamental changes with respects to how seriously people perceive the issue of sexual harassment.

5.2. Within the garment industry there are certain gender specific vulnerabilities that women face by mere virtue of their gender. Women do not only have to face harassment at work but also at home in the form of domestic violence and hence have no support structures to bolster them. Although women make up the majority of garment workers, very often they earn less than men, even for equal work as skilled operators. Women are often simply excluded from higher-paid jobs, as well as opportunities for training and promotion, because of gender norms long-entrenched in societies where “women’s work” is not valued, and where heads-of-household and public decision-makers have traditionally all been men. These archaic roles have carried over into the workplace where women are perceived to be of a lower status to men. Geeta Menon the Secretary of *Stree Jagruthi Samithi (SJS)*⁸ reiterates this message and

⁸ This is a women’s organisation based in Bangalore which predominately deals with women who work in the unorganized sector

has seen the same pattern emerging towards domestic workers in India whereby 'even though the relationship between the employer and employee has changed economically, mentally and socially it is still considered as a feudal part of the relationship.'

5.3. Sex and sexuality

One of the other key factors framing this issue is societal attitudes towards the notion of sex and sexuality. Women are in general looked upon as sexual objects and are often not afforded recognition in terms of their intellectual and practicable attributes. Because of the repressed attitude towards sex Geeta Menon further contends that 'most girls are brought up in a society where anything about sex and sexual harassment is not talked about openly and is treated as something that should not be spoken about. They are led to believe that if they speak about it they will become the victim and will be victimised further.' Geeta further states that 'Indian society is tied up in hypocrisy in that parents will allow their children to see dancing girls and sexy scenes and pornography but any discussions relating to real issues regarding sex are banned.'

In many cases the husbands' of garment workers are not highly educated. Consequently many women feel that they will not be supported and will in fact be blamed if they lodge a complaint of sexual harassment. GATWU representatives have also stated that many women suffering continued sexual harassment also feel reluctant to share their experiences with other workers due to dependency on the job and the fact that in many situations they are the sole earners within their households and so cannot afford to potentially lose their job. Young women in particular also feel that reporting incidences of sexual harassment may affect future marriage prospects or may indeed hold the view that if their parents gain knowledge of such an incidence, they will be prevented from going out to work.

Case Study 2

Mallije is a trade garment worker for Rebound factory. She was quite a strong character and had stood up to management during a previous labour harassment case where she had been detained within the factory. In a separate incident she suffered sexual harassment in her workplace in that she was given tough jobs to do after refusing to perform sexual favours to her supervisor. In addition she was informed that she would get easier jobs, more pay and a promotion if she complied. She got in contact with GATWU who said that they would take the complaint forward but she refused as she was afraid about the reaction of her husband if he came to know what happened.

Although efforts have been taken to improve the status of women, it seems like India is still a long way from achieving the reality of gender equality. The dominant tendency has always been to confine women and women's issues in the private domain. The traditional patriarchal systems of control have continued to prevail and have been used to perpetuate and justify the use of violence and harassment as a way to penalize women who don't conform to the 'norm.'

6. UNION PARTICIPATION

The inclusion of an active trade union dealing specifically with garment workers has only been a recent development within Bangalore. Up until 2006 there was no such union working for and fighting on behalf of such workers. However after the long and determined struggle by workers along with the assistance of Cividep, GATWU was finally established and has gone some way in trying to increase and improve the rights of workers within the industry. That the union has a current membership of around 2666 members is testament to the vast efforts being made to promote the wider benefits of union membership. Arguably this may be due to the fact that many of the board comprise of former workers and are thus viewed as more representative of the workers knowing firsthand about the struggles faced. However a lot more still has to be done to ensure that more workers feel confident to join a union. The feminization of migration of many of these workers has led to extreme vulnerability manifesting in forms such as harassment. Trying to organize this new group of worker presents one of the major challenges that the union will have to face if any progressive change is to arise.

6.1. Challenges faced by the union

J.M Rathna is a former garment worker who is one of the founder members of GATWU as well as a founder member of Munnade (which means "Forward Movement") which is a community-based women's organization based in Bangalore that amongst other things provides micro-credit and counseling to garment workers. She describes that earlier on when the union was being established, she and fellow workers would be harassed by management for their participation in union activities. However because of the domestic violence she had previously encountered, she thought it essential that a union be formed due to the numerous problems being faced by workers within the factory. Rukmini V.P the current GATWU General Secretary also reiterates the difficulties suffered during the early years and further goes on to note that 'It was a very challenging time as the other workers were reluctant to come forward and organise themselves for fear of termination of their jobs. They also had limited time to get involved in union activities.' Thankfully conditions have improved for her and in fact she is now a full-time member of GATWU whilst receiving her salary from her previous

employer. She cites that one of the problems in recruiting more members has been the fact that many workers are often told horror stories about what union participation can mean and are given misinformation about their effectiveness. Often companies and the workers have a very regressive impression of trade unions with companies assuming that their purpose is to demand excess salaries, while the un-informed workers are led to believe that unions mean losing jobs.

Case Study 3

There was a former factory called Ashoka Exports where a traditional trade union called CITU had tried to organize the 3000-4000 garment workers that worked in the factory. CITU had arranged a one-day strike in which unfortunately two people died as a result. After the strike the factory suddenly closed. Subsequently when GATWU tried to visit factories to try and organize workers, many of these workers have heard tales about what happened in Ashoka Exports and were fearful that if a union was formed the same thing will happen and they will lose their jobs.

One of the other issues cited by workers for lack of union participation is the fact that very often they feel unable to spare the time to get involved in union activities. Most of the workers work a six-day week and so the only day they have off is Sunday. Because of the domestic duties that many of these women face in the home, many felt that active participation with a union would reduce the little time they have with their families and also mean that they would be unable to complete their domestic chores.

6.2. Access to members

This has been one of the main issues restricting the union from undertaking any real work. One of the main problems faced is the fact that often union activists are not allowed inside factory premises and are thus unable to continuously monitor the situation on the ground. Information obtained pertaining to harassment in the workplace normally comes directly from members working within a particular factory, who will report to either GATWU or Munnade whenever an incident arises. Consequently this may mean that there may be a delay in the time in which the union is informed of any type of mistreatment occurring. GATWU have therefore advised its members that whenever an incident arises, then they should inform their fellow colleagues as well as the union as soon as possible if assistance is required.

Case Study 4

Jayanthi worked as a checker and was harassed by management for failing to reach high production targets. As she stood up and spoke against the management her employment was eventually terminated. However beforehand they had humiliated her by making her stand in the factory for everyone to look at and failed to provide her with any work. This continued for a few days. When GATWU got involved Rukmini and others contacted the HR manager within the factory and warned him against adopting such practices and warned him that they would report him to the police if they continued to treat her in this manner. Eventually after Jayanthi was terminated GATWU filed a case against them. As a result she was reinstated by the management, however the case ran for one year although she managed to get recompensed for all her back-wages.

Not a single union member has ever lodged a formal complaint regarding sexual harassment in the workplace, although the union is aware that this occurs frequently. Women are reluctant to report cases as they are scared that they will be discriminated against by other workers. As discussed earlier, there is still a large social stigma relating to sexual harassment and many women feel that they will be treated differently or suffer adversely if they lodge a complaint. In some instances, rather than speaking out a woman will either change factories or change departments in order to move away from the problem. However it was noted that more confident workers may stand-up to the perpetrator or may indeed raise the issue with their management, however this is not often the case.

GATWU view sexual harassment in the workplace as a major issue and have for the past two years have been working on a campaign named HUSHAR which largely deals with the issue of sexual harassment and other types of harassment within the factory. They are currently trying to train up volunteers and there are plans for a march of female garment workers scheduled for April 2012. In addition through their workshops both GATWU and Munnade have provided training to their members regarding the implications of the Guidelines and have provided practical advice as to how to deal with such an issue if it arises.

7. SEXUAL HARASSMENT COMMITTEES

As discussed above one of the key features derived from the Guidelines was the requirement for establishments to set up a complaints committee dealing specifically with sexual harassment in the workplace. However in the years immediately after the Vishaka ruling, there has been confusion over the implementation of the Guidelines, especially regarding the role and functions of these committees. This is a problem that is widespread both amongst the public and private sphere and accordingly workers in the garment industry have not been immune to the inconsistent and haphazard manner in which these committees are often constituted. Despite the fact that employers are aware of their obligations, they also are aware that very often they can get away with non-compliance. This may change as a result of the impending Bill which will seek to penalise establishments that don't fail to constitute a committee, however only time will tell whether the threat of monetary sanctions will suffice to act as an efficient deterrent.

One of the significant problems reported by workers is that very often sufficient information is not provided either about the composition of any committee, nor about the complaints mechanism applicable within the factory (or if indeed one exists at all). Many workers are not provided with any information either prior to or during the course of their employment. Furthermore very often even if the procedure is publicly displayed, it is often done so in a manner which is of little use to the workers i.e. it may not be published in their local language. Additionally it may only be published in one area of the factory and thus a large proportion of the workforce may not readily be able to access the information. As many of these workers already work under strict production targets, it is almost impossible for them to find the time to come and view any such notices. Other workers have reported that where there is a committee in place it very often populated with workers who are viewed favourably by management and indeed serves very little purpose for the majority of the workforce.

As part of her role in SJS Geeta Menon has participated in a number of committees (albeit within other industries), however she notes that out of 10 companies of which she sits as a committee member, only about three are serious, consistent and have meetings with awareness sensitising sessions. She states that in two instances where complaints have been lodged the committees have been quite good in resolving the matter. The remaining seven committees are completely dead and have just been set up in order to show on the paperwork. She contends that this is largely due to the fact that the mentality in India is still patriarchal and still backwards in many respects. Sexual harassment is not seen as an important issue but instead a common occurrence

which is bound to happen because 'girls are girls' and 'boys are boys'. Therefore the adopted attitude is that time and money should not be spent investigating such matters.

Under the current Guidelines there is not much that can be done to penalise establishments that fail to constitute a functioning committee and this is why many factories have managed to get away with the bare minimum for so long. Furthermore by all accounts even when social audits are conducted by brands, often the workers chosen to speak to them are pre-selected and are again normally those viewed as being favoured by management. Furthermore social audits have been shown to have failed in the garment sector since, researchers found that workers and their organizations are often marginalized in the social audit process and don't give an accurate picture of the reality of the workplace. This is because workers reported being interviewed in front of management and therefore felt too frightened to reveal workplace problems. They also reported being bypassed by the auditors completely, or other irregularities in the interview process.⁹ Nevertheless there are some steps that can be taken by the union to try and address this issue. For example if GATWU becomes aware that there is may be some potential violation, they can write a letter to the Inspector of Factories who will then go and inspect the factory and provide a letter confirming whether or not a committee is in place.



⁹ The study which was conducted by the Cleans Clothes Campaign in India, Bangladesh, China, Kenya, Pakistan etc

Case Study 5

According to Rathnamma who was a former garment worker, in her previous workplace there was a strong sexual harassment committee of which union activist members formed part of the committee. They used to take up even small issues of harassment to the Production Managements cabin to seek justice. However as a result they were continuously targeted and harassed for production targets and other issues. Therefore most of them left the job and changed factories and thus the committee became redundant. Up until that point the committee had been up and running for about one year.

The management acknowledged that there should be a new committee (to show to buyers), however they only chose workers who were favourable to them. The new members were also oblivious to the fact that they were to form part of the committee and were just informed by management that this was to be the case. This second committee is however for all tense and purposes a dead committee and is there just for namesake and to comply with the minimum requirements. No new cases have ever been brought in front of this new committee.

8. CONCLUSION

Over time numerous international brands have set up offices in India to benefit from the low cost of the Indian labour force and consequently the garment industry in Bangalore has grown rapidly with the trend being towards larger factories, and higher concentration of capacity and workforce. The garment sector is a labour-intensive sector with low entry barriers and level of skills and characterized by a predominately female workforce who often have to handle a double workload of factory and household work. Although the growth within the garment industry has provided the opportunity for many of these women to obtain employment, it has nevertheless led to discriminate and systematic abuses such as the lack of proper labour rights, poor pay and harassment within the workplace. This last issue is of particular concern largely because of the psychological as well as physical impact this has on the women affected. Despite the legislative framework being in place to deal with the issue of sexual harassment in the workplace, it is clear that many of these women still feel reluctant to lodge formal complaints and seek justice. If some headway is to be made in tackling this

issue it may require a lot more than just relying on the upcoming Bill, which in itself is still subject to much debate. The following issues will need to be addressed.

Greater participation by women's organizations and NGO's

Over the years there have been a raft of organizations tasked with assisting and promoting the role of women both generally and specifically within the garment industry, but these are still few and far between. This is a sentiment also echoed by workers themselves who feel that such organizations are in a better position to raise the profile and address their key concerns on a wider scale and devote the time and the resources to find practical solutions. However it is important to note that this will only be an affective route if firstly, there is uniformity in terms of what is to be achieved and secondly, it is driven by legitimate and organized participants.

Greater union influence

Undoubtedly the work of the likes of GATWU and Munnade has been influential in empowering numerous women and providing them with invaluable information regarding their legal entitlements. Nevertheless to date only a small proportion of garment workers based in Bangalore are currently unionized meaning that a substantial proportion still have a lack of legal literacy and lack of basic awareness of rights and entitlements. If women are not made aware of the basic information i.e. which type of acts constitute sexual harassment, then many innocent women will continue to suffer in the belief that such behavior is acceptable. However one of the major barriers for unions is will be to shake off the negative publicity that surrounds them. This will involve being more proactive on the ground level and drawing attention to the fact that it is being led and organized by women who have direct experience of life of the factory floor and who can therefore relate to the struggles. Another barrier that will need to be addressed is the timings of which union activities are conducted, which are often viewed as excluding a large sect of women who can't afford to take the time off. Once again a number of actions can be taken to address this issue including providing more community based training or alternatively providing extensive training to members who will be able to relay key information to their fellow colleagues. Where possible greater efforts may need to be made to try and establish cordial relationships with more factories and thus providing an opportunity to speak to workers directly within the factory.

Brand participation

Although measures have been put in place by many brands to assure that factories are adhering to at least a minimally accepted standard i.e. implementing codes of conduct, it is also apparent that significantly more could be done to ensure that the widespread abuses in the workplace becomes a thing of the past. This includes undertaking more thorough and vigorous social audits and ensuring that the information provided is not dictated by management. Another option is for collective action to be taken by a number of brands specifying a minimum standard to be achieved and thus demonstrating a unified commitment to eradicate injustices and discriminative practices found within many of these factories. After all, the presence of workplace justice within a company can boost its image as a good place to work for women and acts as a great boost to recruiting efforts of organizations. For brands having a good reputation for dealing with female employees can favourably affect sales volumes as many customers prefer buying products of companies that have a reputation of treating their employees well.

Cultural change in attitudes

Cultural attitudes are arguably one of the major factors in why many women feel unable to speak openly about harassment in the workplace. There is still a very repressed attitude towards sex adopted within India and accordingly many women feel ashamed to discuss such matters candidly. Until the stigma attached to sex is removed and entrenched patriarchal attitudes towards women subside, little progress will be made in getting women to report sexual harassment. However this is no easy task and indeed will take considerable time before tangible gains are made. Geeta Menon contends that conditioning has to start from an early age and discussions must be had with children about the treatment of others. This include a more expansive sex education program within schools as well as a more egalitarian treatment of boys and girls within the classroom as these are the early stages of which they come to learn how to socialize with the opposite sex. She seems optimistic that things can change but notes that with improved digital communication and globalisation, many parents are caught between how to manage their children in this new culture whilst trying to stay true to their old culture. Whether such a cultural shift is manageable is debatable but what is clear to see is that the issue is being forced out into the open at an increasingly rapid rate and thus no longer can it be swept under the carpet.

Comprehensive legislative framework

As well as the issues addressed above, undoubtedly it is essential that the impending Bill be adopted as soon as possible. That there has been a 13-year period since the Vishaka Guidelines were published without any suitable legislation being implemented has arguably reinforced the notion that this is an issue which is not considered of great importance. As a result of this complacency, many women across India have suffered unjustly due to the inconsistent nature in which the current framework is applied. As was highlighted earlier the current draft of the Bill is not without its critics and there are still some fundamental amendments that will need to be addressed before it is deemed fit for purpose. Nevertheless every effort should now be made to bring the issue up to the forefront and ensure that all women are adequately represented. Only time will tell whether the provisions of the Bill will prove to be a sufficient deterrent for non-compliance, but any proactive steps taken to ensure greater enforcement for breaches of the provisions can only drive more companies to be more vigilant and focused on tackling this issue effectively and justly.



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