

# BEHIND THE SHOWROOM: the hidden reality of India's garment workers

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,





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# Executive summary

FIDH conducted a mission in July 2013 in India, in order to assess the working conditions and human rights situation of garment workers, including by looking into the persistence of the Sumangali scheme. Mission delegates visited a shoe factory and four ready-made garment (RMG) factories that supply global brands and retailers, and three on-site hostels in the states of Tamil Nadu, Uttar Pradesh and Haryana. Interviews were conducted with local trade unions and NGOs, as well as with experts whose research enriched the observations and analysis presented in this report.

Human rights violations in the garment sector in India have to be understood in the context of 25 years of accelerated economic growth and liberalisation, which, coupled with Indian socio-economic and cultural specificities, gaps in the legal framework and inadequate enforcement of national law, has contributed to fuelling precarious working conditions and serious human rights abuses.

## Main Findings

FIDH identified serious human rights concerns on textile factories' work-floors and hostels during its mission and as a result of interviews conducted with local trade unions, NGOs and experts. Precarious employment and working conditions continue to be commonplace. Disproportionate use of contract labour and apprenticeship, stripping workers of legal protections and benefits, as well as overtime work and salaries below minimum wage are amongst the issues prevailing in garment factories. Garment workers can be subject to an alarming level of control both within factories and at hostels, including through restrictions on their freedom of movement and communication outside the factory. Garment factory facilities such as "doctors rooms" and toilets were found empty in every factory visited, which may indicate an intense pressure to maintain high productivity.

Gender discrimination is deeply entrenched in garment factories, and manifests itself notably in the persistence of the Sumangali scheme. Local NGOs indicated that humiliation, and verbal and physical abuse including sexual harassment are recurrent issues in factories and hostels. Migrant workers and workers from "lower castes", especially dalits, can also be subject to discriminatory treatment.

Employers frequently breach legal requirements regarding the employment of young workers, and the legal prohibition on child labour remains difficult to enforce due to the inability to verify the authenticity of controls such as age certificates. The practise of the Sumangali scheme (an employment scheme which comprises elements that could amount to bonded labour) is enduring, especially in spinning mills. Multi-stakeholder initiatives set up in response have led to little concrete improvements and have failed to eradicate the Sumangali scheme.

The near absence of trade unions and of functioning grievance mechanisms in garment factories, as well legal and practical obstacles to the establishment of unions, constitute clear violations of the right to freedom of association and the right to organise, including the right to collective bargaining.

## Indian manufacturers' role and responsibilities

Garment factory owners and managers are extremely accustomed to and well-prepared for unannounced visits by auditors, NGOs, or foreign companies. Upon the arrival of external visitors, they deploy a sophisticated *show response* to purvey an ideal picture of working conditions in factories and to demonstrate compliance with foreign buyers' "social requirements". During visits by FIDH mission delegates, factory management and hostel guardians directed or corrected interviewed workers' answers, and self-censorship was palpable. Factory owners and managers provided imprecise and often contradictory answers, and showed documents that could not be cross-checked by mission delegates.

According to local trade unions and NGOs, in order to conceal the reality of working conditions at the factory level, garment factories often falsify documents such as age certificates, and exercise tight surveillance on workers to stifle grievance. Garment factory owners and managers purposefully obstruct civil society monitoring, which along with the weakness of government labour inspections, and the near absence of trade unions at the factory level, contributes to perpetrating labour and human rights violations on India's garment factory work floors.

Owners' and supervisors' reluctance to allow the introduction of trade unions in garment factories denies workers the right to freedom of association and the right to organise, including the right to collective bargaining. Managers often state that unions are unnecessary and present existing workers committees as satisfactory substitutes, yet these are not democratically elected nor do they enable genuine reporting and treatment of grievances.

Widely accepted international standards such as the UN Guiding Principles on Business and Human Rights state that garment factories and spinning mills have the responsibility to respect human rights. Indian manufacturers must respect their employees' rights, and they should exercise leverage on their suppliers to prevent human rights violations taking place in spinning mills.

## Global brands' role and responsibilities

This report highlights the limits of the 'Codes of Conduct' of global brands and of the system of social audits established to monitor compliance with such codes, which are unsuited to assess and prevent complex human rights abuses. There remain blatant mismatches between global brands' social commitments and garment workers' realities inside factories. Furthermore, social compliance policies and systems are usually restricted to first-tier suppliers, disregarding labour and human rights violations in second and third tier producers such as spinning mills. Thanks to international denunciation of the Sumangali scheme, initiatives have been set up involving global brands and Indian manufacturers. However, concrete lasting improvements have been limited and insufficient.

Transnational corporations such as global brands have the responsibility to respect human rights and to exercise human rights due diligence throughout their entire supply chains. Brands must identify, prevent, mitigate and remedy adverse human rights impacts directly linked to their operations or to those of their suppliers, even if they have not directly contributed to such impacts. As observed by FIDH in other countries in Asia,<sup>1</sup> global brands' purchasing practices have direct repercussions on working conditions throughout the supply chain: changes to order schedules, tight production planning, and downward pressure on prices contribute to labour rights violations. Lack of transparency in the supply

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1. See 'China's workers are calling for a change. What role should brands play?', FIDH and CLB, May 2013 and 'Bangladesh: Labour Rights in the Supply Chain and Corporate Social Responsibility', FIDH, June 2008.

chain further hinders progress in terms of respect for human rights in garment factories. Given global brands' economic clout and their crucial influence on manufacturers, they should exercise leverage and play an active role in improving working conditions in garment factories in India. Ultimately, workers need to be empowered to actively contribute to improve their working conditions and to be able to claim their rights.

## **Recommendations**

### **To the Indian government**

- Ratify ILO Conventions No. 87 on Freedom of Association and Protection of the Right to Organize, No. 98 on the Right to Organize and Collective Bargaining, No. 181 on Private Employment Agencies, No. 29 on Forced Labour, No. 177 on Home Work, and No. 105 on the Abolition of Forced Labour.
- Withdraw declaration to Article 32 of the Convention on the Rights of the Child.
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- Amend national legislation so as to align it to international labour and human rights standards, ensuring in particular:
  - Elimination of legal and practical restrictions on the right to organise, the right to bargain collectively and the right to strike of all workers, in the formal and informal sectors;
  - a significant reduction of the maximum apprenticeship period to avoid exploitation that can result from the current 3 year period for apprenticeship.
- Reinforce labour inspection at local and districts level through the allocation of necessary political, financial and human resources. In particular, address corruption among labour inspectors.
- Put an end to impunity and ensure that transparent, prompt and impartial investigations into labour rights violations are systematically conducted. Access to remedy for victims must be guaranteed.
- Avoid using piece rate systems, or at a minimum, ensure that targets correspond to what a large majority of workers are capable of producing without overtime hours.
- Develop policies towards the recognition of the informal sector, and ensure the protection of labour rights including, but not limited to, the right to freedom of association and to form a trade union, and the right to an adequate standard of living (including living wages).
- Facilitate the unionisation of workers in garment factories, through dialogue and collaboration with manufacturers, global brands, NGOs and existing trade unions.
- Ensure transparent, prompt and impartial investigations into attacks and harassment of trade union members and labour activists.
- Invest in rural development programmes in order to provide opportunities in impoverished and underdeveloped regions where jobs are scarce, with a view to tackle human rights abuses that may result from circular migration.

### **To garment manufacturers and factory owners in India**

- Respect legal requirements regarding child labour, apprenticeship, working hours and discrimination.
- Assess the risk of Sumangali or similar schemes being practised by suppliers and other business partners, by paying particular attention to:
  - the existence of dormitories or hostels, and of brokers-based recruitment systems, and lump sum payments,

- the absence of trade unions,
- bank accounts records indicating the withholding of wages,
- the absence of free and democratic elections for workers committees, and
- restrictions on freedom of movement, among others.
- Refrain from entering into commercial relations with businesses suspected of practising Sumangali or similar employment schemes that may be considered as bonded labour.
- Exercise leverage with suppliers such as spinning mills to ensure that respect for human rights is a prerequisite for commercial relations.
- Allow and facilitate trade unions' access to garment factories.
- Ensure workers committees are democratically elected and that they are appropriate forums for workers to raise and address concerns without fear of retaliation.
- Genuinely engage in negotiations and allow the free election of workers' representatives to enable workers to engage in collective bargaining.
- Pay workers a living wage, sufficient to allow them and their families to enjoy an adequate standard of living.
- Participate in good faith in social auditing, supplying full and authentic documentation and refraining from interfering in workers' interviews.
- Implement measures to combat discrimination of all kinds on work floors and in hostels.

#### **To home states of global brands sourcing in India**

- Enact legislation which requires companies to disclose information about their corporate structure and supply chain, including the location of production sites, and to report on the risks and the actual human rights impacts of their activities, as well as the measures taken to address such impacts.<sup>2</sup>
- Enact legislation to ensure that multinationals that fall under their jurisdiction are required to perform human rights due diligence throughout their supply chain.
- Undertake measures to ensure that victims of labour and other human rights abuses linked to brands headquartered in their territory and/or under their jurisdiction can have access to effective judicial remedy before national courts.
- In bilateral relations with India, raise the issues of Sumangali and indecent working conditions with the Indian government.
- When providing any form of assistance or support to India, insist that the Indian government ensure respect for social and labour rights in the garment sector.

#### **To international brands and retailers sourcing in India**

Global brands and retailers must uphold their responsibility to respect human rights throughout the supply chain, and carry out due diligence by identifying, preventing and mitigating adverse human rights impacts. Global brands should:

- Undertake comprehensive human rights risk assessments adapted to local issues and social realities, in order to identify their potential and actual human rights impact throughout their supply chain.
- Ensure social audits allow for detection of labour rights and human rights abuses at supplying factories.
- Extend assessment and auditing to lower-tier suppliers such as spinning mills.
- Disclose the full list of suppliers in India.

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2. Taking advantage, for instance, of opportunities such as the recent legislative reform adopted by the European Parliament requiring major companies to report on social, environmental and human rights impacts in their annual company report.

- Favour stable and long-term relationships with suppliers in order to improve traceability and social compliance throughout the chain of production. “Integrated suppliers” should be privileged.
- Exercise leverage with Indian manufacturers, garment factory owners and the authorities, in order to ensure that all necessary measures are taken to prevent and mitigate human rights impacts.
- Increase cooperation efforts amongst global brands sourcing in India, including through robust multi-stakeholder initiatives aiming at harmonizing social auditing practices, and more importantly at increasing their leverage to address the complex issues at stake in a concerted, coordinated and meaningful manner.
- Assess the risk of Sumangali or similar schemes being practised by suppliers and other business partners, by paying particular attention to:
  - the existence of dormitories or hostels, and of brokers-based recruitment systems, and lump sum payments,
  - the absence of trade unions,
  - bank accounts records indicating the withholding of wages,
  - the absence of free and democratic elections for workers committees, and
  - restrictions on freedom of movement, among others.
- Refrain from entering into commercial relations with businesses suspected of practising Sumangali or similar schemes.
- Map spinning mills presenting risks of Sumangali scheme.

#### **To the United Nations Working Group on Business and Human Rights**

- Clarify the responsibility of, and make recommendations to, host states regarding legislative, administrative and political measures to be implemented in order to for them to respect the UN Guiding Principles on Business and Human rights. In particular, make recommendations to put an end to impunity and to ensure that effective judicial and non-judicial remedies are available for victims and their families.
- Clarify the responsibility of global brands including, but not limited to:
  - the scope of human rights due diligence in light of the reality of global supply chains, in particular regarding brands’ purchasing practices;
  - the obligation to map supply chains and ensure full control of production, eliminating uncontrolled outsourcing;
  - transparency obligations;
  - brands’ obligations vis a vis workers; and
  - processes to enable sustainable remediation of adverse impacts to which they directly or indirectly contribute.
- Make recommendations to home states of multinational brands, to ensure that these prevent and refrain from contributing to violations of garment workers’ rights in global supply chains



# Introduction

## **FIDH mission: methodology**

Within the framework of the International Federation for Human Rights (FIDH)'s cooperation with the global retailer Carrefour (see below), FIDH conducted a mission from 22 to 31 July 2013 in the states of Tamil Nadu, Haryana and Uttar Pradesh in India. The objectives of the mission were to assess the working conditions and human rights situation of garment workers in India, to look into the persistence of the Sumangali scheme (see below), as well as to provide recommendations in order to improve respect for human rights in global retailers' supply chain in India.

The mission delegation visited four garment factories and one shoe factory supplying Carrefour and other global brands in three different Indian states: two factories were visited in Tamil Nadu, two in Uttar Pradesh and one in Haryana.<sup>3</sup> One of the factories in Tamil Nadu was an "integrated supplier"<sup>4</sup>, and had an associated spinning mill. However the delegation could not access any spinning mills, given that global brands like Carrefour are not direct clients of the mills. Mission delegates visited one of the factory's three on-site hostels for garment workers, one for male and two for female employees. The delegation also visited a small town and a village in Theni district, and one village in Madurai district (both in Tamil Nadu), where they met with groups of women who had formerly been employed under the Sumangali scheme or similar schemes. Delegates held meetings with local NGOs, national trade unions, the International Labour Organisation (ILO) office in New Delhi, researchers in social sciences, as well as at Carrefour's Global Sourcing office in New Delhi. Meeting requests with the Ministry of Labour and Employment and the Ministry of Textiles were not successful. (see Annex 1)

The mission delegation was composed of Dr. Paivi Mattila, Secretary-General of FIDH's member organisation the Finnish League for Human Rights, Professor Marie-Ange Moreau, expert in International and European Social Law, N. Jayaram, independent journalist and interpreter in Bangalore and Ms. Pía Navazo, then Programme Officer at the Globalisation and Human Rights Desk of FIDH. Carrefour did not attend meetings where FIDH delegates discussed with workers or former workers.

Factory visits were unannounced and made on typical working days, in order to be able to witness routine functioning. Upon arrival, the delegation would generally be received by members of the management, with whom it would hold a discussion. The management would then give delegates a tour of the factory's premises.

## **Background to FIDH – Carrefour cooperation**

Cooperation between FIDH and Carrefour was initiated in 1998, and is carried out through an association called Infans. Carrefour first approached FIDH in 1997 to find ways of improving working conditions at factory level and in particular to eradicate child labour from its supply chain. In 2000, Carrefour adopted its Social Charter, based on the Universal Declaration of

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3. Factory names and exact location are kept confidential so as to avoid retaliation against workers.

4. Suppliers that include different phases of the production process in a same structure or geographical perimeter.

Human Rights and the eight fundamental ILO conventions. An audit methodology was developed with FIDH's assistance and initial audits were undertaken by FIDH. In 2002, the mandate of Infans was revised to end FIDH's systematic involvement in social auditing. FIDH insisted on addressing labour issues through a broad and consistent human rights approach, integrating all human rights and based on internationally recognized human rights standards. FIDH-Carrefour cooperation now encompasses among other things the role of local social actors, freedom of association, purchasing practices, and advocacy for international standards on business and human rights.

Issues related to Carrefour as an employer in the service sector are not included in the cooperation agreement,<sup>5</sup> therefore this report does not cover the situation of labour rights in "Wholesale Cash & Carry" Carrefour supermarkets in India.

Two missions carried out in the framework of Infans were conducted in January and November 2010 in India in order to assess working conditions in selected factories supplying Carrefour and other multinational brands. A number of labour rights violations were identified, and some factories presented presumptions of bonded labour known as the Sumangali scheme. A number of recommendations were made to Carrefour, which implemented important measures to address some of the issues raised, notably improving the local team's awareness and consideration for human rights issues, and increasing dedicated resources. A third Infans mission was conducted in July 2013, to assess the situation in Carrefour's supply chain and progress made since the 2010 missions, as well as to launch a project against the Sumangali scheme operated by Social Awareness and Voluntary Education (SAVE), an NGO based in the state of Tamil Nadu.<sup>6</sup> Conclusions and recommendations in this report therefore build on this monitoring work. Mission findings indicate that working conditions in factories producing goods for Carrefour and other brands remain a matter of concern, and FIDH submitted a series of recommendations to Carrefour to address the human rights issues identified.

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5. Standards relating to Carrefour employees are nevertheless addressed under the Global Framework Agreement between Carrefour and UNI Global Union.

6. Infans is funding a project aiming at combating Sumangali in the south of India, operated by SAVE, an NGO based in Tirupur in Tamil Nadu. SAVE's activities as part of this project includes awareness-raising, information and data collection, case studies documentation and a mapping of spinning mills. See SAVE's website : <http://www.savengo.org/>

# General context

Labour rights violations in the textile industry have to be understood in a context of 25 years of accelerated economic growth and liberalisation, which led to declining rates of employment, particularly in agriculture, a decline of trade unionism and an increase of workers' exclusion and exploitation.<sup>7</sup> Internal complexities, such as India's diversity of languages, cultures, castes and religions, which place entire vulnerable groups at risk of labour rights abuses, have played an eminent role in extending and perpetuating indecent working conditions. These complexities and vulnerabilities have been exploited by dominant classes, and have been exacerbated by export growth acceleration and the larger impacts of globalisation.

## Economic context

### The impact of globalisation on the textile industry

Economic liberalisation in India from 1991 has led to the development and modernisation of the textile industry and to a significant increase in textile exports. Textile production mutated from a traditional hand-woven and home-based organisation to a modern industry shaped by scientific management. Opportunities for formal jobs increased, especially for women, who were traditionally excluded from male-dominated tailoring. Import-export activities expanded from 2005, following the phasing out of the Multi Fibre Agreement (MFA), and export opportunities for India's small and medium enterprises augmented. Growing competition with other Asian countries (particularly with China, Bangladesh and Cambodia) has pushed India to develop a high-quality textile industry, making it a leading cotton exporter. India's export growth mainly rests on the manufacturing sector, and today the textile industry plays a crucial role in the economy of the country, contributing to 16.63% of export earnings and employing over 35 million people. Nearly 40% of textile production is exported.<sup>8</sup> Tamil Nadu is India's main hub for cotton yarn production, and hosts 65% of India's spinning mills. The city of Tirupur in Tamil Nadu produces over 60% of India's knitted garments, and is one of the largest cotton yarn exporters.

The two decades which followed the economic liberalization of India have been marked by an extreme volatility in employment in all sectors, and by a general decrease in salaries which in many cases have fallen below subsistence level. Outsourcing and large-scale casual employment have increased in the formal sector, while the informal sector remains largely preponderant. Liberalisation has not been accompanied by labour policies integrating human rights concerns and capable of providing livelihood for a large part of the work force. Poverty reduction policies have concentrated on creating *any kind of* employment rather than *decent* employment, and labour market flexibility and cost minimization have added more tiers to the layers of exploitation, forms of discrimination and inequality affecting workers and particularly women.<sup>9</sup> Less than a decade ago, the ILO said that India's economy was at a point where it could achieve sustained economic growth and enable significant improvements in lives of the people.<sup>10</sup> Today, it is clear

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7. During her meeting with mission delegates, Mary E. John, Senior Fellow of Centre for Women's and Development Studies (CWDS) described the "highly advanced forms of exclusion and exploitation that follow the advanced forms of capitalism existing today in India" and concluded that "India experiments the worst forms of Globalisation".

8. Indian Exports of Apparel & Textile – Facts & Figures, available at <http://www.india-exports.com/apparel.html>

9. See "Women Workers and Globalisation: Emergent Contradictions in India", Centre for Women Development Studies, New Delhi, 2007; and Mary John, "The problem of Women's Labour", *Indian journal of Gender Studies*, 2013, vol. 20 ( 2), 177-210.

10. ILO: Decent Work India Country Program 2007-2012, available at <http://www.ilo.org/public/english/bureau/program/>

that growth has not translated into significant poverty reduction, improved living conditions or healthy labour relations, but that it rather made exploitation and labour rights abuses rampant.<sup>11</sup>

### **The growth of informal labour in the garment sector**

Informal labour is a structural element of India's economy, and it is still the predominant form of labour.<sup>12</sup> In the garment sector, the phenomenon of informalisation has increased in recent years, and it has been marked by a growing trend towards home-based production. Home-based workers, who generally are all women,<sup>13</sup> are often dependent on middlemen and agents, and are vulnerable to various forms of abuse. Employers determine piece rate production systems and workers' income is unregulated, unstable and usually very low. Home-based garment workers are often unaware of their rights and they have little leverage to improve their working conditions. They do not enjoy welfare benefits or other legal protections. For example, labour laws such as those on minimum wage do not apply to piece rate workers,<sup>14</sup> and garment stitching is not listed in the Minimum Wages Act. Moreover, in the garment industry, the increased use of casual or contract workers and the often irregular employment conditions have resulted in a growing numbers of workers in informal employment situations.

In general, widespread lack of registration of formal work and of compliance with Indian laws blurs the distinction between the formal and informal sectors.<sup>15</sup> The informal sector is, however, being increasingly professionalised and organised, as some trade unions are beginning to penetrate it.<sup>16</sup> At the same time, formal labour, subject to greater flexibility, is not necessarily characterised by respect for state regulation, regular and written contracts and decent working conditions, as highlighted in this report.

The division of the economy into formal and informal can be seen as artificial, and can moreover contribute to the invisibility, vulnerability and poverty of informal workers.<sup>17</sup> Informal workers were not recognised as workers and were identified as a threat to the organized sector by international trade unions until the ILO acknowledged the growing numbers of home-based workers.<sup>18</sup>

Given the preponderance of the informal sector within the total workforce, improving labour conditions will require policies targeting both the formal and informal sectors, recognizing the

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[dwcp/download/india.pdf](#)

11. See "Women Workers and Globalisation: Emergent Contradictions in India", Centre for Women Development Studies, New Delhi, 2007.

12. Today some 20% of the operating manufacturing export units would be registered as opposed to 6% in 1990. According to the Self-Employed Women's Association (SEWA), today workers of the informal sector constitute 93% of Indian labour force, while 94% of female workers are employed in the unorganised sector.

13. Home-based work, which allows to combine household duties, child rearing and sources of income, is also privileged by some women due to the absence or inadequacy of crèches, despite the requirement for such facilities stated by the Factories Act.

14. Ela R. Bhatt, "We Are Poor but So Many. The Story of Self-Employed Women in India", Oxford University Press, 2005 .

15. *In 2004-2005, 86% of the total of 457 million workers were employed in the informal economy while 6%-7% of the 63 millions workers in the organised sector were registered as contract labourers, and thus 92% of the total force were in the informal sector, defined as work not regulated by law. S. Ahn and Y. Ahn, Organising experiences and experiments among indian trade unions : concepts, processes and showcases ». The Indian Journal of Labour Economics , vol 55, n°4, 2012, p.573-593.*

16. In particular, the Self Employed Women's Association (SEWA), a trade union gathering 700,000 members in 13 states of India, is promoting the organising of female workers in informal sectors, including home-based workers, street-vendors, small producers and labourers. Through organisation in co-operatives, SEWA seeks to achieve work, income, food and social security (including health care, child care, shelter). SEWA constitutes an alternative model in India, based on women's forms of independent organization in the communities covering a number of informal workers' needs linked to the globalised economy.

17. According to mission interviews with the Self Employed Women's Association (SEWA).

18. Ela R. Bhatt, "We are poor but so many. The story of self employed women in India", Oxford University Press, 2005 .

importance and specificity of the informal sector, and promoting better working conditions in both sectors.

## Socio-political context

### Government and institutions

Institutional reform in India in the last decades has not been able to keep up with the rapid changes brought about by globalisation and it has not allowed for adequate protection of human rights, in particular labour rights. Governmental bodies, including the judiciary and the administration, still lack the capacity to monitor labour conditions and ensure respect for workers' right.

The judiciary system is widely respected in India. The Supreme Court, which sits at the head of an extensive and integrated national court system, has been proactive in responding to public interest litigation, including over official corruption and environmental issues, and in advancing the enforceability of economic, social and cultural rights. It has largely contributed to extending the scope of fundamental rights, particularly regarding the right to a life of dignity, which includes the right not to be subjected to "bonded labour" or "unfair conditions of labour".<sup>19</sup>

Since the economic liberalisation, the judiciary's decisions seem to be following a regressive orientation with regards to compensations, employment and other labour rights.<sup>20</sup> A number of recent judgements from the Supreme Court, which set legal precedents, have for example established new restrictions on the right to strike.<sup>21</sup> Members of the judiciary themselves point to a "visible shift" in Courts' interpretations of social welfare legislations: "The attractive mantras of globalisation and liberalisation are fast becoming the *raison d'être* of the judicial process and an impression has been created that the constitutional courts are no longer sympathetic towards the plight of industrial workers".<sup>22</sup> Workers' lack of access to judicial remedies and lack of awareness of the existence of such remedies also act as impediments to a stronger role of the judiciary in fulfilling human rights.

In practice, few cases of labour rights violations are filed. Several factors can account for the paucity of denunciations, such as lack of awareness of legal remedies available and censorship based on reluctance and fear to denounce abuse. Individuals belonging to lower castes, indigenous groups or ethnic or religious minorities are faced with additional obstacles to file complaints. Moreover, denunciations of labour rights abuses are rarely followed by prompt, transparent and impartial investigation, and cases are frequently closed without meaningful redress for victims and adequate sanction of those responsible.

The violent incidents which took place following the closing down of the Manesar plant of Maruti Suzuki India Ltd. in 2012, during which 147 workers were arrested, and 546 permanent

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19. Among others, Francis Coralie Mullin v. The Administrator, Union Territory of Delhi (1981) 2 SCR 516, People's Union v. Union of India, AIL (1982) 1473, SC.

20. K.R. Shyam Sundar, Op.cit. supra, p. 555.

21. In a major judgement the Supreme Court ruled that Tamil Nadu governmental workers had no moral right to resort to strike. See The Times of India "Govt employees have no rights to strike: SC". Available at [http://articles.timesofindia.indiatimes.com/2003-08-06/india/27183945\\_1\\_employees-strike-state-or-nation](http://articles.timesofindia.indiatimes.com/2003-08-06/india/27183945_1_employees-strike-state-or-nation)

22. See The Indian Express "Globalisation blinds us to aam aadmi plight:" published on 28 January 2010, available at <http://www.indianexpress.com/news/globalisation-blinds-us-to-aam-aadmi-plight-sc/572348/>

and 1,800 casual workers were suspended, is a recent illustration of impunity and lack of access to effective remedy in cases of labour rights violations. In spite of the scale and media attention on this case of industrial violence, no independent investigation was carried out, and the right to bail and to a fair trial were severely disregarded.<sup>23</sup>

Corruption is widespread, and it involves government officials and private companies alike.<sup>24</sup> Institutional corruption is rampant and touches all levels of the administration and key institutions,<sup>25</sup> generating a blatant lack of accountability and a breakdown in the rule of law.<sup>26</sup> Allegations of corruption are particularly common in the garment industry in Tamil Nadu, as politicians, government officials and even some labour inspectors are often factory owners themselves or have economic ties to factories. For example, civil society recently brought a case in which a labour inspector was prevented from entering a spinning mill where 200 children were allegedly employed, after he received call from the district collector, the highest civil servant at the district level<sup>27</sup> Furthermore, in Tamil Nadu transparency and accountability are largely undermined by the fact that petitions filed under the 2005 Right of Information Act remain largely unanswered.

Labour inspectors and police forces are often unable or unwilling to monitor compliance with labour laws. Despite a number of government declarations of measures being taken to address the issue of labour inspection, labour inspection bodies continue to be extremely understaffed, particularly in Tirupur and Coimbatore. In the city of Tirupur in Tamil Nadu for example, there are between five and ten inspection offices to cover more than 2,000 factory units.<sup>28</sup> Labour inspectors are in some cases prevented from accessing the factories, while at the same time, corruption and collusion with manufacturers is frequent. Labour inspection is thus largely incapable of monitoring law enforcement and of preventing the creation of new exploitative schemes.

Although India is regarded as the world's largest democracy, with a strong legal framework, stable democratic institutions and a strong, independent judiciary, woeful lack of law enforcement and corruption allow for the persistence of labour rights violations.

### **State policies**

Education policies can influence labour rights abuses. Under the Right to Education Act of 2009, the state provides compulsory free education up to primary school, but there are little monetary incentives to pursue secondary education. Long distances from villages to schools generate pressing cost and security concerns to poor families. Dropping out of school at the age of 14 is common, and garment factories represent attractive and much needed employment opportunities regardless of working conditions, especially for girls and women from poor backgrounds.

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23. See for a full description: International Commission for Labour Rights (ICLR) "Merchants of Menace: Repressing workers in India's new industrial belt, Violations of workers' and trade union rights at Maruti Suzuki India Ltd.", 27 June, 2013, available at [http://ntui.org.in/files/reports/Merchants\\_of\\_Menace.pdf](http://ntui.org.in/files/reports/Merchants_of_Menace.pdf)

24. See International Commission of Jurists, Access to Justice : Human Rights Abuses Involving Corporations, 2011, <http://www.indianet.nl/pdf/AccessToJustice.pdf> / Transparency International, Daily lives and corruption: public opinion in South Asia Report 2011 for further. Available at [http://www.transparency.org/whatwedo/pub/daily\\_lives\\_and\\_corruption\\_public\\_opinion\\_in\\_south\\_asia](http://www.transparency.org/whatwedo/pub/daily_lives_and_corruption_public_opinion_in_south_asia)

25. See Shibashis Chatterjee and Sreya Maitra Roychoudhury, "Institutions, Democracy and Corruption in India: Examining Potency and Performance", Japanese Journal of Political Science, Cambridge University, Volume 14 / Issue 03 / September 2013, pp 395-419.

26. Interview with Mary E. John, Senior Fellow, Centre for Women and Development Studies (CWDS).

27. The Tamil Nadu Assembly examined, and later on blocked this case in July 2013. This information was provided by SAVE.

28. According to civil society organizations met during the FIDH mission.

The multiplication of ‘welfare state schemes’ acts as a mechanism of exclusion and a barrier to legal reform and meaningful change, and these schemes have fuelled poverty and have contributed to maintain the *status quo*.<sup>29</sup> For instance, the Tamil Nadu state government provides monetary support and sometimes a small amount of gold for marriage.<sup>30</sup> The ‘Marriage Assistance scheme’ for example, is meant to assist families in buying “Thali or Thirumangalyam” which according to Hindu custom a woman is expected to wear during and after the wedding.<sup>31</sup> Families have to produce secondary education certificates in order to be eligible to this scheme, and the amount allocated depends on girls’ education qualifications. While the programme is intended to promote education among girls and to provide an alternative to employment in mills and factories, in practice marriage assistance may be contributing to perpetuate the dowry system.

Additionally, a lack of information and heavy administrative requirements for registration and eligibility leave a large part of the population without adequate access to welfare schemes.

## **Civil society**

### **Unions**

Trade unions face a number of restrictions and obstacles at the stages of formation and registration, as well as for daily functioning. There is no legal obligation on employers to recognize a union or to engage in collective bargaining. Collusion between the authorities and factory owners is common, and applications to register new unions often remain unanswered, delayed or rejected, often on the grounds of inadequate supporting documentation.<sup>32</sup> Burdensome obstacles were introduced through the Union Act reform of 2001, such as the registration requirement of a minimum membership of 10% of the workforce (subject to a minimum of 7 workers) or of 100 workers per unit. Effectively, obstacles to the registration of trade unions seem to be multiplying.<sup>33</sup>

Unions also face practical difficulties which affect functioning. Union members have no choice but to conduct meetings outside working hours and away from factory premises. Productivity targets, on which salaries frequently dependent, are also an obstacle to unionism, as they prevent workers from leaving the workplace during working hours to attend union meetings. Trade union members met during the mission reported serious obstacles both in terms of resources and access to information.<sup>34</sup>

Anti-union prejudice is widely prevalent. Employers enjoy a dominant position with no or little counter power. They have largely contributed to preventing trade union access at the factory level, presenting existing workers committees, whose members are frequently selected by management or under its control, as satisfactory substitutes for unions. In cases where trade unions do have access to factories, manufacturers generally do not recognize them or refuse to negotiate with them. Criminalisation, threat against labour activists or striking workers, and violence against union members, including murder in some cases, remains common and

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29. According to civil society organisations met during the FIDH mission.

30. In 2011, there were five different forms of marriage assistance in Tamil Nadu, including the ‘Inter-Caste Marriage Assistance Scheme’ or the ‘Marriage Assistance scheme’.

31. Order of the Government of Tamil Nadu, 46, Social Welfare and Nutritious Meal Department, GO.M.S no. 8 July 2011, available at [http://www.tn.gov.in/go\\_view/dept/30?p.=1](http://www.tn.gov.in/go_view/dept/30?p.=1).

32. ITUC survey 2012 provides further information on union rights’ violations in India, available at <http://survey.ituc-csi.org/India.html>

33. According to civil society organizations met during the FIDH mission.

34. Interview with Mr. Abimannan and Mr. Karuppusamy, Tanjore members of the Communist Party of India (Marxist – CPM).

generally goes unpunished.<sup>35</sup>

Trade unions are affected by internal issues, which limit their influence and thus their capacity to protect labour rights and freedom of association in India.

There are 12 central trade union federations in India. Informal sector unions are few, and company unions exist in rare cases. Most established trade unions are considered lacking independence due to their affiliation with political parties. Traditional trade unions are also considered heavily involved in corruption, and it is not uncommon for unions to have linkages with factory owners, notably business ties. According to the International Metalworkers Federation representative “*unions with all the benefits rarely speak for their weaker counterparts*”.<sup>36</sup> Conflicts and divisions based on seniority, gender, age, caste, religion are common between unions but also within unions. Moreover, traditional trade unions’ relevance has been in decline due to the transformation of the economy as a result of India’s increased participation in global production, to the development of new industries, to their lack of access to factories and due to their political involvement and lack of independence.

Against this background, a new generation of independent, non-affiliated unions has emerged, and there is a growing number of new unions. The New Trade Union Initiative (NTUI) for example, was incorporated as a central trade union in 2006, with no political affiliation, gathering several independent unions in the organized and unorganized sectors. However, it seems that it is still early days for these new unions, who as of yet do not seem to have the capacity to gain access to factories and to advance freedom of association.<sup>37</sup>

The history of comparative labour law suggests that union presence inside the factories is the only possibility to improve working conditions. Real and long-term progress towards human and labour rights respect in supply chains in India requires two necessary conditions: state action and trade union engagement. Workers need to be aware of their rights and the issues they face, be able to interact between them and management, to voice their grievances and be included in decision-making processes.

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35. In tandem with rampant anti-unionism, human rights defenders and labour activists face violence and harassment Also, the Indian Foreign Contribution Regulation Act, as amended in 2010 imposes burdensome requirements on organizations that receive external funding, which results in further insecure situation for activists and human rights defenders. Please see Observatory for the Protection of Human Rights Defenders, Annual Report 2013: *Violations of the right of NGOs to funding: from harassment to criminalization*, available at [http://www.fidh.org/IMG/pdf/obs\\_2013\\_human\\_rights\\_defenders\\_english.pdf](http://www.fidh.org/IMG/pdf/obs_2013_human_rights_defenders_english.pdf)

36. Gartenberg, Indira and Bandekar, Supriya Challenges to Ensuring Core Labour Standards in Transnational Corporations: *the Case of India*, *The Indian Journal of Labour Economics*, Vol.54, No.2, 2011 p. 270.

37. Indian law incorporates strong protections for the rights of workers, but gives unions limited access to the workplace. This is one of the reasons that the trade union movement has generally relied on its political connections, a practice that become less effective over time due both to divisions within the trade union movement and globalization. <http://labornotes.org/2006/09/%E2%80%98unity-democracy-militancy%E2%80%99-new-trade-union-initiative-launched-india?language=en>



## NGOs

India is witnessing the multiplication of new organisations of various shape and form, such as solidarity movements and stakeholders' forums, which look into a big spectrum of issues. Private-led initiatives have flourished all over the country in response to the inadequate protection of workers.

The National People's Tribunal on the Living Wage as a fundamental right of Indian garment workers is an example. It was held in Bangalore in November 2012 at the request of 20 organizations representing garment workers across India,<sup>38</sup> as part of a series of National Public Hearings coordinated by the Asia Floor Wage Campaign. Through the review of petitions submitted by Indian garment workers representatives and hearing of workers' testimonies, it documented and assessed the existence and the extent of grave exploitation and human rights violations of garment workers in India. Although non-binding, the Jury's verdict has been of major significance in providing dignity and visibility to victims.

Non-governmental organisations are numerous and they are becoming increasingly involved and active on the issue of labour rights. Some NGOs are working on organising and defending victims of human rights violations, including through the provision of legal assistance, while some are acting specifically against the Sumangali scheme (see below). Others focus on development projects, providing informal education in villages from which young people leave to work for garment factories.

While trade unions do not have access to factories, NGOs are in some cases able to penetrate them, either on their own initiative or sometimes at the request of brands or manufacturers. They perform different roles in factories, such as capacity building or provision of health care, and in some cases they even act as communication channels or set up *hotlines*.

Nevertheless, while NGOs can be useful in certain aspects such as raising workers' awareness on labour rights, their capacity in pushing factories to protect human rights is limited. In fact there is a significant risk that NGOs' actions perpetuate the current status quo, in which each private actor has a differentiated role: local NGOs helping to marginally improve workers' situation in factories, brands using their own voluntary codes of conduct, and auditors monitoring social compliance and implementation of social charters.

Increased NGO involvement in factories may exacerbate the ever-decreasing leverage on national and local labour authorities to take responsibility over labour rights violations in the garment sector. The strengthening of NGOs, through substantive international funding, may ultimately act as an obstacle to trade unionism. According to a Tamil Nadu CITU trade union leader, "NGOs don't solve the problem, they receive and have a lot of money, but in the end they become certification agencies".<sup>39</sup>

The decline of trade unionism in India is paving the way for NGOs to act as substitutes. Because NGOs have in practice better chances of gaining access to factories, they could potentially play a role towards the development of real unionism at the factory level. In the long term however, only trade unions shall be in a position to ensure better working conditions through organisation

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38. National People's Tribunal on Living Wages and Decent Working Conditions for Garment Workers, Op cit 3.

39. Interview held with Mr Abimannan and Mr karuppasamy, Tanjore members of the Centre of Indian Trade Unions (CITU), affiliated to the CPM.

and collective bargaining. Dialogue and collaboration between NGOs and trade unions needs to be deepened, to give room to workers organisation at factory levels, with the view of eventually paving the way for trade unions' access and active involvement in garment factories.

## **Discrimination**

### *Gender*

Globalisation has been marked by the “feminization” of labour in a number of countries,<sup>40</sup> and in India it has opened new opportunities for women to enter the labour market, mainly in repetitive assembly line work in export-oriented “light” industry subsectors, such as garment, textile and shoes. In Tamil Nadu for example, employment of women in the garment sector is on the rise.<sup>41</sup>

Female labour is often casual and temporary, less well paid and less secure. The flexibilisation of labour has led to a deterioration of women's working conditions in the garment industry. A majority work in the informal sector, where they are subject to increased vulnerability.

The traditional division of labour between men and women has been transformed by women engaging in paid work outside the household. The question of the feminization of labour requires a contextualization of the initial position of women in relation to their entry into the labour market, as well as an analysis of their situation in an intersectional framework that is oriented through the question of gender, class, caste and sexuality.<sup>42</sup> Despite the general impression that under globalisation female employment in manufacturing would increase equality, inequalities between male and female workers have grown following the opening up of the economy to international trade and capital flows. Social norms and relations regarding paid labour and housework, which are highly influenced by the caste system, have also been shaken by women entering the labour market.<sup>43</sup>

Gender discrimination is deeply rooted, and it acts as a driving force for all kinds of abuses against women. The persistence of harmful practices, pervasive gender stereotypes and deeply entrenched patriarchal social and cultural norms is of serious concern, as recently highlighted by the UN Special Rapporteur on violence against women.<sup>44</sup> Women are subject to enormous pressure regarding marriage, reputation, respectability and social stigma. Although banned since 1961, the practice of the dowry is deeply established, and touches all social classes. For poor working class families, a dowry payment for one's daughter may equal to ten years' salary. Saving up for dowry is often a major reason for parents to send their daughters to work in the garment sector or in domestic work, and the Sumangali scheme stems from such pressures.<sup>45</sup>

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40. See Barrientos, Kabeer, Hossain (2004) “The gender dimensions of the Globalisation of production”, Working Paper No. 17 Policy Integration Department World Commission on the Social Dimension of Globalisation, International Labour Office Geneva, May 2004. Available at [http://www.ilo.int/wcmsp5/groups/public/---reports/---integration/documents/publication/wcms\\_079121.pdf](http://www.ilo.int/wcmsp5/groups/public/---reports/---integration/documents/publication/wcms_079121.pdf), citing to G. Standing, “Global feminization through flexible labour: A theme revisited”, in *World Development*.1999, vol. 27, (3), p. 583-602,

41. “Women Workers and Globalisation”, op. cit

42. Mary E. John, “The Problem of Women Labour: Some Autobiographical Perspectives”, *Indian Journal of Gender Studies*, 2013, vol 20. N°2, 177-2012.

43. “The Problem of Women Labour: Some Autobiographical Perspectives”, Op. Cit Mary Jones, p.185 -186.

44. Report of the UN Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, on her mission to India (22 April-1 May 2013), A/HRC/26/38/Add.1, 1st April 2014.

45. According to mission interviews with the NGO SAVE.

### *Caste system*

Contrary to the dominant view, India's embrace of globalization and the legal and policy reforms which followed it have not diminished the importance and influence of the caste system on the labour market. The garment sector is no exception, and segregation and traditional caste-ordered social hierarchies continue to structure the division of labour within factories.

Management and line supervisors are frequently from urban middle-class background, and they generally belong to the same upper castes. Manual workers on the other hand usually belong to lower castes, the *dalit* community or to indigenous groups (Scheduled Castes/Scheduled Tribes).<sup>46</sup>

*Dalits* are at the very bottom of the system, and they typically perform tasks that sections of the population consider unclean and polluting.<sup>47</sup> "DDD" tasks (dirty, demeaning, and dangerous) are usually assigned to members of the lowest or lower castes, ethnic minorities or workers from indigenous communities. For instance, those asked to clean the floor and the toilets are more likely to be *dalits* or from the lowest caste.

In garment factories, many *dalit* workers are landless labourers whose potential for any upward mobility in their own village is blocked by upper caste villagers. Jobs outside the village therefore appear as an escape from the stranglehold of caste and class oppression. Many, if not most, of the young women recruited under exploitative schemes such as the Sumangali scheme are *dalits*.<sup>48</sup>

### *Migration*

The garment sector employs high numbers of migrant workers, who generally either come from other states or from rural areas of the same state. The city of Tirupur in Tamil Nadu is an important export hub in India, and attracts migrants from poor areas, mainly Northern and Eastern states like Orissa, Jharkhand, Bihar and North-Eastern states like Assam and Mizoram. Circular migration, a phenomenon by which poor people from low productivity areas migrate for part of the year -often on a seasonal basis-to areas with more job opportunities and higher wages, is on the increase.<sup>49</sup>

## **The Sumangali scheme**

### *Description*

The Sumangali scheme is an employment scheme particularly widespread in the south of India, by which young workers are recruited in their villages to go work in textile mills or factories for a 3 to 5 year contract, at the issue of which they receive a lump sum that they can use for their dowry. They receive a small monthly wage and are provided with accommodation and food at hostels located in or near the mills and factories. Sumangali was established about 10 years ago,

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46. Scheduled Castes/Scheduled Tribes are historically-disadvantaged groups recognized in the Constitution of India, for whose protection the Parliament enacted specific legislation in 1989 (the Scheduled Castes and Tribes (Prevention of Atrocities Act).

47. "Women Workers and Globalisation: Emergent Contradictions in India", 319. op cit.

48. Civil society members interviewed during the mission pointed to this trend. See also "Captured by Cotton: Exploited Dalit girls produce garments in India for European and US markets", by SOMO Centre for Research on Multinational Corporations and ICN - India Committee of the Netherlands (May 2011).

49. Circular migration is particularly high among the poor, low castes, indigenous people and Muslims. See, Kate Bird and Priya Deshingkar, Circular Migration in India, Overseas Development Institute, Policy Brief No 4 2009.

mainly in spinning mills in the Tirupur region in the state of Tamil Nadu. The Sumangali scheme is primarily being practised in spinning mills, as more than 80% of cases were identified in mills and 20% in garment factories.

Sumangali is also known as “Thirumagal Thirumun Thittam”, a Tamil word alluding to the state of happiness a woman is believed to have attained once she is married. Poor families struggle to get their daughters married and to come up with the dowry demanded by the grooms’ families. Workers recruited under the Sumangali scheme are mostly young women, 80% of them between 14 and 20 years old, and they are sometimes even younger. Most come from poor rural villages and vulnerable groups, and 60% are *dalits*. One study shows that 60% of workers recruited under Sumangali are between 15 and 18 years old.<sup>50</sup>

Vulnerable workers are tempted into the Sumangali scheme by the promise of monthly wages, a lump sum between Rs 30,000 ( US \$ 491) and Rs 50,000 (US \$ 818), and by the provision of training, food and accommodation in hostels.<sup>51</sup> Air conditioning in factory workshops also acts as a major incentive, since it is reputed to have a beneficial effect on skin colour, which is a often a basis for discrimination and affects the amounts for dowries.<sup>52</sup>

The Sumangali scheme also represents an opportunity for young girls to leave their villages, escape their families’ control, earn a salary and feel empowered. Poor families are especially likely to be tempted by what is perceived as a structured way to save for the dowry, and a guarantee of lodging, food and security in workers’ hostels.<sup>53</sup>

Recruitment is carried out through very organised networks of brokers, who display posters and distribute flyers in and around socially and economically vulnerable villages, and systematically target families below the poverty line and other vulnerable groups. Brokers push the dowry argument and gain parents’ trust by making regular visits to villages, and insisting that daughters will be safe. Brokers’ recruitment commission is often conditional on worker’s fulfilment of the fixed contract term, and in some cases parents are forced to reimburse brokers if the contract is breached.<sup>54</sup>

Research on the Sumangali scheme has evaluated that this practice comprises elements of forced labour,<sup>55</sup> human trafficking and bonded labour. Workers engage in the scheme out of economic necessity, on the basis of false promises or misleading and deceptive information, and are coerced and threatened to remain in employment. Moreover, workers are subject to high levels of control,

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50. R. Gayathri, ‘A Study on Issues of Adolescent Girls in Camp Labour Scheme in Textile Sector’, Bharathidasan University, Department of Economics, March 2012.

51. Workers recruited under the Sumangali scheme usually belong to the poorest families, and in workers interviews the provision of food appeared to be the main incentive for joining the scheme.

52. It is not uncommon that darker skin increases the bride’s family needs to pay for the dowry or to pay for a higher amount. Groups victims of race and caste discrimination such as dalits seem especially receptive to the argument of air-conditioned mills and factories.

53. Traditional families are often concerned about daughter’s sexual and physical safety concerns, and workers’ hostels are perceived as a relatively safe and secure working environment.

54. According to mission interviews with the NGO SAVE.

55. See section “The Sumangali scheme: Legal qualification”. In Peoples Union for Democratic Rights vs Union of India, AIR 1982 SC 1473, the Supreme Court of India gave a very progressive interpretation to article 23: “where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words ‘forced labour’ under Article 23 (...) the word ‘force’ must be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage”.

including restrictions on freedom of movement and on family visits, and are often not allowed to have mobile phones. In addition to confinement and surveillance, workers often experience sexual, physical, verbal and mental harassment. These elements make the Sumangali scheme a form of modern forced labour.<sup>56</sup>

Recruitment practices featured in Sumangali and similar schemes could also qualify as human trafficking.<sup>57</sup> As a result of mobilization and denunciation in recent years, recruitment schemes have evolved, and some factories have internalized recruiting through in-house personnel instead of using brokers. However, new recruitment practices invariably follow the same logic of targeting vulnerable workers, ultimately perpetuating the scheme. The Sumangali scheme may also fall within the category of bonded labour (or debt bondage)<sup>58</sup> as workers are tied to the promise of the lump sum payment, which can be considered as a “reverse bondage”. Workers employed under Sumangali do not have the option of leaving the mill or factory before the end of the contract, since premature termination could entail loss of the lump sum amount or any wages due.

### *Recent responses to Sumangali*

The Sumangali scheme has been the subject of several press and NGO reports in recent years.<sup>59</sup> International and national mobilisation has had a large echo, and in 2007, an interim order of the Madras High Court declared the Sumangali scheme illegal.<sup>60</sup> As a result, multi-stakeholder initiatives have multiplied in India, such as the Tirupur Stakeholder Forum (TSF), initiated by the Tirupur Exporters Association (TEA) and gathering the Brands Ethical Working Group (BEWG), trade unions and NGOs. The TSF has elaborated a “Guidance for Migrant Women Workers in Hostel & the Recruitment Process – Spinning/Garmenting Factories”<sup>61</sup>. Employers associations have also undertaken different initiatives. For example, SIMA, the South India Mills Association, has elaborated its own “Recruitment Guidelines and Code of Discipline for Women Employment in Textile Industry”. The Fair Wear Foundation (FWF), together with SAVE and CIVIDE, launched a programme to help garment factories implement anti-harassment laws, through anti-harassment policies and committees, training courses and a workers helpline.<sup>62</sup>

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56. ILO Convention No. 29 (ratified by India in 1954) defines forced labour as “all work or service which is extracted from any person under menace of any penalty and for which the said person has not offered himself voluntarily”. ILO 2006 Guide sets out the indicators that determine forced labour: psychological coercion, retention of identity documents, sexual violence and exclusion from community, imprisonment or physical confinements or financial penalties. All of these are more or less present in Sumangali.

57. US Department of State’s Trafficking in Persons 2012, [www.state.gov/j/tip/rls/tiprpt/2012/](http://www.state.gov/j/tip/rls/tiprpt/2012/)

58. According to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956, debt bondage is « the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined ».

59. See, among other, reports by EveryChild, Centre for World Solidarity and UNICEF; Report of State Level Consultation on Sumangali Scheme: Challenges and Way forward; EveryChild, (March 2011); Anti-Slavery International, Slavery on the High Street, Forced labour in the in the manufacture of garments for international brands (June 2012); SOMO, Bonded (child) labour in the Indian garment industry (May 2012); Still ‘captured by cotton’? (April 2012); SOMO, Captured by Cotton (May 2011); Solidaridad-South & South East Asia, Understanding the Characteristics of the Sumangali Scheme in Tamil Nadu Textile & Garment Industry and Supply Chain Linkages (May 2012); Industryall, Precarious Conditions in India (June 2012).

60. First Division Bench of Madras High Court, Interim Order, dated 03.10.2007 communicated by Circular No.209/2007 dated 03.10.2007, para. 6

61. Available at: [http://www.tsf.org.in/documents/TSF\\_GUIDELINE\\_VERSION\\_1\\_0\\_ENG.pdf](http://www.tsf.org.in/documents/TSF_GUIDELINE_VERSION_1_0_ENG.pdf)

62. The programme was launched in October 2011. A progress report on the programme was published in November 2013, see [http://www.fairwear.org/ul/cms/fck-uploaded/documents/fwpublications\\_reports/StandingFirmReportFWF2013.pdf](http://www.fairwear.org/ul/cms/fck-uploaded/documents/fwpublications_reports/StandingFirmReportFWF2013.pdf)

As of today, despite the multiplication of initiatives, these have yielded little improvements.<sup>63</sup> In some cases, these initiatives have triggered modifications in the shape and form of the Sumangali scheme, while not fundamentally eradicating the practice. Fearing accusations of practising Sumangali, some spinning mills have stopped paying the lump sum or providing written evidence of such payment, leaving workers ever more vulnerable and unable to claim the lump sum promised upon completion of the employment term. Variations of the Sumangali scheme, under which workers are not accommodated in factory facilities, appear to have emerged. The very name of the Sumangali scheme has been changed in certain cases to Kanmani or Mangalya scheme, while the lump sum has in some cases been paid under the names of Provident Fund, Savings or Gratuity.

Today, government authorities, businessmen, employers' associations such as the TEA and the SIMA<sup>64</sup> have declared that Sumangali no longer exists in Tirupur.<sup>65</sup> SIMA has declared that the system is present in less than 10% of the textile and apparel industry. However, the scheme, or variations of it, continues to prevail, at times under different names or in the best cases, with an increase in wages. Recent research carried out by SAVE continue to point to high numbers of girls working in garment factories under the Sumangali scheme.<sup>66</sup> According to the ILO no drastic changes have taken place, despite the international awareness and several court decisions from the Madras High Court.<sup>67</sup>

## Legal Framework

Under international human rights law, States have an obligation to respect, protect and fulfil the human rights enshrined in the treaties they are party to. India is part to all major human rights treaties.<sup>68</sup> India has also ratified several ILO Conventions, but has not ratified four of the ILO fundamental Conventions.<sup>69</sup> Several treaty bodies have called on India to ratify and effectively implement ILO Conventions and national legislation.<sup>70</sup>

## Freedom of association and union rights

India has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), whose Article 8(3) and

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63. See for example « Small steps-Big challenges », Update on (tackling) exploitation of women workers in the garment industry of South India, FNV Mondiaal and ICN, March 2014.

64. *The Southern India Mills' Association (SIMA) is a trade organization of yarn spinning and fabric weaving mills in Southern India and the Tirupur Exporters Association (TEA) is an association exclusively for exporters of cotton knitwear who have production facilities in Tirupur.*

65. Business & Human Rights Resource Centre: Eastman response regarding child labour employed in its factories in India, "Bonded (child) labour in the South Indian Garment Industry - An Update of Debate and Action on the 'Sumangali Scheme'", SOMO, 3 August 2012.

66. SAVE's data collection of January 2014 in the district of Dindigui shows that over 9 000 young women would be employed in the 158 spinning mills of the district, and lodged one of the 56 on-site hostels.

67. Interview with Coen Kompier, Senior Specialist on International Labour Standards, ILO office in India.

68. Such as the ICCPR, ICESCR, the International Convention on the Elimination of all forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC)

69. ILO Convention C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87); ILO Convention C098 - Right to Organise and Collective Bargaining Convention, 1949 (No.98); ILO Convention C138 - Minimum Age Convention, 1973 (No.138) and ILO Convention C182 - Worst Forms of Child Labour Convention, 1999 (No.182).

70. Among others, CESCR has called for the ratification of the ILO Convention No. 98 (1949) on the Right to Organize and Collective Bargaining (CESCR, Concluding Observations on India 8 August 2008, E/C.12/IND/CO/5).

Article 22(3) respectively protect the right to form and join trade unions. However India has not ratified ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 on the Right to Organise and Collective Bargaining. In 2008, the Committee on Economic Social and Cultural Rights (CESCR) has expressed concerns regarding obstacles to the exercise of freedom of association in 2008.<sup>71</sup>

Article 19(1)(c) of the Constitution of India guarantees the right to form associations or unions. The Trade Unions Act (1926) recognizes the right to establish and join trade unions with a limited scope and coverage, but burdensome requirements and limitations contrary to international standards were included in the amendment of the Act in 2001.<sup>72</sup>

Collective bargaining is limited within the scope provided in Industrial Disputes Act 1947. There is no legal obligation on employers to recognise a union or to engage in collective bargaining. Moreover, Central Civil Services (Conduct) Rule (1964) clearly limits public service employees' right to collective bargaining.

The right to strike flows from the constitutional right to form unions, the Trade Union Act (1926) and the Industrial Dispute Act of 1947, which explicitly recognizes the right to strike in certain circumstances. Nevertheless, the exercise of the right is restricted, and industry workers in public utilities have to announce a strike at least 14 days in advance.<sup>73</sup>

The legislation of Tamil Nadu is considered particularly restrictive on the right to strike. Rule No.22 in the Tamil Nadu Government Servants' Conduct Rules (1973), provides a blanket ban not only on strikes of employees, but also on any form of demonstration. Moreover, the Tamil Nadu Essential Services Maintenance Act (2002) declares a large number of public services are included within the definition of "essential" (section), 'essential service' arming the executive with arbitrary and illegal powers to suppress protests and the possibility to issue en mass disciplinary action against employees for violations.

## **Child labour**

India is party the UN Convention on the Rights of the Child (CRC), which states that children everywhere should have the right to protection from economic exploitation (Article 32). India has not ratified the two main international Conventions focusing specifically on child labour, namely ILO Minimum Age Convention (No. 138) or the Worst Forms of Child Labour Convention (No. 182), although it has expressed commitment to do so<sup>74</sup>. The CEDAW Committee<sup>75</sup>, the HRC,<sup>76</sup>

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71. "The Committee recommends that the State party remove, in law and practice, obstacles to trade unions' rights to conduct collective bargaining, and to pay particular attention to the workers' rights in Special Economic Zones (SEZs) and Export Processing Zones (EPZs)", CESCR, Concluding Observations on India 8 August 2008, E/C.12/IND/CO/5 para. 63

72. For example, a minimum membership of 10% per cent (subject to a minimum of 7) or 100 workers of the unit in order for a trade union to be registered. See Section 9, The Trade Unions (Amendment) Act, 2001 No. 31.

73. Industrial Dispute Act (1947). Moreover, a six weeks strike notice period is required in EPZs and special economic zones.

74. See: [http://www.ilo.org/ipec/WCMS\\_189552/lang--en/index.htm](http://www.ilo.org/ipec/WCMS_189552/lang--en/index.htm)

75. CCEDAW Concluding observations on India, February 2007, CEDAW/C/IND/CO/3 IND

76. Human Rights Council, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review on India, 23 May 2008, A/HRC/8/26, para. 78. India made a declaration on article 32 of the Convention on the Rights of the Child. "While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware

and the CRC Committee<sup>77</sup> have expressed concern over child labour and trafficking of children for labour.

India's current national legal framework establishes working ages and working conditions below international standards.<sup>78</sup> The Constitution of India states that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment (Article 24). The Child Labour (Prohibition and Regulation) Act (1986) prohibits the employment of children below the age of 14 years in 18 occupations and 65 processes that are hazardous to the children's lives and health. The Factories Act of 1948 prohibits the employment of children below the age of 14 years and an adolescent aged between 15 and 18 years can be employed in a factory only if he obtains a certificate of fitness from an authorized medical doctor. The Act also prescribes four and a half hours of work per day for children aged between 14 and 18 years and prohibits their working during night hours.

As of April 2014, a new bill, the Child Labour (Prohibition & Regulation) Bill 2012, was currently under examination in the Parliamentary Standing Committee and would, if adopted, amend current national legislation in conformity with ILO Conventions 138 and 182.<sup>79</sup>

### **Discrimination in employment**

The principle of non discrimination is protected in several international instruments ratified by India. The HRC has expressed serious concerns regarding discrimination and harassment in India in the past, particularly regarding women and scheduled castes.<sup>80</sup>

The Indian Constitution prohibits discrimination on the basis of gender and caste among others (article 15), and addresses specific aspects related to equality in different provisions. Regarding equal remuneration for example, national legislation<sup>81</sup> is more restrictive than the principle of equal remuneration for men and women for work of equal value adopted by ILO.<sup>82</sup>

The right of women to be free from sexual harassment at the workplace has been specifically

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that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India - the Government of India undertakes to take measures to progressively implement the provisions of article 32, particularly paragraph 2 (a), in accordance with its national legislation and relevant international instruments to which it is a State Party.”  
77. “The Committee is extremely concerned at the large numbers of children involved in economic exploitation, many of whom are working in hazardous conditions, including as bonded labourers, especially in the informal sector (...) The Committee is further very concerned that minimum age standards for employment are rarely enforced and appropriate penalties and sanctions are not imposed to ensure that employers comply with the law, CCPR/C/79/Add.81, para. 13. Discrimination at the workplace has been included on the list of issues to the next periodic report of India. See, CEDAW 28 October 2013 CEDAW/C/IND/Q/4-5, para 25.  
78. The ILO Minimum Age Convention No. 139, 1973 sets the general minimum age for admission to employment or work at 15 years (13 for light work) and the minimum age for hazardous work at 18 (16 under certain strict conditions). It provides for the possibility of initially setting the general minimum age at 14 (12 for light work) where the economy and educational facilities are insufficiently developed.  
79. For further information see: [http://www.ilo.org/ipec/WCMS\\_189552/lang--en/index.htm](http://www.ilo.org/ipec/WCMS_189552/lang--en/index.htm)  
80. HRC, Concluding Observations on India, 4 August 1997, CCPR/C/79/Add.81, para. 13. Discrimination at the workplace has been included on the list of issues to the next periodic report of India. See, CEDAW 28 October 2013 CEDAW/C/IND/Q/4-5, para 25.  
81. The Equal Remuneration Act of 1976, which applies to an extensive range of classes of employment including informal employment relationships, requires employers to pay workers not less than that paid to the other sex for performing the same or similar work.  
82. The scope of comparison is limited to “work of a similar nature”, whereas it should be possible to compare work of an entirely different nature. CEACR Observation - adopted 2013, published 103rd ILC session (2014) Equal Remuneration Convention, 1951 (No. 100)



articulated by the CEDAW Committee.<sup>83</sup> India has recently adopted a Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013) covering women workers in the organized sector and workplaces in the unorganized sector where fewer than ten people are employed, including domestic workers. However, under section 10 the Act provides for ‘conciliation’ before the initiation of an inquiry giving a chance to the aggrieved woman to settle the matter along with the accused.

India has not ratified ILO Migration for Employment Convention (Revised), 1949 (No. 97), nor is it party to the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. India’s Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979, applies to every establishment where 5 or more Inter-state migrant workmen are employed, or every contractor who employs 5 or more.

### **Employment and working conditions**

The ICESCR Article 6(1) recognizes the right to decent work.<sup>84</sup> 18 ILO Conventions address the issue of occupational safety and health (OSH), and India has ratified three conventions of those.<sup>85</sup> The CESCR called on India to ensure respect for state minimum wages with a view to enable workers and their families to enjoy an adequate standard of living.<sup>86</sup>

There are three main laws related to work conditions and occupational health and safety: The Factories Act (1948), which governs minimum legal requirements for work conditions in factories with 10 or more workers. Among others it regulates working times, wages criteria and safety at the working place (section 59, 5 and 40, respectively) and requires the Government to work on strictly implementing and enforcing labour laws and inspecting the health and safety conditions in which the labourers are working. The Employee State Insurance Act (1948) relates to treatment of employees in the case of sickness, injury and maternity leave and a Minimum Wages Act (1948) sets minimum terms and conditions of employment for persons in a range of types of employment including weaving and carpet making. In Tamil Nadu, working conditions are regulated by the Tamil Nadu Factory Rules (1950). However, these laws are poorly enforced, companies use loopholes to circumvent them, and regulatory authorities have limited capacities.

The Apprentices Act (1961) states that the number of apprentices must not exceed 10% of the total workforce, and the legal apprenticeship period is of three years.

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83. CEDAW Committee, General Recommendation 19, Violence Against Women (1992), A/47/38 para 18.

84. Established by the CESCR as the respect for the fundamental right of the human person as well as the rights of workers in terms of conditions, worker safety and remuneration, which is necessary to ensure the equal opportunities for all. CESCR, General Comment 18, Article 6: the equal right of men and women to the enjoyment of all economic, social and cultural rights (Thirty-fifth session, 2006), U.N. Doc. E/C.12/GC/18 (2006).

85. India has yet to ratify important conventions like Convention 155 on occupational safety and health and the working environment and Convention 187, the promotional framework for occupational safety and health.

86. CESCR, Concluding Observations on India 8 August 2008, E/C.12/IND/CO/5 para. 62

## **The Sumangali scheme: legal qualification**

The Sumangali scheme could amount to forced labour under the definition stated in the ILO Forced Labour Convention, 1927 (No.30) and the ILO Abolition of Forced Labour Convention, 1957 (No. 105), both ratified by India. Forced labour is understood as “all work or service which is extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (article 2). This is an umbrella definition that includes other forms of forced labour, for example, trafficking and bonded labour. Forced labour is also prohibited under Article 8.(3)(c) of ICCPR.

Freedom from exploitation is specifically protected in article 11 of the Indian Constitution. Forced labour would also violate Indian Constitution’s Articles 14, 15, 21 & 23 which protect the right to life, liberty and dignity, respectively. The Indian Criminal Code, under Article 374 on “unlawful forced labour”, states that “whoever unlawfully compels any person to labour against the will of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both”.

The Sumangali scheme could also qualify as human trafficking. (see section “The Sumangali scheme”) Sumangali breaches numerous Indian laws .<sup>87</sup>



*Workers in a garment factory in Tamil Nadu.*

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87. Among these are: the Apprentices Act (1961), Factories Act (1948), Contract Labour (Regulation and Abolition) Act (1970), The Inter-state Migrant Workmen (Regulation of Employment and conditions of Service) Act (1981), The Industrial Employment (Standing Orders) Act (1946), Trade Unions Act (1926), The Minimum Wages Act (1948), The Payment of Gratuity Act (1972), Payment of Bonus Act (1965), Payment of Wages Act (1936), Equal Remuneration Act (1976), Employee’s Compensation Act (1923), Child Labour (Prohibition and Regulation) Act(1986), Bonded Labour System Abolition Act (1976), Juvenile Justice (Care and Protection of Children) Act (2000).

# Mission Observations

## Issues of concern

During factory visits, management was mostly cooperative and forthcoming, and appeared accustomed to and extremely well-prepared for audits and unannounced visits from foreign clients, auditors and NGOs. Some factories employed “compliance managers”, who take charge of orchestrating external visits. Lengthy presentations, written documents (including detailed information regarding salaries, benefits, age certificates, and declarations attesting to the voluntary nature of employment<sup>88</sup> etc.) were willingly presented to delegates.

During interviews, management often gave vague and contradictory answers. Inconsistency in managements’ answers was also observed on matters of minor importance, which leads to question the overall accuracy and authenticity of the information communicated. The delegation noted remarkable mismatches between what it could see in the factories, what arose from conversations with workers, and what management said.

Direct contact with garment workers was limited. Mission delegates were not able to talk to workers without the presence of members of the management or factory hostel staff. It quickly became apparent that private conversations with workers could pose serious security risks for the workers in question, and thus mission delegates tried to avoid singling out workers to prevent retaliation. Brief and targeted questions were addressed to a few workers at random inside factories, both during shifts and at lunch breaks. Longer interviews were conducted with workers in one factory in Tamil Nadu at the hostels where they were lodged.

However, these interviews always took place in the presence of hostel wardens who seemed to direct and even to correct workers’ answers. “Model employees”<sup>89</sup> would sometimes spontaneously approach mission delegates. None of the workers that mission delegates spoke to, within factory premises or at hostels, reported any major concerns.

The delegation felt that overall, the workers they interviewed could not express themselves fully and freely. The level of surveillance and pressure workers are subject to, and the serious risks of retaliation can largely account for this. All workers’ interviews were kept confidential and anonymous, and translation from Tamil and Hindi was provided by one of the mission delegates, Mr. Jayaram.

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88. Mission delegates were shown declarations signed by workers stating “I am willing to do this job voluntarily and not forced by anybody to accept this job”, both in Hindi and English.

89. Local NGOs indicated that factories often paid certain employees to perform a role of “model workers” and demonstrate that employee treatment and working conditions are optimal when external visitors such as brands or NGOs inspected the factories. Indeed in one factory a worker “spontaneously” approached mission delegates, addressing them in articulate English and showing them a modern mobile phone.

## Employment and working conditions

According to civil society organisations interviewed during the mission, precarious employment continues to be commonplace in the garment sector in India. Salaries below legal minimum wage, overtime and disproportionate use of contract labour and apprenticeship are amongst the issues prevailing in garment factories. Informal and casual work is prevalent in the garment sector, and it particularly affects women.<sup>90</sup> Casual workers are not afforded any legal protections, and they are thus subject to increased vulnerability and precarious living conditions. Abusive recourse to apprenticeship and lack of respect for apprenticeship laws is rampant in garment factories.<sup>91</sup> Apprentices are not legally entitled to social protections afforded to regular workers such as state insurance and pension schemes, and are paid monthly stipends rather than proper wages.

Traffic light chart recording manufacturing defects, placed on each workers' table in a garment factory in Tamil Nadu.

Mission delegates observed several issues regarding employment and working conditions during factory visits. At one of the factories visited in Tamil Nadu, workers told mission delegates that they were not provided with contracts or pay slips. In one factory, mission delegates were shown declarations in Hindi and English signed by workers and which stated: "I am willing to do this job voluntarily and not forced by anybody to accept this job". Such declarations and the way in which they were hastily presented to the delegates clearly aimed at "convincing" visitors that forced labour did not take place in the factory's vicinities. During factory visits, mission

delegates did not have the possibility to ascertain what proportion of employees was hired as contract workers or apprentices, or whether the contracts presented by management were enforced in practice. In one hostel, when mission members spoke to a few employees away from the gaze of management representatives, workers complained of the poor quality of food.

Delegates identified the level of pressure and control workers were subject to, and the use of disproportionate disciplinary measures as particularly alarming. In another factory in Tamil Nadu, mission delegates found charts registering manufacturing defects under a "traffic light" coding, marking workers' sheets with the colours red, yellow or green according to the number of mistakes made. When interrogated about this chart, a member management acquiesced that workers were fired if they had two days marked as red in the same



90. Interview with Jyoti Macwan, Secretary General of the Self-Employed Women's Association in India (SEWA).

91. The Apprentice Act (1961) limits the duration of apprenticeship to 3 years, and the proportion of apprentices to less than 10 % of the workforce. Apprentices must enter into a formal contract of apprenticeship with the employer and they cannot carry out overtime work or night shifts. No child below the age of 14 can be hired as an apprentice, and only children who have attained a certain minimum qualification in education and have passed a physical fitness test can be accepted as apprentices in textile factories. According to Rule 100 of the Tamil Nadu Factories Rules of 1950, factories are obliged to declare the number of workers, adolescents and children employed. Employers tend to hire new apprentices at the end of the 3 year apprenticeship contract, so as to avoid apprentices as regular workers. It is worth noting that while the Tamil Nadu Industrial Model Standing order Rule allows apprenticeship period to last three years, the Tamil Nadu Joint Action Council (JAC) of Textile Trade Unions has pointed out that garment jobs, being semi-skilled or unskilled, did not require more than six months of training. See The Hindu, "JAC demands relaxations in rehabilitation fund scheme", 13 March 2009, available at <http://www.hindu.com/2009/03/13/stories/2009031357290600.htm>

month. Another member of management immediately refuted such claim and said that the chart was only a way of monitoring the functioning of machines.

Control and various forms of constraint, such as restrictions on displacements appeared especially pressing in hostels. Moreover, the fact that the toilets were always found empty during factory visits suggests that daily production targets may be too high to allow workers to take breaks. NGOs interviewed during the mission have reported that some factories use a token system to limit the use of the W.C., and that workers were given a two token maximum per day. Additionally, they reported that workers were often paid by the piece and that line managers, who were themselves subject to high production targets, would often pass the pressure onto workers.



Canteen facility in a garment factory in Tamil Nadu.

## Workers' Health & Safety

Health and safety issues, while of capital importance, were not the main focus of this mission. Delegates were able to consult some factories' social audits, commonly commissioned by global brands to evaluate their suppliers' compliance with their health and safety requirements (see below). Visits were unannounced, but the factories visited appeared to deploy routine responses upon the delegation's arrival. Indeed, unannounced visits do not permit real assessment of working conditions, as any visit of production rooms is invariably preceded by a meeting with management, which generally leaves time to prepare work floors for external visitors' eyes.

In the five factories' production rooms, most workers were seen wearing masks, and some were also wearing earplugs. However, in some cases protection equipment seemed to have been put on hastily because of the delegates' visit. For example, in one of the factories visited workers were seen wearing earplugs in halls or units where music was being played, which suggests that these workers did not usually wear hearing protections. In another factory, delegates saw management distributing earplugs to workers when they entered the production room. Instructions on protection equipment- including in visual explanations- were put up in some, but not all of the factories visited. Civil society organisations reported that workers often lacked knowledge and awareness regarding health and safety equipment and the potential consequences of not wearing any protection gear.

The five factories visited by the delegation had well-equipped and clean premises. Mission delegates were shown facilities such as toilets, *crèches* (nursery), "doctor rooms" and "sick rooms".<sup>92</sup> In every case, all these facilities were found empty when the delegation visited the factories, which raises questions regarding the authorisation or opportunity to use such facilities given that factories visited generally employ roughly between 200 and 900 workers.

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92. The Factories Act requires facilities for washing, sitting, canteens, creche (one for more than 30 women) and first aid appliances.

## Discrimination



Workers in a shoe factory in Haryana.

Discrimination is rampant in India's textile industry, and is particularly based on caste, gender, and region or district of origin (see above). Interviews with factories' managements revealed that discrimination is deeply entrenched, and that is often treated as an issue of minor importance.

Gender discrimination exists under various forms in the garment sector. Some of the women met in the Theni and Madurai districts, who had been employed under the Sumangali scheme, reported having suffered from verbal and physical abuse, including sexual harassment while they were working in spinning mills. Mission delegates noted that such issues were difficult to tackle with the workers they interviewed, and that cultural factors, uneasiness or fear prevented free expression on issues of violence against women. NGOs and unions confirmed that discrimination and abuse, especially of female workers, were

recurrent issues in factories. For example, job applications for garment factories usually include information regarding applicants' marital status. Local NGOs indicated that women would not be hired if they had been married for less than 6 months. They also indicated that female workers would be immediately fired if they were to become pregnant. Hostel guardians visited confirmed that many workers in the factories were married. Mission delegates did not see any pregnant women in these factories.<sup>93</sup>

Discrimination against migrants is critical in India's garment factories. Migrant workers, who face multiple cultural barriers related to language but also to food and climate, are very often subject to discrimination and poor working conditions. Breaches of national legal dispositions, such as the obligation to notify the authorities of migrants' recruitment or to issue passbooks, are widespread in the garment industry.<sup>94</sup> Migrant workers are not always provided with contracts, nor are Hindi or Tamil translations systematically provided for appointment letters and other documentation. Factory managers and hostel wardens used discriminatory language against migrant workers during mission interviews. In one of the garment factories visited, migrant workers were seen eating under their sowing desks with the lights turned off, while the rest of the workers were eating lunch at the canteen.

Finally, workers from 'lower castes', especially dalits, are subject to high levels of discrimination. They are systematically allocated more demeaning, dangerous or difficult tasks, and subject to tougher working conditions. In the factories visited, women who were seen cleaning and sweeping toilet facilities were identified as dalit. Moreover, most young women recruited under the Sumangali or similar employment scheme are for the great majority dalits.<sup>95</sup>

93. On delegates' concern with regard to this observation, see section « Violations linked to Sumangali scheme » below regarding allegations of food poisoning.

94. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act of 1979 (No. 30 of 1979) requires employers to issue to every inter-State migrant workman, a passbook affixed providing some information about the employment in Hindi and English languages, and where the language of the workman is not Hindi or English, also in the language of the workman.

95. According to the non-governmental organization READ in Tamil Nadu, 60% of girls working under Sumangali or similar arrangements are dalits. Cited in « Small steps-Big challenges », Update on (tackling) exploitation of women workers in the garment industry of South India, FNV Mondiaal and ICN, March 2014.

## Child labour

In spite of the prohibition of child labour,<sup>96</sup> in practice the average age of garment workers remains below international standards, especially in the South of India. Mission delegates did not document/observe irrefutable instances of child labour, but according to local NGOs, female workers recruited to work in garment factories under the Sumangali scheme tend to be between 15 and 16 years old for the most part, while a significant proportion are between 12 and 14 years old.<sup>97</sup> Under-aged workers are especially vulnerable to poor working conditions, exploitation and other labour rights violations, including forced labour. While the legal working age in Tamil Nadu is set at 14 years old, legal requirements to employ young workers such as the prohibition to perform hazardous tasks (including hand and power loom work, cloth printing, dyeing, weaving and wool-cleaning), limitation of working hours, and requirement of certificates of fitness for adolescents, are frequently breached by employers. Moreover, the minimum age to join a trade union is 18.

Inadequate working conditions for young workers tends to be especially prevalent when workers live in factory hostels, as they are subject to varying degrees of restrictions and other forms of control.

All garment factories said that no children were working in their factories, and some factories displayed anti-child labour posters on factories' walls. Some factories presented some workers' age certificates to mission delegates, but there was no possibility of verifying the authenticity of these documents and according to civil society, such age certificates are often falsified. When asked about their age, workers all replied that they were above 16. However in a factory in Tamil Nadu, when asked how long they had been working in the factory, some workers corrected their initial answers and indicated that they were older than they had originally said.

## Freedom of association

Trade unions are mostly absent in garment factories in India. Indeed none of the factories visited during the mission had union presence. In one of the factories visited in Tamil Nadu, all female workers interviewed at hostel facilities reported not to know what a trade union was, but most of them were aware of the existence of different workers committees.

Most factories visited had numerous workers committees, such as the "works committee", the "canteen committee", the "health and safety committee", the "prevention of sexual harassment committee". Pictures of these committees were commonly displayed on the factories' walls. PHOTO 1285. légende:

"Photos of different workers' committees on the wall of a factory in Tamil Nadu" Local NGOs indicated that workers committees' representatives were often chosen by management, and that these committees did not represent genuine forums to report abuses. Garment factory managers



*Names and pictures of different workers' committees in a garment factory in Tamil Nadu.*

96. Constitution of India, Article 24 (1950); Child and Labour (Prohibition and Regulation) Act (1986); Factories Act, section 67 (1948), Mines Act (1952).

97. According to research conducted by Solidaridad and the Fair Labor Association in May 2012, out of a sample of 70 female workers who had been employed under the Sumangali scheme, 27% were between 12-14 years old when they started working, 40% were 15-16, 17% were 17-18 and 16% above 18. SOLIDARIDAD, Understanding the Characteristics of the Sumangali Scheme in Tamil Nadu Textile & Garment Industry and Supply Chain Linkages, 2012 available at: <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=2749&context=globaldocs>.

indicated that trade union presence was not necessary at factory level since workers committees were established. Management in one factory in Tamil Nadu explained that a “suggestions box” was opened every Monday, and that there had been no complaints in 7 years, which according to them demonstrated that workers were satisfied and that trade unions were not needed in the factory. However, this suggests that workers do not feel comfortable to use the suggestion box or that it is not perceived as an appropriate medium. Management in other factories gave different explanations as to why trade unions were not required, including the fact that management was “open to people’s problems” or that workers did not like trade unions. NGOs indicated that workers were liable to be dismissed if they joined a trade union.

According to trade union representatives interviewed during the mission, there are a multiplication of obstacles to the registration of trade unions imposed both by government officials and management. Asia Floor Wage Alliance and the Garment and Textile Workers Union reported that delays of sometimes over a year were necessary to successfully register as a union.<sup>98</sup> Anti-unionism amongst manufacturers was also cited as a common occurrence. Most worryingly, union members spoke of how violence, including murder, threat and criminalization (such as raising cases of criminal charges on questionable bases) against activists and protesting workers remains common and generally goes uninvestigated.<sup>99</sup> Trade union members met during the mission also reported violence against activists and union members in Tamil Nadu.

## Violations linked to the Sumangali scheme



*Young garment worker on a work floor in Tamil Nadu.*

Testimonies from groups of women met in the Theni and Madurai districts, interviews with NGOs and the ILO office in New Delhi, as well as several reports<sup>100</sup> indicated that the Sumangali scheme or similar employment schemes persist in India’s garment sector. Regulations regarding child labour and apprenticeship are almost systematically violated under the Sumangali scheme. High production targets engender various labour rights violations such as forced unpaid overtime, lack of necessary rest and added pressure, including arbitrary late night calls to perform night shifts, control of bathroom breaks (via a token system) or reduction of lunch breaks.

Forced, unpaid overtime work is frequent, and 12 to 15 hour-long shifts are a common average, according to interviews conducted during the mission. Overtime turns into an obligation as

98. Interview with Anannya Bhattacharjee of Asia Floor Wage Alliance and the Garment and Textile Workers Union.

99. In tandem with rampant anti-unionism, human rights defenders and labour activists face violence and harassment. Also, the Indian Foreign Contribution Regulation Act, as amended in 2010 imposes burdensome requirements on organizations that receive external funding, which results in further insecure situation for activists and human rights defenders. Please see Observatory for the Protection of Human Rights Defenders, Annual Report 2013: Violations of the right of NGOs to funding: from harassment to criminalization, available at [http://www.fidh.org/IMG/pdf/obs\\_2013\\_human\\_rights\\_defenders\\_english.pdf](http://www.fidh.org/IMG/pdf/obs_2013_human_rights_defenders_english.pdf)

100. See for example « Captured by Cotton », SOMO and ICN, May 2011 ; « Maid in India », SOMO and ICN, April 2012 ; « Update of debate and action on Sumangali », OMO and ICN, July 2012 ; « Time for Transparency », SOMO and ICN, March 2013 ; « Small steps-Big challenges », Update on (tackling) exploitation of women workers in the garment industry of South India, FNV Mondiaal and ICN, March 2014; « Slavery on the High Street », Anti-Slavery International, June 2012; « Understanding the Sumangali scheme in Tamil Nadu’s textile and garment industry », Solidaridad and the Fair Labour Association, May 2012.



most workers need to supplement low wages, and they cannot risk jeopardising the lump sum promised upon completion of the scheme. Wages are drastically lower than those paid to workers who are not subject to the scheme. Additionally, as highlighted during mission interviews, underpayments and wage retention under different forms are common (late payment, early termination of contract, deductions, salaries below minimum wage, or absence of compulsory state contributions (Provident Fund (PF) and Employee State Insurance (ESI)). Harassment from supervisors in different forms is frequent, including physical and psychological violence and humiliation. Few workers however will directly denounce violent treatment, especially when sexually abused girls or women fear family reprobation or repudiation.

Under the Sumangali scheme, workers are accommodated in hostels run by garment factories or spinning mills. Hostels are separated by gender, and staffed by guardians. In these hostels, workers, and particularly young women, are subject to an extreme level of control. Factories and workers' hostels are usually surrounded by high walls, and workers are not allowed to leave the premises, to receive visitors or to have mobile phones. Psychological control and pressure has had tragic consequences in some cases.<sup>101</sup> Mission delegates were particularly alarmed at allegations of control over women's menstruation and maternity cycles. Indeed some workers alleged that drugs were administered via their food to prevent them from getting pregnant and menstruating, in order to maintain their productivity.<sup>102</sup> Mission delegates could not obtain further information regarding this serious allegation, and further investigation would be needed. The quality of the food and of facilities in garment factories and workers' hostels were systematically signalled as a matter of concern by the former Sumangali workers interviewed.

## Garment manufacturers' role and responsibilities

As witnessed first-hand during FIDH's mission, garment factory managers and owners deploy extremely well-orchestrated *show-responses* to unannounced visits by auditors, foreign clients or NGOs. Efforts are concentrated on attempting to demonstrate observance of global brands' "social compliance" demands (see below), often through hiding the reality of working conditions inside factories or through falsification of documents. Tight surveillance and high pressure is maintained over workers to self-censor in front of visitors.

This distortion of working conditions prevents independent third party monitoring, on the part of government agencies, audit companies or NGOs alike. Indeed mission delegates could only see what management and factory owners provided them with, and they lacked capacity to double-check the veracity of statements or written documents. According to the civil society representatives interviewed, certain factories have developed a system of classifying documentation to be respectively presented to auditors and foreign buyers, and real company information, known as *ABC*: A for auditors, B for brands, C for company.

By covering-up the reality of working conditions in garment factories and impeding third party assessment and reporting, local managers and owners clearly contribute to perpetuating labour and human rights violations.

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101. See "Made in India", SOMO, 2012. <http://www.indianet.nl/pdf/MaidInIndia.pdf> On 28 September 2013, a 17 year-old girl working in a mill near Suler, Coimbatore, under the Sumangali Scheme was found hung in her room. The young girls' relatives alleged that the management of the mill had driven her to commit suicide. "Kin block road alleging foul play in girl's death", The Hindu Saturday, September 28th 2013.

102. This testimony was provided during interviews in the field. Female young former workers would point to colleagues gaining weight because of menstruation loss and stress.



A Tamil Nadu garment factory's stated "quality policy".

Managers and supervisors are clearly reluctant to see the introduction of trade unions within factories. Unions are presented as unnecessary, and when the need for some form of organising is acknowledged, workers committees are put forward as a satisfactory substitute. Employers are not legally obliged to engage in collective bargaining or to recognise unions, and garment manufacturers are not taking any measures to encourage workers' organisation and mature industrial relationships between employers and workers. Given the level of control that factory management exercises over workers, this adverse approach to unionism on their part amounts to a clear obstacle to freedom of association and collective bargaining. Workers committees can be a first step towards the

organising of workers, provided that members are democratically elected, and that they represent genuine forums to report and address grievances.

Indian factory owners and managers often show disregard to national legislation in place, particularly regarding working hours, child labour and apprenticeship. They moreover operate in a context of weak law enforcement, low government oversight, and widespread corruption. Global brands' pressure on their Indian suppliers has to some extent proved a motor for improvement of labour conditions in garment factories. International attention and denunciation of the Sumangali scheme has led to certain improvements, especially in terms of facilities of garment factories in the state of Tamil Nadu. Overall, however, concrete and lasting improvements at the factory level have nonetheless been limited, and Indian garment sector manufacturers by and large continue to disregard human rights.

Garment factory and spinning mills owners have a fundamental role and most importantly the crucial responsibility to guarantee respect for the human and labour rights of the garment workers they employ. As Gautam Modi of the New Trade Union Initiative explained, "employment practices in India are set by Indians, both employers and public actors, not by foreign multinationals".

As outlined in the United Nations Guiding Principles on Business and Human Rights (UNGPs)<sup>103</sup> and the OECD Guidelines for Multinational Enterprises,<sup>104</sup> businesses have the responsibility to respect human rights and to exercise human rights due diligence in their commercial activities.<sup>105</sup> Such responsibility applies to large businesses like global brands and smaller enterprises like Indian garment manufacturers and spinning mills alike.<sup>106</sup> Furthermore, garment factories have responsibilities *vis-a-vis* their own suppliers, namely towards spinning mills. As spinning mills' direct clients, manufacturers have the opportunity and the responsibility to exercise leverage on mills to encourage respect for human rights.<sup>107</sup> Exercising leverage on spinning mills is capital, given that they are not generally subject to thorough monitoring, and that the gravest human rights violations, such as those triggered by the Sumangali scheme take place in spinning mills.

103. UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, 21 March 2011.

104. OECD Guidelines for Multinational Enterprises, Recommendations for Responsible Business Conduct in a Global Context, 25 May 2011.

105. UN Guiding Principle 17 details the operational principle of human rights due diligence. OECD Guidelines, Part I, Chapter II and Chapter IV.

106. UN Guiding Principle 14 states : « The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts ». UN Guiding Principles on Business and Human Rights, op. Cit.

107. According to the commentary to UN Guiding Principles 19, « Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm ».

## Global brands' role and responsibilities

Most global brands have developed their own 'Codes of Conduct' or 'Social Charters', which define a number of "social" and environmental requirements that their suppliers must contractually respect. These social charters are often placated on factories' walls, in English and in the local language. Although global brands' codes of conduct are generally based on international labour and human rights standards, and cover issues such as health and safety, freedom of association and child labour, in practice such charters are insufficient to prevent human rights abuses. Indeed there continues to be blatant mismatches between what is announced in the social charter and garment workers' realities inside factories, as evidenced in this report.



To ensure compliance with their codes of conduct, transnational corporations commission third-party firms to carry out 'social audits' of the garment factories they source from. Based on factories' inspections, auditing firms draft social audit reports and corresponding corrective action plans indicating the renovations and measures that must be taken to align with brands' social charters. Some suppliers have to pay for the audits as well as for the implementation of corrective measures. Follow-up of audit findings and implementation of corrective action plans varies from factory to factory. The 5 factories visited were regularly audited by different specialised firms.<sup>108</sup>

*Signs put up on a garment factory's wall in Tamil Nadu*

The limits of social audits are well-known and have consistently been flagged by FIDH.<sup>109</sup> While necessary, social audits indeed prove insufficient to thoroughly assess respect for human rights within factories, and to analyse complex supply chain and underlying factors which lead to human rights abuses in the garment sector. Social audits have for example been incapable of detecting and preventing grave human rights violation like bonded labour in India.<sup>110</sup> Moreover, social audits are unsuited to identify discrimination and other human rights violations in the context of local dynamics and complexities such as discrimination based on the caste system.

Moreover, as the practice of audits has become commonplace, Indian garment factories deploy sophisticated *show-response* aiming at satisfying auditors and foreign buyers. Most importantly, workers are very likely to refrain from expressing concerns to auditors when interviewed on-site, given the control and tight supervision exercised by management and witnessed by the delegation itself during its factory visits.

Social auditors may easily be misled by factory managements. Record falsification, particularly of documents proving workers' age is widespread among garment factories, as child labour is prohibited by law, yet common in practice. Finally, corruption within auditing companies,

108. Intertek, TUV SUD South Asia Pvt Ltd, SGS India, TUV Rheinland India.

109. See 'China's workers are calling for a change. What role should brands play?', FIDH and CLB, May 2013 and 'Bangladesh: Labour Rights in the Supply Chain and Corporate Social Responsibility', FIDH, June 2008.

110. Small steps- Big challenges. Update on (tackling) exploitation of women workers in the garment industry of South India', FNV Mondiaal and ICN Paper, March 2014.



Garment workers in a shoe factory in Uttar Pradesh.

collusion with factory owners or management and bribery are frequent (see section “Socio-political context”), which cast further doubts regarding social audits’ capacity to adequately assess respect of labour and human rights in garment factories.

Global brands should continue ensuring that suppliers conform to social requirements, and they should strive for the improvement of the social auditing system. Exercising human rights diligence indeed requires business enterprises to identify and prevent adverse human rights impact directly linked to their operations

or by their business relationships.<sup>111</sup> In the case of global brands sourcing in India, this responsibility includes ensuring that labour and human rights concerns are adequately included in audits, ensuring rotation amongst auditors and ensuring the implementation of corrective measures.

The global supply chain’s complex structure also has a direct influence on respect for human rights in the garment industry. In most cases, global brands monitor the social compliance of the garment factories they directly source from, but not that of the spinning mills which supply these factories. Spinning mills are second and/or third tier suppliers, and serious human rights violations tend to be found in entities at the beginning of the production chain that dodge monitoring such as spinning mills. Moreover subcontracting and recourse to informal labour are frequent in this sector, and brands’ policies are not sufficiently tailored to prevent such occurring. Very few global brands have extended compliance monitoring beyond first-tier suppliers, but multi-stakeholder business initiatives are beginning to encourage audits in the second and third production tiers such as spinning mills.<sup>112</sup> Extending monitoring and auditing to spinning mills is vital to guarantee respect for labour and human rights situation in these high-risk factories. Global brands have the responsibility to respect human rights throughout their supply chains, which means that they should also identify and prevent human rights violations in the spinning mills that supply the garment factories they source from.<sup>113</sup>

In addition to the inherent limits of social audits, and garment manufacturer’s subcontracting or circumvention of monitoring and auditing, global brands’ purchase practices also have crucial repercussions within factories. Changing and tight order schedule and production planning, late payment, increased quality demands, downward pressure on price etc can translate into overtime work, delayed payment or reduced wages, and generate high levels of pressure on garment workers.<sup>114</sup> Manufacturers met during the mission acknowledged that brands’ procurement practices did have repercussions on garment workers, but seemed reluctant to criticise buyers. Indeed, they are themselves subject to pressures as a result of internal and international

111. UN Guiding Principle 13 states « The responsibility to respect human rights requires that business enterprises(...) b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. » See also OECD Guidelines II. B. 10 , 11 and 12.

112. According to ‘Small steps- Big challenges.’ (op. cit), PHV and O’Neill have taken steps to monitor labour conditions beyond first tier suppliers. The Business Social Compliance Initiative’s Code of Conduct 2014 allows for audits in 2d and 3d tier suppliers and provides members with tools and solutions to generally improve conditions in their production chain’s lower tier.

113. UN Guiding Principle 18 states « In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. »

114. See As you sow, Best current practices in purchasing: The apparel industry, 2010 Report Available at, [http://www.asyousow.org/publications/Apparel\\_Report.pdf](http://www.asyousow.org/publications/Apparel_Report.pdf)

competition, and they are well-aware of international brands' tendency to shift production to countries offering cheap labour such as Cambodia, Vietnam and now Burma. In practice, considerations of quality, price and schedule remain global brands' main purchase policy drivers, often at the expense of respect for human rights.

Lack of transparency in the supply chain severely hinders progress in terms of respect for human rights in garment factories. Too few global brands accept to disclose their full suppliers' list, which is considered confidential commercial information. However, supply chain transparency is not incompatible with competitiveness, as exemplified by some global brands' recent decisions to disclose their full supplier maps.<sup>115</sup> Transparency is a fundamental requirement to ensure respect for human rights, enabling local stakeholders such as unions and NGOs to monitor and improve working conditions.<sup>116</sup>

International brands have embarked upon different collective initiatives, including multi-stakeholder forums or working groups.<sup>117</sup> Although such business-led initiatives represent interesting forums to discuss issues and best practices, so far measures have been insufficient and there has been little tangible improvement regarding the Sumangali scheme<sup>118</sup> and other human rights violations in India's garment sector.

As outlined above, businesses have the responsibility to respect human rights throughout their supply chains. Transnational corporations such as global brands must exercise due diligence and identify, prevent, mitigate and remedy adverse human rights impacts directly linked to their operations or to their business relationships, even if they have not directly contributed to such impact.<sup>119</sup> While the commentary of the UN Guiding Principle no. 17 acknowledges that « when businesses have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all », it adds that in such cases, « [...] business enterprises should identify general areas where the risk of adverse human rights impacts is most significant [...] and prioritize these for human rights due diligence ». The human rights violations highlighted in this report and observed in India's garment sector, especially those in spinning mills, can in some cases amount to serious human rights violations. Conducting business with the Indian garment sector should therefore be considered as posing significant risks of adverse human rights impacts.

Moreover, global brands must exercise leverage on business partners, in this case on the Indian garment factories they source from, to prevent as well as address adverse human rights impact.<sup>120</sup> Given global brands' clout and direct influence on manufacturers, they should play an active role in improving working conditions in garment factories in India.<sup>121</sup> Using their ability to effect change in Indian manufacturers' practices to impede and end human rights violations in the garment factories they source from is part of their responsibility to respect human rights.<sup>122</sup>

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115. Nike, Adidas, Patagonia, Timberland, Levi's and H&M publicly disclose their full suppliers list, in some cases in the form of an interactive map. The Accord on Fire and Building Safety in Bangladesh, signed by over 150 brands, provides for a simple aggregated suppliers list being made public.

116. See « Time for Transparency : The case of Tamil Nadu textile and garment industry », SOMO and ICN paper, March 2013.

117. Such as the Business Social Compliance Initiative (BSCI), the Ethical Trading Initiative- Tamil Nadu Multi-Stakeholder Group (ETI-TNMS), and the Fair Wear Foundation (FWF).

118. 'Small steps- Big challenges. Update on (tackling) exploitation of women workers in the garment industry of South India', FNV Mondiaal and ICN Paper, March 2014

119. UN Guiding Principle 13

120. UN Guiding Principle 19

121. According to OECD Guidelines II. A. 1. Enterprises should « contribute to economic, environmental and social progress with a view to achieving sustainable development »

122. UN Guiding Principle 19

# Conclusion and Recommendations

India's garment industry, which represents an important share of the country's exports and gross national product, remains mired in labour and human rights violations. These violations range from discriminatory treatment (including verbal and physical harassment), underpayment and wage retention, absence of freedom of association (including threats and violence against union leaders) to restrictions on the freedom of movement. In some cases, such abuses comprise elements that could qualify as bonded labour. Multi-stakeholder initiatives set up in response to the Sumangali scheme have led to little concrete improvements and have failed to eradicate this practice. Legal and practical obstacles to the freedom of association result in a near absence of trade unions in India's garment sector, which clearly prevents improvements of working conditions and regarding respect for human rights.

India's complex internal historical dynamics are mirrored in the garment industry, and can in part account for the persistence of human rights violations which characterise this sector. Discrimination based on gender, caste or region of origin fuel abuses. Moreover, weak enforcement and monitoring of national labour law, legal and practical obstacles to the registration of trade unions, as well as a lack of engagement from state authorities to tackle this issue further prevent tangible improvement. The globalised nature of garment production, particularly complex global supply chains, further galvanizes disregard for human rights on India's garment factories' work floors.

This report highlights how multinational companies sourcing in India, and Indian garment manufacturers supplying these are, indirectly or directly, impacting garment workers' labour and human rights.

FIDH's mission enabled to experience first-hand garment factory owners and managers' sophisticated circumvention of monitoring and auditing of working and human rights conditions in factories. This report also contributes to demonstrate that global brands' responses remain unsuited to address the complex social realities in India and insufficient to guarantee respect for human rights along the supply chain. While necessary, social audits present limits, are insufficient to address complex discriminatory and labour rights violations and easily circumvented by India garment manufacturers. As observed by FIDH in other countries in Asia,<sup>123</sup> global brands' purchasing practices can have harmful repercussions on working conditions, and lack of transparency in the supply chain moreover hinders progress in terms of respect for human rights in garment factories.

The sophistication of both labour rights violations and of the organization of manufacturers to respond to the control and demands of international companies highlights the need for renewed strategies. The tragedy of the collapse of the Rana Plaza building in Bangladesh in April 2013, which caused the death of over 1 130 garment workers and over 2 000 injured, has marked a

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123. See 'China's workers are calling for a change. What role should brands play?', FIDH and CLB, May 2013 and 'Bangladesh: Labour Rights in the Supply Chain and Corporate Social Responsibility', FIDH, June 2008

turning point in the approach to “CSR”, underlining the need for a more systematic, coordinated and robust and coordinated a approach.

Governmental authorities bear the primary responsibility to ensure respect for workers’ rights in the garment sector. As highlighted in recommendations below, fundamental reforms, both legal and in practice, are needed at the national and states levels to put an end to human rights violations and precarious working conditions in the garment sector. On their part, businesses, whether garment manufacturers or multinational clothing corporations sourcing in India, must uphold their responsibility to respect human rights. Ultimately, workers need to be empowered to actively contribute to improve working conditions in their sector of employment.

## Recommendations

### To the Indian government

- Ratify ILO Conventions No. 87 on Freedom of Association and Protection of the Right to Organize, No. 98 on the Right to Organize and Collective Bargaining, No. 181 on Private Employment Agencies, No. 29 on Forced Labour, No. 177 on Home Work, and No. 105 on the Abolition of Forced Labour.
- Withdraw declaration to Article 32 of the Convention on the Rights of the Child.
- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- Amend national legislation so as to align it to international labour and human rights standards, ensuring in particular:
  - Elimination of legal and practical restrictions on the right to organise, the right to bargain collectively and the right to strike of all workers, in the formal and informal sectors;
  - a significant reduction of the maximum apprenticeship period to avoid exploitation that can result from the current 3 year period for apprenticeship.
- Reinforce labour inspection at local and districts level through the allocation of necessary political, financial and human resources. In particular, address corruption among labour inspectors.
- Put an end to impunity and ensure that transparent, prompt and impartial investigations into labour rights violations are systematically conducted. Access to remedy for victims must be guaranteed.
- Avoid using piece rate systems, or at a minimum, ensure that targets correspond to what a large majority of workers are capable of producing without overtime hours.
- Develop policies towards the recognition of the informal sector, and ensure the protection of labour rights including, but not limited to, the right to freedom of association and to form a trade union, and the right to an adequate standard of living (including living wages).
- Facilitate the unionisation of workers in garment factories, through dialogue and collaboration with manufacturers, global brands, NGOs and existing trade unions.
- Ensure transparent, prompt and impartial investigations into attacks and harassment of trade union members and labour activists.
- Invest in rural development programmes in order to provide opportunities in impoverished and underdeveloped regions where jobs are scarce, with a view to tackle human rights abuses that may result from circular migration.

### **To garment manufacturers and factory owners in India**

- Respect legal requirements regarding child labour, apprenticeship, working hours and discrimination.
- Assess the risk of Sumangali or similar schemes being practised by suppliers and other business partners, by paying particular attention to:
  - the existence of dormitories or hostels, and of brokers-based recruitment systems, and lump sum payments,
  - the absence of trade unions,
  - bank accounts records indicating the withholding of wages,
  - the absence of free and democratic elections for workers committees, and
  - restrictions on freedom of movement, among others.
- Refrain from entering into commercial relations with businesses suspected of practising Sumangali or similar employment schemes that may be considered as bonded labour.
- Exercise leverage with suppliers such as spinning mills to ensure that respect for human rights is a prerequisite for commercial relations.
- Allow and facilitate trade unions' access to garment factories.
- Ensure workers committees are democratically elected and that they are appropriate forums for workers to raise and address concerns without fear of retaliation.
- Genuinely engage in negotiations and allow the free election of workers' representatives to enable workers to engage in collective bargaining.
- Pay workers a living wage, sufficient to allow them and their families to enjoy an adequate standard of living.
- Participate in good faith in social auditing, supplying full and authentic documentation and refraining from interfering in workers' interviews.
- Implement measures to combat discrimination of all kinds on work floors and in hostels.

### **To home states of global brands sourcing in India**

- Enact legislation which requires companies to disclose information about their corporate structure and supply chain, including the location of production sites, and to report on the risks and the actual human rights impacts of their activities, as well as the measures taken to address such impacts.<sup>124</sup>
- Enact legislation to ensure that multinationals that fall under their jurisdiction are required to perform human rights due diligence throughout their supply chain.
- Undertake measures to ensure that victims of labour and other human rights abuses linked to brands headquartered in their territory and/or under their jurisdiction can have access to effective judicial remedy before national courts.
- In bilateral relations with India, raise the issues of Sumangali and indecent working conditions with the Indian government.
- When providing any form of assistance or support to India, insist that the Indian government ensure respect for social and labour rights in the garment sector.

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124. Taking advantage, for instance, of opportunities such as the recent legislative reform adopted by the European Parliament requiring major companies to report on social, environmental and human rights impacts in their annual company report.



### **To international brands and retailers sourcing in India**

Global brands and retailers must uphold their responsibility to respect human rights throughout the supply chain, and carry out due diligence by identifying, preventing and mitigating adverse human rights impacts. Global brands should:

- Undertake comprehensive human rights risk assessments adapted to local issues and social realities, in order to identify their potential and actual human rights impact throughout their supply chain.
- Ensure social audits allow for detection of labour rights and human rights abuses at supplying factories.
- Extend assessment and auditing to lower-tier suppliers such as spinning mills.
- Disclose the full list of suppliers in India.
- Favour stable and long-term relationships with suppliers in order to improve traceability and social compliance throughout the chain of production. “Integrated suppliers” should be privileged.
- Exercise leverage with Indian manufacturers, garment factory owners and the authorities, in order to ensure that all necessary measures are taken to prevent and mitigate human rights impacts.
- Increase cooperation efforts amongst global brands sourcing in India, including through robust multi-stakeholder initiatives aiming at harmonizing social auditing practices, and more importantly at increasing their leverage to address the complex issues at stake in a concerted, coordinated and meaningful manner.
- Assess the risk of Sumangali or similar schemes being practised by suppliers and other business partners, by paying particular attention to:
  - the existence of dormitories or hostels, and of brokers-based recruitment systems, and lump sum payments,
  - the absence of trade unions,
  - bank accounts records indicating the withholding of wages,
  - the absence of free and democratic elections for workers committees, and
  - restrictions on freedom of movement, among others.
- Refrain from entering into commercial relations with businesses suspected of practising Sumangali or similar schemes.
- Map spinning mills presenting risks of Sumangali scheme.

### **To the United Nations Working Group on Business and Human Rights**

- Clarify the responsibility of, and make recommendations to, host states regarding legislative, administrative and political measures to be implemented in order to for them to respect the UN Guiding Principles on Business and Human rights. In particular, make recommendations to put an end to impunity and to ensure that effective judicial and non-judicial remedies are available for victims and their families.
- Clarify the responsibility of global brands including, but not limited to:
  - the scope of human rights due diligence in light of the reality of global supply chains, in particular regarding brands’ purchasing practices;
  - the obligation to map supply chains and ensure full control of production, eliminating uncontrolled outsourcing;
  - transparency obligations;
  - brands’ obligations vis a vis workers; and
  - processes to enable sustainable remediation of adverse impacts to which they directly or indirectly contribute.

Make recommendations to home states of multinational brands, to ensure that these prevent and refrain from contributing to violations of garment workers’ rights in global supply chains

# Annex : Visits and meetings conducted during the mission

## **Interviews and meetings**

- A. Aloysius and Ramesh Raju, Social Awareness and Voluntary Education (SAVE), Tirupur, Tamil Nadu.
- Mr Abimannan and Mr Karuppusamy, Tanjore members of the Centre of Indian Trade Unions, which is affiliated to the Communist Party of India (Marxist – CPM) near Thanjavur.
- Mary E. John, Senior Fellow, Centre for Women’s Development Studies (CWDS), New Delhi.
- Coen Kompier, Senior Specialist on International Labour Standards, ILO, New Delhi.
- Maja Daruwala, Secretary General and Vidya Venkat of the Commonwealth Human Rights Initiative, New Delhi.
- Gautam Mody, Secretary General, New Trade Union Initiative, , New Delhi.
- A.K. Padmanabhan, President, Centre of Indian Trade Unions, New Delhi.
- Anannya Bhattacharjee, Asia Floor Wage Alliance and Garment and Textile Workers Union, New Delhi.
- Manodeep Guha, India representative, Workers Rights Consortium, New Delhi.
- Jyoti Macwan, Secretary-General of the Self-Employed Women’s Association in India (SEWA), New Delhi.
- Basudeb Chaudhuri, Director, Centre de Sciences Humaines, New Delhi.
- A group of women in a small town in Theni district, three young women in a village in Theni district, and four young women in a village in Madurai district, all of whom had been employed in the past under sumangali or similar schemes in Tirupur or other districts. Mission delegates were also able to interview members of their families. These conversations, held outside factories, were an extraordinary source of information and insight.

## **Factories visited**

Four garment factories and a shoe factory were visited in the states of Tami Nadu, Uttar Pradesh and Haryana. The exact name and location of the factories are not revealed in order to prevent any kind of retaliation against interviewed workers. Management representatives were interviewed in the five factories visited. A few workers were interviewed within factory premises or hostels.

## **Other places visited**

- A school in the village of Nallakaruppanpatti in Tamil Nadu, where a member of SAVE conducted an awareness-raising session to schoolgirls on the “Sumangali” scheme and the need to continue with their education
- A shop-cum-office of trade unionists in Valli (where the delagation met the local CITU people), just outside Thanjavur
- SAVE’s office in Tirupur

## Establishing the facts

### investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

## Supporting civil society

### training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level

## Mobilising the international community

### permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

## Informing and reporting

### mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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**FIDH - International Federation for Human Rights**

17, passage de la Main-d'Or - 75011 Paris - France  
CCP Paris: 76 76 Z  
Tel: (33-1) 43 55 25 18 / Fax: (33-1) 43 55 18 80  
www.fidh.org

Director of the publication: Karim Lahidji

Editor: Antoine Bernard

Author: Pía Navazo and Marion Cadier

With the contribution of FIDH mission delegates Marie-Ange Moreau,  
N. Jayaram, Paivi Mattila

Coordination : Marion Cadier and Geneviève Paul

Design : Julian Jeanne

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inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

## ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

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Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

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