

## **Employment, Rights and Security at Work: Case of Adolescent and Young Women in India**

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### **Abstract**

*The paper examines and addresses the challenges faced by youths particularly by the young and adolescent women at work in India. The underlying patriarchal attitudes and practices, and the economy driven by increasing capitalism and globalisation provide further reasons for examining, understanding and addressing adolescent girls and their rights to work, as well as the conditions of work. All these need to be looked under the purview of international standards, national laws, policies, programmes and strategies with regard to adolescent and young women.*

### **I. Introduction: Youth and Rights at Work**

The ILO Report (2010), *Global Employment Trends for Youth* states that “young men and women today build the foundations for the economies and societies of today and tomorrow. They bring energy, talent and creativity to economies and make important contributions as productive workers, entrepreneurs, consumers, agents of change and as members of civil society. There is no doubt that what young people strive for is the chance of a decent and productive job from which to build a better future. Take away that hope and you are left with a disillusioned youth trapped in a cycle of working poverty or in danger of detaching from the labour market altogether – thus representing a vast waste of economic potential (p.2).

The statement provides the rationale for examining and addressing the challenges faced by youths at work. The underlying patriarchal attitudes and practices, situated in the context of increasing capitalism and economic globalisation (a largely exploitative phenomenon), provide further reasons for examining, understanding and addressing adolescent girls and their right to work, as well as rights in work (conditions of work). This is partially what this paper seeks to address. Additionally, international standards, national laws, policies, programmes and strategies with regard to adolescent girls’

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work are also discussed. A considerable amount of work contributed by girls is unpaid labour that is not valued in monetary terms, and yet, such work is extremely important for the functioning of any economy.

The ILO Report (2010) based on recent labour market information available, explores and highlights the vulnerabilities of youth (between the ages of 15 and 24) to unemployment and decent work deficits, showing where progress has or has not been made in absorbing the energy, talent and creativity of young people into the productive potential of the economy. The key findings of the report were (pp.3-6)

- a) The youth labour force participation rate decreased globally from 54.7 to 50.8 percent between 1998 and 2008, the main reason being increase in number of young people participating in the education system,
- b) The young people have higher likelihood than adults of being among the working poor,
- c) In developing economies many more young people than adults engage in family businesses or farms (informal enterprises). The chances of them of ever transiting to paid employment in the formal sector are slim,
- d) Most regions demonstrated encouraging gender trends with decreasing gaps in both male-to-female labour force participation rates,
- e) During 2007-9 when there was a global economic crisis, young women had more difficulty than young men in finding work, and
- f) In developing countries, the global economic crisis contributes to 'vulnerable employment,<sup>1</sup> and informal sector employment.

The findings, particularly the last two, provide clear indication that worldwide, adolescent girls and young women get forced into informal sector employment and employment where their rights are not likely to be protected, out of desperation of wanting to find work.

## II. International Human Rights Standard Related to Work

We are aware that workers' struggles have been essential to the recognition of a range of economic, social and cultural rights, including the right to work. The ILO developed a broad range of labour-related standards, even prior to the drafting of the Universal Declaration of Human Rights. India too has ratified a number of international

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<sup>1</sup> ILO defines workers in vulnerable employment as the sum of own-account workers and contributing family workers. They are less likely to have formal work arrangements, and are therefore more likely to lack decent working conditions, adequate social security and 'voice' through effective representation by trade unions and similar organizations. Vulnerable employment is often characterized by inadequate earnings, low productivity and difficult conditions of work that undermine workers' fundamental rights. For more details, see [http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS\\_120470/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/features/WCMS_120470/lang-en/index.htm), accessed 10 October 2012

conventions<sup>2</sup> that focus directly or have provisions on women's rights at the workplace.

Moreover, some of the *Standards set by Human Rights Treaties* are- Article 23 of the Universal Declaration of Human Rights (UDHR) guarantees everyone "the right to work, to free employment, to just and favourable conditions of work and to protection against unemployment." Article 6 of the ICESCR states - the right to work includes "the right of everyone to the opportunity to gain his living by work. "Work as a human rights standard involves earning an adequate standard of living. Further, Article 6(2) states that "the full realisation of this right shall include technical and vocational guidance and training programmes." The *Directives of the European Union* to its member states on the issue of protecting young people at work are an example of standard-setting on this issue<sup>3</sup>. While such directives are applicable only to member countries of the European Union, these are discussed below to illustrate potential ways in which the Indian government can safeguard the rights of adolescent girls at work.

The directives set the objective to adopt minimum requirements aimed in particular at improving working conditions, guaranteeing workers better health and safety protection; applies to all young people under the age of 18<sup>4</sup> who have an employment contract or an employment relationship defined by the law in force in a Member State and/or subject to the law in force in a Member State. Member States are to take the necessary measures to prohibit the employment of children and shall ensure that the employment of adolescents is strictly controlled and protected under the conditions provided for in the Directive.

The list the employer's general obligations as stated in the directive on young people are - protection of the health and safety, assessment of the risks associated with their work, assessment and monitoring of the health, information about young people and children's legal representatives on the possible risks to their health and safety. The types of employment that are prohibited for young people are work which is objectively beyond their physical or psychological capacity, work involving harmful exposure to

<sup>2</sup> For example the ILO Underground Work (Women) Convention, 1935 (No. 45) (ratified on 25/03/1938); ILO Night Work (Women) (Revised) Convention, 1948; and Protocol, 1990 (No. 89) (ratified on 27/02/1950); ILO Equal Remuneration Convention, 1951 (No. 100) (ratified on 25/09/1958); ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratified on 03/06/1960); ILO Employment Policy Convention, 1964 (No. 122) (ratified on 17/11/1998); ILO Rural Workers' Organisations Convention, 1975 (No. 141) (ratified on 18/08/1977); UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (ratified on 09/07/93); UN Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) (acceded to 10/04/1979); UN Covenant on Civil and Political Rights, 1966 (ICCPR) (acceded to 10/04/1979) UN Convention on the Political Rights of Women, 1953 (ratified on 01/11/1961) are some of them.

<sup>3</sup> European Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work; summary of the directive is available at <http://www.europa.eu.int>, accessed 15 September 2012

<sup>4</sup> young people under the age of 15 or who are still in full-time compulsory education in accordance with National legislation; adolescents, young people between the ages of 15 and 18 who are no longer in full-time compulsory education in accordance with national legislation are considered.

agents which are toxic, carcinogenic cause, heritable genetic damage, or harm to the unborn child or which in any other way chronically affect human health, work involving harmful exposure to radiation, work involving the risk of accidents which, it may be assumed cannot be recognised or avoided by young person owing to their insufficient attention to safety or lack of experience or training and work.

As per the directives the Member states' responsibilities are to implement the directives in the form of legislations in their respective countries, to define necessary measures applicable in the event of infringement of the provisions of this directive and to ensure that such measures must be effective and proportionate to the offence.

In the Indian context, since adolescent girls at work also include girls who are pregnant, have recently given birth or are breast feeding, the European Union directive on this issue are relevant to examine state responsibility in other jurisdictions.

The European Council directive<sup>5</sup> on protection of pregnant women, women who have recently given birth and women who are breastfeeding - the directive calls upon the European Commission to draw up guidelines on the assessment of the chemical, physical and biological agents and industrial processes considered dangerous for the health and safety of the relevant workers, to include physical movements and postures, mental and physical fatigue and other types of physical and mental stress. For all the activities liable to involve a risk, the employer or the health and safety service must determine the nature, degree and duration of exposure in order to evaluate the risks and decide what measures should be taken. In this context the workers are also to be notified of the results and of measures involving health and safety at work. The directive also states that pregnant workers have the right to take leave from work without loss of pay to enable them to attend ante-natal examinations if such examinations take place during working hours; prohibition of dismissal of women for reasons related to their condition, protective measures for unlawful dismissal and an adequate allowance for health insurance.

### **III. Constitution and Labour Laws in India**

The Constitution of India sets out a number of fundamental rights, generally enforceable in the courts. These include equality before the law and equal protection under the law (Article 14), and prohibition on discrimination by the State on a number of grounds, including sex (Article 15), in spheres including public employment (Article 16). In addition, the State can make affirmative action in favour of women, including through reservation and special laws (Article 15-3). The State is duty-bound to protect the life and personal liberty of all, including women (Article 21). The Constitution also directs the state to provide equal pay for equal work (Article 39-d), and make provisions

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<sup>5</sup> Council Directive 92/85/EEC of 19 October 1992 (Tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC.), Summary available at <http://www.europa.eu.int>, accessed 15 September 2012

for ensuring just and humane conditions of work and maternity relief. The Constitution further states, in the fundamental rights chapter, that no child below the age (Article 42) of 14 years shall be employed to work in any factory / mine / other hazardous employment (Article 24). The right to primary education has been included as a fundamental right<sup>6</sup>. The Constitution further directs the state to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth is protected against moral and material abandonment (Article 39-f).

Provisions of labour laws have focused on prohibiting/regulating child labour, particularly in hazardous work, and on improving the safety, health and welfare of women and girls in factories and other places of work, minimum wages, equal pay for equal work, maternity benefits, child care facilities, provisions for adequate rest and leisure, prevention of discrimination and sexual harassment at the work place. Many labour laws are an elaboration of principles and directives stated in the Constitution. For example, the equal pay for equal work clause led to the enactment of The Equal Remuneration Act, 1976. The emphasis on just and humane conditions of work led to provisions in Factories Act, 1948 and other labour laws, prescribing for separate toilets for women and girls, and provision of crèches, and the prohibition of employment of women in dangerous or arduous jobs and night employment. The direction to the State to provide maternity relief<sup>7</sup> resulted in the enactment of The Maternity Benefits Act, 1961.

Under the Constitution of India, labour is a subject in the 'Concurrent List'. This means that both the central and state governments are competent to enact legislations pertaining to the same. At present India have several acts<sup>7</sup> those also protect women at the work place (and are implicitly applicable to adolescent girls).

#### **IV. The Children in the Labour Market**

Child Labour may be defined to include children prematurely leading adult lives, working with or without wages, under conditions damaging to their physical, social, emotional and spiritual development, denying them their basic rights to education, health and development. This includes children working in any sector, occupation or

<sup>6</sup> The Government of India, through the 86<sup>th</sup> amendment Act of 2002, inserted Article 21A to the Constitution which states that the state 'shall provide free and compulsory education to all children of the age of 6 to 14 years.'

<sup>7</sup> The equal remuneration Act, 1976; The Factories Act, 1948; The Mines Act, 1952, The Minimum Wages Act, 1948; Employees Compensation Act, 1923; The Industrial Dispute Act, 1947; The Payments of Gratuity Act, 1972; The Employees Provident Fund Act, 1952; The Child Labour (Prohibition and Regulation Act 1986; The Apprentices Act, 1961; The Bonded Labour System (Abolition) Act, 1976; Plantation Labour Act, 1951; The Payments of Bonus Act, 1955; Personal Injuries (Compensation Insurance Act, 1963; Employees State Insurance Act, 1948; Interstate Migrant Workmen (Regulation of Employment) Conditions of Services Act, 1979 and The Contract Labour (Prohibition and Regulation) Act, 1970. For an elaboration of labour laws in general and those pertaining to women, please see Bhasin (2007) and Sharma (2007).

process, including the formal and non-formal, organised and unorganised, within or outside the family<sup>8</sup>. The organisation *Free the Children* defines child labour as a work done by children below the age of 14 "... which restricts or damages their physical, emotional, intellectual, social or spiritual growth as children"<sup>9</sup>. UNICEF describes child labour as "one of the clearest and worst manifestations of how poverty has a child's face" (UNICEF, 2001).

It is important to remember that protective laws are able to regulate the conditions of work in the unorganised and informal sector. The government ought to address the causes of child labour, instead of its manifestations. The causes of child labour include poverty, lack of education and exposure, poor access to education, suppression of adult workers' rights, and partial prohibition of child labour and inadequate enforcement of child labour laws. Employment of girl children is intricately linked to class and caste hierarchy, social attitude towards education of girls as well as gender discrimination.

Adolescent girls are also considered one of the most vulnerable groups for exploitation at work, due to the process of socialisation. They are conditioned to be more docile, timid, compliant, loyal and responsible. They are seen to have less addictions or vices, and more hardworking and obedient than boys. Significant characteristics of the girl child labourer include invisible work which is not recognised as an economic activity and which is not under the purview of law, no identifiable employer, home-based work, long working hours, poor conditions that prevent them from attending school, no skill formation, low pay and low status, and physical abuse and sexual harassment (Bajpai, 2003). Sexual abuse of girl children and adolescent girls employed in domestic work is rampant in this country.

This places an onus on the law and policy makers and to formulate relevant laws and policies to address possible exploitation, and for their proper implementation.

#### ***Policy Framework for the Child Labour***

The National Policy on Child Labour, August 1987 spelled out an action plan for tackling the problem of child labour. It envisaged a legislative action plan; focused on and convergence of general development programmes for benefiting children wherever possible; and launching of projects for the welfare of working children in areas of high concentration of child labour<sup>10</sup>. In pursuance of National Child Labour Policy, the National Child Labour Project (NCLP) Scheme was started in 1988 to rehabilitate child labour. The Scheme sought to adopt a sequential approach with focus on rehabilitation of children working in hazardous occupations and processes in the first instance. Under the Scheme, after a survey of child labour engaged in hazardous occupations and processes was conducted, with the objective to withdraw the children from these

<sup>8</sup> [http://www.wikigender.org/index.php/Girl\\_Child\\_Labourers\\_in\\_India:\\_An\\_Invisible\\_Issue](http://www.wikigender.org/index.php/Girl_Child_Labourers_in_India:_An_Invisible_Issue), accessed 1 September 2012

<sup>9</sup> [http://www.freethechildren.org/youthinaction/child\\_labour\\_the\\_situation.htm](http://www.freethechildren.org/youthinaction/child_labour_the_situation.htm), accessed 6 September 2012

<sup>10</sup> <http://labour.nic.in/cwl/ChildLabour.htm>, accessed 1 September 2012

occupations and then put into special schools in order to enable them to be mainstreamed into formal schooling system. The Scheme envisages running of special schools for child labour withdrawn from work. The special schools are provisioned with formal/non-formal education along and vocational training, a nominal stipend, supplementary nutrition and regular health check-ups. Most of these schools are run by the NGOs in a district and the provisioned fund is released by the district administration. According to the Ministry of Labour and Employment, Government of India, the coverage of the NCLP Scheme has increased from 12 districts in 1988 to 100 districts in the 9<sup>th</sup> plan (1997-2002) to 250 districts during the 10<sup>th</sup> Plan (2003 – 2007)<sup>11</sup>.

An evaluation of the Scheme was carried out by independent agencies in coordination with V V Giri National Labour Institute in 2001. Based on the recommendations of the evaluation and experience of implementing the scheme since 1988, the strategy for implementing the scheme during the 10<sup>th</sup> Plan was devised. The 10<sup>th</sup> Plan aimed at greater convergence with the other developmental schemes and bringing qualitative changes in the Scheme. The salient points of the strategy as envisaged by the 10<sup>th</sup> Plan include:

- Focused and reinforced action to eliminate child labour in the hazardous occupations by the end of the Plan period;
- Expansion of National Child Labour Projects to additional 150 districts;
- Linking the child labour elimination efforts with the Scheme of *Sarva Shiksha Abhiyan* of Ministry of Human Resource Development and
- Convergence with other Schemes of the Departments of Education, Rural Development, Health and Women and Child Development for the ultimate attainment of the objective in a time bound manner<sup>12</sup>.

The strategy outlined for the 11th Five Year plan (2007-12) includes expanding the NCLP scheme to ensure universal enrolment of children in the 6-14 age groups to cover those in the hard-to-reach segment. Another Government initiative under the 11th plan is to amend all laws to recognize everyone under the age of 18 as children and to take appropriate measures to protect their rights accordingly<sup>13</sup>.

### ***Protective Laws***

The enactment of the Factories Act, 1948 and the Child Labour (Prohibition and Regulation) Act 1986 further complement the constitutional provision on child labour. The Act of 1948 prohibits employment of children below the age of 14 years in factories and regulates the working conditions in the age group of 15-18 years. The Act of 1986 prohibits children in hazardous occupations and regulates conditions of work in non-hazardous jobs. Employment of children has been prohibited in at least 13 occupations and 51 processes in the country, with more and more hazardous occupations

<sup>11</sup> <http://labour.nic.in/cwl/ChildLabour.htm>, accessed 10 September 2012

<sup>12</sup> Ibid

<sup>13</sup> The 11th Five Year Plan, Volume II, available at <http://planningcommission.nic.in>, accessed 8 September 2012



and processes added to the list from time to time. In 2006, the Central Government amended the Child Labour (Prohibition and Regulation) Act, 1986 prohibiting employment of children below 14 years of age even in non-hazardous industry such as restaurants, motels and in domestic work<sup>14</sup>.

Through a 2008 notification, the government sought to further amend and add to the list of occupations and processes in which child labour is prohibited. These include the food processing and beverage industries, mechanised fishing, timber handling and loading, and warehousing<sup>15</sup>. In June 2012, the chairperson of National Commission for Protection of Child Rights, has reportedly said that there is a need to club both hazardous and non-hazardous work as child labour, and a serious need to amend the law on child labour to include every kind of child labour as hazardous to children<sup>16</sup>. On 28 August 2012, the cabinet approved a new law – Child & Adolescent Labour (Prohibition) Act, proposing a complete ban on employment of children under the age of 14 in all areas of work. It can be noted that without sufficient political backing, effective implementation, adequate budgets and robust enforcement, the amended law could remain on the statute book without any impact for the estimated 12.6 million under-14 years working in the country<sup>17</sup>.

#### ***Law and Policy in Action***

The judiciary has been conscious of the strong link between child labour and education of children. An important judicial intervention in the action against child labour in India was the *M.C. Mehta case* (1996) in which the Supreme Court, directed the Union and state governments to identify all children working in hazardous processes and occupations, to withdraw them from work, and to provide them with quality education<sup>18</sup>. The Court also directed that a Child Labour Rehabilitation-cum-Welfare Fund be set up using contributions from employers who contravene the Child Labour Act. In addition, in 1993, the Supreme Court in *Unnikrishnan v. State of Andhra Pradesh*<sup>19</sup> stated that each child has the right to free education until he or she completes the age of 14 years. Article 21-A was subsequently inserted into the Constitution to reflect this standard.

In 2005, three non-profit organisations working on child rights - the M V Foundation, HAQ: Centre for Child Rights and Social Jurist- filed a public interest litigation in the Supreme Court of India challenging the validity of the Child Labour Act in the wake of the constitutional guarantee to right to education for children in the 6-14 age-group. They argue that child labour up to the age of compulsory education is unconstitutional and is in negation of rights under Article 21-A which provides compulsory education up to the age of 14. The petition questions as to how children can be at work and at school at the same time, compromising on the quality. The petition contends that the

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<sup>14</sup> Notification in the Official Gazette, dated 10 October 2006

<sup>15</sup> Gazette Notification by the Ministry of Labour and Employment (Child Labour Section), Government of India, dated 25 September 2008.

<sup>16</sup> 'NCPCR Head Advocates Amendment in Child Labour Act', [http://zeenews.india.com/news/nation/ncpcr-head-advocates-amendment-in-child-labour-act\\_781223.html](http://zeenews.india.com/news/nation/ncpcr-head-advocates-amendment-in-child-labour-act_781223.html), accessed 8 September 2012

<sup>17</sup> A Move that could Help Reduce Child Labour', *The Wall Street Journal*, 29 August 2012



existing legislations on child labour which were not completely prohibiting it in all occupations and processes, were resulting in negation of all the fundamental and human rights guaranteed to the children under Article 14, 21-A, 23, 24, 39 (e) 39 (f), 41, 45 and 51-A (h), 61-A (j), 51-A (k) of the Constitution read with U.N. Convention on the Rights of the Child and ILO Minimum Age Convention, 1973. This case is pending before the Supreme Court. Notably however, under this case the Court has asked the Government to file a status report on the implementation of *Sarva Shiksha Abhiyan* – the ongoing government programme providing free and compulsory education to all children.

As on many other issues, there exists a gap between the legal standards and reality. In many Indian industries, girls are unrecognised labourers because they are seen as helpers and not workers. Therefore, girls are therefore not protected by the law<sup>20</sup>. The National Child Labour Project (NCLP) scheme, which provides for Rs. 100 as stipend per month to each child labourer withdrawn from work, has come under criticism from persons, including the chairperson of NCPCR, who observed: “The Rs 100 stipend is on official papers only. I wonder how many kids receive this monthly stipend”<sup>21</sup>. Moreover, despite the fact that India has formulated laws and policies to protect adolescent girls in labour, the issue is still caught between legal and policy commitments to children on the one hand, and the fallout of the process of globalisation on the other<sup>22</sup>. The statistics below indicate the level of enforcement of the law on child labour, and highlight the fact that out of the number of violations detected, only a small number of prosecutions are launched, out of which an even smaller number convicted.

**Table: Enforcement of Child Labour (Prohibition and Regulation) Act 1986**  
(Based on reports received from the State Governments & CLC)

Year	No. of inspections carried out	No. of violations detected	Prosecutions launched	Convictions	Acquittals
1997-98	288150	25909	19496	6073	157
1998-99	222856	11263	6469	4125	725
1999-2000	242269	7598	3972	1333	356
2000-01	189842	10537	2398	1036	343
2001-02	449042	16604	9201	1799	606
2002-03	372504	28850	5660	1717	2229
2003-04	346212	26411	9221	4013	642
2004-05	242223	16632	2609	1385	447
<b>Total</b>	<b>2353098</b>	<b>143804</b>	<b>59026</b>	<b>21481</b>	<b>5505</b>

Source: Ministry of Labour, Government of India, <http://labour.nic.in/cwl/ChildLabour.htm>

<sup>18</sup> *M C Mehta vs State of Tamil Nadu*(1996) 6 SCC 756: AIR 1997 SC. 699

<sup>19</sup> AIR 1993 SC 217: 1993 SCR (1) 594: 1993 SCC (1) 645

<sup>20</sup> [www.indianchild.com/child\\_labor\\_india.thm](http://www.indianchild.com/child_labor_india.thm), accessed on 7<sup>th</sup> September, 2012

<sup>21</sup> NCPCR Head Advocates Amendment in Child Labour Act', [http://zeenews.india.com/news/nation/ncpcr-head-advocates-amendment-in-child-labour-act\\_781223.html](http://zeenews.india.com/news/nation/ncpcr-head-advocates-amendment-in-child-labour-act_781223.html), accessed 1 September 2012

<sup>22</sup> <http://infochangeindia.org/children/backgrounder/children-background-a-perspective.html>, accessed 9 April 2012

## V. Children as Bonded Labour

The causes of bonded labour include poverty, unemployment/under-employment, inequitable distribution of land and assets, low wages, distress migration and social customs. The system which ties a person for a specified or unspecified period of time either with wages or without wages draws heavily upon traditional feudal social relations, the caste system, social hierarchy and discriminatory practices that are prevalent in society. Such systems thrive in agriculture, brick kilns, stone quarries, crushers and mines, power looms and cotton handlooms, as well as in constructions and other industries.

People considered 'untouchables', *adivasis*, women and children are among the main victims of the bonded labour system, as they have a lower social ascription and fewer perceived rights. In addition to other forms of exploitation and abuse, female bonded labourers are vulnerable to wage discrimination, physical abuse and sexual exploitation by the creditor and his family members / relatives. The malnutrition-related death of Katraju Lakshmi – a Chenchu tribal woman from Andhra Pradesh – who worked as a bonded labourer on construction sites in Meghalaya, is a case in point<sup>23</sup>.

### *Legal and Policy Response*

The Bonded Labour System (Abolition) Act 1976 was enacted to abolish the system, as it is exploitative, violative of human dignity and is contrary to basic human values<sup>24</sup>. The law unilaterally frees all bonded labourers from debt bondage, with simultaneous liquidation of their debts. The law lays down monitoring, enforcement and implementation modalities, which mainly rest on state governments. A series of progressive judgments of the Supreme Court has attempted to monitor the implementation of the law. Pursuant to a 1997 directive of the Supreme Court, the National Human Rights Commission (NHRC) has been vested with the responsibility of monitoring the implementation of the law and making reports to the Court from time to time<sup>25</sup>.

### *Law and Policy in Action*

*In Bandhua Mukti Morcha vs. Union of India*, the Supreme Court dealt with the release of bonded labourers from stone quarries in Haryana<sup>26</sup>. Despite a formal abolition of the system by law and some positive judgments, it continues to exist in practice. An example of the manner in which the bonded labour system works, in particular relevance

<sup>23</sup> For more details, see <http://www.fian.org/cases/letter-campaigns/india-failure-of-state-social-programmes-leads-to-bonded-labour-of-600-chenchu-tribals-and-the-death-of-a-chenchu-woman>. accessed 4 December 2009

<sup>24</sup> The words of the Supreme Court in the *Asiad Workers case - People's Union for Democratic Rights vs. Union of India* AIR 1982 SC 1473

<sup>25</sup> Order dated 11 November 1997 in *PUCL vs. State of Tamil Nadu and others*

<sup>26</sup> AIR 1984 SC 802

to adolescent girls, is the *Sumangali*<sup>27</sup> scheme in Tamil Nadu.

In February 2006, the State Textile Workers Federation made a representation through the Centre of Indian Trade Unions (CITU), to the Government of Tamil Nadu, alleging that the Textile Mills in Tamil Nadu were indulging in an exploitative practice of engaging adolescent girls under the Marriage Scheme for Adolescent Girls leading to forced labour. In January 2007, a notification was issued by the government of Tamil Nadu, including the employment in textile and spinning mills within Part I of the Schedule to the Minimum Wages Act. Thereafter the Chief Inspector of Factories submitted a report to the state government, confirming that girls above the age of 15 were employed in spinning mills for 3 year apprenticeship, and that after completion, the girls were paid Rs. 30,000 – Rs. 50,000 as a lump sum amount to meet their marriage expenses. The report also indicated that a total of 38,461 girls were employed in 406 mills of Erode, Coimbatore and Dindugul districts. The report further said that there had been some incidents of sexual harassment. The report recommended that since it might be impossible to abolish the system all of a sudden, it would be better to appoint monitoring committees at the district level to examine the working conditions and prevention of exploitation of the young girls<sup>28</sup>. Now based on directions received from the NHRC, the state government has begun identifying mills where young girls were employed.

The *Sumangali* scheme is clearly exploitative in nature, as it provided the girls an approximate daily wage of Rs. 50 a day, nearly three times lesser than the legal minimum wage in Coimbatore in 2008. Once the contract is signed, young girls are under the control of the factory or the broker. It is often reported that the girls lived in captivity for a long period. Some factories are reported to fire the girls or make them resign shortly before they finish the three- year contract so as to avoid paying the marriage assistance fund, ranging from Rs. 30,000 to Rs. 50,000<sup>29</sup>.

In November 2008, the state government, through a government order, fixed minimum wages of Rs. 110/- per day apart from dearness allowance as detailed in the order, to apprentices engaged in employment in textile mills<sup>30</sup>. This order was challenged through many writ petitions in the Madras High Court before a single judge, where they were all dismissed, and the government order upheld<sup>31</sup>. In July 2012, civil society renewed

<sup>27</sup> The *Sumangali* scheme, which is a form of forced labour in India, is said to have started in 1989. The word “*Sumangali*” in Tamil means an unmarried girl becoming a respectable woman by entering into marriage. Thus, the scheme is also known as “marriage assistance system”. Under this scheme, girls’ parents, usually poor and from the lower castes, are persuaded by brokers to sign up their daughter(s). The scheme promises a bulk of money after completion of a three-year contract working in the factory. The scheme, prevalent largely in the spinning mills of Coimbatore, Tamil Nadu, supposedly meets the need of poor families and provides stable workforce to factories.

<sup>28</sup> G.O.Ms.No.62, Labour and Employment department, dated 30-3-2007

<sup>29</sup> Sindhu Menon, *Adolescent Dreams Shattered in the Lure of Marriage: Sumangali System: A New Form of Bondage in Tamil Nadu*, available at <http://labourfile.org/ArticleMore.aspx?Id=826>, accessed 1 June 2012

<sup>30</sup> G.O. (2D) No.61, Labour and Employment (J1) Department of State of Tamil Nadu, dated 7.11.2008

<sup>31</sup> *Tamil Nadu Spinning Mills vs The State of Tamil Nadu*, judgment dated 30 April 2009

its demand for monitoring of companies implementing the *Sumangali scheme*<sup>32</sup>. Despite the various interventions of the state government, NHRC, the judiciary and civil society organizations, exploitation in the form of bonded and forced labour of adolescent girls reportedly continues in the Tamil Nadu textile and garment industry<sup>33</sup>.

The *Sumangali* scheme is a complex issue involving adolescent girls, embedded in and deriving strength from a combination of factors: the Indian context of patriarchy, gender discrimination, low social value for girls, the importance attributed to marriage of girls, the practice of dowry and the perception of girls as a financial burden. The case study from Tamil Nadu discussed above is a mere example of the phenomenon of employing girls in bonded / forced / exploitative labour.

Despite the legal provisions, identification and release of bonded labourers is always challenging, as only a small number are identified, that too with the persistent efforts of non-profit organizations, and that the rehabilitation of such labourers is often neglected (Srivastava, 2005). Moreover, very few employers got prosecuted and even fewer got convicted. According to the Ministry of Labour's figures, between 2000 and 2002 in all of India, there were only around 1800 bonded labourers being identified and released; and another around 17300 bonded labourers rehabilitated. However, there was no data showing how many child labourers are among those being freed, and how many of them were adolescent girls<sup>34</sup>.

## VI. Sexual Harassment at Workplace

Sexual harassment at the workplace is an important issue related to the safety and dignity of the young women in workplaces.

Sexual harassment is an expression of male power over women and girls that sustain patriarchal relations, and is often an extension of violence against women and girls in everyday life, targeting and exploiting their vulnerability at the workplace. The cases of sexual harassment of women and girls at the workplace are increasing alarmingly because of several factors, such as the poor status of women, patriarchy and gender discrimination, increasing number of working women which results in a 'threat' perception among certain men, poor knowledge of human relations, and inadequate provisions of law to deal with the problem effectively. Sexual harassment at the workplace is not only an issue related to empowerment of women and girls and an issue of occupational safety and health, but is also an issue pertaining to human rights, as the right to life ought to include the right to work in an environment that is conducive to human dignity.

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<sup>32</sup> 'Monitoring of Companies under the Sumangali Scheme Demanded', *The Hindu*, 18 July 2012

<sup>33</sup> B. Aravind Kumar, Exploitation Continues at Garment Hub, *The Hindu*, 8 March 2012

<sup>34</sup> Human Rights Watch (2003), p. 50

Sexual harassment<sup>35</sup> of women at workplace is also a violation of the right to life and personal liberty as mentioned in Article 21 of the Indian Constitution. Right to livelihood is an integral facet of the right to life, and consequently sexual harassment at the workplace is the violation of the right to livelihood, as it deprives the woman and girl of a safe working environment.

#### ***Landmark Judgment of the Supreme Court***

The Supreme Court of India pronounced a landmark judgment on sexual harassment of working women in 1997 in *Vishaka and Others vs. State of Rajasthan*<sup>36</sup>. In this judgment, the court stated that sexual harassment of working women (including girls) as a form of discrimination against women and violation of the constitutional right to equality. The backdrop to this judgment was the gang rape of a *sathin*, Bhanwari Devi in 1992, who was employed by the Rajasthan government in its women's development programme to prevent child marriages. A group of women's organisations came forward to file a public interest litigation (PIL) in the Supreme Court, asking for directions and guidelines to ensure the constitutional rights of women to work in a violence-free work environment. The landmark judgment was significant in recognising sexual harassment at the work place as a violation of the constitutional rights of women and outlining guidelines for the prevention, deterrence and redress of sexual harassment.

The judgment also provided guidelines for employers to redress and prevent sexual harassment at workplace, and to provide a discrimination-free working environment for women employees. The judgment said that it was the duty of the employer or other responsible persons in work places to provide women with a safe working atmosphere as well as provide mechanisms for resolution of complaints through the establishment of complaints committees<sup>37</sup>.

<sup>35</sup> In common parlance, there is only a thin line distinguishing between casual flirting and sexual harassment. The Supreme Court of India laid down the definition of sexual harassment as "any unwelcomed sexually determined behavior such as avoidable physical contact, a demand for request of sexual favors, sexually colored remarks, showing pornography, and any other unwelcomed physical, verbal and non-verbal conduct of sexual nature. It also includes dirty jokes, sexual remarks about a person's body, sexual advances either verbal or through gestures or through the use of sexually suggestive or pornographic materials, whistling or obscene remarks, touching, patting, pinching, physical assaults and molestation of and towards women workers by their male colleagues.

<sup>36</sup> *Vishaka & others vs. State of Rajasthan* AIR 1997 SC 3011; (1997) 6 SCC 341.

<sup>37</sup> There is directive from the Supreme Court to constitute a committee for receiving and inquiring into complaints of sexual harassment at every workplace. Every such committee should consist of members of whom at least 50% are women, a chairperson who is a woman and an external member from a social work/non-profit organisation. It also outlined preventive steps that the employer ought to take, including discussing the issue affirmatively in workers' meetings and employer-employee meetings, prominent display of guidelines to create awareness of the right of women employees, and prominent display of members of the complaints committee and their contact details. The employers are also responsible for formulating an anti-sexual harassment policy, and for constituting a complaints committee to investigate, mediate, counsel and resolve cases of sexual harassment. A separate law on the issue is being drafted. In the absence of any written law, the judgment is legally binding and final on the issue.

**Law and Policy in Action**

Though the Supreme Court judgment has shifted the onus on the employers in public and private sectors to ensure women employees' safety at the workplace, formulating and anti-sexual harassment policy and setting up a complaints committee are not priorities for companies. Hence the law is violated rampantly. Most workplaces do not constitute a committee till an incident of sexual harassment occurs. Unless a criminal case has been filed, the consequences of the enquiry are usually in the form of a reprimand, demotion, suspension, dismissal or being asked to tender an apology.

An important contributory factor to non-implementation of the law is the lack of awareness among women and girls. In a research by Sakshi – a women's organization – it was found that 58% of the women were not aware of the Supreme Court guidelines<sup>38</sup>. Despite the law, many cases go unreported as women are reluctant to lodge complaints of sexual harassment against their colleagues for fear of accompanying social stigma and protracted litigation in courts of law.

The National Commission for Women (NCW) commissioned a project on "Sexual harassment of women at work place" in various cities. The study reveals that nearly 60% of the working women are not aware of the guidelines given by the Supreme Court of India in *Vishakha* case. It was further found that even many of the employers are not aware of the Supreme Court guidelines and have not constituted a committee in pursuance of the guidelines. Thereafter, the NCW had prepared the code of conduct at work place in pursuance of the Supreme Court guidelines and circulated the same to all the ministries, educational institutions, public and private sector undertakings and various NGOs for information and implementation.

In 2010, The Protection Against Sexual Harassment of Women Bill was drafted. The bill makes it mandatory for all workplaces, including homes, universities, hospitals, government and non-government offices, factories, other formal and informal work places to constitute an internal committee for redress of complaints. On 3 September 2012, the Bill – The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill 2010 - was passed by Lok Sabha. One of the major provisions of the Bill, which is of serious concern to women's rights activists and advocates, is that which penalises the complainant if the internal committee or the local committee concludes that the allegation of sexual harassment was maliciously made, or was false<sup>39</sup>. This provision will have a chilling effect on women who are subjected to sexual harassment at the workplace, and deter them from complaining<sup>40</sup>.

<sup>38</sup> Sucheta Dalal , 'Bias in the Boardroom', *The Sunday Express*, May 18 2003

<sup>39</sup> Section 14 of the bill calls for action against the complainant in case the "internal committee or the local committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false."

<sup>40</sup> For a comprehensive critique of the Bill, see Jaising, Indra. 'Complainant in the Dock', *The Indian Express*, 17 September, 2012.

## VII. Conclusion: Importance of Policies for Adolescent Girls at Work

Lack of implementation of laws, lack of awareness of rights enshrined in the laws coupled with lack of access to justice for adolescent girls, brings to the fore the importance of pro- active policies for adolescent girls at work as a complementing strategy.

“Kishori Shakti Yojana” – an adolescent girls’ scheme sponsored by the central and state government of Haryana - is a case in point where adolescent girls are trained and equipped to improve their home-based and vocational skills. The scheme was commenced with the objective of improving the nutritional and health status of adolescent girls between 11-18 years of age, to train and equip them to improve home-based and vocational skills, to promote awareness of health hygiene, nutrition, home management, child care, and take all measures as to facilitate their marriage after attaining the age of 18 years and even later. This scheme is being implemented through anganwadi centres<sup>41</sup>. Such schemes need to be taken up at a larger, nationwide scale to make a meaningful and long-term impact on economic empowerment of adolescent girls.

In conclusion, instead of viewing adolescent girls only through the lens of their natal families, they should be seen as individuals in their own right, who require laws and policies for protecting and promoting their rights. Micro-credit facilities and facilities for on-site banking facilities for adolescent girls and young women at their place of work are some such strategies. The policies should be geared towards supporting adolescent girls for building skills such as life skills and vocational skills, and for having savings independent of their families, in order that they can become economically independent. Laws related to eradication of child labour, bonded labour and protecting girls at the workplace ought to be implemented in a rigorous manner.

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