

CONTRASTING THE INDIAN GARMENT AND HANDLOOM INDUSTRIES – A CRITIQUE OF LEGISLATIVE AND EXECUTIVE INACTION

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ABSTRACT

The textiles and garments industry contributes 16.63 per cent of India's export earnings; around 45 per cent of this comes from garment exports alone. The garments industry provides employment to around 3.5 million people across the country and is one of the success stories of neoliberal India, but its success is on account of the thousands of garment workers – those working in big and small factories, as well as from their shanty homes. On the other hand, handloom weaving is a part of India's cultural ethos, and employs the second largest workforce in India, next only to agriculture. However, in terms of State treatment, the two sectors constitute extreme ends of the legal spectrum. Through a presentation of the features, working conditions and politico-economic (in)significance and resultant policy initiatives, it is hoped to place these two sectors in stark contrast against each other – the former, the child of the policy makers, while the latter, the albatross around their

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neck, while adopting a labour and human rights perspective. In the light of the recent crises of capitalism that have afflicted the world economy, as also the spate of weavers' suicides, the author appeals to the Government to awake to the consequences of following an export-oriented policy of textile promotion and instead safeguard the right to be human of millions of handloom weavers.

I. INTRODUCTION

The textile industry in India, one of the oldest¹ and the largest of Indian manufacturing industries, employs 35 million people at present. The Indian textiles industry is extremely varied, with the hand-spun and hand-woven sector at one end of the spectrum, and the capital intensive, sophisticated mill sector at the other.² India's rich cultural textile tradition attracted traders from all over the world in ancient times; evidence of textile manufacturing has been found from the Harappan valley civilization.³

It is considered that among manufacturing sectors, the single largest employment potential is in textiles, which was slated to generate 7 million jobs from 2002-2020. More than 40 per cent of these jobs were predicted to be in garment production units in the small scale

¹"The spinning wheel was invented in India between 500 – 1000 A.D." C. WAYNE SMITH & JOE TOM COTHREN, COTTON: ORIGIN, HISTORY, TECHNOLOGY, AND PRODUCTION 8 (John Wiley and Sons Ltd., 1999).

²"At current prices the Indian textiles industry is pegged at US\$ 55 billion, 64% of which services domestic demand. The textiles industry accounts for 14% of industrial production, which is 4% of GDP; employs 35 million people and accounts for nearly 12% share of the country's total exports basket." Annual Report 2009-2010, MINISTRY OF TEXTILES, GOVERNMENT OF INDIA, at 3 (2010).

³*Indian Textile History: Textile Images*, HISTORY OF TEXTILE (Dec. 7, 2011), <http://www.textileasart.com/weaving.htm#indian>.

industry (SSI) sector.⁴ India is the second largest manufacturer of textiles and garments after China. The textile industry accounts for 14 per cent of industrial production and 12 per cent share of the country's total exports basket.

According to the Ministry of Textiles, the Indian textile industry may be subdivided into seven important segments:⁵

1. Organized Cotton/Man-made Fibre textile industry
2. Man-made fibre/Filament Yarn industry
3. Wool and Woollen Textiles industry
4. Sericulture and Silk industries industry
5. Handlooms
6. Handicrafts
7. Jute and Jute Textiles industry.

After 2005, when the quota system on global textile trade lifted, India expected a dramatic increase in exports.⁶ The predictions came true as India emerged the prime sourcing destination for textiles: from 2004-05 to 2009-10, India's exports of textile and clothing increased by 60.14%.⁷

⁴Report of the Committee on India Vision 2020, PLANNING COMMISSION, GOVERNMENT OF INDIA, at 39 (2002).

⁵*Supra* note 2, at 4.

⁶*Id.*

⁷"India's textiles & clothing (T&C) export registered robust growth of 25% in 2005-06, recording a growth of US\$ 3.5 billion in value terms thereby reaching a level of US\$ 17.52 billion. The growth continued in 2006-07 as T&C exports were US\$19.15 billion recording an increase of 9.28% over previous year. Though India's T&C exports in 2007-08 at US\$ 22.13 billion were adversely affected by strong appreciation of the Indian rupee against the US dollar, it still managed to record a healthy growth of 15.59% in US dollar terms (in rupee terms, the growth was about 2.76%. India's textiles exports at US\$ 20.94 billion showed a decline of 5.45% in 2008-09 over 2007-08 as the recessionary trends were observed in India's major markets i.e. the US and the EU. As per the latest available provisional figures of the Directorate General of Commercial Intelligence and Statistics (DGCI&S), Kolkata, during 2009-10, the exports of T&C increased by over 5.60% and reached the level of USD 22.42 billion." Outcome Budget 2011-2012, Ministry of Textiles, Government of India, at 1 (2011).

Post-liberalization, India has chosen to integrate her domestic economy with the global economy of goods and services, thus subjecting herself to what has been termed the ‘international division of labour’, where “industrial capital (as a consequence of globalization, improvement in technology and communication) has been increasingly able to internationally relocate the different parts of the industrial labour processes where the relative price and productive attributes of the different national labour forces best satisfies its requirements, thus giving birth to the New International Division of Labour (NIDL)”.⁸ In simple terms, this means that in order for it to engage with the global market, it must fulfil specific demands of such market, in this case, provide cheap labour for the global production process. Thus we see that the problems of labour, which were already substantial, have only become aggravated in the neoliberal era.

Precisely twenty years have elapsed since the introduction of neoliberal elements into Indian economy, and the past few years have been particularly eventful. Empirically, there is no better time than now to critically examine the true effect of neoliberal policy and legislation in the textile sector, especially in context of the fissures that appeared in the neo-capitalist system of production in 2008 and 2011 in the world markets. This being the perfect time to take stock, India must reflect on the symptoms manifested by its textile law, and decide whether to blindly move forward, or pause and reconsider the course dictated by the Washington Consensus.

This paper looks at the unorganized labour employed by two of the most important sectors in the Indian textile industry: the garment sector and the handloom sector, and analyses the effect of neoliberal legislation on the workers in these two sectors. The garment sector represents the modern, export-driven and revenue-earning focal point

⁸Nicolas Grinberg, *The New International Division of Labour and the Differentiated Evolution of Poverty at World Scale* (Jan. 21, 2012) <http://www.sed.manchester.ac.uk/research/events/conferences/povertyandcapital/grinberg.pdf>.

of Government policy, while the handloom sector presents the picture of historical and cultural significance, the employment-source of millions of Indian citizens, many of whom have resorted to committing suicide in the face of inhuman deprivation and poverty. The difficulties of balancing economic and social objectives of the State through the instrument of Law are highlighted through a comparison of Government legislation, policy and political will in these two sectors.

For the purpose of this paper, the author will follow the definition of ‘unorganized sector workers’ as provided by the National Commission on Enterprises in the Unorganized Sector (NCEUS), viz.:

*Unorganized/Informal workers consist of those working in the informal sector or households, excluding regular workers with social security benefits provided by the employers, and the workers in the formal sector without any employment and social security benefits provided by the employers.*⁹

As per the definition, the unorganized/informal workers would include (i) all casual contributing family workers; (ii) self-employed persons in informal sector and private households; and (iii) all other employees not eligible for advance notice of dismissal or paid sick or annual leave or for any social security benefits provided by the employees.¹⁰

The first part of the paper looks at the garment sector, discussing its peculiar features, conditions of work, trends at the workplace, along with important developments in the international and national spheres that have affected the prospects of the sector or its workforce. The second part of the paper analyses the handloom industry in India in a

⁹Report on Financing of Enterprises in the Unorganised Sector and Creation of a National Fund for Unorganised Sector, National Commission on Enterprises in the Unorganized Sector at 3 (2007) [hereinafter NCEUS 2007b].

¹⁰NCEUS, 2008a, at 45 (2008).

similar fashion. The last part provides a brief comparison between the two sectors so as to highlight the variance in labour policies, with suggestions for the future.

II. THE INDIAN GARMENT INDUSTRY

A. Introduction

The readymade garment sector constitutes 45 per cent of the total textiles exports.¹¹ The Indian textile value chain operates independently, manufacturing raw material (fibres) to finished products (garments and apparel), with spinning, weaving, knitting and processing in between as intermediate processes. The structural pyramid of Indian textile industry is inverse in terms of strength: fibre manufacturing and spinning processes are strong while weaving and processing are relatively weak.¹² The clothing sector is the final stage of the textile value chain and the maximum value addition takes place at this stage.¹³

The pattern of production in the Indian garment industry is highly fragmented, testimony to which fact is borne by the co-existence of varying structures of production, viz. large units, small enterprises and home-based work,¹⁴ albeit on varying conditions of survival. In

¹¹Annual Report 2010-2011, MINISTRY OF TEXTILES, GOVERNMENT OF INDIA, at 45 (2011).

¹²T.S. Devaraja, *Indian Textile and Garment Industry-An Overview*, INDIAN COUNCIL FOR SOCIAL SCIENCE RESEARCH (Dec. 28, 2011), http://sibresearch.org/uploads/2/7/9/9/2799227/working_paper_-_dr_devaraja.pdf.

¹³Report of the Working Group on Jute and Textiles for the Eleventh Plan (2007-2012), Planning Commission of India, Government of India, at 35 (2006).

¹⁴There is a tendency to treat home-based workers as self-employed persons; however, 'home-based worker' here includes: i) independent employers or own-account workers (purely self-employed), and ii) dependent sub-contract workers or 'homeworkers'. ILO Home Work Convention, Article 1 (1996) (C177) defines 'home-worker' as a person who carries out work for remuneration in premises of

this paper, in tandem with the adopted definition of ‘unorganized worker’, the workers in the regulated¹⁵ large factories are also considered as unorganized workers.¹⁶

The garment industry in India operates within subcontracting supply chains. These supply chains are sometimes small and at the local level, while some operate for export houses who supply to international retail brands.¹⁷ The growth of numerous small-scale units around the larger units has led to a splitting up of the production process,¹⁸ rampant contracting and sub-contracting often lends

his/her choice, other than the work place of the employer, resulting in a product or service as specified by the employer, irrespective of who provided the equipment, material or inputs used.

¹⁵The Factories Act, 1948, No. 63, Act of Parliament 1948 (India).

¹⁶“The work in numerous garment-manufacturing units, many of which employ a large number of workers, is organised in nature, but is entirely informal,” Report of the SNCL, ¶7.19. “The (big) factories are usually subsidiaries of big textile mills in the country. These registered factory outlets are in the ‘organized sector’ in name only; the rampant flouting of labour laws by such units, except on paper, leads to withholding of social security to their workforce, much of which is temporary or casual, there being no employment contract affording them the benefits accruing to permanent labour.” Maithreyi Krishna Raj, *New Opportunities on Old Terms: The Garment Industry in India*, 15 SOCIAL SCIENTIST 45 (1987).

¹⁷NCEUS, 2007b, at 82, ¶5.21. Many of the activities undertaken by homeworkers are conducted within a value chain, which is sometimes connected globally. The value chain contains a number of intermediaries between the homemaker/producer and the final consumer. An example of a global value chain is in the garment industry. At the upper extreme are the international retailers such as GAP or Wal-Mart. These retailers mainly operate through export houses or large exporters themselves. The export houses contract out the orders to contractors who in turn may sub-contract it to sub-contractors. The actual production may be done in large factories, small factories or by homeworkers. The production process may be broken up and some part of this work, sometimes the more intricate hand work such as embroidery work, is done by the home-workers, NCEUS, 2007b, at 71, ¶4.89.

¹⁸See Report of the National Commission on Self Employed Women and Women in the Informal Sector, “The encouragement given to small sector, although welcome, is reported to have led to splitting of large units into smaller ones, contracting and sub-contracting systems and growth of home-based industry. These forms of production are used as tools of avoiding labour laws and as means of exploiting workers, women workers being the greater sufferers.”

credence to the illusion that the industry is composed primarily of small and medium enterprises.

Post-liberalization, home-based work is more often found in the form of homeworkers, who form the base of the pyramid of manufacturers, and are engaged in production of items such as frocks for children, petticoats and gowns, to be sold through small retail outlets mainly to the local market. Such workers, mostly women,¹⁹ operate through a chain of contractors and sub-contractors. These contractors take the material from the large merchants or shops and supply it to home based workers. They then collect the finished product and return it to the supplier for final sale in the market.²⁰

Though homework offers several advantages to the workers,²¹ these are far outweighed by the disadvantages: in a labour market characterized by surplus labour, homeworkers are often paid extremely low piece rates, with little or no access to the final market or consumer and increased vulnerability due to the lack of unionization. The distance between the final consumer and the homeworker also makes it difficult to identify the principal employer, the one who is responsible for providing higher wages and social security.²² Child labour constitutes an integral part of homework.²³

¹⁹In the apparel manufacturing sector, women are present to the tune of 28.2 per cent, while men are 20.4 per cent: NSS 55th Round 1999-2000, quoted from NCEUS, 2007b, at 59.

²⁰*Supra* note 12.

²¹The advantages are in the form of being time-conserving, offering flexible work hours and an additional source of income for the family, while sometimes resulting in the birth of individual enterprise. Women find it easier to fulfill domestic responsibilities while augmenting the household income: NCEUS, 2007b, at 71, ¶4.86.

²²ILO 2002b. *Decent Work and the Informal Economy*, Report VI, International Labour Conference, 90th Session (2002).

²³There has been a visible decline in the incidence of child labour in factory settings, in reaction to growing public and political pressure within India and beyond. Yet this decline represents merely a displacement of the problem: child labour has shifted out of factory-based production into the arena of household activity, as the restructuring of garments production to reduce costs and

Often, the exploitation of the home-worker by local employers can be a mere first step in the exploitation through the global value chain.²⁴

Thus, the garment sector in India engages three types of workers – factory workers (in both big and small enterprises), homeworkers and own account workers.

B. Conditions of Work

- a) *“Workers are Cheaper than Machines”* – The minimum working hours in the Garment Industry range from 10-12 hours,²⁵ against a Factories Act, 1948 mandate of nine working hours per day;²⁶ workers are often forced to work overtime, and in case of refusal, are perfunctorily dismissed. One finds workers working for 20 to 30 years without any week-long holidays and at times, on 12-14 hour shifts.²⁷

Minimum wage stipulations are relentlessly flouted, thus lowering the average wages as a whole. For instance, tailors, who are among the highest paid employees in Bangalore factories, are paid Rs 140 per day, when the minimum wages for such work in Karnataka has been notified as Rs. 158 per day.²⁸

evade regulation has dramatically increased the importance of home-based work and the numbers of (particularly women) workers in the burgeoning household sector: Nicola Phillips et.al., “Child labour in global production networks: poverty, vulnerability and ‘adverse incorporation’ in the Delhi garments sector”, Chronic Poverty Research Centre, *Working Paper* (Jun., 2011), http://www.chronicpoverty.org/uploads/publication_files/WP177%20Phillips%20et%20al.pdf.

²⁴NCEUS, 2007b, at 71, ¶4.87.

²⁵Jatinder S. Bedi & Radheyshyam Verma, *State of Fabric Producing Units in India* EPW, Vol. XLVI No. 4, 66 (2011). See *infra*, note 28.

²⁶The Factories Act (1948) mandates vide S. 51 that no adult workers shall be required or allowed to work in a factory for more than forty-eight hours in any week, or, vide S. 54, more than nine hours in any day.

²⁷Long work hours are often a strategy on the part of the employer to minimize possibilities of unionization. Workers in many factories have been threatened if they make attempts to unionize themselves.

²⁸In conversation with Ms. Suhasini Singh, CIVIDEP India. In another case, the Government of Karnataka revised minimum wages in 2009 and later repealed its

Where payment is on a piece-rate basis, as is invariably the case, especially where women are employed in majority, unrealistic targets of 100-120 pieces per day, against an industrial average of 60-70 pieces per day, are imposed on the workers, who have no choice but to skip their pithy (usually 30-minutes long), supervised lunch-breaks in order to achieve daily targets.²⁹

Garment workers face physical and sexual abuse by the employers who often use hurtful, derogatory and gender-insensitive language in their communication with these workers, most of whom are women.³⁰

Within the factory, basic facilities like toilets, ventilation and even drinking water are a luxury.³¹ employers impose restrictions on the use of toilets and the workers are usually not permitted to sit while working. Safety standards of work are abysmal; injuries are frequently caused by old machinery, and occupational diseases are rampant among the workers. The only social security these workers get is a 'maternity-benefit' in the form of a single nursing break.³²

own notification. *See, Garment workers seek better working conditions*, THE HINDU (Mar. 9, 2011), <http://www.hindu.com/2011/03/09/stories/2011030967570400.htm>; Nilanjana Biswas, *A Tailor-made Catastrophe*, TEHELKA, Vol. 4, Issue 45, (2007).

²⁹Suhasini Singh, *Fashionable and Famous – At the Garment Worker's Cost*, (Apr., 2009), <http://cividep.org/wp-content/uploads/Fashionable-and-famous.pdf>.

³⁰Nirmala Krishna, *Garment Factories – A Hell on Earth* (Nov. 21, 2011), <http://www.socialistworld.net/doc/2695>. The recent case of 25-year old Ammu is an instance of the increased spate of 'suicides' by garment workers: Ammu was found hanged in suspicious circumstances on the day she was harassed by supervisors for more production; she was abused, violently pushed and objects were also thrown at her. The factory employing her until her death is 'Triangle Apparels', a part of the Gokuldas Corporation which employs around 40,000 workers and produces garments under brand names such as Mexx, Puma and O'Neil for export to foreign countries.

³¹The Royal Commission on Labour (RCL), 1929, Report of the Labour Investigation Committee, at 130 (1946).

³²*Supra* note 30.

Obsolete and faulty machinery causes constant puncture wounds on the fingertips and the nails, as the cloth is passed through heavy vibrating machines; at times the worker loses entire fingers in the process. Textile dust enters the lungs of the workers due to improper ventilation and causes lung cancer. A Cividep study in 2008 showed that 80 per cent of the patients registered with the Employee State

Supervisors are predominantly male, leading to abuses of a greater degree.³³

The 1988 National Commission on Self Employed Women and Women in the Informal Sector (NCSEW) highlighted in the case of home-based workers, the issue of visibility (with respect to the planning process); it recommended their recognition as workers along with ensured access to raw materials and credit facilities.³⁴

Perhaps a reason for the extremely poor working conditions of the garment sector workers is the lack of unionization.³⁵

C. *Discrimination at Work*

Discrimination at the workplace manifests itself in three forms – against women, child and migrant labour.

- a) *Discrimination against Women Workers* – Women labour has been increasing in the garment sector; although precise data on this is not available, several national-level reports have brought this incidence to light.³⁶ Occupational segregation between men and women is

Insurance Corporation (ESIC) were suffering from tuberculosis caused due to inhalation of cotton fluff. Apart from these, cases of anaemia, sleeplessness, miscarriages and leg and back pain (as work is repetitive and monotonous) are common.

³³Deepa Girish, *Bangalore garment workers woes and challenges ahead* (Dec. 2, 2011), <http://www.socialistworld.net/doc/5231>.

³⁴Report of the National Commission on Self Employed Women and Women in the Informal Sector, at 149-152 (1988).

³⁵Less than 5% of the workforce is union members: Mohan Mani “The minimum wage in the sector was first fixed at Rs.7 per day in 1979. At that stage, the minimum wage was not linked to inflation, and there was no DA (dearness allowance) component to the wage. In 1984, the state government took up the matter with the judiciary, and DA was included as a component of wage in 1986, with the minimum wage fixed at Rs.18 per day. It should be noted that even the 1984 intervention was not done by workers’ organisations, but was taken up by the state.” *Id.*, at 14.

³⁶The National Commission for Self Employed Women and Women in the Informal Sector identified that certain non-traditional industries like garments had recorded sizeable increase in women population, Report of the National Commission for Self Employed Women and Women in the Informal Sector, (1988) also identified in the Report of the Study Group on Women and Child Labour, Second National

perceived as an important and effective instrument of discrimination against women. Because of narrow options, women get crowded into certain sectors with an inevitable lowering of wages. Alternatively their concentration in some sectors which eliminates competition between men and women also permits the bypassing of the legal requirement of equality of wages. If men and women are doing different things, obviously there is no need to apply the same standard.³⁷ Moreover, for women workers in the informal economy, the ‘double burden’ of combining the tasks of production and reproduction is even more arduous because they are already engaged in activities that require long hours to obtain a subsistence wage.³⁸

The sexual division of labour is often used as a justification for dubbing women’s work as low-skilled; a division that is visible in the garment making process and also in the type and quality of the garments contracted. In most industry groups, women are placed at the bottom of the hierarchy of jobs, which is then used to (de)value the job as low-skilled even if it involves exceptional talent and years of informal training.³⁹ Such a division of work results in lower piece-rate wages and lower overall monthly incomes for women, thus relegating them to the lowest categories of work.⁴⁰ Men are engaged in the more specialized activities, such as cutting the garments (most

Commission on Labour (SNCL), at 576 (2001). “Women are employed in large numbers in the unorganised textile sector, in hosiery, handlooms, textile handicrafts like embroidery, patchwork and block printing, and in the manufacture of readymade garments.” The SNCL identifies garments as one of the areas employing a high percentage of women, SNCL, ¶9.30, 9.38. In countries such as Bangladesh and Cambodia, where the garment sector is equally strong, women comprise 80 and 85-90 per cent respectively of the workforce: Ratnakar Adhikari & Yumiko Yamamoto, *Flying Colours, Broken Threads: One Year of Evidence from Asia after the Phase-out of Textiles and Clothing Quotas* (January, 2005), http://asia-pacific.undp.org/practices/poverty_reduction/publications/P1069.pdf.

³⁷Maithreyi Krishna Raj, *New Opportunities on Old Terms: The Garment Industry in India*, 15 SOCIAL SCIENTIST 45 (1987).

³⁸NCEUS, 2007b, ¶5.1.

³⁹NCEUS, 2007b, ¶5.26.

⁴⁰NCEUS, 2007b, ¶5.22.

specialized), supervision, procuring orders and marketing. Women were engaged in minor activities like cutting the loose threads, stitching the buttons and other finishing and ornamentation work.⁴¹

Further, there is also the incidence of discrimination within a category of vulnerable workers: studies show that rural women workers occupy a lower position compared to their urban counterparts, but the lowermost layer is constituted by those belonging to the bottom strata of the society i.e. SCs and STs.⁴²

- b) Discrimination against Child Workers – Child labour is highly fragmented, prevalent within complex structures where much of the work is done through a system of sub-contracting to small, unorganised sector enterprises (home-based and otherwise), which are paid on piece rates. The system of sub-contracting permits the employer to escape application of labour law regulations which ban child labour in such industries.⁴³ The violation is, therefore, not just of labour law, but also human rights.

Within the class of women workers, and related to the issue of gender discrimination, there is the subset of girl child workers. Although the latter is only 2.6 per cent of the total women workers, the problem of out of school girl children is a larger one.⁴⁴ The main issue about the girl child is that the characteristics of their work participation and engagement in domestic duties reflect those of the adult women. The same double burden of work operating on her ensures reduced capabilities to enter the labour law market in the

⁴¹*Supra* note 33, at 50. See NCEUS, 2007b, ¶5.27. See also Report of the Study Group on Women and Child Labour, Second National Commission on Labour (SNCL), at 581 (2001).

⁴²NCEUS, 2007b, ¶5.51.

⁴³NCEUS, 2007b, ¶6.42. “Independent researchers have found child workers in large numbers in home-based industries such as beedi making, match industry, carpet production, lock making, glass bangle making, *hosiery* and so on, all identified as ‘hazardous industries’ under the Child Labour Act of 1986.”

⁴⁴NCEUS, 2007b, ¶5.50.

future.⁴⁵ Child labour is also prevalent wherever home-based work is performed.

- c) *Discrimination against Migrant Labour* – Migrant labourers comprise the petty self-employed and the unskilled casual wage workers who are highly disadvantaged and vulnerable and are subject to extremely adverse working conditions and economic exploitation. Migration from nearby villages to the garment factory is seen. Over 90% of garment workers in Tirupur are migrants and they are all contractual labourers. Bonded labour has been found in handlooms, sericulture and silk weaving and woollen carpets.⁴⁶
- d) *New Forms of Discrimination* – Apart from the traditional conceptualization of ‘discrimination’, studies reflect a newer understanding of discrimination in cases of home-based work; discrimination due to *invisibility*. Amongst the home-based women producers, apart from those doing their own account work, there is a large section of women doing piece-rate work. In the case of the latter the employer is in advantageous position to exploit the workers. He saves on over-head costs, the women are at mercy of such employers as it is imperative for them to get work on any terms. The wages therefore, are very low. A sad corollary of this system is that all the children assist their mothers in such work. The prevalence of child labour in this category is very high.⁴⁷

The workers do not enjoy the protection of legislation as they remain invisible to the Plan-makers, thus suffering the evils of invisibility. The only solution to their plight is for these workers to unionize themselves, but remains a distant dream. Women operating own

⁴⁵NCEUS, 2007b, ¶6.48.

⁴⁶NCEUS, 2007b, ¶6.52.

⁴⁷Report of the National Commission on Self Employed Women and Women in the Informal Sector, (1988). For home-based women workers, despite receiving training, wages are low and there are no tie ups with markets. Working capital is scarce, and the workers are dependent on someone else to do the cutting work, due to lack of training.

account enterprises in the garment sector, usually manufacturing for the local market, also remain unseen by the policy-makers: such women are not recognized as workers and therefore do not enjoy any protection whatsoever.

D. Legislative and Policy Framework

- a) *Evolution of Indian Policy on the Garment Sector* – India developed a modern textile industry soon after Britain, using her indigenous cotton, cheap labour, access to British machinery, and a well-developed mercantile tradition. By the 1950s, India was among the leading nations in textile production. From the 1950s, however, Indian textiles receded steadily from the world market, while the industry receded in importance in the industrialization process at home.⁴⁸ This change in the 1950s adhered to the policy of protectionism. In 1985, the National Textile Policy was announced, with far-reaching impacts on the textile industry and trade. First, the macro-economic regime encouraged export of textiles, import of equipment, and import of generic intermediates. Costs of resources and costs of acquiring new capability came down from what they were in a protected market. Second, deregulation removed barriers to expansion and restructuring of mills and powerlooms.⁴⁹

After liberalization of the economy in 1991-1992, textiles became a significant issue for the plan-makers, especially as its exports of readymade garments in that year are estimated to have reached Rs 6,282 crore which is almost double the value obtained in 1989-90 when garment exports amounted only to Rs 3,472 crore.⁵⁰ Henceforth, (as is clear from an understanding of the handloom sector) Indian policy has consistently favoured growth – through modernisation – of

⁴⁸Tirthankar Roy, *Economic Reforms and Textile Industry in India*, 33 EPW No. 32 2173(Aug. 8-14 1998).

⁴⁹*Id.*

⁵⁰Somnath Chatterjee & Rakesh Mohan, *India's Garment Exports*, 28 EPW No. 35 M-95 (Aug. 28, 1993).

the garment industry, apparent from the evolution of policy in its favour.

The Technology Upgradation Fund Scheme (TUFS), commissioned on April 1, 1999 for an initial period of 5 years, with a view to facilitate the modernization and upgradation of the textiles industry by providing credit at reduced rates to the entrepreneurs both in the organized and the unorganized sector, was mainly directed towards the export-oriented garment manufacturing units. This scheme has helped in the transition from a quantitatively restricted textiles trade to market driven global merchandise, thus infusing an investment climate in the textile industry.⁵¹ However, the Scheme is driven solely to meet the requirements of export-led growth and not the demand for domestic markets.

This was followed by a new National Textile Policy (NTP) in 2000, and sustained the orientation towards export-led growth and investment-wooing. It aimed at making India a global player in textile production and exports, especially in the sphere of garments, by dereserving the garment sector from the small-scale sector, allowing foreign investment to the tune of 100 per cent (subject to the guidelines of the Foreign Investment Promotion Board), in order to compete with neighbouring countries such as Sri Lanka, Pakistan and Bangladesh. The garment sector was earlier under SSI reservation with an investment ceiling of Rs 3 crore and a cap of 24 per cent FDI equity.⁵² Pursuant to such policies, there was a rise of the garment-manufacturing with both branded and unbranded garments manufactured primarily in the small-scale and unorganised sector.⁵³

⁵¹Annual Report, MINISTRY OF TEXTILES, GOVERNMENT OF INDIA, at 4. It aimed at raising the export target for textile and apparel from then \$11 billion to \$50 billion by 2010, out of which the share of garments would be \$25 billion.

⁵²See also Ruddar Datt, *New Textile Policy -- Blow to the employment objective*, THE BUSINESS LINE (Nov. 27, 2000), <http://www.thehindubusinessline.in/businessline/2000/11/27/stories/042769tx.htm>.

⁵³Study Group on Women and Child Labour, Report No. 2, National Commission on Labour, at 590 (2011).

- b) Indian Policy post Neo-liberalization – With the lifting of the quota system in 2005, India faces ruthless competition from neighbouring Asian countries. Accordingly, the Working Group on Textile and Jute Industry for the Eleventh Plan highlighted the potential for exponential growth in the garment sector and the strategies that would help attain this growth; *inter alia*, labour law reforms to attract investment in large size units, and the liberalisation of procedures to attract Foreign Direct Investment (FDI) in specific areas of textile industry⁵⁴ needing FDI to *bridge the gap* between domestic investment and required investment.⁵⁵ It assailed the existing labour laws declaring that they “retain the potential for last minute disruption of export orders fulfilment”.⁵⁶

A reading of this Report is vital to glean the true focus of India’s policy on the garment industry: it advocates astonishing relaxations in labour laws applicable to the garment and apparel sector by suggesting the inclusion of Export-Oriented Textile Units (EOUs)⁵⁷ within s. 10 of the Contract Labour (Regulation and Abolition) Act, 1970 so as to allow employers in EOUs to hire contract workers, or unrestricted outsourcing of the work;⁵⁸ easing the application of Industrial Disputes Act, 1956 by increasing the limit on workers from

⁵⁴Such area also includes FDI in textile machinery, an aim which must be ‘aggressively’ pursued as was in China.

⁵⁵Report of the Working Group on Textile and Jute Industry for the Eleventh Five Year Plan (2007-2012), MINISTRY OF TEXTILES, Preface (2006). The vision statement consists only of references to increasing the ‘competitiveness’ and ‘market-shares’ of the textile industry, with an ambiguous ‘development of human resource’ added, almost as an afterthought.

⁵⁶*Id.*

⁵⁷These are textile units engaged in export related activities, with exports or deemed exports comprising 50 per cent of the sales.

⁵⁸Report, ¶1.40.1. This is to be done so as to offshoot the financial ‘risk’ inherent in employing excess workers during lean periods or the initial stages of developing an export market, when the uncertainty of the order is high.

100 to 500;⁵⁹ and extending the work hours from nine to twelve hours per day and forty-eight to sixty hours per week, so as to compensate for peak seasons and low labour productivity.⁶⁰ These recommendations were incorporated in the Eleventh Plan with commendable sagacity.

More recently, in September 2011, the Textile Ministry has asked the Planning Commission to allocate Rs 35,000 crore funds (a 60 per cent leap) during the Twelfth Plan period, 2012-2017. In the Eleventh Plan period, the Ministry was allocated the budgeted Rs 14,000 crore plus additional fund of Rs 22,000 crore.⁶¹

The Approach Paper to the Twelfth Plan indicates a return to the theory of manufacturing as the sole fount of employment-creation.⁶² The Commission continues to hold labour regulations “long pending review, such as the Factories Act” responsible for the increased cost to employers in the form of routine inspections and forms, but allows that new institutional arrangements are required to provide security for employees before existing legal safe-guards for them

⁵⁹This must be done so as to remove the hindrance, particularly to medium enterprises, of obtaining necessary approvals for lay-offs etc., by keeping units employing more than 500 persons outside the purview of the Act. Report, ¶1.40.2.

⁶⁰Report, ¶1.40.3.

⁶¹*Textile Ministry seeks 60% jump in 12th Plan funds*, BUSINESS STANDARD (Sept. 19, 2011), <http://www.business-standard.com/india/news/textile-ministry-seeks-60-jump-in-12th-plan-funds/147077/on>.

⁶²The Commission notes the Eleventh Plan had targeted growth in manufacturing at 10.0-11.0 per cent but predicts actual performance to be only about 7.7 per cent. “It is a matter of concern that the manufacturing sector has not shared in the dynamism of the economy not just in the Eleventh Plan, but even in preceding Plan periods. As a result, the share of the manufacturing sector in GDP is only 15.0 per cent in India, compared with 34.0 per cent in China and 40.0 per cent in Thailand. The slow pace of growth in the manufacturing sector at this stage of India’s development is not an acceptable outcome. Manufacturing must provide a large portion of the additional employment opportunities as opposed to agriculture for India’s increasing number of youth. On the contrary it should be releasing labour which has very low productivity in agriculture to be absorbed in other sectors.” : *Approach Paper to the Twelfth Plan (2012-2017)*, PLANNING COMMISSION OF INDIA, GOVERNMENT OF INDIA (Dec. 2, 2011), http://planningcommission.gov.in/plans/planrel/app11_16jan.pdf.

can be reduced or altered. Thus, a “solution to the fairness-flexibility conundrum is not only in changes in laws but also in building and strengthening institutions”.⁶³

In November 2011, the Cabinet, amidst political furore, opened doors for foreign direct investment (FDI) up to 51 per cent in multi-brand retail and simultaneously increased the FDI limit in single-brand retail ventures to 100 per cent, much beyond its February 2006 decision to permit 51 per cent FDI in single-brand retail.⁶⁴ The decision to allow FDI in multi-brand retail, though on hold as of now, would create conditions of imbalanced competition, with the large foreign retail investors exploiting their vast resources and sourcing capacities to outmanoeuvre the small manufacturers and retailers, an immediate consequence of which will be the loss of employment for millions in the formal and informal sector, contrary to the Government’s allegations of job-creation.⁶⁵ This could create an unlevel playing field between international brands, such as Wal-Mart, and established local garment brands, where one concern is the inability of the latter to match the economies of scale enjoyed by the former. Unable to compete with the prices, variety and quality afforded by the global brands, domestic garment manufacturers and retailers would be gradually weeded out from the indigent market for garments. Moreover, there is also the threat that such large multi-brand retailers source their products from other (cheaper) Asian countries into India, a situation which would spell doom for the local manufacturers keen to tie in production processes with these firms.

⁶³*Id.*, at 82-83, ¶8.10-8.11.

⁶⁴*Cabinet opens doors for 51% FDI in multi-brand retail*, THE BUSINESS LINE (Nov. 24, 2011), <http://www.thehindubusinessline.com/industry-and-economy/marketing/article2656952.ece>.

⁶⁵*Misplaced obsession*, THE HINDU (Nov. 28, 2011), <http://www.thehindu.com/opinion/editorial/article2665876.ece#.:C.P>.
Chandrasekhar, *The retail counter-revolution*, THE HINDU (Nov. 30, 2011), <http://www.thehindu.com/opinion/columns/Chandrasekhar/article2672067.ece>.

In the midst of increasing competition from other countries, particularly Bangladesh and Cambodia,⁶⁶ it appears that garment exports have ceased to hold as much importance as they once did. The Government, while extending TUFS (that provides Plan support for textiles through interest reimbursement and capital subsidy) during the 12th Five-Year Plan period, did not mention garment exports as core areas. Instead, the Textile Minister seems to suggest that the new focus area is *technical textiles*,⁶⁷ an industry expected to grow to Rs 1.4 trillion (\$31.4 billion) by 2016-17, with the healthcare and construction industries as its prime consumers.⁶⁸ Whether this reflects a change in policy with respect to the Indian garment industry remains to be seen.

- c) International Policy on Trade in Garments – International trade in textiles and garments has been an exception to the principles⁶⁹ of the General Agreement on Tariff and Trade (GATT), 1947 as amended in 1994. The Short Term Cotton Arrangement (STA) was concluded at the behest of US, in 1961, for a year. Textiles came to be acknowledged by GATT as a "special case". The STA was followed by Long Term Arrangement (LTA) which was in force from 1962 to 1973.

⁶⁶The textiles and clothing share in total exports exceeds 70 per cent in these two economies: Ratnakar Adhikari & Yumiko Yamamoto, *Flying Colours, Broken Threads: One Year of Evidence from Asia after the Phase-out of Textiles and Clothing Quotas*, (January, 2006), http://asia-pacific.undp.org/practices/poverty_reduction/publications/P1069.pdf.

⁶⁷Technical textiles include textiles for automotive applications, medical textiles, geo-textiles, agro-textiles used for crop protection and protective clothing for fire fighters, bullet-proof jackets and space suits. *Infra*.

⁶⁸*Technical textile sector to get capital subsidy in 12th Plan*, THE BUSINESS LINE (Aug. 25, 2011), <http://www.thehindubusinessline.com/industry-and-economy/article2396848.ece>.

⁶⁹The GATT, 1947 proclaimed its main object to be the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce, by entering into reciprocal and mutually advantageous arrangements directed towards the same, GATT, Preamble (1947).

The Arrangement Regarding International Trade in Textiles, better known as the Multi Fibre Agreement (MFA) governed world textile and garment trade from December 1, 1974 until its expiry on January 1, 2005. It allowed developed countries to adjust to imports from the developing countries, which enjoyed the benefits of low labour cost and labour intensive manufacture, by imposing trade quotas on such imports. Post-MFA, textiles and clothing are integrated within GATT rules, having lost their 'special' status. The immediate effect of the expiry of quotas in the textile industry was a gain for developing countries and a loss for developed and semi-developed economies in Asia and EU.⁷⁰ However, there still exist substantial tariff barriers constructed by developed countries, to ostensibly protect their domestic market, as well as non-tariff trade barriers.⁷¹

The MFA era greatly benefitted Indian trade in textile and clothing; post-MFA, India is looking at ruthless competition from its low-cost Asian neighbours. Looking to opportunities in the vast Indian market, both EU and USA have offered India zero-for-zero tariffs. The new economic order requires, therefore, a combination of national as well as company strategy, where each (local) firm tries to outdo the other in order to emerge as the best *global competitor*.⁷² With the threat of competition, India enjoys no assured market for its textile trade. This raises the rhetoric of the need for "timely action to relax various

⁷⁰Ratnakar Adhikari & Yumiko Yamamoto, *The textile and clothing industry: Adjusting to the post-quota world* (Dec. 4, 2011)

http://www.un.org/esa/sustdev/publications/industrial_development/2_2.pdf.

⁷¹*Id.*, at 198-200. Examples of these are regulatory measures, also called 'frictional barriers', through stringent regulatory or standard-based norms that make compliance either expensive or impossible (providing no revenue to the importing country but) adding to the cost of the exporter; and allegations of dumping, resulting in anti-dumping investigations.

⁷²Samar Verma, *WTO Agreement on Textiles and Clothing: Impact on Indian Textile & Clothing Industry*, WTO AND THE INDIAN ECONOMY (G.K Chadha, Deep & Deep Publications ed., 2011). *See also* Eckart Naumann, *The Multifibre Agreement – WTO Agreement on Textiles and Clothing*, in *WORLD TRADE ORGANIZATION: AN AFRICAN PERSPECTIVE MORE THAN A DECADE LATER* 37, 39 (Trade Law Centre for Southern Africa, 2009).

policy constraints to increase the competitiveness of the domestic industries".⁷³

III. THE INDIAN HANDLOOM SECTOR

A. Introduction

The handloom sector forms a precious part of the generational legacy and exemplifies the richness and diversity of our country and the artistry of the weavers. Tradition of weaving by hand is a part of the country's cultural ethos. As an economic activity, handloom is the second largest employment provider in the unorganized sector,⁷⁴ next only to agriculture.⁷⁵ There are 43.31 lakh handloom workers in India as of 2010.⁷⁶

Indian handloom products range from coarse cloth to very fine fabrics from a variety of fibres such as cotton, silk, *tasar*, jute, wool, and synthetic blends. Each region has handcrafted textiles that are unique in design and style. What is woven is, however, inseparable from where and how it is woven, that is from the structure of production. There are independent weavers, weavers organized into co-operatives, and those working under master weavers.⁷⁷

⁷³Rajesh Chadha et.al., *Phasing out the Multi Fibre Agreement: Implications for India* (Dec. 4, 2011), <https://www.gtappagecon.purdue.edu/resources/download/3505.pdf>.

⁷⁴NCRL, ¶7.22 (1991).

⁷⁵Annual Report (2010-2011), MINISTRY OF TEXTILES, GOVERNMENT OF INDIA, at 135 (2011). 69 per cent of the handloom households undertake commercial production: Third Handloom Census of India. The Census also reflects a decline in the total number of weavers and weaver households, but an increase in the full-time weavers and also average person work-days; this, on the eve of the Twelfth Plan. *See also* Rajeev Shukla, *Census weaves rich handloom data*, THE ECONOMIC TIMES, February 7, 2011.

⁷⁶Third National Census of Handloom Weavers and Issue of Photo Identity Cards to Weavers and Allied Workers (2009-10), at xxii (2010).

⁷⁷Eleventh Five Year Plan, Vol. III, PLANNING COMMISSION, GOVERNMENT OF INDIA, ¶5.18 (2007-2012).

A large proportion of workers in these enterprises is self-employed and works out of his/her home. As a result, the entire family becomes integrated in the spinning or weaving work, thus making handloom weaving or spinning the occupation of the entire household. Working conditions and safety provisions are far from satisfactory. The wage rates are also considerably low.⁷⁸ However, there are also the wage-workers in this sector, primarily those who do not own looms of their own. These households are either engaged in hired weaving activities, and their members have to go to other locations with looms (like master weaver's premises, cooperative society work sheds or factories) to do the weaving activity; or these households undertake handloom allied work.⁷⁹

A third of the total number of hand-looms in the country is concentrated in Andhra Pradesh and Tamil Nadu. Within the textile industry, the incidence of mechanisation is the lowest in the handloom sector; not much is required by way of capital for owning a loom and other incidentals; nor long training for operating a loom either.⁸⁰

Handloom weaving is the mainstay of the artisan community, most of which is poor; 87 per cent of the handloom weavers/workers live in rural and semi-urban areas.⁸¹ Nearly 39 per cent of the rural households engaged in handloom industry comprise the most vulnerable sections of the society.⁸² It represents a classic case of an industry uprooted by technological change.⁸³

⁷⁸Report of the National Commission on Labour, ¶29.36 (1967).

⁷⁹*Supra* note 76. "Nearly 33 per cent of the handloom worker households do not have looms."

⁸⁰*Id.*, ¶29.37.

⁸¹Third National Census of Handloom Weavers and Issue of Photo Identity Cards to Weavers and Allied Workers (2009-10), at xxi (2010). Nearly 27.83 lakh handloom households are engaged in weaving and allied activities.

⁸²Report of the National Commission on Rural Labour, ¶7.22 (1991).

⁸³NCEUS, 2007b, ¶4.38.

However, the strength of the handloom sector lies in its regional diversity, community skills and the demand in the local markets.⁸⁴ The strength of the handloom sector, its tenacity in the face of unpredictable economic conditions, is the sole fount of its sustenance, and not pithy Government dole, as has been touted by various Centre-funded Committees.⁸⁵ This sector produces, however, the modern artefacts of a vanishing art, and is confronted with various problems, such as, obsolete technology, unorganized production system, low productivity, inadequate working capital, conventional product range, weak marketing links leading to accumulation of stocks at various levels etc.⁸⁶ It has, after decades of deterioration, been relegated to the base of the hierarchy of textile manufacturing.⁸⁷ Owing to the self-employed nature of work, there is not much scope for unionisation of weavers.

While the total production of cloth has increased by about 30 per cent between 1996–97 and 2004–05, the production of handloom sector has declined by about 23 per cent.⁸⁸ Recent reports of frightening starvation deaths in what were once economically prosperous weaving districts in Andhra Pradesh bring to the fore increasingly problematic issues of regulating the conditions of work and wage structures of these weavers, as well as theories on what caused them to take such drastic measures in the first place.⁸⁹

⁸⁴K. Srinivasulu, *A Death Blow to Weavers?*, THE HINDU, March 28, 2000.

⁸⁵*Id.*, quoting the Satyam Committee Report, “Generally the handloom weavers remain tradition-bound and are averse to change ... For more than five decades, the poor handloom weavers remained spoon-fed through Government schemes and they continue to look up to the Government for anything and everything.”

⁸⁶*Id.*, at 13.

⁸⁷The NCSEW notes that “policy changes and technological developments in the organized sector affect the unorganized sector, often drastically.” Report of the NCSEW, ¶42 (1988).

⁸⁸Eleventh Five Year Plan ¶5.19 (2007–2012).

⁸⁹See also, *Starvation deaths in Andhra Pradesh*, FRONTLINE (Jan. 02–15, 2010), <http://www.frontlineonnet.com/fl2701/stories/19911206030.htm>. K. Srinivasulu, *Handloom Weavers’ Struggle for Survival*, EPW 2331–33 (1994). “The major crisis in 1991, which surfaced within months after the presentation of the 1991–92 budget,

B. Conditions of Work

- a) “Ours is not the Loom Pit, it is our Grave Pit.” – The condition inside the loom-shed (in many cases it is a residential place) is far from satisfactory. The sudden growth of the industry had its ill-effects not only on housing for men who ran the looms, but also on the space available for the looms. Handloom weavers face acute problems with regard to housing. Most of the handloom households live in *kutchha* (54 per cent) or semi-*pucca* (31 per cent) houses, and these are mostly in the rural areas.⁹⁰ In many places the walls are dilapidated, the lighting and ventilation inadequate, and the temperature oppressive, exposing the workmen to unhealthy and dangerous consequences. Some centres of powerlooms present the picture of industrial slums, with industrial waste littered on the streets.⁹¹ Regulation of work hours is near impossible, and the workers end up putting in inhuman hours of work.

About 89 per cent of the weaver households earn a monthly income of less than Rs. 500 per month from weaving activity and only 11 per cent earn more than Rs. 500. However, more than one-third of households have reported monthly earning of even less than Rs. 100 per month. This includes 7 lakh households in Assam who do not make any earning from weaving activity.⁹²

Outdated technology, low productivity and high cost are the characteristics of handloom sector.⁹³ Handloom sector has to face stiff competition from the mills and powerlooms, besides the problem of

was a direct consequence of the increase in the prices of 40-60-80 counts yarn from Rs 45 to Rs 115 per bundle of 4.5 kgs. Finding it unprofitable to continue production due to the price increase, many master-weavers discontinued production and as a result workers were thrown out of employment and pushed into starvation, disease and death. Within a span of three months between September and November 1991, there were around 110 starvation deaths and suicides.”

⁹⁰Third Handloom Census, at xxii.

⁹¹Report of the National Commission on Labour, ¶29.43 (1967). *See also* NCEUS 2007b, ¶4.52.

⁹²*Id.*, ¶7.24.

⁹³*Id.*, ¶7.40.

declining demand due to shift in consumer preferences in favour of blended and non-cotton fabrics.⁹⁴

Access to raw materials is also a huge problem for this sector. Handlooms are dependent on the mill sector for yam supplies. The weavers generally have to pay prices which are about 30 per cent higher than that of yam produced by the composite mills for self consumption.⁹⁵ The disadvantage that the handloom sector suffers from in the textile market, given the stiff competition from powerlooms, is such that the prices of handloom cloth cannot be raised corresponding to the increase in the raw material prices.⁹⁶

Access to credit amidst conditions of increasing debt, plunging demand and escalating raw material costs is another insurmountable problem for the handloom worker. NABARD provides refinance facilities to the State co-operative banks and Regional Rural Banks (RRBs) for financing requirements of primary and apex weavers' co-operative societies; however, the service charges levied by these institutions result in the doubling of interest rates for the artisans and societies. Further, most State handloom co-operative societies lift stock and reimburse weavers only on sale of products. This blocks the working capital for the weavers.⁹⁷ In some cases, like that of the Andhra Pradesh State Handloom Weavers Cooperative Society Ltd. (APCO), the society itself owed crores of rupees to weavers, which it was unable to repay on its collapse in 2000.⁹⁸

⁹⁴*Id.*, ¶7.25.

⁹⁵Report of the National Commission on Rural Labour, ¶7.38 (1991).

⁹⁶The usual response of the master-weavers to such a situation (especially when the price rise is within the range of manageability) is to transfer the burden of the increase in the cost of production on to the weaver through a corresponding cut in the '*majdoori*' (wages). When the price rise is extraordinarily high, the master-weavers find it unprofitable to continue production: K. Srinivasulu, *Handloom Weavers' Struggle for Survival*, XXIX EPW No. 36 2333 (Sept. 3, 1994).

⁹⁷Eleventh Five Year Plan, ¶5.23 (2007-2012).

⁹⁸Asha Krishnakumar, *The Collapse of APCO*, 18 FRONTLINE, Issue 08 (Apr. 14 - 27, 2001), <http://www.flonnet.com/fl1808/18080180.htm>. APCO, who had been defaulting on its loans since 1998, since January 1999 APCO owed the primary

Deprivation of the weaver community has been deepened by the textiles policies of the Centre, which seek to liberalize, modernize⁹⁹ and privatize the industry, successfully marginalizing over 40 lakh handloom weavers who used to produce over 400 crore metres of cloth every year.¹⁰⁰ Modernisation brings with it powerlooms, that displace up to 12 handlooms, and jet and auto looms, that displace 40 powerlooms. The weavers, already facing a decline in product demand, thus also face the prospects of irreversible unemployment, what with alternative employment options limited in such (usually drought-prone) areas. The workers also grapple with extremely low levels of nutrition, and diseases and starvation. Such deprivation has also led to severe degradation of working and living conditions.

In most states, the weaver castes are listed among backward classes. They are socially and economically underprivileged and a high proportion of them live below the poverty line. As weaving does not provide continuous employment and adequate income throughout the year, most of the families seek employment in agriculture and allied activities or migrate to cities in search of employment.¹⁰¹

C. Legislative and Policy Framework

- a) *“The weavers are not new to crises.”* – The Indian handloom sector has been the recipient of unsympathetic and technology-driven policy ever since Independence. Adverse Government policies, all aimed at modernisation of the handloom, begun as early as the Nehruvian era, when the Kanungo Committee, 1952 stated: “For the ordinary cloth,

cooperative societies Rs.36.26 crores for the purchase of cloth and Rs.10.32 crores for procuring yarn. As a result of these dues, and the interest of 8.5 per cent on the loans taken from the district cooperative banks, most primary societies have collapsed. More recently, NABARD has granted a loan of Rs 10 crore to APCO. *See also APCO gets Rs 10 cr., for revival of handloom sector*, THE BUSINESS LINE (Mar. 29, 2012), http://articles.timesofindia.indiatimes.com/2012-03-17/hyderabad/31204303_1_handloom-cluster-handloom-hub-handloom-industry.

⁹⁹The TUFS does not cover cottage industries, and so more traditional weavers cannot modernize their looms.

¹⁰⁰*Supra* note 96.

¹⁰¹Report of the National Commission on Rural Labour, ¶7.27 (1991).

the pure and simple handloom is and must be a relatively inefficient tool of production. With the exception of those items which required an intricate body pattern, there seemed to be no variety of fabric which the handloom industry could produce in a better quality or at a lower price. A *progressive conversion* of handlooms into powerlooms through organised effort over a period of 15 to 20 years is, therefore, recommended.” (emphasis added)

The extreme undesirability of such an attitude towards the traditional pit loom systems of weaving is reflected in the fact that the ‘conversion’ of a *handloom*, made of wood, into a *powerloom*, made of cast iron, is not possible; the true import of the Committee’s recommendation was ‘replacement’ of one by the other.¹⁰²

The Government’s ‘protective’ measures to save the handloom sector from the unequal competition from powerloom & mill sector include:

- i. Reservation of certain products for handlooms.
- ii. Restriction in expansion of the capacity of the mill sector.
- iii. Imposition of a cess on the production in the large Industry.¹⁰³

The first product reservation order under Essential Commodities Act for traditionally produced handloom products was made in April, 1950. The loopholes in the Act and half-hearted enforcement defeated its purpose. The power looms poached even on those exclusive products like coloured sarees, checked shirting, *lungies* and bed sheets.¹⁰⁴ Thus, we see that in an attempt to protect the handloom weavers from the mills, the Government in its haste did not spare thought to check the powerloom sector, which quickly rose to prominence.

¹⁰²Vijaya Ramaswamy, *Silencing the singing looms*, THE BUSINESS LINE (January 29, 2001), <http://www.thehindubusinessline.in/2001/01/29/stories/102969a6.htm>.

¹⁰³Report of the National Commission on Rural Labour, at ¶7.36 (1991).

¹⁰⁴*Id.*, ¶7.37.

The Santanam Committee, 1974, on the inter-sectoral changes in the textile industry had estimated that the installation of one powerloom displaces 12 handloom weavers, and that, therefore, the growth of powerlooms had been disastrous for the handlooms.¹⁰⁵ The 'Janata Cloth Scheme' was started during 1976 with the twin objectives of providing sustained employment to the under-employed/unemployed handloom weavers and making available cloth (cotton dhoties, lungies, sarees, shirting and long cloth) at affordable prices to the poorer section of society.¹⁰⁶

In 1985, the National Textile Policy (NTP), 1985, was introduced. Though this policy intervention was intended to protect handlooms, its unintended consequence was the expansion of the powerlooms (the more "commercially viable" sector). The NTP proclaimed as its main object, 'the production of cloth of acceptable quality at reasonable prices to meet the clothing requirements of a growing population' and promised the following measures to the handloom sector:

- i. modernisation of looms to improve handloom productivity and quality;
- ii. necessary measures to encourage and increase spinning in *khadi* sector, given its large employment potential;
- iii. ensuring the availability of yarn and other raw materials at reasonable prices; and
- iv. encouragement to the production of mixed and blended fabrics on handlooms by making man-made fibre adequately.

¹⁰⁵The Santanam Committee was more sympathetic to the woes of the handloom weavers. It proposed several changes to better their conditions, *inter alia*, bringing the excise duty on powerlooms at par with that on handlooms, strengthening weavers' co-operatives so as to make them a vital force in textile production and sales; and reservation of items for exclusive manufacture by the handloom sector. *Supra* note 102.

¹⁰⁶The Central Government also introduced 'Susman Cloth' Scheme similar to that of 'Sulabh Cloth' Scheme to increase production of mixed and blended fabrics as well as the earnings of handloom weavers.

Soon after, the Handloom (Reservation of Articles for Production) Act, 1985 was enacted by the Legislature. Although it provided protection to handlooms in the form of reservation of 22 items and the hank yarn obligation by the spinning mills to supply 50 per cent of the yarn produced by them to this sector, these safeguards were grossly violated in practice.¹⁰⁷ Challenged by the powerloom and mill lobbies, this Act remained *sub judice* for eight long years¹⁰⁸ till the Supreme Court upheld it as constitutionally valid in a historic judgment in 1993.¹⁰⁹ Instead of creating the necessary mechanism for its successful implementation, the Central Government constituted a review committee to go into the question once again. On the basis of its recommendation, the number of items was reduced by half. During this period, the mills and powerlooms did all the damage they could to this sector, by producing the varieties reserved for this sector and also duplicating the designs that define the identity of the sector.¹¹⁰

¹⁰⁷“Though mills are required to produce 50% of the yarn output meant for market delivery in the form of yarns, this obligation is not faithfully carried out. Thus, physical availability, prices and also the quality of yarn are pitted against the handloom sector.” Report of the National Commission on Rural Labour, at ¶7.39 (1991).

¹⁰⁸The Abid Hussain Committee (1985) recommended that the reservation for handlooms be placed in the Ninth Schedule of the Constitution in order to avoid the legal challenge to this legislation. *See*, for instance, *G.T.N. Textiles Ltd. & Anr. v. Assistant Directors, R.O.T. Commr. & Anr.*, AIR 1993 SC 1596.

¹⁰⁹*Parvej Aktar & Ors. v. Union of India & Ors.*, 1993 SCR (1) 803.

¹¹⁰Report of the National Commission on Rural Labour, at ¶7.35 (1991). “The textile mills who were under obligation to supply fixed percent of controlled cloth resented and pleaded that it was not viable and was resulting in sickness of industry. Its imposition on handloom sector has turned out to be counterproductive. Hence, the scheme should be modified so that handlooms can also produce value added fabrics.” The hank yarn obligation was never fulfilled entirely; delivery though required at 50 per cent of production, ranged from 22-24 per cent in the wake of the policy. Reasons for this failure were identified by the Abid Hussain Committee as two: first, diversion of the yarn to the powerloom sector, and second, mismatch between the yarn supplied and the yarn required by the weavers. The yarn supplied, more often than not, did not meet the requirements of the handlooms (i.e., of specific count and quantity).

The Mira Seth Committee, which surveyed the state of the industry in the 1990s, pointed out that however hard the Government tried to stem the tide against handlooms, powerlooms had corroded into the traditional sector and also dominated the co-operatives.¹¹¹

The 1991 shift to liberalization and devaluation of the Indian Rupee led to a desperate attempt by the Centre to boost exports, irrespective of yarn production and domestic requirement.¹¹² Post-liberalization, the Satyam Committee divided weavers on the basis of the 'quality' of cloth produced into three tiers. In the first tier are grouped the weavers 'producing unique, exclusive, high value-added items', in the second tier producers of 'medium- priced fabrics and articles from not-so-fine counts of yarn' and in the third tier those producing 'plain and low cost textile items'. There was no attempt to estimate the proportion of each tier either in terms of production of fabric or the volume of employment: it is simply assumed that the third tier comprises the bulk of weavers producing coarse fabric and by implication the less skilled lot of the handloom weavers. The items produced by this last category of weavers, it is presumed, enjoy no market demand and have survived only due to Government support.¹¹³

As a result of trade liberalization, there was a quantum jump in the exports of cotton and yarn in the early 1990s, leading to steep rise in the hank yarn prices in the local market without corresponding increase in product prices. Therefore, a number of master handloom weavers refused to take the risk and suspended production. Thus, thrown out of employment and into serious indebtedness, malnutrition and disease, around 200 weavers either died of starvation or resorted

¹¹¹*Supra* note 102.

¹¹²Yarn export rose from 94.68 mn kgs in 1990-91 to 110.99 mn kgs in 1991-92 when yarn production as a matter of fact decreased from 1,510 mn kgs to 1,450 mn kgs. A matter of serious concern is that in these exports the proportion of hank yarn, most of it being in low counts, as 86.8 per cent. K. Srinivasulu, NTP, quoting from *The Economic Times*, 11 April 1994.

¹¹³*Supra* note 96.

to suicide.¹¹⁴ A study in Karimnagar district, Karnataka, where over 43 powerloom deaths took place in 1999-2000, showed that average annual household income among the weavers was Rs. 3,687 as compared with the poverty line limit of Rs. 4,819.¹¹⁵

The Textile Policy, 2000 put in place far-reaching changes as proposed by the Satyam Committee, 1998, thus phasing out even the limited protection available to the handlooms.¹¹⁶ It promises a global market for textiles; a rapid technological revolution in the production sector, especially in loom upgradation; and more employment and better living conditions for weavers. However, the extremely vital issue of energizing latent handloom cooperatives finds scant mention in this 'growth-oriented' policy.¹¹⁷ Customs on modern powerlooms were reduced from 15 to 5 per cent and a TUFs subsidy of 50 per cent on machinery was also provided. Big and modern powerlooms have set up composite looms and adopted an integrated production system, incorporating all allied activities such as warping, spinning, weaving and dyeing.¹¹⁸

¹¹⁴K. Srinvasulu, *Weavers' woes in AP*, THE HINDU, April 26, 2001, <https://frontline.thehindu.com/other/article30218687.ece>.

¹¹⁵Asha Krishnakumar, *Weavers in distress*, 18 FRONTLINE, Issue 08 2 (April 2001). The Minister for Handlooms and Textiles, Karnataka, where over 400 starvation deaths and suicides occurred between 1998-2000, was even quoted as saying, *The powerloom owners must be discouraged from committing suicide as they do it only after getting into a financial mess*.

¹¹⁶The official response to the Handloom crisis has usually been: i) The problem is localised; ii) The handloom weaver community lacks skills and their products lack quality; and iii) In order to make them competitive, technology Upgradation and skills-training are imperative. This misdiagnosis leads to spurious solutions: *Supra* note 114.

¹¹⁷*See, Garment sector dereserved: Textile policy focus on FDI flows, modernisation*, THE BUSINESS LINE (Nov. 3, 2000), <http://www.thehindubusinessline.in/businessline/2000/11/03/stories/14036901.htm>. The NTP was heralded as a "death blow to the millions of weavers across the length and breadth of the country": *Supra* note 84. *See, Powerloom sector hails textile policy*, THE BUSINESS LINE (Nov. 6, 2000), <http://www.thehindubusinessline.in/businessline/2000/11/06/stories/140669uy.htm>.

¹¹⁸*Supra* note 96.

The policy of treating powerlooms on par with handlooms (both being decentralised) in the matter of fiscal and excise concession and exemption from factory laws encouraged the mills to set up powerlooms in a phenomenal way. Since 1961, the number of powerlooms multiplied tenfold—from 1 lakh to 10 lakhs. The policy of ban on the weaving capacity of the mill sector was lifted in 1985 (the Textile Policy of 1985) causing an adverse effect on the handloom sector.¹¹⁹

Other smaller policies also contributed their share in worsening the weavers' lot: sharp increase in yarn prices, steep increase in power tariff, Technology Upgradation Fund Schemes' concessions bypassing the small and traditional powerlooms, let alone weavers, as also dumping by China and Thailand countries, all led to a fall in the market for these textiles.

The unkindest cut of all for the handloom sector is the pronouncement by policy-makers that they wish to develop the 'exclusiveness' of handlooms for the global market. The varieties that made Indian textiles so 'exclusive' – *jamdani*, *jamewar*, *mashroo* or *telia* – can be woven only on the handloom. All these varieties demand manual intervention to the extent of change of shuttle in every pick. Loom conversion, technology upgradation and computer designs render any statement on the *exclusiveness* of Indian loom products, farcical.

In 2006, the Prime Minister of India launched the 'Handloom Mark' as a part of its brand promotion campaign for handloom products. The Mark serves as a guarantee to the buyer the handloom product being purchased is a genuine hand-woven product and not a powerloom or mill made product. This marketing strategy is to be supported by the Geographical Indicators (GI) protection to avoid imitation of these designs.

¹¹⁹*Supra* note 95.

Thus, the Government's policy towards the handloom sector has been to synchronize it with its own neoliberal aspirations, with grave omission to comprehend its true nature. The projected creation of a 'globalised weaver' is an oxymoron rooted in the inherent contradictions of the textile industry – between powerlooms and handlooms, between fast-paced technology and the slow-paced excellence of the handloom weaver.¹²⁰ The handloom industry in India survived with remarkable tenacity all the troughs and crests of manufacturing policy because it serviced the demands of local consumers. In fact, the great diversity in handloom products of one region from another's is due to variations in local demand that caused the product to be modelled in highly unique fashions. Some have even gone so far as to say that the market for handloom products cannot be understood or determined by mere forces of demand and supply.¹²¹

The song of the loom has been reverberating in Indian craft-culture for 2,000 years; however, technology and globalisation, in tandem with governmental policies, threaten to silence these looms forever. Indian policy toward the handloom sector has always claimed to be protectionist, when in fact, it has consistently advocated technological upgradation of the traditional wooden handloom into an electricity-powered mini-machine. Sixty years of Independence have yet not taught the simplest lesson: mechanization, or 'technological advancement' of the old looms, displaces the weaver. The difference between the method of work of a handloom worker and powerloom worker is as much a comparison between a tailor who sews by hand and one who stitches clothes on the factory-machine. By treating the handloom sector as tantamount to the powerloom and jetloom sectors,

¹²⁰Vijaya Ramaswamy, *Silencing the singing looms*, THE BUSINESS LINE (Jan. 29, 2001), <http://www.thehindubusinessline.in/2001/01/29/stories/102969a6.htm>. See also Asha Krishnakumar, *Perilous policies*, FRONTLINE, Vol. 18 (April 2002), <http://www.frontlineonnet.com/fl1808/18080170.htm>.

¹²¹K. Srinivasulu et al., *Proceedings of the Workshop on Crisis in Handloom Sector in Andhra Pradesh: The Ways Forward*, GAPS – CENTRE FOR ECONOMIC AND SOCIAL STUDIES, 11 (Sept. 2004).

the Government only vitiated the effect of its stated protectionist stance. Suggestions for a new form of protection to this sector are discussed later.

IV. CONCLUSION

The dominant trend in the textiles and garments industry in the last two decades has been the decline of the organised mill sub-sector and the rise of the 'unorganised' powerlooms, hosieries and garment manufacturing units.¹²² The problems of the weaving industry have often been seen as an issue of handlooms versus powerlooms. This is no longer valid. With liberalization, globalization and structural adjustment of the economy, the issue is now one of the *small and vulnerable* versus the *big and strong*.

The step-motherly treatment of handlooms, one of the oldest and most unique occupations in the country, is evident when one looks at the *sheer amounts of taxpayers' funds* that have been invested to modernize *growth-oriented* industries.¹²³ This, compared to the handloom policy: *reliance on a mere mark and geographical indications* to create effective demand for these products, with some concessions here and there.

In the Budget 2011-12, the Government had announced a loan waiver package of Rs. 3,000 crores, which was expected to benefit 15,000 handloom weavers' cooperative societies and 3 lakh handloom weavers, who had been unable to repay their loan on account of

¹²²Study Group on Women and Child Labour, SNCL (2001).

¹²³"As a result of a mixture of initiatives taken by the government, there has been new investment of Rs.500 billion in the textile industry in the last five years. Nine textile majors invested Rs. 26 billion and plan to invest another Rs. 64 billion. The industry expects investment of Rs.1,400 billion in this sector in the post-MFA phase." N. Senthil Kumar & P. Subburethina Bharathi, *Indian Textile Industry: Sea of Potential Opportunities*, II INDIAN JOURNAL OF COMMERCE AND MANAGEMENT STUDIES, No. II 2 (Mar. 1, 2011).

economic difficulties.¹²⁴ However, a large number of weavers operate as self-employed persons, and this fund would not do much to benefit them.

Instead of developing elaborate “handloom packages” and restructuring “technology upgradation schemes”, the Government should act upon the knowledge that the real solution is in assured supply of yarn and dyes at reasonable prices, accessibility to institutional finance so that they can escape the debt trap, and proper marketing facilities, rather than disastrous schemes such as loom modernisation.¹²⁵

It is strange to note the Ministry hailing technical textiles as the new saviour of the export-oriented textile industry in India. The Eleventh Plan seems to be the last refuge of the ailing garment industry; with the Eleventh Commandment of *export-oriented growth* declaring the garment industry diseased and non-competitive, India’s policy seems to be shifting towards other, more lucrative avenues. Perhaps this tilt was imminent, seeing that India’s biggest trade competitor, China, boasts of a 13.75 per cent share in global exports, while India’s share is a measly 3 per cent.

With the rise and fall of these industries, one can reasonably expect the unorganized workforce operating these to feel the blows of unfriendly trade policy. Any suggestion to better the conditions of these workers rests on Executive will. Legislation will only serve to add to the bulk of disregarded statute books. In the absence of these, one can only seek the Judiciary as its harbinger of hitherto elusive Justice. Resort to such elevated, disagreeable institutions is not possible without the *collectivization of the workers*. Which brings one

¹²⁴P. Sunderarajan, *Rs.3,000-crore package for handloom units*, THE HINDU (Feb. 28, 2011),

<http://www.thehindu.com/business/Industry/article1498385.ece>.

¹²⁵*Supra* note 114.

back to the oft-repeated¹²⁶ conclusion: unorganized workers must unionize themselves into a collective if they are to better their conditions of work. In the absence of such an effort, they remain isolated and more vulnerable to the whims of a ruthless global village.

Handloom workers today appear to be the most vulnerable class of workers; their vulnerability is compounded because, on account of being self-employed, no employer can be identified, and thus, minimum working conditions and social security remain an impossible dream. From wages to ventilation, their plight is sadder than that of bonded labour, seeing that they have (through ancestry or will) bound themselves to their decrepit occupation. Their condition cannot be ameliorated by enforcing labour laws against any one employer; rather, it is the cruel hand of successive Governments that have allowed the principles of socialism to rust beyond salvage. In a sense, the ruthlessly fierce policies of neo-liberalization have corrupted Indian economic foresight to the extent that the twenty-first century is gearing to witness the annihilation of the traditional weaver-artisan class: the third assassination of Gandhi.¹²⁷

In 1991, when the first spate of handloom weavers' suicides occurred in Andhra Pradesh, the late Pragada Kotiah, Member of Parliament from Chirala in Andhra Pradesh, stressed the need for the revival of ancient designs.¹²⁸ The *revival of ancient designs*, backed by

¹²⁶“The Commission feels unless the workers in these sectors whose need for unionization and protection is the greatest, are brought into the mainstream of the labour movement, the latter has very little relevance for them. It is high time the major labour unions took the labour of the unorganized sector in their fold and extend their trade union knowhow in bringing better income and social security to them.” Report of the National Commission on Self Employed Women and Women in the Informal Sector, at ¶8.21 (1988).

¹²⁷The first being a historical fact, while the second being the policy and legislation of 1985.

¹²⁸Reports suggest that numerous ancient designs are to be found at London's Victoria and Albert (V&A) Museum, the world's largest repository of the oldest and most varied designs and textile pieces: *India must revive designs and textures*, 19 FRONTLINE Issue 14 (Jul. 06 - 19, 2002), <http://www.flonnet.com/fl1914/19140780.htm>.

aggressive marketing in both the Indian and international markets would greatly aid the cause of millions of starving weavers in India. Judging the impact of Indian fashion designers in international fashion shows, the policy-makers must devise new strategies of *using home-bred art to create and channel global demand in the fashion retail sector* as also save the weavers and their centuries' old craft from extinction.

Since the organs of the State are incapable of rectifying the situation as it stands, suffering from a variety of ill affections, as a solution, the author suggests the *introduction of a national-level, distinct statute* protecting the *human* rights of the handloom workers, promoting their occupation and integrating the same within the Plan framework. Such a measure is essential in the light of decades of executive and legislative thrusting of the handloom industry towards technology modernization and skill upgradation. However, legislation such as this must be enacted at a national level, so as to holistically and uniformly improve the lot of the 4.3 million strong workforce, across regional disparities and local governments' political inclinations. It must be underscored that the case of the handloom workers is not merely one of poor working conditions or even inadequate wages; it is the systematic, 'Planned' annihilation of one of the oldest and most widespread occupation of the country. It is important to internalize and distinguish this eradication from a mere deterioration of the mainstay of millions of Indian workers.

Moreover, the work done by the weaver is almost the persistence of intense manual labour in a world of increased mechanisation. It may, therefore, be an over-simplification to treat her wages, working conditions, skills, etc. at par with those of ordinary factory workers. The author proposes that the wage-fixing mechanism take into account the detailed and intricate nature of the weaver's work before stipulating minimum wage.

The handloom workers of India have been deprived of their right to development, "... an inalienable human right by virtue of which every human person and all peoples are entitled to participate in and contribute to and enjoy *economic*, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realized",¹²⁹ that a group of persons (as opposed to individuals) are entitled to. In a similar context, Upendra Baxi says that 'development' must at least mean that people will be given the right to be and remain human. Total and continuing destitution and impoverishment exposes people to a loss of their humanity. In no society that takes its human rights seriously should there be allowed a state of affairs where human beings become sub-human – that is, when they perforce have to surrender even those sonorously recited "inalienable" rights of man.¹³⁰

It is in this context that we must understand the entitlements of the millions of handloom workers, facing starvation, indebtedness and obsolescence in today's mechanised production system. A system of 'perfect obligations' would impose a duty on the State to ensure regular access to credit (and not debt-/interest-waivers), raw materials, and aggressive marketing strategies, not in *technology upgradation*. However, herein lies the problem: who will bell the cat?

It must be noted, to conclude, that a system of perfect obligations for the handloom sector workers, while theoretically appeasing and long overdue, remains practically unfeasible due to political disinterest. Such disinterest can, perhaps, be traced to the lack of contribution from this sector to the State exchequer, unlike the garment sector.

¹²⁹Declaration on the Right to Development, art.1 (1986), United Nations General Assembly, Resolution No. 41/128, as affirmed by the 1993 Vienna Declaration and Programme of Action. *See also*, Arjun Sengupta, *The Right to Development as a Human Right*, 13 HUM. RTS. Q. 322-38 (1991) 322, 322-38; Stephen Marks, *The Human Right to Development: Between Rhetoric and Reality*, 17 HARV. HUM. RTS. J. 137-168 (2004).

¹³⁰Upendra Baxi, *From Human Rights to the Right to be Human: Some Heresies*, RETHINKING HUMAN RIGHTS 187 (S Kothari and H Sethi ed., 1989).

However, the needs of the handloom workers are far more basic to their right to be and remain human than the needs of the garment workers. This is not to say that the conditions of work in the garment sector are satisfactory, but instead, to focus on the intense and perennial deprivation of the weaver community that needs a set of entitlements far more integral to their *survival* than mere regulation of working conditions.