



Gender Equality and Social Dialogue in India

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In cooperation with Industrial and
Employment Relations Department



Bureau for
Gender
Equality

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**Industrial and Employment
Relations Department
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International Labour Office • Geneva
January 2011**

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First published 2011

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Sankaran, Kamala; Madhav, Roopa

Gender equality and social dialogue in India / Kamala Sankaran and Roopa Madhav ; International Labour Office.
- Geneva: ILO, 2011

1 v.

ISBN 978-92-2-123909-3 (print)

ISBN 978-92-2-123910-9 (web pdf)

International Labour Office

gender equality / social dialogue / collective bargaining / women workers / equal employment opportunity / sex discrimination / India

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Printed in Switzerland

Foreword

Gender equality and social dialogue are both fundamental values and cross-cutting issues for the International Labour Organisation. In 2009 the International Labour Conference concluded its discussion on “Gender equality at the heart of decent work” by reaffirming that social dialogue and tripartism are essential policy tools to advance gender equality in the world of work.

This paper is a part of a comparative research project whose objective is to demonstrate that gender equality and social dialogue are mutually beneficial and their promotion should go hand-in-hand. Despite several studies on each topic separately, there is a knowledge gap worldwide on how gender equality at work is advanced through social dialogue. This topic is examined both from qualitative and quantitative aspects:

- participation on an equal footing of men and women in social dialogue, in particular in the national tripartite bodies, as well as within government units, trade unions and employers’ organisations, and
- gender equality issues on the agenda of social dialogue, including collective bargaining.

This study provides valuable information on India’s progress to improve its equal employment opportunities for women and men through its legislation, policies and social dialogue. Notwithstanding several achievements, the Indian society is still marred by inequality, in particular based on gender and social origin. National tripartite forums in India are not yet fully representative of the workforce, nor do they deal with gender equality issues in substance. Despite the challenge that the large informal sector represents for collective bargaining, the authors have presented some innovative practices of negotiation with cooperatives representing informal workers, in addition to a pioneering analysis of several branch collective agreements that contain provisions related to gender equality.

The national consultation to discuss the study, which took place in New Delhi in 2010, reviewed the institutional setting to promote gender equality in India and in particular how tripartite social dialogue could play a role. The discussion was a starting point to encourage the social partners in India to take initiatives to promote more balanced participation of men and women in tripartite social dialogue forums, as well as to include gender equality issues in national discussions concerning the labour market and collective agreements.

The paper is the result of collaboration between the Industrial and Employment Relations Department, the Bureau for Gender Equality and the ILO Decent Work Technical Support Team for South Asia. Kamala Sankaran, Associate Professor, Faculty of Law, University of Delhi, and Roopa Madhav, independent law researcher, prepared the national study. Angelika Muller coordinated the comparative research project and national studies. Particular thanks for comments and assistance are expressed to Line Begby, Raphael Crowe, Marleen Rueda, Reiko Tsushima, and Jyoti Tuladhar. This paper was developed with support from the Governments of Norway and Sweden.

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Abbreviations

AIBEA	All India Bank Employees Association
AICCWW	All India Coordination Committee of Working Women
AICCTU	All India Central Council of Trade Unions
AIEO	All India Employers Organisation
AIMO	All India Manufacturers' Organisation
AITUC	All India Trade Union Congress
ASHA	Accredited Social Health Activist
ASSOCHAM	Associated Chambers of Commerce and Industry of India
AWAKE	Association of Women Entrepreneurs of Karnataka
BMS	Bharatiya Mazdoor Sangh
BSNL	Bharat Sanchar Nigam Limited
CSWI	Committee on Status of Women in India
CEDAW	Convention for the Elimination of all forms of Discrimination Against Women
CITU	Centre for Indian Trade Unions
CIE	Council of Indian Employers
CII	Confederation of Indian Industries
CrPC	Criminal Procedure Code
CMSS	Chhattisgarh Mines Shramik Sangh
CTUO	Central Trade Union Organisations
DPE	Department of Public Enterprises
EFI	Employers Federation of India
ERA	Equal Remuneration Act
FICCI	Federation of Indian Chambers of Commerce and Industry
ILC	Indian Labour Conference
INTUC	Indian National Trade Union Congress
IRC	Industrial Relations Committees
IDA	Industrial Disputes Act
IWEP	Integrated Women's Empowerment Programme
HMS	Hind Mazdoor Sabha
JMC	Joint Management Council
LPF	Labour Progressive Federation
MMTC	Mines and Minerals Trading Corporation
NABARD	National Bank for Agriculture and Rural Development
NASSCOM	National Association of Software and Services Companies
NCEUS	National Commission for Enterprises in the Unorganised Sector

NCW	National Commission for Women
NDWM	National Domestic Workers' Movement
NFITU(DHN)	National Front of Indian Trade Unions – Dhanbad
NFITU(KOL)	National Front of Indian Trade Unions- Kolkata
NTPC	National Thermal Power Corporation
NPEGEL	National Programme for Education of Girls at Elementary Level
NSSO	National Sample Survey Organisation
NTUI	New Trade Union Initiative
PSE	Public Sector Enterprises
RMK	Rashtriya Mahila Kosh
SEWA	Self Employed Women's Association
SCOPE	Standing Conference of Public Enterprises
SLC	Standing Labour Committees
SIDBI	Small Industries Development Bank of India
SSA	Sarva Shiksha Abhiya
UTUC	United Trade Union Congress
UTUC (LS)	United Trade Union Centre (Lenin Sarani)
WIPS	Forum of Women in Public Sector

1. Introduction

This paper addresses the current legal and policy framework in India within which women can achieve a better work environment through collective bargaining and social dialogue. This paper also addresses the practice of industrial relations from a gender perspective and analyses trends on how social partners, social dialogue institutions and collective bargaining address equality at the workplace. The paper is arranged as follows. The first part of the paper traces developments that have a bearing on the status of women and gender discrimination in the labour market, focusing on both the formal and informal economy. The second part reviews the labour institutions within which gender concerns get articulated – trade unions, employers’ organisations, social dialogue institutions, labour law and policy measures, and how gender issues have been constructed and addressed within these institutions. The last part of the paper analyses some collective agreements that represent national, industrial and establishment-level settlements, as well as agreements dealing with workers in the informal economy to understand how the process and outcomes of bargaining impact gender equality in the workplace.

2. Methodology

For this paper, we have covered collective settlements which are bipartite and entered into independent of conciliation efforts on the part of the state or central labour departments,¹ as well as a few settlements arrived at between the parties in the presence of the conciliation officer as a result of conciliation efforts of the labour department.² National level, industry level, state level and local collective agreements have been chosen to cover as wide a group as possible, keeping in view the timeframe and terms of reference of this study. Care was also taken to include sectors/industry where women dominate or are well represented in the work force and also where collective agreements are entered into for wage and/or workplace related facilities. We have also included sectors which fall within the informal economy and where the majority of the labour laws do not apply, such as the waste collection sector in urban areas with a significant number of women workers.

The collective agreements include bipartite settlements entered into by the parties, as also settlements entered into by the parties as a result of conciliation proceedings under the IDA. Presently, there is no mechanism, either by law or convention, to register the collective bargaining agreements either at the state or the centre. Consequently, access to the collective bargaining agreements is difficult and dependant on the good will of the parties to the agreement. Fortunately, most unions that we approached were fairly open to providing copies of important collective bargaining agreements. Overall, approximately 20 collective bargaining agreements have been reviewed and ten select agreements have been analysed in this paper (see Annex B for the list).

Information and statistical details for the paper were gathered through several interviews with union representatives, employer representatives and officials in the labour department (see Annex E for details). Additionally, primary material was gathered from several union head offices located in Delhi. Some of the limitations in carrying out the

¹ These are referred to as ‘settlements arrived at otherwise than in the course of conciliation proceedings’ in section 18(1), Industrial Disputes Act, 1947 (IDA), the central law governing collective bargaining and dispute settlements in India.

² These are referred to as ‘settlements arrive at in the course of conciliation proceedings’ in section 18(3), IDA. Data on the proportion of settlements under each of the two types of settlements are not systemically collected in India. Case studies are important sources of information and analysis.

study were the lack of access to primary material available in government departments, and a lack of gender disaggregated data and analysis, as there is a systemic indifference to gendered reporting and data gathering. Additionally, there was limited access to employer organisations and their data bases. The limited timeframe also meant travel to cities and towns where employer organisations or trade unions are located to obtain a wider and varied perspective could not be undertaken.

3. Impact of socio-economic developments on gender

The position of women in India has transformed over the decades. Great strides have been made in ensuring equality for women in Indian society. However, contradictions and gaps in protecting certain basic rights of women continue to exist. The Government has actively – both through law and policy – sought to improve the status of women. Keeping in mind the regional variations, religious, caste and class-based differences that have a definitive impact on women in India; we draw some broad generalisations on the major socio-economic developments that have impacted women in the country.

Powered initially by the reformist movement in colonial India, women's issues and concerns were taken forward by the nationalist movement and subsequently sustained by the women's movement. India being predominantly an agricultural economy in the initial years after independence, the immense contribution of women to the agrarian economy was insufficiently acknowledged by the economy. Many decades hence, women in India continue to struggle for basic rights such as minimum wages, equal wages and property rights, in spite of several protective legislations. Women's access to resources such as land, credit, skill training and education in particular, is relatively poor, while they still carry the burden of a 'double shift' at home cooking, cleaning, caring for the young and the old, adversely impacting their abilities to contribute effectively in the labour market.

The 'Committee on Status of Women in India' (CSWI) (1971-74) found increasing marginalisation of women in the economy and society. The Committee noted demographic trends of declining sex ratio, the growing disparity in the life expectancy and death rates of men and women, and wide disparities in their access to literacy, education and livelihood. It also found that the instruments of political rights, legal equality and education had remained outside the reach of the overwhelming majority of women who were being marginalised. The findings of the Committee gave impetus for the women's movement to raise issues and push for further reforms and change. The Declaration of the International Women's Year, in 1975, brought much needed attention to several important concerns of women.

The 1980s saw the emergence of a strong women's movement, and several autonomous groups emerged. This movement was concerned with violence against women (such as rape and wife battering), with issues of divorce, maintenance and child custody, with issues of gendering of text books and education and with equal opportunities at the workplace (Gandhi and Shah, 1992). One of the recommendations of the CSWI was the setting up of a National Commission for Women, which was established through an enactment – the National Commission for Women Act, 1990 – to safeguard and promote the rights of women. However, as this statutory body has only recommendatory powers, it has been ineffective in addressing issues critical to women. In 1993, India ratified the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), with one reservation and two declaratory statements. Following this, a taskforce was set up to review and suggest amendments to laws. Important amendments to laws pertaining to divorce and maintenance were carried out, notably – Indian Divorce (Amendment Act) 2001, Indian Succession Amendment Act 2001, Marriage Laws (Amendment) Act 2001.

Social status: Crucial in transforming the social status of women are protective and preventive legislations seeking to better the status of women. The early reformers sought to tackle difficult social practices – such as child marriage, *sati*,³ and remarriage of widows through legislation. The attempt to bring about social transformation through legislation is still being pursued with mixed results. Noteworthy amongst these are: the Medical Termination of Pregnancy Act 1971, the Dowry Prohibition Act 1961, the Immoral Traffic (Prevention) Act 1986, the Indecent Representation of Women (Prohibition) Act 1986, the Commission of Sati Act 1987, the Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 2002, the Maternity Benefit Act, 1961, and the Protection of Women from Domestic Violence Act 2005.

Several important judicial rulings have also had an impact – positively and adversely – on the status of women. The adverse ruling in the famous Mathura Case⁴ led to widespread protests and the government appointing a law commission to review the rape law. Thus ‘custodial rape’ was introduced in the statute books as a more heinous crime and the onus of proof in all such cases was shifted to the accused. However, the ruling in the Shah Bano case⁵ had the opposite effect. The Supreme Court in this case upheld the right of Muslim women to maintenance under Section 125 of the (Code of Criminal Procedure, 1973) CrPC and under Muslim personal law. Despite protests and pressure from women’s groups, the Muslim Women (Protection of Rights on Divorce) Act, 1986, was passed excluding Muslim women from the purview of Section 125 (judicial interpretation has modified the impact of this law). The Vishaka judgment⁶ transformed the jurisprudence on sexual harassment and the NCW went on to formulate a Code of Conduct for preventing Sexual Harassment at the Workplace (1997).

The National Plan of Action for the Girl Child (1992) recognizes the right of the girl child to equal opportunities and seeks to eliminate all forms of violence perpetuated against the girl child. India is a signatory to the United Nations Convention on the Rights of the Child, 1989. The female literacy rate increased from 39 per cent in 1991 to 54 per cent in 2001 and the gender gap in literacy has thus come down from 25 to 21 per cent between 1991 and 2001.⁷ The 93rd Constitutional Amendment makes free and compulsory education a fundamental right for all children in the 6-14 age group. The National Programme for Education of Girls at Elementary Level (NPEGEL), a component of the Sarva Shiksha Abhiyan (SSA),⁸ provides region-specific strategies to enable girls to come to school and also provides remedial teaching through bridge courses and residential camps.

The Government of India adopted a National Policy for the Empowerment of Women in 2001 to bring about gender justice and gender equality. Several State Governments have also formulated similar policies for women’s empowerment. Efforts to set up effective institutional machinery to address women’s issues are prevalent both at the national and state level. Apart from NCW, the Department of Women and Child Development set up within the Ministry of Human Resources Development in 1985 has

³ The practice of widows leaping into the funeral pyre of their dead husband.

⁴ *Tukaram v. State of Maharashtra*, 1979 (2) S.C.C. 143 wherein the Supreme Court acquitted the police constables accused of custodial rape of a minor girl.

⁵ *Mohd. Ahmed Khan v. Shah Bano Begum & Ors* 1985 SCC (2) 556.

⁶ *Vishaka and others v. State of Rajasthan and others* (1997) 6 SCC 241. This case involved the rape of a *saathin* or village level worker in retaliation for her efforts to prevent child marriage in a village in Rajasthan. The Supreme Court held that sexual harassment of women at the workplace resulted in the violation of the fundamental rights to equality and the right to life and liberty, including the right to work with dignity. The Supreme Court formulated measures to prevent sexual harassment, relying on the content of international conventions and norms, along with providing a basic definition of sexual harassment at the workplace.

⁷ Government of India, Census Report, 2001.

⁸ Sarva Shiksha Abhiyan (SSA) is a national programme for free and compulsory elementary education launched in 2000, to reduce the gender and social gap through context specific innovative interventions.

since 2006 been upgraded to a full-fledged Ministry of Women and Child Development that seeks to further the cause of women and children. At state level, the State Departments of Women and Child Development and the State Commissions for Women are important governmental bodies taking forth gender concerns. Women's Cells and gender budgeting initiatives have been set up in various ministries/institutions. Apart from regular commissions and committees seeking to focus on gender issues, the Planning Commission regularly reviews the government programmes and policies for women.

Political status: Though initially unrepresented, women are emerging gradually as a small but significant political force in the country. The Women's Reservations Bill has been passed in the Rajya Sabha (Upper House), and is yet to be passed by the Lok Sabha (Lower House). In 1993, the 73rd and 74th Constitutional Amendment provided for one third reservation for women in local bodies both urban and rural (panchayat). Special reservations for women from Scheduled Castes and Tribes have enabled their active participation in mainstream politics. Gender budgeting involving grassroots-elected women representatives are being used for advocacy in several places. However, the overall scenario indicates underrepresentation of women in governance and decision-making positions in all areas of public life in the country.

Table 1.
Women's participation in Panchayati Raj institutions, 2005

District panchayats	537	11,825	41
Intermediate panchayats	6,097	110,070	43
Village panchayats	234,676	2,073,715	40

Source: Ministry of Panchayati Raj

Women's representation in the National Parliament

Proportion of seats held by women in the National Parliament	9.07 % as of 9/1/2007
--	-----------------------

Source: Lok Sabha & Rajya Sabha Secretariats.

From: Government of India, Ministry of Women and Child Development. 2007. A handbook of statistical indicators on Indian women, available at: <http://wcd.nic.in/stat.pdf>

Economic status: The economic status of women in the country has undergone many changes. Up to 1991, India had a planned economy which enabled planned growth. Post 1991, the liberalisation and globalisation phase had a serious impact on women workers. While new work arenas such as information technology and biotechnology absorbed more and more women, there was also a marked increase in the presence of women in the unorganised or informal sector. Nearly 93 per cent of women workers in India are in unorganised or informal employment and their numbers are steadily rising.⁹ Globalisation and the removal of trade restrictions have impacted domestic industry and small farmers; this in turn has adversely impacted low paid women workers. The feminisation of poverty is a growing concern as the number of female inter-state migrant workers within the country is rapidly growing. This is a direct consequence of the transformation of rural areas, of tribal displacement and of the widespread neglect of marginalised groups in the country (Shanti, 2006). The formal sector has also witnessed massive changes as economic

⁹ The NCEUS defines the unorganized or informal sector as consisting of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten total workers. The NCEUS also makes a distinction between organized or formal and unorganized or informal employment as follows: Unorganised workers consist of those working in the unorganized enterprises or households excluding regular workers with social security benefits, and the workers in the formal sector without any employment/social security benefits provided by the employer (NCEUS, 2009).

restructuring as a part of the liberalisation mandate in the 1990s which has meant downsizing of jobs, retrenchment of workers and declining recruitment of staff. Simultaneously, the steady growth of micro-credit through self-help groups for women has encouraged the development of micro-enterprises by women. Leading national financial institutions, like the Small Industries Development Bank of India (SIDBI), the National Bank for Agriculture and Rural Development (NABARD), Swayamsidha, or the Integrated Women's Empowerment Programme (IWEP), and the Rashtriya Mahila Kosh (RMK), have played a significant role in promoting micro-credit and the economic empowerment of women.

Another significant development with wide ramifications was the setting up of the National Commission for Enterprises in the Unorganised Sector, seeking to examine and recommend changes to the informal sector. The NCEUS put forth three Bills, i.e.: (i) the "Unorganised Non-agricultural Sector Workers (Conditions of Work and Livelihood Promotion) Bill, 2007"; (ii) the "Unorganised Agricultural Sector Workers (Conditions of Work and Livelihood Promotion) Bill, 2007" and (iii) the "Unorganized Sector Workers Social Security Bill, 2007" – for the consideration of the government. A diluted version of the NECUS bill on social security was enacted in 2008, i.e. the "Unorganised Workers' Social Security Act, 2008", a national legislation which provides social security benefits for unorganized sector workers.

Apart from the more patent economic changes that have an impact on women, macroeconomic policies such as better water and sanitation facilities, access to cooking fuel, improved transport and health care, and ensuring food security, also impact women's lives. Ill conceived macroeconomic policies have a direct adverse impact on women, and this is evidenced in the rolling back of the state from health care, education, public distribution system and housing (Chandrashekar and Ghosh, 2002). We deal with the more specific economic impacts on women, in other parts of the text below.

Over the years, there have been a number of important ad hoc bodies that have reported on issues critical to women in the world of work. Notable among these are:

- As noted above the Committee of the Status of Women in India (1971-74) was the first such effort which raised women's issues and the report led to new legislation such as the Equal Remuneration Act 1976.
- The National Commission on Self Employed Women and Women in the Informal Sector (1987-88) – produced a report entitled *Shramshakti* which makes a number of important recommendations for legislative changes.
- The National Commission on Rural Labour (1991) – produced a report which included the consideration of rural issues as they affect women and recommended increased self employment, wage employment and diversification in order to redress inequality. It called for the amendment of patrilineal inheritance laws, training in technological skills, and increased legislative protection for home workers.
- The National Commission on Labour (1966-69) established important principles of labour policy in India which has included an emphasis on women. This was followed by the second National Commission on Labour (2002) that set up a Task Force on Women and Children and examined rationalisation of labour laws and legislation for unorganised or informal workers
- More recently, the National Commission for Enterprises in the Unorganised Sector (NCEUS) (2007) has acknowledged the need for separate policy attention for women, especially home based workers.
- In spite of the many efforts at elevating the socio-economic status of women in the country, problems continue to persist – the falling sex-ratio and the increase

in female foeticide and infanticide in certain parts of the country;¹⁰ increasing violence and oppression against women as a direct consequence of increasing religious fundamentalism within the country; the growing vulnerability and informalisation of women workers as a result of liberalisation and globalisation; declining health and education status; and a lack of access to vital resources.

4. Gender and the labour market

At the outset it must be stated that the national data available on women and work does not adequately capture the extent of women's participation in the labour market. Apart from undercounting, the failure to define women's work impacts adversely on any authoritative account of Indian women in the labour market. More particularly, surveys have been unable to adequately value and quantify household work and work done for domestic consumption, which is carried out predominantly by women in the country.

The overall gender discrimination present in the labour market in terms of occupational sex-segregation contributes to the low economic participation of women in the labour market. However, over the years, there has been an increase in the level of employment of women in sectors such as manufacturing, financial services and personal services (see Table 3), due in part to improved access to education, technological advancement, and increased employment opportunities for women. Women workers are also viewed as less "troublesome" and cheaper than male labour, thus contributing to their increased presence in certain sectors.

There are two major sources of data that provide estimates on women's workforce participation in India: the decennial censuses and quinquennial rounds of the National Sample Survey Organisation (NSSO).

Table 2.
Work participation rates by sex, 1971 to 2001
(in per cent)

Census year	T/R/U	Female	Male	Persons
1971	Total	14.22	52.75	34.17
	Rural	5.92	53.78	35.33
	Urban	7.18	48.88	29.61
1981	Total	19.67	52.62	36.70
	Rural	23.06	53.77	38.79
	Urban	8.31	49.06	29.99
1991	Total	22.27	51.61	37.50
	Rural	26.79	52.58	40.09
	Urban	9.19	48.92	30.16
2001	Total	25.63	51.68	39.10
	Rural	30.79	52.11	41.75
	Urban	11.88	50.60	32.25

Source: Modified from the Report of the Working Group on Empowerment of Women, Planning Commission, Government of India, 2007-2012.

According to the 2001 Census, the work participation rate for women was 25.63 per cent in 2001, which is an improvement from 22.27 per cent in 1991 and 19.67 per cent in

¹⁰ Punjab, Haryana, Tamil Nadu, Uttar Pradesh, Rajasthan and Bihar.

1981. In 2001, work participation rate for women in rural areas was 30.79 per cent as compared to 11.88 per cent in the urban areas. In the rural areas, women are mainly involved as cultivators and agricultural labourers. In the urban areas, almost 80 per cent of women workers are working in the unorganized sectors like household industries, petty trades and services, buildings and construction.

Although the census figures show a negligible but steady increase in work participation rate for women, the NSSO figures provide a more complex picture. They indicate a decline in work participation rates for women between 1993-94 and 1999-2000 from 28.6 per cent to 25.9 per cent. There was an increase again in 2004-05 to 28.7 per cent, and in recent years there has been a marginal but steady increase in work participation. (Sunny Jose, 2007; NCEUS, 2009: 45)

Table 3.
Distribution of women workers across various sectors in India

Industrial category	1993– 1994	1993– 1994	1993– 1994	1999– 2000	1999– 2000	1999– 2000	2004– 2005	2004– 2005	2004– 2005
	1	2	3	1	2	3	1	2	3
Agriculture, forestry and fishing	945357	77.44	39.48	912023	74.88	38.74	1079652	72.42	41.63
Mining and quarrying	522	0.43	19.51	3842	0.32	17.14	4221	0.28	16.52
Manufacturing and repair services	120987	9.91	29.14	123355	10.13	28.24	174039	11.67	31.05
Electricity, gas and water	516	0.04	3.71	375	0.03	3.61	494	0.03	4.07
Construction	16482	1.35	13.61	20343	1.67	11.66	28024	1.88	10.75
Trade, hotels and restaurants	39376	3.23	12.84	52325	4.30	12.78	61208	4.11	12.31
Transport, storage and communication	3285	0.27	3.06	4408	0.36	3.01	5945	0.40	3.19
Finance, insurance, real estate and business services	4489	0.37	12.07	4692	0.39	9.61	9152	0.61	11.72
Community, social and personal services	84987	6.96	26.35	96587	7.93	28.94	128026	8.59	33.93
Estimated workers	1220700	100.00	32.59	1217950	100.00	30.94	1490759	100.00	32.47

Note: 1) Absolute number of workers ('00); 2) Sectoral share in total female employment; 3) Female share in total employment. Data source: various rounds of NSSO.

Source: Neetha, N. 2009.

Another notable feature of the work force is the large numbers of persons who are self-employed. This has been highlighted in recent data and government reports (*Report on Conditions of Work and Promotion of Livelihood in the Unorganised Sector*, (hereafter NCEUS, 2007). As of January 2005, the total employment in the Indian economy stood at 458 million of which those in the unorganised or informal sector accounted for 395 million (86 per cent). Of these 395 million unorganised or informal sector workers, 253 million were engaged in agriculture and the rest 142 million in the non-agricultural sector. Within the agricultural sector 65 percent were self-employed (around 166.2 million) while within the non-agricultural sector 63 percent (92.1 million) were self-employed. Clearly in both these segments of the unorganised or informal sector, the predominant form of work is in self-employment. Indeed, around half of the total workforce of India is self-employed.

Even where women are employed, this employment takes the form of contract labour routed through intermediary contractors. Contract workers are not deemed to be

employees of the principal employer. Though the principal employer is responsible for providing minimum facilities for contract labour, the provisions of the Contract Labour (Prohibition and Regulation) Act, 1970 are often flouted. There is growing informalisation of formal sector employment (NCEUS, 2007; Sharma, 2006), with the numbers of those in casual employment and those engaged through contractors increasing. There is also an increase in casual employment among women, employed for a fixed term, usually as daily wage workers.

5. Common forms of gender discrimination in the workplace

Typically, gender based discrimination can be listed under the following broad topics:

- Definition of ‘work’: As stated earlier, the primary issue continues to be the gender bias in defining ‘work’ and in enumerating and making visible women’s work. The biggest challenge is to account for women’s work in the labour market, and for the value of women’s contribution (paid and unpaid) to be correctly assessed; a gendered definition of ‘work’ is long overdue.
- Accounting for household work: Women work both at home and in the labour market. The former (domestic and care work) is rarely given due recognition for the contribution to the labour market.
- Discrimination at the work place: Women workers are paid differential wages for the same work. They also have limited access to and control over resources, poor access to information and improving skills. Women are often times regarded as additional or supplementary workers, further marginalising their ability to consolidate their position as workers. Aside from this, there is widespread gender bias in recruitment and promotion of women workers.
- Nature of work: Women are largely found in jobs that are low skilled, labour intensive and repetitive.
- Access to facilities: Women have less access to facilities and benefits. Welfare facilities and services such as sanitary facilities, arrangements for drinking, eating and resting, and access to first aid, health care and transport are at times not regarded from a gendered perspective. In the case of night work, it is acknowledged that transport and security is provided for women workers.
- Indirect discrimination: Indirect discrimination practices such as poor terms of conditions of work, poor performance ratings for women, lack of access to skill training and other resources are commonly encountered by women workers. The proverbial ‘glass ceiling’ creates invisible barriers for women from accessing higher positions, thus preventing career advancement.
- Occupational health and safety: Given the specific needs of women, most work places do not take care to protect the reproductive health of women workers. Elimination of exposure to chemicals, radiation, biological contaminants, poor working posture and stressful working conditions is yet to be prioritized.
- Sexual harassment: Women at the work place are regularly subjected to sexual harassment. Norms to seek redress and remedy through a special procedure for sexual harassment complaints, though mandated by the judgement of the Supreme Court, is rarely found to be implemented.
- Inadequate and poor representation: Women do not get adequate representation in trade unions, employers’ organisations, social dialogue bodies and other relevant fora so as to address and improve their working conditions. The lack of

representation in decision making positions in organized sector (both public and private sectors) has wider ramifications on their ability to demand and transform their work environments.

- Exclusion of women from marginalised communities such as Dalits, Muslims and tribals persist despite protective and preventive legislations. Doubly discriminated, women workers from these communities populate occupations that are the least paid, least protected and suffer widespread exploitation. Heinous practices such as bonded labour and untouchability continue to impact workers lives in rural India. While the affirmative action policy has ensured their entry in limited numbers into the formal sector, the growing informalisation of the labour market has only contributed to their further marginalisation. Their inability to unionise compounds their marginalisation as they cannot voice their demands.
- Again, only a miniscule number of women are in the organised sector, which accords them job protection and other necessary statutory benefits such as maternity benefit and crèche facilities. Even within the formal sector, the women workers are rarely found to be active in unions and find little or no representation within the male dominated unions (Hensman, 2002). The majority of women workers continue to be vulnerable to the vagaries of the labour market due in part to the fact they are women. Patriarchy within the home deprives women of equal access to education, training, and skills; and hence contributes to their presence in lower paying jobs as they lack employable skills.

6. The legal framework dealing with equality and discrimination

The Indian Constitution guarantees equality to all persons within India; it also prohibits discrimination by the State on the grounds of sex. The equality guarantee is available to all persons within India (not merely citizens), thus extending its scope to all migrants and persons of non-Indian origin in India. However, the constitutional non-discrimination guarantee, for the most part, is available only in case of abuse by the State. This lack of “horizontal effect” of the non-discrimination provision implies that those employed in the private (non-State) sector do not have constitutional protection against discrimination on the grounds of sex. Remedies under labour statutes, of course, remain available. For instance, protection against gender-based discrimination in recruitment and promotions is guaranteed by the Equal Remuneration Act, 1976 (ERA).

Women in the unorganised or informal sector are also often not covered under labour laws since these laws are confined to industries/sectors employing a minimum of workers. This is a form of discrimination against unorganised or informal workers. The recently enacted Unorganised Workers’ Social Security Act, 2008, aims to provide minimum benefits to such workers.

The constitutional guarantee of equality is not merely negative, in the sense of prohibiting discrimination; it also has provisions for ensuring substantive equality¹¹ by

¹¹ Substantive equality recognizes that patterns of disadvantage and oppression exist in society and requires policy makers, law makers and the government to take into account the inequality in circumstances in formulating the law or policy. Substantive equality requires that the roots of inequality be identified, and that mechanisms be put in place for removing the barriers associated with the individual or group’s “special characteristics”, rather than securing an equal result. It examines the impact of law within its surrounding social context to make sure that laws and policies promote full participation in society by everyone, regardless of personal characteristics or group membership.

enabling the state to make special provisions for women and children.¹² It is through provisions such as these that job reservation for women and special provisions for women are made possible.

The constitutional provisions guaranteeing formal gender equality¹³ have been the subject matter of litigation in the courts. For instance, in a landmark judgement, the Supreme Court held that regulations put in place by a state-run aviation company in India which provided for the retirement of air hostesses on their first pregnancy, and the provision for extension of services of air hostesses beyond 35 years and up to the age of 45 years at the sole discretion of the managing director were arbitrary and violated the right to equality.¹⁴ Yet, the Court upheld the lower retirement age for air hostesses compared to (male) flight pursers on the ground that this was not discrimination based *solely* on sex, as they belonged to different cadres and their service conditions were different.

The limitations of a formal equality approach in dealing with more systemic gender discrimination and indirect discrimination against women (as in occupational segregation) is sought to be remedied by substantive equality provisions which permit gender specific (rather than mere gender neutral) laws and policies that enhance the educational profile, skill development, and job prospects for women in the labour market. A quota-based reservation for women in government jobs is seen as part of the strategy of substantive equality, and as a means to achieve substantive equality in employment. In some states, such as Andhra Pradesh, other things being equal, thirty percent of posts in the government could be set aside for women. The courts have held that ‘special provisions’ for women were introduced in the Constitution to eliminate the socio-economic backwardness of women and to bring about effective equality between men and women.¹⁵ Similar quotas for women in government jobs are not uniformly applied across India. The proposed Equal Employment Opportunities Commission, now under discussion within the government, will be pivotal in dealing with discrimination in both the public and private sphere. This is a broad-based commission dealing with discrimination not just in employment, but also generally in the private and public domain. Its membership is therefore broad-based consisting of elected representatives and judges, with a stipulation that some of them must be women (Government of India, 2008).

India has ratified Convention No. 100, Equal Remuneration, 1951 (ratification: 1958) and Convention No. 111, Discrimination (Employment and Occupation), 1958 (ratification: 1960). Other Conventions affecting gender equality that India has ratified are: Convention No. 4, Night Work (Women) Convention, 1919; Convention No. 45, Underground Work (Women), 1935; Convention No.89, Night Work (Women) Revised, 1948; Convention No. 41, Night Work (Women) (Revised), 1934.

6.1 Rights combating discrimination

6.1.1 Choice of employment

Women-specific special provisions have also been used to justify ‘protective’ laws and policies such as ban on night work for women in factories (except for exemption granted in

¹² See articles 14 and 15 of the Constitution of India adopted in 1950. Article 15(1) prohibits discrimination by the state “on grounds only of religion, race, caste, sex, place of birth or any of them”. Article 15(3) of the Constitution permits the State to make special provisions with respect to women and children. See generally, Kamala Sankaran (2007b).

¹³ Formal equality assumes that equality is achieved if the law treats all persons alike. However, when individuals or groups are not identically situated, the formal equality approach does not make concessions for the differences and further perpetuates discrimination and inequality, as it does not take into account the real inequality in the circumstances and is unable to address structural reasons underlying such inequality.

¹⁴ *Air India v. Nergesh Meerza*, AIR 1981 SC 1829.

¹⁵ *Government of Andhra Pradesh v. P.B. Vijayakumar*, (1995) 4 SCC 520.

certain industries)¹⁶ or night work in commercial offices,¹⁷ limiting the entry of women in the combat wings of the armed forces. These also prohibit certain kinds of work which is seen to be inappropriate for women either due to working conditions/environment, such as jobs in jails, underground mines, and dance bars; or jobs that are treated as hazardous such as electricity linesmen. There is an increasing challenge to the denial of employment to women in these sectors. The legislative ban on night work in factories has been recently held unconstitutional in certain states, while the ban on women's employment in dance bars and in hotels/restaurants to serve liquor has been judicially struck down as a constitutionally impermissible restriction that violates the right to equality (Sankaran, 2003, 2007a, 2010; Working Women, 2006, p 12). The courts are increasingly scrutinising restrictions on women's employment that have been justified in the name of 'protection' under the test of equal treatment and opportunity, and have ruled that such restrictions should be re-assessed with changing times. The judicial approach has been in the direction of expanding the scope of women's employment, while at the same time ensuring safe conditions for women at their workplace. The right to have a work environment free from sexual harassment, and the duty cast upon the employer to ensure such a non-hostile work environment, is a result of court decisions in India¹⁸ (India has a common law legal system where courts can judicially fill 'gaps' not addressed in legislation).

6.1.2 Wages

As noted earlier, the ERA lays down the principle of equal remuneration for same work or work of a similar nature for men and women within the same establishment. Same or similar work has been found to fall short of the requirement of equal pay for work of equal value to be found in the Equal Remuneration Convention, No. 100 that India has ratified.

Studies indicate that on an average, women's pay is around 30 percent lower than that of men across all sectors and fields of employment (NCEUS, 2007; Working Women, 2007). Among agricultural labourers, real earnings of male workers grew at a rate faster than those of female workers between 1983 and 1987-88. There was a further widening of the pay gap across Indian states in the period 1987-88 to 1993-94, and it has further widened since 2000. Nominal wage was lower than the official minimum wage in most states for women agricultural labourers, leading to greater gender disparity for women agricultural labourers who account for 41.6 percent of the agricultural workforce of 259 millions in 2004-05 (who are 57 percent of the total Indian workforce; 72.8 percent of the female work force is agricultural workers) (NCEUS, 2007; Chavan and Bedamatta, 2006). A similar disparity in wages is also seen in sectors such as sales in shops and establishments (women earned 89 percent of the male wage, and the gap increased with experience), food processing, coir, match and fireworks industry (NCEUS, 2007).

Women also suffer where payment is in the form of a piece-wage or a family wage. In the former, women may get their children to work alongside them, and they often work for more than 10 hours to earn an equivalent time-rated wage. Fixation of wages which is based on output that can reasonably be expected to be achieved by working 8 hours a day is not the norm when fixing minimum wage rates. In addition, when women work in home-based industries, the wage rate does not reflect the amount spent by the woman when she

¹⁶ There is a proposal to amend the Factories Act, 1948, to lift the ban on night work for women; this amendment has not yet been enacted. The proposal permits the employment of women workers between 7 p.m. and 6 a.m. provided the occupier of the factory makes adequate arrangements for the occupational health and safety of women workers, their transportation from the factory premises to the nearest point of their residence, and provides for prior consultations with the concerned employer, or employers' organization, and workers, or workers' representative organizations. This consultation falls short of the prior agreement with workers' and employers' organization as required by Article 1 (1)(a) of the ILO Protocol. Trade unions have pointed out to the ILO Committee of Experts that there is no explicit provision under the proposed amendment prohibiting the employment of women factory workers during the night period before and after childbirth for at least 16 weeks, as required under this Article of the Protocol.

¹⁷ See the night work limitations under the Shops and Establishment Acts of various states.

¹⁸ *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011.

provides the premises, lighting and water to the contractor/user, which are not compensated in the wages paid to her.¹⁹ In industries such as brick-kiln industry which employs large numbers of persons, the wage is often fixed as a ‘family wage’. The family is recruited for a season, where the male prepares the pit, and the women and children mould and move the brick from the pit for drying/firing. The work of the woman is invisible since payment is made only to the male, though it is expected that the woman and children will assist in this work (NCEUS, 2007; Breman, 1996). The calculation of minimum wage in India proceeds on the assumption that an earning member should support another adult and two children,²⁰ and does not include the unpaid work put in by women in performing such work.

Occupations performed by women are often classified as unskilled under the Minimum Wages Act, 1948. For instance, in agriculture, weeding and transplanting (performed exclusively by women in most parts of India) are so classified, though skill and experience is required for both activities, while other activities performed generally by men are treated as skilled work for which higher wages are paid. This results in gender-based segregation in the labour market. Sectors where women dominate, such as domestic work, were until recently not subject to the minimum wage law. Some state governments have only recently begun to notify wages for domestic work. The National Rural Employment Guarantee Act, 2005, which provides for a legal guarantee for at least 100 days of employment on asset-creating public work programmes every year for at least one person in every household, is an important recent legislation that has enhanced women’s employment. The Act provides that “priority shall be given to women in such a way that at least one third of the beneficiaries shall be women who have registered and requested for work under this Act”. (Schedule II, paragraph 5). According to the Government, out of the 4,928,338 persons employed under the Act in 2006-07 some 40 per cent were women.²¹

6.1.3 Marriage

Several employers have engaged in the practise of terminating the services of women workers upon their getting married. There was a rule that gave the option to the government to terminate the services of women employees if it was deemed that their marriage interfered with their efficiency at work. Prior permission was also required from the government before a woman employee in certain government services could get married. Nor could a married woman claim as a matter of right that she be appointed to such a service (Gothoskar, 1992). Private sector companies such as those in the pharmaceutical sector and public enterprises such as aviation also had similar rules permitting termination of an air hostess if she married within four years of recruitment. This discrimination was a subject of long struggle by women workers and their unions in the 1950s, 1960s and 1970s. In the case of government employees and those in public enterprises, such marriage clauses were struck down as unconstitutional.²² Since some of the fundamental rights such as equality and non-discrimination apply only to the state/public sector (unless expressly covering private persons also as in the case of abolition of untouchability or forced labour), the presence of similar discriminatory provisions in employment contracts could not be challenged through writ proceedings before the courts. Instead, they were challenged under labour law and were held to be void on grounds of violating the requirement of social justice which labour laws and contracts are expected to comply with.²³

¹⁹ The draft law on conditions of work in the unorganised sector prepared by NCEUS 2007 provided for a mark up of the minimum wages payable to home-based workers to reflect this contribution by the woman worker.

²⁰ See Indian Labour Conference 15th Session on a need-based minimum wage, and the judgment in *Workmen v. The Management of Reptakos Brett & Co Ltd*, AIR 1992 SC 504.

²¹ Report to the ILO Committee of Experts, 2007 with regard to Convention No. 111.

²² *CB Muthumma v. Union of India*, AIR 1979 SC 1868; *Air India v. Nargesh Mirza*, AIR 1981 SC 1829.

²³ *International Franchise Co. v. Bombay Labour Union*, AIR 1966 SC 942.

6.1.4 Pregnancy/maternity benefit

The aviation sector also had a clause that provided for retirement of air hostesses upon their first pregnancy which was struck down by the courts as discriminatory. The age of retirement of airhostesses which was lower than that of flight pursuers who performed the same work on a flight was however upheld on the ground that this was not discrimination based solely on sex, since they belonged to different cadres and their service conditions were different. The classification of women air hostesses and male pursers was sufficient for the court to uphold that there was no discrimination on the grounds of sex alone, which is the requirement of article 15 (1) of the Constitution.²⁴

Some public sector employees in India have restrictions upon newly recruited pregnant women joining duties. This has been widely protested and challenged in courts as discriminatory, following which undergoing pregnancy tests or asking details of menstrual history have been struck down by the courts.²⁵ Notwithstanding such court decisions, similar norms denying promotion and immediate posting for pregnant women, was withdrawn by the largest bank employer, the State Bank of India, only as recently as September 2009.²⁶

Maternity benefit is provided in sectors under the Maternity Benefit Act, 1961²⁷ and the Employees' State Insurance Act, 1948.²⁸ Apart from these laws, the fast growing government flagship health insurance scheme, the Rashtriya Swastha Bima Yojna was launched recently. This scheme covers persons below the poverty line and benefits a large number of unorganised workers (given the large overlap between poverty and the informal sector). On December 16, 2009 8,017,527 families had been issued a smart card under the health insurance scheme.²⁹ Government employees have access to paternity leave for 15 days upon the birth of a child. Paternity leave is not very common in the private sector and the unions/activists interviewed did not prioritise this issue.

6.1.5 Number threshold for providing facilities

Some of the facilities, such as provision of a crèche under Factories Act, 1948 and the Plantations Labour Act, 1951, are required to be provided only when there are twenty women workers. Women workers thus argue that the provision of a crèche should be de-gendered and made applicable wherever there are a certain number of workers employed in an establishment. This would lessen any effect that providing such facilities would have on employment of women (Gothoskar, 1992). Laws such as the Maternity Benefit Act, 1961, Factories Act, 1948 and the Plantations Labour Act, 1951, place the burden of providing benefits such as leave and crèche facilities exclusively upon employers. Unlike social insurance schemes which are contributory and where the burden is spread over the entire work force, the financing of such facilities are exclusively the employer's liability. In addition, there are non-statutory crèches run by the government in different parts of the country to aid working women; unorganised women workers can use these services.³⁰

6.1.6 Lack of proper enforcement

Many of the provisions of these laws and rules are flouted in practise. For instance, a survey of 126 factories revealed that 39 had no separate washing facilities for women (Mendiratta, 2009). A survey of the socio-economic conditions of women workers in

²⁴ *Air India v. Nergesh Meerza* AIR 1981 SC 1829

²⁵ *Neera Mathur v. LIC*, decided by Supreme Court on 31.10.1991.

²⁶ 'SBI dumps norm denying posting, promotion to pregnant women', The Hindu, 16.10.2009.

²⁷ 16,560 women availed of this benefit in 2006. See www.labourbureau.nic.in for details.

²⁸ 19,098 women availed of this benefit in 2007. See www.esic.nic.in for details.

²⁹ For details see www.rsby.in

³⁰ These schemes cover 17355 crèches with 433,875 beneficiaries (Mendiratta, 2009).

plantations in India reveal that only around 37 percent of the plantations surveyed offered crèche facilities and only 17 percent have appointed welfare officers to provide facilities under the law (Government of India, 2009). Lack of proper and regular inspection, weak enforcement by the labour administration, lack of resources of the labour departments, and corruption, are some of the reasons often put forward for the poor implementation of labour laws in India.

7. Social partners and gender concerns

7.1 Trade unions

The major central trade union organisations (CTUO) that represent a large number of workers in the country are political arms of the existing political parties. There are 13 major trade union federations in the country. In 1990, it was agreed that central trade unions which had a verified membership of at least 500,000 spread over at least four states and four industries would be considered as CTUOs for the purpose of representation in committees, councils, government bodies and international organisations.

As of 2008 (based on verification of central trade unions in the country carried out in 2002), there are 13 CTUOs which are (according to size): 1) Bharatiya Mazdoor Sangh (BMS); 2) Indian National Trade Union Congress (INTUC); 3) All India Trade Union Congress (AITUC); 4) Hind Mazdoor Sabha (HMS); 5) Centre for Indian Trade Unions (CITU); 6) United Trade Union Centre (Lenin Sarani); 7) Trade Union Co-ordination Centre; 8) Swahrayi Mahila Sewa Sangh (SEWA); 9) All India Central Council of Trade Unions (AICCTU); 10) Labour progressive federation (LPF); 11) United Trade Union Congress (UTUC); 12) National Front of Indian Trade Unions – Dhanbad (NFITU – DHN); and 13) National Front of Indian Trade Unions – Kolkata (NFITU-KOL). SEWA, a trade union comprised mainly of informal women workers, won a court case to be considered a CTUO.³¹ Apart from these, there are other unions affiliated to political parties, autonomous or independent unions such as New Trade Union Initiative (NTUI), Chhattisgarh Mines Shramik Sangh (CMSS), and a range of public sector professionals who have unionized such as the All India Bank Employees Association (AIBEA).

Unions in India are usually craft unions (focusing on a single occupation, e.g. journalists unions), industry-level unions, and labour unions (which permit all workers irrespective of the industry they are employed in to be members). There are also state and national level federations. Central unions are unions operating at the national level with unions affiliated across the country.³² The verification of the CTUOs conducted in 2002 (results published in 2008) reveal that for the first time a trade union focused on working women, viz., SEWA was recognised as a CTUO and had a membership of 0.69 millions. (Sex disaggregated data of the verification results are not available.)

³¹ *Swahrayi Mahila Seva Sangh v. Union of India* decided by Delhi High Court on 10 February, 2005.

³² A more accurate picture of the number of unionised workers is available on the membership of all registered trade unions irrespective whether they submit returns or not, unlike the Annual Indian Labour Year Book data which is restricted to returns filed by trade unions. See Subesh K. Das, 2008.

Table 4.
Membership in central trade unions, 1980-2002 (millions)

Union	1980	1989	2002
INTUC	3.51	2.69	3.95
BMS	1.88	3.12	6.22
HMS	1.84	1.48	3.34
UTUC (LS)	1.23	0.84	1.37
UTUC	0.61	0.58	0.61
NLO	0.41	0.14	0
TUCC	0.27	0.23	0.73
NFITU	0.53	0.53	0.60
AITUC	1.06	0.94	3.44
CITU	1.03	1.78	2.68
Others*			1.94
Total	12.39	12.33	24.88

Others include LPF (0.61 million members), AICCTU (.64 million members), and SEWA (0.69 million members). Source: S. Das, 2008.

There has been a sharp increase in trade union membership in the recent past across all unions, mainly because of the increasing unionisation of agricultural and rural workers. The membership of agricultural and rural workers of all verified CTUOs increased from 1.72 million in 1989 to 7.47 million in 2002 (John, 2007).

Table 5.
Membership in trade unions disaggregated by sex

Year	No. of unions on register	No. of unions submitting returns	Membership of trade unions (000s)			Percentage of women to total membership
			Men	Women	Total	
1	2	3	4	5	6	7
1981	37,539	6,682	5,012	385	5,397	7.1
1986	48,030	11,365	7,368	819	8,187	10.0
1991	53,535	8,418	5,507	594	6,101	9.7
1992	55,680	9,165	5,148	598	5,746	10.4
1993	55,748	6,806	2,636	498	3,134	15.9
1994	56,872	6,277	3,239	856	4,095	20.9
1995	57,952	8,162	5,675	863	6,538	13.2
1996	58,988	7,242	4,250	1,351	5,601	24.1
1997	60,660	8,872	6,504	905	7,409	12.2
1998	61,992	7,403	6,104	1,145	7,249	15.8
1999	64,817	8,152	5,190	1,218	6,407	19.0
2000	66,056	7,253	4,510	910	5,420	16.8
2001	66,624	6,531	4,392	1,481	5,873	25.2
2002	68,544	7,812	5,102	1,871	6,973	26.8

Source: Annual returns under the Trade Unions Act, 1926 received by Labour Bureau.

We present below the data relating to some central trade unions.

The HMS in 2008 had a total membership of 5,745,732. Women comprised 25 per cent (1,436,417) of this membership. The presence of women in the membership of HMS is significant in industries such as railways, ports and docks and in the informal sector. The presence of women in the 31st Biennial Convention held in 2006 was 407 out of a total number of 1510 delegates. Women also comprise a significant number of the leadership within the HMS, including the post of President.

The HMS has set up a Women's Committee to focus on women's issues. This initiative began in 1985 and in 1994 HMS held a National Women's Convention and a National Women's Committee was elected.

The oldest and biggest federation in India, the All India Railwaymen's Federation, formed a national level women's committee in 2000. This committee is affiliated to the IUC Women Committee. Such women's committees are also functioning in other unions of railway workers, ports and dock workers. (As with other trade unions, despite such exemplary instances, women do not get elected to the topmost leadership positions of trade unions on a regular basis).

The AITUC has increased its membership significantly in the unorganised or informal sector and has emerged as the third largest union in India as of 2002. It has increased its membership where women's employment is significant such as anganwadi³³ workers, Accredited Social Health Activists (ASHAs),³⁴ and banks. It has set up the All India Working Women's Forum, active in seven states. The AITUC has started a journal for women workers titled *Working Women* which has begun publication in 2006. At the 39th Session of the AITUC held in December 2008, 4 office bearers (out of 37), 5 out of 52 working committee members, and 34 out of 368 of the General Council members were women.

The CITU has set up an All India Coordination Committee of Working Women (AICCCWW). CCWW have been formed in 16 states. The proportion of women in the membership of CITU has grown in recent years, from 12.88 percent of membership in 1987 to 15.91 in 1998. The proportion of women in states such as Karnataka and Maharashtra was around 60 per cent of its membership in 2006.³⁵ In states such as Himachal Pradesh and Assam it is close to 50 per cent and in several states it is between 25-40 per cent. It is also high in industries such as beedi (or hand rolled tobacco), plantations and textiles. The proportion at the national level is around 20 per cent. The AICCCWW brings out a monthly magazine in English and Hindi titled *The Voice of the Working Woman*. CITU decided that 20 per cent of its delegates to its 11th Conference should be women from those states where women comprised at least 15 per cent of its membership and at least 15 per cent from other states. This was more or less complied with and the overall position of women delegates at the conference was around 15 per cent. The proportion of women in leadership positions has also increased within the CITU. At present, out of the total 35 office bearers, 4 are women, with a smaller proportion in their General Council. This increase is reflected in state committees too. In states such as Karnataka and Maharashtra, women comprise 5 office bearers out of a total of 23, and

³³ Anganwadi centres come under the Integrated Child Development Scheme (ICDS) and employ a large number of women workers. The main objective of this programme is to cater to the needs of the development of children in the age group of 3-6 years and to provide for holistic pre-school education.

³⁴ The Accredited Social Health Activist (ASHA) is a health activism initiative that creates awareness on health and mobilizes the community towards local health planning, increased utilization and accountability of existing health services provided by the government. Under the National Rural Health Mission, the government appoints female Accredited Social Health Activist (ASHA) in every village and the ASHAs get performance-based compensation for promoting universal immunization, referral and escort services for RCH, construction of household toilets and other healthcare delivery programmes.

³⁵ Report of the Convenor of AICCCWW to the 8th Convention of AICCCWW, 3-5 November, 2006 and Secretary's Report to the 6th All India Conference of Working Women, 16-17 September, 2000.

32 state-level office bearers, respectively. The AICCWW is now aiming to increase the presence and leadership of women in those trade unions/states and sectors where women's employment/membership is significant to make it commensurate with the presence of women.

In addition, there are trade unions where women dominate the membership. For example, SEWA which has a membership of 0.69 million members and has a leadership comprising almost exclusively women. Also, The National Domestic Workers' Movement (NDWM) has a broad support base of domestic workers across 23 states.

7.2 Employers' organisations

There are three major employers' associations in India – All-India Organisation of Employers (AIOE) founded by FICCI, the Employers Federation of India (EFI) founded by the Associated Chambers of Commerce and Industry of India (ASSOCHAM), and the Standing Conference of Public Enterprises (SCOPE). These three organizations have loosely federated to form the Council of Indian Employers (CIE) with the purpose of representing employer's interests with the Government and international forums such as the ILO.³⁶ Apart from these three, the All India Manufacturers' Organisation (AIMO) represents the interests of the small and medium scale enterprises and ensures representation in the ILC and SLC (Venkataratnam and Verma, 2001). It must be noted here that the employer organisations are not broad based and truly representative of the large number of employers in the unorganised sector.

In 1990, the Forum of Women in Public Sector (WIPS) was set up under the aegis of the Standing Conference of Public Enterprises (SCOPE). The broad objective of "WIPS" was to create a national network and a support system that would help women employees to harness their full potential and to enhance their contribution in the national development process in general, and public enterprises in particular. This forum operates at a national level through its Central apex body at New Delhi and functions through four regional centres at Mumbai, Chennai, Kolkata and New Delhi. The specific aims and objectives of the efforts are: (a) to promote growth and development of women in the public sector; (b) to assist the public undertaking in organising the full potential of women employees; and (c) to play a catalytic role in improving the status of women in and around public undertakings. WIPS cells are also set up in each enterprise to help network more effectively. It does not operate as a forum in which to seek redress for grievances for individual complaints from women. It works closely with human resources departments to develop women workers' capacities (through personality development, time management, etc), and also assist in skill development. For example, women in Coal India were trained in the use of shovels.

Various public sector enterprises have also complied with directions issued by the Ministry of Women and Child Development, Government of India that a special women's cell headed by a senior official be set up for overseeing work relating to women's welfare and for taking measures to provide a suitable environment for women employees. In addition, as part of the Gender Responsive Budgeting, cells set up in several public sector enterprises for the identification and implementation of welfare projects for women, along with other related activities have been stepped up in recent years.

The EFI represents employers on tripartite bodies set up under various labour laws and also commissions set up by the government from time to time. The EFI has advocated for adoption of policies against sexual harassment by constituent members. Various trade associations and chambers of commerce have also taken measures to promote participation

³⁶ The CIE is not registered while AIOE, EFI, and SCOPE are all registered organisations. The total membership in AIOE and EFI consists of 80 regional associations of employers or chambers of commerce and 322 public and private companies. SCOPE covers 240 public sector enterprises.

of women within their constituent units that we briefly discuss below. Recognising the importance of gender equality, the Confederation of Indian Industry (CII) set up a National Committee on Women's Empowerment in the late 90's. Following the study on Gender Equality at the Workplace, CII have been conducting interactive workshops in different regions/states to increase capacity of HR Heads to fully engage with gender equality in the workplace; and be aware and understand the ideas, assumptions, attitudes and behaviour which create an enabling environment. The Women Business Leaders Forum is also an active wing of CII. CII has also instituted the CII Woman Exemplar Award to promote women's empowerment by recognising the contribution of women in the fields of: Primary Education and Literacy; Health; and, Micro-Finance. CII has also been focussing on skill development for women and is looking to set up centres in backward districts that will focus on women's skills. Additionally, within CII, there are the CII Women's Empowerment Committee and CII – Corporate Social Responsibility wings that address women's issues.

In 2005, CII National Committee on Women's Empowerment commissioned a study on gender equality at the workplace, "Understanding the levels of women's empowerment in the workplace"(CII, 2005). The study revealed that women constitute only a very small percent of the employment labour force in companies. Only six per cent of the total number of employees in medium and large scale industries are women; with 18 per cent in medium and four per cent in large companies, respectively. The study also found that women employed at the managerial levels of a company were only 16 per cent at the junior level, 4 per cent at the middle and senior levels, and almost none at the top leadership positions. The study further notes that "Gender bias in recruitment, gender inequality and sexual harassment at the workplace are the major issues affecting women, as is evident from the study which quoted that 25 per cent of women faced gender bias on jobs". According to the study, 56 per cent of the companies that were surveyed did not have any formal policies in place to counter sexual harassment.

Apart from this, another noteworthy effort is the initiative of NASSCOM (National Association of Software and Services Companies, a trade body and the chamber of commerce of the IT-BPO industries in India) to launch the Gender Inclusivity Initiative in 2006. It has also introduced NASSCOM gender awards to encourage companies to include gender inclusive policies and programs. The Association of Women Entrepreneurs of Karnataka (AWAKE), formed in 1983, seeks to encourage and develop women entrepreneurs through skill building, finances and other related support. In 2003, the UN's Global Compact Society (India) was formed to promote corporate social responsibility based on a broad set of guiding principles based on human rights, labour rights, anti-corruption and sustainable environmental growth as part of the UN Global Compact Programme. It requires that companies support and enact, within the area of their influence, ten universally accepted principles; one of the principles requires that companies eliminate discrimination in respect of employment and occupation. Nearly 93 organisations – both public sector and private companies, professional bodies and other institutions, are a part of this initiative. FICCI and SCOPE are founding members of the UN Global Compact Society (Indian Chapter).³⁷

7.3 Emerging issues for social partners

The large scale increase in union membership in the recent past is attributable to increased unionisation among unorganised or informal workers, where most women are employed. While there is a surge in the increase of women's membership, this is not adequately reflected in the composition of the leadership, both of industry level unions and central trade union organisations. The fact that there has been only one woman representative in collective bargaining at the national level (in the case of banks) is a pointer to the relatively

³⁷ For more details see: http://www.unglobalcompact.org/docs/networks_around_world_doc/6.6/india_rep0405.pdf

smaller role played by women within these organisations. Often where delegates are elected to represent the state/union at national meetings, women do not get selected. Many trade unions have therefore adopted an informal role of reserving some seats in such conferences for women and their insistence that local units must send women delegates appears to have paid off.

The setting up of women's committees/cells/forums has helped focus attention on the specific concerns of women members. However, some of these concerns need to be emphasized in a greater way in order that they do not get sidelined in favour of discussions of wage revision, leave and seniority matters, which are often seen to be of more pressing importance. The following are seen as issues of women's concern: monitoring of sexual harassment committees, obtaining decent rest rooms and toilets for women, ensuring safety of women employees in sectors such as transport (where women drivers and conductors are being recruited), HIV at the workplace, training and skill development for women workers in order for them to break out of stereo typed roles. The trade union leaders we interviewed pointed to the need to draw larger numbers of women into the day-to-day functioning of unions, and the challenges this posed to the unions given the double burden faced by women workers. Taking time out to attend union meetings and union organising pose tremendous challenges, but many women are coming forward. The consciousness of increasing the role and facilities for women and creating a safe environment is also shared by employers and their organisations.

Viewed from a broad perspective, it is evident that gender concerns are on the periphery rather than woven into all agendas of both the employer organisations and trade unions. Male-dominated trade unions prefer to let the women-specific cells deal with gender issues while a similar creation of women's wings in employer organisations seek to address gender concerns. As further evidenced in the section on collective agreements and gender equality, our analysis of specific agreements indicates how gender concerns are mere additions to the 'regular' agenda and rarely nuanced to accommodate gender issues. Though there have been incremental changes in acknowledging the gender issues, in reality, action is limited to instituting studies or providing concessions to enable greater participation of women in a range of arenas. The more difficult work of gendering institutions and workplaces is yet to be undertaken in a real and meaningful way.

8. Social dialogue mechanisms and gender equality

The mechanisms of social dialogue have a long history in India, and at the national level, there have been several experiments with building social dialogue on labour issues. The first tripartite body to promote social dialogue – Tripartite National Labour Conference – was constituted in 1942. It was renamed the Indian Labour Conference in 1944. In the initial years, it met once a year to resolve labour and management issues and to discuss broader policy and legislative concerns. The first tripartite labour conference was held at New Delhi under the Chairmanship of Dr. B.R. Ambedkar. The conference consisted of two organisations, namely, the Indian Labour Conference (ILC) and the Standing Labour Committee (SLC). The objectives set before the two tripartite bodies at the time of their inception in 1942 were: (a) promotion of uniformity in labour legislation; (b) laying down of a procedure for the settlement of industrial disputes; and (c) discussion of all matters of importance to employers and employees across India.

Similarly, at the state level, State Labour Advisory Boards were also set up for consultation on labour matters. The period from 1947 to 1956 saw many labour legislations being enacted to protect the interests of workers. The next decade – 1957 to 1965 – saw a greater shift towards social dialogue. The Code of Discipline was introduced in 1958, but with limited success (Report of the National Commission on Labour, 1969).

Though not legally binding, under the code, disputing parties were asked to refrain from unilateral action. After the limited success of the Code of Discipline, the Government sought to introduce works committees/joint management councils through legislation to improve industrial relations and social dialogue.

The National Labour Commission was set up by the Government of India to study all aspects of labour problems in both the organised and unorganised sector and it submitted its report in 1969. Both the ILC and the SLC met in 1970 and 1971, respectively, to discuss the report and made significant policy suggestions for implementation. The ILC did not meet between 1972 and 1976. During the Emergency in June, 1975 the National Apex Body was set up in place of the ILC. A bipartite body, it met six times in 1976 to review industrial relations. The National Apex Body was abolished in 1977 and the ILC was restored (Monappa, 1985).

Tripartite consultative mechanisms which advise the government in evolving principles and policies in the labour field are: the Indian Labour Conference, the Standing Labour Committee and the Industrial Committees for various sectors.

Apart from these, the government's Joint Consultation Machinery (JCM) and the three-tier Permanent Negotiation Machinery (PNM) in Indian Railways are important efforts at promoting social dialogue. The JCM is a three tier structure set up for Central Government employees for consultations and arbitration of unresolved disputes.

At the State level, some states have experimented with social dialogue mechanisms to ensure welfare and job security for unorganized sector workers such as fisheries and head load workers. The Industrial Relations Committees (IRCs) have institutionalized industrial relations machinery in Kerala. IRCs have been set up in several sectors such as coir, plantations, cashew, construction, beedi and cigar, tile, motor transport, etc. These are tripartite bodies with wide representation of both employees and workers to resolve issues having an impact on the sector as a whole. The Labour Welfare Funds – tripartite bodies with representation from workers, employers and the government – have also stimulated effective social dialogue in the unorganized sector (Krishnamurthy, 2001). Maharashtra has tripartite boards for head load workers (*mathadi* and *hamal* workers) and security guards; while states like Tamil Nadu, Andhra Pradesh, Gujarat, Madhya Pradesh and Sikkim have tripartite structures to provide welfare for unorganised workers (NCEUS, 2007). However, overall, the effectiveness of the tripartite mechanism in the country has been on the decline over the last two decades as fewer meetings are held and the decisions rarely implemented.

8.1 Bipartite mechanisms

Collective bargaining is the primary bipartite dialogue mechanism in sectors where worker organisations are strong and vibrant. Collective bargaining is a process of negotiation and discussion between workers and management, primarily on the terms of employment. Roughly 7 per cent of the work force in the formal sector benefit from the process of collective bargaining. In the informal sector, where unionization is rather weak, autonomous groups have emerged to build dialogue on behalf of workers. The modes of dialogue in the informal sector can range from traditional forms of negotiation with employers where such employment relationships exist to lobbying with the government for suitable policy formulation and minimum wage protections for the workers in the sector.

Collective bargaining occurs at multiple levels in the country – plant level, industry level, sectoral-cum-regional level (cotton, jute, engineering, tea) and national level (banks, coal, ports and docks). Within the formal sector, there are several statutory bipartite workplace institutions that promote social dialogue for better industrial relations.

Attempts at improving workers' participation in management have led to the formation of Works Committees in several industries, but with limited success. The

Industrial Disputes Act, 1947, provides for the setting up of the Works Committees. The Joint Management Council (consisting of equal representation from workers and management to discuss matters relating to working conditions) was yet another effort at promoting better industrial relations which also met with limited success.

In 1975, a constitutional amendment was effected to promote workers participation in management. Article 43 A was introduced in the Directive Principles of State Policy and it stated thus: “the State shall take steps by suitable legislation or in any other way, to secure the participation of workers in management of the undertakings, establishments or other organizations engaged in any industry”. Accordingly, the Government of India introduced schemes in 1975 and 1983, largely for undertakings in the public sector, to enable greater participation of workers in management. The scheme provided for constitution of bipartite forums primarily at shop and plant levels. In certain undertakings, it was also to be implemented at the board level. The scheme provided equal representation of workers and management in the forums.³⁸ In 1990, the ‘Participation of Workers in Management Bill’ was introduced in Parliament but it has yet to be passed.

While social dialogue in India occurs at multiple levels, not much thought has been given to the creation of a labour-related gender-specific social dialogue institution. In our various conversations with representatives of trade unions and employers, it was evident that gender issues continue to be low down on the list of priority concerns for both worker and employer organisations. While acknowledging the importance of these issues, many argued that they were already subsumed within existing battles for better wages or basic facilities. However, it was clear that the exercise of gendering of each of the issues had not always been undertaken. For instance, undifferentiated productivity or performance criteria are an accepted norm at most workplaces. Thus, given the rather poor representation of women in labour matters at all levels, it may perhaps be in the interest of women workers to have an exclusive social dialogue machinery at the national and sectoral levels.

We discuss below two sector examples that have effectively used social dialogue to better the working conditions of women workers.

8.1.1 The garment sector

The Garment or Apparel industry employs nearly seven million women workers. Though dotted across the country, they are concentrated in Tirupur, Bangalore, Gurgaon Mumbai, Chennai and Ludhiana. The sector employs roughly 7 million people and the readymade export garment earnings of approximately US \$ 10.64 billion in 2009-10 (Apparel Export Promotion Council, 2010).³⁹ Considerable part of the industry is in the informal sector with only about 25 per cent of the firms being registered under the Factories Act (Vijaybaskar, 2002). Even within the formal sector, implementation of labour norms continues to be a struggle.

Both skilled and unskilled workers are employed in the Garment industry. Women workers are largely employed in low-end and tedious tasks such as sewing buttons, trimming threads, stitching and checking. Apart from segregation in allocation of jobs, a considerable wage differential exists between men and women workers in some parts of the country. Piece rates have been preferred over time rates for certain home based value added jobs, thus depressing wage rates for women workers (Majumdar, 2007). Wide spread violation of basic rights of workers has led to campaigns worldwide to protect and promote compliance with minimum labour standards.

One such effort towards greater corporate social responsibility is the social accountability standard or the SA 8000. Initiated by Social Accountability International,

³⁸ Government of India, Ministry of Labour, Background note at the Third India-EU Seminar on Employment Relations and Resolution of Conflicts, New Delhi, September 2008 accessed at <http://labour.nic.in/lc/Indo-EU/seminarSep22-23-08.pdf>

³⁹ Press Release of the Apparel Export Promotion Council, India, dated June 3, 2010.

SA 8000 is an auditable standard for third party verification based on 11 ILO conventions, the Universal Declaration of Human Rights and the United Nations Convention on the Rights of the Child. The standard requires compliance with eight labour standards: elimination of child labour, abolition of forced labour, occupational safety and health, freedom of association and the right to collective bargaining, discrimination, disciplinary practices, working hours, and compensation. It extends to companies, suppliers and subcontractors and is generally monitored through independent auditors. The newer and more credible social audits are the multi stakeholder initiatives that ensure greater participation of local teams in the implementation of the codes of conduct. Despite the potential that such codes of conduct may present, problems persist.⁴⁰ These mechanisms however cannot substitute for traditional collective bargaining in this sector where a large number of CTUOs are active.

8.1.2 Waste pickers

Waste picking and the recycling industry provides employment to a large number of women workers. Though there are no reliable estimates of the number of workers in the country, the total population of waste collectors in Pune is estimated to be 6,000, according to one study, of whom 72 per cent are women (Chikarmane et al, 2001). There is now a slow but steady movement to organise the workers by several independent unions and organisation in cities like Pune, Delhi, Mumbai and Ahmadabad. Typically, these workers are self-employed as there is no employer-employee relationship between the workers and the scrap traders or the municipalities. Being vulnerable and having no legal right to the waste, the workers face regular harassment and extortion at the hands of the police and other authorities.

The recycling sector is structured in the form of a pyramid, with the scrap collectors at the base and the reprocessors perched at the apex. At the bottom of the heap are the waste pickers engaging in “free” collection of scrap from municipal garbage bins and dumps. Marginally above them are the itinerant buyers who purchase small quantities of scrap from households. Waste pickers retrieve paper, plastic, metal and glass scrap from garbage bins or receptacles that are provided by the municipalities for the disposal of garbage on the street, and from landfill sites where the collected garbage is transported and dumped. They establish ‘territorial rights’ over bins and dumping sites and frequently squabble over their infringement. They move mostly on foot covering up to 10-12 kilometers a day with headloads of up to 40 kg. Some of them travel by train or truck to the villages and industrial belts around the city in order to collect scrap. They leave their homes at sunrise and return at sunset after a 10-12 hour working day. The average daily earning is about Rs.60.⁴¹ Waste pickers are almost exclusively Dalits,⁴² the erstwhile ‘untouchable’ castes. They rank the lowest within the urban occupational hierarchy even within the informal sector.

The Kagad Kachda, Patra Kashtakari Panchayat⁴³ (KKPKP), a trade union of waste pickers has over 5000 registered members and is active in Pune. On the initiative of KKPKP, a unique public private partnership which is the first in the country, an agreement

⁴⁰ For instance, in a specific instance of regulating working conditions for workers in a garment factory in Bangalore, the Garment and Textile Workers Union (GATWU), Cividep and Clean Clothes Campaign and the India Committee of the Netherlands were slapped with civil, criminal and other legal action by the company Fibres & Fabrics International (FFI/JKPL). The provocation was a public campaign which informed the Dutch and international constituencies of labour rights violations and irregularities in the application of labour laws at FFI/JKPL. The ensuing litigation and eventual intervention of the Dutch Government to mediate the matter provide a classic example of failure of the social dialogue mechanisms leading to escalation of tensions in industrial relations.

⁴¹ 1 US \$ is approximately Rs.50.

⁴² The term Dalit meaning oppressed was used by Dr Babasaheb Ambedkar for the collective of all the erstwhile untouchable castes. It has been imbued with political meaning ever since and will be used henceforth in this paper.

⁴³ Literally translated, the title means Paper, Glass, Scrap Collectors Association.

was signed between the Pune Municipal Corporation and the cooperative of waste pickers called SWaCH Pune Seva Sahakari Sanstha Maryadit (formed on the initiative of KKPKP) on 24.9.2005 under which the cooperative would have the responsibility of primary door-to-door collection of waste from households in the city. Beginning with a pilot project and the participation of 1.5 lakh⁴⁴ households involving 1300 waste pickers, the agreement now is operational in 80 of the 144 wards in the city. Under this unique tripartite agreement, the Pune Municipal Corporation provides infrastructure to the waste pickers in the form of handcarts, bucket, materials, tools and uniforms. The municipality also supports management costs of supervisors, training costs and is responsible for the insurance of the waste pickers. The KKPKP organizes the waste pickers for door-to-door collection and in the formation of the cooperative. The citizens are responsible for segregating their waste and pay Rs. 10 per month per household for waste collection.

9. Collective agreements and gender equality

Collective bargaining in India covers only a very small proportion – approximately 7 per cent – of the workforce. The expressions ‘collective agreements’ used in this paper includes both bipartite settlements entered into by the trade unions and employers as well as those entered into in the presence of the Conciliation Officer under the IDA. We may note that the bipartite concept of collective bargaining excludes the unorganised workers who may rely more on social dialogue mechanism to negotiate their working conditions (see example of waste pickers in the earlier section).

The collective agreements we have focused on cover the following sectors: plantations, aviation, telecom, banks, heavy engineering, power, coal and beedi. The union density in each of the sectors/industries covered varies; while the all India average union density is 16.88 percent.⁴⁵ (Data relate to only the regular workforce; those who are in informal employment in the formal sector viz, those employed through an intermediary for performing certain tasks and those on a casual employment are not included in calculation of union density). Of these sectors, the coal sector has a union density of 100 per cent; banks, as part of the financial institutions has a union density of 8.6; tea plantations – 48.1; and electricity, gas, power – 54.5 (Das, 2008). We can also note that the union density is higher in public sector institutions compared to those in the private sector, and is greater in larger firms compared to smaller firms.⁴⁶

Some of the collective agreements covered relate to the public sector enterprises (telecom, coal, power, MMTC). Wage fixation in the different public sector enterprises (PSE) in India are concluded separately for different public sector companies within the framework set by the guidelines issued by the Department of Public Enterprises (DPE).⁴⁷ These guidelines are issued with the approval of the central or state governments depending on whether the public enterprise is under the control of the central or state government. The guidelines relate to not only wages, but also working conditions and facilities. Collective agreements in the public sector are often concluded industry-wide in sectors such as coal, power, telecom, aviation and steel. Parties to the negotiation are the managements of the various public sector units in the industry and the unions recognised under the Code of Discipline, voluntarily adopted by managements and unions several decades ago.⁴⁸

⁴⁴ Lakh is an Indian terminology for one hundred thousand, in other words 1 lakh = 100,000.

⁴⁵ Union density refers to the proportion of actual to potential members in an industry or establishment.

⁴⁶ S. Das(2008).

⁴⁷ The Bureau of Public Enterprises was conferred the status of a full-fledged Department and is now known as the Department of Public Enterprises (DPE) in the Ministry of Heavy Industries and Public Enterprises in 1990.

⁴⁸ Appendix A, Code of Discipline lays down the criteria for recognition of Union.

The central government has adopted the recommendation of the Justice Jagannadha Rao Committee to look into matters concerning wage revision. Specifically, this recommendation mentions that officers of PSE are entitled to higher wages if the profit of the enterprise should so warrant. This has led to some unions stating that there is a shift to employing more workers on a contractual or casual basis to evade payment of regular benefits in order to increase the profits of such PSEs (Working Class, 2009, p. 24).⁴⁹ One of the important issues raised by unions in PSEs in the current round of wage negotiations has been that the periodicity of wage revision should be five years while the DPE argues for a ten year settlement period.

The DPE has adopted some family-friendly policies which are binding upon all member PSEs. The DPE has adopted a policy of sympathetically considering the possibility of posting spouses in the same city in order to assist the work-life balance of its employees. This applies where the spouses are government employees or work in a PSE.⁵⁰ In line with the recently announced policy of the government to increase the number of women among government employees in 2009, it has issued guidelines for the mandatory setting up of crèches near the PSE in “view of the dual responsibilities borne by working women”.⁵¹ This guideline is in the process of being implemented in the PSEs.

A brief profile of the sector, industry, local area of each of the collective bargaining agreements analysed herein is contained in Annex C. The main features and the analysis of the collective agreements that have a bearing on gender equality are elucidated below.

9.1 Public sector telecommunications industry (BSNL)

Bharat Sanchar Nigam Limited (BSNL) in the telecommunications industry is one of the biggest public sector enterprises in the country. BSNL employs over 300,000 workers with over 100, 000 casual and contract labour in BSNL. Women constituted around 30 per cent of the workforce in exchanges and were employed in this sector as telephone operators and telegraphists. This has gradually changed and the workforce in exchanges is now mixed. Till the 1940s all telephone operators were women.

Until the 5th Pay Commission (implemented from 1.1.1996), wages in the telecom sector were unilaterally set by the government after consulting the social partners. After restructuring, the first wage agreement based on collective bargaining was concluded in 2002. However, for purposes of leave and medical benefit, the employees are governed by government rules. The trade unions had put forward, and obtained, based on consultation in the social dialogue procedures for government employees, the right to have dormitories at the exchanges where those whose duties began at night could rest. This was particularly the case in states such as Kerala where trade unions have women’s wings. In 1980 the BSNL Employees’ Union had fought for and won the right to have crèches with attendants provided in offices in large cities. In line with the Pay Commission for government employees BSNL employees now obtain six months maternity leave and the facility of total child care leave of two years. Women also comprise around 30 per cent of the 50,000 strong executive (non-workman) cadre employees. There are only 5 per cent of women in the contract labour employed in BSNL. Some of the contract workers in states such as West Bengal and Kerala have formed themselves into trade unions, and the BSNL Casual and Contract Workers Federation was formed a few years ago. These contract workers are not covered by the wage agreement entered into nationally with the BSNL management.

⁴⁹ *The Working Class*, August 2009, p. 24.

⁵⁰ <http://dpe.nic.in/newgl/glch02d16.htm>, Posting of Husband and Wife in the same station, BPE, O.M. 15/1/89 dated 15 January, 1989, accessed on 11.10.2009.

⁵¹ <http://dpe.nic.in/newgl/glch1222.pdf>, dated 17.9.2009, accessed on 11.10.2009.

9.2 Banks

The government nationalised 14 commercial banks in 1969, followed by 6 more in 1980. Together with prior rounds of bank nationalisation of the State Bank of India and its subsidiaries, there are now 27 public sector banks in India. There have been eight bipartite national level settlements thus far between the Indian Banks Association and their staff represented by the All India Bank Employees' Association, National Confederation of Bank Employees, Bank Employees' Federation of India, Indian National Bank Employees' Federation and National Organisation of Bank Workers.

The 8th Bipartite settlement entered into in 2005, which is currently in force, has a woman as part of the negotiating team from AIBEA for the first time. Women account for around 5 per cent of the officer cadre and around 20 per cent of the clerical cadre in banks (Mazumdar et al, 2000). The presence of a woman negotiator reflected the growing presence of women in the union and the creation of a women's cell within the All India Bank Employees Association. The central trade unions have focused on increasing trade union membership among women bank employees, and this is reflected in the large presence of women in trade union meetings/activities, gender concerns articulated in the collective agreements and the presence of women in the negotiation team for the national-level settlements in banks. While the specific-gender issues are discussed in the broad themes identified in section 9.8 below, we can note that the bank settlement is the first in the country to permit pregnant women to discontinue working at a computer if she so requests. (The law relating to maternity benefit only requires a pregnant woman to be exempted from arduous work.).

9.3 Aviation

The Aviation sector employs a large number of women employees. Air India, one of the largest air carriers in the country employs nearly 1889 cabin crew, of whom 55 per cent are women. There was, initially in Air India (then government owned airline company), considerable disparity in the pay scales, promotional avenues and age of retirement of the male cabin crew (Flight Stewards) and the female cabin crew (air hostesses). Initially, the retirement age of air hostesses in Air India was fixed at 30 years or on marriage whichever occurred earlier. Under Regulation 47 the General Manager was given the discretion to extend the retirement age of air hostesses up to five years subject to their being found medically fit. In 1980, Air India stipulated that air hostesses would retire at the age of 35 years or on marriage if it took place within four years of service or on the first pregnancy whichever occurred earlier. There were discretionary powers vested in the Managing Director to extend the retirement age up to ten years by granting yearly extensions subject to the air hostess being found medically fit. As far as the male cabin crew were concerned, however, members could continue on flight duties until 58 years. On challenge, the Supreme Court held that "air hostesses form an absolutely separate category from that of the AFPs (Air Flight Pursers) in many respects having different grades, different promotional avenues and different service conditions".⁵² It was held that the prescription of a different retirement age for the female cabin crew was not discriminatory and did not violate Article 16(1) of the Constitution. The court also did not find arbitrary the stipulation that that if the air hostess married within four years of their joining service they would stand to lose their jobs. However, the Court struck down that portion of Regulation 46 of the service regulations which provided for termination of service on first pregnancy. It also struck down the Regulation which gave uncontrolled discretion to the Managing Director to extend the services of an airhostess beyond 35 years and up to the age of 45 years, and allowed for their extension till 45 if found medically fit.

⁵² *Nargesh Meerza v. Air India*, AIR 1981 SC 1929.

Following the continued agitation by air hostesses against their differential retirement age, fresh challenges were filed in courts. In *Air India Cabin Crew Association v. Yeshaswinee Merchant*,⁵³ the Supreme Court once again negated the challenge to the constitutionality of the regulations that sanction a lower retirement age from flight duties for air hostesses, on the same grounds as in the *Nergeesh Meerza* case, viz., that the discrimination was not based solely on sex. The added justification for holding so also came from the fact that the air hostesses were themselves parties to the collective agreement that sanctioned their retirement from flight duties at 50. This acquiescence by the (majority) cabin crew association was crucial for the court holding that it could not be argued that air hostesses are made to retire at an age earlier than males. Subsequently, the Petition Committee of the Lok Sabha (House of the People, Indian Parliament) recommended that the different retirement ages for male and female cabin crew should be done away with. The Central Government on 16.10.1989 issued a direction to Air India that the male and female cabin crew should be allowed to serve till 58 years. With the age of retirement being identical, the airline stated that Executive Female Cabin Crew can also be considered to be designated as In-flight Supervisors along with Executive Male Cabin Crew, subject to suitability. This was challenged by the male crew and the Air India Cabin crew Association, and air hostesses represented by the Air India Air Hostesses Association impleaded themselves in this case. The Delhi High Court held in 2007 that the order permitting women to perform roles of in-flight supervisors was a removal of inequality against women cabin crew and not an imposition of inequality on the male crew, and stated: “This Court also finds nothing arbitrary, unreasonable or irrational in the pre-1997 male cabin crew being asked to serve on a flight which has their female colleague as an IFS (in-flight supervisor). Air India Ltd. has enabled its female cabin crew to break the ‘glass ceiling’. From a constitutional perspective, we cannot find fault with that.”⁵⁴

9.4 Coal

The coal industry is one of the earliest industries set up in colonial times and saw the emergence of a modern-day working class in India. There are around 4,500,000 employees in Coal India and its subsidiary companies at present, of which around 29,000 are women. There are also 35,000 contract labour employees in Coal India and its subsidiaries. The number of women employees in coal mines was very high in the nineteenth century given the practise of recruiting families to work the mines. With the slump in demand for coal in the 1920s, and the introduction of the ban on underground work by women, the number of women in mines declined.

Following the nationalisation of the coal mines in the 1970s, there were attempts to rationalise staff and to increase productivity. Currently women are employed in open cast mines, as security guards, in hospitals; and some skilled workers are employed in high capacity earth moving equipment, lathes and in motor winding equipment.

The coal agreements have had provisions for compassionate appointment on the death of an employee dying in harness. The management in 2002 offered a voluntary retirement scheme for the women workers with a provision that an eligible son of a female retiree could be offered appointment. This has been a subject matter of complaint to the ILO Committee of Experts on the Application of Conventions and Recommendations and the Committee has requested the Government take the steps necessary to ensure that voluntary occupational retirement schemes are designed and implemented without discrimination based on sex. Meanwhile, the Supreme Court has also laid down norms for implementing schemes of compassionate employment keeping in mind the constitutional requirement that public employment must be open to all citizens. The schemes are under review in the light of these developments.

⁵³ 2003 III LLJ 1 (SC); AIR 2004 SC 187.

⁵⁴ *Rajendra Grover v. Air India*, Delhi High Court, 2007.

9.5 Tea

India is the world's largest tea producer and exporter. Tea plantations are one of the largest employers in the organised sector, and they employ around 1.5 million workers of whom little less than a million are permanent workers and the rest casual. Women constitute roughly half of the work force in this sector.

Collective agreements are entered into at the state level for various plantations. In Kerala the Plantation Labour Committee is the tripartite forum where negotiations take place between owners of plantations and workers. There are 501,000 workers employed in plantations in Kerala spread over 1,001,573 estates/growers. The latest collective agreement with respect to tea, rubber, coffee and cardamom plantations was entered into between the Association of Planters of Kerala and the trade union representatives in the presence of the conciliation officer on 29.9.2008. The agreement with respect to tea, for instance, is based on a piece-rated system of wages. It also specifies a guaranteed time rate as permitted under the Minimum Wages Act, 1948 that ensures a certain basic minimum payment per day for a worker who is reasonably diligent, beyond which the worker is paid for increased output. Elaborate adjustment of the piece rate is done in those estates where the standard output is lower than the state average. The presence of the trade union (though there are no women in the collective bargaining team) has ensured gender equality in payments and also ensures equality of wage rates between women dominated categories, such as midwives, teachers in plantation schools that are not recognised, ward boys and ward girls; and other categories which are male dominated, such as plumbers, pump operators, masons. All these categories of workers are treated as 'non-staff' and are covered by a single pay scale with variations in skill and seniority determining a person's place on the scale.

9.6 Power

The National Thermal Power Corporation Ltd. is one of the largest power generating companies in India. It generates 200.683 billion units of electricity which is 28.51 per cent of the total power generated in India. NTPC has a share of 19.12 per cent of the installed capacity in the country. It has also diversified into joint ventures and as of 2008, 27,350 MW of energy was generated through its owned companies and 2,044 MW through joint ventures.

The numbers of regular employees in 2008-09 was 23,390. Women comprised 3 per cent of the regular worker/executive cadre, while they comprised 6 per cent of the executive cadre. The wages and benefit structures for workers of the NTPC are negotiated through a National Bipartite Committee. The last negotiations were concluded on 25.1.2001. The next rounds of negotiations are currently about to start.

9.7 Beedi/tobacco

The Beedi industry, dominated by women, is now a home-based industry. The raw material (tendu and tobacco leaves) is obtained and distributed through the subcontractor to individual workers. Payment of wages to workers and maintenance of production records is primarily the responsibility of the subcontractor. Production is carried out at individual households by women or collectively, when they gather at one place to work. The nature of work, therefore, makes the process of unionization and collective bargaining difficult. Studies indicate that after the promulgation of the Beedi and Cigar Act, 1961 and 1967, factory-based beedi workers (mostly men) were displaced from the factories, and the work shifted to home-based women workers (Srinivasulu, 1997).

The beedi establishments covered under the Minimum Wages Act, 1948 include the establishments licensed under the Beedi and Cigar Workers (Conditions of Employment)

Act, 1966, along with an unknown number of those functioning without the requisite licences. In addition, a large number of unbranded beedi establishments, functioning as beedi traders or green beedi manufacturers, and operating within the excise exemption limit of 20 lakh beedis per annum (which does not require such licenses), are also covered under the Minimum Wages Act, 1948. The minimum wage for beedi workers is fixed on the piece rate basis (per thousand beedis). Under the Beedi Welfare Fund Act, the beedi workers receive scholarships and school uniforms for their children, maternity benefits, free health services, housing and life insurance along with sports and recreation services. Funding for all these social security services is levied on all employers in beedi industry.

While collective agreements are rare in this sector, trade unions participate in the advisory boards set up under the Minimum Wages Act, 1948 for wage fixation to ensure that the piece-rated wages are equivalent to a time-rated wage. The notification in the state of Karnataka for wages of beedi worker is a reflection of a long struggle by beedi workers (largely women) and the role played by the trade union in such boards. As a result of the 2006 notification, the piece rated wage as fixed in a per-day basis (1000 beedis, per day) and ensures a payment of Rs. 80.36 per day for every 1000 beedi rolled.⁵⁵

9.8 Collective agreements and gender concerns

Based on an analysis of the collective agreements and interviews with senior trade union leaders, we highlight the gender concerns that are clearly manifest in the bargaining process.

9.8.1 Definition of family and dependants

One of the issues in collective agreements and their impact on women is the manner in which a family is defined. Often, the patriarchy inherent in the notion of a male dominated family is visible in the choice of whether the man's parents or wife (where she is working) will be chosen as the dependants who are entitled to medical benefits and other facilities. The decision of who may be chosen as dependants is usually determined through collective bargaining. In the absence of women in the bargaining team, or the absence of the voice of widowed women who have been given jobs in their husband's organisations (on ground of compassionate appointments – a common practise in public enterprises), the presence of her deceased husband's parents as existing dependants may oust the right of her own parents to be given benefits. This is often a reflection of the patrilocal kinship structures in India where the woman lives with her husband's family, and usually continues living there even after her widowhood (living alone or returning to her natal family are not common practises in some parts of India). For instance, the current National Thermal Power Corporation agreement states, "The parents of a deceased employee shall continue to be treated as dependants of widow of the deceased employee who has got employment in National Thermal Power Corporation on compassionate grounds. Consequently, the parents of the widow of the deceased employee will not be treated as dependants in such cases."⁵⁶ This is because the management permits only one set of parents to be covered under the term dependant. Another national wage agreement for the coal sector, on the other hand, grants the widow who is offered compassionate appointment the choice of retaining either the in-laws or own parents as dependants for the purpose of such facilities. While this no doubt poses a hard choice to the spouse, it allows some leeway in deciding whom to retain as dependants eligible for medical facilities. The collective agreements in banks offer a similar choice to an employee concerning dependants. However, given the patrilocal nature of married residence in India, it may be the parents-in-law who may benefit from the stipulation of co-residence. The current bank settlement states: "A married female employee may include her natural parents or parents-in-law under the definition of

⁵⁵ Notification No. KAE 165 LMW 2006 dated 06.10.2006.

⁵⁶ Clause 4.7, National Bipartite Committee, Memorandum of Agreement on Wage Revision w.e.f. 1.1.1997.

family – but not both – provided that the parents/parents-in-law are ordinarily residing with and wholly dependent on her.”⁵⁷

9.8.2 Maternity/paternity benefit

Maternity leave under the Maternity benefits Act, 1961, and the Employees’ State Insurance Act, 1948, is 90 days (see Annex A for details of coverage). The government has increased this to 135 days for its employees. The 7th Bipartite Settlement (2000) covering bank employees, grants maternity leave to a female employee for a period not exceeding six months on any one occasion, and not exceeding 12 months during the entire period of service. Unlike in the case of government service, there is no overt move to limit the number of children for eligibility to maternity leave, but a cap is placed on the total duration per employee. The collective agreement in banks also permits a childless female employee to avail of maternity leave when she adopts a child below one year of age of a maximum period of two months, or till the child reaches the age of one year, provided that such maternity leave for adoption can be availed of only once during an employee’s service. Leave for adoption cannot be availed by part-time or temporary employees.

It is still not very common to find provisions for paternity leave in collective agreements. Government employees have, since 1997, been granted the right to avail of 15 days paternity leave. Some collective agreements also incorporate this leave, as in the case of the settlement for the NTPC. It provides that paternity leave will be prospectively available to male employees having less than two surviving children, for 15 days during the same period during which the wife avails of maternity leave. This leave is also to be availed of only twice in the entire period of service.

Paternity leave is yet to become commonplace in the public sector establishments. It has also not often been raised as a priority issue by trade unions in negotiations. Far more concern has been expressed in enhancing maternity leave and benefits for women employees.

9.8.3 Number of children eligible for medical/ maternity benefits

The limitation of medical benefits to children or the limiting of maternity benefit to two children are other aspects found in some collective agreements, and also the conditions of work determined through a social dialogue process. The need, often articulated by the Indian government, to have effective population stabilisation policies, has led to the government limiting the maternity benefit for its government employees to two children. The drive to limit women to having just two children is also visible in a series of state-level laws adopted by different states in India that limit the right to be elected as representatives of grassroots institutions (panchayats/municipalities) to those persons who have no more than two children. This affects, in particular, the rights of women who may have a limited role in deciding the number of children they may have within a marriage. This limitation of the right of such persons to be elected as democratic representatives has also been upheld by the courts in India.⁵⁸

The NTPC Agreement on Wage Revision w.e.f 1.1.1997 (and which is still in force as the new agreement has not yet been signed) defines family for facilities of leave travel concession and medical benefits as spouse (only one), two surviving children below 25 years of age and parents, and this is subject to members being dependent on the employee. The restriction regarding number of children is prospective; it does not apply in respect of those employees who already have more than two children. The bank settlement is broader, and includes all wholly dependent unmarried children. It is also one of the few collective agreements that specifically include step-children and legally adopted children

⁵⁷ Clause 18. c of the 8th Bipartite Settlement.

⁵⁸ *Javed v. State of Haryana* AIR 2003 SC 3057.

within the scope of the family. The recognition of adopted children is significant, given the long standing demand of women's organisations in India that a limited form of maternity benefit should be available to women who adopt an infant. The right to legally adopt a child is not available uniformly across all communities in India. This is a result of the religious personal laws which are specific to each religious community. At present, the Muslim and Christian communities in India do not have the right to adopt a child (except under the Juvenile Justice Act, 2000). Instead, they are appointed as wards/guardians of such a child, under the Guardians and Wards Act, 1890. The NTPC collective agreement treats children who have been given in guardianship to a childless Muslim or Christian employee as entitled to medical, travel and educational facilities available to those who have natural or adopt children.⁵⁹

9.8.4 Compassionate appointments/ voluntary retirement schemes

The importance of a job in the government or public enterprises and its value as a vehicle to a better life is underscored in the unique practise of compassionate appointment granted to a member of the family upon the disablement/death of a deceased employee. Compassionate appointment is not a right available in every case and rules have been framed by government and public enterprises for grant of this benefit. Generally, not more than 5 per cent of recruitment can be by way of compassionate appointment. Collective agreements have addressed this matter and differences on account of the age and sex of the family member who is given a job in such cases can be noted. The NTPC collective agreement grants the right to one dependant of each worker who is permanently disabled or dies as a result of accident while on duty. The definition of dependant does not discriminate between spouse, son/daughter or legally adopted son/daughter.⁶⁰ In the coal sector, if a woman employee dies, a male spouse irrespective of his age (though it needs be within the retirement age) is offered employment. If the son opts for this appointment, then he should be below 35 years. However, if a male employee dies and the spouse takes up compassionate employment, she should be below 45 years of age; otherwise, compassionate appointment is not offered and instead a monthly compensation which is a fixed proportion of the last pay drawn is given to her. This amount is negotiated and is currently 80 per cent of the last pay drawn according to the latest collective agreement payable until she reaches the age of 58 years.⁶¹

A similar provision under the National Coal Wage Agreement that gives preferential treatment to sons of early retirees, as well as to male dependants of workers who died in service has been held to be discriminatory by the ILO CEACR in 2008. The National Coal Wage Agreement entered into force in January 2009 has indicated a revised scheme for determining a dependant of a worker will be worked out at the earliest.

9.8.5 Transfer/deployment

Collective agreements in banks have over the years reflected the need for computerisation of bank procedures and the need to be deployed in different branches. This has meant that the staff has acquired the requisite competence to upgrade to computerised banking and also that management has increased flexibility to deploy staff across branches.⁶² The current bank settlement has restricted the ability of managements to so deploy female employees above the age of 55 and male employees above the age of 56, with the option to raise the bar on redeployment to 58 years if the required number of eligible employees is not available.

⁵⁹ Clause 4.8 NTPC Agreement on Wage Revision.

⁶⁰ Clause 4.3, NTPC Agreement on Wage Revision.

⁶¹ See *Mamata Mohanty v. Chairman, Coal India Limited*, decided by the Supreme Court, 2003.

⁶² Schedule VI, 8th Bipartite Settlement.

9.8.6 Dealing with sexual harassment

Following the decision of the Supreme Court in 1997, sexual harassment in the workplace has been prohibited and complaints committees are to be in place in all establishments. Presently, there is no specific legislation pertaining to 'sexual harassment' in the country. Collective agreements and standing orders have incorporated the requirement of sexual harassment as a misconduct for which the employee or employer can be punished. Trade unions and managements, by and large, assert that such committees are in place and that very few complaints are actually lodged by women employees in practise. However, in the absence of a requirement to make public whether the sexual harassment committees have been set up, how the members of the committees are selected/elected, the nature/types of sexual harassment within establishments, or the pro-active measures taken by such complaints committees, such information is hard to access. Our discussions with leading members of the trade union centres indicated that women in certain sectors, such as: road transport (conductors/drivers who have to remain with the bus even if it breaks down at night during inter-state travel), municipal employees (who need to report for duty in the early hours of the morning in order to clean the cities by day break), and those working the late shift, are particularly prone to violence when travelling to and from work, apart from harassment at the workplace. Trade unions have pointed out that there is a need to broaden the scope of such policies to provide for transport facilities to not only those in the night shift, but to those who need to adhere to hours of work when public transport does not apply.

9.8.7 Other issues

Some collective agreements have incorporated broader issues that impact the status of women in society as punishable misconduct. For instance, the revised Settlement on Disciplinary Action and Procedure entered into by banks and their employees in 2002, stipulates that the giving or taking of dowry, i.e. demanding directly or indirectly from the parents or guardians of a bride or bridegroom any dowry, amounts to a misconduct for which the employee can be punished. Rules governing government employees treat bigamy, employment of child labour in their homes, giving or taking of dowry, in addition to sexual harassment at the workplace, as a misconduct for which departmental action may be taken against an employee. The justification for including actions not directly impinging on workplace discipline in the list of prohibited misconducts for which action can be taken by the employer is in recognition of the social responsibility of trade unions and managements to transform the social fabric of society. These changes have had the full support of the trade unions in the social dialogue process.

Women employed in customer service jobs such as air hostesses have to maintain minimum health requirements a part of their contract. These requirements are negotiated as part of collective agreements in the aviation sector. The collective agreement entered into between Air India and the Air India Cabin Crew Association in 2008 stipulates that the modalities of the new weight procedure will be bilaterally discussed and finalized. Despite such agreements, in 2007 air hostesses unsuccessfully moved a single judge of the Delhi High Court against their employer-airlines that required them to shed weight to the level stipulated in their employment contract.⁶³ The employer had ordered them to be grounded and to be treated as on leave (due to them, in other cases, leave without pay) until such time they shed their excess weight. The court held that maintaining their weight within the prescribed limits constituted a part of the service conditions and could not be challenged. The court also observed that the job profile demanded handling of emergency situations which are to be handled deftly, with alacrity and presence of mind, all of which require that the cabin crew possess the highest order of physical and mental fitness. The court also rejected the contention that such weight-related regulations are in any way unfair, unreasonable and insulting to their womanhood, since it observed that it was not air

⁶³ *Sheela Joshi v. Indian Airlines Ltd*, decided on 31 May, 2007.

hostesses alone who were required to observe weight standards; other members of the flying crew were also required to do so. This decision was affirmed on appeal to a larger bench.⁶⁴

Women tend to be concentrated in lower skilled and lower paying jobs in many of the sectors. There appears to be no specific focus in the negotiations to provide skill development to women in order to enhance their capacity to move into higher paying jobs. The Women in Public Sector (WIP) organisation has focused on obtaining skill development for women so as to break this occupational segregation by gender.

9.8.8 Nature of collective agreements in the informal economy

The Pune experiment with waste pickers constitutes a pioneering attempt by informal workers to engage in collective agreements. Despite there being no employer-employee relationship, a public private partnership involving government, the consumer and service provider may be an ideal one for women workers who are self employed and who constitute a major portion of the unorganised or informal workforce. Similar arrangements involving street vendors and the municipality, forest collectors and the forest departments, women fisher folk engaged in selling produce and the government agencies, may offer a way to have collective agreements for this group of workers.

9.8.9 Laxity in enforcement

There is a marked absence of monitoring and enforcement issues in the collective agreements surveyed. While standards are mutually agreed upon, there is an implicit assumption that all the laws and rules issued by the government will be complied with. Studies indicate that in several institutions, the provisions with regard to maternity benefit, crèches, restrooms, and toilet facilities are not complied with. However, grievance committees to deal with such discrepancies do not seem to have been a priority in the negotiation/social process. Reliance is placed upon the inspection procedures of the labour administration departments that regularly inspect premises for violations. Studies undertaken of such inspection procedures indicate that the number of women enforcement officers of the labour department is abysmally small. In the absence of adequate women labour administration officials, it is difficult to detect violations of laws such as the ERA, 1976, mandating equal wages for same or similar work. Labour administration officials lack transport facilities, and are understaffed, and laws specifically affecting women, such as those dealing with equal remuneration or maternity benefit, are not subject to the same numbers of inspections as general laws affecting all workers (Thorat, 1995).

9.8.10 Presence of women in negotiating teams

The number of women in trade unions is increasing in India. This increase is primarily due to the increased unionisation among informal workers. Increased unionization rates among women employees does not get adequately reflected in leadership positions within trade unions, nor in the negotiating teams that conclude collective agreements. Among the sectors surveyed, women were part of the team only in banks and among waste pickers. We have already noted the difficulties faced by women union members in taking an active part in union affairs due to their double burden: patriarchy within the households that require women to do most of the household work, male domination within trade unions which do not easily change their style of functioning to include women nor give sufficient importance to 'women's issues' as compared to issues of wages and other perks. There is no doubt that the presence of women in leadership positions and within the negotiating team brings to the fore issues that would otherwise have lower priority. The examples of computer use during pregnancy in banks, dormitories for women telecom workers are

⁶⁴ "HC backs IA in grounding of overweight cabin crew", *Indian Express*, June 5, 2008.

some examples. The lack of women in such negotiations also has adverse effects on women. The agreements concluded with the cabin crew in the Air India agreed to a disparity in retirement age for women; challenges by individual women were turned down by the courts on the ground that these were binding on all cabin crew. Even in the recent collective agreements entered into by the Air India Cabin Crew Association and Air India, there were no women representing employees. Another aspect of the matter is that under the Industrial Disputes Act in India, employees who perform supervisory jobs are no longer treated as ‘workmen’ and subject to the provisions of the IDA. As a result, women who are senior and who would be ideally suited to be part of the negotiating team are excluded from the scope of such agreements, and collective agreements may not reflect their interests, such as in the case of air hostesses where the union agreed to a retirement age despite objection from more senior executive level air hostesses.

Among other collective agreements studied, the presence of women in the negotiating team in the pharmaceutical industry in Goa was significant. This is a sector with women workers, and the Goa Trade and Commercial Workers’ Union has women as part of the negotiating team that concludes the agreement.

In order to highlight gender related achievements in each of the agreements discussed in all sectors, the main gender features of all the agreements have been placed in a comparative chart at Annex D, below.

10. Conclusions

The increasing presence of women in the work force and in trade unions has sharpened the demand for gender equality and non-discrimination at work. The challenge to policymakers is to provide a level workplace/environment for women and to create enabling mechanisms within which women’s voices can be articulated and heard. Measures to achieve this could focus on:

10.1 Law and policy reforms

Acknowledging women’s work by adopting a gendered definition of ‘work’ is a crucial beginning to law and policy reforms in the country. Redefining ‘work’ from the perspective of women workers would enable a more gendered understanding of work as carried on by women. Accounting for household work and its vital contribution to the labour market would be a first step in gendering law and policy in this direction. Improving the access of women to skill training, capital and other resources through law and policy efforts would enable a better working environment for women workers. Some specific areas that need intervention are:

- Discrimination at the work place: Women workers are paid differential wages for the same work and have limited access to control of resources and to better skills. Women are often times regarded as additional or supplementary workers, further marginalising their ability to consolidate their position as workers. Aside from this, there is a widespread gender bias in recruitment and promotion of women workers. Better representation of women in decision making bodies, including trade unions and employer organisations, can strengthen their ability to bargain for better working conditions. The proposed Equal Employment Opportunities Commission will be pivotal in dealing with discrimination in both the public and private sphere.
- Occupations performed by women are often classified as unskilled under the Minimum Wages Act, 1948. For instance, this is the case in agriculture for weeding and transplanting (performed exclusively by women in most parts of

India), though skills and experience are required for both activities. Meanwhile, other activities performed generally by men are treated as skilled work for which higher wages are paid. This results in gender-based segregation in the labour market.

- Women in the unorganised or informal sector are also often not covered under labour laws since these laws are confined to industries/sectors employing a minimum of workers. This is a form of discrimination against unorganised or informal women workers and needs to be remedied with proactive legislative and policy interventions. The recent enactment of the Unorganised Workers' Social Security Act, 2008 is a step in the right direction.
- Sexual harassment: Women at the work place are regularly subjected to sexual harassment. Norms to seek redress and remedy through a special procedure for sexual harassment complaints, though mandated by the judgement of the Supreme Court, are rarely found to be implemented. It is crucial that there be a legislation to deal with sexual harassment.
- Inclusive work spaces: Exclusion of women from marginalised communities, such as Dalits, Muslims and tribals, persists despite protective and preventive legislations. Doubly discriminated, women workers from these communities populate occupations that are the least paid and least protected and suffer widespread exploitation. While the affirmative action policy has ensured their entry in limited numbers into the formal sector, the growing informalisation of the labour market has only contributed to their further marginalisation. Their inability to unionise compounds their marginalisation as they cannot voice their demands. Protective legislations need to be strengthened to empower the most vulnerable women workers in the country.

10.2 Improving social dialogue

The Indian Labour Conference (ILC) which is the national tripartite forum in India is not fully representative of social partners. It also leaves out the large majority of workers as there is no effective representation of the unorganised or informal workers. The ILC should be expanded to include all organisations that represent workers interests and that of small entrepreneurs. There appears to be a lack of mechanisms at the social dialogue levels which specifically address such concerns of women workers. A permanent agenda item relating to gender issues should be made part of the ILC agenda. In addition, a special ILC focused on women's issues could be convened once in five years. This will certainly have a cascading effect on other social dialogue institutions in the country.

There is a need for trade unions to focus on creating mechanisms within the establishment or industry for grievances of women employees to be heard and addressed. Special capacity-building training could be arranged for trade unions, and in particular women leaders, to take on leadership positions within trade unions and in social dialogue processes. The gendering of institutions is critical to enlarging the space for addressing gender concerns. Agencies such as the National Labour Institute, women's organisations, management institutes and universities could be identified for this purpose. The glass ceiling women encounter both in employer organisations and trade unions needs to be consciously eliminated, to allow for greater participation of women in decision making.

The many transitions in the country indicate a definite shift from tripartism to bipartism, with a limited role for the state as a mediator of social dialogue. With changes in the labour market and the overall steady decline of trade unions in the formal sector and workers collectives, the need of the hour is to encourage dialogue through innovative means with the large majority of unorganised or informal workers. The rapidly transforming labour scenario and the growth of the unorganised sector have transformed the employer profile and their numbers. Currently, this dispersed set of employers is not a

part of employer collectives and organisations such as EFI or CIE. It is critical that the older and larger employer organisations transform their profile to provide representation for employers in the unorganised sector, so that recommendations for transforming social dialogue to improve gender equality at the workplace have an impact on the majority of the workforce. Additionally, sectoral dialogue needs to be proactively promoted in women dominated employments to address specific concerns.

Tripartite bodies, particularly under the ERA, need to be strengthened. A body to ensure valuation of women's work across establishments and industries need to be set up to deal with gender segregation at the workplace. This will have to work closely with the proposed Equal Opportunity Commission to carry out studies on valuation of women's work in sectors and across occupations. Newer forms of social dialogue mechanisms need greater experimentation, as the potential for inclusion of large sections of the informal sector women workers in the process needs to be explored.

10.3 Eliminating gender stereotypes

The proposed Equal Opportunity Commission will provide a proactive forum to deal with gender discrimination. Instead of a simple complaints based system, this will encourage proactive research and studies to be conducted, and place the onus on employers to adopt policies to deal with gender discrimination.

10.4 Monitoring decent work and gender equality

The need for sex-disaggregated data in membership of trade unions and in employment needs to be urgently addressed. Data collection needs to be done keeping a gender focus. The recent measures to include the unorganised or informal sector in National Sample Survey Organisation studies are welcome and this should be strengthened.

There is no central database to monitor collective agreements in India. This is essential to monitor the role of women in such agreements. Provisions can be made for registering of Collective Bargaining Agreements under the Industrial Disputes Act.

The presence of adequate women inspectors in the labour administration machinery is an important means to monitor compliance with gender-specific provisions of the labour law. There is a need for inspectors to be sensitised to gender equality issues and to give these matters due recognition and importance in their work schedules. A gender audit of the labour administration machinery to understand how concerns of women employees can be made more visible and steps taken to achieve gender equality in the workplace is required.

Annex A.

Facilities/benefits for women employees under important labour laws

Maximum permissible weight to be carried by women	State level rules under Factories Act, 1948	
	Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1998	Adult woman – 30 kg Adolescent female – 20 kg
Separate facilities	Factories Act, 1948 Contract Labour (Regulation and Abolition) Central Rues, 1971 Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 Mines Act, 1952 Plantations Labour Act, 1951. Beedi and Cigar Workers (Conditions of employment) Act, 1966. Contract Labour (regulation and Abolition) Central Rues, 1971. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980. Mines Act, 1952. Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1988.	Separate washing facilities for women Separate toilets for women
	Contract Labour (Regulation and Abolition) Central Rules, 1971 Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980	Rest rooms for women
	Factories Act, 1948 (30 women). Plantations Labour Act, 1951 (50 women). Beedi and Cigar Workers (Conditions of Employment) Act, 1966. Contract Labour (Regulation and Abolition) Central Rues, 1971 (20 women). Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Central Rules, 1980 (20 women). Mines Act, 1952 (any number of women employed). Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 (50 women).	Crèches for children linked to employment of women only.
Maternity benefit	Maternity Benefit Act, 1961 (80 days minimum employment)	Maternity benefit of leave with wages for 12 weeks, 6 of which to be after delivery, medical bonus, shift to work which is not arduous, 2 nursing breaks

Maximum permissible weight to be carried by women	State level rules under Factories Act, 1948
Employees State Insurance Act, 1948 (13 weeks minimum employment).	until child is 15 months old, additional leave of one month for sickness. Maternity benefit of leave with wages for 12 weeks, 6 of which to be after delivery, medical bonus, access to health care in ESI hospitals.
Beedi and Cigar Workers (Conditions of Employment) Act, 1966; Building and other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996; Sales Promotion Employees (Conditions of Service) Act, 1976.	Maternity benefit under the respective law; limited to two children.
Service Rules for government employees (e.g. Central Civil Service (Leave) Rules)	Maternity Benefit Act, 1961 extended. Maternity benefit up to two children only.

Annex B.

List of collective agreements reviewed for this paper

Memorandum of Agreement on Wage Revision, NTPC, w.e.f 1997.

National Coal Wage Agreement – VIII, 24.1.2009

Eighth Bipartite Settlement – Banks, 2.6.2005

Memorandum of Settlement for Tea, Coffee, Rubber and Cardamom Plantation, Kerala, 29.9.2008

Memorandum of Settlement between National Aviation Company of India and Air India Cabin Crew Association, 29.2008

Memorandum of Settlement between Indian Airlines and Indian Commercial Pilots' Association, 18.7.2006

Memorandum of Settlement between Indian Airlines and Air Corporations Employees Union, 15.6.2007 and 1.10.2008

Memorandum of Settlement –MMTC, 5.7.2001

Memorandum of Settlement between Management of M/s Cosme Pharma Ltd, Bicholim, Goa and the Goa Trade and Commercial Workers' Union (AIUC), 16.6.2008

Memorandum of Settlement between Centaur Pharmaceuticals Pvt Ltd, Tivim Industrial Estate, Karaswada, Mapusa, Goa and the Goa Trade and Commercial Workers' Union (AITUC), 10.10.2006.

Annex C.

Sectoral details of collective bargaining agreements analysed in this paper

Public telecom sector

Bharat Sanchar Nigam Limited (BSNL) is one of the biggest PSEs in the country that employs 300,000 workers; over 250,000 workers belong to the non-executive cadre. There are, in addition, over 100,000 casual and contract labour in BSNL. In the early years, the posts and telecommunications department of the Government of India was a single department until its bifurcation in the early 1980s. The history of the trade unions in this sector is over a century old. Though it was a department of the government, its employees have been considered industrial employees with the concomitant right to form trade unions. However, as government employees they were denied the right to strike, and the government had used the essential services ordinances/acts against strikes in this sector. Pay and other working conditions were therefore fixed by the government and certain restricted matters were raised in the Joint Consultative machinery (see section on social dialogue for government employees). After restructuring, and technological up gradation, the telecom industry has dramatically transformed. Until the 5th Pay Commission (implemented from 1.1.1996), wages in the telecom sector were set up by the government. However, after restructuring, the first wage agreement based on collective bargaining was concluded in 2002.

Banks

The government nationalised 14 commercial banks in 1969 followed by 6 more in 1980. Together with prior rounds of bank nationalisation of the State Bank of India and its subsidiaries there are now 27 public sector banks in India. These banks, including some private banks, have industry level collective agreements settling wages and other conditions, usually over a five year period. Employment in these nationalised banks increased from 175,368 to 856,571 in 1991. Following the policies of disinvestments, mergers and downsizing of banks after the 1991 period, government holding has come down to 51 per cent in 20 of these banks, while employment is down by more than 150,000 from 875,390 in 1992 to 721,700 in 2007, over 5000 branches have been closed, while business has increased over twenty-fold. The unions have been demanding increased recruitment and there has been a fresh recruitment in 2008-09.⁶⁵

Coal

The coal industry is one of the earliest industries set up in colonial times and saw the emergence of a modern-day working class in India. The British used a system of contractors to get tribal peoples to work in the coal mines and offered them a piece of cultivable land. The labour was often recruited as a family, with women deployed to bring up the coal cut by their men-folk. A family wage was paid, and conditions of work and life were grim. Unionisation grew among the coal miners and an All India Tribunal (Colliery Dispute) was set up to deal with agitations in the coal mines in 1954 for higher wages. Subsequently, the government set up a tripartite Central Wage Board for the Coal Mining Industry in 1962. Mines were privately owned until the nationalisation of the coking coal mines in 1972, and non-coking mines in 1973. The different coal companies came under a holding company, Coal India Limited, in 1975. After nationalisation a permanent negotiating machinery – the Joint Bipartite Negotiation Committee – for the Coal Industry

⁶⁵ “40 years of bank nationalisation”, *Working Class*, Vol. 39, No. 12, p. 21.

was set up in 1973 (Giri and Murthy, 1993; Engels, 1993; Lahiri-Dutt, 2001). The National Coal Wage Agreement – VIII, signed in January 2009, is now in force.

Tea

India is the world's largest tea producer and exporter. The tea industry is an old one and spread over different states. Tea plantations are one of the largest employers in the organised sector, and they employ around 1.5 million workers, of whom little less than a million are permanent workers and the rest casual. Women constitute roughly half of the work force in this sector. According to a well known commentator on this sector, their relative isolation within plantations, their depressed wages and their low levels of literacy, contribute towards making them the most backward section of the industrial workforce (Bhowmik, 1993). There is occupational segregation by gender in tea plantations, with women usually employed in tea picking. As in the case of coal, there has historically been the employment of a family as a group, and this has resulted in lower wages being paid.

The British planters of West Bengal and Assam set up the Indian Tea Association. The plantation industry (that includes tea, coffee, rubber and cardamom under the Plantations Labour Act, 1951) have an all-India employers' association known as the Consultative Committee of Planters' Association, which includes planters' associations such as the Darjeeling Planters' Association and the United Planters of South India. The workers are represented by the Coordination Committee of Tea Plantation workers. Issues are negotiated at the unit (plantation) level, and industry-wide negotiations are held at a state level. In the State of Kerala for instance, the tea estates employed 90,000 workers of which roughly 50 per cent are women.

Aviation

Women were first recruited in this sector in 1946-47 when the private airline Air India started flying international routes. After nationalisation of this sector in the fifties two companies, viz., Indian Airlines for domestic and Air India for international routes were formed. Air hostesses in the new airline companies could work only for 15 years and had to resign upon marriage (Gavankar, 1992). The Central Government, by a notification under Section 3 of the Air Corporations Act, 1953, created two corporations known as Indian Airlines Corporation and Air India International ('Air India'). In 2007 the National Aviation Company of India Limited (NACIL) was formed by merging Air India and Indian Airlines.

Annex D.

Comparative chart of collective agreements analysed for this paper

Gender concern	Sector/industry	Collective agreement	Gender clause
Definition of family/ dependants	1) Power: National Thermal Power Corporation (NTPC)	National Bipartite Committee, Memorandum of Agreement on Wage Revision w.e.f. 1.1.1997.	"The parents of a deceased employee shall continue to be treated as dependants of the widow of the deceased employee who has got employment in the National Thermal Power Corporation on compassionate grounds. Consequently, the parents of the widow of the deceased employee will not be treated as dependants in such cases." (Clause 4.7)
	2) Coal Sector	National Wage Agreement	A widow is offered compassionate appointment the choice of retaining either the in-laws or own parents as dependants for the purpose of such facilities.
	3) Banks	8th Bipartite Settlement	A married female employee may include her natural parents or parents-in-law under the definition of family – but not both – provided that the parents/parents-in-law are ordinarily residing with and wholly dependent on her." (Clause 18. c)
Maternity/paternity benefit	1) Banks	7th Bipartite Settlement	(a) It grants maternity leave to a female employee for a period not exceeding six months on any one occasion and 12 months during the entire period of service. The collective agreement in banks also permits a childless female employee to avail of maternity leave when she adopts a child. (b) The bank settlement is the first in the country to permit pregnant women to discontinue working at a computer if they so request.
	2) NTPC		The Agreement provides that paternity leave will be prospectively available to male employees having less than two surviving children, for 15 days during the same period during which the wife avails of maternity leave. This leave is also to be availed of only twice in the entire period of service.
Limiting medical/ maternity benefit	1) NTPC	Wage Revision w.e.f. 1.1.1997	The Agreement defines family for facilities of leave travel concession and medical benefits as spouse (only one), two surviving children below 25 years of age and parents, subject to members being dependant on the employee.
	2) Banks		The bank settlement is broader, and includes all wholly dependent unmarried children. It is also one of the few collective agreements that specifically include step children and legally adopted children within the scope of the family.
Adopted children	1) NTPC		The NTPC collective agreement treats such children who have been given in guardianship to a childless Muslim or Christian employee as entitled to medical, travel and educational facilities available to

Gender concern	Sector/industry	Collective agreement	Gender clause
Compassionate appointments/voluntary retirement schemes	2) Banks		those who have natural or adopt children (Clause 4.8 NTPC) The recognition of adopted children is significant, given the long standing demand of women's organisations in India that a limited form of maternity benefit should be available to women who adopt an infant.
	1) NTPC		The NTPC collective agreement grants the right to one dependant of each worker who is permanently disabled or dies as a result of accident while on duty. The definition of dependant does not discriminate between spouse, son/daughter or legally adopted son/daughter (Clause 4.3, NTPC)
	2) Coal		(a) If a woman employee dies, a male spouse, irrespective of his age (though it needs be within the retirement age), is offered employment. If the son opts for this appointment, then he should be below 35 years. However, if a male employee dies and the spouse takes up compassionate employment, she should be below 45 years of age; otherwise, compassionate appointment is not offered and instead a monthly compensation, which is a fixed proportion of the last pay drawn, is given to her. This amount is negotiated and is currently 80 % of the last pay drawn according to the latest collective agreement, payable until she reaches the age of 58 years. (b) The National Coal Wage Agreement that gives preferential treatment to sons of early retirees, as well as to male dependants of workers who died in service, has been held to be discriminatory by the ILO CEACR in 2008.
Transfer/ deployment	1) Banks		The current bank settlement has restricted the ability of managements to deploy female employees above the age of 55 and male employees above the age of 56, with the option to raise the bar on redeployment to 58 years if the required number of eligible and trained employees is not available.
Sexual harassment	Mandated by the judgement of the Supreme Court in the Vishaka case (1997)		Collective agreements and standing orders have incorporated the requirement of the consideration of sexual harassment as a misconduct for which the employee or employer can be punished.
Dowry	1) Banks	Settlement on Disciplinary Action and Procedure entered into by banks and their employees in 2002	The Settlement stipulates that the giving or taking of a dowry, i.e. demanding directly or indirectly from the parents or guardians of a bride or bridegroom any dowry amounts to a misconduct for which the employee can be punished.

Annex E.

List of persons interviewed/contacted

Trade unions

Amarjit Kaur, National Secretary, AITUC; Convenor, Working Women's Forum
Christopher Fonseca, AITUC
K.P. Gopinath, Cividep Bangalore, Co-ordinator, NGO working on CSR in the garment and electronics industry.
Dr. Hemlata, Convenor, All India Coordination Committee of Working Women, CITU, National Secretary, CITU.
Lalitha Joshi, Joint Secretary, All India Bank Employees Association, Convenor BIBEA Women's Cell
R.A. Mittal, HMS
V.J.K. Nair, General Secretary, CITU, Karnataka
V.A.N. Namboodiri, General Secretary, BSNL Employees Union
Lakshmi Narayan, KKPKP
Dr. M.K. Pandhe, CITU
Ashim Roy, General Secretary, New Trade Union Initiative
Swadesh Dev Roye, National Secretary and Head, International Affairs, CITU
C.H. Venkatachalam, General Secretary, All India Bank Employees Association

Employers

Meenakshi Dua, General Manager, IR, Air India (National Aviation Company of India Ltd)
Prince Thomas George, The Association of Planters of Kerala
Rajeev Jaidev, Chief General Manager (P&A), MMTC
Preeti Kaur, President Apex Committee, WIPS
Ram Kumar, Tamil Nadu Planters' Association
R.G. Warriar, Deputy Chief Personnel Manager, Coal India

Others

S.K. Mukhopadhyay, Chief Labour Commissioner (Central)
The late Prof. C.S. Venkataratnam, Director, International Management Institute

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The Bureau for Gender Equality supports the implementation of the ILO's Policy on Gender Equality and Mainstreaming. This entails offering advice to constituents and ILO staff on measures to help ensure that policies, legislation, programmes and institutions are more gender-equitable. Such measures include ratifying and implementing relevant labour standards, increasing the number of women in decision-making positions, promoting women's entrepreneurship and paying attention to situations where women are particularly vulnerable in the labour market.

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The Bureau participates in United Nations inter-agency activities and initiatives aimed at promoting gender equality and the empowerment of women. These include the Millennium Development Goals (MDGs) and especially MDG 3 on gender equality, the Beijing Platform for Action and the Convention on the Elimination of Discrimination against Women (CEDAW). The Bureau contributes to Expert Group meetings to prepare the Commission on the Status of Women (CSW) and participates in the yearly CSW thematic discussions panels. The Bureau supports gender mainstreaming in "Delivering as One" initiatives at the country level and in United Nations Development Assistance Frameworks (UNDAFs).

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ISBN 978-92-2-123909-3



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