

CLOAKED INJUSTICE: LABOUR LAW VIOLATIONS IN THE ASIA PACIFIC FAST FASHION INDUSTRY*

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I. INTRODUCTION

The Oxford English Dictionary defines ‘*fast fashion*’ as ‘*inexpensive clothing produced rapidly by mass-market retailers in response to the latest trends*’.² In order to increase consumption and thereby maximise profits, multinational fast fashion corporations such as H&M and Mauritz (“H&M”), Inditex’s Zara and GAP drifted away from seasonal collections and introduced cheap clothing with new styles hitting their racks every other week.³

Over the years the West has offshored the manufacturing of garments to the underdeveloped Asian nations on account of the cheap labour available in these countries.⁴ Asia alone accounts for almost 55 percent of global garment production.⁵ The lack of oversight in these third world countries with regards to labour rights makes them an attractive fast fashion manufacturing hub.⁶ These multinational brands prefer to have minimal control over the manufacturing process in their supply chains in order to evade legal liability.⁷

This industry has provided employment to over 60 million labourers in Asia, but its rapid growth has resulted in manufacturers facing an overwhelming number of orders with tight production deadlines.⁸ This has led to immense pressure whereby these Asian nations are competing in a race to the bottom with respect to human rights abuses in the ready-made garment sector (“RMGS”).

² ‘fast fashion, n.’ (*Oxford English Dictionary Online*, Oxford University Press, July 2023 <<https://www.oed.com/search/dictionary/?scope=Entries&q=fast+fashion>> accessed 15 August 2023

³ Elizabeth L. Cline, *Overdressed: The Shockingly High Cost of Cheap Fashion* (1st edn, Portfolio/Penguin 2012) 92

⁴ Mary Jo DiLonardo, ‘What Is Fast Fashion—and Why Is It a Problem?’ (*Treehugger*, 5 October 2022) <<https://www.treehugger.com/fast-fashion-environmental-ethical-issues-4869800#:~:text=Fast%20fashion%20refers%20to%20the,significant%20environmental%20and%20labor%20issues.&text=Mary%20Jo%20DiLonardo%20has%20worked,health%2C%20science%2C%20and%20animals.>>> accessed 15 August 2023

⁵ Souleima El Achkar Hilal, *Employment, Wages And Productivity Trends In The Asian Garment Sector: Data And Policy Insights For The Future Of Work* (International Labour Organisation 2022) 3

⁶ Emma Ross, ‘Fast Fashion Getting Faster: A Look At The Unethical Labor Practices Sustaining A Growing Industry’ (The George Washington University, 28 October 2021) <<https://studentbriefs.law.gwu.edu/ilpb/2021/10/28/fast-fashion-getting-faster-a-look-at-the-unethical-labor-practices-sustaining-a-growing-industry/>> accessed 15 August 2023

⁷ Smera Sarnath Sonker, ‘Fast Fashion Industry and the Gross Violation of Labour Laws’ (Bar and Bench, 3 May 2022) <<https://www.barandbench.com/apprentice-lawyer/fast-fashion-industry-gross-violation-labour-laws>> accessed 31 July 2023

⁸ Souleima El Achkar Hilal, *Employment, Wages And Productivity Trends In The Asian Garment Sector: Data And Policy Insights For The Future Of Work* (International Labour Organisation 2022) vii

Labourers are facing exploitation, non-payment of wages, forced overtime, poor health and safety measures and various other conditions that are leading to a degradation of the basic human rights to which they are entitled. Female employees face a double whammy of sorts as they deal with an added barrier of the blatant gender bias in favour of their male counterparts.⁹

Another growing concern is the continuation of the practices of engaging child labour and forced labour as well as trafficking of migrant labourers from rural areas, for meagre wages.

Additionally, most of these Asian nations seem to have an anti-unionisation sentiment. Labourers are often mistreated when they propose to form unions. Union leaders often receive threats from the authorities. Some of these nations recognize the right to association, however, do not legally recognize unions at the grassroot level and curb union activity.

Hence, the fast fashion industry or rather the '*Fast Façade Industry*' is another modern world manifestation of the wide divide between the developed, developing and under-developed nations.

II. CHECKS AND BALANCES IN PLACE TO PROTECT GARMENT LABOURERS

1. Universal Declaration of Human Rights

Article 23(1) of the Universal Declaration of Human Rights¹⁰ ('UDHR') affirms that all individuals are entitled to just and favorable conditions of work.

Furthermore, Articles 23(3)¹¹ and 24¹² emphasize the importance of fair remuneration and reasonable limitations on working hours. However, the UDHR fails to provide a concrete definition for ambiguous terms such as '*fair*' and '*reasonable limitations*', thereby, permitting garment suppliers to exploit the garment labourers.

⁹ Vicki Crinis and Adrian Vickers *Labour in the Clothing Industry in the Asia Pacific* (1st edn, Routledge 2017)

¹⁰ Universal Declaration of Human Rights, Art. 23(1) (UDHR)

¹¹ UDHR, Art 23(3)

¹² UDHR, Art 24

2. The Ruggie Framework *i.e.*, United Nations' Guiding Principles on Business and Human Rights

The United Nations, through its Guiding Principles on Business and Human Rights (“**Guiding Principles**”), aims to ensure that member states as well as businesses prevent the abuse of human rights.¹³ These Guiding Principles are built on 3 pillars namely, protect, respect and remedy.¹⁴

They impose a duty on the State to ‘protect’ human rights within their territory and ensure human rights compliance by third party businesses.¹⁵

Chapter 2 of the Guiding Principles lays down the corporate responsibility to ‘prevent’ human rights abuses by businesses.¹⁶ Businesses are required to have policies in place to prevent the abuse of human rights.¹⁷ Emphasis has been laid on conduct of human rights diligence and impact assessment studies.¹⁸

The 3rd pillar of these Guiding Principles encapsulate the obligation of States to provide efficacious remedies to the victims whose rights are violated by businesses functioning in the State.¹⁹

Sadly, multinational fast fashion brands as well as garment suppliers in third world Asian countries do not adhere to such principles and on the contrary, try their best to ensure that human rights violations in their production units do not come to light in order to avoid negative publicity and legal consequences. Although the States have provided remedies to prevent labour law violations in the RMGS, the delay in justice administration has left these remedies to be a mere dead letter.

¹³ United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles)

¹⁴ The UN Working Group On Business And Human Rights, ‘The UN Guiding Principles On Business And Human Rights An Introduction’ (OHCHR, 2011)
<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf>

¹⁵ UN Guiding Principles, Ch I

¹⁶ UN Guiding Principles, Ch II

¹⁷ UN Guiding Principles, Ch II

¹⁸ UN Guiding Principles, Principles 17 and 18

¹⁹ UN Guiding Principles, Ch III

3. International Labour Organization Initiatives

The Philadelphia Declaration, 1944 of the International Labour Organisation (“ILO”) clearly establishes that “*labour is not a commodity*”.²⁰

a) ILO Conventions

The ILO aims to mitigate instances of forced labour and child labour, recognizes the rights of freedom of association, receipt of minimum wages, occupational safety and health (“OSH”) and right to equality. In this regard, the ILO has formulated 10 core conventions, namely:

- i. Forced Labour Convention, 1930 (“**Convention No. 29**”)
- ii. Freedom of Association and Protection of the Right to Organise Convention, 1948 (“**Convention No. 87**”)
- iii. Right to Organise and Collective Bargaining Convention, 1949 (“**Convention No. 98**”)
- iv. Equal Remuneration Convention, 1951 (“**Convention No. 100**”)
- v. Abolition of Forced Labour Convention, 1957 (“**Convention No. 105**”)
- vi. Discrimination (Employment and Occupation) Convention, 1958 (“**Convention No. 111**”)
- vii. Minimum Age Convention, 1973 (“**Convention No. 138**”)
- viii. Occupational Safety and Health Convention, 1981 (“**Convention No. 155**”)
- ix. Worst Forms of Child Labour Convention, 1999 (“**Convention No. 182**”)
- x. Promotional Framework for Occupational Safety and Health Convention, 2006 (“**Convention No. 187**”)²¹

Most Asian garment manufacturing countries including Bangladesh, India, Indonesia and Vietnam are member nations of the ILO,²² but none of these countries have ratified all 10 core conventions. Despite ratifying some these core conventions, the State as well as the garment suppliers in Asian nations turn a blind eye to these conventions and the absence of ILO’s on ground presence has served little to no use in curbing human rights violations in the RMGS.

b) ILO initiatives for Asian garment producing nations

²⁰ ILO Declaration Of Philadelphia, ‘Declaration concerning the aims and purposes of the International Labour Organisation’

²¹ ‘Conventions and Recommendations’ (ILO) <<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>> accessed 15 August 2023

²² ‘ILO Member States’ (ILO) <<https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/member-states/lang--en/index.htm>> accessed 15 August 2023

Despite the failure of ILO Conventions to achieve considerable success, the ILO's efforts to mitigate human rights violations in the Asian RMGS are commendable. In August 2021, the ILO in collaboration with the German GIZ Fabric project has introduced 'Asia Garment Hub', a digital network to enhance the knowledge of various stakeholders in the Asian RMGS with regards to sustainability and decent work practices.²³ This was followed by the adoption of the first ILO Code of Practice On Safety And Health In Textiles, Clothing, Leather And Footwear Industries in October 2021.²⁴ This Code provides guidelines on how various stakeholders in the textiles and clothing supply chain including retailers, suppliers, labourers and governments should work in collaboration to ensure workplace OSH.²⁵ The ILO has also partnered with H&M for improving working conditions in the fast fashion sector.²⁶

4. Sustainable Development Agenda 2030

Goal 8 of the Sustainable Development Agenda provides for decent work and economic growth.²⁷ The goal aims to achieve decent work for men and women without any discrimination and exploitation, equal pay for equal work, end all forms of forced labour and child labour, providing a safe and secure working environment for all including migrant labourers.²⁸

Despite numerous conventions and guidelines in place, the human rights of labourers continue to be egregiously violated in the Asia Pacific RMGS. Through this paper, we will be shedding light on 4 such nations Bangladesh, India, Vietnam, and Indonesia, where human rights have taken a backseat as the fast fashion industry scales new heights.

²³ 'Asia Garment Hub- A Digital Gateway To Sustainability And Decent Work Resources For The Garment And Textiles Industry- Is Launched' (*ILO*, 11 August 2021) <https://www.ilo.org/asia/media-centre/news/WCMS_816258/lang--en/index.htm> accessed 15 August 2023

²⁴ ILO Code of Practice, 'Safety And Health In Textiles, Clothing, Leather And Footwear' (*ILO*, 26 April 2022) <https://www.ilo.org/sector/activities/sectoral-meetings/WCMS_828429/lang--en/index.htm> accessed 15 August 2023

²⁵ International Labour Organisation, 'Safety and Health in Textiles, Clothing, Leather and Footwear' (*ILO* 2022)

²⁶ ILO And H&M Group Expand Partnership (*ILO* 24 January 2019) <https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_664764/lang--en/index.htm> accessed 15 August 2023

²⁷ 'Sustainable Development Goals (Goal 8)' (UNDP 2015) <<https://www.undp.org/sustainable-development-goals/decent-work-and-economic-growth>> accessed 15 August 2023

²⁸ 'Sustainable Development Goals (Goal 8)' (UNDP 2015) <<https://www.undp.org/sustainable-development-goals/decent-work-and-economic-growth>> accessed 15 August 2023

III. PEOPLE'S REPUBLIC OF BANGLADESH

The foundation of the Bangladeshi RMGS was laid on the ashes of the Bangladeshi jute industry. Post the submergence of the jute industry, the RMGS acted as the major catalyst for the growth of Bangladesh's economy.²⁹ NuroolQuader Khan, the founder of Desh Garments was the spearhead of the RMGS in Bangladesh.³⁰ In 1974, Khan signed a 5 year partnership with the South Korean agglomerate Daewoo, whereby Daewoo provided technical and marketing assistance to Desh Garments in return for a commission.³¹ Additionally, 130 labourers were sent to South Korea to learn how to produce ready-made garments.³² Following Khan's footsteps, other perseverant entrepreneurs started setting up garment factories in Bangladesh.³³

Bangladesh is the second largest exporter of garments in the world.³⁴ However, the cost of proliferation of the '*Made in Bangladesh*' label has been born by its population which largely consists of labourers. Prior to 2006, the labour laws in Bangladesh consisted of 25 separate enactments.³⁵ In 2006, the Government of Bangladesh formulated the Bangladeshi Labour Act, 2006 in an effort to bring all legislations concerning labourers under one roof. However, the Bangladeshi Labour Act, 2006 failed to serve its purpose. The labourers in the RMGS were subjected various atrocities by their employers, despite the Act.

Additionally, in order to invite FDIs and boost the economy, the government created Export Processing Zones ("**EPZ**").³⁶ Bangladesh is divided into 8 EPZs. The garment factories in the

²⁹ Dina Siddiqi, 'Before Rana Plaza: towards a history of labour organizing in Bangladesh's garment industry' Vicki Crinis, Adrian Vickers, *Studies in the Growth Economies of Asia* (Routledge 2017) 97

³⁰ 'About Garment Industry of Bangladesh' (BGMEA, 2020) <<https://www.bgmea.com.bd/page/AboutGarmentsIndustry>> accessed 25 July 2023

³¹ Dina Siddiqi, 'Before Rana Plaza: towards a history of labour organizing in Bangladesh's garment industry' Vicki Crinis, Adrian Vickers, *Studies in the Growth Economies of Asia* (Routledge 2017) 97

³² 'About Garment Industry of Bangladesh' (BGMEA, 2020) <<https://www.bgmea.com.bd/page/AboutGarmentsIndustry>> accessed 25 July 2023

³³ 'About Garment Industry of Bangladesh' (BGMEA, 2020) <<https://www.bgmea.com.bd/page/AboutGarmentsIndustry>> accessed 25 July 2023

³⁴ ILO InfoStories, 'The Rana Plaza Disaster Ten Years On: What has changed' (ILO, April 2023) <<https://www.ilo.org/infostories/en-GB/Stories/Country-Focus/rana-plaza#bangladeshi-garment-sector>> accessed 25 July 2023

³⁵ 'Labour Rights violations in Bangladesh' (War on Want 2008) 1

³⁶ 'About BEPZA' (Bangladesh Export Processing Zones Authority (BEPZA)) <<https://www.bepza.gov.bd/content/about-bepza>> accessed 25 July 2023

EPZs are predominantly owned by foreign investors.³⁷ The laws related to labourers' rights in the EPZ slightly vary from the rights of the labourers employed in factories located outside EPZs. The rights of labourers working in factories situated in EPZs are governed by the Bangladesh EPZ Labour Act, 2019 (“**EPZ Act**”).

Rana Plaza: The Catalyst for Labour Law Reforms in Bangladesh

The Tazreen Factory fire in 2012³⁸ followed by the collapse of the Rana Plaza in 2013 acted as the major catalyst for Labour Law Reforms in Bangladesh. On 24 April 2013, the Rana Plaza garment factory located on the outskirts of Dhaka collapsed.³⁹ The tragic incident left a scar on the face of the Bangladeshi RMGS. Almost 1100 people, mainly garment labourers lost their lives.⁴⁰ This incident was a wakeup call to the Bangladeshi government in order to strengthen laws related to labour association and workplace safety. In the aftermath of the Rana Plaza incident, the government of Bangladesh, amended the Bangladeshi Labour Act, 2006 (“**Bangladeshi Labour Act**”) to primarily increase association rights and improve OSH.

1. Child Labour

Prior to 1992, the Bangladesh RMGS was the primary employer of child labourers. The alienation of child labour in the formal RMGS in Bangladesh was brought about by the introduction of the Harkin Bill in the United States Senate in 1992.⁴¹ The bill aimed to impose a bar on the import of goods manufactured by children under 15 years of age. Even though the bill was not approved, the Bangladesh Garment Manufacturers and Exporters Association

³⁷ Mohd Raisul Islam Khan and Christa Wichterich, ‘Safety And Labour Conditions: The Accord And The National Tripartite Plan Of Action For The Garment Industry Of Bangladesh’ (2015) Global Labour University, 7, <https://global-labour-university.org/wp-content/uploads/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf> accessed 25 July 2023

³⁸ ‘Whoever Raises Their Head Suffers Most’ (*Human Rights Watch*, 22 April 2015) <<https://www.hrw.org/report/2015/04/22/whoever-raises-their-head-suffers-most/workers-rights-bangladeshs-garment#318f80>> accessed 25 July 2023

³⁹ ILO InfoStories, ‘The Rana Plaza Disaster Ten Years On: What has changed’ (*ILO*, April 2023) <<https://www.ilo.org/infostories/en-GB/Stories/Country-Focus/rana-plaza#bangladeshi-garment-sector>> accessed 25 July 2023

⁴⁰ ILO InfoStories, ‘The Rana Plaza Disaster Ten Years On: What has changed’ (*ILO*, April 2023) <<https://www.ilo.org/infostories/en-GB/Stories/Country-Focus/rana-plaza#bangladeshi-garment-sector>> accessed 25 July 2023

⁴¹ Mahbub Bin Shahjahan, Mst. Jesmin Ara, Md. Ayaz, ‘Protecting Child Labor in Bangladesh under Domestic Laws’ (2016) Vol 3 No. 4 Open Access Library Journal <<https://www.scirp.org/journal/paperinformation.aspx?paperid=69186#return20>> accessed 26 July 2023

(“BGMEA”) reacted to the Bill by compelling its members to eliminate child labourers from their establishments.⁴² This led to commencement of child labour elimination in Bangladesh.

Although the BGMEA claims that child labour was abolished in the Bangladesh RMGS by 1995⁴³, external reports say otherwise. Additionally, the COVID-19 pandemic added fuel to the child labour menace. Economic crisis coupled with school closures forced many school going children in the country to take up jobs in the RMGS.⁴⁴ Most of these children are working in the informal RMGS.⁴⁵ They have been forced to work long hours with fewer breaks and negligible wages as a result of the pandemic.⁴⁶ They are compelled to carry heavy loads and are exposed to harmful chemicals with lack of provisions for protective equipment.

It was only in 2022 that the Bangladeshi government made realistic efforts to curb the child labour menace. In January 2022, the government ratified ILO Convention No. 138.⁴⁷ The government also rescued 5088 vulnerable children from 23 districts through labour inspections.⁴⁸

Although the Government of Bangladesh has provided for laws to curb child labour under the Bangladeshi Labour Act, the same do not comply with international standards.

The Bangladeshi Labour Act divides juveniles into two groups; “*child*” and “*adolescent*”. “*Adolescent*” is defined as a person between the ages of 14-18.⁴⁹ Whereas, “*child*” is defined as a person below 14 years of age.⁵⁰ Section 34 of the Bangladeshi Labour Act permits juveniles of 14 years of age and above to be employed in any occupation or establishment subject to certain compliances.⁵¹ However, the country fails to comply with the minimum age

⁴² Mahbub Bin Shahjahan, Mst. Jesmin Ara, Md. Ayaz, ‘Protecting Child Labor in Bangladesh under Domestic Laws’ (2016) Vol 3 No. 4 Open Access Library Journal <<https://www.scirp.org/journal/paperinformation.aspx?paperid=69186#return20>> accessed 26 July 2023

⁴³ ‘About Garment Industry of Bangladesh’ (BGMEA, 2020) <<https://www.bgmea.com.bd/page/AboutGarmentsIndustry>> accessed 25 July 2023

⁴⁴ ‘Findings On The Worst Forms Of Child Labour: Bangladesh’ (Bureau of International Labor Affairs 2021) 2

⁴⁵ ‘National Plan of Action To Eliminate Child Labour (2021-2025)’ (Ministry of Labour and Employment 2021) 16

⁴⁶ ‘Findings On The Worst Forms Of Child Labour: Bangladesh’ (United States of America, Bureau of International Labor Affairs 2021) 2

⁴⁷ C138 - Minimum Age Convention, 1973 (No. 138)

⁴⁸ ‘Findings On The Worst Forms Of Child Labour: Bangladesh’ (United States of America, Bureau of International Labor Affairs 2021) 1

⁴⁹ The Bangladesh Labour Act, 2006, Act No XLII of 2006, s 2(8) (The Bangladesh Labour Act, 2006)

⁵⁰ The Bangladesh Labour Act, 2006, s 2(63)

⁵¹ The Bangladesh Labour Act, 2006, s 34

requirements provided under the Convention No. 138. The Convention provides 15 years as the minimum working age, whereas the Bangladeshi Labour Act permits children of 14 years of age to be employed. Additionally, the Bangladeshi minimum age provisions do not cover within its ambit children working in the informal work sector.⁵²

Under the Bangladeshi Labour Act, the maximum daily working hours of an adolescent cannot be more than 5 hours.⁵³ This provision seems to be a mere dead letter. In 2021, children employed in the informal RMGS were found to be working for as long as 16 hours a day.⁵⁴

Section 374 of the Bangladeshi Penal Act, 1860 provides for imprisonment of one year or a fine or both for unlawfully compelling a labourer to work against their will.⁵⁵ These provisions have proved to be ineffective on account of the slow and lengthy judicial process.⁵⁶ Additionally, the penalties are insignificant and would fail to deter child labour violations.

The Bangladeshi Government has taken various initiatives such as the “16357” hotline through which labourers can report child labour violations in the RMGS⁵⁷ and children protection networks comprising of officers from various agencies with procedures in place to curb children labour.⁵⁸

In an effort to abide by Convention No. 138, the Bangladeshi Government introduced The National Plan of Action on the Elimination of Child Labor (2021-2025) (“**Action Plan**”).⁵⁹ The said Action Plan aims to eliminate worst forms of child labour by 2021 and all forms of child

⁵² ‘Findings On The Worst Forms Of Child Labour: Bangladesh’ (United States of America, Bureau of International Labor Affairs 2021) 5

⁵³ The Bangladesh Labour Act, 2006, s 40 (1)

⁵⁴ ‘Findings On The Worst Forms Of Child Labour: Bangladesh’ (United States of America, Bureau of International Labor Affairs 2021) 2

⁵⁵ The Penal Code 1860, s 374

⁵⁶ ‘Findings On The Worst Forms Of Child Labour: Bangladesh’ (United States of America, Bureau of International Labor Affairs 2021) 1

⁵⁷ ‘Findings On The Worst Forms Of Child Labour: Bangladesh’ (United States of America, Bureau of International Labor Affairs 2021) 5

⁵⁸ ‘Findings On The Worst Forms Of Child Labour: Bangladesh’ (United States of America, Bureau of International Labor Affairs 2021) 5

⁵⁹ ‘Bangladesh Ratifies The Minimum Age Convention’ (*ILO*, 22 March 2022) <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/child-labour/WCMS_840125/lang-en/index.htm#:~:text=Convention%20No.,light%20work%20and%20artistic%20performances> accessed 26 July 2023

labour by 2025.⁶⁰ The Action Plan faces multiple enforcement and coordination challenges on account of the laid back attitude of the government in amending the laws relating to child labour.⁶¹

2. Gender Gap

The World Bank Index on Women, Business and The Law, 2023 scored Bangladesh a 49.4 on 100 for its legislations in place for women in business.⁶² The overall score of Bangladesh is very poor compared to its South Asian neighbours which earned a regional average of 63.7 on 100.⁶³

44% of the garment labour population in Bangladesh consists of females.⁶⁴ Bangladesh surpasses its Asian counterparts, Vietnam and Cambodia with respect to gender pay gap.⁶⁵ The gender pay gap is about 22% in the country as per the ILO,⁶⁶ whereby male labours are remunerated much more than their female counterparts.

The employers usually employ females at the bottom of the production chain and often find it easy to subdue them. Women are often victims of physical and verbal abuse. The factory managers are rewarded for their atrocious behaviour towards women by promotions instead of being criticised.⁶⁷

A notable instance of exploitation of female labour force in the Bangladesh RMGS pertains to the 2012 London Olympics. The factories in Bangladesh produced sportswear for 2012 London

⁶⁰ 'National Plan of Action To Eliminate Child Labour (2021-2025)' (Ministry of Labour and Employment 2021) 11

⁶¹ 'Findings On The Worst Forms Of Child Labour: Bangladesh' (United States of America, Bureau of International Labor Affairs 2021) 8

⁶² Women Business and Law 2023, World Bank, page 1
<https://wbl.worldbank.org/content/dam/documents/wbl/2023/snapshots/Bangladesh.pdf>

⁶³ Women Business and Law 2023, World Bank, page 1
<https://wbl.worldbank.org/content/dam/documents/wbl/2023/snapshots/Bangladesh.pdf>

⁶⁴ Souleima El Achkar Hilal, *Employment, Wages And Productivity Trends In The Asian Garment Sector: Data And Policy Insights For The Future Of Work* (International Labour Organisation 2022) 33

⁶⁵ Souleima El Achkar Hilal, *Employment, Wages And Productivity Trends In The Asian Garment Sector: Data And Policy Insights For The Future Of Work* (International Labour Organisation 2022) 33

⁶⁶ Souleima El Achkar Hilal, *Employment, Wages And Productivity Trends In The Asian Garment Sector: Data And Policy Insights For The Future Of Work* (International Labour Organisation 2022) 33

⁶⁷ Naznin Sultana, 'Gender (In)equality and Discrimination In The Readymade Garments Sector Of Bangladesh: Is The Experience Of The (Female) Office Workers Overshadowed By The Experience Of The Factory Workers?' (University of Bergen, 2021) 11

Olympic sponsors: Adidas, Nike, and Puma.⁶⁸ Female labourers employed at factories contracting with these brands, were abused both physically and verbally, underpaid, and were forced to overwork.⁶⁹ None of these sponsor companies effectively monitored for compliance with labour standards⁷⁰ and in fact profited at the cost of these ill-fated women.

Section 332 of the Bangladeshi Labour Act⁷¹ prohibits indecent or unmannerly conduct towards women. The said Section provides that “*Where any woman is employed in any work of any establishment, whatever her rank or status may be, no person of that establishment shall behave with her which may seem to be indecent or unmannerly or which is repugnant to the modesty or honour of that woman*”. This section seems to be vague since multiple terms such as “*indecent*”, “*unmannerly*” and “*repugnant to the modesty or honour of that woman*”, have not been defined. Additionally, the Section does not provide any penalty for its contravention. In such a case, persons who violate the provisions of this Section would be subject to the penalty laid down in Section 307, which seems to be a residuary provision laying down a common punishment. Hence, a person who violates Section 332 of the Bangladeshi Labour Act would be punishable with imprisonment of upto 3 months or with a fine of 25000 taka or both.⁷²

The provisions of Section 332 are not adequate to protect the rights of women in the workplace on account of several ambiguities and the punishment being too lenient thereby failing to deter employers from exploiting female labourers. Neither does the provision make any reference to “*sexual harassment*”⁷³ nor does the Act provide any power to the authorities to enforce rules with reference to sexual harassment. There has hardly been any reported instance of a case being filed under Section 332 before the Bangladeshi Labour Courts.⁷⁴

⁶⁸ Mohammed Ziaul Haque and Fara Azmat, ‘Corporate Social Responsibility, Economic Globalization And Developing Countries: A Case Study Of The Readymade Garments Industry In Bangladesh’ (2015) Vol. 6, No. 2 Sustainability Accounting, Management And Policy Journal 166, 13

⁶⁹ Mohammed Ziaul Haque and Fara Azmat, ‘Corporate Social Responsibility, Economic Globalization And Developing Countries: A Case Study Of The Readymade Garments Industry In Bangladesh’ (2015) Vol. 6, No. 2 Sustainability Accounting, Management And Policy Journal 166, 13

⁷⁰ Mohammed Ziaul Haque and Fara Azmat, ‘Corporate Social Responsibility, Economic Globalization And Developing Countries: A Case Study Of The Readymade Garments Industry In Bangladesh’ (2015) Vol. 6, No. 2 Sustainability Accounting, Management And Policy Journal 166, 13

⁷¹ The Bangladesh Labour Act, 2006, s 332

⁷² The Bangladesh Labour Act, 2006, s 307

⁷³ Taslima Yasmin, ‘Laws Against Sexual Harassment: Analyzing The Legal Framework Of Bangladesh’ (2021) Vol. 32(2) Dhaka University Law Journal 103, 112

⁷⁴ Taslima Yasmin, ‘Laws Against Sexual Harassment: Analyzing The Legal Framework Of Bangladesh’ (2021) Vol. 32(2) Dhaka University Law Journal 103, 112

The provisions of Section 332 of the Bangladeshi Labour Act are encapsulated under Section 189 of the EPZ Act⁷⁵ as well, for curbing unfair treatment meted out to women working in establishments located in the EPZs. Since Section 189 of the EPZ Act does not prescribe a penalty, the penalty prescribed under Section 159 would be attracted. Section 159 simply provides for a fine of 5000 taka which is unproportional to the gravity of the offence of abusing a woman in her workplace.⁷⁶

Essentially, the above provisions of the Bangladesh Labour Act and the EPZ Act do not provide for adequate safeguards against sexual harassment of women in the workplace. The stepping stone for action against sexual harassment faced by women in the workplace was laid down by the Bangladesh Supreme Court, through the landmark judgement of *BNWLA vs. Government of Bangladesh And Others*.⁷⁷ The Hon'ble Bangladesh Supreme Court laid down guidelines for the prevention of harassment of women and children at workplaces, educational institutions and on the streets, in 2009. The guidelines provided by the court included-

- a) Prohibition on touching or hurting any female with *malafide* intention;
- b) Bar on use of any indecent words or comments towards women and children;
- c) Instructed the relevant authorities to form a minimum five-member Sexual Harassment Prevention Committee headed by a woman and consisting predominantly of women at every workplace and institution to investigate allegations of harassment of women.⁷⁸

The Supreme Court directed the guidelines to be in force until the Government enforces a concrete legislative policy against sexual harassment. More than a decade has passed since the Supreme Court judgement and yet there seems to be no concrete law in force against sexual harassment in Bangladesh.

3. Freedom of Association

The Bangladeshi government seems to be anti-unionism.

Article 38 of the Bangladeshi Constitution⁷⁹ guarantees Freedom of Association (“FoA”) as a fundamental right. However, it was only in 2006 that the Bangladeshi Government essentially

⁷⁵ Bangladesh EPZ Labour Act, 2019, Act No 2 of 2019, s 189 (Bangladesh EPZ Labour Act, 2019)

⁷⁶ Bangladesh EPZ Labour Act, 2019, s 159

⁷⁷ 31 31 BLD (HCD) 2011[3240]

⁷⁸ *BNWLA vs. Government of Bangladesh And Others* 31 31 BLD (HCD) 2011[3240]

⁷⁹ The Constitution of the People's Republic of Bangladesh, Act No of 1972, Art. 38 (Bangladesh Constitution)

permitted FoA as a consequence of the large scale labour turmoil which led to wildcat strikes throughout the country. Consequently, a tripartite Memorandum of Understanding was entered into between the Government, garment factory owners and the labourers through their welfare council.⁸⁰ The Memorandum of Understanding was seen as a landslide victory for the garment labourers since all their demands were met including maternity benefits, weekly holidays, increase in minimum wages and representation of labourers through trade unions. Soon enough it came to light that these changes were only effective on paper. Most factories remained unbothered and none of these changes were implemented on ground.⁸¹

The introduction of the right to form trade unions under the Bangladesh Labour Act, 2006 also proved to be a mere dead letter with almost negligible changes in the ground reality.⁸² It was only after the collapse of Rana Plaza that the Bangladeshi government faced pressure from the international community to strengthen its labour laws.⁸³

Although the amended Bangladeshi Labour Act accelerated the registration of trade unions,⁸⁴ the discretionary powers of the functionaries were left intact. The Registrar of Unions has discretion to reject an application for registration of a trade union if “*he finds the application deficient in any material respect*”.⁸⁵ Additionally, the Registrar of Unions has discretion to register the union only if the objections raised by him are “*satisfactorily met*”.⁸⁶ The use of ambiguous terms such as “*deficient in any material respect*” and “*satisfactorily met*”, provide the functionaries with blanket discretionary powers to repress the formation of unions. As a result, the majority of the unions which are registered in the country are “*yellow unions*” which are set up by the factory owners themselves in order to prevent the garment labourers from forming their independent unions.⁸⁷ Required minimum membership of 20% of the labourers

⁸⁰ Dina Siddiqi, ‘Before Rana Plaza: towards a history of labour organizing in Bangladesh’s garment industry’ Vicki Crinis, Adrian Vickers, *Studies in the Growth Economies of Asia* (Routledge 2017) 113

⁸¹ Dina Siddiqi, ‘Before Rana Plaza: towards a history of labour organizing in Bangladesh’s garment industry’ Vicki Crinis, Adrian Vickers, *Studies in the Growth Economies of Asia* (Routledge 2017) 114

⁸² Dina Siddiqi, ‘Before Rana Plaza: towards a history of labour organizing in Bangladesh’s garment industry’ Vicki Crinis, Adrian Vickers, *Studies in the Growth Economies of Asia* (Routledge 2017) 114

⁸³ Mia Mahmudur Rahim and Sk Samidul Islam; Freedom of association in the Bangladeshi garment industry: A policy schizophrenia in labour regulation, *International Labour Review*, Vol. 159 (2020), No. 3, page 428-429

⁸⁴ Mia Mahmudur Rahim and Sk Samidul Islam; Freedom of association in the Bangladeshi garment industry: A policy schizophrenia in labour regulation, *International Labour Review*, Vol. 159 (2020), No. 3, page 429

⁸⁵ Section 182(2), Bangladesh Labour Act, 2006

⁸⁶ Section 182(3), Bangladesh Labour Act, 2006

⁸⁷ Mia Mahmudur Rahim and Sk Samidul Islam, ‘Freedom Of Association In The Bangladeshi Garment Industry: A Policy Schizophrenia In Labour Regulation’ (2020) Vol 159 No 3 *International Labour Review* 423, 424

in a factory in order to get a union registered⁸⁸ acts as a further deterrent to the formation of unions.

Additionally, the Government rolled out The Bangladesh Labour Rules, 2015⁸⁹ (“**Rules**”), which explained the rules regarding the creation of labour unions. The Rules stipulated in depth standards and procedures to remove ambiguities in the amended Bangladeshi Labour Act. These rules made the procedure for formation of trade unions even more cumbersome. For instance, Rule 169(4)⁹⁰ provided that only a permanent labourer is eligible to be a union leader.⁹¹ These rules provided additional excuses to the Registrar of Unions to reject applications. Many factory owners preferred closing down their establishments over negotiating and dealing with employees’ unions, which further deterred unionisation.⁹²

The labourers in the EPZ are at a greater disadvantage compared to the labourers working in non-EPZ zones. Under the EPZ Act, labourers are barred from forming independent trade unions at the enterprise level⁹³, instead all labourers working in a particular industry in each zone would be permitted to form and join the Workers Welfare Association.⁹⁴ The EPZ Act also prohibits strikes in any newly established enterprise for 3 years from the commencement of production,⁹⁵ thereby curtailing the collective bargaining rights of labourers in such enterprises. Such a provision is unreasonable and adversely affects the labourers rights. In the RMGS, over 500,000 labourers employed in EPZs were not allowed to form or join unions, which has left them without real power to bargain.⁹⁶

As per the International Trade Union Confederation Global Rights Index Report 2020 (“**ITUC Index**”), of the 1,104 union registration applications received by the Registrar between 2010 and 2019, 46% were rejected.⁹⁷ Of the 575 unions which were registered, 62 unions have been

⁸⁸ Bangladesh Labour Act, 2006, s 179(2)

⁸⁹ Bangladesh Labour Rules, 2015

⁹⁰ Bangladesh Labour Rules, 2015

⁹¹ ‘Bangladesh: Garment Workers’ Union Rights Bleak (*Human Rights Watch* 21 April 2016) <<https://www.hrw.org/news/2016/04/21/bangladesh-garment-workers-union-rights-bleak>> accessed 26 July 2023

⁹² Mia Mahmudur Rahim and Sk Samidul Islam, ‘Freedom Of Association In The Bangladeshi Garment Industry: A Policy Schizophrenia In Labour Regulation’ (2020) Vol 159 No 3 *International Labour Review* 423, 430

⁹³ *2020 ITUC Global Rights Index* (International Trade Unions Confederation 2020) 24

⁹⁴ Bangladesh EPZ Labour Act, 2019, s 94

⁹⁵ Bangladesh EPZ Labour Act, 2019, s 131

⁹⁶ *2020 ITUC Global Rights Index* (International Trade Unions Confederation 2020) 24

⁹⁷ *2020 ITUC Global Rights Index* (International Trade Unions Confederation 2020) 43

busted or are inactive due to anti-union retaliation, and 81 unionised factories have shut down permanently.⁹⁸

The anti-unionisation sentiment of factory owners is only getting stronger. In June 2023, Shahidul Islam, the president of the Bangladesh Garment and Industrial Workers Federation Gazipur district committee was mercilessly beaten to death post his visit to a factory in Gazipur to secure unpaid wages for the factory's labourers.⁹⁹

As result of the anti-union sentiment, the ITUC Index has classified Bangladesh as one of the 10 worst countries in the world for working people.¹⁰⁰ Government intervention is strongly needed in order to protect the labourers' FoA rights. The legislations in place are just good on paper and have failed to reform the FoA scenario in the country.

4. Occupational Health and Safety

The collapse of Rana Plaza led to a huge outcry from the international community. The Bangladesh government was pressurized to instal checks and balances with regards to work place safety. International brands having their production base in Bangladesh invited severe criticism on account of their lack of sympathy towards the working conditions in these factories.

As an aftermath of the Rana Plaza incident, 3 major multi stakeholder agreements were entered into, Accord on Fire and Building Safety in Bangladesh ("**Accord**") at the international level, National Tripartite Plan of Action ("**NTPA**") and Alliance for Bangladesh Labourer Safety ("**Alliance**") of the Government of Bangladesh at the national level.

a) *Accord on Fire and Building Safety in Bangladesh*

The Accord was signed in May 2013 under the chairmanship of the ILO,¹⁰¹ by more than 150 apparel corporations around the world including H&M and American Eagle Outfitters¹⁰², the

⁹⁸ 2020 ITUC Global Rights Index (International Trade Unions Confederation 2020) 43

⁹⁹ <https://www.hrw.org/news/2023/07/06/bangladesh-labor-activist-killed>

¹⁰⁰ 2020 ITUC Global Rights Index (International Trade Unions Confederation 2020) 5

¹⁰¹ Mohd Raisul Islam Khan and Christa Wichterich, 'Safety And Labour Conditions: The Accord And The National Tripartite Plan Of Action For The Garment Industry Of Bangladesh' (2015) Global Labour University, 13, <https://global-labour-university.org/wp-content/uploads/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf> accessed 25 July 2023

¹⁰² 'Safe Workplaces' (*Accord on Fire and Building Safety in Bangladesh*) <<https://bangladeshaccord.org/>> accessed 26 July 2023

two global union federations IndustriALL and UNI Global Unions, labour rights campaign groups and a number of Bangladeshi trade unions in order to ensure workplace safety in the RMGS.¹⁰³ It is a legally binding agreement.¹⁰⁴ The 2013 Accord expired in 2018 and was renewed for a further period up until 31 May 2021.¹⁰⁵

The signatories of the agreement are required to establish fire and building safety through safety inspections, remediation and extensive fire safety training programs.¹⁰⁶ The programme is being built in close cooperation with the Government of Bangladesh's NTPA.¹⁰⁷

The key aspects of the Accord involve-

- i. Extensive fire, electrical and structural safety inspections supported by the apparel corporations with the involvement of labourers and trade unions.¹⁰⁸
- ii. Where corrective actions are identified by the Safety Inspectors, the signatory companies shall compel the supplier factories to ensure time bound rectification of violations.¹⁰⁹
- iii. Extensive training programmes on safety issues through a training plan approved by the Supreme Court of Bangladesh.¹¹⁰

The Accord has proved to be a game changer in improving safety in Bangladeshi garment factories. By 2023, the Accord has managed to conduct more than 40,000 initial and follow-up inspections in factories and identified more than 150,000 safety hazards that needed to be remedied.¹¹¹ 93% of these safety hazards have been remedied.¹¹²

¹⁰³ Mohd Raisul Islam Khan and Christa Wichterich, 'Safety And Labour Conditions: The Accord And The National Tripartite Plan Of Action For The Garment Industry Of Bangladesh' (2015) Global Labour University, 11, <https://global-labour-university.org/wp-content/uploads/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf> accessed 25 July 2023

¹⁰⁴ Mohd Raisul Islam Khan and Christa Wichterich, 'Safety And Labour Conditions: The Accord And The National Tripartite Plan Of Action For The Garment Industry Of Bangladesh' (2015) Global Labour University, 13, <https://global-labour-university.org/wp-content/uploads/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf> accessed 25 July 2023

¹⁰⁵ 'Safe Workplaces' (*Accord on Fire and Building Safety in Bangladesh*) <<https://bangladeshaccord.org/>> accessed 26 July 2023

¹⁰⁶ Accord on Fire and Building Safety in Bangladesh

¹⁰⁷ Accord on Fire and Building Safety in Bangladesh

¹⁰⁸ Accord on Fire and Building Safety in Bangladesh, pp 1,2 & 3

¹⁰⁹ Accord on Fire and Building Safety in Bangladesh, pp 12

¹¹⁰ Accord on Fire and Building Safety in Bangladesh, pp 12b

¹¹¹ Isatou Ndure, '10 Years Since Rana Plaza, The Accord Has Some Bold Expansion Plans' (*Just Style*, 28 March 2023) <<https://www.just-style.com/features/10-years-since-rana-plaza-the-accord-has-some-bold-expansion-plans/#:~:text=The%20Bangladesh%20Accord%3A%20A%20success%20story&text=Across%20those%20factories%2C%20the%20Accord,that%20needed%20to%20be%20remedied>> accessed 26 July 2023

¹¹² Isatou Ndure, '10 Years Since Rana Plaza, The Accord Has Some Bold Expansion Plans' (*Just Style*, 28 March 2023) <<https://www.just-style.com/features/10-years-since-rana-plaza-the-accord-has-some-bold-expansion-plans/#:~:text=The%20Bangladesh%20Accord%3A%20A%20success%20story&text=Across%20those%20factories%2C%20the%20Accord,that%20needed%20to%20be%20remedied>> accessed 26 July 2023

The tenure of the renewed Accord has expired in 2021, and there seem to be no signs of a renewed Accord post 2021.

b) Alliance for Bangladesh Labour Safety

Alliance was formed by a group of northern American apparel companies, retailers and brands. The Alliance was a 5 year undertaking in order to set timeframes and ensure accountability for occupational and fire safety inspections and trainings in the Bangladeshi garment factories.¹¹³ However, the Alliance terminated its mandate in 2018 upon the conclusion of 5 years. Unlike Accord, Alliance was not a legally binding initiative.¹¹⁴ The companies part of the initiative resolved to appoint domestic entities to monitor safety compliances in the factories supplying to these brands post the determination of the initiative.¹¹⁵

Alliance released its final report in 2018.¹¹⁶ The report claims to have completed 93% of safety remediation required across the affiliated factories.¹¹⁷

c) National Tripartite Plan of Action

The NTPA is a national agreement jointly signed by the Ministry of Labour and Employment and representatives of labourers and the owners, with the assistance of the ILO for ensuring fire safety in garment factories.

Key tasks of the NTPA include assessment of the structural integrity and fire safety of garment factory buildings, strengthening labour inspections, training and awareness regarding OSH and labourer rights and rehabilitation of disabled labourers.¹¹⁸ Progress is monitored by a Tripartite

¹¹³ 'Alliance Announces End Of Its Tenure' (*New Age Bangladesh*, 14 December 2018) <<https://www.newagebd.net/article/58837/alliance-announces-end-of-its-tenure>> accessed 26 July 2023

¹¹⁴ Jaakko Salminen, 'The Accord On Fire And Building Safety In Bangladesh: A New Paradigm For Limiting Buyers' Liability In Global Supply Chains?' (2018) Vol 66 *American Journal of Comparative Law* 411, 431

¹¹⁵ 'Alliance Leaves Bangladesh' (*New Age Bangladesh*, 2 January 2019) <<https://www.newagebd.net/article/60547/alliance-leaves-bangladesh>> accessed 26 July 2023

¹¹⁶ 'An Industry Transformed: Leaving a Legacy of Safety in Bangladesh's Garment Sector: Alliance for Bangladesh Worker Safety; Fifth Annual Report November 2018' (Alliance 2018)

¹¹⁷ 'An Industry Transformed: Leaving a Legacy of Safety in Bangladesh's Garment Sector: Alliance for Bangladesh Worker Safety; Fifth Annual Report November 2018' (Alliance 2018)

¹¹⁸ 'Bangladesh Government, employers and workers organizations sign integrated national action plan on fire safety and structural integrity in the garment' (*ILO* 25 July 2013) <https://www.ids.trade/files/ilo_release_on_bangladesh_ntpa.pdf> accessed 26 July 2023

Committee.¹¹⁹

The NTPA led to the 2013 amendment of the Bangladeshi Labour Act, 2006. The 2013 amendment includes several provisions to improve workplace safety, such as the creation of a Health and Safety Committee in factories with more than 50 labourers.¹²⁰ Use of personal safety equipment,¹²¹ sound structural integrity, and provision of sufficient free exit paths and open stairways/paths during working hours have been made mandatory.¹²²

The factories falling under NTPA's purview are third-tier factories, which are mainly subcontracting factories that do not have any direct business relations with international fast fashion companies and whose business model is based on informal sweatshop conditions.¹²³

d) Occupational Safety and Health Policy, 2013 (“Bangladesh OSH Policy”)

The Bangladesh OSH Policy was introduced with a dual aim of increasing productivity and ensure a safe and healthy working environment for labourers.¹²⁴ The OSH standards prescribed in the policy have proved to be ineffective. Most factories lack basic necessities such as clean drinking water and clean toilets. Labourers often complain of smelly and worm filled drinking water provided to them in factories.¹²⁵

Although the measures related to occupational safety may have been successful, one cannot on the analysis of the data available conclude that the measures undertaken for occupational health have successfully served their purpose.

¹¹⁹ ‘Bangladesh Government, employers and workers organizations sign integrated national action plan on fire safety and structural integrity in the garment’ (*ILO* 25 July 2013) <https://www.ids.trade/files/ilo_release_on_bangladesh_ntpa.pdf> accessed 26 July 2023

¹²⁰ Bangladesh Labour Act 2006, s 90A

¹²¹ Bangladesh Labour Act 2006, s 78A

¹²² Bangladesh Labour Act 2006, s 72

¹²³ Mohd Raisul Islam Khan and Christa Wichterich, ‘Safety And Labour Conditions: The Accord And The National Tripartite Plan Of Action For The Garment Industry Of Bangladesh’ (2015) Global Labour University, <https://global-labour-university.org/wp-content/uploads/fileadmin/GLU_Working_Papers/GLU_WP_No.38.pdf> accessed 25 July 2023

¹²⁴ National Profile on Occupational Safety and Health in Bangladesh 2019, 28

¹²⁵ ‘Whoever Raises Their Head Suffers Most’ (*Human Rights Watch*, 22 April 2015) <<https://www.hrw.org/report/2015/04/22/whoever-raises-their-head-suffers-most/workers-rights-bangladeshs-garment#318f80>> accessed 25 July 2023

IV. INDIA

The RMGS in India is the second largest industry in the country after agriculture.¹²⁶ The formal Indian RMGS was set up by the British during their 89 yearlong rule in India.¹²⁷ They set up the first modern garment factory in Bombay.¹²⁸

The spatial concentration of RMGS factories in India is evenly spread out. The largest export-oriented factories are concentrated in the states of Tamil Nadu, Karnataka, Haryana and Uttar Pradesh. The states of West Bengal, Gujarat and Maharashtra are home to domestic garment industries, medium and small scale enterprises.¹²⁹ The Indian RMGS is divided into the formal and informal sector.¹³⁰ 86% of the garment labourers in India work in the informal sector.¹³¹

The Indian RMGS caters to not only fast fashion brands but also luxury brands including Dior and Yves Saint Laurent which outsource their embroidery projects to Indian garment labourers.¹³²

As illustrated below, the cost of rapid industrialisation of the Indian economy is being borne by its labour force who is not being allowed to reap the benefits of the same and is being exploited day in and day out in order increase India's textile exports.

1. Child Labour

Article 24 of the Indian Constitution prohibits the employment of children below 14 years of

¹²⁶ Ruchira Ganguly Scrase, 'Workers In The Export Garment Industry; Surviving Neoliberal Reforms', Vicki Crinis, Adrian Vickers, *Studies in the Growth Economies of Asia* (Routledge 2017) 171

¹²⁷ N Chandran, 'Indian textile industry: The silent cash cow' (*The Economic Times*, 10 March 2023) <<https://retail.economicstimes.indiatimes.com/blog/indian-textile-industry-the-silent-cash-cow/98537969>> accessed 30 July 2023

¹²⁸ N Chandran, 'Indian textile industry: The silent cash cow' (*The Economic Times*, 10 March 2023) <<https://retail.economicstimes.indiatimes.com/blog/indian-textile-industry-the-silent-cash-cow/98537969>> accessed 30 July 2023

¹²⁹ Souleima El Achkar Hilal, *Employment, Wages And Productivity Trends In The Asian Garment Sector: Data And Policy Insights For The Future Of Work* (International Labour Organisation 2022) 9

¹³⁰ Ruchira Ganguly Scrase, 'Workers In The Export Garment Industry; Surviving Neoliberal Reforms', Vicki Crinis, Adrian Vickers, *Studies in the Growth Economies of Asia* (Routledge 2017) 175

¹³¹ Souleima El Achkar Hilal, *Employment, Wages And Productivity Trends In The Asian Garment Sector: Data And Policy Insights For The Future Of Work* (International Labour Organisation 2022)18

¹³² Kai Schultz, Elizabeth Paton and Phyllida Jay, 'Luxury's Hidden Indian Supply Chain' (*New York Times*, 11 March 2020) < <https://www.nytimes.com/2020/03/11/style/dior-saint-laurent-indian-labor-exploitation.html>> accessed 30 July 2023

age in any factory or mine or any other hazardous employment.¹³³ This age limit of 14 years is clearly violative of Convention No. 138, which recognises the minimum working age to be 15 years of age. India having ratified the said convention should ideally amend its constitution in order to change the minimum working age to 15 years.

The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986¹³⁴ (“**Indian Child Labour Act**”) regulates the employment of juveniles in various industries. Similar to the Bangladeshi legislation, the Indian legislation divides juveniles into 2 categories; “*child*” and “*adolescent*”. A “*child*” is a person who has not completed 14 years of age¹³⁵ and an “*adolescent*” is a person between 14 to 18 years of age.¹³⁶ The Schedule to the Indian Child Labour Act lays down a list of hazardous industries where adolescents and children cannot be employed. Under the schedule, processes related to manufacturing of garments are not part of the list of hazardous industries.¹³⁷ However, the Schedule prohibits an adolescent and child from participating in any family enterprise relating to processes of cloth printing, dyeing and weaving including processes, preparatory and incidental thereto.¹³⁸

The Indian Child Labour Act also provides for a penalty of imprisonment or fine or both for persons who engage children or adolescent in any prohibited sectors.¹³⁹

Additionally, the Factories Act, 1948¹⁴⁰ lays down conditions and hours of work for children and adolescent in factories and also prohibits night work.¹⁴¹ It also requires the employer to keep a record of each juvenile working in his factory and that each child be given a fitness certificate in order to be permitted to work.¹⁴²

Despite multiple checks and balances being in place, child labour norms are often flouted. Child labour is widely pervading through the Tirupur district of Tamil Nadu, which is a RMGS

¹³³ Constitution of India, art 24

¹³⁴ Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

¹³⁵ Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, s 2(i)

¹³⁶ Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, s 2(ii)

¹³⁷ Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, Schedule

¹³⁸ Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, Schedule 6

¹³⁹ Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, s 14

¹⁴⁰ Factories Act, 1948

¹⁴¹ Factories Act, 1948, s 71

¹⁴² Factories Act, 1948, s 69-70

hub. Children in Tirupur are made to work way more¹⁴³ than the 4 and half hour daily limit.¹⁴⁴

In the national capital region of Delhi (“NCR”) children are often trafficked from the states of Uttar Pradesh and Bihar to work in the garment units in the region.¹⁴⁵

In 2008, a British Broadcasting Company (“BBC”) report caused massive uproar. The BBC Report exposed the British fast fashion brand Primark, which made use of child labour in India to manufacture its garments.¹⁴⁶ This led to thousands of Primark customers protesting outside its stores. Subsequently, Primark issued a statement that it had fired 3 of its primary Indian suppliers on account of the allegations of using child labourers.¹⁴⁷

2. Gender Gap

Unlike Bangladesh and Vietnam, female labourers do not dominate the RMGS in India. Females represent only 39% of the workforce in the Indian RMGS.¹⁴⁸

Article 15 of the Indian Constitution prohibits discrimination among individuals based on sex.¹⁴⁹ Despite the bar on gender based discrimination, female garment labourers are often paid less compared to their male counterparts and are often innocent victims of verbal, physical and sexual abuse at the hands of their managers, supervisors and employers.

The Hon’ble Supreme Court of India in the case of *Vishaka v. State of Rajasthan*¹⁵⁰ (“**Vishaka judgement**”), highlighted the lack of laws in India for protection of women in their workplaces. The Hon’ble Supreme Court of India proceeded to lay down guidelines for protection of women in workplaces, which were to be followed until the legislature introduced laws for protection of women in the workplace.

¹⁴³ *India Fair Wear Country Study 2016* (Fair Wear Foundation, 2016) 34

¹⁴⁴ Factories Act, 1948, s 71

¹⁴⁵ Meghna Dasgupta, ‘Working Conditions Of Migrant Garment Workers In India: A literature review’ (International Labour Organisation 2017) page 20

¹⁴⁶ Kathryn Hopkins, ‘Child labour: Primark caught out’ (*The Guardian*, 23 June 2008) <<https://www.theguardian.com/business/2008/jun/23/primark.children>> accessed 30 July 2023

¹⁴⁷ Dan McDougall, ‘The hidden face of Primark fashion’ (*The Guardian*, 22 June 2008) <<https://www.theguardian.com/world/2008/jun/22/india.humanrights#:~:text=Last%20week%2C%20in%20an%20announcement,subcontracting%20labour%20to%20child%20workers>> accessed 30 July 2023

¹⁴⁸ Souleima El Achkar Hilal, *Employment, Wages And Productivity Trends In The Asian Garment Sector: Data And Policy Insights For The Future Of Work* (International Labour Organisation 2022) 33

¹⁴⁹ Indian Constitution, Art 15

¹⁵⁰ AIR 1997 SC 3011

The Indian legislature, in 2013, finally introduced the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”) as a corollary to the Vishaka judgement. The POSH Act addresses sexual harassment in the workplace. The POSH Act provides an all-inclusive and exhaustive definition of “*workplace*” which involves private and public organisations and enterprises involved in supply, sale and purchase of goods and services.¹⁵¹ It defines “*sexual harassment*” as any unwelcomed acts or behaviour (whether directly or by implication) including physical contact and advances, demanding sexual favours and making sexually coloured remarks.¹⁵² The POSH Act also provides for the setting up of an “*Internal Complaints Committee*” at all workplaces having 10 or more labourers¹⁵³ for addressing complaints from female labourers who have faced sexual harassment at the work place.¹⁵⁴

After a decade of the POSH Act’s enforcement, the Hon’ble Supreme Court of India has criticized the implementation of the POSH Act in a June 2023 judgement.¹⁵⁵ The Hon’ble Supreme Court issued various guidelines to ensure better implementation and success of the POSH Act such as imposing an obligation on employers to conduct awareness programmes in order to upskill members of the Internal Complaints Committees and to educate female labourers about the provisions of the POSH Act.¹⁵⁶

Despite the implementation of the POSH Act, women in the RMGS continue to be exploited on a daily basis. In 2021, a female worker at a factory supplying garments to H&M was found dead after being raped by her supervisor.¹⁵⁷ Subsequently, several women in the same factory came forward and claimed they were victims of sexual violence which persisted in the factory.¹⁵⁸

¹⁵¹ Protection of Women from Sexual Harassment Act, 2013, s 2(o)

¹⁵² Protection of Women from Sexual Harassment Act, 2013, s 2(n)

¹⁵³ Protection of Women from Sexual Harassment Act, 2013, s 4

¹⁵⁴ Protection of Women from Sexual Harassment Act, 2013, s 9

¹⁵⁵ *Aureliano Fernandes Vs. State of Goa and Others* 2023 SCC OnLine SC 621

¹⁵⁶ Rashmi Pradeep, Bishen Jeswant, Luv Saggi and Kriti Singh, ‘Supreme Court’s landmark ruling : Directions for effective implementation of the POSH Act’ (*Cyril Amarchand Mangaldas Blogs*, 7 June 2023) <<https://corporate.cyrilamarchandblogs.com/2023/06/supreme-courts-landmark-ruling-directions-for-effective-implementation-of-the-posh-act/>> accessed 30 July 2023

¹⁵⁷ Anonymous, ‘Garment Worker Raped and Killed at H&M Supplier Factory in India’ (*Remake*, 3 February, 2021) <<https://remake.world/stories/news/garment-worker-raped-killed-at-hm-supplier-factory-in-india/>> accessed 30 July 2023

¹⁵⁸ Annie Kelly, ‘Female workers at H&M supplier in India allege widespread sexual violence’ (*The Guardian*, 9 March 2021) <<https://www.theguardian.com/global-development/2021/mar/09/female-workers-at-hm-supplier-in-india-allege-widespread-sexual-violence>> accessed 30 July 2023

A survey published by Asia Floor Wage Alliance in 2021, reported that 25-30% of female labourers employed at an Indian factory which supplies garments to fast fashion brands such as Superdry and American Eagle faced sexual harassment at their workplace including inappropriate touching and physical intimidation.¹⁵⁹

3. Freedom of Association

The ITUC Index has placed India on a list of the ten worst countries globally, for working people with respect to FoA on account of the repression of labour agitations in the country.¹⁶⁰

The Indian Constitution recognises the right to FoA and the right to form unions.¹⁶¹ Additionally, India has not ratified major ILO Conventions related to FoA and Collective Bargaining, namely, Convention No. 87¹⁶² and Convention No. 98.¹⁶³

In India, the Trade Union Act, 1926 provides for the registration of trade unions, their rights and liabilities.¹⁶⁴ However, it does not impose any obligation on employers to recognise and engage or bargain with trade unions in their establishments.¹⁶⁵ Additionally, the legislation also fails to recognise the powers of the trade union as collective bargaining agents in India. As a result, bureaucratic decisions related to the labourers can freely be taken without representations from the stakeholders themselves.

As stated above,¹⁶⁶ most of the garment labourers in India are employed in the informal sector whereby they are not governed by labour laws and employers do not see the need to provide labour law benefits to such labourers. Consequently, one may conclude that unionisation among these labourers is low. Even in the formal sector, most labourers fail to join unions on account of intimidation by their employers.¹⁶⁷

¹⁵⁹ A Stitch in Time Saved None: How Fashion Brands Fueled Violence Beyond the Factory (Asia Floor Wage Alliance, December 2021) 57

¹⁶⁰ 2020 ITUC Global Rights Index (International Trade Unions Confederation 2020) 60

¹⁶¹ Constitution of India, art 19(1)(c)

¹⁶² Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

¹⁶³ Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

¹⁶⁴ Trade Unions Act, 1926

¹⁶⁵ Kamala Sankaran 'Labour Laws in South Asia: the Need for an Inclusive Approach' (International Institute for Labour Studies Geneva, 2007)

¹⁶⁶ Pg.20

¹⁶⁷ Meghna Dasgupta, 'Working Conditions Of Migrant Garment Workers In India: A literature review' (International Labour Organisation 2017) 29-30

Although success stories of unionisation at the enterprise level are not adequately documented, instances of success stories of collective bargaining at the district level have been reported. One such successful story is that of the Tirupur Tripartite Trade Agreement which was negotiated between the district trade union and government for staggered wage increases for the labourers.¹⁶⁸ Unfortunately, the Government pulled out of this agreement in 2015.¹⁶⁹

4. Occupational Safety and Health

Just like the FoA conventions, India has not yet ratified the ILO's Convention No. 155¹⁷⁰ too.

The Factories Act, 1948 deals with OSH. It imposes an obligation on the State Government to appoint OSH inspectors for inspection of factories.¹⁷¹ The Factories Act, 1948 lays down guidelines for health, sanitation and safety that need to be maintained in the workplace.¹⁷²

The law also directs the employer to notify any accident to the relevant authority.¹⁷³ The Factories Act, 1948 also provides for the setup of a safety committee composed both of labourers and management within the factory in order to foster cooperation between the employees and employers with respect to OSH.¹⁷⁴

The garment labourers who work in a factory, *i.e.*, a premises which employees 10 or more employees in a calendar year, would be protected under the Factories Act, 1948,¹⁷⁵ however, garment labourers in the informal sector working in premises with less than 10 people would not be eligible to reap the benefits under the Factories Act, 1948. Axiomatically, one may conclude that the Indian RMGS would be highly dependent on the informal sector in order to avoid compliance with multiple rules and regulations, which in turn would lead to cost cutting.

¹⁶⁸ Meghna Dasgupta, 'Working Conditions Of Migrant Garment Workers In India: A literature review' (International Labour Organisation 2017) 30

¹⁶⁹ Stephanie Wilson, 'Garment Industry in Tiruppur, Tamil Nadu, India' (Global Living Wage Coalition) <<https://globallivingwage.org/case-studies/garment-industry-in-tiruppur-tamil-nadu-india/>> accessed 30 July 2023

¹⁷⁰ Occupational Safety and Health Convention, 1981 (No. 155)

¹⁷¹ Factories Act, 1948, s 8

¹⁷² Factories Act, 1948, ch III & IV

¹⁷³ Factories Act, 1948, s.88

¹⁷⁴ Factories Act, 1948, s. 41G

¹⁷⁵ Factories Act, 1948, s. 2(m)

A survey conducted by Fair Wear Foundation in 2016 in the Indian RMGS highlights the lacunae in the OSH measures opted for by the garment manufacturing enterprises. The main concerns highlighted by the survey included lack of training to the labourers, lack of fire safety measures, unhygienic washrooms.¹⁷⁶ In 2022, multiple incidents related to workplace safety came to light in the Indian RMGS. In June, 2022, a slab of a one storeyed garment factory in Mumbai collapsed, killing one worker and injuring 9 others.¹⁷⁷

In 2019, Thomson Reuters reported that multiple garment factories in South India were administering non-prescription pills to its female workforce who complained of menstrual cramps, so as to not interfere with their productivity and on the pretext of it easing menstrual cramps. However, most women who consumed these pills for an extended period showcased a deterioration in their physical and mental health.¹⁷⁸

Laj Exports, a garment manufacturer located in Bangalore which supplies garments to fast fashion brands such as Lee and Wrangler stands out from its peers in this aspect. The OSH initiative “*Zalando’s Life Skills for Empowering Women*” adopted by Laj Exports is commendable and sets an example for the other garment manufactures. Under the said initiative, 35 women from the factory itself are trained and act as advisors to their peers. Additionally, the factory also has an on-site clinic with a trained nurse. The nurse provides health related information and services including menstrual cramps, sanitary napkins, family planning counselling and contraception options.¹⁷⁹

5. Minimum Wages

The minimum wage structure in India appears to be intricate. There is no provision for a standard minimum wage across the country. The minimum wage varies based upon the geographical location, nature of the industry and the designation and skill levels of the

¹⁷⁶ *India Fair Wear Country Study 2016* (Fair Wear Foundation, 2016)

¹⁷⁷ Jasmin Malik Chua, ‘India: Multiple Factory Accidents Raise Concerns Over Health & Safety In The Garment Industry, Campaigners Call For Freedom Of Association In Factories To ‘Stave Off’ Accidents’ (*Business and Human Rights Resource Centre*, 29 June 2022) <<https://www.business-humanrights.org/en/latest-news/india-freedom-of-association-can-stave-off-garment-factory-accidents-according-to-labour-led-alliance-after-multiple-industrial-accidents-raise-concerns-over-occupational-health-safety/>> accessed 30 July 2023

¹⁷⁸ Anuradha Nagaraj, ‘Indian factories found endangering seamstresses’ health with illegal pills’ (Thomson Reuters, 12 June 2019) <<https://www.reuters.com/article/us-india-textiles-women-abuse/%0Dindian-factories-found-endangering-seamstresses-health-with-illegal-pills-idUSKCN1TD00T>> accessed 30 July 2023

¹⁷⁹ Robyn Russell, ‘The Women Behind The Clothes : Worker Health and Well-Being in the Indian Apparel Sector’ (*The United Nations Foundation*, 21 February 2020) <<https://unfoundation.org/blog/post/the-women-behind-the-clothes-worker-health-and-well-being-in-the-indian-apparel-sector/>> accessed 30 July 2023 ;

labourers.¹⁸⁰ The Minimum Wages Act, 1948 provides that the appropriate State Government or the Central Government is obligated to fix minimum wages depending upon whether the industry concerned falls within the purview of the State or Central Government.¹⁸¹

In 2022, several news portals reported that garment labourers in Karnataka working at factories supplying to top fast fashion brands like Zara, H&M and Nike had refused to pay their labourers the wages due to them for the preceding 2 years.¹⁸² This is believed to be one of the worst fashion wage thefts in history.¹⁸³ To add to the miseries of the garment labourers in Karnataka, the State Government suspended the increase in minimum wages on account of the COVID-19 pandemic for the financial year 2020-21.¹⁸⁴ The Hon'ble Karnataka High Court later quashed the government's order, however, RMGS employers refused to comply with the High Court's order and refused to pay the labourers their due shares.¹⁸⁵

As per a news capsule, a skilled garment worker in the State of Karnataka earns a mere sum of INR 441 (approx. 5.30 USD) per day for an 8 hour shift whereas labourers in other industries receive a minimum wage of around INR 561-661 (approx. 6.75-7.95 USD) per day.¹⁸⁶ The State Government also seems to be in a helpless position on account of the garment employers using intimidation tactics in order to maintain minimum wages at a low rate.¹⁸⁷

¹⁸⁰ Meghna Dasgupta, 'Working Conditions Of Migrant Garment Workers In India: A literature review' (International Labour Organisation 2017) 13

¹⁸¹ Minimum Wages Act, 1948, s 3

¹⁸² Emma Ockerman 'Zara, Nike, and Abercrombie's Indian Factories Weren't Fully Paying Workers' (*Vice News*, 9 February 2022) <<https://www.vice.com/en/article/akvny4/garment-workers-karnataka-india-wage-theft>> accessed 30 July 2023

¹⁸³ Annie Kelly, 'Worst fashion wage theft': workers go hungry as Indian suppliers to top UK brands refuse to pay minimum wage' (*The Guardian*, 16 December 2021) <<https://www.theguardian.com/global-development/2021/dec/16/worst-fashion-wage-theft-workers-go-hungry-as-indian-suppliers-to-top-uk-brands-refuse-to-pay-minimum-wage>> accessed 30 July 2023

¹⁸⁴ Annie Kelly, 'Worst fashion wage theft': workers go hungry as Indian suppliers to top UK brands refuse to pay minimum wage' (*The Guardian*, 16 December 2021) <<https://www.theguardian.com/global-development/2021/dec/16/worst-fashion-wage-theft-workers-go-hungry-as-indian-suppliers-to-top-uk-brands-refuse-to-pay-minimum-wage>> accessed 30 July 2023

¹⁸⁵ Joyjeet Das, 'Makers of High Fashion, Karnataka's Skilled Garment Workers Are Cheated of Fair Wages' (*The Wire*, 5 May 2023) <<https://thewire.in/labour/karnataka-election-garment-workers-wages>> accessed 30 July 2023

¹⁸⁶ Joyjeet Das, 'Makers of High Fashion, Karnataka's Skilled Garment Workers Are Cheated of Fair Wages' (*The Wire*, 5 May 2023) <<https://thewire.in/labour/karnataka-election-garment-workers-wages>> accessed 30 July 2023

¹⁸⁷ Joyjeet Das, 'Makers of High Fashion, Karnataka's Skilled Garment Workers Are Cheated of Fair Wages' (*The Wire*, 5 May 2023) <<https://thewire.in/labour/karnataka-election-garment-workers-wages>> accessed 30 July 2023

A survey conducted by one Maarten van Klaveren, in 2016 for over 100 garment suppliers in Asia indicates that approximately 90% of garment labourers received wages below the minimum prescribed thresholds.¹⁸⁸

6. Migrant Labourers- The Caged Birds of the Indian RMGS

The Indian RMGS experiences mass exodus of migrant labourers from different parts of the country.¹⁸⁹ On account of their failed agricultural ventures, these labourers migrate from the rural areas to the RMGS hubs.¹⁹⁰ The primary reason for migration of young female labourers is the collection of money to pay their dowries.¹⁹¹

Migrant labourers in the Indian RMGS are often subjected to forced labour on account of their vulnerabilities. The employers find it easier to exploit these migrant labourers on account of language barriers. Since these labourers are from various parts of the country, they do not understand English or the regional language, as a result of which they are unable to understand the terms of their employment contract.¹⁹² Most of these labourers are not put on the payrolls of the factory and are as a result paid wages lower than the minimum threshold.¹⁹³ The labourers are provided hostel facilities and are subjected to stringent conditions. They are not allowed to have any visitors. The unionisation among migrant labourers is fairly low as a result of which these labourers are easily subjected to atrocities by their employers.

Tamil Nadu has in particular experienced an efflux of female migrant labourers on account of the “*sumangali*” scheme.¹⁹⁴ The scheme allows young female labourers to earn wages along

¹⁸⁸ Maarten van Klaveren, ‘Wages in Context in the Garment Industry in Asia’ (WageIndicator.org, April 2016) 48

¹⁸⁹ Meghna Dasgupta, ‘Working Conditions Of Migrant Garment Workers In India: A Literature Review’ (International Labour Organisation 2017) 26

¹⁹⁰ Meghna Dasgupta, ‘Working Conditions Of Migrant Garment Workers In India: A Literature Review’ (International Labour Organisation 2017) 26

¹⁹¹ Annie Delaney and Jane Tate, ‘Forced Labour and Ethical Trade in the Indian Garment Industry’, Louise Waite, Gary Craig, Hannah Lewis and Klara Skrivankova, *Migration, Diasporas and Citizenship: Vulnerability, Exploitation and Migrants Insecure Work in a Globalised Economy* (Palgrave Macmillan 2015) 247

¹⁹² Meghna Dasgupta, ‘Working Conditions Of Migrant Garment Workers In India: A Literature Review’ (International Labour Organisation 2017) 27

¹⁹³ Aarohi Damle and Priyansha Singh, ‘Stitched Together: Migrant Workers and the Indian Textile Sector’ (*Medium*, 10 October 2019) <<https://medium.com/@indiamigration/stitched-together-migrant-workers-and-the-indian-textile-sector-4c5022a3a7e8>> accessed 30 July 2023

¹⁹⁴ Annie Delaney and Jane Tate, ‘Forced Labour and Ethical Trade in the Indian Garment Industry’, Louise Waite, Gary Craig, Hannah Lewis and Klara Skrivankova, *Migration, Diasporas and Citizenship: Vulnerability, Exploitation and Migrants Insecure Work in a Globalised Economy* (Palgrave Macmillan 2015) 247

with accumulating funds for their marriage expenses while living away from home.¹⁹⁵ On completion of three years in the service of the employer, these women receive a lump sum amount for their marriage expenses, which compels these labourers to compulsorily work for the employer come rain or shine.¹⁹⁶ The scheme is a mere scapegoat for attracting cheap labour and forcing them to work in unhealthy working conditions.¹⁹⁷ Their identity documents are confiscated by the employers in order to withhold the labourers permanently.¹⁹⁸ They are often subjected to overtime without pay and sexual abuse in their work place.¹⁹⁹

The onset of the COVID-19 pandemic added to the miseries of migrant labourers. Many of them lost their jobs on account of western companies cancelling or cutting orders.²⁰⁰ With the government sealing state borders to contain the spread of the virus, in a desperate attempt to return to their families, these migrant labourers undertook their journey to return home thousands of kilometres away by foot in the scorching heat.²⁰¹ The plight of these labourers attracted considerable attention from all parts of the world however, very little was done to aid these helpless labourers.

V. REPUBLIC OF INDONESIA

The Indonesian garment industry is divergent and includes production of yarns and fibres coupled with manufacturing of ready-made fast fashion garments.²⁰² The origin of the Indonesian textile industry can be traced back to the advent of the Dutch colonists in the 19th

¹⁹⁵ Annie Delaney and Jane Tate, 'Forced Labour and Ethical Trade in the Indian Garment Industry', Louise Waite, Gary Craig, Hannah Lewis and Klara Skrivankova, *Migration, Diasporas and Citizenship: Vulnerability, Exploitation and Migrants Insecure Work in a Globalised Economy* (Palgrave Macmillan 2015) 247

¹⁹⁶ Gisela ten Kate and Martje Theuws, 'Migrant labour in the textile and garment industry' (*Stichting Onderzoek Multinationale Ondernemingen*, February 2016) <<https://www.somo.nl/wp-content/uploads/2016/02/FactsheetMigrantLabour.pdf>> accessed 30 July 2023

¹⁹⁷ Meghna Dasgupta, 'Working Conditions Of Migrant Garment Workers In India: A Literature Review' (International Labour Organisation 2017) 35

¹⁹⁸ Pauline Overeem, Martje Theuws and Diewertje Heyl, 'Spinning around workers' rights' (*Stichting Onderzoek Multinationale Ondernemingen*, May 2021) 80

¹⁹⁹ Pauline Overeem, Martje Theuws and Diewertje Heyl, 'Spinning around workers' rights' (*Stichting Onderzoek Multinationale Ondernemingen*, May 2021) 80

²⁰⁰ Marc Bain, 'Indian garment workers are caught between Covid-19 and lost wages' (*Quartz*, 27 April 2021) <<https://qz.com/2002075/indian-garment-workers-are-caught-between-covid-19-and-lost-wages>> accessed 30 July 2023

²⁰¹ 'Covid-19 impact and Responses: India' (*Fair Wear Foundation*, 16 April 2020) <<https://www.fairwear.org/country-specific-guidance/india/>> accessed 30 July 2023

²⁰² John Maxwealth, *The Indonesian Garment Industry: A Deep Dive into Sourcing and Manufacturing* (2012 ESG LA Press) 2

century.²⁰³ Following Indonesia's liberation from the Dutch, the government established several state-owned textiles mills which primarily focused on domestic consumption.²⁰⁴

It was only in 1970 that the Indonesia government introduced policy reforms to invite foreign investors into the country, which served as a catalyst for the growth of RMGS.²⁰⁵

Today, Indonesian textiles account for 11% of its manufacturing exports and employs over 4.3 billion people.²⁰⁶ The chief export destinations for Indonesian garments being the United States and Japan.²⁰⁷ Most of the RMGS manufacturers are situated in the islands of Java. Unfortunately, the Indonesian RMGS has faced several challenges including environmental and labour law violations.²⁰⁸ The Indonesian Government seems to maintain a culture of secrecy in reporting labour rights violations as hardly any recent statistics seem to be available for perusal by the public.

2020- Year of the reformation of the Indonesian Labour Law

On 5 October 2020, the Indonesian government amended 77 legislations (**"Omnibus Law"**) related to a wide range of sectors in order to enhance the Ease of Doing Business in Indonesia.²⁰⁹ This move was not welcomed by most labourers in the country as it seemed to be a step in the wrong direction when it comes to remediation of labour atrocities in the country. The new amended law fails to adhere to the core ILO Conventions which have been ratified by Indonesia.²¹⁰

The Omnibus Law increases the permissible overtime hours from three to four hours per day and from fourteen hours to eighteen hours per week.²¹¹ The medium and small scale industries

²⁰³ John Maxwealth, *The Indonesian Garment Industry: A Deep Dive into Sourcing and Manufacturing* (2012 ESG LA Press) 7

²⁰⁴ John Maxwealth, *The Indonesian Garment Industry: A Deep Dive into Sourcing and Manufacturing* (2012 ESG LA Press) 8

²⁰⁵ Nabiyla Risfa Izzati, 'Indonesia Fair Wear Country Study Report 2021' (Fair Wear Foundation 2021) 24

²⁰⁶ Nabiyla Risfa Izzati, 'Indonesia Fair Wear Country Study Report 2021' (Fair Wear Foundation 2021) 24

²⁰⁷ Nabiyla Risfa Izzati, 'Indonesia Fair Wear Country Study Report 2021' (Fair Wear Foundation 2021) 26

²⁰⁸ John Maxwealth, *The Indonesian Garment Industry: A Deep Dive into Sourcing and Manufacturing* (2012 ESG LA Press) 8

²⁰⁹ Nabiyla Risfa Izzati, 'Indonesia Fair Wear Country Study Report 2021' (Fair Wear Foundation 2021) 29

²¹⁰ Nabiyla Risfa Izzati, 'Indonesia Fair Wear Country Study Report 2021' (Fair Wear Foundation 2021)

²¹¹ <https://hsfnotes.com/employment/2020/10/27/omnibus-law-insights-are-the-labour-reforms-really-pro-employer/>

have been exempted from paying minimum wages to their employees.²¹² The Omnibus Law confers greater power in the hands of employers by deleting the requirement for 3 years fixed term employment contracts.²¹³

This Omnibus Law was subjected to a legal review before the Indonesian Constitutional Court on the grounds that the law violated the procedure to be followed as per Article 22A of the Indonesian Constitution²¹⁴ on account of the lack of public consultation.²¹⁵ The Hon'ble Court in its ruling on 25 November 2021 held the Omnibus Law to be “conditionally constitutional”²¹⁶ i.e., the law would become ultra vires if the procedural flaw was not rectified within two years from the date of the decision.²¹⁷ Consequently, the Omnibus Law would continue to be operational until 25 November 2023, after which it shall be deemed unconstitutional unless rectified by the government.²¹⁸

In March 2023, the Indonesian Government replaced the 2020 Omnibus Law with the Job Creation Law, 2023 (“**2023 Law**”).²¹⁹ Although the 2023 Law alters the minimum wages formula, it fails to overturn majority of the flaws in the Omnibus Law.²²⁰ In the aftermath of the introduction of the 2023 Law, Labour Unions took to the streets in order to express their

²¹² Herbert Smith Freehills, ‘Indonesia Omnibus Law insights: Are the labour reforms really pro-employer?’ (*Herbert Smith Freehills*, 27 October 2020) <<https://hsfnotes.com/employment/2020/10/27/omnibus-law-insights-are-the-labour-reforms-really-pro-employer/> accessed> 20 August 2023

²¹³ Herbert Smith Freehills, ‘Indonesia Omnibus Law insights: Are the labour reforms really pro-employer?’ (*Herbert Smith Freehills*, 27 October 2020) <<https://hsfnotes.com/employment/2020/10/27/omnibus-law-insights-are-the-labour-reforms-really-pro-employer/> accessed> 20 August 2023

²¹⁴ Marojahan JS Panjaitan, ‘Applicability of Law Number 11 of 2020 Concerning Job Creation After the Constitution’ (2022) Vol 17 *Pandecta Research Law Journal* 216, 217

²¹⁵ Stefano Sulaiman, ‘Indonesia passes jobs decree into law, easing investment uncertainty’ (*Reuters*, 21 March, 2023) < <https://www.reuters.com/world/asia-pacific/indonesias-parliament-passes-controversial-jobs-decree-into-law-2023-03-21/>> accessed 20 August 2023

²¹⁶ Chalid Heyder, Dyah Paramita and Zuhul Saputra, ‘Indonesia Constitutional Court declares Omnibus Law “conditionally unconstitutional”’ (*Hogan Lovells*, 8 December 2021) <<https://www.engage.hoganlovells.com/knowledgeservices/news/indonesia-constitutional-court-declares-omnibus-law-conditionally-unconstitutional>> accessed 20 August 2023

²¹⁷ Court Decision Number 91/PUU-XVIII/2020

²¹⁸ Chalid Heyder, Dyah Paramita and Zuhul Saputra, ‘Indonesia Constitutional Court declares Omnibus Law “conditionally unconstitutional”’ (*Hogan Lovells*, 8 December 2021) <<https://www.engage.hoganlovells.com/knowledgeservices/news/indonesia-constitutional-court-declares-omnibus-law-conditionally-unconstitutional>> accessed 20 August 2023

²¹⁹ ‘Key Employment Regulatory Changes upon the Revocation of Law No.11 of 2020 on Job Creation’ (*PwC Indonesia Legal Alert*, May 2023) <<https://www.pwc.com/id/en/publications/legal/legal-alert-2023-16.pdf>> accessed 20 August 2023

²²⁰ ‘Key Employment Regulatory Changes upon the Revocation of Law No.11 of 2020 on Job Creation’ (*PwC Indonesia Legal Alert*, May 2023) <<https://www.pwc.com/id/en/publications/legal/legal-alert-2023-16.pdf>> accessed 20 August 2023

discontent causing waves of unrest and chaos.²²¹

In light of the aforementioned, a critical analysis of the labour rights violations in Indonesia is necessitated.

1. Child Labour

Recently, no incidents of child labour have come to light in the Indonesian RMGS.²²² The same could be on account of a culture of secrecy maintained by these factories. Alternatively, it has been observed that some factories do not have any age verification procedures in place,²²³ as a result of which child labour in the Indonesian RMGS might go unreported and unnoticed.

2. Gender Gap

82% of Indonesia's RMGS labourers are women.²²⁴ The Indonesian RMGS is breaking stereotypes with respect to gender pay gaps. Unlike Vietnam, India and Bangladesh, female labourers are paid 1% higher monthly wages as compared to males.²²⁵

Although the gender pay gap seems to have reversed, women in Indonesia RMGS factories are still subjected to abuse and sexual harassment. Female labourers in factories contracting with GAP have reported being mocked on a daily basis and have received threats of termination on several occasions if they fail to work at a fast pace.²²⁶ In 2019, four of every five female labourers in Indonesia's RMGS complained of sexual harassment in their workplace.²²⁷ These figures indicate that Indonesian female labourers are aware of their rights and are vocal about their concerns.²²⁸ This positive change can possibly be attributed to the 'Respectful Workplace

²²¹ 'Indonesia passes emergency decree for Job Creation Law' (*Industriall*, 12 April 2023) <<https://www.industriall-union.org/indonesia-passes-emergency-decree-for-job-creation-law>> accessed 20 August 2023

²²² International Labour Organisation and International Finance Corporation, 'Annual Report, Creating an Impact on Every Level' (BetterWork Indonesia, 2019), 10

²²³ International Labour Organisation and International Finance Corporation, 'Annual Report, Creating an Impact on Every Level' (BetterWork Indonesia, 2019), 10

²²⁴ Nabiyla Risfa Izzati, 'Indonesia Fair Wear Country Study Report 2021' (Fair Wear Foundation 2021), 24

²²⁵ Souleima El Achkar Hilal, *Employment, Wages and Productivity Trends in The Asian Garment Sector: Data and Policy Insights for The Future of Work* (International Labour Organisation 2022) 34

²²⁶ Kate Hodal, 'Abuse is daily reality for female garment workers for Gap and H&M, says report' (*The Guardian*, 5 June 2018) <<https://www.theguardian.com/global-development/2018/jun/05/female-garment-workers-gap-hm-south-asia>> accessed 20 August 2023

²²⁷ International Labour Organisation and International Finance Corporation, 'Sexual harassment at work: Insights from the global garment industry' (BetterWork Indonesia, 2019) 9

²²⁸ International Labour Organisation and International Finance Corporation, 'Sexual harassment at work: Insights from the global garment industry' (BetterWork Indonesia, 2019) 14

Programme' launched by the Better Work initiative, whereby different levels of managers and labourers are educated regarding mitigation of sexual harassment and gender based violence.²²⁹

After a decade long debate, the Indonesian parliament finally passed the Sexual Violence Bill in 2022.²³⁰ The term "*Sexual Violence*" under the newly made law encompasses a broader term as compared to "*Sexual Harassment*".²³¹ It recognises 9 forms of sexual violence including physical and non-physical sexual harassment.²³² Under the said legislation, the Indonesian Ministry of Manpower introduced the Sexual Violence Guidelines for Preventing and Handling Sexual Violence in the Workplace, 2023 ("**Sexual Violence Guidelines, 2023**").²³³ The 2023 Guidelines urge employers to formulate policies against sexual violence in the workplace and provide training on sexual violence.²³⁴ Employers are also required to form a Sexual Violence Taskforce to tackle sexual violence in the workplace.²³⁵

In the light of the introduction of the Sexual Violence Guidelines, 2023, it remains to be seen if the newly formulated guidelines are successful in facilitating a positive change or not.

3. Freedom of Association

Indonesia has a rich history of unionisation, with trade unions playing a vital role in the nationalist movement during the final years of the Dutch colonial rule.²³⁶ Their significance continued into the early years of Indonesia's independence under President Sukarno.²³⁷

²²⁹ International Labour Organisation and International Finance Corporation, '*Sexual harassment at work: Insights from the global garment industry*' (BetterWork Indonesia, 2019) 15

²³⁰ Aisyah Llewellyn, 'Explainer: Why is Indonesia's sexual violence law so important?' (*Aljazeera*, 14 April 2022) <<https://www.aljazeera.com/news/2022/4/14/explainer-why-is-indonesias-sexual-violence-law-so-important>> accessed 20 August 2023

²³¹ Chad De Guzman, 'After a Teacher Was Convicted of Raping 13 Girls, Indonesia Finally Passed Sexual Violence Reform' (*Time*, 14 April 2022) <<https://time.com/6166853/indonesia-sexual-violence-law/>> accessed 20 August 2023

²³² Chad De Guzman, 'After a Teacher Was Convicted of Raping 13 Girls, Indonesia Finally Passed Sexual Violence Reform' (*Time*, 14 April 2022) <<https://time.com/6166853/indonesia-sexual-violence-law/>> accessed 20 August 2023

²³³ Guidelines for Preventing and Handling Sexual Violence in the Workplace, Minister of Manpower Decree No 88 of 2023

²³⁴ Prawidha Murti, 'Indonesia Issues Guidelines on Preventing Sexual Violence in the Workplace' (*SHRM*, 25 July 2023) <<https://www.shrm.org/resourcesandtools/hr-topics/global-hr/pages/indonesia-preventing-sexual-violence.aspx>> accessed 20 August 2023

²³⁵ Prawidha Murti, 'Indonesia: New Guidelines on Sexual Violence in the Workplace' (*Herbert Smith Freehills*, 26 June 2023) <<https://hsfnotes.com/employment/2023/06/26/indonesia-new-guidelines-on-sexual-violence-in-the-workplace/#page=1>> accessed 20 August 2023

²³⁶ Michele Ford, 'Indonesia: Separate Organizing within Unions', Kaye Broadbent and Michele Ford, *Women and Labour Organising in Asia: Diversity, Autonomy and Activism* (Routledge 2008) 16

²³⁷ Michele Ford, 'Indonesia: Separate Organizing within Unions', Kaye Broadbent and Michele Ford, *Women and Labour Organising in Asia: Diversity, Autonomy and Activism* (Routledge 2008) 16

However, their influence diminished during President Suharto's regime, as they, along with other mass organizations, became integrated into the authoritarian state system.²³⁸ Under President Suharto's regime, the right to organize was mostly limited to blue-collared labourers, deliberately excluding the traditionally highly unionized sectors such as RMGS. However, on account of international pressures, President Suharto's successor was compelled to ease restrictions on the FoA.²³⁹

The Indonesian labour unionisation movement has made substantial progress since President Suharto's departure from power.²⁴⁰ However, several significant challenges still persist, including the relatively small formal sector, elevated rates of unemployment and underemployment, and the constrained resources available to Indonesian labourers.²⁴¹ Consequently, Indonesia's performance on the ITUC Index is extremely poor with a rate of 5, which signifies the worst score in terms of FoA rights.²⁴²

The primary regulation governing trade unions in Indonesia is Law No.21/2000.²⁴³ According to this law, it only takes a minimum of ten labourers to establish a union, and it permits the operation of multiple unions within a single enterprise.²⁴⁴ Moreover, the trade union law prohibits activities that are against unions, such as intimidation, efforts to discourage union formation, termination or temporary suspension of employment, demotion or transfer, and withholding or reducing payment.²⁴⁵

In 2012, Adidas was accused of being hand in glove with its supplier in Indonesia for suppressing the FoA rights of the labourers working in the supplier's factory.²⁴⁶ Over 2000 labourers went

²³⁸ Vedi Hadiz, *The Politics of Economic Development in Indonesia Contending Perspectives* (Routledge 1997)

²³⁹ Michele Ford, 'Indonesia: Separate Organizing within Unions', Kaye Broadbent and Michele Ford, *Women and Labour Organising in Asia: Diversity, Autonomy and Activism* (Routledge 2008) 16

²⁴⁰ Michele Ford, 'Indonesia: Separate Organizing within Unions', Kaye Broadbent and Michele Ford, *Women and Labour Organising in Asia: Diversity, Autonomy and Activism* (Routledge 2008) 19

²⁴¹ Michele Ford, 'Indonesia: Separate Organizing within Unions', Kaye Broadbent and Michele Ford, *Women and Labour Organising in Asia: Diversity, Autonomy and Activism* (Routledge 2008) 19

²⁴² *2020 ITUC Global Rights Index* (International Trade Unions Confederation 2020)

²⁴³ Labour Union Act of Indonesia, 2000, Law No. 21/2000

²⁴⁴ Nabiyla Risfa Izzati, *Indonesia Fair Wear Country Study 2021* (Fair Wear Foundation 2021) 42

²⁴⁵ Nabiyla Risfa Izzati, *Indonesia Fair Wear Country Study 2021* (Fair Wear Foundation 2021) 43

²⁴⁶ Paul, 'Clean Clothes Campaign files complaint against Adidas for breaching OECD guidelines in Indonesia' (Clean Clothes Campaign, 17 August 2023) < <https://cleanclothes.org/news/2018/03/14/clean-clothes-campaign-files-complaint-against-adidas-for-breaching-oecd-guidelines-in-indonesia> > accessed 20 August 2023

on strike on account of subpar wages and poor working conditions.²⁴⁷ Instead of addressing the highlighted issues, majority of the protesting labourers were laid off and were denied their dues.²⁴⁸ The sole motive behind the layoffs was to crush dissent and discourage unionisation. Unfortunately, there are no recent official statistics regarding compliance on FoA with respect to Indonesia's RMGS.²⁴⁹ As per a 2021 Report published by the Fair Wear Foundation, when textile and garment employers discover labourers attempting to establish a trade union, they promptly demote union leaders and deny approval for their overtime work.²⁵⁰ Additionally, management's reluctance to engage in negotiations with existing unions is a common issue.²⁵¹ Another obstacle to effective negotiation is the presence of multiple trade unions, even if all of them are legitimate, as management can pit these unions against each other.²⁵²

The onset of the COVID-19 pandemic imposed further restrictions on the right to FoA on account of social distancing which prevented unions from socialising, which in turn affected their collective bargaining powers. For instance, as stated earlier, these unions were not consulted on the implementation of the Omnibus Law, which directly affected their rights.²⁵³

4. Occupational Safety and Health

More often than not Indonesia has been in the limelight for using toxic chemicals in its RMGS. In 2012, factories producing for international fast fashion brands including Gap, Mango, Esprit were accused of using toxic chemicals such as Nonylphenol Ethoxylates (“NPEs”) in their manufacturing process which in turn adversely affected the environment and pose a severe risk to the human reproductive system.²⁵⁴

Matchalya, a village located on the banks of the Citarum River in Indonesia, is home to almost

²⁴⁷ Paul, ‘Clean Clothes Campaign files complaint against Adidas for breaching OECD guidelines in Indonesia’ (Clean Clothes Campaign, 17 August 2023) < <https://cleanclothes.org/news/2018/03/14/clean-clothes-campaign-files-complaint-against-adidas-for-breaching-oecd-guidelines-in-indonesia>> accessed 20 August 2023

²⁴⁸ Paul, ‘Clean Clothes Campaign files complaint against Adidas for breaching OECD guidelines in Indonesia’ (Clean Clothes Campaign, 17 August 2023) < <https://cleanclothes.org/news/2018/03/14/clean-clothes-campaign-files-complaint-against-adidas-for-breaching-oecd-guidelines-in-indonesia>> accessed 20 August 2023

²⁴⁹ Nabiyla Risfa Izzati, *Indonesia Fair Wear Country Study 2021* (Fair Wear Foundation 2021) 42

²⁵⁰ Nabiyla Risfa Izzati, *Indonesia Fair Wear Country Study 2021* (Fair Wear Foundation 2021) 44

²⁵¹ Nabiyla Risfa Izzati, *Indonesia Fair Wear Country Study 2021* (Fair Wear Foundation 2021) 44

²⁵² Nabiyla Risfa Izzati, *Indonesia Fair Wear Country Study 2021* (Fair Wear Foundation 2021) 44

²⁵³ Nabiyla Risfa Izzati, *Indonesia Fair Wear Country Study 2021* (Fair Wear Foundation 2021) 44

²⁵⁴ *Toxic Threads : Polluting Paradise - A Story of big brands and water pollution in Indonesia* (Greenpeace Foundation, 26 April 2013)

800 textile factories.²⁵⁵ The labourers in these textile factories are not provided adequate protective equipment while dealing with the toxic chemicals used in these factories. Moreover, these toxic chemicals are discharged into the Citarum River which has become the most polluted river in Indonesia.²⁵⁶ The polluted water from the Citarum River is used by the locals to irrigate their fields and for drinking purposes.²⁵⁷ In 2009, the Indonesian government enacted legislations to alleviate the issue however, the legislation remains good only on paper with no practical measures taken for its enforcement.²⁵⁸

Law No.1/1970 on Work Safety remains the primary regulatory legislation focusing on OSH in Indonesia.²⁵⁹ Additionally, Law No.13/2003 on Manpower also obliges employers to guarantee OSH to every worker and requires OSH to be integrated within the management systems of companies.²⁶⁰ In furtherance of Law No.13/2003, the Indonesian government introduced the Government Regulation on the Application of Occupational Safety and Health Management System, 2012 (“**Law No.50/2012**”).

Under Law No.50/2012, every enterprise which has more than 100 labourers or poses a hazard risk must execute a OSH Management System.²⁶¹ The guidelines annexed to Law No.50/2012 provide for the setting up of an Advisory Committee on OSH (“**P2K3**”) in order to facilitate collaboration between labourers and employers with respect to OSH.²⁶²

There is no official statistic with respect to OSH compliance in Indonesia.²⁶³ Although the OSH conditions in medium and small enterprises are considered to be deplorable, various stakeholders allege that the healthcare situation seems to be improving progressively upon the

²⁵⁵ Nina Lewis Thomas, ‘Indonesia’s Textile Industry : A bleak situation’ (Fabric of the World, 12 February 2020) <<https://www.fabricoftheworld.com/post/indonesia-s-textile-industry-a-bleak-situation>> accessed 20 August 2023

²⁵⁶ Nina Lewis Thomas, ‘Indonesia’s Textile Industry : A bleak situation’ (Fabric of the World, 12 February 2020) <<https://www.fabricoftheworld.com/post/indonesia-s-textile-industry-a-bleak-situation>> accessed 20 August 2023

²⁵⁷ Larry C. Price and Debbie M. Price, ‘Worse for Wear: Indonesia’s Textile Boom’ (Pulitzer Center, 23 February 2017) <<https://pulitzercenter.org/stories/worse-wear-indonesias-textile-boom>> accessed 20 August 2023

²⁵⁸ Nina Lewis Thomas, ‘Indonesia’s Textile Industry : A bleak situation’ (Fabric of the World, 12 February 2020) <<https://www.fabricoftheworld.com/post/indonesia-s-textile-industry-a-bleak-situation>> accessed 20 August 2023

²⁵⁹ Law No 1/1970 on Occupational Safety

²⁶⁰ Act concerning Manpower [Indonesian Labour Law], Law No 13/2003

²⁶¹ Regulation concerning Occupational Safety and Health Management Systems, Law No. 50/2012, Art 5

²⁶² Regulation concerning Occupational Safety and Health Management Systems, Law No. 50/2012, Guideline C(2)

²⁶³ Nabiyla Risfa Izzati, *Indonesia Fair Wear Country Study 2021* (Fair Wear Foundation 2021) 53

fading of the Covid-19 pandemic, however, not much progress can be seen with regards to workplace safety.²⁶⁴

5. Minimum Wages

The Omnibus Law abolished the minimum wages criteria for micro and small scale enterprises.²⁶⁵ This adversely impacted the garment labourers in micro and small enterprises, leaving them at the mercy of their employers who would legally be entitled to pay them meagre disproportionate wages in order to cut down production costs.

The minimum wages in Indonesia are calculated provincially based on the inflation rates, economic growth, employment rate, purchasing power and median wages.²⁶⁶

The current minimum wages per month in Indonesia's RMGS provinces are as follows-

- a) Central Java- IDR 19,58,169²⁶⁷ (approx. 128.30 USD)
- b) East Java- IDR 20,40,244²⁶⁸ (approx. 133.68 USD)
- c) West Java- IDR 19,86,670²⁶⁹ (approx. 130.17 USD)

In 2022, the gap between minimum wage and average living wage in Indonesia is 69%.²⁷⁰ Even though the gap seems to be wide, Indonesia still appears to be in a better position than India and Bangladesh which present a gap of 72% and 74% respectively.²⁷¹ Vietnam's performance

²⁶⁴ Nabiyla Risfa Izzati, *Indonesia Fair Wear Country Study 2021* (Fair Wear Foundation 2021) 53

²⁶⁵ Nabiyla Risfa Izzati, *Indonesia Fair Wear Country Study 2021* (Fair Wear Foundation 2021)

²⁶⁶ Anonymous, 'Minimum Wages Regulations Indonesia' (*WageIndicator.org* , 15 February 2023) <<https://wageindicator.org/labour-laws/labour-law-around-the-world/minimum-wages-regulations/minimum-wages-regulations-indonesia>> accessed 20 August 2023

²⁶⁷ Anonymous, 'Minimum Wage – Central Java' (*WageIndicator.org*) <<https://wageindicator.org/salary/minimum-wage/indonesia/40342-central-java>> accessed 20 August 2023

²⁶⁸ Anonymous, 'Minimum Wage – East Java' (*WageIndicator.org*) <<https://wageindicator.org/salary/minimum-wage/indonesia/40379-east-java>> accessed 20 August 2023

²⁶⁹ Anonymous, 'Minimum Wage – West Java' (*WageIndicator.org*) <<https://wageindicator.org/salary/minimum-wage/indonesia/40313-west-java>> accessed 20 August 2023

²⁷⁰ Anonymous, 'Garment Industry Living Wage Gap' (*WageIndicator.org*) <<https://wageindicator.org/salary/wages-in-context/garment-industry-living-wage-gap>> accessed 20 August 2023

²⁷¹ Anonymous, 'Garment Industry Living Wage Gap' (*WageIndicator.org*) <<https://wageindicator.org/salary/wages-in-context/garment-industry-living-wage-gap>> accessed 20 August 2023

appears to be only marginally better with a gap of 64%.²⁷²

Indonesia has witnessed one of the largest wage thefts in the history of the RMGS. In 2015, the Jaba Garamindo textile factory producing garments for fast fashion brands such as Uniqlo, H&M and s. Oliver declared bankruptcy overnight²⁷³ on account of Uniqlo withdrawing a bulk order.²⁷⁴ As a result, almost 2000 labourers employed at the factory were not paid their dues amounting to USD 5.5 million.²⁷⁵ Even after the judiciary ruling in their favour, these labourers are still fighting tooth and nail to receive their legally owed dues.²⁷⁶ After a long 8 year battle, in April 2023, s. Oliver, a German fast fashion brand, paid 100000 euros to the 200 labourers on account of their dues.²⁷⁷ However, Uniqlo still refuses to accept any liability and has not come forward to make any payments.²⁷⁸

The instants of wage thefts in Indonesia were accentuated by the COVID-19 pandemic. Giant fast fashion producers cancelled bulk orders on account of which several labourers were laid off and their dues still remain unpaid.²⁷⁹ The fast fashion sportswear brand Nike is amongst the brands involved in pandemic related wage thefts. Although the profits of the brand reached an all-time high during the pandemic, Indonesian labourers working in factories producing garments for Nike were forced to accept only half of their lawful dues plunging them into financial crisis.²⁸⁰

VI. SOCIALIST REPUBLIC OF VIETNAM

²⁷² Anonymous, ‘Garment Industry Living Wage Gap’ (*WageIndicator.org*) <<https://wageindicator.org/salary/wages-in-context/garment-industry-living-wage-gap>> accessed 20 August 2023

²⁷³ Scott Nova and Jessica Champagne, ‘Wage Theft at Indonesian Factory’ (*Worker Rights Consortium*, 21 December 2015) <<https://www.workersrights.org/communications-to-affiliates/wage-theft-at-indonesian-factory/>> accessed 20 August 2023

²⁷⁴ Anonymous, ‘Jaba Garamindo’ (*Clean Clothes Campaign*) <<https://cleanclothes.org/campaigns/jaba-garmindo>> accessed 20 August 2023

²⁷⁵ Anonymous, ‘Jaba Garamindo’ (*Clean Clothes Campaign*) <<https://cleanclothes.org/campaigns/jaba-garmindo>> accessed 20 August 2023

²⁷⁶ Anonymous, ‘s.Oliver gives 100K Euros to Jaba Garmino workers owed \$5.5 million, but where is Uniqlo?’ (*Clean Clothes Campaign*) <<https://cleanclothes.org/news/2023/soliver-gives-100k-euros-to-jaba-garmindo-workers-owed-55-million-but-where-is-uniqlo>> accessed 20 August 2023

²⁷⁷ Anonymous, ‘s.Oliver gives 100K Euros to Jaba Garmino workers owed \$5.5 million, but where is Uniqlo?’ (*Clean Clothes Campaign*) <<https://cleanclothes.org/news/2023/soliver-gives-100k-euros-to-jaba-garmindo-workers-owed-55-million-but-where-is-uniqlo>> accessed 20 August 2023

²⁷⁸ Anonymous, ‘s.Oliver gives 100K Euros to Jaba Garmino workers owed \$5.5 million, but where is Uniqlo?’ (*Clean Clothes Campaign*) <<https://cleanclothes.org/news/2023/soliver-gives-100k-euros-to-jaba-garmindo-workers-owed-55-million-but-where-is-uniqlo>> accessed 20 August 2023

²⁷⁹ Big Fashion and Wall Street Cash In on Wage Theft (Asia Floor Wage, February 2023)

²⁸⁰ Big Fashion and Wall Street Cash In on Wage Theft (Asia Floor Wage, February 2023)

In the aftermath of the Vietnamese War for reunification in 1975, Vietnam became one of the poorest nations in Asia.²⁸¹ Prior to 1986, the Communist Government in Vietnam had an autocratic control over production and trade activities in the country.²⁸² In 1986, due to its crippling economic conditions, the Communist Government introduced the “*Doi Moi*” (“**Renovation**”) economic policy. The Renovation Policy marked a shift from a centrally planned economic model to a socialist-oriented market economy.²⁸³ These reforms promoted Foreign Direct Investments (“**FDIs**”),²⁸⁴ opened doors for market capitalism²⁸⁵ and aided in curbing inflation of over 700%.²⁸⁶ As a result of the Renovation Policy, Vietnam has created jobs for millions of Vietnamese labourers, especially in the RMGS.

Further, the RMGS in Vietnam, received a major boost on account of the 2002 United States of America-Vietnam Bilateral Trade Agreement²⁸⁷ and Vietnam’s accession to the World Trade Organisation (“**WTO**”) in 2007.²⁸⁸ Ever since, the Vietnamese RMGS has maintained a high productivity rate,²⁸⁹ making Vietnam the 3rd largest exporter of textiles in Asia.²⁹⁰

The Vietnamese RMGS consists of around 6000 textile establishments.²⁹¹ Majority of these establishments are concentrated in and around two cities i.e., Ho Chi Minh and Hanoi.²⁹² The contemporary textile manufacturing units are opting to relocate to rural areas or areas easily

²⁸¹ David Hutt, ‘The Myth of Doi Moi in Vietnam’ (*The Diplomat*, 31 January 2023) <<https://thediplomat.com/2023/01/the-myth-of-doi-moi-in-vietnam/>> accessed 14 July 2023

²⁸² David Marshall, ‘Immago Textile Industry in Vietnam’ (*Immago*, 25 July 2022) <<https://immago.com/immago-textile-industry-vietnam/>> accessed 14 July 2023

²⁸³ David Lim, *Economic Growth and Employment in Vietnam* (Routledge 2014) 27

²⁸⁴ David Lim, *Economic Growth and Employment in Vietnam* (Routledge 2014) 27

²⁸⁵ Donald B. Freeman, *Doi Moi Policy and the Small-Enterprise Boom in Ho Chi Minh City, Vietnam* (Vol 86 No 2, Taylor and Francis Ltd 1996) 178

²⁸⁶ ‘Challenges to the Social Rights of Workers in Vietnam, Case Study of Garment Sector’ (Rosa Luxemburg Stiftung Southeast Asia) 2

²⁸⁷ DO Quynh Chi, ‘Social and Economic Upgrading in the Garment Supply Chain in Vietnam’ Institute for International Political Economy Berlin, Working Paper 137/2020, 3

²⁸⁸ David Marshall, ‘Immago Textile Industry in Vietnam’ (*Immago*, 25 July 2022) <<https://immago.com/immago-textile-industry-vietnam/>> accessed 14 July 2023

²⁸⁹ DO Quynh Chi, ‘Social and Economic Upgrading in the Garment Supply Chain in Vietnam’ Institute for International Political Economy Berlin, Working Paper 137/2020, 4

²⁹⁰ ‘Textiles In Vietnam’ (OEC, 2021) <<https://oec.world/en/profile/bilateral-product/textiles/reporter/vnm#:~:text=Exports%20In%202021%2C%20Vietnam%20exported,m%20exported%20product%20in%20Vietnam>> accessed 31 August 2023

²⁹¹ International Labour Organisation and International Finance Corporation, ‘Annual Report 2019 An Industry and Compliance Review’ (BetterWork Vietnam, 2019)

²⁹² Do Quynh Chi, ‘Business & Human Rights in the Garment, Footwear and Electronic Supply Chains in Vietnam: A Baseline Study’ (August 2019)

accessible by migrant labourers.²⁹³

65% of the RMGS in Vietnam produces textiles on Cut-Make-Trim (“CMT”) contracts.²⁹⁴ Under the CMT model, the retailers are responsible for the design and global distribution of the textiles, while the manufacturers are responsible for cutting, stitching and adding finishing touches to the textiles.²⁹⁵ Several prominent clothing brands have their suppliers in Vietnam including Zara, H&M and Levis Strauss & Co.²⁹⁶

However, there is evidence to prove that the cost of Vietnam’s rapid economic development is being borne by its labour force, employed particularly in its RMGS.²⁹⁷ However, Vietnam appears to be the best of the worst in the Asia Pacific region in terms of labour rights violations.

1. Child Labour

Compared to its neighbours, child labour menace in Vietnam is relatively diminutive.²⁹⁸ The Vietnamese Government is actively working to curb the menace of child labour in the country. Vietnam has ratified various international covenants pertaining to child labour including Convention No. 182 and Convention No. 138.

Article 37 of the Vietnamese Constitution prohibits exploitative and abusive labour practices against children.²⁹⁹ However, the constitution fails to define the term ‘children’ or set an age limit for persons who would fall within the said term and thereby, facilitating exploitation of juveniles at the hands of the gluttonous industrialists.

Chapter XI of the Vietnamese Labour Code, 2019 (“**Labour Code**”) deals with laws regarding “*minor employees*”.³⁰⁰ It defines a “*minor employee*” as “*an employee under 18 years of*

²⁹³ Anonymous, Prevalence of Forced Labor in Vietnam’s Apparel Industry (Global Fund To End Modern Slavery 2021) 7

²⁹⁴ DO Quynh Chi, ‘Social and Economic Upgrading in the Garment Supply Chain in Vietnam’ Institute for International Political Economy Berlin, Working Paper 137/2020, 5

²⁹⁵ DO Quynh Chi, ‘Social and Economic Upgrading in the Garment Supply Chain in Vietnam’ Institute for International Political Economy Berlin, Working Paper 137/2020, 5

²⁹⁶ Liva Sreedharan, Aarti Kapoor, ‘Sitting on Pins and Needles: A rapid assessment of labour conditions in Vietnam’s garment sector’ (Anti-Slavery International) 16

²⁹⁷ ‘Challenges to the Social Rights of Workers in Vietnam, Case Study of Garment Sector’ (Rosa Luxemburg Stiftung Southeast Asia) 2

²⁹⁸ ‘A story of hope after child labour in Viet Nam’ (*alliance8.7*) <<https://www.alliance87.org/interactive/vietnam/>> accessed 20 August 2023

²⁹⁹ The Constitution of the Socialist Republic of Vietnam, art 37

³⁰⁰ Labour Code, 2019 No. 45/2019/QH14 ch Xi (Vietnam Labour Code, 2019)

age”.³⁰¹ The employer must take consent from the minor employee’s parents before hiring him/her.³⁰² Additionally, the Labour Ministry (“**MOLISA**”) requires the employers to maintain a separate record for minor employees hired in their industrial establishment.³⁰³ It is the duty of the employer to ensure vocational and educational training and health of the minor employees.³⁰⁴ The Labour Code also enlists the sectors in which juvenile employees between the ages of 15-18 years and 13-15 years may be employed.³⁰⁵ Juveniles between the ages of 13-15 years are permitted to be employed in thread cutting, buttoning and packing of handmade textiles.³⁰⁶ Whereas, juveniles under the same age group are prohibited from dyeing and steaming fabrics,³⁰⁷ since the government believes the chemical fumes from the same adversely impact their development.

Additionally, the Law on Child Affairs, 2016 bridges the lacuna in the Vietnamese Constitution and attempts to define the term “*children*”. The legislation defines a child as a human being below 16 years of age.³⁰⁸ The said legislation stipulates prohibited forms of child exploitation, including forcing children to work to against the labour law.

In 2013, 12 children from an ethnic group in Vietnam were rescued by an NGO from a small garment factory in Ho Chi Minh City.³⁰⁹ These children were trafficked and caged in the factory for around two years. They were made to stitch clothes for no pay and were subjected to violence.

Despite an overall decrease in child labour in the country,³¹⁰ child labour in the Vietnamese RMGS appears to be showing an upward trend. The ILO conducted two periodical National Child Labour Surveys in Vietnam in 2012³¹¹ and 2018³¹². As per the 2012 survey findings,

³⁰¹ Vietnam Labour Code, 2019, s 1, art 143(1)

³⁰² Vietnam Labour Code, 2019, art 144

³⁰³ Vietnam Labour Code, 2019, art 144

³⁰⁴ Vietnam Labour Code, 2019, art 144

³⁰⁵ Vietnam Labour Code, 2019, arts 145 and 147

³⁰⁶ Circular Elaborating Some Articles Of The Labour Code On Minor Workers, Circular No 09/2020/TT-BLDTBXH (Circular No 09/2020/TT-BLDTBXH)

³⁰⁷ Circular No 09/2020/TT-BLDTBXH

³⁰⁸ Law on Child Affairs, 2016, Law No: 102/2016/QH13, Art 1

³⁰⁹ Marianne Brown, ‘Vietnam’s lost children in labyrinth of slave labour’ (*BBC*, 27 August 2013) <<http://www.bbc.com/news/world-asia-23631923>> accessed 20 August 2023

³¹⁰ ‘Tỷ lệ lao động trẻ em của Việt Nam thấp hơn 2% so với trung bình của khu vực’ (18 December 2020) <<https://nhandan.vn/ty-le-lao-dong-tre-em-cua-viet-nam-thap-hon-2-so-voi-trung-binh-cua-khu-vuc-post628562.html>> accessed 20 August 2023

³¹¹ Vietnam National Child Labour Survey, 2012

³¹² Vietnam National Child Labour Survey, 2018

approximately 47 thousand children were employed in the RMGS³¹³ The 2018 survey findings indicated marginal increase in the number of children employed in the RMGS to approximately 48 thousand.³¹⁴ The increase in the number of child labourers can be attributed to the wide spread poverty in the nation.³¹⁵ As a result of the child labour menace in Vietnam, the United States list on Child and Forced Labour, 2022 listed the garments produced in Vietnam as goods produced by child and forced labour.³¹⁶

The efforts being made by the Vietnamese Government in curbing this menace are laudable. In furtherance of Sustainable Development Goal 8.7 *i.e.*, “*elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms*”,³¹⁷ the Vietnamese Government launched two successive programmes for the Prevention and Reduction of Child Labour for the periods of 2016-2020 and 2021-2025 respectively. These programmes aim to prevent and detect cases of child labour, to raise awareness about child labour and provide intervention in cases of child labour.³¹⁸ In order to support Vietnam’s efforts to curb child labour, the ILO has launched ENHANCE, a technical support scheme for “*enhancing the national capacity to prevent and reduce child labour in Vietnam*”.³¹⁹

2. Gender Gap

The Vietnamese Constitution prohibits discrimination based on gender and strives to provide equal opportunities to men and women.³²⁰ The Vietnamese Labour Code compliments its Constitution by imposing a blanket ban on discrimination and sexual harassment in the work place.³²¹

³¹³ Vietnam National Child Labour Survey, 2012, 19

³¹⁴ Vietnam National Child Labour Survey, 2018, 25

³¹⁵ Khuyen Hoang and Dung Nguyen, ‘Poverty And Child Labor In Vietnam: Present Status And Solutions’, 7

³¹⁶ ‘2022 List of Goods produced by Child Labor or Forced Labor’ (*Department of Labour, USA*, September 2022) <https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/2022-TVPR-List-of-Goods-v3.pdf> accessed 20 August 2023

³¹⁷ UNDP, ‘Goal 8 - Decent Work and Economic Growth’ (*UNDP*) <https://www.undp.org/sustainable-development-goals/decent-work-and-economic-growth?gclid=Cj0KCQjwqs6lBhCxARIsAG8YcDh8Rxnk4EW4xHhGTZDp03zwhLpbCmIBfmm-TrRJ78Ojpt9F7LK-14aAjx_EALw_wcB> accessed 20 August 2023

³¹⁸ International Labour Organization, ‘Viet Nam launches second programme of action plan to tackle child labour’ <[https://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_830515/lang-en/index.htm#:~:text=Through%20the%20launch%20of%20the,SDG\)%20target%208.7%20to%20eliminate](https://www.ilo.org/hanoi/Informationresources/Publicinformation/Pressreleases/WCMS_830515/lang-en/index.htm#:~:text=Through%20the%20launch%20of%20the,SDG)%20target%208.7%20to%20eliminate)> accessed 20 August 2023

³¹⁹ International Labour Organization, ‘Technical Support for Enhancing the National Capacity to Prevent and Reduce Child Labour in Viet Nam (ENHANCE)’

³²⁰ The Constitution of the Socialist Republic of Vietnam, art 26

³²¹ Vietnam Labour Code, 2019, arts 8(1) and (3)

80% of the labour force in the Vietnamese RMGS consists of females.³²² Despite checks and balances being in place, women in the Vietnamese RMGS often face discrimination, especially with regards to pregnancy. Women are often asked to undergo pregnancy tests prior to their recruitment.³²³ New mothers are denied bonuses and dearness allowance on account of their maternity leaves.³²⁴ Some establishments also include no pregnancy clauses in their employment contracts.³²⁵

In 2019, The Labour Code defined the term “*sexual harassment*” for the first time. It defines “*sexual harassment*” as “*any sexual act of a person against another person in the workplace against the latter’s will*”.³²⁶ Prior to the enforcement of the 2019 amendment, women in garment factories were subjected to atrocities such as groping, slapping, rape and threats for contract termination.³²⁷ However, in the coming years one would have to assess whether the prohibition on sexual harassment introduced by the 2019 Amendment has positively impacted the dire situation or not.

CARE Australia in collaboration with the Vietnamese authorities launched the Enhancing Women’s Voice to Stop Sexual Harassment (“**STOP**”) Project. The STOP Project has assisted employers in the RMGS to set up concrete guidelines for mitigating sexual harassment and educated female labourers to raise their voices against sexual harassment faced by them.³²⁸

3. Right to Association

On account of the communist Government in Vietnam post the war, FoA was considered to be

³²² International Labour Organisation and International Finance Corporation, ‘Annual Report: A Decade of Empowering Workers and Driving Business’ (Better Work Vietnam, 2019)

³²³ International Labour Organisation and International Finance Corporation, ‘Annual Report: An Industry and Compliance Review’ (BetterWork Vietnam, 2019)

³²⁴ ‘Responsible business conduct and the apparel and footwear industry, Guidance for Companies in Vietnam’ (Vietnam Chamber of Commerce and Industry and Australian Human Rights Commission 2021) 26

³²⁵ International Labour Organisation and International Finance Corporation, ‘Annual Report An Industry and Compliance Review’ (BetterWork Vietnam, 2019)

³²⁶ Vietnam Labour Code 2019, art 3(9)

³²⁷ Kate Hodal, ‘Revealed: women making clothes for west face sexual abuse’ (*The Guardian*, 7 April 2019) <<https://www.theguardian.com/global-development/2019/apr/07/violence-sexual-abuse-vietnam-garment-factory>> accessed 20 August 2023

³²⁸ Jan Breckenridge, Pichamon Yeophantong, Georgia Lyons and Mailin Suchting, ‘Enhancing Women’s Voice to STOP Sexual Harassment Final Evaluation – Vietnam’ (*UNSW, Sydney*, 11 September 2020) <https://www.careevaluations.org/wp-content/uploads/STOPEvaluationReport_Vietnam_FINAL_11Sept2020.pdf> accessed 20 August 2023

a taboo.³²⁹ Although, the Vietnamese constitution recognizes FoA as a constitutional right,³³⁰ the State has only one state led, legally recognised trade union, the Vietnam General Confederation of Labour (“**VGCL**”)³³¹. However, the VGCL has done very little to protect the rights and interests of labourers being a state led entity and predominantly protects the interests of employers rather than employees. This has resulted in frequent wildcat strikes and labour militancy.³³² However, due to internal and external pressures, the country is making efforts to reform the trade union laws in the country. Vietnam has only ratified Convention No. 98 whereas, it aims to ratify Convention No. 87 by the end of 2023.³³³

In 2021, the Vietnamese government enforced the reformed Labour Code, 2019. The reformed Labour Code introduced the concept of Workers’ Representative Organisations (“**WRO**”) as a slapdash effort to reform FoA rights of labourers.³³⁴ These WROs will be set up at the enterprise level to protect the rights of labourers in their respective enterprises. The Labour Code bestows various rights on the WROs in order to protect labourers’ interests including the right to collective bargaining, organise strikes, represent labourers in disputes with employers.³³⁵ On account of these reforms, the ITUC Index has awarded Vietnam a revised ranking of 4/5 in 2020.

In comparison to trade unions which are subsidiaries of VGCL, the WROs seem to be at a disadvantage. *Firstly*, the establishment of WROs is at the mercy of the Government. Prior approval and registration of the Government is required to set up WROs.³³⁶ The subsidiaries can engage in political debates and pitch in policy decisions, whereas the same freedom has not been given to the WROs. *Secondly*, in contrast to the WROs, VGCL being a state led entity receives financial aid from the government.

³²⁹ Joe Buckley, ‘Vietnam’s Labour Reforms: Drivers and Implications’ (ISEAS Yusof Ishak Institute, 19 January 2022) 79

³³⁰ The Constitution of the Socialist Republic of Vietnam, art 25

³³¹ ‘Workers and Employers Organisation of Employees’ (*International Labour Organisation*, **no date**) <<https://www.ilo.org/hanoi/Areasofwork/workers-and-employers-organizations/lang--en/index.htm>> accessed 20 August 2023

³³² Joe Buckley, ‘Vietnam’s Labour Reforms: Drivers and Implications’ (ISEAS Yusof Ishak Institute, 19 January 2022) 6

³³³ ‘The Importance of Freedom of Association and Collective Bargaining for Brands’ (STITCH 2021) 3

³³⁴ Vietnam Labour Code, 2019, art 171

³³⁵ Vietnam Labour Code, 2019, art 178

³³⁶ Vietnam Labour Code, 2019, art 172

Unfortunately, WROs cannot be set up presently in Vietnam even though the Labour Code permits the same.³³⁷ As per Article 172(4) of the Labour Code,³³⁸ the Government would provide the in depth procedure for setting up WROs. Two years have passed since the introduction of the reformed Labour Code and yet the Government has not come up with any guidelines or regulations for the setting up of WROs. Hence, the right to set up WROs remains in abeyance.

As a result of the ineffective implementation these reforms, rampant strikes continue to take place in the country, especially in the RMGS. In April 2023, more than 300 labourers in the Saitex International jeans factory in Vietnam staged a strike against the manufacturer's policy to penalize labourers committing errors in stitching the garments by deductions in their wages.³³⁹

These strikes are expected to continue until the Government steps up and introduces guidelines for the setting up of WROs. Additionally, the setting up of WROs is a haphazard effort merely to pacify capital investors and does very little to safeguard labourers' rights. The government ought to consider giving more autonomy and powers to the WRO to safeguard labourers' interests and avoid labourer militancy.

4. Occupational safety and health

As per the data released by the National Occupational Health and Safety Bureau, Vietnam, in 2019, poor OSH measures in Vietnam's labour intensive industries claimed the lives of 979 people and 1,892 people were severely injured.³⁴⁰ A large portion of these incidents were reported in the Vietnamese RMGS.³⁴¹ The Vietnamese RMGS is found to be in flagrant violations of the laws related to OSH.

³³⁷ Joe Buckley, 'Vietnam's Labour Reforms : Drivers and Implications' (ISEAS Yusof Ishak Institute, 19 January 2022) 3

³³⁸ Vietnam Labour Code 2019

³³⁹ Jasmin Malik Chua, 'Hundreds of Saitex Workers strike over Paycheck deductions' (*Rivet*, 14 April 2023) <<https://sourcingjournal.com/denim/denim-business/saitex-denim-garment-workers-vietnam-strike-wages-union-429378/>> accessed 20 August 2023

³⁴⁰ 'Current situation of occupational accidents in 2019' (*VNNIOSH*, 2019) <<http://vnniosh.vn/english/Details/id/31295/Current-situation-of-occupational-accidents-in-2019>> accessed 20 August 2023

³⁴¹ 'Vietnam Country Study 2021' (Fair Wear Foundation 2021) 52

The Labour Code imposes an obligation on the employer to ensure OSH of the labourers.³⁴² The Vietnamese regulation on OSH requires employers to provide personal protective equipment, the machinery must be maintained and preserved according to the technical standards, regular health check-ups must be conducted and OSH training and information must be provided to employees.³⁴³ The Regulation also gives the labourers the right to cease work temporarily in case they observe any OSH standards being violated, until their grievances are addressed.³⁴⁴

In addition, the OSH Regulations require the factories to provide timely first aid to injured employees,³⁴⁵ most factories do not have sufficient on site medical facilities and first aid kits to provide timely medical attention to labourers in need.³⁴⁶

As per a survey conducted by Fair Wear Foundation in Vietnam in 2021, the level of awareness and training of labourers as regards OSH standards was extremely poor.³⁴⁷ Most factories lack the presence of a safety officer,³⁴⁸ as required to be appointed by the OSH Regulations.³⁴⁹ Labourers working with sharp cutting machines are not provided with protective gloves.³⁵⁰

In 2022, the Vietnamese government released the National Program on Occupational Safety and Health for the years 2021-2025.³⁵¹ The key goal of this initiative is to reduce the rate of fatal occupation accidents by 4%.³⁵² The initiative encourages investment and upgradation in equipment, machineries; trained officers for the supervision of occupational safety, treatment for people suffering from occupational accidents and diseases.³⁵³

³⁴² Vietnam Labour Code, 2019, art 133

³⁴³ Law on Occupational Safety and Health, 2015, art 16

³⁴⁴ Law on Occupational Safety and Health, 2015, art 6 dd

³⁴⁵ Law on Occupational Safety and Health, 2015, Article 38

³⁴⁶ Stacey Frederick and Alizée Charbonneau, 'Occupational Safety And Health Improvement In The GARMENT INDUSTRY: Drivers And Constraints' (ILO, 2021) 32

³⁴⁷ 'Vietnam Country Study 2021' (Fair Wear Foundation 2021) 54

³⁴⁸ 'Worker Rights Consortium Assessment Can Man Garment (Vietnam)' (Workers Rights Consortium 2022) 30

³⁴⁹ Law on Occupational Safety and Health, 2015, art 72

³⁵⁰ 'Worker Rights Consortium Assessment Can Man Garment (Vietnam)' (Workers Rights Consortium 2022) 32

³⁵¹ Promulgating the National Program on Occupational Safety and Health for the 2021-2025 period, Resolution No. 19/NQ-CP (Resolution No. 19/NQ-CP)

³⁵² 'Vietnam aims to reduce occupational fatalities by 4 percent' (*Vietnam Law & Legal Forum*, 4 April 2022) <<https://vietnamlawmagazine.vn/vietnam-aims-to-reduce-occupational-fatalities-by-4-percent-48458.html>> accessed 20 August 2023

³⁵³ Resolution No. 19/NQ-CP

The legal framework outlined above demonstrates how the Vietnamese labour legislation has substantially evolved over the past few decades. The government seems to be making constant efforts to mitigate labour law violations in the country. The relentless government efforts seem to be a beacon of light in order to achieve labour rights standards in the country.

5. Minimum Wages

As per the Labour Code, the minimum wages for labourers is decided by the Government, based on the recommendations of the National Salary Council.³⁵⁴ The minimum wages threshold has been pre-determined on a regional basis. The minimum monthly wages are categorised into 4 regions-

- a) Region I (includes the urban districts of the cities of Ho Chi Minh and Hanoi)- VND 4,420,000 (approx. 186.95 USD)
- b) Region II (includes the cities of Hoi An and Ha Long) - VND 3,920,000 (approx. 165.8 USD)
- c) Region III (includes various provincial districts) - VND 3,430,000 (approx. 145.08 USD)
- d) Region IV (includes all the regions not enlist in any of the above 3 regions) - VND 3,070,000³⁵⁵ (approx. 129.85 USD).

However, most labourers in Vietnam find themselves unable to meet their basic expenses and always end up borrowing finances in order to cover the deficit.³⁵⁶

6. Forced labour

Article 3(7) of the Labour Code defines the term forced labour as “*use force or threat to use force or a similar practice to force a person to work against his/her will*”.³⁵⁷ The Labour Code bestows upon the labourers a right to be protected against forced labour³⁵⁸ and conversely, forbids employers from engaging labourers against their will.³⁵⁹ Additionally, Article 297 of the Vietnamese Criminal Code provides a penalty of not more than VND 200 million and a maximum of 3 years of imprisonment in cases perpetrating forced labour.³⁶⁰

³⁵⁴ Vietnam Labour Code, 2019, Article 91(4)

³⁵⁵ Stipulating Region-Based Minimum Wages Applied To Employees Working Under Labour Contracts Decree No. No.: 90/2019/ND-CP

³⁵⁶ Anonymous, Prevalence of Forced Labor in Vietnam’s Apparel Industry (Global Fund To End Modern Slavery2021) 7

³⁵⁷ Vietnam Labour Code, 2019, art 3(7)

³⁵⁸ Vietnam Labour Code, 2019, art 5(1)(a)

³⁵⁹ Vietnam Labour Code, 2019, art 8(2)

³⁶⁰ Vietnam Labour Code, 2019, art 297

In spite of adequate legislations being in place to protect labourers against forced labour, a miniscule percentage of labourers do experience intimidation tactics including threats of wage reductions and loss of employment in case they seek sick leaves or commit accidental errors at work.³⁶¹

The root cause for the labourers' vulnerability could be attributed the employers' refusal to provide copies of employment contracts to the. As a result, the helpless labourers are ignorant about their terms of employment and rights and feel compelled to endure the injustice meted out to them.

However, the Vietnamese government seems to be making great strides in curbing the menace of forced labour. Better Work Vietnam, a joint initiative by the ILO and the International Financial Corporation of the World Bank, concluded from its 2019 assessment of 295 factories that forced labour in Vietnam's RMGS was non-existent.³⁶²

VII. INTERNATIONAL INITIATIVES TO MITIGATE LABOUR LAW VIOLATIONS IN THE ASIA PACIFIC FAST FASHION INDUSTRY

1. Sustainable Textile Initiative: Together for Change (“STITCH”)

STITCH is a strategic partnership for the period of 2021-2025, which comprises of 6 organisations under one roof, *i.e.*, CNV International (Netherlands), Ethical Trading Initiative (United Kingdom) (“**ETI**”), Centre for Development and Integration (Vietnam) (“**CDI**”), Fair Wear (Netherlands), Cividep (India) and Mondiaal FNV (Netherlands) that are focused towards ensuring that the human rights of labourers in the RMGS across the globe are respected.³⁶³ 75 % of the workforce in the RMGS are women and STITCH is determined to ensure that these women are ensured dignified working conditions, FoA and paid substantial wages.³⁶⁴

³⁶¹ Liva Sreedharan, Aarti Kapoor, ‘Sitting On Pins And Needles: A Rapid Assessment Of Labour Conditions In Vietnam’s Garment Sector’ (Anti-Slavery International) 16

³⁶² International Labour Organisation and International Finance Corporation, ‘Annual Report: A Decade of Empowering Workers and Driving Business’ (Better Work Vietnam, 2019)

³⁶³ ‘Sustainable Textile Initiative: Together for Change’ (*STITCH*) <<https://www.stitchpartnership.org>> accessed 25 August 2023

³⁶⁴ ‘How Does STITCH Operate’ (*STITCH*) <<https://www.stitchpartnership.org/about-stitch>> accessed 25 August 2023

The STITCH partnership is working relentlessly in the countries of Bangladesh, Cambodia, India, Indonesia, Myanmar, and Vietnam to alleviate atrocities meted out to the RMGS labourers.³⁶⁵

The ETI and Fair Wear Foundation are two key players in the Asia Pacific with respect ensuring labourers' right.

a) Ethical Trading Initiative

The ETI is an organization aimed at ensuring ethical trade practices by international brands globally.³⁶⁶ Their collaborative efforts focus on addressing the intricate inquiries surrounding the measures that brands ought to adopt for ethical trading and their contributions to improving the well-being of workers.³⁶⁷ All affiliated brands are required to adopt the ETI Base Code of Labour which comprises of eight core principles which are in line with ILO standards which recognises various rights of labourers including freedom to choose employment, FoA, OSH, prohibition of forced and child labour.³⁶⁸

The ETI has a strong presence in India and Bangladesh.³⁶⁹ In August 2023, ETI in collaboration with other international foundations addressed a letter to the Chairman of Bangladesh's Minimum Wages Board in order to support the RMGS labourers in their resolve to secure higher minimum wages in order to cope with the growing inflation and also stressed on the importance of trade union participation in the decision making process.³⁷⁰

b) Fair Wear Foundation

Fair Wear is an independent, not-for-profit foundation, established in 1999 with the primary purpose of improving labour conditions in the garment industry.³⁷¹ As on date, Fair Wear has

³⁶⁵ 'The Importance of Freedom of Association and Collective Bargaining for Brands' (STITCH 2021) 19

³⁶⁶ 'About Ethical Trading Initiative' (*Ethical Trading Initiative*) <<https://www.ethicaltrade.org/about-eti/what-we-do>> accessed 26 August 2023

³⁶⁷ 'The Importance of Freedom of Association and Collective Bargaining for Brands' (STITCH 2021) 20

³⁶⁸ The ETI Base Code, 2018

³⁶⁹ 'The Importance of Freedom of Association and Collective Bargaining for Brands' (STITCH 2021) 20

³⁷⁰ Cara Casey-Boyce, 'ETI Advocates For Higher Wages In RMG Sector Amidst Bangladesh's Wage Negotiations' (*ETI* 30 August 2023) <<https://www.ethicaltrade.org/blog/eti-advocates-higher-wages-rmg-sector-amidst-bangladeshs-wage-negotiations>> accessed 26 August 2023

³⁷¹ 'Get To Know Fair Wear' (*Fair Wear*) <<https://www.fairwear.org/about-us/get-to-know-fair-wear/>> accessed 26 August 2023

over 140-member brands.³⁷² The organisation directly engages with factories and brands to address issues faced by labour workers universally such as low wages, precarious employment conditions, incidences of sexual harassment and gender-based violence, health and safety breaches, the inability to form unions.³⁷³

In August 2023 itself, the Foundation partnered with GoodWeave International to address child and forced labor in the informal textile supply chains.³⁷⁴ This partnership endeavors to encourage Fair Wear member brands sourcing from India to become GoodWeave licensees and avail of deep supply chain mapping facilities including child, forced and bonded labor inspections that travel beyond Tier One factories, into sub-contracted and home-based worksites where majority of the exploitation occurs.³⁷⁵

In the aftermath of the Rana Plaza incident, Fair Wear has worked with organizations in Bangladesh to improve building and fire safety which culminated into the “*Enhanced Human Rights Due Diligence Policy for Fire, Structural and Electrical Safety in Bangladesh, 2022*” (**“Enhanced HRDD Policy, 2022”**).³⁷⁶ The Enhanced HRDD Policy, 2022 provides training sessions for fire and building safety to factory managers and trade unions to improve the on ground fire safety compliance.³⁷⁷

Additionally, Fair Wear has also focused their work on eradicating gender-based violence. In 2022, an innovative collaboration unfolded between Fair Wear and GIZ Bangladesh.³⁷⁸ The primary goal of this collaboration is to create safe and equitable workplaces, free from gender-based violence.³⁷⁹ As part of this endeavour, a total of 24 trainers hailing from six local

³⁷² ‘Get To Know Fair Wear’ (*Fair Wear*) <<https://www.fairwear.org/about-us/get-to-know-fair-wear/>> accessed 26 August 2023

³⁷³ ‘Get To Know Fair Wear’ (*Fair Wear*) <<https://www.fairwear.org/about-us/get-to-know-fair-wear/>> accessed 26 August 2023

³⁷⁴ ‘Fair Wear Partners With GoodWeave To Address Child And Forced Labour’ (*Fair Wear*, 22 August 2023) <<https://www.fairwear.org/stories/fair-wear-partners-with-goodweave-to-address-child-and-forced-labour-in-hidden-and-informal-parts>> accessed 26 August 2023

³⁷⁵ ‘Fair Wear Partners With GoodWeave To Address Child And Forced Labour’ (*Fair Wear*, 22 August 2023) <<https://www.fairwear.org/stories/fair-wear-partners-with-goodweave-to-address-child-and-forced-labour-in-hidden-and-informal-parts>> accessed 26 August 2023

³⁷⁶ *Enhanced Human Rights Due Diligence Policy for fire, structural and electrical safety in Bangladesh* (Fair War 2022)

³⁷⁷ ‘Bangladesh’s garment industry: improvements and pathways’ (*Fair Wear*) <<https://www.fairwear.org/programmes/countries/bangladesh/>> accessed 26 August 2023

³⁷⁸ ‘Bangladesh’s garment industry: improvements and pathways’ (*Fair Wear*) <<https://www.fairwear.org/programmes/countries/bangladesh/>> accessed 26 August 2023

³⁷⁹ ‘Bangladesh’s garment industry: improvements and pathways’ (*Fair Wear*) <<https://www.fairwear.org/programmes/countries/bangladesh/>> accessed 26 August 2023

organizations underwent training.³⁸⁰ These six organizations are tasked with the establishment and remodelling of Anti-Harassment Committees (“AHCs”) in RMGS factories.³⁸¹ Additionally, efforts will also be made to lobby for the ratification of Convention No. 190 and enacting a concrete country specific law for sexual harassment.³⁸²

In Indonesia, Fair Wear launched a significant initiative known as the Gender Network Platform in 2017.³⁸³ This platform serves as a collaborative effort involving trade unions, international organizations, government ministries, and the National Women's Rights Commission to address gender-related issues and facilitates knowledge-sharing sessions on gender and labour rights concerns.³⁸⁴

Another noteworthy initiative in Indonesia is the Freedom of Association Protocol (“FoA Protocol”).³⁸⁵ This ground-breaking agreement fosters collaboration among Fair Wear member brands, factories, and trade unions to improve working conditions, mitigate conflicts, and strengthen workers' rights.³⁸⁶

In Vietnam, Fair Wear has been actively implementing its basic module on Workplace Education Programme since 2014.³⁸⁷ This module serves as an introduction to Fair Wear's Code of Labour Practices and its complaints hotline, aiming to assist both brands and factories in initiating workplace awareness regarding labour rights.³⁸⁸ The training comprises two sessions for management, supervisors, and workers, encompassing topics such as workers' rights, their

³⁸⁰ ‘Bangladesh’s garment industry: improvements and pathways’ (Fair Wear) <<https://www.fairwear.org/programmes/countries/bangladesh/>> accessed 26 August 2023

³⁸¹ ‘Bangladesh’s garment industry: improvements and pathways’ (Fair Wear) <<https://www.fairwear.org/programmes/countries/bangladesh/>> accessed 26 August 2023

³⁸² ‘Bangladesh’s Garment Industry: Improvements And Pathways’ (Fair Wear) <<https://www.fairwear.org/programmes/countries/bangladesh/>> accessed 26 August 2023

³⁸³ ‘Varying Labour Conditions And A Largely Female Workforce Define Indonesia’s Garment Sector’ (Fair Wear) <<https://www.fairwear.org/programmes/countries/indonesia/>> accessed 26 August 2023

³⁸⁴ ‘Varying Labour Conditions And A Largely Female Workforce Define Indonesia’s Garment Sector’ (Fair Wear) <<https://www.fairwear.org/programmes/countries/indonesia/>> accessed 26 August 2023

³⁸⁵ ‘Varying Labour Conditions And A Largely Female Workforce Define Indonesia’s Garment Sector’ (Fair Wear) <<https://www.fairwear.org/programmes/countries/indonesia/>> accessed 26 August 2023

³⁸⁶ Dr Tim Connor, Dr Annie Delaney and Sarah Rennie, ‘The Freedom Of Association Protocol: A Localised Non-Judicial Grievance Mechanism For Workers’ Rights In Global Supply Chains’ (Non-Judicial Redress Mechanisms Report Series No. 19 2016)

³⁸⁷ ‘A Recent Boom In Garment Production Puts Vietnam Front And Centre In The Fight For A Living Wage’ (Fair Wear) <<https://www.fairwear.org/programmes/countries/vietnam/>> accessed 26 August 2023

³⁸⁸ ‘A Recent Boom In Garment Production Puts Vietnam Front And Centre In The Fight For A Living Wage’ (Fair Wear) <<https://www.fairwear.org/programmes/countries/vietnam/>> accessed 26 August 2023

individual and collective duties, and the support channels accessible to them.³⁸⁹

2. Decent Work Agenda

The Decent Work Agenda was promulgated by the ILO with the aim of developing employment opportunities, rights at work, social dialogue and gender equality.³⁹⁰

In 2008, the ILO introduced a framework comprising of ten ILO Decent Work Indicators including decent working hours, adequate wages, equal opportunities and workers' representations.³⁹¹ These indicators serve as a guiding light for labourers. They cover a gamut of issues faced by the labourers and seek to redress them with the help of these indicators that are in place to guide factory owners and entrepreneurs alike.

Over the years, the ILO has promoted the Decent Work Agenda in Asia. In 2016, the ILO launched the program of "*Decent Work in the Garment Sector Supply Chains in Asia*", which was funded by the Government of Sweden.³⁹² The project was conducted over a three year period from 2019-2022 while primarily focusing on strengthening social dialogue and industrial relations between labourers and employers in order to improve wages and working conditions.³⁹³ It rallied for gender parity in the workplace and sustainable manufacturing practices.³⁹⁴

Upon the conclusion of its term, the ILO published the Report on "*Employment, Wages And Productivity Trends In The Asian Garment Sector: Data And Policy Insights For The Future Of Work*".³⁹⁵ The report examines recent data and trends within the RMGS to provide a background about wages and labour productivity. The analysis encompasses structural and institutional aspects, such as industrial relationships, sheds light on the ongoing difficulties

³⁸⁹ 'A Recent Boom In Garment Production Puts Vietnam Front And Centre In The Fight For A Living Wage' (*Fair Wear*) <<https://www.fairwear.org/programmes/countries/vietnam>> accessed 26 August 2023

³⁹⁰ 'Decent Work' (*ILO*) <<https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> accessed 27 August 2023

³⁹¹ 'Decent Work Indicators' (*ILO*) <https://www.ilo.org/integration/themes/mdw/WCMS_189392/lang--en/index.htm> accessed 27 August 2023

³⁹² 'Decent Work in the Garment Sector Supply Chains in Asia' (ILO 2019)

³⁹³ 'Decent Work in the Garment Sector Supply Chains in Asia' (ILO 2019)

³⁹⁴ 'Decent Work in the Garment Sector Supply Chains in Asia' (ILO 2019)

³⁹⁵ Souleima El Achkar Hilal, *Employment, Wages And Productivity Trends In The Asian Garment Sector: Data And Policy Insights For The Future Of Work* (International Labour Organisation 2022)

faced by specific labourers' sub-categories, including those in informal roles, home-based workers, and highlights the importance of women in the RMGS.³⁹⁶

3. Better Work

Better Work is a collaborative initiative between the ILO and the International Finance Corporation.³⁹⁷ It brings together governments, international brands, factory owners, labour unions, and labourers with the aim of enhancing labour conditions within the global textile industry.³⁹⁸ Their work is mainly based with Asian nations and focuses on eight primary issues including gender equality, social dialogue, wages and OSH.

Better Work conducts a compliance assessment in order to ensure that organizations are complying with the norms and plans set out by them.

Better Work has championed the cause of gender equality in Asia Pacific nations. In Vietnam, by the time a fourth compliance assessment was carried out, Better Work had managed to close 85% of the pay gap between the male and female labourers.³⁹⁹ In Indonesia, Better Work emerged victorious in giving around 26% women access to pre-natal check-ups and other healthcare resources, which was a meagre 8% before they took charge.⁴⁰⁰ In Bangladesh, the Mothers@Work Programme has enabled working mothers to gain access to breastfeeding support and childcare facilities in their work premises.⁴⁰¹

Better Work has constantly strived to raise the OSH standards of labourers across the continent, they were particularly proactive during the pandemic. They provided PPE kits and other protective gear to factory workers in countries like Bangladesh and Indonesia to ensure their safety whilst they continued to work, even during the pandemic.⁴⁰² Better Work continues to

³⁹⁶ Souleima El Achkar Hilal, *Employment, Wages And Productivity Trends In The Asian Garment Sector: Data And Policy Insights For The Future Of Work* (International Labour Organisation 2022)

³⁹⁷ 'Better Work' (*Better Work*) <<https://betterwork.org/>> accessed 27 August 2023

³⁹⁸ 'Better Work' (*Better Work*) <<https://betterwork.org/>> accessed 27 August 2023

³⁹⁹ 'Gender Equality And Inclusion' (*Better Work*) <<https://betterwork.org/gender-equality-and-inclusion/>> accessed 27 August 2023

⁴⁰⁰ 'Gender Equality And Inclusion' (*Better Work*) <<https://betterwork.org/gender-equality-and-inclusion/>> accessed 27 August 2023

⁴⁰¹ 'Mothers@Work: A Qualitative Assessment' (*Better Work*) <<https://betterwork.org/reports-and-publications/motherswork-a-qualitative-assessment/>> accessed 27 August 2023

⁴⁰² 'Occupational Safety And Health' (*Better Work*) <<https://betterwork.org/occupational-safety-and-health/>> accessed 27 August 2023

work for to safeguard the health and safety of all labourers in their factories through various programmes and undertakings.⁴⁰³

4. ILO Sustaining Competitive and Responsible Enterprises Programme

The Sustaining Competitive and Responsible Enterprises (“SCORE”) Programme aims to revolutionize working conditions and productivity in Small and Medium Enterprises including the RMGS enterprises in Asia Pacific.⁴⁰⁴ The key aspect of SCORE is to provide training which combines practical classroom training with in-factory consulting.⁴⁰⁵ The Training elaborates on international practices in the manufacturing processes of global supply chains.⁴⁰⁶ The SCORE program has been implemented in the RMGS in India, Vietnam and China.⁴⁰⁷

5. European Union’s Strategy for Sustainable and Circular Textiles

The European Union’s Strategy for Sustainable and Circular Textiles (“SSCT”) addresses the negative impact of the production and consumption of textiles.⁴⁰⁸ The SSCT focuses on sustainable fashion and aims to bid adieu to fast fashion by 2030.⁴⁰⁹ Sustainable fashion entails the practice of consciously ensuring that the garment production process focuses on the dual goals of minimizing their environmental footprint while also prioritizing fair treatment and well-being of the individuals involved in the production process. The SSCT aims to ensure that all goods sold in the EU by the year 2030 must meet certain standards of production, including a non-violation of the human rights of those making them has only furthered the cause of sustainable clothing.⁴¹⁰

Most fast fashion brands producing in the Asia Pacific region find their origins in these EU nations and cater to large markets there. In light of this, popular fast fashion brands are now venturing into the arena of sustainable clothing. The Spanish fast fashion retailer, Zara has

⁴⁰³ ‘Occupational Safety And Health’ (*Better Work*) <<https://betterwork.org/occupational-safety-and-health/>> accessed 27 August 2023

⁴⁰⁴ ‘The SCORE Programme’ (*ILO*) <<https://www.ilo.org/empent/Projects/score/lang--en/index.htm>> accessed 27 August 2023

⁴⁰⁵ ‘Sustaining Competitive And Responsible Enterprises (SCORE) Programme At A Glance’ (ILO 2019)

⁴⁰⁶ ‘The SCORE Programme’ (*ILO*) <<https://www.ilo.org/empent/Projects/score/lang--en/index.htm>> accessed 27 August 2023

⁴⁰⁷ ‘Sustaining Competitive And Responsible Enterprises (SCORE) Programme At A Glance’ (ILO 2019)

⁴⁰⁸ ‘EU Strategy For Sustainable And Circular Textiles’ (*European Commission*) <https://environment.ec.europa.eu/strategy/textiles-strategy_en> accessed 27 August 2023

⁴⁰⁹ ‘EU Strategy For Sustainable And Circular Textiles’ (*European Commission*) <https://environment.ec.europa.eu/strategy/textiles-strategy_en> accessed 27 August 2023

⁴¹⁰ ‘EU Strategy For Sustainable And Circular Textiles’ (*European Commission*) <https://environment.ec.europa.eu/strategy/textiles-strategy_en> accessed 27 August 2023

introduced a “*Join Life*” range which is a range of sustainable clothing manufactured in an ethical manner.⁴¹¹ They also developed a program to prioritize human and worker rights.⁴¹² Swedish fast fashion retailer, H&M too promotes the cause of sustainability and alleges to conduct routine human rights due diligence in its supply chains.⁴¹³ However, there is little to substantiate how effective these brand policies are in eradicating the gross human rights violations that take place on a daily basis in the manufacturing outlets of these brands.

6. Fair Labor Association

The Fair Labor Association (“FLA”), headquartered in the United States, is a global initiative comprising businesses, educational institutions, and civil society organizations united in their mission to enhance labour conditions within factories across the supply chain.⁴¹⁴ It has an active presence in Bangladesh, India and Cambodia.⁴¹⁵

In Vietnam, FLA has championed the cause of securing better working conditions for labourers working in its affiliate RMGS factories. In 2015, FLA conducted a survey of Maxport Limited’s production unit which produces apparels for Nike and Lululemon.⁴¹⁶ After the 2015 assessment, Maxport Limited reviewed its working schedule for the year to reduce excessive overtime and ensured at least one day off every week for each labourer.⁴¹⁷ The real wages of the labourers increased by 39% by 2020.⁴¹⁸

These initiatives are a stepping stone to better working terms for labourers across the continent. If executed properly, they have the potential to be truly beneficial and to change the lives of thousands of labourers who work hard every day and are yet denied the very basic human rights to which they are entitled.

⁴¹¹ ‘Join Life’ (*Zara*) <<https://www.zara.com/ao/en/z-join-life-mkt1399.html>> accessed 27 August 2023

⁴¹² Sumra Iqbal, ‘How Ethical Is Zara’s “Join Life” Collection?’ (*Medium*, 3 September 2021) <<https://medium.com/@sumraiqbal/how-ethical-is-zaras-join-life-collection-4173a92e069d>> accessed 27 August 2023

⁴¹³ ‘Our Approach To Respecting Human Rights’ (*H&M Group*) <https://hmgroup.com/sustainability/fair-and-equal/human-rights/our_approach/> accessed 27 August 2023

⁴¹⁴ ‘The Fair Labor Association Promotes Human Rights At Work’ (Fair Labor Association) <<https://www.fairlabor.org/>> accessed 27 August 2023

⁴¹⁵ ‘The Importance of Freedom of Association and Collective Bargaining for Brands’ (STITCH 2021) 21

⁴¹⁶ ‘Reaching Living Wages for Garment Workers’ (Fair Labor Association 2021) 12

⁴¹⁷ ‘Reaching Living Wages for Garment Workers’ (Fair Labor Association 2021) 12

⁴¹⁸ ‘Reaching Living Wages for Garment Workers’ (Fair Labor Association 2021) 15

VIII. CONCLUSION

The Asia Pacific is a land of paradox, it comprises of nations with the largest workforces, maximum production capacities of ready-made garments and the most progress but is yet crippled with complex labour rights issues such as gender disparity, child and forced labour, lack of OSH and subpar wages. As demonstrated above, the garment producing nations have time and again enacted various legislations and adopted different approaches to combat labour rights abuses in their RMGS with varying degrees of success. However, it must be recognized that most countries in Asia-Pacific are relatively under-developed and corrupt coupled with rampant red-tapism. However, the labour rights abuses can be eliminated with a comprehensive approach from multiple stakeholders including the Governments, international fast fashion brands, international organisations, labourers and consumers. International brands must recognise their corporate social responsibility and establish supply chain transparency and accountability. Ethical sourcing practices, such as selecting suppliers and factories committed to compliance with labour standards, play a vital role. Labour education and empowerment is quintessential, ensuring that labourers are not only aware of their rights but also armed to the teeth to report any abuses without fear of intimidation. Regular, human rights due diligence inspections should be conducted to monitor compliance with labour standards. The modern age consumer will also have an active role to play in mitigating labour rights abuses. Consumption patterns must be altered to shift to sustainable, long lasting options and bid adieu to cheap fast fashion. While this does seem starry-eyed and unrealistic, it is only with a positive outlook and determination that favourable results can be obtained.