

Order on Childcare Provisions in Garment Industries

RECOMMENDATIONS

The Commission is deeply disturbed by rampant non-compliance by garment factories with the statutory provisions related to providing crèche facilities for children of women workers under the Factories Act, 1948 and the Karnataka Factories Rules, 2002 and the unhurried efforts of the Dept. of Factories and Boilers Government of Karnataka to guarantee the same.

Read with the Commission's survey report of 2012 and the reports¹ of the National Commissioner for Labour and NTUI, it becomes implicit that at a very basic level, there needs to be a better understanding of the need for childcare services and make different options available to workers and study the reasons why they do or do not use factory crèches.

Based on these concerns, the Commission makes these recommendations:

I. Secretary, Department of Labour Govt. of Karnataka

The Dept. of factories and Boilers, Govt. of Karnataka must

1. Conduct a mass survey of women garment workers who are the primary target of child-care and crèche services to understand the needs and requirements of workers
2. Undertake a time bound enforcement drive to ensure that statutory obligations, in regard to the provision for child-care and crèches and break times for nursing mother are fulfilled at the factory-level in the prescribed manner.
3. Make inspection of crèches a must annually. They must also be subjected to ISO standards. The validity of licensing could be three years.
4. Ensure access of every worker to the crèche and child care facilities for their children as a matter of right. Children's right to free and compulsory education must be promoted. The crèche must encourage women to enrol their children into regular schools and offer necessary support.
5. Set up a Visiting Committee comprising an Officer from the Dept. of Factories and Boilers, a civil society organisation representative, and a worker or trade union representative to monitor compliance in the garment industry. The Visiting Committee should have the powers to conduct inspections, including surprise inspections to monitor the functioning of the crèches in factories.
6. Initiate penal action against factories in the event of their failure to establish crèches or their failure to provide facilities in crèches as mandated under the law

*The Report of the National Commission on Labour 2002 states that the provision of childcare results in up to 50% enhancement in the productivity of the mother as well as in lower morbidity and better growth for the child. <http://www.prsindia.org/uploads/media/1237548159/NLCII-report.pdf>

NTUI (New Trade Union Initiative) undertaken with support of government officials, researcher (MIDS) and non-profit organizations to understand and support the needs of the women garment workers outside the workplace reported that it found that most garment workers work over 16 hours a day at the factory and at home. Their most time-consuming chores outside the workplace were (1) washing (clothes), (2) cooking (3) **childcare** (4) commuting.

7. Direct garment factories to establish Workers Committees, which should include women workers with young children. Such Committees should be empowered to review the functioning of the welfare services including crèches, child care services, redress grievances and make recommendations to managements as and when necessary.
8. Issue a circular to all garment factories to display in bold letters at the entrance of their shop floor relevant sections of the Factories Act 1948 and Karnataka Factories Rules for provision of child care services so that workers can claim these services as a matter of right.
9. Set up an Expert Committee to review the Karnataka Factory Rules and to consider the recommendations made by the Commission to amend provisions relating to providing day care services for children which would ensure that quality care and good standard of pre-school education in a conducive child friendly environment is provided to children.(Refer page 4 of this order)
10. Promote the idea of Area-wise Crèches: Most women garment workers prefer community based crèches for their infants and pre-school children in localities around the factories where the factories are located in clusters. These area-wise crèches would be a collective effort of factories and prove economically viable. It would also tackle the existing problem of employers trying to get around the present law (where factories employing more than 50 women only are expected to run crèches) and doing away with establishing crèches. However, it must be clear that the responsibility for the provision of the creche lies with the Factory Management.
A replicable model could be the collective crèches currently operational in Chennai. Partnership between an organization funded by the Frederich Stiftung Foundation and TANSTIA, the largest organization of small firms in Tamil Nadu has provided collective crèches for women working in several different small firms in garment clusters around Chennai.
11. Include after school programmes for older children of workers up to the age of 14 years as a mandatory welfare service in factories employing more than 30 women workers as such a service is not readily available in the community and would offer a safe and secure environment for children who would otherwise remain unattended. This would also go a long way in stemming the anxiety of working parents. Local associations of garment manufacturers could be invited for a dialogue on promoting welfare services within factories and to conduct collective programmes for the empowerment of workers.
12. Take steps towards the amendment of the Karnataka Factory Rules, 1969 as regards the provisions relating to creches as recommended by the Commission so as to make it more women and child friendly.
13. Include child care services and after school programme in the GTZ-Govt of Karnataka collaborative venture whose report of 2008-2011 claims that 'delivery mechanisms for social security products have improved, and social security products and packages have been developed for several sectors including garment workers'

II. Dept. of Commerce & Industries Department

The proceedings of the Government of Karnataka, Sub: Suvarna Vastra Neethi 2008-2013 Read: G.O. No. CI 50 JAIKAIIE 2002, dated 21/02/2004 acknowledges that the textile and garment industry is the backbone of socio-economic structure of Karnataka. It states that the largest employment provider next to agriculture and single largest foreign exchange earner in the country.

The Garment Industry in Karnataka is said to have achieved rapid growth in the last ten years by increasing its total turnover from about US\$ 3300 million in 1995-96 to over US\$ 9600 million in

2005-06. The State also enjoys significant share of the domestic apparel market (32%) with over 1500 apparel units with considerable scope for expansion.

1. To include in its Textile Policy - Suvarna Vastra Neethi (TPSVN) day care and after- school care programmes for children of garment workers as this is an investment which is known to enhance productivity.

III. Chief Secretary, Government of Karnataka

- 1.
2. Conduct a multi-stakeholder dialogue among Departments of Women and Child Development, Education and Health and Family Welfare, national and state level associations of the garment industry, employers and workers' representatives with civil society to help devise a common platform of action that benefits vulnerable children of parents working in the garment industry.
3. Bring out with a policy on early child care services in the State and make necessary amendments in laws governing employment particularly women employment making provision of quality child care services mandatory.
- 4.

IV. Clothing brands both national and International which source garments from Karnataka

1. Pro-active role of brands in improving welfare services in the garment industry is the need of the day. Brands must take on the obligation of expanding the scope of their regular audit teams to ensure statutory compliances. These teams should build rapport with workers and worker committees and empower Welfare Officers/HR personnel to execute their responsibilities. Brands could also show case best practices to enable others emulate same.

The Karnataka State Commission for Protection of Child Rights (Commission) took cognizance of a complaint filed by Munnade -Social Organisation, an association of women garment workers on 08/07/2009 which alleged that in a majority of the garment industry in Bangalore, crèches were not being run for children below six years though it is a mandatory requirement under the Factories Act, 1948.

Details of the complaint

The complainants highlighted the fact that Bangalore is the largest manufacturer of ready-made garments in the country and that the output is primarily for premium markets across the globe and that the industry is poised for rapid expansion. Mega-garment manufacturers, they opined had turnovers of over Rs.100 crores per annum and employ upwards of ten thousand workers. According to Garment and Textile Workers Union's (GATWU) unofficial estimate they said there are around 5 lakh workers employed in around 1,000 factories with smaller factories employing 50-60 workers and remaining unregistered.

According to the information gathered from their members, over 80% of the workers are women with children of pre-school and school going age. Majority of these workers are migrant women from the neighbouring towns of Srirangapatna, Tumkur and Kolar with a large proportion hailing from the dalit and minority communities and were also the principal wage earners with a number of dependents. They were paid only the statutory minimum wages which has condemned most of their families to bare survival at the level of the poverty line. Many families are forced into indebtedness; engage in supplementary employment as domestic workers and some even send their young children out to work in order to make ends meet.

The complainants also shared with the Commission a report of a study of 300 garment workers completed by Garment Mahila Karmikara Munnade in collaboration with SAMVADA in 2008 which brought to the fore these facts:

- Almost 60% of the workers had migrated from rural Karnataka with 73% having only acquired 6-8 years of education. 49% were between 20 to 29 years and 8% were in the 40 plus age group. These women were mothers to a total of 529 children with nearly half (46%) being children of 7 years of age or less. Only 33 out of a total 529 children (around 6%) used factory crèche facilities. Large majority of children (43%) were taken care of by family members. Over a third of the children (34%) had no caretakers at all (including children as young as 3 and 4 years of age). They were generally left to play near the house till the parents returned home under the supervision of older siblings.
- Several women workers disclosed that for their older children they hung sacks on the door handle of their homes with a change of clothes and a tea time snack. In some cases, arrangements were made for the children to wait at a neighbour's place for their parent/s to get back. A few parents left the children to their devices until they returned and the parents feared the children would tend to loiter around the streets. Many workers reported suffering from great anxiety about the well being of their children until they returned home.
- The study also brought to light the women workers views, that their productivity would increase and consequently their income if their children were cared for in a work-place

crèche while they concentrated on their work. The study concluded stating that employment opportunities for mothers would increase with the availability of crèche services and after school care services thus directly improving their standard of living and quality of lives.

The Commission also had access to a 2009 survey report of the renowned international brand WALMART which revealed that in the 21 supplier factories surveyed, 14,000 women workers were below the age of 30 years, which is the prime reproductive period for women in India. In these factories only 4.34% or 608 children were enrolled in crèches. Knowing that most women workers are migrants to the city, this is a very miniscule percentage, even considering that a proportion of women are unmarried, have older children or live in extended families.

Meeting with Department of Factories and Boilers

To probe the matter further, the Commission held a meeting with the officers of the Dept. of Factories and Boilers, Government of Karnataka on 27/07/2009 where the Commission was informed that there were 863 garment factories employing 3.55 lakh workers in Bangalore/Karnataka. 654 factories employed over 30 women workers of which 610 factories were providing crèche services. The number of factories booked for not running crèches was 14 and 10 for the years 2007-08 and 2008-09 respectively.

At this meeting it was decided to hold a public hearing of garment workers and follow that up with a meeting with the brands which source the finished products.

Public Hearing

- i. The public hearing was organised on 01/08/2009 where women garment workers articulated the lack and shortcomings of crèche facilities in factories in the presence of officials of the Dept. of FACTORIES AND BOILERS, civil society organisations and the media. Their demands included:
 - ii. Crèche facilities should be provided in all garment factories including its extended units
 - iii. Children upto 10 years of age should be admitted in it
 - iv. The number of staff in the crèches should be proportional to the number of children
 - v. The staff should be professional, qualified and skilled to provide day care and pre-school education
 - vi. It is necessary that children are kept active and their learning and development avenues should be explored
 - vii. There should be minimum prescribed standard of services- adequate room space, well ventilated and airy, safe, separate kitchen, emergency medical aid and bathroom area, play items, toys, learning aids etc
 - viii. Surprise inspections should be carried out and a Monitoring Committee must be in place. The staff and employees should also be represented on this Committee.
 - ix. Manufactures and companies should be blacklisted as per law, if they violate the provisions of the statute
 - x. Dept. of Factories and Boilers should be strengthened and equipped with more powers to prosecute violations by factories

- xi. A comprehensive survey in factories is required to address issues about age group of children to be admitted into crèches, problems faced by employees, welfare services provided etc.
- xii. More counselors and welfare officers must be employed in factories. They should be appropriately qualified and trained and periodical capacity building programme must be arranged for them
- xiii. If factories cannot provide adequate services, constructive partnerships should be forged with civil society organizations to provide the crèche facilities. The management should pay for child care services.
- xiv. The employees and their representatives should also be permitted to interact with regulatory authorities.

Commission visits three garment units

Following the public hearing, a team from the Commission on 13/08/2009 visited at random three leading garment factories in the city namely Shalini Creations, Choice Apparels and Wonder Blues and found that the crèche facilities were run in a most perfunctory manner.

Two of the factories namely Shalini Creations and Wonder Blues ran crèches. There were around 10 children seen lying on the floor at 4 pm in one crèche while at the other there were around 20 children. At both crèches there was no play area or pre-school learning material and untrained workers were handling the children. Workers reported that children are admitted only upto the age of 3 years and women were not permitted to take breaks to nurse infants and were also not offered flexibility in working hours to attend to the needs of their young children. During government inspections, some the workers reported that factory managements ask workers to bring in children to put up a pretence.

Action taken by Dept. of Factories and Boilers

The Commission reported the matter to the Dept. of Factories and Boilers to which a response was received on 17-5-2010 stating that Shalini Creations had appointed a trained teacher and had improved crèche facilities while cases had been filed against the factory administration of Choice Apparels and Wonder Blues in the 2nd and 3rd Addl. Metropolitan Magistrate for breach of provisions of the Factories Act 1948 with respect to absence or improper functioning of child care services and other welfare measures.

Commission's recommendation to Dept. of Factories and Boilers to review functioning of factory creches

The Commission in September 2009 addressed a letter to the Dept. of Factories and Boilers strongly recommending that they set up a Working Group to review the functioning of crèches in factories and also made suggestions for amending the Karnataka Factory Rules 2002 related to child care services so that systems and procedures are put in place to ensure consistency in quality of child care provided in crèches and to ensure the adoption of sustainable practices across all the factories.

Karnataka State Commission for Human Rights intervenes

On 13/08/2001, touched by media reports regarding poor child care facilities at garment industries, the Karnataka Human Rights Commission(KSHRC) took suo motu cognizance of the failure of

garment factories to set up crèches and sought an explanation from the Director of Factories and Boilers.

KHSRC received a response from the Directorate of Factories and Boilers on 1/3/2010 stating that they have sent directions through circulars to all garment factories that action will be initiated against those factories violating the provisions of the Factories Act and Karnataka Rules and had also recommended that a five member Task Force Committee be constituted by the Government of Karnataka consisting of the Factories Joint Director as the Chairman with the following members: Deputy Labour Commissioner; Deputy Director, Training Department; Karnataka State Commission for Protection of Child Rights and the Deputy Director, Department of Women and Child to undertake the monitoring of welfare services for women primarily in garment factories located in Bangalore Rural and Urban and Ramnagar districts. It was also suggested that a Task Force be set up for six months and submit interim reports bi-monthly and a final report at the conclusion of their term of appointment. Though this recommendation was a timely response regrettably, such a Task Force did not get appointed.

Further, as the Director of Factories and Boilers reported to KSHRC that the Karnataka State Commission for Protection of Child Rights was inquiring into the matter of non-compliance of garment factories in running child care services, KSHRC forwarded the communication received from the Dept. of Factories and Boilers to the Commission and disposed off their complaint.

Discussions with Dept. of Factories and Boilers and International Brands

Thereafter on 28/09/2009 the Commission arranged a meeting of the Commissioner, Department of Labour Department and the Director of Factories and Boilers and his officers with the representatives of garment brands and brought to their notice the disregard of garment factories to comply with the statutory provision of running crèches. The brand representatives of Walmart, Levi Strauss, H & M, TESCO International, Mother Care and Navigator participated and in principle agreed to the following:

- To work with suppliers to create a data base of women workers to identify their need for day care services including pre-school education for children 0-6 years of age
- To enforce setting up of quality child care services for children of garment workers using a persuasive strategy
- To share with suppliers, Commission's suggested Minimum Standards to be maintained in crèches run at the factories
- To extend Corporate Social Responsibility projects to garment units
- To share best practices of some of their suppliers with others
- To strengthen Commission's initiative to protect the rights of children of garment workers
- To build capacities of Managements, Welfare Workers and Garment workers in their supplier units at their training facilities
- As a follow-up, to invite other Brands for a meeting to discuss in greater depth compliance issues
- To invite garment manufacturers for a state level meeting to deliberate on the subject and statutory compliance of

- child care services and all other welfare measures (including Health care, canteen facility etc) with the intention of motivating them to cooperate on humanitarian grounds too.

Commission presentation to Welfare Officers of garment factories

Further at the invitation of the Director of Factories and Boilers on 06/11/2009 the Commission made a presentation to a large gathering of Welfare Officers of garment factories seeking their co operation in complying with the mandatory requirement of setting up crèches in garment factories.

Commission seeks status report from Dept. of Factories and Boilers on crèches in garment factories

The Commission followed this up with a communication dated 19/12/2009 to the Director of Factories and Boilers seeking information on three issues:

- i. Details of functioning crèches in garment factories
- ii. Number of women workers having children below 6 years
- iii. Number of children below 6 years using the crèche facilities.

Director of Factories and Boilers reverted back on 30/12/2009 stating that the information was being sought from divisional level officers.

Commission recommends amending Karnataka Factory Rules to the Dept. of Factories and Boilers

On 16/02/2010 the Commission forwarded suggestions for making suitable amendments to the Karnataka Factories Rules, 2002 in respect of crèche facilities and the setting up of a three member Visiting Committee to inspect crèches in garment factories and to take up a strict enforcement drive.

- a. For Rule 101(1) states that “Crèches shall be conveniently accessible to the mothers of the children accommodated therein and so far as is reasonable to it shall not be situated in close proximity to any part of the factory where obnoxious fumes, dust or odours are given off or in which excessively noisy processes are carried on.”

Commission’s views

This provision should be provided to all working mothers- widows, married, unmarried, part-time, fulltime, permanent, temporary. The age must be specified in the rule and also minimum environmentally safe standards according to current building norms should be followed.

Amendment proposed

“The Crèche shall be conveniently accessible to all working mothers/caretakers/guardians of the children aged between 0-6years accommodation therein shall not be situated in close proximity to any part of the factory where obnoxious fumes, dust or odours are given off or in which excessively noisy processes are carried on. The environment and safety norms of the institution must be in line with current building norms.”

- b. Rule 101(2) states that “The building in which the crèche is situated shall be of sound construction and all the walls and roof shall be of suitable heat resisting materials and shall be water –proof. The floor and internal walls of the crèche shall be so laid or finished as to provide a smooth impervious surface.”

Commission’s views

The Commission felt that the crèche should be certified by the closest fire station and adequate safeguards and fire-fighting equipment shall be installed.

Amendment proposed

“The building in which the crèche is situated shall be of sound construction and all the walls and roof shall be of suitable heat-resisting materials and shall be water-proof. The crèche should be certified by the closest fire station and adequate safeguards and fire-fighting equipment shall be installed. The floor and internal walls of the crèche shall be so laid or finished as to provide a smooth impervious surface.”

- c. Rule 101(3) states that “The height of the rooms in the building shall not be less than 3.7 meters from the floor to the lowest part of the roof and there shall not be less than 1.86 sq. M of floor area for each child to be accommodated.

Commission’s views

This Rule needs to be re-examined according to current building norms

Amendment proposed

“The height of the building shall meet the current building norms.”

- d. Rule 101(4) states that “Effective and suitable provisions shall be made in every part of the crèche for securing and maintaining adequate ventilation by the circulation of fresh air.”

Commission’s views

The Commission felt that it is essential for the accommodation to be certified by the appropriate housing and environment department as being suitable for young children. The minimum standards for temperature must be stated.

- e. Rule 101(5) states that “The crèche shall be adequately furnished and equipped and in particular there shall be one suitable cot or cradle with the necessary bedding for each child (Provided that for children over two years of age it will be sufficient if suitable bedding is made available), at least one chair or equivalent seating accommodation for the use of each mother while she is feeding or attending to her child, and a sufficient supply of suitable toys for the older children.

Commission’s views

Suitable bedding and furniture should be available for use by children over two years of age for resting, play and learning and also recreational material for younger children must be provided.

Amendment proposed

“The crèche shall be adequately furnished and equipped and in particular there shall be one suitable cot or cradle with the necessary bedding for each child. Suitable bedding and furniture should be available for use by children over two years of age for resting, play and learning. Appropriate seating arrangements should be made for the use of each mother while she is feeding or attending to her child, and a sufficient supply of suitable recreational material for all age groups of children.”

- f. Rule 101(6) states that “A suitable fenced and shady open air playground shall be provided for older children; provided that the Chief Inspector may by order in writing exempt any factory from compliance with this sub-rule if he is satisfied that there is not available sufficient space for provision of such a playground.

Commission’s views

This needs to be re-examined according to current building norms.

- g. Rule 101(7) states that

The Chief Inspector may, in respect exempt from the provision of crèche in certain cases.

Commission's views

Specific mention should be made for the grounds on which an exemption for a crèche is made.

Such as:

-if the number of women are too few, an alternative crèche could be provided by an external party such as an NGO or another factory, provided that this crèche is within 1-2kms from the workplace.

-it is a unanimous decision of the female employees that they do require a crèche. This decision must be made at a meeting of all workers. The minutes and signatures shall be kept on records for monitoring purposes.

Therefore the Commission proposes the following amendment-

“The Chief Inspector may exempt factory factories from these rules in the following circumstances.

-It is a unanimous decision of the female employees that they do not wish for a crèche. This decision must be made at a meeting of all workers. The minutes and signatures shall be kept on records for monitoring purposes.

-In factories where it is reasonably not practicable to provide and maintain a crèche in accordance with law, the Chief Inspector of Factories may exempt such factories from the provision of the Rules 101 to 104, if he is satisfied that alternate arrangements made under sub-rule 101(7) of this rule are ensured by the occupier of the factory.

Provided that the occupier of the factory shall,-

Obtain the consent of the employee;

Furnish full details of the places, owner or person or Non Government Organization who are providing such a crèche and the Infrastructure facility available therein;

- h. Rule 102(1) states that “There shall be in or adjoining the crèche a suitable washroom for the bathing of children and washing their clothing. The washroom shall conform to the confirm to the following standards:-“

Commission's views

This Rule needs to be re-examined according to current building norms.

- i. Rule 102(1 a) states that “The floor and internal walls of the room to a height of one meter shall be so laid in finished as to provide a smooth impervious surface. The room shall be adequately lighted and ventilated and the floor shall be effectively drained and maintained in a clean and tidy condition.”

Commission's views

This Rule needs to be re-examined in view of current building norms.

Amendment proposed

The floor and internal walls of the room shall conform to existing building norms and standards.

- j. Rule 102(1 b) states that “There shall be at least one basin or similar vessel for every four children accommodated in the crèche at any one time together with a supply of water provided, if practicable, through taps from a source approved by a Health Officer. Such source shall be capable of yielding for each child a supply of at least 23 litres of water a day”.

Commission's views

This Rule needs to re-examined according to current building norms and also the height of the basin must be scaled down to the height of young children.

Amendment proposed

There shall be at least one basin (The height of the basin must be scaled down to the height of young children) or similar vessel for every four children accommodated in the crèche at any one time together with a supply of water provided through taps from a source approved by a Health Officer. Such source shall be capable of yielding for each child a supply of at least 23 litres of water a day.

- k. Rule 102(1 c) states that "An adequate supply of clean clothes, soap and clean towels shall be made available for each child while he is in the crèche. "

Commission's views

Child mentioned above should be referred to as he/she

Amendment proposed

"An adequate supply of clean clothes, soap and clean towels shall be made available for each child while the child is in the crèche".

- l. Rule 102(2) states that "Adjoining the washing room referred to above, a flush type latrine shall be provided for the sole use of the Children in the crèche. The design of the latrine and the scale of accommodation to be provided shall be as determined by the Health Officer"

Commission's views

There should be several latrines and the latrines should be made child friendly. The crèche latrine shall always be kept clean and in a sanitary condition by the sweeper especially employed for the purpose.

Amendment proposed

"Adjoining the washing room referred to above, a flush type latrine shall be provided for the sole use of the children in the crèche. The design of the latrine and the scale of accommodation to be provided shall be as determined by the Health Officer. There must be several child friendly latrines. The crèche latrine shall always be kept clean and in a sanitary condition by the sweeper especially employed for the purpose".

- m. Rule 103 states that "At least 40.0 centilitres of clean pure milk shall be available for each child every day, he is accommodated in the crèche and mother of such a child shall be allowed in the course of her daily work two intervals of at least fifteen minutes to feed the child. For children above two years of age there shall be provided in addition an adequate supply of whole some refreshment.

Commission's views

The Commission felt that it is necessary to mention the kind of milk to be given preferably pasteurized milk. The child should be referred to as he/she. The amount of milk stipulated is inadequate and needs to be revised to include items such as suitable weaning semi-solid foods as well. The interval time for breastfeeding must be made 4 hours and also nutritious meals planned by a nutritionist should be provided to children.

Amendment proposed

“At least 40.0 centilitres of clean pure milk shall be available for each child on every day, he is accommodated in the crèche and mother of such a child shall be allowed in the course of her daily work two intervals of at least fifteen minutes to feed the child. For children below two years of age, suitable weaning and semi-solid foods should be provided. For children above two years of age there shall be provided in addition an adequate supply of wholesome refreshment. The nutrition component of every crèche center shall be planned by a certified nutritionist.”

- n. Rule 104(1) states that “For each crèche there shall be appointed a woman-in-charge and one female attendant for every 20 children attending or a fraction thereof and at least one sweeper.
Commission’s views

The Commission feels that this aspect needs review, and the ratio needs revision, 1:20 is not adequate and there should be 1 staff for every 5 infants below 1 year of age.

Amendment proposed

“For each crèche there shall be appointed one female attendant for every five children below the age of one year and one female attendant for every ___ children above the age of one year attending the crèche. The female attendant shall be trained and certified through early childhood care and development (ECCD) training centres established/recognized by the State. There shall be a cleaner and sweeper appointed for every crèche. The workers in the crèche shall be paid according to minimum wage rules for skilled labour and unskilled labour. Crèche workers shall be given the same conditions as regular factory workers. There must be a compulsory visitation by a doctor on a weekly basis as appointed by the factory. The doctor shall provide immunization to the attending children, in the crèche premises. At such centers where provisions for immunization cannot be carried out, women should be permitted to take their children for the necessary immunization coordinated by the doctor or crèche attendant in-charge.

- o. Rule 104(2) states that “Except as in sub-section (2) of section 48, no woman shall be appointed under sub-rule (1) as woman in-charge unless she possesses a Nurse’s qualifications or produces a certificate that she has undergone training for a period of not less than 18 months in child care in a hospital, maternity home, or nursing home, approved in this behalf by the Chief Inspector.

Commission’s views

Staff training must be provided to all staff as appropriate.

Amendment proposed

“No woman shall be appointed under sub-rule (1) as woman in-charge unless she possesses an ECCD qualification or produces a certificate that she has undergone training for a period of not less than 18 months in child care in a training center approved in this behalf by the Chief Inspector.”

- p. Rule 104(4) states that “The crèche staff shall be provided with suitable clean clothes for use while on duty in the crèche.”

Commission’s views

Crèche staff must be provided with uniforms

Amendment proposed

“The crèche staff shall be provided with suitable uniforms for use while on duty in the crèche.”

- q. Rule 104 A (1) states that “Exemption from the provision of crèche- (1) In factories where the number of married woman or widows employed does not exceed 15 or where the factory works for less than 180 days in a calendar year, or where the children kept in the crèche were less than 5 in the preceding year, the Chief Inspector of Factories and Boilers may exempt such factories from the provisions of section 48 and rules 101 to 104 made there under, if he is satisfied that alternate arrangements as stipulated under sub-rule (2) are provided by the Factory.”

Commission’s views

Categorisation of woman must be avoided in order to be unbiased.

Amendment proposed

“Exemption from the provision of crèche shall only be under the amendment of Rule 101(7).

- r. Rule 104(2a) states that “ The alternative arrangements required in sub-rule (1) shall include a crèche building which has a minimum accommodation of 2 sq. meter per child as constructed in accordance with the plans approved nu the Chief Inspector.

Commission’s views

This rule needs to be re-examined according to current building norms.

Commission’s visit to garment unit in Belgaum

In March 2010, the Commission also took the opportunity during its visit to Belgaum district to inspect the functioning of the crèche at the Forbes Campbell Knitwear garment factory which employs over 500 women workers. Most surprisingly, though a fairly large crèche had been set up in the premises with the necessary infrastructure, none of the workers sent their children there. The factory manager explained that most workers preferred to leave their young children with the extended family at home rather than carry them to the crèche. However the responses given in confidence by the women workers pointed to their concern about leaving their children in the hands of untrained staff at the crèche.

Surprisingly, the factory had done little to identify the reasons why workers were not sending their children to the crèche. The Welfare Officer could not furnish data on the number of workers with children below 6 years of age and with whom the children were left behind by the women workers while at work. No serious attempt had also been made to delve into the reasons why the working mothers were not bringing children to the crèche.

Commission meeting with Secretary, Department of Labour

To take forward the suggestions made to amend the Karnataka Factory Rules, on 10/03/2010 the Commission met with the Secretary of the Labour Department, Government of Karnataka. However, response from the government is still awaited.

Munnade –Social Organisation submits another complaint

Meanwhile, Munnade, - Social Organisation again filed a complaint on 26/11/2010 alleging that little has changed since their first complaint was lodged with the Commission on lack and shortcoming in the functioning of crèches in garment factories and urged the Commission to intervene.

Commission's visit to garment units in Bangalore

On two consecutive days, 8/02/2011 and 09/02/2011, a team from the Commission visited seven factories namely Texport Creations, Bombay Rayon Fashion Limited, Hinduja Processing and Finishing unit, The Intex V, Dhanya Apparels, International Factory, Tavarakere and Paprika Wear, Tavarakere and video-recorded their observations. Four of the factories each with more than 550 workers on their rolls ran a single crèche each while three factories were not running crèches. Those running crèches were found wanting in infrastructure, sanitation and hygiene and trained staff to care for the children and provide pre-school education. In comparison to the number of women working at these crèches, very few children were availing of the service.

- Texport Creations: There were 550 workers employed and 19 children in the age group of 3 to 6 years at the crèche which measured about 10' x 20'. There were two caretakers both of whom were illiterate and not equipped to keep the children engaged. Pre-school education for a brief period each day was provided by a nurse and there was no outdoor play area.
- Bombay Rayon Fashions: 950 workers were working in two adjoining units of this factory. There was only one crèche with 22 children in the age group of 2 to 3 years. The crèche measured 20' x 20'. There were two care takers, one of whom was illiterate and the other was trained. The floor of the crèche was all cracked and uneven and the children were simply seated with no toys though they were stocked on the loft.
- Hinduja Processing and Finishing Unit: 800 workers were employed in this factory. 15 children in the age group 2 to 3 years were in the crèche, the size of which was about 15' x 20'. The crèche was well located and had a play area. There was only one care taker who had studied upto 8th Std. She was previously employed in the garment unit and six months after the birth of her child was reappointed as the crèche help. She found it next to impossible to attend to the 15 children as well as attend to her six month old child. The fifteen children in the crèche appeared forlorn and neglected.
- Intex V: 750 workers were employed in the factory. There was a medium sized room with no ventilation attached to the factory floor where 9 children in the age group of 2 to 3 years were seated with no toys, learning or play material. A single worker was attending to the children. She had studied upto SSLC
- Dhanya Apparels, International Factory and Paprika Wear each had 190, 380 and 170 women workers working employed in their factories respectively. However, none of these factories was running a crèche. The room designated as the crèche at Dhanya Apparels was locked and used as godown to stock raw materials while a room had been set aside on the 4th floor of the International Factory to run the crèche. Here most women workers were not even aware that a crèche room existed.

The Commission sent its visit report to the Dept. of Factories and Boilers bringing to their attention the total apathy of the garment factories in providing child care services and the helplessness of the workers in claiming their rights. The government is yet to share with the Commission its action taken report.

Commission Study on Childcare Provisions in Bangalore's Garment Industry

To gain a deeper understanding on the prevailing status of child care services in garment factories across the state, the Commission at its business meeting held 27/07/2011 passed a resolution to

issue notices to all garment factories in Karnataka employing more than 60 women workers to provide information regarding crèche services provided by them. This study aimed at improving children's access to quality care through statutory childcare facilities at their parents' workplaces. Notice was issued to 575 factories, of which 118 factories responded. The Commission collated the information received from the factories into a report the main findings of which are given below:

Findings of the Study

The garment industry is a leading employer of women in Bangalore region and is therefore in a pivotal position to raise the standard of childcare. The study has found that, despite employing a majority of women, with a large percentage being mothers of children under six years, the garment manufacturing industry has not demonstrated full compliance with the statutory requirements.

- a. Though only 12 of the 118 factories in the survey admitted that they did not provide a crèche it is surprising that those factories who reported running a crèche had only one each for 100 to more than 1000 workers.
- b. In 9.43% (10 out of 106) of the cases, no employee availed of the creche.
- c. Though working parents constituted 34% of workforce in the sample of factories, only 5.7% of them used the employer-provided crèches. In fact, workplace crèches were used by less than 20 workers in 65% to over 90% of factories in all size brackets.
- d. Lack of crèches seems to be a bigger problem in factories employing less than 100 women and 500 to 1,000 women
- e. The issue of under-utilised crèches was more serious as the factory size increased.
- f. Factories which employed more than a thousand women had the lowest percentage of parents availing of childcare services at their workplace.
- g. The data also revealed that only 6% of the reported number of employees' children were benefiting from employer-provided childcare, with much less than 50% of the under-six children of employers using the crèche in any factory.
- h. The sharp discrepancy between the supposed provision of staffing and equipping crèches and the exceptionally low parent usage of workplace-based crèches on the other is in need of deeper scrutiny.
- i. A possible explanation for this conundrum could be that garment workers live in joint families and have relatives who can provide free and flexible childcare. However, this may not apply to the majority of workers are known to be migrants and Dalits whose households have greater economic pressures than others.

Avenues for Possible Interventions

- i. Quality childcare at the early childhood stage is known to have a positive impact on children's intellectual and social development, and thereby potentially disrupt the poverty cycle. At a very basic level, there needs to be better understanding of the childcare options available to workers and the reasons why they do or do not use factory crèche. This can only be addressed in a mass survey of women garment workers who are the primary targets of these services. This could be complemented by an enforcement drive to ensure that legal obligations are fulfilled at the factory-level.
- ii. Promoting the idea of area-wise crèches. Most women garment workers prefer community based crèches for their infants and pre-school children in localities around the factories

where the factories are located in clusters. These area-wise crèches would be a collective effort of factories and prove economically viable. It would also tackle the existing problem of employers trying to get around the present law (where factories employing more than 30 women only are expected to run crèches) and doing away with establishing crèches.

- iii. A replicable model could be the collective crèches currently operational in Chennai. Partnership between an organization funded by the Frederick Stiftung Foundation and TANSTIA, the largest organization of small firms in Tamil Nadu has provided collective crèches for women working in several different small firms in garment clusters around Chennai.
- iv. Another viable option would be for the welfare departments of factories to negotiate with existing state run anganwadi centres or privately run crèches and pre-schools to extend their working hours for a fee which could be paid by the factories to provide day care services for children of workers. However, responsibilities of the factories towards provision of these childcare services must be maintained.
- v. Steps must be taken to promote Worker Committees in factories including women with children, who would participate in the functioning and monitoring of the crèches.
- vi. A multi-stakeholder dialogue among government enforcement agencies, employers and workers' representatives, purchasers who are in a majority national and international brands and civil society could help to devise a common platform of action that benefits vulnerable children of working parents.

Constitutional and Statutory obligations towards provision of child-care in factories

The 0-6 year period is considered a crucial time for the development of the child, and early child care is essential in this period. Children learn to cope with increasingly complex forms of thinking, feeling, relating to others and moving. Lack of nurturing or care at this juncture can result in lifelong impairment of the child's faculties.

In this context, **the Constitution** provides for the protection, care and development of children. Article 39(f) of the Directive Principles of State Policy states that the State should ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45 makes provision for early childhood care and education to children below the age of six years, and requires that the State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.

The Factory Act 1948. The legislation governing the conditions of work and provision of welfare measures in factories clearly mandates the provision of a crèche, in the manner and description as prescribed in the Karnataka Factory Rules

Crèches - Section 48

(1) In every factory wherein more than thirty women workers (Subs. by Act 94 of 1976, sec. 23, in place of "fifty women workers" (w.e.f. 26-10-1976)) are ordinarily employed there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants

The Act also provides for the State Government to make rules prescribing the location and the standards in respect of the crèches and the provision of other facilities including washing facilities, provision of free milk and refreshment.

The Government of Karnataka's progressive Factories Rules 1969 and subsequent Amendment 2002 prescribe in Rules 101 to 103, standards that are required to be maintained in crèches in factories: Provision of one suitable cot or cradle with the necessary bedding for each child, at least one chair or equivalent seating accommodation for the use of each mother while she is feeding or attending to her child, and a sufficient supply of suitable toys for the older children.

A suitable fenced and shady open air play-ground shall be provided for the older children, except where exempted

Provision of suitable washroom for the bathing of the children and washing their clothes

Supply of free milk and refreshment for children

Appointment of one woman-in-charge, possessing a Nurse's qualification or having undergone training in child care and one female attendant for every 20 children and at least one sweeper.

Government has allowed women to work upto 10 p.m with a condition being that facilities of canteen and crèche shall be extended, if the same is available in the factory.

Exemption from the provision of crèche in certain cases

Rule 104 (1) a, b, c & d

Obtain consent of employee

Furnish full details of the places, owner or person or Non Government Organization who are providing such crèche and the Infrastructure facility available therein;

Bear the cost incurred by the parent on the child;

Furnish the information of the child as and when it is admitted and withdrawn

Penalty Section - 92 of the Factories Act provides penalty for the failure to comply with any of the provisions of the Factories Act or the Rules made there under, and states that "Any contravention of any of the provisions of this Act or of any rules made there under or of any order in writing given there under, the occupier and manager of factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to ²[two years] or with fine which may extend to ³[one lakh rupees] or with both. If contravention is continued after conviction, with a further fine which may extend to ⁴[one thousand rupees] for each day on which the contravention is so continued."

Maternity Benefits Act, 1961 under Section 11 mandates for nursing breaks to be taken by woman who have delivered of a child to return to duty after such delivery. It provides

"11. Nursing breaks. -- Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months."

International Mandates

International Labour Organization Conventions 156 and 183 set standards for factories to follow. India as a member of ILO is expected to ensure compliance with the Conventions in order to protect the workers in factories and their families.

Convention no. 156 pertains to Workers with Family Responsibilities, and recognizes that the problems of workers with family responsibilities are aspects of wider issues regarding the family and society which should be taken into account in national policies, and requires that the following steps are taken among other:

Each Member shall make it an aim of national policy to enable persons with family responsibilities to enter employment 'to the extent possible without conflict between their employment and family responsibilities.'

Requires (so far as national conditions permit) that account is taken 'of their needs in terms and conditions of employment and social security.'

States that all measures compatible with national conditions and possibilities shall further be taken to develop or promote community services, public or private, such as child-care and family services and facilities.

Convention no. 183 pertaining to Maternity Protection notes the 'need to promote equality of all women in the workforce and the health and safety of the mother and child', and the 'development of the protection of maternity in national law and practice',

Stipulates that, on the production of a medical certificate, the woman is entitled to take pre-confinement and post-confinement leave and to be paid at not less than two thirds of the woman's earning at the date of leave.

Makes it unlawful for an employer to terminate the employment of a woman during her pregnancy or absence on maternity leave and guarantees the right to return to the same position or equivalent position and paid the same rate at the end of her maternity leave.

Provides women the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child. These breaks or the reduction of daily hours of work shall be counted as working time and be remunerated accordingly.

States that in case of complications or illness arising out of childbirth which is supported by medical certificate, leave may be extended and the maximum duration of such leave may be specified in accordance with national laws.

Codes of Vendor Conduct and the responsibility of brands

All national and international clothing brands profess high sounding Codes of Vendor Conduct with the stated objective of ensuring compliance of supplier factories to fair labour standards and statutory obligations. This is what a few select brands have to say:

GAP INC.

Compliance with laws: Factories that produce goods for Gap Inc. shall operate in full compliance with the laws of their respective countries and with all other applicable laws, rules and regulations. The factory operates in full compliance with all applicable laws, rules and regulations, including those relating to labor, worker health and safety, and the environment.

The factory allows Gap Inc, and/or any of its representatives of agents unrestricted access to its facilities and to all relevant records at all times, whether or not notice is provided in advance.

Monitoring, Enforcement and Compliance Management

As a condition of doing business with Gap Inc., each and every factory must comply with this Code of Vendor Conduct. Gap Inc. will continue to develop monitoring systems to assess and ensure compliance.

If Gap Inc. determines that any factory has violated this code, Gap Inc. may at its discretion either terminate its business relationship and/or require the factory to implement a corrective action plan. If corrective action is advised but not taken, Gap Inc. will suspend placement of future orders and may terminate current production.

Gap Inc. strongly encourages factories to define and implement a policy for social accountability and to adopt of establish a management system to ensure that the requirements of the Code of Vendor Conduct can be met in a consistent way

(http://www.gapinc.com/content/dam/csr/documents/COVC_070909.pdf
http://www.gapinc.com/content/gapinc/html/investors/corporate_compliance.html)

MARKS & SPENCERS

“The five pillars represent the key areas where we believe we can tackle the biggest challenges facing us as a retailer. These five areas are: Climate Change, Waste, Sustainable Raw Materials, Health and being a Fair Partner”

(<http://plana.marksandspencer.com/we-are-doing>)

MOTHERCARE plc

“Our responsible sourcing programme is about people and the environment. Our Responsible Sourcing Code is based on the ETI* base Code and covers 10 key areas:

- | | |
|--|-----------------------------|
| No Forced labour | Reasonable working hours |
| Workers can choose to join a trade union | No discrimination |
| Safe and hygienic working conditions | Regular employment |
| No child labour | No physical or verbal abuse |
| Wages are reasonable and fair | Environmental protection” |

(<http://www.mothercareplc.com/responsible-sourcing>)]

WALMART

“At Walmart, we know that being an efficient and profitable business and being a good steward of the environment are goals that can work together. Our broad environmental goals at Walmart are simple and straightforward:

- To be supplied 100 percent by renewable energy;
- To create zero waste;
- To sell products that sustain people and the environment.

Compliance with Applicable Laws: All Vendor Partners shall comply with the legal requirements and standards of their industry under the national laws of the countries in which the Vendor Partners are doing business. Should the legal requirements and standards of the industry conflict, Vendor Partners must, at a minimum, be in compliance with the legal requirements of the country in which

the products are manufactured. Necessary invoices and required documentation must be provided in compliance with U.S. law.”

<http://actrav.itcilo.org/actrav-english/telearn/global/ilo/code/walmart.htm>

<http://www.walmartstores.com/sustainability/>

GOKALDAS EXPORTS LTD.

Social Accountability 8000 (SA 8000) approved which specifies requirements for social accountability to enable a company to :

- i. Develop, maintain ,and enforce policies and procedures in order to manage those issues which it can control or influence;
- ii. Demonstrate to interested parties that policies, procedures and practices are in conformity with the requirements of this standard.

Gokaldas Exports Ltd.is also certified by Worldwide Responsible Apparel Production(WRAP) which demonstrate the company’s commitment to socially responsible business practices by adhering to the WRAP Production Principles and the core standards that address labor practice, factory conditions, and environmental and customs compliance. Facilities such as Gokaldas Exports Ltd. that participate in the program voluntarily agree that an independent monitor will evaluate the facility for compliance with the principles.

<http://www.gokaldasindia.com/social-initiatives.html>

International Brand’s stand on infant death in garment factory crèche

This refers to a complaint received by the Commission from two civil society organisations namely SAMVADA and Munnade- Welfare Organisation in regard to the death of an eleven months old child namely Shrusti in the factory provided crèche of M/s Texport Creations on 14th Dec, 2011. According to M/s Texport Creations, it manufactures and supplies products to GAP Inc. The Commission noting the Vendor Code of Conduct of GAP Inc. issued summons to GAP Inc in regard to the said case. However, GAP Inc responded to the Commission stating that as M/s Texport Creations and GAP Inc were separate legal entities and that GAP Inc.was in no way responsible for actions of M/s Texport Creations, and requested that the Commission directly liaise with M/s Texport Creation.

FINDINGS OF THE COMMISSION

The Commission, through the above process of having received the initial complaint, to the conducting inspections across the city of Bangalore and at Belguam to ascertain the ground level position in regard to crèches, the public hearing organized of garment workers, and the official information received from the statutory and other authorities has arrived at the following findings in regard to the provision of crèches in garment factories in Bangalore:

- i. Most workers in garment factories are women, and most of them are women with children of pre-school and school going age. A large number of these workers are migrant women from neighbouring towns, with no family support in their current place of residence. They have no access to quality child-care facilities run in factories which is essential in order to protect the development of their children
- ii. Compliance with the statutory requirements in garment factories in regard to the provision of day care services in minimal , despite employing a majority of women, with a large

- percentage being mothers of children under six years. In several factories where more than 30 women are working, no crèche was provided for in violation of the law.
- iii. In factories where crèches had been provided, in the majority, the crèches were run in a perfunctory manner and found wanting in infrastructure, sanitation and hygiene and trained staff to care for the children and provide preschool education. Children in these crèches were being neglected, and in some cases, the poor quality of creches acted as a deterrent for mothers from using the same. This could also directly be related to the serious issue of under-utilized crèches.
 - iv. Even in those factories which are located in spacious premises, no effort was made to set up a full fledged crèche with all the amenities which would promote the care and development of children of factory workers and encourage more workers to admit their children here.
 - v. The Rules provide for a Nurse to be-charge of the crèche. In reality, it is the factory Health Worker who is given this responsibility but due to her pre-occupation with attending to employee needs, she is unable to spare any time for the crèche and is there only as a namesake.
 - vi. The Welfare Officers in most factories are stooges of the factory management and have little independence to suggest or improve welfare services even those which are mandated in the Factory Act. They act on the whims of the factory management in regard to setting up of crèches, its location, provision of infrastructure, appointment of trained staff and providing health, nutrition and other facilities to the children in the crèche.
 - vii. It is most unfortunate that while on the one hand, various brands have their own Code of Vendor Conduct and employ Compliance Officers or Compliance Consultants who routinely visit factories in order to enforce and ensure that factories comply with labour laws including protection of worker rights, on the other hand there is a failure to address real issues that occur within factories which negatively impacts the lives of the often mute labour class and their families.
 - viii. Despite the failure of many factories to comply with the law, penal action has not been initiated against all these factories.
 - ix. Women workers in factories visited revealed that admission to factory crèches for their children below six years was not a matter of right but a decision made by the factory manager who based it on the worker's worth, availability of space in the crèche and at times held admission as an incentive given for good performance.
 - x. There is very limited participation of workers, especially women with young children in regard to the manner in which crèches are managed, and child-care is provided. Many mothers and members of Munnade-Social Organisation have revealed in confidence the anxiety mothers suffer when they leave their young children in crèches where they are unattended due to inadequate and untrained staff and poor infrastructure.
 - xi. Carrying young children to work is impracticable and not easy for the working mothers and some did suggest the idea of leaving their children in area-wise community based crèches or in government run anganwadis if they will run well and are full time. Though the provision for utilizing NGO run crèches is available in the Karnataka Factory Rules, none of the factories have made such arrangements for their workers.
 - xii. Feedback from several workers on commitment of brands to promoting worker rights is indeed revealing. It is understandable, they state that brands focus on targets and the quality of production but what they failed to comprehend, they said, was the fact that

Compliance Officers of brands turn a blind eye to workers poor working conditions. They rarely step into the crèches to see how they are managed. Visits of these Compliance Officers are just a mockery they disclosed and their interactions with workers on the shop floor are most often stage managed by the factory managers.

Sd/-

Sd/-

Nina P. Nayak Chairperson Karnataka State Commission for Protection of Child Rights Bangalore		Mr. Vasudeva Sharma Member Karnataka State Commission for Protection of Child Rights Bangalore
---	--	--