

STAND UP FOR THE RIGHT TO SIT: THE CASE OF WOMEN WORKERS IN INDIA

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ABSTRACT

Women working in the textile and jewelry showrooms in the Indian state of Kerala have recently won a long-fought battle for their 'Right to sit' in 2018. These women mostly employed as salesgirls in textile and jewelry retailing show-rooms in Kerala had been battling several workplace issues like long working hours, low wages, job insecurity and above all denial of 'right to sit'. This paper discusses their problems and challenges along with the working conditions and absence of unionism in the informal retail sector in India. The discussion is made in the light of existing regulations in India and labour standards of the ILO on the subject of occupational health. It is suggested that existing occupational health related legislation and facilities are expanded and extended to workers in the informal sector in India.

Keywords: Women, workers, trade unions, labour rights, human rights, India, occupational health and safety.

1. INTRODUCTION

Women working in the textile and jewelry showrooms in the Indian state of Kerala have recently won a long-fought battle for their 'Right to sit' in 2018. These women mostly employed as salesgirls in textile and jewelry retailing show-rooms in Kerala had been battling several workplace issues like long working hours, low wages, job insecurity and above all dismissal of 'right to sit'. While they greet the customers with their pleasant smiles they suffer from several health problems such as back pain, swollen feet, and varicose veins. These women have been consistently denied 'right to sit' during working hours. This case of denial of the basic human rights is one among others which the workers in the unorganized sector in India face every day (Eapen, 2001; Chowdhury, 2005; Goyal et al. 2009).

The violation of basic human rights like the 'right to sit' is rampant in the retail industry both in India and other countries apart from it (Neumayer & De Soysa, 2007; Azizul Islam & Jain, 2013). The majority of employees in the retail industry are women with low educational qualifications and skills. In a study conducted in the state of Punjab in India, the researchers have reported similar findings. They

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state that as per the women employees surveyed by them, the major difficulty faced is that they have to keep standing throughout the day and no facility is provided to them to sit in their free time. This causes a lot of fatigue (Goyaletal, 2009). The employers of retail outlets say that they want their employees to keep standing because sitting in front of the customers is ‘disrespectful’. Identical cases have been reported in some companies in California. In 2016, the pharmacy chain CVS faced a litigation filed by the cashiers employed by the company (Reuters, 2018). At issue in this case was California Wage Order requirements that an employer provide suitable seating for employees under certain circumstances. The California Supreme Court ruled that suitable seating is required “when the nature of the work reasonable permits the use of seats.” In 2017, Bank of America faced a similar legal action filed by the tellers at the Bank, who were required to stand continuously while on their duty. The Bank agreed to settle the seating lawsuit for \$15 million, and allowed suitable seating in all bank branches in California. In 2018, WalmartInc also agreed to pay \$65 million to nearly 100,000 current and former cashiers in California who accused the retailer of violating state law by refusing to provide them with seating while they worked (Reuters, 2018).

The international agencies like International Labour Organisation (ILO) are striving for ‘decent work for all’ and United Nations Organization has adopted Sustainable Development Goals (SDGs) for 2030 with the resolve of world leaders “to achieve full and productive employment and decent work for all women and men” (SDG 8). But the reality is that women’s prospects in the world of work are far from being equal to men’s (ILO, 2018). The women workers of Kerala had to fight for several years for even their basic right at workplace- ‘the right to sit’. There is scant literature in the Indian context on problems faced by the women workers in the informal retail sector in India. The objective of this paper is to discuss the problems and challenges for the informal Indian women workers in the background of the unique fight for the ‘right to sit’ won by them in Kerala. The data and information for the paper has been collected from different sources, mainly secondary sources comprising recent literature, reports of the government and non-government organizations, policy documents, news paper-reports and articles. This paper contributes to the literature on industrial relations and has important implications for industrial relations policy and practice.

2. PARTICIPATION OF WOMEN IN WORKFORCE IN INDIA

The Indian labour market is divided into two sectors- the organized and unorganized. The unorganised or informal sector is often defined negatively as absence of some characteristics which belong to the formal sector like- regularity of work, better

earnings, non-wage benefits, protective legislation and presence of unions (Papola, 1980). The proportion of employment in the organized sector is low compared with that in the unorganized sector. The unorganised sector also has some unique characteristics like seasonality of work, casual labour, contract labour, multiple jobs etc. The majority of workers in the informal sector are women, where wages and working conditions are inferior, largely unsecured and mostly devoid of social security benefits (VenkataRatnam& Jain 2002). Gender norms affect also women's participation in Indian work force. Women comprise 48.3 per cent of the population but have only 31.1 per cent share of those employed. The labour force participation rate of women is low in India and a sizable gender gap persists. Moreover, when women work they tend to end up in marginal jobs. One of the most intense debates in recent years has centered on the declining labour force participation rate of women in India, which dropped from 42.7 per cent in 2004-05 to 31.2 in 2011-12. The latest data from the Labour Bureau indicates a similar participation rate of women in 2013-14 i.e. 31.1 per cent (ILO, 2016). The increasing global competition has led to the growth of non-standard employment in many countries. Non-standard employment may be part-time employment, irregular employment or unorganised employment, as is the case in India (Rubery et al. 1995; O'Reilly and Fagan 1998). This type of employment is often marked by job insecurity, poor working conditions and also low wages. Some researchers have stated that non-standard employment affects women more than men because of the relatively large proportion of women in this form of employment (Rubery et al. 1995; O'Reilly & Fagan 1998). These workers mostly do not have written employment contracts and therefore are not covered within the scope of labour legislations, social security regulations and relevant collective agreements.

It can also be attributed to the continuing educational gap between Indian girls and boys, particularly in tertiary education, which means that women continue to be employed in the lower-skilled and lower-paid jobs compared with men. As Youngs (2000) has pointed out, women enter the market place to meet demands for cheap, docile labour and to fill semi-skilled and low-level tasks in production processes and the expanding service sectors. The women in India are less educated because dowry payments for marriage and the loss of return on human capital investment upon marriage make parents unwilling to invest in their daughters' education and health (Kingdon 2002; Patel &Parmentier 2005). Due to this relatively low level of education attainment of women, they are forced to be employed in jobs with poor remuneration (Kingdon 2002). There is ineffective enforcement of social legislation in India including that for women empowerment (Budhwar, Saini&Bhatnagar, 1999). In a scenario where government, employers and unions have mostly remained indifferent and unconcerned, or reluctant and ineffective in addressing the issues of gender equality, the Indian courts have played an important role in defending women's rights (VenkataRatnam& Jain 2002).

3. RETAIL OUTLETS IN KERALA

India's sound economic growth, rising population and changing lifestyle offer an attractive environment for retailers (Dibb, 1996). Retailing is one of the important industry in India accounting for over 10 per cent of the country's gross domestic product (GDP) and 8 per cent of its employment (Guruswamy et al, 2005). By 2020, retail market in India is projected to reach USD1.3 trillion from USD672 billion in 2016 (IBEF,2018).

The retail outlets in Kerala are covered under the Shops and Commercial Establishments Act, 1960. There are 354,675 registered shops and commercial establishments in Kerala employing 823,976 workers (Annual Report, 2016). The retail outlets in Kerala are famous for their textile and gold jewelry. These textile retail outlets majorly sell sari, which is a traditional draped dress for women created from a single piece of fabric five to nine yards long. Kerala has a variety of traditional saris which are created by several textile and handloom industries across Kerala and its neighboring states. Sari is the oldest known traditional dress worn by the women in India. Indians have tremendous love for gold and Kerala is the gold hub of India. Gold jewelry is mostly purchased on festive occasions and weddings and the buyers spend substantial portion of their savings in purchase of gold.

These textile and jewelry retail shops and establishments employ women as salesgirls, because the buyers in these stores are largely females. In the retail stores women are becoming the preferred choice in most front-end profiles, which require constant interaction with customers. Women employees are also the favoured choice in certain product categories like food and grocery, cosmetics, kids, jewellery, home décor, textile and apparels. Young and smart women with an impressive communication ability are considered better employees as they manage to stay longer in the service industry as compared to men (Goyalet *al.*, 2008). There are plenty of other reasons for the traders to prefer women over men. The most important reason being, that the women workers can be paid less than their male counterparts. According to the Global Wage Report of the International Labour Organization (ILO), India is among the worst in terms of gender wage disparity. Other reasons are cheaper availability of women labour and absence of unions of women workers (Deshpande&Deshapande, 1992). The retail sector is an informal sector and is highly unorganised and thus has high number of females employed.

3.1. 'Right To Sit' And Related Health Hazards

The salesgirls in Kerala textile and jewelry showrooms have to work for 10-12

hours a day and are allowed to sit only during lunch break for half an hour. They are also not allowed to sit even when there are no customers inside the shop. They are thus forced to lean against the walls to get rest. Most of these showrooms have intentionally avoided putting chairs or stools to prevent the employees from sitting. The shop managers keep an eye on them through CCTV cameras, so it is not possible to sit on the floor without getting noticed (Muyarath&Roopak, 2018). Their wages are deducted as a penalty for every time they are found sitting. These women travel long distances in state transport buses from their residences to the workplaces. Most of the times, the buses are crowded and the women end up standing during their journeys. Then they stand for 10-12 hours at the workplace and return home where they have the daily household chores to finish. So they hardly get any time to sit and rest.

The Indian labour laws, specifically the Factories Act, 1948 contains a provision for 'right to sit' under its section 44. It lays down that "In every factory suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work." But the Factories Act is applicable only to the manufacturing units in the organized sector. Thus, the law does not apply to the retail shops of Kerala. The law applicable in this case i.e. Kerala Shops and Commercial Establishments Act, 1960 does not contain any provision for sitting facilities for the workers.

The constant denial of the right to sit has resulted in several serious health issues in these women in their young age. They suffer from swollen legs, back pain, varicose veins, disk prolapsed and other related illness due to standing for prolonged hours. The problem of varicose veins occurs due to prolonged standing at the work (Tuchsen et al, 2000). Prolonged standing is defined as standing for more than 8 hours and can lead to pain of the lower back and feet, pre-term birth and spontaneous abortions in females (McCulloch, 2002). Moreover, they are not allowed to use escalators installed inside the showrooms, which are meant only for the customers. Employees are forced to climb the stairs every time they have to move up or down inside the multi-storied outlets, which leads to fatigue.

The working conditions for women in these retail stores are very poor and strenuous. Most of the stores do not even have toilets for their employees. In some shops the restrooms are restricted for use of only the customers. The women employed in them are also not allowed to go to toilet during rush hours and the managers keep a track of toilet breaks taken by them. They are expected to seek permission from the managers, who are generally men, for every toilet break. Women employees are humiliated and reprimanded for the toilet breaks. As per Kerala Municipality

Building Rules, 1999, every business occupancy shall have sanitation facilities to be provided shall be computed at the rate of not less than 1 person per 4.75 sq. m of carpet area of the building. Urinals should be provided at the rate of 1 for every 50 persons. But after the building plans are approved by the municipal authorities, these spaces meant for construction of toilets are put to some other use by the building owners. In this scenario women have to depend on the public toilets in the market place which are often unhygienic and poorly maintained. Moreover, going to a public toilet would mean a longer break, which the female workers are not allowed to take.

Due to this problem of lack of toilets, women employees refrain themselves from drinking water even during hot and humid summer season. Consequently they develop health issues relating to urinary infections and kidney. The women who drink less water at work have 2.21 fold higher risk of urinary tract infection than the women who drink more water (Nygaard & Linder, 1997). There is an intimate connection between the sanitation environment and the physical and mental wellbeing of women and girls. Women and girls are disproportionately affected by poor sanitation infrastructure, impacting their psychological and physical health (Sahoo et al, 2015). All over the world there is growing recognition of the unique health risks faced by women and girls due to inadequate sanitation, including increased maternal mortality risk (Cheng et al., 2012), uro-genital tract infections (Mudey et al., 2010) and urinary incontinence and chronic constipation (WSSCC, 2006).

3.2 *Other workplace Issues*

There are other serious workplace issues like absence of holidays, low wages and absence of any medical health cover or pension and frequent dismissals. Most of the women employed in the retail stores are not given formal contracts of employment. Hence they are unable to claim any medical or social security benefits from their employers. The minimum wages to be paid to workers in shops and commercial establishments in Kerala are governed by the Minimum Wages Act of 1948. The wages are fixed and revised from time to time by the state government. But the law does not cover the workers in the informal sector. Hence most of the women workers are paid less than the prescribed minimum wages and some of them are employed for meager daily wages. As per the law on minimum wages, workers are also entitled to get overtime wages if they work for more than 8 hours in a day. The salesgirls in the retail stores in Kerala are made to work for more than 10 hours daily without any extra payment. But in a scenario where the workers are not being paid the minimum wages, the payment for overtime is a far-fetched dream.

4. INDIAN LAWS ON WORKERS HEALTH

Labour regulations in India are considered to be among the most restrictive and complex in the world (World Bank, 2006). This discourages the employers from creating jobs with better quality in the formal sector and millions of workers remain employed in the informal or informal sector. At present there are sixteen major laws related to working hours, conditions at work and employment (Saha, 2018). Out of these there are two laws containing the main provisions for legal measures for the protection of health and safety of workers; they are the Factories Act (1948) and the Mines Act (1952). The Factories Act was amended in 1987 and provides for minimum standards on health, safety and welfare of the workers to be followed by the employers in the manufacturing sector. Besides, there are various labour laws, like Trade Union Act 1926, The Minimum Wages Act 1948, Employees State Insurance Act 1948, Industrial Disputes Act 1947, Industrial Disputes Decision Act 1955, Payment of Bonus Act 1955, Workmen's Compensation Act, 1923, Maternity Benefits Act 1961, Contract Labour (Regulation and Abolition) Act 1970, Equal Remuneration Act 1976, etc. However, these labour laws and policies are applicable for workers in the organized sector only.

The Employees' State Insurance Act, 1948 is devised so as to provide social protection to workers in contingencies such as illness, long term sickness or any other health risk due to exposure to employment injury or occupational hazards. The social protection can be in the form of medical benefits, sickness benefits and dependent benefits. The occupational hazards listed out in this act do not include 'prolonged standing' as a hazard to the health of workers.

In India, there are two central government ministries responsible for occupational health- ministry of labour and ministry of health and family welfare. The ministry of labour and the labour departments of the various state governments are mainly responsible for the health and safety of the workers. The Ministry of Labour and Employment, Government of India, approved the national policy on safety, health and environment at workplaces in February 2009. It provides guidelines for developing and maintaining safety culture and environment at workplaces for all stakeholders. But, despite of the presence of extensive labor legislations framework and government labour departments in India, certain workers like salesgirls of Kerala are still left out their ambit.

4.1 *Constitutional Provisions*

The Indian constitution guarantees some fundamental rights to all its citizens. As per Article 21 of the Indian Constitution, it is the primary duty of the state to protect

the right to live with human dignity as fundamental right of each citizen. It is the most fundamental of all rights given to Indian citizens. There are specifically three articles in Indian constitution for ensuring workers' safety and health. Article 24 prohibits employment of children under the age of 14 years. Article 39 states that the health of men, women and children should be protected, and children should be given opportunity and facility for healthy development and should be protected against exploitation. Article 42 states that humane conditions at work and maternity relief should be provided.

According to the Directive Principles of State Policy of the Indian Constitution (Article 39) the state is required to secure for the citizens, both men and women the right to an adequate means of livelihood; equal pay for equal work for both men and women; protection against abuse and exploitation of worker's economic necessity; protection of their health and strength; to secure for children opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and protect children and youth against exploitation and moral and material abandonment. On the basis of these Directive Principles as well as international instruments, it is the duty of the Government to regulate all economic activities for management of safety and health risks at workplaces and to provide measures so as to ensure safe and healthy working conditions for every working man and woman in the nation.

4.2 Labour Rights and Decent Work: International recognition

Labour rights are the rights to which a person is entitled in his role as a worker. While some of these rights are exercised individually, others are exercised collectively. These rights are- right to fair working conditions, right to fair wages, right to safety at workplace, right against exploitation, right to form and participate in trade unions, etc. (Mantouvalou, 2012). Fundamental principles of labour rights and human rights are set out in the ILO's Constitution of 1919 and in the Declaration of Philadelphia of 1944 (appended to the Constitution). In the 1944 Philadelphia Declaration, the ILO proclaimed that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". ILO has endorsed several labour rights as human rights. In 1988, ILO adopted the Declaration of Fundamental Principles and Rights at Work. ILO has laid out the decent work agenda for the member states. The concept of decent work stems for the ILO mandate to improve social justice and refers to the need for women and men to be able to obtain decent and productive work, in conditions of freedom, equity, security and human dignity. It covers six dimensions: opportunities

for work, freedom of choice of employment, productive work, equity in work, security at work, and dignity at work. As per ILO (2015), 'Decent work' sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

There has been an increased urgency among international policy-makers, particularly in the wake of the global financial and economic crisis of 2008, to deliver quality jobs along with social protection and respect for rights at work to achieve sustainable, inclusive economic growth, and eliminate poverty. During the UN General Assembly in September 2015, decent work became integral element of the new 2030 Agenda for Sustainable Development. Goal 8 of the 2030 Agenda calls for the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work. According to Reddy (2005), decent work refers to work wider than job or employment including wage employment, self employment and home working and is based on the core enabling labour standards viz, freedom of association, collective bargaining, freedom from discrimination and child labour. The goal of decent work is based on sound ethical principles of ILO. The main goal of decent work is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security, and human dignity.

But listing out the rights of labour by the ILO and other international agencies does not ensure decent work conditions to all. In the case of women workers in Kerala, there has been a consistent violation of basic human rights as well as labour rights. Many aspects of their working conditions clearly violate the workers' own sense of justice (Kabeer 2004). Interestingly, however, many of the main grievances relate not to wages, but to other factors that can only be understood from a gender perspective. These include harassment, lack of respect from supervisors, difficulty arranging childcare (especially in cases of mandatory overtime) and health concerns such as restrictions on the number of toilet breaks allowed during the working day (Kabeer 2004). The harrowing working conditions in which these women are employed are in clear infringement of their right to work with human dignity.

5. PARTICIPATION OF WOMEN IN TRADE UNIONS

Although India has a history of more than 100 years of trade unionism, yet less than 8 per cent of the 380 million workforce in India are unionized and women

account for a very small fraction of trade union membership (Venkataratnam& Jain, 2002). India has adopted multiple union system and multiple trade union federations. At present there are ten major federations of trade unions in India. All trade unions in India are male-dominated. The low proportion of women activists in union leadership positions has been attributed as one of the main reasons for the ineffective representation of women issues in India (VenkataRatnam& Jain 2002). All major unions in India have established a women's wing, which deals with gender issues'. Women make up only a very small fraction of union membership, with varying membership levels across occupations and industrial sectors. Female members of the unions do not participate actively in union activities because gender stereotypes, religion, taboos and cultural inhibitions make it difficult for women to break into male environments. Family responsibilities and the masculine union structures and operating style that are unfriendly and even hostile to women add further barriers (VenkataRatnam& Jain 2002). Trade unions largely operate in the formal sector and are disinterested in organizing and representing workers in unorganized employment, despite the latter's desire to be organized and represented.

As per the Annual Report on the working of Minimum Wages Act (2016) there are more than twelve thousand trade unions registered in Kerala. But neither these unions operating in state of Kerala nor the central trade unions could do anything worthwhile to solve the problems of the saleswomen. The women workers also feared that in case they join a trade union, they will be thrown out of their jobs, citing various random reasons. This is another major reason for female workers being a preferred choice of the employers of retails shops in Kerala. The male dominated trade unions in Kerala had not made any effort to organize women retail workers from the textile sector.

Consequently, the women workers started protesting on their own. Several protests and strikes were taking place in Kerala against the employers in the textile retail sector. Ultimately, the women workers of Kerala registered their first Trade Union in 2016 with the name of AsangatithaMeghalaThozhilali Union (AMTU), for voicing the issues of unorganised workers (Muyarath, 2016). The Union was supported by a women association Penkoottu and SEWA, the Self-Employed Women's Association. SEWA is one of the few trade unions in India for workers in the informal economy (Roychowdhury, 2005). It has almost a quarter of a million women members, and it focuses on eradicating poverty through women's collective strength and bargaining power; access to savings, credit and insurance, capacity building through education and social security based on women's roles as workers, mothers and caregivers (Barrientos&Kabbeer, 2004). An organization such as SEWA understands the needs of women workers better than many traditional trade unions, which tend to reproduce the norms and behaviour that treat women as a

subordinate category and marginalize their needs and priorities as women (Kabeer, 2004). The focus of these organizations is on broad objectives of empowerment, development and fighting for their rights (Bhat, 1997).

AMTU is a women-led trade union. While many men who belong to the informal sector are members, the leadership positions are held only by women. The first application for registration of AMTU was made in 2013, while it finally got registered in 2016. AMTU originated from Penikoottu, which was a woman collective working for women workers in informal sector. Members of AMTU include male and female workers of retail shops, petrol pumps and supply stores etc. AMTU has taken up several struggles of the informal workers including right to sit and toilet facilities.

6. RIGHT TO SIT-THE SUCCESS

AMTU supported several strikes by the saleswomen for their right to sit and for toilet facilities. The biggest such strike was called on the International Women's Day in 2014. Though it attracted attention of the media towards the problems of the saleswomen but they were not given any solution by the patriarchal trade unions or the government. AMTU also garnered support to this struggle by making petition to Kerala State Human Rights Commission and the National Human Rights Commission. Finally these women won their right to sit in July 2018 when the Kerala cabinet cleared an amendment to the Kerala Shops and Establishments Act to ensure that the employees are provided with seating facilities for sales-staff. The Kerala Shops and Commercial Establishments (Amendment) Act 2018 has inserted a new section 21B which provides for seating facilities and states that "In every shop and establishment suitable arrangements for sitting shall be provided for all employees so as to avoid 'on their toes' situation throughout the duty time, so that they may take advantage of any opportunity to sit which may occur in the course of their work." The amendment also allowed employment of women employees to work in the night shifts in shops and establishments. It will help the women who want to work during night. It makes a provision for employment of women in groups of five during night and provides for transportation facilities for them. The saleswomen have welcomed the amendment and are hopeful that it will change the attitude of the employers towards them.

7. MANAGERIAL AND POLICY IMPLICATIONS

The formation of the women unions like AMTU and SEWA is reflective of the new wave of labour activism. Emergence of unionism in the informal sector has significant implications for industrial relations. While there is a need for the existing

trade unions to support and promote women as leaders within their organizations, there is also a need for greater labour activism among the women workers. New unions can be instrumental in organizing the workers in the informal sector. Though there are national legislations and ILO guidelines on labour rights, the women-related issues often remain neglected. The policy makers are required to revisit the labour legislations for a more focused drive on workplace issues related to women in the informal sector. It is very important that existing occupational health related legislation and facilities are expanded and extended to workers in the informal sector with immediate implementation and periodic review for improvement. Also there is greater need to understand that social justice and economic growth cannot be achieved without safe and healthy working environment being recognized as a fundamental human right.

8. CONCLUSION

The battle waged by the saleswomen of Kerala highlights two significant aspects- first, the inhuman working conditions of the retail sector employees throughout the country and second, the need for women to form workers' unions in the informal sector, without any affiliation to the political parties or to the other male-dominated unions. This development has forced the main-stream trade unions in the organized sector to pay attention to the informal workers as well. But there is a need for the other state governments in India to follow the suit to amend the regulations for the informal works employed in their states.

India is a densely populated nation with a high unemployment level, due to which there is ready availability of labour at lower wages. In such situations, health and safety at the workplace is often compromised. There is indifference and apathy of employers, employees, the general public and other stakeholders to occupational health issues. Also in India a very large proportion of the workforce is in the informal sector (more than 90% vs. less than 10% in the organized sector). The occupational health management system, implementation and beneficiaries are limited largely to the organized sector. Moreover, there is no dearth of labour legislations in India but the constraint lies in their ineffective implementation. Hence, in such an environment, there may be no other choice than to fight such micro battles to improve working conditions for women in the informal sector.

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SHORT BIO

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