

*Sumangali System: Is the Truth Ugly?*

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## ABSTRACT

The tussle between universalism and relativism is a hotly debated issue under the human rights regime. The influence of the same is visible in varied spheres including labour rights. India in particular being home to a huge labour force demands attention on the various local practices in the industries and its contrast with rights guaranteed to labour at a universal level. The black letter law does not always produce the ideal solution, and one such instance is the Sumangali system in the textile industry. However, is this system extremely evil as it is presented to the world? The answer requires a deeper and closer look at the context and the lives of the stakeholders.

## I. INTRODUCTION

The Universal Declaration of Human Rights emphatically states that “[e]veryone is entitled to all the rights and freedoms... without distinction of any kind” under Article 2. This is the core spirit of universalism, wherein the rights must be enjoyed by individuals based on universal notions.<sup>1</sup> The labour standards set by International Labour Organisation for instance, stems from such ideas that are placed as standards for the nation state.<sup>2</sup> However, has this idea then triumphed

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<sup>1</sup> J Donnelly, “Human Rights: Both Universal and Relative (A Reply to Michael Goodhart)” (2008) 30(1) *Human Rights Quarterly* 194, 195.

<sup>2</sup> International Labour Organisation (ILO), “How International Labour Standards are Created” <<https://www.ilo.org/global/standards/introduction-to-international-labour-standards/international-labour-standards-creation/lang--en/index.htm>> (accessed 15 April 2019).

in extending recognised universal rights and freedoms to every human across jurisdiction? The response would be a clear negative. It is in this context scholars suggested economic relativism as an explanation to differential rights and freedoms since these are founded on socially constructed ideas that differ according to time, place, nation and culture.<sup>3</sup> This leads to a friction between universalism and economic relativism in many instances. The widely prevalent Sumangali system in the textile industry of Tamil Nadu is a suitable example in order to understand these conflicting principles on human rights discourse.

The main focus of this paper is to understand the reasons behind the continued prevalence of Sumangali system that blatantly infringes human dignity. Why does this system attract girls? Why has this system attained the significance it has today? Is it a trade-off between rights and ‘development’? Should this system continue? The paper will delve into these in light of economic relativism. With these questions in the backdrop, the central argument of the paper is that *Sumangali system thrives on the ‘fictional’ female agency of the girl child*.

The theme is developed around the contrast between universal labour rights and economic relativism analogous to cultural relativism, by relying on academic articles, reports and books. The aim of the project is to bring out the core reasons for the flourish of the Sumangali system in textile industry, and the objective is to analyse the extent of agency exercised. For this, the real-life experiences of the young girl children provided the perspective to pierce the veil of dominant narrative of ‘victimisation’.

## II. WHAT IS SUMANGALI SYSTEM?

Sumangali scheme<sup>4</sup> is a system prevalent in the Tamil Nadu textile industry, wherein girls aged between 13–18 years are employed as ‘apprentice’.<sup>5</sup> The scheme witnesses migrant workers moving in to these textile mills from the neighbouring states as well.<sup>6</sup> The idea of Sumangali worker is that of a female

<sup>3</sup> D Donoho, ‘Relativism versus Universalism in Human Rights: The Search for Meaningful Standards’ (1991) 27(2) *Stan J Int’l L* 345, 348.

<sup>4</sup> Exchange of dowry is a recognised crime under Dowry Prohibition Act, 1961.

<sup>5</sup> Sumangali scheme and bonded labour in India, Fair Wear Foundation (2010) <<https://www.fairwear.org/wp-content/uploads/2016/06/fwf-india-sumangalischeme.pdf>> (accessed 15 April 2019). As per a later decision in *Tamil Nadu Spinning Mills v The State of Tamil Nadu Working Paper No. 9182 of 2007*, apprentices are covered under Minimum Wages Act, 1948. Hence non-payment of minimum wages to Sumangali girls is violation of law.

<sup>6</sup> Gerard Oonk, *et al*, “Maid in India: Young Dalit Women Continue to Suffer Exploitative Conditions in India’s Garment Industry” (Report, Centre for Research on Multinational Corporations and India Committee of the Netherlands, April 2012) 19; *Inter-State Migrant Workmen Act, 1979 has been enacted in India for governing matters of migrant workers*.

who works in these mills for a collated amount after a period of time to facilitate marital bliss. In essence, the narrative accepted by many is that the girls work for earning their potential dowry and the system is a marriage assistance scheme.<sup>7</sup> Moreover, the formal employment relationships are avoided in order to escape the obligations imposed on employers at multiple levels.<sup>8</sup> Therefore, this system is considered to be exploitative in nature where the innocent girls are termed to be the ‘victims’ of the greed of capitalism.<sup>9</sup> However, many fail to notice the other side of the story; the story that the Sumangali girls have to say. The civil society assumes upon themselves the moral obligation to free the victims from the shackles of Sumangali scheme.<sup>10</sup> But is that what the girls want? The proponents of rights and freedom simply cut through the system, without understanding the core needs leading to the flourish of such system in the twenty-first century. The fundamental reason for this biased view ‘to protect the girls’ arise from the idea of universalism and the uniform application of labour standards at the international level to the local labour force.

#### A. UNIVERSAL LABOUR RIGHTS

ILO conventions and the sustainable development goals<sup>11</sup> suggest certain standards of labour rights that the nation states must strive to achieve.<sup>12</sup> India has been falling behind in taking up this responsibility until last year when it ratified

<sup>7</sup> Sindhu Menon, ‘Adolescent Dreams Shattered in the Lure of Marriage: Sumangali System: A New Form of Bondage in Tamil Nadu’ (2006) 4(3) Labour File <<http://www.labourfile.com/section-detail.php?aid=337#>> (accessed 15 April 2019). Additionally, during my conversation with NGOs in Tamil Nadu (CARET), the idea followed by civil society is that of a direct connection between Sumangali system and dowry.

<sup>8</sup> Apprenticeship Rules Central, April 2015. Apprentices cannot be more than 10% of the workforce which is violated by the textile mill owners. They employ girls under the Sumangali system without formal contracts.

<sup>9</sup> N Mani and N Krishnan, “Understand the Labourer’s Problems Under the Sumangali Thittam Scheme in Textile Industry in Tamil Nadu, India” (2014) 1(6) International Journal of Business and Administration Research Review 118, 120.

<sup>10</sup> Understanding the Characteristics of the Sumangali Scheme in Tamil Nadu Textile & Garment Industry and Supply Chain Linkages, Solidaridad and Fair Labor Association (2012) 27.

<sup>11</sup> Target 8.7 which suggests to “take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms” under Sustainable Development Goal 8-Target 8.7 (Promote Inclusive and Sustainable Economic Growth, Employment and Decent Work For All), International Labour Organisation.

<sup>12</sup> Also see Universal Declaration of Human Rights 1948, articles 23 and 24.

two conventions concerning child labour.<sup>13</sup> Subsequent to this, policies were to be formulated to implement the ideas contained in these conventions. But can we implement these ideas applicable on a universal level at equal par in India? Here is where the idea of universalism stumble.

Universal labour rights envisage elimination of child labour so that children are facilitated with the opportunity to develop physically and mentally to their full potential.<sup>14</sup> In addition to this, the Minimum Age Convention, 1973 provides that:

[M]inimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young persons shall not be less than 18 years.<sup>15</sup>

Economic exploitation of a child is looked down upon by the international community.<sup>16</sup> However, the context and circumstances of the vocal nations while framing such obligations at international level differ considerably from developing nations like India, for instance.

The scholars supporting universalism would consider that, for example, concepts like equal remuneration,<sup>17</sup> prohibition on forced labour,<sup>18</sup> safe housing conditions and facilities<sup>19</sup> is universally applicable and all nations must adopt steps to ensure the same. In furtherance, India has made efforts to follow certain international obligations.<sup>20</sup> However, still our society has not escaped the vices of exploitation of young labour and has not been successful in providing dignified working conditions. This is because of a crucial reason—the idea of rights and freedom differ according to place, time and culture.<sup>21</sup> The way an American labourer asserts her right to clean workspace is to be distinguished from an Indian labourer in content as well as context in its entirety.

Economic relativism comes in handy in such situations when the idea of one's right has to be shaped based on the circumstances and surroundings.

<sup>13</sup> Minimum Age Convention 1973 (No. 138) and the Worst Forms of Child Labour Convention 1999 (No. 182) were recently ratified by India.

<sup>14</sup> International Labour Office (Geneva), *The End of Child Labour: Within Reach* (International Labour Conference, 95th Session 2006) <<https://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-i-b.pdf>> (accessed 15 April 2019) 23–9.

<sup>15</sup> Minimum Age Convention, ILO C 138, article 3. Read also, Worst Forms of Child Labour Convention 1999.

<sup>16</sup> United Nations Convention on the Rights of the Child 1989.

<sup>17</sup> Equal Remuneration Convention 1951, ILO C 100.

<sup>18</sup> Elimination of Forced Labour Convention 1957, ILO C 157; Discrimination (Employment and Occupation Convention) 1958, ILO C 111.

<sup>19</sup> Recommendation 115 on Workers' Housing Recommendation 1961.

<sup>20</sup> The Child Labour (Prohibition and Regulation) Amendment Act 2016, The Right of Children to Free and Compulsory Education Act 2009 and Tamil Nadu Hostels Act 2014.

<sup>21</sup> Ben White, "Defining the Intolerable Child Work, Global Standards and Cultural Relativism" (1999) 6(1) *Childhood* 133, 134.

Universal labour rights cannot be applied on a one-size-fits-all framework, however disregarding them in the name of relativism is to be frowned upon. Economic relativism cannot in any way legitimise the violations of human rights, however it can be a practical analytical tool.<sup>22</sup>

### B. ECONOMIC RELATIVISM AS A QUIETIST APPROACH?

Relativism, be it economic or the larger boundary of cultural relativism, is a useful corrective tool to pseudo-universalist notions.<sup>23</sup> As Balakrishna Rajagopal rightly puts it “[d]evelopmentalisation of human rights discourse has caused the turn to culture”.<sup>24</sup> Critics argue that economic relativism is quietistic in accepting the utility vis-à-vis those economies. These surroundings are the product of social hierarchies, political actions and various forms of decision making subject to moral and utility grounds.<sup>25</sup> Imbibing local content to global standards help in understanding and discovery and not legitimising the practices.<sup>26</sup> Therefore, economic relativism will be the suitable tool in understanding systems like Sumangali scheme to decipher the core reasons such practices are active in the domestic sphere.

According to economic relativism, social economy acts as the foundational ‘authority’ for decision making. It provides the certainty to the decision maker to justify the acts in the face of legal ambiguity, by providing a solution to the ‘economic dilemma’ of liberal legalism.<sup>27</sup> However, this justification through economic relativism at the outset seems to move away from the need to understanding the basis of practices by imposing the widely accepted standards from outside. This is a wrong approach as can be seen from the dominant narrative surrounding Sumangali system.

### III. SUMANGALI SYSTEM: ISSUES, CAUSES AND RESULTS

Economic relativism and the development discourse have a close connection. State as a motor of economic development engages in developmental repression which is justified through the trade-off thesis.<sup>28</sup> When private parties engage in such repression, the idea takes a U-turn. The trajectory privileges criminal law

<sup>22</sup> *ibid* 135–7.

<sup>23</sup> Robin West, “Relativism, Objectivity, and Law” (1990) 99(6) *Yale LJ* 1473, 1475–8.

<sup>24</sup> Balakrishna Rajagopal, *International Law From Below: Development, Social Movements And Third World Resistance* (2003) 203.

<sup>25</sup> West (n 23) 1492.

<sup>26</sup> Donoho (n 3) 351–2.

<sup>27</sup> West (n 23) 1492.

<sup>28</sup> J Donnelly, *Universal Human Rights in Theory and Practice* (1989) 188.

approach that works via the reductive traditional dialectic of victim protection and offender incarceration. This distances itself from the direction of freedom.<sup>29</sup>

The imposition of state security apparatus, which are influential products of universal labour standards and rights with its discourse and technologies of control, is removed from the women's human rights, their freedom and easing their suffering.<sup>30</sup> Therefore, it is pertinent to understand the idea of Sumangali system as understood by the Sumangali girls themselves.

It is a matter of fact that Sumangali girls do not believe the system to be repressive in nature at the outset.<sup>31</sup> Is it their own belief or a belief imposed by the surroundings? It is argued that, it is the latter in light of the "fictional" agency that the girls exercise at all stages of their decision-making while being part of the Sumangali system and this unfortunately marks the flourish of Sumangali system through the lens of economic relativism.

Even though financial conditions trigger the idea to work at a young age, it is not the sole reason for girls to join the textile factories.<sup>32</sup> There are diverse reasons including lack of interest in education, public perception of being part of industrialisation (through a factory job) as opposed to primary agricultural hard labour and a false imagination of a luxurious life at the textile mills.<sup>33</sup> It was also understood that many of them make this choice themselves and not under parental pressure, subject to exceptions.<sup>34</sup> However, it is argued that this exercise of their female agency is distorted and is fictional in nature. This is because the reasons leading their decisions are founded upon painted circumstances that the community itself imposes on the girl child. She is not free from the chains of public opinion and perception to independently think and make choices.

These influences on the female agency are manifold. *One*, the girls who are already part of the system provide rosy picture of a future to the gullible young child—about financial independence and other 'attractive' facilities. *Two*, the factory personnel convince the girls to believe promises on money, education, protection and other services to make her life 'enjoyable'.<sup>35</sup> *Three*, the influence of

<sup>29</sup> See Ratna Kapoor, *Gender, Alterity and Human Rights: Freedom in a Fishbowl* (2018) 98.

<sup>30</sup> See Janie Chuang, "Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy" (2010) 158(6) *University of Pennsylvania Law Review* 1655.

<sup>31</sup> Solidaridad and Fair Labor Association (n 10) 6, 22; White (n 21) 139.

<sup>32</sup> Oonk (n 6) 17–8.

<sup>33</sup> Macro Level Understanding of Sumangali Scheme and its Impact on the Lives of Camp Coolie Workers and the Economic Share of the Camp Coolie Workers in the National And International Economy, SOCO Trust – Action Aid (2014) 5-6.

<sup>34</sup> Solidaridad and Fair Labor Association (n 10) 13–24.

<sup>35</sup> These promises are given to allure the girls into the scheme and turn out to be false later.

outside media and entertainment on the idea of her freedom and human dignity,<sup>36</sup> to name a few. This creates a bubble of false consciousness within which the girl child functions day in, day out.

The promise of the lump sum amount attracts majority of the girls to work under this scheme. The lack of availability of independent financial services and access to collated amounts for persons lacking security evidenced the reasoning for choosing Sumangali scheme. Marital bliss is not the sole driving force for the necessity of such funds; there are instances like medical requirements, repayment of loans and maintenance of basic shelter.<sup>37</sup>

When it comes to the parents of the girl child, they consider the factory/mill premises to be a safer surrounding for their girl children to grow with adequate basic facilities. Parents also consider it as a way to develop a sense of discipline and moulding of their girls to fit the traditional ideas of a role of woman in society, where the ultimate goal is to attain a happy family life.<sup>38</sup> The girls during their upbringing are shaped into endorsing this narrative in the society which in turn leads to their exercise of agency being biased and narrowed, “fictional” as it is called in this paper.

It is disappointing to note, while advocating the rights and freedoms of the Sumangali girls, the civil society “[w]hich is the nongovernmental and noneconomic connections and voluntary associations that anchor the communication structures of the public sphere in the society component of the life world”, as Habermas calls it,<sup>39</sup> fails to address the root causes while in its race to highlight the exploitation and human rights violations. The diehard abolitionists who consider such practices sabotage universal labour rights<sup>40</sup> imposes their ideas on the girls to make them believe that their narrative is ‘the’ sole one in their best interest. By failing to listen to these girls, the mistake we commit is again pushing the girls to make choices under their fictional female agency.

#### IV. WAY FORWARD

Taking guidance from ‘capability approach’ as propounded by Martha Nussbaum, the Sumangali scheme must be understood in the framework of *one*,

<sup>36</sup> Oonk (n 6) 17–8; Solidaridad and Fair Labor Association (n 10) 6, 13–24; SOCO Trust – Action Aid (n 33) 36. It must be noted how such short term facilities or pleasures attract the girls into this scheme. This in turn shows the gullible nature of the girls who are unable to separate false from the reality.

<sup>37</sup> SOCO Trust – Action Aid (n 33) 36.

<sup>38</sup> Solidaridad and Fair Labor Association (n 10) 15, 22.

<sup>39</sup> Jurgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (MIT Press 1996) 366–7.

<sup>40</sup> Solidaridad and Fair Labor Association (n 10) 26.

primary moral importance of freedom to achieve well-being, and *two*, this freedom to be subject to the people's capabilities, their real opportunities and the value accorded.<sup>41</sup> Therefore, the abolitionist approach will worsen the situation by directing the girls to hardship as this view is blind to the narrative of the girls on account of over-emphasis on universalism and the universal labour rights. The societal structures and hierarchies cannot be divorced while understanding the Sumangali system as they are deeply rooted in the local context. This however, in any way, does not legitimise the violations but will provide solutions to the dilemmas over certain practices. This approach will also ensure that girls are facilitated with an environment to make choices free from other influences gradually, by better understanding the economic context, freedoms and capabilities.

The first step should be in formulating a legal regime to govern the Sumangali scheme. In doing so, it must cover specificities about the legal status of a Sumangali girl—whether she is an apprentice, contract labourer or employee. In addition, it should also contain guidelines on eligible age for work, mandatory requirement for a written contract, details on working hours, wages and leave as well as rules governing migrant workers. This express legal framework can raise awareness about the scheme and allied labour issues among various stakeholders including the international brands in the supply chain.

On the other hand, the international textile brands can also initiate steps by having tags on their clothes which mention, for instance, 'made under Sumangali' which shifts a moral burden on the ultimate consumer, who can make a choice. In the long run when the demand for such goods falls, these steps will ensure that the exploitative working systems are weeded out and replaced with healthy working environment for the girls.

Following this, there must also be efforts in developing mutual support networks with current Sumangali girls and ex-Sumangali girls. The girls who have experienced the vices of the system can share their insights as well as other opportunities available outside of the same, with girls who are currently trapped in the Sumangali system. This will help in creating an environment of mutual

<sup>41</sup> M Nussbaum, "Human Rights and Human Capabilities" (2007) 20 Harv Hum Rts J 21, 22. In addition to this, certain regulations governing mill owners for providing standard work environment will facilitate the achievement of this framework.



respect, understanding and empathy which can empower the girls to realise the imposed exploitation and consequently make a choice for themselves.

Lastly, the State should take steps to ensure that educational programmes, skill development sessions and other alternative avenues to explore one's potential are readily accessible in neighborhood where the Sumangali system prevails.

The imposition of views on the girls, alter their decision-making process and thereby results in only exercise of an agency, which they think are 'real', to be only a manifestation of 'fictional' female agency. This must be cut at the root for achieving long lasting solutions for the community at large by erasing information asymmetry. This will also give rise to Sumangali system not seen as a plague in the society, but as a practice which is to be understood and analysed in the local context. In conclusion, the girls have to undergo a process of cleaning the already existing notions in order to exercise their free will which will ensure dignified human life (individual human dignity) as a product of one's choice.

## V. CONCLUSION

Universal application of labour standards to all the nations divorcing the local contexts is a relativist's nightmare. The paternalistic narrative picturing Sumangali girls as 'victims' of oppression and exploitation is lacking an understanding of the issues surrounding this practice. It is in this context that lens of economic relativism must be utilised to understand and analyse the system, and in no case to legitimise the practice.

Universal labour rights prescribe standards to be achieved and cannot serve the labour force in every nation state as they differ in place, time, culture, social hierarchies, political actions and various forms of decision making. Economic relativism on the other hand, facilitates in understanding systems like Sumangali and subsequently finds suitable solutions to the problems in such systems.

When social economy acts as the authority for decision making in cases of legal ambiguity, certain problems arise especially when the primary stakeholders in systems like Sumangali lack voice. The diehard abolitionists fail to acknowledge the reasons behind Sumangali system. It is not just a method to gain a collated amount for potential dowry; in most of the instances, the girls themselves make the choice to work for varied reasons as already discussed. However, this decision-making process is tinted with public perception, beliefs of other members of the society who directly influence the girls and other mediums of media. Therefore,

the choice that the girl child makes using her agency, is in reality not a ‘real’ choice, but a product of ‘fictional’ female agency.

Additionally, when it comes to advocating rights and freedoms of Sumangali girls, again we tend to forget that our views are imposed on the girl as opposed to letting her decide in an unopinionated environment. Therefore, it is their capabilities—opportunities and its value—that the Sumangali girls must gradually become aware of, in order to exercise their agency to full potential. As witnessed above *Sumangali system thrives on the ‘fictional’ female agency of the girl child*, and solely a cut through approach deciphering the reasons for decision making by Sumangali girls can ensure individual human dignity in the long run. Therefore, the truth behind Sumangali system is not as ugly as it seems to be.