



WORKER RIGHTS CONSORTIUM

SAFETY RISKS AT FACTORY-BASED CHILDCARE CENTERS
GOKALDAS EXPORTS, LTD.
(BANGALORE, INDIA)
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I. Executive Summary

The tragic death of the two-year-old son of a woman garment worker while in the care of an employer-run nursery in a garment factory in Bangalore, India, has raised concerns regarding safety conditions in onsite childcare facilities in the country's export apparel manufacturing sector. These concerns arose after a WRC investigation of the death in July 2014 of a garment worker's child in the care of the Gokaldas India factory in Bangalore found violations of regulations regarding staff qualification and equipment for onsite childcare and emergency medical facilities that major garment factories are required by state law to provide.¹

This tragedy is of particular concern not only on account of the worker's loss and the failure of the factory to comply with applicable safety laws governing such facilities, but also because the facility in question is operated by India's largest garment manufacturer and supplies two of the world's leading athletic apparel companies. Gokaldas Exports, Ltd., whose factory in Bangalore, called Gokaldas India, was the site of this tragedy, employs more than 32,000 workers in the country.²

The Gokaldas India factory supplies adidas and Puma, and the company's other factories in the country supply such brands as Columbia, Nike, Gap, H&M, Levi's, and Marks and Spencer.³ Gokaldas Exports is owned by the US private equity firm, Blackstone Group, L.P., which recorded more than \$4.3 billion in profits in 2014.⁴

While the factory where this tragedy occurred is not a supplier of collegiate licensed apparel, the incident raises concerns that similar noncompliance may exist in other factories in Bangalore, and elsewhere in India that have been disclosed as manufacturing university goods. For this reason it is important that the violations that have been identified at Gokaldas India in relation to this tragedy be thoroughly remedied to set a standard of good safety practice in this area for other factories providing onsite nursery and emergency medical facilities for employees and their children.

While the ultimate cause of the child's death appears related to respiratory causes, there are strong indications that the emergency treatment he received while in the factory's care was deficient in multiple aspects – all of which appear to be related to the company's failure to meet legally required standards -- and that these deficiencies likely contributed to the tragic outcome. The specific legal standards with which the WRC found that the Gokaldas India factory failed to comply are state laws requiring that factories with more than 500 workers maintain: (1) an emergency medical clinic staffed fulltime by a licensed medical doctor, (2) a medical ambulance for transporting victims of serious accident or illness, and (3) an onsite nursery for employee's children that is under the direction of a caregiver with prior pediatric healthcare training.⁵

¹ Karnataka Factories Act, 1948, §§ 42-48.

² Gokaldas Exports, *Manufacturing Facilities*, <http://www.gokaldasexports.com/manufacturing-facilities.html>.

³ Id., *Customers*, <http://www.gokaldasexports.com/customers.html>.

⁴ Blackstone Group, L.P., "Blackstone Reports Full Year and Fourth-Quarter Results," http://ir.blackstone.com/files/doc_presentations/2015/Blackstone4Q14EarningsPressRelease.pdf.

⁵ Karnataka Factory Rules Act (1969), §§ 92, 104.

These requirements may appear excessive in the North American context, where childcare providers undergo state licensing and where emergency medical care is typically available on an urgent basis from public safety authorities, but in India, public oversight of such services is more limited, and response times for emergency services can be much longer. This is why, in India and many other major garment-exporting countries, local laws often obligate factories to provide such care and services themselves, and provide detailed standards for how this is to be done.

In this case, there is strong reason to believe that, if Gokaldas Exports had complied with the legal requirements, the death of the employee's child might well have been avoided. The child first fell unconscious in the factory's nursery facility which was under the supervision of a caregiver who – in violation of state laws⁶ – lacked any training in nursing or pediatric healthcare.

The child was then taken to the factory's first aid clinic which, rather than being staffed by a medical doctor, as the law required,⁷ had on duty a single nurse – who, to make matters worse, lacked legally required credentials. Furthermore, although state laws required that the factory maintain an ambulance on the premises for use in emergencies (in order to provide emergency care enroute to hospitals),⁸ none had been provided, so the child was taken from the factory in a manager's private car – in which he did not receive any care while being transported.

Finally, despite the fact that a government hospital that is well-equipped to deal with pediatric emergencies was only two kilometers (1.25 miles) away, the child – while in the care of the unqualified factory nurse – was first taken to two less-equipped private healthcare centers. These facilities both refused to admit the child and he ended up being taken to a hospital nearly 30 kilometers (19 miles) distant, where he was found to be dead upon arrival. A subsequent autopsy determined the cause of the child's death to be pulmonary edema – death by accumulation of fluid in the lungs.

After completing a preliminary investigation in September 2014, the WRC contacted Gokaldas Exports, as well as its business partners, adidas and Puma, and recommended that the deficiencies identified in the company's facilities for onsite childcare and emergency medical care be corrected, and that the worker who is the mother of the child who died in the company's care receive adequate compensation (so far she has been given roughly US\$2,400, about two years' wages). Gokaldas, for its part, responded to the WRC with letters from its attorney denying the deficiencies, refusing to provide additional assistance to the mother, and suggesting that the worker, herself, was at fault in her son's death, implying that she knowingly placed an ill child in the factory's care.⁹

The WRC also wrote to those university licensees that have disclosed factories in Bangalore as among their current or recent suppliers of collegiate goods – Bruzer, Columbia Sportswear and its business partner, Outdoor Custom Sportswear, Cutter and Buck, and Glory Haus – requesting that they confirm that these facilities comply with the relevant legal requirements with regard to

⁶ Id., § 104.

⁷ Id. § 92.

⁸ Id.

⁹ S.N. Murthy, Letters to the WRC, Oct. 15, 2014, Jan. 16, 2015 (on file with WRC).

employer-run onsite nurseries and emergency medical care. Two of these licensees, Bruzer and Cutter and Buck, indicated that they no longer purchase apparel from factories in the Bangalore area. Glory Haus, for its part, indicated that its supplier in the area is a small factory that is not covered by the legal requirement to provide onsite childcare. Columbia and Outdoor Custom, however, indicated that they would review these requirements with their suppliers and ensure compliance.

With respect to the companies doing business with Gokaldas India, the factory in whose care the worker's child died, adidas and Puma indicated that the incident and the factory's compliance with relevant laws governing workplace childcare and medical facilities would be investigated by the Fair Labor Association under that organization's third-party complaint procedure. As discussed below, the FLA's report of its investigation subsequently confirmed many of the WRC's previous findings with respect to the factory's failure to comply with relevant laws governing onsite childcare and emergency medical facilities.¹⁰

The FLA's investigation also found, and the WRC's own research confirmed, that, following the issuance of the WRC's original findings, the factory, in fact, had corrected a number of the incidences of noncompliance with relevant legal standards.¹¹ The FLA's report, however, which it shared in advance with the WRC, did not issue recommendations that would correct two key issues: (1) the inadequacy of the compensation paid by the factory to the worker for the loss of her child; and (2) the lack of a legally qualified caregiver in charge of the factory's childcare center.

With respect to the lack of qualifications of the persons overseeing the onsite childcare center, as discussed below, the FLA noted that adidas and Gokaldas Exports had agreed upon a corrective action plan that included obtaining additional training for the existing caregivers.¹² But since the legal requirement specifies a minimum of 18 months' training, that corrective action plan could leave employees' children in the care of a person lacking legally required qualifications for an extensive period of time. The WRC continues to recommend that Gokaldas Exports immediately hire a person with the requisite qualifications to oversee its onsite nursery.

With respect to the lack of adequate compensation for the worker whose child died in the factory's care, after the WRC pointed out to the FLA the absence of any recommendation concerning this issue, the FLA amended its report to recommend that adidas "engage a recognized independent actuary or forensic economist to review the adequacy of the amount of compensation paid by the factory to the family of the deceased child."¹³ The WRC is concerned, however, that the approach the FLA has adopted is inconsistent with an independent assessment of the issue. In particular, there is a conflict of interest inherent in having adidas choose and pay an actuary or economist, no matter how formally independent, to perform this analysis, since any additional compensation would presumably be paid by adidas' business partner, Gokaldas, or adidas, itself.

¹⁰ Fair Labor Association, *Summary Report, Third Party Complaint, Gokaldas India, Bangalore, India*, 4 (Apr. 2015) ("FLA Report").

¹¹ *Id.*

¹² *Id.* at 4.

¹³ *Id.* at 5.

Moreover, the inadequacy of the compensation Gokaldas has paid so far to the worker whose child died in its care – \$2,400 or only roughly 2 years’ wages for the worker – is readily apparent. In the program set up to assist the families of the victims of the Rana Plaza disaster, the compensation being paid for the same type of loss – death of a family member – has been set, based upon international labor standards, local wage rates and current life expectancies, at roughly \$30,000.¹⁴ While average life expectancy is 10% shorter in India than it is in Bangladesh,¹⁵ wages for garment workers in India have tended to be significantly higher,¹⁶ so compensation for the bereaved mother in this case should be somewhat higher, as well – not many times lower, as seems to be Gokaldas and adidas’ position.

This is all the more true since, in the case of the brands that have funded the Rana Plaza compensation program, those firms were not, *themselves*, violating relevant safety laws when those fatalities occurred. By contrast, in this case, Gokaldas’ management *was* breaking relevant safety laws when the worker’s child died in its care. As this report discusses, the WRC continues to recommend that the worker in question receive additional compensation for her loss from Gokaldas and the multi-billion dollar private equity firm that is its owner – or from the brands and retailers whose codes of conduct were supposed to ensure that the factory complied with local labor laws. The WRC estimates that reasonable compensation in this case is US\$40,000.

The WRC also continues to recommend that both Gokaldas Exports and other garment manufacturers operating in the Bangalore area, as well as those brands, retailers and licensees with which they do business, ensure that factories that are legally required to provide onsite childcare and emergency medical care do so in accordance with the standards established under relevant laws. Such measures, if taken, should greatly reduce the likelihood of future tragedies of this kind.

The following report discusses:

- (a) The methodology of the WRC’s investigation;
- (b) The WRC’s factual findings concerning the death of the workers’ child while in the factory’s care;
- (c) The instances of noncompliance with legal and code of conduct requirements that the WRC’s investigation identified;
- (d) The relationship of these legal and code of conduct violations to the child’s death;
- (e) The recommendations of the WRC to the factory’s owners, Gokaldas Exports, and its buyers, adidas and Puma, as well as other brands, retailers and licensees doing business

¹⁴ Rana Plaza Arrangement, *Donors Trust Fund*, <http://www.ranaplaza-arrangement.org/fund/about>.

¹⁵ World Health Organization, *Life Expectancies at Birth: 1990-2013*, http://gamapserv.who.int/gho/interactive_charts/mbd/life_expectancy/atlas.html.

¹⁶ WRC, *Global Wage Trends for Apparel Workers, 2001-2011*, 47-48 (2013), <https://www.americanprogress.org/wp-content/uploads/2013/07/RealWageStudy-3.pdf>.

with other garment factories owned by Gokaldas Exports and other garment manufacturers in the Bangalore area; and

(f) The responses to date of Gokaldas Exports, adidas and other brands, retailers and licensees to the WRC's findings and recommendations.

The report concludes by discussing the WRC's continuing recommendations in this case, both those specific to Gokaldas Exports – concerning compensation that must be paid to the worker whose child died in the company's care and compliance with legal requirements at the factory where this tragedy occurred – and those that apply, more generally, to garment manufacturers operating in the Bangalore area concerning provision of onsite childcare and emergency medical care.

II. Methodology

The WRC's factual findings and recommendations, as presented in this report, are based on the following sources of evidence:

- Interviews conducted by the WRC India representative and/or by a local physician, Dr. Sylvia Karpagam, who was commissioned by the WRC to assist with the inquiry, with the following persons:
 - Yashodamma, the female worker whose child died in the factory's care;
 - Fourteen other employees of the Gokaldas India factory, including other workers who bring children to the onsite childcare facility;
 - Representatives of a Bangalore area labor organization whose members include workers employed at the factory, the Garment and Textile Workers Union (GATWU);
 - Medical officer at the local government hospital in Gorgantepalya, which is the nearest full-fledged hospital to the Gokaldas India factory; and
 - A local physician, Dr. Bobby Joseph, who was commissioned by the FLA to conduct an inquiry into the death of the worker's child.
- Review of relevant documents, including:
 - Autopsy report of the deceased child and other documents related to his death;
 - Letters to the WRC from Gokaldas Exports' outside legal counsel, Attorney S.N. Murthy, dated October 15, 2014 and January 16, 2015;
 - Report prepared for the WRC by Dr. Karpagam concerning her investigation;
 - Report prepared for the FLA by Dr. Joseph, and the FLA's report of its inquiry;
 - Relevant state laws and vendor codes of conduct of major apparel brands and retailers.

It should be noted that the WRC offered on multiple occasions in the course of its investigation to meet with representatives of Gokaldas Exports. The company declined these offers. Therefore, the WRC accepts the written communications of the company's attorney and the reported statements of company managers as representing the company's position on the issues discussed herein.

III. Factual Summary

On July 29, 2014, Abhishek, a two-and-one-half year old boy, who was the son of Yashodamma, a female worker who had been employed sewing garments in the Gokaldas India factory since April 3, 2013, died while in the care of the factory's onsite childcare center. Abhishek was born on September 3, 2011. Yashodamma had been bringing Abhishek to the factory childcare center since March 2014.

On July 29, Yashodamma arrived at the factory at her usual starting time and brought her son, Abhishek, to the company's onsite nursery ("crèche"). The nursery is managed by a Gokaldas employee named Radha, who, with the assistance of a helper (known as the "ajji," literally "grandmother") cares for the children brought there by factory workers.

At 12:30 p.m., Yashodamma visited the nursery to see her son, as was her daily custom. Her son appeared healthy at the time. At 1:30 p.m., Yashodamma was summoned over the factory's public address system to the factory's first aid room.

On arriving at the factory's first aid room, Yashodamma found her child lying in a bed, with the factory nurse who at that time oversaw the first aid room, who was known as Shiney, and the nursery manager, Radha, rubbing the boy's hands.¹⁷

Yashodamma was then informed by Radha that her child had fallen unconscious in the crèche. According to Yashodamma, no attempt was made at this time to provide cardio-pulmonary resuscitation ("CPR"), oxygen or other treatment to Abhishek.

Yashodamma and Abhishek were enrolled in the government's Employees State Insurance (ESI) program, which operates a hospital located less than three kilometers from the factory that is well-equipped to deal with pediatric emergencies. For reasons that are unclear, Suresh Batija, a supervisor in charge of the plant's fabric godown (warehouse) took Yashodamma and Abhishek, along with the factory nurse, Shiney, in his car, instead, to a smaller and less-well-equipped private clinic named Ashwini. The human resources manager, Mangala, followed separately.

The doctors at the Ashwini clinic, however, refused to treat Abhishek. The warehouse supervisor, Batija, then took Yashodamma, Abhishek and Shiney, with Manager Mangala still following, to a private hospital named Sanjeevini. The Sanjeevini facility, however, also refused to treat the child.

Supervisor Batija then took Yashodamma and her child, along with the nurse, Shiney, to a third, larger hospital, named M.S. Ramaiah, which is roughly 30 kilometers (19 miles) from the factory, with Manager Mangala, again, following. By the time they finally arrived at this hospital, the doctors who examined the child declared him to already have died. A subsequent

¹⁷ As Dr. Karpagam noted in her report to the WRC, "Rubbing a child's feet serves no purpose except to prove that the nurse had no idea about how to respond in an emergency. The presence of a trained medical officer, or at worst a nurse trained and skilled in first aid, would have offered the child a good chance of survival."

autopsy of the child determined the cause of death to be pulmonary edema (fluid accumulation in lungs) of natural causes.

Within twenty-four hours of the child's death, both Yashodamma and the management of the factory reportedly filed separate police complaints requesting investigation of the child's death. Also, after discussions with Yashodamma and her husband as well as the GATWU labor union, the factory management agreed that it would pay 150,000 Indian rupees (US\$2,345) as, what it termed "solatium,"¹⁸ on account of her child's death, with the payment to be made by August 2, 2014.

On July 31, however, Yashodamma and her husband travelled to their home village for the child's funeral with the result that they did not return home until after August 2. When Yashodamma did receive the payment on August 11, 2014, the factory management required her, as a pre-condition, to sign a letter written by a local police sub-inspector stating that: (1) Yashodamma had been wrong to think that the company was responsible for Abhishek's death; (2) her child had died due to ill health; (3) she had been adequately compensated; and (4) was withdrawing her complaint against the company. The same police sub-inspector reportedly told Yashodamma and her husband that her child's death "was the fault of the family for leaving the child in the [factory] crèche and that they should have taken care of him themselves."¹⁹

Shortly thereafter, the WRC received a complaint concerning the death of the employee's child in the factory's care from the Garment and Textile Workers Union. The complaint alleged violations of applicable law concerning onsite childcare and emergency medical care at the Gokaldas India factory and failure to provide adequate financial compensation to the employee who was the child's mother. Although the WRC was subsequently informed by adidas and the FLA that they had received allegations that the child's death was the result of intentional harm, no such claims were lodged with the WRC as part of the complaint we received, or were raised by the union or by the employee who was the child's mother, during the course of our investigation.

IV. Findings

The investigation by the WRC and Dr. Karpagam of the death of Abhishek, the child of Gokaldas employee Yashodamma, which occurred while the boy was under the care and supervision of the factory, indicated that at the time of this incident, the Gokaldas India factory was violating Indian labour law (and, therefore, buyer codes of conduct) with respect to availability at the factory of: (a) a medical doctor, (b) an ambulance for use in an emergency, (c) adequate nursing staff in the factory's first aid room, and (d) trained caregivers in the factory's crèche, omissions that may have contributed to the unfortunate outcome. Specifically, the WRC's investigation found and Dr. Karpagam's inquiry confirmed the following violations.

¹⁸ *Merriam-Webster Dictionary* (defining "solatium: compensation given for suffering, [or] loss").

¹⁹ The FLA's report describes this as a "negotiated . . . monetary settlement to compensate the parents for the death of the child while in the care of the crèche." FLA Report at 3. The WRC's position is that a letter written by a police sub-inspector that Yashodamma was required to sign to receive money she had already been promised by the factory cannot be considered an accurate representation of her position as to either the adequacy of the compensation she was provided, or the responsibility of the factory with regard to her child's death.

A. Unavailability of Medical Doctor to Treat Worker’s Child

Although Gokaldas India has roughly 1600 workers, at the time of the death of the child of the worker, Yashodamma, the facility did not employ a full time medical officer as is explicitly required under the Karnataka Factories Rules Act, 1969 (“Factory Rules Act”). Section 92 of the Factory Rules Act mandates that factories maintain an “ambulance room” that is in “the charge of at least one whole-time qualified medical practitioner (hereinafter referred to as Medical Officer)” — defined in the law as “a person holding a qualification granted by an authority specified in the schedule to the Indian Medical Degrees Act, 1916, or in schedules to the Indian Medical Council Act, 1956.”

Both the WRC’s investigation and the investigation subsequently undertaken by FLA, confirmed that the factory did not regularly have a medical doctor on the premises – including on the day the worker’s child died – and, therefore, that the factory’s practices in this regard violated applicable law.²⁰

This violation had, in turn, significant implications for the factory’s response when the worker’s child fell unconscious in the onsite childcare center. As Dr. Karpagam noted to the WRC, the response of the staff present, “[r]ubbing [the] child’s feet” showed that they “had no idea about how to respond in an emergency.” By contrast, “[t]he presence of a trained medical officer . . . would have offered the child a good chance of survival.”

Specifically, a full-time Medical Officer, if one had been present in the factory, could have:

- (1) Accurately diagnosed the child’s condition when he first fell unconscious in the factory;
- (2) Provided immediate care to the child;
- (3) Made an informed and expert decision regarding where the child should have been sent for treatment; and
- (4) Accompanied and provided treatment to the child while enroute to a hospital.

In the absence of a Medical Officer, none of these vital measures – which might have saved the child’s life – were taken by the company.

B. Unavailability of an Ambulance to Transport Worker’s Child

Section 92(5) of the Factory Rules Act states that “The occupier of every factory to which these rules apply shall for the purpose of removing serious cases of accident or sickness, provide in the premises and maintain in good condition an Ambulance Van.”²¹ As was reported by factory workers, on the date that the incident involving the death of the worker’s child occurred, Gokaldas India did not have an ambulance stationed at the factory for use in case of a medical emergency, in violation of the relevant law.

²⁰ Id.

²¹ Id. § 92(5) (“The occupier of every factory to which these rules apply shall for the purpose of removing serious cases of accident or sickness, provide in the premises and maintain in good condition an Ambulance Van.”).

Although Gokaldas' attorneys asserted that the company complied with the law by having an ambulance that, while not stationed at the factory, was available to several of its factories in the area. Both the WRC investigation and, subsequently, that of the FLA determined that the factory did not have an ambulance available at the facility on the day the incident occurred and that Gokaldas was, in fact, in violation of the statute at the time the fatal incident involving the child's death occurred.²²

This violation, especially in combination with the failure to provide a Medical Officer at the plant, also had significant implications for the factory's response to the emergency which occurred on July 29, 2014. If a Medical Officer had been present and an ambulance had been available at the factory at the time the worker's child fell unconscious, the Medical Officer could have provided emergency treatment to the child while enroute to a hospital. As Dr. Karpagam observed, a properly-equipped ambulance vehicle would have provided "oxygen facilities, [that] would have offered a gasping child better respiratory functioning."

Instead, as a direct result of the factory's violations of the law, the young boy was taken from the factory to multiple hospitals in a private vehicle without receiving oxygen – or any other care — while in transit. Such care, had it been available, might have helped prevent the tragic outcome in this case.

C. Unavailability of Qualified Nursing Staff to Treat Worker's Child

On the date when the employee's child died in the factory's care, Gokaldas India also lacked nursing staff in its factory's first aid room with the legally required qualification. Section 92 of the Factory Rules Act also requires that the Medical Officer in charge of factory "ambulance room[s]" must be "assisted by at least one qualified nurse or dresser-cum-compounder and one nursing attendant."

The WRC and, subsequently, the FLA found that on the day when the fatal incident occurred, the factory ambulance room was staffed only by the factory nurse. Dr. Joseph, who conducted the FLA's inquiry, determined that "[o]n close scrutiny of her certificates . . . the qualifications for the incumbent in the nurse post are unlikely to be endorsed by the Nursing Council of India."

This determination confirmed the previous finding of the WRC, which Gokaldas had previously denied, that the factory was in violation of the relevant legal requirements at the time the child's death occurred.

The lack of a qualified nurse also had significant implications for Gokaldas' response when the child, Abhishek, fell unconscious in the factory's childcare center on July 29, 2014. As Dr. Karpagam stressed in her report to the WRC, "the [factory] nurse had no idea about how to respond in an emergency. . . . [A] nurse trained and skilled in first aid, would have offered the child a good chance of survival."

Specifically, a fully qualified nurse, if one had been present in the factory, could have more competently:

²² FLA Report at 3.

- (1) Diagnosed the child's condition;
- (2) Provided emergency care to the child;
- (3) Made decisions regarding where the child should have been sent for treatment; and
- (4) Provided treatment to the child while enroute to a hospital.

Gokaldas' failure to provide a nurse with the legally required qualifications meant that this did not occur – a failure which likely contributed to the tragic outcome in this case.

D. Unqualified Caregivers in Factory Crèche (Nursery)

The WRC and, subsequently, the FLA, found that the caregivers in the Gokaldas India factory's nursery facility for employee children also did not have the legally required qualifications for their positions. Section 104 (2) of the Factory Rules Act states that “[N]o woman shall be appointed under sub-rule (1) as a woman-in-charge [of a factory nursery] 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.”

The WRC's investigation found that Radha, the caregiver in charge of the Gokaldas India factory nursery, did not have the training or qualifications required under the law. The inquiry subsequently undertaken for the FLA by Dr. Joseph confirmed that this employee, whom Gokaldas placed in charge of the factory crèche “has not received any formal training in the care of children.” As such, by placing this caregiver in charge of the factory childcare center, Gokaldas Exports violated the relevant legal standard.

This violation, again, had significant implications for the response of the nursery's staff when the child, Abhishek fell unconscious inside the childcare center. Unfortunately, as Dr. Karpagam observed, their response – “rubbing [the] child's feet” showed that the caregivers “had no idea about how to respond in an emergency.” By contrast, if the nursery had been staffed by “a nurse trained and skilled in first aid” this would have “offered the child a good chance of survival.”

A caregiver with the legally required qualifications or training – “a [n]urse's qualifications or . . . training for a period of not less than 18 months in child care in a hospital, maternity home, or nursing home”²³ – could have more competently diagnosed the child's condition and provided immediate emergency care. Gokaldas' failure to provide a caregiver with the legally required qualifications meant that this did not occur – a failure which may have contributed to the tragic outcome in this case.

²³ Factory Rules Act, §104.

V. Role of Legal Violations in Death of Employee's Child in Factory's Care

The WRC's investigation of the death of the employee's child in the factory's care identified several significant factual instances in which Gokaldas' failure to comply with relevant laws which were likely contributory factors in the child's death. These were:

- Rather than a qualified nurse or a caregiver who had received childcare training in a medical setting – which the law required the factory to provide – the person in charge of the nursery, who was the first responder when Abhishek fell unconscious, was a person who lacked any such qualifications.
- Rather than the legally required medical doctor and qualified nurse, the person in charge of the factory first aid room who was responsible for (a) providing initial medical treatment and diagnosis for Abhishek, (b) directing where the child should be taken, and (c) providing treatment to him enroute, was an employee whose “qualifications . . . are unlikely to be endorsed by the Nursing Council of India.”
- Rather than in the legally required ambulance, which is typically equipped with facilities for providing emergency medical care enroute – including oxygen, the most common initial treatment for pulmonary edema – the unconscious child was transported, without receiving medical treatment, in a private car.
- Rather than being immediately taken to a fully-equipped hospital²⁴ located less than two miles away, the child was taken to a private clinic which was not equipped to care for the child, and then to another private hospital – which also did not provide treatment – before being taken to a third facility nearly 20 miles from the factory. A medical doctor and qualified nurse – had they been present as required – almost certainly would not have directed or permitted such a misguided course of action.²⁵

Taken together, this series of omissions and missteps makes clear that there is a reasonable basis for concluding that Gokaldas' failure to comply with the applicable legal standard likely played a role in the child's death, which otherwise was quite possibly avoidable.²⁶

²⁴ Dr. Karpagam noted that this hospital has both a neonatal intensive care unit (NICU) and a pediatric ventilator, the crucial facilities for handling such an emergency.

²⁵ Dr. Joseph, in his report for the FLA states that the decision to take the child to the private clinic “was influenced by the report that the child's sister used to be taken to this clinic for treatment.” It seems highly unlikely, however, that had a trained medical officer or a qualified nurse been on hand, as was legally required, they would have allowed their professional judgment to be swayed by such a factor, especially since a hospital that was equally nearby had far superior facilities for addressing pediatric emergencies. *Id.*

²⁶ Dr. Joseph, in his report for the FLA states that “where the cause for the pulmonary edema is not identified . . . it is impossible to comment on the consequences of the lack of a medical professional or of an ambulance, and of the possible consequences of immediate hospital treatment.” Dr. Karpagam, in her inquiry for the WRC, however, noted multiple instances in which the company's failures made it significantly less likely that the child would survive the incident: (a) While “a trained medical officer or . . . a nurse trained and skilled in first aid, would have offered the child a good chance of survival,” the unqualified factory nurse and caregiver made no effort to administer CPR or other first aid, but instead “rubbed the child's feet,” (b) An ambulance vehicle, unlike a private car, would have provided “oxygen facilities, [that] would have offered a gasping child better respiratory functioning;” and (c) Unlike the private facilities where the child was taken – but refused treatment – the nearby government hospital “would

VI. Recommendations and Responses

A. Recommendations to Gokaldas Exports and Buyers for Correcting and Compensating for Legal Violations at Gokaldas India

The WRC recommended that Gokaldas Exports take a number of measures to correct and compensate for its failures to comply with legal requirements for onsite childcare and emergency medical care at the Gokaldas India factory. The WRC has found, and the FLA’s investigation also confirmed, that Gokaldas complied with some of these recommendations.²⁷ Certain key recommendations made by the WRC, however, remain unimplemented: In particular the recommendation that the company provide adequate compensation to the worker whose child died in the factory’s care.

1. Failure to Provide Legally Required Medical Doctor and Qualified Nurse

The WRC recommended that Gokaldas India comply with applicable law by staffing the factory’s first aid room with a medical officer and a qualified nurse. Workers reported to the WRC, and the FLA also confirmed in its report that a medical doctor is now present in the factory on a daily basis.

The FLA also reported that the factory has agreed to “contact local medical institutions and explore suitable additional training for the nurse already on staff” and that a “custodial staff member” who “has received training in first aid” is “posted in the ambulance room during working hours and acts as nursing assistant.”²⁸ As the legal requirement is that the factory provide, in addition to a medical officer, “one qualified nurse or dresser-cum-compounder and one nursing attendant,” if the current nurse actually receives training that enables her to provide the necessary qualification, the factory will be in compliance with the law in this respect.

2. Failure to Provide an Ambulance at the Factory Premises

The WRC recommended that Gokaldas India comply with applicable law by providing an appropriately equipped ambulance at the factory premises for use in case of emergencies. Workers report, and the FLA’s inquiry also confirmed, that an ambulance and driver are now stationed full-time at the factory.²⁹

As the factory management has declined to provide the WRC access to the factory premises, the WRC is unable to assess whether the ambulance is properly equipped and maintained as the law requires. If this is the case, the factory will be in compliance with the law in this respect.

have been mandated to provide at least emergency services... [and] has in place a pediatrician, emergency drugs, a ventilator, an ICU and oxygen.”

²⁷ FLA Report, 4.

²⁸ Id.

²⁹ Id.

3. Failure to Provide Legally Qualified Staff at Factory Childcare Center

The WRC recommended that Gokaldas India comply with applicable law by providing adequately trained staff at the factory nursery to safely care for employees' children. Workers reported that the caregiver who was previously in charge of the crèche was no longer employed at the factory, and that the company had assigned a staff-member from its human resources department to serve as a "welfare officer" for the facility. The FLA in its report also indicated that the factory had agreed to "secure additional training for childcare service providers."³⁰

The WRC notes that the legal requirement is that the employee in charge of the crèche must have "either a Nurse's qualifications or . . . 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."³¹ As a result, any additional training the factory secures for current caregivers would not achieve compliance with the law until the caregiver in charge either acquired a nursing qualification or completed 18 months of training.

In either case, this is an excessive period for the crèche to continue to be managed by unqualified personnel. For this reason, the WRC recommends that the factory immediately hire a caregiver who has the required nursing or pediatric healthcare qualifications. The WRC notes that the State of Karnataka has, in its labor market, more than 190,000 registered nurses who would meet this qualification.

4. Inadequate Compensation of Worker whose Child Died in Factory's Care

The WRC recommended to Gokaldas Exports that it provide employee Yashodamma with adequate compensation and other assistance to address the loss of her child, consistent with relevant standards. As discussed, on August 11, 2014, Gokaldas paid the worker 150,000 Indian rupees (2,345 USD) as "solatium" on account of her child's death. This amount, as noted, is the equivalent of roughly two years' base wages for the worker.

The WRC believes that the amount paid to the worker by the factory to compensate her for her loss is shamefully inadequate, and recommends that additional compensation should be paid to the worker in the amount of US\$40,000. This recommendation is based on the following factors:

a. The Worker, Yashodamma, Suffered Severe Emotional Trauma and Significant Future Economic Loss from her Son's Death

- (1) The worker, the child's mother, was witness to her own child's death – a deeply traumatizing experience.
- (2) In Indian society, the worker could have expected her son to remain in her home through adulthood, and for the son (and, most likely, his wife) to provide economic support and personal care for her and her husband into old age.

³⁰ Id.

³¹ Factory Rules Act, §104.

(3) In the program set up to assist the families of the victims of the Rana Plaza disaster in Bangladesh, the compensation being paid for the same type of loss – loss of expected economic support from death of a family member – has been set by the ILO at roughly \$30,000.³²

(4) While life expectancies in Bangladesh and India are similar, wages for garment workers in India are significantly higher. Given that, if not for this tragedy, the worker could have expected, on average, to have been supported by her son’s income for roughly 25 years, a fair amount of compensation to be paid to the worker is \$40,000.

b. Gokaldas’ Legal Violations, and Buyers’ Failure to Enforce their Codes of Conduct were Likely Contributory Factors in the Child’s Death

(1) The worker’s child, Abhishek, died while in Gokaldas’s care – care that both the WRC and, now, the FLA, have confirmed was legally deficient in multiple, substantial respects.

(2) As discussed, there is reasonable basis to conclude that one or more of these deficiencies played a contributory role in the child’s death – in preventing necessary care and treatment from being available either at the factory or enroute to treatment; and by permitting the misjudgment that prevented the child from receiving timely treatment at a nearby hospital.

(3) As a result, it is also reasonable to conclude that, if the brands and retailers who are Gokaldas’ buyers had enforced their own codes of conduct and required the company to comply with the law, this tragedy may well have been avoided.

c. The Cost of Additional Assistance to the Worker is Negligible to the Factory and its Buyers

(1) Unlike the factory tragedies in Bangladesh, this case is, thankfully, an exceptional one, involves only a single worker, and, particularly, assuming Gokaldas complies with the relevant laws going forward, is unlikely to arise often in the future. It is, as the FLA’s investigator, Dr. Joseph noted, the “rarest of rare” cases.

(2) As noted, the factory is owned by the largest garment manufacturer in India, a company that is, in turn, owned by a large US private equity firm, Blackstone Group with \$4.3 billion in annual profits.³³ Gokaldas’ buyers include, at the factory where the tragedy occurred, adidas and Puma, two of the world’s largest athletic brands, and, at its other plants in India, Nike, Gap, H&M, Levi’s and Marks and Spencer.³⁴ These are all companies that can easily afford to provide additional assistance to the worker.

³² Rana Plaza Arrangement, *supra*, n. 14.

³³ Blackstone Group, *supra*, n. 4.

³⁴ Gokaldas Exports, *supra*, n. 3.

d. Any 'Agreement' by the Worker to Existing Amount of Compensation was Improperly Obtained and Legal System does not Provide Viable Alternative for Adequate Compensation

- (1) As discussed, to receive the money she had previously been promised by the factory, the worker, Yashodamma was presented with and required to sign a letter written by the local police sub-inspector stating that she had been wrong to think that the company was responsible for Abhishek's death; and that she had been adequately compensated by the company. Given the circumstances, the letter cannot be taken as representing the worker's actual agreement with these sentiments.
- (2) Although the FLA's report states that "[t]here are no legal provisions or rules that govern the topic of compensation of parents whose deceased child was in the care of a factory crèche," this is not entirely correct. India, in fact, has a general 'wrongful death' statute, the Fatal Accidents Act, under which, given the circumstances of this case, the parents might well have a strong claim for compensation. However, unlike statutes addressing occupational injuries or fatalities, the law does not establish an explicit schedule of the amounts of compensation to be awarded in specific instances. These are left to the purview of the courts. More importantly, to obtain such compensation through a legal action, the child's mother, a poor garment worker, would have to prevail against the country's largest garment manufacturer in an Indian civil court system that is notoriously slow to act on such claims, and has often awarded compensation for loss of life that is unconscionably low.

The WRC, therefore, recommends that adidas, Puma, Nike, Gap, H&M, Levi's, and Marks and Spencer and other buyers doing business with Gokaldas Exports either require the company to pay additional compensation to the worker, Yashodamma, in the amount of US\$40,000 or provide such compensation to the worker themselves.

B. Recommendations to Gokaldas Exports and Buyers from Other Factories in the Bangalore Area Concerning Onsite Childcare and Emergency Medical Care

The WRC reiterates its recommendation that Gokaldas Exports ensure in its other factories in the Bangalore area, and that brands, retailers and university licensees doing business with these factories or with other manufacturers' facilities in the area also ensure, that each such factory that employs more than 500 workers comply with the relevant legal requirements for onsite childcare and emergency medical care facilities.

The WRC notes garment workers in the Bangalore area report, and Dr. Joseph's investigation for the FLA also concurs, that the legal violations existing at Gokaldas India prior to the death of the employee's child in the factory's care are also prevalent among other garment factories in the region. These noncompliant practices are as follows:

- Maintaining an "ambulance room" (first aid room) that is regularly staffed only by a nurse and which is visited by a medical officer on only an occasional basis.

- Employing “nurses” in the above capacity who lack recognized nursing credentials and training.
- Providing, in lieu of an ambulance that is stationed at each factory’s premises during its hours of operation, the services of an ambulance that is stationed offsite and is contracted by multiple factories at multiple locations.
- Placing an onsite childcare center under the supervision of an employee who lacks any recognized pediatric healthcare training.

The WRC urges that Gokaldas Exports and brands, retailers and university licensees doing business with its factories or with other manufacturers’ facilities in the Bangalore area ensure that these facilities instead take the following measures to comply with the relevant legal requirements:

- Maintain an “ambulance room” (first aid room) in each factory that is staffed on a fulltime basis during the factory’s operating hours by a medical doctor *and* a qualified nurse or dresser-cum-compounder (i.e., pharmacist) and nursing assistant.
- Maintain on the premises of each factory during the factory’s operating hours a properly-equipped ambulance vehicle.
- Provide for the care of employees’ children a nursery that is operated under the supervision of an employee who either is a qualified nurse or can certify that she has undergone training for a minimum of 18 months in childcare in a healthcare facility that has been approved to offer such instruction.

The WRC observes that the rationale for these measures has been demonstrated by the recent tragedy involving the death of the employee’s child, which might well have been avoided, had Gokaldas Exports simply complied with these legal requirements.

VII. Conclusion

In order to help to prevent the recurrence of incidents like the recent tragedy befalling employee Yashodamma’s son, the WRC recommends that the above recommendations be implemented not only at Gokaldas India, but at all other Gokaldas Exports’ facilities and all other factories in the Bangalore area which are required by law to provide onsite childcare and emergency medical care facilities. In light of mutually corroborating reports that noncompliance with legal requirements concerning such facilities is pervasive among factories in the Bangalore area, the WRC requests that university licensees, in particular, cooperate with the WRC to ensure such compliance at suppliers of collegiate goods.

Finally, the WRC urges Gokaldas Exports, adidas, Puma, Nike, Gap, H&M, Levi’s, and Marks and Spencer to ensure that adequate compensation is finally provided to the worker, Yashodamma, for the loss of her child while in the factory’s care. Given the depth of the worker’s loss, the well-established legal violations, omissions and misjudgments by the factory

surrounding this tragedy, and the billions of dollars in earned annually by Gokaldas Exports, its US owners, and the international brands and retailers that are its business partners, it is inconceivable that she cannot receive assistance from these firms that is more commensurate with the tragedy she and her family have suffered.