

## **Does Caste Matter When Doing Business in India? Socio-Legal and Economic Perspectives**

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**Abstract:**

Caste-based discrimination in India is associated with human trafficking, slavery and child labour in various sectors of the economy. This paper explores the implications of caste-based discrimination for multinational corporations operating in India through sub-contractors and supply chains in the light of extra-territorial antislavery and supply chain transparency laws passed in the USA, UK, France and Australia. We find that there are some de jure effects of these extra-territorial laws in combating bonded labour and child labour in India. Besides the socio-legal case, we also explore whether there is a sound business case for global corporations to engage with enterprises owned by people from the lower castes; officially designated as scheduled castes and tribes (SC/STs). Our findings indicate that despite social disadvantage, SC/ST owned enterprises have in recent years fared well on key economic indicators and offer good business prospects for global corporations to engage with them. We discuss our findings in the context of the role of the state, trade unions and industry association of SC/ST entrepreneurs.

**Introduction:**

The 'caste system' in India is thousands of years old and refers to a system of social stratification based on birth and descent and maintained largely through marriages within the members of the same caste. The discriminatory nature of the caste system in the Indian society has been well documented (Olcott 1944; Deshpande 2014; Teltumbde 2018). Subgroups of population called the 'Dalits' (meaning oppressed/crushed) considered to be lower castes and tribes and treated as untouchables, have been historically discriminated against in education, employment and society at large by people from the upper castes. Although commonly associated with the Hindu religion, caste hierarchies and discrimination are found in other religious groups within India and in countries outside of India (Newell 1961; Ali 2002; IDSN 2018). Officially, the lower castes or 'Dalits' are classified by the government of India as those belonging to the 'Scheduled Castes and Scheduled Tribes' (SCs/STs) and according to the 2011 census, SC/STs constitute 305.7 million of the Indian population. Social and economic deprivation often goes together. Consequently, over 80 percent of workers employed in the informal (unregulated) sector of the Indian economy belong to the SC/ST communities (Kannan 2009).

This article postulates caste-based discrimination as modern day slavery (IDSN 2018) and explores the implications of caste discrimination in labour markets for foreign businesses that operate in India through subsidiaries and sub-contractors in supply chains. We explore these issues from two perspectives i.e. socio-legal and economic perspectives. First, we review the growing body of extra-territorial anti-slavery legislation on supply chain transparency in countries such as the USA, UK, France and Australia. We also consider the domestic legislation in India which prevents caste discrimination and slavery. We suggest that both domestic and international laws have so far not offered any significant protection to vulnerable workers such as the SC/STs in India against slavery and human trafficking in supply chains of multinational corporations (MNCs). However, there appears to be some *de jure* effects of the international anti-slavery regulations. This is evident in the collaborative measures taken by some western governments and MNCs working with NGOs and trade unions in India to address the issues of child and bonded labour in supply chains.

Second, besides the socio-legal perspective we also explore the issue of caste from an economic perspective. Here we look at entrepreneurship among SC/STs and suggest that engaging with SC/ST owned enterprises offers a good business case for foreign investors alongside serving their wider agenda of inclusive business practices and societal development which is being promoted by the US Business Roundtable – a globally influential industry association (BRT 2019).

### **India and International Trade:**

After nearly three decades of economic reforms India has decisively positioned itself on the global stage as one of the fastest growing economies in the world. In 2019, the Indian economy was valued at \$2.8 trillion USD and Prime Minister Narendra Modi aims to make India a \$5trillion USD economy by 2024. India has made a quantum leap from its 142<sup>nd</sup> rank in the 2015 World Bank's Doing Business Report to 77<sup>th</sup> rank on 'ease of doing business' ranking in 2019. The World Bank has applauded India as one of the only two economies to have made it into the list of top-10 'improvers' for second consecutive years (World Bank 2019). Thus, doing business with India is an attractive proposition to MNCs and investors from the developed western economies. In 2018, the foreign direct investment (FDI) from the USA into India reached \$24.8 billion USD contributing 6 percent of the

total FDI inflows in India (DPIIT, Govt of India 2019). UK has been the largest G20 investor in India over the last decade with over 270 British companies operating in India and employing nearly 800,000 people. Bilateral trade between UK and India reached £18 billion in 2017 and in the previous year “around 800 Indian companies were operating in the UK accounting for around 110,000 jobs and recording combined revenues of £47.5 billion.” (Dept for International Trade, Govt of UK 2018). The European Union is India’s largest trading partner accounting for nearly 13% of India’s total trade in goods in 2017 and the trade between EU and India trebled from 28 billion euros to 91 billion euros from 2002 to 2018 (Khorana 2019).

The major industry sectors that have attracted FDI inflows in India from 2000-2018 are; a) services sector which includes, banking, finance and insurance, business process outsourcing, computer software development, logistics, b) manufacturing which includes computer hardware, automobile industry, chemicals, pharmaceuticals, textiles and garments, leather, rubber goods c) construction and infrastructure development including residential and commercial construction projects, telecommunications and power, d) agriculture services, food processing, mining and metallurgical industries. The federal states in India which have been prime FDI destinations over the past two decades are: Maharashtra, Andhra Pradesh, Karnataka, Tamil Nadu, Delhi (with parts of Uttar Pradesh and Haryana), Punjab and Chandigarh (DPIIT Govt of India 2019).

It is worth noting that many of the industry sectors and federal states that have attracted high proportion of FDI in the past two decades also have a high proportion of SC/ST workers in the labour market often employed on precarious and exploitative terms and conditions through sub-contractors in supply chains. For instance, over 80 percent of workers employed in the export-oriented textile and garments industry in the state of Tamil Nadu belong to the SC/STs. A similar proportion of workers employed in the construction industry in large metropolitan cities such as Mumbai, Delhi, Bangalore and Hyderabad are from the SC/ST communities. A very large proportion of workers employed in agriculture, food processing, construction industry, leather goods, textiles, mining and metallurgy industries in states such as Punjab, Jharkhand, Uttar Pradesh, Bihar, Chhattisgarh come from the SC/ST communities (Franciscans International 2012; Andrees 2015; IDSN 2018).

According to the 2011 population census, 36.8 percent of the population in Tamil Nadu which is the hub of textiles and garments industry in India belongs to the SC/STs. Nearly 32 percent of Punjab's population belongs to scheduled castes – a state which has a large agriculture and food processing industry. Jharkhand and Chhattisgarh known for mining and metallurgy have an SC/ST population of 38.3 percent and 43.4 percent respectively. Uttar Pradesh - parts of which have manufacturing and automobile industry and, other parts of the state are production zones for textiles, carpets and leather goods has an SC/ST population of 21.3 percent. The highly industrialized federal states of Maharashtra, Gujarat, Karnataka and Andhra Pradesh which are the major outsourcing destinations for US and European MNCs have substantial SC/ST populations of 21.2 percent, 21.5 percent, 24.1 percent and 23.4 percent respectively. Thus nearly, one in four persons in most of the federal states in India belong to SC/STs (Govt of India Census 2011).

The number of officially recorded atrocities and human rights violations against SC/STs in many of the federal states that attract high levels of FDI is a matter of grave concern. For instance, in 2016 the federal state of Andhra Pradesh recorded 7,888 atrocities against SC/STs. The corresponding atrocities figures in other high FDI attracting states are; Telangana (5343), Maharashtra (6650), Karnataka (6746), Tamil Nadu (4583), Gujarat (4178), Bihar and Chhattisgarh (6371) and Uttar Pradesh (10,430) (source: National Crime Records Bureau, Govt. of India 2016). The overall picture that emerges from this triangulation is disconcerting. It indicates that foreign capital flows largely into federal states and economic sectors with higher population of SC/STs who are vulnerable to exploitation and, these federal states also tend to record a higher level of atrocities against SC/STs as compared to Indian states with low FDI inflows. This situation is comparable to the Syrian refugee crisis in Turkey. Following the start of the Syrian war in 2011, nearly 3 million Syrian refugees have fled to Turkey and these refugees who are extremely vulnerable are exploited by local factories which supply to major retail brands such as Marks and Spencer, Zara and Next (The Telegraph 24 Oct 2016). The net inflows of FDI in Turkey increased from US\$ 8.56 billion in 2009 to US\$ 19.27 billion in 2015 (World Bank Country Profiles).

### **Caste and Employment in India:**

The vulnerability of the SC/ST workers in the Indian labour market is documented in various scholarly studies (Sharma et al. 2014). Contributions in Thorat and Newman (2010) and Thorat, Aryama and Negi (2007) indicate, widespread discrimination against SC/STs in employment starting from access to jobs in the formal sector, discriminatory practices in recruitment and selection and, wage discrimination. Recent studies by Shah, Lerche and Axelby et al (2018) suggest that even in federal states such as West Bengal and Kerala with decades of Communist Party rule, and in industrially developed states like Maharashtra and Tamil Nadu, the SC/STs have continued to suffer exploitation and discrimination. Using large-scale macro-economic data over several decades, Kannan (2018) demonstrates how economic growth has largely bypassed SC/ST workers who are effectively forced to seek precarious employment in the informal sector of the economy characterized by low wages and exclusion from labour laws and welfare protection.

Kumar (2010) argues that the economic reforms policies pursued by successive governments since the early 1990s have resulted in the shrinking of employment opportunities for SC/STs in the public sector thus increasingly rendering worthless the reserved job quotas in employment for the SC/ST. This situation is further exacerbated by cuts in social welfare provisions such as access to education, health care and subsidized food through rationing. It is suggested that liberal market economic policies over the past three decades have contributed to rising poverty and unemployment amongst the SC/STs and increased the incidence of child labour and bonded labour amongst Dalits.

While jobs in the public sector are disappearing at a rapid pace due to privatization and disinvestment policies of the state, the private sector has not offered any solace to Dalit job seekers (Thorat et al 2007). In 2006, the national United Progressive Alliance (UPA) government led by the Congress Party appointed a committee to consider the extension of statutory affirmative action quotas for SC/STs in the private sector. This met with widespread resistance from the industry who proposed that they would self-regulate through voluntary codes. Subsequently all major industry associations such as the Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI) published their voluntary codes on social inclusion and affirmative action. There was no further significant progress on this issue for nearly a decade and it was only in September

2018 that Prime Minister's Office called for a meeting to review the developments on affirmative action in the private sector. Recent official disclosures suggest that out of the 17,788 member companies of the private sector employer associations only 19 percent have signed up to the voluntary code of conduct for affirmative action. The total number of employment opportunities in the formal sector created by the industry associations CII and FICCI stand at around 100,000. That said, industry associations appear to have contributed towards vocational training and entrepreneurship development programmes for SC/STs (Khan 2019). The limited effectiveness of voluntary industry codes on affirmative action and fair labour practices is not unique to India and their ineffectiveness has been widely reported in other parts of the world such as Latin America, Africa and South Asia (Micheletti and Follesdal 2007; Alexander et al. 2017).

#### **Caste-based discrimination in the International Context:**

Caste based discrimination and associated issues of child and bonded labour are getting increasing attention in the international fora. The International Dalit Solidarity Network (IDSN) has been highly influential in championing the cause of Dalit rights through the United Nations and the European Union. At its 2018 General Assembly, Prof Gay McDougall, member of the UN Committee on the Elimination of Racial Discrimination (CERD) said: "The fight to end caste discrimination is at the root of some of the most horrendous human rights violations facing the world today including modern slavery, violence against women, extreme poverty and grave failures of the justice system in affected countries across the world." While, Dr Aidan McQuade, former Director of the Anti-Slavery International said: "Caste discrimination continues to be a highly divisive practice causing suffering, violence, abuse and the curtailment of basic human rights on a massive scale. It fuels child labour, bonded labour and many other serious human rights violations, implicating not just national industries but large multinational companies as well" (IDSN 2018: 5). India is a party to the UN's International Convention on Elimination of All Forms of Discriminations (ICERD) adopted in 1965. The ICERD did not make specific reference to caste discrimination until 1996 when it first referred to caste discrimination, untouchability and, scheduled castes categorizing these forms of discrimination under 'descent' (Thorat and Umakant 2004).

The India chapter of the EU Human Rights Report 2018 states: “Women from vulnerable communities, in particular those at the bottom of the caste hierarchy or Dalits and indigenous people are still most vulnerable to human trafficking.” In February 2018, Heidi Hautala, the Vice President of the European Parliament submitted a written question to the European Commission on whether the Commission had raised the issue of ending all human rights abuses against ‘Dalits’ in India and whether these talks are linked with future Free Trade Agreements between EU and India. In May 2018, the Commission replied to this question by stating that the issue of human rights has been discussed with the Indian Prime Minister in November 2017 and India is a beneficiary of the Generalised Scheme of Preferences (GSP) which links unilateral trade preferences to the respect of human and labour rights (EU Parliamentary Questions 31 May 2018).

In the UK, the government committed through the Enterprise and Regulatory Reform Act (2013) to include caste as ‘an aspect of’ the protected characteristic of race in the Equality Act 2010 (Waughray 2014: 359). However, until now ‘caste’ is not yet recognised as a protected characteristic under the Equality Act 2010. A September 2015 judgement by an Employment Tribunal in *Tirkey v Chandhok & Anor* case held that discrimination on the grounds of ‘caste’ may fall within the scope of race as currently defined in the Equality Act 2010. While this judgement appears to be a step progress in the campaign by many civil society groups in the UK to have ‘caste’ included as a protected characteristic in the Equality Act, it does not offer an automatic protection to victims of caste discrimination in the UK (Waughray and Dhanda 2016: 186-189). In the light of increasing UK-India bi-lateral trade and immigration from the Indian sub-continent into the UK, there are growing concerns about rising incidences of caste discrimination in UK.

The Global Slavery Index (GSI) 2018 ranks India amongst the top 10 countries in Asia-Pacific region for ‘vulnerability to modern slavery’ with an estimated number of almost 8 million victims of modern slavery. This figure is likely to be an underestimate given that the official census records of 2011 reports more than 10 million children in the age group of 5-14 employed as child labour. According to GSI, products such as apparel and clothing accessories, carpets and rice are particularly at risk of being produced by slave labour in India and imported by major G20 economies.

According to the World Bank, in 2017 USA imported nearly 8.2 billion US\$ worth of textiles and garments from India which was 16.20 percent of its total textile imports while UK imported some 2 billion US\$ worth of textiles and garments which was 21.75 percent of its total textile imports (World Bank Country Profiles).

India is the second largest cotton yarn producer in the world after China and, several well-known international brands such as Marks and Spencer, H&M, Zara, C&A, Tesco, Walmart and Primark source textiles and garments from India. The National Dalit Movement for Justice in India, made presentation at the European Parliamentary hearings on caste and slavery in supply chains of global multinational companies operating in India (NDMJ 2018). One such employer operated scheme in the federal state of Tamil Nadu which is a major exporter of textiles and garments is known as ‘Sumangali’ which perpetuates slavery amongst women from the lower castes. The term ‘Sumangali’ in Tamil language refers to “an unmarried girl becoming a respectable woman by entering into marriage” (Franciscans International 2012: 20). The scheme has been running since the 1980s and is also called the ‘marriage assistance scheme’. Essentially, employers offer cash advance loans to poor Dalit families who cannot afford to pay for their daughter’s wedding. In return the girl from the family has to work as a bonded labourer in the garment factories for at least 3 to 5 years to repay the loan given to her parents. The girls are reportedly treated in the most inhumane manner, not paid any wages at all or, part of their wages are withheld, they live and work in the most unhygienic conditions, are starved and deprived of medical assistance. Many of these girls are victims of mental and physical abuse leading to ill-health and sometimes death (ibid; ICN 2016; Nathan 2018).

In 2008, the BBC1 Panorama programme highlighted the plight of child labour employed by Primark suppliers in garment factories in India. In response, Primark cancelled millions of pounds worth of contracts with three of its clothing suppliers in the country for what it called “wholesale deception” (Hopkins 2008). However, despite public outcry against such modern -day slavery, recent evidence suggests that large British retailers Primark and Topshop continue to employ children as young as 14 years old in their supply chains in India (Barr 2018). Caste-based slavery is also widely reported in agriculture and agro-based industries, mining, construction, work in brick kilns, leather

and tanning industries, carpet industry, chemicals and fireworks industries in several states of India (source: Bandhua Mukti Morcha and Bachpan Bacho Aandolan websites).

### **Regulations on Modern Day Slavery and Transparency in Supply Chains:**

Governments of some economically developed countries have enacted laws that have extra-territorial reach to promote greater transparency in supply chains of businesses that are registered or operating in their countries and have overseas supply chains through contractors and sub-contractors. This is largely in response to public outcry in the western world over modern day slavery allegedly perpetuated by MNCs in developing countries evident through instances like the Rana Plaza garment factory collapse in Bangladesh where 1,135 people died and hundreds of others were seriously injured (The Guardian July 18, 2016). This move towards extra-territorial legislation is also a result of the failure of employer created bodies in collaboration with voluntary organizations to effectively monitor and deal with slavery in transnational supply chains in developing countries. For instance, the Social Accountability International (SAI: [www.sa-intl.org](http://www.sa-intl.org)) a USA based voluntary organization which offers training and certification on labour rights to MNCs and has well-known corporate partners such as GUCCI, Chiquita and Tchibo had certified a textile factory in Pakistan as compliant with SAI standards in the areas of health and safety, child labour and minimum wages just a few weeks before the factory was destroyed in fire killing over 200 workers (New York Times September 19, 2012).

Following the Rana Plaza Bangladesh tragedy, European retailers, trade union officials and governments worked together to create an international accord on Factory and Building Safety in Bangladesh. The 'Accord' is a legally binding agreement aimed at committing funds from large MNCs, governments and trade unions to promote health and safety in garment factories in Bangladesh which supply ready-made garments to US and European retailers. Not many US companies signed up to this Accord in the fear that it would create third party interest and litigation in the US (Hathaway and Fontana 2018). The Accord website reveals only three US companies have signed up to the Accord out of a total 220 western companies largely from Europe (<https://bangladeshaccord.org/signatories>).

The extra-territorial laws that govern transnational supply chains are: a) the California Transparency in Supply Chain Act (2010), b) the US Federal Acquisition Regulatory Anti-trafficking Provisions (FAR 2015), c) the UK Modern Slavery Act 2015, d) French Penal and Regulatory Code 2017 and more recently the Australian Modern Slavery Act 2018. The Canadian government too is expected to bring in a similar regulatory code that governs overseas supply chains of Canadian companies and others which operate from Canada (de Hass 2019).

The 2015 FAR code is aimed at promoting zero-tolerance for slavery and coerced labour in any part of the supply chain of federal contractors doing business with the US government. The US government is the world's largest consumer of goods and services and contracts out services that transcend national supply chains. The 2015 FAR regulation puts the onus on the contractors to ensure that the entire supply chain is free of human trafficking and forced labour. There is a statutory obligation on federal contractors to a) prohibit their employees and sub-contractors from engaging in trafficking related activities, b) cooperate with and provide access to enforcement agencies investigating complaints of trafficking and forced labour and, c) mandatory disclosures of any information received from any source about such violations by sub-contractors, agents, employees anywhere in the supply chain. Violations under the FAR 2015 regulation include: employing forced labour, misleading/fraudulent recruitment practices, denying employees access to their identification documents, non-payment of transportation costs, using contractors and sub-contractors who fail to comply with local labour laws, charging recruitment fees to employees, failure to provide an employment contract if necessary in the employee's native language prior to the employee's departure from his/her home country (Hathaway and Fontana 2018: 8-9).

Federal contractors with contracts worth over US\$ 500,000 have additional requirements on disclosures, due diligence and to certify annually neither the company nor its employees have engaged in trafficking related activities and have taken appropriate remedial action where such incidences were identified. The penalties under the FAR 2015 are also very stringent and include: imprisonment of employees if they have made false annual certifications, have not shown due diligence or have knowingly avoided learning the truth. Financial penalties include loss of contract/award fees,

termination or suspension of contract payments and, debarment of offenders from federal contracts (ibid: 10).

In contrast to the FAR 2015 regulation, the California Transparency in Supply Chain Act 2010 is a light-touch regulation which only requires companies to disclose on their websites the efforts they have made to identify the risk of slavery and human trafficking in their supply chain. The Act aims to provide greater information to consumers to inform their purchasing decisions of goods and services. Companies that fall within the ambit of this law are those with annual worldwide gross earnings exceeding \$100 million USD and doing business in California. The disclosures that are required under this law relate to whether the company has verified its product supply chains to assess the risk of slavery, has undertaken audits of suppliers to evaluate statutory compliance, require direct suppliers to certify that materials are free of forced labour, provide certain employees and managers training on slavery and maintain internal accountability standards (Johnson Jr 2015 cited in Hathaway and Fontana 2018). It is argued that compliance with this law is straightforward as simply saying that the company has done nothing to assess the risk of slavery in its supply chains would be an acceptable disclosure. In the event of complete failure to make any disclosures whatsoever, the state Attorney General's Office has the power to bring legal proceedings against the company to seek disclosures (ibid).

There have been several lawsuits filed by consumers against MNCs in the USA for failure to disclose information on the use of indentured labour in their global supply chains (Hathway and Fontana 2018: 13). Some of the notable lawsuits were those filed by consumers against COSTCO and their suppliers CP Foods for using slave labour trafficked from Thailand in the manufacturing processes of shrimps/prawns sold in the USA (Lawrence 2015). Another lawsuit by Melanie Barber, et al. v. Nestle USA Inc, et al pertains to the alleged use of indentured labour by Nestle in the manufacturing supply chains of its cat food. The plaintiffs in these law suits argued that if the companies had disclosed the use of slave labour in their overseas supply chains on their product labels, the consumers would not have bought their products. Thus according to the plaintiffs failure of the companies to disclose slavery in supply chains was violation of the California Transparency in

Supply Chains Act as well as other related US statutes pertaining to unfair competition, legal remedies and false advertising. These lawsuits were unsuccessful in the California federal district court but were challenged by the plaintiffs in the US Court of Appeals for the Ninth Circuit in 2017 (Hathway and Fontana 2018: 14). However, on 4 June 2018, the Ninth Circuit court ruled against the plaintiff in a class action suit *Hudson v. Mars* on the grounds that the company had disclosed on its website the possibility of forced child labour being employed in the manufacture and processing of coca in the Ivory Coast but that the California Transparency in Supply Chain Act does not require the defendants to disclose this information in its product labelling. The court also ruled that failure to disclose the information on harmful labour practices in its supply chains did not cause any defect in the product or an unreasonable safety hazard to consumers. On 10 July 2018, the Ninth Circuit court also dismissed similar consumer class actions brought against MNCs under the same statute including *Wirth v. Mars*; *Barber v. Nestle*; *Hughes v. Big Heart Pet Brands*; *De Rosa v. Tri-Union Seafoods LLC*. Lawyers however point out the importance of disclosures on company websites without which Mars would have lost the case (Funk and Sipos 2018; Lammi 2018; Aiken, McHugh and Agnew 2018)

The UK Modern Slavery Act (MSA) 2015 largely mirrors the intent of the California Transparency in Supply Chain Act 2010 whereby it relies on voluntary disclosures by companies about their due diligence and endeavours to end slavery in their supply chains. The intent being that such disclosures will inform consumer purchasing decisions and public perceptions about the company's business practices. Thus, the risk of reputational damage and potential business losses could force companies to act ethically and eradicate slavery in their supply chains. Going by the examples of major UK retailers like Primark, Top Shop who operate in India and have admitted to using children aged 14 years in their garment supply chains in 2018, the efficacy of the UK Modern Slavery Act seems limited. This was acknowledged by the May 2019, Independent Review of the Modern Slavery Act undertaken by a parliamentary committee under the chairmanship of Mr Frank Field MP. Section 54 of the MSA requires commercial organizations with an annual global turnover of £36 million or more to make annual disclosures on steps they have taken to ensure that slavery and

human trafficking is not taking place in their businesses or supply chains. However, under the MSA too, firms can legitimately declare that no such steps were taken. Unlike the US FAR 2015 regulation or the more recent Australian Modern Slavery Act 2018, the UK MSA 2015, does not cover public sector organizations and disclosures from public sector organizations are currently voluntary in nature. Businesses operating in the UK have expressed displeasure about confusions surrounding level of due diligence and disclosures required, lack of enforcement and penalties which the parliamentary review committee has concluded are some of the salient reasons for variable and poor quality disclosures by companies covered by the Act and, generally low levels of compliance with the law. The UK Home Office confirmed, that it has written twice to CEOs of nearly 17,000 UK-based organizations which fall within the remit of the Act who were identified as failing to meet their legal obligations (UK Home Office Response to Independent Review of MSA 2019).

The review committee made several recommendations to the UK Home Office regarding amendments to the MSA 2015 and in particular Section 54 of the Act which deals with transparency in global supply chains. Specifically, the recommendations state that individual companies must be responsible for determining if they need to provide statutory disclosures on slavery in supply chains, removal of provisions within the statute which allow companies to report they have not undertaken due diligence to eradicate modern slavery in their supply chains, disclosures must go beyond due diligence and state the precise steps taken by the companies to eradicate slavery in their supply chains. Most importantly, the parliamentary committee recommended that The Companies Act 2006 should be amended to include reference to eradication of modern slavery in their annual statements and that failure to comply with statutory disclosures or to take appropriate actions when slavery is detected in the supply chains should be treated as an offence under the Company Directors Disqualification Act 1986. The committee also recommended inclusion of UK Public sector employers within the ambit of the law as is the case with US FAR 2015 (Independent Review of MSA (May 2019): 45-46).

In response to the parliamentary committee's report, the UK Home Office has offered to include UK public sector organizations which spent £255 billion on public procurement in 2016-17 within the MSA. However, the Home Secretary has refused to include disclosure requirements on

modern slavery as a statutory requirements under Companies Act 2006 or allow for disqualification of company directors and treating non-disclosures on precise steps taken to eradicate slavery in global supply chains as an offence under the Company Directors Disqualification Act 1986. The Home Office response offers to publicly name companies which have been non-compliant with the MSA 2015 but thereafter continues to rely on disclosures leading to more informed purchasing decisions by consumers and public scrutiny by voluntary organizations (UK Govt Response 2019).

To what extent the UK government's soft-touch approach is likely to work in ensuring statutory compliance by covered companies under the MSA 2015 is a moot question. But it demonstrates the political stance of the present government aimed at minimizing the regulatory burden on large businesses and limiting the scope of any state intervention in the event of non-compliance with anti-slavery legislation to essentially advising the concerned companies and at best naming them publicly as a last resort. The government's underlying reasoning that it is ultimately the consumers and public at large who should decide the appropriate course of action against non-compliant companies leaves a lot to be desired. Consumer class actions in the USA against MNCs under the California Transparency in Supply Chain Act 2010 have so far not resulted in favourable judicial interpretations. And, a recent academic study in the UK by Carrington, Chatzidakis and Shaw (2018) aptly titled 'Consuming Modern Slavery' suggests a combination of consumer ignorance, ambivalence and indifference towards modern slavery and child labour in third world countries.

The most recent piece of extra-territorial legislation passed by a developed country is the Australian Modern Slavery Act 2018 which came into force on 1 January 2019. This law relies on mandatory disclosures by public and private sector organizations operating in Australia with an annual revenue of \$100 million or more. The law broadly defines modern slavery to include; slavery, child labour, debt bondage, servitude, slavery like practices, forced marriages and deception in labour recruitment. Mandatory disclosures required include; description of the structure, operations and supply chains of the organization, its risk assessment of modern slavery in its supply chains and the remedial action taken to overcome this risk e.g. providing staff training about modern slavery, designing policies to combat slavery in supply chains. The Australian MSA 2018 extends to "acts of

omissions, matters and things outside Australia”. The public at large will have access to annual modern slavery statements released by concerned companies through a government operated central repository. However, even the Australian statute relies on consumer action as a result of publicly naming companies who have failed to take steps to eradicate slavery in their global supply chains and unlike the US FAR 2015 regulation does not yet have provisions for criminal prosecution being brought against the organization covered by this Act.

The French government in 2017 has taken a much stricter and two-pronged approach with its anti-slavery legislation. The Criminal Code has been amended to create new offences relating to human trafficking and slavery. This includes, human trafficking, forced labour or service and illegal confinement. Offences of such nature are punishable by imprisonment by up to 20 years. Exploitation is defined as “putting the victim at the disposal of the perpetrators, or of a third party for purposes among others of forced labour or service, reduction to servitude, subjecting the victim to living or working conditions contrary to his dignity, or forcing the victim to commit a crime or other illegal act.” (Hathaway and Fontana 2018: 15-16). Penalties for human trafficking and slavery include imprisonment ranging from 7 to 15 years depending upon the age of the victim, number of victims and a fine of up to 1.5 million Euros. Where a corporation is the ‘legal person’ then under the French Criminal Law the legal person is responsible for acts of their representatives carried out on their behalf. And in these instances, fines can be increased by up to 5 times for an offence of human trafficking and reduction to slavery. A corporation may be liable to pay fines up to 7.5 million Euros. (ibid: 17).

The French National Assembly, the French Senate and the French Constitutional Court have also amended the Commercial Code to impose a “duty of vigilance” on all businesses with their head office in France employing 5000 or more employees between the parent company and any subsidiaries in two consecutive fiscal years. The commercial code also covers “businesses which employ 10,000 or more employees between parent company and any its subsidiaries in two consecutive fiscal years irrespective of where their head offices are based” (ibid: 18). The duty of vigilance extends to all contractors, suppliers and any company with which there is an established

commercial relationship. Failure to meet these statutory provisions “allows any party with sufficient legal interest to bring an action in quasi-delict (equivalent to tort in Anglo-American common law) before the proper court to claim damages to compensation for loss caused by failure.” There is no upper limit for the damages that courts can award (ibid 18). These statutory provisions are likely to bolster trade union and civil society efforts to eradicate child labour and slavery in Indian supply chains. In 2018, six hundred French companies were operating in India employing 400,000 people and investing around 1 billion euros annually (Business Today, 3 November 2018). Major French MNCs in India are Saint-Gobain, Schneider Electric, and Renault.

### **Domestic Anti-Slavery Legislation in India:**

There is a substantial body of evidence which shows that Dalits or the SC/STs and in particular women and children from these communities are trafficked by agents from the rural areas and parts of India which are affected by natural disasters and sold to contractors and sub-contractors as bonded labour to work in the textile and garment sector supply chains mainly in the metropolitan cities but also as farm labour, domestic labour or employed in hazardous occupations such as chemical factories, leather tanneries, mines, brick kilns and construction work (National Commission for Scheduled Castes, Govt. of India 2016; ICN 2016; Nathan 2018).

In 1976, the Government of India passed the Bonded Labour System (Abolition) Act. The law states that any form of bondage by ascent or descent, forced or partly forced, due to customary and social obligations, by reasons of birth in a particular caste or community where labour is being discharged due to consideration of advance payment irrespective of whether or not there is documentary evidence of such payments and, where the freedom of the person or any of his/her family members or dependents is curtailed to move freely, seek alternative employment or to sell their property at market value is deemed as debt bondage and is unlawful. In two landmark judgements, *‘People’s Union for Democratic Rights & others vs. Union of India (1982) and, Bandhua Mukti Morcha vs. Union of India & others (1984)*, the Supreme Court of India ruled that anyone who is made to work for less than the minimum wage is to be considered a bonded labour (Dasgupta 2017).

In 2016, the government of India introduced an enhanced rehabilitation scheme for bonded labourers who are rescued by NGOs. This scheme entailed a payment of Indian rupees 100,000 to each worker in addition to an immediate cash relief of rupees 20,000. The rehabilitation amount is increased to rupees 200,000 in case of women/children and rupees 300,000 in case of Dalit workers from the lower castes. Despite the abolition of bonded labour system and a rehabilitation plan, the ILO and Walk Free Foundation report that in 2017 there were 18.3 million bonded labour in India working in agriculture and various industrial sectors. The report also estimates that nearly 86 percent of these bonded labourers are from the scheduled castes and tribes (ibid).

Reportedly, very few if any rescued bonded labourers have received the financial aid promised by the government. This is because the law states that the financial assistance is payable only upon conviction of the employer. This rarely ever happens. According to Swami Agnivesh who runs an NGO called the Bandhua Mukti Morcha which has rescued 178,000 bonded labourers “We have not come across any punishment in all these cases. In a handful of cases, they had to pay a few hundred rupees as fine, and even that was done after a long time had passed. What we do find is that there is some sort of collusion between the state machinery, local politicians and the keepers of bonded labour. So though the labourers are laid off because of the pressure of the law, the employers who should be charged, prosecuted and convicted go unpunished” (cited in Dasgupta 2017). The government of India it seems has now amended the law after intensive campaigns by civil rights organization to grant immediate relief of rupees 20,000 irrespective of the outcomes of criminal prosecution against the employers of bonded labour (ibid).

The second domestic legislation relates to the work of children i.e. The Child Labour (Prohibition and Regulation) Act 1986. This Act was amended by the government in October 2016. The amended law allows children under the age of 14 years to work in ‘family enterprises’ and limits the scope of the definition of “hazardous” works by reducing the list of hazardous occupations and processes from 81 to just 3 which include mines, inflammable substances or explosives and, ‘hazardous process’ as defined in the ‘Factories Act 1948’. The amendment fails to recognize that the Factories Act only applies to the work of adults in the formal (regulated) sector enterprises and not

children who are employed in the unregulated or informal sector of the economy. These amendments have been widely criticized by civil rights groups (Ganotra 2016; Nathan 2018). Primarily, these amendments legitimize the use of child labour in most hazardous occupations such as carpet weaving, textiles, brick kilns and construction activities, gem cutting, handling chemicals such as pesticides, work in slaughter-houses and working in agriculture or agro-based industry.

The amendments loosely define ‘family enterprise’ which “means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons.” (section 3 (1)b of The Child Labour (Prohibition and Regulation) Amendment Act 2016). Ganotra (2016) argues that such broadened definition of family enterprise could permit all forms of sub-contracting, increase the trade of human trafficking and perpetuates caste-based slavery which binds children to traditional caste occupations which are dehumanizing to Dalits. It is disturbing to see that the government has amended the child labour legislation at a time when the official census records demonstrate a meagre 2.2 percent reduction in child labour between the age group of 5 to 14 from 2001 to 2011. Further disaggregation of this data reveals that there was a 37 percent increase in the incidence of child labour in the age group of 5 to 9 years (ibid). Thus the 2016 amendments are only likely to exacerbate the problems of child labour in India and have effectively legalized the use of child labour in supply chains of MNCs in textiles, leather goods and other hazardous trades. It is not surprising then that UK retailers Primark and Topshop continue to employ children aged 14 years in their supply chains in India (Barr 2019). They are effectively complying with the law of the land.

This raises a pertinent question as to whether a public or private sector company in the USA, UK, Australia or France can be held liable for violation of extra-territorial anti-slavery legislation passed by these countries if the company is complying with the domestic anti-slavery legislation in India which ostensibly perpetuates caste-based slavery and exploitation of children and adults largely from the SC/ST communities. Under such circumstances, can the aggrieved person or third parties such as trade unions or NGOs representing them pursue legal action in US or European courts when the defendants are compliant with the Indian anti-slavery laws? One would expect that where such

violations create criminal liabilities for the company covered by the extra-territorial anti-slavery laws (e.g US FAR 2015 or French Codes 2017) the affected individuals or third parties representing them may be able to bring criminal prosecution under the statutes in the countries where the extra-territorial laws were enacted. Civil prosecutions under consumer protection rights such as those brought under the Californian federal transparency in supply chain laws have so far been unsuccessful.

Such legal contingencies covered within both national and extra-territorial jurisdictions are yet to be tested in the Indian courts and the US or European courts. However, Hathaway and Fontana (2018: 4-5) report that major US brands such as Gap, Wal-Mart and 20 others have settled out of court law suits worth US\$ 20 million with labour unions and NGOs who had taken legal action against them for using slave labour in factories located in the Pacific island of Saipan which is a part of US Commonwealth of the Northern Mariana Islands (also see: <https://www.business-humanrights.org/en/us-apparel-cos-lawsuit-re-saipan-0>)

There appears to be some *de jure effect* of the extra-territorial legislations in prevention of slavery in Indian supply chains of global corporations. This could be attributed to a range of factors viz. the growing awareness of extra-territorial legislations amongst MNCs in the Western world, rising union membership levels in India since 2008 in almost all sectors of the Indian economy, rise in the number & intensity of general strikes, greater scrutiny in the western media of MNCs and their supply chains in India and, initiatives taken by at least some European governments to work with trade unions and NGOs in India to eradicate child labour and bonded labour in supply chains.

In 2018, the German Federal Ministry for Economic Cooperation and Development launched a 'Multi-Stakeholder Initiative' in the Indian state of Tamil Nadu (MSI-TN) which as reported earlier in this paper is a centre for textiles and ready-made garment supply chains for global brands. The partners in this initiative are the German government, MNCs – Hugo Boss, Kik, Otto Group, and Tchibo, NGOs such as TransFair e.V., Brands Fashion and FEMNET, the Department of Labour, federal government of Tamil Nadu and local NGOs in the state. The MSI-TN acknowledges that there is a widespread violation of human rights and exploitation of workers especially women and children

in the garment supply chains in Tamil Nadu and aims to work with multiple stakeholders to eradicate slavery in the Indian garment supply chains. The specific actions involve promoting social dialogue between NGOs representing workers, local employers/textile mill owners, government officials, offering training programmes to employers and state inspectors employed in the Department of Labour about international anti-slavery legislations and human rights compliance. The MSN-TN aims to reach out to 300 spinning mills in Tamil Nadu by February 2020 (source: Partnership for Sustainable Textiles [www.textilbuendnis.com/en](http://www.textilbuendnis.com/en)).

A similar initiative has been launched by the Dutch government in 2016 which aims to forge a broad alliance between the Dutch International Responsible Business Conduct (IRBC 2016), Government of Netherlands, Industry associations (VGT, Modint, INretail), Trade Unions (FNV, CNV), NGOs (Arisa – formerly, Indian Committee of the Netherlands), Four Paws and Solidaridad, and some company representatives from individual MNCs. It is yet to be seen how far these international state initiatives to abolish slavery in India yield favourable results. The *de facto* effects of the extra-territorial legislations in conjunction with tripartite initiatives of some foreign governments in abolishing bonded labour, slavery and human trafficking in India is matter of future investigation.

The labour movement in India has increased its membership and mobilization capacity. The aggregate union membership in India has increased nearly three times from around 35 million workers to around 100 million workers from 2008 to 2013. Union density of waged non-agricultural workers too has increased from around 20 percent in early 1990s to about 38 percent in 2012. Indian unions affiliated to all major political parties have made significant progress in organizing workers in the informal sectors of the economy including those employed on casual and temporary contracts through sub-contractors in manufacturing, services sectors, agriculture, construction and mining industry. The average union membership growth rate in the ‘manufacturing’ industry over a 20-year period from 1992 to 2012 was 58.64 percent while in the ‘community, social and personal services’ it has been 173.29 percent. Mining and quarrying industry which employs a large proportion of SC/ST workers has also seen a union membership growth rate of 110.40 percent. While, aggregate union

membership among casual workers remains low nationally, within specific industry sectors, Indian trade unions appear to have organised a large proportion of casual workers. For instance, the proportion of casual workers who have joined unions in the ‘mining and quarrying industry’ has risen from 14.77 percent in 2009-10 to 67.60 percent in 2011-12. Similarly, unionization amongst casual agricultural workers has risen from 3.15 percent to 38.36 percent over the same period (Badigannavar and Ghosh 2019).

There have been more than a dozen nation-wide general strikes in India organized by national union federations over the past 10 years with over 100 million workers from formal and informal sectors participating in these strikes. In September 2016, more than 150 million workers across the Indian economy participated in the general strike action which the British newspaper The Guardian described as the world’s largest industrial action (ibid). The reinvigorated labour movement in India is in a stronger position to engage with the Indian government and foreign MNCs with supply chains in India and western governments which have enacted extra-territorial anti-slavery laws.

### **The Economic Case for Doing Business with SC/ST Entrepreneurs in India.**

While there is a large body of extant literature that demonstrates economic marginalization of SC/STs in India, there isn’t a substantial body of literature which examines how self-employed entrepreneurs from SC/STs have fared in the recent years. Studies which have examined caste and entrepreneurship in India have generally concluded that despite increased political participation of SC/STs at various levels self-employed SC/ST entrepreneurs are substantially worse off when compared to those from upper castes (‘Others’) or even those classified as other backward castes (‘OBC’). These classifications are used by the government of India in its various demographic surveys and official publications. The reasons given for the poor economic performance of SC/ST owned enterprises are largely the lack of social capital and networking which other caste groups have access to. This underperformance of SC/ST entrepreneurs is found even in states which are known to have progressive policies on education and social welfare aimed at the lower castes (e.g. Iyer, Khanna and Varshney 2013; Thorat, Kundu and Sadana 2010; Jodhka 2010).

Most of the quantitative studies that examine the economic performance of SC/ST enterprises in India have relied on data drawn from the Economic Census of India (e.g. Iyer et al. 2013 analyse Economic Census data on enterprises by caste ownership from 1990, 1998 and 2005 rounds). While the Economic Census data on enterprises is helpful it is silent on some key performance indicators of enterprises such as the Gross Value Added (GVA), Fixed Assets, and whether the business is expanding, stagnant or contracting. In this article, we use the official National Sample Survey Office (NSSO) 'Enterprise Round' data for 2010-11 and 2015-16 (67<sup>th</sup> & 73<sup>rd</sup> rounds respectively) which captures these salient performance indicators by the caste of enterprise owners (i.e. SC, ST, OBC and Others).

The NSSO enterprise rounds provide data from unincorporated non-agricultural enterprises excluding construction. The self-employed entrepreneurs are officially classified as 'Own Account Enterprises' (OAE). In 2010-11, the estimated number of OAE owned by STs were 2.1 million which increased to 2.35 million in 2015-16 thus recording a compound annual growth rate (CAGR) of 2.25 percent. The estimated number of OAE owned by SCs were 7.3 million in 2011 which remained about the same at 7.2 million in 2016. The corresponding figure for OAEs owned by other backward castes (OBC) were 21.72 million in 2011 which increased to 26.47 million enterprises in 2016 thus recording a CAGR of 4.03 percent. The OAEs owned by people from the upper castes (Others) recorded a marginal decline from 16.74 million in 2011 to 16.19 million in 2015-16. Thus, on the whole entrepreneurship growth amongst the lower castes including the SC/STs and OBC has surpassed that for the upper castes from 2010-11 to 2015-16. On one hand this could be construed as a positive development of rising aspiration and entrepreneurship amongst the lower castes in India. An alternative explanation could be that members of the SC/ST and OBC communities are excluded from regular waged/salaried employment in the formal sector (more so in the private sector) and hence are forced into self-employment. While this possibility cannot be entirely ruled out given the nature and extent of caste-based discrimination in India, a more detailed analysis of the NSSO enterprise data reveals an optimistic picture.

We examined the extent to which businesses (OAEs) owned by different caste groups have contracted annually from 2011 to 2016. Business contraction as opposed to expansion is likely to be an indicator of poor financial health and distress. While, all enterprises have shown a degree of contraction during this time period, those owned by SCs and STs have shown the least contraction when compared to enterprises owned by OBCs and upper castes (Others). The percentage of business contraction by caste groups were: ST (1.81), SC (2.68), OBC (8.62) and Others (9.97). The mirror image of contraction would be business expansion. Here, enterprises owned by OBCs have shown 2.27 percent expansion, those owned by scheduled castes (SC) have recorded a negative growth of -0.81 percent. However, this is significantly lower when compared to the -4.37 percent annual negative growth recorded by enterprises owned by the upper castes.

We then calculated the CAGR of Gross Value Added (GVA) per enterprise by caste group and sector for the period 2010-11 to 2015-16. Here the picture is somewhat mixed but nevertheless fairly positive for SC/ST owned enterprises. Manufacturing enterprises owned by the upper castes (Others) have done substantially better in terms of GVA growth (10.26 percent) as compared to all other caste groups. However, 'trading' enterprises owned by the SCs have recorded a growth of 10.72 percent which is marginally higher than the growth recorded by trading enterprises owned by the upper castes (10.38 percent). For service sector enterprises, those owned by STs have recorded a growth of 13.17 percent which is higher than those owned by other caste groups i.e. SC (11.33), OBC (11.26) and Others (12.06) percent respectively. Even in the services sector, the GVA growth of SC owned enterprises is at par with that of OBCs and is only slightly lower than the enterprises owned by upper castes.

Fixed assets are an indicator of firms' financial health particularly in terms of their ability to borrow capital against those assets. Here too, SC/ST entrepreneurs have outperformed those from the OBCs and upper castes. From 2011 to 2016, the CAGR for fixed asset per enterprise of ST owned manufacturing firms was 3.69 percent and those of SC owned firms was 2.60 percent. This compares favourably with the fixed asset CAGR for manufacturing firms owned by OBC (0.87) and Others (1.81) percent respectively. A similar pattern is seen in the 'trading' sector firms where ST owned

firms have recorded a fixed asset growth of 11.45 percent, while the corresponding growth for SC owned firms was 3.94 percent. This is substantially higher than the fixed asset growth for OBC owned firms (2.61 percent) and those owned by Others which recorded a negative growth of -0.78 percent. Fixed asset growth in service sector firms owned by STs (10.37 percent) outstripped that of similar firms owned by all other caste groups (SC: -1.46; OBC: 4.69 and Others: 2.94 percent).

Thus, on the whole our initial assessment from the NSSO data from 2010-11 and 2015-16 suggests that despite the social disadvantage suffered by the lower castes in India, SC/ST entrepreneurs have performed reasonably well in recent years and in some cases have outperformed enterprises owned by OBCs and upper castes on key economic indicators. There could be several reasons for the improved economic performance of SC/ST owned enterprises in recent years in India. A fine-grained analysis of these reasons would require primary qualitative and quantitative data. This would be our future endeavour but nevertheless in this article, we offer some plausible explanations for our findings.

According to Weiss (2003) economic and social policies of the state are not entirely subservient to the dictates of multilateral institutions such as the World Bank or IMF. National governments do exercise their choices based on various contingencies including electoral politics. Political scientists often refer to this phenomenon as 'clientelism' (Stokes 2011) which refers to political favours being given to certain constituents in anticipation of voting support in elections. Caste is a major political factor in Indian elections and political parties of various ideological persuasions have attempted to attract votes of the SC/ST and OBC caste groups by offering them various incentives such as reserved quotas in education and public employment as well as incentives in the forms of subsidies and financial credit for the self-employed (Shourie 2006; Kothari 2010). With SCs and STs constituting 25.2 percent of the national population these caste groups form a substantial vote bank for all political parties (Census 2011).

In 2015, the central government launched the 'Stand-Up India' institutional credit scheme to promote economic participation of scheduled castes and tribes and particularly women entrepreneurs with greenfield projects. The scheme financed microenterprises with a capital ranging between 1

million to 10 million Indian rupees and every local branch of all public sector banks were asked to finance at least one such beneficiary with a proposal for greenfield enterprise in either manufacturing, services or trading sectors. The Central government launched a bespoke financial institution called the Micro Units Development Refinance Agency (MUDRA) Bank to lend credit to small entrepreneurs particularly women and those from the SC,ST and OBC caste groups. For the financial year 2015-16, 23 percent of all the beneficiaries belonged to the SC and ST caste groups. The government also created a 'National SC/ST Hub' with a budget allocation of around US \$ 68 million to provide professional support for SC/ST micro and small enterprises to help them secure public procurement contracts. Under the 2012 Public Procurement Policy for Micro and Small Enterprises Order, 4 percent of all purchase of goods and services is to be done through enterprises owned by SC/ST entrepreneurs (MSME, Govt of India website).

It appears that SC owned enterprises have benefited from government subsidies at least at par with other caste groups and in particular the upper castes. And both SC and ST owned enterprises have done better than OBC owned enterprises. For instance, there was a 15.64 percent rise in SC owned enterprises from 2010-11 to 2015-16 which reportedly received government subsidies. The corresponding figures over the same period for other caste groups were; ST (3.36), OBC (-6.26) and Others (16.53) percent respectively. Thus, although ST owned enterprises do not report the same level of state support as SC owned enterprises they have done better compared to the OBC owned enterprises which have reported a fall in state subsidies (Authors calculations from NSSO 67<sup>th</sup> and 73<sup>rd</sup> rounds).

Government initiatives targeted at SC/ST communities appear to have electorally paid off for the ruling BJP government at the centre. The BJP has increased its vote share in 2019 general elections compared to its 2014 electoral performance in several (though not all) federal states with higher population of SCs and STs. For example, in the federal state of West Bengal with a SC/ST population of 29.3 percent, the BJP increased its vote share from 17 percent in 2014 to 40.3 percent in 2019 general elections. In the state of Odisha with a SC/ST population of nearly 40 percent, the BJP increased its vote share from 21.9 percent in 2014 to 38.4 percent in 2019 and, in an industrially

developed state like Karnataka with a SC/ST population of 24.1 percent, the BJP vote share increased from 43.4 to 51.4 percent between the two general elections (Election Commission of India). Thus, political clientelism may explain to some extent the higher level of state support for SC/ST owned enterprises.

Previous research on caste and entrepreneurship in India identifies weak social networks as a possible factor that explains poor performance of SC/ST owned enterprises in India up until 2005 (Iyer et al. 2013). This situation may have changed in subsequent years which is reflected in improved economic performance of SC/ST owned firms in 2015-16. The Dalit India Chambers of Commerce and Industry (DICCI) which was established on 14<sup>th</sup> April 2005 has become a very influential industry association with representation on all major government bodies on trade and commerce at both national and federal levels. DICCI has branches in 18 Indian states and 7 international branches. Its aim as stated on its website is to 'Fight Caste with Capitalism'. Its primary objective is to provide support to SC/ST entrepreneurs to set up successful business ventures and create jobs in the labour market rather than seek reserved job quotas in the public sector employment.

The DICCI works with the government and is represented on the National SC/ST Hub launched by the Ministry of Micro and Small Enterprises. It was instrumental in the launch of the state sponsored MUDRA Bank and its related credit schemes to support Dalit entrepreneurs. In 2015, DICCI lobbied the state government of Telangana and secured reservation of 22 percent of all industrial land in the federal state for Dalit entrepreneurs. The Chief Minister of the state also agreed to provide up to nearly ₹500,000 in margin money to Dalit entrepreneur to secure a bank loan without a collateral (Business Standard News 13 Feb 2015). DICCI has successfully linked private investors with SC/ST entrepreneurs and has thereby facilitated access to market finance for Dalit entrepreneurs. It regularly organises trade exhibitions for its members and has linked over 500 SC/ST enterprises with major corporate houses in their supply chains (DICCI website). These initiatives are likely to have enhanced the social capital of SC/ST entrepreneurs and contributed to their economic success.

## **Conclusion**

The primary aim of this article was to explore whether ‘caste’ matters when doing business in India. In our view it does when caste-based discrimination is conceptualised as modern day slavery (ISDN 2018). Nearly one in four persons in India belongs to the SC/ST or ‘Dalit’ communities who are vulnerable to socio-economic exploitation and discrimination in the labour markets. A disproportionately large number of Dalits are employed in the informal sector of the Indian economy and many work in exploitative conditions in the supply chains of global brands (ICN 2016; Nathan 2018). The efficacy of domestic anti-slavery laws in India viz. Bonded Labour System Abolition Act and the Child Labour Regulation and Abolition Act are limited. There is however, a growing body of extra-territorial anti-slavery legislation enacted in the USA, UK, France and Australia which governs transnational supply chains of MNCs operating from these countries. While consumer class action suits brought against MNCs under the California Transparency in Supply Chain Act have so far not yielded favourable judicial interpretations in the USA, they appear to have put the global business community on high alert of greater public scrutiny and future legal challenges with regards to labour practices in their downstream supply chains (Hathaway and Fontana 2018; Business Roundtable 2019).

The extra-territorial legislations such as the US FAR 2015 and French Criminal and Commercial Code amendments 2017 are likely to generate greater interest among trade unions and civil society organizations given that their scope includes both civil and criminal liabilities for principal employers based in Western countries for slavery in transnational supply chains. The risk of litigation is real. Major US retailers such as Gap, Nordstrom and Wal-Mart have settled out of court millions of US\$ worth of law suits with plaintiffs who had accused these MNCs of using slave labour in their overseas supply chains (Hathaway and Fontana 2018: 4-5). The issue of caste-based discrimination in India continues to receive increasing attention in multilateral bodies such as the United Nations and European Parliament. The Indian labour movement has made substantial membership gains at national and industry levels and has demonstrated its ability to organize major national strikes. With its political affiliations and increased membership the Indian trade unions are in a stronger position to hold MNCs to account with respect to bonded and child labour practices in their

Indian supply chains. Perhaps a cumulative effect of this is reflected in the initiatives taken by the German and Dutch governments to work with MNCs, national and international trade unions and NGOs to eradicate caste based slavery in the Indian supply chains.

Besides, the socio-legal case, we also explored whether engaging with SC/ST owned enterprises in India offers a sound business case for MNCs. Our analysis of the SC/ST owned enterprises in recent years, suggests that they have done reasonably well in terms of business growth, gross value added, fixed asset growth and securing state subsidies. Caste plays a significant role in the electoral politics of India and it may be that political clientelism has to some extent enabled SC/ST enterprises to improve their performance on some of the key economic indicators. Bespoke industry associations such as the DICCI also appear to have generated the social capital and political influence necessary to boost economic performance of SC/ST entrepreneurs. Above all, the economic performance data of SC/ST owned firms indicates tenacity of these entrepreneurs despite the social disadvantage they suffer. These factors suggest that engaging with SC/ST owned enterprises in Indian supply chains may offer a good business case for global corporations whilst simultaneously enabling them to fulfil their CSR commitments of inclusive business practices.

This article presents initial findings of our analysis of national and international anti-slavery legislation as well as the economic performance of SC/ST owned enterprises using official NSSO datasets. The extra-territorial anti-slavery laws are an emerging field and while we see some *de jure* effects of these laws in stakeholder attempts to eradicate caste-based slavery in Indian supply chains of global brands, the *de facto* effects of these laws over a period of time needs further investigations. Our analysis of economic performance of SC/ST owned firms is aggregated at national level. Further disaggregation of data at federal levels and by industry sectors combined with primary qualitative and quantitative data collected at local levels will yield more nuanced results on the economic case of doing business with SC/ST owned enterprises.

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