

## **Going beyond CSR: Why corporate firms in India should take ‘Modern-Day Slavery’ seriously**

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### **Abstract:**

This article argues that it is high time Corporate India takes human rights violations in their supply chains very seriously. This is in the light of growing transnational modern slavery laws passed by US and European countries which can result in serious litigation costs, reputational damage, restrict access to US and European consumer markets, loss of business and substantial financial costs.

### **Introduction:**

Corporate social responsibility (CSR) has become a buzz word in many countries including India. It largely implies national and global corporate entities trying to off-set the detrimental impact of their business activities with charitable acts of social work and ‘empowerment’. In India, regulatory reforms by the Ministry of Corporate Affairs have apparently resulted in companies spending over 1 trillion Indian rupees (about US\$13,435 million) from 2015 to 2021 (Mampatta 2021).

Typically, CSR activities include financially supporting community development projects in education, health, nutrition and skill development in collaboration with not-for-profit organizations or through in-house company initiatives. While this is a laudable effort on part of corporate firms, it falls short of addressing core human rights issues which lead to modern-day slavery in their supply chains. Addressing these issues should no longer be seen as an act of corporate altruism or philanthropy but a business case imperative to access consumer markets in the Western economies. There are now several transnational anti-slavery laws put in place by developed countries in the Global North which potentially create civil and at times criminal liabilities for officers of global corporations and their down-stream suppliers in the developing countries of the Global South. The legal liabilities are being extended beyond first-tier subsidiaries to sub-contractors and sub-sub-contractors in the supply chains. International labour unions have been able to successfully use these laws to bring law-suits against global brands for using exploitative labour practices in their supply chains. For instance, Wal-Mart and GAP along with other global brands have settled out of court over 20 million US\$ worth of law suits with labour unions and NGOs who sued them in

the US jurisdiction for allegedly employing workers in conditions of modern slavery in their factories in Asia-Pacific region (Hathaway and Fontana 2018).

The cost of negative publicity and reputational damage of such law suits can far outweigh the value of out of court settlements. Boohoo Group Plc, a UK-based online fashion conglomerate which owns well-known brands like Burton, Debenhams, Dorothy Perkins, Wallis and more was accused of employing largely migrant workers in conditions of modern slavery in their sub-contracted factory operations in Leicester, UK. Following these allegations in the media, Boohoo's share price tumbled from a high value of 413.00 pence on 13 June 2020 to 229.50 pence on 11 July 2021 – over 40% erosion in share price. The company until to date has not recovered from these losses.

### **Extra-territorial Anti-Slavery Laws to promote Supply Chain Transparency**

Governments of several 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 Tschibo 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).

A number of extra-territorial laws have been enacted or are to be imminently enacted by various countries. The following laws could be of particular interest to firms operating in India.

1. California Transparency in Supply Chain Act (2010)
2. US Federal Acquisition Regulatory Anti-trafficking Provisions (FAR 2015)

3. UK Modern Slavery Act (2015)
4. French Penal and Regulatory Code (2017)
5. Australian Modern Slavery Act (2018)
6. Netherlands (2022) – The Child Labour Due Diligence Act
7. Germany (2023) – Human Rights Supply Chain Duty of Care Act
8. EU Directive on Mandatory Human Rights, Environmental and Good Governance Due Diligence (2021) – expected to become an EU legislation by 2022 to be incorporated into national regulatory framework of all member states by 2023.

It is beyond the scope of this article to review all of these extra-territorial laws, but I would like to highlight salient features of the US FAR (2015) and the French Penal and Regulatory Code (2017).

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 includes any central or federal agency of the state and potentially a publicly funded body. 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).

According to the Office of the United States Trade Representative (<https://ustr.gov/countries-regions/south-central-asia/india>);

- India was the United States' 10th largest supplier of goods imports in 2019.
- U.S. goods imports from India totalled \$57.7 billion in 2019, up 6.3% (\$3.4 billion) from 2018, and up 172.6% from 2009. U.S. imports from India account for 2.3% of overall U.S. imports in 2019.
- The top import categories (2-digit HS) in 2019 were: precious metal and stone (diamonds) (\$11 billion), pharmaceuticals (\$7.6 billion), machinery (\$3.7 billion), mineral fuels (\$3.6 billion), and organic chemicals (\$2.8 billion).
- U.S. total imports of agricultural products from India totalled \$2.6 billion in 2019, our 14th largest supplier of agricultural imports. Leading categories include: spices (\$271 million), rice (\$230 million), essential oils (\$184 million), processed fruit & vegetables (\$142 million), and other vegetable oils (\$133 million).
- U.S. imports of services from India were an estimated \$29.7 billion in 2019, 3.0% (\$864 million) more than 2018, and 143% greater than 2009 levels. Leading services imports from India to the U.S. were in the telecommunications, computer, and information services, research and development, and travel sectors.

Certain industry sectors listed above are more vulnerable to human trafficking, bonded labour and child labour but also other forms of exploitation of largely migrant workers in India. For e.g. agriculture and agro-based industry, mining, chemicals and manufacture of electronic equipment are sectors with high prevalence of child labour and bonded labour in India. The same applies to leather goods manufacturing, chemicals and tanning industry and jewellery manufacturing sectors. The US and UK import nearly 20% of their cotton yarn and garments from India. The textile industry in Southern India has a very

high prevalence of child labour and bonded labour (Global Slavery Index 2018; Nathan 2018). The employment practices in textile and garment factories would meet the criteria of human trafficking, forced labour and modern-day slavery in US FAR (2015) legislation and, the California Transparency in Supply Chain Act (2010).

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 of 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 with wide-spread supply chains of contractors and sub-contractors in the country.

### **Implications for India:**

The large informal sector in India employs around 92% of the national workforce. Over 80% of those employed in the informal sector belong to the scheduled caste and scheduled tribes (SC/STs) who have suffered historical discrimination, social and economic disadvantage (Kannan 2018). It is the informal sector workers who are often employed in global supply chains and are subjected to employment practices which would meet the criteria of modern slavery as defined in the trans-national anti-slavery laws passed by governments of western countries. Caste-based discrimination in India is associated with human trafficking, child labour and bonded labour (IDSN 2018). The top-5 products which are at a high risk of being products of modern slavery and imported by G20 countries are: laptops, computers and mobile phones – US\$ 200.1 billion, garments (US\$ 127.7 billion), fish and fish produce (US\$ 12.9 billion), Cocoa (US\$ 3.6 billion) and Sugar (US\$ 2.1 billion) per annum (Global Slavery Index 2018). Many of these products are export priorities for Indian industry and hence requires extra vigilance to ensure that employers, contractors and sub-contractors involved in the manufacture or processing of these products meet the stringent criteria of modern slavery in US and European anti-slavery laws and human rights violations are immediately dealt with. In 2020-21, US Customs and Border Protection detained 696 shipments and have 50 active withhold release orders against consignments where there were allegations of modern slavery in the supply chains of the manufacturers. It only takes an online form to be completed by organizations like trade unions or NGOs to report human rights abuses in the production of export goods to US Customs authorities. It can take several months for investigations to be concluded by the US authorities and therefore such detention of goods and consignments impose a substantial financial cost on the manufacturer and their downstream contractors and sub-contractors whose payments would be withheld by US buyers.

The UK based Institute for Human Rights and Business (IHRB 2012) in collaboration with various international stakeholders was instrumental in drafting the ‘Dhaka Principles for Migration with Dignity’ a voluntary code of practice which organisations sign up to. The two core principles of this code are: 1) All workers are treated equally and without discrimination

and, 2) All workers enjoy the protection of employment law. If we were to apply these two core principles to the Indian labour market, the situation is alarming and dismal. Less than 10% of all workers in India are covered by the basic laws such as minimum wages, health and safety and employment protection (Sharma et al. 2014). Population census shows that child labour in India in the age group of 5 to 9 years has increased by about 37% from 2001 to 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) (source: National Crime Records Bureau, Govt. of India 2016).

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).

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).

Given these contingencies and the civil and criminal liabilities that transnational anti-slavery laws create with respect to supply chain transparency, it would be prudent if corporate entities in India rise up to the challenge and go beyond the traditional CSR and public relations agenda. They need to work in collaboration with key stakeholders i.e. the trade unions who are organising workers in the informal sector at a much higher rate than any NGOs would be able to extend their reach. Aggregate trade union membership in India has increased from about 35 million in 2008 to about 104 million in 2013. The growth rate of female union membership in India is about 21% as against 9% for male union membership. And the growth rate of union members from the scheduled caste and tribes employed in casual employment is about 40% as against 28% for workers from OBC and other categories. Just as corporations have gone multinational so have trade unions with several international federations representing millions of workers across the globe (Badigannavar et al 2021). It is hardly surprising then that the German and Dutch governments along with well known international brands like Hugo Boss and Tchibo are engaging with trade unions in India to educate factory owners in Tamil Nadu on modern slavery laws (ibid). The Industrial Relations Code 2020 for the first time allows trade unions to recruit workers as young as 14 years of age as union members. These provisions will further bolster union membership in India which is reported to have over 10 million child workers. It is only a matter of time before Indian trade unions in collaboration with US and European trade union federations will mount legal challenges against corporate entities in India in the US and European jurisdictions holding them accountable for violation of human rights in their supply chains. In such eventualities, it is unlikely that corporates operating in India would be able to find safe heaven under their CSR rubric.

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