

# **Status of Corporate ..... Responsibility in India, 2019**

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Is Human Rights in Business Limited to Rhetoric?  
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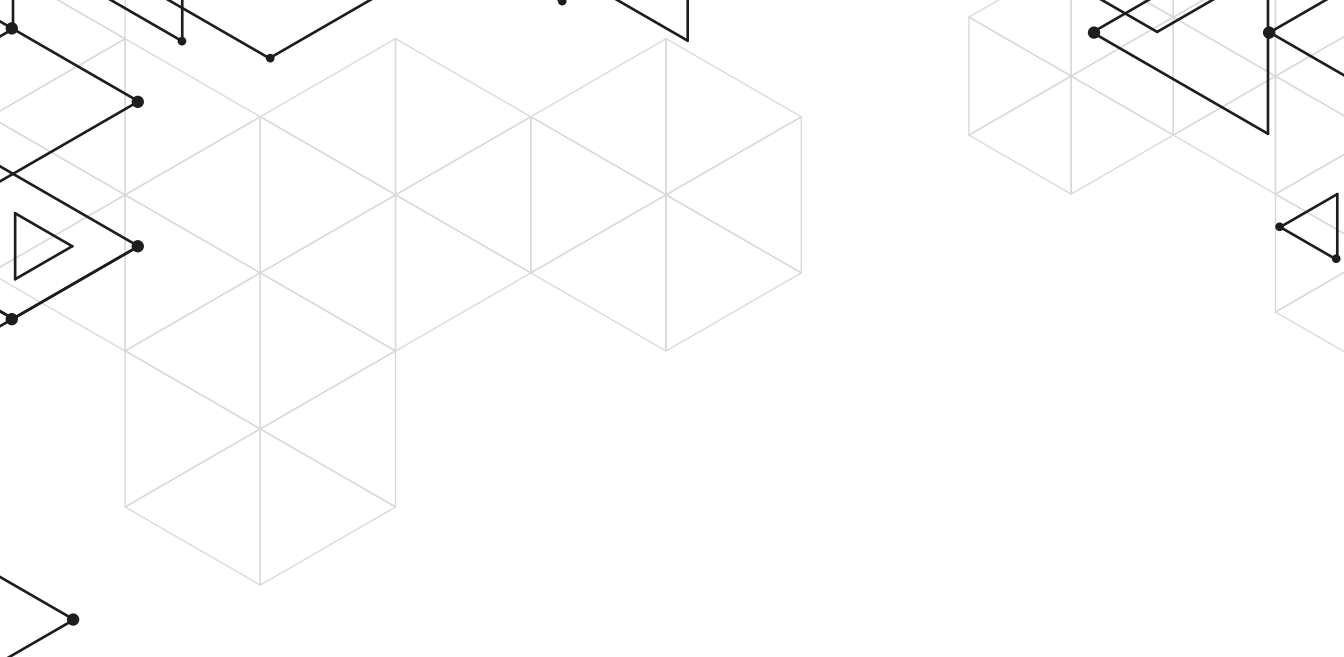
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# Preface

Two crucial campaigns are underway for India's holistic development. It is time to take stock. Notwithstanding the *Make in India campaign* to boost manufacturing and encourage companies to manufacture their products in India, the GDP growth has dropped to 5 per cent which is the lowest in the past six years and well below the 8 per cent plus annual expansion needed to achieve the goal of becoming a 5 trillion dollar economy by 2025. Over the past months, the core industries have witnessed a gradual slowdown due to weak consumer demand and lack of dedicated investments into manufacturing as envisioned by the Make In India campaign. Some of the sectors that have been hit badly include automobiles, manufacturing and real estate sectors. While the *Skill India Campaign* aims to train over 40 crore people in India, thus aiming to generate employment opportunities, the current scenario is that unemployment is at a 45-year high. Assuming the skills of the Indian youth segment is being developed, given the economic slowdown, the opportunities to absorb them have reduced.

As a result of the economic slump, jobs are dwindling and companies are unable to retain the existing workforce. Certain sectors like IT, manufacturing and automobiles have laid off their employees. This problem has been further compounded by more and more companies increasingly resorting to unethical, non transparent means to cut corners and shirk their social, economic and environmental responsibilities and accountability to their communities as its primary stakeholder. As the most crucial actor that is driving the economy towards the target of becoming a 5 trillion economy, one of the critical areas that companies are overlooking or consciously ignoring is the violations being committed against communities in their core operations. In this context, Corporate Social Responsibility (CSR) has been reduced to acts of philanthropy, as companies continue being irresponsible in their primary business activities. The narrative of the two per cent spent on CSR is insidiously masking the wider accountability of India Inc towards the society, environment and economy. The reality is that while businesses have been engaging across multiple domains of community development in India, they have been doing so without a firm commitment to treating communities as key stakeholders, and not merely as beneficiaries. It is set against this context that the Status of Corporate Responsibility in India today can be appreciated.

Corporate Responsibility Watch (CRW) is an initiative that is attempting to unpack, track and monitor corporate responsibility as well as clearly separate it from the overpowering CSR narrative that tends to absolve companies of their responsibilities to the nine basic principles towards social and environmental practices in the Ministry of Corporate Affairs' National Guidelines on Responsible Business Conduct (NGRBC) framework for business responsibility. After having published analyses of Business Responsibility Reports (BRRs) through the series Disclosure Matters and three editions of the India Responsible Business Index, this is the fourth in the series of Status of Corporate Responsibility in India reports. The authors, all experts in their respective fields, have built on the analyses of the BRRs to unpack and nuance ground realities of corporate responsibility in India on issues as diverse as the dilution of environmental norms, state-business complicity, health impacts on consumers and communities child labour, violation of worker and child rights in the corporate sector and businesses and human rights defenders. The report uses information available in the public domain, largely put across by companies themselves through their business responsibility reports, annual reports and annual CSR reports.

This report would not have been possible without valuable contributions by the organisations and networks associated with Corporate Responsibility Watch. We would also like to place on record our sincere thanks to the distinguished authors Ajay Sinha, Amita Joseph, Amita Puri, Anirudha Nagar, Basudev Barman, Dheeraj, Jhumki Dutta, Lara Jesani, K. Moulasha, Nandini Sharma, Pooja Gupta,

Pradeep Narayanan, Dr Rahul Suresh Sapkal, Rajavelu K., Rijit Sengupta, Subhash Mittal, Shireen Kurian, Umi Daniel, Vikas Yadav and Viraf Mehta. We would also like to thank Tarini Shipurkar and Pragya Shah for providing overall support in data analysis and Anusha Chandrasekharan, Sowmyaa Bharadwaj and Zoya Surana for report production and finalisation.

# Acknowledgements

## CRW members

Amita Joseph	Pradeep Narayanan
Amitabh Behar	Pradeep Patra
Anand K. Bolimera	Rijit Sengupta
Annie Namala	Prof Sri Ram Khanna
Archana Shukla Mukherjee	Semeda Steves
Ashok Bharti	Subhash Mittal
Jashodhara Dasgupta	Tom Thomas
Karandeep Bhagat	Viraf Mehta
Paul Divakar	

## Core team for Status of Corporate Responsibility in India, 2019

Amita Joseph (Business and Community Foundation), Amita Puri (National Foundation for India), Dheeraj (Praxis), Pradeep Narayanan (Partners in Change), Shireen Kurian (Praxis), Subhash Mittal (Socio Research and Reform Foundation), Rijit Sengupta (Centre for Responsible Business), Tom Thomas (Praxis) and Viraf Mehta (Partners in Change)

## Research Team

Tarini Shipurkar	Praxis
Pragya Shah	Partners in Change
Sowmiya Kannan	Partners in Change
Sarulatha S	Praxis
Geethanjali Balakrishnaiah	Partners in Change
Jhumki Dutta	Partners in Change
Irshad Ali	Socio Research and Reform Foundation

## Report production

Anusha Chandrasekharan	Praxis
Sowmyaa Bharadwaj	Praxis
Zoya Surana	Consultant

## Interns

Durba Biswas	Tata Institute for Social Sciences
Himani Tiwari	Tata Institute for Social Sciences
Pankaj Malik	Asian Law College
Pritha Choudhury	Tata Institute for Social Sciences
Shahid Patel	Asian Law College
Siddhas Goel	Dr. B. R. Ambedkar University
Simran Preet Kaur Puri	Asian Law College
Sujeet Tiwari	Asian Law College

# Abbreviations

ACMS	Assam Chah Mazdoor Sangh
AGM	Annual General Meeting
APPL	Amalgamated Plantations Private Limited
ARD	Asbestos-Related Diseases
BHR	Business and Human Rights
BRR	Business Responsibility Reports
BSE	Bombay Stock Exchange
CAO	Compliance Advisor Ombudsman
CBI	Central Bureau of Investigation
CEO	Chief Executive Officer
CFTRI	Central Food Technological Research Institute
COPTA	Cigarette and Other Tobacco Product Act
COPs	Conferences of the Parties
CSO	Civil Society Organisations
CRW	Corporate Responsibility Watch
CSR	Corporate Social Responsibility
DBBS	Diocesan Board of Social Services
EPFO	Employees' Provident Fund Organisation
ESI	Employees' State Insurance
EWI	Employing Workers Index
FCTC	Framework Convention on Tobacco Control
FMCG	Fast Moving Consumer Goods
FY	Financial Year
FPIC	Free, Prior Informed Consent
FSSAI	Food Safety and Standards Authority of India
IARC	International Agency for Research on Cancer
IFC	International Finance Corporation
ILO	International Labour Organisation
IMPEX 2019	(Index compiled by a Mumbai-based non profit India Migration Now)
IRDA	Insurance Regulatory Development Authority
IRS	Industrial Relations System
ISMWA	Interstate Migrant Workmen Act
ITC	India Tobacco Company Limited
ITUC	International Trade Union Confederation
GRI	Global Ranking Index
LIC	Life Insurance Corporation of India
MCA	Ministry of Corporate Affairs
MoEF&CC	Ministry of Environment, Forests and Climate Change
MSG	Monosodium Glutamate
NAP	National Action Plan on Business and Human Rights
NCDRC	National Consumer Disputes Redressal Commission
NDA	National Democratic Alliance

NFSI	Nestle Food Safety Institute
NGRBC	National Guidelines on Responsible Business Conduct
NGT	National Green Tribunal
NHRC	National Human Rights Commission
NSA	National Security Act
NSE	National Stock Exchange
NVGs	National Voluntary Guidelines on Social, Economic and Environmental Responsibilities of Business
OBC	Other Backward Classes
PAD	People's Action for Development
PAJHRA	Promotion and Advancement of Justice, Harmony and Rights of Adivasis
PIL	Public Interest Litigation
PLA	Plantations Labour Act
PWD	Persons With Disability
PSU	Public Sector Undertakings
R&D	Research and Development
RTI	Right to Information
SC	Scheduled Castes
SDGs	Sustainable Development Goals
SEBI	Securities and Exchange Board of India
ST	Scheduled Tribes
UAE	United Arab Emirates
UAN	Universal Account Number
UK	United Kingdom
UN	United Nations
UNCRC	United Nations Child Rights Convention
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNHRC	United Nations Human Rights Commission
USA	United States of America
VST	Vazir Sultan Tobacco
WHO	World Health Organization

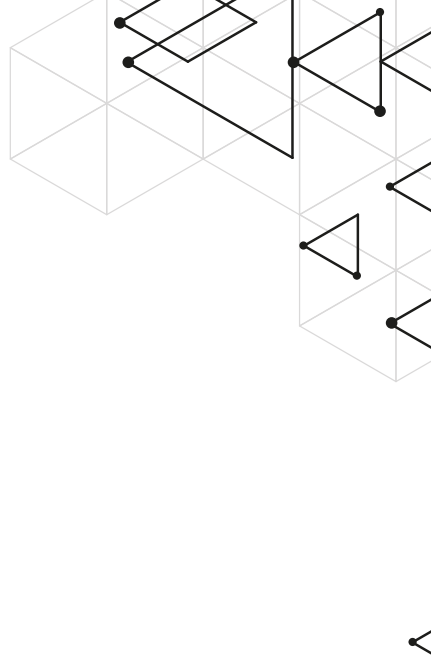
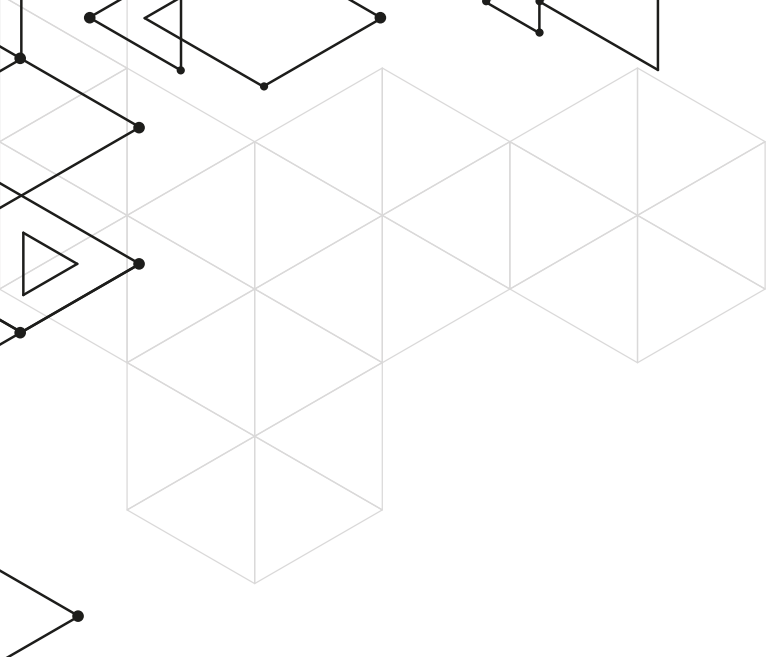


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*\*The views of all authors are personal and do not necessarily represent the views of their organisations.*





Part 1

# The Big Picture

# Chapter 1: Analysing Disclosures: Are Businesses Paying Lip Service to Human Rights?

*Corporate Responsibility Watch Team<sup>i</sup>*

## A. Setting the Context for Corporate Responsibility in India<sup>ii</sup>

There have been some critical shifts in the business disclosure environment since the year 2011 when the Ministry of Corporate Affairs, Government of India, sharpened its focus on encouraging businesses to play a proactive role in ensuring sustainable and inclusive growth. The Ministry of Corporate Affairs launched the National Voluntary Guidelines on Social, Economic and Environmental Responsibilities of Business (NVGs) in 2011. The NVGs, comprising nine principles, were developed based on India's socio-cultural context and priorities as well as global best practices, and finalised after extensive consultations with business, academia, civil society organisations and the government. This was a significant step towards mainstreaming the concept of business responsibility as these guidelines set the ground for shaping responsible business practices in the Indian setting.

While the Ministry of Company Affairs launched the guidelines as voluntary, the Securities and Exchange Board of India (SEBI) made disclosure on the nine principles compulsory for the top 100 companies listed on the stock exchange at the end of the previous financial year. By 2016,

SEBI<sup>iii</sup> extended the Business Responsibility Reporting (BRR) mandate from top 100 to the top 500 companies listed on Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) to improve disclosure standards and help shareholders make informed decisions. This would essentially include information about the company's business and non-business activities so that there is more clarity in the public about the company's dealings. BSE recognises that "sustainable business practices are critical to the creation of long-term shareholder value in an increasingly resource-constrained world"<sup>iv</sup>

While the SEBI directive took effect, another noteworthy move was the Ministry of Corporate Affairs' addition to the Companies Bill, proposing that companies with a turnover of Rs. 1,000 crore or net profit of Rs. 5 crore or more earmark 2 per cent of their net profit for the preceding three years on corporate social responsibility. The Act was passed in August 2013.

The table<sup>v</sup> below details the chronology of significant milestones in the evolution of responsible business conduct in India:

2009	<ul style="list-style-type: none"> <li>Corporate Voluntary Guidelines released to encourage corporates to voluntarily achieve high standards of Corporate Governance</li> </ul>
2011	<ul style="list-style-type: none"> <li>Endorsement of United Nations Guiding Principles on Business &amp; Human Rights by India</li> <li>National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVGs) released to mainstream the concept of business responsibility</li> </ul>
2012	<ul style="list-style-type: none"> <li>Securities and Exchange Board of India (SEBI) mandates top 100 listed companies by market capitalisation to file Business Responsibility Reports (BRR) based on NVGs</li> </ul>
2013	<ul style="list-style-type: none"> <li>Enactment of Companies Act, 2013</li> </ul>
2014	<ul style="list-style-type: none"> <li>Section 135 of Companies Act, 2013 on Corporate Social Responsibility (CSR) comes into force</li> </ul>

2015	<ul style="list-style-type: none"> <li>High Level Committee on CSR (HLC-2015) under the chairmanship of Shri. Anil Baijal makes recommendations on the CSR framework and stakeholder concerns</li> <li>SEBI extends BRR reporting to top 500 companies by market capitalisation</li> </ul>
2016	<ul style="list-style-type: none"> <li>Companies Law Committee reviews the recommendations of HLC-2015 for adoption.</li> </ul>
2018	<ul style="list-style-type: none"> <li>The second High Level Committee on CSR constituted under the Chairmanship of Shri. Injeti Srinivas, Secretary, Corporate Affairs to review the CSR framework</li> <li>Committee on Business Responsibility Reporting constituted under the chairmanship of Shri. Gyaneshwar Kumar Singh, Joint Secretary, Corporate Affairs</li> <li>Zero Draft of National Action Plan on Business and Human Rights released by Ministry of Corporate Affairs</li> </ul>
2019	<ul style="list-style-type: none"> <li>National Guidelines on Responsible Business Conduct released</li> </ul>

**Disclosure Analysis:** With a vast range of data now available in the public domain, and in the absence of a known monitoring mechanism by SEBI or the Ministry for the 100 listed companies and their BRR compliance; Corporate Responsibility Watch<sup>vi</sup> is seizing the opportunity to bring the NVGs back to the centre of discussions. Corporate Responsibility Watch (CRW) is a voluntary network of 14 organisations and prominent independent consultants that has come together to attempt to unpack and track corporate responsibility. To this end, CRW has conceived the Disclosure Matters series which included an analysis of the level of disclosure of the top 100 listed companies and the analysis of the inclusive policies, disclosures and mechanisms of the top 100 companies using the India Responsible Business Index (IRBI)<sup>vii</sup>.

**Source of Data:** This report is based on BRRs for the last three financial years; annual reports and sustainability reports since 2015-16 and CSR reports since 2016-17. This report is based

exclusively on company disclosed information available in the public domain. The self-reported information is taken at face value and has not been validated through independent assessments nor has any related information in the public domain been factored into the assessment.

**Sample Companies in this Study:** The study analyses the Business Responsibility Reports of 300 randomly selected private and public sector companies from the top 500 BSE listed companies.

- The sample comprises 253 private companies and 47 public sector companies.
- The companies are spread across 16 sectors<sup>viii</sup> with the highest representation from banking and finance (55), construction and infrastructure (43), pharmaceuticals and healthcare (36), FMCG, retail and packaging (38) and automobiles and auto parts (31).
- They together employ approximately 5.5 million (55 lakh) workers.

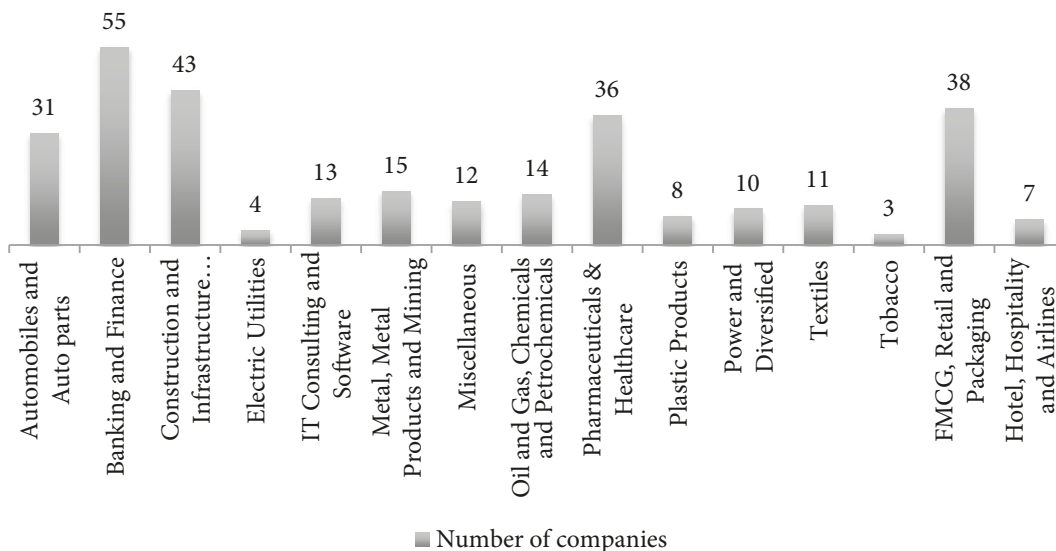


Figure 1: Disaggregation of top 300 companies as per business sectors (n=300)

## B. Findings

### 1. Policy Commitment to the Nine Principles of National Voluntary Guidelines<sup>ix</sup>

Mapping of policy related disclosures of 150 cohort companies, which CRW has been analysing over the last three years, shows that a majority of the companies have responded in the affirmative for having policies related to aspects such as ethics and transparency, product life cycle sustainability, environment and employees well being. But still there are weak links, particularly when it comes to carrying out independent evaluations

of the working of these policies. Some of the key themes such as public advocacy, customer value, stakeholder engagement and human rights show a relatively less number of companies claiming to have carried out independent evaluations. **It is important to note here that 93 per cent of the companies claim that they have policies on business and human rights and 71 per cent even claim that they do organise independent evaluation of the functioning of their policy on human rights.**

Table 1: Percentage of companies reporting in affirmative about the status of implementation mechanisms related to National Voluntary Guideline Principles 2017-18<sup>x</sup> (n=150)

S.No	Indicator	Ethics, Transparency & Accountability	Product Lifecycle Sustainability	Employee Well Being	Stakeholder Engagement	Human Rights	Environment	Public Advocacy	Inclusive Growth	Customer Value
1	Existence of Policy	98	94	97	96	93	95	74	98	93
2	Formulation in consultation with Stakeholders	98	93	97	95	93	94	73	98	93

S.No	Indicator	Ethics, Transparency & Accountability	Product Lifecycle Sustainability	Employee Well Being	Stakeholder Engagement	Human Rights	Environment	Public Advocacy	Inclusive Growth	Customer Value
3	Conforms to international standards	95	91	94	94	91	95	69	96	87
4	Policy approved by Board	97	86	91	93	85	91	70	95	86
5	Systems to oversee the implementation	98	92	97	96	91	94	75	98	90
6	Link provided to view policy online	96	91	92	94	90	91	75	96	89
7	Communicated to all relevant stakeholders	97	91	96	95	91	93	73	97	90
8	In-house structure to implement the policy	98	93	97	97	91	95	74	98	93
9	Existence of grievance redressal system	97	91	96	95	91	91	73	95	92
10	Carried out independent evaluation of the working of the policy	75	73	77	71	71	79	58	75	71

Source: Business Responsibility Reports

Each of these nine NVG principles has a number of elements or components. It seems that even if the company has policies on any of those sub-components, they state in the affirmative in terms of the presence of policies for the entire principle. As we delve further into the actual details of the policy, it is evident that all the aspects related to any theme may not be covered by the policy

while the companies as per their disclosures claim having policies in place. Table 2 provides a comparison of top 100 listed companies as per market capitalisation, wherein the corporate policies of these companies were reviewed to decipher whether they actually mention these elements of NVG principles. Mapping of eight key themes has been summarised below.

Table 2: Number of companies recognising specific policy aspects in their policies

S.No	Policy Domain	Companies recognising particular aspect in their policies disclosed in the public domain		
		2015-16 (n=100)	2016-17 (n=99)	2017-18 (n=99)
1	Equal opportunity in recruitment	77	75	78
2	Disabled friendly workspace	18	19	19
3	Mentioning sexual minorities in recruitment policy	36	32	32
4	Freedom of association	66	68	70
5	Ensuring health and safety of workers	90	91	93
6	Identifying specific vulnerable groups in CSR policy	81	86	86

S.No	Policy Domain	Companies recognising particular aspect in their policies disclosed in the public domain		
		2015-16 (n=100)	2016-17 (n=99)	2017-18 (n=99)
7	Priority to local suppliers	50	57	59
8	Supplier code prohibits child labour	31	29	31

Source: IRBI 2017 & 2018 and Company policies from website (2017-18)

**One may see that out of 100, only 31 companies have disclosed that their supplier code explicitly prohibits child labour in the supply chain; only 19 explicitly mention creating disabled-friendly workspaces; and only 32 mention**

**sexual minorities in their recruitment policies. There are still 30 per cent of the top 100 companies that have not disclosed policies or any commitment towards extending freedom of association for their workers.**

## 2. Nature of Employment

These 300 companies among the top 500 listed companies employ a total of 39 lakh permanent employees and 16 lakh contractual employees. The total aggregate workforce of these companies amounts to 55 lakh workers. The overall workforce has grown by 3.35 per cent over one year.

Similarly, while the overall workforce is growing, when this is compared to the previous year (2016-17), it is revealed that, in 2017-18, about 50 per cent companies (149) have reported a reduction in the total number of employees.

**Thus, one in every two companies reported a reduction in their workforce.**

Table 3: Distribution of workforce over two years (n=300)

S.No	Category	Year 2 (2017-18)	Year 1 (2016-17)	Difference	Difference (%)
1	Total workforce	54,92,748	53,14,423	1,78,325	3.35%
2	Permanent Employees	38,94,130	38,02,473	91,657 <sup>xi</sup>	2.41%
3	Contractual Employees	15,98,618	15,119,50	86,668	5.73%

Source: Business Responsibility Reports 2016-17 & 2017-18

Table 4: Number of Companies reporting increase or decrease of workforce in the year 2017-18 compared to the year 2016-17 (n=300)

S.No	Category	Ownership (Private= 253, PSUs= 47)	No. of companies that reported increase	No. of companies that reported decrease	No. of companies that reported stagnant	Not reported
1	Total Workforce	Total	111	149	3	37
		PSU	19	23	0	5
		Private	92	126	3	32
2	Permanent Workforce	Total	120	164	4	12
		PSU	16	31	0	0
		Private	104	133	4	12



S.No	Category	Ownership (Private= 253, PSUs= 47)	No. of companies that reported increase	No. of companies that reported decrease	No. of companies that reported stagnant	Not reported
3	Contractual Workforce	Total	130	103	34	33
		PSU	15	14	13	5
		Private	115	89	21	28

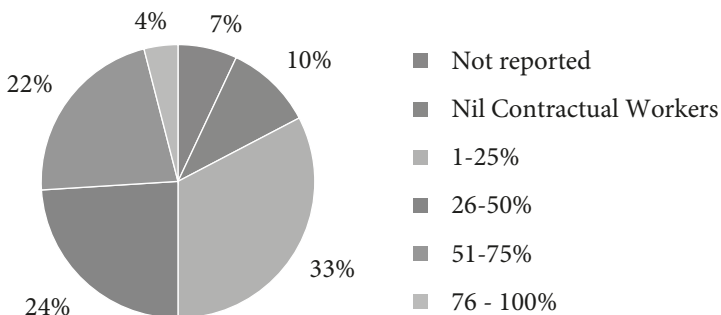
### 3. Trend towards Contractualisation<sup>xi</sup>

The contractualisation of the formal workforce has been an impediment to the provision of ‘decent employment’ as defined by ILO. The contractual workers are mostly denied job security, social security and the right to organise, including collective bargaining. The Annual Survey of Industries (2015-16), reports that the total employment in the organised manufacturing sector increased from 7.7 million in 2000-01 to 13.7 million in 2015-16. The share of contractual workers in total employment has also increased sharply from 15.5 per cent in 2000-01 to 27.9 per cent in 2015-16, while the share of directly hired workers fell from 61.2 per cent to 50.4 per cent in the same period. More than half of the increase is accounted for by an increased use of contractual

workers.<sup>xii</sup> At a micro-level a similar trend is also observed in the comparison of data collected for this study from 2015-16 and 2017-18.

**From Table 3, what emerges clearly is that during the year, 2017-18, the contractual workforce (5.73 per cent) in the Sample companies has grown by a rate more than the double that of the permanent workforce (2.41 per cent).** A closer look at the distribution of contractual workers in 2017-18 shows that out of the 300 companies, 50 per cent of the companies have 26 per cent or more contractual workers and about 4 per cent have a contractual workforce, which constitutes 76 per cent or more of the total workforce.

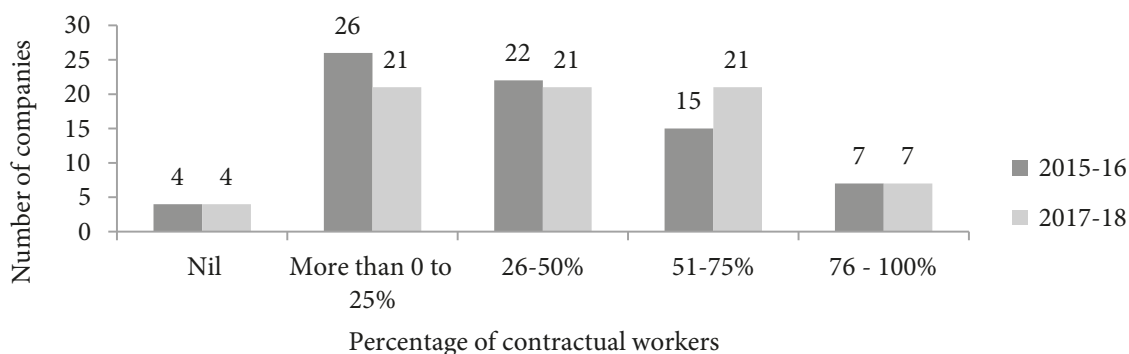
Figure 2: Distribution of companies across categories of percentage of contractual workers in the total workforce (n=300)



In the year 2017-18, there were 21 companies that employed more than 50 per cent of their workforce as contractual workers. Six were from the construction sector, four FMCG companies

and three automobile companies. The remaining eight companies were spread across a range of sectors including oil and gas and metal and mining and power.

Figure 3: Number of companies as per percentage distribution of contractual workers across years (n=74)



Though it is not clear whether there is any direct relationship of increasing contractualisation with the fact that the economy is facing a slowdown in recent years<sup>xiii</sup>, many companies might choose to employ a larger contractual workforce in order to reduce their labour costs. Contractual workers are often paid lower wages and cannot avail of the benefits that full-time employees have.<sup>xiv</sup> In many cases, companies are able to by-pass various labour laws due to the contractual nature of

the workforce.<sup>xv</sup> Our analysis next year would probably give more insights on what is happening.

A look at contractual labour data from an ownership lens shows the differences between private sector and public sector companies. Clearly, the private sector has shown a higher incidence of contractualisation with 58 per cent companies having more than 25 per cent contractual workers. This percentage is at 30 per cent for the PSUs.

Table 5: Distribution of companies across percentage range of contractual employees across workforce (Disaggregated in terms of public and private ownership of companies)

S. No.	Ownership	Percentage of Contractual workforce to the Total workforce			
		Nil	<25%	26-50%	Above 50%
1	Private Companies (n=236)	9.7%	32.2%	28.4%	29.6%
2	Public Companies (n=43)	34.9%	34.9%	9.3%	20.9%
17 private sector companies and 4 public sector companies have not reported information on contractual employees present in their companies.					

Source: Business Responsibility Reports 2017-18

The distribution of percentage of contractual employees across sectors reveals that the automobiles sector is engaging the largest number of contractual workers (above 50 per cent contractual). A close second was the FMCG, retail and packaging sector with 35 per cent companies having more than 50 per cent contractual workforce. The automobiles industry in particular,

has been facing one of the biggest slump in sales this year (2019). This slump has caused a vast number of companies to lay-off large chunks of their permanent workforce – initial estimates suggest that close to 3,50,000 workers were laid off since April 2019,<sup>xvi</sup> which will be seen in the analysis next year.

Table 6: Percentage distribution of contractual workers across sectors

S. No.	Percentage of Employees	Not reported	Nil	Less than 25%	26-50%	51-75%	76 - 100%	More than 25%
1	Banking and Finance (n=55)	11%	31%	55%	4%	0%	0%	4%
2	Automobiles and Auto parts (n=31)	6%	6%	6%	26%	48%	6%	80%
3	Pharmaceuticals and Healthcare (n=36)	6%	3%	47%	42%	3%	0%	45%
4	FMCG, Retail & Packaging (n=38)	5%	3%	13%	42%	34%	3%	79%
5	Textiles (n=11)	0%	18%	45%	36%	0%	0%	36%
6	Construction and related (n=43)	5%	9%	35%	16%	28%	7%	51%

Source: Business Responsibility Reports 2017-18

## 4. Workers' Union

Data shows that the presence of a large number of contractual workers helps diminish the bargaining power and wage demands of the directly hired workers.<sup>xvii</sup>

The freedom to associate is a constitutional right of all workers, however, it was found that out of the 300 companies, 109 companies did not recognise employee associations and 21 did not report whether they had an association. Only 170 companies recognise employee associations, but within that 21 did not report the percentage of permanent employees who were part of the associations. **Thus, only 50 per cent of the sample companies seem to have any kind of workers' associations.**

Disaggregated data for private and public companies shows that 129 private companies and 41 PSUs recognise employee associations. Of

these 129 private companies, one third (35 per cent) have less than 25 per cent of their workforce as part of associations. On the other hand, 59 per cent of the PSUs that recognise employee associations have more than 76 per cent of their permanent workforce as part of the association.

Figure 4: Percentage of companies recognising permanent employee associations

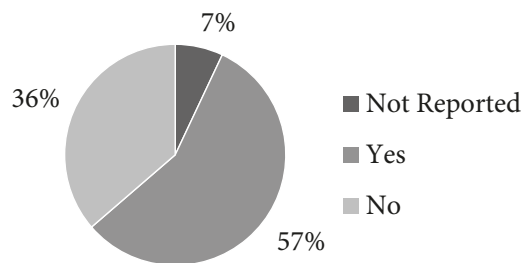


Table 7: Distribution of percentage representation of permanent employees in associations in PSUs and non-PSUs (n=300)

S. No.	Percentage of Employees	Private		PSU	
		Number of companies	Percentage of companies	Number of companies	Percentage of companies
1	Companies that have recognised employee associations	129		41	
2	Recognise but not reported	14	11%	7	17%

Less than 25% workers in association	45	35%	2	5%
26-50% workers in association	20	16%	1	2%
51-75% workers in association	20	16%	7	17%
76% and above workers in association	30	23%	24	59%

Source: Business Responsibility Reports 2017-18

In terms of sectors, the list is topped by automobile and auto parts where 29 per cent of the companies that recognise associations have representation of 76 per cent or more of their employees as part of associations.<sup>xviii</sup> Following automobiles and auto parts, banking

and finance (31 per cent) and textiles (18 per cent) have the highest percentage of workers as part of associations. A particularly low level of participation in associations can be seen in the pharmaceutical and healthcare sector.

Table 8: Percentage representation of permanent employees in associations across sectors

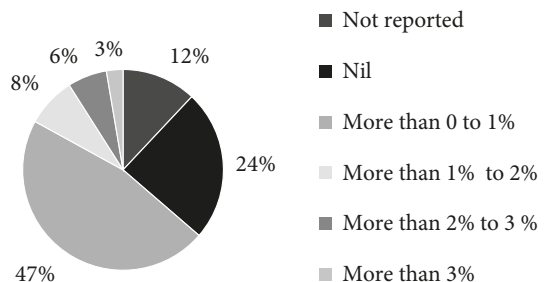
S. No.	Percentage of Employees	Not reported	Do not recognise	Recognise but not reported	Less than 25%	26-50%	51-75%	76% and above
1	Banking and Finance (n=55)	5%	40%	7%	7%	2%	7%	31%
2	Automobiles and Auto parts (n=31)	3%	6%	39%	0%	6%	16%	29%
3	Pharmaceuticals and Healthcare (n=36)	6%	31%	25%	33%	0%	3%	3%
4	FMCG, Retail & Packaging (n=38)	11%	39%	13%	13%	5%	13%	5%
5	Textiles (n=11)	0%	55%	9%	0%	9%	9%	18%
6	Construction and related (n=43)	7%	47%	26%	5%	7%	2%	7%

Source: Business Responsibility Reports 2017-18

## 5. Diversity in Businesses: Women and PWDs still under-represented

Over 70 per cent of the businesses have either zero or less than one per cent of disabled employees. The reporting has increased marginally ('not reported' has reduced from 43 companies to 36 companies). The Rights of Persons With Disabilities Act, 2016 states that every government establishment shall appoint not less than four per cent of persons with disability. **However, only three out of the 47 PSUs that were part of this study had three or more per cent of employees with disability. Despite the presence of the Act, the increase in the number of PWDs among the workforce in the sample company over one year is negligible (0.006 per cent).**

Figure 4: Distribution of companies as per percentage representation of employees with disabilities in permanent workforce (n=300)



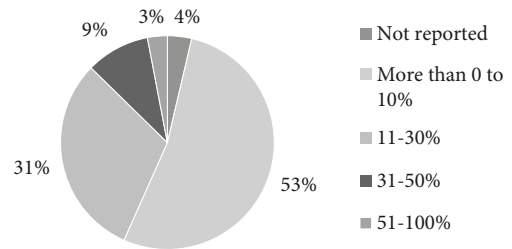
**Table 9: Distribution of workforce across categories over two years (n=300)**

S.No	Category	Year 2 (2017-18)	Year 1 (2016-17)	Difference	Difference (%)
1	Permanent Employees	38,94,130	38,02,473	91,657	2.41%
2	Permanent Women Workforce	8,59,483	7,91,253	68,230 <sup>xix</sup>	8.62%
3	Permanent PWD Workforce	26,328	26,168	160	0.006%

Source: Business Responsibility Reports 2016-17 & 2017-18

About 53 per cent of the businesses had a male to female ratio of 10:1 or worse. 12 per cent of the companies had a workforce of women that was more than 30 per cent. Out of 276 companies, which provide comparable data, 103 companies have actually reported a reduction in the number of women employees.

In terms of representation of women in different sectors, it was found that a comparatively higher percentage of women were present in the workforce of sectors such as banking and finance, FMCG, retail and packaging and textile and comprise more than 30 per cent of the permanent workforce in companies. However, it is important to note that while these sectors have a large share of women workers – women are often overrepresented in blue collar jobs and in textiles, the presence of women in informal labour is huge, thus they have lower chances of securing social benefits as compared to their male counterparts.<sup>xx</sup>



**Figure 5: Distribution of companies as per percentage representation of women in permanent workforce (n=300)**

This has been elaborated further in a chapter of this report that focuses on the condition of migrant women labourers in the garment sector. In the automobile and construction sectors, a majority of the companies have a higher concentration in the 'less than 10 per cent' band, revealing a strikingly low representation of women in the formal workforce of these two sectors.

**Table 10: Percentage distribution of Permanent Women Employees across key Sectors**

S. No.	Percentage of Employees	Not reported	More than 0 to 10%	11-30%	31-50%	51-100%
1	Banking and Finance (n=55)	0%	13%	71%	13%	4%
2	Automobiles and Auto parts (n=31)	10%	74%	6%	3%	6%
3	Pharmaceuticals and Healthcare (n=36)	6%	53%	31%	6%	6%
4	FMCG, Retail & Packaging (n=38)	8%	61%	16%	11%	5%
5	Textiles (n=11)	0%	36%	36%	27%	0%
6	Construction and related (n=43)	2%	74%	19%	5%	0%

Source: Business Responsibility Reports 2017-18

In senior management, it was found that overall, in the top 200 companies women form 14 per cent of the Board of Directors, which in most

cases amounts to having one mandatory woman member in a Board of 6 to 7 members. 135 companies have only one female board director.

## Caste: Private sector still far from acknowledgement

In addition to gender and PWD, caste plays a significant role in business in terms of employment – where it is found that most low-skilled occupations with lower wages have a very high representation of scheduled castes.<sup>xxi</sup> Data from 300 companies reveals that only 39 companies out of the top 300 have proactively disclosed having employees from Scheduled Caste (SC), Scheduled Tribe (ST) or Other Backward Classes (OBC) groups as part of their workforce. Only 35 companies have provided data substantiating the same. Out of 47 PSUs, 32 have provided figures while only 3 private sectors companies – Tata Steel (17.29 per cent), Bajaj Finance (4 per cent) and Bajaj Auto (9.34 per cent) have provided these numbers. Bajaj provided these figures only for the new recruits. Interestingly, 3 PSUs have provided figures related to representation of minority communities. It is evident that disclosures related to representation of marginalised and weaker sections in quite dismal and needs particular attention. This is particularly important in the case of formal sector employment, where entry even at the business ownership level is not easy for marginalised groups.

As part of the study, we have started analysing the caste composition of the Boards of the companies. An analysis of caste categories of Board members of the top 10 listed private companies reveals a predictable analysis. Out of 108 Board members, the surnames and other searches revealed the castes of 83 members. Of these 83, 77 belonged to Brahmin, Kshatriya, Parsi communities. None

were from Dalit or Adivasi groups.

In this context, there have been interesting studies this year. A recent study by Raj and Anand (2019)<sup>xxii</sup> highlighted that beyond socioeconomic disadvantage, the historically marginalised communities faced an additional disadvantage, as “their occupation (as business owners) is incongruent to their perceived historical role and status”. It was found that Dalit business owners earn 35 per cent less as compared to non-Dalit owners of similar socioeconomic background. The business incomes for sections that are socioeconomically disadvantaged, but not historically stigmatised, did not show a similar discrimination. Similarly, a study of a 1,000 business merger and acquisition deals between 2000 and 2017 revealed that nearly 50 per cent of the deals were made between boards that had members of the same caste.<sup>xxiii</sup>

A worrying trend has been noticed in the area of sanitation and sewerage work. Large numbers of deaths were reported last year where private companies were involved.<sup>xxivxxv</sup> In the construction sector it has been particularly noted that even new infrastructure is not being built keeping mechanised handling of sewerage in mind as part of the design. Now deaths are not being reported only from house based, or government settings but also from new infrastructure spaces.<sup>xxvi</sup> Demonstrating apathy is the fact that none of the 43 construction and infrastructure sector companies that are part of the sample have recognised the issue or challenges of the manual handling of sewage.

## 6. Grievance Redressal System

All the companies, except one (UCO bank), have reported on sexual harassment complaints. A very large percentage of the companies (72 per cent) revealed ‘nil’ complaints being reported.

Reporting on child labour, forced labour and discriminatory employment revealed that while 264 companies reported on complaints received, all were reported as ‘nil’, except in the case of

Tech Mahindra and Motherson Sumi Systems that reported that they received one complaint of discriminatory employment. The number of 'nil' complaints is high across grievance categories.

It is pertinent that companies in their own claims have disclosed relatively less presence of external evaluation of the policies.

## 7. Mandatory CSR spending

The introduction of section 135 of the Companies Act 2013 has been instrumental in shaping discussions around responsible businesses in India. To some extent, it has also shifted focus away from core business, some elements of which were discussed in previous editions of the report. After four years of implementation, Ministry of Corporate Affairs in 2018 setup a High Level Committee to look into the CSR regulatory framework and come up with guidelines. Before this, the committee was formed in 2015 to delve into the CSR framework. In its report, the committee has analysed four years of data and provided interesting insights to understand the expenditure patterns.

In contrast to the mainstream understanding, the Committee has clearly stated that the primary notion behind introducing CSR provision was not to fill in resource gaps for the government to meet the Sustainable Development Goals but it was brought in to influence the business philosophy promoting sustainable businesses and provide space for companies to have innovative ideas to address social and environmental concerns in the local as well as needy areas.<sup>xxvii</sup>

Another interesting observation has been in the area of earmarking of CSR funds for central government schemes. The table below summarises allocation of funds to various central government schemes over four years:

Table 11: Funds allocated to Central Government Funds from 2 per cent CSR spending

S.No	Contribution to funds set up by Central Government	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	Grand Total
1	Any Other Fund	277.10	334.35	418.29	250.52	1,280.27
2	Clean Ganga Fund	5.47	32.82	24.37	4.44	67.10
3	Swachh Bharat Kosh	113.86	325.52	184.06	211.57	835.02
4	Prime Minister's National Relief Fund	228.18	218.04	158.80	152.26	757.29
5	Total contribution to Funds	624.61	910.74	785.53	618.80	2,939.67

Source: Report of the High Level Committee on CSR 2018

Representations made to the committees have raised concerns about allocating funds for central government schemes. The report stated that approximate allocation to such funds have been around 5.6 per cent of the total CSR expenditures for the years 2014-15 to 2017-18. This is greater than the contribution in areas such as heritage, art and culture, slum area development, gender equality and women empowerment.<sup>xxviii</sup> The

committee observed that such expenditures go against the philosophy of CSR, which seeks to engage businesses as partners in social development and bring in innovative solutions.<sup>xxix</sup>

The skewed allocation of funds in terms of geographies has been reiterated by the HLC 2018. State level variations have been consistent over the years. The table below depicts the top 20 CSR fund recipient states for the year 2017-18.

Table 12: Top 20 states receiving highest amount of CSR funds in 2017-18

Ranking	State	Amount spent FY 2017-18 (INR Cr.)	Ranking	State	Amount spent FY 2017-18 (INR Cr.)
1	Maharashtra	2,482.75	11	Rajasthan	256.63
2	Karnataka	940.26	12	Haryana	254.15
3	Gujarat	764.27	13	Kerala	145.37
4	Tamil Nadu	606.75	14	Madhya Pradesh	144.71
5	Delhi	522.80	15	Punjab	86.40
6	Odisha	467.30	16	Assam	83.89
7	Uttar Pradesh	287.39	17	Uttarakhand	81.81
8	Telangana	286.74	18	Chhattisgarh	65.49
9	West Bengal	277.66	19	Himachal Pradesh	60.53
10	Andhra Pradesh	265.70	20	Goa	51.50

Source: Report of the High Level Committee on CSR 2018

In line with the last year’s findings, the data clearly shows that there is a concentration of funds in certain states. Maharashtra is leading in terms of fund receipts with Rs 2,482.75 crore while the entire North-Eastern region received around Rs 29.55 crore. This raises doubts about the way CSR expenditures are being planned and implemented and the kind of priorities that are being set. In an interesting contrast, the HLC report pointed that of the 117 aspirational districts; around 55 per cent fell in states of Jharkhand, Bihar, Chhattisgarh, Madhya Pradesh and Uttar Pradesh while in terms of concentration of funds these states altogether received only 9 per cent of the

total CSR expenditure for the year 2014-15 to 2017-18.<sup>xxx</sup>

This variation is also evident in the development sectors where the spending is being done which have been consistent over the period of four years. In 2017-18 as per the filings received as on 31st March 2019, 21,337 companies have spent a total of Rs 13,326.69 crore. The total prescribed amount to be spent by these companies was around Rs 23,247.90 crore while they spent 57 per cent of the prescribed amount. The sector-wise disaggregation of the amount spent for top and bottom seven spending sectors has been given below.

Table 13: Top seven and bottom seven development sectors in terms of spending of funds in 2017-18

Sectors with highest spending			Sectors with lowest spending		
S.No	Sector	FY 2017-18 Amount (In Cr.)	S.No	Sector	FY 2017-18 Amount (In Cr.)
1	Education	4,478.9	1	Clean Ganga Fund	4.4
2	Health Care	2,127.1	2	Agro Forestry	12.2
3	Rural Development Projects	1,455.6	3	Technology Incubators	14.6
4	Environmental Sustainability	1,062.6	4	Gender Equality	20.2
5	Livelihood Enhancement Projects	654.0	5	Armed Forces, Veterans, War Widows/ Dependents	26.8



Sectors with highest spending			Sectors with lowest spending		
S.No	Sector	FY 2017-18 Amount (In Cr.)	S.No	Sector	FY 2017-18 Amount (In Cr.)
6	Poverty, Eradicating Hunger, Malnutrition	618.8	6	Slum Area Development	30.8
7	Vocational Skills	388.7	7	Senior Citizens Welfare	31.3

Source: Report of the High Level Committee on CSR 2018

Another striking revelation is in terms of percentage of funds being utilised by companies at the top and bottom of the profit/ turnover ladder. The data from 2017-18 shows that around 7,970 companies with prescribed CSR amounts of less than Rs 10 lakh, spend 4 times of their prescribed amount collectively while companies with the liability of more than 10 crore utilised only half of what they were supposed to do.<sup>xxxii</sup> This trend has been consistent over the years and raises a question of whether smaller companies are more forthcoming at spending CSR amount than big

companies. This requires more research.

The above facts related to CSR spending depict that any discussion around CSR needs to move beyond the approach of utilisation of funds and needs to look at the mechanism and principles that shape the spending of CSR funds at company level. It is pertinent that CSR, though very miniscule in comparison to the government spending, becomes more accountable and inclusive, and does not become a mere marketing gimmick for the companies.

## Conclusion

Since the year 2003, India has had a Gross Domestic Product (GDP) growth rate higher than 6 per cent consistently, except for one year, with growth rate exceeding 9 per cent in at least four years. Similarly, the SENSEX touched 7,000 points in the year 2005. 15 years hence, it has peaked at 40,000 points. There is no doubt that businesses have been growing at an exponential rate in terms of their wealth and also spearheading the GDP growth of the country. In recent times, the term '5 trillion dollar economy' has become a goal post and the Ease of Doing Business Index has become the instrument to attract investors.

On the other hand, the total number of workers in the economy fell to 457 million in 2017-18 from 472.5 million in 2011-12. The absolute number of workers declined by 15.5 million over six years. Since demonetisation, the Indian growth narrative in the public domain is no longer the same. India's GDP growth fell to a seven-year low of 5 per cent in the April-June quarter of 2019-20. India's economic growth stood at 8 per cent in the same quarter of 2018-19<sup>xxxiii</sup>. In spite of a slowdown and the

effectively quasi recessionist<sup>xxxiii</sup> status that India has entered, stories around wealth creation are not hard to find. The top 10 per cent of India's population holds 77.4 per cent of the total national wealth. The contrast is even sharper for the top 1 per cent that holds 51.53 per cent of the national wealth<sup>xxxiv</sup> and wealth is not getting distributed to benefit the most needy. Surely, the top one per cent would include all or most of the top 500 companies listed in BSE, which submit the Business Responsibility Reports. A sample of 300 companies among the top 500 listed companies together employ directly 5.5 million workers.

The 2 per cent CSR mandate is playing its role in ensuring that the narratives about business even in civil society spaces are that of contributing to national development. A number of corporates are receiving awards on almost a monthly basis for their contribution towards social development. It is in this context that it has become important to redefine CSR as a company's efforts to make their core operations socially, economically and environmentally responsible.

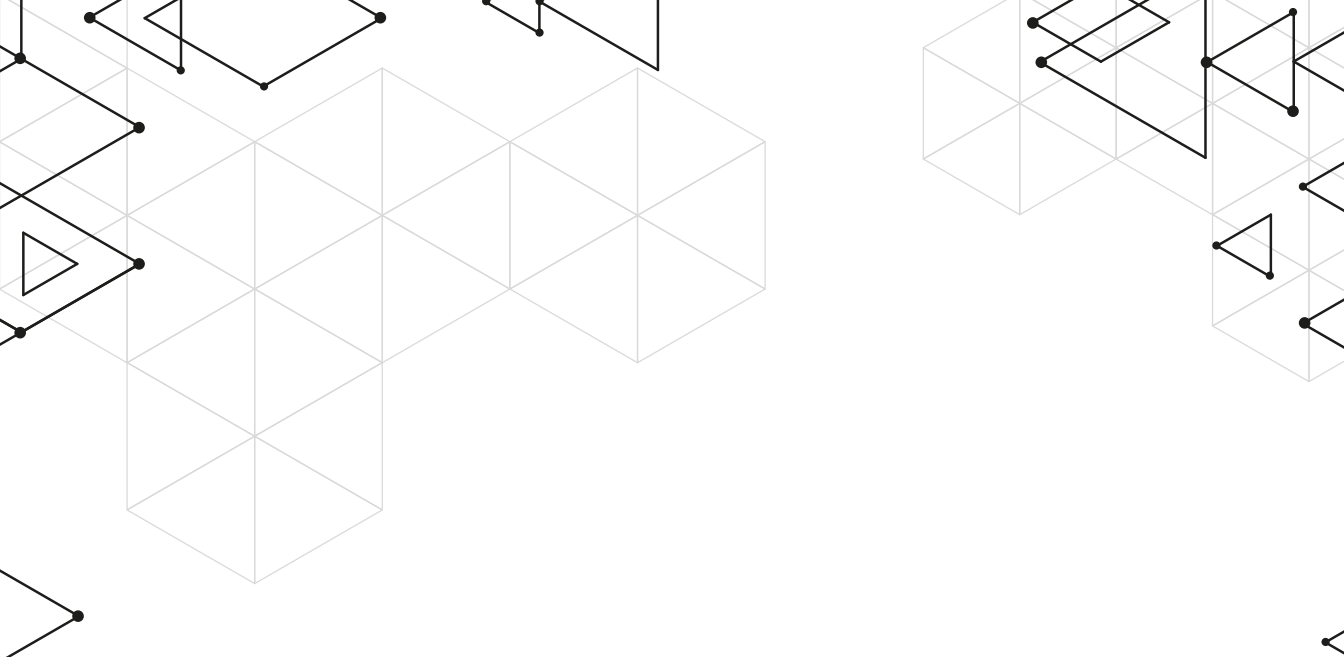
The analysis of BRRs of 300 companies among top 500 listed companies, based on market capitalisation reveal:

1. Companies have started adopting the word, 'Human Rights' in their corporate policies. It was unheard of a couple of decades ago. However, it may be seen that they have not necessarily taken responsibility of human rights violations in their supply chain, even in policy commitments. Only 31 per cent of companies explicitly disclose their commitment to prevent child labour in their supply chain.
2. 56 per cent of the 300 companies have reported a reduction in the number of permanent employees, compared to the previous year. The overall workforce in these 300 companies has grown by 3.35 per cent over one year.
3. The concern is that the contractual workforce (5.73 per cent) is growing by a rate more than double that of the permanent workforce (2.41 per cent). The private sector is depicting a higher incidence of contractualisation with 58 per cent companies having more than 25 per cent contractual workers. This percentage is at 30 per cent for the PSUs.
4. Over 70 per cent of the businesses have either zero or less than one per cent disabled employees. About 53 per cent of the businesses had a male to female ratio of just 10:1 or worse. 103 companies have actually reported reduction in number of women employees.
5. Only 39 companies out of top 300 have proactively disclosed caste composition of their employees. Only 3 private sector companies have provided these numbers. Appreciably, 3 companies have provided figures related to representation of minority communities. None of the construction and infrastructure sector companies, which are about 43 among the top 300 have recognised any issues related to the manual handling of sewerage.
6. An analysis of caste categories of Board members of the top 10 listed private companies reveals a predictable analysis. Out of 108 Board members, the surnames and other searches revealed the castes of 83 members. Of these 83, 77 belonged to Brahmin, Kshatriya, Kayastha, Jain or Parsi communities. None seem to be from dalit or adivasi groups.
7. Out of the 300 companies, 109 companies did not recognise employee associations. While only 170 companies recognised employee associations, within that 21 did not report the percentage of permanent employees who were part of the associations. Thus, only 50 per cent of the sample companies seem to have any kind of workers' associations.

Set against this stark reality of the way in which corporate responsibility continues to develop and the Government continues to promise a series of steps to bring the economy back on track, there is a challenge posed to the growing emphasis on integrating social and environmental risks in businesses. The larger business ecosystem often looks at the costs of doing responsible business as a burden and with the current economic slowdown, any discussions for bringing in social clauses in company policies poses a challenge. It is important that more evidences are gathered to present the real situation of workers, marginalised communities and those affected by the operations of businesses. Or else, the violations by businesses would remain hidden under the cloaks of their CSR.

- .....
- i. Amita Joseph (Business and Community Foundation), Amita Puri (National Foundation for India), Dheeraj (Praxis Institute for Participatory Practices), Pradeep Narayanan (Partners in Change), Rijit Sengupta (Center for Responsible Business), Subhash Mittal (Socio Research and Reform Foundation), Shireen Kurian (Praxis Institute for Participatory Practices), Tom Thomas (Convenor, Corporate Responsibility Watch), Viraf Mehta (Partners in Change)
  - ii. The introduction is based on information from a range of sources including Report of the high level committee on corporate social responsibility 2018, [http://www.mca.gov.in/Ministry/pdf/CSRHLC\\_13092019.pdf](http://www.mca.gov.in/Ministry/pdf/CSRHLC_13092019.pdf); Making Growth Inclusive 2017 and 2018, [http://www.corporatewatch.in/images/Making\\_Growth\\_Inclusive\\_2018.pdf](http://www.corporatewatch.in/images/Making_Growth_Inclusive_2018.pdf) and [http://www.corporatewatch.in/images/Making\\_Growth\\_Inclusive\\_2016\\_Web\\_version.pdf](http://www.corporatewatch.in/images/Making_Growth_Inclusive_2016_Web_version.pdf)
  - iii. [http://www.sebi.gov.in/cms/sebi\\_data/boardmeeting/1449642399967-a.pdf](http://www.sebi.gov.in/cms/sebi_data/boardmeeting/1449642399967-a.pdf)
  - iv. <http://www.livemint.com/Companies/TNq1HX1YBMN1xW4yvAjsI/BSE-extends-business-responsibility-reporting-to-top-500-fir.html>
  - v. Source: Report of the high level committee on corporate social responsibility 2018, [http://www.mca.gov.in/Ministry/pdf/CSRHLC\\_13092019.pdf](http://www.mca.gov.in/Ministry/pdf/CSRHLC_13092019.pdf)
  - vi. The main objective of CRW is to facilitate the transparency of economic activities and accountability of corporates not only to their shareholders but also to wider society. Working within a human rights framework, the role of the core group is to think through home grown-solutions and monitoring mechanisms for the Responsible Business practice space, with the understanding that voluntary codes will not work unless there is a vigilant regulatory environment, media attention, civil society scrutiny and activism. For more details visit [www.corporatewatch.in](http://www.corporatewatch.in)
  - vii. IRBI is a collaborative effort by Corporate Responsibility Watch, Oxfam, Change Alliance, Praxis Institute For Participatory Practices and Partners in Change. Details are available at [www.corporatewatch.in](http://www.corporatewatch.in)
  - viii. Some of the sectors have been merged for simplified representation based on the proximity in the nature of business activity
  - ix. The version 2.0 of NVG has now been adopted as National Guidelines on Responsible Business Conduct. The companies have however reported on the earlier version.
  - x. Analysis was done for the companies that provided data as per the BRR format from 300 randomly selected companies
  - xi. Instances of large lump sum workforce increase affect these figures. For examples, State Bank of India increased their permanent workforce by about 60,000 employees due to a merger with five banks.
  - xii. Kapoor, R. Krishnapriya P. P. (2019) Explaining the contractualisation of India's workforce. Working Paper, Indian Council for Research on International Economic Relations.
  - xiii. Kapoor A. (2019) The dynamics of India's growth slowdown, The Economic Times. Available at: [//economictimes.indiatimes.com/articleshow/71020942.cms?from=mdr&utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71020942.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)
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  - xvi. <https://in.reuters.com/article/mahindra-results/mahindra-warns-of-job-losses-in-auto-sector-seeks-government-help-idINKCN1UX10H>
  - xvii. Kapoor, R. Krishnapriya P. P. (2019) Explaining the contractualisation of India's workforce. Working Paper, Indian Council for Research on International Economic Relations.
  - xviii. It is important to note however, that the data analysed only accounts for permanent employees, if other categories of the workforce (particularly contractual workers) are to be considered the levels of participation would be far lower.
  - xix. Instances of large lump sum workforce increase affect these figures. For instance, Motherson Sumi Systems had an increase of close to 10,000 women employees.
  - xx. International Labour Organization (2018) India Wage Report Wage policies for decent work and inclusive growth, Page 35. Available at: [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_638305.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_638305.pdf)
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- xxv. <https://www.thehindu.com/news/cities/Delhi/dlf-sewer-deaths-two-more-arrested/article25017999.ece>
- xxvi. <https://theprint.in/opinion/between-swachh-bharat-deaths-where-is-the-sanitation-policy-for-manual-scavengers/252294/>
- xxvii. Report of the High Level Committee on Corporate Social Responsibility, 2018, Government of India Ministry of Corporate Affairs August, 2019, Page 21
- xxviii. *ibid*, p 42
- xxix. *ibid*, p 71
- xxx. *ibid*, p 45
- xxxi. *ibid*, p 43
- xxxii. [https://www.business-standard.com/article/economy-policy/india-s-economic-growth-slows-to-5-in-april-june-from-8-a-year-ago-119083001071\\_1.html](https://www.business-standard.com/article/economy-policy/india-s-economic-growth-slows-to-5-in-april-june-from-8-a-year-ago-119083001071_1.html)
- xxxiii. [https://www.business-standard.com/article/economy-policy/india-s-economic-growth-slows-to-5-in-april-june-from-8-a-year-ago-119083001071\\_1.html](https://www.business-standard.com/article/economy-policy/india-s-economic-growth-slows-to-5-in-april-june-from-8-a-year-ago-119083001071_1.html)
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Part 2

**Workers' Rights:  
Yet another series of  
violations**

## Chapter 2:

# A Textile Story: Missed Opportunity For Creating Model of Safe Migration In Tamil Nadu

*Umi Daniel<sup>i</sup> and K. Moulasha<sup>ii,iii</sup>*

The textile industry in Tamil Nadu has the distinction of possessing the largest labour-intensive workforce after agriculture. This is due to the large number of medium and small manufacturing units located in 18 districts of Tamil Nadu. In recent years, the migration of workers from states like Bihar, Odisha, Jharkhand and Assam has seen an increase, with migrant workers constituting 15 to 35 per cent of textile workers. The Tamil Nadu garment and textile industry is infamous for a system (Sumangali)<sup>iv</sup> of contractual employment of young, adolescent girls, mostly aged 16 and above, which contravenes international standards as established in the Palermo Protocol and borders on 'trafficking'. Although exporters strongly deny

the existence of Sumangali practices in the textile and garment sector, they admit the presence of hostel facilities for migrant workers, which is called 'camp coolie system'.

This chapter highlights key findings from a study<sup>v</sup> undertaken to understand the working conditions of interstate migrant workers in Tamil Nadu and explores the nature of forced labour or gross exploitation. It studies details of working conditions, statutory entitlements<sup>vi</sup>, recruitment processes, living conditions, and freedom of movement of the interstate migrants. The study was done through individual interviews as well as a qualitative survey designed to capture the perspectives of other stakeholder groups on issues affecting the garment industry<sup>vii</sup>.

## Migrants recruit acquaintances at home with promise of better opportunities

The findings revealed that there were three major methods by which workers got recruited. More than half of them (53 per cent) mentioned, 'Friends and known persons' working in garment factories in Tamil Nadu; approximately 25 per cent said they were recruited by "Family members and relatives" and the remaining 22 per cent mentioned skill centres. The work attracted recruits from landless and poor families, often tribal, who work as seasonal agriculture labour for low wages and come in contact with returning migrant workers and approach them with a request to be recruited. Some returning migrant workers proactively shared about their work life, hostel life, wage, bonus, and other aspects related to life outside the state among their network of relatives and acquaintances to attract new recruits. They are incentivised to do so by employers. What

tended to act as push factors of migration, as stated by 75 to 90 per cent of respondents, was the absence of lucrative, local livelihood opportunities, poor wages and insufficient income. The urgency to pay off debts back home was mentioned as a reason by 40 per cent of respondents. Comparatively, only 30 per cent respondents stated dowry as the reason for migration.

What emerged clearly from the sample villages is that migration to Tamil Nadu for garment work was rampant, and had become very normalised. A popular narrative had been successfully created in the villages where the respondents hailed - 'all is fine' with migration. This was given credence by a situation where current workers themselves acted as recruiters. Irrespective, there is an accepted belief that any kind of situation during migration

would still be better than what is currently

available in the two districts affected by drought.

## Poor conditions at work, but no questions raised

Upon reaching Tamil Nadu textile factories, the working conditions did not always turn out as promised. The lack of awareness of their rights as workers seemed widely prevalent, especially when one spoke about contracts, working hours and wages. While mechanisms of grievance redressal were present, workers preferred to opt for sorting matters by negotiating with seniors or leaving a job for another one. There seemed to be an instinct of self-preservation that compelled migrant workers to accept their situation as a norm, rather than question or seek clarifications about it.

**Contracts lack detail when issued:** While 78 per cent respondents reported not receiving any written appointment order, 28 per cent just stated that they joined the company through their relatives. In fact, the 22 per cent who had received an order described it as a brief letter of employment that did not contain any detail, job description or other terms and conditions.

**Long working hours and ‘voluntary’ overtime:** Two-thirds of respondents stated that they worked 12 hours a day, while other workers said they worked between 11 and 12 hours, both of which are longer than the prescribed eight-hour work day shift. All workers said that they were given one hour of leisure time for having lunch (30 minutes) and two tea breaks (15 minutes each). In the sample district, most of these industries adopted one and a half shifts i.e. 12 hours, with one-hour break. More than 90 per cent of the women migrant workers interviewed stated that they worked 6 days a week. Except a weekly off, no leave system was maintained in the industry. Workers placed by the skill centres stated that the centres instructed them to work for at least 10 hours a day with two days off in a month.

Overtime work was often voluntary but the supervisors “excepted” everyone to volunteer. Exemptions were allowed for workers with severe sickness / ill health or any other emergency.

Regarding payment for overtime work, 30 per cent stated that they were promised double the wage while others did not know the rate as they said they had not worked overtime in the recent past.

**Low wages and lack of clarity about it:** Many respondents were unable to share their exact monthly wages. Neither did they have any written contract nor did they receive any lump sum amount from the employer. Though they received pay slips, many did not have any idea about how their wage was being calculated or what deductions were being made and why. The table below provides an approximate figure that the respondents provided – this is the figure prior to deductions of Employee Provident Fund (EPF) and Employee Social Insurance across different categories of work. The wage mentioned in the table is on the higher side. Most workers do not necessarily get this wage, as deduction are often made for leave or absence. Those who stayed in the company accommodation said that if they did not work the 12-hour shifts, it would be difficult for them to substitute the deduction of Rs 1500 towards food, accommodation and EPF.

If wages were calculated based on an 8-hour working day, none of these workers were paid the statutory minimum wage. Some of the workers were told that they were being paid as per the hosiery industry minimum wage calculation. However, the wages are below par even by that standard. Workers would not necessarily stand up for their right to a minimum wage because they felt they had consented to the wage. The lack of alternative options placed them in a vulnerable position. Further, all factories uniformly paid less than minimum wage, so even if they moved out of their factory, they would not get better options in the state.

**Table: Approximate Monthly Wage Before Statutory Deductions for 26-days Month, Based on Responses from 79% respondents\***

Monthly Wage (approx.)	Local workers or Those Not provided Accommodation by the Employer				Workers staying in the accommodation provided by the employer			
	Packers/Helpers Quality Control/Checker		Machine Operator/Supervisor		Packers/Helpers Quality Control/Checker		Machine Operator/Supervisor	
	Statutory Minimum Wage (Rs. 7957 to Rs 8490 for 8 hrs)		Statutory Minimum Wage (Rs 8190 to Rs 8490 for 8 hrs)					
	Min	Max	Min	Max	Min	Max	Min	Max
12 hours	9600	10400	9600	10400	8100	8900	8400	9200
8 hours	7000	7500	7500	8000	5500	6000	5500	6500

Note: \*21% respondents refused to share information on the wage. Amounts mentioned are approximate

### Significance of social security not realised:

Some workers preferred to look for factories where statutory deductions such as ESI and EPF would not be made from their earnings so that they could have more cash in hand. More than one-third of respondents (35 per cent) said that employers had enrolled their name for EPF scheme, while 25 per cent said that they were not sure about it. However, none of those who mentioned EPF were able to specify how much money was deducted towards EPF or their EPF account number or the new Universal Account Number (UAN). In case of ESI, 30 per cent said that their name was registered for the ESI scheme. Again, none of them were able to mention either the amount deducted from their wage for ESI or their ESI account number.

With regards to bonus, a discussion with respondents revealed that there was no common understanding among the workers. Some said that the bonus amount varied between 6-10 per cent of the cumulative salary of the last 12 months according to seniority, and some said that they received a consolidated amount of Rs 2000 to Rs 4000. Among the workers interviewed, only 40 per cent reported receiving a bonus.

**Verbal abuse is 'normal':** When asked about

conditions of work, respondents seemed reluctant to talk about any abuse they faced. Through informal discussions aimed at understanding their views on abuse, harassments, committees and supervision, it emerged that none of them had reported having undergone any physical, sexual, violence and harassment in the work premises or in the hostels. None of them reported having felt that the workers from outside the state were treated worse than local workers.

Workers denied having faced or having heard of any sexual harassment or physical abuse by the supervisors. Most workers accepted the verbal abuse as 'normal'. A majority of the workers did not take the verbal abuse and intimidation by supervisors to ensure achievement of production targets as an infringement of their rights. However, they did say that if "poor treatment continues" for long then they changed jobs.

**Committees exist but hardly used:** Only 60 per cent of respondents were aware of grievance redressal committees and fewer (45 per cent) were aware of an internal complaints committee to address complaints of sexual harassment in the factory. Those who were aware of these said that the committees consisted of migrant workers. None of the respondents mentioned having ever



approached either committee with any complaint. Most workers preferred taking up issues with the hostel warden or supervisors/ managers. Female supervisors and hostel wardens played a major role in sorting out the issues faced by the workers at the hostel as well as the worksite.

**Minimal hostel facilities:** About 75 per cent of respondents reported living in an employer-provided hostel at the time of survey. The accommodation was either located within factory premises or at a walking distance from the workplace. The room space varied - in some places, the dormitory with bedding and bunk cot facilities accommodated 100-125 persons while in some other places 8 to 14 persons stayed in a single room with bunk cot facilities. Around 10-15 workers had to share bathrooms and toilets with their co-workers. Only 40 per cent respondents ranked the living space as “good”. Only 35 per

cent of respondents ranked the condition of toilets as “good”. Overall, living spaces were equipped with electricity, light and fans. A majority of them said that their hostels had basic amenities such as furniture, storage facilities, beds and mattresses and common television kept in the hall for leisure. Some hostels also had separate canteen facilities while in a few, the workers had to cook their own food in the kitchens. Irregular water supply was common and considerably worse in most of the hostels, especially during summer. Therefore, many hostels provided limited water for daily use during the summer.

The factories as well as hostels had a semblance of an emergency medical facility in the form of health rooms and a first-aid box. Respondents said they were provided medical attention if someone fell ill.

## Several violations hint at possibility of bonded labour

The Bonded Labour System Abolition Act (1976) of India is quite extraordinary in that it recognises the overlap between forced labour and bonded labour in customary relationships, the manifestation of these relationships in contract labour and inter-state migration, and considers the nature of restraints suffered by the labourer as a result of the bonded/forced labour relationship, and makes all of these illegal<sup>viii</sup>. Further, the Supreme Court clearly states, “... when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under some force of compulsion which drives him to work though he is paid less than what he is entitled under law to receive.”<sup>ix</sup>

None of the workers covered under the study perceived that they had been trafficked or tricked into the work by anyone. Further they said that, they could quit the work or move jobs as they desired, by informing the supervisor or manager a week or two in advance. According to workers, none of the companies retained the workers forcefully as they had not signed any contract or paid any lump sum payment to the workers.

However, the research team observed certain aspects that need to be further studied. This included the system of companies paying recruiters, recruiters making false commitments at the time of recruitment and the circumstances around the consent to migrate and the element of duress in the same. Additionally, the following themes emerge.

**Denial of Minimum Wage:** An average female migrant worker works for 10 hours a day for 26 days. According to the minimum wage calculation, even at the lowest rate, the monthly wage would add up to Rs 11,935. But most workers were paid a wage between Rs 8000 and Rs 8600. The denial of minimum wage has become a norm. The wage terms were more or less the same in a majority of the garment factories

**Restrictions on freedoms:** Even though the workers staying in hostels were allowed to contact their family and friends via phone, their freedom of movement was found to be restricted to some extent. Women workers were allowed to leave the hostel once a week or twice in a month for a few hours on Sundays and given time to buy

personal items.

**Denial of Holidays:** None of the workers were provided with holidays other than a weekly off and a holiday on harvest festival of Pongal. They were not provided any paid leave but allowed to take leave any number of days with prior notice. While many went home for two to three months with no specific obligation to return, every time they returned from their village, they were treated as new workers, which made them lose their seniority and other benefits such as annual increment.

**No Contract provided:** Most of the workers are not provided any written contract with work terms and conditions.

**No registration of workers:** According to the Interstate Migrant Workmen Act (ISMWA) 1979, labour departments are duty-bound to register migrant labourers both in the source area and the destination area. The workers who are registered under ISMWA are entitled to have journey allowance to the inter-state workplace, better housing, minimum wage as prescribed by the destination state and basic services at the worksites. In this case, none of the workers were aware of the Interstate Migrant Workers Act, 1979 or its mandates. The Government authorities interviewed stated that a big challenge to this was the scattered nature of workers and that no mechanism had been put in place to keep a record of migrant workers.

## Scope to create a model of responsible business and safe migration

With the demand in Tamil Nadu for ‘workers, who are vulnerable’ and the supply that states such as Odisha provide of ‘workers, who are desperate for any kind of livelihood options’ unsafe migration is inevitable. The textile industry, in this case, targets a female work force to reap the additional gender-based vulnerabilities – a contentment with lower wage, a sense of escape or freedom from the lack of mobility back home and a contentment with limited means and minimal living conditions. A number of female workers now migrate from the two districts of Odisha to Tamil Nadu and most also act as recruiters, keeping this cycle of migration self-sustained.

This has bolstered a ‘business-case’ for textile companies, owing to which they target migrant workers who are less demanding, less collectivised and can be kept as ‘captive’, rather than local workers. Companies have, consciously or unconsciously, woven a working environment

that has ensured that this kind of work practice falls short of being classified as bonded labour or trafficking.

There is a need for proactive intervention from businesses to create good models of worker-friendly environments, so that workers can demand and receive better working conditions in other ‘free-entry/exit’ occupations.

The business and human rights narrative can ensure that the state protects the workers and their rights; the businesses respect their human rights and there is an efficient grievance redressal mechanism in companies, company associations, state bodies, quasi-state bodies and judiciary. This alone can contribute to a sustainable and responsible business environment in the textile industry where migration becomes a safe livelihood option for women from different states across the country.

## The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

The system of employment of migrant labourers are not only exploitative in nature but also woven with false promises, malpractices and violation of human rights. The provision of Contract labour (regulation and abolition) Act, 1970 even after certain amendments had been unable to protect migrant workers' rights and take care of the malpractices by contractors. Hence in 1979, the Inter-State Migrant Workmen Act was enacted to regulate the condition of service and safeguard migrant workers' rights. The act creates provisions for contractors to employ better skilled labour from outside whenever there is a shortage of required skills among the locally available labour.

### **Key Highlights:**

- According to Economic survey 2016-2017, an average of 9 million people migrated between states every year either for education or work. The figure of inter-state migration is almost double than recorded during 2001-2011
- According to IMPEX 2019 (index compiled by a Mumbai-based non profit India Migration Now), Kerala ranked first for migrant friendly policies for out-of-state migrants, followed by Maharashtra and Punjab
- Migrants prefer to settle down in smaller cities rather than in huge urban agglomeration or metropolitan cities according to the report 'Migration and its impacts on cities' by World Economic Forum
- While major rural migration corridors have been Uttar Pradesh and Bihar for decades, some of the newer regions sending manual labour across the country are Odisha, Madhya Pradesh, Rajasthan and the North-Eastern states

- i. Aide et Action International - South Asia
- ii. Praxis Institute for Participatory Practices
- iii. With inputs from Pritha Choudhury and Durba Biswas
- iv. The word "Sumangali" in Tamil means "married woman" or "single girl becoming respectable through marriage." The scheme is also known as "marriage assistance system". Under the Sumangali scheme, girls' parents are persuaded by brokers to sign up their daughter(s) with the promise of a bulk of money after completion of a three- or five-year contract working in the factory that is used as dowry for marriage by the families. (<https://www.fairwear.org/wp-content/uploads/2016/06/fwf-india-sumangalischeme.pdf> and <https://www.inditex.com/our-commitment-to-people/our-suppliers/workers-at-the-center/sumangali-in-india>)
- v. Commissioned by Rights Education and Development Centre (READ, Tamil Nadu) with the financial support from TRAIID and done by Partners in Change
- vi. Such as wage, Provident Fund, Employees State Insurance and bonus
- vii. The research team reached out to 295 respondents, of which 70 people refused to be part of the study after the introduction and 25 stopped answering after the start of the interview. Therefore, 200 respondents were included in the final analysis. The survey was facilitated by three civil society organisations and field work was organised between August and September 2018. All respondents, belonging to two districts of Odisha, were female workers who were formerly or currently migrant workers in and around Tiruppur, and working in the textile industry of Tamil Nadu. The majority of respondents were aged 19-22 years, unmarried and had not studied beyond middle school. Most of the migrant workers belonged to the SC or ST categories.
- viii. ILO (2005), Bonded Labour in India: its Incidence and Pattern. Available at [https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_081967.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_081967.pdf)
- ix. Writ Petition 8143 of 1981, People's Union for Democratic Rights vs. Union of India, 1992

## Chapter 3:

# Corporate Accountability: The Elephant in the Room for Assam's Tea Industry

Anirudha Nagar<sup>i</sup>

Hathikuli in Assamese means a place frequented by elephants. It is the name of the flagship tea plantation of Amalgamated Plantations Private Limited (APPL), the largest tea producer in Assam. Stretching for 12 kilometres along the National Highway near the Kaziranga National Park, Hathikuli is home to roughly 4000 people and has been described as the largest organic plantation of its kind in Asia.<sup>ii</sup>



Natural beauty aside, Hathikuli makes for interesting viewing from a corporate accountability lens. Its major owners are two powerhouses in global sustainability: the Tata Group, prized for its Tetley tea brand and commitments to ethical business, owns 65 per cent; and the International Finance Corporation (IFC), which is mandated to reduce poverty, owns

16 per cent of the company. A decade ago, in 2009, Tata and the IFC established an employee-owned plantation model at APPL with the stated rationale of empowering workers by offering them the opportunity to make decisions in the company and share in its profits. The IFC's Performance Standards were expected to raise living and working conditions for over 1,55,000 people living and working on APPL's 25 plantations. This was supposed to result in increased sustainability of APPL's tea operations and be a leadership example to initiate change in the Assam tea industry.

Unfortunately, APPL has posted losses for four years running and meaningful changes to conditions facing workers are wanting. Meanwhile, the Tata Group celebrates Hathikuli's organic tea cultivation as an example of its contribution to the Sustainable Development Goals (SDG), specifically SDG 12 on responsible consumption and production.<sup>iii</sup> The plantation is well known domestically as its tea is sold in Starbucks outlets in India and it is now Fairtrade-certified, which has further raised its profile in international markets.

For the Assam tea industry, the elephant in the room is the continuing grim reality for tea workers living and working on Hathikuli. Why have workers not seen the SDGs realised in the context of their lives and livelihoods despite the plantation's profile in the global marketplace, its Fairtrade certificate, and the IFC's investment?

## Conditions facing Assam's tea workers far from 'decent or fair'

Most present-day tea workers in Assam are descendants of Adivasis who were forcibly brought from central India under British rule in the 1800s. Although companies have now taken over the reins, the colonial plantation model remains.

At the root of workers' continuing generational

exploitation is the system of dependence and the barriers they face in asserting their rights. Workers are dependent upon their employers for nearly every aspect of their lives, from housing, sanitation, and drinking water, to education and medical care, which their employers are required to provide under the Plantations Labour Act, 1951

(PLA). With housing tied to their job, workers are practically hostage to their employer. The upshot is that most workers fear speaking out given the grave implications to their livelihoods.

While there are several unions offering membership in Assam, most have close relationships with both tea plantation management and the political establishment. The Assam Chah Mazdoor Sangh (ACMS), which has been the dominant union in recent times, has a clear track record of undermining workers' interests and consistently allowing cash wages to be set at a rate well below the living wage in so-called collective bargaining negotiations.

Moreover, many plantation managers exert tight control over workers by restricting access to non-residents and non-workers, even in the labour quarters where workers live. Workers who meet with outsiders have been questioned and some threatened or punished with higher workloads. These restrictions have hindered the ability of workers and workers' representatives to meet freely, for instance, with the purpose of raising awareness about their legal rights.

It is in this context that the roughly 1,55,000 strong Adivasi community live and work on APPL's 25 tea plantations. Workers endure backbreaking, long hours of work in the harsh sun for six days a week, sometimes seven. Tea pickers are required to pick 24 kilograms of tea leaves a day or can face possible wage penalties. At the end of the day, most workers come home to dilapidated housing, unhygienic drinking water, and inadequate healthcare. Due to the absence of functioning toilets, many defecate in the open, exacerbating disease, which along with malnutrition, is disproportionately high on the plantations.

In exchange for their efforts, workers receive abysmally low wages. Today, across the state of Assam, tea workers receive a cash wage of Rs 167 per day. This wage is significantly below the state mandated minimum wage of Rs 250 for unskilled agricultural workers. It is also less than half the daily living wage of Rs 350, which grassroots movements in Assam advocate for.

APPL, like other companies in the Assam tea



industry, claims that when the 'in-kind' services they provide to workers under the PLA are accounted for, the overall wage (cash and in-kind) rises above the minimum wage. This reasoning is logically flawed because the company has not adequately implemented many of the statutory PLA benefits in keeping with the requisite standard. For instance, based on interviews at Hathikuli in all three divisions (Hathikuli, Rangajan, and Deering) in August 2019, it was found that basic requirements for housing and sanitation were not being met. Many houses are still without toilets, and where they do exist, many are unhygienic and otherwise unusable. Many workers complain of not having ready access to drinking water, and have had to either make their own makeshift tube wells or share taps with as many as 15-20 other families. Across the board, workers describe a broken grievance handling system, with repairs to houses not being completed after years of following up with the welfare officer. Workers also complained that there had been no doctor in one of the garden hospitals for over three weeks.

Moreover, APPL's practice of employing large numbers of temporary workers for many years to deny them key PLA benefits also prevails at Hathikuli. According to APPL's website, Hathikuli has 836 permanent employees and an additional 1200 temporary workers during the peak season.<sup>iv</sup> Yet, several temporary workers interviewed at Hathikuli had worked for several years consecutively (in contrast to the 'peak season' clause put up on the website). These workers have had to make their own houses using makeshift materials and were not entitled to medical care.

## Worker shareholder programme mired in limited information and coercion

In 2009, the IFC invested in APPL to enable the company to implement a sustainable 'worker-shareholder' model aimed at strengthening the agency of plantation workers. Soon after the investment, the IFC's independent accountability office, known as the Compliance Advisor Ombudsman (CAO), initiated an investigation following several serious incidents on the plantations. One such incident involved a 25-year-old worker at the Powai estate in Assam who collapsed and died at work in May 2010 after allegedly being assigned to pesticide spraying duties. Later that day, workers protested and clashed with the police, resulting in two protesters being shot dead and at least 18 others injured.<sup>v</sup>

In February 2013, three local civil society organisations, Promotion and Advancement of Justice, Harmony and Rights of Adivasis (PAJHRA), People's Action for Development (PAD), and Diocesan Board of Social Services (DBSS), filed a separate complaint to the CAO raising concerns about inhumane labour and working conditions at three different plantations – Hattigor, Majuli, and Nahorani. The complaint cited long working hours, inadequate compensation, poor hygiene and health conditions, coercion and pressure of workers, and a lack of freedom of association. They alleged that these conditions violated the IFC's Performance Standards. The complaint also raised concerns about the worker-shareholders programme.<sup>vi</sup>

In November 2016, the CAO released a scathing investigation report which found that living and working conditions (including housing, drinking water, sanitation, medical facilities, and the manner of pesticide use) were hazardous, and the wages on APPL plantations were so low that they were jeopardising the health of workers. In particular, the CAO found that the IFC's labour standard, which requires upholding "workers'

fundamental rights while paying them a decent and fair wage", was being violated.<sup>vii</sup>

With respect to the shareholder plan, the CAO found APPL workers were not given proper information about their rights as shareholders. From the outset, workers describe that the share programme was presented in an overtly positive way, with limited discussion of the risks of participation. Workers were offered 800 preference shares for Rs 10 each. Initially, workers were guaranteed their capital and an annual dividend of 6 per cent, but in February 2014, the preference shares were converted to ordinary shares, without any of the guarantees to capital or dividends. Workers own roughly 10 per cent of the company.

Though the programme was intended to provide workers with greater agency in the company, many workers were instead pressured into buying shares, often without information on what it meant to be a shareholder or the risks of investment especially once they converted to ordinary shares. Some workers describe management resorting to coercion to ensure shares were purchased. As a result, the majority of worker-shareholder today, including at Hathikuli, do not understand what shares are, the value of their shares, and their rights as shareholders.

Most workers are also kept ignorant about their right to attend APPL's annual general meeting (AGM), either in person or via proxy, and to vote on important aspects of corporate governance, including electing directors, and approving their pay packages, all of which are crucial to holding the board accountable. Every year, APPL handpicks workers from each plantation to attend the AGM in Kolkata, but these workers have struggled to understand what goes on. Some workers describe farcical electronic voting processes, where they are asked to say yes or no with little information on the purpose of the vote.

## Fairtrade certification

Despite these well-documented problems at APPL, in 2017, the Hathikuli plantation was deemed to have met Fairtrade's minimum requirements and

was awarded a Fairtrade certificate. As a result, Hathikuli plantation now has the right to sell produce as Fairtrade if it can find a buyer that will

pay a fair price and a premium for community projects.

But, should a plantation company known to have paid workers below the state-mandated minimum wage and put workers at risk through hazardous conditions be Fairtrade-certified? The shortcomings of Fairtrade certification in the Assam tea sector has been recently well documented by the University of Sheffield in its study on the Global Business of Forced Labour, which found no difference in labour standards, including wage levels, between Fairtrade-certified and non-certified tea plantations in Assam.

One of the central problems with certification is that it relies upon audits, essentially interviews with workers, which are not appropriate in a captive plantation context given workers may fear speaking out and would do so at great risk. Audits are also regularly orchestrated by tea garden management, including by taking auditors to the best facilities and to workers who have been instructed and coached on what to say, wear and act. As the University of Sheffield's study notes, "Workers told us that they are instructed to alter their working practices (e.g. in relation to safety equipment) to meet standards during annual audits by certifiers, but are then asked to

revert to breaking standards the following day, suggesting that producers are cheating audits and inspections.<sup>viii</sup>

Another problem with certification in this context is that the minimum standard for certifying plantations is too low. This allows tea plantations to use certification as a shield to justify that conditions are adequate, since tea buyers and consumers are likely to assume certification is evidence of compliance while workers are unlikely to speak up during audits. In order to regain credibility and create the right incentives, Fairtrade must raise the minimum standard for certifying plantations and conduct more rigorous and transparent audits.

On the ground, the majority of workers interviewed at Hathikuli in August 2019 had no knowledge of Fairtrade while others were confused about how the system worked. The few workers that did know of the system were part of the worker-management Fairtrade premium committee comprising 21 workers, (seven from each division) tasked with deciding how the premium should be spent. Despite the two years that had passed, these workers indicated that community benefits had not yet been decided upon.

## Conclusion

If nothing else, the experiences of the IFC and Fairtrade at Hathikuli plantation serve as a reminder that bringing about corporate responsibility must always involve meaningfully listening to the voices of the people affected by a project.

In January 2019, the CAO released a monitoring report which confirms that conditions on APPL plantations continue to be poor, including with respect to:

- living conditions, including housing, drinking water, sanitation, and medical facilities;
- pesticide use, and past impacts of highly hazardous chemicals on workers;
- ensuring workers earn fair wages,
- grievance handling;
- the shareholder program, including ensuring

workers can understand and assert their rights as shareholders;

- consultation generally; and
- APPL failing to investigate the root cause of serious incidents of death and injury.<sup>ix</sup>

The CAO report made it plain that APPL requested resources from its shareholders in October 2016 to address issues facing workers. This funding will be crucial to any locally-determined solutions going forward. Illness and disease that presently arise out of poor housing, sanitation, and occupational exposure to pesticides are contributing to lost productivity, staff absenteeism, and medical costs at APPL plantations. Investing in these areas will increase the productivity of APPL's tea workers so they can decently work, live, provide for their families, and contribute to the global marketplace, with tangible improvements for the company's bottom line.

- .....
- i. Human rights lawyer and Communities Co-Director for Accountability Counsel; Accountability Counsel supports communities to defend their environmental and human rights and is supporting the efforts of Promotion and Advancement of Justice, Harmony and Rights of Adivasis (PAJHRA) and People's Action for Development (PAD) through technical advice on the CAO complaint process.
  - ii. Sanctuary Asia, "Hathikuli Goes Organic", 2012, available at: <https://www.sanctuaryasia.com/magazines/conservation/8934-hathikuli-goes-organic.html>
  - iii. Tata Sustainability Group, "We Dream of a Better World: Tata Group and the SDGs", 2017, available at: <http://atasustainability.com/pdf/TataGroup-and-theSDGs.pdf>, pg 110.
  - iv. Amalgamated Plantations Private Limited, "Hathikuli Tea Estate", available at: <https://amalgamatedplantations.co.in/hathikuli-tea-estate.html>.
  - v. Sujata Gothoskar, Ashwini Sukthankar and Jasper Goss, "In Cold Blood, Death by Poison, Death by Bullets: Human Rights Violations at the Tata/Tetley-controlled Powai Tea Estate in Assam, India", available at: <https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/incoldblood.pdf>.
  - vi. Complaint to CAO of IFC Investment in APPL, February 2, 2013, available at: <https://www.accountabilitycounsel.org/wp-content/uploads/2017/08/APPL-complaint.pdf>.
  - vii. CAO Investigation Report of IFC Investment in APPL, September 6, 2016, available at: [http://www.cao-ombudsman.org/cases/document-links/documents/CAOInvestigationReportofIFCinvestmentinAPPL\\_EN.PDF](http://www.cao-ombudsman.org/cases/document-links/documents/CAOInvestigationReportofIFCinvestmentinAPPL_EN.PDF)
  - viii. Genevieve LeBaron, "The Global Business of Forced Labour: Report of Findings", 2018, SPERI and University of Sheffield. <http://globalbusinessofforcedlabour.ac.uk/wp-content/uploads/2018/05/Report-of-Findings-Global-Business-of-Forced-Labour.pdf>
  - ix. CAO Monitoring Report of IFC Investment in APPL, January 23, 2019, available at: [http://www.cao-ombudsman.org/cases/document-links/documents/CAOComplianceMonitoringReport\\_APPL2019.pdf](http://www.cao-ombudsman.org/cases/document-links/documents/CAOComplianceMonitoringReport_APPL2019.pdf)



## Chapter 4:

# An Unsafe Ride? Ola and Uber as Drivers of the Gig Economy

Basudev Barman<sup>i</sup>

## Introduction

A transformative change has swept through the world of work, rendering an irrevocable impact on work arrangements and working environments, transcending towards a new global order. The world of work in the current globalised economy is dominated by app-based companies running businesses across the globe. The concept of work is focussed on jobs created in the platform economy specifically by the ride sharing/hailing services of Ola and Uber in India. Technological innovations, globalisation, climate change, emergence of platform-based economies, digital technologies and artificial intelligence continue to rapidly transform the world of work. These transformational changes have major implications on the standard employment relations and employee-employer relations<sup>ii</sup>. One of the significant implications of the same is on the cohesive industrial relations<sup>iii</sup> protecting the rights and entitlements of workers. Workers have fewer bargaining powers than the capital.

The rapid growth in technological innovations and its penetrations has led to a steep rise in 'new age jobs', across sectors and industries, through the platform-based economies. Since the early 1990's, the global reform measures<sup>iv</sup> established an economy for the neoliberal modern market spaces, with multinational corporations trading almost exclusively in services and intangible products. They have penetrated each and every sphere of

our day-to-day lives<sup>v</sup>. Multinational corporations fuelling the global economies are allowed by the governments to have unbridled access to products and labour markets. As a result, these firms running enormous businesses across the globe, engage representatives at every significant point of their global supply/value chain, limiting their own presence and responsibilities as principal employers<sup>vi</sup>.

The state intervention and responsibilities are gradually withering away. On the contrary, state machineries have often smoothened obstacles that hinder the functioning of global supply chains. A majority of the workforce has been rendered transient over the last decade. This transient workforce is part of the platform economy, simultaneously engaging with different and disparate employers<sup>vii</sup>. The platform economy has become the new reality in this day and age.

'Platform Aggregators' such as Uber and Ola in the Indian transport industry and other similarly modelled app-based companies in other industries, have emerged as the new technological breakthrough for providing a range of services. This has replaced the traditional forms of industry practices. The new forms of industry and supply chain models, directly connect suppliers with customers, thereby externalising the work-related risk and responsibilities.

## Ola and Uber in India

Ola and Uber are India's leading app-based taxi service providers. They have successfully disrupted and changed the structure and operations of the Indian taxi industry in the last five years. Their

business model has made it possible for people to book a ride from their own doorstep, often at affordable rates and minimum wait time. On city coverage basis, Uber's second largest market

operations were in India till 2015.<sup>viii</sup> It was reported that India had over five million weekly active riders in August 2017 and Uber controlled 40 per cent of the market in India, the world's third largest and its domestic rival Ola is the market leader, with a share of 56 per cent<sup>ix</sup>. On a rough estimate available, it is speculated that there are about 4.75 lakh vehicles operating for Uber and approximately 10 lakh vehicles for Ola across India<sup>x xi</sup>. Ola operates in nearly 125 Indian cities, offering cabs, auto rickshaws, and even two-wheeler services while Uber services are available in 36 cities<sup>xii</sup>. Ola and Uber engage/attach drivers for business purposes through three categories of vehicles: fleet, leased and partner.<sup>xiii</sup>

- Partner vehicles are those that are owned by the drivers themselves. By registering with Ola and Uber through their online platform, followed by physical verification of relevant documents and the vehicle, drivers can utilise app-based service for earnings, paying for a certain commission claimed by Ola and Uber from the fare.
- Leased, or “driver under a partner” in case of Uber, is where drivers who don't own a vehicle can lease a vehicle. In the case of Ola, it is for Rs 31,000 security deposit with a daily rental fee of Rs 1,150. For Uber, the fleet vehicles are registered under a single owner; the registered individual then acts as an employer and employs drivers to drive his/her fleet vehicles for a salary he/she negotiates with the driver.

## Methodology

This article has been developed using secondary data and first-person accounts of 15 drivers driving for Ola and Uber. The respondents were selected through snowball sampling and there was no purposive selection of the same. Interviews were conducted in an informal setting, during rides and at completion of trips. The respondents were asked about their experience of driving

- Fleet operator/owner has a number of vehicles registered with either of the companies. Ola also provides assistance in securing drivers for the fleet vehicles if drivers are not available for certain fleet operators/owners.

Most of the drivers who drive for platform aggregators – Ola or Uber or for both – end up driving for more than 15 hours a day. They do so in order to justify the cost of fuel consumed, and to pay commission and monthly installments due to these platform aggregators. Even after toiling for hours, often the drivers don't take home a decent enough earning for survival. The earnings have dwindled from Rs 70,000-Rs 1,00,000 to Rs. 22,000 – Rs 25,000 per month over the last three years.<sup>xiv</sup> On the contrary, the work hours have increased drastically. This astronomical drop was fuelled by incentives and bonuses being cut, coupled with the rise in fuel prices and decrease in per kilometre rates by platform aggregators. This has made it impossible for the drivers to escape the push towards urban poverty.<sup>xv</sup>

Apart from plying long hours on the Indian roads, drivers also have to be wary of harassment and violence from the riders, police and road rage. Numerous reported incidences confirm robbery, abduction and in some cases even murders during/after a ride/trip.<sup>xvi xvii xviii</sup> The virtual employers – here the platform aggregators – bear no responsibility towards their driver partners in the event of an accident or any untoward incident during the course of work.<sup>xix</sup>

with Ola and Uber with probes focusing on their income, expenses and on issues dealing with health, safety concerns, harassment and, if any, authoritarian role by the platform aggregators. The secondary data was sourced from online news articles, ongoing research projects, journals and blog posts.

# The Plight of App-Based Driver Partners

The platform economy is churning out jobs that are precarious and hazardous in nature. These companies would argue that the worker is a free agent and not an employee, having the free will to log out of the platform aggregators' app. However, this rationale is misleading and devoid of the fact that the companies had enticed and entrapped the vulnerable and marginalised workforce through their initial programmes of high incentives and bonuses. Drivers are trapped and shackled in debts by the platform aggregators, pushing them to race every day to complete targets and earn just enough to meet liabilities. Drivers' responses with regards to their work when analysed through the lens of

precarity<sup>xx</sup> and forced/bonded labour<sup>xxi</sup> tick all the checkboxes.

Work of drivers associated with platform aggregators is distant from the definition of decent work<sup>xxii</sup>. It is an illustration of modern slavery<sup>xxiii</sup>, where a worker is not bound by chains anymore but by debts and contracts. The core issues gripping Ola and Uber drivers in India can be broadly classified into three categories. These categories are not conclusive or exhaustive as in each city the drivers will have their own set of problems, which they prioritise over the others. The three categories are elaborated in the following paragraphs.

## Core issues faced by drivers

**Opacity of the System:** The drivers in several Indian cities, working for different app-based platforms, have complained about the lack of transparency related to fare determination, promotional costs, surge pricing, incentives, penalties and bonuses. They have little or no information on how rides are being fixed or are being allotted and remain in the dark on the software/office end of the business. Questions on the rating system for drivers, its impact on rides/fares or their income and parameters of customer ratings exist. The relationship between the state monitoring and regulating authorities/agencies and the platform aggregator companies is unclear.

**Dehumanising Work Practices:** Effective grievance redressal mechanisms to resolve issues faced by drivers don't exist. The automated system and scripted responses from the call centre overlook and trivialise their problems. The algorithm keeps nudging and needling them to complete at times impossible targets for insubstantial incentives and bonuses.<sup>xxiv</sup> Long working hours to meet debts and liabilities force them to lead a very isolated existence. Interactions between a driver and the rider/customer are often confrontational and the tone of the rider/customer is that of indignation and disdain. Drivers feel they have been reduced to a cog in the machinery

that exists only to generate profit while shunning the human who drives the business.

### **State Apathy and Regulatory Ignorance:**

Discontent on possible collusion between state machinery and platform aggregator companies exist among drivers. Some of the developments suggesting the same are – disappointing outcomes to major agitations spearheaded by drivers' unions and associations,<sup>xxv xxvi</sup> hike in road and municipal taxes for commercial vehicles,<sup>xxvii</sup> lack of regulation for platform aggregators, precariousness and hazardous nature of work, absence of social security and protection etc. State regulatory authorities/agencies are relegating their role in restraining the malpractices and bad faith conduct by the platform aggregators. Through the recently amended Motor Vehicle Act, 2019, drivers have been further disenfranchised while all issues pertaining to platform aggregators would be resolved under the Information and Technology Act, 2000. This further denies the drivers their identity as workers/employees working for an employer.<sup>xxviii</sup>

In addition to the above-mentioned three categories, there are serious concerns pertaining to the financial statements of driver remunerations, physical and mental health issues including stress

faced by drivers resulting from work, long-term impacts not only on drivers but also on their

## How Does it Work?

Fare and commission of the platform aggregator companies are major concerns for the drivers; on a trip their earnings vis-à-vis company's commission. The parity between what platform aggregator companies charge their customers and actual payment to their drivers can be elaborated through the screenshot below.

FARE DETAILS	
<b>You Receive</b>	
Base Fare	\$1.80
Distance (32.07 mi × \$1.4040/mi)	\$45.03
Time (38.89 min × \$0.1728/min)	\$6.72
Tip	\$3.00
<b>Total</b>	<b>\$56.55</b>
<small>Your earnings are always calculated the same way. On every trip you take, you earn your base fare, plus time and/or distance rates for the length of the trip, plus applicable tolls, fees, surge/Boost, and promotions. To see your rates anytime, see Fares in the menu.</small>	
<b>Rider Pays</b>	
Rider Payment	\$118.78
Tip	\$3.00
<b>Total</b>	<b>\$121.78</b>

Picture source: RideGuru

This is a screenshot of the final bill statement, an illustration of what a driver gets on ride completion. In this case, the driver has earned less than half of what the rider has been charged

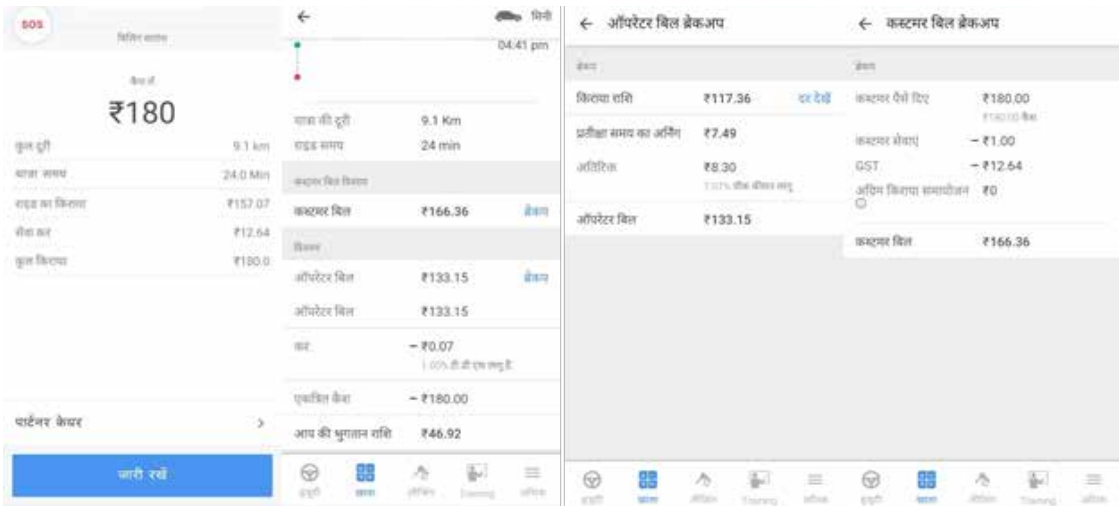
family and friends.

by the company. It demonstrates how platform aggregators, in this case the Uber, retain more than the stipulated 25 per cent commission, it lists out in its contract with the drivers.<sup>xxix</sup> Though this example is not from India, in India too, we can see a similar discrepancy as observed in the screenshot below.

Trip Earnings	
<b>₹ 100.54</b>	
Duration <b>18min 27sec</b>	Distance <b>8.47 km</b>
<b>Cash Collected</b>	<b>-₹ 133.62</b>
<b>Trip Type</b>	<b>UberGo</b>
<b>Time Requested</b>	<b>1:23 PM</b>
<b>Date</b>	
<b>Fare</b>	<b>₹ 133.62</b>
<b>Uber Fee</b>	<b>-₹ 26.72</b>
<b>Tax on Fare</b>	<b>-₹ 6.36</b>
<b>Your Earnings</b>	<b>₹ 100.54</b>

Picture Source: Private

It appears that platform aggregator companies, in this case the Uber, take advantage of drivers and possibly exploit them. The drivers, even if they want to resolve discrepancies through a proper redressal mechanism, are stonewalled by the company and its policies. Companies' position that the drivers are not employees but 'partners' further creates an obstacle in resolution of these



Picture Source: Private

issues through any traditional state or legal apparatus.

Ola has separate bill calculations for its riders and driver partners. The upfront pricing scheme usually benefits the company rather than riders or driver partners. There is also the case of taxes being levied on both riders and driver partners, which is never explained nor any details being provided for. The following screenshot of a bill will shed light on this issue.

The bill shows that a trip fare reported in the beginning is different from rider and operator fares. The additional charges and expenses further muddle the calculation process of actual fare against the demanded fare. Even then, the driver has to pay back to the company the commission he/she owes. In addition to this, there is also the EMI if one is a fleet driver, cost of fuel and maintenance. The drivers have always been short-changed by the companies with policies and processes, often aimed at maximising profits at the cost of drivers and customers/riders.<sup>xxx</sup>

In terms of driver earnings, we can consider the case of an Uber driver. He informed that if he needs to have a gross earning of Rs. 90,000 in a month, he would have to be on the wheels for more than 20 hours a day, at least six days a week. Even after working for extreme long hours without

leave, the cost of actually keeping the vehicle running for the month would set him back by at least Rs. 50,000-60,000.<sup>xxxi</sup> A typical monthly expenditure as provided by the driver shows the actual earnings vs expenses.

Income (per month)	Expenses (monthly average)
<b>Rs 88,000</b> Gross Income	<b>Rs 4,800</b> Down payment (averaged out monthly over three years)
	<b>Rs 15,000</b> EMI
	<b>Rs 24,800</b> Fuel expenses
	<b>Rs 1,500</b> Tyre change cost
	<b>Rs 4,800</b> Commercial tax
	<b>Rs 7,900</b> Other maintenance and data costs (9% of Rs 88,000)
	<b>Rs 630</b> Insurance premium
<b>Total: Rs 88,000</b>	<b>Total: Rs 57,030</b>
<b>Net income: Rs 88,000 - Rs 57,030 = Rs 30,970</b>	

Picture source: Factordaily

Drivers working for these platform aggregator companies have reported these issues and challenges with regards to income and earnings. There are severe health implications given the long working hours. The long hours they are

confined to their vehicles lead to irregular food and sleep schedules resulting in severe life threatening diseases, continuous and repetitive actions during driving causing muscular pain, fatigue and at times accidents due to impaired judgements.<sup>xxxii xxxiii</sup> The health concerns are not just limited to physical symptoms and ailments; stress and burnout due to long hours of work also affect the mental health of these drivers. There has been limited work on this issue across the globe, however, some ongoing projects<sup>xxxiv</sup> have identified back, neck and leg pain to be the most reported ailment for drivers. They also face stomach issues due to regular consumption of street vended or unhygienic food to save time and money. Drivers are unable to access timely health services and avail of any health or accident insurance, claimed otherwise by Ola and Uber<sup>xxxv xxxvi</sup>.

The harassment from traffic police, customers, a near constant threat of assault and robbery,

coupled with the aggressive push by the companies to achieve targets and incentives, the need to undergo mandatory training breaks for better approval ratings and the pressure for keeping the app running, take a toll on the driver. These, as evident from cases reported by drivers, affect their relationships with family and friends and lead to severe behavioural changes. The drivers tend to push themselves above and beyond in order to complete targets for incentives and meet liabilities. Taking an odd day off seldom helps in recovering from physical and mental tolls from the taxing work of the other days.

The work for ride sharing apps is 'stressful by design.'<sup>xxxvii</sup> It thrives on cutthroat competition, games on human greed and need for comfort. The app pushes drivers into these precarious and hazardous 'new age jobs' to meet the liabilities arising out of the debt traps.

## Conclusion

The platform aggregator companies undermine the basic rights of a worker. The algorithm governed work borders on forced labour and modern-day slavery. The current scenario may seem bleak but successes in Paris<sup>xxxviii</sup>, California<sup>xxxix</sup> and United Kingdom<sup>xl</sup> are encouraging. The possibility of replicating these success stories in the markets of developing countries is still an optimistic aspiration. Digital economy and platform-based work are here to

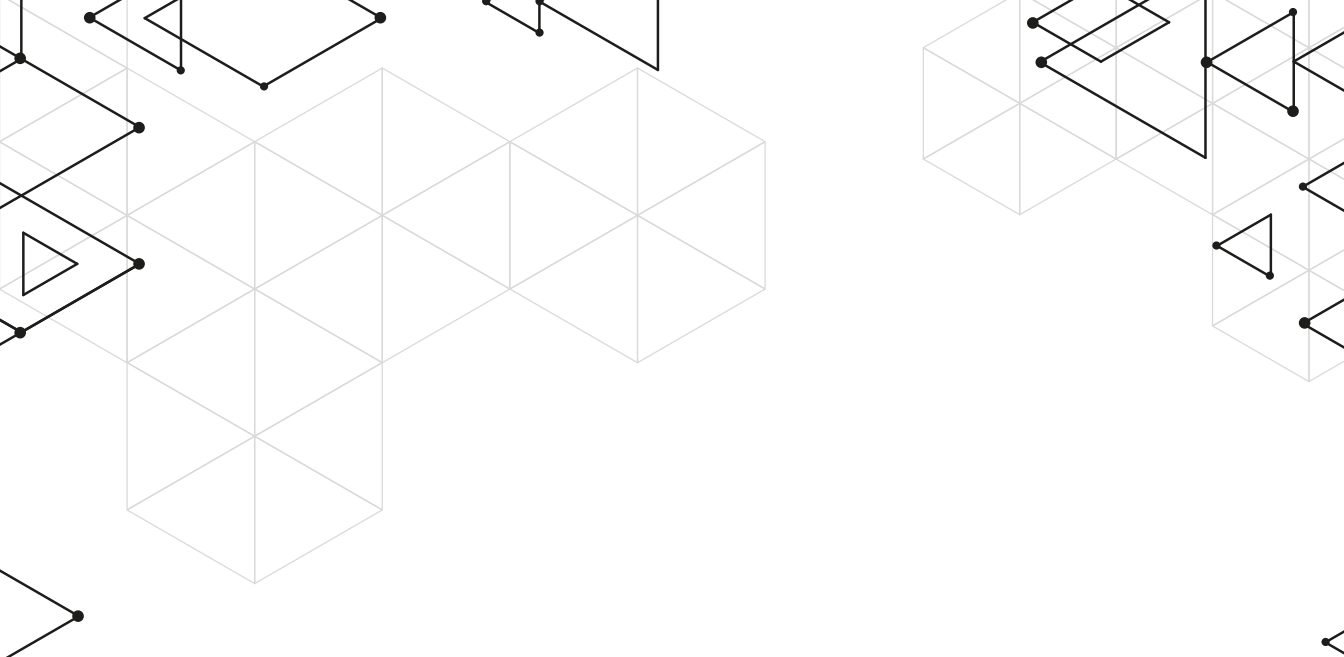
stay. The strategies undertaken by the drivers' unions and associations need to be reassessed and targets for negotiations, appeals, litigations and agitations need to be reidentified. If the technological innovations are improving our standard of living and prosperity, then this should be reformulated not at the costs of workers' rights and dignity. The State must not turn a blind eye towards its citizens – in this case, the 'new age workers'.

- .....
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With inputs from Mathew Jacob, Human Rights Defenders Alert-India
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  - iii. A "cohesive industrial relation" refers to the relationship between the organisational structures of employer's associations and trade unions where there is a increased interaction between the two entities with better negotiation and dialogue.
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Part 3

# **No Child's Play: Putting Children in Harm's Way**

## Chapter 5: Decoding Child Labour in The Handicrafts Industry

*Nandini Sharma<sup>i</sup> and Vikas Yadav<sup>ii,iii</sup>*

For most of us, child labour may seem to be a relic from a bygone era which is perhaps best relegated to history. However, nothing could be further from the truth. While there is no denying that we have come away from the days of the 1960s, when the firecracker industry (Sivakasi) as well as the carpet and rug industry were under intense scrutiny resulting in lockdowns for the use of child labour, however, we still have a long way to go in creating a positive impact. Over the years child labour has taken on more sinister forms making it further difficult to address and uproot. The narrative below, which is a culmination of a field trip involving interviews from different stakeholders, offers at best a glimpse into this sordid underbelly of child labour.

Let us consider the city of Jaipur, Rajasthan, barely 300 km from the National Capital, Delhi, a city that records the third highest number of child workers, i.e., children below the age of 14 (as per the 2011 Census). Most of the children are employed in the handicrafts industry, primarily: bangle making, apparel (stitching), stone cutting and polishing, and embroidery. It is estimated that on an average 50,000 children are trafficked<sup>iv</sup> and brought to the city annually. These children come from different states, a substantial proportion however, comes from Bihar, Jharkhand, West Bengal, Uttar Pradesh, and Madhya Pradesh. For these children, some as young as six, the moment

they lay foot in the city, their nightmarish ordeal begins. Overworked (working from 8.30 am to beyond midnight, for almost 16-18 hrs with two short breaks), underfed (drugged to suppress hunger and sleep) and often beaten up. It is worth noting that these figures only account for children that are trafficked – there are innumerable uncounted numbers who stay with their family and work alongside to help earn a living (they may or may not go to school).

To understand child labour, one needs to understand how it manifests and thrives amidst us. This in-turn begs a closer look at the labyrinthine supply chains that characterise the handicrafts industry which employs a significant number of child workers. Amongst the aforementioned four sectors, bangle making employs the highest number of migrant child workers. Within the bangle making sector, there are primarily two segments, namely, the cold lac and hot lac. It is cold lac where child labour (trafficked) is most prevalent. The trafficked children are squeezed into tiny, dimly lit and poorly ventilated rooms (called workshops or *karkhanas*, located in residential and mostly unregistered localities) to make lac bangles. There also exist home-based work units, wherein the family, including children, work within their residences and sell the produce to an aggregator (small wholesaler) from the community.

### Understanding Child Labour through the Supply Chain Lens: Cold Lac Bangle<sup>v</sup>

Typically, the value chain constitutes of five to seven actors; links between some actors are well entrenched and stable making it difficult to break and/or govern, while links between other actors are weak implying the influence that each wields

over one another. Owing to the proliferation of child labour in cold lac bangle making, for the purpose of this article we will focus our attention on studying its supply chain.

The workshops are the hotbeds of child labour. They are generally owned by a community member, who may have more experience and is able to rent out a small room to serve as the sweatshop. The workshop owners have strong ties with wholesalers to whom they sell their output, based on the order placed. They generally buy the raw material and get people together to work. The small workshop owners may also sell their produce to small wholesalers (who are more like aggregators, and may also include designers). They in-turn sell the collected produce to a big wholesaler. Eventually all the material gets sold to the retailer. The retailer sells it to the final consumer and also informs the wholesaler about the trending bangle designs. Some of the bigger wholesalers may also own workshops where both children and adults work.

The dominant power and influence in the supply chain lies with the wholesaler, having both backward and forward linkages, as well as the retailer. Together the two entities account for and pocket 50-60 per cent of the profit margins (with zero to negligible value add to the product). Meanwhile, the manufacturer receives only about 15-20 per cent of the total transaction value. Accordingly, an adult artisan would get Rs 6000-8000. In case of children, they are paid, mostly in kind (food and clothes), besides an advance to their families. Everything put together would amount to roughly Rs 1,000 per month. The stark inequity along the supply chain tends to arrest each of the supply chain actors in a status quo, which is particularly bad for the artisans occupying the lowest rung. It makes them most susceptible to socio-economic exploitation and leaves them with slim-to-none chances of lifting themselves out of poverty by demanding better wages and livelihood.

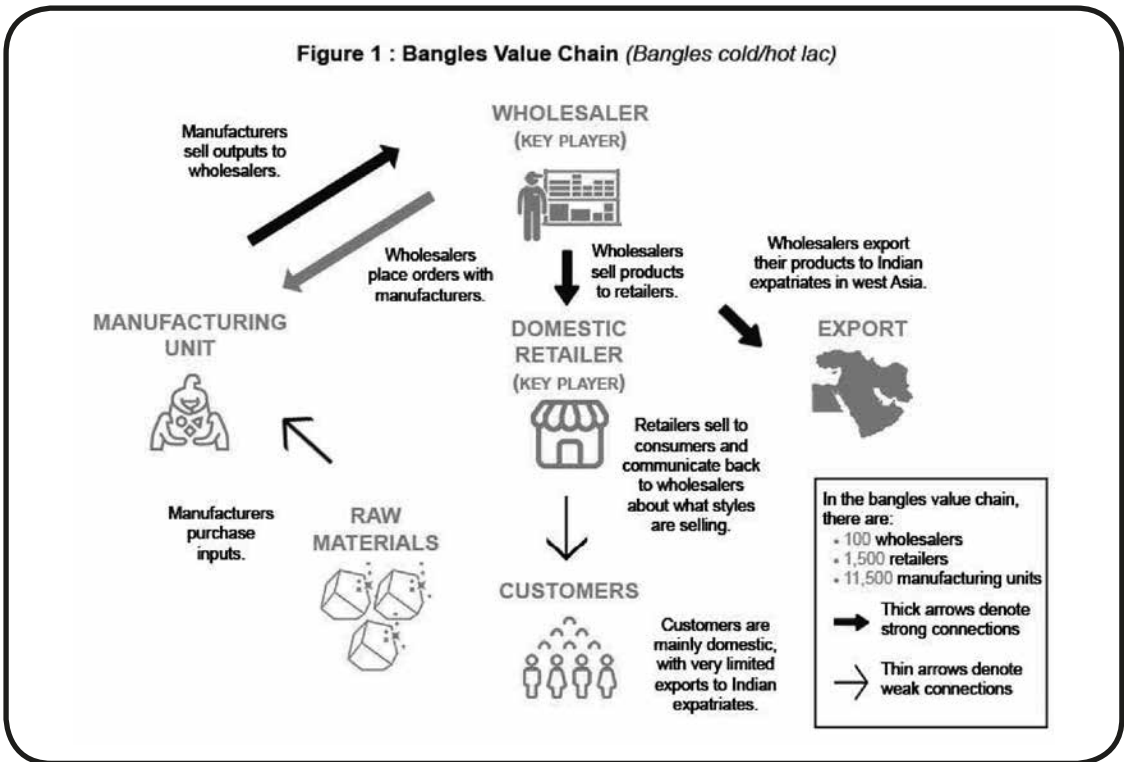


Image Source: Report: Business Strategies for a Child Labour-Free Jaipur

## The Market Dynamics: Interplay of Demand & Supply Forces & its effect<sup>vi</sup>

In addition to the intractable supply chain issues, the market dynamics governing the cold lac bangle making segment also make it difficult to address the issue of child workers. The market segment is fraught with competition (with the local communities burgeoning with dingy workshops) and adding to the woes is the fact that this segment has little to no variation in the product (bangles) and is classified as a low skill and low price product. Consequently, the margins to play with are very narrow. This makes child labour a 'lucrative' business strategy, where one plays on the already abysmally low wage-costs. What came through in the interviews and the literature was that competing on wage costs is neither a desirable nor a sustainable strategy, particularly in the present times when machines are edging out human labour. Instead of falling

into a downward cost spiral (wherein children are employed to keep costs low), there is perhaps a compelling case to improve productivity and efficiency through mechanisation and automation which will help balance out cost differentials of employing adult workers (which tantamount to higher wages). Also, dependency on a single (cold lac bangle) product requiring low skill and having a low value, exposes the artisan to demand and price fluctuations which pushes them further into a self-perpetuating cycle of exploitation. In such a scenario, focus on skill enhancement and product diversification become critical factors in hedging livelihood loss from saturation and competition. Additionally, mechanisms that can help link artisans to the market as an alternate may also give a higher bargaining power to artisans and help reduce exploitation.

## Recommendations to Combat Child Labour

Most of the features delineated above are typical to the handicraft industry in the low skill and value segments. Charting a way forward would entail market-based solutions and approaches and tackling the issue on multiple fronts. Some good practice examples adopted by businesses include, setting up community centres/workshops for artisans to work, shifting to in-house production for greater transparency and better governance. There are a few multi-stakeholder initiatives underway which deal with the issue holistically through collaborative intervention with different organisations. Under these initiatives, affected communities are mobilised through sensitisation on the ills of child labour. Women from the community, in particular, are engaged and imparted soft and technical skills to improve the quality and efficiency of work and diversify their skill set and encouraged to organize themselves better to earn a living. Endeavours to forge direct linkages with the market (marketing portals, tie-ups with agencies) to eliminate the need for intermediaries are being made. Big businesses are assured of child labour-free products (as

part of regulatory compliance and commitments to UNSDGs) through branding/labelling/certification, which in-turn helps create a market that incentivises child labour-free products to leverage a better price. While the demand for such products maybe relatively low in the domestic markets, but with the new international laws such as the UK Modern Slavery Act, 2015 and Dutch Child Labour Due Diligence Law, 2019 the demand for such products is expected to be on the rise. From a compliance risk standpoint more and more businesses today (particularly the MNCs) see reporting and disclosures on the issue take priority. This may well serve as an unrealized opportunity for the smaller businesses to gain competitive advantage by ensuring child labour free products /supply chains. A lot of the onus therefore is on the big businesses to use these progressive legislations and policies to work together with small businesses in enabling them to address child labour across supply chain (through dialogue, capacity building, awareness generation, better and direct market access etc)

Additionally, as part of the multi-pronged approach, there are endeavours to work with the community to demand better schools in the locality thereby, ensuring a lower school dropout

rate and better future prospects for the children. Such multi-front approaches help address the social evil of child labour at its root.

## Consumers hold the key

There is a growing consciousness among consumers about sustainability, particularly with regard to the social and environmental impact of production. Today consumers, particularly the millennials, no longer want to be bystanders and instead want to drive the responsible business agenda. In a recently conducted survey on the use of child labour in producing goods, most consumers were repulsed by the idea and were willing to pay a higher price against the

assurance of no child labour in the supply chain. It is therefore time for us, as consumers, to now put the money where the mouth is. Vijay Goel, an expert on child labour, believes that the day society decides to reject child labour in all forms (as domestic help, in supply chains, hotels and restaurants, construction labour) will be the day when child labour is stamped out. Let us do our bit in raising awareness on child labour and be relentless in asking businesses the right questions.

- .....
- i. Centre for Responsible Business
  - ii. Praxis – Institute for Participatory Practices
  - iii. With inputs from Durba Biswas and Pritha Choudhury
  - iv. Report: Rescue Operations in Jaipur: [http://childlabourfreejaipur.org/pdfs/Report-Rescue\\_in\\_Jaipur-Feb2018.pdf](http://childlabourfreejaipur.org/pdfs/Report-Rescue_in_Jaipur-Feb2018.pdf)
  - v. Business Supply Chains Research Report: [http://childlabourfreejaipur.org/pdfs/Business\\_Strategies\\_for\\_a\\_Child\\_Labour-Free\\_Jaipur%20v1-FINAL\\_REPORT.pdf](http://childlabourfreejaipur.org/pdfs/Business_Strategies_for_a_Child_Labour-Free_Jaipur%20v1-FINAL_REPORT.pdf)
  - vi. Interviews & Report Business Strategies for Child Labour Free Jaipur

## Chapter 6:

# Ethics of Business of Social Media and Gaming

Ajay Kumar Sinha<sup>i</sup>

### The Web of Social Media

On July 19, 2019 the Indian media widely reported the move by the Ministry of Electronics and Information Technology, Government of India, to seek answers from Beijing ByteDance Technology Co Ltd., owner of the popular Chinese video app TikTok, to a voluminous list of 24 questions.<sup>ii</sup> The questions ranged from alleged unlawful usage of TikTok by children to availability of content that is obscene and anti-national. The Ministry also enquired whether TikTok restricts usage of the app among children, or those below the age of 18 years through its 'age gate' mechanism, and if the mechanism can be made applicable for users who are already registered. The government sought detailed responses on the Company's policies with regard to obscene content available on the platform, about the preventive and corrective measures ByteDance had taken to ensure that such content does not appear on the platform and whether it has taken significant steps to sensitise children and parents to ensure safe use of the platform and 'avoid any addiction to the application' by the younger generation.

It is important to know that ByteDance is one of the world's most valuable start-ups, even though both TikTok and Helo are not offered in their home-market China. The Company, which has seen blistering growth in India, was also questioned on data localisation and whether the Company was in compliance of the Information Technology (Intermediaries guidelines) Rules, 2011, and other Indian laws apart from the IT Act.

This questioning of ByteDance by the Ministry is quite noteworthy as TikTok is not the lone application that is in violation of the UN conventions, laws, policies and ethical norms of the society. There are numerous social media and

online gaming companies that are operating in India who pay scant regard and consideration to the effect content produced and/or hosted by them, or on their platforms, has on children and young people. Such companies are in serious need of reform and restructuring of standards and mechanisms, so they are in compliance of the standards of children's rights to privacy, safety, health and well-being as they are espoused in the Constitution of India and the United Nations Convention on the Rights of the Child (UNCRC). These companies seem to be doing business of their products and services in the Indian market while being completely oblivious to their social responsibilities of protecting and promoting peace, harmony, non-violence and preventing sexual abuse and exploitation, addiction and other practices like gambling, which are harmful for the society in general and children in particular. It is a matter of both social responsibility of the business and of business ethics. A business that thrives on and flourishes from causing harm to its clients, buyers and users is unethical and criminal.

Recently, there was also news of a ban on the PUBG mobile game, one of the most popular mobile games in India, in Gujarat and arrests of some young adults who were playing the game.<sup>iii</sup> This made the whole nation take notice of a phenomenon that a majority of the population is facing but for which there is very little attention from – (a) law and policy makers, (b) teachers and schools and (c) parents and guardians.

Tencent, the makers of PUBG, have received flak for not doing enough to prevent children from getting 'addicted' to the game and affecting their overall behaviour due to the promotion of gun violence in the game. The ban and news

around it has triggered a national conversation around regulating online gaming in India. When we look around and talk to people in general, almost everyone is facing the problem of people spending more than the desirable amount of time looking into the screens of their smart phones. However, very few understand the reasons behind the malaise and what could be the possible solution.

What needs to be discussed and understood is the lack of laws and regulation surrounding gaming in India, the lack of any law requiring compliance with international guidelines and rating systems and the nuanced difference between – (a) an online game being objectionable due to its violent and sexually inappropriate content and (b) the

addictive nature of the online game.

Additionally, the differential adverse impacts of ‘Violent and Sexually Inappropriate Content’ and ‘Addictive Nature’ of online games on children also need discussion and solution. There is a need to understand these phenomena that are multi-dimensional and which permeate and flourish in an environment lacking any central administration of the Internet. This allows organic growth of the network, as well as the non-proprietary nature of the Internet protocols, which encourages vendor interoperability and prevents any one company from exerting too much control over the network. This reality of the Internet also hinders the government from intervening with any real authority.

## The Modus Operandi of Online Gaming and Social Media Companies

One often wonders whether we own our technology, or our technology owns us. Our use of technology changed from a tool we want to use into a tool we must use. The devices and services have crept further into our personal lives, demanding an increasing amount of our attention and engagement.

But, why do we behave the way we do? Why are we always hooked on to digital devices? Is there someone who is planning and plotting to keep us using more and more social media and online gaming? We need to understand that most of the content we consume online is also watching us, recording us, and building a digital version of us. That digital version of us is quite valuable. So, the true owners of technology need us to be as engaged in the technology as possible. Because **WE** are the product they are selling. Our digital identity and our online behaviour (tracked by algorithms of the digital media companies) are the products.

We binge on a lot of things in the modern world – TV shows, video games, food, alcohol, social media, and all the other menu items available in our modern-day dopamine buffet. It is great in the sense that we’ve never had so many options for

enjoying life, but it also means that the companies responsible for serving up the feast are highly incentivised to keep us logged in to using their online gaming and social media applications.

As mobile games and in-game payment models become the new norm in video gaming, we are in for a whole new generation of carefully-tailored compulsion loops that most people will find hard to resist. Who likes saying no to some free dopamine? As game consumers, if one finds a game using compulsion loops without a satisfying end in sight, the game may be taking more from the player in terms of time than what they are getting back in terms of enjoyment.

Persistent identifiers are the main fuel of the online tracking industry. These are used by the companies to gain insights into the websites we visit and the apps we use, including what we do within those apps, mostly in violation of the laid down policies. A persistent identifier is just a unique number that is used to either identify us or our devices. Examples of persistent identifiers used in real life are our Social Security numbers and phone numbers. Web Cookies use persistent identifiers to identify us across websites and apps.

On our mobile device, there are many different types of persistent identifiers that are used by app developers and third parties contacted by those apps. For example, one app might send an advertising network our device's serial number. When a different app on the same phone sends that same advertising network our device's serial number, that advertising network now knows that we use both apps and can use that information to profile us. This sort of profiling is what is meant by 'behavioral advertising.' That is, they track our behaviour so that they can infer our interests from the behaviour pattern, and then send us ads targeted at the inferred interests.

In 2013, with the creation of the 'ad ID', both Android and iOS unveiled a new persistent identifier based in software that provides the user with privacy controls to reset that identifier at will (similar to clearing cookies).

Of course, being able to reset the ad identifier is only a good privacy-preserving solution if it is the only identifier being collected from the device. Imagine the following situation:

1. An app sends both the ad ID and the IMEI (a non-resettable hardware-based identifier) to a data broker.
2. Concerned with her privacy, the user uses one of the above privacy settings panels to reset

her phone's ad ID.

3. Later, when using a different app, the same data broker is sent the new ad ID alongside the IMEI.
4. The data broker sees that while the ad IDs are different between these two transmissions, the IMEI is the same, and therefore, they must have come from the same device. Knowing this, the data broker can then add the second transmission to the user's existing profile.

In this case, sending a non-resettable identifier alongside the ad ID completely undermines the privacy-preserving properties of the ad ID; resetting it does not prevent tracking. For this reason, both iOS and Android have policies that prohibit developers from transmitting other identifiers alongside the ad ID. For example, in 2017, it was major news that Uber's app had violated iOS App Store privacy guidelines by collecting non-resettable persistent identifiers. Tim Cook personally threatened to have the Uber app removed from the store. Similarly, Google's Play Store policy says that the ad ID cannot be transmitted alongside other identifiers without users' explicit consent, and that for advertising purposes, the ad ID is the only identifier that can be used. However, there still continue to be lots of violations by the online gaming and social media industry (read online tracking and profiling industry!).

## The Digital Space: Are Children Safe?

In the case of children, one of the most critical issues with digital technology is the impact on their digital identities over their life course. This digital identity is extremely dynamic and keeps changing and updating as the software platforms are constantly busy in the acquisition and processing of information (updates, photographs, additional information). The most significant player in the construction of the digital identity is the host of online gaming and social media services that collects and utilises the personal data, more often than not for economic purposes. Within this context, the data that is collected from and of children may, at any uncertain point in the

future, be utilised and analysed by indeterminate algorithms, for indeterminate clients, to create digital identities or to perform any operation in the digital space, of which the individuals/children are unaware and have no control.

Today, the following cyber-risks gravely affect children worldwide:

1. Digital misinformation (violation of Article 17 – Access to Relevant Information and Media)
2. Cyberbullying (violation of Article 19 – Protection from all forms of Violence)



3. Online grooming (violation of Article 11 – Kidnapping)
4. Technology addiction (violation of Articles 19, 31 – The Right to Relax and Play)
5. Privacy invasion and hacking (Articles 8, 16 – The Right to Privacy and Preservation of Identity)
6. Exposure to violent and inappropriate contents/contacts (Article 17, 19, 34 – The Right Against Sexual Exploitation) and
7. Online radicalisation and trafficking (Article 35 – The Right against Abduction and Trafficking)

Articles 3 (best interests of the child), 4 (protection of rights) and 6 (survival and healthy development) clearly state that every measure must be taken to ensure the respect, protection and fulfilment of children’s rights by governments and all other stakeholders. Thus, there is an urgent call for us to work together to put our children

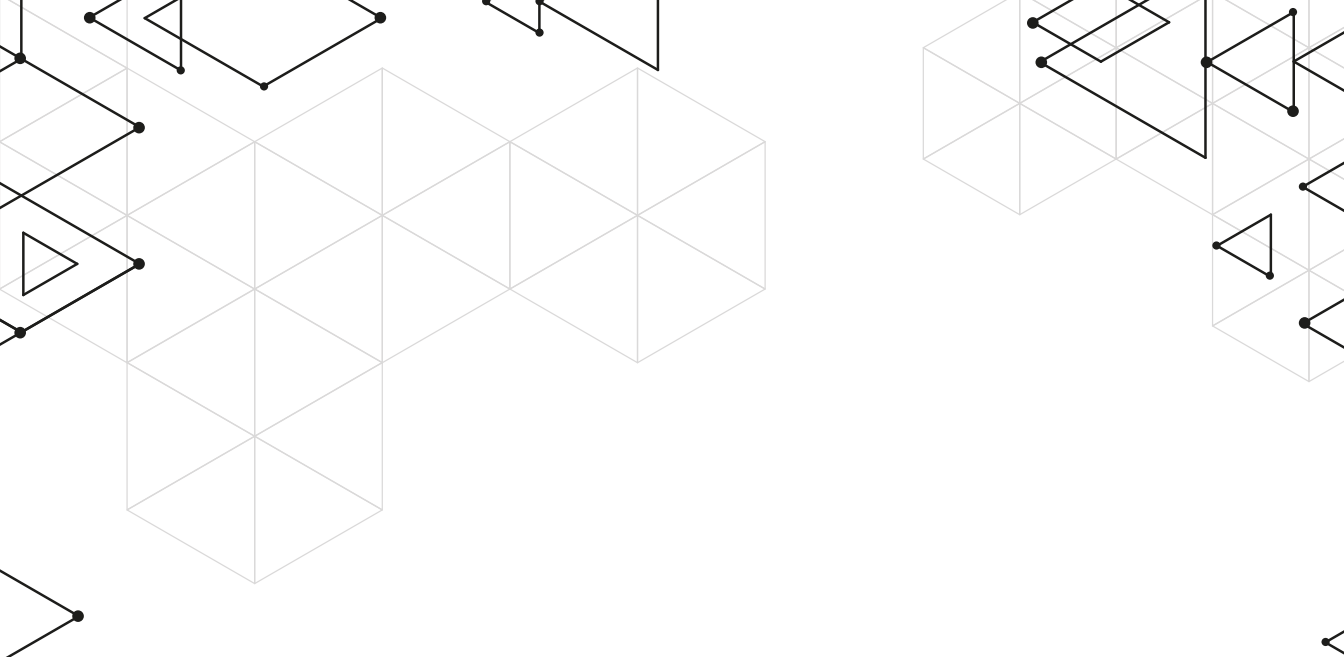
first and to reshape the digital ecosystem.

So, in a nutshell it is the online tracking industry that runs on a hacked dopamine reward system. It thrives on – (a) keeping us logged into online video games and social media more and more, and (b) making us lose our agency (‘agency’ means independence of our thought and decision making). The companies earn money on the basis of these two hard realities and their business model is anything but ethical.

There is a need for companies to be brought to a discussion board by the Government of India and find a way forward so that the profit motive does not completely takeover societal and human concerns. After all, the companies and businesses will also survive and flourish when the humanity and society survive and flourish. A short term and short-sighted profit motive will spell doom to all of us.

- .....
- i. Forum for Learning and Action with Innovation and Rigour (FLAIR)
  - ii. India Today Tech (2019) TikTok at risk of ban in India? ByteDance says working with govt, assures users everything is alright, India Today. Available at: <https://www.indiatoday.in/technology/news/story/tiktok-ban-in-india-bytedance-working-with-govt-1570844-2019-07-18>
  - iii. <https://www.indiatoday.in/technology/features/story/10-arrested-for-playing-pubg-in-gujarat-what-was-govt-warning-why-arrests-and-everything-you-need-to-know-1477832-2019-03-14>





Part 4

# **Shades of Grey: State-Business Complicity?**

## Chapter 7:

# New Labour Codes: Are They Empowering Workers?

*Dr. Rahul Suresh Sapkal<sup>i</sup>*

## Introduction

As India gained political independence, the policy makers had two options with regard to the governance of and rulemaking in the industrial relations system (IRS), viz. a state intervention model and a bi-partite model. In the former, the state interventionist institutions make the rules of the IRS and in the latter, the employers and the workers' organisations through collective bargaining make the rules and during an impasse, in negotiations, they are aided with voluntary and minimalist third-party aid. In the state interventionist model, the role of the state is high, while in the bi-partite model it is minimum, i.e., enough to enable the system to function. The policy makers and the labour market actors in politically independent India in a consensual manner preferred the state intervention model to the bi-partite model owing to several factors, viz. imbalance in the distribution of power in the labour market, inadequate growth of workers' organizations, the need for rapid industrialization under economic planning and so on.<sup>ii</sup> An important aspect of the regulation model is that regulation of IRS was seen as a part of the larger regulatory system concerning the industrial sector in India. As part of a mixed economy model, the government in various five year plans allowed the public sector to lead industrial development only to be complemented by the private sector. Further a strong regulatory system in terms of say industrial licensing and monopoly restrictions

was put in place to govern the private sector. As a result, the institutional mechanism of IRS was structured on five major pillars namely labour laws, the labour judiciary, the interventionist labour administration, collective bargaining, and voluntary arbitration and the moral codes (such as Codes of Conduct and Discipline).<sup>iii</sup>

Prior to unleashing the process of codification of labour laws, the collective dialogues among the trade unions, employers and the State played an important role in shaping the economic development in India through collective participation in the decision making process.<sup>iv</sup> The two components of the Constitution, viz. the Fundamental Rights and the Directive Principles of State Policy together provide the framework of labour rights. Articles 14, 19, 21, 23 and 24 comprise fundamental rights promised under Part III of the Constitution and these rights by definition are justiciable. On the other hand, Articles 38, 39, 39A, 41, 42, 43, 43A and 47 form part of the Directive Principles of State Policy under Part IV of the Constitution. These are not enforceable in a court of law. But they provide valuable guidelines for the law makers and the judiciary in their businesses such as law-making and judgments. They could also be taken to represent the aspirations of a society, social justice and the ideal conditions to be realised in the course of economic development.

## From Labour Laws to Labour Code

Since the 1990's, labour laws in India have been perceived by major trade and corporate houses as well as policy makers as complex, archaic and not conducive to promote the robust economic growth

of the country. Many laws are old and outdated, with a few almost a century old. Consequently, they have lost their relevance with changing times and in fact have inhibited the growth of

the Indian economy, which lose out on the gains they could have made from economics of scale and innovation. Primarily, concerted efforts have been made to dilute the content of social justice in the existing industrial relations system to foster labour flexibility and protect the interest of capital. To improve India's standing in the Ease of Doing Business at the rank of 90 out of 189 countries across the globe by 2019, the government has unleashed a series of reforms in major employment laws and attempts have been made to consolidate them into labour codes.<sup>v</sup> Scholars who favour those reforms have welcomed these policy measures as being both progressive and business friendly<sup>vi</sup>, whereas those who are critical of these reforms have expressed their concerns since it removes all social safety nets and legal protection to millions of workers who are pushed to the margins of precarious working conditions wherein the collective bargaining of capital outweighed the labour concerns.<sup>vii</sup>

Existing empirical scholarships argue that India's labour laws are a key deterrent to growth and job creation in major sectors.<sup>viii</sup> This strand in the literature has successfully influenced the policy making process in the favour of industrial business houses. On the other hand, relatively few empirical studies have argued that the rigidity in labour laws does not yield negative outcomes, as it creates more nuanced incentives to increase the marginal product of labour.<sup>ix</sup> While this strand in literature takes into account not only the de jure perception of the rigidity of labour laws but also the de facto implementation of those laws.<sup>x</sup>

As part of codification, the government has consolidated almost 44 central labour laws into four proposed codes as follows:

**Labour Code on Industrial Relations:**

Consolidating the Industrial Dispute Act, 1947; Industrial Employment (Standing Orders) Act, 1946; and The Trade Union Act, 1926 – three keystone laws for industrial democracy and collective bargaining instruments in India. The proposed code has substituted “workman” by “worker” to be more gender neutral as well as expanded the definition of “employer”. In the

context of trade unions, strict compliances have been introduced with a mandatory requirement of holding elections every 2 years and making the leadership invalid if the represented leader is not part of 10 per cent of the total members who are working in the same establishment. This inevitably weakens the collective bargaining strengths at the macro-level whereby the collective efforts of workers will have lesser impact on the negotiation process at the factory floor. The code does not provide any scope for access to justice under adversarial adjudication labour courts but rather introduces mechanism of arbitration and has laid down the rules for dispute resolution by the intervention of a third neutral party. Negotiating agents who will have the authority to entertain appeals have been introduced instead. The code has made a provision for fund, for ensuring socio-economic schemes and allotments of workers, thereby enhancing the scope of productivity during work by ensuring a distributive efficiency in use of funds and other social security benefits through creating a trust funds which shall manage the social contribution of workers. The nature and *modus operandi* of such funds is not yet provided in the proposed code. Occupational health dimensions have also been catered to.

**Labour Code on Social Security and Welfare:**

Consolidating security laws such as the Employees Provident Funds and Miscellaneous Provisions Act, 1952; Employee State Insurance Act, 1948; Maternity Benefits Act, 1962; and Employee Compensation Act, 1923. The code shall allow up to 30 per cent contributions from employees towards ESIC and EPFO with self employed workers contributing towards 20 per cent. In the code, all establishments will be liable to pay compensation if they fail to contribute towards the social security schemes of workers. The code in many ways overlooked the changing nature of work, instead of focusing on labour process wherein the larger share of the workforce is engaged; it is still using the classical approach for defining employment and establishment category. The code is also silent on employment opportunities in global value chains, which is driving the modern retail sector. It provides a

crucial social security measure, conditioned on Aadhaar-based registration service to a portable social security account, which may promote exclusionary employment practices.

**Labour Code on Wages<sup>xi</sup>:** The Code on Wages, 2019 replaced four key federal labour laws: The Minimum Wages Act, 1948; The Payment of Wages Act, 1936; The Payment of Bonus Act, 1965; and the Equal Remuneration Act, 1976. The code aims to ensure minimum wages for all employees and timely payment of wages. While minimum wages is not clearly defined, wages include salary, allowances or any other components expressed in monetary terms. The code contemplates National Minimum Wage and State level Minimum Wages, which further leaves a lot to the discretion of the administrators to determine minimum wages which will likely lead to temporary, spatial and unequal differences. The needs based criteria should include specific nutrition requirements, clothing and housing needs, medical expenses, family expenses, education, fuel, lighting, festival expenses, provisions for old age and other miscellaneous expenditure. The Reptakos judgment by the Supreme Court lays down important criteria for fixing of minimum wages and should be upheld by the code. The joint committee for designing the minimum wages do not provide any scope for members of civil society and other trade union members to be represented. While the definition of employee excludes apprentices, the worker now includes journalists and sales promotion employees, which was not previously there. The Code also excludes a large number of workers in the unorganized sector through an ambiguous and narrow definition of the term 'employer'. Workers in the unorganised sector especially the ones employed in the on-demand economy, as well as all types of contractual workers, cannot establish their employment relations with the employer in order to benefit from the provisions of the Code. It also contains a significant provision with respect to Article 14 of the Indian Constitution, as it provides for prohibition of discrimination on the grounds of gender. Provisions for wages for two or more classes of work and minimum

time rate for piece work have been included which are critical social security measures. There is inclusion of clauses on overtime payment but silence on provision of women workers to work in night shifts. The code proposed to set up a quasi-judicial body and appellate authority to redress violations regarding workers' wages is a step in the right direction and may lead to speedy, cheap and effective resolution of wage disputes; however, **the judgment of these bodies should be subject to review by Courts** (as per CPC section 9). Furthermore, **the condition of a claim to be filed only by an appropriate authority, employee or trade union needs revisiting** as it would exclude millions of undocumented casual and informal workers, as well as workers who do not belong to a trade union. Finally, the code is silent on **upholding the liability of the principal employer to pay due wages** in case the contractor fails to do so. For an economy with 93 per cent informal workers it is a highly critical wage protection measure that should not be diluted. Further, **wage deductions on conditions of non-performance or to recover losses is a highly anti-worker measure which should be dropped.**<sup>xii</sup>

**Labour Code on Occupation Health and Safety:** This code has consolidated following four major laws: The Factories Act, 1948; Dock Workers (Safety, Health & Welfare) Act, 1986 & The Dock Workers (Safety, Health & Welfare) Regulations, 1990; The Mines Act, 1952 and other laws pertaining to mines; and finally, The Building & Other Construction Workers (Regulations of Employment and Conditions of Service) Act, 1996. Under this code, workers definition excludes an apprentice. Further different types of workers have been defined, for instance contract worker, migrant worker, working journalist, audio-visual worker, etc. Like the previous code, this code also has overlapping categories of workers and establishments which might affect the effective coverage under newly designed enforcement mechanism. They provide a strong measure of occupation health and safety, working hours and welfare conditions as proposed in the code as they provide duty-bound measures to be effectively implemented by the employer, including weekly

and compensatory holidays. The code also establishes National and State health boards. The code also includes provisions for Inter-state migrant workers, however, it does not define the administrative jurisdictions of State labour departments.

**Provisions for women under the codes:** The Code on Wages, 2019, under sub-section (2) of section 42 states that one-third of the members in sub-section (1) would be women.<sup>xiii</sup> Similarly, the Code on Industrial Relations, in section 4(4), provides that at least 50 per cent of the Grievance Redressal Committee, constituted to resolve disputes arising out of individual issues, should be composed of women. The draft code on Occupational Safety, Health and Working Conditions, 2018, contains extensive provisions, which have taken into account the circumstances under which female workers work. For instance, section 7 provides for separate rooms for the children of women, and bathing places equipped with showers and lockers. Chapter X of this code contains special provisions related to employment of women. Section 42 provides for working hours,

which the appropriate government may change under the procedure laid down, while section 43 enables the government to prohibit employment of women under certain circumstances, which could be detrimental to their health and well-being. The code establishes social security organisations for administrative purposes, one amongst which is the National Social Security Council of India, often referred to as the National Council. Clause 3.6 of the draft code provides for proportional representation to the women in the central board. Similar clauses enable women to be represented to other entities such as the Executive Committee, Advisory Committee, and Standing Committee.

As per chapter eight of the report of the Second National Commission on Labour, women not only need maternity protection, but also against widowhood, desertion and divorce, which is why special measures would have to be taken to increase their participation in gainful employment and raise their economic status.<sup>xiv</sup> Hence, the above mentioned provisions ought to be gauged from an economic standpoint, in order to holistically assess their impact on women workers.

## Why Should Ranking Systems Matter Generally?

The ease of doing business (EDB) index clearly sparks media and policy attention. Because of the authority and resources of the World Bank, the rankings have the potential to be accepted as an indicator of the true underlying business environment. As such, they have the potential to define problems, set standards, reward compliant behaviour; in short, they become an implicit yet powerful governance tool.<sup>xv</sup> By ranking states according to specific criteria, actors attempt to define goals and set states in competition with one another to achieve them. Some states respond by devoting significant resources to improving their scores. Rwanda, for example, has formed a bureaucracy to manage their Global Ranking Index profile. Similarly, India is in the global race to push forward the hard core procedural reform that fits the expectation of neo-liberal market reforms. In the context of the labour regulation debate, despite removing the labour

market rigidities and allowing flexibility the Indian economy is yet to show any positive impact of labour reform. Rather, worst on numerous indicators, reforms are failing to provide decent livelihood, causing serious problem of welfare loss. In a recent paper, Sapkal and Shyam Sundar (2017)<sup>xvi</sup>, it was found that those states that have reformed labour laws in favour of the employer are hurting the working class widely and forcing them into the world of precarity. If one would believe that these indices actually affect the policies and its process, then indeed it is merely influencing the domestic politics and not the welfare activity of the state.

### ***Interface between Flexibility and Labour Rights Indicators at the Global level***

The EDB exercise till 2010 ranked the countries on ten components, viz. starting a business, dealing with construction permits, employing workers, registering property, getting credit, protecting investors, paying taxes, trading across borders, enforcing contracts, and closing a business.<sup>xvii</sup>

Global agencies and researchers have criticised these exercises principally as leading to “a race to (the) bottom” in labour standards as countries compete to improve their relative ranking vis-à-vis other countries which meant progressive dilution in labour standards in a country. In order to be a lead competitor in the global production chain, the labour standards across many developing countries have been weakened relative to the developed countries. To attract the foreign direct investment in the host developing countries, the labour regulation regime has been weakened and the predatory competition has been promoted among developing countries. Weaker labour standards are seen to reduce the labour costs of production of goods and services and capital prefers lower labour costs with other things such as productivity remaining equal.<sup>xviii</sup> The absence of trade unions and collective bargaining would obviously reduce the nuisance value arising out of labour rights’ assertion function and allow more scope for exercise of managerial rights and introduction of technology and suitable reorganisation of work without protests. Also, it has been observed in India that compulsory adjudication of industrial disputes functions better where trade unions are present and act as meaningful representatives of workers.<sup>xix</sup>

Furthermore, the domestic business lobbies raise a stink of these adverse rankings and lobbies with the government to ease the regulations especially on labour markets.

As a result of tremendous pressure by ITUC and ILO, the World Bank stopped ranking countries on the employing workers index (EWI) since 2010 though it provides qualitative information on this aspect in the Reports since then. The ILO has been for long and quite substantially in the recent post-globalisation period, advocating respect for labour

standards by member countries and conceived of global benchmark concepts like the Decent Work, Core Labour Standards or the Fundamental Human Rights, Formalising Informality and so on. It has been seen as the sole agency, technically and qualitatively, for determining labour standards and their implementation in countries by the global community in the late 1990s. The ILO has provided an alternative framework for framing labour policies as against the World Bank’s EDB. In the ILO’s perspective, two labour rights are core and essential for achieving all other labour rights, viz. freedom of association and the right to collective bargaining as enshrined in ILO Conventions, C87 and C98.

The ITUC has been publishing data on violations of trade unions and collective bargaining rights in more than 100 countries and these have been used by some scholars (e.g. Kucera 2002). Since 2014 it has been publishing Global Rights Index (GRI). It has 333 affiliated organisations in 162 countries and territories on all five continents, with a membership of 180 million. A questionnaire is sent to 333 national trade unions in the member countries seeking information on violation of labour rights. Suitable intervention is made to elicit sound data. Legal experts analyse labour codes/ laws to identify clauses that hurt internationally recognised labour rights. The textual information is matched with 97 categories of rights based on ILO rights and jurisprudence and each is given one point. After summing up the scores for each country, the countries are classified into five ratings, 1-5, labour rights’ violations increase with the score – Irregular violations of rights (1), Repeated violations of rights (2), Regular violations of rights (3), Systematic violations of rights (4), No guarantee of rights (5) and No guarantee of rights due to the breakdown of the rule of law (5+). The 97 indicators are classified as violations in law or in practice for the following criteria, viz. Civil liberties, Right to establish or join unions, Trade union activities, Right to collective bargaining, and Right to strike.<sup>xx</sup>

It can be safely argued that efforts to promote labour flexibility could and rather would lead to



weakening of labour rights and labour market outcomes eventually via two channels taken together. The government's keenness to promote the ease of doing sends two signals, formal and informal. In cases where the government has to take concrete legal measures there will be a lag effect to do so thanks to political transaction costs. But policy announcement effects take place, which embolden the employers to take measures on their own. Together these two reinforce one another. Various measures regarding numerical flexibility components such as hiring, firing, severance pay, etc. reduce standard work practices and promote

informality in the labour market which weaken the bargaining power of trade unions vis-à-vis employers. All these affect the labour market outcomes in terms of unemployment, quality of jobs, assured pay components (fixed versus variable components, etc.) and so on – even the flexibility school admits to short-term costs arising out of structural adjustments. As a result, we should expect ease of doing in general and numerical flexibility measures reflected in EWI to be associated with weak labour rights as reflected by GRI measures to erode labour rights in law and/or practice.

## Conclusion and Way Forward

The Central Government was caught up in the pressure group tactics of labour and capital. While for the government, capital infusion is necessary to generate a certain amount of employment and growth for which capital needs liberalisation of labour laws; the labour sector protests and going against the collective aspirations and demands of the working class could prove to be politically costly as was found out by several governments at the states and the National Democratic Alliance (NDA) at the general elections in 2005. The political economy angle of labour law reforms is further reinforced by the argument that protests by labourers to labour law reforms belong to 'mass politics' while the reforms concerning other economic institutions like capital market belong to 'elite politics' – the implication is that mass politics are highly visible and noise-making, while the elite politics is only for the discernible and can be seen on the corridors of power. The impacts of the mass politics are loud and direct while that of the elite politics is indirect and through various systems.<sup>xxi</sup> The initiatives by the state are a welcome step to rationalise and streamline the procedural laws, and to improve the effectiveness of the labour administration in the country. While so doing, the policy focus has shifted from labour to capital, while promoting a business-friendly legal environment. All four proposed codes, often provide overlapping definitions of workers, establishment and competent authorities who shall be the key players in industrial relations. This

might further affect the substantive branches of labour laws. Secondly, the effective provisioning of social benefits has been entrusted with private sectors, which may have a negative impact as there is an attempt to privatise social security funds. Thirdly, the collective bargaining power of trade union has been diluted which might affect the negotiations at the factory level. Though the Code on Wages has been accepted in both houses, the execution of this code is unlikely to be discussed, as it will be unviable to employers to accept the proposed minimum wages. Fourth, the executive and administrative part is aiming to consolidate the decision making power at the centre, leaving aside a social dialogue with other stakeholders. This will have serious implications in the long run. All codes are silent on the dynamics of the industry which are changing due to technological innovations and diffusion, technology assisted employments are silent in the proposed draft. Finally, the dilution of dispute resolution systems will affect the social cohesion in the industrial democracy as it aims to promote private methods of dispute resolution.

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    - (a) representing employers;
    - (b) representing employees which shall be equal in number of the members specified in clause (a); and
    - (c) independent persons, not exceeding one-third of the total members of the Board.
- Non-applicability of this Chapter.
- Central Advisory Board and State Advisory Boards.
- (2) One-third of the members referred to in sub-section (1) shall be women and a member specified in clause (c) of the said sub-section shall be appointed by the Central Government as the Chairperson of the Board.
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## Chapter 8:

# Blinkered view: Government Approach to Tobacco is Injurious to Health

*Jhumki Dutta<sup>i</sup> and Dheeraj<sup>ii</sup>*

In India, 28.6 per cent of people older than 15 and about 15 per cent of children in the 13-15 age-group consumed some form of tobacco in 2018.<sup>iii</sup> According to the Tobacco Atlas, in 2016, almost 13 per cent of deaths in the country were from tobacco-related causes. Such alarming statistics only showcase the harm that tobacco consumption has caused in India. In a recent move to fight this malaise, the Union Cabinet approved an ordinance to ban manufacturing and sale of e-cigarettes after taking up a proposal from the Health Ministry, Government of India, to make production, manufacturing, import, export, transport, sale, distribution or advertisements of e-cigarettes a cognizable offence. The government ban is

based on the premise that while “e-cigarettes got promoted initially as a way in which people can get out of the habit of smoking cigarettes... a weaning process from using cigarettes”, it was now being used by the younger population thus posing a health risk.<sup>iv</sup>

The government, through this brilliant move, demonstrates its stand on restricting tobacco sale and usage, citing health risks. However, its other policies, legislations and actions fall short of showing a similar resolve towards manufacturing and sale of cigarettes and other traditional tobacco products.

## Mixed signals marked by blinkered understanding of tobacco control

In 2004, India became the eighth country to ratify the Framework Convention on Tobacco Control (FCTC). Since ratification, it has actively participated in all of the Conferences of the Parties (COPs), and even hosted one in 2016, with the aim of negotiating specific protocols for FCTC implementation. However, the progress in actually implementing FCTC policies in India has been slow. One would expect the policy makers to be aware of the Convention they have ratified and its obligations, but the current Indian tobacco legislations do not inspire confidence. Rather than curbing the activities of the industry, through its policies, the government is providing various avenues to the tobacco companies to diversify and re-brand. One of the major weaknesses of the tobacco-related policies currently in place is that they have not been able to move beyond the rhetoric of restriction on promotion and consumption of tobacco. The other policies of the government, including Corporate Social

Responsibility, Public Investment, Corruption and Transparency are not aligned with tobacco control, thereby enabling the tobacco industry to influence the government and public through other means. This alignment is necessary to ensure de-normalisation of the tobacco industry and its activities.

**Irresponsible investment:** In 2011, a Right to Information application filed by a civil society organisation (Voice of Tobacco Victims) revealed huge investments by the Indian Government in the tobacco industry. This led to public interest litigation (PIL) filed in 2017 against the investment. According to the PIL, the Union government owned a 32 per cent stake in ITC through five state-run insurance companies,<sup>v,vi</sup> and the Unit Trust of India. Life Insurance Corporation of India (LIC), one of the insurance companies, India’s largest government-owned insurance company, was reportedly also

investing in other tobacco companies including Vazir Sultan Tobacco (VST) and DS Group. The investment contravenes the international convention and undermines tobacco control efforts of the government, which reportedly cost Rs 10,000 crore each year. The irony of this is, while the Indian government spent Rs 10,000 crore in 2009 on tobacco control measures, its own Insurance company invested Rs 3,500 crore in companies manufacturing cigarettes. In news articles covering the RTI application, prominent doctors from Tata Memorial Hospital, who had filed the 2017 PIL mentioned above, have been quoted as stating “With the government spending so much to tackle tobacco usage over the past few years, one would expect a phasing out of the LIC shares from ITC. However, the number of shares have only drastically increased in the past two years (sic)”. By doing this, “they are contradicting their own policies”.<sup>vii</sup> The LIC’s reply to this was two-pronged – one, it stated that the laws, including the Insurance Regulatory Development Authority (IRDA) and LIC Act did not restrict tobacco investment and, secondly, ITC was not a tobacco company, but a diversified business with good governance record. It stressed that the ITC stock was chosen due to the company’s good governance, track record, and the liquidity of the stock and its performance. The LIC Act and the IRDA, which govern LIC, explicitly state that the primary aim of the insurance company should be to maximize the returns and interests of the policyholders. It does not provide any guidelines with regard to investments in tobacco companies. Through this reply, LIC not only washed its hands of the irresponsible investment, it also certified ITC, a company whose gross turnover of cigarettes was 45.80 per cent and gross revenue from sale of cigarettes and tobacco was approximately 49.61 per cent in 2018-19, as a non-tobacco company engaged in ‘responsible’ business<sup>viii</sup>. Even as health advocates filed a PIL seeking disinvestment, LIC applied for increase of its exposure to ITC. According to a 2017 report, LIC holds 16.29 per cent stake in ITC<sup>ix</sup>, which is more than the limit prescribed by IRDA, which allows insurance firms to hold up to 15 per cent stake in one company. Acting upon the PIL, the IRDA issued an

advisory to LIC to reduce its stake in companies, including ITC, where it owns more than 15 per cent shares and submit a roadmap for the same. This move, however, had little to do with tobacco control. Rather, it was to initiate compliance with regulatory norms.

**CSR as panacea:** Meanwhile, CSR laws are enabling the industry to present itself as a responsible business by contributing to government welfare programmes. Traditionally, companies have leveraged CSR as a medium to whitewash their flagging reputations and create a narrative of responsible business conduct.<sup>x</sup> When the government revised its CSR clause as a part of the Companies Act 2013, it specified that companies either having a net worth of Rs 500 crore or a turnover of Rs 1,000 crore or net profit of Rs 5 crore, need to spend at least two per cent of their average net profit for the immediately preceding three financial years on corporate social responsibility activities. In doing so, the clause, however, did not specify non-promotion of companies and their brands while engaging in CSR activities. This led to several apprehensions in the tobacco control circle about this provision with regard to entities engaged in tobacco business, including those manufacturing cigarettes and gutkha among others. Evidences during the time suggested that tobacco companies have incidentally been among the largest spenders on promotional activities. As they cannot directly promote any tobacco product on most platforms, they have to depend on indirect advertising, including through CSR. Tobacco major ITC promotes its brand through CSR activities, which it often delineates from its core business activities. As a recommendation to prevent industry interference in government policies, FCTC recommends ‘Denormalizing and, to the extent possible, regulate activities described as ‘socially responsible’ by the tobacco industry, including but not limited to activities described as ‘corporate social responsibility’’. The recommendation is based on the presumption that the ‘socially responsible’ activities of the tobacco industry are a strategy to distance its image from the lethal nature of the product it produces and

sells and interfere, where possible, with the setting and implementation of public health policies by creating a good public image.

Caught in a tricky situation, the government set up an inter-ministerial panel to look into CSR programmes of tobacco firms to ensure that such activities do not look like promoting the use of such products. This led to the 2016 notification of the Ministry of Corporate Affairs, which specified tobacco companies can engage in CSR, as long as their activities do not contravene the Cigarette and Other Tobacco Product Act (COTPA). The legislative mandate, however, has done little to restrict the companies who have been contributing heavily to government programmes to earn 'public goodwill' from promoting themselves.

Analysis of the CSR activities of the tobacco companies demonstrate that the companies

have invested very generously in government programmes, including the Swachh Ghar Mission, Swaccha Bharat Kosh and the Prime Minister's National Relief Fund. VST or the Vazir Sultan Tobacco has stated that in the year 2018-2019, it has spent almost 90 per cent of its CSR allocation (Rs 415 Lakhs out of the Total Rs 463 Lakhs) in promoting government programmes. The government itself accepts such funds and even publicises it on its own website. For example, [www.pmindia.gov.in](http://www.pmindia.gov.in) has a photograph of ITC Chairman Late YC Deveshwar with Prime Minister Narendra Modi, donating generously to the Prime Minister's National Relief Fund, for the flood-affected people of Jammu and Kashmir<sup>xi</sup>. Far from denormalising CSR activities by tobacco companies, the Government is rather acknowledging and recognising these activities of the industry.

## Teething Tobacco Control Measures

Continuation of such support inhibits the overall success of tobacco control. In fact, today, few people know ITC as a tobacco company. Instead, it is perceived as an ethical company engaging in luxurious hotels, FMCG and stationery products and pioneering social responsibility activities that aim to reach out to the last mile. Such whitewashing of the image of tobacco companies is facilitated by the lack of alignment between the various policies, which enable companies to conceal their harmful products behind the veil of misleading narratives.

While tobacco consumption has reduced in India, for more tangible results, support to the industry by government and its agencies should be curtailed and the false narratives about them need to be busted. Evidences on tobacco control measures in various other countries suggest that choking of such support is crucial to give teeth to the Indian government's attempts to restrict and limit tobacco companies' growth. While some countries have introduced legislations that sanitise all ministries and agencies from the influence of tobacco companies, in other countries

measures have been adopted to sanitise the ministry/department of health from interference by the tobacco industry. Most of these countries, including UK, Uganda, Australia, Uruguay, Norway and New Zealand, are set to meet global and national commitments to cut tobacco use in people above the age of 15 by 30 per cent by 2025.<sup>xii</sup>

The above two instances demonstrate that in the fight against tobacco, the balance of scale tends to be favouring the tobacco industry through financial support and recognition. While the activities of the government are well within the legal gamut of India's legislative provisions, it raises serious questions about the intention of the Government to regulate tobacco and tobacco industry. Data demonstrates that in India, while about one million people are killed by tobacco-related disease, more than half a million children in the age groups of 10-14 years and 80 million people above the age of 15 continue to use tobacco in one or the other form. This complacency and laxity on the part of the government in the face of the tobacco epidemic insulates the tobacco

industry in India and ensures that the tobacco death toll grows every year.

In this light, it is imperative that we ensure the overall success of tobacco control laws, by strengthening the framework of our policies and legislations, insulate government machinery

against tobacco industry influence, step up efforts to protect tobacco control from commercial and other vested interests and invest adequate resources for establishing systems for monitoring the level of implementation of tobacco control laws in India.

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## Chapter 9:

# Justice: A Distant Dream in Thoothukudi

Rajavelu K.<sup>i</sup> and Stanley Joseph<sup>ii</sup> <sup>iii</sup>

It has been more than a year since the peaceful protestors in Thoothukudi in Tamil Nadu were brutally killed by police firing during protests seeking the closure of the heavily polluting Sterlite Copper smelter plant in Thoothukudi, Tamil Nadu. Protests and dissent, which have always

been the strength of the Indian democracy, were mercilessly and in the most inhumane manner, murdered in Thoothukudi. The image of a policeman in a yellow shirt with a sniper atop a vehicle shooting at Thoothukudi protestors continues to haunt.

## In the name of progress – Commission of Inquiry

A day after the police firing in Thoothukudi, the Tamil Nadu government appointed a Commission of Inquiry consisting of a single member, Honourable Justice Aruna Jagadeesan, retired judge of the Madras High Court, to inquire into the causes and circumstances leading to the firing that resulted in deaths and injuries on May 22, 2018<sup>iv</sup>. Out of the 15 persons who lost their lives in the police firing and *lathicharge*, the Commission has collected statements from the families of 13 of the deceased. The Commission has also held an inquiry into 316 persons from amongst those who were critically injured and were eyewitnesses. In total, 329 persons were examined by the Commission until May this year. The Commission has received statements of 440 persons and 200 Sterlite employees, who are yet to be examined.

The Commission was mandated to complete

its investigation within three months of its appointment. A year has passed and the Commission still has to examine statements from 640 persons. This brings in more despair in the minds of the victims who had held hope that justice would be met from this Commission of Inquiry. It is anticipated that at the present force, it will take the Commission several more months to complete its task.

In addition to the compensation, the Government of Tamil Nadu also promised to provide employment to one family member of each of the deceased. Most of them have been appointed as *Thalayaris* (village assistants). This possibly is one of the lowest levels of government employment available in the state of Tamil Nadu. The government, clearly, did not apply much thought while appointing the people.

## Lethargic CBI Inquiry

The Madurai Bench of the Madras High Court ordered for an inquiry by the Central Bureau of Investigation on August 14, 2018 into the incidents of police firing. This was a ray of hope for the residents of the town. However, despite explicit directions from the court on the investigation being completed within four months (i.e. by December 2018), the investigation remains

incomplete nine months after the deadline has passed. Once the CBI started its investigation, persons expressing their stand in opposition to Sterlite faced continuous harassment by the police – incidents that the CBI did not take into cognizance. This has left the people in total despair with little hope of justice from the CBI investigation, too.

## Reprisals on Human Rights Defenders

The defenders of human rights have had tremendous challenges in Thoothukudi, facing the wrath of the state. Those who have withstood the struggle have been publicly accused of being ‘people who have indulged in violence, extremists or terrorists’. The large number of omnibus FIRs<sup>v</sup> that were registered were used generously to book anybody who belonged to any of the numerous ‘anti-Sterlite’ movements in Thoothukudi, to ensure that 2000-7000 accused could be included in each of the FIRs. To this end, started the herding of young people across the town, their illegal detentions, torture, verbal abuse, their false implication in several cases and remand after illegal detentions. This soon became the subject of public protests, interventions by political parties and even a public interest litigation filed in the Madurai Bench of the Madras High Court.

The next course of action that immediately followed was to attempt the use of preventive detention laws like the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug

Offenders, Goondas, Immoral Traffic Offenders and Slum-Grabbers, Act, 1982 and the National Security Act, 1980 (NSA) against a few leaders of the *Naam Tamilar Party*, *Makkal Athigaram* etc<sup>vi</sup>. Through a series of legal interventions challenging each of the detentions, all the detainees were released by July 2018<sup>vii</sup>.

Thirumurugan Gandhi, a prominent human rights activist and defender in Tamil Nadu, was arrested at Kempegowda International Airport, Bengaluru, in August 2019. He was returning to India after attending the recent United Nations Human Rights Council (UNHRC) session, formal meetings in the European Commission as well as other meetings in Europe. During the UNHRC sessions in June 2018, Gandhi had on record mentioned the death of 15 people in Thoothukudi due to police firing and other police actions meted out against the peaceful protestors. He was charged with sedition for his speech at the UNHRC.

## Investigation by the National Human Rights Commission

The National Human Rights Commission (NHRC) had initially on May 23 2018, on the basis of reports that appeared in the Times of India, taken suo-motu cognizance of the incident. Citing the said report, the NHRC registered a complaint with Case No: 907/22/41/2018 and sent an investigation team to Thoothukudi to conduct an independent enquiry.<sup>viii</sup>

Despite serious concerns that still remain and justice not being delivered to the victims and their families, the NHRC closed the case stating:

“Since adequate compensation has been paid to the victims and appropriate steps have been taken by the State Government to bring law and order situation under control, and that the Judicial Commission is already looking into the angle of use of force/police excesses, if any, no further intervention in the matter is required. Report is taken on record and the case stands closed.”

Recently, the Commission agreed to reopen the case after an appeal by Human Rights Defenders Alert-India and Peoples’ Watch, who had initially sent complaints in this case as well.<sup>ix</sup>

## A Distant Dream – State of Litigation

On May 23 2018, the Government of Tamil Nadu ordered for the closure of Sterlite Industries after the police firing in Thoothukudi. Sterlite appealed against this order at the National Green Tribunal, which ruled against the closure of the plant on

December 15, 2018<sup>x</sup>. The Supreme Court, on hearing an appeal petition against the order of the National Green Tribunal, ruled that the Tribunal lacked jurisdiction in this case.<sup>xi</sup> Sterlite Industries has now approached the Madras High Court



against the order of the National Green Tribunal and the case is being heard by the Court.

Almost a year later, justice for the people of Thoothukudi remains a distant dream and it is unfortunate that despite one year having passed, no one has been held accountable for what happened in Thoothukudi on May 22, 2018. What is more disturbing is that there is no sign of any action being considered or initiated by the

Government of Tamil Nadu against the errant police officers in Thoothukudi. There is a common feeling of dejection and disappointment among the affected families due to the lack of action against any of the state officials, including the police, whose actions led to the death of people. The parameters of justice for them have been reduced only to ex-gratia compensation and jobs.

## The Looming Corporate Will

Ever since its initiation in 1995, the Sterlite plant was an issue of contention as it continued to allude norms and compliances, which impacted the lives and health of people. The decision to expand in the face of such opposition had led to popular unrest in the community. They were further frustrated because despite local and national judicial and administrative bodies having documented water contamination, air pollution and other forms of environmental degradation linked to the copper smelting plant and related activities, the state had not taken cognizance of the matter and seemed to have colluded with the Vedanta group.

It is pertinent to note that it was the Company that first claimed the perceived threat based on which the action of the state followed. The Company, instead of seeking protection for itself, if it really apprehended danger, instead sought the banning of the democratic right of the people to protest in a public space. The police complied and this led to severe consequences for the people. All this was happening while the people of Thoothukudi had clearly communicated that their protest was not against all industries, but against the hazardous ones with unscrupulous practices, affecting the

people and environment. The government of Tamil Nadu had also failed to point out before the Honourable Madras High Court the huge impropriety of a private company seeking a ban on any democratic activity in the public space to safeguard its private interests. This infringement on the rights of the community to protest peacefully, seeking answers and redressal of issues of non-compliance by the Company, was a direct attack on the fundamental rights as enshrined in the Constitution of India.

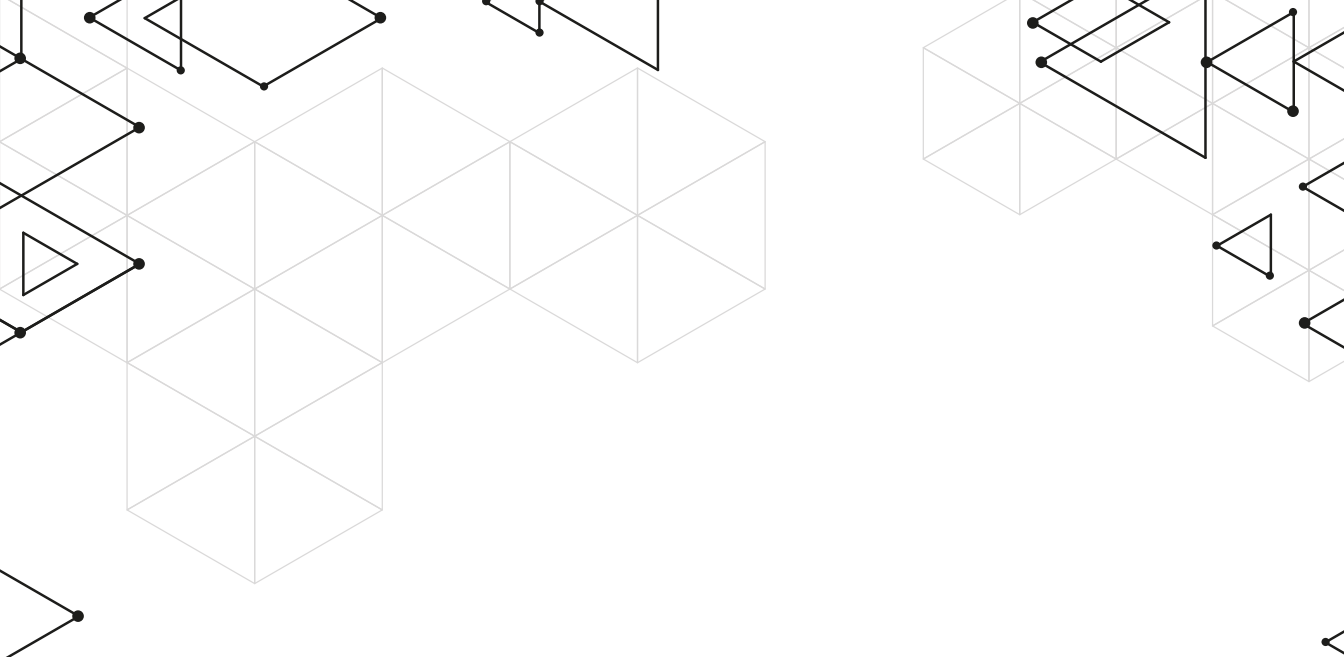
Even a year after the mass reprisal and the ongoing human rights violations by the state at the behest of the corporate, the Company continues to mark its presence in the region through its CSR activities. And all this is happening while the local administration seems to be playing the role of ‘watch-dog’ on behalf of the Company.

The situation in Thoothukudi very well underlines a dangerous and growing reality in India where companies leverage the government and its agencies to use force to subvert popular voices against them and their unethical operations as an extension of corporate will.

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- i. Human Rights Defenders Alert-India
- ii. Partners in Change
- iii. With inputs from Himani Tiwari
- iv. <https://www.thehindubusinessline.com/news/national/one-person-commission-to-probe-thoothukudi-violence/article23967238.ece>
- v. Omnibus FIRs do not have the name of a specific accused and may be misused to implicate random people.
- vi. <https://www.thehindu.com/news/cities/Madurai/advocate-detained-under-nsa-thoothukudi/article24533329.ece>
- vii. <https://scroll.in/latest/888807/tamil-nadu-madras-high-court-summons-thoothukudi-collector-over-detention-of-advocate-under-nsa>
- viii. <http://nhrc.nic.in/press-release/nhrc-notice-government-tamil-nadu-over-killing-more-10-people-police-firing-tuticorin>
- ix. <https://www.thehindu.com/news/national/tamil-nadu/national-human-rights-panel-may-reopen-thoothukudi-firing-case/article29412230.ece>
- x. <https://www.thehindubusinessline.com/news/national/ngt-orders-reopening-of-sterlite-plant-in-tamil-nadu/article25751269.ece>
- xi. <https://timesofindia.indiatimes.com/business/india-business/supreme-court-refuses-to-allow-reopening-of-sterlite-plant/articleshow/68043399.cms>





Part 5

# **Unfair Treatment: Health risks posed by corporates**

## Chapter 10: Tasty Bhi, Healthy Bhi! Maggi's *Instant* Violation of Consumer Rights

Shireen Kurian<sup>i</sup> and Pradeep Narayanan<sup>ii</sup>

Just when everyone thought that the case against Nestle with respect to Maggi noodles has been successfully concluded, the Supreme Court in January 2019 vacated its stay and allowed the National Consumer Disputes Redressal Commission (NCDRC) to continue its proceedings against Nestle India. The Ministry of Consumer Affairs, Government of India had filed a class action suit in August 2015 under Section 12-1-D of the Consumer Protection Act, 1986 alleging unfair trade practices, false labelling and misleading advertisements by Nestle. It has sought a compensation of Rs 640 crore. The class action is rooted in the case of alleged high lead content that is “unsafe and hazardous” for human consumption and the presence of Monosodium Glutamate (MSG) in Nestlé’s popular Maggi instant noodles.

This Supreme Court order is significant for two reasons. Firstly, it is for the first time in the nearly three-decade-old Consumer Protection Act, that the Government of India has taken action under Section 12-1-D, under which both the Centre and states have powers to file complaints. In the petition filed before the NCDRC, the Ministry

had charged that Nestle India has misled consumers claiming that its Maggi noodle was healthy - “Tasty bhi healthy bhi.” The Government reiterated that the main issue in the class action was not whether the noodles were harmful or not, but that the company misled the consumers by alleged **unfair trade practices, false labelling and misleading advertisements**. The significance lies in the fact that the success of this action has potential to pave the way for the government playing its role as guardian of the rights of consumers in a powerful way, given that a lot more businesses do engage in labelling citing ‘local practices’ as reasons. Secondly, it helped quash a narrative that Nestle has successfully been able to create and sustain in the public media about it actually being a victim of poor testing capacity of the Food Safety and Standards Authority of India (FSSAI). It has not even disclosed on its own website what actually happened in the year 2015. Given that Nestle has been selectively publishing the truth so as to help protect its brand image, it is important that the truth be unearthed and made available to the wider public and children, who have these rights as consumers.

### Maggi in the Indian Public Imagination

With its USP of being an instant meal, Maggi has through its narrative building and advertising over the years, assured audiences and users that it was a complete nutritious meal in itself. Since the 1980s, Maggi ads have featured a mother feeding her children the noodles, giving the not-so-subtle message that it is ‘fast to cook’ for moms and ‘good to eat’ for kids and could be substituted for breakfast, lunch or dinner. In one of the ads the Maggi mom assures families that one bowl of the noodles is equivalent to three rotis and vegetables.

That there cannot possibly be a better, tastier alternative to the otherwise boring roti-sabzi routine is clear from the messaging. Another target audience that Maggi has captivated are youngsters and students who leave home to study - Maggi is their ‘comfort food’. Cooking Maggi often is the litmus test that these students can live independently, convincing their protective parents that their child can manage his/ her food intake without much problem.<sup>iii</sup>

With the share of the noodle market at about \$1

billion in 2014, Maggi alone had sales of \$623 million.<sup>iv</sup> India is the second largest single market for Nestlé's Maggi brand. It has total dominance

over the industry built over two decades of careful brand building.

## Understanding Allegations and Nestlé's Rodomontade

Nestlé's woes began in a small town at a Government Regional Public Analyst Laboratory in Ghorakhpur through a sample collected from a smaller town, Barabanki. A 'routine check' on the packet of Maggi noodles was made in March 2014. The company has been engaging with the Laboratory from June 2014, when it appealed on 22 July 2014 for the sample to be retested at the Kolkata Laboratory. As it seems, the Company never took this seriously until May 2015, when the issue started garnering media attention. After 18 months of testing, retesting and validating, the Food Safety and Standards Authority of India, on June 5, 2015, indicated three major violations:

- (a) Presence of Lead detected in the product in excess of the maximum permissible level of 2.5 ppm;
- (b) Misleading labelling information on the package reading "No added MSG"; and
- (c) Release of non-standardised food products in the market without risk assessment.

With regards to **misleading labelling** of 'No added MSG' on its label, the company claimed MSG traces are detected due to the presence of other ingredients in the product. Thus, underlying the fact that the company did not independently add MSG during the course of production. In effect what was conveyed was that its naturally occurring MSG and not MSG that has been added to the product. This leads to the understanding that Nestle isn't doing due diligence to ensure that there is no MSG in the consumer's plate of Maggi. Nestle has possibly known about the MSG, but decided to slap on a "No added MSG" label despite following US FDA regulations which states "However, foods with any ingredient that naturally contains MSG cannot claim "No MSG" or "No added MSG" on their packaging. MSG also cannot

be listed as "spices and flavouring."<sup>v</sup>

### Everybody is doing it

"We have been declaring "No Added MSG" on Maggie Noodle Packs as we do not add MSG (flavour enhancer-E621) as an additive in the product. This is a common practice across the industry in many food products."

- Mr. Paul Bulcke, Global CEO, Nestle at FSSAI hearing on 4 June 2015

Nestle when questioned by the FSSAI stated that the reason they had put 'No MSG' on their label was because everyone in the industry was doing it. A global company that adheres to stringent regulations abroad had decided to ignore the prescribed clause for the Indian market. While Nestle claimed that they did not violate any law, what is questionable is how ethical and transparent is its business practice?

### Bordering on Preposterous

"The Product contained two parts - the Noodles and the Tastemaker. The samples had been tested for each of the two components separately whereas it should have been tested as a combined end product, i.e. the form in which it is finally consumed."

- Mr. Paul Bulcke, Global CEO, Nestle at FSSAI hearing on 4 June 2015

On the issue of the **presence of lead** in the tastemaker, Nestle claimed that the company's own tests showed lead levels well below what was permitted in a product of any kind. In addition, they alleged that the FSSAI testing process was potentially inappropriate as they individually tested the two separately packaged products as

opposed to doing it together. FSSAI's response to Nestle was that "The Company manufactures the Noodles and the Tastemaker and markets the same in two separate packages (Tastemaker or Masala is always in a separate sachet placed inside the main packet). The prescribed Standards have to be applied in respect of each of these two components independently and have no linkage with the processing of the end product as it is consumed". FSSAI went further to state that if it is to be added with water then one cannot make the

company liable for the source of the water.

In June 2015 Nestle went ahead with taking off 38,000 tonnes of Maggi<sup>vi</sup> from the shelves and this posturing in the public imagination was more as a goodwill gesture only to relaunch in November the same year after a five-month ban. In its new avatar, the 'No MSG' from the product label has been removed so that there is no confusion. In six months since its return it had re-conquered 57 per cent of the market share.

## Continued Deception

What continues to be problematic is the fact that Nestle has been in denial mode with respect to its social and legal responsibilities and has created a newer narrative of victimhood. By hiding behind technicalities and loopholes, it is still grossly guilty of misleading the society and the Government for years, of information, to which it is privy thereby putting the lives of millions of consumers at long-term risk (the extent of which has not yet been determined). The ambiguous labelling is in a way that it hides important information, which citizens deserve to know about the product allowing people to make an informed choice about consumption.

Principle 6 of Children's rights and Business Principles states that "Use marketing and advertising that respect and support children's rights". Under Pillar 2 of the Protect, Respect, Remedy framework of UNGPs on business principles, businesses must comply with the standards of business conduct in World Health Assembly instruments related to marketing health.<sup>vii</sup> In respecting and aligning with children's rights, the corporate's responsibility is to ensure that communications and marketing do not have an adverse impact on children's rights. This applies to all media outlets and communication tools. Product labelling and information should be clear, accurate and complete, and empower parents and children to make informed decisions. In the case of Maggi it is a clear case of violation of Principle 6 of Children's rights and Business Principles where the disclosure was inappropriate and incomplete.

Nestle India has misled consumers claiming that its Maggi noodle was healthy - "Taste bhi healthy bhi". By misleading their main constituencies targeted - mothers and children - Nestle has taken away their agency to make informed decisions, those that have an adverse impact on their health.

Another hugely questionable move seems to be the partnership that FSSAI and Nestle embarked on just a little over two year ago when the food regulatory authority had banned Maggi instant noodles over health and safety worried.<sup>viii</sup> Ironically, FSSAI inaugurated the Nestle Food Safety Institute (NFSI) at Manesar that will provide guidance and training on food safety. The institute conducts training programmes, on food safety management systems, testing methods and regulatory standards. NFSI is the third such state-of-the-art Research and Development (R&D) centre for training on food safety set up by the Swiss MNC globally. Since March 2014, the R&D centre has been Nestle's global hub for research on noodles and spices. The institute as part of its training offers courses for food safety professionals associated with FSSAI and state food and drug administrations. Nestle's role in influencing FSSAI in taking informed decisions while formulating regulations raises eyebrows about the potential conflict of interest since the case is pending in court.

## Has Supreme Court's order come a little too late?<sup>ix</sup>

The overall perception of what appears to be a setback to Nestle, where the apex court has vacated a stay on the Centre's action to seek monetary damages is that this may have come in a little too late. While the court has challenged Nestle with queries ranging from "why should we eat Maggi with lead in it or why should Maggi noodles have lead at all," to "why should children eat Maggi with lead" suggests that the court puts the spotlight on the health of the consumer as the primary consideration in this case, where the court like other aggrieved consumers is part of India's vast consumer base.

However, the partnership between the Centre and the corporate might appear as a collusion of sorts, casting a shadow on the courts' efforts. Perhaps for the first time, the court is also questioning the impact on health of children, thereby highlighting the need to address the rights of children. Added to this, diluting the case is the fact that the court has directed the Central Food Technological Research Institute (CFTRI) report be used for the basis of further proceedings, with no mention of misleading labelling information. A clean chit by CFTRI and not taking into cognisance the complaint filed by Consumer Affairs Ministry, many experts and critics would say is tilting the case verdict in favour of Nestle.

Within the purview of law, the revival of the case on both counts of excessive lead and no added MSG comes at a time when the corporate and the country's food regulatory institution is collaborating on food safety management systems and regulations. This raises questions of the intent of the Centre, regulatory institutions and the corporate in enabling and participating in a fair, transparent legal process that would align with Pillars 1 and 2 under the UN Guiding Principles on Business and Human Rights and adherence of Principle 1 of the National Guidelines on Responsible Business Conduct (NGRBC).

Nestle has very systemically challenged and appealed against the complaints and suits filed by the Centre. Early in September 2019, Nestle

stated that the company would be appealing against an order issued in 2015, imposing a Rs 20-lakh fine on the company for the presence of MSG in its instant noodle product Maggi arguing that the product is safe for consumption and MSG as an ingredient is not added at any stage of the manufacturing process. Given that this could be just one step away from what could be a verdict in favour of them, Nestle has managed to control the damage caused by the controversy in terms of business where it has slowly but surely crawled its way back to 60 per cent market share. With a verdict in its favour, Nestle would hope to regain its 75 per cent market share, on a firm footing of being cleared of all charges. Thus, the assumption can be that in a calculated, strategic move by Nestle to pave the way of regaining their reputation and number one position in the instant noodle category, the corporate is making efforts to minimise the recall by customers of the negative health impacts in consumption of Maggi.

A day after the Supreme Court revived the class-action suit by the government, Nestle was set to release advertisement campaigns highlighting the "trustworthy facts" about its instant noodles brand Maggi. "Our approach as a credible, trustworthy and responsible company is to always communicate with consumers on facts, in a simple, clear and transparent tone and manner," a spokesperson for Nestle India said in an email reply to one of the leading publications' query on the campaign. "What you will see in the print ads, to be released over the next few days, is just that." The campaign started on January 5, 2019.

Meanwhile, trainings being conducted by the food institute are helping to engage with the entire FMCG sector and industry in getting their buy in about food safety systems and regulations. Following Nestlé's example, ITC too has removed No Added MSG from the label. This does not auger well with the industry in its efforts to come across as an industry that is transparent and ethical in its practice.

While managing headlines, what has not been clarified to the consumer and begs further questioning from Nestle is whether the noodles and tastemaker separately packaged are safe for consumption or not given that the Tastemaker does not come with any printed instructions on the packet. And whether one should assume that the product does indeed contain MSG now, as the disclaimer has been taken off. The fact that none of this was clarified in the four year image rebuilding exercises points to the absence of an effective human rights due diligence system.

Nestle should answer “Tasty bhi, healthy bhi” or “Lead bhi, MSG bhi?”

- .....
- i. Praxis – Institute for Participatory Practices
  - ii. Partners in Change
  - iii. <https://www.firstpost.com/living/the-great-maggi-con-job-how-their-ads-have-been-fooling-you-for-years-2276688.html>
  - iv. India is the second largest single market for Nestlé’s Maggi brand, with retail sales worth \$623 million in 2014 across noodles, table sauces and other products, according to Euromonitor International.
  - v. <https://www.firstpost.com/business/adding-insult-to-injury-nestle-ceos-defence-of-maggi-is-weak-on-sincerity-and-facts-2281402.html>
  - vi. How Nestle is rebuilding in India – <https://www.livemint.com/Companies/xyFCHn7hGJm1zUkesEVy5L/How-Nestle-is-rebuilding-in-India18-months-after-the-Maggi.html>
  - vii. [https://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/CRBP/Childrens\\_Rights\\_and\\_Business\\_Principles.pdf](https://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf)
  - viii. <https://www.livemint.com/Companies/c1MIHhFpMJJIHupohxMVGn/Nestle-sets-up-first-food-safety-institute-in-India-at-Manes.html>
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## Chapter 11:

# Deplorable Cost of Corporate Greed: A Study of The Asbestos Industry In India

Pooja Gupta<sup>i</sup> and Lara Jesani<sup>ii</sup>

## Background

The history of asbestos usage goes back to the 1800s but the business of manufacturing asbestos products in India was started in 1934 when the first plant was established in Kymore, Madhya Pradesh. The industry later expanded with the establishment of factories at Mulund (Mumbai) in 1937, Calcutta in October 1938 and Podanur near Coimbatore in Tamil Nadu in 1953 by a British company called Turner and Newall. Following this, many factories came up across the country. Asbestos, which was considered a '*mirakel*' mineral, started being mined in the states of Rajasthan, Karnataka, Jharkhand, Andhra Pradesh and Odisha.

'Asbestos' is a term encompassing various naturally occurring fibrous silicate minerals— Actinolite, Tremolite, Crocidolite, Anthophyllite, Amosite and Chrysotile. Asbestos was once used widely in the production of many industrial and household products because of its useful properties, including fire retardation, electrical and thermal insulation, chemical and thermal stability, and high tensile strength. However, the imports of crocidolite, actinolite, anthophyllite, amosite and tremolite are restricted in terms of Interim Prior Informed Consent (PIC) Procedure of Rotterdam Convention for Hazardous Chemicals and Pesticides.<sup>iii</sup>

In 1986, the government restricted the expansion of existing asbestos mines in India citing health impacts. In 1993, mining of asbestos was banned by restricting permission for any fresh grant or for renewal of mining lease. However, there was no ban on the use, manufacture, export, and import of chrysotile (known as white asbestos). Further, despite the ban on mining, several mines

in Andhra Pradesh continued production, as reported in all official documents of the Mines Department. Some mines in Rajasthan, where asbestos was present as an associate mineral, also continued production by removing reference to asbestos from the Mineral Lease of the mine.

In October 2015, on the basis of a statement made by the Rajasthan and Jharkhand governments, the National Green Tribunal (NGT) passed an order in the matter of Environics Trust versus Union of India and Others<sup>iv</sup> that all the asbestos mines have been closed down and abandoned. Having noted the failure of mine owners to submit final closure plans (as per Indian Bureau of Mines Guidelines of Mine Closure Plan<sup>v</sup>), the NGT directed the states of Rajasthan, Karnataka, Jharkhand and Andhra Pradesh to conduct surveys and ensure scientific closure of the mines and restoration of the environment. Meanwhile, the implementation of the order for restitution of the sites is still underway and being monitored by the NGT in the matter of Kalyan Bansingh & Others Vs HIL Ltd. & Others<sup>vi</sup>.

Despite the ban on mining, to meet industry requirements in India, asbestos continues to be imported in large quantities. India's asbestos requirement is met through imports from Russia, Kazakhstan, Brazil and China.<sup>vii</sup> As per the IBM mineral yearbook 2017 on Asbestos, in 2015, India imported over 370,000 tonnes of asbestos, with the trade value totalling over \$239 million. This represents over 57 per cent of the share of total imports of asbestos worldwide. Imports were mainly from Russia (60 per cent), Kazakhstan (26 per cent) and Brazil (14 per cent). Chrysotile asbestos fibres make up a majority of these

imports.<sup>viii</sup> However, the Ministry of Commerce data indicates fluctuations in the quantity of import and a decline between 2015 and 2017. (See Table 1). India also exports the Asbestos Containing Materials to USA (27 per cent), Egypt (7 per cent), UAE (6 per cent), Saudi Arabia & Poland (4 per cent each) and Sri Lanka (3 per cent).<sup>ix</sup>

Over 90 per cent of asbestos-fibre produced today is Chrysotile.<sup>x</sup> The range of applications in which asbestos has been used includes: roofing, thermal and electrical insulation, cement pipe and

sheets, flooring, gaskets, friction materials (e.g. brake pads and shoes), coating and compounds, plastics, textiles, paper, mastics, thread, fibre jointing, and millboard.<sup>xi</sup> Asbestos is used as a loose fibrous mixture, bonded with other materials (e.g. Portland cement, plastics and resins), or woven as a textile.<sup>xii xiii</sup> Other products still being manufactured with asbestos content include vehicle brake and clutch pads, roofing, and gaskets. More than 90 per cent of all the production is used in commercial applications and these products are also being used as low-cost building materials.<sup>xiv</sup>

Table 1 - Import Data of Raw Fibre of Asbestos in India

IMPORT DATA OF RAW FIBRE OF ASBESTOS IN INDIA MINISTRY OF COMMERCE, GOVERNMENT OF INDIA, DECEMBER 2018						
YEAR	2011-2012	2012-2013	2013-2014	2014-2015	2015-2016	2016-2017
AMOUNT (IN LACS)	1,19,917.39	1,90,040.33	1,32,989.87	1,71,681.05	1,48,655.11	1,12,793.70
QUANTITY (THOUSAND KG)	3,76,593.72	4,58,301.94	2,82,357.38	3,96,257.56	3,52,586.88	3,09,447.75

## Asbestos and its health hazards

Asbestos has been recognized as a health hazard and the cause<sup>xv</sup> of various diseases and cancers<sup>xvi</sup> and is considered a health hazard if inhaled.<sup>xvii</sup> Today, several academic as well as international research institutions have scientifically proven the cause-effect relationship between asbestos, including the still-in-use chrysotile, and cancer. The current global estimate of the annual death toll from asbestos is 2,55,000<sup>xviii</sup>, resulting from occupational and environmental asbestos exposure. The International Agency for Research on Cancer (IARC) classifies all forms of asbestos as carcinogenic to humans (Group 1). In humans, there is convincing evidence that asbestos causes mesothelioma (a cancer of the pleural and peritoneal linings); and lung, larynx and ovarian cancer. There are also positive associations between asbestos exposure and pharynx, stomach and colorectal cancer (IARC, 2012).

The science on the risk of developing human disease (e.g. different types of cancer and chronic lung disease) following exposure to any form of

asbestos is unequivocal. Even a basic appraisal of the most recent primary scientific literature confirms the overwhelming evidence that all forms of asbestos are a major health concern, causing devastating disease on a global scale<sup>xix</sup>, from historic as well as current exposures in the workplace and in non-occupational settings. No new research is needed to prove causation between asbestos and asbestos-related diseases. Differences in the relative potency of the different forms of asbestos to cause disease is not relevant – they all cause disease. Furthermore, differences in lung bio-persistence of different forms of asbestos are not relevant. It is well established that accumulation of asbestos fibres, in particular Chrysotile fibres, in pleural tissue (the lung lining), not lung tissue, causes mesothelioma (e.g. Suzuki and Yuen, 2006; Kohyama and Suzuki, 1991). As there is no known level of exposure that would prevent the likelihood of asbestos-related diseases occurring, the risk to human health now and in the future when the asbestos is disturbed or deteriorates is

unacceptable.

Mesothelioma is a type of cancer with a long gestation period<sup>xx</sup> following initial asbestos exposure. It can affect workers<sup>xxi</sup> as well as their family members, who may inhale dust from the worker's clothes; and also those within the vicinity of asbestos air pollution point sources<sup>xxii</sup>. Asbestos exposure is also responsible for other diseases such as asbestosis<sup>xxiii</sup> (a chronic lung disease in which there is scar-like tissue formed in the lungs (pulmonary fibrosis)). This decreases the elasticity

## Legal Framework

### *International principles*

Though the Asbestos Convention C162, providing for regulation of activities involving exposure of workers to asbestos in the course of work<sup>xxv</sup> was passed in 1986 at the General Conference of the International Labour Organization (ILO), it was not ratified by India.<sup>xxvi</sup> While India is party to the United Nation's Basel Convention on Transboundary Movement of Hazardous Wastes and Their Disposal of 1989, the objective of which is to reduce movement of hazardous waste between nations, it has not ratified the Ban Amendment, which prohibits export of hazardous waste from a list of developed countries to developing countries such as India.<sup>xxvii</sup> This has hollowed the effect of the Basel Convention in the context of India, which continues to be a dumping ground for hazardous asbestos waste arriving at ship breaking yards through old ships, sale of ships for salvage, etc.

The World Health Organization (WHO) passed a resolution in 2005 at the 58th World Health Assembly urging member states to pay special attention to cancers for which avoidable exposure is a factor, including exposure to chemicals at the workplace and in the environment.<sup>xxviii</sup> This was followed by a resolution passed at the 60th World Health Assembly by which WHO was asked to carry out a global campaign to eliminate asbestos-related diseases (ARDs).<sup>xxix</sup> The ILO adopted a resolution in 2006 at the 95th Session

of the lungs, making breathing more difficult, with shortness of breath the most common symptom.

As there is no known safe level of exposure to asbestos, even a very minimal exposure represents a health risk. Globally, half of the deaths from occupational cancer<sup>xxiv</sup> is considered to be caused by asbestos exposure. In addition, it is estimated that several thousand deaths annually can be attributed to exposure to asbestos at home. Almost 70 countries have banned the use of asbestos in any form.

of the International Labour Conference declaring all forms of asbestos, including Chrysotile, as carcinogenic and resolving to eliminate future use of asbestos and identification and proper management of asbestos currently in place.<sup>xxx</sup> The Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was adopted by the Conference of the Plenipotentiaries in 1998 and entered into force in 2004<sup>xxxi</sup>, which was ratified by India in May 2005<sup>xxxii</sup>. The WHO along with ILO also prepared an outline for development of national programmes for elimination of ARDs in 2007.<sup>xxxiii</sup> The WHO along with organisations such as ILO has been since running a global campaign towards eliminating the hazards of asbestosis and ARDs.

### *Recognition of asbestos linked hazards in domestic legislation*

Asbestos linked activities fall in the red category of most polluting industries and require prior environmental clearance from the authorities, irrespective of the size of the establishment. Asbestos is listed as a hazardous waste under the Environment Protection Act, 1986. Ministry of Environment and Forest, vide Notification dated 13.10.1998, under Sections 3 (1) and 6 (2) (d) of Environment (Protection) Act, 1986 and Rule 13 of Environment (Protection) Rules, 1986, has prohibited the imports of waste asbestos (dust and fibre), being a hazardous waste detrimental to

human health and environment. Asbestos is also regulated under the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, which under Schedule I<sup>xxxiv</sup> lists production of asbestos or asbestos containing materials as a process generating hazardous waste and holds the industry responsible for safe and environmentally sound management of the hazardous waste. The industry is also required to obtain an authorisation under Rule 6 from the State Pollution Control Board (SPCB) for managing the hazardous and other wastes, for grant of which the SPCB is required to assess and satisfy itself that facilities to manage hazardous waste are in place. The Ministry of Environment, Forests and Climate Change (MoEF&CC) issued a notification in October 1998 prohibiting the import of waste asbestos (dust and fibres) under the Environment Protection Act and Rules, 1986.<sup>xxxv</sup>

The Indian Factories Act, 1948<sup>xxxvi</sup>, recognises manufacturing, handling and processing of asbestos and its products as a hazardous industry under Schedule I of the Act. Schedule II lists the permissible level of asbestos in the work environment. Schedule III of the Act lists asbestosis as a notifiable occupational disease, thereby recognising it as an occupational hazard. However lung cancer and mesothelioma are not included in the list. Section 41C of the Factories Act pins specific responsibility on the industry in relation to hazardous substances to maintain accurate and up-to-date health records of the workers and provide access to the

health records to the workers, and to provide for medical examination of every worker before, during and after the employment, as prescribed. Section 89 of the Factories Act requires the medical practitioners to report any occupational disease in Schedule III of the Act to the Chief Factories Officer or relevant factories. The Indian Government has published under Schedule XIV – ‘Handling and Processing of Asbestos, Manufacture of any Article or Substance of Asbestos and any other Process of Manufacture or otherwise in which Asbestos is used in any Form’<sup>xxxvii</sup> as a Dangerous Operation under Section 87 of the Factories Act.

The Building and Construction Workers (Regulation and the Employment and Conditions of Service) Act, 1996<sup>xxxviii</sup>, recognises as hazardous, processes such as roof work, demolition, work in contained spaces under Schedule IX, but does not include handling or repairing of asbestos products. Schedule II of the Act only recognises asbestosis as a notifiable occupational disease, leaving out lung cancer and mesothelioma.

Though there is a need to make legal provisions stronger, the existing law as it stands regarding asbestos is almost entirely ignored by industry. With 93 per cent of the workers in the affected industries being in the unorganized sector, the protections granted under the labour laws fail to reach the affected workers.<sup>xxxix</sup>

### **Compensation – a hollow term**

The Employee’s State Insurance Corporation is responsible for paying compensation to insured workers under the Employee’s State Insurance (ESI) Act, 1948. Workers who are not insured under the ESI Act can claim compensation under the Employee’s Compensation Act, 1923. Both these Acts recognise the scheduled occupational diseases such as asbestosis under Part C of Schedule III, and lung cancer and mesothelioma caused by asbestos under Part B of Schedule III of the respective Acts. A worker suffering from Asbestosis must be employed for a minimum of three years before they can claim compensation under either Acts<sup>xl</sup>. However, there is no provision to compensate environmental asbestos victims or those who have had secondary exposure.

The existing process of applying for compensation disadvantages the worker and is time consuming and ridden with difficulties. Contract workers have to surmount the hurdle to first establish the employer-employee relation to be eligible to apply for compensation. Workers also face difficulty proving the ARD, due to misdiagnosis of disease as tuberculosis. Even where compensation is eventually awarded, the workers are faced with non-implementation of orders and delay on account of the appeal process and for enforcement of the order. The workers in Rajasthan who were exposed to the mines are fighting for justice and their rights. “Bhagwati Mathur, a housewife in Vaishali Nagar, Ajmer, was diagnosed in December, 2012 as suffering from mesothelioma a lung cancer caused by inhalation of particles found in asbestos and get no relief from state”.<sup>xii</sup> This explains the dismal number of compensation awards granted to workers inspite of the massive number of workers exposed to asbestos and suffering from ARDs. Though the Rajasthan is the only state that has pneumoconiosis board with a panel of doctors that certifies the disease. Currently, the government of Rajasthan is paying compensation from its District Mineral Fund, but are on their way to launch a policy and its framework this year.

### ***Indian judicial precedents recognising the harms of asbestos***

In 1995, the Supreme Court of India, in the matter of Consumer Education and Research Centre and Others versus Union of India and Others<sup>xiii</sup>, while recognising the health impacts of asbestos industries, passed several directions including to maintain health records for every worker up to a minimum period of 40 years from the beginning of employment in asbestos industry or 15 years after retirement, whichever is later. This judgment upheld the right to health and medical care of a worker as a fundamental right under Article 21 of the Indian Constitution, read with Articles 39(c), 41 and 43 of the Indian Constitution, to ensure a life of dignity for the workers. The Supreme Court also noted that the asbestos companies in India are bound by the rules “All Safety in the Use of Asbestos” issued by ILO. However, the directions are far from being implemented.

In 1998, the National Human Rights Commission (NHRC) in Case No. 673/30/97-98<sup>xiii</sup> recommended the replacement of asbestos sheet roofing with roofing made up of some other material not harmful to the inmates. In 2009, the Kerala State Human Rights Commission recommended that the state government replace

roofs of government school buildings, ensure that private schools also replace their asbestos roofs and ensure that no new school is allowed to use asbestos roofs.<sup>xiv</sup> In January 2014, in the matter of Occupational Health and Safety Association versus Union of India and Ors. the Supreme Court dealt with the adverse effects of asbestos when used in insulation in Coal Fired Thermal Power Plants and possibility of asbestosis in workers due to inhalation of asbestos fibres.<sup>xv</sup>

### ***Lack of Legislative Intent***

In 2011, the Supreme Court of India, relying on claims of compliance of directions passed by it in 1995 and observing that it is for the legislature to issue a ban, dismissed a petition filed by an NGO – Kalyaneshwari for ban of asbestos.<sup>xvi</sup> Although a private member bill<sup>xvii</sup> was introduced in November 2014 in the Rajya Sabha for total ban on import and use of white Chrysotile asbestos and to promote the use of cheaper and safer alternative to white asbestos, no legislation for ban of white asbestos has been passed in the country to date. Meanwhile, the Asbestos Information Centre and the Asbestos Cement Products Manufacturers Association, which are leading industry organisations, have consistently refused to acknowledge the extent of the problem.

There has also been a failure on the part of the Indian government to provide incentives to the alternatives of asbestos,<sup>xlviii</sup> to enable phasing out of the products altogether.

In February 2014, the Ministry of Health and Family Welfare published a press statement on asbestos related diseases, admitting that all types of asbestos fibres are responsible for human mortality and morbidity.<sup>xlix</sup> It has relied upon studies carried out by the National Institute of Occupational Research, an institute of Indian Council of Medical Research, Ahmedabad, which shows that workers when exposed to higher workplace concentration of asbestos fibre have higher incidence of interstitial lung disease and pulmonary function impairment. It has reported the reduction of air borne fibres by the Indian Government to 20.1 fibre/cc. It has also acknowledged data intimated by Directorate General Factory Advice Service and Labour Institutes under Ministry of Labour & Employment of workers suffering from asbestosis in factories registered under the Factories Act, 1948, that 21 cases were reported in Gujarat in 2010 and two cases in Maharashtra in the year 2012. Needless to add, these figures constitute gross underreporting on the part of the authorities / companies, failure to acknowledge the ARDs and lack of monitoring, survey and documentation of all the asbestos factories for ARDs.

In 2016, the NHRC in an order passed in Case No. 2951/30/0/2011,<sup>l</sup> ignored its own order of 1998 and Supreme Court order of 1995 and refrained from prohibiting use of carcinogenic fibres of white asbestos, relying upon a questionable report filed by the National Institute of Occupational Health.

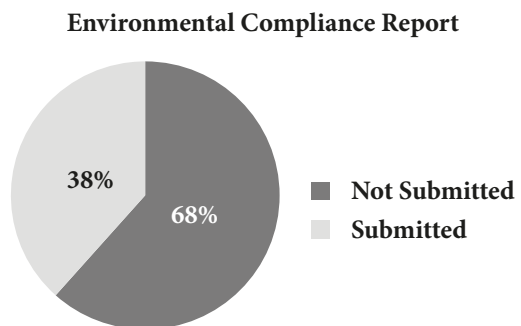
At the 9th meeting of the Conference of Parties (COP) to the Rotterdam Convention held in Geneva in May 2019 on Prior Informed Consent procedure for certain hazardous chemicals and pesticides in International Trade, the Indian delegation, consisting of MoEF&CC and other ministries, joined countries like Pakistan and Russia to oppose listing of white chrysotile asbestos in the United Nations (UN) list of hazardous chemicals. By doing this, India

contradicted its own position under domestic law, having recognised asbestos as hazardous material in various domestic legislations and having banned its mining. Since the listing of hazardous chemicals requires consensus, the opposition by just seven countries, including India and the asbestos companies, led to the deferring of the consideration of listing of chrysotile in the UN list of hazardous chemicals to the 10th meeting of the COP to the Rotterdam Convention. Meanwhile, the MoEF&CC conveniently failed to even mention the position taken by it at the Geneva meeting in its official press release.<sup>li</sup>

### **Poor environmental regulatory mechanism**

According to the MoEF&CC website,<sup>lii</sup> there are 112 large asbestos-containing material manufacturing plants present in India. There will be several more which may have established prior to the Environment Protection Act coming into force or are operating without clearances and hence are operating without any safeguards and permissions.

62 per cent of these industries have not submitted any environmental compliance report, which have to be submitted every six months, on even one occasion. Only 38 per cent of them has ever been inspected by the ministry. It is also well known that a significant quantity of asbestos is generated in Ship Breaking Yards, which are largely unnoticed. Alang in Gujrat is one such place where workers are exposed to hazardous asbestos fibres during ship-breaking.



**Figure 1- Compliance Status of Asbestos Industry (As per MoEFCC data 2108)**

### **Lack of infrastructure and skills for diagnosis of victims**

Since asbestos-related diseases require specialised skills for diagnosis, there need to be specialists and trained doctors. Further since it is a notifiable disease, the medical practitioners generally avoid committing to their diagnosis on paper. Several states do not even have the adequate facilities of X-ray and ILO plates even if skilled doctors are available. Such situations not only delay the

treatment but also add on to the future burden of disease.

In Denmark, every worker has to contribute to the government work injury scheme; hospital doctors must report all occupational diseases as well as suspicions of diseases which could be work-related. Such mandatory regulatory mechanisms are needed in order to develop an adequate process of victim database generation and compensation.

## **Conclusion**

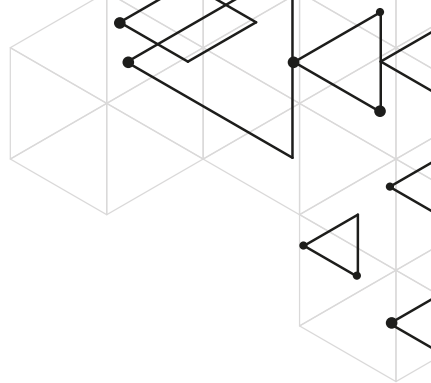
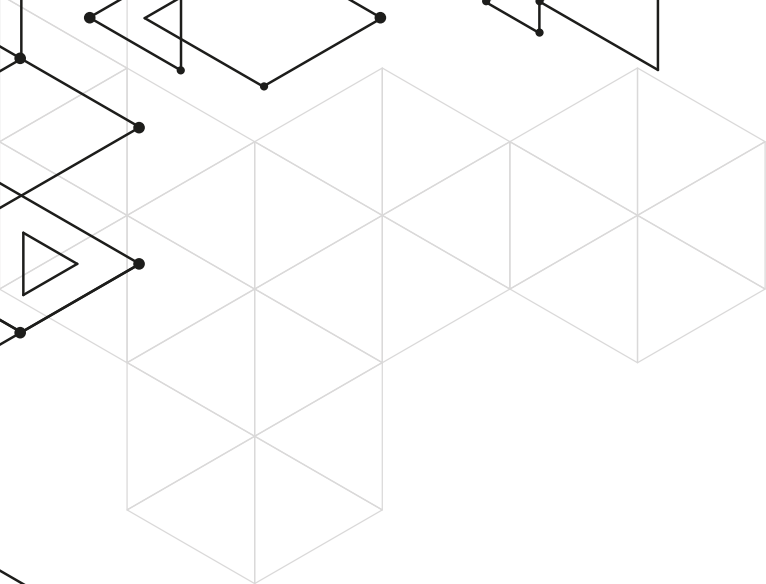
The need of the hour is a total and unconditional ban of asbestos in the country, and systematic work towards eliminating asbestos from the environment and human ecosystem. What we need is political will and legislative intent. Brazil, which up until a few years back was the third largest producer of chrysotile asbestos in the world, saw a brilliant breakthrough when the Federal Supreme Court, by a majority verdict in November 2017, prohibited the mining, processing, marketing and distribution of

chrysotile (white) asbestos in Brazil.<sup>liii</sup> As one of the largest exporters of the hazardous material, India has already surpassed its capacity to deal with the carcinogenic asbestos fibres and wastes entering and polluting its work environment and natural ecosystem daily. Immediate action is needed to stop the impending doom staring at us if asbestos use and manufacturing continues unabated.

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Part 6

# Conclusion and Way Forward

## Chapter 12:

# Towards a National Action Plan on Business and Human Rights: Is This Going To Be Business as Usual?

- Pradeep Narayanan<sup>i</sup> and Tom Thomas<sup>ii</sup>

In June 2019, a Thompson Reuters Foundation study found that all 100 women garment workers in Tamil Nadu, who were interviewed stated that they were given un-labelled drugs at work for menstrual cramps, and more than half said their health suffered owing to that.<sup>iii</sup> In the same month, 26 child labourers were rescued from a Parle-G factory in Chhattisgarh.<sup>iv</sup> In January 2019, the Supreme Court lifted the stay on the proceedings of a class-action suit filed by the central government against the maker of Maggi noodles in the apex consumer court for the presence of lead in the product, beyond the permissible limit.<sup>v</sup> The most important segment of consumers of Maggi noodles is children. While India's ranking in the Ease of Doing Business Index is improving, India ranks poorly, at 53rd, in the prevalence of bonded labour as per the Global Slavery Index or ranking 108th in the Gender Gap index. The urgency to evolve a business and human rights jurisprudence that could take such companies to task for violating human rights cannot be underemphasised.

The UN Guiding Principles on Business and Human Rights (UNGPR) envisages a Protect-Respect-Remedy framework locating the State's role primarily in the first pillar. However, it is also the role of the State to ensure that all three pillars are grounded in reality. The National Action Plan, therefore, ideally, needs to set clear targets for all the three pillars and prepare an activity plan, along with a financial memorandum to achieve the same. Its significance lies in its power to create a discourse on business and human rights, which became a non-starter since the two per cent corporate social responsibility (CSR) discourse completely took over any discussion on social responsibilities of businesses. The National Action

Plan is an opportunity to visibilise such human rights violations by businesses and at the same time, to appreciate efforts from such businesses, which are willing to look into their supply chain through a due-diligence mechanism.

The zero draft of the National Action Plan on Business and Human Rights (NAP) is, although too limited, definitely a welcome step from the Ministry of Corporate Affairs. The zero draft has embarked into certain domains, which are conventionally left out of the State agenda. If one looks deeper, the State has been seen from four roles: (a) setting legislative agenda for businesses; (b) facilitating an enabling environment for business; (c) redressing the grievance and rendering justice; and (d) in the current scenario of extreme privatisation which has been extended to even defence supplies, the State is a significant procurer of products from businesses.

For two reasons, one can say that the zero draft has shown eagerness to take on hard issues. The fact that public procurement has been discussed as an instrument to promote human rights is an important first step. Secondly, the zero draft is probably among the first instruments from the Government that has acknowledged that the State-business nexus is a problem; and there is a need for an action plan to be drafted on the issue. It is important that the discussion is extended to strengthening and protecting the whistle-blowers and human rights defenders. However, as of now, the zero draft is primarily an amalgamation and update of what is existing today in terms of legislations, schemes, programmes and also listing of various institutions that have the mandate related to Business and Human Rights (BHR). To that extent, it is good, but listing of a number of

existing programmes should not give a ‘feel good’ sense to the Government – as if things are fine vis-à-vis the business and human rights agenda. It takes away the need to ‘revamp’, if not overhaul these institutions to do justice to the BHR agenda. The gruesome corporate murder of 15 citizens protesting against violations by the Sterlite Plant

or deaths of 32 workers owing to an explosion in the NTPC plant or 377 miners deaths in the last three years or India continuing to use 350,000 tonnes of asbestos annually – there is clearly a lot wanting in terms of implementing the human rights agenda within businesses.

## Key Challenges for NAP

The big picture question looming is whether the NAP will be another toothless ‘feel good’ instrument. In a series of consultations, that Partners in Change organised with hundreds of organisations and groups working at the grassroots, there was clearly despair, for they have seen a number of such toothless instruments that have emerged from the State, which seldom protect communities at the margins. The NAP, it is feared, would sidestep the following five questions:

**The wage question** - It is important to note that as per the National Sample Survey Office’s Periodic Labour Force Survey, 2017-18, the unemployment rate is 6.1 per cent, which is the highest in the last 45 years. For educated rural females, the unemployment rate stands at 17.3 per cent. With high unemployment rates, even among educated females, the supply of the labour force would be high and therefore their ability to negotiate wages would be limited. From garments to tea plantations to the construction sector, and from primary to manufacturing to service sectors, there is one common concern – the workers deep in the supply chain do not even get a minimum wage. This even includes teachers in the private schools in a number of rural areas and smaller towns. It is a shame that as early as the 1950s, the Constitution of India under Article 43, the Directive Principles of State Policy, directed the State to secure for every worker, a living wage. Seven decades hence, we have not been able to go beyond the minimum wage debate. Strong unionisation and collective bargaining institutions will play a significant role in determining wages and need to be strengthened as well. The NAP would probably just reiterate that every worker should get the minimum wage, rather than embarking into measures that could

make the concept of minimum wage a reality.

**The supply chain development question** - The fear is that a NAP would list all progressive labour legislations, which cease to be applicable beyond the workspace. The Economic Survey of 2018-19 states that almost 93 per cent of the total workforce is ‘informal’. Many of them work under the piece-rate system, and often within the household space, but still contribute to big national and international brands. In the third tier of the supply chain and beyond, one may see migrants trapped into bonded labour and trafficking, the presence of child labour and commercial and sexual exploitation of workers. Unless the NAP devises a system that makes big corporates accountable for various violations in the supply chain, the NAP would just be a toothless paper.

**The Ease of Doing Business Index question** – This takes the focus away from workers and centres on encouraging investments. All the efforts on the ground are meaningless, if the macro-policy is centred on promoting businesses at the cost of workers, communities and the environment. The pace at which ‘flexibility’ is being brought in at the cost of labour and the environment, needs to be tamed. This means that the NAP should clearly encourage debates around looking at businesses from the lens of human rights of workers and communities and should be a non-negotiable.

**State-business nexus challenge question** – This poses a potential challenge especially in a scenario when the interests of businesses are competing with the interests of communities; and the State articulates its role as ‘protecting investment so that

it could provide benefits to the community'. In other words, there is increasingly a scenario where the State aligns with the interests of business, most often 'legitimately' and many times covertly. Of course, one can see how a two per cent CSR policy is used to foster a legitimate and illegitimate nexus between corporates and the government.

**The inclusion question** - This remains the most significant aspect. There are enough studies that have pointed out that the board and senior management team of most of the companies are not diverse from the lens of gender, caste or disability. The absence of diversity in the workspace is not natural – it is a result of discrimination embedded in the society. The question is whether this would even be problematised by the NAP. Surely, a NAP, in the current mainstreamed anti-reservation narrative, would shy away from recommending affirmative action in the private sector?

There is a strong feeling that these five significant questions will be sidestepped because of the

lack of clarity on whether the NAP development process itself would be inclusive. Who will be playing the lead in this process is ambiguous. Government officials, UN agencies, big corporates and large national level CSOs are definitely engaging. Probably, some of the large trade unions would get into the consultations at a later stage. The constituencies that would be left out are communities at the margins, grass root organisations, human rights defenders, micro-enterprises, petty contractors and unorganised workers. Even if they get engaged, their opinions would be scattered as they are not organised enough to push an agenda. Another constituency that would be ignored is that of the government and quasi-state regulators, such as pharmaceutical pricing authority or consumer commissions. Invariably, the votaries of these questions are not yet in the world of policy-making. Unless an effective mechanism to foster their effective participation is evolved, the NAP would probably be another paper tiger.

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## Corporate Responsibility Watch members

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## **Corporate Responsibility Watch**

Secretariat, Praxis Institute for Participatory Practices  
BB-5, Second Floor, Greater Kailash Enclave II, New Delhi – 110048  
Tel: 011 4107 5550/29223588  
[www.corporatewatch.in](http://www.corporatewatch.in)  
[crw@praxisindia.org](mailto:crw@praxisindia.org)