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# ESG and Human Rights

## Supply Chain Management

October 2023

Research

# ESG and Human Rights

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October 2023

DMS Code: 22901.1



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# List of Abbreviations

Abbreviation	Full Form
<b>Accord</b>	Accord on Fire and Building Safety in Bangladesh
<b>BAT</b>	British American Tobacco
<b>BRR</b>	Business Responsibility Report
<b>BRR</b>	Business Responsibility Reporting
<b>BRSR</b>	Business Responsibility and Sustainability Report
<b>BRSR</b>	Business Responsibility and Sustainability Report
<b>CORE</b>	Canadian Ombudsperson for Responsible Enterprise
<b>CSDD</b>	Directive on Corporate Sustainability Due Diligence
<b>CSR</b>	Corporate Social Responsibility
<b>CSRD</b>	Corporate Sustainability Reporting Directive
<b>DEI</b>	Diversity, Equality and Inclusion
<b>ESG</b>	Environmental, Social and Governance
<b>EU</b>	European Union
<b>FLOC</b>	Farm Labour Organizing Committee
<b>GDP</b>	Gross Domestic Product
<b>HRIA</b>	Human Rights Impact Assessment
<b>Human Trafficking Fund</b>	UN Voluntary Trust Fund for Victims of Human Trafficking
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant of Economic, Social, and Cultural Rights
<b>ILO</b>	International Labour Organisation
<b>INR</b>	Indian Rupee
<b>ITeS</b>	IT-enabled services
<b>IUF</b>	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
<b>KPI</b>	Key Performance Indicators
<b>MCA</b>	Ministry of Corporate Affairs
<b>MNE</b>	Multinational Enterprise

## List of Abbreviations

<b>Abbreviation</b>	<b>Full Form</b>
<b>NCP</b>	National Contact Point
<b>NFRD</b>	Non-financial Reporting Directive
<b>NGRBC</b>	National Guidelines on Responsible Business Conduct
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OECD Due Diligence</b>	OECD Due Diligence Guidance for Responsible Business Conduct
<b>OECD Guidelines</b>	OECD Guidelines for Multinational Enterprises
<b>OHCHR</b>	Office of the United Nations High Commissioner for Human Rights
<b>Palermo Protocol</b>	Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children
<b>PLI</b>	Production Linked Incentive Scheme
<b>RBI</b>	Reserve Bank of India
<b>RSCI</b>	Resilient Supply Chain Initiative
<b>SCM</b>	Supply Chain Management
<b>SEBI</b>	Securities and Exchange Board of India
<b>SIA</b>	Social Impact Assessments
<b>Slavery Fund</b>	UN Voluntary Trust Fund on Contemporary Forms of Slavery in 1991
<b>SME</b>	Small, Medium Enterprises
<b>TCFD</b>	Task Force on Climate-Related Financial Disclosures
<b>TISC</b>	Transparency in Supply Chains
<b>UFLPA</b>	Uyghur Forced Labour Prevention Act
<b>UN</b>	United Nations
<b>UNGP</b>	United Nations Guiding Principles on Business and Human Rights
<b>UNODC</b>	United Nations Office of Drugs and Crime
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>UNPRI</b>	UN Principles for Responsible Investment
<b>US</b>	United States of America
<b>USD</b>	United States Dollar
<b>WTO</b>	World Trade Organization



# Introduction

It is not new for India to be considered as a hub for global supply chain demand. The well-known business strategy known as “China-plus-one,” which was first used in 2013,<sup>1</sup> was the preceding instance for such a declaration about India being an alternative to China. The Covid-19 pandemic created various supply chain bottlenecks that resulted in logistical delays and export limitations that were exacerbated by the Ukraine crisis.<sup>2</sup> This highlighted the need for supply channel diversification and manufacturing localization. As a result, American and European businesses who had invested substantially in China over the last two decades due to the country’s low labour and production costs are now progressively moving their attention to nations like India.<sup>3</sup>

In line with the objective of combating supply chain disruptions, the Resilient Supply Chain Initiative (“RSCI”) was launched in 2021 by Australia, Japan, and India.<sup>4</sup> It aims to build critical industrial clusters for diverse supply chains. This was followed by the creation of a roadmap in July 2022 by a coalition of 18 economies, including India, the US, and the European Union on strategies to mitigate supply chain dependencies and vulnerabilities.<sup>5</sup>

India’s place in the global supply chain is solidified by its varied business environment and highly trained, reasonably priced labour force. Furthermore, its standing is supported by strong macroeconomic conditions, easy access to resources, and an expanding market of 1.3 billion people. The government of India is emphasizing infrastructural and logistical improvements as well as increasing local manufacturing. The Production Linked Incentive Scheme (“PLI”), originally intended for Large-Scale Electronics Manufacturing, was expanded to fourteen industries, including steel, pharmaceuticals, and the automotive and steel industries.<sup>6</sup>

Supply chain management is a crucial component of business operations which refers to the movement of goods, services, information, and funds at different levels, from the extraction of raw materials to end-user consumption. The economy of a country relies on it and is built around it. Lower production costs and improved customer satisfaction are two benefits of a well-organized, efficient supply chain architecture. In addition to this, it improves business accessibility, which in turn speeds up consumer growth in both urban and rural areas.

The COVID-19 pandemic not only exposed the vulnerabilities in the supply chain management systems across the world but also drew attention to environmental, social and governmental (“ESG”) concerns in the context of stakeholder-centric approach for business opportunities and integrated risk management. The integration of ESG principles into supply chain management has emerged as a crucial avenue for fostering sustainable business practices. Investors, consumers, regulators, and other stakeholders are increasingly evaluating companies based on their ESG performance, as it reflects a long-term approach to value creation that goes beyond financial metrics. As a result, many businesses are incorporating ESG principles into their strategies to achieve lasting success in a rapidly changing global landscape.<sup>7</sup>

1 [https://www.business-standard.com/podcast/international/what-is-the-china-plus-one-strategy-12207260052\\_1.html](https://www.business-standard.com/podcast/international/what-is-the-china-plus-one-strategy-12207260052_1.html).

2 <https://hbr.org/2022/03/how-the-war-in-ukraine-is-further-disrupting-global-supply-chains>, <https://www.weforum.org/agenda/2022/09/5-challenges-global-supply-chains-trade>, last accessed 8<sup>th</sup> September, 2023.

3 [https://economictimes.indiatimes.com/news/economy/policy/dont-worry-if-china-isnt-there-india-can-take-care-of-the-global-supply-chain/articleshow/97310019.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/economy/policy/dont-worry-if-china-isnt-there-india-can-take-care-of-the-global-supply-chain/articleshow/97310019.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).

4 <https://pib.gov.in/PressReleaseFramePage.aspx?PRID=1714362>.

5 India is becoming part of Global Supply Chains, Equity Master, Jan 31, 2023, available at: <https://www.equitymaster.com/detail.asp?date=01/31/2023&story=4&title=India-is-Becoming-Part-of-Global-Supply-Chains-Here-are-the-Facts-and-Opportunities>.

6 <https://pib.gov.in/PressReleasePage.aspx?PRID=1945155>.

7 <https://www.wolterskluwer.com/en/expert-insights/the-abcs-of-esg-reporting>.



## Introduction

This research paper explores the intersection of ESG principles and human rights within the context of supply chain management. The paper examines the importance of aligning the supply chain operations of companies with ESG objectives, particularly in relation to human rights. Through an analysis of the regulatory landscape, case studies, and best practices, this paper aims to provide insights into the opportunities and strategies for promoting ESG and upholding human rights in Indian supply chains.

## Most prevalent

The countries estimated to have the highest prevalence of modern slavery tend to be conflict-affected, have state-imposed forced labour, and have weak governance.

	Rank	Prevalence Rate*	# of People
North Korea	1	104.6	2,696,000
Eritrea	2	90.3	320,000
Mauritania	3	32.0	149,000
Saudi Arabia	4	21.3	740,000
Türkiye	5	15.6	1,320,000
Tajikistan	6	14.0	133,000
United Arab Emirates	7	13.4	132,000
Russia	8	13.0	1,899,000
Afghanistan	9	13.0	505,000
Kuwait	10	13.0	55,000

\*Estimated number of people in modern slavery per 1,000 population

## Least prevalent

The countries with the lowest prevalence of modern slavery are those with strong governance and strong government responses to modern slavery.

	Rank	Prevalence Rate*	# of People
Switzerland	160	0.5	4,000
Norway	159	0.5	3,000
Germany	158	0.6	47,000
Netherlands	157	0.6	10,000
Sweden	156	0.6	6,000
Denmark	155	0.6	4,000
Belgium	154	1.0	11,000
Ireland	153	1.1	5,000
Japan	152	1.1	144,000
Finland	151	1.4	8,000

\*Estimated number of people in modern slavery per 1,000 population

**Figure 1** Estimated number of people in modern slavery per 1,000 population- report by Global Slavery Index-2023

# ESG and Human Rights Nexus

The COVID-19 pandemic worsened already-existing disparities and forced businesses to rethink human resources across global value chains, thus the ESG trend shouldn't come as a surprise. While most of the discussion around ESG has centred on the diversity, equality, and inclusion (“DEI”)<sup>1</sup> aspect of the social index, other human rights abuses that occur in supply chains, such as child labor, forced labor, and hazardous working conditions, also require consideration.

The ESG elements themselves, however, are not independent, but rather linked.<sup>2</sup> For instance, when businesses try to abide by environmental rules while also having concerns about sustainability, social criteria might cross over with environmental criteria and governance. For example, Environmental factors within ESG, such as carbon emissions, resource usage, and waste management, directly impact human well-being. Unsustainable practices can lead to adverse health effects, particularly in marginalized communities near industrial clusters. Further, governance aspects such as transparent governance structures and ethical business practices contribute to human rights protection.<sup>3</sup> Ensuring accountability and compliance with regulations is integral to preventing human rights abuses.

To further understand the correlation between ESG and human rights, it is pertinent to note that modern slavery, corporate security, diversity, employee relations, supply chain sustainability, customer relations, and personal data protection are some of the topics falling within the purview of ‘S’ within the ESG matrix.<sup>4</sup>

Further, the ‘S’ in terms of social responsibility relates to workplace accidents, anti-discrimination policy, privacy policy, third party risk policy, whistleblowing policy, corporate social responsibility and so on in the context of due diligence and compliance for corporations.<sup>5</sup>

However, the ‘S’ of the ESG is a broad concept covering a wide range of human rights. It includes, for instance, the rights to life, freedom, and security, to equality before the law, to be free from torture and slavery, to be exempt from forced labor, and to be free from discrimination enumerated in the 1948 Universal Declaration of Human Rights.<sup>6</sup> Human rights also cover the principles outlined in the International Covenant on Economic, Social, and Cultural Rights (1966)<sup>7</sup> and the Convention on Civil and Political Rights (1966).<sup>8</sup> Additionally, UN treaties on migrant workers’ rights,<sup>9</sup> the prohibition of discrimination against women,<sup>10</sup> and the rights of children<sup>11</sup> are also relevant.

1 <https://www.thomsonreuters.com/en-us/posts/international-trade-and-supply-chain/preventing-supply-chain-risk/>.

2 <https://www.oecd.org/finance/ESG-Investing-Practices-Progress-Challenges.pdf>.

3 <https://link.springer.com/article/10.1007/s10668-023-02921-x>.

4 Supra note 9.

5 <https://corpgov.law.harvard.edu/2020/08/01/introduction-to-esg/>.

6 <https://www.un.org/en/about-us/universal-declaration-of-human-rights#:~:text=Drafted%20by%20representatives%20with%20different,all%20peoples%20and%20all%20nations>.

7 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

8 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

9 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-protection-rights-all-migrant-workers>.

10 <https://www.unwomen.org/en/digital-library/publications/2016/12/cedaw-for-youth>, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women#:~:text=On%2018%20December%201979%2C%20the,twentieth%20country%20had%20ratified%20it>.

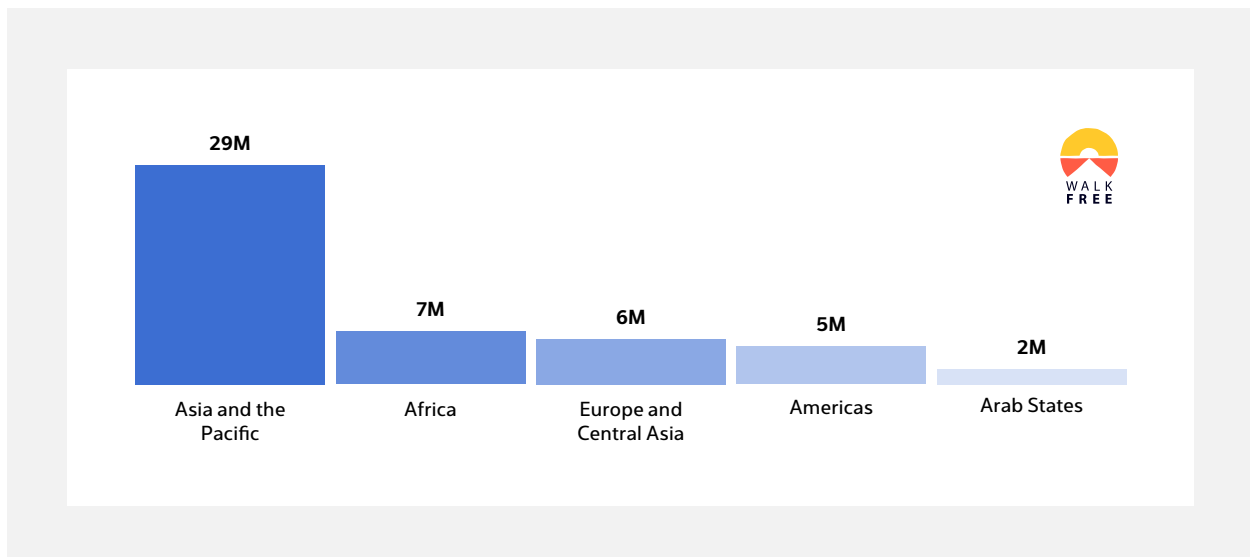
11 <https://www.unicef.org/child-rights-convention>.

# Human Rights Concerns in Global Supply Chains

In today's interconnected world, global supply chains play a pivotal role in the production and distribution of goods and services, enabling companies to source materials, components, and services from various corners of the globe. While these supply chains contribute significantly to the economic growth of a country, they also give rise to a complex web of human rights concerns that demand careful examination. The intricate nature of global supply chains often makes it challenging to monitor and regulate every stage of production.<sup>1</sup> As a result, various human rights violations occur, affecting workers and communities. From forced labour, child exploitation to hazardous working conditions, these supply chains can inadvertently perpetuate and exacerbate various human rights abuses.

The umbrella term that covers all the human rights violations in supply chains is 'Modern Slavery'. When a person is unable to refuse or leave an exploitative arrangement due to threats, violence, compulsion, or deception is said to be in modern slavery.<sup>2</sup> Modern slavery, inter alia, manifests itself in forced labour, debt bondage and human trafficking. According to the 2021 Global Estimates,<sup>3</sup> there are currently 27.6 million people in forced labour. This absolute figure comprises of 11.8 million women/girls and 3.3 million children. The phenomenon of modern slavery is in stark contradiction to the progress and values of contemporary society. It exploits the most marginalized and desperate populations, capitalizing on factors such as poverty, lack of education and inadequate legal protection.

## 49.6M People are Living in Modern Slavery Globally



**Figure 2** Global estimates of people living in modern slavery<sup>4</sup>

1 <https://hbr.org/2020/09/global-supply-chains-in-a-post-pandemic-world>.

2 [https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms\\_575479.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf).

3 <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>.

4 <https://www.walkfree.org/global-slavery-index/map/>.

The following sections delve deeper into the major forms of modern slavery relevant for consideration in the context of supply chain management.

## A. Forced Labour, Child Labour and Bonded Labour

Forced labour works along the dynamics of a market-oriented global economy. A lot of pressure is placed on the suppliers to meet consumer demands. Supply chains can be divided in terms of upstream and downstream operations.<sup>5</sup> Upstream operations are those that are closest to the raw material production phase while downstream operations are those that are closest to the product's ultimate retail sale. Forced labour frequently happens in the upstream operations. Pressures on prices and delivery times start in downstream industries and move upstream. As a result of such pressures on the profit margins, companies neglect labour practices of their suppliers/sub-contractors.

To illustrate, forced labour has frequently been connected to production of clothing in China, Bangladesh, Cambodia, and India, among other nations.<sup>6</sup> Poor working conditions which include confined spaces, exposure to hazardous chemicals and physical abuse are faced by the employees.<sup>7</sup> For instance, recently fashion brands such as H&M<sup>8</sup> and Zara<sup>9</sup> have been accused of taking advantage of harsh working conditions of employees in China.

Additionally, children can be easily pushed into forced labour as they are more vulnerable to exploitation. A report from the US Department of Labour has revealed that there are 148 different consumer goods produced with child or forced labour around the world. The list includes clothing, beef, sugar, bricks, coffee, and other products originating from 76 countries.<sup>10</sup> In the context of India, it is worth mentioning about the mining of mica where child labour is rampant.<sup>11</sup> For instance, there were reports about the popular cosmetics beauty line — Fenty Beauty owned by international singer, Rihanna, having allegedly obtained mica from mines of Jharkhand and Bihar where children were forced to work in appalling conditions.<sup>12</sup> In these mica mines the labour is typically done without any safety equipment, risking suffocation in the mine shafts along with health conditions such as tuberculosis and skin diseases.

In the context of bonded labour, it is pertinent to note that India's population is not evenly impacted by it. The bulk of those held captive by debt are Dalits, members of low castes, indigenous people (also known as scheduled tribes and scheduled castes), and other underprivileged groups. Bonded labour can be found in brick kilns, farms, silk and cotton industries, domestic work and so on.<sup>13</sup> Debt bondage occurs when workers, often together with their families are compelled to work for an employer in dire conditions such as long working hours and low pay until their loans, whether personal or inherited, are settled.

5 <https://www.mcgill.ca/desautels/channels/news/effects-upstream-and-downstream-mergers-supply-chain-profitability-255702>.

6 [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms\\_848624.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_848624.pdf).

7 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_554809.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_554809.pdf).

8 <https://www.business-humanrights.org/en/latest-news/hm-ends-relationship-with-chinese-yarn-producer-over-accusations-of-forced-labour/>.

9 <https://gflc.ca/zara-and-the-uyghur-crisis-is-there-forced-labour-in-india-supply-chains/>.

10 <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods>.

11 <https://www.reuters.com/authors/roli-srivastava/>.

12 <https://theprint.in/india/rihannas-fenty-beauty-under-scanner-in-india-for-using-mica-from-mines-hiring-child-labour/599647/>.

13 [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).

Furthermore, many men leave India for jobs in construction and related fields, mainly in the Middle East, despite the dangers and challenges they confront.<sup>14</sup> Migrant labourers are virtually always exploited, often-times leading to forced labour and human trafficking. This is carried out by agents who extort unlawful recruiting fees, coerce potential immigrants into taking out loans, and fail to provide adequate travel papers. When employees arrive at the target country, their passports are confiscated, no residency permits are given and they frequently wind up working in a different industry than what they were hired for at a considerably lower pay.

## B. Human Trafficking

Forced labour is strongly tied to the problem of human trafficking which is defined by the United Nations as: “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”<sup>15</sup> The results of exploitation may range from prostitution or other types of sexual exploitation, to forced labour or services, slavery or activities akin to slavery, servitude, or organ harvesting.

According to the United Nations Office of Drugs and Crime (“**UNODC**”)’s 2018 estimate,<sup>16</sup> women made up around 46% of the recognised victims of human trafficking, followed by males (20%), boys (19%), and girls (15%). Further, 57% of these victims had been trafficked by a business type of organized criminal groups, 19% had been victims of governance-type organized criminal groups, 14% were trafficked at the hands of opportunistic associations of traffickers and 11% were victimized by individual traffickers.

One pertinent case study for understanding human trafficking in supply chains is the fisheries industry from Thailand. The Thai fishing industry which is a 6.5-billion-dollar business with major export links to UK, Japan and US, has been under the radar of ILO for its thriving modern slavery.<sup>17</sup> In contrast to Thailand’s well-known sex trade, which largely targets vulnerable female immigrants from South Asian countries, the fishing business predominantly takes advantage of immigrant males. These enslaved men are then forced to work in hazardous, unsanitary conditions with either no pay or very low pay.<sup>18</sup>

14 <https://www.theguardian.com/global-development/2022/nov/23/india-migrant-workers-work-unemployment-jobs-covid-pandemic>.

15 <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm#:~:text=According%20to%20the%20ILO%20Forced,offered%20himself%20or%20herself%20voluntarily.%22>.

16 [https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP\\_2018\\_BOOK\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTiP_2018_BOOK_web_small.pdf).

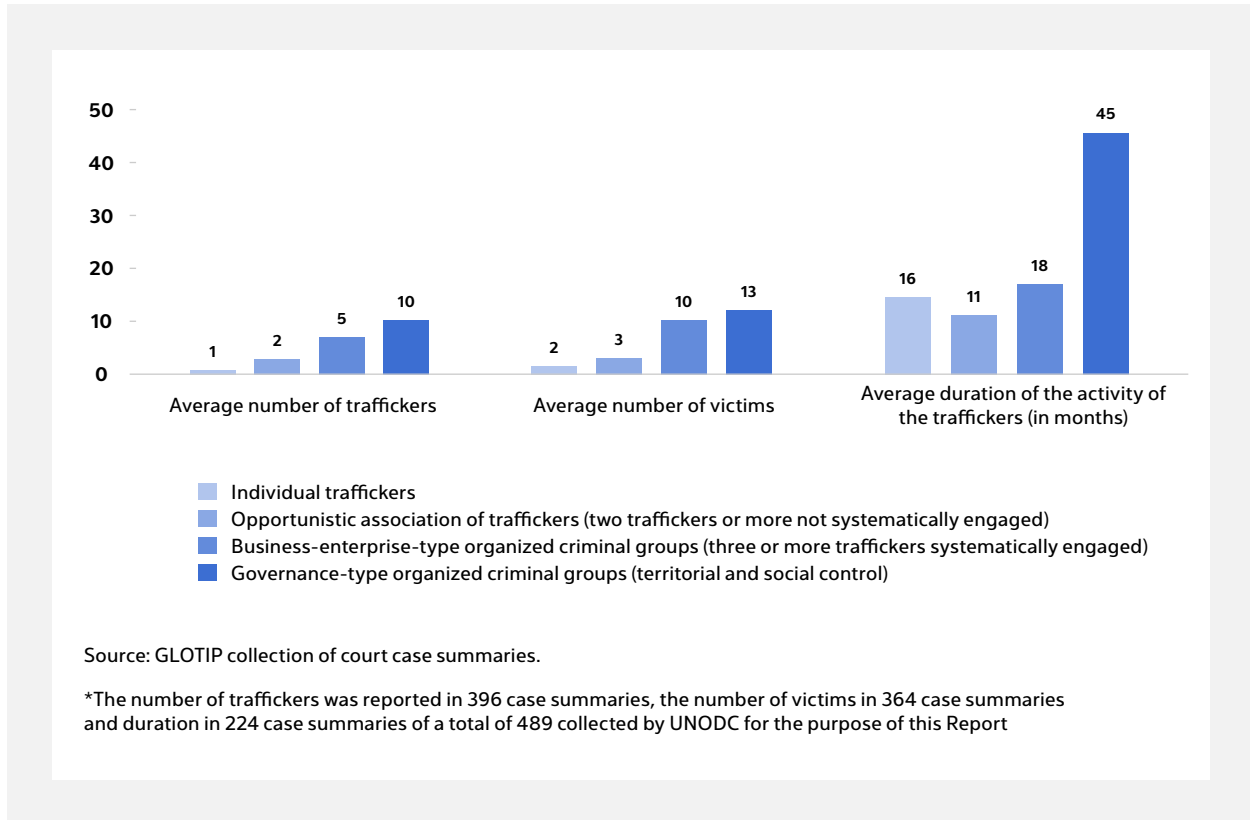
17 <https://www.ilo.org/global/topics/forced-labour/policy-areas/fisheries/lang--en/index.htm>.

18 <https://www.ilo.org/global/topics/forced-labour/policy-areas/fisheries/lang--en/index.htm>.

## Human Rights Concerns in Global Supply Chains

FIG. 6

Average number of traffickers, average number of victims and average duration of traffickers' activity per single case, by type of criminal actor, as reported in GLOTIP court cases\*



**Figure 6 4. Average number of traffickers, average number of victims and average duration of trafficking activity per single case<sup>19</sup>**

## C. Unsafe Conditions of Work

Third world countries are left with considerably more than their fair share of hazardous manufacturing and unsafe working conditions because of the nature of industrial growth. As a result of increased economic competition, several nations now compete not only in terms of quality but also lower labour costs. It is due to this reason that emerging nations like India have diluted their labour laws to attract foreign investment and improve their ease of doing business.<sup>20</sup> Therefore, many workers are made to work under unsafe conditions of work.

<sup>19</sup> [https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP\\_2020\\_15jan\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf).

<sup>20</sup> [https://economictimes.indiatimes.com/news/economy/policy/view-new-labour-laws-will-improve-indias-ease-of-doing-business-ranking/articleshow/80340847.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/economy/policy/view-new-labour-laws-will-improve-indias-ease-of-doing-business-ranking/articleshow/80340847.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).

Workers who are subjected to settings, tasks or circumstances that represent a serious danger to their health, safety or general well-being are said to be working under unsafe conditions of work. These conditions may also involve operating risky machinery, being exposed to hazardous chemicals, lacking safety gear, doing demanding physical labour and so on. The other major components of unsafe work conditions include low pay and long working hours.

At this juncture, it is essential to mention about the research on prolonged periods of working hours and overtime which points to an immediate risk of injury and adverse health effects such as depression, strokes and heart attacks along with decreased levels of productivity.<sup>21</sup> However, when moderate overtime is done voluntarily and appropriately remunerated, it can be beneficial to both the organization and the individual.<sup>22</sup>

For example, occupational health and safety risks plague India's industrial sector, taking a toll on workers and occasionally having fatal results. More than 2800 workers have sustained serious injuries in the supply chain of the automobile industry, in the past 5 years.<sup>23</sup> A majority of them were employed in making automotive parts in hubs like Haryana, Rajasthan, Uttarakhand, Tamil Nadu and Gujarat. They are contractual, migrant workers with little education and earn less than INR 10,000 per month. Their employers are suppliers to all the big brands in the automobile industry — Maruti, Tata, Hero, Bajaj, TVS and Honda. Most of the accidents that have occurred in the automobile industry are due to lack of training, inadequate safety standards and malfunctioning safety sensors.

It may be helpful to recount India's worst industrial disaster — the Bhopal gas tragedy to lay emphasis on safety of workers.<sup>24</sup> This incident throws light on the impact of industrial operations not only on its workers but also on the local communities around the industrial plant and the environment. It happened in 1984, at the Union Carbide India Limited pesticide facility in Bhopal. The negligence of the company in maintaining safety standards led to chemicals such as methyl isocyanate (MIC) escaping into the air. Nearly 5,00,000 people were exposed to this lethal gas out of which at least 4000 people died and others suffered severe health ailments.<sup>25</sup>

For women, unsafe conditions of work take the form of sexual harassment at workplace. According to data analysis based on company annual reports, the overall number of sexual harassment complaints at work increased by 27 percent in March 2022 compared to in 2021.<sup>26</sup> This research was conducted on BSE 100 index companies that make up more than 65 percent of total market capitalisation of listed companies in India. The results of the research showed that the two sectors which had the highest percentage of sexual harassment claims were banking, financial services and insurance (BFSI) and Information technology (IT) and IT-enabled services (ITeS).<sup>27</sup>

At the higher rung of the supply chain, unsafe conditions of work are characterized by toxic work cultures. Employees who work in toxic work cultures suffer severe and long-lasting damage, including high levels of stress, anxiety and burnout. Major health issues may also be developed. In the long run, the performance

21 [https://www.ilo.org/wcmsp5/groups/public/---ed\\_emp/---emp\\_ent/documents/publication/wcms\\_227760.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_227760.pdf).

22 Ibid.

23 <https://auto.economicstimes.indiatimes.com/news/industry/indian-auto-industrys-dirty-little-secret-it-doesnt-care-for-its-supply-chain-workers/89134282>.

24 [https://nidm.gov.in/pdf/trgReports/2021/December/Report\\_02December2021sp.pdf](https://nidm.gov.in/pdf/trgReports/2021/December/Report_02December2021sp.pdf).

25 <https://www.jstor.org/stable/40736695>.

26 <https://www.forbesindia.com/article/take-one-big-story-of-the-day/rise-in-sexual-harassment-cases-in-indias-top-companies-shows-dichotomy/80721/1#:~:text=safety%20and%20dignity.,The%20total%20number%20of%20sexual%20harassment%20complaints%20at%20workplaces%20climbed,based%20on%20company%20annual%20reports>.

27 [https://economicstimes.indiatimes.com/news/company/corporate-trends/at-bse-100-companies-survey-finds-more-cases-reported-as-awareness-grows/articleshow/66142084.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economicstimes.indiatimes.com/news/company/corporate-trends/at-bse-100-companies-survey-finds-more-cases-reported-as-awareness-grows/articleshow/66142084.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).



of the company also suffers due to its toxic work culture as healthcare costs of the employees which are typically borne by the company, increase. Furthermore, employees are more prone to disconnect from their jobs, disparage their employers and search for other employments as a result of toxic work cultures. The recent example of Byju's employees revealing their ordeal in the company perfectly showcases the impact that toxic culture has on the employees and the company.<sup>28</sup> The long working hours wherein the employees were forced to work beyond 72 hours a week if their targets were not met, coupled with constant verbal and physical abuse led to Byju's reputational damage and consequent bankruptcy, among other factors.

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28 [https://economictimes.indiatimes.com/news/new-updates/byjus-employee-speaks-out-against-alleged-toxic-work-culture-and-unresolved-grievances-in-viral-video/articleshow/102074383.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/new-updates/byjus-employee-speaks-out-against-alleged-toxic-work-culture-and-unresolved-grievances-in-viral-video/articleshow/102074383.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst).

# Impact of Poor Supply Chain Management — Human Rights Perspective

Supply chain management consists of different tiers or levels that represent various stages and components of the supply chain process. These tiers are often categorized based on their proximity to the end user and their role in the overall supply chain. The following are the different tiers of the supply chain:<sup>1</sup>

1. Tier 1 Suppliers — these are the suppliers that directly provide products or materials to the manufacturer or company. For example — in case of a company selling apparel, the factory that assembles the company’s cotton is its tier 1 supplier.
2. Tier 2 Suppliers — these are suppliers that provide materials to tier 1 suppliers. For example — the cotton mill that supplies cotton to the textile factory is the apparel company’s tier 2 supplier.
3. Tier 3 Suppliers — these suppliers provide materials further upstream in the supply chain. For example — the farm that sells fabric to the cotton mill becomes the apparel company’s tier 3 supplier.

Global supply chains that violate human rights have far-reaching impact and affect a variety of stakeholders, including different facets of the society. Below is a summary of the impact of such human rights violations, or in other words, poor supply chain management:

1. Costs of workplace accidents<sup>2</sup> — The costs arising out of workplace accidents can be assessed at three levels — cost to the workers, the society and the employer. The costs to the worker, primarily, can be represented in the form of missed wages and medical expenditures that are not reimbursed or covered by the company’s worker’s compensation scheme. Next, the costs to society are incurred for the gap between the increased insurance premium as a result of the accident and the compensation scheme’s reimbursement provided to the employee. The payments made by companies to the employees who have injured themselves or developed an illness in the course of the employment, are considered direct costs to the employer. However, costs resulting from low, poor quality and delayed production, are the indirect costs borne by the employers. Further, occupational diseases have a significant negative impact on economic and social growth, as well as on employees and their families. According to ILO estimates, direct and indirect costs associated to injuries and diseases result in an annual 4 per cent loss in global gross domestic product (“GDP”) which is roughly USD 2.8 trillion.<sup>3</sup> For India, that would translate to INR 10 lakh crores. Thus, it is evident that protecting worker/employee safety is the company’s best interests in order to reduce both economic and social costs.
2. Reputational Harm — It is obvious that at least some links in the global supply chains encourage and profit from the human rights violations. In fact, G20 nations are the focus as they make up almost 85% of the global GDP and 80% of global trade. As a result, USD 354 Billion worth of goods are potentially made from modern slavery.<sup>4</sup> Further, potential workers/employees, consumers and investors are becoming more aware and interested in business ethics and good governance practices and therefore, this critical issue of human rights violations in the global supply chains, creates a rising

1 <https://www.sustain.life/blog/tier-suppliers>.

2 <https://ec.europa.eu/social/BlobServlet?docId=7417&langId=en>.

3 [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_211627/lang--en/index.htm#:~:text=The%20ILO%20estimates%20that%20occupational,for%20an%20effective%20prevention%20strategy](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_211627/lang--en/index.htm#:~:text=The%20ILO%20estimates%20that%20occupational,for%20an%20effective%20prevention%20strategy).

4 [https://www.regjeringen.no/en/dokumenter/modern\\_slavery/id2670039/](https://www.regjeringen.no/en/dokumenter/modern_slavery/id2670039/).

reputational challenge for governments and corporations across the world. The investments and share prices of a company are easily impacted by human rights violations as these reflect the company's culture and brand values.

3. **Social Impact** — Due to modern slavery practices, the disparities between the various sections of the society become enlarged.<sup>5</sup> Exploitation of workers can lead to poverty and reduce their quality of life. Further, the vulnerable sections of the society such as woman and children can be easily trafficked for cheap labour. In some cases, where the violations are severe, social unrest and conflicts may be resulted between the worker groups and the employers. Moreover, when businesses disregard human rights, the effects may be catastrophic for individuals at the bottom of the global supply chain. When the Rana Plaza building which housed five garment companies, fell in Dhaka, Bangladesh, in 2013, over 1100 employees died and 2000 were wounded.<sup>6</sup> At least 250 people were killed in Brumadinho, Brazil in 2019 after an iron ore tailings dam collapsed, releasing a flood of poisonous sludge.<sup>7</sup>
4. **Business Interruptions** — Employee activism, attrition or strikes by workers and trade unions are the expected outcome of human rights violations in supply chains.<sup>8</sup> These outcomes delay the production and cause revenue losses to the companies. Further, companies implicated in human rights violations may face lawsuits from the employees, advocacy groups or regulatory authorities. Thus, businesses who are linked to human rights violations at any point in their supply chain may be compelled to find alternative production and supplier sources.<sup>9</sup> These modifications may further cause revenue losses and business interruptions.
5. **Legal Consequences** — Depending on the jurisdiction, type and extent of the violations and the legal frameworks in place, the legal consequences of the human rights violations in global supply chains differ. Victims of human rights violations may file a civil suit under the various labour laws enacted by their respective countries for a legal recourse to their sufferings.<sup>10</sup> Companies may also face contractual disputes arising out of their supply contracts for not adhering to the labour standards outlined therein.<sup>11</sup> Further, governments in sourcing or destination countries may take regulatory actions against companies found to be involved in human rights violations.<sup>12</sup> This can include fines, penalties and the revocation of licenses or permits. Moreover, some countries in Europe and America have passed “transparency regulation”, such as the *UK Modern Slavery Act of 2015*,<sup>13</sup> *Australia's Modern Slavery Act of 2018*,<sup>14</sup> and *California's Transparency in Supply Chain Act*<sup>15</sup> to disclose information about their supply chains, including efforts to address human rights issues. Under the international law manifested in various treaties and conventions such as the UN guiding principles on business and human rights,<sup>16</sup> companies may face risk of trade restrictions and reputational damage.

5 [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_855019/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_855019/lang--en/index.htm).

6 <https://www.ilo.org/infostories/en-GB/Stories/Country-Focus/rana-plaza#safety-challenges>, «Exclusive: Brazil prosecutor aims to charge Vale within days over mining waste dam disaster», <https://www.reuters.com/article/us-vale-sa-disaster-exclusive-idUSKBN1Z72GS>.

7 [https://www.hbs.edu/ris/Publication%20Files/ShortTofelHugill\\_2020\\_ILRR\\_786600d8-3042-4141-b408-ee606bae68ff.pdf](https://www.hbs.edu/ris/Publication%20Files/ShortTofelHugill_2020_ILRR_786600d8-3042-4141-b408-ee606bae68ff.pdf).

8 [https://www.hbs.edu/ris/Publication%20Files/ShortTofelHugill\\_2020\\_ILRR\\_786600d8-3042-4141-b408-ee606bae68ff.pdf](https://www.hbs.edu/ris/Publication%20Files/ShortTofelHugill_2020_ILRR_786600d8-3042-4141-b408-ee606bae68ff.pdf).

9 [https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12\\_2\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12_2_en.pdf).

10 Ibid.

11 <https://www.bu.edu/ilj/files/2018/04/Cernic-Final-Version.pdf>.

12 <https://www.un.org/esa/socdev/enable/comp103.htm>.

13 <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

14 <https://www.legislation.gov.au/Details/C2018A00153>.

15 <https://oag.ca.gov/SB657>.

16 [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro\\_Guiding\\_PrinciplesBusinessHR.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf).

# Measures to Mitigate the Impact of Human Rights Violations in Supply Chains

While each company should evaluate the risks associated with their supply chains and strategize the company response to the same, the following are the five broad measures that companies can consider taking to mitigate the impact of the human rights violations in supply chains:

1. **Supply Chain Transparency** — It is important for companies to map their supply chains in such a way that hotspots for modern slavery can be identified. Companies may proactively identify risks and take appropriate action based on their findings through rigorous due diligence including supplier audits and assessments.
2. **Collaborative Initiatives** — Companies may aim to create a bond with the supplier by highlighting the significance of fair labour practices. The implementation of successful strategies to end modern slavery inside supplier's operations may be facilitated by collaborative initiatives including capacity building, training and exchanging best practices. For instance, companies can engage in collaborative initiatives such as the UN Global Compact's Business Network against Trafficking<sup>1</sup> and the Responsible Business Alliance's Responsible Labour Initiative.<sup>2</sup>
3. **Certified Products** — Companies may responsibly source their products from suppliers that are certified by independent councils for not using modern slavery. For example, certifications from Responsible Jewellery Council<sup>3</sup> or Forest Stewardship Council<sup>4</sup> and so on.
4. **Creating awareness** — A culture that prioritizes human rights and actively strives to prevent and solve modern slavery issues may be developed with the aid of training initiatives, awareness campaigns and open lines of communication.
5. **Categorizing risks** — it is crucial for categorizing risks based on which human rights need to be prioritized in cases where the supply chains are too vast and complex as it may be difficult to track all the operations of the suppliers. Risk assessments would enable the company to ascertain which suppliers pose the greatest risks in terms of potential human rights violations. The assessments should comprise of identifying vulnerable groups, mapping key stakeholders, and reviewing any past incidents of human rights violations. Some human rights based on the sector in which the company is operating, are more relevant than the rest. Therefore, accordingly, the risks should be categorised in terms of the gravity of the circumstances and the rights associated.
6. **Maintain relevant policies and code of conducts** — it is essential for companies to develop a comprehensive human rights policy that outlines their commitment to protection of human rights which would help in establishing expectations for all employees and business partners.

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1 <https://unglobalcompact.org/what-is-gc>.

2 <https://www.responsiblebusiness.org/initiatives/rli/>.

3 <https://responsiblejewellery.com/>.

4 <https://fsc.org/en>.

# Role of Corporations in Addressing Modern Slavery Practices

Human rights violations resulting from modern slavery practices have typically been addressed by governments and civil society organizations with the corporations mainly focusing on their profit-making operations. However, in the modern world, big companies hold significant economic power and affect a vast number of people, whether through employment or global supply chains.<sup>1</sup>

In order to better understand the role of corporations in addressing modern slavery practices, the example of Bangladesh’s garment sector’s worst accident, the collapse of Rana Plaza factory may be considered.<sup>2</sup> This incident led to the signing of the industry-wide pact, “The Accord on Fire and Building Safety” by over 170 brands which undertook to implement worker safety audits and inspections across their value chains.<sup>3</sup> This response by the various garment companies was instrumental in improving the workplace safety for workers in Bangladesh’s garment sector.

Thus, companies have a significant influence on the human rights of communities, consumers and workers. The impact that they have may be beneficial, like expanding employment opportunities or enhancing public services or may be harmful like environment pollution, modern slavery and so on.

Further, international norms provided under the OECD Guidelines for Multinational Enterprises<sup>4</sup> and the United Nations Guiding Principles on Business and Human Rights<sup>5</sup> dictate the following to be the role of corporations in addressing human rights violations:

## A. OECD Guidelines for Multinational Enterprises (“OECD Guidelines”)

Business enterprises have the responsibility, within the framework of internationally recognised human rights, to:

- i. Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
- ii. Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.
- iii. Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.
- iv. Have a policy commitment to respect human rights.

1 <https://www.cambridge.org/core/journals/asian-journal-of-law-and-society/article/garment-industry-in-bangladesh-corporate-social-responsibility-of-multinational-corporations-and-the-impact-of-covid19/FA597A48D0155C6B28AF4722A32233AF>.

2 Ibid.

3 <https://bangladeshaccord.org/>.

4 [https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro\\_Guiding\\_PrinciplesBusinessHR.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf).

5 <https://www.ungpreporting.org/resources/the-ungps/>.

- v. Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.
- vi. Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

## B. United Nations Guiding Principles on Business and Human Rights (“UNGP”)

The UNGP provides that regardless of the size or sector, companies have the responsibility to protect human rights wherever they operate. Companies are required to be aware of their actual or potential impact, avoid and limit abuses and resolve issues around human rights violations. This creates an obligation for the companies to acknowledge and demonstrate that they uphold human rights in all aspects of their operations.

It is pertinent to note that the UNGP make it clear that the corporate responsibility to respect human rights operates regardless of the state’s duty to uphold the same. Further, the UNGP also acknowledge that communities and individuals have an explicit right to redressal when their rights are violated. Thus, companies are required to set up or take part in effective grievance redressal mechanisms, providing a remedy to employees/communities adversely affected by them.

Therefore, as explained above, there are three components to the corporate responsibility under the UNGP —

- i. Companies must establish policies committing them to upholding their obligation to protect human rights.
- ii. To detect, avoid, mitigate and account for their human rights impact, companies must continuously carry out human rights due diligence.
- iii. Companies should have in place processes that would enable them to remedy human rights violations caused by them.

The UNGP also provide the rationale for placing corporations as one of the stakeholders for recognizing and protecting human rights. The following are the benefits received by corporations that respect human rights:<sup>6</sup>

- i. Improved risk management with less chance of business disruptions, public campaigns and criticism, litigation, reputational harm, and harm to employee retention and recruitment;
- ii. Greater access to business opportunities with governments, financiers and business customers and buyers, who increasingly recognize the reduced risk to themselves when working with a company that effectively manages risks to human rights;
- iii. Positive recognition, including from socially responsible investors and civil society organizations, of the company’s improving human rights performance and its efforts to address challenges;
- iv. Improved relationships with workers, communities and other stakeholders in societies, resulting in greater trust and a stronger social licence to operate;

<sup>6</sup> <https://www.ungpreporting.org/resources/the-ungps/>.

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**Role of Corporations in Addressing Modern Slavery Practices**

- v. Improved ability to preserve their reputation when negative impacts occur, given better public understanding of their overall efforts to avoid such incidents;
- vi. Improved ability to recruit the next generation of young leaders, who are increasingly focused on companies' performance in this area;
- vii. A comparative advantage with a growing number of stock exchanges and public and private financial institutions scrutinizing companies' non-financial performance, including with regard to human rights.



# Legal and Regulatory Landscape on Protection of Human Rights in Supply Chain Management

Companies are subjected to varying degrees of accountability for protection of human rights in their supply chains by - fiscal, legal, market forces. Fiscal accountability is achieved through the use of public funds that are tied to a company's fulfilment of requirements such as adherence to human rights standards and providing incentives for compliance.<sup>1</sup> Legal accountability is ensured through compliance with established laws and provides grounds for bringing legal action against companies that do not comply.<sup>2</sup> Finally, investors can exert market accountability by withdrawing money from businesses that do not show any concern towards human rights in their supply chains.<sup>3</sup>

In this section of the paper, we shall discuss the various laws and frameworks for legal accountability of companies. States are progressively addressing the issue of modern slavery in their legal systems, both internationally and domestically. Beyond the codified principles of international law, the ban against slavery is a *jus cogens* norm with *erga omnes* obligations that bind all nations.<sup>4</sup> At the same time, domestic laws have been introduced by various nations that advance the anti-slavery campaign.

## A. International Perspective

Instead of referring to conventions and treaties, generally on the topic of human rights which include rights of workers, under this section we will be covering specific international legal framework on protection of human rights in supply chains.

### I. ILO Core Conventions

The International Labour Organization's ("ILO") Declaration on Fundamental Principles and Rights at Work<sup>5</sup> binds all of its member nations to four categories of principles and rights with regard to the specific human rights of workers - freedom of association and the right to collective bargaining; the elimination of compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation. The eleven ILO core conventions address these categories of rights in detail.<sup>6</sup>

Further, in the context of supply chain management, the ILO has laid out the following nine business practices to implement and promote a culture of prevention and protection through supply chains:<sup>7</sup>

1 <https://internationalsales.lexisnexis.com/in/glossary/compliance/supply-chain-law#:~:text=For%20supply%20chain%20management%2C%20the,link%20in%20the%20supply%20chain.>

2 <https://www.oecd.org/investment/duo-diligence-guidance-for-responsible-business-conduct.htm>.

3 <https://legal.un.org/ilc/reports/2019/english/chp5.pdf>.

4 <https://www.ilo.org/declaration/lang--en/index.htm#:~:text=The%20ILO%20Declaration%20on%20Fundamental,our%20social%20and%20economic%20lives.>

5 <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

6 <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.

7 <https://www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/#:~:text=The%20UN%20Guiding%20Principles%20on%20Business%20and%20Human%20Rights%20are,abuses%20committed%20in%20business%20operations.>

- i. Map your supply chains to gain a better understanding of existing Occupational Safety and Health (“OSH”) challenges
- ii. Include OSH and employment injury protection in procurement practices;
- iii. Improve the monitoring of OSH compliance, including through closer engagement with suppliers;
- iv. Promote vertical and horizontal knowledge and capacity sharing;
- v. Align and complement the national legal and policy framework and be a driver for improvement;
- vi. Promote workers’ participation and social dialogue;
- vii. Support efforts to enhance the reporting, recording and notification of occupational injuries and diseases to improve data collection;
- viii. Engage with development partners to share knowledge of good practices and innovative approaches to build capacity and partnerships;
- ix. Join international initiatives to support the development of national policies and strengthen national institutions — in sourcing countries — on OSH practices and employment injury protection.

## II. United Nations Guiding Principles on Business and Human Rights

Since their adoption, the Guiding Principles have pushed for a convergence in business and human rights norms throughout the world, solidifying their status as the authoritative global standard on business and human rights. They have reached this status by pushing beyond corporate social responsibility (“CSR”), a form of governance based on voluntary behaviour and self-regulation rooted in a company’s long-term interest. These Guiding Principles have been formulated based on the Protect, Respect and Remedy<sup>8</sup> framework.

The Guiding Principles are founded on three pillars:

- i. The State duty to protect human rights against abuse by third parties, including business, through appropriate policies, legislation, regulations and adjudication;
- ii. The corporate responsibility to respect human rights, meaning to act with due diligence to avoid infringing on the rights of others and address adverse impacts with which they are involved;
- iii. The need for greater access to effective remedy, both judicial and non-judicial, for victims of business-related human rights abuse.

## III. OECD Guidelines for Multinational Enterprises

The OECD Guidelines provide benchmarks for responsible business conduct in areas ranging from human rights, labour rights and the environment. The OECD Guidelines also establish an international system of government-backed grievance processes to resolve conflicts between enterprises and individuals affected by irresponsible business conduct. These guidelines were formulated with the aim of strengthening trust

<sup>8</sup> <https://www.oecd.org/investment/investment-policy/oecddeclarationanddecisions.htm>.

between business enterprises and the societies in which they operate, to help improve the foreign investment climate and to increase the contribution of multinational enterprises to sustainable development. They were formed as a part of the OECD Declaration on International Investment and Multinational Enterprises.<sup>9</sup>

The OECD Guidelines can be divided into two parts:

- i. Guidelines for responsible business conduct in areas like labour rights, human rights, environment, information disclosures, technology, combating bribery, consumer interests, competition, taxation and so on.
- ii. Procedures to guide government in implementing the above guidelines.

Recently in June 2023,<sup>10</sup> these guidelines were updated to include additional topics such as climate change, protection of civic space and so on. In addition to the above, the OECD Due Diligence Guidance for Responsible Business Conduct<sup>11</sup> (“**OECD Due Diligence**”) has been released to help enterprises in implementing the OECD Guidelines.

#### IV. UN Sustainable Development Goals

Modern slavery is antithesis to the principles and objectives of United Nations Sustainable Development Goals. Particularly, SDG 8 which promotes sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, relates directly to the problem of modern slavery.<sup>12</sup> Furthermore, Target 8.7 emphasizes the need for eradicating forced labour, modern slavery, human trafficking and the worst forms of child labour.<sup>13</sup>

Additionally, SDG 5 which promotes gender equality, is relevant in the context of modern slavery.<sup>14</sup> According to ILO, women and girls are disproportionately impacted by forced labour and human trafficking, constituting 58% of the workers in mainstream sectors and about 99% in commercial sex industry.<sup>15</sup> Through this goal, women and girls can be protected from exploitation.

Finally, a reference can also be made to SDG 16 which promotes peace, justice, and strong institutions. Strengthening institutions, improving access to justice, and creating effective, accountable and transparent institutions are essential for curbing modern slavery practices.<sup>16</sup> This also entails, having in place, legal frameworks that criminalize all forms of exploitation.

9 <https://www.oecd.org/publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct-81f92357-en.htm>.

10 <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

11 <https://www.oecd.org/investment/du-diligence-guidance-for-responsible-business-conduct.htmv>.

12 <https://sdgs.un.org/goals/goal8>.

13 <https://www.unodc.org/roseap/en/sustainable-development-goals.html#:~:text=Target%208.7%20%2D%20Take%20immediate%20and,labour%20in%20all%20its%20forms>.

14 <https://sdgs.un.org/goals/goal5>.

15 <https://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>.

16 <https://www.un.org/sustainabledevelopment/peace-justice/>.

## V. The Protocol to Prevent, Suppress and Punish Trafficking in Persons

The Convention against Transnational Organized Crime is the main framework aimed at eliminating human trafficking. This convention was the first to acknowledge the intricacies of modern slavery which includes a cluster of players influencing each other. It has three protocols attached to it, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (“**Palermo Protocol**”). In particular, the Palermo Protocol advocates for coordination between member states for media campaigns, research, social and economic initiatives, law enforcement and immigration.

## VI. Anti-Slavery Conventions

The Slavery Convention of 1926 forbade slavery and slave trade by establishing specific actions that state parties were required to undertake to put an end to slavery.<sup>17</sup> Subsequently, the Protocol amending the Slavery Convention<sup>18</sup> modified wording to include references to the United Nations Organization because the previous convention was drafted under the oversight of the League of Nations.

Further, in 1956, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery<sup>19</sup> was introduced to expand the definition of slavery from “chattel slavery” to prohibition of debt bondage, serfdom, servile marriage and child servitude.

Thereafter, numerous international instruments were passed that recognized the prohibition of slavery. According to Article 6.1 of the International Covenant of Economic, Social, and Cultural Rights (“**ICESCR**”), everyone has a right to the opportunity to earn their living through work that they freely choose or accept.<sup>20</sup> Similarly, Article 8 of the International Covenant on Civil and Political Rights (“**ICCPR**”) safeguards persons from slavery, forced labour and other forms of servitude.<sup>21</sup> Finally, under Article 7 (2) (c) of the Rome Statute of the International Criminal Court categorises slavery as a crime.<sup>22</sup>

## VII. The UN Principles for Responsible Investment

The UN Principles for Responsible Investment (“**UNPRI**”)<sup>23</sup> were developed to encourage investors to exercise greater responsibility when making investment decisions by promoting the inclusion of ESG concerns. With merely 100 signatures at the time, the UNPRI were introduced in April 2006 at the New York stock Exchange.<sup>24</sup> Through these principles, investors recognize the significance of ESG factors on investment portfolios and pledge to behave in their beneficiaries best long-term interests.

17 <https://www.ohchr.org/en/instruments-mechanisms/instruments/slavery-convention>.

18 <https://www.ohchr.org/en/instruments-mechanisms/instruments/slavery-convention#:~:text=The%20Convention%20was%20amended%20by,force%20in%20accordance%20with%20article>.

19 <https://www.ohchr.org/en/instruments-mechanisms/instruments/supplementary-convention-abolition-slavery-slave-trade-and>.

20 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>.

21 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

22 <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>.

23 <https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment#:~:text=Principle%201%3A%20We%20will%20incorporate,entities%20in%20which%20we%20invest>.

24 Ibid.

The principles that the signatories agreed to are:

- i. Incorporation of ESG concerns into investment analysis and decision-making processes.
- ii. Incorporation of ESG concerns into our ownership policies and practices.
- iii. Appropriate disclosure on ESG concerns to be sought from entities in which investment is to be made.
- iv. Promoting acceptance and implementation of the principles within the investment industry.
- v. Working towards enhancing effectiveness in implementing the UNPRI.
- vi. Reporting on activities and progress towards implementing the UNPRI.

## VIII. International Investment Treaties<sup>25</sup>

In investment treaties, including bilateral investment treaties and free trade agreements with investment provisions, there is a tendency towards a greater emphasis on labour standards and responsible corporate behaviour.<sup>26</sup> The subject of corporate behaviour under investment treaties needs to be highlighted because of the leverage that the treaty-covered investors have over governments to file claims against them on various issues such as discriminatory treatment. However, the same option is not available to the governments under the investment treaties to scrutinize corporate behaviour.

Although national laws and regulations provide for the primary considerations for investors to do business, they are not enough for addressing issues around investor and business conduct.<sup>27</sup> Contribution from investment treaties is a must as it has been observed that many investment treaties are silent on issues like climate change, human rights, gender, the rights of indigenous peoples or public health.<sup>28</sup>

For instance, the Dutch Government has established a new model of bilateral treaty that represents a significant endeavour to incorporate elements from the UNGP and OECD Guidelines into investment treaty frameworks with regard to both the duties of the governments and corporations.<sup>29</sup>

## IX. Regional Transparency Legislations

European Union (“EU”) transparency legislation can be found in the Non-financial Reporting Directive<sup>30</sup> (“NFRD”)<sup>31</sup> which entered into force in 2014. However, the same has been replaced by the Corporate Sustainability Reporting Directive (“CSRD”)<sup>32</sup> effective from 5 January 2023.

Despite the fact that supply chains linked to EU may be responsible for 80-90% environmental damage caused by EU production, the Environmental Liability Directive does not apply to them. Since the ‘E’ and the ‘S’ in ESG are interlinked, it is relevant for our discussion to point out the aforesaid directive for preventing

25 <https://www.oecd.org/daf/inv/investment-policy/Consultation-Paper-on-business-responsibilities-and-investment-treaties.pdf>.

26 <https://ustr.gov/trade-agreements/bilateral-investment-treaties>.

27 [https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/apec\\_handbook\\_on\\_obligations\\_in\\_iit.pdf](https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/apec_handbook_on_obligations_in_iit.pdf).

28 <https://www.oecd.org/daf/inv/investment-policy/Consultation-Paper-on-business-responsibilities-and-investment-treaties.pdf>.

29 <https://www.oecd.org/daf/inv/investment-policy/Consultation-Paper-on-business-responsibilities-and-investment-treaties.pdf>.

30 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0095>.

31 [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS\\_BRI\(2021\)654213\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/654213/EPRS_BRI(2021)654213_EN.pdf).

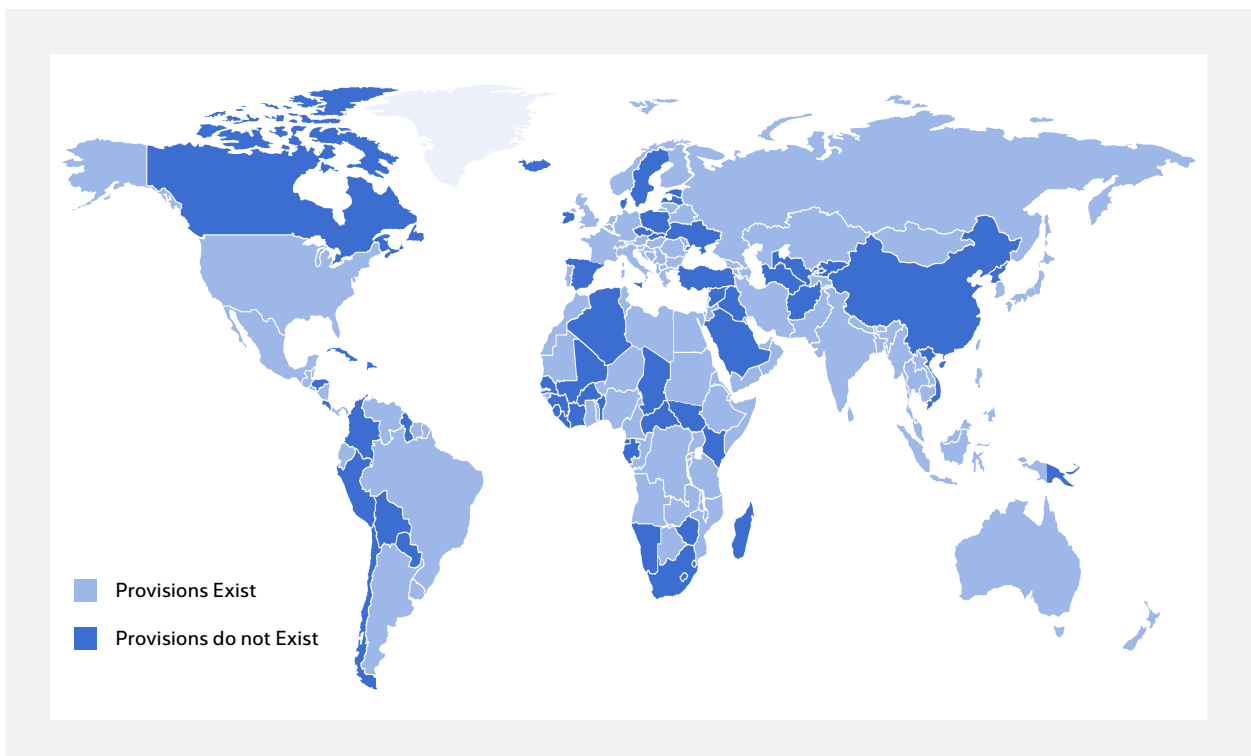
32 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022L2464>.

and reversing environmental damage. The corporate liability under this framework is based on the *polluter pays principle* but excludes any reference to supply chains of the polluting companies. Considering this loophole, the Directive on Corporate Sustainability Due Diligence (“CSDD”)<sup>33</sup> was introduced to provide for civil liability in relation to the supply chains.

## B. Domestic Perspective

In recent years, corporate response has been the focus for domestic laws to address modern slavery issues in supply chains. In contrast to more extensive laws, governments across various jurisdictions have shown a preference for corporate reporting through transparency in supply chains (“TISC”) legislations. For instance, TISC legislations such as US State of California’s Transparency in Supply Chains Act (2010),<sup>34</sup> the UK Modern Slavery Act (2015)<sup>35</sup> and the France’s Corporate Duty of Vigilance Law (2017),<sup>36</sup> require the largest companies doing business in the relevant jurisdiction to report on the steps they are taking to ensure there is no modern slavery or human trafficking in their supply chains.

### Criminal Law: Slavery and the Slave Trade



**Figure 73. Anti-slavery database mapping domestic legislations against international treaty obligations of all 193 UN member states**<sup>37</sup>

33 [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_1145](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_1145).

34 Supra note 63.

35 Supra note 61.

36 <https://respect.international/french-corporate-duty-of-vigilance-law-english-translation/#:~:text=In%202017%20the%20French%20Parliament,-publish%20annual%2C%20public%20vigilance%20plans>.

37 <https://thewire.in/labour/slavery-not-a-crime-labour>.

Companies and enterprises that source their products from emerging markets, constantly discover that each country has a different approach to human rights and labour relations. However, regulators and stakeholders expect international standards to be maintained despite variations in domestic laws.

In India, the Voluntary Guidelines on Corporate Social Responsibility,<sup>38</sup> published by the Ministry of Corporate Affairs (“MCA”) in 2009, marked the beginning of ESG reporting. Since the introduction of Business Responsibility Reporting (“BRR”),<sup>39</sup> National Guidelines on Responsible Business Conduct (“NGRBC”)<sup>40</sup> and the recently introduced business responsibility and sustainability report (“BRSR”),<sup>41</sup> the reporting framework has advanced significantly.

In 2021, the BRSR mandate requiring the top 1000 listed companies to include ESG-related disclosures in their annual reports was introduced in India which was voluntary for FY 2021–2022 and became mandatory from FY 2022–2023.<sup>42</sup> The BRSR format was revised to include BRSR Core in July 2023 which provides for assurance requirements of the top 150 companies applicable from FY 2023–2024 and shall be extended to the top 1,000 companies by FY 2026–2027.<sup>43</sup> Under the BRSR framework, a broad range of ESG concerns are covered, including board composition, diversity and inclusion, employee health and safety, water consumption, carbon emissions and so on. In particular reference to the social disclosures under the ESG matrix, factors affecting the workforce, value chain, communities, and consumers, have been covered. These factors include gender and social diversity among employees/workers, measures for differently-abled employees/workers, turnover rates, median wages, welfare benefits for permanent and contractual employees/workers, occupational health and safety, training initiatives, Social Impact Assessments (“SIA”), rehabilitation and resettlement efforts, Corporate Social Responsibility (“CSR”), and consumer-related aspects like product labelling, product recall, and consumer complaints pertaining to data privacy and cyber security.

Although it is the listed companies’ obligation to disclose, supply chain partners run the risk of losing business if they do not disclose all required ESG factors or do not follow the company’s sustainability policy. Therefore, compliance is necessary for small, medium enterprises (“SMEs”) which are a part of the supply chains of the concerned listed companies in India.<sup>44</sup>

Besides, actively starting to disclose their ESG performance, leading Indian companies need to focus their efforts on overcoming challenges. The companies that were already disclosing information in accordance with the international standards such as Global Reporting Initiative (“GRI”),<sup>45</sup> Sustainability Accounting Standards Board (“SASB”),<sup>46</sup> Task Force on Climate-Related Financial Disclosures (“TCFD”),<sup>47</sup> or Integrated Reporting (“IR”)<sup>48</sup> need to align their disclosures with the BRSR requirements.

38 [https://www.mca.gov.in/Ministry/latestnews/CSR\\_Voluntary\\_Guidelines\\_24dec2009.pdf](https://www.mca.gov.in/Ministry/latestnews/CSR_Voluntary_Guidelines_24dec2009.pdf).

39 [https://www.bseindia.com/downloads1/BRR\\_FAQs%2010052013.pdf](https://www.bseindia.com/downloads1/BRR_FAQs%2010052013.pdf).

40 [https://www.mca.gov.in/Ministry/pdf/NationalGuideline\\_15032019.pdf](https://www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf).

41 [https://www.sebi.gov.in/sebi\\_data/commondocs/may-2021/Business%20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure1\\_p.PDF](https://www.sebi.gov.in/sebi_data/commondocs/may-2021/Business%20responsibility%20and%20sustainability%20reporting%20by%20listed%20entitiesAnnexure1_p.PDF).

42 [https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities\\_50096.html](https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html).

43 [https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain\\_73854.html](https://www.sebi.gov.in/legal/circulars/jul-2023/brsr-core-framework-for-assurance-and-esg-disclosures-for-value-chain_73854.html).

44 [https://www.mca.gov.in/Ministry/pdf/BRR\\_11082020.pdf](https://www.mca.gov.in/Ministry/pdf/BRR_11082020.pdf).

45 <https://www.globalreporting.org/>.

46 <https://sasb.org/>.

47 <https://www.fsb-tcfid.org/>.

48 <https://www.integratedreporting.org/resource/international-ir-framework/>.



In addition to the above, ESG investments have been encouraged by Reserve Bank of India (“**RBI**”) which is the regulatory authority of the banking sector in India. According to a circular issued by RBI in 2020,<sup>49</sup> banks are required to publish ESG-related information in their annual reports, including their policies and funding initiatives on climate risk management, sustainable finance and social responsibility.

### C. Enforcement of Human Rights in Supply Chains

The UNGP provides for a system of many complementing grievance mechanisms under pillar 3 as aforementioned, to offer compensation for redressing human rights abuses in supply chains. The state’s legal and administrative processes serve as this system’s integral part, indicating the importance of the state in defending human rights. Similarly, the UNGP envisages grievance mechanisms led by businesses or collaborative initiatives. For workers and communities directly impacted by a company’s operations, the company is required to put in place an early-stage recourse and resolution in addition to the remedies available under the judicial processes.

However, the UNGP along with the other international regulations on human rights in supply chains mentioned in the preceding section of the paper, are not binding but voluntary in nature. Therefore, extraterritorial legislations passed by various countries against modern slavery with a combination of both voluntary and binding approaches, including internal auditing mechanisms from corporations themselves, aid in enforcing human rights in supply chains. Despite the fact that not all countries have passed such legislations against modern slavery, collectively, they create a movement towards legally binding corporate responsibility that requires companies to carry out due diligence in respect of human rights violations in their business operations.

This movement is further strengthened by the commitment of intergovernmental forums such as the G7 and the G20 which bring together world leaders for international economic cooperation. Through these forums, governments from the participating countries have advocated for the UNGPs and stated, “To enhance supply chain transparency and accountability, we encourage enterprises active or headquartered in our countries to implement due diligence procedures regarding their supply chains, e.g. voluntary due diligence plans or guides.”<sup>50</sup> Similarly, commitment by the G20 leaders in 2017 wherein it was undertaken to “work towards establishing adequate policy frameworks in our countries such as national action plans on business and human rights and underline the responsibility of businesses to exercise due diligence”.<sup>51</sup>

49 <https://www.rbi.org.in/Scripts/PublicationReportDetails.aspx?UrlPage=&ID=1215>.

50 The G7 statement can be accessed here: <https://www.oecd.org/investment/OECD-Report-to-G7-Leaders-onResponsible-Business-Conduct.pdf>.

51 The G20 statement can be accessed here: <https://www.business-humanrights.org/pt/%C3%BAltimasnot%C3%ADcias/g20-leaders-declaration-sets-goal-to-take-measures-against-child-labour-modern-slaveryemphasizes-un-guiding-principles-and-oecd-ncps/>.

## I. Enforcement of the Rights by the Courts

### a. Under OECD Principles

The OECD Guidelines are voluntary principles for responsible business conduct towards human rights protection. Each country following the Guidelines is required to maintain a National Contact Point (“NCP”) to address complaints about violation of the Guidelines.<sup>52</sup> In the UK, the UK NCP has been set up for this purpose. On April 27, 2016, the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (“IUF”) and the Farm Labour Organizing Committee (“FLOC”) put forth a plea alleging that British American Tobacco (“BAT”) was responsible for the exploitation of migrant farmworkers in the United States and did not meet its obligations under chapter II, paragraph 10 and 12 and chapter IV, paragraphs 1, 3 and 5.<sup>53</sup> The UK NCP found that BAT was not in breach of the OECD Guidelines. However, BAT was required to address the issues pointed out in the reports relating to the working and living conditions of tobacco workers. Further, the UK NCP recommended BAT to use the OECD Due Diligence for the purpose of managing the well-being of migrant farmworkers employed in its supply chains.

### b. Under UNGPs

Recently, on May 26, 2021, the District Court of Hague passed a judgement in the case of *Milieudefensie et al. v Royal Dutch Shell*,<sup>54</sup> ordering the company to reduce its global carbon dioxide (CO<sub>2</sub>) emissions by 45 percent by 2030. Although this judgment is in respect of the environment, it is pertinent to note that human rights and environmental protection are intrinsically related. This judgment was the first time that a company was asked to meet a specific mitigation obligation. The court asserted the company’s obligation to reduce its emissions based on its duty of care towards the current and future Dutch residents. To arrive at the afore-said judgment, the court observed that corporate responsibility under the UNGP has been endorsed by the company and therefore, it is only right to hold it accountable for the same.

### c. Under Customary International Law

On February 28, 2020, the Supreme Court of Canada in *Nevsun Resources Ltd. v. Araya*<sup>55</sup> (2020 SCC 5) accepted the allegations submitted by Eritrean miners on forced labour and exploitation against Nevsun Resources Ltd. (“Nevsun”), a Canadian mining company. The miners claimed that they had been forced to work in the mines of the company under inhumane conditions. The case was initiated at British Columbia for damages under the customary international law which prohibits forced labour, slavery, cruel, inhuman or degrading treatment, and crimes against humanity. It was observed that the violations alleged by the miners not only formed a part of the customary international law but also Jus Cogens norms or peremptory norms against which no derogation is allowed. Further, it was held that due to the evolution of international law, individuals and private actors have been brought within its purview and as such corporations are not immune to the application of the same. In any case, the court concluded that the customary international law norms relied upon by the miners formed part of the Canadian common law and therefore applied to Nevsun.

52 <https://www.oecd.org/investment/mne/ncps.htm#:~:text=Governments%20adhering%20to%20the%20Guidelines,alleged%20non%20observance%20of%20the>.

53 <https://www.gov.uk/government/publications/iuf-and-floc-complaint-to-uk-ncp-about-bat/final-statement-iuf-and-floc-complaint-to-uk-ncp-about-bat>.

54 <https://climatecasechart.com/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/>.

55 <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18169/index.do>.

#### d. Tortious Liability

In the recent case of *Hamid Begum v Maran (UK) Ltd* [2020] EWHC 1846 (QB),<sup>56</sup> the boundaries of tortious liability were extended to hold corporates liable for human rights violations occurring in their supply chains. Maran UK Ltd (“**Maran**”) was the broker engaged by the owner of a ship for the purpose of its demolition and sale. Maran was alleged to be responsible for the death of Mr Mohammed Khalil Mollah (“**Mr Mollah**”) who met with a fatal accident while working on the demolition of the ship. Mr Mollah has been working in shipbreaking industry since 2009. He used to work for 70 hours a week at low pay in lethal conditions. Maran was well aware of the dangers of the industry as the “beaching” method of demolition carried out in India, Pakistan and Bangladesh has always been the subject of international scrutiny for disregarding the health and safety of the workers. The liability was imposed on Maran and not the shipyard or ship owner because the court concluded that a state of danger was created by Maran such that it could be easily exploited by a third party. Especially, since Maran was bound by an express contractual term that required the demolition broker to sell the vessel only to a “ship breaker’s yard that is competent and will perform the demolition and recycling of the vessel in an environmentally sound manner and in accordance with good health and safety working practices”. Thus, Maran was asked to pay compensation to the family of Mr Mollah as it was held liable for negligent demolition of the ship.

#### e. Consumer Protection

Consumers have begun filing lawsuits in the US based on how supply chains affect human rights. For instance, consumers have accused Nike<sup>57</sup> of engaging in unfair and deceptive practices under California’s Unfair Competition Law,<sup>58</sup> and False Advertising Law.<sup>59</sup> Here, it was claimed that the company deliberately concealed facts about the working conditions of the workers in its supply chains to maximise profits. The case advanced till the Supreme Court but was ultimately settled. However, along similar lines of deceiving the consumers by omitting to make material disclosures on human rights, when consumer complaints under the

Supply Chains Transparency Act<sup>60</sup> were filed, they were unsuccessful. The courts created a ‘safe harbour’ for companies against civil liability if they had taken reasonable steps for compliance.<sup>61</sup>

#### f. Evolving Jurisprudence

In the constantly evolving landscape of corporate responsibility as interpreted by the courts, it is pertinent to take a note of principles which can be extended to relationships of corporations with their suppliers or contractors. For instance, in *Chandler v. Cape plc*,<sup>62</sup> the English Court of Appeal established a test for parent company’s responsibility for the health and safety of its subsidiary’s employees. Along similar lines as the principles laid out for imposing responsibility of the subsidiary’s employees on the parent company, principles for holding companies accountable for their supply chains can also be evolved. In the aforesaid case, it was held that where (1) the businesses of the parent and subsidiary are the same; (2) the parent has, or ought to have, superior knowledge on the relevant aspects of health and safety in that particular industry; (3) the subsidiary’s system of work is unsafe which the parent company knew, or ought to have known; and

56 [https://www.serlecourt.co.uk/images/uploads/news-and-events/Begum\\_v\\_Maran\\_%28UK%29\\_Ltd\\_2020\\_EWHC\\_1846\\_%28QB%29.pdf](https://www.serlecourt.co.uk/images/uploads/news-and-events/Begum_v_Maran_%28UK%29_Ltd_2020_EWHC_1846_%28QB%29.pdf).

57 Nike, Inc et al v Marc Kasky 539 U.S. 654 (2003).

58 [https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?division=7.&chapter=5.&part=2.&lawCode=BPC](https://leginfo.ca.gov/faces/codes_displayText.xhtml?division=7.&chapter=5.&part=2.&lawCode=BPC).

59 [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=BPC&sectionNum=17500](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=BPC&sectionNum=17500).

60 <https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf>.

61 Barber v Nestlé USA Inc No. 8:2015cv01364 (C.D. Cal. December 14, 2015) at p787.

62 *Chandler v. Cape plc* [2012] EWCA (Civ) 525, para. 80.

(4) the parent knew or ought to have expected that the subsidiary or its employees would rely on it to use its superior knowledge for employees' protection. Further, in the recent case of *Vedanta Resources PLC and Another v Lungowe and Others* [2019] UKSC 20,<sup>63</sup> the courts clarified that the extent of Vedanta's involvement in the operation of its subsidiary's mine was a factual issue relevant for negligence claims but it was not necessary to show that the parent company was in the practice of intervening in the health and safety policies of the subsidiary. The court will look at the relationship between the companies more broadly.<sup>64</sup> Accordingly, Vedanta was held liable for causing health hazard and hampering the agricultural activities of the Zambian farmers.

## II. Enforcement of the Rights by Governments

### a. Border Restrictions, Import Bans and Economic Sanctions

Apart from using transparency legislations for enforcing human rights in supply chains, governments around the world have started formulating customs laws in order to block or seize goods made from forced labour. These laws are of two kinds — inwardly directed and outwardly directed measures. The inwardly directed measures enable the governments to regulate the flow of trade within the country and the outwardly directed measures enable the governments to regulate the flow of trade with other countries. For instance, the US government has used the US Tariff Act 1930 to seize/ban products<sup>65</sup> such as rubber gloves from Malaysia,<sup>66</sup> palm oil from Indonesia,<sup>67</sup> cotton from Turkmenistan,<sup>68</sup> and products from the Uyghur Region<sup>69</sup> which are suspected to have been made from forced labour.

In addition to the above, the US passed the Magnitsky Act in 2012.<sup>70</sup> It imposed sanctions on Russian officials linked to the torture and murder of Sergei Magnitsky who was responsible for exposing a mass tax scam in Russia.<sup>71</sup> In 2016, it was expanded with the passage of Global Magnitsky Human Rights Accountability Act<sup>72</sup> to impose sanctions on people across the world linked to human rights violations. Similarly, in 2020, the EU adopted a Magnitsky-style framework to impose global sanctions on both legal and natural persons found involved in human rights violations such as slavery.<sup>73</sup> In the same year, that is, 2020, the UK government released the Global Human Rights Sanctions Regulations under the Sanctions and Money Laundering Act 2018.<sup>74</sup> These regulations allow for sanctions to be imposed, often in the form of asset freezes or travel bans. Several companies alleged to be using forced labour have been included in the list of financial sanctions target in the UK.<sup>75</sup>

63 <https://www.supremecourt.uk/cases/uksc-2017-0185.html>.

64 For a detailed discussion, see Gabrielle Holly, Access to Remedy Under the UNGPs: Vedanta and the Expansion of Parent Company Liability, EJIL TALK! (Oct. 31, 2017), <https://www.ejiltalk.org/if-the-pleading-represents-the-actuality-vedanta-access-to-remedy-and-the-prospect-of-a-duty-of-care-owed-by-a-parent-company-to-those-affected-by-acts-of-subsidiaries/> [https://perma.cc/Y35M36QV].

65 <https://www.cbp.gov/trade/forced-labor>.

66 <https://www.theguardian.com/global-development/2021/mar/30/us-bars-rubber-gloves-malaysian-firm-top-glove-evidence-forced-labour>.

67 <https://www.bloomberg.com/news/articles/2022-04-22/indonesia-bans-exports-of-edible-oil-amid-local-shortage>.

68 <https://www.antislavery.org/wp-content/uploads/2019/04/Turkmenistan-Turkey-report.pdf>.

69 <https://www.theguardian.com/world/2022/jun/21/us-ban-on-cotton-from-forced-uyghur-labour-comes-into-force>.

70 <https://www.congress.gov/112/plaws/publ208/PLAW-112publ208.htm>.

71 <https://home.treasury.gov/news/press-releases/jy0654#:~:text=Following%20his%20death%2C%20Congress%20passed,of%20human%20rights%20in%20Russia.>

72 <https://crsreports.congress.gov/product/pdf/IF/IF10576>.

73 <https://www.theguardian.com/world/2020/nov/27/eu-to-use-magnitsky-style-law-to-impose-sanctions-on-human-rights-abusers>.

74 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1152004/Notice\\_Global\\_Human\\_Rights\\_210423.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1152004/Notice_Global_Human_Rights_210423.pdf).

75 [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1152003/Global\\_Human\\_Rights.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1152003/Global_Human_Rights.pdf) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1179214/Russia.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1179214/Russia.pdf).

For ascertaining the effectiveness of such economic sanctions, a case study of the US import ban on a rubber glove supplier in Malaysia can be referred.<sup>76</sup> The import ban made the supplier agree to improve the working conditions of the workers and reimburse them with an amount adding up to USD 34 million which comprised of the recruitment fees collected from the migrant workers.<sup>77</sup> In order to avoid being subject to a similar import ban, the other top three Malaysian suppliers of rubber gloves also announced million-dollar reimbursements to migrant workers.<sup>78</sup>

On the point of validity of such trade restrictions, it is pertinent to note that the World Trade Organization (“WTO”) allows countries to advance non-trade objectives such as protection of human rights through trade restrictions.<sup>79</sup> In situations of conflict, economic sanctions and trade restrictions are often used to coerce countries to perform their obligations under various international legal instruments.<sup>80</sup> Such sanctions are usually imposed in response to any violation of the applicable laws as a penalty. Sanctions are further categorised as country-based and product-based sanctions. The Uyghur Forced Labour Prevention Act (“UFLPA”)<sup>81</sup> which imposes import ban on goods made from forced labour originating from the Xinjiang region in China is an example of both product-based and country-based sanction.

In fact, economic sanctions are frequently employed by the UN and its various other organs. Sanctions on the Libyan government constitute the first direct listings on human trafficking by the UN Security Council.<sup>82</sup> On June 7, 2018, six people known to be leading trafficking networks were listed for smuggling migrants and human trafficking.<sup>83</sup> Further, the ILO has also used its own set of sanctions to counter state-sponsored forced labour as required under Article 33 of the ILO Constitution. However, ILO has only in one instance, imposed sanctions against Myanmar.<sup>84</sup> The sanctions were symbolic rather than punitive. ILO announced to not provide any technical assistance to Myanmar and block the entry of its diplomats to ILO meetings.

76 <https://www.theguardian.com/global-development/2021/mar/30/us-bars-rubber-gloves-malaysian-firm-top-glove-evidence-forced-labour>.

77 *Ibid.*

78 <https://www.cnn.com/2020/09/11/business/malaysia-top-glove-forced-labor-dst-intl-hnk/index.html>.

79 [https://www.wto.org/english/tratop\\_e/envir\\_e/envt\\_intro\\_e.htm#:~:text=WTO%20rules%20set%20up%20the,members%20under%20basic%20trade%20disciplines](https://www.wto.org/english/tratop_e/envir_e/envt_intro_e.htm#:~:text=WTO%20rules%20set%20up%20the,members%20under%20basic%20trade%20disciplines).

80 <https://www.cfr.org/backgrounder/what-are-economic-sanctions>.

81 <https://www.cbp.gov/trade/forced-labor/UFLPA>.

82 UN Security Council Resolutions 1970 [2011], 2174 [2014] and 2213 [2015].

83 <https://news.un.org/en/story/2018/06/1011751>.

84 [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_183287/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_183287/lang--en/index.htm).



**Figure 5** Government Response to modern slavery<sup>85</sup>

**b. Financial Assistance**

Aside from sanctions, there have been efforts by governments across the world to fund initiatives against modern slavery. For instance, the UN General Assembly established the UN Voluntary Trust Fund on Contemporary Forms of Slavery in 1991 (“**Slavery Fund**”)<sup>86</sup> and the Office of the United Nations High Commissioner for Human Rights (“**OHCHR**”) is in charge of its administration. The Slavery Fund supports initiatives that

<sup>85</sup> <https://www.walkfree.org/global-slavery-index/map/>.

<sup>86</sup> <https://www.ohchr.org/en/about-us/funding-and-budget/trust-funds/united-nations-voluntary-trust-fund-contemporary-forms-slavery>.

provide victims of modern slavery with assistance for their rehabilitation and integration. Similarly, the UN Voluntary Trust Fund for Victims of Human Trafficking (“**Human Trafficking Fund**”)<sup>87</sup> was established in 2010. The United Nations Office on Drugs and Crime (“**UNODC**”) oversees its management. The Human Trafficking Fund is able to accept donations from the private sector unlike the Slavery Fund.

### c. Helplines

Further, many countries operate dedicated helplines to provide assistance to the victims of modern slavery.<sup>88</sup> Such helplines enable victims to escape their situations, access essential services and seek justice. They also serve as important tools for raising awareness and collecting information to combat modern slavery. With the law enforcement agencies involved, those committing human rights abuses can be easily hindered from doing so. When victims are unable to access these helplines, anyone who suspects someone to be in slavery can provide the requisite information through these helplines. For instance, the UK government established its modern slavery helpline in 2016.<sup>89</sup>

### d. Collaborative Initiatives

Furthermore, countries are collaborating with each other to launch Export Controls and Human Rights Initiatives<sup>90</sup> to restrict the export of goods to countries that continue to exploit forced labour and cut supply to companies that indulge in modern slavery practices. As a part of this initiative, the 2020 United States-Mexico-Canada Trade Agreement<sup>91</sup> was executed to mandate Mexico and Canada to supplement the efforts of the US government in curbing modern slavery by adopting and implementing import restrictions of products made from modern slavery.

A charity foundation called Humanity United<sup>92</sup> entered into a public-private partnership with the US Government in 2012 to launch the “Partnership for Freedom” initiative.<sup>93</sup> This initiative aims to combat modern slavery by combining private innovation investment with government expertise. Similarly, the Global Fund to End Slavery<sup>94</sup> is a recently established Washington-based public-private partnership. It was established for engaging with governments, businesses, civil society and international organisations to drive country-wide transformations required for combatting modern slavery.

Apart from the governments and civil society organizations, many businesses have also been contributing in the efforts to combat slavery. For instance, Google has reportedly donated USD 11.5 million towards ending slavery in 2011.<sup>95</sup> A major portion of this donation, amounting to USD 8 million was provided to the International Justice Mission in India to fund anti-slavery initiatives, rescue operations and government interventions.<sup>96</sup>

87 [https://www.unodc.org/pdf/human\\_trafficking/UN\\_Victims\\_Trust\\_Fund\\_Basic\\_Facts\\_Dec2017.pdf](https://www.unodc.org/pdf/human_trafficking/UN_Victims_Trust_Fund_Basic_Facts_Dec2017.pdf).

88 [https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/national-hotlines\\_en](https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/national-hotlines_en).

89 <https://www.reuters.com/article/us-britain-slavery-helpline-exclusive-idUSKCN1S028T>.

90 <https://www.state.gov/export-controls-and-human-rights-initiative-code-of-conduct-released-at-the-summit-for-democracy/>.

91 <https://www.cbp.gov/trade/priority-issues/trade-agreements/free-trade-agreements/USMCA>.

92 <https://humanityunited.org/>.

93 <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/fact-sheet-obama-administration-announces-efforts-combat-human-trafficki>.

94 <https://gfems.org/>.

95 <https://www.reuters.com/article/us-google-slavery-idUSTRE7BD1Q720111214>.

96 <https://www.ijm.org/news/more-than-550-rescued-in-ijms-largest-anti-slavery-operation-ever>.



### e. Public Procurement Processes<sup>97</sup>

By incorporating human rights and labour norms into public procurement processes, governments may utilise their purchasing power to influence change in the private sector. This is usually undertaken by way of social clauses,<sup>98</sup> mandatory exclusions,<sup>99</sup> and human rights due diligence standards.<sup>100</sup> For example, the EU rules on public procurement and concession contracts provide for conditions based on which subcontractors are employed by the suppliers.<sup>101</sup>

### f. Human Rights Ombudsman

Recognizing that courts may have legal impediments in terms of jurisdiction in addressing human rights violations that have occurred outside of their country but are linked to the supply chains of their companies, Countries like Canada have established Canadian Ombudsperson for Responsible Enterprise (“CORE”) which has the authority to look into claims of human rights violations associated with major Canadian Corporate operations overseas.<sup>102</sup>

### g. Other Measures

Other measures taken by countries across the world include, restricting public-funding of the companies found to be partaking in modern slavery practices, restricting sale of their products, boycott from the other private sector companies who refuse to buy from such suppliers. For instance, in Brazil all these measures have been taken against companies mentioned in a so-called dirty list of companies known to be employing forced labour.<sup>103</sup> Such companies need to have paid all the applicable fines and reformed their labour practices to get delisted from the dirty list, which may be considered by the government after two years. As a further step, Brazil has also allowed freezing of assets of such companies, through a constitutional amendment in 2014.<sup>104</sup>

97 <https://www.oecd.org/governance/procurement/toolbox/search/Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf>.

98 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0024>.

99 The UK Public Contracts Regulations found at [https://www.legislation.gov.uk/uksi/2015/102/pdfs/ukxi\\_20150102\\_en.pdf](https://www.legislation.gov.uk/uksi/2015/102/pdfs/ukxi_20150102_en.pdf), excludes a bidder from further participation in procurement if it is in contravention of the Modern Slavery Act 2015.

100 <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>.

101 Supra Note 163.

102 [https://www.canada.ca/en/globalaffairs/news/2018/01/the\\_government\\_ofcanadabringingleadershiptoresponsiblebusinesscond.html](https://www.canada.ca/en/globalaffairs/news/2018/01/the_government_ofcanadabringingleadershiptoresponsiblebusinesscond.html).

103 [https://www.ilo.org/wcmsp5/groups/public/---ednorm/---declaration/documents/publication/wcms\\_111297.pdf](https://www.ilo.org/wcmsp5/groups/public/---ednorm/---declaration/documents/publication/wcms_111297.pdf).

104 <https://www.theguardian.com/global-development/2016/mar/02/brazil-loss-dirty-list-sparks-fears-worker-exploitation-olympic-games-international-labour-organisation>.

# Challenges with the Implementation of ESG Norms in Supply Chain Management

Despite there being many steps taken by various governments, international organizations and businesses, there still remain challenges in the implementation of ESG norms in supply chain management. The following are the major challenges that are encountered in this respect:

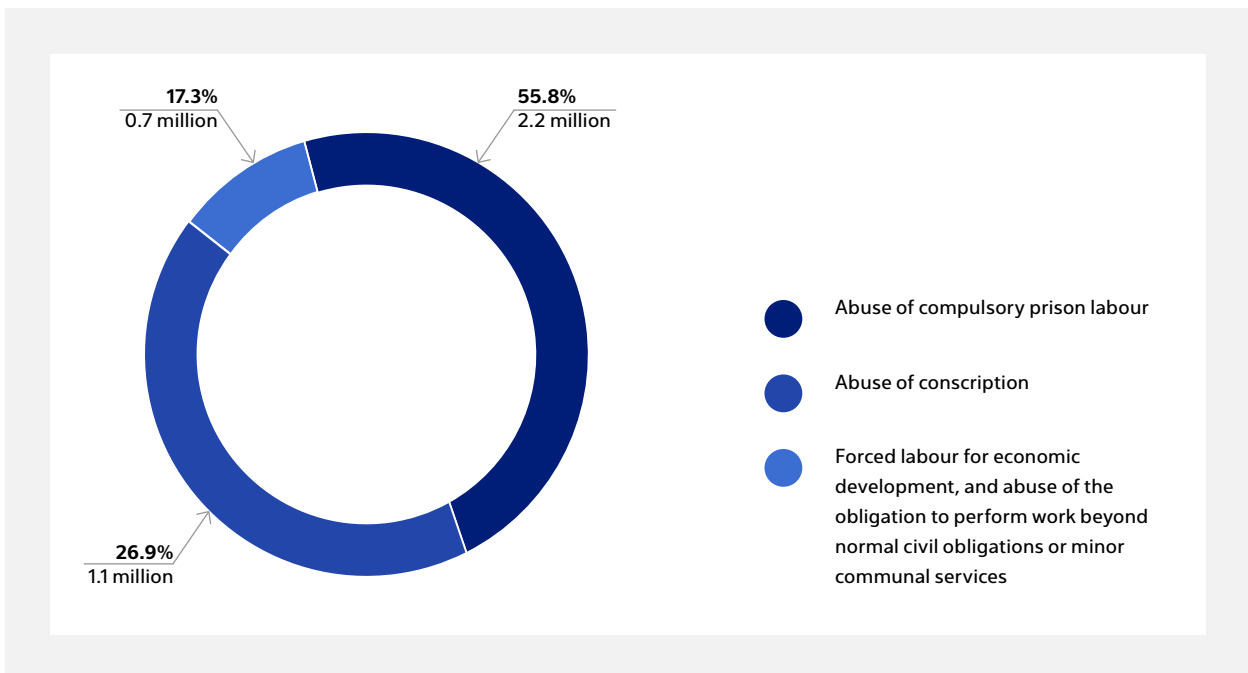
- i) **Business-models designed to disregard human rights** — Most businesses around the world are structured in such a way that their sole objective is profit maximization. In other words, companies tend to focus on short-term financial growth rather than long-term sustainability goals. This is why companies utilize sourcing models such as just-in-time delivery and pricing models that discount labour costs. Labour costs are significantly kept low by employing migrant workers from third world countries. However, companies are largely unaware of the problems or benefits that accompany the implementation of an ESG-friendly policies. For instance, they don't realize that workplace health and safety issues can cause unanticipated delays in production or shipping and interfere with business.
- ii) **Lack of political will** — The fact that historically investment treaties have failed to impose any responsibility onto the investors with respect to environment preservation, labour and human rights, shows the lack of political will for regulating human rights compliances of businesses. While recent treaties have tried to include provisions on human rights protection, these are directory and not mandatory in nature. For instance, article 12 of the Indian Model Bilateral Investment Treaty (BIT), 2015<sup>1</sup> reads as: "Investors and their enterprises operating within its territory of each party shall endeavour to voluntarily incorporate internationally recognised standards of corporate social responsibility in their practices and internal policies, such as statements of principle that have been endorsed or are supported by the parties. These principles may address issues such as labour, the environment, human rights, community relations and anti-corruption." Further, countries that are conflict ridden such as Afghanistan, Palestine, South Sudan, Syria, and Yemen have shown some of the weakest responses to modern slavery due to the inefficiencies of the political systems found in these countries.<sup>2</sup> Lastly, in countries like China, North Korea, Poland, Russia, Belarus and so on, there exists state-imposed forced labour.<sup>3</sup>

1 [https://dea.gov.in/sites/default/files/ModelBIT\\_Annex\\_0.pdf](https://dea.gov.in/sites/default/files/ModelBIT_Annex_0.pdf).

2 Page 30, <https://cdn.walkfree.org/content/uploads/2023/05/19162025/GSI-2023-CH03-Global-Findings.pdf>.

3 Ibid.

### Type of State-Imposed Forced Labour



- iii) Collaboration challenges — Collaboration is essential, yet conflicts of interest may arise and create a roadblock. In order to successfully combat slavery, governments, NGOs and companies must work together which requires aligning of their interests. Thus, it presents challenges which vary depending on the industry, location and specific circumstances surrounding the collaboration. One major concern for companies when they collaborate is sharing of confidential information on supply chains and labour practices which can lead to reputational risks.
- iv) Customer indifference — Due to lack of awareness and the enticement of cheap products, it is seen that customers do not always give regard to how the products were made. For instance, despite the reports surfacing on hazardous denim treatment practices followed at Nudie Jeans, a Swedish clothing brand, customers continued to buy the jeans<sup>4</sup>. Similarly, in the supply chains of Patagonia, a US clothing brand, it was discovered that human-trafficking was prevalent. This however did not deter the consumers from buying their products.<sup>5</sup> Therefore, while in some instances the reputational harm can have tangible impact in the form of loss of customers, in most cases the customers continue to indulge.
- v) Legal Impediments — In most cases, there are jurisdictional challenges in implementing modern slavery legislations since the supply chains may be connected to various other countries. In such a scenario, multiple laws of different countries may be applicable. For instance, in the Anvil mining case,<sup>6</sup> the Canadian courts have laid down the criteria for their intervention in a matter involving human rights abuses in supply chains of Canadian companies. The subject matter of the proceedings should be connected with the place in which the case is being filed. This territorial nexus is a legal principle recognized under both international law and laws of civilized nations. Further, the courts

4 [https://downloads.ctfassets.net/7er3lxqzbqz/d4DloS6jgrZor3i2dezeM/c8b6585d1b9472c63077c330f0dc844e/2021\\_Nudie\\_Jeans\\_Sustainability\\_Report.pdf](https://downloads.ctfassets.net/7er3lxqzbqz/d4DloS6jgrZor3i2dezeM/c8b6585d1b9472c63077c330f0dc844e/2021_Nudie_Jeans_Sustainability_Report.pdf).

5 [https://www.patagonia.com/static/on/demandware.static/-/Library-Sites-PatagoniaShared/default/dwd52f9d06/PDF-US/PAT\\_2023\\_LegalDocuments-ModernSlaveryAct-012423.pdf](https://www.patagonia.com/static/on/demandware.static/-/Library-Sites-PatagoniaShared/default/dwd52f9d06/PDF-US/PAT_2023_LegalDocuments-ModernSlaveryAct-012423.pdf), <https://www.theatlantic.com/business/archive/2015/06/patagonia-labor-clothing-factory-exploitation/394658/>.

6 <https://www.business-humanrights.org/en/latest-news/anvil-mining-lawsuit-re-dem-rep-of-congo/>.

refused to get into the merits and dismissed it summarily stating that at the time of Anvil's involvement in funding the troops in Congo where the soldiers committed brutality and killed many civilians, Anvil had not started operating in Quebec, which is where the case had been filed. A similar approach was adopted by the US courts in the case of *Doe v. Nestle*.<sup>7</sup> Another issue of whether the laws of the worker's home country of which they are citizens applies or the place where the violation occurred and company is located apply has been interpreted differently by different courts. For instance, in the German company Kik's case,<sup>8</sup> the case was dismissed as barred by limitation, leaving the families of the Pakistani workers who died in a fire accident due to the negligence of the company, without any remedy. Lastly, even if the case is heard by the courts, it takes years for the victims to receive any kind of relief.

- vi) Supply chain visibility — Depending on the industry and business model, companies may have different supply chain structures. The supply chains are so dynamic that the same supplier may act as the purchaser at different levels of the supply chains. The size and complexity of the modern supply chains lead to lack of transparency which makes human rights due diligence challenging. Further, companies lack end to end visibility over their supply chains to ascertain all the suppliers that are a part of it and under what circumstances have they been operating. Therefore, it might be difficult for a company to maintain an exhaustive and updated list of suppliers. Supply chains are volatile in nature due to political instability, technological advancement and changes in the law.
- vii) Cultural and behavioural shifts — Implementing human rights norms often requires cultural and behavioural shifts within organizations and among suppliers. Changing the management of a company with a human rights approach can be complex and time-consuming. As such, ESG norms should be integrated into an organization's culture and values by senior leadership, transparently communicating ESG goals and policies.
- viii) No strict compliance — most of the jurisdictions across the world have enacted modern slavery legislations or the so-called transparency legislations which propose companies to undertake annual reporting on steps taken to address modern slavery issues in supply chains and carry out due diligence exercises to ensure no human rights violations occur in the supply chains. However, in most cases, the compliance under these laws is not strict, in the sense, there is no specific penalty imposed for non-compliance. For instance, the California Transparency in Supply Chains Act<sup>9</sup> does not require companies to implement specific measures for ensuring that their supply chains are free from modern slavery. The companies can simply report that they have not taken any action to address modern slavery concerns. The same is the case for UK Modern Slavery Act,<sup>10</sup> Australian Commonwealth Modern Slavery Act<sup>11</sup> and so on. Besides this, many countries still do not have dedicated legislations to curb modern slavery practices.
- ix) Resource Constraints — smaller and resource-constrained suppliers may lack the capacity to meet the human rights standards. They may require support and resources to improve their practices. Besides, implementing ESG norms in supply chain management can be resource-intensive, both in terms of financial investment and time. Companies may need to allocate significant resources to ensure compliance, which can impact their overall operations and profitability.

7 [https://www.supremecourt.gov/opinions/20pdf/19-416\\_i4dj.pdf](https://www.supremecourt.gov/opinions/20pdf/19-416_i4dj.pdf)

8 <https://www.publicinternationallawandpolicygroup.org/lawyring-justice-blog/2020/12/7/the-german-kik-case-from-failed-case-towards-national-supply-chain-legislation>.

9 Supra note 108.

10 Supra note 109.

11 Supra note 62.

## Recommendations

With the development of the ESG space, more challenges may present themselves in ensuring that human rights are safeguarded. Therefore, the following broad recommendations may be considered for addressing some of the abovementioned challenges:

1. There should be some sort of liability when a company chooses to outsource production and other business operations while also arranging and entering into contracts in a way that effectively sets ESG expectations for its contractors and suppliers. Although codes of conduct are typically seen as voluntary norms, they are increasingly being included in legally binding contracts. For instance, before being approved as a supplier, Ikea asks contractors to sign a contract with legal implications for breaching the code of conduct which includes human rights protection. Once approved, a contractor is obliged to adhere to Ikea's code of conduct and make sure that all subcontractors do the same. Such contractual expectations can further be accompanied by penalty clauses, termination rights and investigatory rights.
2. Human rights training that employs the right terminology is important for company contractors and suppliers and their employees. It may be provided as a supplement to other training sessions or as independent programmes. By creating human rights awareness in this form, companies can ensure that human rights in the supply chains can be protected and enforced. For instance, the training can focus on contractual obligations towards human rights, procurement practices and compliance with the code of conduct.
3. Regular human rights impact assessments (“**HRIA**”) are crucial since these impacts might shift over time. HRIAs offer a comprehensive picture of all existing or possible human rights issues pertinent to a company's operations and supply chain. HRIAs can help mainstream human rights into current company practises and structures by integrating them into risk management procedures that are already in place.
4. The use of technology should be explored for traceability, identifying the impact on human rights, engaging stakeholders, providing grievance channels, certification and so on. This should be done in conjunction with human rights experts in order to ensure that technology used for human rights due diligence does not unintentionally lead to violation of any human rights.
5. Companies should engage with the governments through the consultative processes for bringing in regulatory reforms to increase their credibility such that the laws passed are practical and efficient. Companies may do this individually or through organizations and other representatives from the industry. Further, given that human rights due diligence is a new and developing field, from the big to the small and medium sized businesses should be informed about the developments being made.
6. In order to counter delays in the judicial processes and also to mitigate jurisdictional challenges, specialized ad-hoc arbitral tribunals can be set up for the purposes of resolving human rights disputes involving companies. For instance, in 2017, a tribunal set up by the Permanent Court of Arbitration took up a matter involving breach of the Accord on Fire and Building Safety in Bangladesh (“**Accord**”) formed after the Rana Plaza Incident.<sup>1</sup> The claimants alleged that the respondent companies had failed to get their suppliers to remediate facilities within the specified timelines.<sup>2</sup> This case was settled within a few months of its initiation, proving to be an efficient means of redressing the human rights grievances.

1 Supra note 69.

2 Article 12 of the Accord.

## Conclusion

Global supply chains provide opportunity for growth, employment and skill development, among other things. At the same time, these also perpetuate human rights violations such as forced labour, child labour and human trafficking. Therefore, it is imperative for all the stakeholders such as the government, businesses, NGOs and so on to check supply chains for any human rights abuses.

In the recent years, due to the Pandemic and the increase in consumer awareness regarding the environmental and social impacts of businesses, a transition is seen in the way ESG factors were viewed. While ESG factors were formerly seen mainly as a compliance requirement from the regulatory perspective, they have now evolved as a crucial element for devising long-term strategies. Although ESG commitments are supported by three pillars, the 'S' is frequently absent from the chain connecting corporate strategy and regulatory compliance. In India, creating jobs is a difficult task and as a result the government often ignores labour violations.

In India, ESG trends are relatively new. Investors invested nearly USD 500 million in Indian ESG mutual funds during 2020–21.<sup>1</sup> Investors in India are anticipated to join the movement as it picks more steam in the coming days, especially because the majority of experts concur that ESG approach will fetch long-term returns.

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1 <https://economictimes.indiatimes.com/markets/stocks/news/inflows-in-sustainable-funds-surge-76-to-rs-3686-cr-in-fy21/articleshow/82197389.cms?from=mdr>.



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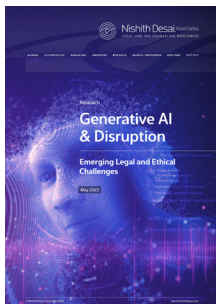
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