



**THE HINDU CENTRE**

for

Politics and Public Policy

## Ensuring Zero Tolerance for all Forms of Forced Labour



[RICHARD EBENEZER](#)



Bonded labourers leaving a brick kiln in Karnataka. File Photo: The Hindu Photo Archives

*Images of countless migrant workers either painfully trekking back to their villages of origin often with children in tow, or jostling for space in crowded modes of transport are among the several tragic outcomes of the ongoing COVID-19 pandemic. These heart-breaking images brought to public glare the invisible social endemic of labour*

*exploitation. Richard Ebenezer, a lawyer based in Chennai, unravels the deep-rooted exploitation of large sections of unorganised labour, in particular bonded and other forms of forced labour, including human trafficking of vulnerable workers.*

*In this article, he analyses why the legislations that are in place to provide for decent conditions of work are observed largely in the breach by middlemen and employers. Combined with apathetic, if not collusive, state mechanisms, the vulnerable workforce has been left with no means to defend itself for decades. As India battles against the pandemic, the author strongly calls for reworking the mechanisms to ensure that the invisibilised workforce is given its place in society.*

**T**he first quarter of 2020 in Tamil Nadu witnessed an operation where 247 migrant labourers were rescued from a brick kiln in Tiruvallur district by the One Stop Crisis Team (OSCT) headed by the District Legal Services Authority. The rescued labourers included 197 adults and 50 children. Most of them hailed from Kalahandi, Balangir, Nuapada, and Subarnapur districts in Odisha, and a few from Mahasamund district in Chhattisgarh. The district administration conducted an inquiry under the Bonded Labour System (Abolition) (BLSA) Act<sup>1</sup> and issued release certificates. The police filed a First Information Report (FIR) against three persons and arrested and remanded them in judicial custody.

In a separate operation in Karnataka, 150 victims of bonded labour and labour-trafficking were rescued following an operation that was coordinated by the

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District Legal Services Authority in Bylakere, Yelahanka, and Bengaluru Urban North subdivision of the city<sup>2</sup>. Here again, the rescued labourers hailed from Balangir and Nuapada districts of Odisha. Here, too, the district administration conducted an inquiry under the BLSA Act and issued release certificates. The police filed an FIR against five persons and arrested and remanded two in judicial custody. They were later released on bail. The FIR was filed for various offences under the BLSA Act, the Child Labour (Prohibition & Regulation) Act, and Sections 370 (human trafficking) and 374 (unlawful compulsory labour) of the Indian Penal Code

(IPC). Operations of this size and scale may be few and far between but they do manage to highlight the hidden prevalence of bonded labour in this part of the country and the vulnerability of migrant workers to forced labour or labour trafficking.

Migrant workers, essentially temporary or seasonal in character, find themselves in a state of continual flux. They make significant contributions to the economies of the States they work in but seldom gain official attention for basic protection and social benefits. As per the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Work) Act, 1976<sup>3</sup> (ISMWA), an

**'inter-State migrant workman' means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment'. [Sec. 2 (3) (e)]**

Inter-State migrant workers form a large part of contract labour sourced from the unorganised sector across India. They are often subjected to additional vulnerability owing to their migration from another State with challenges of language barriers, lack of food security or social benefits, and domiciliary status in destination States. A major and rather unspoken characteristic of this unprotected population is their susceptibility to deception and coercion for the purpose of forced labour. Where exploitation takes deep roots, these workers often find themselves vulnerable to several forms bondage<sup>4</sup> and trafficking.<sup>5</sup> These have been amply demonstrated following numerous rescue operations from various types of industries, with only a few reported cases of clampdown on traffickers. In October 2019, a total of 91 labour agents and middlemen were arrested in Odisha alone for trafficking labourers to other States.

## **Normative laws**

Article 23 of the Constitution of India prohibits and punishes human trafficking and all forms of forced labour. Several legislations deal with Trafficking in Human Beings (THB), which include the following:

1. The BLSA Act administered by Ministry of Labour and Employment, which provides for abolition of the system of bonded labour and the rehabilitation of released labourers.
2. Child Labour (Prohibition and Regulation) Act, 1986, also administered by Ministry of Labour and Employment.

Among important labour laws regulating migrant workers are the Inter-State Migrant Workmen Act, 1979, the Bonded Labour System (Abolition) Act, 1976 and the Contract Labour (Regulation and Abolition) Act, 1970.

Even though these legislations are set in the context of labour protection, their interconnections to constitutionally prohibited crimes like human trafficking are not easily traced. Human trafficking and forced labour are offences of unambiguously grave criminality and severity under Sections 370, 341, and 374 of the IPC. Ownership over or the possession of the individual or group by another individual or group for the purposes of physical or sexual exploitation through fraudulent, coercive, hidden, and absolute control attract the above provisions.

The BLSA Act is a remarkable piece of legislation relevant for our current times. It discerns the overlap between forced labour and bonded labour in customary and economic relationships and the manifestation of these relationships in contract labour legislation and inter-State migration legislations.

It also considers the nature of the bondage imposed and the deprivations of fundamental human rights suffered by the labourer in varying forms of slavery or slave-like conditions as a result of the customary/economic arrangement in the labour relationship, rendering this a criminal and cognizable offence. But quite often, the use of the word 'labour' in the term 'bonded labour' serves as a misnomer that wrongly construes the issue not as a crime but as a labour

dispute. Undoubtedly, the *crime* of bonded labour occurs in a labour context, like the *crime* of murder or sexual assault could occur in the workplace, but only with greater preponderance. However, no one would argue for crimes of murder or sexual assault to be handled as a labour dispute simply because the context was the workplace. Our emphasis here is the characteristic of the worker being in 'bondage' that elicits the force of illegality and criminality. Moreover, among many stakeholders in the business world and general public, the discussion of trafficking has been confined largely to sexual exploitation, with little to no awareness on labour-trafficking, and the subject of bonded labour traditionally gets associated with archaic customary bondage or slavery under feudal systems.

### **Buried in denial**

Despite public denials of the existence of bonded labour by many States, data released by the Union Ministry of Labour and Employment (MoLE) through the Press Information Bureau in 2018<sup>6</sup> not only reveals the present-day realities of the extent of this crime but also shows its high incidence in States such as Karnataka, Tamil Nadu, Odisha, Uttar Pradesh, and Andhra Pradesh. These States accounted for around 84 per cent of the identified and released bonded labourers in the country, with some other States reporting a few cases as well. It is also important to note is that the National Crime Records Bureau (NCRB) reports statistics regarding human trafficking for the purpose of forced labour (otherwise 'labour-trafficking').

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The general narratives in India on bonded labour and the debates over its root cause are largely confined to socio-economic vulnerabilities. But given the linkages of bonded labour and trafficking, they do not sufficiently address the underlying threats by the violent oppressor/perpetrator. Consequentially, this

legislation gets flagrantly violated with near impunity. In cases of sex-trafficking there are hardened and predatory individuals seeking opportunities of financial profit through sex slavery. Such individuals adopt cunning schemes to dupe defenceless victims and inflict brutal violence and psychological fear to subdue them. However, unlike in cases of sex trafficking the pernicious exploitation of labourers, who are also subjected to trafficking and violence by their oppressors, rarely gets the needed attention. Understandably so, for it does not sit very well with the vanguards of industry and keepers of economic interests.

### **Bonded Debt in Labour Nomadism**

It is imperative that we grasp the deep vulnerabilities associated with labour nomadism among the unorganised workforce. Labour contractors and employers resort to covert strategies to leverage flexible labour circulation, where it works in their self-interest to keep an army of footloose labourers. In his seminal work *At Work in the Informal Economy of India*, Jan Breman states,

**"Labour contractors, acting on behalf of employers, form another link in the chain of circulation for the workforce kept footloose. These mediators see to it that their catch has seldom access to other jobs wherever they go, even in the informal economy. Opting out of the circuit with the aim of staying on and settling down at the new worksite is next to impossible."**<sup>z</sup>

Such workers are lured into a near-perpetual state of nomadism through the use of debt (monetary, in-kind, or other economic considerations) in order to create an obligation and a predatory relationship that psychologically binds the labourers to accept any conditions imposed in the burden to payback. The notion of 'bonded debt' as defined under BLSA Act has never been socialised in States or industry related audit/inspection schemes. Nearly all labour-trafficking cases involve the use of promise and debt-trap to ensure consent and cooperation of the individuals/families. Breman goes on to also state,

**"The preference for outsiders is often part of a strategy resorted to by employers to command pliable and vulnerable labour contingents which, by their status as aliens and transients, have forfeited their bargaining power." [Page 66]**

In this context, we should be asking ourselves how have grievance mechanisms in brands and supplier factories, plants, and state inspection mechanisms, monitored bonded debt and forced labour and provided redress to effectively address the concerns of criminal exploitation of migrant workers. In addition, several cases of bonded labour in which the victims were from particularly vulnerable tribal groups reveal the role of collusive employers in perpetuating debts by heaping inflated costs and interests on victims who lack basic financial literacy or the assertiveness to question them.

News reports on some brutal cases have only demonstrated that when and if people do demand their wages, raise questions, or decide to leave, they are subjected to threats to life, brutal<sup>8</sup> assault<sup>9</sup> and persistent daily violence. Today, scores of families and individuals accept a life of bondage primarily as their fault and responsibility.

Owing to their inability to repay debts, labourers are manipulated into believing that they are criminally culpable and liable for their outstanding debts and therefore the system will be out to get them. These covert strategies are adopted by labour brokers and employers operate across all sectors. Combined with the vulnerability of workers, trafficking for labour or bonded labour becomes a vital and material subject for all industries to grapple with. However, quite often in some businesses that thrive on such labour nomadism, such nuances are overlooked because of the narrow focus of the counter-exploitation strategies on materiality assessments and human rights due diligence.

### **The impossibility of Decent Work conditions**

As per ILO's Decent Work Agenda<sup>10</sup>,

**'Productive employment and decent work are key elements to achieving a fair globalisation and poverty reduction. Decent work...involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, freedom to organize and participate in the decisions that affect their lives, and equality of opportunity and treatment for all women and men.'**

India's labour legislation provides a legal framework for decent work. However, wherever decent work is not a priority, exploitation begins. It is imperative for our understanding to note that human trafficking for labour and bonded/forced labour are not merely antithetic to decent work, they are a form of criminal exploitation. The brutality and indignity meted out to men, women and children from the daily violence and the continual force of terror cannot be captured through vague and weak labels like 'labour exploitation'. Rather, such violence under a life of daily languishing in bondage requires a distinct categorisation: 'criminal exploitation', a parlance that needs to be brought into the mainstream of India's vocabulary of labour law violations.

As tremendous efforts go into keeping these crimes completely hidden at all costs, one of the key issues that perpetuates such forms of criminal exploitation is its potential invisibility and the difficulty of detection. To meet this nefarious end, oppressors subdue individuals through repeated and brutal violence to the point of shock, exhaustion and breaking of wills and intimidation at any semblance of assertiveness. It is no wonder, therefore, that victims avoid contact with authorities in the presence of their oppressors. The fear of retribution, brutal forms of retaliation and harrowing physical and verbal abuse inflicted on them and their families far outweighs all hope and attempts towards a courageous leap for freedom.



## **When crisis strikes**

The current COVID-19-triggered global crisis and the spectre of unemployment add to the woes of the workforce manifold. It is estimated that 400 million workers in India will further sink into poverty in view of the mass exodus of migrant workers from different cities.

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This massive disruption weighs enormously on India. Even as the Union and State governments seek to support businesses with the much-needed conditions and supply base for labourers, States like Uttar Pradesh have tragically jettisoned almost all labour laws – with the exception of three laws including the BLSA Act<sup>11</sup> – to support industry for the next three years. While the retrogressive impact of the suspension of labour laws is yet to be felt, it is imperative that the much forgotten BLSA legislation is accorded primary importance.

In a recent Public Interest Litigation (PIL) filed in early June this year on the vulnerability of children to trafficking amidst COVID-19, the Supreme Court<sup>12</sup> has been deliberating over the formation of a committee to address child trafficking for child labour or child bonded labour in private establishments. At the same time, the Bihar government was faulted by the Supreme Court for its delay in implementing the May 11 order of the National Human Rights Commission to rescue 187 bonded labourers, and for 'turning a blind eye' to bonded labour<sup>13</sup>. The growing attention to trafficking during COVID-19 and the rise in bonded labour in private establishments makes it incumbent upon industrialists and business 'sustainability' teams to pay special attention to the impact of violations of these legislations and criminal codes on the domestic and global supply chains.

## **Sacrificing labour welfare for economic growth**

The weakening of state enforcement machineries raises more fundamental questions. Firstly, with the transformation of the role of labour officials from implementers of the law to business 'facilitators' to maintain a business-friendly

image<sup>14</sup> (for instance, taking a soft-stand against defaulting employers), we need to ask what mechanisms and stakeholders exist in the system to prevent or respond to criminal exploitation of labour:

How is the labour setting monitored for proactive prevention of such crimes and a robust response to identify, rescue, and rehabilitate victims? Is there a labour-crimes intelligence gathering mechanism under the labour departments? How does corruption and complicity with unscrupulous employers get addressed? Do inspection/audit frameworks capture vulnerabilities or incidence of bonded labour and labour trafficking? How should businesses tackle criminal elements in supply chains from the weakening law enforcement mechanisms? How can civil society organisations push for effective enforcement action on criminal exploitation, and what is industry's accountability in facing such criminal exploitation? As a desperate model of growth, how does the suspension of labour laws enhance a discriminatory economy from the severe curtailing of fundamental rights of the vulnerable labourer with no recourse to justice? Martin Luther King Jr. had stated:

**"It is true that behavior cannot be legislated, and legislation cannot make you love me, but legislation can restrain you from lynching me, and I think that is kind of important."**<sup>15</sup>

Therefore, with the suspension of certain labour laws, how are States prepared to prevent and tackle bondage in the current crisis?

### **Gaps in enforcement**

In order to review the gaps across States in robustly monitoring violations of the BLSA Act, one requires to firstly correct the flawed perception on bonded labour and its consequences that gravely affects identification and rescue efforts at district levels. In many States, bonded labour is perceived as a customary arrangement between the haves and the have-nots in certain communities that does not require feather-ruffling given the consent of the individual or family

entering into a debt-obligation arrangement. As psychological ties of obligation and a distorted sense of loyalty bind the oppressed poor to their oppressor, the daily violence is absorbed by the victim and well hidden by the oppressor. Hence, this form of enslavement is never perceived as a crime.

Secondly, due to the lack of conceptual literacy on bonded labour, and its misconstruction as a labour dispute than a human rights crime, enforcement does not attract the severity of the law against the owner who is more favoured as a major contributor to the country's GDP, and deserving of opportunities to improve. This trade-off, biased in favour of the employer, buries the bondage and indignity inflicted on the weak.

Thirdly, and more importantly, as the perpetrators often enjoy political clout, economic power, or position of influence in the community, officials succumb to pressures, corruption, undue influence, or caste dynamics that taint and tilt all levels of inquiry and investigations favourably in the direction of the oppressors.

It is imperative that in a post-COVID-19 India, all States put in place robust mechanisms, architectures, and capacities to review all enforcement actions

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taken at the district levels. This is imperative to weed out prejudices and corruption in procedures and provide necessary flow of information required for interdepartmental cooperation to achieve effective identification, rescue, and rehabilitation of the victim, and prosecution of the perpetrator. In the absence of directives flowing down to the district levels, all on-ground officials lack conceptual clarity, roles, and procedural uniformity, and are, therefore, limited only by their discretion, prejudices, and proclivities. This results in lapses in implementation or—even worse—complicity with the powerful against the victims.

## **Need for unified approach**

A unified approach to enforcement can only be achieved when each State adopts a State Action Plan (SAP), the necessary Standard Operating Procedures (SOP) and roll out capacity-building programmes right down to the district levels for effective response to the crime of bonded labour. It will be insightful to learn which among the States highlighted by the MoLE regarding the release of bonded labourers have in place an SAP, an SOP, and capacity building programmes for officials on bonded labour. Fortunately, States like Tamil Nadu and Karnataka have issued the needed SAP and SOP resulting in a heightened State performance and inter-departmental coordination for the implementation of BLSA Act leading to better confidence of the poor on the state machinery.

Tamil Nadu has also led some innovative action in its efforts to combat trafficking of all forms by being the first State in the country to come up with a One-Stop Crisis Team (OSCT)—an initiative of the State Legal Services Authority (SLSA)<sup>16</sup> to provide legal assistance and coordination oversight pertaining to all forms of human trafficking. Under this initiative, committees and sub-committees have been formed at district and taluk levels that are headed by secretaries of District Legal Service Authority (DLSA) for the purposes of coordination across all line departments. Teams thus formed work extensively on the identification, rescue, and rehabilitation of trafficking victims and prosecution of perpetrators. As a game-changer model, civil society organisations in other States will do well to involve SLSAs for heightened action and coordination against criminal exploitation in a post-lockdown scenario.

## **Inspection Reforms and Ease of Doing Business**

We should now shift our attention to the Inspection Framework regarding criminal exploitation in labour settings. While the World Bank has set 10 indicators for Ease of Doing Business (EoDB) that determine country-wise rankings, the Indian government found it strategic to altogether expunge inspections of human rights atrocities under the cloak of EoDB. It is important to

note that efforts to streamline the regulatory structures and cut the onerous red tape towards a conducive business environment were initiated way back in 2014 with the launch of the Shram Suvidha Portal by the MoLE. This is a unified web portal “catering to four major organisations under its aegis: Office of Chief Labour Commissioner (Central); Directorate General of Mines Safety; Employees' Provident Fund Organization; and Employees' State Insurance Corporation. The portal's four main features are:

- Unique Labour Identification Number (LIN) allotted to Units facilitating online registration.
- Filing of self-certified, simplified Single Online Return by industry.
- Units will only file a single consolidated Online Return, instead of separate Returns. Amendments to 10 Rules already undertaken.
- Transparent Labour Inspection Scheme via computerised system as per risk-based criteria and uploading of Inspection Reports within 72 hours by Labour Inspectors.<sup>17</sup>

However, 2019 saw better outcomes, in terms of implementation of Shram Suvidha, when the Department for Promotion of Industry and Internal Trade (Ministry of Commerce and Industry-MOCI) issued the State Business Reform Action Plan-2019 (BRAP 2019) Implementation Guide for States/UTs <sup>18</sup>. Many States have already passed orders implementing these reforms under the priority of EoDB. Strikingly, the guidance on Central Inspection Framework, an online mechanism for compliance inspections, though highlighting several labour ordinances applicable to businesses, excludes BLSA Act from the compliance and inspection ambit.

This implementation oversight seems to be completely at odds on two counts. The first is on the declared intent of BRAP that a 'Central Inspection System (CIS) can help eliminate inspections being conducted in silos and ensure mutual sharing of information between inspecting Departments and Agencies'. As the Executive Magistrate (Department of Revenue) is responsible for conducting enquiries on reports on bonded labour at the district level, the exclusion of the BLSA Act from the CIS rules out any information flow from the Labour Department to the Revenue Department to allow for a rapid response.

Secondly, its exclusion preempts any alignment with declared policy commitment by the MoLE announced in 2016<sup>19</sup> to identify, rescue, and rehabilitate 1.84 crore bonded labourers in a 15-year vision (till 2030). A 15-year vision plan that lacks conceptual clarity on the interactions between bonded labour and human trafficking and fails to see the critical instrumentality of inspection frameworks to promote industry awareness and compliance renders the entire vision suspect and token.

### **Exposing Business-friendly Inspections**

The Section (vi) of recommendation 65 of the BRAP 2019, requires States to mandate that inspections (except in case of complaint-based inspections) shall be limited to the checklist. However, inspections through a strictly close-ended checklist approach does not allow room for investigative interviewing to assess evasions or deceit in the face of denials against human rights violations or criminal exploitation like bonded labour or labour-trafficking.

A complaint-based inspection falsely assumes that victims have the power to go against perpetrators/oppressors to lodge complaints. For example, the garments sector in southern India has been fraught with the absence or non-functional<sup>20</sup> ICCs (internal complaints committee) and non-reporting because of the ingrained power imbalance between supervisors and workers, who are mainly women and Dalit girls<sup>21</sup>, and tight surveillance<sup>22</sup> over movement and communication among workers. Moreover, cases of bonded labour and labour-trafficking have clearly demonstrated that in the face of brutal violence, psychological trauma, and learned helplessness, victims simply do not, and cannot, garner the needed courage or the will to retaliate. Therefore, for the proposed complaint-based inspections to be effective, State governments need to address what practical procedures/mechanisms are in place that allow for victims' access to redress against bonded labour, forced labour or labour-trafficking.

Under recommendation No. 66, pointing to the operational model for the CIS, BRAP 2019 requires that

**"The establishment must be informed of upcoming compliance inspections through e-mail/SMS. Also, send inspection information on forms and templates before the inspection process to the establishment being inspected."**

This pre-notified inspection plays the same function that a tip-off would in criminal investigations. It would alert the factory/establishment allowing them time to 'clean up' their act. For labour traffickers and factories using forced labour, this would be the best of all worlds.

This measure of trying to insulate businesses allegedly from 'inspector raj' would rule out any possibility of ever identifying a case of forced/bonded labour/labour trafficking and raises more questions as to the state's intent to protect the vulnerable from human rights violations and criminal exploitation. Also, the recommendation is often bent to serve and protect exploitative business interests. As India formulates its National Action Plan for Business and Human Rights (steered by the Ministry of Corporate Affairs), it should address critical gaps towards the removal of practical and insurmountable obstacles faced by victims in their pursuit of administrative and quasi-judicial/judicial redress.

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### **Lacunae in the single-window portal**

The Shram Suvidha portal, is the actualisation of the Central Inspection Framework launched in 2014 by the Centre and is a unified single-window portal. Touted by the MoLE as a 'one-stop-shop for labour law compliance' for better enforcement and transparency, it has materialised the exclusion of the BLSA Act. Even as some States have been integrated with the portal, they seem to be in unison to exclude industry compliance against bonded labour in their own

State inspection schemes. But one has to ask: should not a one-stop shop disseminate information of what businesses should do along with what they should avoid?

This points to a clear lack of will by the Union and State governments to provide the needed awareness to business fraternity on human rights atrocities that are cognisable and punishable offences. Bonded labour and labour trafficking are cognisable and punishable offences. Their inclusion in compliance frameworks for responsible performance of businesses is necessary for two reasons. Firstly, to promote awareness of the import of this legislation in the industry. And secondly, for the adoption of a deterrent behaviour against criminal exploitation. In addition, it is the only way to facilitate the much required inter-departmental coordination and information flow to enforcement actors in order to come down hard on unscrupulous businesses or traffickers from leveraging the crimes of debt-bondage and labour-trafficking towards illicit profits of crime.

The Central Government's approach to risk-assessments for inspections has not been encouraging. A review of the inspection scheme under the Suvidha Portal lists out the types of inspections<sup>23</sup>—Emergency, Mandatory, CAIU (Central Analysis and Intelligence Unit—for provident fund deposits) and optional inspections where priorities are based on fatalities, accidents, lockouts, closures, strikes, court directions etc. There are no indications of risk-assessments over human rights crimes like bonded labour or labour-trafficking.

Moving on to States' inspection scheme, let us randomly take Tamil Nadu as an example. Upon closer scrutiny of the 2017 Inspection Scheme<sup>24</sup> issued by the Directorate of Industrial Safety and Health (DISH), based on the computerised risk-based inspections of the Factories Division and the Building and Other Construction Establishment Division, one would find risk-determination and classifications done on the basis of hazardous nature of work, like dangerous operations in factories/industries involving hazardous process, major accident hazard factories, or based on threshold of workers employed. However, towards



the end of 2019, and only in keeping with its SAP and SOP on Bonded Labour, the Tamil Nadu government included the issue of bonded labour under its inspection framework<sup>25</sup>. What remains to be seen is the coordination between the Labour Department and Revenue Department for information flow to respond to crimes of bonded labour. But it is safe to say that for TN Inspection Scheme right until 2019, risk determinations on crimes like bonded labour (a material subject for the industry and state) was never the priority. And this progressive move initiated in 2019 by Tamil Nadu seems to be the only exception.

### **Shift of burden**

As States exclude risk determinations on labour-trafficking, bonded labour, or forced labour, its result is witnessed in the abandonment of victim-identification efforts to protect the vulnerable, but even greatly in a complete shift of burden on to businesses to solely undertake risk assessments, traceability, and responsibility to tackle these issues. While large and mature companies/global brands are undertaking Human Rights Due Diligence/Materiality Assessments/Human Rights Impact Assessments to solely identify the issues, they are already feeling the heat and insurmountable challenge of traceability and remediation of adverse human rights impacts in supply chains that spill into hidden tiers in the unorganised sector where illegality and criminality thrive. But there is only so much that businesses can do. And no firm or conglomerate, when it comes to criminal offences, could do the work of law enforcement.

The dialogue of business and human rights in India requires convergence of actions between the Ministry of Corporate Affairs and the Ministry of Commerce

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and Industry so that there is a common directional commitment to tackle criminal exploitation where equal emphasis is laid and shared between the state's duty to protect and the responsibility of businesses to respect the rule of law. The Centre/State

inspection schemes must complement business efforts to prevent or mitigate human rights violations.

It is imperative to note that the *raison d'être* of ISMWA, is that 'some administrative and legislative arrangements, both in the source State from where they are recruited and also in the destination State where they are engaged for work, are necessary to secure effective protection against their exploitation<sup>26</sup>'. However, this dimension of protecting vulnerable migrants from severe forms of exploitations, such as human trafficking for forced/bonded labour or other forms of slavery, was either completely lost or deliberately side-lined in the nation's quest to promote the ease of doing business.

### **Time to correct chronic neglect**

The breakdown by enforcement machineries of State and central governments to account for the migrant poor is a result of the absolute disregard and neglect of duties by the very guardians and enforcers of the ISMWA legislation. However, for the post-COVID-19 future, large businesses can still further their 'responsibility efforts' or human rights agenda with a new emphasis on responsible recruitment across their supply chains and invest in state architecture and governance gaps. Businesses can come together, if they so choose, with the special aim to elevate the ISMWA to its original intent.

This would first mean for firms to have a clear expectation of suppliers by calling out specific Indian legislations in supplier codes of conduct such as BLSA Act and its interactions with the Contract Labour (Regulation and Abolition Act) and ISMWA. Many Supplier Codes of Conduct merely expect suppliers to prohibit forced labour and child labour in all its forms. However, scores of suppliers from the MSME sector do not have an in-house legal or HR team to provide them the required legal literacy on various legislations that deal with forced labour. Hence, it is imperative for large corporations to play this function in supplier education through calling out specific legislations.

Moreover, monitoring of suppliers must entail verification of the legitimacy of the labour contractors/agents and their compliance to the ISMWA. If migrant workers are deployed at factories of suppliers, then their contractors are bound by the law to hold a recruitment licence in the source State, an employment license in the destination State and mandatorily register all recruited migrant workers at the Labour department. Recruitment corridors must be strengthened on all fronts. Brands must determine if their own manpower agents or suppliers are transacting with unlicensed agents or traffickers. Unscrupulous labour agents/traffickers evade the law to exploit the large vulnerable population and keep migrant workers deliberately hidden from the system.

The current absence of data on migrant workers with State Labour Departments and the concomitant debacle of the repatriation process is a direct consequence of the non-compliance by both contractors and suppliers and lack of enforcement mechanisms by States. Brands can now pay greater attention to the vulnerabilities of migrant workers in supply chains by ensuring that supplier records of migrant workmen match the registry at the Labour Department. If a mismatch of records is discovered, then suspecting evasion, an improvement notice ought to be served to suppliers mandating that information about migrant workers and contractors be updated with the Labour Department.

This presents a unique opportunity for industry collaboration with the Department of Labour in each State to assess its data gaps and bring information on migrant workers under the ambit of supervision for better protection under the legislation. Towards this, blockchain and other technologies must find its suitable use-cases. If mobile giants like Airtel, BSNL, Jio, and Vodafone Idea can come together to implement what is claimed to be the world's largest blockchain<sup>27</sup> with a database and KYC management of over one billion mobile users, States and businesses should have the wherewithal to come together in coordination to support this legislation for better protection of 400 million migrant workers. There already exists global use-cases of blockchain with

government and industry collaborations to secure a registry of workers for better protection from forced labour<sup>28</sup>.

Businesses can insist that their own manpower agents or supplier agents undergo awareness trainings on human trafficking, BLSA Act, ISMWA, and other legislations related to exploitation, and on the state enforcement machinery. The 2017 circular<sup>29</sup> from the Ministry of Home Affairs required the MoLE to sensitise officers of labour departments in States and UTs on the needed vigilance over activities of placement agencies<sup>30</sup> which have been coming under the scanner for organised human trafficking. This vigilance will be needed now, in a post-Covid-19 India, more than ever. Businesses could also come together and interact with law enforcement bodies for intelligence and potential screening of their own manpower agents or that of their suppliers for criminal history in labour-trafficking or bonded labour. If criminal elements are identified, businesses should have the moral imperative to report to law enforcement agencies. There are interesting and admirable initiatives around the world where businesses collaborate to provide direct intelligence to law enforcement in order to tackle crimes. However, in such cases there should exist not only a legal framework but also the supporting state architecture and the capacity building initiatives to respond to such crimes, which have been systematically ignored in India.

### **For a renewed understanding**

Nothing has been more revealing and heart wrenching than the vivid images and cries of poor millions in the face of broken systems of governance and the flagrant disregard. With new doors opening to exploitation in a post-lockdown scenario, the desperate poor driven by added misery caused by the pandemic will have no option but to settle for employment that are least favourable or even dangerously detrimental to their mental and physical wellbeing.

Citizens armed with their purchasing power can and should expect better initiatives of worker protection from their brands and governments. India needs more than slick slogans, smokescreens, and piece-meal efforts. It needs systems

of accountability. *Athmanirbharta* (self-reliance) is needed for the defenceless not just the fittest. All this requires a renewed understanding among citizens that governments listen only to businesses, business to the markets, and the markets are driven by the consumption and purchasing choices of its citizens. Responsible business must meet responsible consumption.

In the final analysis, this is a very sombre thought. This is a triangle of responsibilities. Consumers disengaged and unperturbed by criminal exploitation in industry practices only demonstrate the ugly and monstrous connivance of governments, businesses, and silent consumers towards a systematic exploitation of the weak. Now is the time to restructure state policies and mechanisms, especially where criminal exploitation of the poor and vulnerable is not only checked but met with zero-tolerance by governments, businesses, and consumers—in words and action.

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