A photograph showing several tea workers, likely women, gathered under a large, light-colored umbrella. One woman in the center-right is smiling and holding a small metal cup. They are wearing traditional headgear and clothing. The background is slightly blurred.

A Bitter Brew: Business Accountability for Human Rights Violations in the Assam Tea Supply Chain

Madhura Rao

Researcher

Madhura Rao

MSc Food Safety, Wageningen University

Registration number: 950316680040

Supervisor & Examiner A

Dr. Nadia Bernaz

Law and Governance Group, Wageningen University

Examiner B

Dr. Kai Purnhagen

Law and Governance Group, Wageningen University

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ABSTRACT

Assam tea is globally celebrated for its brisk, malty flavour. It is an irreplaceable ingredient in several breakfast tea blends around the world and provides much impetus to the Indian economy. Images of cheerful, saree-clad women picking leaves in the lush Assamese tea gardens are often the face of packaged Assam tea. However, this imagery is starkly different from the reality of a life on Assam's tea plantations. This plantation community has been subjected to human rights violations for over a century- first, at the hands of British colonisers and now by multinational tea companies. The workers are dependent on their employers for basic necessities and are thus severely exploited.

This research aims to explore how international and domestic law can be applied to ensure that businesses sourcing tea from the region take responsibility for the human rights violations in their supply chains. For this purpose, the study is divided into three parts. The first part provides an overview of the Assam tea industry- its birth, its current standing, and the hardship faced by its workers. The second part focuses on legal analysis of the business and human rights framework and its applicability to the issue. The last part discusses the position of the UK's wealthiest tea businesses on this issue.

Key words- business and human rights, Assam tea, CSR, multinational companies

LIST OF ABBREVIATIONS

ABF	Associated British Foods
ACMS	Assam Chaha Mazdoor Sangha
APPL	Amalgamated Plantations Private Limited
BHR	Business and Human Rights
BTG	Bettys and Taylors Group
CAO	Compliance Advisor/Ombudsman
CDF	Community Development Forum
CIPS	Chartered Institute of Procurement and Supply
CSR	Corporate Social Responsibility
DP	Directive Principles of State Policy
ETP	Ethical Tea Partnership
F&A	Fortnum & Mason
FIDH	International Federation for Human Rights
FR	Fundamental Right

GNRTFN	Global Network for the Right to Food and Nutrition
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
ILO	International Labour Organization
INR	Indian Rupee
ITMEB	Indian Tea Market Expansion Board
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
MIGA	Multilateral Investment Guarantee Agency
TBG	Tata Global Beverages
MNE	Multinational Enterprise
MSA	Modern Slavery Act
NAP	National Action Plan
NCP	National Contact Point
OECD	Organisation for Economic Co-operation and Development

SRSG	Special Representative of the Secretary-General
TISC	Transparency in Supply Chain Clause
TNC	Transnational Corporation
UN	United Nations
UNGPs	United Nations Guiding Principles
UNHRC	United Nations Human Rights Council
UNICEF	United Nations Children's Fund
UNCTC	United Nations Centre on Transnational Corporations
UPR	Universal Periodic Review

LIST OF DEFINITIONS

Adivasi	Indian indigenous people
Assam Chah Mazdoor Sangha	The largest trade union organizing labourers in tea gardens of the Assam Valley in north-eastern India.
Behind the Brand	Oxfam's campaign to assess the agricultural sourcing policies of the world's 10 largest food and beverage companies.
Constitutional law	A body of law which defines the role, powers, and structure of different entities within a state, namely, the executive, the parliament or legislature, and the judiciary; as well as the basic rights of citizens.
Coolie	A South Asian or Chinese worker engaged in unskilled manual labour
Corporate Social Responsibility	A management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders.
Ethical Tea Partnership	A not for profit membership organisation that aims to improve tea sustainability, the lives and livelihoods of tea workers and smallholder farmers, and the environment in which tea is produced.
Human Rights	Rights that every person is entitled to, without any discrimination. Examples of human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, and the right to work and education.

Indentured labour	A system of servitude governed by a signed contract that binds the employee in bonded labour.
International Federation for Human Rights	International human rights NGO federating 184 organisations from 112 countries.
Know the Chain	An organisation dedicated to helping companies and investors understand and address forced labour risks in their supply chains.
Labour Rights	A group of legal rights and claimed human rights having to do with labour relations between workers and their employers, usually obtained under labour and employment law.
Modern Slavery	A group of crimes including human trafficking, slavery and slavery like practices, forced labour, forced or servile marriage, the sale and exploitation of children, and debt bondage.
Rainforest Alliance	Non-governmental organization working to conserve biodiversity and ensure sustainable livelihoods by addressing land-use practices, business practices and consumer behaviour.
Sirdari system	A system of recruitment in British India where a Sirdar or foreman would recruit Indian workers to work for the British enterprises.
Solidaridad	International civil society organisation that aims to facilitate the development of socially responsible, ecologically sound and profitable supply chains.
Special Representative of the Secretary-General	A highly respected expert who has been appointed by the Secretary-General of the United Nations to represent her/him in meetings with heads of state on critical human rights issues.

Tort	A wrongful act or an infringement of a right (other than under contract) leading to legal liability.
Transnational corporation	A corporation that has a home base, but is registered, operates and has assets or other facilities in at least one other country at one time. Also known as a multinational corporation.
Trustea	An industry initiative to develop and implement a sustainability Code for the Indian domestic tea market.
Universal Periodic Review	A process which involves a periodic review of the human rights records of all 193 United Nations Member States.
Whistleblowing	The act of exposing any kind of information or activity that is deemed illegal, unethical, or not correct within an organization that is either private or public.

ASSAM ON THE INDIAN MAP



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1. INTRODUCTION

“Tea is big business in India and Assam in particular, and a cartel of owners have persuaded the state that they cannot afford to pay the legal minimum. In doing so, they have created a fertile breeding ground for the 21st century slave trade”

- Kailash Satyarthi, Nobel Peace Prize laureate

1.1 PROBLEM STATEMENT

Tea is the second most consumed beverage in the world, subsequent only to water itself. Globally, India is the second largest producer of tea¹ and the Indian state of Assam is the world's largest tea growing region². The history of tea in India dates to the late 1830s when tea bushes were discovered in the lowlands of Assam by British explorers. Driven by the necessity to find an alternative to Chinese imports, tea production in British India received immense encouragement.³

Estimated to be employing around 3.5 million workers, at present, the tea industry is India's largest private sector employer.⁴ Most of the tea plantation workers in Assam are female Adivasis who are descendants of displaced workers from neighbouring states. They were forcefully relocated to the region by colonial tea planters.⁵ It has been 70 years since India's independence but the tea plantation workers in Assam are not far ahead of their ancestors when it comes to basic human rights.

A fact-finding mission by the Global Network for the Right to Food and Nutrition reported that

¹ Food and Agriculture Organization (FAO). (2015). World tea production and trade: current and future development. p. 3.

² Global Network for the Right to Food and Nutrition (2016). A life without dignity –the price of your cup of tea. p. 25.

³ Sharma, J. (2009). ‘Lazy’ Natives, Coolie Labour, and the Assam Tea Industry. *Modern Asian Studies*, 43(6), pp. 1287-1324.

⁴ Rosenblum, P., & Sukthankar, A. (2014). The More Things Change. *The World Bank, Tata and Enduring Abuses on India's Tea Plantations*. New York: Columbia Law School Human Rights Institute. p. 7.

⁵ Gupta, B., & Swamy, A. V. (2013). Unfree Labour: did indenture reduce labour supply to tea plantations in Assam? pp. 3-6.

as of May 2016, tea workers in Assam are largely dependent on plantation owners for their sustenance and basic needs like food, water, and housing.⁶ The report also points to the fact that despite of having lived in the same estate for over 200 years, workers have no right to their homestead and can be evicted at the whim of the management. An alarmingly high mortality rate, abysmally low wages, coupled with lack of alternative employment opportunities have resulted in these workers falling into a vicious circle of poverty and deprivation.⁷

Lack of transparency in the global tea supply chain makes it difficult to trace the origin of blended tea sold in western markets. It is a known fact that major tea brands such as such as Tata Global Beverages, PG tips, Tetleys, and Twinings source their tea from parts of India, including Assam.⁸ It is unclear as to which gardens produce tea for which company.⁹ This helps large, transnational companies evade human rights related accountability.

There has been academic debate about whether businesses, being non-state entities, are subjects of international human rights law. This area of law has been developed to hold states accountable for the human rights of their citizens. Therefore, as per conventional interpretation, businesses can be held accountable for human rights violations only by the state they operate in.¹⁰ When the operations of a business transcend national boundaries, the question of ‘who exactly should be held accountable by whom?’ becomes increasingly complex. To add to the complexity of the situation ratification of Human Rights treaties is voluntary for states and therefore difficult to enforce.

Andrew Clapham notes that “lack of international jurisdiction to try a corporation does not mean that the corporation is under no international legal obligations. Nor does it mean that we are somehow precluded from speaking about corporations breaking international law.”¹¹ Like Clapham, numerous other legal and business scholars are of the view that a broader reading of international human rights law can ensure that businesses are held legally accountable for their

⁶ Global Network for the Right to Food and Nutrition (2016). A life without dignity –the price of your cup of tea. p. 6.

⁷ Global Network for the Right to Food and Nutrition (2016). A life without dignity –the price of your cup of tea. pp. 57- 72.

⁸ Rowlatt, J and J. Deith. (2015, September 8). The bitter story behind the UK's national drink. *BBC news, 8 British Broadcasting Corporation, London.*

⁹ Ibid.

¹⁰ Bernaz, N. (2016). *Business and Human Rights: History, Law and Policy-Bridging the Accountability Gap*. Taylor & Francis. p. 94.

¹¹ Clapham, A. (2006). *Human rights obligations of non-state actors*. OUP Oxford. p. 31.

actions.

In 1948, India was among the 48 members of the United Nations who voted in favour of the Universal Declaration of Human Rights. Since its independence, India has ratified several international treaties which support citizens' entitlement to human rights. In the context of Assam tea plantation workers, various other domestic legal instruments besides the broader Protection of Human Rights Act (1993) are in place. The Plantation Labour Act (1951), which forms the legal backbone of the industry, seeks to ensure fair treatment and socio-economic security for the plantation workers. In spite of this dedicated legal framework being in place, workers continue to be exploited.

The plight of Assam's tea workers gained global attention when Columbia Law School's Human Rights Institute published a report in 2014, describing the subpar conditions on Amalgamated Plantations Private Limited (APPL) tea gardens, owned partly by the Tata Group. The report criticised the \$7.8 million-dollar investment made by the International Finance Corporation, a member of the World Bank Group, in some of Tata's tea plantations.

In response to a complaint filed by three Assamese non-profit organisations, the World Bank's Compliance Advisory/Ombudsman (CAO) carried out extensive investigation of the conditions on APPL's plantations. The results of the investigation were released in September 2016 and directed immediate redress of various violations such as interference with workers' right of free movement, restrictions on workers' right to form and join a union of their choice, erosion of wages through unfair deductions and high task rates, sale of APPL shares to workers through deception and coercion, and seizure of workers' agricultural land.¹²

1.2 WHY UK-INCORPORATED TEA BUSINESSES?

This study will focus on business accountability by UK-incorporated tea businesses. Tea from Assam is an indispensable component in the standard English Breakfast blend which is consumed by millions of people every day. UK-based tea companies and retailers have immense influence in the supply chain and the global market, with both Unilever and Tata

¹² Compliance Advisor Ombudsman. (2016). CAO Investigation of IFC Environmental and Social Performance in relation to: Amalgamated Plantations Private Limited (APPL), India. pp. 6-11.

Tetley owning 10-20 per cent of global market share.¹³

The Modern Slavery Act (2015) passed by the United Kingdom Parliament is among the first of its kind. The Transparency in Supply Chains clause (TISC) of the Act requires companies to report how they have tackled modern slavery in their supply chains. Since the Act has been operative for close to three years, most UK incorporated companies have published at least one Modern Slavery statement till date. These statements provide insight into how effective such legislation can be at improving business accountability. Therefore, in order to be able to assess the impact of the TISC, it is imperative to focus on the Assam-UK supply chain.

1.3 RESEARCH QUESTIONS

The objective of this thesis is to answer the following research question:

How can increased accountability by businesses for human rights violations on Assam's tea plantations be ensured?

In order to frame the answer to this research questions, the following sub-questions will be answered:

- 1. What are the problems faced by the workers and how are they linked to the history of tea cultivation in Assam?**
- 2. How can national and international law be used to promote increased business accountability in the Assam tea supply chain?**
- 3. To what extent are UK's top tea businesses taking responsibility for the situation in Assam through CSR initiatives?**

1.4 RESEARCH METHODS

¹³ CORE (2017). RISK AVERSE? Company reporting on raw material and sector-specific risks under the Transparency in Supply Chains clause in the UK Modern Slavery Act 2015 Company reporting on raw material and sector-specific risks. p. 37.

This research is qualitative and exploratory in nature. Information from scientific literature, legal texts, and business reports has been used to answer the research questions. Due to the multidisciplinary scope of the, this research will address the problem using a combination of legal and business studies research methods.

Question 1: This question is answered through literature review. Sections 2.1, 2.2, and 2.3 are based on findings from historical and anthropological literature. Section 2.4 is based on the information from two investigative reports relevant to the topic.

Question 2: Question 2 is answered through doctrinal analysis of the applicable business and human rights legal framework. The analysis focuses on tracing the birth of this framework, its interpretation, and its applicability to the Assam tea supply chain.

Question 3: For answering question 3, document analysis of CSR reports, modern slavery statements, and various secondary data was carried out.

1.4 OUTLINE

Chapter 2 provides an overview of the Assam tea industry. It traces the origin of the industry to its colonial roots, discusses how today's community of tea planters came to be, and highlights how the habit of drinking tea became a part of post-colonial Indian culture. The last section of the chapter documents the working and living conditions of the plantation workers, based on two investigative reports.

Chapter 3 seeks to dissect how various international mechanisms could be used to mitigate the problem and hold businesses accountable. Through doctrinal research, various pertinent national and international instruments are discussed. Soft law instruments regarding the issue of business and human rights framed by the UN and the ILO, the OECD guidelines, and international financial institutions' grievance mechanisms have been analysed in the context of the Assam tea industry. As a part of the sub-chapter on domestic law, an analysis of Surya Deva's background paper for India's national framework on business and human rights is presented. This is followed by a discussion on UK's Modern Slavery Act's transparency in supply chains clause.

Chapter 4 analyses the position of 6 UK incorporated tea businesses. The said businesses are the only tea businesses in the UK which reported a profit exceeding the £36 million ceiling set by the Secretary of State for publishing a modern slavery statement. They have been chosen so as to bring the analysis of their modern slavery statements within the purview of this research.

2. THE ASSAM TEA INDUSTRY

2.1 THE DISCOVERY OF TEA IN ASSAM

In her essay titled ‘Questions of Consent’, Samita Sen describes the tea industry in India as “the most spectacularly successful colonial business enterprise”¹⁴. “In the case of Assam”, she continues, “built upon a highly exploitative and draconian labour regime”.¹⁵

Until the mid-nineteenth century, tea trade was a Chinese monopoly. It is a well-known fact that the Chinese Empire consumed and traded tea several hundred years before the industrialising societies of the modern West turned tea into a global commodity.¹⁶ The British held the Qing state’s limiting trade policies in great contempt but admired traditional Chinese tea knowledge.¹⁷ Tea drinking in China dates back to the fourth century and spread to Japan around three centuries later, where it became an important part of social life. It also spread to into the near-by regions of Tibet, Burma, and Thailand. In spite of being surrounded by tea consuming countries, tea did not permeate Indian borders until much later.¹⁸

The first Anglo Burmese war, which concluded in the late 1820s, resulted in the incorporation of the north-east Indian territory of Assam into the British Empire. In the 1830s, British explorers foraging this new land discovered tea forests growing in the plains of Assam.¹⁹ This discovery presented the British with the opportunity to break the Chinese monopoly and cultivate tea within the Empire. In 1848, industrial spy and botanist Robert Fortune was sent on a trip to the interiors of China to steal secrets of tea horticulture and manufacturing.²⁰ In

¹⁴ Sen, S. (2002). Questions of Consent: Women's Recruitment for Assam Tea Gardens, 1859–1900. *Studies in history*, 18(2), pp. 231-260.

¹⁵ Ibid.

¹⁶ Mintz, S. W. (1985). *Sweetness and power: the place of sugar in modern history*.

¹⁷ Sharma, J. (2009). ‘Lazy’ Natives, Coolie Labour, and the Assam Tea Industry. *Modern Asian Studies*, 43(6), pp. 1287-1324.

¹⁸ Collingham, L. (2006). *Curry: a tale of cooks and conquerors*. Oxford University Press, p. 188.

¹⁹ Sharma, J. (2009). ‘Lazy’ Natives, Coolie Labour, and the Assam Tea Industry. *Modern Asian Studies*, 43(6), pp. 1287-1324.

²⁰ Rose, S. (2009). *For All the Tea in China: Espionage, empire and the secret formula for the world's favourite drink*. Random House.

what Rose calls “nothing short of industrial espionage”, Fortune smuggled tea plants and seeds into India to cross with the ‘wild’ Assamese variety.²¹ Meanwhile, in England, resolutions were passed for a public company to be formed to scale up the Assamese tea enterprise. This company was to be called ‘The Assam Company’²².

British administrators believed that skilled Chinese workers would be necessary for the incubation of the tea gardens in Assam. Records quote Lord William Bentinck, the Governor-General of India, suggesting that an intelligent agent should go down to Penang and Singapore for obtaining the genuine tea plant and cultivators who shall then be employed to carry on the cultivation under the promise of liberal remuneration.²³ Thus, Chinese cultivators were brought in to ‘tame’ the undomesticated tea forests of Assam.

In 1836, under the supervision of C.A Bruce who played an important role in the discovery of tea in India, the production of tea commenced. The first batch of tea was processed by the newly appointed Chinese workers. Once ready for consumption, this tea was shipped to London via the Indian port of Calcutta. The shipment arrived in London in January 1838 and was declared ‘satisfactory for a first experiment’ by experts. However, the British consumers welcomed ‘Empire tea’ with much gusto. British parliamentary papers from 1839 reveal that this batch of Assam tea was sold for a record breaking 21 to 38 shillings per pound, 20 times the regular price for Chinese tea.²⁴

Meanwhile, the situation was not as agreeable back in Assam. Not long into hiring these much sought-after Chinese tea growers, British supervisors found them to be unyielding and uncooperative. “Their contracts were cancelled and the whole gang, with the exception of the most experienced tea-makers and the quietest men, were dismissed” writes Antrobus.²⁵

Recruiters turned to indentured domestic labourers known as ‘coolies’ to work on the tea plantation.

²¹ Ibid.

²² Antrobus, H. A. (1957). *A History of the Assam Company, 1839-1953*. Priv. Print. by T. & A. Constable, p. 37.

²³ Smith, Elder (1839). *Assam: Sketch of its History, Soil and Productions, with the Discovery of the Tea-Plant, and of the Countries Adjoining Assam*, p. 23.

²⁴ ibid.

²⁵ Antrobus, H. A. (1957). *A History of the Assam Company, 1839-1953*. Priv. Print. by T. & A. Constable, p. 381.

2.2 THE MAKING OF A COOLIE WORKFORCE

In 1833, the British Parliament adopted the Slavery Abolition Act. This led to the need for recruitment of new labour to replace the African slaves working for various colonial enterprises all over the world. The tribal groups of Central and Eastern India were seen as ideal contenders.²⁶ To facilitate this process, inhabitants of the Chotanagpur and Santhal territories were subjugated into physical and economic dislocation by the British²⁷. Jayeeta Sharma points out that these once fierce and feared populations were transformed into obedient hill coolies by ‘political and economic processes of colonialism’.²⁸

Section 2.1 discussed the failure of the original scheme of employing Chinese tea growers in Assam. With the Chinese workers depleting in number, the Assam Company began scouting for labour among the local inhabitants of Assam.²⁹ Local labour was inexpensive but hard to tie down. A village headman could supply labourers to plantations but he could not make them stay.³⁰ Two-thirds of the population was known to be addicted to opium, which grew in abundance in Assam.³¹ It is not hard to imagine that these opium-using workers were slothful and unwilling to work. Drawing from the archives of the Assam Company, it also known that scarce population and better opportunities made the low paying tea plantation jobs unappealing to the locals.³² Given these circumstances, the Company realised the need to look for labour that was ‘cheap and easy to discipline’. The quest for such labour began in the 1860s.³³

The late 1860s saw the advent of the ‘sirdari’ system; wherein native labour contractors provided the plantations with thousands of labourers from Chotanagpur, Bihar, and eastern

²⁶ Ghosh, K. (1999). ‘A Market for Aboriginality: Primitivism and Race Classification in the Indentured Labour Market of Colonial India’. *Subaltern Studies*, Volume 10.

²⁷ Ibid.

²⁸ Sharma, J. (2009). ‘Lazy’ Natives, Coolie Labour, and the Assam Tea Industry. *Modern Asian Studies*, 43(6), pp. 1287-1324.

²⁹ Ibid.

³⁰ Ibid.

³¹ Butler, J. (1855). *Travels and adventures in the province of Assam, during a residence of fourteen years*.

³² Behal, R. P. (2010). Coolie drivers or benevolent paternalists? British tea planters in Assam and the indenture labour system. *Modern Asian Studies*, 44(1), pp. 29-51.

³³ Sharma, J. (2009). ‘Lazy’ Natives, Coolie Labour, and the Assam Tea Industry. *Modern Asian Studies*, 43(6), pp. 1287-1324.

Uttar Pradesh regions of India.³⁴ These migrant labourers came to be known as ‘coolies’. It is widely believed that the word has its origins in the Tamil language where ‘kuli’ means wages.³⁵

During this period, the British state was instrumental in creating a system of indentured labour for the tea industry in Assam. This system was sustained by harsh penal legislation where the planters had the right to ‘private arrest’.³⁶ This meant that they could hunt down absconding workers and deliver punitive sentences. Although the Empire had legally done away with slavery, one can draw several resemblances between this indentured system of labour and slavery. For instance, Alick Carnegie, a tea planter, wrote in a private correspondence to his home: “We had awful work driving the coolies, we drove up and down the line and had to shove them on exactly as nigger drivers in America.”³⁷

The exploits of the British planters in Assam have been extensively documented. All these records indicate that the labourers who worked in the colonial tea gardens were subjected to the vindictive behaviour of their bosses. Official investigations carried out in the years 1863 and 1873 in the tea plantations of Assam revealed that the labourers were not paid the minimum wage, the recruitment process was abusive, the transportation facilities were atrocious, and the poor living conditions resulted in high mortality rates.³⁸ Since the planters had the right to private arrest, any coolies that would escape were subjected to severe punishment. Frequent instance of flogging a recalcitrant worker to death, rubbing pepper into the sexual organs of female coolies, and other equally vile forms of torture have been recorded in various archives and first-hand accounts.³⁹

³⁴ Behal, R. P., & Mohapatra, P. P. (1992). ‘Tea and money versus human life’: The rise and fall of the indenture system in the Assam tea plantations 1840–1908. *The Journal of Peasant Studies*, 19(3-4), pp. 142-172.

³⁵ Tinker, H. (1974). *A New System of Slavery: The Export of Indian Labour Overseas*, 1830–1920. pp. 236–366.

³⁶ Sharma, J. (2009). ‘Lazy’ Natives, Coolie Labour, and the Assam Tea Industry. *Modern Asian Studies*, 43(6), pp. 1287-1324.

³⁷ Ibid. Original source: Letter Alick Carnegie, Carnegie Letters; MSS. Eur. D 682; Private Papers, Oriental and India Office Collection, British Library.

³⁸ Behal, R. P., & Mohapatra, P. P. (1992). ‘Tea and money versus human life’: The rise and fall of the indenture system in the Assam tea plantations 1840–1908. *The Journal of Peasant Studies*, 19(3-4), pp. 142-172.

³⁹ Sharma, J. (2009). ‘Lazy’ Natives, Coolie Labour, and the Assam Tea Industry. *Modern Asian Studies*, 43(6), pp. 1287-1324.

2.3 TEA IN POST-COLONIAL INDIA

Today, tea or ‘chai’ has become an inseparable part of the Indian cultural identity. The habit of sipping milky, highly sweetened tea throughout the day has turned into a ubiquitous phenomenon. This is the result of a deliberate and carefully planned strategy by first, the British planters and then the Indian government.

In colonial times, tea plantations spread to other hilly parts of India eventually. The purpose of growing tea in the country was restricted solely to export.⁴⁰ Tea passed through the port, and later the auction market, of Calcutta on its way to England. The Anglophile elite of the Indian



Figure 1: poster promoting tea as a swadeshi (home-grown) product. Source: Urban History Documentation Archive, Centre for Studies in Social

society began to partake in the consumption of this ‘high-class’ beverage as it passed through Calcutta.⁴¹ The logistical difficulties of long distance transportation encouraged tea growers in India to consider introducing tea to the domestic market for some surplus income.⁴² In 1901, the Viceroy authorised an experiment to introduce tea in certain regions of India.⁴³ Although this experiment did not yield any distinct results, it was a start.

In the early 20th century, when India witnessed the birth of a political revolution that demanded independence from the British, tea became a commodity of much contempt. Congress workers were often heard referring to tea as ‘the blood of the peasants of Assam’. ⁴⁴ However, the economic depression in the early 1930s changed this. By 1935,

⁴⁰ Lutgendorf, P. (2012). Making tea in India: Chai, capitalism, culture. *Thesis Eleven*, 113(1), pp. 11-31.

⁴¹ Ibid.

⁴² ibid.

⁴³ ibid.

⁴⁴ ibid.

growers were left with an unsold surplus of more than a hundred million pounds of tea.⁴⁵ In the same year, the ‘Indian Tea Market Expansion Board’ (ITMEB) was set up and it embarked on a vigorous marketing campaign to promote domestic tea consumption. This campaign saw the ITMEB distribute several millions of cups of tea for free, so as to cultivate the habit of consuming tea in the Indian society.⁴⁶ As the independence movement gained greater velocity, the ITMEB adopted a more nationalistic rhetoric and promoted tea as a ‘national beverage’ which could be enjoyed by all Indians irrespective of their ‘religious, linguistic, and caste’ groups.⁴⁷

In 1947, independent India was born. The ITMEB was reorganized to form the ‘Tea Board of India’ (hereafter, ‘the board’) by the Tea Act of 1953. Today, the board functions as a state agency of the Indian Government and works towards promoting the cultivation, manufacture, and trade of Indian tea. Over the last six decades, the tea business in India has grown steadily. Today, tea, as a commodity of trade, is a major driving force of the Indian economy.⁴⁸ In 2016, India produced 1.2 million metric tons of tea. Of this, 200 thousand metric tons was exported. India is the second largest producer and exporter of tea in the world; second only to China. With a domestic consumption of 91 thousand metric tons in 2014, India is the largest consumer of black tea. As of 2015, 567 thousand hectares of land is under tea cultivation, of which the maximum land and production is from the north-eastern state of Assam.⁴⁹

Tea comes from *Camellia Sinensis*, the ‘tea shrub’. A shrub takes close to five years to start producing leaves which can be used commercially and can stay productive for up to 100 years. Tea can be harvested all year round but has ‘peak seasons’ during which tea of higher quality is picked. The tea supply chain is long and complex and involves several intercessors along the way.⁵⁰ Once plucked, tea leaves are delivered to a processing unit at the earliest to retain

⁴⁵ Griffiths, P. J. (1967). *History of the Indian tea industry*, p. 196.

⁴⁶ Lutgendorf, P. (2012). Making tea in India: Chai, capitalism, culture. *Thesis Eleven*, 113(1), pp. 11-31.

⁴⁷ Ibid.

⁴⁸ Hazarika, K. (2011). Changing market scenario for Indian tea. *International Journal of Trade, Economics and Finance*, 2(4), p. 285.

⁴⁹ Tea Board of India. (2015). Tea area and production. Retrieved from http://www.teaboard.gov.in/pdf/Area_Production_2015_16_pdf4832.pdf (last accessed 10 September 2017)

⁵⁰ Das, A. K. (2009). Sustainability in tea industry: An Indian perspective, p. 6.

their quality.⁵¹ Processed tea is sent out for either direct selling or for auction. Around half of the total produce is sold through auction.⁵² At the auction, buyers blend and pack the tea, which is then sold to consumers. With every progressing stage in the supply chain, value is added to the tea leaves, making the downstream stages such as blending, packaging, and marketing more profitable. These ‘downstream activities’ are carried out mostly in buyer countries where large multinational companies amass wealth due to high profit margins.⁵³ Around 85 per cent of world tea production is sold by a few multinational corporations.⁵⁴ Unilever, Tata tea, Van Rees, and James Finlay are four major corporations that dominate the tea market globally.

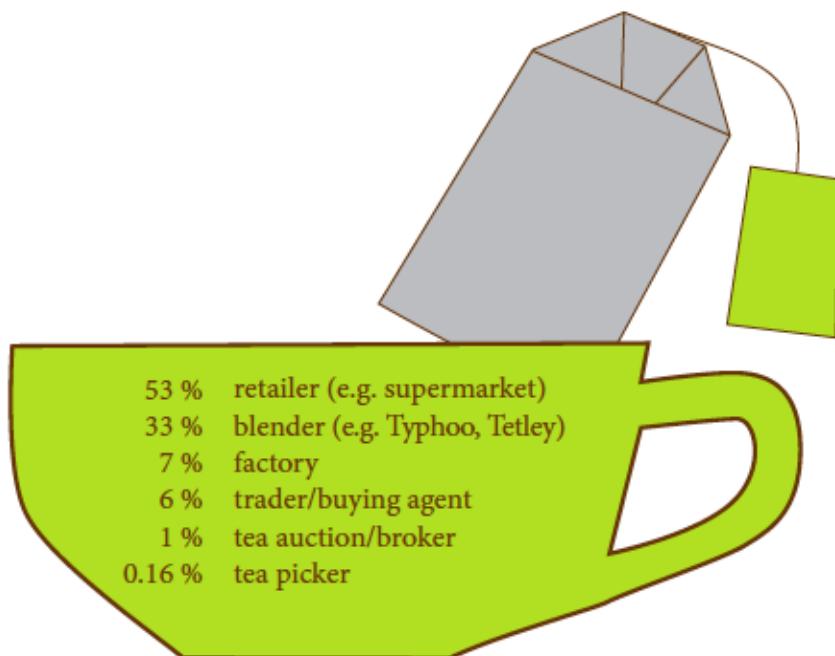


Figure 2 Profit distribution in the global tea supply chain. Source: GNRTFN report

⁵¹ Ibid.

⁵² Ibid.

⁵³ Hilary, J., & Dromey, J. (2010). A bitter cup: the exploitation of tea workers in India and Kenya supplying British supermarkets. *Fighting global poverty. War on Want*, p. 4.

⁵⁴ Huw, T. (2015). Good Practices by Multinational Enterprises in the Promotion of Decent Work in the Global Tea Supply Chain. Sectoral Studies on Decent Work in Global Supply Chains. *International Labour Organisation*, pp. 104-126.

2.4 WORKERS RIGHTS AND THEIR VIOLATION

Having ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), India is obliged to ensure the right of everyone to the enjoyment of just and favourable conditions at work according to Article 7 of the ICESCR. However, investigations carried out in the tea plantations of Assam in the recent years tell a different story.

This sub-chapter lists the grievances of workers in various tea plantations across the state of Assam. Two most recent reports i.e. The Global Network for the Right to Food and Nutrition's fact-finding mission report published in 2016, and Colombia Law School's paper titled 'the More Things Change' published in 2014, will be the main sources of information discussed in this chapter. Both reports being very extensive, cover the grievances of workers in great detail. This sub-chapter merely summarises the problems.

The Global Network for the Right to Food and Nutrition (GNRTFN) is an initiative of public interest that works towards the realization of the human right to adequate food and nutrition. In May 2016, GNRTFN published the results of its fact-finding mission about the abuses and violations of human rights in tea plantations in India. The report is titled 'A life without dignity –the price of your cup of tea'. The mission focussed on investigating and analysing allegations of serious human rights abuse on Indian tea plantations, in particular the workers' right to food and nutrition. The investigations in Assam were carried out in the Sibsagar, Tinsukia and Dibrugarh districts. The information provided by the report has been gathered by the fact-finding mission team which visited 17 plantations, interviewed approximately 300 workers, and met with relevant actors, including representatives from local groups supporting workers, academia, trade unions, tea plantation companies, and local, state and central government.

Human Rights Institute of Columbia Law School undertook extensive research from May 2010 to May 2013 to evaluate the extent of human rights violations on the tea plantations in Assam. The findings of the research were published in a report titled ““The More Things Change ...” (hereafter ‘the Colombia report’). The report was published in January 2014 and brought national and international attention to the plight of the tea workers in Assam. The research team visited 15 plantations and spoke to workers about their living conditions. Pay slips, pass books and documents related to the APPL share plan were examined in an effort to understand the conditions that the workers lived in.

Housing

“Housing facilities:

It shall be the duty of every employer to provide and maintain necessary housing accommodation for every worker (including his family) residing in the plantation”

Plantation Labour Act, section 15



Figure 3 Dilapidated housing, Hattigora 2017. Source: Accountabilitea project

The GNRTFN report provides detailed insight into the condition of workers' houses. Interviews conducted on various plantations reveal that most of the accommodation provided to the workers is in a depilated condition. Workers criticised the management for the poor conditions of their living quarters which were built 50 to 60 years ago. They also mentioned that pleas for repairs fall on deaf ears. Labour lines in public view are cleaned up by the management when an inspection is due.

One of the major problems with the housing is leaking roofs. Several workers informed the research team that they are often left without a place to eat when it rains because their roofs leak. One female workers reported not having eaten in a week because she could not leave her

house due to heavy flooding and insufficient housing construction. Leaking roofs and walls are also often rotting because of the sacks that are used to cover the leakages

The Colombia report fortifies the narrative by presenting evidence from the Hathikuli tea estate. Representatives from the Assam Chah Mazdoor Sangha (ACMS) who otherwise are quite resolute in their support for the management admitted that “the last time a new house was built, or an old house repaired, was 12 years ago”⁵⁵.

The Colombia report also goes on to explain that lack of a sufficient number of houses is a key issue. At Hattigor tea estate, several individuals who spoke to the research team claimed that they lived in a one-room accommodation with seven or eight other adults. Similarly, at Kakajan estate, four or five ‘nuclear families’ were found to be residing in together in two small rooms. A worker who did not wish to be identified stated “When we ask for our own house we are told ‘you people are used to living together in one house, so that is what you should do’”.⁵⁶

Sanitation

“(1) There shall be provided separately for males and females in every plantation a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed therein.

(2) All latrines and urinals provided under sub-section (1) shall be maintained in a clean and sanitary condition.”

Plantation Labour Act, Section 9

⁵⁵ Rosenblum, P., & Sukthankar, A. (2014). The More Things Change.. *The World Bank, Tata and Enduring Abuses on India's Tea Plantations*. New York: Columbia Law School Human Rights Institute, p. 35

⁵⁶ Ibid, p. 35.

The GNRTFN report states that workers on several estates mentioned that there was a dire lack of toilets in the labour lines and that the current latrines are 40 to 50 years old. Furthermore, the report also explains that workers have had to construct their own toilets due to the lack of action taken by the management. However, the research team concludes that the conditions of these self-built toilets are unsatisfactory.



The Colombia report focuses on the problem of unmanaged sewage on the labour lines. It

Figure 4 Cess pool in the labour lines, Nahorani 2013.

Source: GNRTFN report.

states that every plantation visited by the research team was found to have latrines in dangerous disrepair and refuse flowing directly into yards. Among all the plantations that were visited, the research team found the condition at Borhat to be the worst. According to the report, in Borhat, “open cesspools lay within a few feet of the doorstep of nearly every house. Raw sewage flowed from latrines into these pools, and clogged the shallow ditches surrounding each house and running alongside each lane in the labour lines. One house had three such cesspools, brimming with human waste”.⁵⁷

A similar situation was observed at almost all the tea estates visited by the team. The only recently constructed latrines the ones funded by UNICEF but even the management admitted that they were of inferior quality because the fund allotted by UNICEF were insufficient.

Water

“Drinking water

In every plantation, effective arrangements shall be made by the employer to provide and maintain at convenient places in the plantation a sufficient supply of wholesome drinking water for all workers.”

⁵⁷ Ibid, p. 40

Plantation Labour Act, Section 8



Figure 5 Figure 5 Sources of drinking water adjacent to latrines, Achbam 2013. Source: Colombia report

The GNRTFN report highlights that there is a dire lack of sufficient potable water on the labour lines – both in terms of quantity and quality. Access to water is a problem for workers because the management has not provided a sufficient number of hand pumps on the labour lines. The report mentions one worker stating that his labour line receives only 30 litres of water per day. Water is available twice a day and is shared by 58 people. Similarly, the Colombia report provides examples from various tea estates which were visited by the research team. In Borhat, in an effort to supplement the scant number of water taps, households had dug their own wells. At Kakajan, workers mentioned that during the dry season they had to walk for over an hour and a half to fetch water.

Both reports provide ample data about the available water being polluted. The GNRTFN report mentions that mixing of agricultural chemicals is done near sources of water meant for domestic consumption without appropriate precaution. Due to improper management of sewage, water often gets contaminated. The workers used to be able to clean the water using disinfectant provided by the management. However, the management stopped providing disinfectant and the workers cannot afford to purchase it anymore. Workers also complained that containers used for storing water were recycled tins which were previously used for holding tar.

The Colombia report suggests that consumption of untreated ground water is the primary cause of water borne diseases like diarrhoea and cholera, which are prevalent among the plantation workers. A group of workers from Majuli narrated an incident to the research team. The workers claimed that a cow had drowned in their drinking water supply but was not removed for several days. The workers continued to consume water from the same tank.

Gender Based Discrimination

The GNRTFN report points out that women work almost exclusively as tea pluckers. In contrast, men are given better paid clerical positions. 80 percent of the plucking is done by female workers. This perhaps stems from the belief that women's nimble fingers are more suited to plucking. However, this severely restricts the women's chances of getting promoted to a better paying position or earning higher wages.

“Family”, when used in relation to a worker means- (i)His or her spouse, and (ii) The legitimate and adopted children of the worker dependent upon him or, who have not completed their eighteenth year and includes parents and widow sister, dependent upon him or her”.

Plantation Labour Act, Section 2 (ee)

The Colombia report mentions that the employers systematically disregard the definition of 'family' as laid down by the PLA. Dependents of the female workers are excluded from access to benefits such as medical care or food rations in spite of the PLA explicitly including the spouses, children, and parents of both male and female workers. When questioned about this unfair practice, the welfare officer at Borjan "openly mocked the idea of a man receiving free health care as a dependant of his female spouse."⁵⁸ The officer argued that a man should work and take care of his own needs. Another official from Hattikuli reasoned that this practice was "an old bilateral agreement with the union".⁵⁹

“Nursing breaks - Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of prescribed duration for nursing the child until the child attains the age of fifteen months.”

Maternity Benefits Act, Section 11

The GNRTFN report makes a strong case about the violation of women's right to breastfeed their infants. Several female workers interviewed by the team reported that they were not provided with breastfeeding breaks and as a result had to use their lunch breaks to rush back home and feed their children. There were reports of management harassing women who they

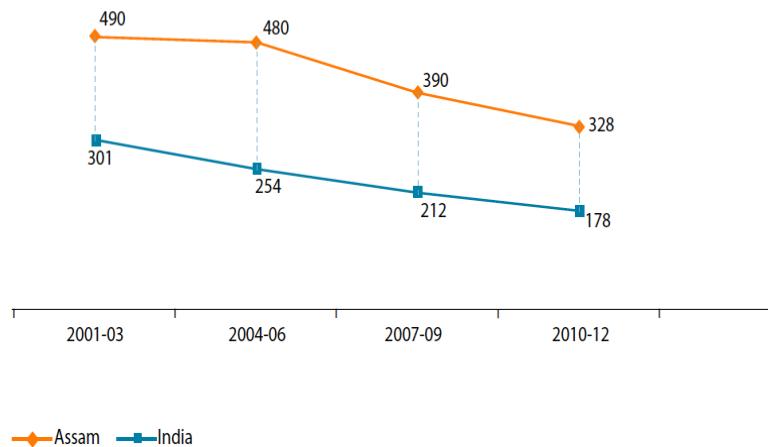
⁵⁸ Ibid, p. 48.

⁵⁹ Ibid.

saw breastfeeding by calling them pejorative names. This violates not only the Indian law but also international law. The Convention on the Elimination of Discrimination against Women (CEDAW), to which India is party, directs the state to

“encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities”.

CEDAW, Article 11



Source: RGI, Relevant Years.

Figure 6 Maternal mortality rate in Assam compared to Indian average. Source: Assam Human Development Report (2014).

Furthermore, the report states that the employers violate women’s maternity protection rights in regard to pre-natal and post-natal care. Women are compelled to continue performing the same tasks throughout their pregnancies in spite of requesting a lighter workload. As a result, the maternal mortality rates on tea plantations are alarmingly

high. According to the Assam Human Development Report (2014), the state has the highest levels of maternal mortality nationally, and one of the highest levels globally in specific regions such as the Upper Assam districts. In an interview with an assistant professor of gynaecology at Assam Medical College in Dibrugarh, the research team was told that “Out of 10 maternal mortality cases, 8 of them are from tea plantations”.⁶⁰ These conditions violate several clauses of the Indian Maternity Benefits Act as well as various articles of the ICESCR and CEDAW.

Medical facilities

⁶⁰ Global Network for the Right to Food and Nutrition (2016). A life without dignity –the price of your cup of tea, p. 32.

“Medical Facilities

(1) In every plantation, there shall be provided and maintained so as to be readily available such medical facilities for the workers [and their families] as may be prescribed by the State Government.”

Plantation Labour Act, Section 10

The Colombia report observes that several mass protests that have occurred on APPL plantations have been triggered by the severe mismanagement of medical services. Of the workers interviewed, several mentioned that they were treated with extreme callousness by the medical staff. A worker from Hattigor told the research team that “before the doctor even looks up at us he is writing out a prescription.”⁶¹ The research team experienced this dismissive behaviour first hand. For example, a doctor at Borjan, when questioned about these allegations made by the workers, said “what you need to understand about these people (workers) is that they have very low IQ”.⁶²

Another erroneous health related practice as observed by the research team was that patients had to present themselves at the clinic two, or even three times in order to access sick leave which they are entitled by law. “How are we supposed to walk two kilometres to the clinic and back again three times if we are sick?” questioned a worker from Majauli.⁶³ The management defended its stance on this rule by mentioning that the system was in place to ensure that the workers were not lying about being ill.

The GNRTFN report raises concerns about the fact that in case of serious sickness, workers must travel a distance of approximately 20 km to reach the nearest state-run hospital. In spite of the PLA directing plantations to have free medical facilities, there is often neither a health facility nor an ambulance available. According to the workers, the management does not reimburse medical costs incurred when the workers visit the government health facilities.

Wages

⁶¹ Rosenblum, P., & Sukthankar, A. (2014). The More Things Change.. *The World Bank, Tata and Enduring Abuses on India's Tea Plantations*. New York: Columbia Law School Human Rights Institute, p. 51

⁶² Ibid.

⁶³ Ibid.

Insufficient wages can be viewed as the root cause of the several problems faced by the workers. The GNRTFN report explains why the workers in Assam are paid much below the national average. The report explains that in the states of Assam and West Bengal, the wage is determined through collective tripartite bargaining involving the state, tea planters' association, and the workers' unions. As a result, the wage in Assam (in 2015) was INR 122 per day. In stark contrast, the tea plantation workers who performed the same activities in the Indian states of Kerala and Tamil Nadu earned an average of INR 301 per day. This difference can be attributed to the fact that the tea industry in these two states are part of scheduled employment under the Indian Minimum Wages Act, 1948. When compared to the national average wage earned by an unskilled agricultural worker, a tea worker in Assam earns half the amount.

Another issue faced by the workers is that of unfair deductions. Both reports have identified various unjust deductions from the workers' payslips for reasons such as electricity, medical expenses, union dues, and expenses for religious celebrations (irrespective of the workers' religious views). Furthermore, the payslips are written in English and are not understood by most of the workers.

The Colombia report also mentions the problem of sub-contracting wherein odd jobs such as cleaning of gutters and pruning of bushes is given out to casual labourers. These labourers are paid far less than what permanent or even temporary workers are paid.

Occupational safety

“Safety-

(1) In every plantation, effective arrangements shall be made by the employer to provide for the safety of workers in connection with the use, handling, storage and transport of insecticides, chemicals and toxic substances.”

Plantation Labour Act, Section 18 A

The main concern regarding occupational safety on the tea plantation presents itself in the form of unsafe handling of toxic pesticides. As per the Colombia report, the management at Namroop described to the research team in great detail the various measures and safety equipment used by workers handling pesticides. However, an unannounced visit by the team

offered a starkly contrasting reality. Workers received nothing besides a tarpaulin sheet to wrap around their waist while spraying the chemicals. At Achbam, the research team was informed by one of the workers that he did not use the googles provided by the management because they were of such low quality that it was impossible to see through them.

The GNRTFN report also points out that the lack of occupational safety also extends to other areas of work. The team interviewed a male temporary worker who worked as an electrician. The worker said that he is not provided with safety equipment.



Figure 7 Spraying pesticide without protective gear, Hattigor 2017. Source: Accountabilitea fact file

Human Trafficking

Trafficking of children and young people is rampant on the tea estates of Assam. Neither the Colombia report nor the GNRTFN report discuss this; perhaps due to the fact that it is seen as an external problem and not a problem on the tea estates per se. According to a report published by Stop the Traffik, a UK based organisation, human traffickers pose as employment agents and entice young people living on the tea estates of Assam to migrate to cities or groom parents to send children to cities on the promise of a better life.⁶⁴ Trafficked individuals are sold as domestic servants, poorly paid factory labour, or even sex workers.⁶⁵ It is difficult to capture

⁶⁴ Quinn, T. (2017). Report: Not my cup of tea. *Stop the traffic*, p. 13.

⁶⁵ Ibid.

the realities of human trafficking in and from Assam due to the absence of a composite quantitative database on human trafficking.⁶⁶

⁶⁶ UNICEF. (2014). Report: secondary data analysis on trafficking of women and children in Assam.

3. BUSINESS ACCOUNTABILITY THROUGH A LEGAL LENS

3.1 LABOUR RIGHTS VERSUS HUMAN RIGHTS IN THE CONTEXT OF ASSAM

Before considering the situation in Assam from the perspective of international and domestic law, it is important to discuss whether the grievances of the workers can be classified as a violation of their labour rights or human rights and whether the distinction between the two is necessary at all.

In her article ‘Are Labour Rights Human Rights?’, Virginia Mantouvalou discusses three approaches to analyse the relationship shared by human rights law and labour law. The first one is the positivistic approach which considers labour rights as human rights as long as they are explicitly incorporated in human rights documents⁶⁷. Though simplistic in its method, this approach sees the subject as ‘black and white’ while ignoring the ‘grey areas’ which seem to be in abundance in the context of this topic. The second approach is the instrumental one which is rooted in Marxist philosophy. The instrumental approach assesses whether labour rights are human rights based on how civil society and organisations fare in protecting labour rights as human rights. The third approach is the normative approach. It considers the definition of a human right and then goes on to examine whether a particular labour right fulfils the criteria put forth by the said definition.

These varied approaches go on to say that there is no single, fool proof method to conclude whether labour rights are indeed human rights. The answer to the question ‘are labour rights human rights?’ depends upon which approach is used to assess the same.

Another school of thought argues that human rights and labour rights are two separate issues. From this point of view, human rights are largely oriented towards limiting the power of the state whereas labour rights work towards limiting the power of private actors in the market; and while human rights concern individuals, labour rights are “collectively oriented”.⁶⁸

⁶⁷ Mantouvalou, V. (2012). Are labour rights human rights?. *European labour law journal*, 3(2), pp. 151-172.

⁶⁸ Kolben, K. (2009). Labor rights as human rights. *Va. J. Int'l L.*, 50, p. 449.

Furthermore, human rights are universal and possessed by all simply by the virtue of their humanity whereas labour rights are applicable to an individual only upon acquiring the status of a worker.⁶⁹ As a result of this distinction, international labour law and international human rights law are two independent spheres of international law. Contesting this view, Nadia Bernaz argues that although it is true that labour rights apply exclusively to workplace, it is incorrect to conclude that human rights are meant to apply only in non-workplace situations.⁷⁰

Another argument put forth by supporters of the dichotomous view is that the universality of labour law is much lower than that of human rights law. An example of this argument can be found in the application of the right to minimum wage. There is no universal ‘absolute minimum’ due to the fact that different societies can afford different minimum wages. As opposed to this, human rights are applicable to a person irrespective of what a society can or cannot afford. Mantouvalou argues that “if this argument is correct, it would mean that other social rights, like a right to basic subsistence or housing, are not human rights for the very same reason, namely because their precise content may vary depending on a country’s resources.”⁷¹

To reinforce this idea, another example offered by Mantouvalou is worth discussing.⁷² In this example, she compares the ‘human right to privacy’ with ‘workers’ privacy against employer interference’⁷³. Both these rights, like several other human and labour rights, were established for the purpose of achieving identical results but in different contexts. “It is a mistake to think that the right to privacy against state interference is more fundamental than the right to privacy against employer interference” she concludes.⁷⁴

Other scholars like Jay Youngdahl opine that classifying labour rights as human rights will deprive the workers of the much needed “solidarity and unity”.⁷⁵ He argues that

⁶⁹ Mundlak, G. (2007). The right to work: Linking human rights and employment policy. *International Labour Review*, 146(3-4), pp. 189-215.

⁷⁰ Bernaz, N. (2016). *Business and Human Rights: History, Law and Policy-Bridging the Accountability Gap*. Taylor & Francis, p. 53.

⁷¹ Mantouvalou, V. (2012). Are labour rights human rights?. *European labour law journal*, 3(2), pp. 151-172.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Youngdahl, J. (2009). Solidarity first: Labor rights are not the same as human rights. *New Labor Forum*, Vol. 18, No. 1, p. 31.

individualisation of the struggle at work will bring an end to the union movement.⁷⁶ In response to this, Lance Compa asserts that contemporary scholarship of human rights law no longer makes a distinction between individual rights and collective rights. He emphasises that “all social movements contain a bundle of animating forces, both individual and solidaristic.”⁷⁷

The discussion regarding whether labour rights are indeed human rights is a rather convoluted one and it is beyond the scope of this thesis to discuss all relevant schools of thought. However, from the examples and views discussed above, it is clear that in spite of certain undeniable differences, both the fields of study have overlapping goals. It would not be incorrect to say that the situation in Assam presents itself as a case of violation of the workers’ rights as both, human beings seeking a life of dignity as well as workers seeking a safe working environment and a secure future. For the purpose of identifying legal instruments that can aid in alleviating the plight of the Assamese tea workers, this chapter will analyse both human rights law as well as labour law without artificially dividing the two.

3.2 INTERNATIONAL STANDARDS AND MECHANISMS

3.2.1 THE UNITED NATIONS ON BUSINESS AND HUMAN RIGHTS

The United Nations’ work on the subject of the impact of business activities on human rights can be traced back to the early 1970’s when the UN’s Economic and Social council recommended the Secretary General to establish a group of experts to study the impact of transnational companies on the economic and social development of countries.⁷⁸ The appointed group worked for over two decades to establish a code of conduct for TNCs⁷⁹ but ended unsuccessfully in the early 1990s due to irreconcilable differences and disagreements between

⁷⁶ Ibid.

⁷⁷ Compa, L. (2009). Solidarity and human rights: A response to Youngdahl. *New Labor Forum*, Vol. 18, No. 1, pp. 38-45.

⁷⁸ UNCTC. ‘Background and Activities of the Commission and the Centre on Transnational Corporations: 1972 to 1975.

⁷⁹ Jägers, N. M. (2002). Corporate human rights obligations: In search of accountability. *School of Human Rights Research*, p. 17.

developed and developing countries.⁸⁰

After a few dormant years, the UN once again started formulating policies and documenting human rights responsibilities of companies. Among its most noteworthy initiatives in the area of business and human rights are the Global Compact which was launched in 2000, the appointment of a Special Representative for the purpose of formulating guiding principles on business and human rights in 2005, and the establishment of a five-member working group on the issue of human rights and transnational corporations and other business enterprises in 2011.

Although not directly focussed on human rights issues related to business, it is important to mention the Human Rights Council (HRC) which is the main intergovernmental organ of the United Nations for discourse on human rights and their protection. The Universal Periodic Review (UPR) is a reviewing mechanism supervised by the HRC. The scope of the HRC's work is wide and focuses on human rights from several perspectives. Since neither the HRC nor the UPR deal specifically with business and human rights, their work does not come under the purview of this chapter. However, certain promises made by the Indian government as a part of the UPR will be discussed later.

The contribution of the Special Representative in the form of the Guiding Principles and the activities of the Working Group will be analysed in this sub section from the point of view of addressing the situation in Assam.

Guiding Principles on Business and Human Rights

The last couple of decades have seen a colossal reshuffle of global power as the scales of the global economy continue to be tipped by heavyweights of the corporate world. To put things into perspective, in 2016, the ‘world’s top 100 economies’ list comprised of 69 corporations and only 31 countries⁸¹. This phenomenal increase in globalization has created visible governance gaps between “the scope and impact of the economic actors and the capacity of

⁸⁰ Muchlinski, P. (2007). *Multinational enterprises and the law*. Oxford University Press, p. 20.

⁸¹ The World Bank (2016). The world’s top 100 economies: 31 countries; 69 corporations. Retrieved from <https://blogs.worldbank.org/publicsphere/world-s-top-100-economies-31-countries-69-corporations> (last accessed 16 september 2017).

societies to manage their adverse consequences”; and these gaps can be seen as the root cause of the business and human rights predicament.⁸²

In an effort to bridge these gaps, the United Nations Human Rights Council (UNHRC) unanimously endorsed the United Nations Guiding Principles on Business and Human Rights (hereafter ‘Guiding Principles’) in 2011. The document was put together by Professor John Ruggie in his capacity of Special Representative of the Secretary-General (SRSG) on the issue of human rights and transnational companies. This development is seen as among the most significant efforts by the UN in recent years to promote increased visibility about the issue of business accountability for human rights violations.

The SRSG describes the Guiding Principles as “a principles-based conceptual and policy framework” built on a three-pronged structure of ‘Protect, Respect and Remedy’.⁸³ The three parts of the Guiding Principles are- the State duty to protect against human rights abuses by business enterprises, the corporate responsibility to respect human rights, and the need for greater access by victims to effective remedy. The text is not legally binding and aims to provide the State, businesses, and victims with broad guidelines for addressing relevant issues regarding the subject.

The Guiding Principles, when analysed with the purpose of finding a way to address the various human rights issues associated with tea production in Assam, come across as rather deficient in their language and structure. For instance, words such as ‘encourage’, ‘where appropriate’, and ‘appropriate steps and actions’ are used frequently and in the legal sense, this sets precedent for weak adaptations of human rights standards for the state as well as businesses.

Another pivotal point of discussion in the area of transnational corporations and human rights is the State’s extraterritorial obligations. Emphasis on extraterritorial obligations of businesses is especially relevant for transnational supply chains such as the one at hand. The language used in the Guiding Principles destabilises established obligations for states. For instance, the SRSG writes that “at present, States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or

⁸² Ruggie, J. (2008). Protect, respect and remedy: A framework for business and human rights.

⁸³ ibid

jurisdiction".⁸⁴ Instead of building upon the limited body of work on the subject of extraterritorial human rights obligations, the report devalues the importance of having a legal system in place for extraterritorial accountability. For instance, General comment 14 on the ICESCR indicates that states have an obligation to prevent third parties from violating the right to health in other countries.⁸⁵ Although this is in the context of right to health, it pointedly directs the State to protect its citizens from violations by third parties. This is not binding on states but nudges them in the direction of increased responsibility.

An important aspect of the case at hand is that India is a developing country and most of the corporate giants that source tea from Assam are located in developed countries. Governments of developed countries are often hesitant to hold companies incorporated therein accountable for violations caused abroad so as to not endanger their competitive advantage.⁸⁶ On the other hand, various factors such as an underdeveloped legal regime, economic hardships, corruption, and non-independent courts among others can be viewed as reasons for developing countries not holding businesses accountable for their actions.⁸⁷ These factors weaken the capacity of the states to establish and enforce effective legal mechanisms when it comes to businesses violating human rights. In spite of this the Guiding Principles rely heavily on domestic legal systems as opposed to exploring other alternatives that do not suffer from the shortcomings of state enforced regulation.⁸⁸

In discussing the ‘corporate responsibility to respect human rights’, the UNGPs exhibit certain limitations as well. The language used by the SRSG pushes the onus of protecting human rights onto the State and minimizes business accountability. In addressing corporations, the Guiding Principles’ only basis for requesting compliance seems to be ‘basic societal expectations’. The principles offer businesses non-binding “lowest-common-denominator” recommendations which do not seem to encompass the more complex reality of the situation.⁸⁹

⁸⁴ ibid, commentary on Guiding Principle 2

⁸⁵ Committee on Economic, Social and Cultural Rights. (2000). General Comment No. 14.

⁸⁶ McCorquodale, R., & Simons, P. (2007). Responsibility beyond borders: state responsibility for extraterritorial violations by corporations of international human rights law. *The Modern Law Review*, 70(4), pp. 598-625.

⁸⁷ Deva, S. (2012). Guiding principles on business and human rights: Implications for companies. *Ethical trading initiative*, p. 24.

⁸⁸ Ibid.

⁸⁹ Bilchitz, D. (2010). The Ruggie framework: An adequate rubric for corporate human rights obligations. *SUR-Int'l J. on Hum Rts.*, 12, p. 199.

The situation in Assam is further complicated by the virtue of the victims' identity as tribal people and the issue of gender-based discrimination. The Guiding Principles, as pointed out by FIDH's joint civil society statement, does not provide substantial guidance on protecting and respecting the rights of women, indigenous people, and other marginalised sections of the society even though these groups face much more hardship when it comes to seeking recourse.⁹⁰ In spite of suggestions made by the Human Rights Council to integrate a gender perspective in the formulation of the report, the SRSG does not lay too much emphasis on the issue in his report.⁹¹

Besides drawbacks specific to the situation in Assam, the UNGPs have several other aspects which could be improved upon, especially in the second pillar, which addresses businesses and guides them about human rights issues. In a nutshell, the UNGPs do not actively promote the idea of moving towards hard law for corporate accountability. Jägers fittingly suggests that "as a result of the desire to keep everyone at the table, the Guiding Principles on Business and Human Rights lack the teeth needed to bring to account those corporations and States unwilling to respect human rights."⁹²

However, when viewed in the historical context of developments in the field of business accountability for human rights, the Guiding Principles are an optimistic promise of further developments in the field. Previous attempts by the United Nations to put forth concrete regulation regarding business and human rights were largely unsuccessful. As put by Nadia Bernaz, "the Council's endorsement of the Guiding Principles gives the corporate responsibility to respect enhanced legitimacy beyond a mere social expectation"⁹³

The Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises

⁹⁰ Fédération des Ligues des Droits de l'Homme (FIDH). (2011). Joint Civil Society Statement on the draft Guiding Principles on Business and Human Rights.

⁹¹ Ibid.

⁹² Jägers, N. (2011). UN Guiding Principles on Business and Human Rights: Making Headway towards Real Corporate Accountability? *Netherlands Quarterly of Human Rights*, 29(2), pp. 159-163.

⁹³ Bernaz, N. (2016). *Business and Human Rights: History, Law and Policy-Bridging the Accountability Gap*. Taylor & Francis. p. 193.

In 2011, a Working Group on the issue of human rights and transnational corporations and other business enterprises was established by the Human Rights Council. The group consists of five independent experts of balanced geographical representation, appointed for a period of three years.⁹⁴ In June 2014, the working group's mandate was extended for three more years. The Working Group is responsible for the enabling the appropriate comprehension and implementation of the Guiding Principles by providing advice and recommendations regarding the development of domestic legislation and policies. The group makes recommendations at national, regional, and international levels.

A characteristic feature of the Working Group is conducting country visits to assess individual cases of human rights violations and intervene directly with States, business enterprises and others via the communications procedure.⁹⁵ Since its establishment, the group has conducted country visits to the Republic of Korea, Mexico, Brazil, Republic of Azerbaijan, the United States of America, Ghana, Mongolia, and very recently, to India for an Asia based multi-stakeholder consultation on gender and UNGPs.

In the light of the duration and extent of the human rights violations taking place in Assam and the involvement of transnational corporations and businesses in the matter, it is a strong contender for coming under the purview of the Working Group. As in the case of the Group's visits to Brazil in 2014 regarding human rights issues related to the World Cup wherein the International Federation for Human Rights (FIDH), a non-governmental human rights organisation sent in communications regarding the matter, Indian NGOs could initiate communication regarding the human rights related issues in Assam.

Global Compact

The idea of 'Global Compact' was first proposed by the former UN Secretary General Kofi Annan at the World Economic Forum in Davos on 31 January 1999.⁹⁶ The Compact is based on ten principles in the areas of human rights, labour, environment and anti-corruption. The

⁹⁴ Jägers, N. (2011). UN Guiding Principles on Business and Human Rights: Making Headway towards Real Corporate Accountability? *Netherlands Quarterly of Human Rights*, 29(2), 159-163.

⁹⁵ The Working Group's Communications procedure is described at
<http://www.ohchr.org/EN/Issues/Business/Pages/Submittingcomplaints.aspx> (last accessed 20 September 2016)

⁹⁶ UN Press Release SG/SM/6881. (1999). Retrieved from <http://www.un.org/press/en/1999/19990201.sgsm6881.html> (last accessed 1 November 2017)

UN established the Global Compact in 2000 with the aim of supporting companies to conduct their business responsibly by aligning their strategies and operations with the Ten Principles. These Principles are derived from the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. Membership to the compact is voluntary. Members are expected to take strategic actions to advance broader social goals with an emphasis on collaboration and innovation. Companies such as Unilever and Tata tea (now Tata Global Beverages) are members of the Global Compact and have previously reported on how they align their businesses with the interests of the compact. The publicly available reports date back to 2010 or before. They do not reflect the state of the business at present and therefore cannot be considered relevant to this research.

3.2.2 INTERNATIONAL LABOUR ORGANISATION AND THE TEA INDUSTRY

The International Labour Organisation (ILO) since its inception in 1919 and later, its establishment as a special agency of the UN in 1946, has been responsible for developing and overseeing the implementation of international labour standards. The ILO has a tripartite structure which enables representatives of workers, employers, and governments to participate in discussions and formulation of policies on an equal footing.

The organisation has a robust supervision system which involves examination by two ILO bodies of periodic reports submitted by member states.⁹⁷ These reports elaborate on the measures taken by states to implement the provisions of the ILO conventions that they have ratified. Employers and worker organisations can comment on the reports prior to their submission to the Committee of Experts, which then publishes its observations in an annual report.⁹⁸ Civil society organisations can send in reports or observations related to one of the

⁹⁷ The two ILO bodies are the Committee of Experts on the Application of Conventions and Recommendations and the Tripartite Committee on the Application of Standards of the International Labour Conference.

⁹⁸ Fédération des Ligues des Droits de l'Homme (FIDH). (2016). *Corporate Accountability for Human Rights Abuses- A Guide for Victims and NGOs on Recourse Mechanisms*. 3rd edition. pp. 80-98.

ILO conventions to a union in their country or to the International Trade Union Confederation.⁹⁹ These observations can be used as an advocacy tool to pressure governments into fulfilling their commitments.¹⁰⁰

It is important to note that this mechanism can be implemented only in the case of ratification by member states. In the case of agriculture, India has not ratified several conventions directed towards fair treatment of agricultural workers. Among these are the Freedom of Association and Protection of the Right to Organize Convention (1948), Indigenous and Tribal Peoples Convention (1989), Labour Inspection (Agriculture) Convention (1969), Minimum Wage Fixing Machinery (Agriculture) Convention (1951), Plantations Convention (1958), Right to Organize and Collective Bargaining Convention (1949), and Safety and Health in Agriculture Convention (2001).¹⁰¹ All these conventions could have been used to initiate a dialogue at the ILO about the labour conditions in Assam but due to India's non-ratification, it is not possible for employers, worker representatives, or civil society organisations to do so.

However, the ILO's efforts in the recent years towards realising better working conditions for workers employed in the tea industry provides hope for a possible intervention in the case of Assam in the near future. In 2015, the Sectoral Policies Department published a report titled 'Sectoral Studies on Decent Work in Global Supply Chains' which provides an in-depth analysis of the global tea supply chain among others and makes suggestions for improved labour conditions for workers. Discussing the findings of this report and applying them in the context of Assam could offer insight into how labour conditions could be improved.

In 2015, ILO published a study of good practices by multinational enterprises for the promotion of decent work in four rapidly growing sectors of the economy- chemicals, logistics, tourism, and tea. This study was conducted for the purpose of providing input to the International Labour Conference of June 2016. The study on the tea industry will be the point of discussion of this section. The report provides insight about the global tea supply chain and the initiatives taken by various tea businesses to promote better working conditions in the industry. However, what is relevant to this chapter is the part of the report that assesses the effectiveness of

⁹⁹ ibid

¹⁰⁰ ibid

¹⁰¹ Information System on International Labour Standards: NORMLEX (2015). Retrieved from <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:1:0::NO> (last accessed 5 November 2017).

corporate social responsibility (CSR) practices and provides comments on how current practices can be improved upon.

The report boldly reinforces ILO's stand on CSR by quoting the Director-General of ILO (2014) who described CSR as "the unwanted child of globalization, born of the inability or unwillingness of governments to subject enterprises to effective binding regulation".¹⁰² The report goes on to criticize the auction system in tea purchasing which makes it difficult for multinational enterprises to trace subcontractors and implement and monitor standards across the supply chain. Therefore, even if plantations are certified, they are likely to suffer from severe decent work deficit.¹⁰³

Heavy reliance on certification schemes by tea businesses is condemned by the report because certification schemes are not nearly as effective as well-implemented national law. This is particularly true about wages, wherein certification schemes rely upon minimum wages in the country as opposed to the true definition of a living wage. The report points out that certification schemes should not be used as an alternative to efficient law implementation but a way to complement it. Another interesting observation is that certification schemes are seen by TNCs as an indulgence and a way to differentiate their products in the market. Certification schemes are expensive and therefore can be afforded only by the largest TNCs.¹⁰⁴ As a result, plantation workers who are not directly employed by TNCs lose out whatever benefits certification schemes provide.¹⁰⁵ The report provides the example of Kenya, which was successful in developing a more comprehensive certification scheme by involving local partners who were able to reach out to a wide range of smallholders and engage them in the process of certification.¹⁰⁶ Additionally, the problem of businesses relying on the Rainforest Alliance certification which is the lowest baseline certification scheme in terms of labour standards is discussed.

¹⁰² Huw, T. (2015). Good Practices by Multinational Enterprises in the Promotion of Decent Work in the Global Tea Supply Chain. Sectoral Studies on Decent Work in Global Supply Chains. *International Labour Organisation*. pp. 104-126.

¹⁰³ Stichting Onderzoek Multinationale Ondernemingen [Centre for Research on Multinational Corporations] (SOMO). (2011). Small cup, big difference?

¹⁰⁴ Mzembe, A. N., Lindgreen, A., Maon, F., & Vanhamme, J. (2016). Investigating the drivers of corporate social responsibility in the global tea supply chain: A case study of Eastern Produce Limited in Malawi. *Corporate Social Responsibility and Environmental Management*, 23(3), pp. 165-178.

¹⁰⁵ Griffiths, P. (2012). Ethical objections to fairtrade. *Journal of Business Ethics*, 105(3), pp. 357-373.

¹⁰⁶ Initiatief Duurzame Handel (IDH) & True Price. (2011). Tea sector overview.

Another important angle to the problem according to the study is that of a low bargaining power of labourers employed in the tea industry in developing countries. Tea is exported mostly to developed countries where consumers have a higher bargaining power alleviating the overall bargaining power of the supply chain. Unfortunately, most tea produced in developing countries like India is for domestic consumption and in this case, the bargaining power of both the labour force and consumers is quite low. This causes governance gaps which the report suggests should be filled by ILO by building the capacity of its tripartite constituents, leading to increased collective bargaining power in supply chains with weak consumer power.

The study also suggests that multinational companies should provide support to existing structures such as trade unions and employers to ensure improved efficiency, productivity, and better working conditions on the ground. The ILO emphasises including trade unions for collective bargaining and setting appropriate minimum wages. Companies have come to realise in recent years that if they do not involve workers' representatives in their improvement schemes, the chances of success are quite low.

Yet another solution that the study offers is a market-based approach to encourage TNCs to promote decent working conditions in their supply chains. Consumers are increasingly aware of the negative impact of businesses and are likely to evaluate a company's social and environmental commitment before deciding whether or not to buy a certain product.¹⁰⁷ This approach is not a substitute for appropriate legislation but simply an incentive for companies to improve working conditions and at the same time enjoy benefits such as improved income and access to newer markets.¹⁰⁸

All the recommendations made by the report are highly applicable to the tea industry in Assam. Shorter supply chains by excluding middlemen, a stronger reinforcement of the Plantation Labour Act, and reduced reliance on certification schemes could make a positive impact on the workers' living conditions. The core improvement however should be made in the existing trade unions and their functioning. Although trade unions exist, their effectiveness in securing and safeguarding the interests of the workers has not been very impressive.¹⁰⁹ Assam Chah

¹⁰⁷ Cone Communications (CONE). (2013). Social impact study: The next cause evolution.

¹⁰⁸ Tropical Commodity Coalition (TCC). (2010). Tea barometer.

¹⁰⁹ Mishra, D. K., Sarma, A., & Upadhyay, V. (2011). Invisible chains? Crisis in the tea industry and the 'unfreedom' of labour in Assam's tea plantations. *Contemporary South Asia*, 19(1), pp. 75-90.

Mazdoor Sangha (ACMS), a trade union, is the primary representative organization for tea workers in Assam and has sole recognition on most of the tea estates in Assam.¹¹⁰ Their dominance is known to hinder the activities of other groups that seek to represent tea workers in Assam and some non-governmental organisations such as IUF even allege that ACMS along with the employers and the state government work together to stifle workers' rights to associate and bargain collectively.¹¹¹ An improved union and worker representation would result in better bargaining power for the workers, more efficient monitoring of the certification schemes, and the implementation of the ILO's tripartite system.

3.3.3 OECD GUIDELINES

The Organisation for Economic Cooperation and Development (OECD) is an international organisation that aims to “promote policies that will improve the economic and social well-being of people around the world”¹¹² The establishment of the OECD can be traced back to 1948 when the Organisation for European Economic Cooperation (OEEC) was founded for the purpose of administering the Marshall Plan which was set up for the economic reconstruction of Europe. Over the years, the organisation grew to be more inclusive and the OEEC was replaced by the OECD in 1960.

In 1976, the OECD published the first version of their Guidelines for Multinational Enterprises (hereafter ‘the Guidelines’). The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries.¹¹³ They offer non-binding principles for responsible conduct and are consistent with applicable internationally recognized standards.¹¹⁴ In 2011, the Guidelines were updated for the fifth time. This update is noteworthy because of the inclusion of a new chapter about the corporate responsibility to respect human rights. The chapter reflects the standards mentioned in the UN Guiding Principles on Business and Human rights.

¹¹⁰ Compliance Advisor Ombudsman. (2016). CAO Investigation of IFC Environmental and Social Performance in relation to: Amalgamated Plantations Private Limited (APPL), India.

¹¹¹ Ibid

¹¹² About the OECD. (2017). Retrieved from <http://www.oecd.org/about/>. (Last accessed 20 November 2017).

¹¹³ OECD. (2011). OECD Guidelines for Multinational Enterprises. OECD Publishing.

¹¹⁴ Ibid.

As per the guidelines, governments of OECD-adhering countries are obliged to establish a National Contact Point (NCP). The NCPs are responsible for the promotion of the Guidelines, resolving issues via the ‘specific instances’ mechanism¹¹⁵, and assisting civil society in the interpretation of the Guidelines.

India is not a member of the OECD and therefore does not have an NCP. However, this does not end the possibility of raising the issue of the human rights violations faced by the tea workers in Assam with the OECD. According to chapter 1 of the Guidelines, multinational enterprises are required to “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.”¹¹⁶ According to the Commentary on the Guidelines, ‘business relationship’ includes “relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services.”¹¹⁷

In the Assam tea supply chain, the largest MNEs engaged in trading, packaging, and blending (with the exception of TGB) are enterprises based in the United Kingdom. The UK is a member of the OECD and therefore its NCP is authorised to receive communications regarding human rights violations inflicted by UK based MNEs. Any “interested party”, including representatives of employers’ organisations, trade unions, NGOs, as well as individuals can file a complaint with an NCP if proof of its interest in the issue can be provided.¹¹⁸

An example of a complaint filed at the NCP of the MNE’s home country would be the case brought against Nidera- a Dutch agricultural company. The case attempted to highlight Nidera’s violations of the Guidelines in Argentina. Dutch as well as Argentinian NGOs filed a case with the Dutch NCP rather than the Argentinian NCP because they believed that the violations were a result of strategic policy decisions made by the parent company and must be

¹¹⁵ Detailed information about the specific instances can be found at <http://mneguidelines.oecd.org/specificinstances.htm>

¹¹⁶OECD. (2011). OECD Guidelines for Multinational Enterprises. OECD Publishing., op. cit. Chapter I, § 3.

¹¹⁷ OECD. (2011). OECD Guidelines for Multinational Enterprises. OECD Publishing. Commentary on Human Rights, comment 43.

¹¹⁸ Ibid.

resolved in the Netherlands itself.¹¹⁹

However, it is important to note that an NCP's advice is not legally enforceable since it is not a judicial institution. It cannot grant financial compensation to victims or impose pecuniary sanctions on companies. While NCPs are not capable of legally enforcing their decisions, they can positively influence the conduct of MNEs by the virtue of their conclusions and observations being out in the public domain.¹²⁰

The fact that India is not an OECD member and that the MNEs in question do not directly employ plantation workers does make the case weaker than most of the successful cases. However, NCPs do not require legal representation and therefore the complainants are not faced with much expenditures when filing a complaint. Despite the evident drawbacks of using this mechanism for the case of Assam, if the concerned NCP concludes that the MNEs in question are indeed responsible for the human rights violations taking place in their supply chain, there is a possibility for improvement. Intervention by an NCP can reinforce the Guiding Principles' stance about enterprises being able to influence intermediaries in their supply chains to not infringe workers' rights through contractual arrangements such as management contracts, pre-qualification requirements for potential suppliers, voting trusts, and licence or franchise agreements.¹²¹

3.3.4 INTERNATIONAL FINANCIAL INSTITUTIONS AND OMBUDSMEN

Traditionally, human rights have not been a part of international financial institutions' scope of work.¹²² In recent years however, financial institutions have started to incorporate human rights standards into their social and environmental policies.¹²³ If a financial institution does

¹¹⁹NCP Netherlands. (2011). CEDHA et al. vs Nidera. See also Wilde-Ramsing, J. (2009). Toward parent company and home country responsibility in OECD Guidelines cases. *OECD Watch*. Retrieved from <https://www.oecdwatch.org/news-en/toward-parent-company-and-home-country-responsibility-in-oecd-guidelines-cases>

¹²⁰Fédération des Ligues des Droits de l'Homme (FIDH). (2016). *Corporate Accountability for Human Rights Abuses- A Guide for Victims and NGOs on Recourse Mechanisms*. 3rd edition, p.410

¹²¹ Commentary on General Principles, § 21.

¹²²Fédération des Ligues des Droits de l'Homme (FIDH). (2016). *Corporate Accountability for Human Rights Abuses- A Guide for Victims and NGOs on Recourse Mechanisms*. 3rd edition, pp. 439-461.

¹²³Ibid

include human rights regulations in its policies, concerns regarding human rights issues related to projects funded by these institutions can be raised with the complaint mechanisms that are established to resolve disputes and assess whether a project financed by the bank complies with its policies.¹²⁴

In the case of Assam, the World Bank Group and its recourse mechanism are of immense importance. The World Bank Group is a global partnership of five institutions working for sustainable solutions that reduce poverty and build shared prosperity in developing countries.¹²⁵ Among the five institutions, the International Financial (IFC) corporation is of relevance to this subchapter. The IFC is the largest global development institution focused exclusively on the private sector in developing countries.¹²⁶

The Office of the Compliance Advisor/Ombudsman (CAO) is the independent recourse mechanism for IFC and the Multilateral Investment Guarantee Agency (MIGA), both of which are a part of the World Bank Group and are responsible for private sector lending.¹²⁷ CAO's mission is to address complaints by people affected by IFC or MIGA projects and to enhance the social and environmental accountability of both institutions.¹²⁸ It does this by resolving disputes with project-affected communities, carrying out compliance investigations of the environmental and social performances of IFC and MIGA, and by providing independent advice to the World Bank Group president and IFC/MIGA senior management on systemic environmental and social issues.¹²⁹

Regarding the social and environmental impact of the projects they support, IFC and MIGA apply their Performance Standards (PS) which cover the following areas:¹³⁰

¹²⁴ Ibid

¹²⁵ World Bank. (2017). Who we are. Retrieved from <http://www.worldbank.org/en/who-we-are>. (Last accessed 22 November 2017).

¹²⁶ International Financial Corporation. (2017) About IFC. Retrieved from http://www.ifc.org/wps/wcm/connect/corp_ext_content/ifc_external_corporate_site/about+ifc_new. (Last accessed 22 November 2017)

¹²⁷ Compliance Advisor/Ombudsman. (2017). About the CAO. Retrieved from: <http://www.cao-ombudsman.org/about/>. (Last accessed 22 November 2017).

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ Ibid.

- Assessment and management of social and environmental risks and impacts
- Labour and working conditions
- Resource efficiency and pollution prevention
- Community, health, safety and security
- Land acquisition and involuntary resettlement
- Biodiversity conservation and sustainable management of living natural resources
- Indigenous peoples
- Cultural heritage

Any individual or group of individuals affected, or potentially affected, by the environmental and/or social impacts of an IFC/MIGA project can lodge a complaint with CAO. It is possible for an organisation or individuals representing those affected to file a complaint if they provide explicit evidence of authority to present the complaint on the behalf of the victims.¹³¹

In April 2009, the World Bank Group's International Financial Corporation invested USD 7.87 million in Tata Global Beverages' (TGB, formerly Tata Tea Limited) company Amalgamated Plantations Private Limited.¹³² The project was set up to acquire and manage 24 tea plantations located in Assam and its neighbouring state West Bengal.¹³³ The company promised to implement a sustainable employee-owned plantation model.¹³⁴ The company's shares are held by the management and employees of the company (15% - 20%), TGB (19%), IFC (19%), and other investors the balance.¹³⁵

In 2011, CAO received a complaint from the International Union of Food Workers (IUF) outlining concerns from unions representing workers on an APPL tea estate.¹³⁶ In 2012, the CAO Vice President authorised a compliance appraisal in relation to IFC's investment in APPL. In January 2013, CAO concluded that IFC's investment in APPL warranted a compliance investigation.

¹³¹ Compliance Advisor Ombudsman. (2013). CAO Operational Guidelines. p.10.

¹³² IFC project information portal. (2017). Tata tea. Retrieved from <https://disclosures.ifc.org/#/projectDetail/SPI/25074>. (Last accessed 23 November 2017).

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Compliance Advisor Ombudsman. (2016). CAO Investigation of IFC Environmental and Social Performance in relation to: Amalgamated Plantations Private Limited (APPL), India.

In February 2013, CAO received a complaint from three Indian non-governmental organizations (NGOs) on behalf of workers on three of APPL's plantations in Assam. The complaint raised concerns about living and working conditions on the APPL tea estates.¹³⁷ The letter highlighted the long working hours, inadequate compensation, restrictions on freedom of association, poor hygiene and health concerns, poor living conditions, and inadequate protection for workers using pesticides. The complaint also raised concerns about lack of consultation with the workers regarding the share program as well as IFC's decision not to apply its Indigenous Peoples policies to the tribal minorities who work on the tea estates. CAO completed an appraisal of the complaint in February 2014 and determined that the issues raised merited further inquiry.¹³⁸ In 2016, CAO published a detailed report containing data from the investigation it carried out to ascertain if the APPL project had indeed violated certain social and environmental standards of the IFC.

In this report, CAO found that IFC's supervision of the investment in APPL did not meet the requirements of its sustainability policy or relevant internal procedures.¹³⁹ In particular, CAO found that IFC did not develop and retain the information needed to assess TGB's compliance with the performance standards as required.¹⁴⁰ In the context of the living conditions on the plantation, the report finds that IFC did not assure itself that TGB was discharging its obligation to provide housing and other services in a manner that met the requirements of the relevant Performance Standards or those of Indian law.¹⁴¹ The report also systematically answers all questions raised by civil society organisations and made suggestions to IFC regarding the steps needed to be taken for redress of the shortcomings in its adherence to social and environmental policies.

In response to the CAO investigation, APPL formulated 'Project Unnati'¹⁴² to improve the living and working conditions of tea plantation workers across various plantations in Assam.

¹³⁷ Civil society's letter to CAO about conditions on APPL plantations. (2015). Retrieved from <http://www.accountabilitycounsel.org/wp-content/uploads/2017/08/9.18.15-Letter-to-CAO.pdf>. (Last accessed 26 November 2017).

¹³⁸ Ibid.

¹³⁹ Compliance Advisor Ombudsman. (2016). CAO Investigation of IFC Environmental and Social Performance in relation to: Amalgamated Plantations Private Limited (APPL), India.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Unnati means progress in Hindi

The project seeks to improve the quality of life on APPL plantations by providing the necessary infrastructure such as schools, crèches, well-staffed hospitals, and improved housing and sanitation facilities.¹⁴³ Although the extent of the project's impact has not been well documented yet, it is a step in the right direction and an example of how international recourse mechanisms can be used to bring attention to human rights violations inflicted by businesses.¹⁴⁴ As in this case, civil society organisations play an important role in bringing attention to human rights grievances since the victims are often ill-equipped to use recourse mechanisms.

One of the main drawbacks of attempting to solve the problem at hand using financial institutions' recourse mechanisms is the exclusion of tea gardens that are not a part of APPL. As a result, there is a striking paucity of data regarding the conditions on non-APPL owned tea gardens in Assam.

3.3 SELECTED NATIONAL LAW

3.3.1 BUSINESS AND HUMAN RIGHTS IN INDIA- AN ANALYSIS OF SURYA DEVA'S BACKGROUND PAPER FOR INDIA'S NATIONAL FRAMEWORK ON BUSINESS AND HUMAN RIGHTS

Although the focus of this research is on international human rights law and businesses, the role of the Indian law in the context of the situation in Assam cannot be overlooked. After all, all instruments of international human rights law point out that it is the responsibility of the State to ensure that businesses do not get away with violating the rights of its citizens. When discussing domestic legal reforms that could potentially bring relief to the victims of Assam's tea gardens, various instruments of Indian law such as the Plantation Labour Act (1951) and the Protection of Human Rights Act (1993) can be analysed. However, they are scattered,

¹⁴³ More information about the project is available at <http://amalgamatedplantations.co.in/sustainability/project-unnati>

¹⁴⁴ Solidaridad, an internationally operating social organization was selected to conduct an independent assessment of the action plan for Project Unnati. The assessment is based on two tea gardens and therefore cannot be seen as representative of all APPL plantations. The report is available at: <http://amalgamatedplantations.co.in/pdf/APPL-assessment-Executive-Summary.pdf>

inconsistent, and in some cases, obsolete when it comes to business accountability for human rights violations.

In March 2016, Surya Deva, one of the five members of the UN's Working Group on business and human rights, published the first ever work that discussed the advantages of having a national framework for business as human rights in India.¹⁴⁵ The paper being eclectic in its scope, discusses several issues and their influence on a possible national framework for business and human rights in India. It examines whether India needs a business and human rights (BHR) framework at the national level to implement the UN Guiding Principles and what its contents should be. This subchapter seeks to discuss the salient features of the proposed framework from the point of view of how such a legislation would help the case of Assam.

The paper emphasises that although India has a comprehensive legal framework in a wide range of areas connected to the issue of BHR, there is a need to change patchy, outdated or cumbersome regulations into a coherent and holistic framework which seeks to encourage compliance in a manner that does not come across as adversarial or hierarchical.

Firstly, having ratified a number of international human rights instruments, India already fulfils various explicit and implicit obligations related to safeguarding the human rights of its citizens. Secondly, Deva points out that developing a BHR framework would be consistent with article 51 of the Indian Constitution which provides that the state shall endeavour to foster respect for international law.¹⁴⁶ Thirdly, India already has a vast but piecemeal legal framework that obligates companies to include human rights norms in its policies. Using these three arguments as cornerstones, the paper recommends a National Action Plan (NAP) for BHR in India.

Labour Law

Being home to the world's largest youth population makes India an attractive destination for investors from labour intensive industries. As a result, the Indian labour law is important to both businesses and the community. The issue of labour relations in India is regulated by a

¹⁴⁵ Deva, S. (2016). Background Paper for India's National Framework on Business and Human Rights.

¹⁴⁶ Constitution of India. (1950). Part IV. Art.51.

large body of 60 central laws and 200 state laws.¹⁴⁷ This labour law framework operates within the scaffold of various ILO conventions ratified by India.

An analysis of this framework makes it implicit that there is no dearth of regulations covering almost all aspects of labour rights in the country. Yet, as seen from the case at hand, violations of labour rights are wide-spread. Deva reasons that this happens due to “low awareness of rights, corruption, understaffed regulatory bodies, unreliable or unsophisticated trade union leadership, and adjudicatory delays” and as a result, realisation of labour rights ends up only a dream in many instances.¹⁴⁸

Prior to 1991, Indian labour laws were largely pro-labour. In 1991, India opened up its markets and framed economic policies which encouraged liberalisation, privatisation and globalisation. This reduced the overall bargaining power of trade unions. Till date, the government continues to make amends to the labour legislation in order to make India an investor-friendly labour market.¹⁴⁹

In 2015, the Ministry of Labour and Employment introduced the Industrial Relations Bill.¹⁵⁰ As stated in the paper, the main objective of the Bill is to consolidate laws relating to trade unions, conditions of employment, and the investigation and settlement of disputes in order to make the labour law regime in India support an investor-friendly labour market. According to Deva, “it is likely that post-reform laws will offer businesses more leverage and flexibility in negotiating employment terms with their workers.”¹⁵¹ This may not work in the favour of workers when it comes to realising their human rights. A dedicated BHR framework applied through a National Action Plan can be instrumental in striking a balance between the increasing privatisation of the Indian economy and the worker’s rights.

Tort Law

¹⁴⁷ Saini, D. (2011). Employment law framework: structure and potential hurdles. *Doing Business in India*, London: Routledge, pp. 23-45.

¹⁴⁸ Deva, S. (2016). Background Paper for India’s National Framework on Business and Human Rights. p. 24

¹⁴⁹ Badigannavar, V., & Kelly, J. (2012). Do labour laws protect labour in India? Union experiences of workplace employment regulations in Maharashtra, India. *Industrial Law Journal*, 41(4), pp. 439-470.

¹⁵⁰ Labour code on industrial relations bill. (2015). *Government of India*.

¹⁵¹ Deva, S. (2016). Background Paper for India’s National Framework on Business and Human Rights. p. 24

The paper suggests that introducing a BHR framework could improve the way tort law can be used by victims of human rights violations to claim compensation. Various aspects of the Indian tort law can be invoked against companies to ensure compliance with human rights norms. However, in cases such as Assam, using tort law would ensue mass tort claims and the Indian judicial system is not well equipped to deal with them according to Deva. This is evident from the case of the Bhopal gas tragedy¹⁵² of 1984 where prolonged litigation and the burden of proof has resulted in delayed justice for victims.

CSR legislation

In the recent years, the Indian government has been endeavouring to implement comprehensive corporate social responsibility policies. The National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business 2011, CSR provisions in the Companies Act 2013, and the Model Bilateral Investment Treaty (BIT) 2015 are examples of the recent CSR legislation in India. The paper endorses that developing a BHR framework would allow the government to build on these initiatives and encourage companies to incorporate respect for human rights in their operations.

Constitutional law

Part IV of the Indian Constitution includes a list of Directive Principles of State Policy (DPs). These principles are mainly socioeconomic rights such as the right to work, just and humane conditions of work, living wages, equal pay for equal work, participation of workers in management, maternity leave, equitable distribution and control of material resources of the community for the common good, dignified working conditions for workers, and protection of the environment.¹⁵³ Several of these DPs are violated in the case of Assam but since they are non-justiciable in nature, the violations of DPs cannot be presented before a court of law. However, the paper suggests that although the application of all the DPs is limited to the state, they could become relevant for business in some ways. The state can choose to extend DPs to private business actors and ensure their horizontal applicability.

¹⁵² In December 1984, malfunctioning of the Union Carbide India Limited pesticide plant in the Indian city of Bhopal exposed over 500,000 people to methyl isocyanate (MIC) gas and other chemicals. For a critical analysis of how the Bhopal tragedy influenced India's laws about corporate accountability, refer to Deva, S. (2012). Corporate human rights accountability in India: What have we learned from Bhopal?.

¹⁵³ Constitution of India. (1950). Part IV. Art. 36-51

Part III of the Indian Constitution provides a list of fundamental rights conferred upon citizens. The list comprises of rights such as the right to equality before the law, freedom of speech and expression, freedom to form associations or unions, right to life and personal liberty, right to education, prohibition of trafficking of human beings and forced labour among others.¹⁵⁴ Unlike the DPs, FRs are justiciable; but a narrow reading of the law projects them as predominantly vertically applicable. Over the years, when deemed necessary for various cases, the judiciary has provided for a wider interpretation of these FRs which extends their applicability to businesses as well. A BHR framework could work towards extrapolation of this applicability and aid in developing policies based on a wider interpretation of constitutional law.

Consideration for marginalised sections and sector-specific guidelines

Deva advises that a ‘one size fits all’ approach will not bode well while developing a NAP for India. It would not be possible to apply a single, central law to businesses operating in different sectors. Sector specific guidelines would address the unique human rights challenges faced by different sectors of the economy.

In terms of being inclusive in its scope, the BHR framework, according to the paper, should pay special attention to vulnerable or marginalised groups. In the case of Assam, since the victims are mostly female migrant workers belonging to scheduled tribes, access to justice becomes arduous due to lack of financial and social security. The formulation of the NAP should be based on advice from government and civil society organs that specialise in dealing with issues related to these groups.

Improved access to justice

Improved access to justice and optimally functioning redress mechanisms are central to the success of the proposed framework. As discussed before, the current Indian judicial system suffers from delays due to high costs, corruption, and being understaffed. The paper addresses this issue and advises that steps should be taken in order to overcome these obstacles. This is especially true in case of non-serious abuses that do not amount to criminal offences. Access to swift and cheap justice is the backbone of a good BHR legislation.

¹⁵⁴ Constitution of India. (1950). Part III. Art. 12-35.

3.3.2 THE UK'S MODERN SLAVERY ACT (2015)- TRANSPARENCY IN SUPPLY CHAINS CLAUSE

On March 26, 2015, the British Parliament enacted the Modern Slavery Act (hereafter MSA or the Act). Described by its proponents as ‘world-leading’, the Act seeks to tackle human trafficking and forced labour in UK. Clause 54 of the MSA sets out provisions for transparency in supply chains (hereafter the TISC clause) and requires ‘commercial organisations’ with a turnover exceeding £36 million¹⁵⁵ to prepare a slavery and human trafficking statement for each financial year. The Act defines a commercial organisation as any corporate body carrying out all or part of its business in the UK.¹⁵⁶ Therefore, the MSA legislation is applicable to UK based tea businesses that source tea from Assam and requires them to present a modern slavery statement. This sub—chapter aims to identify whether the MSA has had or could possibly have an impact on the working and living conditions on the tea plantations in Assam.

Although exemplary in its effort to tackle the problem of modern slavery, the MSA’s provisions for TISC is not without pitfalls. Firstly, organisations that have failed to present a modern slavery statement have not faced serious legal consequences till date for the delay in submission or lack of a statement. Several non-governmental organisations have been actively engaging in ‘naming and shaming’ such organisations but this approach often lacks teeth and does not negatively impact large businesses. A survey conducted by the Chartered Institute of Procurement and Supply (CIPS) in 2017 found that 34% of businesses required to publish a modern slavery statement have failed to do so.¹⁵⁷ Of the companies that did produce a statement, several did not comply to the requirements of the MSA. Only 30 out of 540 supply chain transparency reports submitted in 2016 to the central repository¹⁵⁸ were compliant with the Modern Slavery Act.¹⁵⁹

¹⁵⁵ The amount is prescribed by regulations made by the Secretary of State and is subject to change.

¹⁵⁶ Modern Slavery Act. (2015). Section 12, Clause 54.

¹⁵⁷ Buist J. (2017, September 6). Third of firms fail to comply with slavery law. *Chartered Institute of Procurement and Supply*.

¹⁵⁸ Business and Human Rights Centre maintains a public tract record of companies’ statements under the MSA. The registry acts as a resource for businesses, civil society and governments. It can be accessed at www.modernslaveryregistry.org

¹⁵⁹ Churchill, F. (2016, September 1). Less than 6% of modern slavery reports compliant with law. *Chartered Institute of Procurement and Supply*.

Another survey conducted by CIPS found that half of the supply chain managers working for organisations that are required to publish a statement lack the necessary skills needed to deal with modern slavery.¹⁶⁰ Even those organisations that did publish fairly compliant statements failed to provide substantial information regarding what they are doing in order to combat the problem of modern slavery in their supply chains. This perhaps stems from fact that companies are “stuck in the mind-set of ‘what’s the minimum I need to do?’” according to Kevin Hyland, UK’s anti-slavery commissioner.¹⁶¹ In order to aid the eradication of modern slavery from supply chains, Hyland expects companies to examine which commodities and operating regions are at a high risk and why. Furthermore, he expects their modern slavery statements to provide detailed information regarding what is being done to mitigate these identified risks.¹⁶²

Impact on the Assam tea supply chain

In comparison to other industries, the global food and beverage industry has been sluggish in its effort to combat modern slavery. As per Oxfam’s 2016 update of its Behind the Brands campaign, the 10 biggest food and beverage companies have barely shown any improvement since 2013 on the issue of labour rights in their supply chains.¹⁶³ Know the chain, a resource centre that evaluates companies across various sectors based on their action (and inaction) towards addressing forced labour, indicated that food and beverage companies have been less responsive to its efforts as compared to other industries that face the same problem.¹⁶⁴

The Assam tea supply chain is not very different in this respect. Companies are not obliged to specify the exact source of the tea leaves that go into their blend. Even if a blend indicates that it uses tea from India, unless specified, it is impossible to know which part of India the tea is sourced from. However, certain companies do sell non-blended Assam tea or mention that their blends contain the same. Among these companies, only Bettys and Taylors Group specifically acknowledged the existence of modern slavery on the tea estates of Assam. All the other

¹⁶⁰ Churchill, F. (2017, August 11). Modern Slavery Act a year on- how have you responded? *Chartered Institute of Procurement and Supply*.

¹⁶¹ Churchill, F. (2017, April 13). Quality of statements are disappointing, anti-slavery commissioner tells CEOs. *Chartered Institute of Procurement and Supply*.

¹⁶² Ibid.

¹⁶³ Oxfam (2016). The journey to sustainable food- A three-year update on the Behind the Brands campaign.

¹⁶⁴ Weber, F. and Tamir, I. (2016, August 29). We’ve asked, many responded: How engaged are technology, food, and apparel companies on forced labour? *Know the Chain*.

companies that source tea from Assam simply make a fleeting mention about the possible existence of modern slavery in their global supply chain. The statements of selected companies will be discussed individually in the next chapter but overall, the obligation to publish a modern slavery statement has not done much to improve the working and living conditions of the tea workers in Assam.

Scope for improved outreach

A reading of governmental discourse regarding the MSA makes it clear that extraterritoriality is not (yet) at the heart of the legislation. Almost all government as well as civil society consultations and reports discuss the impact of the legislation on victims of modern slavery who reside in the UK. As a result, cases such as the one at hand do not benefit from the TISC clause. A cognisant effort by the UK government to provide as much help to victims of businesses that carry out only a part of their business in the country would be required in order to reach victims in remote locations such as Assam.

In spite of lack of access to case law data, an educated guess indicates that prosecution under the MSA is largely in the case of human trafficking and not forced labour.¹⁶⁵ However, in the case of transparency in supply chains, the law does not sanction prosecution for inadequate non-issue of statements. A stronger punitive approach is likely to nudge companies to adopt a more robust method towards fighting modern slavery, even in the upstream supply chain.

Another possible way of encouraging improved efforts to eradicate modern slavery in supply chains via the TISC clause would be to ‘name and fame’ as opposed to ‘name and shame’. Lauding a certain organisation for acknowledging the existence of modern slavery in Assam and disclosing what steps it has taken to tackle the problem could possibly encourage its competing firms to delve deeper into their own supply chains to pin point where exactly abusive labour practices occur.

¹⁶⁵ Churchill, F. (2017, June 5). Modern Slavery Act prosecutions more than quadruple. *Chartered Institute of Procurement and Supply*. News such as this indicate that prosecutions under the MSA have been occurring but mention only instances related to human trafficking.

4. UK'S TOP TEA BUSINESSES- ACCOUNTABILITY AND RESPONSIBILITY TOWARDS ASSAM'S WORKERS

This last chapter of the thesis investigates what some of the world's wealthiest tea businesses are doing to improve the situation in Assam. By documenting publicly available information from various sources, this chapter presents the initiatives taken by six UK incorporated companies. Tata Global Beverages, Unilever, Associated British Foods, Fortnum & Mason, Typhoo, and Bettys & Taylors Group are the six companies that are discussed. Information is sourced from the companies' website, their Modern Slavery statements, CSR reports, and reports published by NGOs and research organisations.

4.1 TATA GLOBAL BEVERAGES

Tata Global Beverages (TGB) is a UK incorporated multi-national group of companies and is the world's 2nd largest tea company. It is a part of the Tata group which is among India's biggest multinational conglomerates. TGB reported a consolidated revenue of £789 million for the financial year 2016/17¹⁶⁶. Tetley, a widely consumed brand of tea in the UK, has been a wholly-owned subsidiary of TGB since 2000. Besides Tetley, TGB also owns Tata tea which is India's largest packaged tea brand. Vitax in Poland, Joekels in South Africa, Good Earth in the USA, Jemča in the Czech Republic, and Teapigs in the UK are the other tea brands owned by the company. TGB is operational across several countries in Europe, the Middle East and South Asia.

Stake in Amalgamated Plantation Private Limited

TGB owns 19%¹⁶⁷ of Amalgamated Plantations Private Limited (APPL) which in turn operates 21 tea estates in Assam.¹⁶⁸ The report published by Colombia Law School¹⁶⁹ as well as the

¹⁶⁶ Converted from Indian Rupees at the rate of 85.8 INR per GBP.

¹⁶⁷ International Financial Corporation. (2009). Project Information Portal. Retrieved from <https://disclosures.ifc.org/#/projectDetail/SPI/25074> (last accessed 5 December 2017).

¹⁶⁸ Amalgamted tea plantations. (2017). Key facts and figures. Retrieved from <http://amalgamatedplantations.co.in/key-facts-figures> (last accessed 5 December 2017).

¹⁶⁹ Rosenblum, P., & Sukthankar, A. (2014). *The More Things Change.. The World Bank, Tata and Enduring Abuses on India's Tea Plantations*. New York: Columbia Law School Human Rights Institute.

BBC documentary¹⁷⁰ about tea workers in Assam specifically targeted APPL owned plantations and as a result, TGB faced backlash from its consumers around the world. At the time, TGB declared APPL to be a “separate corporate entity” and declined to comment on the allegations.¹⁷¹ TGB has worked systematically to dissociate all its brands from Assam tea. None of TGB’s products indicate the presence of Assam tea in their blend.

Tetley Canada’s website contains a dedicated section that guarantees its consumers that “Tetley tea purchased in Canada does not contain any tea from the APPL plantation in Assam.”¹⁷² On the other hand, Tetley UK’s website reassures consumers of the efforts being taken by TGB to improve the conditions on APPL’s plantations in Assam and altruistically states that “taking our business away from this area and these estates is not an option, as it would leave the workers without livelihoods or homes.”¹⁷³

TGB’s corporate website mentions that TGB buys tea for its Indian products from APPL. However, Tata Tea’s Indian website makes no mention of the situation in Assam or of APPL. It is likely that the lack of Indian media outlets covering the issue has resulted in insufficient awareness regarding the situation among Indian consumers and therefore TGB does not need to reassure its Indian consumers regarding its efforts towards improving the conditions on the APPL plantations.

Solidaridad’s investigation of APPL plantations

In March 2014, TGB commissioned Solidaridad, an international civil society organisation, to conduct an assessment audit of the APPL plantations.¹⁷⁴ Solidaridad’s assessment matched the one made by the Colombia report and the GNRTFN report on certain issues such as inadequate

¹⁷⁰ Deith, J.(2015) Inside the tea gardens of Assam. *BBC news, British Broadcasting Corporation, London*. Retrieved from <http://www.bbc.co.uk/programmes/p0339lyz> (last accessed 5 December 2017).

¹⁷¹ Dean Nelson (2014, February 12). Abused workers toil for Tetley tea. *The Telegraph*. Retrieved from <http://www.telegraph.co.uk/news/worldnews/asia/india/10634065/Abused-workers-toil-for-Tetley-tea.html> (last accessed 6 December 2017).

¹⁷² Tetley. (2017). Sustainability. Retrieved from <http://www.tetley.ca/en/about-us/sustainability> (last accessed 7 December 2017).

¹⁷³ Tetley. (2015). In response to BBC story on living and working conditions in Assam. Retrieved from <https://www.tetley.co.uk/bbc-assam> (last accessed 7 December 2017).

¹⁷⁴ Solidaridad (2014, March 7). Solidaridad to conduct independent assessment of APPL tea gardens in India. Retrieved from <https://www.solidaridadnetwork.org/news/solidaridad-to-conduct-independent-assessment-of-appl-tea-gardens-in-india> (last accessed 7 December 2017).

housing facilities, unavailability of functional latrines and bathing units, widespread malnutrition among workers, and lack of proper personal protection equipment for workers.¹⁷⁵

However, on several other issues, Solidaridad dismissed claims made by the previously mentioned reports. It states that APPL pays workers in accordance with the minimum wage standards set by the government and does not deduct any amount of money illegally.¹⁷⁶ In the case of medical facilities provided, the report suggests that “APPL was found to be providing best in class medical facilities in the estates” and that “the availability of doctors is more than required as per law.”¹⁷⁷ The report callously dismisses the problem of human trafficking on the plantations by addressing it as ‘migration of young girls’ and states that urban migration among young boys and girls in search of jobs is a social challenge.¹⁷⁸

In line with the recommendations of the Solidaridad assessment, APPL devised an action plan by the name of ‘Project Unnati’ to tackle the problematic areas identified in the report. This plan was backed by the IFC. However, it was criticized by various civil society organisations due to the fact that instead of acting upon the more critical advice of CAO, APPL and IFC chose to prepare an action plan based on the self-commissioned audit conducted by Solidaridad which comes across as much more relaxed regarding several burning social issues.¹⁷⁹

Project AccountabiliTea, a combined effort by four civil society organisations, published photographic evidence from its June 2017 visit to three APPL plantations which indicates that unprotected pesticide spraying, substandard living conditions, contaminated drinking water, and lack of electricity were still a major problem on the plantations.¹⁸⁰

Modern Slavery statement

¹⁷⁵ Solidaridad (2017). Independent assessment of the APPL action plan.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Project AccountabiliTea (2017). Is the World Bank keeping its promises to Indian tea workers? Retrieved from http://www.accountabilitea.org/wp-content/uploads/2017/08/Project-AccountabiliTEA_FINAL.pdf (last accessed 9 December 2017).

¹⁸⁰ Ibid.

TGB published a modern slavery statement for the financial years 2015-16¹⁸¹ and 2016-17¹⁸². Both statements are almost identical in their content with the exception of a few details. The statements declare that “the vast majority of raw tea used to produce Tetley tea is sourced from Africa with the rest from various countries around the world.”

Neither of the statements mention the brand’s association with Assam tea or APPL plantations. This comes across as a striking contrast to the in-depth description TGB provides on its corporate website regarding its effort to improve the situation on APPL plantations. The statements fail to acknowledge the existence of modern slavery in the tea supply chain.

The contents of the 2016-17 statement differ from that of its predecessor on two aspects. Firstly, the 2015-16 statement mentioned that TGB intended all its Tetley products to be Rainforest Alliance certified by the end of 2016. The 2016-17 statement suggests that 86% of Tetley teas are Rainforest Alliance certified and that TGB is working towards full certification. The new statement does not mention the time frame for achieving this.

The second difference in the two statements is that the new statement mentions a face to face training conducted in March 2017 for the Human Resources, Procurement, and Tea Buying departments regarding the issue of modern slavery and ways to identify and mitigate risks related to it.

Both statements provide detailed information regarding TGB’s affiliation with Ethical Tea Partnership, a non-profit organisation working to realise better working conditions for tea plantation workers around the world.

Other relevant information

TGB’s corporate website suggests that the company intends for all its tea to be 100% sustainably sourced by 2020. It is interesting to note that the website mentions TGB’s

¹⁸¹ Tata Global Beverages (2016). Slavery and human trafficking statement 2015/16. Retrieved from http://www.tataglobalbeverages.com/docs/default-source/Investor-Governance-Policy-/tgb-gb_slavery-and-human-trafficking-statement-2015-16.pdf?sfvrsn=8 (last accessed 10 December 2017).

¹⁸²Tata Global Beverages (2017). Slavery and human trafficking statement 2016/17. Retrieved from <http://tataglobalbeverages.com/docs/default-source/default-document-library/slavery-and-human-trafficking-statement-2016-17.pdf?sfvrsn=0> (last accessed 10 December 2017).

intentions to source Rainforest Alliance certified tea only for Tetley-branded teas in Europe, Middle East, Africa, Canada, America and Australia but excludes its brands that are sold in South Asia.

TGB accepts independent third-party certifications of sustainable agricultural practices, such as Rainforest Alliance Certified, Trustea or UTZ, from their suppliers as evidence that the product they supply is sustainably sourced. The company is associated with Ethical Tea Partnership, Rainforest Alliance, and Trustea for the purpose of ethical sourcing from the point of view of (not only) fair labour and social practices.

4.2 UNILEVER

Unilever is a transnationally operating British-Dutch company specialising in consumer goods. It reported a consolidated revenue of £47 billion in 2016¹⁸³ and is a FTSE 100 company.¹⁸⁴ Unilever is presently the world's largest tea company. It has achieved this via acquisition of various tea companies over the past several decades. The origin of Unilever's tea business can be traced to the acquisition of Lipton tea by its Dutch predecessor company Van den Bergh in 1927.¹⁸⁵ At present, the company owns 15 tea brands of varying sizes across several countries. Of these, Lipton, Brooke Bond, and PG tips are the most prominent.

Unilever and Assam tea

Identifying whether Unilever uses tea from Assam in its products is challenging due to the fact that it does not have one single portal dedicated to its tea business. Upon searching its brands individually, the mention of Assam tea being used in certain products can be found on the websites of three of its brands- Brooke Bond Taj Mahal in India, PG Tips in the UK and Lipton in the USA. This is not indicative of whether or not Assam tea is used in its other products from various brands.

¹⁸³ Converted from Euros at the rate of 0.89 Euros per GBP.

¹⁸⁴ Companies House (2017). Unilever Plc. Retrieved from <https://beta.companieshouse.gov.uk/company/00041424/filing-history> (last accessed 12 December 2017).

¹⁸⁵ Jones, G., & Miskell, P. (2007). Acquisitions and firm growth: Creating Unilever's ice cream and tea business. *Business History*, 49(1), pp. 8-28.

Till date, Unilever has published two human rights reports. The first one was published in June 2015¹⁸⁶ and the second in December 2017¹⁸⁷. The 2015 report does acknowledge tea as an at-risk sector but does not mention Assam. The 2015 report focuses on the tea industry in Kenya and Turkey. The 2017 report however, contains a section dedicated to the Assam tea industry and its women's rights issues. It acknowledges tea plantations in Assam to be part of Unilever's extended supply chain. The section 'Focus on Assam' identifies McLeod Russel as the company's supplier for Assam tea and provides details regarding the steps taken collectively by Unilever, McLeod Russel, and UN Women to improve the living and working conditions of female labourers working on Assam's tea plantations. Some of the issues addressed include sexual harassment and representations via women's forum and mothers' club. The report indicates that efforts for improvement are being implemented across six tea estates in Assam but does not provide any more information. It also mentions that Unilever joined the Ethical Tea Partnership in 2017.

A document from 2003 regarding the company's intentions to source sustainable tea mentions that "Unilever has tea estates in four tea growing regions of the world: Kenya, Northern India (Assam), Southern India, and Tanzania."¹⁸⁸ However, no recent documents are available to confirm whether the company still owns plantations in Assam.

Unilever is a partner in The Seeds of Prosperity programme which is working towards improving the diets and hygiene of smallholder farmers. As per a blog post on Unilever's website, "a successful pilot has reached 2,600 farmers in Tamil Nadu, India and the programme will now be replicated in tea farming communities in Assam as well as Kenya and Malawi, benefiting a further 300,000 people."¹⁸⁹

¹⁸⁶ Unilever (2015). Enhancing livelihoods, advancing human rights- human rights report 2015. Retrieved from https://www.unilever.com/Images/unilever-human-rights-report-2015_tcm244-437226_en.pdf (last accessed 12 December 2017).

¹⁸⁷ Unilever (2017). Human rights progress report 2017. Retrieved from https://www.unilever.com/Images/human-rights-progress-report_tcm244-513973_en.pdf (last accessed 12 december 2017).

¹⁸⁸ Unilever (2003). Tea- a popular beverage. Retrieved from https://www.unilever.com/Images/es_2003_tea-a-popular-beverage_tcm244-409725_en.pdf (last accessed 14 December 2017).

¹⁸⁹ Unilever (2017). Improving the nutrition and hygiene of smallholder farmers. Retrieved from <https://www.unilever.com/news/news-and-features/Feature-article/2017/Improving-the-nutrition-and-hygiene-of-smallholder-farmers.html> (last accessed 14 December 2017).

A section dedicated to information regarding the company's sustainable sourcing practices in the tea industry makes a vague mention of certain 'partnerships' through which Unilever addresses "labour conditions on tea estates in regions such as Assam, India, where more needs to be done to eradicate unacceptable practices."¹⁹⁰

Modern slavery statement

Unilever presented its first modern slavery statement in January 2017. The report begins with the Chief Executive Officer's foreword which acknowledges the risk of forced labour in supply chains and mentions that Unilever knows that there is more that it can do to strengthen its 'process' and 'oversight' in the area.

The statement does not specifically mention Assam but under the section titled 'assessing key risk areas', it discusses the tea sector and its susceptibility to the issue of forced labour. It states: "We believe that more must be done to improve conditions for tea estate workers and their families through working together with partners and others in the industry."

The report goes on to explain that Unilever intends to tackle this issue by strengthening its certification models regarding labour rights and discloses that the company is working with the Rainforest Alliance to achieve this. Human trafficking is mentioned as one of the issues faced by tea communities that Unilever seeks to address. The section focusing on the risk of using third party labour acknowledges that the company outsources its work to labour providing contractors in Asia and Africa to a large extent. In contrast, the work outsourced in Europe, North and South America is done through a very limited number of contractors. As a solution to this problem, the statement says that the company is working to control the terms and conditions of third party contracted labour more closely.

The statement also discusses the fact that in spite of conducting human rights impact assessments in certain parts of its supply chains and not identifying any forms of forced labour, Unilever remains vigilant about the risk of modern slavery in a rapidly developing market. It also provides information about Unilever's grievance mechanisms and tracking systems which,

¹⁹⁰Unilever (2017). Sustainable tea - leading the industry. Retrieved from <https://www.unilever.com/sustainable-living/reducing-environmental-impact/sustainable-sourcing/sustainable-tea-leading-the-industry/index.html> (last accessed 15 December 2017).

as per the statement, are the two pillars of tackling the issue of forced labour and human rights violations in supply chains.

Other relevant information

Know the Chain has benchmarked 20 food and beverage companies based on their efforts to eradicate forced labour from their global supply chains. The companies were selected on the basis of their size and the extent to which they derive revenues from corporate branded products. Unilever is one of the 20 companies that have been benchmarked. At present, data from the 2016 assessment is available on the organisation's website. 2018 benchmarks are expected to be published soon.

With a score of 65 points, Unilever ranks first on the benchmark. Know the Chain attributes this to the robust disclosure of its approach to managing forced labour risks in its supply chain, as seen its human rights reports and modern slavery statement. Unilever achieved the highest score among the 20 companies in five out of seven thematic areas. According to Know the Chain's website, the areas where the company scored the highest are: commitment and governance, traceability and risk assessment, purchasing practices, recruitment, and remedy. Unilever ranked in the top three in the remaining two thematic areas of worker voice and monitoring.

Know the Chain recommended Unilever to address gaps in its transparency in the areas of recruitment and remedy, and to develop and report on initiatives that ensure supply chain workers' voices are heard.

The 'Behind the Brands Scorecard' assesses the sourcing policies of these companies based on publicly available information. Unilever is one of the 10 companies that were assessed.

Unilever holds the top spot with 74% improvement from previous years. According to Behind the Brands, it is exemplary in its efforts towards realisation of women's rights, support for small-scale farmers, transparency about suppliers and taxation, and support for workers' rights. The campaign urges Unilever to provide more information regarding the social impacts of supply chain activities, particularly in relation to land and gender.

4.3 ASSOCIATED BRITISH FOODS

Associated British Foods (ABF) is an international food, ingredients and retail group operational across 50 countries in Europe, southern Africa, the Americas, Asia and Australia. ABF reported a consolidated revenue of £15.4 billion in 2017¹⁹¹ and is a FTSE 100 company. It owns the popular tea brand Twinings, which is now an international brand with more than 200 teas sold in over 100 countries.¹⁹² Twinings does not own any tea plantations but has manufacturing sites in UK, Poland, India and China. Tea used in the company's products is sourced from China, India, Kenya, Malawi, Sri Lanka, Argentina and Indonesia. In 1837, Queen Victoria granted Twinings a Royal Warrant and to date, Twinings has been supplying tea to every successive British Monarch's household.¹⁹³ The company sells Assam tea in both, blended and non-blended forms.

Associated British Foods and Assam tea

Twinings' UK website provides a link to its 'Sourced with Care' programme which aims to improve the living conditions of tea workers who are a part of Twinings' supply chain. As a part of the programme, a social impact report was published in 2016. The report highlights the various initiatives taken by Twinings and their impact.¹⁹⁴

According to the report, Twinings does not directly employ tea plantation workers in any country. The company sources 15% of its tea from India and buys exclusively from large plantations. The report also states that Twinings has full traceability in its supply chain and knows from which estates exactly its raw material is sourced from.

The report discusses two projects undertaken by Twinings in Assam. The report does not disclose the names of the tea estates where both these projects are operational. The first project in Assam commenced in 2010 as partnership between UNICEF, the Assam branch of the Indian

¹⁹¹Companies House. (2017). Associated British Foods Plc. Retrieved from <https://beta.companieshouse.gov.uk/company/00293262/filing-history> (last accessed 20 December 2017).

¹⁹² Twinings. (2017). About Twinings. Retrieved from <https://www.twinings.co.uk/about-twinings> (last accessed 20 December 2017).

¹⁹³ Ibid.

¹⁹⁴Twinings. (2016). Twinings Social Impact Report. Retrieved from <https://www.twinings.co.uk/TwiningsUKI/media/content/About%20Twinings/CSR/Twinings-Social-Impact-Report-2016.pdf> (last accessed 21 December 2017).

Tea Association, and Twinings. The project focused on improving the quality of life for girls residing on tea estates. In 2014, the project changed its focus from nutrition to child protection. At present, the project has been implemented in 63 tea gardens where it has established adolescent girls' clubs and child protection committees. The report claims that the project has been successful in reducing anaemia among young girls by 14%.

The second project commenced in 2015 in partnership with Mercy Corps. It aimed to promote the adoption of clean, fuel-efficient cook stoves among workers on 3 tea estates in Assam. The project expected to improve the air quality in homes, reduce the burden of collecting firewood, and reduce the incidences of smoke related respiratory and eye problems. The report states that as of 2016, 807 households have adopted clean cook stoves and this has improved the quality of life for 4,800 people. It does not provide statistical results regarding any of the areas the project aimed to improve.

ABF's 2016 Corporate Responsibility report¹⁹⁵ provides information regarding the two projects mentioned in the Twinings Social Impact report. The 2017 report¹⁹⁶ discusses a new project which was launched in June 2017. The project was a result of a community-needs assessment conducted by Twinings in 2016 which identified that many of the families living on tea estates in Assam lacked access to clean water and adequate sanitation facilities. The project is slated to run for two years and was developed in collaboration with Mercy Corps and three major producer companies to improve sanitation infrastructure in Assam. The project seeks to construct toilets on six tea estates and conduct hygiene awareness campaigns. It is expected that the project will impact 4000 people. The Corporate Responsibility reports do not disclose the names of the tea plantations.

Modern Slavery statement

ABF has published modern slavery statements for the financial years 2015-16¹⁹⁷ and 2016-

¹⁹⁵ Associated British Foods. (2016). Corporate Responsibility Report 2016. Retrieved from https://www.abf.co.uk/documents/pdfs/ar_cr_2016/2016_corporate_responsibility_report.pdf (last accessed 21 December 2017).

¹⁹⁶ Associated British Foods. (2017). Corporate Responsibility Report 2017. Retrieved from https://www.abf.co.uk/cr2017/dist/documents/ABF_CR17_2017.pdf (last accessed 21 December 2017).

¹⁹⁷ Associated British Foods. (2016). Modern Slavery and Trafficking Statement 2016. Retrieved from https://www.abf.co.uk/documents/pdfs/ar_cr_2016/modern_slavery_act.pdf (ast accessed 4 January 2018).

17¹⁹⁸. Both the statements are almost identical in content with the exception of some additional information in 2016-17 statement. Both the reports are divided into 6 parts- overview and structure, policy, embedding, due diligence, improvement, and measuring. The 2016-17 report includes information regarding improvements in ABF's sugar business with respect to forced labour and information regarding policies specific to Primark, an ABF subsidiary. The statement makes no mention of Assam or the tea sector. This could be due to the fact that both the statements discuss modern slavery in the context of 'forced' or 'bonded' labour and do not view substandard working or living conditions faced by workers as a part of the modern slavery phenomenon.

Other relevant information

Know the Chain includes ABF in its list of 20 companies that were benchmarked in 2016.¹⁹⁹ The company ranked poorly on several aspects. By providing average disclosure of its policies and practices aimed at addressing human trafficking and forced labour risks compared to its peers, ABF finds itself marked with an overall score of 30 out of 100 but ranks 8th among the 20 companies that were benchmarked. ABF scored 0 out of 100 in the 'recruitment' and 'worker voice' areas and 13 out of 100 in 'purchasing practices'. Know the Chain urges ABF to improve in the three areas mentioned above.

As per Behind the Brand, Associated British Foods scored 36% in the 2016 assessment.²⁰⁰ This is an improvement from its 2013 score of 19%. However, ABF still remains at the bottom rank among the 10 companies which were assessed. Once again, the company scored poorly in the transparency area. According to Behind the Brand's report, although it provides some information about where it sources its raw materials from, the information on suppliers and auditing is limited and no information on lobby practices is provided. The company is also urged to develop a strategy to raise low wages. ABF did show considerable improvement in recognizing the land rights of agricultural communities and encourages its suppliers to do the

¹⁹⁸ Associated British Foods. (2017). Modern Slavery and Trafficking Statement 2017. Retrieved from https://www.abf.co.uk/documents/pdfs/arcr-2017/abf_modern_slavery_statement_2017.pdf (last accessed 4 January 2018).

¹⁹⁹ Know the Chain (2016). Associated British Foods Plc. Retrieved from <https://knowthechain.org/companies/22/> (last accessed 4 January 2018).

²⁰⁰ Behind the Brand. (2016). Associated British Foods. Retrieved from <https://www.behindthebrands.org/brands/associated-british-foods/twinings/> (last accessed 5 January 2018).

same. The company has also exhibited tangible interest in supporting rural women but lacks policies to support them.

4.4 FORTNUM & MASON

Fortnum and Mason (F&A) is a luxury department store located in Piccadilly, London. Established in 1707, the company owns two other stores in London and one in Dubai as well as diverse hospitality ventures. It is privately owned by Witton Investments Ltd and reported a consolidated revenue of £112.9m for the financial year 2016-17.²⁰¹

Fortnum & Mason and Assam tea

F&A sells Assam tea in various forms through its website and stores. The website does not provide any information regarding the company's sourcing policies. It does provide a link to F&A's CSR report from 2015.²⁰² The report mentions that "all Fortnum & Mason teas from India and China are sourced from tea estates and producer groups participating in and adhering to Ethical Tea Partnership (ETP) standards". The report makes no further comments regarding F & A's tea supplier or supply chain.

The report states "Fortnum & Mason is committed to ensuring that there is no slavery, human trafficking or child labour in our supply chains. To this end, we have commenced a programme whereby we clearly set out to suppliers the expectations we have for our business partners. We also require our suppliers to set out their employment, remuneration and welfare policies. Based on a risk assessment, these will be scrutinised during due diligence visits by our buyers."

The overall tone of the report remains ambiguous and does not address the problems faced by tea workers in Assam.

Modern Slavery statement

²⁰¹ Company House. (2017). Fortnum and Mason Public Limited. Retrieved from <https://beta.companieshouse.gov.uk/company/00084909/filing-history> (last accessed 6 January 2018).

²⁰² Fortnum and Mason. (2015). Corporate Social Responsibility Report. Retrieved from https://d1329pvav7gzp7.cloudfront.net/cms-assets/L8bHviedTdKmUk0Rby85_F&M_CSR_2015.pdf (last accessed 6 January 2018).

No statement could be found on the company's website or on the Modern Slavery Registry.

Other relevant information

F&A has been a subject of public scrutiny previously for its unsustainable practices such as cutting its staff's basic pay to reduce tax bill²⁰³ and selling foie gras in spite of consumer protests.²⁰⁴ The company has never been in the spotlight for selling Assam tea.

For the purpose of collecting information for this thesis, I contacted Fortnum & Mason's CSR team to enquire about the lack of a Modern Slavery statement. As of 19 February 2018, I have not received a response.

4.5 TYPHOO

Typhoo Tea Ltd. Is the third largest producer of tea in the UK.²⁰⁵ The brand was introduced to the British markets in the early 1900s. In 2005, Apeejay Surrendra Group, an Indian business conglomerate, bought Typhoo from Premier Foods²⁰⁶ and is now jointly owned by Apeejay and Global Tea & commodities. The name Typhoo is derived from *dai fu*, the Chinese word for 'doctor'.²⁰⁷ The company reported a revenue of £71 million for the financial year 2016-17.²⁰⁸ The parent company operates a subsidiary of Typhoo in India by the name of Typhoo India. Typhoo's retail spans over 50 countries globally.²⁰⁹

²⁰³ Butler, S. (2016, December 15). Fortnum & Mason aims to cut basic pay for more staff in bid to reduce tax bill. *The Guardian*. Retrieved from <https://www.theguardian.com/business/2016/dec/15/fortnum-mason-staff-tips-heathrow-bar-tronic>

²⁰⁴ Doward, J. & Owen, J. (2011, December 18). Fortnum and Mason faces celebrity battle over its sale of 'cruel' foie gras. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2011/dec/18/fortnum-mason-foie-gras-protest> (last accessed 8 January 2018).

²⁰⁵ CORE (2017). RISK AVERSE? Company reporting on raw material and sector-specific risks under the Transparency in Supply Chains clause in the UK Modern Slavery Act 2015 Company reporting on raw material and sector-specific risks.

²⁰⁶ Apeejay Surendra Group (2017). Apeejay tea. Retrieved from <http://www.apeejaygroup.com/> (last accessed 15 January 2018).

²⁰⁷ Typhoo Tea. (2017). About us. Retrieved from <http://typhoo.co.uk/about-us/> (last accessed 15 January 2018).

²⁰⁸ Companies House. (2017). Typhoo Tea Limited. Retrieved from <https://beta.companieshouse.gov.uk/company/05573418/filing-history> (last accessed 15 January 2018).

²⁰⁹ Typhoo Tea. (2017). About us. Retrieved from <http://typhoo.co.uk/about-us/> (last accessed 15 January 2018).

Typhoo and Assam tea

Several black teas sold by Typhoo mention the use of Assam tea in their blend. The Apeejay Surrendra Group owns 17 tea estates in the Tinsukia, Dibrugarh, Charaideo, Udalguri and Sonitpur districts of Assam. These estates are spread over 50,000 acres and are operated by three companies- Assam Frontier, Empire, and Singlo. According to Apeejay's website, the estates are ISO 9001: 2008 certified and are under Ethical Tea Partnership. Two premium estates are HACCP certified, 11 estates are Rainforest Alliance certified, and 12 estates have a trustea certifications. The company's website does not provide any further information about the basis for this differentiation in certification schemes, nor does it explicitly mention the use of tea from these estates in domestic or British Typhoo products.

Apeejay's website mentions that welfare of plantation communities is 'core priority' and that the multiple social welfare programmes initiated in and around tea estates are a reflection of this. The company also states, "As a non-state actor and a tea producer, we aspire to deliver on UN Sustainable Development Goals and have aligned our Policy towards activities that deliver the targets - Life on Land, Climate Action, Gender Equality, Clean Water and Sanitation (SDGs 15, 13, 5, and 6 respectively)."

Typhoo UK's Sustainability page mentions that all tea used by Typhoo is sourced from Rainforest Alliance certified farms. It also states that Typhoo was one of the first tea companies to send their buyers to monitor various aspects of life on tea estates. Typhoo Tea Ltd. is a member of the Ethical Trading Initiative. The UK website does not explicitly mention Assam or India in any context.

Modern Slavery statement

A modern slavery statement for the financial year 2016-17 is available on Typhoo UK's website.²¹⁰ The statement discusses the steps taken by the company to mitigate the risk of modern slavery within their organisation as well as in their extended supply chain. The report

²¹⁰ Typhoo Tea. (2017). Slavery and Human Trafficking Statement. Retrieved from <http://typhootea.co.uk/wp-content/themes/typhoo/assets/Typhoo%20Slavery%20and%20Human%20Trafficking%20Statement%202016.pdf> (last accessed 13 January 2018).

discloses that Typhoo sources teas from 15 countries and around 1/5th of all tea is sourced from India.

It also mentions that products are purchased both, privately and through public auction but only via approved suppliers. The said suppliers are approved on the basis of their membership to SEDEX, Fairtrade, Rainforest Alliance, or Ethical Tea Partnership. The company acknowledges that many of the countries that they source tea from have “well publicised historic incidents of abuse of human rights and labour laws.” It is unclear why the statement declares these incidents to be ‘historic’ when they’re clearly quite rampant in several tea producing countries. The report goes on to state that Typhoo is committed to uncover and remedy any modern slavery and human trafficking that might exist in its supply chain. The report mentions that the company is actively supporting a UNICEF project in Assam which aims to eliminate child trafficking and exploitation.

One of the salient features of the report is its list of commitments that the company aimed to fulfil by the end of the financial year 2016-17. Typhoo’s Modern Slavery statement promises that the company will engage with all accreditation bodies and strongly lobby for full visibility of all supplier audits which are currently unavailable because many suppliers are protected by confidentiality agreements. This is a step in the right direction for improving the transparency in the tea supply chain. The list also includes reviewing all modern slavery policies in the company’s EU and UK supply chains and rewriting the company’s trading terms to include a clause regarding compulsory compliance with the modern slavery act.

4.6 BETTYS & TAYLORS GROUP

Bettys & Taylors Group (BTG) is a Yorkshire based family business that owns three tea brands sold in the UK- Taylors of Harrogate, Bettys, and Yorkshire Tea. Taylors of Harrogate holds a Royal Warrant and is an official supplier to the household of the Prince of Wales. The company was founded in 1962 due to a merger between an establishment by the name of Bettys Tea Room and tea and coffee merchants Taylors of Harrogate. BTG reported a revenue of 173.6

million for the financial year 2015-16.²¹¹

Bettys & Taylors Group and Assam Tea

Bettys as well as Yorkshire Tea mention the use of Assam tea as a part of their various tea blends. The group's corporate website as well as individual brand websites express commitment towards responsible sourcing of tea.²¹² The corporate website mentions that BTG works closely with Ethical Tea partnership to develop cohesive plantation communities in Assam. Issues regarding housing, sanitation, and education are among the issues that the project aims to address. BTG is also a part of a project that seeks to understand wage issues in the tea industry. The project focuses on Malawi, Indonesia, and India. No further information is provided about the specific region in India that the project seeks to address.

Yorkshire Tea's website includes a page that provides details regarding the various projects supported by the brand.²¹³ The page mentions a project developed in collaboration with the Ethical Tea Partnership which is likely to be the same as the one mentioned on BTG's corporate website. The said project has been functional since 2016 and aims to set up Community Development Forums (CDFs) on four tea estates. The forum consists of elected representatives from the estate's working and non-working population, community groups, unions and management. The forum works on issues such as housing repairs, access to water, access to latrines, and improving financial literacy levels. The CDFs seek to officially register themselves as Societies so that they can access government funding and work. Yorkshire Tea has invested £100,000 into the project.

Yorkshire Tea is a part of another project in partnership with UNICEF, the Ethical Tea Partnership, and other tea companies to help improve child protection policies on Assam's tea estates. The website mentions that the brand donated £2,000 towards installing household water filters at four estates in the Moran district of Assam.

Modern Slavery statement

²¹¹ Companies House (2017). Bettys and Taylors Group Ltd. Retrieved from <https://beta.companieshouse.gov.uk/company/00500829/filing-history> (last accessed 11 January 2018).

²¹² Bettys and Taylors Group. (2017). Sourcing. Retrieved from <https://www.bettysandtaylors.co.uk/our-approach/sourcing/> (last accessed 11 January 2018).

²¹³ Yorkshire Tea. (2017). Retrieved from <https://explore.yorkshiretea.co.uk/> (last accessed 11 January 2018).

The company has by far published one modern slavery statement for the financial year 2015-16.²¹⁴ Betty & Taylor Group's statement reports that in the 2016 financial year, the company did not identify any instances of modern slavery in its operations or supply chain; the statement goes on to acknowledge that this does not mean that the company can guarantee the absence of modern slavery in its business. Sourcing black and specialty tea is recognized as a high-risk business activity due to documented instances of trafficking and rural poverty in the Assam and Darjeeling regions of North India. The UNICEF-ETP project mentioned above is also discussed in the statement. In order to mitigate this risk, the company sources all its tea from third party certified farms. The statement lists Rainforest Alliance, Fairtrade, and UTZ as trusted certification schemes. Bettys & Taylors group's sourcing policy is based on a direct relationship model that supports long term forward supply contracts, high levels of supply chain transparency, and regular face-to-face contact with suppliers.

The statement explains the company's risk assessment process which was developed in 2016. The aim of this process is to enable decision makers to identify those aspects of business that are at a risk of facilitating modern slavery.

Other relevant information

BTG's corporate website provides links to their Anti-Slavery and Human Trafficking Policy²¹⁵ and Whistleblowing Policy and Procedure²¹⁶. The Anti-Slavery and Human Trafficking Policy consists of a policy statement which underlines TBG's commitment to publishing a Slavery and Human Trafficking statement on their website for each financial year in line with disclosure obligations under the Modern Slavery Act 2015. The policy further discusses the implication of such a commitment on the company's business.

²¹⁴ Bettys and Taylors Group. (2017). Modern Slavery Statement. Retrieved from <https://www.bettysandtaylors.co.uk/wp-content/uploads/2017/03/2016-Modern-Slavery-Statement.pdf> (last accessed 10 January 2018).

²¹⁵ Bettys and Taylors Group. (2017). Anti-slavery and Human Trafficking Policy. Retrieved from <https://www.bettysandtaylors.co.uk/wp-content/uploads/2017/03/Anti-slavery-and-Human-Trafficking-Policy.pdf> (last accessed 10 January 2018).

²¹⁶ Bettys and Taylors Group. (2017). Whistleblowing Policy & Procedure. Retrieved from <https://www.bettysandtaylors.co.uk/wp-content/uploads/2017/03/Whistleblowing-Policy-and-Procedure.pdf> (last accessed 10 January 2018).

The Whistleblowing Policy and Procedure educates employees of the company about the concept of whistleblowing and provides guidance regarding reporting any observed abuse by the employer or colleagues in public interest. The policy discusses protection for whistleblowers against detrimental treatment as well.

5. CONCLUSION AND DISCUSSION

5.1 CONCLUSION

This research is centred around one main research question and three sub-questions which were formulated at the beginning of the thesis. A fitting conclusion can be drawn by answering these questions based on the information analysed and discussed in the various chapters the thesis. The sub-questions were designed with the aim of constructing a pathway to answer the main research question. Therefore, the three sub-questions will be answered first, followed by the answer to the main research question.

What are the problems faced by the workers and how are they linked to the history of tea cultivation in Assam?

Dilapidated housing, lack of access to clean water and sanitation facilities, gender-based discrimination, lack of adequate medical facilities, low wages, lack of occupational safety, and the risk of human trafficking were identified as the key problems faced by the works in chapter 2.4. All of these issues are gross violations of human and labour rights by any international standard.

It is evident from the discussion in chapter 2.3 that tea enjoys a culturally and economically important position in Indian society. What was once a colonial enterprise run by exploitative British planters has turned into a profitable industry providing much impetus to the national economy. Against this background, the deplorable treatment meted out to the plantation workers in Assam points to the State's failure in its duty to protect the workers and their rights.

Section 2.2 provides insight on how today's Assamese tea plantation workers came to be. Being migrant settlers who were subjected to harsh treatment by the British planters paved the way for this community to lead a life of subjugation generation after generation. Till date, the community is not accepted by Assamese locals as their own and thus emancipation from a life of poverty is difficult for them to achieve without local and governmental support.

How can national and international law can be used to promote increased business accountability in the Assam tea supply chain?

The discussion in chapter 3 points out that various instruments of international soft law can be used to make businesses more accountable for their actions. Though not legally binding, the work done by the UN and ILO has achieved commendable results in bringing the discussion on business and human rights to the forefront. In the case of Assam, the most significant involvement by an international body is the investigation carried out by IFC's watchdog, CAO. The possibility of bringing a claim to OECD's UK NCP and the possible involvement of the UN's Working Group on the issue of BHR are other ways to bring about increased business accountability in the supply chain.

On the domestic front, the implementation of a NAP could benefit the tea industry in Assam to a great extent. The nuanced paper written by Surya Deva paints an optimistic picture of how a national framework could harmonize the existent Indian legislation on human and labour rights into one strong legislation.

The UK's Modern Slavery Act has been successful in introducing business and human rights discourse into the world of corporate policy making in the UK. Looking beyond the inevitable teething troubles in the implementation of the TISC, the MSA offers a ray of hope for a world where responsible business conduct is the norm.

To what extent are UK's top tea businesses taking responsibility for the situation in Assam through CSR initiatives?

As seen in chapter 4, most of the top tea businesses have taken steps to improve the situation in Assam through various CSR initiatives. After the Colombia reports successfully drew international media attention, most UK companies have been making some effort in improving the situation.

Tata Global Beverage plays a key role in the supply chain due to its significant share in APPL plantations. Unfortunately, the company's risk mitigation strategy seems to be based on repudiating allegation as opposed to taking responsibility for its actions. Other companies that are making attempts to aid tea plantation workers should be more transparent about their position and indulge in more on-ground work by partnering with local grassroots organisations.

How can increased accountability by businesses for human rights violations on Assam's tea plantations be ensured?

By moving from CSR to BHR

As seen from the data analysed in chapter 4, most tea businesses have been reacting to the human rights issues in Assam based on their individual CSR protocols. The problem with this is that CSR, as a concept, lacks a consistent framework on businesses and their role with respect to human rights, their protection, and promotion.²¹⁷ In the words of Anita Ramasastry, “CSR focuses on individual company decision making - what human rights scholars and activists might view as an à la carte view of human rights.”²¹⁸

In cases like Assam, where human rights violations have been rampant for over a century, mitigation strategies based merely on societal expectations and market forces are insufficient. BHR on the other hand, is a concept born from the tangible negative impacts by businesses and aims to remedy harm that has already been caused; as opposed to CSR, which debates over the role of companies as promoters of positive obligations.²¹⁹

From the discussion in chapters 3, it is evident that a strong Business and Human Rights framework seems to be lacking throughout the Assam tea supply chain. India’s implementation of a BHR legislation with a domestic as well as an extraterritorial scope could be a befitting approach to deal with the Assam tea industry’s human rights issues. While the UK’s legislation in this area is ahead of its Indian counterpart, laws governing extraterritorial liability of UK based businesses are insufficient and need to be more inclusive in their scope.

By opting for more comprehensive certification schemes

All the companies discussed in chapter 4 are members of the Ethical Tea Partnership and 4 of the 6 companies rely heavily on Rainforest Alliance certification. The annex provides an overview of the international labour standards on which ETP and Rainforest Alliance certifications are based. It also provides the basis for Fairtrade certification for comparison. It

²¹⁷ Bauer, J. (2011). *Business and human rights. a new approach to advancing environmental justice in the United States.* p. 175. New York: Cambridge University Press.

²¹⁸ Ramasastry, A. (2015). Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability. *Journal of Human Rights*, 14:2, pp. 237-259.

²¹⁹ Ibid.

is evident that Rainforest Alliance and Ethical Tea Partnership are among the lowest benchmarks in the industry.

The Rainforest Alliance certification has been criticized for being “a less expensive way for companies to answer consumers’ concerns about sustainability than to achieve Fairtrade certification”.²²⁰ In order to receive the Rainforest Alliance label, as little as 30 per cent of the product is required to be sourced from certified farms or plantations.²²¹ By comparison, Fairtrade requires 100 per cent of the product to be sourced from certified farms or plantations in order to be able to use the programme’s label.²²²

Ethical Tea Partnership is a not a certification scheme but an NGO which is a non-commercial alliance between 40 tea companies from around the world. Though it has done some commendable work for improving the conditions on tea plantations, “there is a dearth of representation from the tripartite constituents” as per the ILO’s Sectoral Studies on Decent Work in Global Supply Chains.²²³ If companies chose to work with more comprehensive certification schemes, it would compel plantation owners to implement a higher standard of living and working on their plantations.

By standardising the contents of a modern slavery statement

Most of the modern slavery statements analysed as a part of this thesis seem to be an extension of the companies’ CSR reports. Presently, the content, length, and scope of one company’s statement is remarkably different from another’s. On one end of the spectrum, companies like Unilever have submitted comprehensive statements which acknowledge that modern slavery is a risk that the company faces. On the other end, companies like Tata Global Beverages use the statement as a tool to deny the existence of modern slavery in their supply chains altogether.

While some NGOs are working towards guiding companies regarding the contents of a modern slavery statement, a standard framework does not exist. By including a specified format for modern slavery statements, the Modern Slavery Act would be more successful at demanding a

²²⁰ Nicholls, A.; Opal, C. (2005). *Fair trade: Market-driven ethical consumption*. Sage Publications.

²²¹ Huw, T. (2015). Good Practices by Multinational Enterprises in the Promotion of Decent Work in the Global Tea Supply Chain. Sectoral Studies on Decent Work in Global Supply Chains. *International Labour Organisation*. pp. 121.

²²² Ibid.

²²³ Ibid.

thorough investigation of supply chains.

5.2 STRENGTH OF THE STUDY

One of the strengths of this thesis is that it brings together the history of tea cultivation in Assam, the grievances of the workers, analysis of legal instruments, and the action taken by businesses. Previous studies on the subject have focused exclusively on one of the four topics mentioned above. By bringing together these four themes, this thesis aims to provide a broad overview of the problem and lays emphasis on the fact that the four topics are not mutually exclusive to each other. As a result, the final outcome is a product of multi-disciplinary nature.

5.3 LIMITATIONS OF THE STUDY

Exclusion of small and medium sized plantations

The data analysed in chapter 2.3 is based exclusively on observations and interviews from large tea estates, most of which are owned by APPL. There is a dire lack of information regarding the conditions of workers on smaller tea estates in Assam. It is not known whether these estates export their tea or sell it domestically. The tea businesses discussed in chapter 4 do not reveal the exact location or details of the plantations they work with.

Based on secondary data about workers' situations

It was beyond the scope of this research to conduct field work and collect primary data about the situation on the plantations. All the information regarding the conditions on the plantations is sourced from credible sources but this does not guarantee complete accuracy, especially about the progress made by on-going projects.

5.4 FUTURE DEVELOPMENTS

India's promises in the UPR

The National Report submitted by India for the UN Human Rights Council's 2017 Universal Periodic review made certain promises to improve domestic labour laws.²²⁴ Section 69 of the report discusses the government's efforts towards abolishing bonded labour and the centrally sponsored scheme for rehabilitation of bonded labourers. Section 77 mentions that India is in the process of consolidating existing labour laws into four codes to ensure transparency and consistency across the board. The government also wishes to streamline the Factories Act to achieve increased occupational safety, prevent health hazards and diseases, optimize regulatory compliance and transparency in inspection, and encourage labour-intensive enterprises. Section 78 describes the government's improved mechanism for evaluating employers' compliance with labour laws. Through the new Unified Labour Web Portal employers will file returns detailing their compliance with labour laws. This self-reporting mechanism seeks to streamline compliance. Lastly, section 83 discusses the measures taken by the government to overcome economic, social and cultural barriers which hinder women's equal participation in the workforce. All these developments, if executed well, have the potential to impact the Assam tea industry positively.

Rainforest Alliance-UTZ merger

In June 2017, the Rainforest Alliance announced a merger with UTZ.²²⁵ The two certification companies are working towards build a new organization. This could possibly impact industry-wide certification standard, thus directly affecting the situation in Assam.

UN binding treaty on business and human rights

During the 26th session of the UN Human Rights Council in 2014 in Geneva, a resolution was drafted by Ecuador and South Africa and signed by Bolivia, Cuba and Venezuela.²²⁶ The resolution seeks to establish an open-ended intergovernmental working group with the mandate to elaborate an international legally binding instrument on Transnational Corporations and

²²⁴ UN Doc. A/HRC/WG.6/27/IND/1

²²⁵ UTZ. (2017). Joining forces: UTZ and the rainforest alliance. Retrieved from <https://utz.org/merger/> (last accessed 16 February 2018).

²²⁶ United Nations Human Rights Council. (2014). Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. Retrieved from <http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOnTNC.aspx> (last accessed 16 February 2018).

Other Business Enterprises with respect to human rights.²²⁷ It was supported by 20 countries.

As of October 2017, the group has conducted its third session where it discussed the elements for a draft of the legally binding instrument prepared by the Chairperson-Rapporteur of the working group. If such a binding treaty does come to fruition, it could greatly impact the way businesses take responsibility for human rights violations in their supply chains.

²²⁷ Ibid.

ANNEX – CERTIFICATION SCHEMES AND THEIR LINK WITH ILO’S STANDARDS

Certification scheme	Link with ILO’s standard
Ethical Tea Partnership	Fundamental Conventions along with: Safety and Health in Agriculture Convention, 2011 (No. 184); and Indigenous and Tribal Peoples Convention, 1989 (No. 169).
Rainforest Alliance	Fundamental Conventions along with: Safety and Health in Agriculture Convention, 2011 (No. 184); and Indigenous and Tribal Peoples Convention, 1989 (No. 169).
Fairtrade	Fundamental Conventions along with: the Plantations Convention, 1958 (No. 110); the Migration for Employment, 1949 (No. 97); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); the Workers’ Representatives Convention, 1971 (No. 135); the Rural Workers Organizations Convention, 1975 (No. 141) and its accompanying Recommendation; the Protection of Wages Convention, 1949 (No. 95); the Social Security (Minimum Standards) Convention 1952 (No. 102); the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121); the Medical Care and Sickness Benefits Convention, 1969 (No. 130); the Maternity Protection Convention, 2000 (No. 183); the Workers' Housing Recommendation, 1961 (No. 115); the Occupational Safety and Health Convention, 1981 (No. 155); Safety and Health in Agriculture Convention, 2001 (No. 184) and its accompanying Recommendation; the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77); the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78); and the Welfare Facilities Recommendation, 1956 (No. 102)

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