

# Examining The Effectiveness of Supply Chain Governance In Respect of UK's 2015 Modern Slavery Act, The Progress, and the Pitfalls as it Relates to Section 54 of the Transparency in Supply Chain Act

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## **Abstract:**

The ease of globalisation and trade has ensured that outsourcing is conducted at a wider international scale than ever before, and whilst the UK's Modern Slavery Act was introduced as a promising first step towards combating slavery, the potential to eradicate slavery in practice remains the will of all direct, and in-direct corporate and political actors to collaboratively coordinate efforts, provide sufficient resources, funds and data share for proactive remedial, and detection provisions to seamlessly lead this effort. Much more can be, and must be instigated by the UK for the purpose of corporate accountability and morality. This essay explores some of these possible perspectives and gaps in relinquishing modern slavery.

## INTRODUCTION

The transatlantic slave-trade involving the transportation of enslaved Africans between the 16<sup>th</sup> to 19<sup>th</sup> century may have been abolished by the UK in 1807<sup>1</sup>, however the ILO estimates that 40.3 million<sup>2</sup> people around the globe remain in slavery today. Whether through debt bondage, indentured labour, forced labour, servitude, human trafficking, child labour, organ harvesting, forced marriage, or sex work - slavery continues to thrive in discreet ways. Slavery also encompasses many direct and indirect actors who play an instrumental role in contributing to the growth of this industry. In Supply chains, modern slavery is often deliberately hidden from view, and “obscured by layers of outsourcing, subsidiaries, and opaque ownership structures that make it difficult for various actors to detect them”<sup>3</sup>. There remains a wide gap for corporate and political actors to take greater accountability in ensuring their contribution towards relinquishing slavery from business, and respective supply chains. The modern slavery industry in its entirety is estimated to be worth \$150billion<sup>4</sup> dollars, and remains the fastest growing form of organised crime.

<sup>1</sup> Haynes Jason (2015) Modern Slavery Act (2015): A Legislative Commentary, *Statute Law Review*, 2016, Vol. 37, No. 1, 33–56 doi:10.1093/slr/hmv024

<sup>2</sup> <https://www.ilo.org/global/topics/forced-labour/lang-en/index.htm>

<sup>3</sup> United Nation University, A Blueprint for Mobilising Finance Against Slavery and Trafficking, (2019), Creative Commons Attribution-Non-commercial-Share Alike International license (CC BY-NC-SA4.0), ISBN 978-92-808-6508-0, <https://www.fastinitiative.org/wp-content/uploads/Blueprint-DIGITAL-3.pdf>, p57, article accessed 22.07.20207

<sup>4</sup> <https://www.antislaverycommissioner.co.uk/media/1203/evening-standard-modern-slavery-report.pdf> p5

Whilst the definition of Modern Slavery remains highly debated in scholarly literature<sup>5</sup>, and within the political and legal arenas, there are distinct differences between slavery, and other more common forms of labour exploitations such as sweatshops, which are more widely explored within the management literature.<sup>6</sup> The context used in this essay pertains to the definition outlined in the UK's 2015 Modern Slavery Act;

**Term:**

***“Modern Slavery is a term used to encapsulate both offences in the Modern Slavery Act: slavery, servitude and forced or compulsory labour; and human trafficking”<sup>7</sup>***

For the purpose of this essay, forced marriage, organ harvesting and sex work are omitted as I seek to explore slavery in context of severe labour exploitation through economic coercion, and threats of destitution within supply chains.

Over the last two decades, there have been numerous international slavery cases that have gripped the world's attention, but seemingly not enough to instigate major reforms. Slavery takes place in every corner of the planet, and almost every business is likely to touch slave trade at some point, whether directly or in-directly.

Despite UK's 2015 Modern Slavery Act (“Act”) “there were 5,144 slavery offences recorded by police in England and Wales in year ending March 2019, an increase of 51% from the previous year”<sup>8</sup>, this unfortunately does not include thousands of other cases that remain undetected and unreported. As the recent slavery case arising at the Leicester textile factory serving fast fashion brand Boohoo Group Plc<sup>9</sup> reveals, slavery remains a sinister aspect of the world's capitalistic structure, that systemically manifests across all timelines, industries, and remains an active part of our global consciousness.

To better understand the cause of what sustains modern slavery today, we will briefly examine the conditions of globalisation which contributed to the rise of this thriving billion-dollar industry.

## GLOBALISATION

Globalisation dates back centuries, for humans have always traded goods, and people, across towns, and national borders, but with the emergence of steamship power, the transatlantic cable, as well as governments' willingness to negotiate free trade agreements, the global markets boomed in the 19<sup>th</sup> century<sup>10</sup>, primarily attributed to price reductions in transporting goods nationally, and internationally.<sup>11</sup>

Globalisation encountered a second leap in the late 20<sup>th</sup> century. The end of the cold war promoted further trade reforms as a means of stimulating transitional economies.<sup>12</sup>

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<sup>5</sup> Caruana, Robert. Crane, Andrew. Gold, Stefan. and Genevieve, LeBaron (2020) Modern Slavery in Business: The Sad and Sorry State of a Non-Field, Business & Society 1–37, sagepub. DOI : 1 0.177/0007650320930417

<sup>6</sup> Caruana, Robert. Crane, Andrew. Gold, Stefan. and Genevieve, LeBaron (2020) Modern Slavery in Business: The Sad and Sorry State of a Non-Field, Business & Society 1–37, sagepub. DOI : 1 0.177/0007650320930417

<sup>7</sup> <https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide/transparency-in-supply-chains-a-practical-guide#annex-a---modern-slavery-definition>  
<sup>8</sup> <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/modernslaveryintheuk/march2020>

<sup>9</sup> Hipwell, Deirdre, Mulier, Thomas, (2020) “Boohoo Plunges After Reports of Labor Abuses at Suppliers”, Bloomberg.com. 7/6/2020, pN.PAG-N.PAG. 1p. Accession Number: 144413106 Database: Business Source Premier, AN0144413106;[b8g5]06jul.20;2020Jul08.07:21:v2.2.500

<sup>10</sup> James, Harold, (2014) Cosmos, Chaos: Finance, Power and Conflict, *International Affairs* 90: 1, The Royal Institute of International Affairs, p37-57

<sup>11</sup> BALDWIN, RICHARD (2014) MISTHINKING GLOBALISATION: TWENTIETH-CENTURY PARADIGMS AND TWENTY FIRST-CENTURY CHALLENGES, *Australian Economic History Review*, Vol. 54, No. 3, ISSN 0004-8992, doi: 10.1111/aehr.12046

<sup>12</sup> Khan Habibullah, Bashar Omar (2016) “DOES GLOBALIZATION CREATE A ‘LEVEL PLAYING FIELD’ THROUGH OUTSOURCING AND BRAIN DRAIN IN THE GLOBAL ECONOMY?” *The Journal of Developing Areas*, Volume 50 No. 6 2016

Revolutionary advances to information technology radically digitalised the way in which trade was facilitated internationally, giving rise to e-commerce, and creating new trends for offshoring several stages of production to emerging markets.<sup>13</sup> The world of business became borderless through e-commerce, creating complex matrix of exchanges in global supply and demand for goods and services. The third wave of offshoring beyond 2000, saw an increase in off-shoring customer interaction services, back-office functions, data management functions, and professional services.<sup>14</sup>

The first and second wave of globalisation saw the largest number of migrations across history, and business took advantage of price reduction in labour cost through outsourcing certain functions to low cost locations overseas.<sup>15</sup>

Today, this demand continues to increase year on year, as the cost for labour remains roughly 12 times higher in the west than in developing markets.<sup>16</sup> Whilst there exists a body of scholarly literature targeting slavery in vulnerable sectors such as mining, fishing, agriculture and textile, there remains a research gap concerning slavery within the service and financial sectors.

There is no doubt that globalisation has brought about prosperity globally, but equally it has created crisis and risks that keeps on unfolding. With the rise in demand for cheaper products and services, larger profit margins, and cascades of liabilities downstream within supply chains, the risks and complexities of supply chains have become challenging to manage.

Whilst more and more businesses intensify offshored outsourcing as a strategy for higher economic growth and returns, the supply chain governance protocols are often managed through disjointed, under resourced, and incomprehensive efforts. Equally, the world governments remain inconsistent in their effort to tackle modern slavery in a cohesive manner. The lack of global cooperation to stamp out systemic corruption in high risk regions continues to instigate human trafficking and slavery.

Whilst the focus of this essay is geared at examining UK's Modern Slavery Legislation, one cannot overlook the global contribution that governs the slavery movement. It is suggested that "as an intermediary step, governments could consider working together to develop shared taxonomies for disclosure and action on modern slavery and human trafficking risks".<sup>17</sup> The United Nations remains an instrumental political actor in gathering momentum for transforming how governments, NGO's, and businesses work collaboratively to relinquish global slavery from supply chains.

Modern Slavery is in effect borderless and nationless when we examine it from a macro perspective, it remains a construct of misaligned patriarchal and capitalistic system of power, greed, and corruption that governs the world. Historians have always urged us to reflect and examine the historic links "between capitalism, colonialism, and slavery, and challenge us to consider why—when global capitalism has never existed without slavery—it could be eradicated in the present day."<sup>18</sup> This certainly provokes thought, but nonetheless, it mustn't

<sup>13</sup> BALDWIN, RICHARD (2014) MISTHINKING GLOBALISATION: TWENTIETH-CENTURY PARADIGMS AND TWENTY FIRST-CENTURY CHALLENGES, *Australian Economic History Review*, Vol. 54, No. 3, ISSN 0004-8992, doi: 10.1111/aehr.12046

<sup>14</sup> Khan Habibullah, Bashar Omar (2016) "DOES GLOBALIZATION CREATE A 'LEVEL PLAYING FIELD' THROUGH OUTSOURCING AND BRAIN DRAIN IN THE GLOBAL ECONOMY?" *The Journal of Developing Areas*, Volume 50 No. 6 2016

<sup>15</sup> Khan Habibullah, Bashar Omar (2016) "DOES GLOBALIZATION CREATE A 'LEVEL PLAYING FIELD' THROUGH OUTSOURCING AND BRAIN DRAIN IN THE GLOBAL ECONOMY?" *The Journal of Developing Areas*, Volume 50 No. 6 2016

<sup>16</sup> Khan Habibullah, Bashar Omar (2016) "DOES GLOBALIZATION CREATE A 'LEVEL PLAYING FIELD' THROUGH OUTSOURCING AND BRAIN DRAIN IN THE GLOBAL ECONOMY?" *The Journal of Developing Areas*, Volume 50 No. 6 2016

<sup>17</sup> <https://www.fastinitiative.org/wp-content/uploads/Blueprint-DIGITAL-3.pdf>, p83

<sup>18</sup> Caruana, Robert, Crane, Andrew, Gold, Stefan, and Genevieve, LeBaron (2020) *Modern Slavery in Business: The Sad and Sorry State of a Non-Field*, Business & Society 1–37, sage pub. DOI : 10.1177/0007650320930417

hinder efforts in widening the world's attention to modern slavery, and instigating remedial actions to reform the root causes of slavery.

We must factor in that the impact, and reformative power of legislation in one country alone cannot address such a nuanced worldwide global issue, that rides on major misaligned structural and “external socio-economic factors that uphold it.”<sup>19</sup> It is argued that one of the “key regulatory factors influencing whether modern forms of slavery flourish, is the strength of governance in regions”.<sup>20</sup> By governance, this refers to “government effectiveness, regulatory quality, rule of law, political stability, control of corruption, and voice and accountability to citizens. Where these factors remain lacking, there is a greater propensity for slavery to thrive”.<sup>21</sup>

## THE UK'S MODERN SLAVERY ACT

The UK introduced the Modern Slavery Act in 2015, with an objective to “eradicate” modern slavery and human trafficking. The Act consolidates existing slavery-related criminal offences, increasing penalties for committing such offences.<sup>22</sup>

Part 6, Section 54 of the Modern Slavery Act (“Act”), relates to Transparency of Supply Chains. It orders commercial businesses in the UK (even if incorporated or formed elsewhere) with revenues of above £36million p.a. to annually report on the steps taken (or not) to ensure that their supply chains are void of slavery. The Act currently offers a great deal of freedom for businesses regarding disclosure of their practices.<sup>23</sup>

The financial limit set by the Act provides loop holes for companies who wish to avoid official reporting and liabilities, to create decentralised subsidiaries, that can potentially serve as legal evasion from regulatory requirements. There are ambiguities within the Act, and its guidance, as it relates to legal entities operating within the UK, and creates doubt as to which entity is essentially responsible for the reporting aspect.

Businesses whose parental company are located offshore may not be held accountable to the conducts of their subsidiaries within the UK.<sup>24</sup> Subsequently, “Companies operating in the UK are not required to report on all supply chains within their overseas groups, such as wholly owned subsidiaries abroad. This serves as ‘perfect cover’, to the extent that they are able to overlook the exploitations that might be occurring in their overseas subsidiaries’.”<sup>25</sup> Under “English law, the doctrine of separate corporate personality means that there is a ‘corporate veil’ that creates a significant hurdle in the effort to hold the parent company accountable.”<sup>26</sup>

It's argued that “the Act does not attempt to address the corporate veil with hard legal rules and sanctions for non-compliant businesses.”<sup>27</sup>

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<sup>19</sup> CRANE, ANDREW, (2013) MODERN SLAVERY AS A MANAGEMENT PRACTICE: EXPLORING THE CONDITIONS AND CAPABILITIES FOR HUMAN EXPLOITATION, York University, *Academy of Management Review* 2013, Vol. 38, No. 1, 49-69. <http://dx.doi.org/10.5465/amr.2011.0145>

<sup>20</sup> CRANE, ANDREW, (2013) MODERN SLAVERY AS A MANAGEMENT PRACTICE: EXPLORING THE CONDITIONS AND CAPABILITIES FOR HUMAN EXPLOITATION, York University, *Academy of Management Review* 2013, Vol. 38, No. 1, 49-69. <http://dx.doi.org/10.5465/amr.2011.0145>

<sup>21</sup> CRANE, ANDREW, (2013) MODERN SLAVERY AS A MANAGEMENT PRACTICE: EXPLORING THE CONDITIONS AND CAPABILITIES FOR HUMAN EXPLOITATION, York University, *Academy of Management Review* 2013, Vol. 38, No. 1, 49-69. <http://dx.doi.org/10.5465/amr.2011.0145>

<sup>22</sup> Rae Lindsay, Anna Kirkpatrick & Jo En Low (2017) *Hardly Soft Law: The Modern Slavery Act 2015 and the Trend towards Mandatory Reporting on Human Rights*, BUSINESS LAW INTERNATIONAL Vol 18 No 1

<sup>23</sup> Stevenson, Mark and Cole, Rosanna (2018) *Modern Slavery in Supply Chains: a secondary data analysis of detection, remediation and disclosure*, Supply Chain Management: An International Journal 23/2 (2018) 81–99, Emerald Publishing Limited [ISSN 1359-8546] [DOI 10.1108/SCM-11-2017-0382]

<sup>24</sup> Rae Lindsay, Anna Kirkpatrick & Jo En Low (2017) *Hardly Soft Law: The Modern Slavery Act 2015 and the Trend towards Mandatory Reporting on Human Rights*, BUSINESS LAW INTERNATIONAL Vol 18 No 1

<sup>25</sup> Haynes Jason (2015) *Modern Slavery Act (2015): A Legislative Commentary*, *Statute Law Review*, 2016, Vol. 37, No. 1, 33–56 doi:10.1093/slr/hmv024

<sup>26</sup> Mantouvalou Virginia, (2018) *The UK Modern Slavery Act 2015 Three Years On*, 2018 The Author. The Modern Law Review © 2018 The Modern Law Review Limited. (2018) 81(6) MLR 1017–1045

<sup>27</sup> Mantouvalou Virginia, (2018) *The UK Modern Slavery Act 2015 Three Years On*, 2018 The Author. The Modern Law Review © 2018 The Modern Law Review Limited. (2018) 81(6) MLR 1017–1045

Furthermore, it is often the smaller based companies, contracted by larger firms, who exploit labour directly, or indirectly through downstream subcontracting endeavours. Therefore, by the virtue of the Act, they remain undetected, further perpetuating the problem of slavery.

Due to the financial threshold set for reporting, a greater portion of the vulnerable sector such as domestic servitude, construction, catering, nail/beauty salons, car washes, and cleaning remain under the radar of legal reporting and scrutiny. We know from a vast body of research that low-skilled, high-intensive labour remains a high-risk category for modern slavery, yet no business, nor individual who's baseline revenue is below the financial criteria, is subject to any form of disclosure and scrutiny. In accordance with the Act, reporting remains a voluntary endeavour for companies with revenues less than £36million. p.a. This level of exclusion is detrimental at curbing slavery, for it significantly distorts efforts.

The reporting requirements instigated by the Act are also quite vague and heavily rely on self-regulation, rather than hard law<sup>28</sup>, furthermore, it is subject to various interpretational ambiguities that distorts its intended scope<sup>29</sup>. The effectiveness of the measures implemented by businesses (or not) are not formally, nor centrally scrutinised. According to the Act, a business can release a statement confirming that no steps have been taken to detect slavery in its supply chain, and this remains acceptable, and brings the integrity of the Act and its intention in to disrepute.

Whilst the Act does encourage investors and customers to take a more proactive approach in demanding for assurance, it fails to explicitly exert a hard line for non-compliance. It is widely argued that the Act is too weak at eliminating modern slavery by businesses and their respective supply chains, and existing evidence from businesses' responses to the Act indicates this.<sup>30</sup>

It is also unclear what happens if business independently detects slavery within its supply chain, and whether it is legally obligated to report the misconduct to officials. Or whether in fact any remedial actions are instigated at detecting slavery. Data regarding voluntary slavery detection and reporting initiated by business are not currently reported by the National Statistics Office.

Essentially, at the core of UK Government's approach is the notion that transparency will "create a level playing field between businesses' that act responsibly, and those that need to do more, and thereby "should" ideally increase competition to drive up standards in supply chain governance."<sup>31</sup> It is argued that a soft law approach may not necessarily be problematic, if it holds a greater power to drive change.<sup>32</sup> It's further argued that although the quality of information and the degree of transparency remains weak, the reporting mechanism itself instigates tangible change towards mitigating risks in modern slavery, for it is highlighting supply chain governance at a board and investor level, demanding more engagement than ever before.<sup>33</sup>

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<sup>28</sup> Mantouvalou Virginia, (2018) The UK Modern Slavery Act 2015 Three Years On, 2018 The Author. The Modern Law Review © 2018 The Modern Law Review Limited. (2018) 81(6) MLR 1017–1045

<sup>29</sup> Rae Lindsay, Anna Kirkpatrick & Jo En Low (2017) Hardly Soft Law: The Modern Slavery Act 2015 and the Trend towards Mandatory Reporting on Human Rights, BUSINESS LAW INTERNATIONAL Vol 18 No 1

<sup>30</sup> Mantouvalou Virginia, (2018) The UK Modern Slavery Act 2015 Three Years On, 2018 The Author. The Modern Law Review © 2018 The Modern Law Review Limited. (2018) 81(6) MLR 1017–1045

<sup>31</sup> Rae Lindsay, Anna Kirkpatrick & Jo En Low (2017) Hardly Soft Law: The Modern Slavery Act 2015 and the Trend towards Mandatory Reporting on Human Rights, BUSINESS LAW INTERNATIONAL Vol 18 No 1

<sup>32</sup> Mantouvalou Virginia, (2018) The UK Modern Slavery Act 2015 Three Years On, 2018 The Author. The Modern Law Review © 2018 The Modern Law Review Limited. (2018) 81(6) MLR 1017–1045

<sup>33</sup> Rae Lindsay, Anna Kirkpatrick & Jo En Low (2017) Hardly Soft Law: The Modern Slavery Act 2015 and the Trend towards Mandatory Reporting on Human Rights, BUSINESS LAW INTERNATIONAL Vol 18 No 1

A drawback remains that businesses disclose in a manner that meets stakeholder expectations, indicating that reporting may serve as another form of aspirational marketing tool<sup>34</sup>, rather than a measurable impact for change. “Most businesses remain concerned about the face value of social compliance, to market their products and services as socially responsible, and are not really committed towards helping supply chains implement them in practice.”<sup>35</sup>

The Act’s flexible approach to combating slavery remains a firm structural weakness that enables slavery to thrive, by providing loopholes that allows criminals, and exploiters to navigate the blind spots. Furthermore, the harsh penalties applied to individual perpetrators, with soft law measures when it relates to business, sends confusing messages, and dilutes accountability for corporate actors.

To perhaps better understand why the slavery Act is not instigated as hard law, we have to examine the motivating factors behind the inadequacy of the prevailing economic structure, which is beyond the scope of this essay, but nonetheless, significant enough to briefly summarise the economic barriers imposed, at why slavery may in fact never be relinquished under existing economic structures. The primary motivation for corporations remains their profit margin, which in effect determines the financial resilience, market position, and industry dominance of a corporate entity. The profit margins of corporations further determine a country’s GDP index, which yields the wealth and health of a nation. For corporations to eradicate slavery from their supply chain, they will have to allocate substantial capital and resource in setting up systems that enable detection and remediations, or offer larger profit margins to sub-contractors. This would inevitably impact profitability and shareholder returns adversely. Investments for such governance measures are often viewed as operational overhead that yields zero financial return.

In practice for high levels of operational governance to be effectively embedded in an organisation, the costs have to be rationalised, and justified against perceived liabilities and returns on investment.

Equally, the national GDP remains the primary motivation of a country’s political and economic actors, as profitability remains the motivation for the corporate actors. More significantly, profitability determines the GDP index. Both actors’ motivations therefore inevitably work against the instigation of hard law to combat slavery, and thus may serve to explain why governments have opted to enforce a soft law approach for corporations.

This brings in to question the moral duty of the corporate actors, versus costly governance infrastructure that yields zero return in investment. The balance between these two factors typically tilt towards the motivation for profitability, and thus in the absence of hard law regarding supply chain transparency, very little impact is likely to be realised from the corporate actors. Further research is required from the economic and management scholars in expanding this perspective further.

Two years on from the introduction of the Act, and in December 2017, the National Audit Office (NAO) released a highly critical report on the UK’s response to Modern Slavery, highlighting that the Home Office lacked comprehensive understanding of the victims and the perpetrators involved in modern slavery, nor an effective system for victim protection services.<sup>36</sup> A further report published by the Work and Pensions Committee claimed that the UK’s system for dealing with modern slavery is leaving victims destitute while failing to

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<sup>34</sup> Stevenson, Mark and Cole, Rosanna (2018) Modern Slavery in Supply Chains: a secondary data analysis of detection, remediation and disclosure, *Supply Chain Management: An International Journal* 23/2 (2018) 81–99, Emerald Publishing Limited [ISSN 1359-8546] [DOI 10.1108/SCM-11-2017-0382]

<sup>35</sup> Soundararajan, Vivek and Brown, Jill A. (2016), Voluntary Governance Mechanisms in Global Supply Chains: Beyond CSR to a Stakeholder Utility Perspective, *Journal of Business Ethics*, March 2016, Vol. 134, No. 1 (March 2016), pp. 83-102 Published by: Springer, Stable URL: <http://www.jstor.com/stable/24703757>, DOI 10.1007/s10551-014-2418-y

<sup>36</sup><https://www.independent.co.uk/news/uk/home-news/modern-slavery-government-failing-bid-tackle-report-a8111431.html>

effectively prosecute perpetrators.<sup>37</sup> It is argued that the heavy reliance on criminal law for regulation of modern slavery is in itself an insufficient model<sup>38</sup>, it requires a far broader remedial plan of action to tackle the root causes of slavery, stemming from defective or corrupt systemic structures in immigration, policing, judicial, and direct, and in-direct corporate players.

The lack of awareness in business, beyond procurement and legal departments also remain a concern in terms of detection and reporting. If UK is to make any significant impact in how it tackles slavery, a much broader awareness is required at all operating levels within a business. If business is to take slavery seriously, the reforms must commence at the level of compulsory corporate training. Whilst slavery may occur at the level of labour, and supply chain, a lack of governance measures in slavery detection, and remedial training in business remains a firm weakness in UK's efforts against slavery.

It's argued that development of scholarly contribution in the field of Management, Finance & Accounting, Economics and Actuarial studies, in incorporating compulsory slavery awareness within the structure of its academic, and professional disciplines will be beneficial in reforming corporation's propensity in tacking slavery.<sup>39</sup> This is especially pertinent if the Modern Slavery Act remains an ambiguous soft law.

## ETHICAL AUDITING

In an era of declining government inspection and increased supply chain risks, the role of the non-state actors and independent auditors have been emerging to regulate corporate conduct as an instrument of governance.<sup>40</sup> Ethical audits were primarily instigated amid 1990's global outsourcing boom, which enabled multinational corporations to measure, track and enforce standards in their respective business and supply chains.<sup>41</sup>

Whilst California's Transparency in Supply Chain Act 2012 requires large companies to disclose details of audit programmes, the UK's 2015 Modern Slavery Act does not extend to this requirement. With this in mind, studies conducted in the last two decade demonstrate that in "comparison to state based inspections, independent audits fail to have any substantial impact due to limited power of auditors akin to binding confidentiality and gagging clauses."<sup>42</sup> Thus, rendering audit as a means of governance, ineffective, for auditors "lack the power of investigation and prosecution."<sup>43</sup> Furthermore, it's argued that "conflicting, and inconsistent approach to standards have led to suppliers experiencing "compliance limbo", and overwhelm by the costly audit requirements at the supplier's expense, thus leading to fabrication of audits and standards."<sup>44</sup> Uncoordinated audit regiments with conflicting demands often motivate

<sup>37</sup> <https://www.independent.co.uk/news/uk/home-news/modern-slavery-government-failing-bid-tackle-report-a811431.html>

<sup>38</sup> Mantouvalou Virginia, (2018) The UK Modern Slavery Act 2015 Three Years On, 2018 The Author. The Modern Law Review © 2018 The Modern Law Review Limited. (2018) 81(6) MLR 1017-1045

<sup>39</sup> Caruana, Robert, Crane, Andrew, Gold, Stefan, and Genevieve, LeBaron (2020) Modern Slavery in Business: The Sad and Sorry State of a Non-Field, Business & Society 1-37, sage pub. DOI : 1 0.177/0007650320930417

<sup>40</sup> LEBARON, GENEVIEVE, LISTER, JANE & DAUVERGNE PETER (2017) Governing Global Supply Chain Sustainability through the Ethical Audit Regime, Routledge Taylor and Francis Group, Vol. 14, No. 6, 958-975, <https://doi.org/10.1080/14747731.2017.1304008>

<sup>41</sup> LEBARON, GENEVIEVE, LISTER, JANE & DAUVERGNE PETER (2017) Governing Global Supply Chain Sustainability through the Ethical Audit Regime, Routledge Taylor and Francis Group, Vol. 14, No. 6, 958-975, <https://doi.org/10.1080/14747731.2017.1304008>

<sup>42</sup> LEBARON, GENEVIEVE, LISTER, JANE & DAUVERGNE PETER (2017) Governing Global Supply Chain Sustainability through the Ethical Audit Regime, Routledge Taylor and Francis Group, Vol. 14, No. 6, 958-975, <https://doi.org/10.1080/14747731.2017.1304008>

<sup>43</sup> LEBARON, GENEVIEVE, LISTER, JANE & DAUVERGNE PETER (2017) Governing Global Supply Chain Sustainability through the Ethical Audit Regime, Routledge Taylor and Francis Group, Vol. 14, No. 6, 958-975, <https://doi.org/10.1080/14747731.2017.1304008>

<sup>44</sup> Amy V. Benstead, Linda C. Hendry & Mark Stevenson (2020) Detecting and remediating modern slavery in supply chains: a targeted audit approach, Production Planning & Control, DOI: 10.1080/09537287.2020.1795290

suppliers to falsify standards and requirements.<sup>45</sup> From falsifying documents, to relocating production to shadow factories, this serves as a major challenge in countries where there remains a “lack of political will to demand transparency in business”.<sup>46</sup>

Essentially, an audit of a business without the mechanism to officially and transparently report findings to a wider public or official audience is meaningless, if there are no genuine motivations and top-down support for the business to instigate meaningful change, and execute remedial plans.

Nonetheless, in recent years, ethical auditing has emerged in certain industries in a bid to minimise public relation risks, and reassure investors regarding standards of conduct within production lines<sup>47</sup>. Where increasingly, well-known brands in the space of manufacturing and agriculture are turning towards ethical audits as a means for governing supply chains, and assuring consumers, and investors on their stance to ethical trading,<sup>48</sup> the practice has been slow to trickle to service-based organisations. However, it is argued that this “top down approach, where western standards are imposed on developing countries with opposing cultural, and socio-economic conditions, may be in fact be an ineffective tick box exercise, and reel no measurable impact to detect and remedy slavery practices.”<sup>49</sup>

The contractual terms set between business and their auditors, also tilts the power relation in favour of the contracting authority, and often offers incentives in favour of leniency for purpose of client retention.<sup>50</sup> In this case, the state has a role to play in how it regulates auditing firms, and what powers it grants in respect of standardising contractual terms across the board to enable greater measures for transparency, and whistleblowing on the misconducts detected. The slavery Act, holds greater power in how it may set out to address conflict of interest risks prevalent within such contractual power relations, and whether it makes ethical supply chain auditing for UK’s trading companies a compulsory part of its reporting mechanism. It is argued that the ineffectiveness of audit as a structured diagnostic tool is not deemed a technical flaw, but a political one.<sup>51</sup> Thus the state has greater powers to reform such weaknesses currently imposed by ethical audits.

Furthermore, the exploitation of labour typically falls under the radar of such audits, and the exploitative third-party recruitment agents remain unaudited and undetected, thus, the wider factors as to how labour enters a workforce remains unaddressed<sup>52</sup>, and warrants greater attention.

In many cases, the governance of supplier network breakdown, due to “dilution of buyer power, arising from a web of factors rooted in suppliers’ traditions, beliefs, local demands, and resource dependencies”.<sup>53</sup> A greater sense of cohesive shared value is often at odds between

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<sup>45</sup> LEBARON, GENEVIEVE, LISTER, JANE & DAUVERGNE PETER (2017) *Governing Global Supply Chain Sustainability through the Ethical Audit Regime*, Routledge Taylor and Francis Group, Vol. 14, No. 6, 958–975, <https://doi.org/10.1080/14747731.2017.1304008>

<sup>46</sup> LEBARON, GENEVIEVE, LISTER, JANE & DAUVERGNE PETER (2017) *Governing Global Supply Chain Sustainability through the Ethical Audit Regime*, Routledge Taylor and Francis Group, Vol. 14, No. 6, 958–975, <https://doi.org/10.1080/14747731.2017.1304008>

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<sup>49</sup> Amy V. Benstead, Linda C. Hendry & Mark Stevenson (2020) Detecting and remediating modern slavery in supply chains: a targeted audit approach, *Production Planning & Control*, DOI: 10.1080/09537287.2020.1795290

<sup>50</sup> LEBARON, GENEVIEVE, LISTER, JANE & DAUVERGNE PETER (2017) *Governing Global Supply Chain Sustainability through the Ethical Audit Regime*, Routledge Taylor and Francis Group, Vol. 14, No. 6, 958–975, <https://doi.org/10.1080/14747731.2017.1304008>

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<sup>52</sup> Amy V. Benstead, Linda C. Hendry & Mark Stevenson (2020) Detecting and remediating modern slavery in supply chains: a targeted audit approach, *Production Planning & Control*, DOI: 10.1080/09537287.2020.1795290

<sup>53</sup> Soundararajan, Vivek and Brown, Jill A. (2016), Voluntary Governance Mechanisms in Global Supply Chains: Beyond CSR to a Stakeholder Utility Perspective, *Journal of Business Ethics*, March 2016, Vol. 134, No. 1 (March 2016), pp. 83–102 Published by: Springer, Stable URL: <http://www.jstor.com/stable/24703757>, DOI 10.1007/s10551-014-2418-y

buyers and suppliers,<sup>54</sup> and deterrence theory offers three potential variables that influence such dynamics<sup>55</sup>;

- “The cost of complying with the demands of voluntary regulation;
- the probability of getting caught for non-compliance, and;
- the size and nature of the penalty for non-compliance.”<sup>56</sup>

Deterrence theory applies to both the perpetrators of slavery, as well as the peripheral corporate actors who enable slave trade to remain undetected in their supply chains.

As discussed earlier, instigating a supply chain audit and transparency mapping program requires substantial resource and funds. Most businesses determine the governance and compliance measures based on the probability of risk, and liability, weighed against costs. If such voluntary investments outweigh potential fines, or the probability of getting caught, why would businesses voluntarily opt to invest in such radical and costly measures?

A soft legislation applied in the case of slavery will only ensure that businesses embed minimal governance measures to meet basic legal criteria.

In another example, “when the power resides at the level of the buyer for higher profits, and cascade of lower profit margins to respective sub-contractors, the sub-tiered suppliers manipulate the system to attain justice, mostly in cutting cost corners within its business practices, and thus exploits labour to meet its motivations.”<sup>57</sup>

A study revealed that “subcontractors who actually complied with the buyer’s social standards, did it for receiving more business opportunities, and none seemed to show any authentic concern regarding “better working conditions” or “sustainable supply chains” as the core reason for compliance.”<sup>58</sup> Furthermore, lower tiered subcontractors often receive lower profit margins and are left financially deprived. “Many do not possess the necessary capability to adapt to western standards, for they lack the infrastructure, technology, finance, skills and resources to implement robust standards.”<sup>59</sup>

Overall, there remains a lack of understanding about the actual functioning of supply chains in today’s complex global economy, which is a core reason for why voluntary governance mechanisms have failed to produce expected improvement in most offshored supply chains.<sup>60</sup> Legislation may remedy this lack, through mandatory provisions for governance, and mapping supply chain vulnerabilities, including disclosure of ethical audits.

The reluctance of government to make this hard law, directs one back to the motivation and intentions behind keeping the Act flexible and vague.

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<sup>54</sup> Soundararajan, Vivek and Brown, Jill A. (2016), Voluntary Governance Mechanisms in Global Supply Chains: Beyond CSR to a Stakeholder Utility Perspective, *Journal of Business Ethics*, March 2016, Vol. 134, No. 1 (March 2016), pp. 83-102 Published by: Springer, Stable URL: <http://www.jstor.com/stable/24703757>, DOI 10.1007/s10551-014-2418-y

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<sup>60</sup> Soundararajan, Vivek and Brown, Jill A. (2016), Voluntary Governance Mechanisms in Global Supply Chains: Beyond CSR to a Stakeholder Utility Perspective, *Journal of Business Ethics*, March 2016, Vol. 134, No. 1 (March 2016), pp. 83-102 Published by: Springer, Stable URL: <http://www.jstor.com/stable/24703757>, DOI 10.1007/s10551-014-2418-y

## COLLABORATION

It has been argued that buyer collaboration with local NGO's as a means for education, training, and improvement of standards have been shown to provide effective remedial solutions to achieve greater supplier compliance.<sup>61</sup> Where top-down CSR strategies often conflict with local cultural, norms, values, and laws, a deeper collaborative effort with local NGO's may serve to close the gaps. It is not clear how power relations are likely to manifest with the inclusion of NGO's in corporate affairs, or what levels of cooperation or transgression this type of dynamic may impose.

There also remains the additional cost factor in involving NGO's, and whether given the soft stance of the Act, buyers would be willing to voluntarily fund a regional NGO activity for greater efforts in supplier transparency, scrutiny, and reforms. Such strategies are extremely resource intensive, and costly to operate, but research highlights that these costs can be shared horizontally with other buyers<sup>62</sup>.

The Act can certainly offer more leverage to dissolve corporate resistance in using NGO's as an agent for support in practices involving regional suppliers and labour. This strategy is also likely to provide improved worker voice through support, guidance, and rights to local labour laws.<sup>63</sup> Thus empowering those individuals who remain at risk of exploitation.

Whilst the Act does encourage greater collaboration, action in this regard have been slow to manifest, although in certain industries, such as textile, the big brands have been voluntarily seeking horizontal collaboration<sup>64</sup> with competitor firms in respect of modern slavery and social sustainability. Effective horizontal collaboration offers a shared vision on combating slavery, and creates a collective message that ripples through an industry, and its subsequent supply chain networks, and serves as a powerful reformative model to relinquish modern slavery from supply chain networks.

Horizontal-collaboration may also offer a shared capital fund, to assist deprived sub-suppliers meet or improve standard requirements, where they are often deemed costly to implement, and lead to labour exploitation and non-compliance with ethical codes of conduct. Over time, this form of collaboration is likely to reduce the cost of governance for the corporate actors through shared resourcing, therefore the model serves as a win/win dynamic for all actors involved.

Disparity of power, justice and fairness must be considered by the global corporate actors and the Act itself. There is certainly a gap for corporate actors to get more involved in cooperative developmental strategies with lower tiered sub-suppliers, and create a notion of shared responsibility and accountability. Furthermore, shifts in price and payment structures, and flexibilities in turnaround time are just a few positive actions that may offer relief to subcontractors, lessening the risk of labour exploitation<sup>65</sup>. Such measures require corporate actors to prioritise moral responsibility, and cooperation, over irrational business demands and fierce competition. Yet in the absence of hard law, such reforms may remain within the domain of few socially conscious corporate actors.

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<sup>61</sup> Amy V. Benstead, Linda C. Hendry & Mark Stevenson (2020) Detecting and remediating modern slavery in supply chains: a targeted audit approach, *Production Planning & Control*, DOI: [10.1080/09537287.2020.1795290](https://doi.org/10.1080/09537287.2020.1795290)

<sup>62</sup> Amy V. Benstead, Linda C. Hendry & Mark Stevenson (2020) Detecting and remediating modern slavery in supply chains: a targeted audit approach, *Production Planning & Control*, DOI: [10.1080/09537287.2020.1795290](https://doi.org/10.1080/09537287.2020.1795290)

<sup>63</sup> Amy V. Benstead, Linda C. Hendry & Mark Stevenson (2020) Detecting and remediating modern slavery in supply chains: a targeted audit approach, *Production Planning & Control*, DOI: [10.1080/09537287.2020.1795290](https://doi.org/10.1080/09537287.2020.1795290)

<sup>64</sup> Benstead Amy V, Hendry C Linda, and Mark Stevenson (2018) Horizontal collaboration in response to modern slavery legislation, An action research project, *International Journal of Operations & Production Management* Vol. 38 No. 12, pp. 2286-2312, Emerald Publishing Limited 0144-3577, DOI 10.1108/IJOPM-10-2017-0611

<sup>65</sup> Soundararajan, Vivek and Brown, Jill A. (2016), Voluntary Governance Mechanisms in Global Supply Chains: Beyond CSR to a Stakeholder Utility Perspective, *Journal of Business Ethics*, March 2016, Vol. 134, No. 1 (March 2016), pp. 83-102 Published by: Springer, Stable URL: <http://www.jstor.com/stable/24703757>, DOI 10.1007/s10551-014-2418-y

Whilst the Act does encourage collaboration with NGO's and other companies, it keeps such collaborations at a voluntary level. There is an opportunity for the Act to potentially offer incentives for companies who embark on such collaborative endeavours, as a greater means for encouragement towards attaining meaningful social reforms and impact.

In defence of the Act, it does seek to bring in to awareness the responsibility of in-direct actors such as customers and investors, and urges for proactive stakeholder stance at seeking anti-slavery assurance from the businesses they collaborate with. Thus increasingly, multinationals are responding to stakeholder and investor pressure for enforcing voluntary governance mechanisms, such as aspirational/philosophical CSR statements, and supplier codes of conduct to ensure supply chains comply with standards.<sup>66</sup> This highlights the influencing power of indirect actors in reforming governance measures of other corporate actors, and thus the Act can leverage on this further by introducing greater accountability and penalisation for the financial services actors in respect of slavery. In practice, the financial services sector (banks, accountancy, insurance and pension firms) provide funds, investment or audits to multinationals in sectors vulnerable to slavery. By not directly penalising financial services actors who perpetuate slavery within their portfolio, UK's effort to achieving any real and meaningful impact at curbing slavery remains doubtful.

## LINKS TO OTHER CRIMES

With regards to financial crimes such as money laundering, businesses are held liable, and subject to heavy fines for failing to implement robust processes to combat financial crimes, or for failing to embed adequate processes to identify money laundering practices within its network of clients and suppliers. All business within the UK are liable to report any detected suspicious activity in this area, and by law require designated and named responsible officers for reporting, and training purposes. It remains perplexing as to why modern slavery is not warranted the same degree of legal attention and scrutiny.

There are also major disconnects between the Acts. Nowhere within the Modern Slavery Act, nor the Money Laundering Act are the two crimes referenced and linked together. Where in practice the link between these two crimes exists. Under the remit of Money Laundering, the Liechtenstein Initiative report highlights this link, and warns that reporting suspicious activity regarding money laundering can inevitably disrupt practices of slavery and human trafficking.<sup>67</sup> Therefore more research in examining the links between these crimes is essential for combating slavery.

Additionally, "many financial sector actors often rely on third party business information providers such as credit bureaux, corporate credits, and bond rating agencies to provide risk information. At present, most of these third-party information sources do not factor modern slavery and human trafficking into their analysis and data."<sup>68</sup> "If finance is to mobilize meaningfully against slavery and trafficking, this will need to change".<sup>69</sup>

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<sup>66</sup> Soundararajan, Vivek and Brown, Jill A. (2016). Voluntary Governance Mechanisms in Global Supply Chains: Beyond CSR to a Stakeholder Utility Perspective, *Journal of Business Ethics*, March 2016, Vol. 134, No. 1 (March 2016), pp. 83-102 Published by: Springer, Stable URL: <http://www.jstor.com/stable/24703757>, DOI 10.1007/s10551-014-2418-y

<sup>67</sup> <https://www.fastinitiative.org/wp-content/uploads/Blueprint-DIGITAL-3.pdf>, p57

<sup>68</sup> <https://www.fastinitiative.org/wp-content/uploads/Blueprint-DIGITAL-3.pdf>, p81

<sup>69</sup> <https://www.fastinitiative.org/wp-content/uploads/Blueprint-DIGITAL-3.pdf>, p81

There are definitely, drawbacks within the Act in relation to in-direct actors, and much more can be instigated in reforming in-direct actor accountability, this is especially significant given the magnitude of the influencing power possessed by the indirect actors.

## CONCLUSION

The ease of globalisation and trade has ensured that outsourcing is conducted at a wider international scale than ever before, and whilst the UK's Modern Slavery Act was introduced as a promising first step towards combating slavery, its soft law approach to remedy a growing crime in supply chains, is simply inadequate.

Whilst Section 54 of the Act is directed at large multinationals, the medium and smaller firms are left in obscurity, and are not challenged, nor called in to mandatory action. This remains a significant drawback, and one that must be reviewed for reform if UK is serious in its intention to relinquish Modern Slavery.

As enforced by the Act, the proactivity scale of corporate actors to govern against slavery practices remains inconsistent, voluntary and flexible, resting upon the moral responsibility of a business, rather than any real legal threats. Thus, the potential to eradicate slavery rides upon the will of all direct and in-direct actors to collaboratively coordinate efforts, with sufficient resource, data sharing, and funding allocated by corporate actors for proactive remedial, and detection provisions to seamlessly lead this effort.

Whilst some corporate actors operating in the vulnerable sectors instigate a collaborative approach due to reputational and financial risks, it's challenging to know whether genuine ethical, and moral responsibility are the primary driving force behind their action, or the fear of dwindling loss to their bottom line figures.

Legally enabling the corporate actors to retain a voluntary approach to collaboration and supply chain transparency and governance, will not alone yield measurable impact in reducing slavery. Much more can be, and must be instigated by the UK's legislation for the purpose of corporate accountability and morality.

The economic motivations driving the Act, presents doubt as to how under the current economic system, we can expect world governments to add pressure on to corporate actors to govern their supply, and value chains against slavery, when in practice, embedding robust governance practices requires significant resources that can adversely impact a company's bottom line, and subsequently the wealth of UK's markets.

Perhaps it is this economic motivation that serves to rationalise why the UK Modern Slavery Act takes an extraordinarily soft law approach to combating slavery, and evades holding corporations accountable for their inactions in implementing, and reporting on supply chain governance measures.

One universal strategy may not fit such a diverse and nuanced global slavery paradigm, but if all direct and in-direct actors are not merely encouraged (as currently), but held formally accountable to take proactive, collaborative, and ethical approach to supply chain governance, UK may actually step closer to relinquishing modern slavery.

Currently, the aspirational motive behind the Act remains slow to yield any meaningful impact given the magnitude of slavery, and its ramifications on human lives, including its prevailing impact in retaining the phenomena of slavery within the human consciousness.

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