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Will Business and Human Rights regulation help Rajasthan's bonded labourers who mine sandstone?

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Abstract

Some of the worst human rights conditions globally are found in Rajasthan's sandstone quarries. This paper asks if state-based regulation in the economic-North advanced under the Business and Human Rights agenda: disclosure-based regimes, due diligence compliance regimes and trade-based regimes, could advance efforts to improve respect for human rights in this sector. It adopts a fields of struggle lens and Global Value Chain theoretical approaches to business power and governance to understand the challenging political and economic dynamics that entrench harm within sandstone quarrying in Rajasthan. This analysis suggests that company-based disclosure and due diligence regimes will struggle to ameliorate these dynamics whilst trade-based approaches hold some potential to generate meaningful change.

Keywords

Business and human rights
Regulation
Modern Slavery Act
Rajasthan
Sandstone
Quarry workers
Informal work

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Introduction

Sandstone from Rajasthan's quarries is used in landscaping and floors in residential and commercial premises across the economic-North. Rajasthan's quarries are also marked by some of the worst human rights conditions globally: child labour is common; bonded labour is widespread; and the work is undertaken in blistering heat, with injuries and silicosis widely experienced by workers. This paper asks whether and how state-based regulatory initiatives in the economic-North could advance efforts to improve respect for human rights in this sector.

Such state-based initiatives that are currently receiving the greatest attention in 'business and human rights' fora fall broadly into three regime types: disclosure-based, due diligence compliance-based and trade-based. Disclosure and due diligence compliance regimes both place obligations on large firms in the countries imposing the regulation, with the objective that changes in their conduct will result in changes in human rights practices throughout the supply chain. For trade-based regimes, the country imposing the regulation makes continued (or preferential) trade access for particular goods conditional on evidence of efforts to improve human rights conditions in the production of those goods. This paper explores the conduits and barriers impacting on the capacity of these three types of regulation to improve the conditions of bonded and child labourers who quarry sandstone in the Indian state of Rajasthan. Our purpose is to assess which of the existing popular regulatory methods best address the power dynamics that are contributing to modern day slavery.

As this paper explores, significant barriers to the efficacy of disclosure and due diligence compliance regimes arise. Local dynamics entailing internal migration and displacement of peasants and tribal people from land, and the market structures and operation of power in sandstone value chains make it hard for companies in the economic-North to have significant influence on conditions in Rajasthan. Analysis into the significance of these barriers is demonstrated through a combination of a field of struggle lens applied to the local actors and dynamics within India together with an appreciation of the diffuse and multi-polar nature of the global value chain (GVC) that characterises the stone industry.

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The paper is structured as follows: it first sets out our research methods, followed by a brief outline of a field of struggle and then a GVC approach. It then examines the human rights conditions for workers in Rajasthan's sandstone quarries, paying careful attention to the fields of struggle around those human rights conditions. An exploration of the GVCs linked to Rajasthan's quarry mines follows, highlighting the diffuse and multipolar nature of the global value chain associated with stone. Based on this analysis, the paper concludes that, of the three state-based regimes under most discussion, a trade-based approach holds the most promise in utilising the leverage afforded by both the complex and challenging field of struggle and the GVC of stone mining.

Methods, materials, theoretical lenses and limitations

The data is based on the findings of a three-year Australian Research Council Linkage Project, and the authors are indebted to other members of the research team, particularly Samantha Balaton-Chrimes. It is part of a larger project that focused on human rights grievances in the garment and footwear, agribusiness and extractives sectors in India and Indonesia. Rajasthan sandstone was selected as a case study because Rajasthan is the second most mineral rich state in India; the percentage exported is high (Indian Bureau of Mines, 2016, 2019) and human rights conditions in its mines are particularly egregious. This study adopted a mixed method approach. In 2013 an Australian researcher and an Indian researcher conducted 54 interviews in Jodhpur, Makrana and Delhi with stone workers, widows of stone workers, businesses at all points of the supply chain, government regulators, unions and NGOs working in the sector. Extensive documentary analysis of relevant newspaper articles, company reports and the assessments of legal and quasi-legal bodies completed the data set.

The scope of our research is limited in several ways. Workers were fearful of backlash from employers, who themselves were wary of speaking with foreigners, so this aspect of our research was conducted by our Indian researcher. Fieldwork was conducted in 2013, and thus much of the information in this paper is only current to that date. Interview data has been checked against more recent studies that suggest that (unfortunately) little has changed for workers since our study, and thus the broad findings of our research remain relevant. Our conclusions are empirical rather than normative. The paper's insights concern the capacity and likely efficacy of existing types of business and human rights regulation to address human rights abuses within the

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fields of struggle and GVCs pertaining to sandstone. We do not engage with important debates about the normative responsibility of firms based in the economic-North or normative arguments about how business and human rights regulation *should* occur.[i]
We put to one side important arguments about the neo-colonial nature of these forms of regulation, for instance. In other words, we do not make an argument for best practice regulation, but rather assess the likely efficacy of existing regulatory types.

Fields of struggle lens

Worker and community grievances around human rights breaches arise in specific places as products of existing dynamics of power and contestation. Regulatory interventions based in the economic-North intervene into a context in which many laws, policies and social norms are already operating: the resulting interactions reproduce, modify, limit or amplify pre-existing power dynamics. The way such interactions play out influence the outcomes of business and human rights regulation.

The fields of struggle lens adopted in this paper helps us better understand how business and human rights regulation is situated within broader and often deeply context-specific histories of struggles over labour, land, and livelihoods. It helps us understand how such wider dynamics enable actors involved in grievance struggles to draw on sources of social power (Bartley, 2011, 2018; Halliday and Carruthers, 2007). The approach moves beyond a view of regulation as closed institutional mechanisms, to analyse them instead as elements within a wider and more dynamic institutional ecosystem through which human rights breaches are contested (Haines and Macdonald, 2020).

The basic concept of a field refers to a contested interactional space, within which actors are engaged in a struggle over a shared purpose – in this case defining what are or should be the responsibilities of business with respect to human rights (Fligstein and McAdam, 2012: 9). A field approach is actor-centric in that the boundaries of the field are drawn by those engaged in the struggle. In the case of human rights breaches, then, the field comprises the communities or workers who mobilize around grievances, the NGOs or trade unions who support them, the businesses from whom they are seeking redress, as well as government actors and regulatory actors. These actors and interactions are in turn themselves embedded within broader economic,

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cultural and political contexts, and shaped by the legacies and inequalities of the places within which the struggles occur (Liu and Emirbayer, 2016).

Conceptualisations of power and governance in Global Value Chain literature

This field of struggle approach is usefully brought together with insights from the Global Value Chain (GVC) literature which sees value chains as organisationally fragmented and geographically dispersed processes of production (Gibbon, Bair and Ponte, 2008). Studies of GVC governance examine the 'concrete practices, power dynamics and organizational forms that give character and structure to cross-border business networks' (Ponte and Sturgeon, 2014:200). Particularly important here are the distinct challenges posed by the 'multipolar' sandstone GVC that can be contrasted with a 'unipolar' value chain comprising a linear and hierarchical relationship between lead firms i.e. those firms that have a disproportionate influence on the structure and function of the value chains and other businesses along the value chain. In the case of a multipolar value chain with a more dispersed set of influences, the dominant focus of the governance literature on the role of 'lead firms' may result in a number of blind spots important from a regulatory perspective when attempting to assess the efficacy of Northern-state based regulatory initiatives.

Human rights in Rajasthan's quarries

Estimates suggest that the Rajasthan natural stone industry employs around 700-800,000 workers directly and 2.2-2.5 million workers indirectly, of the state's total population of approximately 81 million — though informality within the sector makes such figures unreliable (Indian Bureau of Mines, 2020; ILO, 2018). Egregious breaches of human rights are widespread, including bonded and child labour, with wages well below the minimum wage or a living wage. Respiratory disease, injury and death are common.

Bonded labour

Bonded labour is endemic in India's stone quarries and constitutes a modern form of slavery. Generally, bonded labour or debt bondage refers to a long-term relationship between an employee and employer which is cemented through a loan, by custom or by force, which denies the employee various freedoms including to choose his or her employer, to enter into a fresh

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contract with the same employer or to negotiate the terms and condition of their contract (Srivastava, 2005).

There are certain identifiable characteristics which are common to bonded labourers in Rajasthan's stone quarries. Typically, once an individual takes on debt to a quarry owner, it is accepted that the debt 'can never be settled', and if the worker cannot continue to work the debt bondage will pass to the labourer's next of kin (including children) or the workers' property may be seized as compensation (Srivastava, 2005). Many workers are provided accommodation in the quarry, with their mobility strictly controlled by the quarry owner (Srivastava, 2005). Our research further indicated that workers could have both insecure tenure and be bonded. They may have informal, bonded employment relationships with multiple quarry owners throughout their working life as new employers/quarry owners assume the labourer's debt obligation to the previous employer.

Bonded labourers are extremely vulnerable to retaliation if they attempt to organise or otherwise agitate for enforcement of the law. Even requests for minimal improvements can lead to violent responses from employers. There are numerous reports of bonded labourers being severely beaten after asking for a raise of a few cents a day, or asking the employer to fulfil a promise to give them a few sacks of grain each year, or for other relatively mild 'challenges' to their status. The extent of the brutality is critically under-researched.

Child labour

In addition to the widespread practice of bonded labour suffered by adults, Rajasthan's stone quarries are also populated by hundreds and thousands of child labourers. Twenty per cent of the workers in a typical Indian quarry are estimated to be children, and in Rajasthan's quarries alone this could amount to as many as 375,000 child labourers (India Committee of the Netherlands, 2010). The NGO Vedika, based in Andhra Pradesh, identified that children between the ages of 10 and 14 usually work from 8.00am to 4.00pm, and receive less than US0.50 per day (Upadhyaya, 2008).

Many of these child labourers become bound to quarry owners because of being forced to assume their parents' or even extended family members' debt, or the interest on the debt (Human Rights Watch, 1996). Other children are forced to undertake their own debt to supplement their parents' critically low wages. Moreover, in the absence of any social security measures or

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worker records, if a labourer dies, children must assume responsibility for the survival of the family. Their bondage precludes them from gaining an education, and thereby entrenches intergenerational poverty. One interviewee for our study suggested many children take up work in quarries because of the lack of schools or other shelter.

Inadequate wages and oppressive employment terms

Workers in Rajasthan's stone quarries receive extremely low wages and no employment benefits, leaving them immensely vulnerable and often heavily indebted. Workers have no holidays, weekly days off, medical leave nor maternity leave (Madhavan and Sanjay, 2005). Wages typically fall well short of the government-approved minimum wage. In 2021, under Rajasthan's *Minimum Wages Act 1948*, unskilled labourers have a right to a minimum wage of INR 225 per day, or 5850 per month, working 8 hours a day, while a semi-skilled labourer is entitled to INR 237 per day. A 2017 study found most mine workers earn less than INR 4000 (USD 55) a month (Ahmad, 2017). Typically, wages are calculated on a piece-rate basis, hence stronger workers can earn more and older workers, already afflicted with musculoskeletal disorders caused by decades of gruelling physical labour, less. The daily wages for women and children are also lower, reflecting entrenched patterns of gender inequality and exploitation (Mining Labour Protection Campaign, n.d.). According to a recent study, one male worker said, "I am able to get INR 200 (USD 2.74) per day, but the income of my sisters and mother is only INR 100 (USD 1.37) per day" (Arisa, 2020:14).

Informal and seasonal work

Typically, workers in Rajasthan's stone quarries do not have formal contracts of employment. One quarry owner interviewed for our study reported he had between 30–50 workers (less during monsoon season), all of whom were casual workers, and noted that their job security 'depended whether the worker or employer wants him/her to continue' (Quarry owner in Kali Beri, Jodhpur, interview, 20 July 2013). Even for those who are not bonded to their employer no employment contract exists, insecurity is high and forces quarry workers to accept harsh working conditions (Madhavan and Sanjay, 2005). Work is seasonal, heightening the precarious nature of the work. During the rainy season quarry activity ceases which means that labourers do not receive a reliable, sustained income throughout the year (Madhavan and Sandjay, 2005). Budharam Meghwal, of the Rajasthan State Mine Labour Union (RSMLU), reflected:

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> There is no strong employer–employee relationship. The employer can throw out a worker at any time and a worker can leave his/her employer at any time. This typical relationship also creates a sense of insecurity both in the workers and in the employers. The skilled workers join with a *peshgi* (advance) from the employer, thus ensuring that the employer will not throw him out. And the advance ensures the employer that the worker will not leave in a moment's notice. Therefore, the workers are not united in the absence of unions and very individualistic and employers still have the ultimate control over the workers (Budharam Meghwal, RSMLU, interview, 21 July 2013).

Health and Safety

Many sandstone workers die from silicosis, a fatal but preventable lung disease, caused by the inhalation of dust containing crystalline silica during sandstone mining. In 2015, a cross-sectional study of 126 sandstone miners in Sorya village, Karauli, Rajasthan found that all workers reported some combination of tuberculosis, silicosis, chest pain, back pain, chronic cough, musculoskeletal disorders, poor vision and hearing loss (Ahmad, 2015). Radiological investigations found that 56 per cent of mine workers in Rajasthan are affected with silicosis or silica-tuberculosis, which suggests that at least 800,000 workers in small mines and quarries might be affected in the state of Rajasthan (Lahiri-Dutt, 2008). Our study also indicated that many workers who suffer from silicosis are wrongly diagnosed with tuberculosis and thus given ineffective treatment. Other health issues include injuries associated with the gruelling physical nature of the work, as well as those resulting from mine collapses. Sexual harassment of women working in Rajasthan's mines and quarries is also a significant issue (Gravis, 2010).

Fields of Struggle for Rajasthan Stone Workers

In adopting a field of struggle lens, the focus is on identifying sources of leverage able to be accessed by regulation based in the economic-North that might provide opportunities for positive change. The significant structural weakness of stone workers, captured above, both produces egregious breaches of human rights and generates barriers to effective change. Capacities and sources of empowerment able to be accessed by actors in the field are tied closely to the broader historical, legal and political environment. Empowerment needs to both resonate and wrestle with the configurations of state-society relations (Garvey and Newell, 2005). Organisational and mobilization capacity also depends on the capacity of local groups to draw support from local

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and transnational networks of unions, NGOs or consumer associations, or allied politicians or government officials (Kovick and Rees, 2011; De Sousa Santos and Rodriguez-Garavito, 2005).

State agency and power in fields of struggle over egregious breaches of human rights in Rajasthan sandstone quarries

Within the field of struggle in India, identifying who the relevant state actors are in the field of struggle and how they have influenced conditions in the mines is critical. There is a notable lack of engagement by those responsible for implementing mining regulation and ensuring adequate labour conditions. State-based regulation, at both state and central levels remains weak, despite recent and important attempts by some regulatory actors within the central government and the Rajasthan state government to improve conditions.

The problem of illegal quarries

Our interviews suggest it is difficult to gain licences/concessions for mines from the state government. Licenced quarries are largely owned and managed by politically influential individuals and government-sanctioned quarries often operate as monopolies in particular areas (Madhavan and Sanjay, 2005). In the absence of formal licences, leases or concessions, much of the mining in Rajasthan is known as 'informal mining'. This is the section of mineral economy with the worst labour conditions (Lahiri-Dutt, 2004) and responsible for widespread and uncontrolled environmental degradation, which in turn impacts the health and safety of workers (Kambani, 2003). Informal stone quarries in India could be as high as 88 per cent of the sector's total output (Deb et al., 2008).

In recent years, the prevalence and severity of illegal mining in India has prompted a more considered response from the Central Government. After 2005, the Central Government adopted a new approach that forced state governments to set up task forces at district and state levels, amend their local mining rules, and submit regular reports on cases of illegal mining (Ministry of Mines, 2020). This program appears to have been somewhat less effective in Rajasthan as compared with some other states. The National Conclave on Mines and Minerals (NCMM) reported that between 2013-2017 a total of 37 court cases were filed against operators of illegal mines in Rajasthan; over the same period 21,787 cases were filed in the state of Chhattisgarh and 41,299 in Madhya Pradesh (NCMM, 2018). Recent approaches have focused on enhanced technological capacity to stamp out illegal mining: satellite imagery is being used to detect

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unauthorised mining activity and a mobile app for the public to send in complaints was launched in 2017 (Indian Bureau of Mines, 2020).

The primary mechanism that has delivered redress to workers and their families thus far is the Indian National Human Rights Commission (NHRC), though this has been limited to silicosis and not broader human rights breaches. The NHRC pushed state governments towards compensating labourers who contract silicosis and their next of kin, and consequently directed the State Government to provide an INR 100,000 payment to 44 workers and 22 widows whose husbands had died from silicosis (National Human Rights Commission of India, 2011). When the state government stalled, the NHRC sent reminders to the Chief Minister demanding payments for the victims. In September 2010, the Government of Rajasthan fulfilled the order, paying the victims from the Chief Minister's Relief Fund. To-date, over 10,000 people have been diagnosed with silicosis.

In May 2016, the State Government passed the 'District Mineral Foundation Trust Rules, 2016', establishing a trust for the benefit of mining-affected persons (Government of Rajasthan, 2016). For owners of minor mineral concessions (encompassing quarry owners), the concession holders must pay 10 per cent of their total royalties directly into the Trust. One of the priority areas for the utilisation of the Trust funds is 'the welfare, improvement and protection of health conditions of local mine workers affected by mining operation related health hazards, [and] ex gratia payments to the eligible patients and their legal heirs' (Government of Rajasthan, 2016). Notably, however, this law only applies to formal mines, where there is a mine concession. It thus excludes most quarries and the majority of workers. In 2018 it was reported that only 12% of the fund had been utilised and in 2020 the national finance minister authorised the State Government to use it to pay for general efforts to address the Covid-19 pandemic, rather than specifically for the benefit of mine workers (Centre for Science and Environment, 2018; Tripathy, 2020).

Workers excluded from labour law coverage

Indian labour law acts as a considerable barrier to addressing egregious human rights breaches in Rajasthan's sandstone quarries because those working in illegal quarries are undocumented and excluded from labour law coverage. There is little data on these workers and fewer legal cases that draw attention to practices than for formal workers. This problem is exacerbated in quarries

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located in isolated rural areas are isolated, harder for unions or inspectors to reach. Mr J K Gurbaxani, a mining engineer with the Department of Mining, noted in an interview:

> There are about 60 000 miners in 12 000 quarries, and they're not regularly employed. They shift around — 15 days to one month in a quarry, then they move. So, the mine owner is not able to keep an attendance record, which makes it difficult for us to fix liability (Mr J K Gurbaxani, Department of Mining, interview, Jodhpur, Rajasthan, 13 December 2012).

Even if businesses are motivated to comply it is difficult to do so. There is not just one labour code that is relevant to working conditions in Rajasthan's quarries, but many overlapping and sometimes contradictory sources of law. As one representative of a multi-stakeholder initiative explained:

> Because there are so many overlaps, even the exporters and buyers also are many a times confused as to what applies to this particular sector; in terms of minimum wages, now for the mines, it is not the state administered minimum wage that is applicable, it is the sector government administered minimum wages is applicable … (Member of multi-stakeholder initiative, interview, 2013).

Low capacity of labour departments

Even where an employment relationship or labour law coverage can be established, enforcement of labour laws is extremely limited:

> … the problem is in implementation, with the labour department and the enforcement getting weaker every passing day. And where informal sector workers are concerned where [an] employer–employee relationship is difficult to establish, the implementation is poorest, we need more supporting instruments and mechanisms for better implementation of laws (Anonymous interviewee, interview, Rajasthan, 2013).

The responsibility for enforcement of OH&S provisions of the *Mines Act 1957* lies with the Director General of Mines Safety (DGMS). In 2012, Rakesh Thanvi, a Regional Labour Commissioner, noted that the DGMS had 'one officer for the whole of Rajasthan' (Rakesh Thanvi, State Labour Department, Regional Labour Commission, interview Jodhpur, Rajasthan, 13 December 2013). One OH&S official stated it was 'physically impossible to inspect [all the mines]', due to the fact that Rajasthan was home to thousands of small mines and quarries (Occupational Health and Safety official, interview, Ajmer region, Rajasthan, July 2013). The Inspectorate branch has been noted for having too few officers to conduct inspections, is notoriously underfunded and has minimal capacity to conduct inspections and enforce laws:

> You don't have adequate resources in terms of the implementation of these laws are concerned. You have one or two officials, which will be looking at four or five districts, and it becomes very hard to reach (Member of multi-stakeholder initiative, interview 2013).

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This chronic underfunding makes officials more susceptible to bribery, making enforcement even less likely (Mitchell, Mahy and Gahan 2014; Debroy, 2013). To prompt regulatory action, workers can lodge complaints (in writing) to the Central Labour Department (CLD) based in Delhi. Yet, the likelihood of this occurring is very low. One worker, who had suffered an eye injury while cutting stone, was not provided with treatment or compensation from his owner and indicated the owner 'was the only one that I know' to approach (Male labourer, interview Jodhpur, 19 July 2013).

Many respondents commented on a lack of cooperation and communication between the national labour ministry and the state-level authorities responsible for administering quarry licences. Rana Segupta, of MLPC, helped to explain the complicated and overlapping dynamics at play:

> Labour enforcement is supposed to be from the central government, but they don't know where the mines are. This is because the state Mining Department does not pass on information about concessions. It's like tax — it's self-reporting (Rana Sengupta, Mining Labourer Protection Campaign, interview 14 Dec 2012).

Legal enforcement concerning bonded labour remains weak. There are robust and longstanding provisions in the Bonded Labour System (Abolition) Act 1976, and there have been a number of landmark public interest litigation (PIL) cases before state and central Supreme Courts,[ii] yet there has been a lack of comprehensive action to stamp out the practice of bonded labour. There is some evidence of increased legal action around bonded labour across India since 2017, however action in Rajasthan lags. According to the National Crime Records Bureau, crimes committed under the Bonded Labour Acts are increasing, with 463 cases reported in 2017, 778 cases in 2018 and 1150 in 2019 (National Crime Records Bureau, 2019). A special rapporteur from NHRC who visited Rajasthan in 2016 reported however that there was 'no established method or surveillance by the government agencies including Vigilance Committees to identity existence of bonded labour systems' and reported that '160 posts of Labour Inspectors and a sizeable number of Labour Welfare Officers' positions meant to be ensuring and surveying cases under the Bonded Labour System (Abolition) Act in the state, were vacant (National Human Rights Commission of India, 2016).

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The above demonstrates the ambivalent role different elements of the state play in addressing human rights abuse associated with Rajasthan stone. There remains a plurality of state interests

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within the field of struggle, each with an interest in maintaining the privilege and legitimacy of their representation of state power and with this some potential to improve conditions. To date, the National Human Rights Commission has most clearly used their position to act as an ally to efforts to improve the conditions of workers. But it has no direct powers of enforcement, and so relies on its authority to try and influence other arms of the state. To be effective, regulatory initiatives from the global-North also need to motivate other local state bodies to act. Without this, the failure of the Rajasthan-state government to effectively regulate mining or to issue more formal leases, will continue to act as a barrier to the efficacy of any regulatory action, where-ever based, to improve the conditions of workers. So, too, will the complexity and low coverage of Indian labour laws which result in most workers being excluded from coverage thus informal or unorganised, coupled with extremely low capacity of labour inspectorates to inspect and enforce laws.

Marginalised and vulnerable workforce

Workers in Rajasthan stone occupy a position of profound structural weakness comprised of intense social marginalisation and vulnerability. An appreciation of such weaknesses and the role it plays in maintaining the conditions for impunity is a precondition to understanding the impact state-based regulation emanating from the global-North might achieve in terms of changing the rules governing Rajasthan's quarries.

Discrimination against Scheduled Castes and Scheduled Tribes

The lack of government action around bonded labour highlighted above appears to be driven, in some part, by discrimination. As much as 90-95 per cent in Rajasthan's stone quarries are members of Scheduled Castes and Schedules Tribes (Basu, 2020), that is from indigenous tribes or from particularly discriminated against castes including Dalits (sometimes called 'untouchables' in English). In addition, migrant workers make up 90 per cent of the workforce in quarries and cobble making units, of which 30 per cent are seasonal (Arisa, 2020).

It is common for the most hazardous forms of unskilled labour to be reserved for these groups. Women in the quarries face compound discrimination by virtue of their gender and caste status. They are often illiterate and their extreme poverty leads to further exploitation by employers.

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Land dispossession drives internal migration and the constant circulation of labour

Much of the workforce in informal and illegal mines is composed of people who have lost access to farming land over which they previously enjoyed tenure. This is due to dynamics of colonial and post-colonial law making, combined with more recent patterns of land displacement. In the post-colonial period, throughout Rajasthan in particular, increasing amounts of agricultural land was converted for mining and quarrying activities. In Rajasthan, the landlessness experienced by much of the rural population (and, primarily Dalits) has driven patterns of labour informality. Roughly 75 per cent of Scheduled Castes are landless or 'near landless' (owning less than 1 acre) with the government in Rajasthan recognising that "scheduled caste and tribal families possess small or no landholdings" and form the great mass of the rural workforce (Thorat, 2004; Government of Rajasthan, 2017: para.17.12). Many work as agricultural labourers, who are reduced to wage-dependency and informality as a result of their landlessness. In Rajasthan in particular, severe droughts force many farmers to migrate in search for other work in times of agricultural stress (Lahiri-Dutt, 2008). Such patterns of landlessness are being exacerbated by climate change (Kabir and Serrao-Neumann, 2020).

While informal quarry sector workers rarely strike, there have been instances of other forms of resistance being used. Women seeking compensation on behalf of their deceased husbands conducting *dharnas* (non-violent sit-in protests) and hunger strikes to demand payment. 'Better to strike near the offices — the best thing is to sit outside their office — this is what they respond to', one widow recalled (Female respondent, confidential interview, Rajasthan, July 2013). Others told of travelling to the Chief Minister's office in Jaipur and to Delhi to participate in rallies. It is notable that these forms of resistance have been aimed at the government, rather than at quarry owners/businesses, upon whom the workers are highly dependent.

Low capacity of trade unions to organise stone workers

Regulation based in the economic-North is particularly dependent on civil society organisations and unions providing information about the extent of labour condition violations and assisting workers in gaining redress from transnational business or via fora based in the economic-North. In other words, it must work with the field of struggle comprising civil society and union actors that are engaged within Rajasthan and India more broadly. The extent to which civil society and union engagement in the struggle to improve worker conditions can support worker and

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community claims depends however on both the mix of purposes that civil society actors seek to promote, and the multiple sources of power they are able to harness.

In the period of our study, the Mine Labour Protection Campaign (MLPC), an Indian NGO, was the most active body supporting workers. Most quarry workers in Rajasthan are not organised or covered by a union, and the relevant unions lack bargaining power of the type that unions operating in formal and industrialised sectors can exercise. When speaking about activities of trade unions in representing workers to access redress against abuses in the stone sector, H Mahadevan, of the All India Trade Union Congress, noted that 'things are moving slowly, national trade unions have much more to do'. Mahadevan noted that national level unionists have limited awareness about the informal quarry sector and further, that most of the most marginalised workers 'are not aware of many rights and entitlements' (H Mahadevan, All India Trade Union Congress, interview 11 September 2013).

Union representatives we interviewed reported feeling ignored and abandoned by government, undermining union capacity. Bashilal Binjana, General Secretary of RSMLU, noted:

> We have many more miles to go. The district administration and its officials still remain insensitive, there are bureaucratic delays. We have to reach the actual victims. We alone cannot do that. The government has to develop an awareness and information dissemination programme, more reach out programmes and NGOs like MLPC also has its role to play (Bashilal Binjana, Rajasthan State Mine Labour Union (RSMLU), interview 21 July 2013).

Binjana noted that local unions have started taking more active approaches in attempting to reach rural and isolated workers, such as the RSMLU establishing an accident support helpline for those with access to mobile phones. When the union receives a complaint, it 'immediately connects with the worker, arranges for required treatment, and files complaint with the district collector' (Bashilal Binjana, Rajasthan State Mine Labour Union (RSMLU), interview 21 July 2013).

MLPC and the RSMLU were actively involved in facilitating the compensation process for silicosis victims. The MLPC conducted a postcard campaign targeted to over 900 patients admitted to the government chest hospital and diagnosed with silicosis — informing them of their right to compensation. In 2017, it also hosted a national roundtable on preventable occupational diseases, bringing together doctors, health experts and social workers (Thomas, 2017).

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Our study found that the primary strategic focus of the MLPC and unions has been on health concerns such as silicosis, rather than on issues such as bonded labour and child labour that are the focus of regulation in the economic-North. To some extent this may reflect the power dynamics on the ground – workers who are dying of silicosis do not have much to lose and so have proved willing to speak out and campaign, whereas quarry workers who are well enough to keep working are commonly too scared of losing their jobs to risk retaliation by agitating for better conditions. Nonetheless, any mismatch between the objectives of regulatory actors in the economic-North and those of workers themselves (and those who represent them) will undermine the effectiveness of international regulatory interventions – issues such as bonded labour are unlikely to be addressed unless victims are confident that reporting the issue will not put them in a worse position.

The exercise of business power in Sandstone GVCs

This section examines the types of business power exerted within sandstone GVCs linked with Rajasthan. To do this it brings together the fields of struggle lens to understand business power within Rajasthan and India and GVC theorising that extends an appreciation of business power at the local level to business influences along the stone supply chain. In particular, this section highlights the 'multi-polar' nature of the GVC, its opaque and diffuse nature (Ponte and Sturgeon, 2014). The capacity for leverage by any one market actor, including those in the global-North, then is limited.

Both the production and trade of sandstone is marked by informality and opacity. The value chains are complex and involve a large number of local businesses that are both formal and informal. Quarry owners sell the sandstone and are generally not involved in retail selling, processing or exporting of sandstone. The sandstone is sold to agents. Unlicensed quarry owners are paid in cash on a piece-rate basis by the agent with no formal documentation. The agents collect the stone from the side of the road, where it is assembled by quarry workers. These relationships are either relational, where tacit information is exchanged between parties, governed by trust and relationship, or captive, where less competent suppliers are provided with detailed instructions by dominant buyers (Ponte and Sturgeon, 2014). The norms governing these relationships are 'domestic' in the sense that they are based around loyalty, trust, repetition and long histories (Ponte and Sturgeon, 2014). See Table A1 in the supplemental material online.

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While large stone processors and exporters exercise the strongest forms of governance over the value chain within Rajasthan and India more broadly, smaller businesses shape conditions of work at the local level. (See Table A1 in the supplemental material.) Some stone purchased by agents has already been turned into cobbles at the quarries. Agents with collection centres buy cobbles, which are then sold on to exporters and local traders (Madhavan and Sanjay, 2005). A big proportion of stone bought by agents is for large processing units, who have contracts with

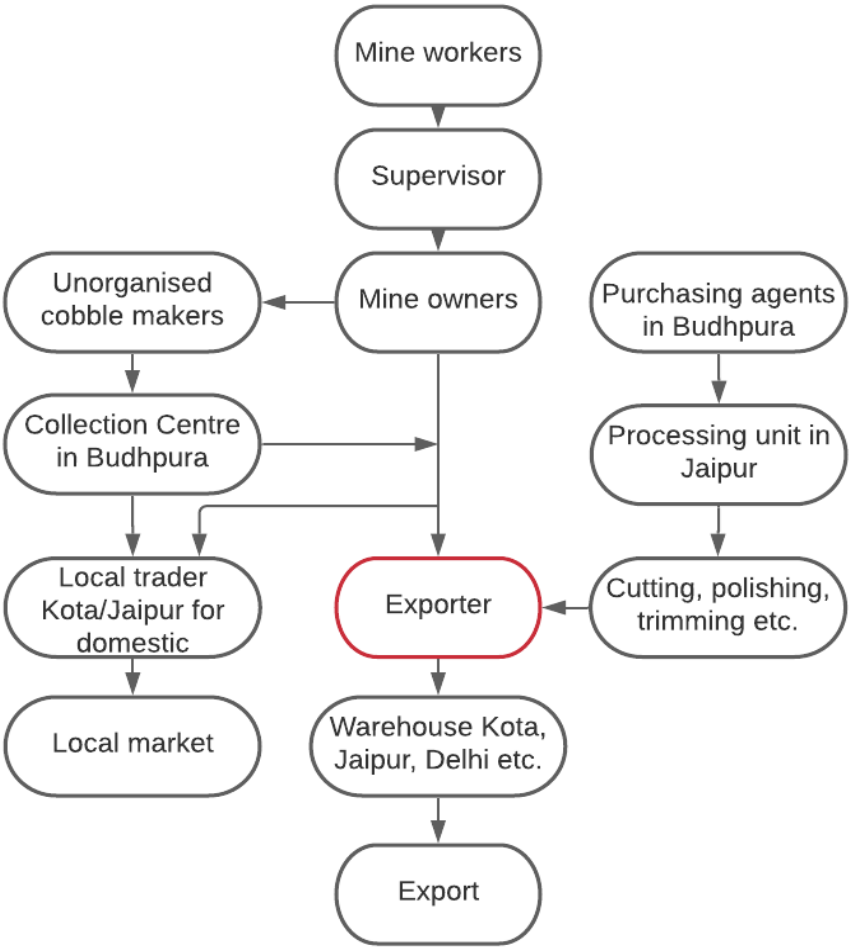

Figure 1: Supply chain from the Budhpura quarries up to the export level. Adopted from (Madhavan and Sanjay, 2005).

buyers. Large processing units are able to exercise captive governance over mine owners, via the agents. The unprocessed stone is transported to processing units from quarries. In Jaipur, the capital of Rajasthan, there are number of processing units, engaging in processing and polishing of sandstone for international customers. The quarried sandstone is roughly sized or trimmed as

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per the specification of buyers. These buyers are generally traders with collection centres or warehouses in Kota, Jaipur or in Delhi. The buyers-traders sell crude or roughly trimmed sandstone to domestic and international customers (Madhavan and Sanjay, 2005). The relationship between the traders and the international customers is largely market-based, in the sense that there is little explicit coordination or guidance provided by international customers to the traders. The coordination is generally of a technical nature, driven by industrial norms around the technical specifications of stone quality, grain and so on.

In the economic-North, also, there are multiple buyers. Unlike other industries in which certain players have developed oligopolies, with high concentration of market capture, sandstone value chains are much more diffuse. Retailers and buyers in the economic-North have very little control or influence over the entire value chain, at the macro-level. Because consumption is not driven by brand value, the norms governing the industry are more of a market (economic values, driven by concerns around price) or industrial (technical measures) nature than reputational. A large part of the stone is then sold onto construction firms.

The multi-polar nature of the value chains at a macro level (see Table A2 in the supplemental material online) acts as a barrier to the type of normative influence anticipated in much business and human rights regulation, whereby reputational concerns around human rights performance are expected to motivate lead-firms to persuade business actors down their supply chains to comply with human rights standards. The norms and conventions that govern these value chains varied at different levels and are mainly "domestic", that is shaped by dynamics within the field of struggle within Rajasthan and India. We witnessed low infiltration of human rights norms at the point of mineral extraction. Domestic norms that apply in Rajasthan compound existing social markers of vulnerability and discrimination for Adavasi and Scheduled Castes.

Assessment of likely efficacy of business and human rights regulation based in the economic-North

What type existing of business and human rights regulation based in the economic-North is most likely to be effective in addressing the human rights breaches commonly seen in Rajasthan's quarry mines? At the outset of this paper we described how nascent business and human rights regimes fall broadly into three categories: disclosure-based regimes; due diligence compliance

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regimes; and trade-based regimes. We now describe these categories further and assess which of them is likely to be most effective. In our discussion, we are concerned with the general characteristics of these regimes and we recognise that there are differences in detail in how they can be enacted and developed. We set out these findings in Table A3 in the online supplemental material.

Disclosure-based regimes are premised on the assumption that lead firms, who are obliged to report, are themselves driven by conventions of reputation. That is, lead firms will be sensitive to the negative publicity that might follow from a report that identifies the use of forced or bonded labour in their supply chain. There are no penalties for failing to conduct those efforts adequately, and no right to remedy for victim survivors of human rights breaches in business operations or supply chains. Such regimes include the Modern Slavery Acts enacted in the UK and Australia and *the California Transparency in Supply Chains Act* enacted in 2015. All require businesses of a certain size to demonstrate, through reporting, efforts to eliminate modern forms of slavery from their operations and supply chains.

Due diligence compliance regimes also focus on lead firms but differ in that they often include a positive duty to effectively implement a vigilance plan and can involve penalties or vulnerability to civil action if they fail to do so. While these laws do not just rely on reputation, they still assume that firms domiciled in the country of the law are able to implement a plan that would reduce the likelihood that they purchase 'tainted' goods and that they will be able to gain sufficient information about the goods to do so. Examples of this include *the French Due Vigilance legislation* (Law No. 2017-399 of 27 March 2017), the *German Human Rights Due Diligence Act* ('Draft law').

As for trade-based regimes, while there are some that involve blocking the importation of *specific merchandise* over labour rights concerns,[iii] it is more common for trade-based regimes to focus on whether the government of the source country is upholding the relevant standards, either generally or in certain sectors. An example is the EU's 'GSP+' program, which grants tariff-free access for certain products to low and lower middle-income countries, provided the EU is satisfied those countries are implementing specified international conventions related to human rights (including labour rights) and environmental protection.

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One trade-based regime that has attracted significant scholarly attention is the US–Cambodia Textile Agreement (UCTA). Under UCTA, the US increased Cambodia's garment export quota every year from 2000 to 2004, partly on the basis of reforms to Cambodia's labour laws and partly on the basis of progress reports from Better Factories Cambodia (BFC), an innovative worker training and factory monitoring program implemented by the ILO (Marshall, 2019). The additional export quota was only made available to those Cambodian factories that volunteered to participate in the BFC program (Wells, 2006:364). UCTA came to an end in December 2004,[iv] but BFC has continued as part of the ILO's Better Work Program. While field studies (including our own) attest to the thoroughness and integrity of BFC's monitoring and training program (Polaski, 2006; Marshall, 2018), there are real questions as to how effectively it has enlisted the Cambodian government as an ally in efforts to improve labour conditions. Particularly since the 'carrot' of US quota access through UCTA has been removed, the Cambodian government has at times instead sought to undermine and circumvent this goal (Marshall, 2018). Nonetheless, whereas other trade-based regimes have often been criticised as tokenistic, UCTA itself has been praised for making significant trade benefits contingent on reliable evidence of progress (Polaski, 2006; Wells, 2006).

Of the three kinds of regimes, it is our view that a trade-based approach has the most potential to be effective in addressing the fields of struggle and GVCs linked to Rajasthan's sandstone quarries – provided that the trade benefits at stake are significant, and that the regime is designed to give greater leverage to local state and civil society actors who are committed to empowering mine workers to assert and claim employment rights. Administration of a trade-based regime would be made easier by the fact that, whereas the relevant value chains are multi-polar, the relevant trade routes are concentrated. The port of Mundra, which is closest to Rajasthan, accounts for 73.9% of sandstone exported from India, and 90 per cent of this sandstone is exported to the UK, where it is received at the Port of Felixstowe (Charan et al., 2020).

Of course, this concentration of trade flows will only be of benefit if there are credible programs in place to improve labour conditions for mine workers, and if decisions about whether to limit or enhance that trade is based on good information regarding whether those programs are proving effective. While it is the capacity of trade-based regimes to incentivise host-states to address human rights that makes them the most advantageous form of business and human rights regulation in this case, our paper has identified that different arms of the Indian and Rajasthani

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states are supporting the rights of quarry workers or inhibiting them to varied extents, for a complex range of motivations. In our analysis, Central and Rajasthani regulatory agencies may be less effective allies in enhancing the leverage of a trade-based regime than the Indian Human Rights Commission (NHRC). The lack of will of the Rajasthan state government and the under-funding of the labour inspectorate suggest that both require additional incentives and assistance in building the capacity to address the egregious human rights breaches that are commonplace in Rajasthan's quarries. While they could be brought into play in negotiations around the administration of a trade-based regime, our analysis anticipates that they may not act effective allies of the type required to monitor compliance with a trade regime. In the NHRC, a trade-based regime based in the economic-North may find a competent and non-corrupt ally, with a proven record of addressing human rights breaches in the Rajasthan sandstone industry. It has the added benefit of being trusted by workers, relevant union and the civil society actors in the field of struggle for improved human rights conditions; it has acted as a meta-regulator, coordinating with other aspects of India's government and bureaucracy; and that it is responsible for breaches of Indian law, which is preferable to the imposition of international standards.

Furthermore, efforts at the point of export in India, and the point of import in the UK, could do a great deal to put pressure on businesses throughout the value chain to improve labour conditions. Our analysis suggests that the processing units and exporters in India are likely the most powerful players in India's domestic value chains, in the sense that they act as market gatekeepers, they have potential access to the most information (should they seek to collect it), and they set prices. They are certainly more powerful than informal quarry owners. If they were required to work with a credible independent monitor to collect data concerning the provenance of stone, as a requirement of export, the most significant barrier to value chain transparency would be overcome. And further, the risk of import into the UK or another port being refused could potentially act as an incentive to increase the payment per piece sufficiently to allow for the payment of living wages. Whether this incentive proves effective will depend on several factors, including the relative attractiveness of other markets for stone. Given the growing size of the domestic market in India, there is a danger that stone producers could respond to a trade-based regime by preferring domestic markets over international ones.

Despite the limitations of trade-based regimes, other types of business and human rights regulation – including disclosure-based regulation and due diligence regulation – would be far

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harder to administer and less likely to be effective in intervening in the fields of struggle and GVCs we examined in this paper. This is because sandstone value chains are multi-polar and opaque, and because it is local dynamics that drive egregious human rights, more than global value chain dynamics. Disclosure-based and due diligence regulation is unlikely to regulate and enrol actors with power in sandstone value chains. At best, such regimes might play a supplemental role. It would likely mainly be larger construction firms in the economic-North that would be responsible for the requirements of such regulation, and by the time sandstone reaches these construction firms it has passed through many hands. Stone importers and retailers in the economic-North are not large enough players to have significant influence in these value chains, and exporters and stone processors in India are unlikely to be recruited, even indirectly, by such regulation. Though large volumes of stone are exported, there are no major buyers against whom leverage can be applied to bring about change within value chains.

The multi-polarity and opacity of the GVCs also acts as a barrier to the type of information gathering that increases the efficacy of disclosure-based and due diligence regulation. It makes it difficult for businesses in the economic-North, such as construction firms or sellers of stone, to assess the risk that sandstone has been imported from Rajasthan and is linked to egregious human rights breaches. One representative of a multi-stakeholder initiative interviewed for our study noted the particular difficulties in attempting to map the value chain in Rajasthan's stone sector:

> It's so complex in the sense of you'll get to your exporter or processor and then they could be buying for a number of businesses. It's a very informal structure for buying stone, so it can just see somebody going to market and looking for a particular colour … there's very little trail in terms of actual documentation and people recording it of where the extraction quarry may be (Member of multi-stakeholder initiative, interview, 21 October 2013).

These factors combine to create significant barriers to tracing the value chain or enrolling value chains to bring about change.

A further barrier to the effectiveness of disclosure-based or due diligence regulation is the low purchase of the norm that business is responsible for human rights or labour conditions across civil society, unions or business in Rajasthan. Our interviews indicated that local respondents did not feel that the transnational elements of the value chain could play a large role in addressing sector-wide reform or responding to human rights breaches. When asked which parties should

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bear responsibility for silicosis in the stone sector, one union representative gave a typical response: 'First the employer, the labour enforcement machinery and then the government' (Bashilal Binjana, Rajasthan State Mine Labour Union, interview, 21 July 2013). When prompted about the responsibility of transnational buyers of stone products for workers' welfare, one processing plant owner, for example, simply stated — 'How could they do so? We pay taxes and CESS [a type of levy], workers' welfare should be the responsibility of the government' (Luvjeet Singh Sankla, processing plant owner, interview, Mandore, 22 July 2013). Because, at the macro-level, the value chain is multi-polar, with marketized relations between actors in the economic-North and India, the opportunities for diffusion or transference of human rights norms are limited. Companies in the North are not seen as legitimate norm-bearers.

Conclusion

This paper has assessed regulatory pathways for improving the human rights conditions of stone quarry workers in Rajasthan, where bonded and child labour is widespread. It has examined which type of state-based business and human rights regulation has the most potential to address the conditions within the fields of struggle and GVCs that drive human rights breaches in Rajasthan's stone quarries. Within the grey literature, at least, there is an assumption that the "race to the bottom" in certain sectors in the economic-South is driven by firms in the economic-North. This gives rise to moral and efficacy-based arguments for business and human rights regulation.

The empirical data examined in this paper has found that sandstone GVCs linked to Rajasthan's quarries are multi-polar, not uni-polar or buyer-driven value chains, which means that they are not "driven" or "governed" by business actors in the economic-North. Rather, power is distributed across the value chain and within the field of struggle in complex ways. If anyone has more power, and the capacity to collect information about stone provenance, it is likely exporters and processors of stone. Regulation will be more effective if it recruits and enrols these actors. It is our view that trade-based business and human rights regulation is best placed to do so – provided the trade benefits at stake are significant, and the design of the regulatory initiative is attuned to local power dynamics.

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Our study of the conditions within the fields of struggle in Rajasthan that inhibit leverage to improve human rights conditions has emphasised local socio-environmental dynamics such as landlessness, drought and discrimination on the basis of caste and tribal affiliations. These social forces must be addressed if the conditions of workers are to be improved. Yet such dynamics are beyond the reach of business based in the economic-North, whose behaviour business and human rights regulation seeks to shape. They are far more likely to be addressed by state and central governments in India, who could be recruited as allies in trade-based regulation. While a number of papers have criticised the Modern Slavery Act model of regulation for by-passing host states on a normative basis, this paper has presented empirical data to explain why by-passing states may be problematic in the case of sandstone value chains. India has a democratic and functioning state. While different state actors currently play a range of roles within the field of struggle – some aligned to business interests, others underfunded and subject to corruption concerns, others actively seeking to protect and enhance workers' rights – it is a priority to promote strengthening of state-based approaches to improving working conditions in India. A well-designed trade-based regime would recruit and support allies within the Indian state as well as incentivising domestic business actors with the capacity to influence the conditions of vulnerable stone quarry workers.

Supplemental material

Supplemental material for this article is available online.

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[i] We make brief reference to these debates in the supplemental material online.

[ii] *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161; *People's Union for Civil Liberties v Union of India* (1982) 3 SCC 235 ('*Asiad Workers' Case*'); Writ Petition filed by the People's Union for Civil Liberties (April 1985).

[iii] An example is section 307 of the *US Tariff Act of 1930* (19 U.S.C. § 1307), which prohibits the importation of merchandise mined, produced or manufactured by forced or indentured labour.

[iv] As a signatory to WTO agreements governing the global trade in garments, after December 2004 the US could no longer offer garment export quotas.