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# **United Nations Guiding Principles and the Business and Human Rights in India**

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## **Abstract**

The early 1990s opened up the Indian Economy for the world market to set up their businesses and corporations in India. While the advent of private corporations served to up the Indian Economy and turn it into one of the biggest business hubs for Asia, business enterprises also came in with an externality of private profit maximization. This article outlines how India deals with corporate rights to set up business enterprises, as well as the corporate responsibility to respect and abide by the regulations that prohibit them from abusing human rights in the interest of private welfare. The article champions the present Indian scenario where a company's failure to exercise due diligence creates a rebuttable conjecture of causation and liability towards those employed. An instrument dedicated to supervision of Business and Human Rights in India providing legal solutions to cure ambiguities and unchecked excesses in the current framework of international law is necessary. The narrative does not restrict its ambit to labour rights and includes land rights as a part of human rights in the agrarian context of India. It cites the lack of proper infrastructure to address such as issue and stresses on the importance of an imposing form legal instrument, founded on a softer outline of regulation such as the United Nations Guiding Principles on Business and Human Rights.

## **JEL Codes**

E2, J7, M2

## **Keyword**

Business and Human Rights, Land, Labour, United Nations Guiding Principles, Corporate Responsibility

## **Overview of Business and Human Rights (BHR) situation in India**

### **The Problem<sup>1</sup>:**

#### **Land for Business Rights**

Land in India is a scarce resource, but a source of livelihood for over half its population. The average landholding of India (3 acres or less), is less than of US (450 acres), France (110 acres), or even Brazil (--) and Argentina (5 hectares). It is almost similar to that of China (2 hectares or less). Agriculture in India is the least productive, accounting for 15% of Indian GDP. But it employs almost half the total population. This might serve as a potent reason behind Indian poverty. Therefore, agriculture either needs to be more efficient or land made more productive by utilising it elsewhere. A large scale governmental effort to modernize agriculture combined with a massive drive to urbanize was the prescription for India's growth and development. But both the cases require land acquisition. The land acquisition law from 1984 dealt with fragmentation of land holdings to remove the problem of land-holdouts and disputed land-titles. Affecting almost 50 million people, more than 6% India's total land has been acquired since 1947. Landowners were ill paid, interests of farmers and peasants hurt. Very little rehabilitation was organized, and tribals were the most afflicted. The acquisition law needs to recognise the geographical and economic diversity and its specific local land cultures and histories.

#### **Labour and Human Rights**

Most workers in unorganized sector are poor. Their debts to labour contractors compel them to practice bonded labour. In the unorganized sector, the labourers are often unaware of their legal obligations. This denies them the benefit of the Minimum Wages Act, 1948. Like bonded labour, a prevalent labour pattern in India depends on children joining the workforce in industries. While prescriptions like Bonded Labour System (Abolition) Act, 1976 and Child Labour (Protection and Prevention) Act, 1986 are existent, it is imperative for the government to actively uphold them and ensure their implementations. Interstate migration of labour ensures more scope for employment. But the presence of violent fundamentalist socio-political parties has instrumented barrage of efficient migration to fulfil the supply-demand gap. Labour, therefore, should also be protected under the Inter-State Migrant Worker (Regulation of Employment and Condition of Services) Act, 1979. The National Human Rights Commission of India (NHRCI) oversees maintaining human and business rights. It recognizes and essentiality of the State's duty to protect, and to ensure access to remedies to the victimized. 86% of Indian workforce in 2006 was employed at the unorganized sector, another 6.2% informally employed. Nothing much has changed over the decade, where the sectoral weight still stands at averagely around 83%. Employers claim that they cannot afford commitments to corporate social responsibility adopted by trade and industry associations. Corporate responsibility therefore covers a mere 10% of the (formal sector) workforce.

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<sup>1</sup> Human Rights in India, Status Report 2012, 2013, 2015 (Prepared for India's Universal Periodic Reviews at the UN), Working Group on Human Rights in India and the UN [2012: <http://wghr.org/wp-content/uploads/2013/07/Human-Rights-in-India-Status-Report-2012.pdf>]

## **BHR and the United Nations Guiding Principles**

### Overview of the UNGPs

Corporate responsibility governs the idea of businesses and human rights coexisting in harmony. Impacts of businesses can have both positive and negative implications on the society. While growth, development, employment and infrastructure are few of the positive externalities of a booming corporate presence, negative externalities often tend to outweigh their positive impacts by marring human rights and interfering in the primary duty of the government to protect its citizens. The United Nations endorsed the 'Protect, Respect and Remedy Framework', developed between 2005 and 2011 under the mandate of John Ruggie. He was the then-Special Representative of the UN Secretary-General for business and human rights. The Guiding Principles were built on extensive research and nearly 50 international consultations around the globe. Following the endorsement, the UN Working Group on BHR, comprising five independent experts, was assigned to guide the implementation of the UNGPs. The framework recognizes unequivocally the duty of the State to uphold international human rights law to protect everyone within their territory and under their jurisdiction over violations committed by corporate enterprises. The corporate responsibility of businesses to not infringe human rights wherever and whenever they operate. The framework demands awareness on the end of corporate houses on their potential and actual impacts. The corporate social responsibility must be independent of the State's duty to protect human rights. States here must have effective legal instruments and regulations in place to prevent and address business-oriented human rights transgressions. This means there should be an easy access to remedial issues by individuals and communities. Implementing the corporate responsibility is temporal in nature. The nature of human rights infringement risk changes with operations, time, contexts, and business relationships. Implementation is therefore a dynamic process. Better corporate reporting can only be born out of the expectation from the companies to know and show how they are progressing in their human rights performance.

There are three pillars in the Guiding Principles: protect, respect and remedy. Each pillar tackles a concrete individual steps to be taken on aspects of government and corporate duty to not infringe human rights (where there is a strong need to involve land rights, for the benefit of agricultural labour force).

### State's Duty to Protect

A fundamental principle of the United Nations' Guiding Principles discusses the States' duty to protect against human rights violations within its territory or jurisdiction. In line with the established international human rights legal obligations a State has to (i) respect, (ii) protect, and (iii) fulfill human rights abuse against its entities by third party organizations (including business enterprises). It is not the responsibility of the State when a human rights abuser violates the mandate (often private actors). But may be in breach of their international human rights legal obligations, it is their duty to oversee the matter in defense of the afflicted. A State's responsibility to protect is subservient to the business enterprise conforming to the regulations laid for the optimal functionality of businesses in the territory. In the case businesses fail to heed to the BHR framework for appropriate human rights acknowledgement, the State is moved to take necessary remedial steps. "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and

redress such abuse through effective policies, legislation, regulations and adjudication.” In additional cases where an abuse can be attributed to the State, or where the State has failed to take necessary remedial steps (prevent, investigate, punish and redress), the State is directly held liable for the human rights violations.

### Corporate Responsibility to Respect

In accordance with the Guiding Principles 11 “Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impact with which they are involved.” Enterprises can and should have freedom to function on a daily basis as long as they protect an individual’s human rights. The Principles underlines the basic corporate responsibility in the sphere of operation, as businesses affect labour in direct and indirect capacities. Businesses often voluntarily take additional commitments in the securing labour rights they employ or even employees that are linked with such corporations in any capacity. Failing to abide by the corporate responsibility might also prove detrimental for the State in the long term. Infringing on human rights might even prove to be detrimental for the State’s functioning as a protector of the human rights in the event of corporate responsibility. For instance, right to fair trial (a State-run instrument for remedy) might be heavily deterred if the businesses obstruct evidence or interferes with witnesses. The Guiding Principles assign the State a tertiary role of delivering justice. The prime party to uphold the BHR remains the corporate businesses. Infringements can range from overt routines like racial profiling in extending its services, to subtle constructions like ignorance for inhuman treatment and lack of effort in improving the situation. The corporate responsibility to protect extends from physical infringements to enterprises operations. This can be manifested in cases of modern slavery and illegal land acquisitions for profit maximization.

### Access to Remedy

One of the most fundamental acknowledgments to BHR, this pillar remains also as the weakest of the triumvirate. According to Article 8 of the Universal Declaration of Human Rights everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Because the onus of corporate social responsibility to check business-related human rights violations lies primarily with the business enterprises, States must intervene only when the case does not hold. The duty of the State will be constantly challenged otherwise. The concept of remedies can be multifold, according to the numerous treaties signed at the United Nations, UN Guiding Principles and the European Convention on Human Rights. Remedies might not be restricted to

- (i) Structural Remedies
- (ii) Access to courts (Supreme and High Courts, Labour Courts<sup>2</sup>)
- (iii) Injunctions or guarantees of non-repetition.

The conventions agree that the remedial system can be in the form of apologies, restitution, financial or non-financial compensation and punitive sanctions. For the access to remedy,

1. The State must affirm its duty to protect, ensuring robust and appropriate instruments (NHRCI, AFP, etc.) that are readily available

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<sup>2</sup> Industrial Disputes Acts, 1947

2. The State should start taking steps to remove legal, practical or other barriers such as administrative fees or language barriers that may prevent victims from presenting their cases
3. Judicial (Principle 26 of the UNGP), non-judicial, administrative, legislative or any other means to check infringements (National Commissions for SCs and STs<sup>3</sup>, National Commissions for Women and Protection of Child Rights, National Green Tribunal, etc.) must be optimally used
4. Non-state mechanisms for contingency (FLA, ADR, etc.) must be taken into account
5. The duty of the corporate businesses must supersede the States' duty to protect, as the UNGPs stipulate that companies should collaborate with judicial mechanisms
6. Necessary mechanisms to field and address individual and community grievances must be established

#### BOX 01: THE MAHANADI COALFIELDS LIMITED CONTROVERSY

Mahanadi Coalfields Limited (MCL) is situated at Talcher coalfields in Angul district of Odisha. They are one of the largest (rated second) and most profitable coal producing subsidiary in India.

With their open cast and underground coalmining operating from five coalfields areas namely Jagannath area, Lingaraj area, Bharatpur area, Talcher area and Hingula, they supply coal to fuel various industries, thermal power plants, textile mills, paper mills, iron and steel plants, and railways in the country. Situated on the fertile banks of Brahmini River, the river along with its tributaries Tikira, Singida and Nandira are being increasingly polluted by such large scale coal mining activities undertaken beyond permissible limits that then release toxic pollutants into the rivers and also degrade the quality of plains and agricultural lands.

In a rural society, where the inhabitants rely heavily on land for their livelihood, access and quality of their land plays a very vital role in their lives. They not only derive their source of sustenance from the land but also worship it, integrating their economic and social identity with it. MCL's acquiring of the majority of land and its consequent pollution for the purpose of mining has affected the landless rural people who now struggle with this vulnerable state of affairs.

It is being argued by the people living there that the productivity of the farmlands is negatively affected by pollutants such as coal dust and fly ashes. Other problems that arise are the instances where the opencast mines that are not filled by the workers get filled with water and become breeding grounds for mosquitoes, moreover inadequate filling of land holes also cause land depression. Excessive mining activities take over agricultural lands, encroach on forest land and causes top soil loss. It also affects water table, soil micro-organism, vegetation coverage, drainage, etc. The sounds of blasting, motor vehicles and coal loaded trains on merry go round railway lines have been causing noise pollution in the affected locality. Blasting sound has been causing ground vibration, land slide, joint fractures and cracks in mining area. It also adversely affects the health of insects, birds, animals and human beings those who are living in the locality. The air pollution is caused by coal dusts which are more often released into air by mining operation during transportation of coal by vehicles, train and conveyor belt, loading and unloading of coal by trucks at coal depot, coal burning in thermal plant, domestic burning of coal at home, blasting of dynamite and releasing of toxic gases like sulphur dioxide, nitrogen oxide, carbon dioxide, etc.

<sup>3</sup> Constitutional Articles 338(5) for SCs, 338A for STs

The entire Talcher belt is increasingly being polluted day by day due to extensive coal mining and thermal power plants operation at present. The opencast method of mining coal has been proved to be risking the environment and leading to the process of massive deforestation of the coalfields.

The affected people argue that it causes excessive heat during summer and drying up ground water sources in the locality. The contaminated ash contained waters, released wastes from open cast and underground mines, coal washeries, surface runoff, etc, released, other industrial toxics released from other nearby industries and the coal dust emission (containing iron, sodium, copper, nickel, chromium, aluminium, zinc, etc) into the streams of rivers pollute the water sources of MCL area. As a result, the existing water canal, springs, dug well, tube well, etc have been severely polluted. The affected and displaced villagers cannot help depending upon the MCL water tanker facility for their drinking water need. But this tanker facility is also irregular, meagre, and usually gets affected by the pollutants. Other than closing the coal mining operation there is no viable option is left for regenerating the water sources as clean and fresh for animal and human habitation in the Talcher locality.

The affected, displaced and mining engaged people in and around the coal mines usually experience acute shortage of drinking water during summer season. The increasing scale of coal extraction, mining operation and frequent powerful blasting in the coal mines the localities not only draw water from the deepest recesses but also drink polluted water as stated earlier. The coal polluted lands, airs and waters are leading to the growth of environmental related diseases among the local people, birds and animals. The diseases like malaria, jaundice, scabies, diarrhoea, asthma, respiratory tract infection, tuberculosis, etc have almost become endemic in the Talcher locality. The other non-communicable diseases like diabetes, heart problems, hypertension, arthritis, cancer, rheumatism, paralysis, etc, are increasingly visible and perceivable among the people in the locality. The people argue that their annual and per capital health expenditures are increasing. Since people fall sick more often they fall into the debt trap because they cannot afford to treat their increasing sickness and morbidity at present.

The objectively perceived situation reflects two important concerns- one includes environmental pollution and another includes pollution caused health hazard in the mining locality. There are two contradictory responses to these concerns- perception of people and perception of project authority. The former blames the latter as the sole culprit of environmental pollution and health hazard whereas the latter blames former as traditional ridden and do not change their health concepts and practices.

As a result, the traditional conceptions of illness, sickness and disease still remain intact among the displaced people in the locality. The MCL authority provides health camp and supply free medicines to the affected households in the MCL locality. The government has been rendering health service through three health wings namely medical wing, public health wing and family welfare wing in Angul district. The medical wing treats largely common diseases like malaria, diarrhoea, leprosy, respiratory tract infection, scabies, etc free of cost at government health institutions whereas public health wing deals with epidemic diseases like gastroenteritis, bloody dysentery, acute respiratory infection, etc, treated through national anti-malaria programme (NAMP), enhanced malaria control programme (EMCP), etc. Family welfare wing deals with care of pregnant women, reduction of infant mortality, immunization facility, etc. But the resettled people in resettlement clusters and colonies argue that these

facilities hardly solve the health problems created in the polluted coal mining environment. In the objective perceived situation it is observable that the entire coal mining belt is highly polluted, and it is natural that health problems are there among the people due to pollution. It is true that health problems could be resolved through medical facilities in the MCL area. It is also not untrue that the government and MCL authority neither completely rectify the pollution problems nor could wipe out the pollution caused illness, sickness and diseases in the locality.

The perceived situation of mining environment and health hazards reflects that the illness, sickness and diseases are outcome of capitalistic economy and polluted atmosphere caused by the coal mining operation. In the name of profits the MCL did not spare the ecology, environment and people's health in the locality.

However, the application of pollution free technology, compensatory plantation, etc and the MCL and government initiatives for modern health infrastructures in the Talcher-Angul area will solve the mining caused health problems in the MCL Talcher area.

The state has taken several actions in recent times, Odisha had fined Mahanadi Coalfields Rs 1,306 crore for "illegal extraction" or mining without environment clearance in the Ib Valley in 2012, prompted by a state controller and auditor general's report. Consequently after the ruling of Supreme Court in 2017, The Odisha government has slapped a demand notice of Rs 82.97 billion on MCL for unlawful production of coal in violation of environmental clearance in  
March 2018.

Despite that a state of complete physical, mental and social well-being or health in coal mining area is rarely practicable. Therefore, health rights, health equity, and health justice in the mining area are largely missing.

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Source(s):

<http://www.newindianexpress.com/states/odisha/2017/nov/02/show-cause-notice-to-coal-india-sub-subsidiary-mcl-for-excess-mining-1689743.html>

[http://www.business-standard.com/article/companies/odisha-slaps-rs-83-bn-demand-notice-on-coal-india-firm-for-illegal-mining-118032100594\\_1.html](http://www.business-standard.com/article/companies/odisha-slaps-rs-83-bn-demand-notice-on-coal-india-firm-for-illegal-mining-118032100594_1.html)

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[http://niti.gov.in/writereaddata/files/document\\_publication/Report%20on%20Coal%20Mining%20C%20Displacement%20and%20Rural%20Livelihoods%20A%20Study%20in%20Mahanadi%20Coalfield%20Odisha.pdf](http://niti.gov.in/writereaddata/files/document_publication/Report%20on%20Coal%20Mining%20C%20Displacement%20and%20Rural%20Livelihoods%20A%20Study%20in%20Mahanadi%20Coalfield%20Odisha.pdf)

<http://peoples-studies.com/wp-content/uploads/2017/08/Indigenous-people%E2%80%99s-right-to-land-in-Odisha.pdf>

## **Purpose of BHR**

### **BHR and India**

On 2<sup>nd</sup> June 2017, The National Human Rights Commission (NHRC) in collaboration with the Confederation of Indian Industry (CII) organized East Regional Conference on Business Human Rights in Kolkata. The main objective of the conference was to share the developments of the region in business and human rights and deliberating the views of the



stakeholders. The pertinence of universal availability and accessibility of human rights was discussed. Justice Darma Murugesan (member of the NHRC), Dr. Satya Mohanty (Secretary General of NHRC) and Mr. Sushanta Sen (principal adviser of CII), came together to talk about the recent initiatives to highlight the importance of industrial relations, dignity of regular and contract workers and reasonable wage disbursements. The UNGPs on Business and Human Rights developed by John Ruggie endorsed by the UN Human Rights Council in 2011 was brought into the purview of the conference. The roles of the three resting pillars: Protection, Respect and Remediation, were elaborately debated upon.

It remains a fact that the government has a responsibility and has to take initiatives to protect the people against human rights violations. At the same time, businesses need to hold themselves accountable with respect to their share to human rights abuse in order to maximise private gains. It is crucial that the conduct and operation of businesses should respect the human rights culture of the country.

In more recent times, the NHRCI organized a national conference on “Business and Human Rights” along with Bharat Heavy Electricals Limited (BHEL). The conference delved into concerns for state duty to protect human rights and upholding corporate responsibility. The NHRC in India plays an important role insofar as BHR is concerned. It has been nominated by the Commonwealth Forum of National Human Rights Institutions (CFNHRI) to be the focal point for the subject. The Commission therefore systematized a meeting with trade and industry associations to discuss and prepare a roadmap of engagements with business enterprises. This was followed by a series of meetings with Industry Federations/Organizations to encourage voluntary compliance of human rights Principles by the Business. This gave birth to the draft Self-Assessment Tool that was to be voluntarily used by the industry. Regional conferences throughout Kolkata, Chennai and Mumbai were held in 2017 thereafter. Human rights remain a voluntary obligation for companies, albeit paving the path for the UNGP implementations.

While the UNGPs are not still fully in place in India, many organizations such as Ethical Trade Initiative (ETI) have been actively working on to start a conversation on implementation and operation of a binding framework. The idea is to raise awareness and development of indicators towards monitoring the conforming of business enterprises to the UNGPs and other international covenants.

### Building awareness on the UNGPs

The disconnect between business actions and the civil rights in India is partially due to the lack of access to remedy and dearth of awareness. The NHRCI<sup>4</sup> is in charge of overseeing the active conformation to business and human rights in India. While the Indian constitution robustly supports human rights, the NHRCI has often failed to act. The NHRCI has regularly come under criticisms for the political interference in its functioning. It failed to meet the basic requirements of the Paris Principles of Independence from the government in structure, composition, decision-making and operation methods. After suboptimal working of labour protection laws and business regulations, the Ministry of Corporate Affairs has published the National Voluntary Guidelines 2011. There is a need to fill the information asymmetry through dialogue.

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<sup>4</sup> Business And Human Rights: The work of the National Human Rights Commission of India On the State's duty to protect, National Human Rights Commission of India

The Dialogue for Change Conference by the ETI collated perspectives from different corporate stakeholders – the government, the civil society and the businesses. These dialogues tend to raise awareness through:

1. Educate stakeholders about the UNGPs
2. Comprehensively discuss human rights and their abuses
3. Impactful business decisions and their financial repercussions due to human rights considerations
4. Gauge the enterprises towards an innovative framework harmonizing business and human rights

Dr. Mohanty pointed out how simple the enforcement of BHR mandate is after the Sustainable Development Goals, agendas 9 and 11 in particular, on responsible businesses. Mr. Avijit Mukherjee from PwC explained CSR's active involvement in education and sustainable development. He also stressed upon the imperativeness in precedence of human rights over motivated business actions if business enterprises wish to build their reputation in the market. India's National Voluntary Guidelines on social, environmental and economic responsibilities of businesses talks about the practical steps they should take to increase corporate accountability.

#### Developing BHR monitoring tool

There appears a need for exploration of solutions in the BHR. Companies should know and be able to show their recognition and respect for human rights by routinely conducting due diligence process. Adversity in human rights impacts labour directly, but enterprises indirectly through forward and backward linkages. Mapping of supply chains by enterprises identify such adversities by creating sustainability transitions that require proactive measures in their operations and supply chains. Business leaders must engage in the political process to encourage government policies that foster sustainability transitions and address other social problems. Distinct from nonmarket strategy and traditional corporate social responsibility, the recent wave of corporate activism focuses on social issues unrelated to their core business, ranging from environmental issues to LGBT rights and race relations<sup>5</sup>. For this to fully materialise, the government through the existing responsible body NHRCI should develop a national action plan which utilises tested self-assessment tools to better effect.

The conference of NHRCI and CII dealt with this in explicit detail. Heads of major business organisations, banking institutions, regulatory bodies, Public Sector Undertakings, media houses, Centre and State government officials and academics in business and legal studies attended and participated in the conference.

#### Access to Remedy

As the Table indicates<sup>6</sup>, a number of remedial institutions are already existent in India. These almost match the range of remedial recommendatory mechanisms that the Guiding Principles

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<sup>5</sup> Chatterji, Aaron K., and Michael W. Toffel, *Assessing the Impact of CEO Activism*, Harvard Business School Working Paper, No. 16-100, July 2017. (Revised December 2017. Previously titled *Can CEO Activism Spark Sustainability Transitions? Evidence from a Field Experiment* and *Do CEO Activists Make a Difference? Evidence from a Quasi-Field Experiment*)

<sup>6</sup> Background Paper for India's National Framework on Business and Human Rights, ETI

mandate. Apart from the NHRCI, there are special commissions for marginalized classes, women and children. Certain non-state mechanisms are also present that are not as well furnished as the state mechanisms are. Owing to the myriad limitations and administrative hindrances in state-run mechanisms, however, the situation might change for the non-state mechanisms in the near future.

### Remedial Mechanisms

According to the UN Guiding Principles Reporting Framework, human rights due diligence is:

“An ongoing risk management process...in order to identify, prevent, mitigate and account for how [a company] addresses its adverse human rights impacts. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed.”

The Guiding Principles are often seen as “global human rights due diligence rules,” but in its correct scope, human rights due diligence is just one of the goals of the Guiding Principles. Human rights due diligence is not aimed at detecting illegal activity or inhibiting business operations. These are actions or efforts carried out to exercise care appropriate to one’s position in order to prevent or mitigate adverse impacts. It comprises essentially internal controls regarding human rights risks, and provides criteria based on which to evaluate whether or not corporate responsibility exists. The Commentary to Principle 17 provides a supplemental explanation that human rights due diligence can be included within broader enterprise risk-management systems; human rights due diligence should be initiated as early as possible in the development of a new activity or relationship; business enterprises should identify general areas where the risk of adverse human rights impacts is most significant and prioritize them; particular attention should be paid to “complicity;” and taking reasonable steps should help business enterprises address the risk of legal claims against them.

Guiding Principles demand that human rights due diligence, and remediation – be organically incorporated in the entire business management system. It should include:

1. Supervision by the Board of decision-making practices and the performance of duties;
2. Deliberation and approval of projects and measures through management meetings and the approval process;
3. Daily management by relevant departments and divisions of the business enterprise;
4. Problem reporting and risk management processes;
5. Whether to bracket these elements into a single human rights control mechanism or incorporate them into separate control mechanisms or systems while ensuring that they are in effect and applied consistently throughout all operations is up to each business enterprise.

## Existing Instruments

### NHRCI<sup>7</sup>

1. Has the power to inquire human rights violations, to intervene proceedings of allegations against labour rights excesses
2. Reviews employment factors that inhibit labour rights and recommend remedial measures for labour laws
3. Submits annual and special reports to the central government to deal with human rights issues in the business sphere, building capacity to address corporate responsibility through research and development
4. Recalls undertakings on CSR and UN Global Compact. It is trying to set prescriptive guidelines to hold consultations on; it has commissioned a study on “Developing a Code of Ethics for Indian Industry”
5. Has taken steps like inquiry to ensure safe rehabilitation of displaced communities in the context of industrialization in green fields, examining complaints of arbitrary action against resilient voices, monitoring assurances given and actions by businesses regarding alternative livelihoods for those deprived of their traditional income
6. Examines business impact on child labour and trafficking as outcomes of government policy, business practices, industrial processes and output. It actively educates bureaucrats, briefs Parliament, moves courts, and sets out review meets and conferences<sup>8</sup> when necessary.

### Compliance Advisor Ombudsman<sup>9</sup>

1. Resolves disputes, undertakes compliance monitoring, and advisory functions
2. Looks into environmental and/or social complaints lodged against Multilateral Investment Guarantee Agency and the International Finance Corporation
3. Assesses complaints based on eligibility criteria, following which it screens for compliance issues before resolution. It concludes investigation after monitoring case proceeding and follow-ups.

### Fair Labour Association<sup>10</sup>

1. Ensures fair and ethical practise of businesses, and promotes adherence to international labour standards for a range of enterprises.
2. Has a system of monitoring plans and agreements by applicants to adhere to all standards and compliances set out in the Charter
3. Entertains a third-party complaint mechanism that can be initiated after the parent remedial mechanisms are exhausted
4. Contains the FLA Workplace Code or Monitoring Principles that dictate terms of remedies, where mediation is done by a FLA-appointed accessor.

<sup>7</sup> Fact Sheet – UPR 2017 – India 3rd Cycle Universal Periodic Review, National Human Rights Institutions, Working Group on Human Rights in India and the UN (WGHR)

<sup>8</sup> ‘NHRCI routinely organizes Regional Workshops on ‘Elimination of Bonded Labour System’ in collaboration with the Governments of Punjab at Chandigarh, Punjab, Haryana, Himachal Pradesh, UT of Chandigarh and Jammu & Kashmir’ - Standard Operating Procedure (SOP) for Combating Trafficking of Persons in India, NHRCI

<sup>9</sup> AD Hydro Power Limited Environment and Social Commitments Register, CAO Ombudsman 2005, 2006, 2007, 2008 [<http://www.cao-ombudsman.org/cases/document-links/links-75.aspx>]

<sup>10</sup> ‘FLA Charter’, Section IX (The Monitoring Process) [http://www.fairlabor.org/sites/default/files/fla\\_charter\\_2-12-14.pdf](http://www.fairlabor.org/sites/default/files/fla_charter_2-12-14.pdf)

### Alternative Dispute Resolutions

1. Negotiation, mediation, conciliation, arbitration, and due diligence process
2. Industrial Disputes Act of India 1947 recognized mediation as remedial, empowered following amendment of the Code of Civil Procedure 1908 in 1999<sup>11</sup>
3. Arbitration and Conciliation Act 1996 enhanced arbitration mechanisms citing decision-making expertise, speed of remedies, and confidentiality as its positive aspects
4. Federation of Indian Chambers of Commerce and Industry (FICCI) and Indian Council of Arbitration established the FICCI Arbitration and Conciliation Tribunal to address business disputes in India and abroad
5. The Arbitration and Conciliation (Amendment) Ordinance 2015 restrains judicial intervention that might delay deliverance of remedies.

### BOX 02: BHOPAL GAS TRAGEDY

In the early morning hours of 4<sup>th</sup> December 1984, when the entire town slept, a highly toxic chemical named methyl Isocyanate-2 (MIC) escaped from the Union Carbide India Limited (UCIL) plant in Bhopal killing and crippling thousands in its wake. Estimated 40 tonnes of toxic gases from the pesticide plant at Bhopal spread throughout the city.

The accident probably began as the result of a runaway reaction of the MIC with water. Water carrying catalytic material had entered MIC storage tank No. 610. As an aftermath of the leakage, people and animals dropped dead on the street in startling numbers. No alarm sounding warnings were given out and neither was there any preparation for evacuation. The doctors treating victims were clueless as to how to treat them as the UCIL had not provided any emergency information. This aggravated the tragedy as an estimated number of 10,000 people died immediately while almost 50,000 were too ill to return to their jobs.

One of the reasons attributed to this happening was that it was being handled by an untrained worker. Several employees of the UCIL stated before the Permanent People's Tribunal on Industrial and Environmental Hazards and Human Rights that factors like design inadequacies, operation practices, poor quality of training of workers, lack of information and illegal plant modifications were responsible factors for the disaster. The factory was built in the midst of a densely populated town. UCIL chose to store and produce MIC one of the deadliest chemical gases (permitted exposure level in US and Britain is 0.2 parts per million) in an area inhabited by more than 120,000 people. The plant was not designed to handle runaway reactions. When the reaction took place MIC was flowing through the scrubber meant to neutralize MIC emissions at more than 200 times its designed capacity. MIC in the tank was filled to 87% of its capacity while the permitted levels are only up to 50%. MIC was not stored at zero degree centigrade as prescribed and refrigeration and cooling system was shut down five months before the disaster as a part of their global economic drive. Vital gauges and indicators in the MIC tank were defective. The flare tower meant to burn off MIC emissions was under repair and the scrubber did not contain caustic soda.

It was found that as a part of the drive of Union Carbide Corporation (UCC) to cut costs, the work force in the factory was brought down to half impacting the standards of safety and

<sup>11</sup> Mediation Training Manual of India, Supreme Court of India

maintenance. The size of the work crew at MIC was cut from 12 to 6 and the position of maintenance supervisor had been eliminated. The period of safety training to the workers was reduced from 6 months to 15 days.

The damages suffered by the public due to this industrial disaster include human disablement, loss of cattle, vegetation, community impoverishment and disruption, long term effects due to exposure to toxic gas leading to reproductive complications, disfigurement of future generations, respiratory and organ failures, etc. According to the Indian Council of Medical Research (ICMR) report, in addition to eye and respiratory problems, they suffered from multi-organ involvement, coma, gastrointestinal disturbances, and lesions in the central nervous system, psychological trauma, and retarded intra-uterine growth of babies born to gas exposed mothers. Industrial Toxicological Research Centre has detected evidence of damaged immune systems in survivors making them vulnerable to infections. Dr. C.R. Krishnamurthy, chairman, Scientific Commission on Bhopal opined in 1987 that babies of gas victims may suffer from genetic defects. According to Medico Friend Circle gas exposer caused more abortions. Infants were most affected victims with death rate of 33 per thousand. Gas affected patients also suffered compensatory elevation of the haemoglobin level. There were neurological manifestations like hearing loss, tremors and vertigo. Large number of people suffered from mental disorders like neurotic depression. There were more instances of spontaneous abortions, still birth rate and new born with congenital malformations.

In addition to all this, UCC withheld medical information on the chemicals depriving the victims of proper medical care. By denying interim relief, as directed by two Indian Courts, it created a lot of hardships for the survivors. In February 1989, the Supreme Court ruled that UCIL should pay a total sum of \$ 470 million as compensation in full and final settlement. UCIL said it would accept the ruling provided Govt of India did not pursue any further legal proceedings against it. The Indian Government accepted the condition without consulting any of the victims.

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Source(s):

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<http://indiaenvironmentportal.org.in/files/Bhopal%20Disaster.pdf>

## **Benefits of BHR National Development Plan in India**

The NHRCI unfortunately lacks the capacity to provide technical and objective inputs on business and human rights<sup>12</sup>. NHRIs in India are overtly allied with the State, have effectively become a puppetry instruments therein. In 1992, K. G. Kannabiran<sup>13</sup>, a prominent human rights activist and lawyer, claimed that the creation of such institutions was due to international pressure on India and have questionable executive influence. The NHRCI is a recommending body that lacks offer prescriptions than execute. The auxiliary mechanisms present are not as well endowed to compensate for the lack of NHRCI's shortcomings. This forms the primary rationale behind establishing a framework dedicated only to monitor business regulations respecting human rights in India. India has ratified several international laws that seek protection of human rights<sup>14</sup>. Developing a BHR framework secures consistency of Article 51 of the Constitution stating that the state 'shall endeavour to foster respect for international law'. Additionally, establishing a Business and Human Rights framework within the Government of India purview is imperative as it can leverage and claim its position in the business and human rights governance.

Key benefits:

1. It ensures that business enterprises operating within Indian Territory or jurisdiction don't abuse human rights.
2. It will allow the government to draw a holistic assessment of the current legal framework in order to identify the pros and cons of business regulations and prospects respecting human rights. It should serve as a step up from the segmental reviews of framework efficiency.
3. It could be responsive to a range of contexts like violations of human rights by Indian corporate houses, their subsidiaries, or foreign companies. Checking violations in the informal sector and the government houses manifested in bureaucratic distresses is also necessary.
4. To make informed discussions and debates on how the all-pervasive companies in a mixed economy like India can do good business at the expense of violated labour laws and administrative loopholes
5. The Corporate Social Responsibilities (CSRs) like the National Voluntary Guidelines, Environmental and Economic Responsibilities of Business, the Companies Act 2013, and the Bilateral Investment Treaty 2015 will be overseen and encouraged must better efficacy.
6. Development of projects will not be slowed down due to resistance from affected communities if the framework is allowed to properly function.
7. It empowers all sectors of the economy by avoiding social conflicts and equitably sharing the gains from growth.
8. It will create an environment conducive to private investment and growth-led development, at the same time being inclusive and sustainable.

## **Functions and Mandate of the BHR Commission in India**

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<sup>12</sup> 2016 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, Global Alliance Of National Human Rights Institutions (GANHRI), 2017

<sup>13</sup> ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, 2016

<sup>14</sup> Two ratifications are included in the International Bill of Rights – the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR)

The importance of a governing body overseeing the enforcement of business and human rights is essential to take the burden of responsibility off the shoulders of the NHRCI. The national plan of action regarding a foundation should encompass six criteria<sup>15</sup>:

- (i) The foundational principles must be mirrored by the guiding principles
- (ii) Existing business regulations must be expanded to incorporate BHR reforms
- (iii) The response to national contexts should be rapid and effective
- (iv) The establishment and the implementation must be inclusive and transparent
- (v) Accountability should be primary when it comes to reporting adverse incidents
- (vi) Routine reviews and updates are necessary

For People and Governments:

A mandate for the Business and Human Rights should ideally strike a balance between conservation of human rights and development goals. The priority in developmental goals should incorporate commitments to uphold fundamental rights under the Constitution. The government needs to implement tripartite duties under international law by taking up the duty to protect human rights under the Guiding Principles. A BHR framework needs mandating for companies to conduct due diligence under Pillar 2 of the GPs. This is not a difficult procedure to establish given our existing legal framework. Due diligence must come through a review of the responsiveness of said framework, so as to pre-empt and address human rights abuses must. A number of improvements can be done in this regard, and newer laws should be encouraged to address the disclosure of non-financial information of the enterprises and protect land and labour employed by them. The current situation is a patchy and cumbersome system consisting of a multiple number of inactive or non-influential bodies which are inconsistent in their functions and jurisdictions. In order to improve this, the dedicated BHR framework must replace the current system with a coherent one that relies on strategies that involve obligatory and voluntary compliance mechanisms. This implies that state regulations should not necessarily be seen as adversarial or hierarchical in nature. Instead, it should be perceived as investment-friendly and in the interest of the communities at risk of getting their rights violated. A simple principle of free, prior and informed consent must be an implementation in letter and spirit.

The Principles also identify a number of substantive, procedural and practical barriers that hinder access to judicial remedies. The BHR framework should outline specific measures to be taken to reduce each of these barriers. The Government here plays an active role in laying out the plan to support the development of remedial mechanisms of all kinds. There should be a range of mechanisms that could be used by victims of corporate human rights abuses to seek fast and efficient access to justice. Apart from state-based judicial remedies like panchayats, courts and tribunals, measures of arbitration, mediation and conciliations should be harnessed by the people to resolve BHR disputes from this framework. The mandate should assign equal weightage to both conventionally opted and unconventional mechanisms as remedial measures. The role of civil society organizations must be institutionalized to address the asymmetry between companies and victims, with due importance given to the effectiveness criterion stipulated by the Principles.

There is one process in which this framework might reach its potential optimum as an effective champion of corporate social responsibility in a country like India. The first step is

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<sup>15</sup> Background Paper for India's National Framework on Business and Human Rights, Ethical Trading Initiative, 2016



capacity building. This benefits all three active parties: The Government, the people, and the enterprises. Both government officials and corporate executives would benefit from training on resolutions of human-rights dilemmas and accountability in operations. The people affected by it benefit from the information sharing and a resultant awareness on their legal rights and remedies available. Law schools, business schools, CSOs and government departments must be allowed for to collaborate on empowering communities against gross excesses by enterprising profit maximization. The second step that follows aims to make the framework coherent by bridging institutional gaps. There exists asymmetry in information between different central ministry departments, between the center, the state and the Gram Sabhas, as well as the domestic legal framework and international commitments. The BHR should comprise of one team that will relate to a number of ministries (an inter-ministerial panel) chaired by the Prime Minister. It attempts to solve information loss and bureaucratic hindrances for work to be done effectively and with a certain hold of power. The last step is a routine monitoring and periodic update of the BHR mandate. It should do away with one thing that currently plagues the Indian bureaucracy – lack of innovative updates in procedures and functioning. Concrete measures and effective monitoring of implementations ensure the framework to not just be a mere planning document with noble aspirational goals.

For Businesses:

The mandate for Business and Human Rights should be as binding and lucrative to enterprises as to the other two active parties. There needs to be a stringent binary of incentives and disincentives for businesses to operate. The mandate might make provisions for incentives such as tax benefits, awards for responsible conduct, or sector-specific labeling schemes for the companies to divert from human rights violation to maximize profits. Instruments offering preferential loans to such companies embracing human rights and lucrative procurement policies for the same might make up for incentives. For disincentives, a range of civil, criminal or administrative sanctions should be provisioned against companies involved in gross excesses of human rights. These policies can breed effectively where the environment supports social sanctions (like disclosure of non-financial information, and public display of information about past sanctions imposed on them for breaching human rights).

### **Examples of BHR Developments in other countries**

U.S.A.

President Obama announced the intention of the government to prepare a National Action Plan along with private sector players and various stakeholders in 2014. The plan was formally launched in the year 2016 with an aim to promote **Responsible Business Conduct (RBC)** by U.S. companies operating abroad.

The NAP process was not only focused on human rights but involved a wide range of executive branch agencies where working groups worked on various aspects of Responsible Business Conduct such as Human rights, labour rights, trade, tax and investment, procurement, transparency and anti-corruption, land tenure and agriculture that overlap with RBC.

It was a maiden effort on behalf of the U.S. government where they assumed a holistic approach, involving all the relevant government departments to focus, improve, and expand

its efforts to promote RBC. The basic idea behind RBC is that business can make profits and run successfully while contributing positively to the society. Government herein aims to create an environment that is conducive to foster a healthy business- society relationship that is founded on two main principles:

- (1) Emphasizing and accentuating the positive contributions businesses can make to economic, environmental, and social progress
- (2) Recognizing and avoiding possible adverse impacts of business conduct, as well as addressing them when they occur.

The US NAP is organised into five categories of action:

1. Leading by Example (global promotion of responsible business conduct and the UNGPs via tools of multilateral agreements and diplomacy, leveraging the US government's purchasing power to promote high standards and conducting due diligence in US developing funding and trade finance)

2. Collaborating with Stakeholders (supporting, promoting and improving the value of key multi-stakeholder initiatives, and initiatives to promote workers' voices through global supply chains including new reporting tools to empower workers to directly report issues in federal supply chains to relevant government departments)

3. Facilitating RBC by Companies (includes improving the government's provision of country-level profiles to support better due diligence by companies, additional training for diplomats on responsible business conduct issues, capacity building and technical support around key issues, and support for voluntary reporting by companies on responsible business conduct)

4. Recognising Positive Performance (new initiatives to recognise best practice)

5. Providing Access to Remedy (exploring and enhancing platforms for remedy including improving the performance of the OECD National Contact and stakeholder consultations on improving access to effective remedy). On an international level the U.S. government has engaged on high levels on issues related to RBC in various ways such as –

5A. The June 2015 G-7 Summit Leaders' Declaration where "the joint responsibility of governments and business to foster sustainable supply chains and encourage best practices" was recognized.

5B. The October 2015 G-7 Labour and Employment Ministerial Declaration sets out how G-7 countries will strive to lead by example in their own practices to collaborating with stakeholders to facilitating RBC by companies.

5C. G-20 under the German Presidency in 2017 where the "responsible supply chains" issue was be an important part of the agenda

5D. Through the Organization for Economic Co-operation and Development (OECD) Working Party on RBC

5E. Active engagement with the Office of the United Nations (UN) High Commissioner for Human Rights and the UN Working Group on the -5- issue of human rights and transnational corporations and other business enterprises

## 5F. Association with the International Labour Organization (ILO) through its work to advance Decent Work in Global Supply Chains

An aim is also to strengthen local communities through long-term investments and corporate social responsibility programs. While the framework does reflect the overall approach of the U.S. government, it does not intend to be an all encompassing document that includes the entire scope of plans and commitments on the RBC issues. It importantly sets a precedent of open dialogue through which the U.S. government will continue to communicate, coordinate, and assess its actions.

## U.K.

The United Kingdom implemented its first NAP in September 2013 which was then revised in 2016.

The NAP formulated for the UNGP reflects the country's commitment to promote a balance between business activities and human rights setting the guidelines that would be hereon be followed in all business activities undertaken domestically and abroad promoting a sustainable business environment globally.

The plain is structured around the three pillars of UNGP: the State duty to protect human rights; the corporate responsibility to respect human rights; and access to remedy.

1. State's duty to protect human rights: Here they discuss the existing legal framework where they have signed multiple international treaties and agreements– the International Labour Organization's eight core conventions, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the European Convention on Human Rights - enshrining human rights and fundamental freedoms and have been given effect through the law. The legal framework includes employment regulations to prevent discriminations against employees on grounds of sex, race, sexual orientation and religious belief, and environmental regulations.

2. Company's responsibility to respect human rights: Here they discuss the expectations of the government with the business enterprises. Human rights policies should be integrated into the objectives and operations of every company. The government aims to guide, train and instruct the companies to comply with all applicable laws and respect internationally recognized human rights, wherever they operate at all levels.

3. UK Government and access to remedy for human right abuses resulting from business activity: Here they discuss the diverse range of remedy mechanisms that exist within the legal framework of UK. It is recognized that remedy may include apologies, restitution, rehabilitation, financial or non -financial compensation and punitive sanctions, as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition Action for business to ensure access to remedy. The Government also discusses the various actions and plan of action on their behalf to ensure that companies are encouraged to review their existing grievance procedures and ensure they are fair, transparent, understandable, well-publicised and accessible by all.

Efforts to provide for grievances to be resolved effectively without fear of victimization is also discussed to make sure that similar good practice of supply chains are followed especially in areas where abuses of rights have been identified.

## Kenya

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Kenya became the first African Country to initiate the process of developing a ‘comprehensive strategy for protecting against human rights abuses by companies’ – a National Action Plan on Business and Human Rights in February 2016. Since then the government has been working in association with the Kenyan National Human Rights Commission and CSOs to implement the UNGPs.

This decision came after they accepted the 2015 UN Universal Periodic Review recommendation. The government through the Department of Justice and the Office of the Attorney General in the very first press release informed of the decision to develop an NAP and expressed its commitment to initiate a development process that would be comprehensive, inclusive and based on facts and suggestions.

A timeline was drawn of the process developing a National Baseline Assessment after several public surveys and consultations from different stakeholders and Kenyan Human Rights Commission was appointed to develop this framework to invest NBA with credibility amongst the stakeholders. It will be carried out by the Kenya Human Rights Commission and the Danish Institute for Human Rights, respectively, with the Kenya National Commission on Human Rights playing a key supporting role. All stakeholder groups, including impartial expert organizations were represented on the multi-stakeholder Advisory Committee established to provide advice in the course of the NAP development process, which was coordinated by the Department of Justice. For instance, there is collaboration between the Kenya National Commission on Human Rights and the Institute for Human Rights and Business which engaged with companies and government on the Nairobi Process (a pact that aims to embed human rights guidance in Kenya’s emerging oil and gas sector), as well as a Code of Ethics for Businesses developed under the auspices of the Kenya Association of Manufacturers and signed by several companies, which spells out responsibilities to the community and the environment and commits companies to respect human rights.

## Malaysia

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On March 24th 2015, the government released the Strategic Framework for a National Action Plan on Business and Human Rights drawn up by The Human Rights Commission of Malaysia SUHAKAM.

It was prepared after several round-table consultations where business groups, civil society and government agencies were involved through focus groups and workshops. The underlying motive is to have a ground on the basis of which a comprehensive NAP on BHR can be developed which would promote a sustainable business environment where the human rights are respected by state and non state actors including businesses, civil society and individuals and a strong framework is guaranteed to minimize human rights violations due to adverse business practices.

The framework is a result of the project started in July 2014, where it was resolved to develop and propose a framework for A NAP in order to implement the UNGP released in 2011 by United Nations Human Rights Commission. It is an example of UNGP's implementation promoting activity, aided by means of partnership and advice from the UN Country Team along with funding from the Foreign and Commonwealth Office.

## **State of agriculture in India**

India is a powerhouse of global agricultural produce being the world's largest producer of milk, pulses and spices. It also has the world's largest cattle herd, as well as the largest area under wheat, rice and cotton. However, according to statistics, despite one out of four people in India being farmers or agricultural workers, this sector contributes to 17.5% of GDP (at current prices of 2015-16). Agricultural growth has been fairly volatile over the past decade, ranging from 5.8% in 2005-06 to 0.4% in 2009-10 and -0.2% in 2014-15. This volatility in turn has a significant impact on farm incomes as well as farmers' ability to take credit for investing in their land holdings. Decreasing sizes of agricultural land holdings, erratic monsoons, inadequate access to irrigation, lack of access to formal agricultural credit, imbalanced use of soil nutrients resulting in loss of fertility of soil, uneven access to modern technology in different parts of the country, limited procurement of food grains by government agencies, and failure to provide remunerative prices to farmers are some of the issues a farmer has to grapple with on a day to day basis in our country.

Added to this, with the increasing pressure of rising national population and global demand there has been a pressure on making the sector more diverse, competitive and productive.

## **Rise of Business and Human Rights Violations**

In order to have an uninterrupted growth of the country's GNP various basic and heavy industries were created. These projects though boosted productivity gave rise to a spate of grave violations of human rights of the farmers and tribal communities that inhabited these fertile lands. Converted for industrial purposes, the acquisition caused loss of their agricultural land and marginalization of the weaker sections. Most of these projects are cleared on the basis of cost-benefit analysis, keeping in mind the profits gained by business enterprises completely ignoring the social cost of a project which concerns the human rights of the farmers and tribal communities. This rise in industrialisation led to a revolution in the field of crop production as well, what is called the 'Green Revolution' that enabled a food scarce country like India to export food grains. These Projects, no doubt helped a lot in achieving the goals like power generation, flood control and supply of irrigation water to the fields, but alongside it physically uprooted sizable number of people who lost their home and hearth and shattered their culture and kinship linkages built over several centuries and generations. A glaring example of this can be witnessed in the backward state of Odisha where large development like multipurpose river valley projects – Hirakud Dam, Rengali, Upper Kolab, Indravati, Subarnarekha, large industries such as Rourkela Steel Plant, NALCO, and HAL have been established. Besides these, several private sector projects have either set up or signed Memoranda of Understanding with the State Government to start their units which include industrial giants Tata, Jindal, Birla, POSCO and others. All these

projects have caused massive displacement of the most disadvantaged communities of the society pushing them closer towards impoverishment and further marginalization, below the threshold of poverty. The rehabilitation measures extended have been very unsatisfactory and inadequate. The living conditions of those displaced remain deplorable, there is pauperization of those uprooted, lack of basic facilities, loss of land, livelihood and breaking of all ties of kinship are some of the serious violations they have to suffer in the hands of profit making business enterprises.

This capitalist path of development also led to creation of certain autonomous categories of farmers who derived their social identity from their landholdings. This caused in them a fear of losing this distinct social identity when markets became unstable. No attempt was made from the side of the State to protect these 'Market Oriented Autonomous Farmers' from becoming dependent on global capital. Rather global capital tried to trap the social categories through the mono-cultural methods of new seed technology and patent regimes such as 'Golden Rice or Bt Cotton' the impact of which were witnessed in the rise of sharpening of the crisis and farmer suicides were witnessed in high numbers in states of Maharashtra (Vidarbha), Karnataka, Andhra Pradesh etc. Monsanto, for example, introduced Bt Cotton in 2002, in the process of which, the Indian farmers lost one billion rupees due to crop failure. This is not compensated with, nor provided any alternatives to the loss. The crisis was further fuelled by the external linkages where the global capitalists subsidised the commodities at the cost of the Indian farmers. In this double standard policy, they would subsidise their domestic economy on one hand, forcing the country to withdraw the subsidies and in turn push the farmers into paying the accumulated debt to the regimes instead. So what ultimately happens is that all the benefits are reaped by the MNCs while the farmers reel in the whirlwind of losses.

### Need For BHR Framework in Indian Agriculture

It is because of these factors weighing heavy upon the basic human rights of the farmers that a comprehensive BHR framework is required in the agricultural sector of our country. Keeping the context of the three pillars of UNGP's guidelines,

1. There is an urgent need for the state to take responsibility to protect the human rights of the marginalized farmers and tribals against abuse by third parties. As there is a lack of a legal framework and zero accountability, the business enterprises continue with the rampant exploitation. There is a need for the state to have a framework wherein they can prevent, investigate, punish and redress the abuse by private actors.
2. The multipurpose projects set up by the MNCs acquire the land of the farmers and displace them arbitrarily, it is here where a comprehensive legislation is formulated under the BHR framework mandating the business enterprises to respect the Human rights and periodically assess any gaps or inadequacy in the implementation of it.
3. The state should have a comprehensive mechanism under which all the grievances of the farmers can be addressed easily and in a hassle free manner. Currently due to lack of education and resources, farmers are not able to reach out to the available judicial redressal forums to fight for their rights. This leaves them helpless and at the mercy of exploitative moneylenders and private actors. There is a need for the state to intervene to facilitate the communication of the farmers to receive adequate redressal.

4. It is important for States to review these laws periodically against the evolving circumstances and whether along with together with clearly formulated policies governing access to land, credit facilities, insurance and entitlements in relation to ownership of land is provided to ensure that a sustainable business environment upholding the rights of the farmers can be created.
5. There is a lack of a body that acts as an interface between the state and the business enterprises to ensure best policies are formulated to promote respect of human rights. The exploitation of farmers can be checked if BHR framework is adopted under which not only the business enterprises are guided as to what kind of policies they should incorporate in their business modules by providing training and support but there is also a regular communication from their side where they convey the manner and efficacy with which they implement them in their projects.
6. A framework is required wherein the business enterprises are able to meet their responsibility to respect human rights through policies and processes appropriate to their size and circumstances. Human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights as well as processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute is urgently required in the agricultural sector.

### **Agricultural and Industrial Issues for BHR**

Gaps in land policies and administrative hindrances have increased with increased agricultural investment for corporate benefits. This has resulted in human rights abuses among agricultural farmers and indigenous communities. Such abuses affect the employment prospect of the labour class population who are engaged in semi-skilled or unskilled menial jobs.

1. Bonded Labour and Child Labour (forms of Transgressing Land and Labour Rights by employers)

Two forms of transgressions of human rights in agricultural employment are bonded labour and child labour. These forms are mostly included in modern slavery, where a section of people are forced by administrative manoeuvrings to work for their employers in the harshest conditions. The NHRC reported 1300 cases of human rights violation pertaining to bonded labour. The practice also exists in multiple non-agricultural industries like textile, leather-goods manufacturing and even with the bonded sex workers (the Devadasi practice). NHRC has also received reports of bonded labour being used to execute defence projects in conflict areas. Of the total 2800 cases being investigated, 40% of them are yet to be solved. Despite the Bonded Labour Abolition Act 1976, it is estimated that there are still 40 million 'bonded labourers' in India with service against less than \$1 a day. Children from migrant and bonded families naturally fall into the trap of bondage. India continues to have the highest number of child labourers in the world. More number of child labourers is entering the labour force and are being exploited by their employers throughout the years. The Child Labour (Prohibition & Regulation) Act 1986 (CLPR Act) makes a distinction between hazardous and nonhazardous employment, banning employment of children aged less than 14 years, only in hazardous sectors. The Act, therefore, directly contradicts the Right to Education Act in as much as, it allows children to

work in non-hazardous occupations and processes and, thereby, becomes a vehicle for excluding children from realising their right to education.

2. Corporate operations displacing communities, curtailing livelihood and degrading the environment

Corporate businesses undertake large scale displacement of millions of rural families without rehabilitation owing to their interests in Special Economic Zones (SEZs). For large infrastructure projects, including dams, ports and mining, environmental conservation projects, large and tax-free areas are designated as such. Majority of resourceful areas are inhabited by indigenous people who face the onslaught of dams, mining and other natural resource extraction projects. Most of the displaced population who continue to face severe displacement threats constitutes the rural poor, marginal farmers, fisher folk and tribals, States like Chhatisgarh, Jharkhand, Andhra Pradesh, Odisha, and the north-eastern states of Manipur, Meghalaya, Sikkim, Arunachal Pradesh, Mizoram, and Tripura, in particular, face acute threats of displacement due to such projects. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act), aimed at recognising rights of forest dwellers, is not being adequately implemented and many tribals are being denied their right to forest resources.

3. Lack of proper structure

Since the early 2000s India has witnessed an alarming number of farmer suicides with a baseline of 15,000 each year primarily due to indebtedness and agrarian distress. Hunger among the producers of food is a reality in a country that ranks second worldwide in farm production. Liberalised trade, patenting of agricultural products, and the introduction of Genetically Modified Organisms (GMOs), especially under the draft Biotechnology Regulatory Authority of India Bill, could further aggravate India's food crisis. The providence of manual work under Acts like MNRGA is contingent upon such work being demanded by well-informed workers, to whom payment of minimum wages within 15 days becomes due. However, surveys reveal that awareness about employment schemes among rural and suburban workers is very low, facilitating denial of their rights under the scheme (e.g. minimum wages) Also, agricultural labour tends to passively wait for work to come their way instead of making an effort to look for suitable jobs. And then there is the overarch of corruption. To prevent corruption, some transparency safeguards have been built on national as well as on a global scale (e.g. Corruption Perception Index, ban on contractors, etc.). However, since these safeguards too are to be executed by the machinery that tends to be corrupt, they are incomplete without an independent system of grievance redressal. Serious delays in payment of wages have also been recorded all over the country, which has forced labourers to resort to lower-paid labour and distress migration.



Nandigram is a rural area in Purba-Medinipur district of the Indian state of West Bengal. It is located about 70 km south-west of Kolkata, on the south bank of the Haldi River, opposite the industrial city of Haldia. The area falls under Haldia Development Authority. The West Bengal government decided to permit the Salim Group set up a chemical hub at Nandigram under the SEZ policy. In 2007 this led to resistance by villagers, clashes with police that left 14 villagers dead, and there were strong accusations of police brutality. Nandigram was chosen as a special economic zone (SEZ) because it is next to Haldia, a major port. Notably, SEZ's are tax free zones, where no law of the land applies - no environmental law, no labour law, and no Panchayati Raj law for local governance. The chemical hub would require the acquisition of over 14,000 acres (57 km<sup>2</sup>) of land. The special economic zone would be spread over 29 villages of which 27 were in Nandigram. Most of the land to be acquired was multi crop and would affect over 40,000 people. The prospect of losing land and thereby livelihood is what raised alarms within the predominantly agricultural populace. The villagers, who had been predominantly supporters of the party in power, turned against it and organized a resistance movement under the banner of the newly formed Bhumi Uchhed Pratirodh Committee or BUPC (Committee for the Resistance to Eviction from Land).

In defence of the project, the state government states that it was won by competing with 9 other Indian states. Being in the vicinity of Haldia Petrochemicals & IOC refinery, which, they claimed, had earlier led to 100,000 jobs being created through downstream projects, the party argued that this is the best place to build a hub from the point of view of supply-chain integration.

The farmers repeatedly informed that the land there is fertile for multi-crop farming. The local farmers were infuriated on the lack of acknowledgment of this fact and raised their voice against the project. The opposition from the farmers forced the Chief Minister to inform that the government would withdraw from the project. Despite the Chief Minister's statement, the local, district and State administration kept stating that the Chemical Hub would take place at Nandigram itself. There were written documents signed by the concerned authorities, which confirmed this.

Inaction from the side of the state led the villagers to take over the administration of the area and all the roads to the villages were cut off. The administration was directed to break the Bhumi Uchhed Protirodh Committee's (BUPC) resistance at Nandigram and a massive operation with at least 3,000 policemen was launched on March 14<sup>th</sup>, 2007. However, prior information of the impending action had leaked out to the BUPC who amassed a crowd of roughly 2,000 villagers at the entry points into Nandigram with women and children forming the front ranks. In the resulting mayhem, at least 14 people were killed. The administration was directed to break the BUPC's resistance at Nandigram and a massive operation with at least 3,000 policemen was launched on March 14, 2007. Immediately following the March 14 carnage voluntary teams of doctors visited the Nandigram health centre, the district hospital at Tamluk and later, the SSKM hospital and compiled a comprehensive report.

After the bloodshed at Nandigram and stiff resistance from various stakeholders the government shifted the project from Nandigram to a sparsely populated island of Nayachar, 30 kilometres from Haldia, to set up the much talked-about chemical hub.

This decision of the government though in favour of the farmers came in much too late as the damage had already been caused whose repercussions were felt periodically in the form of fresh rounds of violence in November 2007 and May 2008.

In November 2007, villagers alleged that Communist Party of India (Marxist), CPI(M) goons were raping women daily in Nandigram. On November 12, 2007, the National Human Rights Commission issued a notice to the West Bengal Government directing it to submit a factual report on the conditions prevailing in Nandigram. Police found weapons belonging to Maoists, including explosives near Nandigram. They also noted that Andhra Maoists also infiltrated Nandigram to counter CPI(M) goons.

In May 2008, another round of violence broke out in Nandigram between supporters of the Bhumi Uchhed Pratirodh Committee, and the CPI(M) activists. Both sides exchanged fire and hurled bombs at each other. On 5th May, CPI(M) mob striped three woman activists of Bhumi Uchhed Pratirodh Committee when they refused to join a rally organized by CPI(M). Owing to wide political and civil protests on the incident the Government of West Bengal ordered a CID probe into the incident.

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Source(s):

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## **Recommendations for further mainstream UNGPs in India**

There is a need for a fuller adoption of the UNGPs on business and human rights in India. While laws<sup>16</sup> are in place to address human rights and their violations regarding businesses and their private welfare, their practical contributions are rather underwhelming. It gives rise to the need to undertake more studies to make laws realistically effective, founded on the guiding principles as a harmonious framework.

According to Surya Deva, Professor at City University of Hong Kong, the necessity of a BHR framework depends on how effective the current mechanisms are. On one hand it is ideal for the business sector and the legal regulators to host only one framework at the national and international level. On the other hand, however, a multitude of frameworks might be necessary since no single framework could capture all issues related to human rights and its interactions with business expansion. The very idea behind establishing a new framework is the possibility of need for an update in future to respond effectively to newer challenges. It becomes imperative to establish guiding regulations which are systematic and more binding to foster agreements and check violations of fundamental rights for land and labour.

1. Initiate dialogues with the business sector on better application of the concordant corporate responsibilities, on improved documentation and accountability
2. Conduct studies to simplify the adoption of the guiding principles, analyze loopholes in Indian legal framework on BHR and inferring how compliance to human rights measures improves ease of doing business in the economy
4. Establish confessional consultations with stake-holders on how to develop a national development plan on incorporating the UNGPs more holistically

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<sup>16</sup> A review of human rights and labour law in India, for the natural stone sector, ETI

The implementation of the UNGPs in India is important for two main reasons: first, it will serve as a responsible government body dedicated to rectifying business-oriented human rights violations and take off a burden of responsibility from the underperforming NHRCI. This even serves to fight future injustices related to land rights and illegal labour practices that are still prevalent in the country. Second, it will answer the call for immediate response to the adverse impact of mining and corporate businesses in ancestral properties that affect the indigenous communities. There is also a need to start a debate on the promotion of recognition of land right as a human right. The goal of the BHR framework is to mediate such dialogues in a more transparent environment. It can assist the NHRCI and additional mechanisms understand the convoluted nature of human rights and its exploitation thereof. A scrutiny into land rights and draconian agricultural practices holds importance in terms of deliverance of justice and upholding law and order. This is a democratic need, rather than an institutional mandate, in the sense that Indian is a labour intensive economy. A violation of rights of the most important resource the country has affects its aim of sustainable development, and abuses the idea of corporate responsibilities. Structural reforms such as commissioning a BHR framework will create a favourable environment for investment and employment<sup>17</sup>. Information symmetry plays a crucial role in investing such cases with business activities. However, the governance in states and the centre suffer deeply from information asymmetry and incomplete knowledge of undercurrents in exploitative measures. This deems the government agencies structurally ineffective in fulfilling oversight functions. As a body dedicated to just one of the many human rights affairs in India, the BHR framework can help improve the business regulations and industrial policies by providing educative insight and focused approach.

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<sup>17</sup> Kenneth Kang, IMF, 2017 [<https://timesofindia.indiatimes.com/business/india-business/imf-favours-three-structural-reforms-in-india/articleshow/61077171.cms>]

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