

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

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

### 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 recognize 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.

## **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. 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.

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.

### **Purpose of BHR**

#### **BHR and India**

On 2nd 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 maximize 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. 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. There is a need to fill the information asymmetry through dialogue. 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