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ABSTRACT

The article examines the difficulties that the international community faces in dealing with human rights violations committed by non-state actors such as Business Corporations and MNCs, with a view of focus on the UN Guiding Principles (GP) on business and human rights. It talks about the creation of a national action plan (NAP) and India's commitment to Guiding Principles. In addition, the article looks at incidents of corporate abuse of human rights in India, such as the Syngenta pesticide poisoning case and the Coca-Cola Plachimada factory disaster. It examines how current laws, like the Prevention of Corruption Act and the Right to Information Act, are insufficient to hold companies responsible for violations of human rights, and it ends by recommending the creation of a more extensive legal framework to safeguard the rights and welfare of Indian citizens. Highlighting the UN Guiding Principles on Business and Human Rights (UNGPs), which emphasise the role that CSR plays in upholding and defending human rights. It talks about the Companies Act of 2013, which requires corporate social responsibility for businesses with an annual turnover of more than 500 crores, and the voluntary nature of the National Guidelines on Responsible Business Behaviour (NGRBC), the National Human Rights Commission (NHRC) and other specialised commissions' roles in resolving corporate human rights violations are also highlighted in the article. In conclusion, it highlights the necessity of a thorough framework to defend human

rights and makes recommendations for changes to the labor laws, corporate laws, and the Constitution as well as offers an all-encompassing framework for the future.

KEYWORDS

Business and Human Rights, Corporate Accountability, UN Guiding Principles (UNGPs), Human Rights Violations in India, National Action Plan (NAP).

1. INTRODUCTION

One of the main challenges faced by the international community in the 20th century relates to the approach taken in addressing human rights violations committed by non-state actors. The United Nations (hereinafter UN) Guiding Principles (hereinafter GP) on business and human rights, which were officially accepted by the Human Rights Council (hereinafter HRC or council) in 2011, are based on three core pillars. The primary tenet entails the state's responsibility to protect and uphold human rights. The second pillar entails a corporate obligation to ensure the protection of human rights. Both governmental and corporate organizations have a duty to ensure access to efficient remedies, as mandated by the third pillar¹.

The United Nations working group on human rights and corporate enterprise strongly recommends the implementation of a national action plan (hereinafter “NAP”) by each state, delineating the obligations of corporations in protecting and advancing human rights². The responsibility for implementing the GPs lies with the state. In June 2014, the Human Rights Council (HRC) passed a resolution that called upon states to develop national action plans (NAP³). As of February 2019, a total of 45 states, including India, have progressed to the stage of formulating their National Action Plans (NAP), with several having already completed and submitted

¹ United Nations Human Rights office of The High Commissioner, Guiding Principles on Business and Human Rights (United Nations New York 2011) <https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf> accessed 2-11-2020.

² United national office of The High Commissioner, Working Resolution 17/4, the UN Working Group on Issues of Human Rights and Transnational Corporations and Other Business Enterprises, <<https://www.ohchr.org/en/issues/business/pages/wghrandtransnationalcorporationsandotherbusiness.aspx>> accessed 2-11-2020.

³ “Govt to Formulate a National Action Plan on Business and Human Rights” (The Financial Express, 13-2-2020) <<https://www.financialexpress.com/industry/govt-to-formulate-national-action-plan-on-business-and-human-rights/1873145/>> accessed 2-11-2020.

their plans. The Ministry of Corporate Affairs is now involved in an extensive consultation process aimed at formulating a fourth National Action Plan (NAP)⁴. As part of this process, the ministry has extended an invitation for public input and perspectives. The alignment of a comprehensive national framework for safeguarding business human rights with the provisions delineated in Article 51 of the Constitution of India⁵ shall be pursued. In light of the aforementioned setting, the authors of this paper will begin by analyzing the various rationales for the indispensability of a national framework in India to assist the execution of Grievance Procedures (GPs). It is noteworthy to mention that India has already accepted several international treaties that impose a responsibility on enterprises to protect human rights. Furthermore, this paper will explore the complexities and essence of this paradigm. This paper will present a set of concrete recommendations that can be implemented to improve the transparency of corporate liability procedures. The incorporation of a nationwide structure for the protection of human rights in business presents a noteworthy concern pertaining to the possible expansion of safeguarding fundamental rights to encompass corporate entities.

2. INSTANCES OF HUMAN RIGHT VIOLATION IN INDIA

The scope of human rights violations committed by corporations in India is diverse, encompassing multiple categories. These include violations perpetrated by domestic companies, transgressions committed by multinational corporations operating within India, infractions carried out by the Indian subsidiaries of foreign companies, transgressions perpetrated by government agencies, and violations committed by Indian companies operating abroad⁶. The process of classifying these groups holds considerable significance owing to the substantial disparities in the kind and approaches of transgressions, along with the related regulatory responses. In order to get a comprehensive understanding of the specific challenges at hand, it is imperative to conduct a thorough examination of multiple case studies within their respective categories.

2.1. Coca Cola Plachimada plant tragedy 2000

Firm name: Hindustan coca-cola beverages private limited | Type:

⁴ Ibid.

⁵ Constitution of India, Art. 51.

⁶ Surya Dev, "Background Paper for National Framework of Business and Human Rights in India" (2014) Ethical Trading Initiative 23.

<https://www.ethicaltrade.org/sites/default/files/shared_resources/india_national_framework_bhr_background.pdf>.

Indian subsidiary of a foreign company. In March 2000, Coca-Cola initiated its operations at the Plachimada factory in Kerala, India, through its Indian affiliate, Hindustan Coca-Cola Beverages Private Limited. Over the following years, the individuals living in close proximity to the facility began to encounter the unfavorable effects of the plant's activities, which became evident through the pollution of groundwater and the release of hazardous waste.⁷ In addition, the firm engaged in the excessive extraction of groundwater, resulting in a depletion of water resources. The situations outlined above have given rise to legal conflicts that have occurred both within and outside the judicial system, involving both the affected community and the business organization⁸. During the proceedings of a writ petition, the Kerala High Court rendered a decision in relation to the aforementioned corporation, "*groundwater was a public property held in trust by a government and that it had no right to allow a private party to overexploit the resources to the detriment of people*⁹."

In 2017, the Supreme Court rendered a definitive decision on a case involving Coca-Cola, wherein it found that the company had violated multiple environmental legislation and infringed upon the rights of the local populace by using groundwater for personal interests.

2.3. Pesticide poisoning Syngenta (2020)

Firm name: Syngenta | Type: MNC

Syngenta, a multinational developer of pesticide seeds, has faced persistent charges of significant violations pertaining to food safety and human health, as well as exerting undue influence on small-scale farmers.¹⁰ In September 2017, a significant number of farmers in Yavatmal experienced pesticide poisoning. According to a survey conducted by a non-governmental organization (NGO), those experiencing negative health effects were found to have utilized a wide range of pesticides. Based on the Right to Information (RTI) request submitted by Miss Meena Menon, it has

⁷ D. Rohan Mathews, "The Plachimada Struggle against Coca-Cola in Southern India," (Ritimo Organisation, 1-7-2011) <<https://www.ritimo.org/The-Plachimada- Struggle-against-Coca-Cola-in-Southern-India>> accessed on 2-11-2020.

⁸ Ibid.

⁹ Perumatty Grama Panchayat v. State of Kerala, 2003 SCC OnLine Ker 500: 2004 (1) KLT 731.

¹⁰ "Pesticide Poisonings in Yavatmal: Those affected taken on Agribusiness against Syngenta" (Business Human Rights Resource Center, 1-11-2020) <<https://www.business-humanrights.org/en/blog/pesticide-poisonings-in-yavatmal-those-affected-take-on-agribusiness-giant-syngenta/>> accessed 3-11-2020.

been stated that as of October 25, 2017, there have been over 450 instances of poisoning and 23 fatalities documented at Yavatmal Medical College Hospital¹¹. The documentation of pesticide poisoning occurrences in rural India is hindered by inherent challenges, primarily arising from the infrequent practice among farmers of preserving purchase receipts and medical treatment records¹². A drop in revenue is an additional challenge in situations when income is not adequately documented. The set of challenges outlined above becomes significantly more challenging to overcome when the firm engaged in pesticide production is located outside the jurisdiction of the local authorities. On September 17, 2020, judicial proceedings were commenced by the spouses of two agricultural laborers against the peace judge of Switzerland, with the litigants facing a range of obstacles. As a complement to the ongoing legal litigation, a collective of 51 agricultural practitioners has formally filed a grievance with the Organization for Economic Cooperation and Development¹³. The framers have made claims that the corporation engaged in the marketing and sale of pesticides, despite possessing knowledge of the significant consequences that ensue. On the 21st of October 2020, Syngenta issued a public statement asserting that their insecticides cannot be attributed to the observed damages.¹⁴

2.3. Anantapur's design company protest for minimum wages (2020)

Company name: Indian design export private limited | Type: Indian Firm.

More than 800 female garment workers employed by Indian Design Exports, Private Limited in Hindupur town, Andhra Pradesh, have initiated an indefinite strike to advocate for a salary hike¹⁵. The remuneration received by these laborers was as low as

¹¹ Menon Meena, "Yavatmal Pesticide Poisoning: Lack of Accountability, Negligence, and Abysmal Medical Facilities Behind Farmers Deaths" (Firstpost India, 30-10-2018) <<https://www.firstpost.com/india/yavatmal-pesticide-poisoning-lack-of-accountability-negligence-and-abysmal-medical-facilities-behind-farmers-deaths-5464981.html>> accessed 3-11-2020.

¹² Untold Realities of Pesticide Poisoning in Yavatmal District in Maharashtra (Pesticide Action Network (PAN) India Assessment Report, 3-10-2020). <<https://pan-india.org/untold-realities-of-pesticide-poisonings-in-yavatmal-district-in-maharashtra/>> accessed 3-11-2020.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ "Over 800 Female Garment Workers in Andhra Pradesh Stage Protest for Minimum Wages and Protection against Harassment" (Business and Human Rights Resource Center, 17-8-2020) <<https://www.business-humanrights.org/en/over-800-female-garment-workers-in-andhra-pradesh-stage-protest-for-minimum-wages-and-protection-against-harassment>>

6000 rupees per month. In addition to expressing grievances on reduced wages, the workers have made allegations of harassment by the management and exploitative working conditions. According to the leader of the Centre India trade union, there has been a lack of salary growth among workers during the past seven years.

3. DO BUSINESS AND HUMAN RIGHT IN INDIA REQUIRE A UNIFORM FRAMEWORK?

The implementation of privatization, liberalization, and globalization policies during the past three decades has resulted in a significant rise in the presence of international firms within the commercial sector. Enterprises can sometimes have adverse effects on human rights. As previously discussed in the chapter dedicated to case studies. Multinationals may create jobs and growth, but they may also displace indigenous people, take away their right to use natural resources, violate labor rights, or violate livelihood rights, as in the Coca-Cola case. Such violations of human rights are rife in today's globalized economy, but the question arises as to whether or not there are sufficient limitations and an effective regime to make businesses honor their obligation and people's right. This chapter aims to analyze the necessity of implementing a business human rights framework in India. In this analysis, the author will examine each guiding principle in detail, assessing the adequacy of the current framework for implementing these principles. Additionally, the author will explore the content and limitations of the zero drafts of the national action plan. The foundation for zero drafts on a national action plan is established by the three-pillar framework, commonly referred to as "Protect, respect, and remedy."

3.4.1. Pillar I - States duty to protect

States are required to defend their citizens against companies and other outside parties who violate their human rights. It is anticipated that they will undertake the tasks of prevention, investigation, punishment, and redress by means of suitable policies, law, regulation, and adjudication¹⁶. The present system in India has a dual-pronged strategy in safeguarding human rights through state intervention. The first is by putting in place sensible laws and rules. The Constitution of India incorporates

humanrights.org/en/latest-news/india-over-800-female-garment-workers-in-southern-state-of-andhra-pradesh-protest-for-minimum-wages-and-protection-against-harassment/ accessed on 3-11-2020.

¹⁶ "Business and Human Rights Ambitions and Actions in India" (Centre of Excellence for Sustainable Development, 2019) https://docs.wbcsd.org/2019/08/WBCSD_Business_Human_Rights_India_Issue_Brief.pdf accessed 5-11-2020.

the safeguarding of human rights within its framework, specifically in Part III, which is dedicated to fundamental rights. One potential obstacle in holding companies accountable for violating fundamental rights is the limited scope of applicability to specific fundamental rights, such as Article 14¹⁷, Article 17¹⁸, Article 21¹⁹, and article 15²⁰, under the horizontal effect²¹ framework, which is applicable to both state and non-state entities.

Corporations, as non-state entities, often possess the potential to avoid legal responsibility by using this status. The Supreme Court has demonstrated a liberal view of the phrase "other authorities" as stated in Article 12²². This has resulted in holding public sector undertakings accountable for human rights abuses in various cases, notably Zee Telefilms Ltd. v. Union of India²³. In the cases of Tekraj Vasandi v. Union of India²⁴ and Chander Mohan Khanna v. National Council of Educational Research and Training²⁵, the Supreme Court has refused to acknowledge some organizations carrying out state functions as other authorities. Therefore, it can be argued that the efforts made by the Supreme Court are insufficient in addressing the issue of holding non-state actors accountable for violating basic rights.

Tort law has played a significant role in safeguarding human rights from corporate violations in addition to the Constitution. The principles of negligence and nuisance have been widely applied in various jurisdictions to enforce human rights and establish corporate liability for infractions²⁶. It has also been common practice to hold a foreign company's subsidiary accountable for agency principle since it is the most practical solution. The principles of constitutional law have been significantly advanced through the formation of the concept of "constitutional torts,"²⁷ demonstrating the crucial role that tort

¹⁷ Constitution of India, Art. 14.

¹⁸ Constitution of India, Art. 17.

¹⁹ Constitution of India, Art. 21.

²⁰ Constitution of India, Art. 15.

²¹ Horizontal effect means extending liability to non-state actors through the state by enacting certain laws.

²² Constitution of India, Art. 12.

²³ (2005) 4 SCC 649.

²⁴ (1991) 4 SCC 578: AIR 1992 SC 76.

²⁵ (1988) 1 SCC 236: AIR 1988 SC 469.

²⁶ Richard Meeran, "Tort Litigation against the Multinational Corporation for Violation of Human Rights: An Overview of the Position Outside the United States" (2011)

3(1) City University Hong Kong Law Review 17.

²⁷ Constitutional torts are those torts whereby human rights violations by the state and

law has played in this horizontal development²⁸. The principles of absolute liability²⁹, the polluter pays³⁰, and the precautionary principle³¹ were all later employed to establish the responsibility of corporations for safeguarding the human rights of individuals. It is reasonable to argue that the difficulty faced by tort litigation victims as a result of the Bhopal gas tragedy is that the drawn-out legal process will be shortened by the adoption of new procedural guidelines and a revision to the burden of evidence doctrine.

With 28% of the total population under age 24, India has the highest young population in the world³². This observation suggests that there is a robust and ambitious workforce of young individuals, which may be of interest to potential investors. Human resources and labor constitute significant elements within both industrial and service-oriented enterprises. India has a complex legal framework governing labor that includes 44 federal legislation and over 100 state laws covering every topic from compensation to layoffs to pay. The labor laws in India were widely perceived as favoring labor interests due to India's mixed economy until the 1990s. However, the adoption of a free-market economy in the 1990s has led to the perception that labor regulations have become an impediment to the reform process.³³ India is regarded by the World Bank as having one of the most inflexible labor markets globally.³⁴ Consequently, the World Bank has advocated for modifications to labor laws, which have been implemented in 2020. However, experts argue that while the amendments are relatively liberal in certain aspects, they have overlooked certain other provisions in the new code. The introduction of these novel codes raises intriguing prospects for their potential impact on the market, warranting further observation. When considering antiquated legislation, it is evident that such regulations include several loopholes. These loopholes serve as potential means to safeguard the interests of workers pertaining to their pay and remuneration. The Payment of Wages Act of 1936 and the Minimum Wages Act of 1948 have been implemented in India.

its agents are also perceived as torts.

²⁸ M.C. Mehta v. Union of India, (1987) 1 SCC 395 : AIR 1987 SC 1086.

²⁹ Ibid.

³⁰ Indian Council for Enviro-Legal Action v. Union of India, (1996) 3 SCC 212.

³¹ Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647.

³² "United Nations Report on World Population and Sustainability: India has World Largest Youth Population" (The Economic Times, 3-7-2014) <<https://economictimes.indiatimes.com/news/politics-and-nation/india-has-worlds-largest-youth-population-un-report/articleshow/45190294.cms?from=mdr>>.

³³ Supra note 30.

³⁴ Ibid.

However, it is evident from the Design Company Act in Andhra Pradesh, India, that these provisions alone are insufficient to safeguard the welfare of the community. The emergence of strikes and lockouts in the Indian labor market highlights the need for further measures to defend the interests of workers.

The correlation between environmental legislation and infringements upon human rights has been widely documented. Corporations have a notorious history of failing to enforce environmental protocols, as evidenced by the Orissa mining case, the Bhopal gas tragedy case, and the Coca-Cola case. The recognition of a healthy environment as a fundamental human right is acknowledged both within the context of India and globally. India possesses a comprehensive array of environmental protection legislation, including the Water (Prevention and Control of Pollution) Act of 1974, the Forest Conservation Act of 1980, and the Hazardous Waste Handling and Management Act of 1989. Corporations, whether directly or indirectly, are subject to the comprehensive framework of environmental legislation in India. An illustration of this can be seen in Section 16 of the Environment Protection Act³⁵, which pertains especially to corporate entities. The legal system encompasses both civil and criminal obligations and has effectively ensured the accountability of corporations for their misconduct. Victims of human rights breaches have utilized environmental law and tort action as means to attain justice.

In addition to the aforementioned laws, the Companies Act adopts a dual approach. The first aspect entails provisions that impose a duty on corporations to protect the interests of citizens. The second aspect involves the state initiating investigations into corporate actions when there is a failure to comply with these provisions, thereby holding them accountable for any violations. A number of other laws are specifically designed to defend citizens' human rights from businesses. In certain instances, corporations engage in the extraction of natural resources by conducting deep forest excavations. Their operations can potentially lead to the displacement of local tribes or other forest inhabitants, thereby jeopardizing their ability to preserve their regional identity. It is important to note that the preservation of regional identity is not only acknowledged as a human right within international legal frameworks, but also recognized as a fundamental right under our Constitution. Furthermore, the government has implemented the Schedule Tribes and Other Forest Dwellers (Recognition of Forest) Act³⁶, as a unique legislation. The legislation seeks to rectify the

³⁵ Environment Protection Act, 1986.

³⁶ Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest) Act,

inequality experienced by the indigenous forest inhabitants, who have had their ancestral lands and habitats taken away, frequently without their consent or appropriate compensation being provided. Section 5 of Act³⁷ imposes a responsibility on corporations to safeguard biodiversity. This provision also pertains to the promotion of transparency and accountability measures for corporations. The enactment of the Right to Information (RTI) Act³⁸ occurred.

One limitation of the Right to Information (RTI) Act is its exclusion of private corporations from its purview. Additionally, the Lokpal and Lokayukta Act of 2013 was established to create an inquiry commission responsible for investigating allegations of corruption against individuals holding public office. However, it is important to note that this act does not extend its jurisdiction to private companies. The Prevention of Corruption Act of 1988 serves as the primary anti-corruption legislation in the country. However, it is worth mentioning that this act holds only individuals accountable for corrupt practices, rather than imposing liability on companies. In order to enhance financial transparency, legislative measures such as the Benami Transaction Act³⁹ and Fugitive Offenders Act⁴⁰ have been implemented. In order to safeguard individuals who disclose sensitive information, several legislative measures have been implemented, with the Whistleblower Protection Act serving as a prominent example of such legislation⁴¹. However, similar to the Right to Information (RTI) Act, this legislation also lacks sufficient legal measures to shield victims against human rights violations perpetrated by private corporations. It solely applies to safeguarding against misbehavior committed by public officials.

The current collection of legislative measures aimed at safeguarding the human rights of individuals is insufficient, as evidenced by these case studies and the inherent obstacles associated with each of these acts. Hence, the inquiry arises regarding the adequacy of these actions in safeguarding the welfare of the general population. In my opinion, the majority of these laws are outdated and violate citizens' human rights in order to benefit companies, who exploit legal loopholes. There are limitations to the judiciary's liberal interpretation since it can be construed as judicial activism if it goes beyond the parameters of the legislation. Despite this, new laws, such as those requiring

2007

³⁷ Id., S. 5.

³⁸ Right to Information Act, 2005.

³⁹ Benami Transaction (Prohibition) Act, 2016.

⁴⁰ Fugitive Economic Offenders Act, 2018.

⁴¹ Whistle Blowers Protection Act, 2014.

more corporate social responsibility, are still being developed annually. India may still require a comprehensive framework to safeguard the welfare and rights of its citizens.

3.4.2 Pillar II - Respecting corporate social responsibility

The essence of this guiding principle can be simply defined as the recognition that all businesses bear a duty to safeguard human rights. To fulfill this duty, corporations must acknowledge and confront any possible adverse effects on human rights that may arise from their operations and business partnerships. This chapter aims to examine the corporate responsibility embedded within the current legal framework and the preliminary draft released by the ministry of corporate affairs. In 2011, the government enacted national voluntary guidelines (NVGs) pertaining to the social, environmental, and economic obligations of businesses. Subsequently, in 2018, the government introduced national guidelines on responsible business behavior (NGRBC). Both of these rules were implemented with the aim of establishing standards that corporations must follow in order to uphold the human rights of individuals impacted by their corporate activities. Furthermore, this chapter will examine the legislative provisions of the Companies Act that impose an obligation on corporations to conduct themselves in a manner that upholds the human rights of individuals impacted by their corporate activities.

The Ministry of Corporate Affairs employed a soft law strategy to incentivize Indian businesses to acknowledge their obligation to safeguard human rights. The United Nations Guiding Principles on Business and Human Rights (UNGPs) were officially adopted in the year 2014. In 2011, the government implemented a set of standards known as NVGs, which encompassed a wide range of social, economic, and environmental responsibilities for businesses⁴². (NVGs) were designed with the intention of promoting the adoption of enhanced governance practices inside enterprises. The primary concern associated with (NVGs) relates to their voluntary usage. Experts contend that NVGs were a failure because companies were held to far higher standards than those of fundamental corporate governance, and because guidelines were optional, corporations were able to avoid following them⁴³. The Ministry of Corporate Affairs' failure prompted the

⁴² Zero Draft, National Action Plan on Business and Human Rights (Ministry of Corporate Affairs, 2018) P. 13”<http://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf> accessed 2-11-2020.

⁴³ S.S. Rana & co. Advocates, “National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business” (Mondaq, 7-9-2018) <<https://www.mondaq.com/india/human-rights/734156/national-voluntary-guidelines-on-the-social-environmental-economic-responsibilities-of-business>> accessed 3-11-2020.

issuance of the 2018 National Guidelines on Responsible Business Conduct (NGRBC). These guidelines, although still optional, were formulated in accordance with the United Nations Guiding Principles (UNGPs) and establish a practical benchmark for corporate entities.⁴⁴ The primary motivating factors for the 2018 National Global Responsible Business Conduct (NGRBC) initiative, in conjunction with the United Nations Guiding Principles on Business and Human Rights (UNGPs), are the Paris climate accord, the fundamental agreements addressing the minimum age of child employment and the eradication of the worst forms of child labor, as well as the United Nations Sustainable Development Goals. The 2018 guidelines are noteworthy in addition because they are applicable to all corporations, regardless of their size, industry, kind, or headquarters location. The 2018 recommendations additionally emphasize the importance for the firm to consider the potential adoption inside its supply chain, in addition to focusing solely on direct corporate initiatives. The 2018 guidelines' Fifth Principle expressly states that businesses must uphold and advance human rights in their business dealings. It is recommended that businesses implement policies that exemplify a commitment to upholding human rights. This procedure is required to effectively *"identify, prevent, mitigate, and account for the manner in which adverse human rights consequences"* are addressed. Principal 6 stipulates that corporations are obligated to demonstrate respect for, safeguard, and actively engage in the restoration of the natural environment. Furthermore, it is imperative for enterprises to actively foster consciousness and implementation of human rights, not alone via their direct corporate endeavors, but also through their indirect contributions.

The voluntary reporting mechanism outlined in Annexure 3⁴⁵ of the 2018 standards consists of three sections. This discussion pertains to the disclosure of financial and ownership information, as well as the disclosure of management and process details. The latter include the structure, policies, and processes employed to incorporate the principles, along with performance indicators that assess the business's adherence to these rules⁴⁶. The 2018 framework incorporates a Grievance redressal process inside the framework of principle 3, principle 5, and principle 9. Despite being relatively recent, experts hold a favorable perspective on the

⁴⁴ Ibid.

⁴⁵ Business Responsibility Reporting Framework:National Guidelines on Responsible Business Conduct (Annexure 3) (Ministry of Corporate Affairs, 15-3-2018).
<https://www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf>
8-11-2020.

⁴⁶ Ibid.

rules.

The Companies Act of 2013 is a legislative provision that imposes an obligation on corporations to preserve the human rights of individuals. The Companies Act of 2013 imposes a fiduciary obligation on directors, extending beyond shareholders to encompass stakeholders, employees, and environmental preservation⁴⁷. According to the provisions outlined in Schedule IV of the Companies Act 2013, independent directors are required to adhere to a code of conduct. This code mandates that they prioritize the protection and interests of all stakeholders, with an emphasis on safeguarding the rights of minority shareholders. Additionally, independent directors are expected to effectively manage and reconcile any competing interests among the many stakeholders involved. Section 135 of Act⁴⁸ imposes an obligation on firms whose annual turnover exceeds 500 crores to allocate two percent of their profits towards the corporate social responsibility fund. In the fiscal year 2022-2023, corporations made a contribution of approximately rupees 23,663 crores⁴⁹. The corporation is obligated to allocate funds towards endeavors outlined in Schedule VII, including the eradication of hunger, poverty, and malnutrition. The corporations have the potential to make a valuable contribution to the Swachh Bharat Mission. The initiatives encompass various areas, including the promotion of education, gender equality, women's empowerment, the establishment of facilities for the elderly, the assurance of environmental sustainability and ecological balance, the protection of flora and fauna, the preservation of national heritage, the provision of training to support rural sports, contributions to the Prime Minister's National Relief Fund, and the development of slum areas. India was among the early adopters of corporate social responsibility legislation, which has made a significant contribution to society.

As mentioned in the earlier drafts, corporations that uphold human rights have also adopted certain voluntary actions. Approximately 577 Indian companies have become signatories to the United Nations Global Compact (UNG). The signatories of this compact pledge their commitment to upholding the ten principles of the United Nations Global Compact.⁵⁰ Additionally, a voluntary code of conduct was produced by an Indian industry

⁴⁷ Companies Act, 2013, S. 166.

⁴⁸ Companies Act, 2013, S. 135.

⁴⁹ India CSR Report Five Years and 1,00,000 Crore (CSR box 28-8-2019) <https://csrbox.org/India_CSR_report_India-CSR-Report--Five-Years-and-INR-100,000- Crore_64> accessed on 4-11-2020.

⁵⁰ Supra note 51

association, its member companies are required to embrace it in order to conduct business in compliance with human rights norms. The Institute of Company Secretaries (ICSI) has developed a corporate anti-bribery code that can be voluntarily embraced by private enterprises⁵¹. The ministry of corporate affairs has received a draft code from a specific industry association which outlines various action points for member companies, including the development and promotion of a human rights policy statement. Additionally, it emphasizes the importance of conducting human rights due diligence to identify and subsequently address instances of human rights abuses over a period of time⁵².

As stated in earlier drafts, the government has taken all necessary legal measures to ensure that firms uphold the principle of respecting human rights as a corporate responsibility. However, as case studies demonstrate, violations of these rights persist. Although the voluntary steps being implemented are really good, it is too soon to assess their potential and efficiency. Based on the conducted research, it is evident that the 2018 guidelines are relatively recent, necessitating a comprehensive analysis to ascertain their true efficacy. Though, in my opinion, in order to hold businesses more accountable, these voluntary principles should be made mandatory as part of a national framework of business and human rights.

3.4.3. Pillar III - availability of relief

As stated earlier, the Indian government has already taken all of the essential legal measures to ensure that businesses adhere to the notion of protecting human rights as part of corporate responsibility. On the other hand, as case studies have shown, abuses of fundamental rights persist. It is too soon to evaluate the potential and effectiveness of the voluntary actions that are being done, despite the fact that these steps are incredibly wonderful. However, in my opinion, in order to hold businesses more accountable, these voluntary principles should be made necessary as part of a national framework of business and human rights. This would be done in order to increase the amount of accountability that is placed on enterprises.

According to Article 32(2)⁵³, The Supreme Court is authorized to issue directions, orders, or writs as it sees fit for the purpose of enforcing any of the fundamental rights. The Supreme Court is

⁵¹ Corporate Anti-bribery and Model Governance Code (Institute of Companies Secretaries of India, 2017).

⁵² Supra note 51

⁵³ Constitution of India, Art. 32.

the highest court in the country and has both original and appellate jurisdiction. In accordance with Article 226⁵⁴, the High Courts have the concurrent power not only to uphold the constitutionality of basic rights but also to issue an order for "any other purpose." A variety of circumstances have provided momentum for the possibility of Article 32 and Article 226 to address violations of basic rights even by corporate actors. These provisions can be found in the Constitution. First, it should be noted that the Supreme Court of India, as was previously said, has adopted a lenient interpretation of Article 12 of the Constitution of India. Second, the Supreme Court of India has broadened the scope of fundamental rights by incorporating a number of prescriptive principles of state policies within the right to life that is guaranteed by Article 21 of India's Constitution. Because of these advances, victims are now in a position to frame the majority of human rights abuses committed by corporations as fundamental rights. Third, in the course of the court's powers being exercised in cases of public interest litigation, the court has loosened the standards of locus standi and has been flexible in its treatment of applications or letters as public interest litigation. In matters involving public interest lawsuits, the courts have also been particularly stringent by appointing fact-finding missions to collect evidence and conduct investigations. Fourth, the court has implemented a strategy to provide relief in the context of diversity. The court has not only restricted its ability to award compensation but also remedies in some cases. In spite of the judicial miracles that have been performed, the door to seek redress against a business enterprise still has major obstacles.

Cases involving disagreements between employers and employees are heard in labor courts. Article 23 of the Universal Declaration of Human Rights and Article 6 of the International Covenant on Economic, Social, and Cultural Rights both recognize an individual's entitlement to gainful employment as a fundamental human right. The Labor Courts and Industrial Tribunals that were established under the Industrial Disagreement Act of 1947 appear to be an appropriate forum for the resolution of the disagreement that has arisen between the corporations. However, in fact there are a number of issues that develop, such as a complex system, a weak trade union, and contentious collective bargaining, which makes the resolution of disputes a lot harder.

The establishment of the National Human Rights Commission (NHRC) is mandated by the Protection of Human Rights Act of 1993. According to Section 12, the National Human Rights Commission (NHRC) is granted the authority to independently take notice of any ongoing case before any court within the nation.

⁵⁴ Constitution of India, Art. 226.

The NHRC is additionally authorized to assess the many issues that impact the ability to fully exercise human rights and to propose suitable corrective actions. The term "human rights" as defined under the act refers to the rights that are ensured by (1) the Indian Constitution and (2) enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). While the National Human Rights Commission (NHRC) possesses a broad range of authority, it lacks a dedicated provision addressing instances of corporate human rights violations. Instead, the NHRC can only intervene in such cases upon receiving a request from the court. The number 62 is the numerical representation of a quantity.

The National Human Rights Commission (NHRC) has lately taken steps to address cases involving corporate human rights breaches. The National Human Rights Commission (NHRC) has demonstrated significant efficacy in addressing instances of corporate human rights violations. There exist other specialized commissions, such as the special commission dedicated to women, the national commission entrusted with the protection of child rights, and the national commission specifically established for the welfare of Scheduled Castes and Scheduled Tribes. The establishment of the National Commission for Women was enacted under the National Commission for Women Act of 1990. Section 10 of the Act confers authority upon the commission to undertake major responsibilities: (1) Conduct inquiries into all topics pertaining to the preservation of women's dignity,

(2) Address instances of non-compliance with provisions intended to ensure the protection of women.

(3) Conduct research focused on promotion and education to propose strategies for achieving equitable representation. The commission has exhibited a high level of activity. The commission has demonstrated significant engagement in addressing the issue of gender-based discrimination within the workplace, as the principle of nondiscrimination serves as a fundamental pillar in the universal declaration of human rights. The Indian Constitution's article 338(5) grants the national commission for ST and SC authority. Scholars have contended that the commission in question has been utilized to tackle instances of human rights violations perpetrated by corporations.⁵⁵

National tribunals, such as the National Green Tribunal, have demonstrated significant engagement in the protection of the environment against corporate activity. The establishment of the

⁵⁵ Supra note 7,

National Green Tribunal aims to realize the concept of "environmental democracy". The tribunal possesses the authority to inflict penalties of up to 10 crores and impose a maximum prison sentence of three years. In the case of M.P. Patil v. Union of India⁵⁶. The tribunal determined that the thermal power corporation had engaged in the misrepresentation of facts in order to secure environmental clearance. The tribunal further emphasized the significance of rehabilitating and resettling individuals who have been displaced. The recognition of the right to access natural resources within the context of environmental protection is an established tenet of human rights. This notion was exemplified in the coca-cola case, wherein the Kerala high court ruled that the ownership of groundwater resources does not pertain to the firm, but rather to all members of the society in an equitable manner. According to reports, there is a possibility that the central government may curtail the tribunal's judicial authority, thus relegating it to a mere advisory role. In such an event, the tribunal might potentially be perceived as an extension of the executive branch and corporate interests, potentially enabling the evasion of accountability for human rights violations.⁵⁷

India can be characterized as having a well-rounded approach that encompasses both corrective judicial and non-judicial processes. Despite facing a number of obstacles, the measures have demonstrated remarkable success. One limitation of India's remedial system pertains to the lack of a non-state remedial mechanism. These non-state entities might be run by businesses, civil society organizations, or multi-stakeholder groups. Dispute resolution can be pursued through several alternative dispute resolution platforms. The Indian Supreme Court has consistently affirmed in several judgments that alternative dispute resolution (ADR) should be included into the overall framework of dispute settlement⁵⁸. The recognition of collective bargaining through mediation in employment disputes is stipulated in Section 4 of the Industrial Dispute Act. The utilization of arbitration and mediation as mechanisms for addressing instances of corporate human rights breaches remains very limited in India. Alternative dispute resolution (ADR) methods have the potential to be highly advantageous in resolving disputes between victims and

⁵⁶ M.P. Patil v. Union of India, 2013 SCC OnLine NGT 1223.

⁵⁷ Choudhary Yukti, "Tribunal on Trial" (Down to Earth, 11-6-2015) <<https://www.downtoearth.org.in/coverage/tribunal-on-trial-47400>> accessed 5-11-2020.

⁵⁸ Agarwal Eshwar, Singh Bani and Mohan Ram, "We Need Alternative Dispute Resolution Mechanism in India", (The Week, 9-7-2020) <<https://www.theweek.in/news/india/2020/07/09/opinion--we-need-alternative-dispute-resolution-mechanisms-in-in.html>> accessed 5-11-2020.

companies. By utilizing ADR, the financial burden associated with legal processes might be diminished, the complexities arising from judicial interpretation could be minimized, and a higher level of transparency could be upheld. The implementation of this entire procedure has the potential to expedite and simplify the attainment of justice for the victims. However, due to apparent factors, corporations are unlikely to willingly engage in alternative dispute resolution. Consequently, I propose the establishment of a comprehensive framework that mandates mediation as a prerequisite to litigation, thereby ensuring expeditious delivery of justice to the victims.

CONCLUSION

It is well acknowledged that corporations, regardless of their country, size, or industry, can exert both positive and negative influences on human rights at any point in their supply chain. India's adherence to the guiding principles on business and human rights is a direct result of the government's commitment as a signatory to the resolution establishing these principles. India has produced a preliminary version of the national action plan, known as the zero draft, which has been made available for feedback. The plan was supposed to be completed by 2020, but it is currently awaiting finalization. Furthermore, the government has also used NVGs and NGRBC as guiding principles to help attain the established aim. Both of these standards, although not mandatory, presented their own distinct issues, which were thoroughly examined in the preceding chapters. Despite the government's efforts to rectify its error in 2011 on NVGs, and the subsequent implementation of a more resilient and user-friendly NGRBC in 2018, the rules still presented difficulties. The zero drafts allowed the Indian government to evaluate its legislative actions pertaining to firms that engage in human rights abuses. This article has examined the initial draft document in relation to each fundamental principle and the difficulties encountered by each legislative action. The author's analysis of legislative measures led to the conclusion that the existing framework is insufficient in preventing human rights abuses, as such abuses continue to be widespread. As evidenced in the chapter on case studies spanning from 1984 to 2020, companies have no concern for the human rights of citizens. Establishing a comprehensive framework for business and human rights will guarantee that the economy, while progressing towards economic growth, is sustainable, inclusive, and upholds the human rights of individuals impacted by corporate activities.

The initial version of the national action plan represents a significant progress in acknowledging the importance of principles outlined in the United Nations Guiding Principles on Business

and Human Rights. The initial draft considers numerous factors but fails to address certain essential elements of governmental protection in order to mitigate human rights violations by corporations, corporate accountability, and remedial measures. This chapter aims to identify the different facets inside each pillar that are overlooked by the zero draft. The ministry, in the initial version of the national action plan, has downplayed the current legal framework and has not made an effort to incorporate essential elements necessary for accomplishing the objectives of the United Nations Guiding Principles (UNGPs).

Experts were concerned about the fact that the plan would be a product of the state-business nexus, and that it would really lack effective implementation or even make things worse for human rights activists. This was done at the time when the government declared that it would be making a draft for a national action plan by the government⁵⁹. It is safe to draw the conclusion that the existing framework is not sufficient to protect the human rights that are violated by corporate acts. This is because the research has already emphasized in the chapters the issues that are encountered by the relevant legislative measures. This chapter will concentrate on the things that the zero-draft failed to take into account and what the future scope will be. There should be some degree of flexibility built into the process to allow for varied treatment between small and medium-sized enterprises and the informal sector. This is despite the fact that the legislation should establish the general contours of the regulatory framework for all types of businesses. To phrase it another way, even when there is a sturdy framework, it should not be the case that a single framework is suitable for all organizations.

With regard to the first pillar, which is referred to as "protection," the zero draft has just minimized the existing administrative structure. Without any significant planned revisions to construct more stringent legislation, the present legal structure remains as it has been. Given that the state serves as both a regulator and an enabler for business, the draft does not address the issue of political influence that is present in the relationship between the state and business. Furthermore, the draft does not address the issue of the state's involvement in the contraction of regulating the behavior and being a promoter of ease of doing business. This is a point that is not addressed. For the purpose of ensuring that victims are granted the protection of fundamental rights against non-state actors, there is no mention of any plan to bring about a constitutional amendment to amend Article 12 of the

⁵⁹ Voices from the Margins: Community Consultation Report on National Action Plan on Business and Human Rights, (Partners in change, 2019) <<https://www.picindia.org/studies>> accessed 1-11-2020.

Constitution. It is possible that selecting Section 8(2) of the Constitution of South Africa, which permits the implementation of fundamental rights against a non-state actor, would be an excellent choice to make. In addition, every high court, regardless of whether it has original or appellate jurisdiction, may be able to deal with violations of basic rights committed by corporations if the rules of the high court are altered. It may be desirable to amend the Human Rights Act of 1993 in order to confer explicit jurisdiction on the National Human Rights Commission (NHRC) as well as the state Human Rights Commission in order to take up complaints of violations committed by corporations and to develop policies and action plans to assist companies in complying with their corporate responsibilities. This is because commissions such as the national human rights institutions have a significant role to play in ensuring that companies respect their obligation to respect human rights. The corporation act is another area that needs to undergo significant revisions in order to correspond with the current framework. One of the legislative measures that is now in place to ensure that a parent is liable is piercing the company's veil. But, in the process of providing victims with justice, the corporate veil has been shown to be ineffectual. As a result, it is essential to take into consideration other methods, such as the concept of performing due diligence without doing so. The reform in labor law that was just recently established is significant; yet, it is too early to evaluate the impact of this change. A harmonious balancing between enabling the business operations of enterprises and safeguarding the fundamental human rights of its citizens is the responsibility of the state, which is responsible for achieving this harmonic equilibrium.

The second pillar of the zero draft places a primary emphasis on the application of soft law instruments in the context of NGRBC and NVGs to encourage corporate responsibility. Hard law measures are given scant consideration in this pillar. Despite the fact that it is well acknowledged that these principles are ineffective, the question of whether or not they can be enforced is still predominantly unexplored. When dealing with cases that involve international organizations, the court regularly faces disagreements regarding the appropriate jurisdiction to exercise. In order to address this issue, it is possible to establish a new national action that contains a specific chapter that is dedicated to providing clarification on jurisdiction within the context of a national framework for business human rights. It is essential to enact stringent legislation about the obligation of firms to carry out comprehensive investigations, in a manner that is analogous to the provisions that are outlined in the national action plan of the European Union.

Within the scope of the third pillar, the proposed document restricts itself to the utilization of courts and other legal instruments that were developed by governments. It is of the utmost importance to establish methods for the resolution of disputes that involve non-state entities or internal processes. It is of the utmost need to strengthen the mechanisms that are not judicial in nature, such as the National Green Tribunal and the National Commission for Women. Inefficiency is a problem that plagues the current judicial system, which leads to drawn-out hearings and costly legal conflicts. An effort will be made to lessen the degree of opacity that is present. In addition to this, the proposal does not highlight the significance of providing legal help to those who have been victims of abuses of human rights committed by corporations.

During this event, India intends to demonstrate its commitment to the United Nations Guiding Principles (UNGPs) as well as its efforts to develop a national action plan to put these principles into practice. The government of India ought to establish a unified task force with representatives from several ministries and government departments, the Securities and Exchange Board of India (SEBI), the National Human Rights Commission (NHRC), and business chambers and groups. Through the evaluation of existing laws and regulations, the formulation of policies with defined deadlines, the identification of critical areas, and the conduct of regular discussions with diverse stakeholders, this task force would be responsible for the execution of the United Nations Guidance Programs (UNGPs) in India. Corporations have the capacity to bring about significant and positive changes in the lives of the numerous individuals whose lives are impacted by their commercial operations if they take the initiative to appreciate and resolve the implications that their operations have on human rights. At the same time, they have the ability to make a significant contribution to the vision of sustainable development goals that the United Nations has. Progressive firms see the potential of this opportunity to improve their public image and actively work to raise the bar for human rights standards through collaborative efforts with their peers in government and civil society.