

# **NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS**

**ZERO DRAFT**



सत्यमेव जयते

**MINISTRY OF CORPORATE AFFAIRS**  
Government of India

**Technical Support Provided by:**



# Contents

<b>Preface: Secretary, Ministry of Corporate Affairs .....</b>	<b>3</b>
<b>Acronyms .....</b>	<b>6</b>
<b>Statement of Commitment.....</b>	<b>8</b>
<b>UNGPs and India's National Action Plan.....</b>	<b>9</b>
UNGPs - Overview .....	9
National Action Plan for India - Process.....	9
<b>Pillar I –The State Duty to Protect Human Rights .....</b>	<b>11</b>
India's International Commitments Towards Protecting Human Rights.....	11
India's Domestic Legal Framework for Protecting Human Rights.....	11
Companies Act, 2013 and Statutory Recognition of Corporate Social Responsibility.....	2
Non-Financial Reporting .....	4
Environmental Protection .....	4
Protecting the Rights of Workers .....	5
Special Protection for Specific Groups .....	5
Women .....	5
Children .....	6
Gender Identity.....	7
Persons With Disability (Divyang Jan) .....	7
Scheduled Castes and Scheduled Tribes.....	7
Transparency and Accountability .....	7
Financial Transparency .....	8
Protection of Human Rights Defenders / Whistleblowers.....	9
Consumer Protection .....	9
Community Consultation .....	10
Extractive Industries.....	10
State - Business Nexus.....	11
Public Procurement.....	11
<b>Pillar II - The Corporate Responsibility to Respect Human Rights.....</b>	<b>13</b>
2011 NVGs and 2018 NGRBC .....	13
Other Voluntary Measures .....	15
<b>Pillar III - Access to Remedy .....</b>	<b>17</b>
State-Based-Judicial/Quasi-Judicial Mechanism to Redress Human Rights Violations.....	17
Labour Courts.....	18
State-Based Non-Judicial Mechanism.....	18

Existence of a National Human Rights Institution .....	18
Available Remedies Under Law.....	19
Legal Aid.....	19
Access to Information.....	20
Promoting Public Awareness.....	20
Other State-Based Grievance/Complaints Mechanism.....	20
<b>Future Course of Action.....</b>	<b>21</b>
<b>Endnotes.....</b>	<b>22</b>

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## PREFACE

India's commitment towards inclusive development for all draws its inspiration from the Gandhian principles of trusteeship that suggest that people must manage earth's resources as trustees or custodians acting in the interest of the society at large. Based on this, India's development agenda is guided by the motto "*Sabka Saath Sabka Vikas*" (Collective Effort, Inclusive Development) as enunciated by the Hon'ble Prime Minister of India. Towards this end, realization of human rights has been a key priority for India.

In fact, as the largest democracy in the world, protection of human rights has been an intrinsic part of Indian tradition. This is also recognised in the Constitution of India in the form of Fundamental Rights and the Directive Principles of State Policy. This framework is supported by an independent judiciary, several national and state commissions to monitor compliance with human rights, a free press and several legal and policy measures that have been implemented by the Government of India with a view to continue its endeavours to fulfill its human rights commitments. India recognizes that certain sections of the population are more vulnerable to marginalization due to several historical and social factors and accordingly, has adopted a host of protective and affirmative measures for the protection of such vulnerable sections.

Even at the global level, India remains committed to work with the United Nations (UN) and other governments towards protection of human rights. The recent election of India to United Nations Human Rights Council

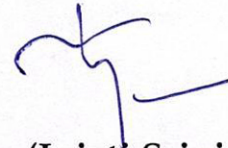
(UNHRC) is a global recognition of India's commitments and efforts at promotion and protection of human rights. Further, India has played a key role in the deliberations and shaping of the Sustainable Development Goals (SDGs) that are also grounded in human rights principles. Notably, the 2030 Agenda for Sustainable Development (2030 SDG Agenda) that provides an opportunity to further advance the realization of human rights for all recognizes the business sector as a key partner for the UN and national governments to achieve the SDGs.

Acknowledging the key role that businesses play in the development agenda and the impact of the activities of businesses on the lives of people, several attempts have been made at the global level to articulate business responsibility to respect human rights. A significant achievement in this regard has been the adoption of United Nations Guiding Principles on Business and Human Rights (UNGPs) by the UNHRC in 2011. Broadly, the UNGP framework is built on three pillars: (a) State's duty to protect human rights; (b) corporate responsibility to respect human rights; and (c) access to effective remedies for business-related human rights abuses.

India has been at the forefront in recognizing social responsibility of businesses. India is one of the first countries to statutorily mandate corporate social responsibility (CSR) through law. First, it has been made an integral part of fiduciary duties of directors of a Company, second, companies meeting a prescribed threshold in terms of annual turnover, networth or net profit have been mandatorily obligated to spend two percent of their net profit on CSR activities. The statutory provisions have been complemented by voluntary measures such as National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011 (NVGs) that the Government of India encourages businesses to follow. In 2015, with a view to align the NVGs with SDGs and UNGPs, the Ministry of Corporate Affairs, Government of India (MCA) started the process of reviewing and updating the NVGs. After elaborate consultations with all relevant stakeholders, including the Central Ministries and State Governments,

industry associates, civil society organisations, and public at large, the *National Guidelines on Responsible Business Conduct* (NGRBC) have been formulated. The NGRBC have been designed to assist businesses to perform above and beyond the requirements of regulatory compliance

This National Action Plan reaffirms India's commitment to continue its endeavour to encourage socially responsible businesses.



(Injeti Srinivas)

Secretary to Government of India

New Delhi  
10<sup>th</sup> December, 2018

# Acronyms

2011 NVGs	National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011
2018 NGRBC	National Guidelines on Responsible Business Conduct, 2018
2030 SDG Agenda	2030 Agenda for Sustainable Development
BRR	Business Responsibility Reports
CA 2013	Companies Act, 2013
CCI	Competition Commission of India
Competition Act	Competition Act, 2002
CPA	Consumer Protection Act, 1986
CPC	Code of Civil Procedure, 1908
CPCR Act	Commissions for Protection of Child Rights Act, 2005
CPSE Guidelines	Guidelines issued by the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises in relation to various corporate governance aspects of CPSEs
CPSEs	Central Public Sector Enterprises
CSR	Corporate Social Responsibility
DMF	District Mineral Foundation
DPE	Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises
EP Act	Environment (Protection) Act, 1986
GeM	Government's e-Marketplace
ICC	Internal Complaints Committee
ICSI	Institute of Company Secretaries of India
JJ Act	Juvenile Justice (Care and Protection of Children) Act 2000
Land Acquisition Act	Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 2013
LSA Act	Legal Services Authorities Act, 1987
MCA	Ministry of Corporate Affairs, Government of India
Minerals Act	Mines and Minerals (Development and Regulation) Act, 1957
MoEF & CC	Ministry of Environment, Forests & Climate Change
NAFRA	National Financial Reporting Authority
NALSA	National Legal Services Authority
NCDRC	National Consumer Disputes Redressal Commission
NCPCR	National Commission for Protection of Child Rights
NCW	National Commission for Women
NGT	National Green Tribunal
NHRC	National Human Rights Commission
NITI Aayog	National Institution for Transforming India
PCA	Prevention of Corruption Act, 1988
PMKKKY	Pradhan Mantri Khanij Kshetra Kalyan Yojana
POCSO Act	Protection of Children from Sexual Offences Act, 2012

RPD Act	Rights of Persons with Disabilities Act, 2016
RTI Act	Right to Information Act, 2005
SC/ST Act	Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989
SDGs	Sustainable Development Goals
SEBI	Securities and Exchange Board of India
SHWW Act	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
UN	United Nations
UNGC	United Nations Global Compact
UNGPs	United Nations Guiding Principles on Business and Human Rights
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review

## Statement of Commitment

India has been unequivocal in its pledge to promote and protect human rights through its international commitments, and the legal and policy measures implemented at the domestic level. Recognizing the significant role played by businesses and their impact on the lives of people, India has been a strong proponent of promoting responsible businesses with a view to further its commitments for realization of human rights, including inclusive development.

The UNGPs re-emphasize the principles that have guided India's policy agenda and are committed to continue its efforts to implement measures to foster an enabling environment for protection and promotion of human rights by State and non-State actors in business activities. This is also reflected in its ongoing efforts such as:

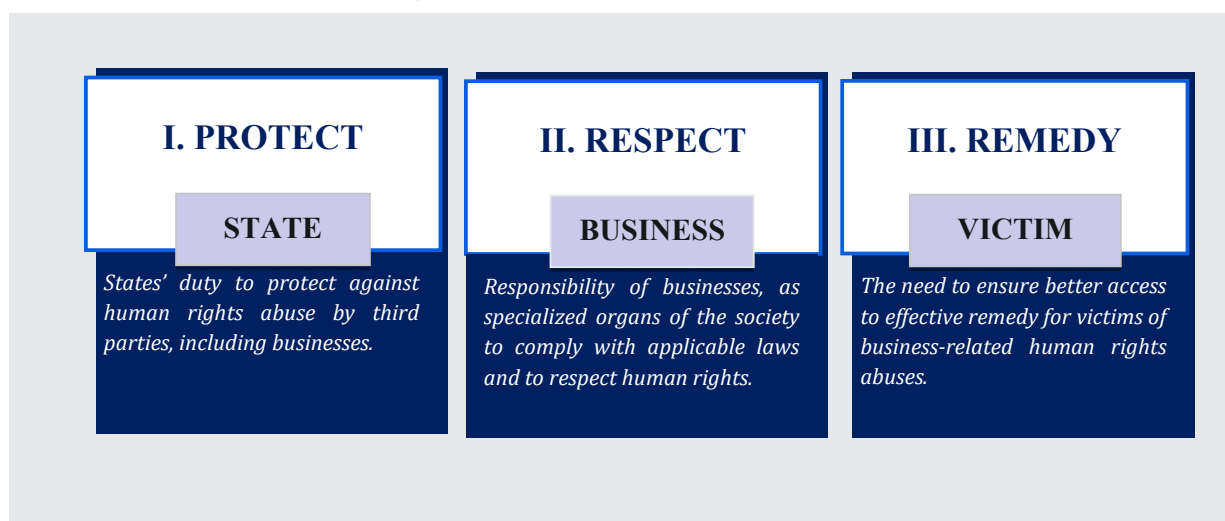
- Implementation of its international commitments under international human rights instruments;
- policy and legislative interventions at the domestic level to realize human rights, with focus on certain vulnerable and marginalized sections of the population;
- the issuance of the 2011 NVGs and the 2018 NGRBC that have been drafted taking into account the UNGPs;
- implementation of measures for achieving the SDGs that are linked to the UNGPs;
- encouraging companies to commit themselves to respect human rights in its activities; and
- cooperating with the UN and other international organizations, and engaging with all relevant stakeholders in order to realize its human rights goals.

# UNGPs and India's National Action Plan

## UNGPs - Overview

In June 2011, the UNHRC endorsed the UNGPs. These principles are the outcome of six years of consultative process, involving States, businesses and civil society. The UNGPs elucidate the duties and responsibilities of the State and businesses in addressing adverse business-related human rights impacts. Spread across 31 foundational and operational principles, the UNGPs are broadly based on three pillars:

- **Pillar I** - The State Duty to Protect Human Rights.
- **Pillar II** - The Corporate Responsibility to Respect Human Rights.
- **Pillar III** - Access to Remedy.



**Figure 1: Overview of the UNGPs**

The objective of the UNGPs is to enhance standards and practices with regard to business and human rights to achieve tangible results for affected individuals and communities, and thereby contribute to a socially sustainable globalization.<sup>3</sup> While the UNGPs do not create new legal obligations, they clarify and elaborate on the implications of relevant provisions of existing international human rights standards.<sup>4</sup>

In June 2014, the UNHRC called upon its member States to develop a National Action Plan to promote the effective implementation of the UNGPs.<sup>5</sup> As will be demonstrated in the succeeding sections, the Government of India has been undertaking measures similar to the UNGP principles much before the UNGPs were formulated.

## National Action Plan for India - Process

This National Action Plan reaffirms India's commitments towards realization of human rights and promotion of socially responsible businesses. It provides an overview of India's legal framework setting out the State's duty to protect human rights, the corporate responsibility to respect human rights and access to remedy against business-related human rights

violations. Key policy measures adopted by the Government of India in this regard have also been discussed herein.

In 2018, the MCA organized several meetings/multi-stakeholder consultations with relevant Ministries of the Government of India, the National Human Rights Commission (NHRC), the Securities and Exchange Board of India (SEBI), domain experts, and other relevant stakeholders, including representatives from industry associations where issues pertaining to business and human rights were deliberated upon. These also included regional consultations held in Kolkata, Mumbai, Bengaluru, and New Delhi. During some of these consultations, the MCA also apprised the participants of the National Action Plan under the UNGPs, and sought active Ministerial participation to develop and finalize India's National Action Plan. Amongst other things, these consultations involved discussions on the following key issues:

- Evolution of business and human rights deliberations in India post endorsement of the UNGPs by the UNHRC.
- Existing framework on business and human rights in India, including initiatives under the Companies Act, 2013 (CA 2013), 2011 NVGs and the 2018 NGRBC.
- Preparation of the National Action Plan in India in consultation with relevant stakeholders.
- Promotion of the concept of corporate responsibility to respect human rights.
- The 2018 NGRBC that seek to align itself to the UNGPs.
- The similarities between the 2018 NGRBC, UNGPs and SDGs.
- Incentivizing corporates to comply with the NGRBCs that are based on the UNGP framework.
- Further, Issues pertaining to business responsibility reporting framework of SEBI, whistleblowing and protection of whistleblowers, non-financial reporting framework, harassment of women at the work place, fair wages, etc. were also discussed.

Further, a draft of this National Action Plan was also shared with relevant Ministries and other government bodies such as NHRC, to get their inputs/comments on the same. This NAP takes into consideration the issues that were discussed during the aforesaid multi-stakeholder consultations and the comments/inputs of relevant Ministries and government bodies. Based on the review of the UNGPs and commentary to the same, certain thematic issues have been identified for the purposes of this National Action Plan, to understand the Indian framework insofar as it is relevant to the UNGPs.

## Pillar I –The State Duty to Protect Human Rights

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Pillar I of the UNGPs clarifies the legal duty of the State to protect individuals from adverse business-related human rights impacts, and outlines a set of operational principles with which States should implement this duty.<sup>6</sup>

Given below are some thematic issues based on which, principles set out in Pillar I as implemented in the Indian legal framework may be understood.

### **India's International Commitments Towards Protecting Human Rights**

As a member of the UN, and other regional and multilateral international forums, India remains committed to cooperating with international organizations as well as other countries individually, in a spirit of reciprocity and comity, to raise the standards of human rights within the country and across the world.<sup>7</sup>

India has shown an unwavering commitment to the cause of recognizing and protecting human rights by way of ratification of a number of international human rights instruments such as the International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), Convention on the Elimination of All Forms of Discrimination Against Women (1979), Convention on the Rights of the Child (1989), Convention on the Rights of Persons with Disabilities (2006), etc. Furthermore, India has also ratified six out of the eight

core/fundamental International Labour Organisation conventions.<sup>8</sup>

The Universal Periodic Review (UPR) under the auspices of UNHRC involves a periodic assessment of the human rights records of all 193 UN Member States. India has actively participated in all three UPRs (till date) and submitted its National Report to the UNHRC.<sup>9</sup>

Recognizing the significance of responsible business and with a view to further its commitment to protection of human rights, India voted in favour of the UNHRC resolution 26/9 which constituted the Open-ended Intergovernmental Working Group with the responsibility to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporation and other business activities. India actively participated in the fourth session of the said working group in Geneva between 15-19 October 2018. This session, in great length, deliberated on the provisions of the zero draft of the said international legally binding instrument.

### **India's Domestic Legal Framework for Protecting Human Rights**

Part III of the Constitution of India, that guarantees the fundamental rights, forms the bedrock of India's commitment to human rights. These rights include the right to life and personal liberty, the right to equality and equal protection of law, freedom of speech and expression, right to move the Supreme Court of India for

enforcement of these rights, etc. Furthermore, the judiciary by way of its expansive interpretation to the fundamental rights, especially the right to life has recognized several other rights such as the right to privacy,<sup>10</sup> access to medical facilities,<sup>11</sup> clean environment,<sup>12</sup> speedy trial,<sup>13</sup> etc. as emanating from the right to life.

The Directive Principles of State Policy as set out in the Constitution of India recognize certain socio-economic rights. These principles are recognized as fundamental in the governance of the country.<sup>14</sup> These constitutional measures are complemented by other statutory enactments for protection of the environment, labour rights, rights of women, children, persons with disabilities, etc.

### **Companies Act, 2013 and Statutory Recognition of Corporate Social Responsibility**

The recent reforms in Indian corporate law such as the enactment of CA 2013, as amended from time to time, has witnessed a shift in the Indian legal framework from a shareholder model of governance to a stakeholder model of governance.

CA 2013 confers statutory recognition to a directors' fiduciary duty not only towards shareholders but also towards employees, the community, and for the protection of the environment.<sup>15</sup>

Further, Schedule IV of the CA 2013, that provides a code of conduct for independent directors, requires them to "*safeguard the interests of all stakeholders, particularly the minority shareholders*" and also "*balance the conflicting interest of the stakeholders*".

Notably, India was one of the first countries that to have regulated and mandated CSR for some select categories of companies registered under the CA 2013. The Companies Act mandates companies (meeting specified net worth, turnover or net profit thresholds) to spend at least 2% of their average net profits of the preceding three years towards socially beneficial activities such as:

- eradicating hunger, poverty and malnutrition, promoting healthcare including preventive healthcare, and sanitation including contribution to the Swachh Bharat Kosh set up by the Central Government for the promotion of sanitation and making available safe drinking water;
- promoting education, including special education and employment-enhancing vocation skills especially among children, women, elderly and the differently abled, and livelihood enhancement projects;
- promoting gender equality, empowering women, setting up homes and hostels for women and orphans, setting up old-age homes, day care centres and such other facilities for senior citizens, and measures for reducing inequalities faced by socially and economically backward groups;
- ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agro forestry, conservation of natural resources and maintaining quality of soil, air and water, including contribution to the Clean Ganga Fund set up by the

Central Government for rejuvenation of river Ganga;

- protection of national heritage, art and culture, including restoration of buildings and sites of historical importance and works of art, setting up public libraries, promotion and development of traditional art and handicrafts;
- measures for the benefit of armed forces veterans, war widows and their dependents;
- training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports;
- contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development, and relief and welfare of the schedule caste, tribes, other backward classes, minorities and women;
- contributions or funds provided to technology incubators located within academic institutions which are approved by the Central Government;
- rural development projects;
- slum area development.

Companies are required to constitute a Corporate Social Responsibility (CSR) committee that must formulate the CSR policy of the company. During the period 2014-17, companies have spent around INR 37,897 crores towards CSR.<sup>16</sup>The CSR mandate is expected to assist India's sustainable drive for ensuring social,

economic and environmental wellbeing for all, through the responsible contributions of corporations. To facilitate and incentivize corporates for complying with CSR provisions in the true spirit, the MCA has also set up the National CSR Award.

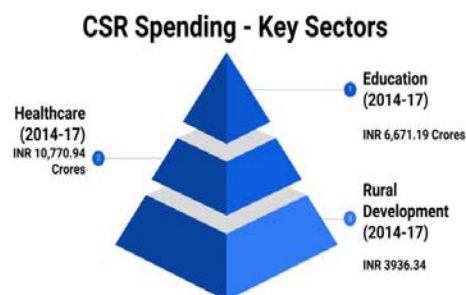


Figure 2: CSR Spending - Key Sectors<sup>17</sup>

Key Indicators	2014-15	2015-16	2016-17
<b>CSR Amount Spent (in INR Crores.)</b>	10,066	14,366	13,465
<b>Number of Companies (in Nos.)</b>	16785	21498	19933
<b>Total Number of CSR Projects (in Nos.)</b>	9391	18044	21171

Figure 3: CSR - Key Indicators<sup>18</sup>

The CA 2013 envisages auditors as 'gatekeepers' since they are tasked with ensuring financial transparency in the business operations of companies. Acknowledging this vital role and function of auditors in the corporate governance framework, the MCA has recently set up the National Financial Reporting Authority (NAFRA). NAFRA is an independent regulator of the auditing profession that will enforce and monitor compliance with accounting standards, investigate and penalize misconduct by auditors.

The aforesaid statutory measures have been complemented by voluntary measures such as the 2011 NVGs and the 2018 NGRBC released by MCA.

Notably, Principle 5 of 2018 NGRBC explicitly provide that companies must respect human rights as envisaged under the UNGP framework. The 2018 NGRBC have made significant progress by recognizing 'human rights due diligence' as an essential component of Principle 5 which requires businesses *"to identify, prevent, mitigate, and account for how they address adverse human rights impacts"*.

### **Non-Financial Reporting**

SEBI mandates top 500 listed companies (in terms of market capitalization) to prepare Business Responsibility Reports (BRRs) describing the initiatives taken by them from an environmental, social and governance perspective.<sup>19</sup>The BRR, which is part of a company's Annual Report, seeks to assess the company's implementation of the 2011 NVGs.

### **Environmental Protection**

The Supreme Court of India has recognized the right to clean environment as a part of an individual's right to life guaranteed by the Constitution of India, with both prevention and precaution as a part of this right.<sup>20</sup>India has a robust legislative framework pertaining to environment, which includes Environment (Protection) Act, 1986 (EP Act), Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, Forest Conservation Act, 1980, among others. Most of these laws also aim to implement India's international

commitments. Further, the EP Act also envisages an environment impact assessment of certain projects and activities.

The Ministry of Environment, Forests & Climate Change, Government of India (MoEF & CC) is the nodal agency of the Central Government for overseeing the implementation of environmental laws and policies. While implementing these laws and policies, MoEF & CC is guided by the principles of sustainable development. The Central Government has launched various programmes across the nation to secure a clean environment.

### **Swachh Bharat Abhiyaan (Clean India Mission)**

Drawing inspiration from Mahatma Gandhi's life and message, on 02 October 2014, the Central Government launched the 'Swachh Bharat Abhiyaan' (Clean India Mission). It aspires to make India clean and free from open defecation by the 150<sup>th</sup> birth anniversary of Mahatma Gandhi. Under this scheme, around 8.823 crores toilets have been constructed across India. This programme has spread awareness about cleanliness and its tangible and intangible advantages.

This mission has encouraged various organisations including corporates to contribute to this programme. In 2016-17, around 217 companies contributed to the *Swachh Bharat Kosh* (Fund) under their CSR spending requirement. An innovative tax like the *Swachh Bharat Cess* (Clean India Cess) has also been levied for mobilizing resources for the Clean India Mission.

#### **Box 1: Clean India Mission<sup>21</sup>**

### **Namami Gange (Clean Ganga)**

The river Ganga is the lifeline of Indian sub-continent, both culturally and spiritually. The 'NamamiGange' (Clean Ganga) programme launched by the Government of India is one of the flagship programmes under the *SwachhBharatAbhiyaan* to clean the river Ganga. Under this programme, 75 sewage management projects, 28 river-front development projects and 33 entry-level projects for construction, modernization and renovation of 182 ghats and 118 crematoria have been initiated.

Corporates either contribute money to Clean Ganga Fund (as CSR) or undertake certain activities such as adopting ghats, piloting new technologies, collecting and disposing floating debris/solid waste, conducting research, creating awareness and planting trees.

#### **Box 2: Clean Ganga Programme<sup>22</sup>**

### **Protecting the Rights of Workers**

India is committed to promoting the right to equal opportunity for work and at work. India has a plethora of central and state labour laws. The central labour laws deal with varied aspects such as health and safety of workers,<sup>23</sup> payment of wages,<sup>24</sup> social security,<sup>25</sup> and industrial relations<sup>26</sup>. Indian labour laws provide an effective forum for redressal of industrial disputes. Such forums adopt adversarial as well as non-adversarial modes of adjudication. With a view to ensure transparency and consistency, India is currently undergoing a process for consolidation of the labour laws in four codes.<sup>27</sup>

The Central Government has overhauled the mechanism for evaluating compliance with labour laws. Through a Unified Labour Web Portal (Shram Suvidha Portal), employers now have to file returns detailing their compliance with labour laws.<sup>28</sup> This portal is envisaged as a '*single point of contact*' between employer, employee and enforcement agencies, bringing in transparency in their day-to-day interactions.

The Central Government has enacted specific laws for ensuring health, safety and welfare of construction workers.<sup>29</sup> The Building and other Construction Workers' Welfare Cess Act, 1996, requires employers to pay a cess of not more than 2% of the cost of construction. The amount collected under this cess is used by the Building and other Construction Workers Welfare Board (which is constituted at the state level) for funding welfare measures for construction workers.

### **Special Protection for Specific Groups**

Recognizing that certain sections of the population are more susceptible to marginalization and human rights violation due to historical factors and social structures, India has adopted several legislative measures for protecting and promoting the rights and interests of such groups.

#### **Women**

India has taken various steps to promote equal participation of women in the workforce, to ensure a safe and dignified work environment, and to facilitate overall socio-economic empowerment of women.

With a view to providing a safe and conducive working environment for women, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (SHWW Act) was enacted. SHWW Act mandates employers to provide an effective redressal mechanism by constituting an Internal Complaints Committee (ICC) to deal with complaints regarding sexual harassment at workplace. To ensure that companies adhere to this statutory requirement, the MCA has mandated that the Director's report, to be submitted under the CA 2013, must contain a statement that the company has complied with the provisions relating to the constitution of an ICC under the SHWW Act.

Several legislations have been enacted by the Parliament that have brought a perceptible improvement<sup>30</sup> in the status of women. Various forms of violence such as acid attacks, stalking, voyeurism, etc. have also been incorporated into the Indian Penal Code, 1860 as distinct offences. The National Commission for Women has been specifically set up to focus on issues affecting women.

**Beti Bachao Beti Padhao (Save the Girl Child, Educate the Girl Child)**

Numerous measures have been put in place for promoting gender equality. For example, the *Beti Bachao Beti Padhao* (Save the Girl Child, Educate the Girl Child) initiative by the Government of India focuses on a comprehensive package of interventions for the girl child including those pertaining to education and their protection.

**Box 3: Save the Girl Child, Educate the Girl Child**

Furthermore, the CA 2013 and SEBI require certain companies to appoint at least one woman director on the board, to enhance gender diversity on boards.

Recently, SEBI has also obligated the top 500 listed companies (based on market capitalization) to appoint at least one woman independent director on the board of directors by 01 April 2019, and the top 1000 listed companies (based on market capitalization) by 01 April 2020.

In order to mainstream gender diversity across sectors and all levels of governance, Government of India, adopted Gender Budgeting as a tool in 2004-05. Gender Budgeting entails dissection of the Government budgets to establish its gender differential impacts, and to ensure that gender commitments are translated into budgetary commitments.<sup>31</sup>

**Children**

India's commitment to protection and welfare of children can be traced back to the constitutional mandate of prohibition of employment, of children in hazardous employment and right to free and compulsory education for children between the ages of 6 to 14 years.

This is complemented by legislative measures such as the Child Labour (Prohibition and Regulation) Act 1986, Juvenile Justice (Care and Protection of Children) Act 2000 (JJ Act), Right of Children to Free and Compulsory Education Act 2009, Protection of Children from Sexual Offences Act, 2012 (POCSO Act), etc. The JJ Act has overhauled the system of administration of justice in relation to children in need of care and protection, as well as juvenile offenders.<sup>32</sup>

Furthermore, the enactment of POCSO Act and the constitution of the National Commission for Protection of Child Rights indicates India's commitments to its international law obligations.

In recognition of the special vulnerability of children to trafficking and related violations, the Government of India has launched operations to rescue missing children. For instance, through Operation Smile and Operation Muskaan, over 28,000 children were rescued in 2015–2016 alone.<sup>33</sup> The Khoya Paaya scheme enables citizen participation in tracking missing children.

### **Gender Identity**

In a landmark decision, the Supreme Court of India found Section 377 of the Indian Penal Code, 1860 to be unconstitutional to the extent that criminalizes homosexuality<sup>34</sup> and it was partially struck down.

### **Persons With Disability (Divyang Jan)**

India is committed to ensuring better protection for persons with disabilities, and to prioritizing efforts to ensure equal access to education for children with disabilities.

In 2016, India enacted the Rights of Persons with Disabilities Act, 2016 (RPD Act), that is aimed at ensuring better protection for persons with disabilities. This law aims to facilitate greater access to public spaces, education, employment and healthcare to such persons. Notably, the Act increases the number of recognised disabilities. The Chief Commissioner for Persons with Disabilities (along with two other commissioners) is *inter-alia* responsible for reviewing the measures for protection of rights of such persons under this Act or other applicable laws, and making necessary recommendations to the Government for its effective implementation.

### **Scheduled Castes and Scheduled Tribes**

The Constitution of India empowers the Central Government to provide affirmative measures for vulnerable groups including Scheduled Caste and Scheduled Tribes.

The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act) seeks to prevent the commission of offences and atrocities against the members of the Scheduled Castes and the Scheduled Tribes. India has amended the SC/ST Act to expand the forms of caste-based atrocities recognized under that law, which has been notified with effect from 26 January, 2016. This amendment has also introduced a new chapter on the rights of victims and witnesses.

The SC/ST Act also provides for Special Courts for the trial of offences, and for the relief and rehabilitation of the victims of such offences.

Pursuant to the provisions of the Constitution of India, the National Commission for Scheduled Castes and National Commission for Scheduled Tribes have also been set up.

### **Transparency and Accountability**

With a view to promote transparency and accountability in governance, the Right to Information Act, 2005 (RTI Act), was enacted. It seeks to provide the framework of right to information for citizens to secure access to information under the control of public authorities. Information that may be accessed by way of the RTI Act also includes information pertaining to any private body which can be accessed by a public authority under any other

law.<sup>35</sup>India has committed to continue to foster a culture of transparency, openness and accountability in the functioning of the Government, as envisaged under the RTI Act.

Furthermore, with a view to deal with corruption and increase accountability, Lokpal and Lokayuktas Act, 2013 was enacted, which seeks to set up an ombudsman for inquiring into allegations of corruption against public functionaries.

The Prevention of Corruption Act, 1988 (PCA), is the principal anti-corruption legislation in India. It seeks to criminalize both active and passive acts of corruption and makes it a crime for a public servant to take gratification (pecuniary or otherwise), other than legal remuneration, in respect of an official act. The recent amendments to the PCA were a conscious move by India to align its law with the UN Convention against Corruption. These amendments seek to prosecute bribe-givers, commercial organizations and its officials.

With a view to protect the users of the aforesaid laws, and persons who make disclosures of corruption, wilful misuse of power or discretion by any public servant, the Whistle Blowers Protection Act, 2011 was enacted.

### **Financial Transparency**

Tax evasion is likely to have an adverse impact on enjoyment of human rights since it robs the State of critical resources necessary to undertake policies and programmes to realize human rights commitments of the Government.

The Central Government has taken a very tough stand against tax evasion and has made sincere efforts in the form of laws

and policies in order to curtail the spread of a shadow economy. The Income Tax Act, 1961, and Central Goods and Services Tax Act, 2017, provide severe penalties in the form of fines and imprisonment for tax evasion. Furthermore, given that black money or undisclosed income has become synonymous with tax evasion, India has enacted The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 that deals with undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India.

Illegal proceeds may be converted into property owned by a fictitious owner. Broadly, such property is colloquially referred to as benami property. The recently enacted Benami Transactions (Prohibition) Amendment Act, 2016, empowers the specified authorities to provisionally attach benami properties which can eventually be confiscated. Besides, if a person is found guilty of offence of benami transaction by the competent court, they shall be punishable with rigorous imprisonment for a term that may range between one to seven years and shall also be liable to fine which may extend to 25% of the fair market value of the property.

In order to evade the process of law, accused persons may escape to foreign countries. Accordingly, India has enacted the Fugitive Offenders Act, 2018, that seeks to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian courts.

Enforcement agencies responsible for anti-money laundering and anti-corruption

frameworks need timely access to beneficial ownership information. Provisions regarding the same are already made under the CA 2013 and the rules issued thereunder, including the Companies (Significant Beneficial Owners) Rules, 2018.

#### **Transparency through Financial Inclusion**

The *Pradhan Mantri Jan Dhan Yojana* (PMJDY) is the world's largest financial inclusion programme. PMJDY aims at providing universal access to banking facilities, at least one basic bank account to every household, financial literacy, access to credit, and social security cover. The beneficiaries of government schemes will get direct benefit transfers in these accounts. This in turn enables the Government to plug leakages in public subsidies and welfare programs.

Since its inception and up till 30 October 2017, around 216.51 crore new bank accounts have been opened under PMJDY. The PMJDY is an enabler for the Direct Benefit Transfer mission of India.

#### **Box 4: Pradhan Mantri Jan Dhan Yojana<sup>36</sup>**

#### **Protection of Human Rights Defenders / Whistleblowers**

With a view to providing protection to such human rights defenders/whistle blowers, several legislative measures have been adopted in India, primary being the Whistle Blowers Protection Act, 2011. Further, the CA 2013 and SEBI also requires certain companies to have a

policy framework for protection of whistleblowers.

#### **Consumer Protection**

The Consumer Protection Act, 1986 (CPA) is the parent legislation which deals with protection of consumers. It envisages setting up of a National Consumer Disputes Redressal Commission (NCDRC), State Consumer Dispute Redressal Commission and a District Dispute Consumer Redressal Forum for settlement of consumer disputes.<sup>37</sup> Consumer complaints pertaining to unfair trade practices, defective goods, deficient services, etc. may be brought by consumers against businesses before these forums. Amongst, other things, these forums have been conferred with the power to award compensation for loss or injury suffered by consumers due to negligence of businesses.

With a view to bridge the gaps in the CPA, the Central Government has prepared the Consumer Protection Bill, 2018. This Bill includes online markets within its fold, and establishes an executive agency, the Central Consumer Protection Authority whose task is to promote, protect and enforce the rights of consumers, make interventions when necessary to prevent consumer detriment arising from unfair trade practices, and to initiate class action including enforcing recall, refund and return of products among others.

Consumer protection and fair competition are closely associated with each other. The Competition Act, 2002 (Competition Act), in India expressly recognizes consumer protection as one of the key objectives of the Act.

The Competition Act envisages an anti-trust authority, named the Competition

Commission of India (CCI), with the power to penalize companies that enter into anti-competitive agreements having appreciable adverse effects on the competition within India, and that abuse the position of dominance that they have in the relevant market.<sup>38</sup>

### **Community Consultation**

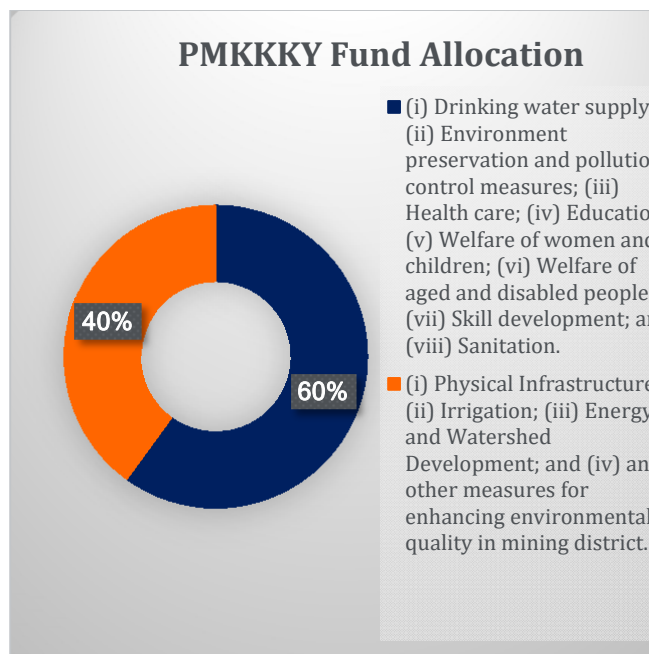
A public consultation with locally affected persons and others who have a plausible stake in the environmental impacts of the project or activity, is a part of the environment impact assessment framework in India. Further, as part of the social impact assessment study envisaged under the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 2013 (Land Acquisition Act), for acquisition of land for certain specified projects, the views of affected families must be solicited at a public hearing for the social impact assessment study, and the study and the objections raised at such hearing must be appraised by a multi-disciplinary expert group. Acquisition of land under the Land Acquisition Act also envisages consent requirements from affected landholders in case of land acquisition for public-private partnership projects and for private companies for public purposes. Consent requirements are also stipulated in case of diversion of forest land for non-forest use under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.

SEBI also mandates that companies must disclose in their BRR whether consultations with relevant stakeholders were conducted before setting up policies with regard to relevant principles.

### **Extractive Industries**

The Mines and Minerals (Development and Regulation) Act, 1957 (Minerals Act), regulates the mining industry in India and provides for obtaining and granting mining leases for mining operations. The 2015 amendment to the Minerals Act, introduced the concept of 'peripheral development' through the creation of District Mineral Foundation (DMF).

Businesses who have obtained mining leases are required to pay, in addition to the royalty, a certain prescribed sum to the DMF, which is tasked with working for the interest and benefit of persons, and areas affected by mining-related operations. DMFs have been set up in 338 districts belonging to 12 major mineral-rich states and a total amount of INR 13,398 crores has been collected from its inception upto 30 October, 2017.<sup>39</sup> Under this mechanism, Central Public Sector Enterprises (CPSEs) have also identified and implemented a number of programmes in the peripheral area of their units/locations for the upliftment of weaker sections of society.<sup>40</sup> Further, the *Pradhan Mantri Khanij Kshetra Kalyan Yojana* (PMKKKY) aims to use funds accrued to DMFs into the following manner:



**Figure 4: PMKKKY Fund Allocation**

### State - Business Nexus

The guidelines issued by the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises (DPE), in relation to various corporate governance aspects of CPSEs (CPSE Guidelines)<sup>41</sup> contains a model code of conduct. This code of conduct envisages certain principles that reflect the commitment of the Government towards responsible business conduct.

Notably, administrative ministries, in case of CPSEs, are required to evaluate and grade CPSEs based on its compliance with the CPSE Guidelines.

### Public Procurement

The Government of India is committed to ensuring responsibility and accountability to bring efficiency, economy, and transparency in matters relating to public procurement of goods and services.<sup>42</sup> The Manual for Procurement of Goods (2017) provides that the eligible bidder is required to comply with sustainability

criteria and legal requirements of environment or pollution control.<sup>43</sup>

### Fair Competition in Public Procurement

Public procurement accounts for more than 25% of India's GDP. It is crucial for India to ensure that public procurement remains fair and transparent. In this regard, CCI, which is the anti-trust regulator in India, has released *CCI's Diagnostic Tool - Towards Competitive Tenders* - a practical guide for procurement officials who can use it to review their public procurement system. It has been prepared drawing from national and international policy documents as well as practical experience in cases dealt with by the CCI. This would facilitate detection of bid rigging in public procurement as well as help design tenders, which would promote fair competition. Competition in the procurement would reduce costs, incentivize innovation and promote allocative, productive and dynamic efficiencies.

### Box5: CCI's Diagnostic Tool<sup>44</sup>

The Manual for Procurement of Consultancy and Other Services (2017) states that many services are subject to various statutory provisions relating to labour, taxation, workmen safety, child and women labour, environmental protection, mining, forest clearance, employment reservations, etc. which must be complied with by the relevant service provider.<sup>45</sup>

In light of Government of India's commitment to enhance transparency in procurement, it has launched the 'Central Public Procurement Portal', which serves as the "single point access to the information on procurements made across various central government organizations".<sup>46</sup> This was done with the aim of creating a uniform and transparent procurement process on a digital platform.

The increasing trend of e-procurement is evident from the data below:

<b>e-Procurement Data</b>			
<b>Year</b>	<b>e-Tenders (in Nos.)</b>	<b>Value of Tenders (in Crs.)</b>	<b>Increase</b>
<b>2017-18</b>	11,11,230	19,58,787.38	62.94%
<b>2016-17</b>	6,81,971	8,90,968.84	32.72%
<b>2015-16</b>	5,13,842	6,92,177.78	66.37%
<b>2014-15</b>	3,08,854	4,77,517.24	39.98%

**Figure 5: e-procurement data<sup>47</sup>**

### **Government's e-Marketplace**

On 9 August 2018, the Government of India launched the Government e-Marketplace (GeM) that is the National Public Procurement Portal. GeM facilitates online procurement of common use goods and services required by various Government Departments / Organizations / Public Sector Undertakings. With GeM, the Government aims to enhance transparency, efficiency and speed in public procurement. As on August 2018, GeM has crossed over INR 10,000 crores in Gross Merchandise Value through more than 6.16 lacs transactions on the platform. These products and services are being bought by over 25,000 government organisations (Central Government, State Governments and Public Sector Undertakings) registered on the platform. Further, 24 States and Union Territories have signed a formal memorandum of understanding with GeM to adopt GeM as the core procurement portal in their respective territories.

### **Box 6: Government e-Marketplace**

## **Pillar II - The Corporate Responsibility to Respect Human Rights**

This pillar deals with the responsibility of businesses to respect human rights in their operations. Given below is an overview of the Government's expectations of socially responsible conduct from businesses as set out in the 2018 NGRBC. It also sets out certain voluntary measures that have been adopted by Indian businesses over and above the statutory provisions discussed above.

### **2011 NVGs and 2018 NGRBC**

The MCA has resorted to a soft-law approach to encourage India Inc. towards recognizing their responsibility to protect human rights. In 2009, before CSR was a statutory requirement and prior to the formulation of UNGPs, the MCA had issued the CSR Voluntary Guidelines that were aimed at nurturing the 'culture of social responsibility' in businesses.

In 2011, based on feedback from various stakeholders, MCA decided to issue the 2011 NVGs, which are a comprehensive set of guidelines that encompass social, economic and environmental responsibilities of businesses. The 2011 NVGs are aimed at encouraging businesses to adopt higher standards of corporate governance. These guidelines specifically urge corporates to embrace the UNGPs in their operations, including the value chain.

While the 2011 NVGs are voluntary in nature, they emphasize that businesses should strive to move forward from compliance with minimum requirements towards pursuing higher standards.

With a view to capture key national and international developments in the sustainable development agenda and business responsibility field that have occurred during the five years that have elapsed since the release of the 2011 NVGs, MCA has issued the 2018 NGRBC. Notably, the 2018 NGRBC which are also voluntary in nature have been drafted with a view to align it with the UNGPs.

While the 2011 NVGs were also based on international best practices, the key drivers of the 2018 NGRBC have been the UNGPs, SDGs, Paris Agreement on Climate Change (2015), Core Conventions 138 (minimum age of employment of children) and Core Convention 182 (worst forms of child labour) of the International Labour Organization, the BRR framework, and the CA 2013.

The 2018 NGRBC are designed to be used by all businesses, irrespective of their ownership, size, sector, structure or location. They further provide that businesses investing or operating in India, including foreign multi-national corporations, are expected to follow these guidelines. The 2018 NGRBC reiterate the need that businesses not only follow the guidelines in business contexts directly within their control or influence, but also encourage and support their suppliers, vendors, distributors, partners and other collaborators to follow the 2018 NGRBC.

The 2018 NGRBC contains 9 Principles. Each Principle is accompanied by a set of requirements and actions that are essential for the operationalization of the Principle.

The Principles adopted under the 2018 NGRBC are as follows:

- **Principle 1:** Businesses should conduct and govern themselves with integrity, in a manner that is ethical, transparent and accountable.
- **Principle 2:** Businesses should provide goods and services in a manner that is sustainable and safe.
- **Principle 3:** Businesses should promote the wellbeing of all employees, including those in their value chains.
- **Principle 4:** Businesses should respect the interests of, and be responsive towards all its stakeholders.
- **Principle 5:** Businesses should respect and promote human rights.
- **Principle 6:** Businesses should respect, protect, and make efforts to restore the environment.
- **Principle 7:** Businesses, when engaged in influencing public and regulatory policy, should do so in a manner that is responsible and transparent.
- **Principle 8:** Businesses should support inclusive growth and equitable development.
- **Principle 9:** Businesses should engage with and provide value to their customers and consumers in a responsible manner.

The 2018 NGRBC enlist certain key enablers for incorporating sustainable business practices in day-to-day operations such as commitment from leadership of the business, engagement with employees, stakeholder engagement, and disclosure and reporting.

*Responsibility of business to respect and promote human rights*

Principle 5 of the 2018 NGRBC specifically recognizes that businesses must respect and promote human rights in their operations. It suggests that businesses should put in place policies, processes, and structures that demonstrate respect for human rights. Such processes must include the responsibility to conduct human rights due diligence in order “to identify, prevent, mitigate and account for how they address adverse human rights impacts”.

This principle also encompasses the need to ensure that the responsibility for addressing human rights impacts is assigned to the appropriate level and function within the business. Further, this Principle urges business to be especially responsive to those persons who are most vulnerable to, or at risk of, such adverse human rights impacts.

Additionally, it requires businesses to promote the awareness and realization of human rights across its value chain.

### Grievance redressal

Principle 3 (relating to employees), Principle 5 (relating to all individuals who are impacted by the activities of the business) and Principle 9 (for consumers) of the 2018 NGRBC state that companies should put in place a grievance redressal mechanism to redress their grievances. The SEBI BRR format which derives principles from the 2011 NVGs also envisages a similar provision.

Both, the 2011 NVGs and the 2018 NGRBC require that such grievance redressal mechanisms are clear, transparent and have independent governance structures, accessible, predictable, equitable and based on dialogue and mediation.

### Stakeholder engagement

One of the key indicators that measures the implementation of the 2018 NGRBC is the role of stakeholder engagement in the entire process of policy formulation and implementation. The 2018 NGRBC provide that businesses must identify and engage with its priority stakeholders for implementing the 2018 NGRBC. The 2018 NGRBC are a result of constant feedback of relevant stakeholders and these have been prepared keeping in mind the need to capture recent national and international developments.

### Reporting framework

2018 NGRBC also envisage a voluntary reporting framework which is based on certain indicators. The principal purpose of this reporting framework is to serve as an internal tool for businesses wishing to align themselves with the 2018 NGRBC.

Pillar I	Pillar II	Pillar III
<ul style="list-style-type: none"> <li>•2018 NGRBC are based on the premise that businesses must comply with existing laws.</li> <li>•2018 NGRBC lay down standards which are over and above compliance with the existing legal framework.</li> </ul>	<ul style="list-style-type: none"> <li>•2018 NGRBC encourage bussiness to respect UNGPs.</li> <li>•Integrate respect for human rights in all polcies and processes.</li> <li>•Recognize and respect human rights of all stakeholders.</li> <li>•Awareness of human rights across value chain.</li> </ul>	<ul style="list-style-type: none"> <li>•Principle 3 (relating to employees), Principle 5 (relating to all individuals who are impacted by the activities of the business) and Principle 9 (for customers) of 2018 NGRBC, state that companies should put in place a grievance redressal mechanism to redress their grievances.</li> </ul>

Figure 6: UNGP and NVGs

### Other Voluntary Measures

- Around 74 Indian companies, including leading names from the public as well as the private sector are signatories to the United Nations Global Compact (UNGC).<sup>48</sup> UNGC signatories commit to honouring the 10 principles of the UNGC, which cover human rights, employee rights, the environment, and anti-corruption, and provide regular reports on their compliance.
- An Indian industry association has also released a voluntary code of conduct that may be adopted by its member companies. Amongst other things, the code of conduct deals with prohibition of bribery in all dealings by the company, and compliance with anti-money-

laundering laws, prohibition of discrimination, prevention of sexual harassment, promotion of social welfare activities, and sustainability to minimize the adverse impact of company's operations on the environment.

- A certain Indian industry association has also provided the MCA with a draft advisory on business and human rights. This draft advisory reaffirms its commitment towards UNGPs. This draft advisory provides action points for member companies, which includes, preparation and publication of 'Human Rights Policy Statement', carrying out 'Human Rights Due-Diligence' to first identify and prevent, and over time, mitigate, and account for the company's salient, or most severe, risks to human rights, among others.

- Reporting by businesses on environmental, social and governance aspects is considered to drive improvements in their performance. Certain Indian companies continue to release Sustainability Reports annually, as required by Global Reporting Initiative Standards which lay down standards for sustainability reporting.<sup>49</sup>
- The Institute of Company Secretaries of India (ICSI), the body which regulates the profession of company secretaries in India, has also formulated a corporate anti-bribery code<sup>50</sup> that may be voluntarily adopted by the private sector.

## **Pillar III - Access to Remedy**

Pillar III stresses and specifies the need to ensure better access to remedy for victims of business-related human rights abuses as a responsibility of both the State and businesses. Given below are some thematic issues based on which principles set out in Pillar III, as implemented in the Indian legal framework, may be understood.

### **State-Based-Judicial/Quasi-Judicial Mechanism to Redress Human Rights Violations**

#### *Supreme Court and High Court*

Access to justice remains a priority for India. The Constitution of India paves the way for an aggrieved person to approach the highest court of the land, i.e. the Supreme Court of India, directly for enforcement of their fundamental rights. The Supreme Court and the High Courts enjoy plenary powers for enforcement of fundamental rights. It is recognized that the Constitution of India casts a constitutional obligation on the Supreme Court to forge new tools, that may be necessary for doing complete justice and enforcing the fundamental rights.<sup>51</sup> Other State-based judicial mechanisms include the subordinate judiciary, consumer forums (discussed in Pillar I above) and labour courts (discussed below).

#### *National Green Tribunal*

In India, specialized quasi-judicial bodies/tribunals complement the Supreme Court, High Court and the subordinate courts. In this regard, reference may be made to the National Green Tribunal (NGT) that was set up in 2010 for effective and expeditious disposal of cases pertaining to

environmental protection, conservation of forests, etc. With the establishment of NGT, India became the third country in the world after Australia and New Zealand to set up a specialized environmental tribunal.<sup>52</sup> The NGT is mandated to apply principles of sustainable development, precautionary principle, and polluter pays principle, while passing any order.<sup>53</sup> NGT has been making commendable efforts in ensuring speedy and effective justice. From its inception till August 31, 2018, around 26,952 cases have been filed before the NGT, against which a total of 23,536 cases have been disposed of.<sup>54</sup>

#### *Specialized Commissions*

There are specialized commissions that have been set up for the protection of rights of specific groups such as women, children, persons with disability, Scheduled Caste, Scheduled Tribes, etc.

The National Commission for Women (NCW) is a statutory body with the mandate to safeguard the constitutional and legal rights of women, look into complaints pertaining to deprivation of women's rights, fund litigation involving issues affecting a large body of women, etc.<sup>55</sup>

The National Commission for Protection of Child Rights (NCPCR) is a statutory body set up pursuant to the Commissions for Protection of Child Rights Act, 2005 (CPCR Act). NCPCR is responsible to review the safeguards for protection of rights of children under relevant laws, and recommend measures for effective implementation of such measures, inquire into complaints relating to violation of

rights of children, etc.<sup>56</sup> Upon completion of inquiry that discloses violation of child rights of a serious nature or contravention of provisions of any law, NCPCR may recommend to the concerned Government / authority to initiate proceedings for prosecution.<sup>57</sup>

The Central Government has also appointed a Chief Commissioner for Persons with Disabilities under the RPD Act to safeguard the rights of persons with disabilities.

### **Labour Courts**

To adjudicate “industrial disputes”, labour courts and industrial tribunals have been set up. There are 22 Central Government industrial tribunals-cum-labour courts that have been set up across several states for adjudication of industrial disputes in organizations for which the Central Government is the appropriate Government.<sup>58</sup>

### **State-Based Non-Judicial Mechanism**

Non-judicial mechanisms such as arbitration, conciliation, and mediation are also recognized as a means of dispute resolution in India, under laws such as Arbitration and Conciliation Act, 1996 and the Code of Civil Procedure, 1908 (CPC).

Furthermore, Lok Adalats that have been given a statutory status by the Legal Services Authorities Act, 1987 (LSA Act) are forums where disputes/cases pending in the courts or at pre-litigation stage are settled/compromised amicably. From April 2017 to March 2018, 1,09,695 Lok Adalats have been organized in the country by state legal services authorities.<sup>59</sup>

The Gram Nyayalayas Act, 2008 provides for the establishment of Gram Nyayalayas at the grass root level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities.

### **Existence of a National Human Rights Institution**

The setting up of an autonomous statutory body like the NHRC reflects India’s continuous commitment for effective implementation of human rights. Amongst other things, NHRC inquiries into violations of human rights and negligence in prevention of such violations by a public servant. Upon completion of an inquiry that discloses violation, NHRC may recommend to the appropriate government / authority to compensate the victim, to initiate proceedings for prosecution against the concerned person(s), etc.<sup>60</sup> As on date, there are 26 State Human Rights Commissions operating in India.<sup>61</sup>

From April 1, 2017 to December 31, 2017, around 61,532 cases were registered for consideration of NHRC, and it had disposed of 66,248 cases, including those carried forward from previous years. During the said period, NHRC recommended payment of interim relief in 570 cases amounting to INR 16,33,10,000.<sup>62</sup>

In 2017, NHRC was awarded ‘A’ status accreditation by the Global Alliance of National Human Rights Institutions as an acknowledgement of the significant work it has carried out for the protection of human rights and promotion of human rights awareness in the country.<sup>63</sup>

## Available Remedies Under Law

The existing legal framework in India recognizes civil and criminal liabilities, including imposition of penalties, fines and imprisonment, for non-compliance with existing statutory obligations. Remedies such as compensation, damages, restitution of environment/property (in certain cases), rehabilitation and resettlement, (in certain cases), etc. are also recognized under specific laws. Victim compensation schemes have been set up by the State Governments in accordance with the provisions of law.<sup>64</sup> Indian courts are also conferred with the power to provide interim/preventive relief such as injunctions.

The Indian judiciary has played a significant role in forging new tools for providing complete justice between parties, including through its public interest litigation for protection against grave violations of human rights. The Supreme Court of India, in exercise of its writ jurisdiction, has granted compensation in cases pertaining to violation of fundamental rights due to illegal detention,<sup>65</sup> custodial deaths,<sup>66</sup> etc. Other remedies granted by the Supreme Court includes rehabilitation of workmen in case of closure of industries ordered by the Supreme Court<sup>67</sup>, and ecological restoration<sup>68</sup> in case of environmental pollution.

Remedies under tort law are also recognized in the Indian legal system. Notably, Indian courts have propounded the doctrine of “absolute liability” pursuant to which an enterprise that is engaged in a hazardous or inherently dangerous activity owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone, failing which the

enterprise will be absolutely liable to compensate all those affected. Further, the Supreme Court has also clarified that the measure of compensation in such cases is correlated to the magnitude and capacity of the enterprise because this compensation is imposed to create a deterrent effect.<sup>69</sup>

In certain cases, courts have recognised that the State can be held vicariously liable for acts of its employees in the same manner in which an ordinary employer would have been held liable for the torts of its employees.<sup>70</sup>

## Legal Aid

The Supreme Court of India has recognized<sup>71</sup> the right to free legal service as an essential ingredient of “reasonable, fair and just” procedures for a person accused of an offence, and is implicit in the guarantee of right to life under Article 21 of the Constitution of India. This is a constitutional right of every accused who is unable to engage a lawyer and secure legal services on account of reasons such as poverty.

The Legal Services Authorities, constituted pursuant to the LSA Act, are also instrumental in providing “legal services”<sup>72</sup> to the marginalized and vulnerable communities (such as women, children, persons with disability, industrial workmen, members of Scheduled Castes or Scheduled Tribes, persons with an annual income below a specified threshold, etc.). From April 2017 to March 2018, around 8,22,856 persons have benefitted through legal services provided under LSA Act.<sup>73</sup> The National Legal Services Authority (NALSA), that is a statutory body, has framed several schemes for providing legal services to victims of trafficking and

commercial sexual exploitation, workers in the unorganized sector, children, those seeking enforcement of tribal rights, etc.<sup>74</sup>

The Department of Justice, Ministry of Law and Justice has collaborated with the United Nations Development Programme to facilitate access to justice for marginalised communities, particularly women, scheduled castes, scheduled tribes and minorities.<sup>75</sup>

### **Access to Information**

It is often pointed out that the absence of or an ineffective framework for providing access to information, is one of the barriers which individuals may face in actions filed against corporations for human rights violations. In the Indian context, sources of information relevant for bringing an action against a company can be traced back to the obligations of reporting information on Indian companies provided under the CA 2013 and the securities law, discovery proceedings under CPCs and the framework envisaged under the RTI Act (as discussed in Pillar I).

### **Promoting Public Awareness**

Arguably, for an effective implementation of laws protecting human rights and to ensure access to justice, public awareness about such measures is relevant. In this regard, some Indian laws mandate the State/appropriate authorities to sensitize and raise awareness about the protection of certain human rights. Such laws include Protection of Human Rights Act, 1993,

POCSO Act, SHWW Act, CPC Act, RPD Act, etc. Furthermore, bodies such as NHRC, NCW, and NALSA, are continuously engaged in conducting such public awareness programmes. For instance, from April 2017 - March 2018, State Legal Service Authorities have conducted around 1,65,124 legal literacy/legal awareness/programmes.<sup>76</sup>

### **Other State-Based Grievance/Complaints Mechanism**

The Government of India has instituted a Centralized Public Grievance Redress and Monitoring System, which is an online web-enabled system that allows aggrieved citizens to submit their grievances to relevant ministries, departments or organizations within the government.<sup>77</sup> Every Central Ministry/Department has designated a Joint Secretary or a Director/Deputy Secretary, as its 'Director of Grievances'. They are the nodal officer for redress of grievances on work areas allocated to that particular Ministry/Department.<sup>78</sup>

## Future Course of Action

India seeks to demonstrate its commitment towards the UNGP framework and preparation of the National Action Plan. For India, the preparation of the NAP will require a dialogue and engagement with all Ministries and Departments of Government of India, State Governments and relevant stakeholders. This Zero Draft kick starts the process of preparation of the NAP.

<b>Constitution of Working Group</b>	<p>A Working Group has been constituted consisting of representatives from relevant Ministries/Government Departments, NHRC, SEBI, etc. that will <i>inter-alia</i> assess and monitor the implementation of the UNGP framework based on review of existing laws and policies. Based on the assessment of the Working Group, this study/review may involve analysis of issues such as implementation of laws relevant for business and human rights administered by the concerned Ministries, capacity building and advisory support to the relevant sector by the Ministry, transparency and improved service delivery by concerned Ministries, etc.</p>
<b>Multi-stakeholder consultation</b>	<p>The Working Group will also conduct multi-stakeholder discussions. This will involve:</p> <ol style="list-style-type: none"><li>(1) At the National level: Discussions with representatives from business, trade unions and civil society organizations, etc. Participation from representatives of marginalized groups will also be encouraged.</li><li>(2) At the State level: Discussions with relevant State Governments.</li></ol>
<b>Action Points</b>	<p>Based on the study and consultations referred above, the Working Group/Committee will:</p> <ul style="list-style-type: none"><li>• undertake a comprehensive study to assess the implementation of UNGPs in India through a review of India's legal and policy framework;</li><li>• identify key priority areas for the Government for effective implementation of the principles envisaged under the UNGPs and accordingly set objectives;</li><li>• prepare time-bound policy actions to achieve objectives, and</li><li>• articulate clear responsibilities of relevant Ministries/Department of the Government of India.</li></ul>

# Endnotes

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- <sup>20</sup>*Vellore Citizens's Welfare Forum v. Union of India* AIR 1986 SC 2715.
- <sup>21</sup> Swachh Bharat Abhiyan - Gramin Portal, Ministry of Drinking Water and Sanitation.
- <sup>22</sup> National Mission for Clean Ganga, Ministry of Water Resources, River Development and Ganga Rejuvenation, Government of India.
- <sup>23</sup> Such laws include Factories Act, 1948, Workmen's Compensation Act 1923, Dock Workers (Safety, Health and Welfare) Act 1986, the Mines Act, 1952, etc.
- <sup>24</sup> Such laws that provide for payment to labour include the Payment of Wages Act, 1936, The Minimum Wages Act, 1948 among others.
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<sup>41</sup> Guidelines on Corporate Governance for CPSEs, 2010, accessed on 05 June 2018; Guidelines were issued in June 2007 on an experimental basis and was earlier voluntary in nature, however, DPE made it mandatory for CPSEs to adhere to the Guidelines on 14 May 2010. Please note CPSEs have not been defined by virtue of a statute or the Guidelines. However, for the purposes of our analysis we aim to cover all CPSEs i.e. companies where the direct holding of the Central Government or of other CPSEs is 51% or more (Source: [www.bsepsu.com](http://www.bsepsu.com)) which fall within the ambit of the Guidelines, excluding Public Sector Banks and Public Sector Insurance Companies. CPSE Guidelines may be accessed on <https://dpe.gov.in/publications/guidelines-corporate-governance-cpses-2010>.

<sup>42</sup>Rule 144, General Financial Rules, 2017, Ministry of Finance, Government of India, [https://doe.gov.in/sites/default/files/GFR2017\\_0.pdf](https://doe.gov.in/sites/default/files/GFR2017_0.pdf), accessed on 02 November 2018.

<sup>43</sup>Manual for Procurement of Goods, (2017), Ministry of Finance, Government of India, Chapter 2.2 (vi), [https://doe.gov.in/sites/default/files/Manual%20for%20Procurement%20of%20Goods%202017\\_0\\_0.pdf](https://doe.gov.in/sites/default/files/Manual%20for%20Procurement%20of%20Goods%202017_0_0.pdf), accessed on 25 October 2018.

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