
CONDITIONING THE CORPORATE PERSON: INTEGRATING HUMAN RIGHTS DUE DILIGENCE (HRDD) INTO THE INDIAN CONSTITUTIONAL FRAMEWORK

Bavya. B, Dr. Aman Kumar Sharma & Mahesh Sharma, Symbiosis Law School, Pune (SLS-P), Symbiosis Centre for Advanced Legal Studies and Research, Pune, India (SCALSAR), Symbiosis International (Deemed University), Pune, India (SIU)

ABSTRACT

The constitutional jurisprudence of the Indians has slowly extended the basic rights assurances to corporations giving them the opportunity to demand assurances of equality, economic freedom and property rights to the Constitution of India. But this expansion of constitutional protection has not been matched by a similar framework of constitutional accountability: corporations are making claim of rights just as they are substantially insulated against any enforceable liability to prevent or remedy the human rights and environmental atrocities that their operations perpetrate. In this paper, the structural accountability gap is identified to be asymmetry and the solution to structural accountability gap is to make it mandatory that the Human Rights Due Diligence (HRDD) requirements be enforced in the constitutional and corporate regulatory frameworks of India. According to the United Nations Guiding Principles on Business and Human Rights, the French Duty of Vigilance Law, the German Supply Chain Due Diligence Act, the EU Corporate Sustainability Due Diligence Directive, the article is a Conditional Corporate Legitimacy Model, under which constitutional rights of corporations are conditionalized on the realization of the HRDD. The model is based on the existing constitutional principles, in particular, on the prolonged right to life provided by Article 21, the Polluter Pays Principle, the Precautionary Principle, and the doctrine of sustainable development, and is associated with the anchors of the legislative reform the Companies Act 2013 and the SEBI sustainability disclosure framework. The article concludes that the constitutional promise of human dignity, social justice and environmental sustainability in India offer sufficient normative reasons to impose proactive due diligence obligations on the corporate persons, and that such omission is a partial and constitutionally flawed evolution of corporate law.

Keywords: corporate personhood, Human Rights Due Diligence, Indian constitutional law, Article 21, fundamental rights, environmental constitutionalism, Companies Act 2013, conditional corporate legitimacy, UN Guiding Principles, HRDD.

Introduction

The corporation also has a distinct status in the Indian constitutional law. The corporate person is neither a person nor a law-created institution of the people; created by law, and, by judicial decree, granted legal personhood¹, it has, over time, been granted by judicial decree much of the constitutional protection of human rights. Corporations use Article 14² to fight against discriminatory treatment of regulation, Article 19(1)(g)³ to fight free trade and commerce and Article 300A⁴ to fight forced acquisition of property. In both, the corporation stands before the Constitution as the possessor of the rights, to appeal to the same fundamental guarantees which safeguard human dignity against the incursion of the state.

Not placed on the corporation by any such constitutional register as that, is a similar scheme of responsibility. The Constitution of India assigns responsibilities to the state; it discusses the responsibilities of citizens under the Fundamental Duties in part IV-A⁵; and it is silent as to the imposition of binding responsibilities on corporate entities in the light of the human rights and environmental harms of their operations. The first paradox of which this article is apprehensive is this; this reciprocity, rights and no duties, constitutional protection and no constitutional responsibility. This paradox is not a simple theoretical one. The victims of the industrial extraction are the people who lose their water; the victims of the endangered work are the labourers, the victims of the robbed land are the families, who create corporate infrastructure - these are all victims of the corporate power, which is not placed in check by a constitutionally proportionate duty of care. They can make a claim on tort law, or on environmental law, or on an ever-widening based jurisprudence on Article 21⁶; yet on the other hand, the corporation against which they are acting can plead its own constitutional privileges in defence to regulatory liability.

This paper claims that such dilemma can be resolved through the idea of conditional corporate legitimacy: the argument that the condition on which the corporation can claim constitutional protection is that it fulfils the promises of Human Rights Due Diligence (HRDD)⁷. The

¹ F.C. von Savigny, *System of the Modern Roman Law*, vol. 2, trans. W. Holloway, J. Higginbotham, 1867, p. 175.

² *The Constitution of India*, art. 14.

³ *The Constitution of India*. (1950). art. 19(1)(g).

⁴ *The Constitution of India*. (1950). art. 300A.

⁵ *The Constitution of India*. (1950). Part IV-A, art. 51A.

⁶ *The Constitution of India*, art. 21.

⁷ *Office of the United Nations High Commissioner for Human Rights (OHCHR), The Corporate Responsibility to Respect Human Rights: An Interpretive Guide*, United Nations, 2012, p. 32.

specified requirement of HRDD under the United Nations Guiding Principles of Business and Human Rights (UNGPs)⁸ and implemented as a harder law in European law obligates corporations to determine, avoid, reduce, and provide the negative impact of corporate operations, that of subsidiaries and business relationships with other companies, on human rights and the environment.

Statement of Problem

The present law on Corporate Social Responsibility (CSR)⁹ in India (under section 135 of Companies Act 2013) has a structural failure of conceptualisation in that the corporate responsibility is not always relating to substantive accountability. A spend based solution is promoted by the law as the compliance is virtually pegged to a compulsory financial transfer of 2% of net profits and this does act in the effect of making operation integrity a backdrop in Favor of philanthropic spending. This causes a structural loophole in which the corporations will be well within the law by giving charitable gifts to the outside world with the added benefit of the human rights and environmental damage of their core business practices being insulated against them. As a result, the current system is more of a reputational management tool than the instrument to ensure that there is actual responsibility and cannot bridge the chasm between the harm being done by corporations and the proactive prevention of social and ecological destruction.

Research Gap

Although the courts in India have extended the rights of corporations and there exists an obligatory model of Corporate Social Responsibility (CSR) expenditure, there remains an enormous research gap at the legal and structural level in the form of the lack of an active, constitutionally-based, architecture of Human Rights Due Diligence (HRDD). Although the analytic literature has a wide coverage on reactive liability (so-called Polluter Pays principle) and philanthropic spending (Section 135), prevention-remedy gap, or absence of the legal framework that would ensure that corporations avoid risks that they are required to identify and eliminate as a constitutional violation before they occur, has not been touched upon. Besides this, it lacks an internalized theory that elucidates how the corporate constitutional

⁸ Directive (EU) 2026/470 of the European Parliament and of the Council of 26 February 2026, [2026] OJ L 2026/470.

⁹ The Companies Act, 2013, s. 135.

safeguards in Articles 14 and 19¹⁰ can be dogmatized regarding the disclosure of this type of human rights responsibility. This positions the Indian legal system with no formal method of becoming enforceable domestic obligations in an Indian constitution the international norms of soft law, in which the principal operations of the corporate person are put under.

Research Questions

1. What has been Indian constitutional law theorized of corporate personhood, and what has been the judicial way of extending fundamental rights to corporate entities?
2. How far does the existing constitutional and statutory framework fail to introduce proactive responsibilities on corporations to prevent human rights and environmental harms and at what stage in the structure does the failure lie?
3. How can the hallmark of the emerging global Human Rights Due Diligence (HRDD) regimes such as in the EU, France, and Germany be applied in the Indian legal context and what are the best design elements?
4. How can the HRDD guarantees be anchored in the existing Indian principles such as Article 21 (Right to Life) and Environmental Constitutionalism without making a constitutional amendment?
5. What are the specific legal reforms and legal procedures that are required to implement a Conditional Corporate Legitimacy Model that conditions corporate rights by demonstrating HRDD compliance?

Research Questions

1. To track methodically the growth of corporate rights by the judiciary in India, and the chapter of its history which has been the constitutional silence, and allowed the rights to bloom without the duties.
2. To study the structural processes in Indian corporate regulation which enable corporations to take constitutional safeguards and be safe-havens against human rights

¹⁰ *The Constitution of India*. (1950). arts. 14, 19.

obligations.

3. To evaluate the best practices worldwide on risk assessment, supply chain responsibility and liability architecture to ascertain its applicability to the Indian industrial and legal environment.
4. To develop a theoretical framework that can rationalize HRDD obligations by integrating the already-established basic rights, directive principles, and environmental precedents.
5. In a bid to develop a normative framework to merge HRDD under the Companies Act 2013 and SEBI regulations, the reform requires specification of the enforcement, penalty and judicial application mechanisms.

Research Methodology

The research employs the doctrinal and comparative qualitative research design in which a critical and purposive approach towards the research is taken to examine the intersection of the constitutional law and corporate regulation. Primary data will consist of primary legal sources, including the Constitution of India, the Companies Act 2013¹¹, and judicial precedents of the Supreme Court of India related to the subject of corporate personhood, and Article 21. This is supplemented by a comparative study of foreign jurisdictional hard law HRDD systems such as France, Germany and the European Union to identify the best practice design features which can be applied in the Indian context. The paper applies normative legal thinking to create a novel structural accountability gap, which consists of integrating international soft-law standards (UNGPs) with national and constitutional environmental and constitutional values and proposes targeted legislative and regulatory changes to seal the gap.

Literature Review

The contemporary academic legal history and legal analysis of corporate personhood and of Section 135 is heavily obsessed with how the corporate entity has come to be a rights-bearing constitutional person, but there is an acute analytical lacuna in the size of the corresponding constitutional responsibilities by which that judicial broadening of corporate rights has been

¹¹ *The Companies Act, 2013* (India).

accompanied by an equal broadening of the constitutional responsibilities. The literature that exists concerning the mechanics of compulsory CSR expenditure and the principle of absolute liability is rich because it does not deal much with the structural imbalance created by the initiatives of artificial persons in the process of obtaining fundamental protection without incurring a proactive, preventive regime of responsibility. This review is a synthesis of the theoretical capital of corporate agency and new forms of hard law due diligence regimes, and the transition to a substantive, conduct-based architecture of accountability as opposed to a reactive and expenditure-oriented model of responsibility.

Books

- **The official explanation of the so-called Protect, Respect, and Remedy framework is presented by John Gerard Ruggie (2013) *Just Business: Multinational Corporations and Human Rights*¹²**- Ruggie, the author of the UNGPs (Steinhardt, 2013). He claims that the business duty to respect human rights require an active due diligence procedure to define and mitigate the negative effects to go beyond the dichotomy between mandated law and voluntary desire. The main theoretical basis of the Human Rights Due Diligence (HRDD) model is this work.
- **Surya Deva (2012), *Regulating Corporate Human Rights Violations: Humanizing Business*¹³** - Deva critiques traditional shareholder primacy forms of regulation (including Friedman's) and uses the Bhopal gas tragedy as a prism through which to explain why an integrated theory of regulation is necessary. He suggests that corporate human rights commitments have to be based on their dependence on and location within the society, and proposes a twin-efficacy test in evaluating the effectiveness of regulatory programs in both redress and prevention.
- ***Corporate Social Responsibility in India*¹⁴**-Chakrabarty by Bidyut Chakrabarty (2015) follows the development of CSR in India, through trusteeship (as advocated by Gandhi) to the compulsory system of the Companies Act 2013. He examines how the process of institutionalization of CSR in India shows a distinctive overlap between

¹² Ruggie, J.G. (2013). *Just Business: Multinational Corporations and Human Rights*. New York: W.W. Norton & Company.

¹³ Deva, S. (2012). *Regulating Corporate Human Rights Violations: Humanizing Business*. London and New York: Routledge.

¹⁴ Chakrabarty, B. (2015). *Corporate Social Responsibility in India*. London and New York: Routledge.

state-imposed philanthropy and new international standards, offering crucial historical and local backdrop to the criticism of Section 135.

Journal Articles

- **Surya Deva (2021), Business and Human Rights: Alternative Approaches to Transnational Regulation¹⁵** -Deva discusses the shortcomings of the current models of transnational regulation and the transition to mandatory HRDD. He finds the existing system of governance of business and human rights by three centers as structural gaps and proposes stronger domestic and international legal anchors to fill the accountability gap.
- **In Corporate Moral Agency and the Responsibility to Respect Human Rights in the UN Guiding Principles Werhane, Patricia H. Werhane¹⁶(2015)** discusses the philosophical justifications of corporate personhood, whether giving organizations a moral status equates to giving them rights that are unequal and greater than those of natural persons. The duty to uphold human rights, she says, is a two-way traffic and should counter the vast economic influence that corporations have over the society.
- **Jonathan Bonnitcha & Robert McCorquodale (2017), The Concept of due diligence in the UN Guiding Principles on Business and Human Rights¹⁷**- This article critically examines the concept of due diligence in the context of how it evolved into a standard of care in international law in relation to it being a procedural obligation of corporations. The authors explain the difference between HRDD and the traditional approach to risk management, which revolves around risks to the rights-holders as opposed to risks to the firm, which is essential to your proposed reform model.

Reports and Institutional Publications

- **United Nations Office of the High Commissioner of Human Rights (2011), Guiding**

¹⁵ Deva, S. (2021). *Business and Human Rights: Alternative Approaches to Transnational Regulation*. London: Routledge.

¹⁶ Werhane, P.H. (2015). 'Corporate Moral Agency and the Responsibility to Respect Human Rights in the UN Guiding Principles'. In R. Bird, D. Cahoy, & J. Prekert (eds.), *Business and Human Rights: From Principles to Practice*. Cheltenham: Edward Elgar Publishing.

¹⁷ Bonnitcha, J., & McCorquodale, R. (2017). 'The Concept of "Due Diligence" in the UN Guiding Principles on Business and Human Rights'. *European Journal of International Law*, 28(3), 899-919.

Principles on Business and Human Rights¹⁸-The core principles of HRDD set by the foundational Ruggie Principles. The following document outlines the four step procedure of identifying, preventing, mitigating, and accounting human rights impacts, which can be used as the normative baseline of your model of Conditional Corporate Legitimacy.

- **Observer Research Foundation (2025), Enhancing the Interoperability of the Business Sustainability Reporting in India with International Standards**¹⁹- This brief examines the SEBI Business Responsibility and Sustainability Reporting (BRSR) framework, where although it provides a framework to establish ESG disclosure standards, there is a strong need to align it with international mandatory due diligence regimes such as the CS3D in the EU (Observer It emphasizes the opportunity to shift the concept of box-ticking to genuine accountability.
- **Ministry of Corporate Affairs, Government of India (2019), National Guidelines on Responsible Business Conduct (NGRBC)**²⁰- These guidelines offer the domestic policy on responsible business in India, namely Principle 5 that calls on businesses to respect and support human rights. They establish the connection between the mandatory CSR (expenditure-based) in India and the bigger (conduct-based) HRDD.
- **European Parliament (2024), Directive on Corporate Sustainability Due Diligence (CS3D)**²¹ - This directive constitutes the most developed "hard law" implementation of HRDD. It imposes testy duty on big businesses (and non-EU firms with substantial EU income) to perform due diligence and creates a civil liability framework, which can serve as a blueprint to your suggested Indian reforms.
- **UN Office of the High Commissioner of Human Rights (2014), Corporate Liability of Gross Human Rights Abuses**²²This report examines the effectiveness of national

¹⁸ OHCHR. (2011). *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. New York and Geneva: United Nations.

¹⁹ Observer Research Foundation. (2025). *Enhancing the Interoperability of the Business Sustainability Reporting in India with International Standards*. New Delhi: ORF Publications.

²⁰ Ministry of Corporate Affairs. (2019). *National Guidelines on Responsible Business Conduct*. New Delhi: Government of India.

²¹ *Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859*, [2024] OJ L 2024/1760.

²² OHCHR. (2014). *Corporate Liability for Gross Human Rights Abuses: Towards a Fairer and More Effective System of Domestic Law Remedies*. Geneva: United Nations.

judicial application to corporate inaction in human rights abuses. It recognizes impediments to achieving justice and the impact of divergent national understandings of corporate responsibility, highlighting the importance of uniform legal protections.

- **SEBI (2023), BRSR Core** ²³– Framework of Assurance and ESG Disclosures - This institutional update proposes BRSR Core, a category of KPIs that will have to be verified by third parties in the case of the largest listed companies in India. It is the beginning of transformation in Indian regulatory thinking where pure self-disclosure is replaced by a system where there is external validation of sustainability claims.

CHAPTER II - CORPORATE PERSONHOOD AND CONDITIONAL LEGITIMACY: A CONCEPTUAL FRAMEWORK

The Artificial Person and Its Constitutional Situation

Corporate form is a wonderful productive force, a legal fiction. The corporate law has enabled the consolidation of capitals that would have been impractical in the hands of natural persons acting singly, in their capacity of acting separately, the incorporation of an association of investors as a single, legal continuity, perpetual succession and limited liability. This legal status provides the corporation with the rights to make agreements, own property, sue, and be sued, and to have economic rights. It is not the stream of nature; it is the will of the law to cause personality run into an artificial creature. This source of legal fiction has normative implications. Where corporate personality is a grant of law, a grant by the state in the expectation that corporate action will lead to a social benefit, then it is conceptually possible to believe that the grant is conditional. The legal personality is achieved because the legal system has determined that it will fulfil social functions; where the exercise of legal personality of the corporation involves serial undermining of the same functions through the creation of human rights violations and ecological destruction, the validity of such grant is under question.

In classical corporate law theory, there have been two poles on this question. That the corporate personality is a privilege granted, and should be granted, to the state and that it is therefore subject to the conditions imposed by the state, was the concession theory which prevailed in the Anglo-American and Indian company law in the nineteenth century. The theory of

²³ SEBI. (2023). *BRSR Core - Framework for assurance and ESG disclosures for value chain*. Mumbai: Securities and Exchange Board of India.

contractarianism that prevailed in the twentieth century, views the corporation as one of the points of the individual agreements between investors, managers, workers and suppliers in which the state intervention should be minimal. The standardisation of the Environmental, Social and Governance (ESG) standards and the emergence of the stakeholder theory are a partial rollback to the concession logic of corporate legitimacy on the premise of social and environmental responsibility.

Constitutional Rights and Structural Imbalance.

The extended constitutional rights given to the corporate bodies also heightens the concession-versus-contractarian debate. When a corporation, by invoking Article 19(1)(g) to challenge a regulatory barrier to its operations, is impugning a personal contractual interest, it is not only claiming the protection of a constitutional guarantee, which is designed to ensure human freedom. That judicial recognition of this assertion, which has been repeated in decades of constitutional adjudication, has led to a structural imbalance in which corporations are afforded constitutional protection in the measure of human dignity, and which have not been afforded constitutional protection in the measure of human responsibility. This imbalance is attempted to be corrected in the idea of conditional corporate legitimacy as discussed in this article. It does not imply abolishment of the constitutional protection of corporations, but it implies that the protection should be subject to fulfilment of HRDD requirements of the corporation. There are several levels of the conditioning mechanism: the legislative level, where the compliance with HRDD is a condition of the enjoyment of a certain set of corporate rights and privileges; the regulatory one, where the compliance with HRDD is one of the conditions of the granting and renewing of licences, permits and government contracts; and the judicial one, when the HRDD record of a corporation is taken into account in the process of adjudication.

HRDD as Constitutional Duty.

This is the main contribution made to this article; the fact that HRDD requirements need not be based on statutory reform, but may be imposed on constitutional doctrine. The constitutional grounding is significant in two ways. On the one hand, it provides a more secure normative foundation compared to the legislative intervention, which may be affected by shifts in politics. Second, it enables the courts to use the HRDD standards in constitutional adjudication, including finding violations of Article 21 and environmental compensation, without necessarily having to wait until legislation is passed.

The HRDD obligations of the Indian system possess many constitutional anchors which are mutually supporting. The wide connotation of the right to life in article 21 encompasses the right to a clean environment, the right to health and the right to livelihood which are threatened as well because of corporate activities without due care of human rights. The part IV directive principles are not directly enforceable and provide interpretive guidance on what is in fundamental rights and constitutional purposes where corporate regulation is to be utilized. The social justice and welfare of the weaker sections is the constitutional pledge and it is the normative justification to take active responsibility on mighty corporate actors in the name of Articles 38 and 39.²⁴

CHAPTER III - CORPORATE PERSONHOOD IN INDIAN CONSTITUTIONAL JURISPRUDENCE

The Development of Juristic Personality

The origin of the legal status of corporate personality in India is as old as pre-independent with its origins in the Companies Act 1913 and its colonial counterparts. Applying the English common law principles, the Indian courts of pre-independent India stated that a company incorporated under the Companies Acts was a legal personality independent of its members, and was able to own property, enter into contracts and sue or defend in its own name. This common law ground was not ousted by the constitutional revolution of 1950; it was overlaid by a new constitutional order, the relation of which to corporate personality had to be determined by judicial case law. The early decisions of Supreme Court regarding the constitutional application to companies were provisional. In *State Trading Corporation of India v. Commercial Tax Officer* (1963)²⁵, the Supreme Court took into account the possibility of a government company to claim fundamental rights. The Court made a plurality decision that the State Trading Corporation was an instrumentality of the state and therefore it could not invoke protection of fundamental rights against the state. The larger issue of whether the fundamental rights protection could be invoked by the private corporations was left in the argument based on the issue of instrumentality of the state.

²⁴ *The Constitution of India*. (1950). Part IV, arts. 38–39.

²⁵ *State Trading Corporation of India Ltd. v. Commercial Tax Officer*, AIR 1963 SC 1811.

Further extension of Fundamental Rights to corporations.

Whether or not the guarantees embodied in the constitution could be availed of by the privately owned corporations was decided, albeit not conclusively, in a wave of cases since the 1960s and into the later decades. The unreasonable critical action was how the Court understood the word citizen when it was applied to other fundamental rights provisions. The Court did express that corporations, as artificial persons, are not citizens in the use of the term in Article 19, and therefore cannot directly avail themselves of the rights in Article 19(1)²⁶ that apply to citizens. However, the Court permitted corporations to challenge legislation as unconstitutional when this legislation infringed the rights of individual shareholder citizens, a derivative standing doctrine, which, in effect, served the same purpose as direct corporate standing. The simpler version of the equality before the law and equal protection of the laws in the Article 14 which is not limited to the citizens of the state has been opened up to the corporate litigants. The Supreme Court has continued to affirm that any arbitrary or discriminative state action that affects the commercial interest of corporations can be challenged by corporations under Article 14. This has led to a huge quantity of constitutional adjudication whereby corporations challenge regulatory and tax measures on the ground that these measures will violate the equality guarantee which is a jurisprudential development that has provided the corporate entities with a substantial degree of practical constitutional safeguard. In questioning compulsory acquisition of land, cancellation of licences as well as withdrawal of contractual rights, corporations have cited article 300A which prohibits deprivation of property against the wishes of persons other than as prescribed by law. The Supreme Court has interpreted article 300A to apply to corporate organizations in general, which has offered ample constitutional protection to corporate property rights. The net effect of these developments is a corporate constitutional protection regime which, despite not applying the language of direct fundamental rights of non-citizen entities, achieves like outcomes through a combination of derivative standing, Article 14 access and Article 300A protection.

Rights Without Duty: The Lacking of Constitutional Rights.

The absence of such a system of constitutional obligation is all the more striking on this background of the increasing corporate constitutional protection. Part IV-A of the Constitution provides Fundamental Duties on all citizens, and in a series of decisions the Supreme Court

²⁶ *The Constitution of India*. (1950). art. 19(1).

has held that Fundamental Duties are not directly binding, but do apply to the interpretation of fundamental rights, and to the performance of constitutional duty. These duties are, however, framed as part of citizenship, not of the personality of corporations; they are spoken to the duties of individuals to the national community, not of the duties of corporations to the communities where their operations have an effect. The constitution itself does not offer any explicit analogue to the proposal that corporations who are granted practical constitutional protection equal to that of natural persons be charged constitutional duties to prevent or remedy the human rights and environmental damages of the activities that they conduct. To some degree this constitutional silence has been filled by the judicial expansion of Article 21 and the creation of the environmental constitutional doctrines. But such judicial trends have served to introduce remedial liability once the harm is inflicted; they have not posed a proactive constitutional duty of due diligence that operates in the future of the harm actually being realised. The disjunction is in the distinction between reactive remediation and proactive prevention and this is what the HRDD framework is meant to bridge.

CHAPTER IV - HUMAN RIGHTS DUE DILIGENCE: CONCEPT AND INTERNATIONAL LEGAL EVOLUTION

Definitional Foundations

The legal concept of Human Rights Due Diligence is most authoritatively articulated in the United Nations Guiding Principles on business and human rights (UNGPs), which were created at the behest of Professor John Ruggie as Special Representative of the UN Secretary-General on business and human rights. The UNGPs have a Protect, Respect and Remedy framework, endorsed by the UN Human Rights Council in June 2011: the state duty to protect against human rights abuses related to business; the corporate responsibility to respect human rights; and the necessity of more victims having access to effective remedy, both judicial and non-judicial. The corporate responsibility to respect, as stated in Principles 11 to 24 of the UNGPs²⁷, is not presented as a voluntary act or even a charitable desire; but rather as a minimum standard that is expected of all business enterprises in any given context, regardless of whether states are performing their own protection roles. The responsibility to respect obligates companies not only to avoid causing or contributing to negative human rights effects in their own

²⁷ *United Nations Office of the High Commissioner for Human Rights (OHCHR), Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, HR/PUB/11/04, United Nations, 2011, Principles 11–24.

operations, but also to attempt to prevent or alleviate negative effects directly related to their operations, products, or services, in their business relationships; and to conduct human rights due diligence, which is a process of identifying, preventing, alleviating, and reporting how they manage their negative human rights effects

The Four-Step HRDD Process.

The UNGPs define HRDD as a four-step process that is ongoing. The initial one is to identify and evaluate real and potential negative human rights impacts in which the business enterprise might be implicated. This will involve consultations with any vulnerable communities, human rights activists, and other experts involved. The evaluation should be conducted on its operations, subsidiaries, and business relations of the enterprise along the value chain. The second step is to integrate and act on the results of impact assessments on the pertinent internal functions and processes and take the right action. This can include direct prevention and mitigation of impacts over which the enterprise has control, and interaction with business partners to incentivise preventive action where the enterprise has less direct control. The third step will be monitoring the performance of the response made by the enterprise, with the help of qualitative and quantitative metrics, and relying on the opinions of the concerned stakeholders. The fourth step involves reporting on the way impacts are met, giving information that is adequate to allow the stakeholders assess whether the enterprise is responding adequately.

These four steps form a proactive and preventive model of corporate responsibility which has a structural difference with the reactive liability model which is the dominant form of corporate and tort law. HRDD does not respond to the damage after it has happened and demand compensation, it demands that the enterprise foresees the possibility of damage, evaluates the probability and seriousness of damage and moves prior to its occurrence. This preventative orientation is the gist of the argument that this article makes: it is what the Indian constitutional environmental jurisprudence has been trying to accomplish by the Precautionary Principle, but only has accomplished half-heartedly and without the procedural systematizing that HRDD offers.

Soft Law to Hard Law.

The UNGPs became a guideline of soft law, which is authoritative in its expression of the

standards but does not have the binding legal authority of treaty commitments. Since 2011 the trend has been towards the gradual codification of HRDD into compulsory law in a number of jurisdictions, a trend that constitutes the most radical structural change in international corporate responsibility law in the post-UNGPs era. This hard to soft law transformation has been along two axes: the territorial, by domestic legislation imposing obligations on businesses in certain jurisdictions; and the extraterritorial, by domestic legislation whose consequences are felt on the activities of foreign business partners that act in international supply channels.

CHAPTER V - COMPARATIVE GLOBAL HRDD FRAMEWORKS

The French Duty of Vigilance Law

The Loi relative au devoir de vigilance des sociétés mères et des entités détenues directement d'ordre²⁸, passed in March 2017 and the first law in France to enforce national mandatory HRDD obligations on large businesses. The law concerns French companies with a workforce of at least five thousand in France or ten thousand in the world, including subsidiaries. These companies must put in place, adopt and publish a plan de vigilance that includes the identification of risks to human rights, fundamental freedoms, health, safety and the environment, attributable to their operations, the operations of their subsidiaries and those of the subcontractors and suppliers, with whom they have an established commercial relationship.

The vigilance plan should have five components: a risk mapping that identifies, analyses and prioritizes risks; systems to constantly evaluate the situation of subsidiaries, subcontractors and suppliers; the right measures to be taken in mitigating risks and preventing severe violations; alert and reporting mechanism to get reports of risks that are present or that are really happening; monitoring mechanism to monitor the implementation and effectiveness of the measures taken. Companies which do not establish and put into effect the vigilance plan can be directed by a court to do so and those which end up harming when such harm would have been avoided by a reasonable vigilance plan are liable to civil action. Loi de Vigilance has brought about massive litigation on civil societies. Climate and human rights organisations have sued large French energy companies claiming that they have not taken appropriate measures to tackle climate-related risks in the vigilance plans. The cases have provided some

²⁸ Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises détenues directement d'ordre, Journal Officiel de la République Française [J.O.] [Official Gazette of France], March 28, 2017.

crucial procedural precedents regarding the justiciability of HRDD obligations, and have shown that mandatory due diligence legislation can be used as a means to hold to account actors in situations where traditional tort law would encounter substantial jurisdictional and evidential challenges.

German Supply Chain Due Diligence Act.

The Lieferkettensorgfaltspflichtengesetz (LKSG) of Germany that came into effect in January 2023 provides a mandatory due diligence framework of the companies in Germany, as well as a foreign company that has a branch in Germany and satisfies certain conditions regarding its number of employees. The law addresses risks to human rights, such as forced labour, child labour, slavery, labour rights violations, and occupational health and safety and some environmental risks to the company, and to its direct suppliers. The companies falling under the LKSG should carry out risk analysis annually; take preventive measures to cover the risks identified; have mechanisms of complaints; take remedial action when cases of violation are detected and publish annual due diligence reports and extend due diligence to indirect suppliers when the company has substantiated knowledge of the possible violation at that level. The Federal Office for Economic Affairs and Export Control (BAFA) has the authority to investigate, issue remedial orders as well as fines of up to two per cent of the global annual turnover of larger firms with the added penalty of being out of the public procurement system up to a maximum of three years.

EU Corporate Sustainability Due Diligence Directive.

The newest and most extensive mandatory HRDD tool to date to be adopted at the supranational level is the EU Corporate Sustainability Due Diligence Directive (CS3D)²⁹, which was adopted by the European Parliament in April 2024. The CS3D is applicable to large EU enterprises, and large non-EU enterprises that have substantial revenue in the EU and which are under obligation to carry out due diligence on any adverse human rights and environmental effects in their operations and established business relations. The Directive requires the implementation of a climate transition plan that is consistent with climate targets in the Paris Agreement making climate accountability one of the fundamental components of the due

²⁹ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, [2024] OJ L 2024/1760.

diligence requirement. The CS3D also carries a civil liability regime: those companies that do not prevent or stop adverse impacts in contravention to their due diligence duties, and as a result, cause harm, are civilly liable to the harm. The extraterritorial aspect of the Directive, whereby it applies to non-EU companies with substantial EU income, renders it de facto as an international standard of conduct to large multinational enterprises, such as Indian companies with operations in Europe, and has the practical effect of harmonizing the global regulatory framework with the domestic Indian regulatory gap reported in this article.

Lessons of Comparative Design to India.

Comparative study of the three frameworks shows that there are some design characteristics that are of great significance to the Indian context. The former is a mix of risk-based assessment and substantive minimum standards: all three structures are based on companies to define and evaluate risks in their respective operations, yet they also are more specific about the types of forbidden behaviour, forced labour, child labour, severe environmental breaches that qualify as bright-line obligations irrespective of risk assessment results. Such a mixture of the flexibility of context and the substantive minimum is quite appropriate to the diversity of the Indian industrial scene. The second design characteristic is the scaled scope of due diligence responsibilities throughout the value chain: weaker responsibilities are imposed further away of the immediate control of the company, recognizing feasible limits of leverage over remote suppliers in the supply chain, but preserving a logic of accountability. The third design characteristic is penalty architecture: fines that are adjusted to global turnover generate meaningful deterrence and civil liability provisions generate access to redress by the impacted communities. All these aspects make it up a template of best practices that Indian reform initiatives can make fit the domestic environment.

CHAPTER VI - CONSTITUTIONAL FOUNDATIONS FOR HRDD OBLIGATIONS IN INDIA

Article 21 and the Right to Life

The widest constitutional basis of HRDD obligation can be found in the broad interpretation of the Article 21 by the Supreme Court. Since then, starting with the landmark case in *Maneka Gandhi v. Union of India* (1978)³⁰ condemning that the right to life should be interpreted to

³⁰ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

mean the right to live with human dignity, the Court has increasingly added to Article 21 a multiplicity of rights the infringement of which by corporate actors is directly involved in the HRDD framework. Article 21 has been read since then to give rise to the right to a clean environment, the right to health, the right to livelihood, and the right to be free of arbitrary displacement. *Subhash Kumar v. State of Bihar* (1991)³¹ the Court ruled that the right to life as provided under Article 21, incorporates the right to pollution-free water and air. In *Consumer Education and Research Centre v. Union of India*(1995)³² the Court affirmed that the right to health and medical care is a fundamental right under Article 21. The Court acknowledged the right to livelihood as a part of the right to life in the case of *Olga Tellis v. Bombay Municipal Corporation* (1985)³³. All these expansions form a constitutional aspect to harms that are regularly produced by corporate activities performed with inadequate due diligence, water pollution, occupational illness, and the relocation of communities.

The Article 21 to Article 21 argument on the obligation to HRDD occurs in a straight forward manner. In case corporations have under the constitution practical protections similar to those of natural persons such as the right to invoke Article 14 and Article 300A and to take a challenge to regulatory actions that affect their business interests the constitutional rights of the communities whose lives are impacted by their activities is not an empty ideal but a real constitutional guarantee. The omission to levy proactive HRDD liability on corporations establishes a structural setting wherein the constitutional rights of corporations are habitually given precedence over communal constitutional rights, a finding constitutionally incongruent with the writing and design of Part III.

The Polluter Pays and Precautionary Principles Environmental Constitutionalism.

The Supreme Court has grown, by an environmental decision-making history, to establish a line of constitutional environmental doctrine that forms additional normative platforms of HRDD requirements. The Court in the case of *Vellore Citizens Welfare Forum v. Union of India* (1996) declared that the Precautionary Principle³⁴ and the Polluter Pays Principle³⁵ fall under the environmental law of India and that they need to be read into the Article 21 and the

³¹ *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598.

³² *Consumer Education and Research Centre v. Union of India*, (1995) 3 SCC 42.

³³ *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545.

³⁴ *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647.

³⁵ *Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647 (where PPP and Precautionary Principle were read together as part of customary international law).

directive principles. The Precautionary Principle demands that the non-existence of full scientific certainty should not be used as an excuse to delay cost-effective actions to avert environmental degradation precisely the preventive orientation which is institutionalised by HRDD. The Court in the case of *M.C. Mehta v. Union of India* (1987) expressed the doctrine of Absolute Liability³⁶, which has the view that the enterprise that is involved in the hazardous or even dangerous activity is absolutely liable to compensate the injured without the advantage of exceptions to the traditional rule in the case of *Rylands v. Fletcher*³⁷. Absolute Liability doctrine has been used to create huge compensatory liabilities in latter cases, but is reactive in nature after harm has come to pass. The Precautionary Principle is proactive, which means it needs to act in advance before an injury has taken place. The Absolute Liability and the Precautionary Principle impose a constitutional landscape where the preventive HRDD can be constitutionally well-informed.

Constitutional Purposivism and Directive Principles.

Directive principles of state policy are found in the Part IV of the Constitution, and, although not directly enforceable in the courts, they have been accepted by the Supreme Court as an obligatory guide in the interpretation of fundamental rights and in the determination of the validity of legislative acts. There are a number of directive principles, which are directly associated with constitutional grounding of HRDD obligations. Article 38 guides the state to establish a social order towards promotion of welfare of the people and to reduce inequalities in status, facilities and opportunities. Article 39 guides the state to make sure that the functioning of the economic system does not lead to the concentration of wealth to the common disadvantage. Article 42 guides the state to provide towards the securing of just and humane conditions of work. Article 48A guides the state to conserve and enhance the environment and preserve natural resources.

In *Unni Krishnan v. State of Andhra Pradesh* (1993)³⁸ the Court noted that fundamental rights and directive principles are complementary and supplementary and that no Article of the Constitution stands alone. This purposivist method of interpreting the constitution aids in the interpretation of fundamental rights including the one that corporations claim in relation to the principles of the directive which are supposed to be dedicated to social welfare, environment

³⁶ *M.C. Mehta v. Union of India*, (1987) 1 SCC 395 (also known as the Oleum Gas Leak Case).

³⁷ *Rylands v. Fletcher*, (1868) LR 3 HL 330.

³⁸ *Unni Krishnan, J.P. v. State of Andhra Pradesh*, (1993) 1 SCC 645.

protection, and human dignity. When a corporation, in an action that appeals to Article 19(1)(g) or Article 300A, is found in a situation where its activities breach the substantive obligations of the directive principles, a constitutional challenge with a purposivist interpretation is warranted.

CHAPTER VII - INTEGRATING HRDD INTO THE INDIAN CORPORATE REGULATORY FRAMEWORK

The Companies Act 2013 as a Legislative Anchor

Mandatory HRDD obligations have the most natural legislative base in the Companies Act 2013, in which the CSR framework in Section 135 and a spectrum of corporate governance and disclosure requirements can already be found. The introduction of HRDD obligations may take the form of a new Chapter of the Companies Act, and it applies to companies which satisfy certain financial thresholds which are operational risk-calibrated. The Chapter would also demand qualified businesses to: carry out annual HRDD assessments, encompassing their own operations, their subsidiaries, and their key business relationships; set up board-level oversight, through a designated Human Rights and Environmental Due Diligence Committee; take preventative and remedial actions to mitigate identified risks; create accessible grievance mechanisms to communities and workers; and publish an annual HRDD report, which has been scrutinized. Importantly, the HRDD obligation would establish a statutory obligation which would be independent and complimentary to the Section 135 CSR expenditure obligation. In Section 135 where companies are supposed to use money in social development, the HRDD Chapter would make companies analyse their footprint of harm and take operational measures to prevent or reduce such harm. The two obligations would take care of both the philanthropic and the accountability aspect of corporate social responsibility which, as this article is the counterpart analysis, are currently being mixed together in Section 135 to the disadvantage of actual accountability.

SEBI Sustainability Disclosure and HRDD Integration

The Business Responsibility and Sustainability Reporting (BRSR) framework, which was launched by the Securities and Exchange Board of India in 2021 on the top one thousand listed companies by market capitalisation, is a major step forward in the sustainability disclosure requirements. The BRSR framework is based on nine principles in line with the National

Guidelines on Responsible Business Conduct (NGRBC)³⁹, such as principles on human rights, environmental stewardship and responsible supply chain management. The BRSR framework⁴⁰ is, however, more of a disclosure system; it does not bring about substantive HRDD requirements or liability of failures of due diligence. It would need to broaden the scope of BRSR to incorporate HRDD requirements into the framework to include accountability in addition to disclosure. In particular, the BRSR may be revised to include the mandatory disclosure of the HRDD assessment methodology and results; disclosure of the percentage of operations and supplier relations to be assessed and human rights and environmental risks; disclosure of material adverse impacts identified and mitigation measures; and disclosure of the effectiveness of grievance mechanisms with the number and resolution of complaints. Such improved disclosures with the independent verification requirements would produce information that can be used by regulators, courts, investors and civil society to assess actual HRDD performance and not compliance theatre.

Environmental Regulatory Frameworks

Ecological legislations, such as the Environment (Protection) Act 1986⁴¹, the Water (Prevention and Control of Pollution) Act 1974⁴², the Forest (Conservation) Act 1980⁴³, offer additional legislative foundations of HRDD integration. The EIA Notification 2006⁴⁴ already provides an environmental impact assessment (EIA) in which project proponents are already expected to evaluate and mitigate the set environmental impacts as a condition to receive environmental clearance. The implementation of HRDD principles in the EIA process would broaden the scope of the required assessment to include human rights implications on the impacted communities, especially the indigenous communities whose rights are listed specifically in the Forest Rights Act 2006⁴⁵ and the PESA Act 1996⁴⁶. The NGT Act 2010⁴⁷ has led to the creation of the National Green Tribunal which has shown an interest in taking part in

³⁹ Ministry of Corporate Affairs. (2019). *National Guidelines on Responsible Business Conduct*. New Delhi: Government of India.

⁴⁰ Securities and Exchange Board of India (SEBI), *Business Responsibility and Sustainability Reporting (BRSR) by Listed Entities*, Circular No. SEBI/HO/CFD/CMD-2/P/CIR/2021/562, 10 May 2021.

⁴¹ *The Environment (Protection) Act, 1986*, No. 29, Acts of Parliament, 1986 (India).

⁴² *The Water (Prevention and Control of Pollution) Act, 1974*, No. 6, Acts of Parliament, 1974 (India).

⁴³ *The Forest (Conservation) Act, 1980*, s. 2.

⁴⁴ *EIA Notification, 2006*, para. 7, stage (3).

⁴⁵ *The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*, No. 2, Acts of Parliament, 2007 (India).

⁴⁶ *The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996*, No. 40, Acts of Parliament, 1996 (India).

⁴⁷ *The National Green Tribunal Act, 2010*, No. 19, Acts of Parliament, 2010 (India).

preventative environmental responsibilities in a way that aligns with the Precautionary Principle. By including the standards of HRDD in the adjudicatory framework of the NGT, the Tribunal would have the opportunity to assess corporate due diligence documentation in creating liability and compensation, and to establish judicial incentives to comply proactively with the standards of HRDD as opposed to reactively addressing the consequences of legal liability.

CHAPTER VIII - CONDITIONING CORPORATE RIGHTS: THE NORMATIVE REFORM MODEL

The Architecture of Conditional Corporate Legitimacy

The normative reform framework suggested in this article rests on the principle of conditional corporate legitimacy: the idea that the constitutional safeguards and legislative privileges that corporate entities will enjoy are conditional on the entity proving that it is abiding by its HRDD commitments. The conditioning mechanism is in effect at three levels constitutional, legislative and regulatory each of which reinforces the other with a view to establishing an elaborate accountability architecture. On the constitutional level, the model contends that the courts that hear the corporate constitutional claims, be it on Article 14, Article 19(1)(g) or Article 300A, should consider the HRDD record of the corporation as a factor in the constitutional inquiry. A corporation that has been found chronically not to conduct HRDD or which has nonetheless found significant material human rights or environmental risks and not acted on them is asserting its constitutional rights in a way inconsistent with the values of human dignity, social justice and environmental sustainability that Part III of the Constitution breathes life into. By constitutional adjudication, which fails to recognize this context, corporate economic rights are afforded implicit privileges in comparison to community constitutional rights.

HRDD is a Statutory Obligation.

The model at the legislative level suggests the implementation of compulsory HRDD obligations in the Companies Act 2013 in form of a new statutory chapter. The statutory obligations would specify: the scope of due diligence, the own operations, subsidiaries and significant business relationship; the process requirements, including an annual risk assessment, preventive and mitigating measures, grievance mechanisms, monitoring and reporting; the governance requirements, including board level oversight through a dedicated

HRDD Committee; the disclosure requirements, including an annual HRDD report with independent verification; and the remediation requirements, including procedures A penalty framework would provide support to the statutory requirements and would be tuned to provide effective deterrence. Based on the comparative lessons learned in Part VI, the model suggests fines on material non-compliance with HRDD which are graduated to global turnover/annual with a maximum penalty of two per cent of global turnover on the gravest of offenses. A statutory cause of action would be civil liability of harms caused or contributed by failures of HRDD and this would reverse the burden of proof where a company has failed to prove that it has a compliant HRDD process. Recurrent or serious breaches would be subject to increased fines and obligatory outside monitoring.

Associating Corporate Rights with HRDD Compliance.

The exercise of specified corporate rights and privileges is conditional on the regulatory level of the model on verified compliance with HRDD. Firms that have an excellent material HRDD violation would not have been allowed to either receive or renew: environmental clearances under the EIA framework; mining licences and extraction permits; large public procurement contracts exceeding a specified value threshold; as well as defined regulatory incentives and subsidies. This process of conditioning develops incentives of compliance with HRDD which work outside of and in addition to the logic of deterrence by monetary finances. The conditioning mechanism relies on the well-established provisions of the law of administration according to which the public resources, licences and contracts are regularly conditionalized on the ability of the applicant to adhere to the identified regulatory conditions. It is a logical progression of this logic to the field of human rights and the environment, where HRDD compliance is viewed as a regulatory precondition in the same sense as tax compliance, occupational safety compliance or environmental permit compliance is now viewed, a conceptually unproblematic extension that can be accommodated by existing legal doctrine.

Judicial application of HRDD Standards.

The judicial aspect of the model suggests that courts of all levels such as the Supreme Court, the High Courts, and the National Green Tribunal should formulate a jurisprudential framework according to which the HRDD record of a corporation should be considered in a variety of cases of legal determination. In constitutional adjudication, the court would determine whether or not the corporation seeking constitutional protection has undertaken sufficient HRDD in its

operations with systematic HRDD failure being one of the factors that can restrict court approval of the corporations constitutional claim. Liability adjudication would consider HRDD compliance to be relevant in negligence, causation, and calculating compensation. Corporation that has made reasonable HRDD and taken proper preventive steps can be found to have exercised reasonable care; a corporation which has not done so cannot avail the benefit of ignorance of foreseeable harms. In access to remedy cases, courts would take into account the sufficiency of the grievance system of the corporation and its sensitivity to the complaints of the community in the development of the remedial order. This legal system would establish strong motives towards actual HRDD compliance, as companies would realize that HRDD documentation has legal implications in various aspects of their constitutional and liability.

CHAPTER IX - IMPLICATIONS FOR CONSTITUTIONAL GOVERNANCE

Corporate Power and Democratic Accountability

The implication of incorporating the HRDD obligations into the constitutional framework of India goes beyond the control of corporate behaviours. It addresses the bigger question of how democratic constitutional orders are to deal with the exercise of private power on the scales by which they must compete and even surpass the ability of the public institutions. The Indian corporate conglomerates are the largest with assets, workforces, and communities that are impactful enough to make them some of the most significant players in Indian public life. The consequences of their choices concerning where to invest, what to produce, how they choose to run their supply chains, how they choose to deal with community opposition are constitutionally important not because corporations are constitutional actors in the traditional meaning of the term but because the exercise of economic power has a direct impact on the circumstances under which constitutional rights are exercised or not exercised. Conditional corporate legitimacy model is a response to this fact, in that it does not view HRDD as a regulatory requirement, but rather a constitutional requirement: constitutional protection comes at the cost of constitutional accountability. This framing conforms to a wider democratic accountability logic that already exists in Indian constitutional culture. The state can limit economic freedoms in the common good; it can levy redistributive responsibility on property-owners; it can make the provision of social standards a condition to the conferral of public resources. The incorporation of HRDD requirements makes this logic of accountability applicable to the realm of human rights and environmental guardianship, and finishes a

constitutional framework that already, in precept, legitimizes the exercise of economic strength on its communal impact.

Environmental Justice and Disadvantaged Communities.

The HRDD framework is specifically relevant where communities are found at the intersections of both economic marginalisation and environmental vulnerability, where communities are those who suffer disproportionately the industrial harm and yet have the least access to legal redress. The constitutional impacts of corporate activities without sufficient due diligence are felt by indigenous peoples who are involved in the mining and extraction of their traditional lands; fisher folk communities whose lives are disrupted by the coastal industrial development; agricultural communities whose water and soil are impacted by the upstream industrial pollution. To these communities, the introduction of the HRDD duties on the constitutional ground can be noted as a shift in the law-making stance: a supplicant, who can be remedied in a post-hoc manner, is substituted with a rights-holder, who is entitled to proactive prevention. The grievance mechanism provisions of the HRDD framework, along with the civil liability provisions and the judicial application of HRDD standards, would establish numerous avenues by which the affected communities would have the opportunity to address the legal system, not just once the damage has been done. This is possibly the greatest contribution of this reform model to environmental justice in Indian context.

India within the Global Regulatory Environment.

The incorporation of the HRDD requirements in the constitutional and corporate regulatory framework in India would as well place India in a vantage position in the changing international picture of corporate responsibility regulation. Since the CS3D and similar tools impose compulsory HRDD requirements on companies having a presence in large markets, the Indian firms having an international presence are under an increasing pressure to show compliance with standards that are higher than the ones currently existing in the country. An HRDD framework that is consistent with the UNGPs and informed by European best practice would narrow this compliance gap and enhance the global competitiveness of Indian firms and establish India as a leader in the formation of the global business and human rights regulatory framework. This positioning has a commercial dimension of reputational and market-access. Market incentives to HRDD compliance that reinforce the legal incentives generated by domestic regulation are also generated by institutional investors with an ESG mandate, the

international buyer with a supply chain due diligence imperative, and the development finance institution with a human rights conditionality policy. The strong domestic HRDD framework would help tie these market incentives to domestic regulatory needs to establish a consistent accountability environment instead of the compliance patchwork where domestic and international standards are tugging in opposite directions.

CONCLUSION AND RECOMMENDATIONS

Recommendations

1. **Introduce a Mandatory Chapter of the HRDD in the Companies Act 2013** - Parliament should enact a new statutory chapter, which is no longer based on the expenditure-focused CSR model of Section 135. This would compel businesses to determine, avert and decrease human rights and environmental risks throughout the whole chain of their value and make responsibility not a monetary credit but an operational responsibility.
2. **Implement a Conditional Rights Doctrine in Constitutional Adjudication** - The court should develop a precedent whereby exercising corporate constitutional rights under Articles 14 and 19 is based on clean hands. Failure to show a strong due diligence by a corporation must be considered a material consideration of whether state limitations on their commercial operations are reasonable.
3. **Combine HRDD and BRSR Framework of SEBI** - SEBI would need to require that Business Responsibility and Sustainability Reporting (BRSR) should be used as an accountability mechanism rather than a disclosure-only tool. This involves obligating third party audits of HRDD procedures and tying in relentless non-conformity to market-based punishment or delisting.
4. **Introduce Civil Liability in the event of Due Diligence failures** - In the footsteps of the EU CS3D, India ought to introduce a civil liability regime such that the affected communities have the right to claim damages in the case of a failure by a corporation to put in place adequate preventive measures and therefore, the resulting liability should be a proactive prevention rather than a remedial measure.
5. **Increase the Oversight of the National Green Tribunal (NGT)** - The NGT needs to

be strengthened to use HRDD standards as the standard of the precautionary action. The Tribunal can more efficiently apply the Precautionary Principle and the Polluter Pays Principle by assessing whether a corporation had done sufficient risk assessment before an environmental incident.

Conclusion

The development of the corporate person in India has come to a critical point in which the constitutional standing of the corporate person needs to be balanced with constitutional responsibility. The existing paradox of rights-without-duty, which is amplified by a CSR model that places greater importance on philanthropic expenditure than operational integrity, causes a structural space in which the corporate economic interests often usually override the basic rights of vulnerable communities. India can close the gap between international soft-law aspirations and domestic enforceable responsibilities by incorporating Human Rights Due Diligence (HRDD) into the domestic legal system in the form of a Conditional Corporate Legitimacy Model. Finally, basing these demands on Article 21 and current environmental jurisprudence will guarantee that corporate personhood is no longer an instrument to escape responsibility, but rather a means to social justice and sustainable development, as the Constitution promises transformation to everyone.

REFERENCES

Primary Sources

- *Constitution of India, 1950* (Articles 14, 19, 21, 38, 39, 48A, 300A).
- *Companies Act, 2013*, Section 135 & Schedule VII.
- *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.
- *M.C. Mehta v. Union of India*, AIR 1987 SC 1086 (Absolute Liability).
- *Vellore Citizens' Welfare Forum v. Union of India*, AIR 1996 SC 2715 (Precautionary Principle).

International Frameworks

- *UN Guiding Principles on Business and Human Rights* (UNGPs), 2011.
- *EU Corporate Sustainability Due Diligence Directive (CS3D)*, 2024.
- *German Supply Chain Due Diligence Act (LKSG)*, 2021.
- *French Duty of Vigilance Law*, 2017.

Secondary Sources

- Deva, S. (2012). *Regulating Corporate Human Rights Violations: Humanizing Business*. Routledge.
- Ruggie, J. G. (2013). *Just Business: Multinational Corporations and Human Rights*. W.W. Norton & Company.
- Bonnitcha, J., & McCorquodale, R. (2017). The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights. *European Journal of International Law*.
- Ministry of Corporate Affairs. (2019). *National Guidelines on Responsible Business Conduct (NGRBC)*.
- SEBI. (2021). *Business Responsibility and Sustainability Reporting (BRSR) Framework*. Circular SEBI/HO/CFD/CMD-2/P/CIR/2021/562.