
NEED OF NATIONAL FRAMEWORK FOR BUSINESS AND HUMAN RIGHTS IN INDIA

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Introduction

The term business was defined in late 18th and 19th century by production, materials and labour. These three factors used to determine the overall growth of an enterprise, which collectively forms the standard of industry. The industry standards include growth, market share and its relative importance to the economy. Post industrial revolution paved the trajectory for new definition of business i.e. profitability. Industrialists, academicians and behavioural scientists rigorously researched on the paradigm shift from productivity to profitability. Profitability in itself encompassed a wide range of dimensions that productivity never thought of. An organization's importance in the industry which was earlier a domestic affair has now adopted an international character. The international character gained impetus because of the growing importance of regional economic bodies. Profitability, which was earlier a function of tangible variables such as productivity, economic growth, market share and purchasers, over the years, has included intangible variables such as employees, employee's welfare, code of conduct and grievance mechanism¹.

Business and its stakeholders are entitled to share responsibility, but this responsibility is confined within monetary relationship. This monetary relationship only encompasses profit as the most significant characteristic to define it. The stakeholder's i.e., employees, owners, suppliers, distributors and the society at large take keen interest in securing each other's stake in business but such interest lacks humane touch². As a result, the humane character if ignored goes unnoticed, unheard and unattended. It creates an inequilibrium between business and stakeholders whereby the society suffers neglect. Enterprises at an individual level were

¹ Amnesty International, *Injustice Incorporated: Corporate Abuses and the Human Rights to Remedy* (London: Amnesty International, 2014).

² UN General Assembly, *National Institutions for the Promotion and Protection of Human Rights*, GA Res 48/134 (4 March 1994). See also Linda C Reif, 'Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights protection' (2000) 13 *Harvard Human Rights Journal* 1.

reluctant in adopting a business code of conduct based on humanistic values.

International agencies sparked a sense of urgency amongst the enterprises to consider human rights as the basis of evaluation of their credit worthiness in the market. The phenomena of ignoring human rights by the business community, on a global scale reflects a disparity and disproportionate results between developed and under developed countries³. The reason for such disparity lays in the fact that State in under developed or developing economies frame policies giving emphasis on productivity and profitability without taking into consideration the basic rights of its human resource. In India, this proposition can strongly be proved from the cases of Bhopal gas tragedy, Bharat Petroleum oil spillage and conditions of employees working in business enterprises. The mandate is to create preference for enterprises which are socially responsive with societal obligations and responsibilities. Therefore, the international community has been wrestling to create a balance between profitability and respecting human rights. One of the flag ship events in this context was the appointment of Professor John Ruggie in 2005 as the Special Representative of the Secretary-General of the United Nations on the issues of human rights, transnational corporations and other business enterprises. The mandate reflected in 2008 through the approval by the Human Rights Council of a United Nations Framework for Business and Human Rights and the endorsement of Guiding Principles prepared by the Special Representative with a view to implement the UN framework. The United Nations growing concern towards the issue of human rights in the context of business holds relevance. The UN has come up with the framework that rests upon three pillars “protect, respect and remedy.”⁴ Protect refers to the safeguarding the rights of all the key stakeholders associated with the enterprise. Respect refers to the degree to which the transnational organizations comply with the host country trade policies and guidelines without diluting their essence. Remedy refers to the policy framework of the nations to combat against the violation of rights.

The UN Working Group on the issue of human rights and transnational corporations and other business enterprises (UNWG) strongly encourages all states to ‘develop, enact and update’ a national action plan (NAP) on business and human rights (BHR) as part of states’ responsibility to disseminate and implement the Guiding Principles (GPs). In June 2014, the HRC passed a

³ Letters to the Editor: Responsibility is not a cost but an investment. Financial Times, 3 May 2005.

⁴ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises by John Ruggie.

resolution calling upon states to develop NAPs. Till February 2016, ten states have drawn up NAPs⁵, while several others are in the process of doing so. Against this background, this paper examines two broad questions: first, whether India needs a BHR framework at the national level to implement the Guiding Principles; second, assuming that such a framework is needed, what the content of such a framework should be and what principles should be followed to make the process transparent, inclusive and legitimate.

India and International Treaties on Human Rights

It has been fairly well established that states have tripartite obligations under international humanitarian law to respect, protect and fulfil human rights. The duty to ‘protect’ human rights against the conduct of non-state actors is especially relevant in relation to corporate human rights abuse which is acknowledged by the GPs as well⁶. India has ratified a number of human rights instruments which, among other requirements, explicitly or implicitly oblige the government to ensure that business enterprises operating within its territory or jurisdiction do not violate human rights. India has ratified two conventions that are part of the International Bill of Rights – the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR) – as well as several other core international human rights instruments. At the same time, there are certain key instruments including in the area of labour rights which have not yet been ratified by the government. This situation would undermine the potential of the Indian government to exercise its duty to ‘protect’ human rights against corporate abuses under the first pillar of the GPs. Another problem is that the Indian government has made substantive reservations to some of the ratified instruments i.e. it will not be bound by certain provisions, which has diluted the effect of these treaties. On the positive side, however, the Indian Supreme Court has taken an activist approach in that it has tried to interpret municipal laws or fill gaps in such laws in accordance to international treaties. In the case of *Visaka vs. State of Rajasthan*.⁷ the Supreme Court observed any ‘*International convention not inconsistent with the Fundamental Rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and*

⁵As of 20 February 2016, ten states (the UK, the Netherlands, Italy, Denmark, Spain, Finland, Lithuania, Sweden, Norway and Columbia) have launched the NAPs. Several other states are in the process of developing a NAP or have committed of doing so. OHCHR, ‘State National Action Plans’, <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

⁶ Human Rights Council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, A/HRC/17/31 (21 March 2011).

⁷ AIR 1997 SC 3011

content thereof, to promote the object of the constitutional guarantee.'

India's Position in International BHR Regulatory Initiatives

The Indian government has generally taken a reactive position domestically to deal with regulatory challenges posed by corporate human rights abuses. For instance, it enacted or amended a number of laws after the Bhopal gas disaster of 1984. On the other hand, at international level, the position of the Indian government regarding the BHR regulatory initiatives has been determined by a number of considerations relating to foreign policy and international relations. We can see this in relation to the response of the Indian government to the GPs and the current push to negotiate a legally binding international instrument in the area of BHR. The government was part of the group of states within the HRC that supported the process during 2006–2011 – spearheaded by Professor John Ruggie, the former Special Representative of the Secretary General on BHR – that led to the drafting and endorsement of the GPs.

However, in June 2014, India voted in favour of establishing an open-ended intergovernmental working group to negotiate a legally binding international treaty to impose human rights obligations on transnational corporations (TNCs) and other business enterprises⁸. Although the GPs and the proposed treaty are often publicly presented as complementary processes, this turnaround may be partly due to the desire of India to play a key role in shaping the rules of the game to regulate the behaviour of TNCs. It is uncertain at this stage how treaty negotiations will be unfold in future and whether the Indian government will continue to support the treaty idea. It is likely that the position of the government will evolve and become more mature by the second session of the intergovernmental working group in October 2016. Whether or not India continues to support the push for a legally binding international instrument and irrespective of whether a treaty is finally adopted or not, putting in place a BHR framework is one approach to making an assessment of current realities on the ground, as well as of what needs to be done in future to ensure that business actors too respect human rights.

Need For National Framework

There are several reasons why the Indian government should initiate the process to put in place

⁸ Geneva Academy of International Humanitarian Law and Human Rights, 'India: International Treaties Adherence', http://www.geneva-academy.ch/RULAC/international_treaties.php?id_state=107

a national business and human rights framework. India has ratified a number of international human rights instruments that impose explicit or implicit obligations on the government to ensure that business enterprises operating within its territory or jurisdiction do not violate human rights. The general principles merely reiterate this international obligation. Developing a business and human rights framework would also be consistent with the mandate flowing from Article 51 of the Constitution of India, which provides that the state ‘shall endeavour to foster respect for international law.’ A national BHR framework would be useful, even if a legally binding international instrument to impose human rights obligations on companies is adopted, in future.

The process of drafting a Business and Human Rights framework would allow the government to make an assessment of the current legal-cum-policy framework so as to identify what is working and what is not with an objective to ensure that companies respect human rights⁹. India already has a vast legal framework that applies human rights norms to companies. Instead of adopting a piecemeal approach of reviewing different segments of this legal framework (such as labour laws or environmental laws), a holistic assessment that does not ignore the human rights impact of creating an environment conducive to private investment-driven development may be preferable¹⁰. Although the Supreme Court has developed some innovative constitutional principles, these cannot ensure full protection of human rights in a free market economy where the private sector has an all pervasive role. The BHR framework would allow an informed debate as to whether a constitutional amendment may be desirable to extend the protection of fundamental rights against companies – similar to that of the constitutional position in South Africa.

The Indian government has adopted a number of significant corporate social responsibility (CSR) initiatives in recent years e.g., the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business 2011, and CSR provisions in the Companies Act 2013 and the Model Bilateral Investment Treaty (BIT) 2015. Developing a BHR framework would allow the government to build on these initiatives and encourage all types of companies to integrate respect for human rights into their business operations. As numerous case studies have shown, if companies operating within India violate human rights,

⁹ UNWG on Business and Human Rights, Guidance on National Action Plans on Business and Human Rights, Version 1.0 (December 2014). Version 2.0 was released in November 2015.

¹⁰ Andrew Clapham and Scott Jerbi, ‘Categories of Corporate Complicity in Human Rights Abuses’ (2001) 24 *Hastings International & Comparative Law Review* 339.

resistance from affected communities drastically slows down development projects¹¹. Conversely, Indian companies – including public sector undertakings (PSUs) – that operate overseas may be accused of violating human rights, as some of these countries may not have adequate regulatory frameworks in place to safeguard the human rights of their communities. Therefore, India needs a BHR framework not merely for companies operating within its territory but also for Indian companies operating outside India's territory through subsidiaries or joint ventures. In fact, adopting a BHR framework would be in the long-term interests of India's development agenda as well as of its companies operating locally or internationally¹².

A BHR framework should also help in developing a model of economic development that is both sustainable and inclusive. For avoiding social conflicts, it is critical that the sufferings as well as the fruits of the development are shared fairly and proportionally among all sections of society.

Principles that should govern national framework

The UN Working Group's Guidance on National Action Plan outlines four essential criteria which are as follows¹³:

- (i) be founded on the guiding principles,
- (ii) respond to specific challenges of the national context,
- (iii) be developed and implemented through an inclusive and transparent process,
- (iv) to regularly review and update.

The Guidance document also recommends that states should keep in mind the following five sequential phases to adopt a national action plan: (i) initiation; (ii) assessment and consultation; (iii) drafting of any initial national action plan; (iv) implementation and (v) update. It would make sense for the Indian government to follow these good practice recommendations rather than reinventing the wheel. Special attention should be paid to ensuring that the drafting process is fully transparent and inclusive, so that the views of all stakeholders – especially those who are adversely affected by corporate activities or who come from disadvantaged

¹¹ Human Rights Watch, *The Enron Corporation: Corporate Complicity in Human Rights Violations* (New York: Human Rights Watch, 1999)

¹² Surya Deva, 'Development, Sovereign Support to Finance and Human Rights: Lessons from India' in Juan Pablo Bohoslavsky and Jernej Letnar Čerňič (eds.), *Making Sovereign Financing and Human Rights Work* (Oxford: Hart Publishing, 2014) 289.

¹³ UNWG on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights*, Version 1.0 (December 2014). Version 2.0 was released in November 2015.

backgrounds – are taken into account. It would be equally important to reach out to a range of business actors at all stages of the process, but without creating the perception of a ‘corporate capture of the state’¹⁴. In order to ensure that the participation of various stakeholders is meaningful, consultations must be conducted in diverse parts of the country in local languages. In addition, people should be given adequate time to digest the information and provide feedback¹⁵.

Developing a BHR framework would require an assessment of India’s existing legal regime operating at both domestic and international levels and exploring reform options. Instead of creating new committees to perform these tasks, the government should consider using existing institutions such as the Law Commission of India and the National Human Rights Commission (NHRC). These institutions in turn could collaborate with law schools and business schools in India to carry out the required research. A few additional principles should also be relevant for developing India’s national BHR framework. It may be desirable to look beyond the GPs, as in certain respects they may not reflect accurately states’ obligations under international human-rights law. The extraterritorial human rights obligations of states are a case in point. Another aspect relates to Pillar 1: as states have tripartite obligations under international human rights law, the duty to protect human rights under the first pillar should not mislead us into believing that states’ obligations to ‘respect’ and ‘fulfil’ human rights would not be relevant in the context of business¹⁶.

Moreover, the Indian government should build on forward-looking principles – such as the strict or absolute liability principle, the polluter pays principle and the precautionary principle – developed by the Supreme Court in holding companies accountable for violating human right. Similarly, the judicial leads on applying certain fundamental rights against companies too should be embraced¹⁷. Since India is a federal country, it would be critical for the Union government to build a broad consensus at the outset with state governments about the need for – as well the content of – the proposed national BHR framework. It may also be desirable for

¹⁴ Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises’ (25 September 2009), <http://www.oecd.org/corporate/mne/43884129.pdf>;

¹⁵ International Commission of Jurists (ICJ), *Access to Justice: Human Rights Abuses Involving Corporations – India* (Geneva: ICJ, 2011).

¹⁶ Surya Deva, ‘Development, Sovereign Support to Finance and Human Rights: Lessons from India’ in Juan Pablo Bohoslavsky and Jernej Letnar Čerňič (eds.), *Making Sovereign Financing and Human Rights Work* (Oxford: Hart Publishing, 2014) 289.

¹⁷ Amnesty International, *Clouds of Injustice: Bhopal Disaster 20 Years On* (London: Amnesty International, 2004); Surya Deva, *Regulating Corporate Human Rights Violations: Humanizing Business* (London: Routledge, 2012).

states to develop their own action plans to complement the national framework. Moreover, the third tier of governance bodies such as Gram Sabhas should also be brought on board, so as to have a shared understanding about the future of BHR discourse in India.

The proposed framework should respond to the full range of contexts in which human rights abuses could take place: (i) violations by Indian companies and/or their subsidiaries; (ii) violations by Indian subsidiaries of foreign companies; (iii) violations by government agencies, including during public procurement and development projects; (iv) violations by PSUs; (v) violations in situations of complicity between government agencies and private companies; (vi) violations by Indian companies – both PSUs and private companies – while operating abroad; (vii) violations within the supply chain of any of the above types of companies; and (viii) violations within the informal sector. While the framework should set the broad contours of the regulatory framework for all types of companies, some flexibility should be built into the process to allow for a differential treatment of small/medium-sized enterprises and the informal sector. In other words, despite having one framework, one size should not fit all.

Contents of Framework

The content of India's national BHR framework should be developed bottom-up through a process of inclusive and transparent consultation with all stakeholders, rather than being pre-defined. Nevertheless, some thematic thoughts are noted below to start the conversation.

1. Declaration to uphold human rights

Any viable BHR framework must offer a vision of how a balance between human rights and development priorities would be struck. The Indian government – through its national BHR framework – should send a clear message that all the human rights of everyone matter while pursuing the development agenda. This may entail reversing the 'development first' mind-set and changing the perception that the human rights of certain sections of society matter less. The government should reiterate its commitment to uphold fundamental rights under the Constitution implement the tripartite duties under international human rights law and take seriously the duty to 'protect' human rights under the GPs¹⁸. The human rights expectations of businesses operating within the territory and jurisdiction of the Indian government should be

¹⁸ Sudhir Krishnaswamy, 'Horizontal Application of Fundamental Rights and State Action in India' in C Raj Kumar and K Chockalingam (eds.), *Human Rights, Justice, and Constitutional Empowerment*, (Oxford University Press: New Delhi 2007) 47;

clearly set out. This may, for example, be done by mandating companies to conduct due diligence for protection of human rights.

2. Establishing coordination committees

The proposed framework should try to minimise the lack of coherence: (i) among different central ministries; (ii) between the central government on one hand and the state governments and Gram Sabhas on the other; and (iii) between the domestic legal framework and India's international obligations. One of the tools to achieve better coherence is to rely on coordination committees where diverse views are exchanged, disagreements are resolved in an amicable manner, and a broad consensus is built. As the BHR framework would relate to a number of ministries and departments of the Indian government, a permanent inter-ministerial committee on BHR, chaired by the Prime Minister, should be established to achieve coherence. On the other hand, the Inter-State Council envisaged under Article 263 of the Constitution should be used to achieve coherence¹⁹, as most of the BHR issues should fall within the existing mandate of this council.

3. Reviewing existing regulatory framework

Although India already has a well-developed legal regime to capture the intersection of human rights with business, a vital aspect of the proposed BHR framework should be to undertake a review of the existing legal framework in order to improve its responsiveness to pre-empt as well as address human rights abuses by business enterprises. Based on a systematic review, a number of improvements could be made to different branches of law. For example, by revising the definition of 'state' under Article 12 of the Constitution, the jurisdiction of the Supreme Court may be extended to take cognisance of at least certain fundamental rights by non-state actors such as companies²⁰. A special bench may perhaps be created in each High Court to deal with such matters. New laws may be required to encourage the disclosure of non-financial information by companies and to protect human rights defenders from persecution²¹. In certain areas of law such as labour rights, social security, land acquisition and environmental rights, the need may be to change patchy, outdated or cumbersome regulations into a coherent

¹⁹ Ashish Chugh, 'Fundamental Rights: Vertical or Horizontal?' (2005) 7 SCC Journal 9.

²⁰ Vijayashri Sripati, 'Toward Fifty Years of Constitutionalism and Fundamental Rights in India: Looking Back to See Ahead (1950–2000)' (1998) 14 American University International Law Review 413.

²¹ Namita Wahi, 'Human Rights Accountability of the IMF and the world Bank: A Critique of Existing Mechanisms and Articulation of a Theory of Horizontal Accountability' (2006) 12 UC Davis Journal of International Law & Policy 331.

framework that relies on a mixture of obligatory and voluntary strategies to encourage compliance and not to see state regulation necessarily as an adversarial or hierarchical process. Any such reforms must also ensure that the goal of simplifying regulations is not driven solely by a desire to create an investment-friendly environment: rather, the human rights interests of the affected communities should be at the heart of such reforms and the principle of free, prior and informed consent should be implemented in both letter and spirit²².

4. Specific attention towards vulnerable groups

India's BHR framework should pay special attention to the unique circumstances and experiences of vulnerable or marginalised sections of society, such as women, children, migrant workers, minorities, people with disabilities, Scheduled Castes (SCs), and Scheduled Tribes (STs). As India already has special human rights institutions to safeguard the interests of these sections of society, they should be involved in developing the BHR framework. A related issue worth considering would be to develop sector-specific guidelines under the broad framework, as companies operating in different sectors face at least some uniquely different sets of human rights challenges, and it may not be feasible for 'one' national framework to respond to the specific needs of a diverse range of industries²³.

5. Offering incentives and disincentives to business

The proposed BHR framework should outline what incentives and disincentives the government would offer to businesses to encourage them to take their human rights responsibilities seriously under both the GPs and the domestic legal framework. Apart from tax benefits, the government may establish responsible citizenship awards, create sector-specific labelling schemes, offer preferential loans to companies that embrace human rights, and integrate respect for human rights in public procurement policies. In terms of disincentives, a range of civil, criminal and administrative sanctions should be contemplated against both companies and their executives found to be involved in human rights violations. The government should also create an environment in which 'social sanctions' can become effective. This could, for example, be done by requiring companies to disclose non-financial information. Companies could also be obliged to include on their websites information about

²² Richard Meeran, 'Access to Remedy: the United Kingdom Experience of MNC Tort Litigation for Human Rights Violation' in Surya Deva, David Bilchitz (eds.), *Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect* (Cambridge: Cambridge University Press, 2013) 378.

²³ Rajeev Dhavan, 'Ex Gratia Justice', *The Hindu* (23 July 2004), <http://www.thehindu.com/2004/07/23/stories/2004072304431000.htm>.

past sanctions imposed on them for breaching human rights.

6. *Strengthening redress mechanism*

As it is inevitable that some business enterprises might not respond to (dis)incentives, the government should provide a range of mechanisms that could be used by victims of corporate human rights abuses to seek access to justice. The first priority should be to reform the existing judicial as well as non-judicial mechanisms in order to make them more accessible, and more capable of dealing with private-sector violations of human rights²⁴. Such reforms may mean relaxing the constitutional or statutory provisions that deal with the jurisdiction of the Supreme Court, the High Courts and the NHRC; consolidating courts that deal with labour disputes (e.g., Labour Courts and Labour Tribunals); and showing greater respect to determinations made by the National Green Tribunal (NGT) and Gram Panchayats.

Furthermore, the government should lay out the plan to support the development of non-state, non-judicial remedial mechanisms. These mechanisms should not be in lieu of – but rather in addition to – state-based judicial remedies. The potential of arbitration, mediation and conciliation should be harnessed to resolve BHR disputes, with due regard paid to the effective criteria stipulated by the GPs. The role of civil society organisations may perhaps be institutionalised to fix the power asymmetry between companies and victims while using non-judicial grievance mechanisms, whether involving only companies or multiple stakeholders²⁵.

7. *Removing barriers in access to remedy*

The GPs identify a number of substantive, procedural and practical barriers that undermine access to judicial remedies. The proposed BHR framework should outline specific measures to be taken to reduce each of these barriers. For example, the Indian government should consider ways to overcome difficulties posed by the corporate law principles of limited liability and separate personality. Recognising a direct duty of care or imposing a due diligence requirement on parent companies may be an option to consider, so that victims could hold a parent company accountable in appropriate cases. The presence of class action and the well developed system of public interest litigation (PIL) enable easier access to courts in cases involving large number of victim.

8. *Building the capacity of various stakeholders*

²⁴ Surya Deva, 'Corporate Human Right Accountability in India: What Have We Learned from Bhopal' SSRN (September 2012) <http://papers.ssrn.com/sol3/papers>.

²⁵ India Has World's Largest Youth Population: UN Report', The Economic Times (18 November 2014)

The BHR framework for a developing country such as India should also list measures aimed at building the capacity of various stakeholders. Both government officials and corporate executives would benefit from training workshops on how to resolve human-rights dilemmas and how to integrate the findings of human rights impact assessments into their decisions²⁶. The help of law schools and business schools should be solicited on this front. Communities adversely affected by corporate activities would also benefit from information-sharing about their legal rights and the remedies available to seek relief in cases of human rights violation.²⁷ The relevant government departments could collaborate with civil society organizations and law students in empowering communities – a collaboration that would allow all participants to gain insights from the process.

9. Regular monitoring and update of the framework

To avoid becoming merely a ‘planning’ document containing noble inspirational goals, the Indian BHR framework should not only identify concrete measures by which declared goals would be implemented, but also specify processes to monitor the efficacy of implementation and suggest ways of improvements. In addition, as BHR issues are dynamic in nature, any framework dealing with such issues must be revised and updated in line with changing needs. Putting in place a system of periodic review of the adopted framework to take place every three to five years, may thus be desirable.

Conclusion and Recommendations

The GPs provide the Indian government an opportunity to assess its laws and policies that have a bearing on BHR and consider taking appropriate remedial steps. Doing so would ensure that the path of economic development is both sustainable and inclusive. Developing a coherent BHR framework in a transparent and consultative manner should help in moving forward in a legitimate way. The presence of a stable politico-economic system, vibrant democracy, civil society, independent judiciary and the rule of law means that India already has the basic ingredients necessary to develop and sustain a BHR framework at national level. While adopting a new national BHR framework, the Indian government should keep in mind a number

²⁶ NS Sidharthan, K Narayan, ‘Human Capital and Development: Introduction’ in NS Siddharthan and K Narayan (eds.), *Human Capital and Development: An Indian Experience* (New Delhi: Springer India, 2013)

²⁷ Kaushik Basu, ‘Why India Needs Labour Reform’, BBC News (27 June 2005), http://news.bbc.co.uk/2/hi/south_asia/4103554.stm; Debroy, note 72.

of recommendations:

1. Achieving coherence – both at the horizontal and vertical levels – in laws, policies and decisions of the government would be critical²⁸. Establishing a permanent inter-ministerial committee on BHR could be one institutional mechanism to achieve such coherence amongst different central ministries. Such a committee should also advise Indian delegations involved in negotiating international instruments that could have some bearing on the domestic BHR regulatory space. The Inter-State Council should be used to achieve coherence between the central government on one hand and the state government and Gram Sabhas on the other.
2. It would be critical to strengthen various judicial and non-judicial mechanisms to improve access to justice. The current judicial system suffers from delays, high cost and corruption. Steps would have to be taken to minimise these obstacles. In addition, the government should encourage non-state non-judicial mechanism that could offer faster and cheaper relief to victims, especially in cases dealing with non-serious abuses. Legal aid should also be made available to the people or communities affected by corporate operations so that they could seek appropriate judicial and non-judicial remedies.
3. The central government should consider amending Article 12 of the Constitution – which contains a definition of the ‘state’ for the purposes of Part III of the Constitution – so as to ensure that the protection of at least certain fundamental rights is available against business enterprises²⁹. In this regard, Section 8(2) of the South African Constitution could be a good option to follow, which provides: ‘A provision of the Bill of Rights binds a natural or a juristic person if, and to the extent that, it is applicable, taking into account the nature of the right and the nature of any duty imposed by the right.’ An amendment of Article 12 would allow the development of other common law principles consistent with this constitutional ethos. In addition, the High Court rules may be amended to allow High Courts to deal with violations of fundamental rights by companies under Article 226 of the Constitution³⁰.

²⁸ Dinesh Narayanan, ‘Labour Laws: Modi Government’s effort to Unilaterally Push Through Reforms Delaying Process’, *The Economic Times* (14 July 2015)

²⁹ The National Commission set up to review the constitution had suggested adding an explanation to Article 12, explaining ‘other authorities’ to include any person in relation to such of its functions which are of a public nature. National Commission to Review the Working of the Constitution, ‘Report of the National Commission to Review the Working of the Constitution’ (31 March 2002).

³⁰ Stephen Gardbaum, ‘The Indian Constitution and Horizontal Effect’ in Sujit Choudhry, Madhav Khosla and Pratap Mehta (eds.), *Oxford Handbook of the Indian Constitution* (New York: Oxford University Press)

4. Although the 2013 Companies Act incorporates several provisions that aim to encourage large companies to fulfil their social responsibilities, the next step should be to consider ways in which all companies – irrespective of their size or turnover – are encouraged to do business in a manner that is consistent with national as well as international human rights norms. Measures should also be taken to enhance gender diversity on corporate boards. Another area of corporate law that would require reform is the liability of a parent company for human rights violations by subsidiaries³¹. As the judicial approach to piercing the corporate veil does not really work for victims, other alternatives should be explored. A statutory recognition of the direct duty of care on the part of parent companies may be an option. Alternatively, a parent company may be held accountable for human rights violations by its subsidiaries as a matter of principle unless it could show that the violations took place despite it taking appropriate due diligence measures.
5. The much-needed reform and consolidation of labour, environmental and social security legislation should be done, keeping in mind the impact of such reforms on the protection of human rights by the private sector.³² It would be critical to try to strike a balance between the needs of companies to do business in a hassle-free environment and the realisation of human rights guaranteed under both the Indian Constitution and international human rights law.
6. It is critical to put in place measures aimed at protecting human rights defenders as well as whistleblowers from persecution. As the threat to human rights defenders in some cases stems from government agencies, it would be vital to allow recourse to courts and other independent institutions (e.g., the NHRC) against repressive actions³³.
7. In terms of the process for putting in place a national BHR framework, transparency and inclusiveness in consultations should be maintained to cover all sections of society: otherwise, the framework might not enjoy the required legitimacy. It would also be fundamental to set measurable targets, conceive means to monitor the implementation of these targets, and have in place a system for periodic review of the framework.

³¹ Ministry of Corporate Affairs, 'Report of the High Level Committee', http://www.mca.gov.in/Ministry/pdf/HLC_report_05102015.pdf.

³² Hari Mohan Mathur, 'Making Resettlement Work: Policy, Planning and Management' in Hari Mohan Mathur (ed.), *Resettling Displaced People: Policy and Practice in India* (New Delhi: Routledge, 2011) 40–41.

³³ Jeremy Cooper, 'Poverty and Constitutional Justice: The Indian Experience' (1993) 44 *Mercer Law Review*, 611.