

Status of Corporate Responsibility in India, 2020

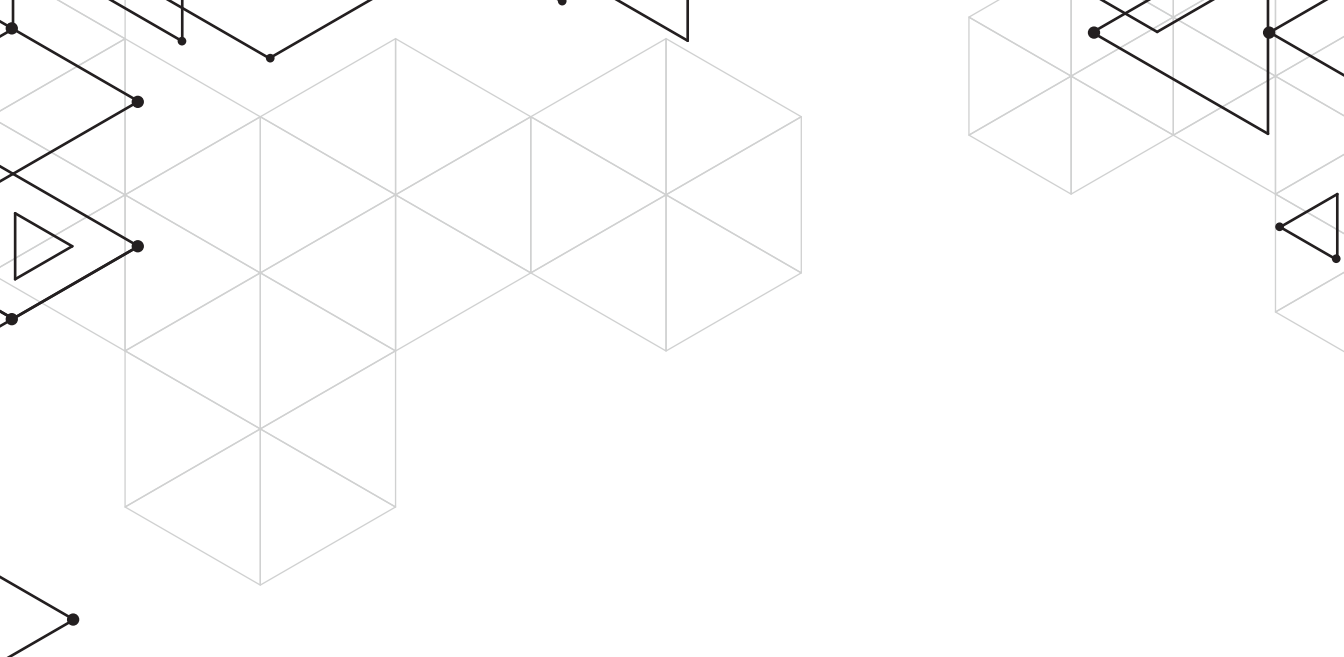
.....
Business As Usual, Pandemic And After
.....



This work is licensed under the Creative Commons Attribution-NonCommercial-ShareAlike 3.0 Unported License.

To view a copy of this licence, visit <http://creativecommons.org/licenses/by-nc-sa/3.0/>

Guideline for citation: Status of Corporate Responsibility in India, 2020; Praxis (2021)



Status of Corporate Responsibility in India, 2020

.....
Business As Usual, Pandemic And After
.....

Preface

The year 2020 witnessed a pandemic that not only exposed people to health risks but also curtailed people's capacity to earn a living and brought the world economy to a halt. From the perspective of the most vulnerable constituency of workers, the pandemic realities exposed the fault lines in corporate and state policies and highlighted the expected responsibilities from the corporates towards the most vulnerable in its operations.

Human dimensions of the COVID-19 pandemic were devastating. As the Government of India announced lockdown to restrict the spread of Coronavirus and consequently manufacturing units and establishments were closed, thousands of migrant workers were stranded, homeless with no access to food. The plight of migrant workers exposed the obscene class character of the pandemic, where the poor were left with no options for livelihood and physical distancing. The situation of female migrant workers became more precarious. Once the unlocking of the economy started, within a month, a number of industrial accidents were witnessed, including the multiple accidents at the LG Polymers plant at Visakhapatnam, Andhra Pradesh. It is ironic that whereas the recovery required immediate human-centric approach, global solidarity and keeping people before profits, we witnessed the dilution of significant labour laws and environmental laws by the State. Fighting the health crisis remained the first priority, but it was imperative to recognise that there was serious and simultaneous, both economic and social crisis. As the job losses escalated, 90 percent of unorganised sector workers were at risk of losing their livelihoods, with no income, social and food security.

In the present crisis, it is important to work with business and state across the three pillars defined in United Nations Guiding Principles on Business and Human Rights – Business, Protect and Remedy, to protect and ensure job and social security of workers, especially the informal workers. Some initiatives were made to provide relief related to food, shelter, health, wages and income security. However, we need to look at these responses not only as humanitarian response but as rightful due and entitlements of workers. Wages, social security, and income security are the core labour rights which need to be provided to all the workers. Key international labour standards were envisioned to ensure workers, both men and women, obtain decent and productive working conditions including freedom, equity, dignity, and security. The importance of such standards became evident in the time of crisis and it is essential that we keep these standards, that is, no forced labor, no child labor, equality and non-discrimination, minimum wages, social and income security, right to have collective voice and bargaining, as core to the economic structure. The importance of the Status of Corporate Responsibility in India report series becomes heightened in the context and developments of the past year.

The Status of Corporate Responsibility in India series is an initiative of Corporate Responsibility Watch (CRW) that attempts to unpack, track and monitor corporate responsibility as well as clearly separate it from the overpowering CSR narrative that tends to absolve companies of their responsibilities to the nine basic principles towards social and environmental practices in the Ministry of Corporate Affairs' National Guidelines on Responsible Business Conduct (NGRBC) framework for business responsibility. After having published analyses of Business Responsibility Reports (BRRs) through the series Disclosure Matters, this is the fifth in the series of Status of Corporate Responsibility in India reports. The authors, all experts in their respective fields, have built on the analyses of the BRRs to unpack and nuance ground realities of corporate responsibility in India on issues as diverse as responsible financing, CSR, violation of worker rights in the corporate sector, transmission lines' violation of farmers' claims and the vulnerability of auto industry workers. There are three chapters that focus on the pandemic and its impact – while two study health and education, the third looks at dilution of environmental norms.

The chapter on BRR uses information available in the public domain, largely put across by companies through their business responsibility reports, annual reports and annual CSR reports. This report would not have been possible without valuable contributions by the organisations and networks associated with Corporate Responsibility Watch. We would also like to place on record our sincere thanks to the distinguished authors, Abid Shah, Advocate Easan, Amita Puri, Aqsa Agha, Chitra Khanna, Dheeraj, Inayat Singh Kakar, Jhumki Dutta, Krishnendu Mukherjee, Lara Jesani, Lorina Anal, Malini Aisola, Pradeep Narayanan, Pragya Shah, Dr. Rana Sengupta, Sandeep Sachdeva, Dr Subhash Mittal and Tarini J. Shipurkar.

We would also like to thank Tarini Shipurkar and Pragya Shah for providing overall support in data analysis and Anusha Chandrasekharan and Sowmyaa Bharadwaj for report production and finalisation.

Acknowledgements

Corporate Responsibility Watch Members

Amita Joseph	Jashodhara Dasgupta	Prof. Sri Ram Khanna
Amitabh Behar	Karandeep Bhagat	Semeda Steves
Annad K. Bolimera	Paul Divakar	Subhash Mittal
Annie Namala	Pradeep Narayanan	Tom Thomas
Archana Shukla Mukherjee	Pradeep Patra	Viraf Mehta
Ashok Bharti	Rijit Sengupta	

Core study design team for Status of Corporate Responsibility in India, 2020

Amita Joseph (Business and Community Foundation), Dheeraj (Praxis), Amita Puri (Independent Researcher), Nandini Sharma (Centre for Responsible Business), Pradeep Narayanan (Partners in Change), Semeda Steves (Christian Aid), Stanley Joseph (Partners in Change), Subhash Mittal (Socio Research and Reform Foundation) and Tom Thomas (Praxis) Rijit Sengupta (Centre for Responsible Business), Viraf Mehta (Partners in Change)

Research Team

Aqsa Agha	Partners in Change
Jhumki Dutta	Partners in Change
Lorina Anal	Partners in Change
Deepti Menon	Praxis
Nirmita Roy Chowdhury	Praxis
Pragya Shah	Partners in Change
Sibija Bensigar	Vaanavil
Tarini J. Shipurkar	Praxis

Report production

Anusha Chandrasekharan	Praxis
Aqsa Agha	Partners in Change
Sowmyaa Bhardwaj	Praxis
Tarini J. Shipurkar	Praxis

Interns

Aayush Kumar	Faculty of Law, University of Delhi
Akhil Jain	Delhi School of Social Work, University of Delhi
Hiba TK	Delhi School of Social Work, University of Delhi
Isha Jain	Faculty of Law, University of Delhi
Kumari Pooja	Delhi School of Social Work, University of Delhi
Mili Budhiraja	Faculty of Law, University of Delhi
Poorvisha Jindal	Faculty of Law, University of Delhi
Priya	Faculty of Law, University of Delhi
Raghav Gupta	Faculty of Law, University of Delhi
Sparsh Goel	Faculty of Law, University of Delhi
Tarandeep Singh Khurana	Faculty of Law, University of Delhi
Vishal Kumar Binay	Faculty of Law, University of Delhi

Abbreviations

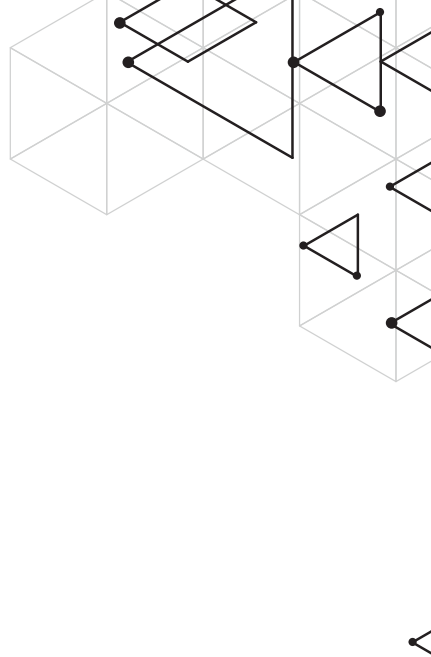
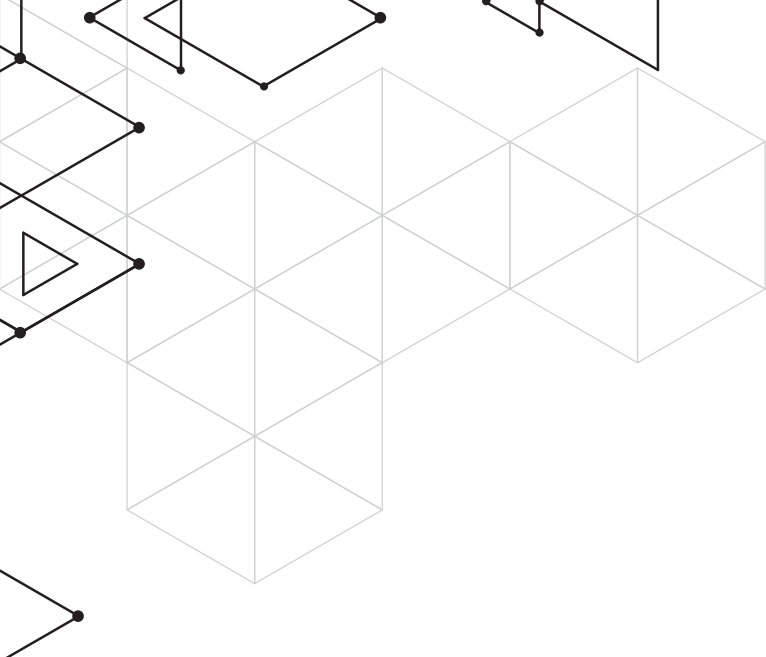
ABACHR:	American Bar Association Centre for Human Rights
ACMA:	Automobile Component Manufacturing Association
AIKS:	All India Kisan Sabha
AIIMS:	All India Institute of Medical Sciences
APPL:	Amalgamated Plantations Private Limited
ASHA:	Accredited Social Health Activist
AYUSH:	Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy
BRR:	Business Responsibility Reports
BRSR:	Business Responsibility and Sustainability Reporting
BSE:	Bombay Stock Exchange
CAR:	Capital Adequacy Ratio
CAGR:	Compound Annual Growth Rate
CBO:	Community Based Organisations
CBI:	Central Bureau of Investigation
CEO:	Chief Executive Officer
CFO:	Chief Financial Officer
COLLECT:	Community-Led Local Entitlements & Claims Tracker
CRW:	Corporate Responsibility Watch
CSIR:	Council of Scientific and Industrial Research
CSR:	Corporate Social Responsibility
CSS:	Code on Social Security
CW:	Code on Wages
DCM:	Delhi Cloth & General Mills
DGMS:	Director General of Mines Safety
DHFL:	Dewan Housing Finance Limited
DRDO:	Defence Research and Development Organisation
EAC:	Expert Appraisal Committee
ECT:	Ethical Certification for Trading
EIA:	Environmental Impact Assessment
EMF:	Electro Magnetic Field
EODB:	Ease of Doing Business
ESG:	Environmental, Social and Governance
EU:	European Union
FAC:	Forest Advisory Committee
FII:	Foreign institutional investors
FMCG:	Fast Moving Consumer Goods
FY:	Financial Year
GDP:	Gross Domestic Product
GNPA:	Gross Non-Performing Assets
HLC:	Higher Learning Commission
HREDD:	Human Rights and Environmental Due Diligence
ICAR:	Indian Council of Agriculture Research
ICICI:	Industrial Credit and Investment Corporation of India
ICMR:	Indian Council for Medical Research
ICNIRP:	International Commission on Non-Ionizing Radiation Protocol
IDFC:	Infrastructure Development Finance Company
IFC:	International Finance Corporation

IIM:	Indian Institute of Management
IIT:	Indian Institute of Technology
IL&FS:	Infrastructure Leasing & Financial Services
ILAB:	Bureau of International Labour Affairs, U.S Department of Labour
ILO:	International Labour Organisation
IPC:	Indian Penal Code
IRC:	Industrial Relations Code
IT:	Information Technology
ITC:	Indian Tobacco Company
MCA:	Ministry of Corporate Affairs
MGNREGA:	Mahatma Gandhi National Rural Employment Guarantee Act
MLPC:	Mines Labour Protection Campaign
MNC:	Multinational Companies
MoEF&CC:	Ministry of Environment, Forests and Climate Change
NAP:	National Action Plan on Business and Human Rights
NBFCs:	Non-Banking Financial Institutions
NBWL:	National Board for Wildlife
NDA:	National Democratic Alliance
NEERI:	National Environmental Engineering Research Institute
NGRBC:	National Guidelines for Responsible Business Conduct
NPA:	Non-Performing Assets
NSE:	National Stock Exchange
NVG:	National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business
OBC:	Other Backward Classes
OECD:	Organisation for Economic Cooperation and Development
OSH:	Occupation Safety, Health and Working Conditions
PGCIL:	Power Grid Corporation of India Limited
PM CARES:	Prime Minister's Citizen Assistance and Relief Emergency Situation Funds
PPE:	Personal Protective Equipment
RBI:	Reserve Bank of India
R&D:	Research and Development
SAIL:	Steel Authority of India Limited
SC:	Scheduled Castes
SCoC:	Supplier Code of Conduct
SDGs:	Sustainable Development Goals
SEBI:	Securities and Exchange Board of India
SEZs:	Special Economic Zones
SHG:	Self Help Groups
ST:	Scheduled Tribes
TANTRANSCO:	Tamil Nadu Transmission Corporation Limited
TCS:	Tata Consultancy Services
UAPA:	Unlawful Activities Prevention Act
UK:	United Kingdom
UN:	United Nations
UNGP:	United Nations Guiding Principles
UNICEF:	United Nations International Children's Emergency Fund
UPSC:	Union Public Service Commission
WHO:	World Health Organization

Table of Contents

	Title	Authors*	Page Number
Part 1	The Big Picture		
Chapter 1	Corporate Responsibility: Static Paradigm, Key Trends and Way Forward	<i>Dheeraj, Aqsa Agha, Lorina Anal, Tarini J. Shipurkar, Pragya Shah, Jhumki Dutta</i>	10
Part 2	Pandemic and Its Challenges		
Chapter 2	Corporatisation of Healthcare in India: Covid-19 Pandemic and Beyond	<i>Malini Aisola and Inayat Singh Kakar</i>	20
Chapter 3	The Business of Education: Growing Divide Among Students, Aided by An Ed-Tech Revolution	<i>Abid Shah</i>	29
Chapter 4	Pandemic, The Perfect Opportunity for Environmental Destruction in India	<i>Lara Jesani</i>	34
Part 3	Sectoral Issues		
Chapter 5	Could this be a new dawn for the Rajasthan Sandstone Industry?	<i>Dr Rana Sengupta and Krishnendu Mukherjee</i>	44
Chapter 6	Failure to Recognise Farmers' Claims with Regard to Land Acquisition: The Case of Transmission Lines	<i>Easan</i>	49
Chapter 7	Safety First: The responsibility of India's auto industry to save workers from life-altering accidents and improve worker productivity	<i>Sandeep Sachdeva and Chitra Khanna</i>	54
Chapter 8	Prioritising Investments: The Tricky Landscape of Human Rights Obligation of Financial Institutions	<i>Amita Puri</i>	59
Part 4	CSR: A Critical Lens		
Chapter 9	Synopsis of CSR Legislation: Covering Legal Amendments Up to January 2021	<i>Subhash Mittal</i>	68
Chapter 10	Reverberation of a Corporate Takeover of a Panchayat: The KiteX Model	<i>Tom Thomas</i>	77
Part 5	Way Forward		
Chapter 11	Progressive Dilution: Takeaways from the Last Decade of Business and Human Rights	<i>Pradeep Narayanan</i>	82

**The views of all authors are personal and do not necessarily represent the views of their organisations*



Part 1

The Big Picture

Chapter 1:

Corporate Responsibility: Static Paradigm, Key Trends and Way Forward

Dheeraj¹, Aqsa Agha, Lorina Anal, Tarini J. Shipurkar, Pragya Shah, Jhumki Dutta

Over the last decade, there have been some key initiatives taken in the domain of corporate responsibility, such as the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVEGs) that were updated as the National Guidelines on Responsible Business Conduct (NGRBC). Two other initiatives were the introduction of Corporate Responsibility provisions and Business Responsibility Reporting (BRR), made mandatory for the top 1000 listed companies as per market capitalisation. The BRR is now being updated in the form of Business Responsibility and Sustainability Reporting. To further this agenda, the Ministry of Corporate Affairs is also in the process of formulating the National Action Plan (NAP) on Business and Human Rights.

While these developments are a welcome step, the dominant business responsibility discourse is still being shadowed by an emphasis on the two percent CSR mandate. CSR in itself is being understood in a restrictive way with ideas around charity and philanthropy dominating its definition. The NGRBC provide an ideal framework for defining CSR in a comprehensive way, with a focus on aspects defined in the

nine principles including, Integrity, Ethics, Transparency and Accountability (P1), Sustainability and Safety (P2) Well-being of Employees (P3) and Human Rights (P4).

Nevertheless, the BRR provides a diverse data set, which can be analysed for an overview of responsible conduct by the top listed businesses in India. Corporate Responsibility Watch² has been analysing the Business Responsibility Reports of the top listed companies for the last four years and providing this data in the public domain to strengthen debates around responsible business conduct. The given trends and experiences, vis-a-vis key developments have a lot to offer for the proposed National Action Plan on Business and Human Rights. Though this data corresponds to the pre-pandemic period, it holds particular significance in the context of the pandemic, as it provides an analysis of the status of workers right before the world was hit with the Covid-19 pandemic, which went on to expose the deep seated fault lines in business and state processes. This data particularly provides inferences with respect to worker rights – a constituency that was found to be most vulnerable during as well as post lockdown.

Defining Human Rights vis-a-vis NGRBCs

With attempts towards formulation of a National Action Plan on Business and Human Rights, it is imperative to understand to what extent the NVEGs and its updated form as NGRBCs have been able to influence corporate commitments vis-à-vis key human rights aspects. As already inferred in

the last few editions of the Status of Corporate Responsibility in India, more than 90 percent companies among the top listed businesses have been reporting in affirmative with regard to key principles as detailed in NGRBCs.

1 While Dheeraj and Tarini are from Praxis Institute for Participatory practices, Aqsa, Lorina, Pragya and Jhumki are from Partners in Change. They have received inputs from Dr Amita Joseph (Business and Community Foundation) and Amita Puri (Independent Researcher). The data collection process has been supported by Aayush Kumar, Akhil Jain, Hiba TK, Isha Jain, Kumari Pooja, Mili Budhiraja, Poorvisha Jindal, Priya, Raghav Gupta, Sparsh Goel, Tarandeep Singh Khurana and Vishal Kumar Binay.

2 The main objective of CRW is to facilitate the transparency of economic activities and accountability of corporates not only to their shareholders but also to wider society. Working within a human rights framework, the role of the core group is to think through home grown-solutions and monitoring mechanisms for the Responsible Business practice space, with the understanding that voluntary codes will not work unless there is a vigilant regulatory environment, media attention, civil society scrutiny and activism. For more details visit www.corporatewatch.in

Each of the nine NGRBC principles have a number of elements or components, however, there is a tendency of companies to state in affirmative the presence of policies for one whole principle, even if the company has policies on only a few of the sub-components. Table 1.1

provides data for the top 100 listed companies as per market capitalisation, wherein the corporate policies of these companies were reviewed to decipher whether they actually mention these elements of NVG principles. Mapping of seven key themes has been summarised below.

S.No	Policy Domain	Number of companies
1	Equal opportunity in recruitment	76
2	Disabled friendly workspace	17
3	Mentioning sexual minorities in recruitment policy	31
4	Freedom of association	69
5	Ensuring health and safety of workers	92
6	Identifying specific vulnerable groups in CSR policy	85
7	Supplier code prohibits child labour	27

Source: Company policies from websites

In terms of coverage of some of the critical sub-components as part of the policy commitment, it is evident that out of 100, only 30 companies have disclosed that their supplier code explicitly prohibits child labour in the supply chain; only 17 explicitly mention creating disabled

friendly workspaces; and only 31 mention sexual minorities in their recruitment policies. There are still 27 companies that have not disclosed policies or any commitment towards extending freedom of association for their workers.

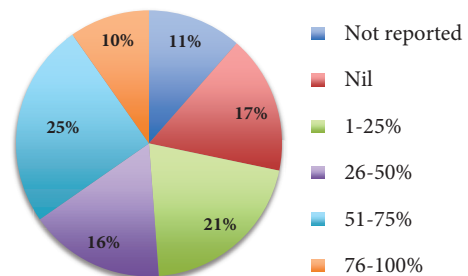
Hiding Labour Force: Trends towards Contractualisation

In continuation of the trends similar to the last few editions of this report, contractualisation of labour seems to have sustained as the popular labour hiring practice among top businesses. An analysis of top 300 companies for the financial year (2018-19) reflects this reality where half the companies have reported presence of more than 25 percent of their labour force as comprising of contractual workers. At the same time almost 10 percent of the companies have not reported any figures for the contractual workers related question in BRR while 17 percent companies have reported having nil contractual workers.

Another worrying trend at micro level among top businesses is with regard to the rate at which contractual labour force is increasing. When a sample of 194 companies was compared over

the period of three years from 2017-18 to 2019-20, though there was an increase in the total workforce, the contractual workforce (8.6 percent) in the sample companies has grown by a rate three times that of the permanent workforce (2.6 percent).

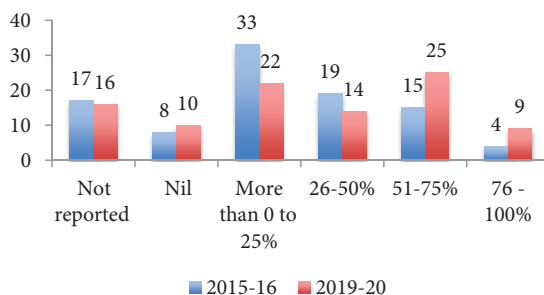
Figure 1.1: Distribution of companies across categories of percentage of contractual workers in the total workforce (n=297)



S.No	Category	Year 1 (2017-18)	Year 3 (2019-20)	Difference	% change
1	Total no. of employees	48,57,741	50,76,193	2,18,452	4.3%
2	Permanent employees	35,52,309	36,47,682	95,373	2.6%
3	Contractual employees	13,05,432	14,28,511	1,23,079	8.6%

In last few years there has been a move towards withdrawal of government from business sphere and in recent times there had been clear mandate being voiced for privatisation of PSUs³. Analysis of the data from the top 300 companies presents a better scenario for workers in PSUs as compared to private sector companies in the domain of contractualisation. It becomes evident that among the top 300 sampled companies in 2018-19, private sector has shown higher prevalence of contractualisation with 63 percent of the companies having more than 25 percent workforce comprising contractual labour, while this percentage stands at 32 percent for PSUs. In light of the proposed privatization of major government-owned companies, this reflection of low contractualisation among PSUs may also not hold for long.

Figure 1.2: Number of cohort companies as per percentage distribution of contractual workers, comparison of 2015-16 and 2019-20 (n=96)



Another comparison of cohort of 96 companies over the period of four years from the year 2015-15 to 2019-20 highlights a shift towards the increased contractualisation in the sample companies.

S. No	Percentage of Employees	Not reported	Nil	More than 0 to 25%	26-50%	51-75%	76 - 100%	More than 25%
1	Banking and Finance (n=56)	14%	50%	25%	5%	2%	4%	11%
2	Automobiles and Auto parts (n=31)	6%	6%	3%	19%	55%	10%	84%
3	Pharmaceutical and Healthcare (n=35)	11%	3%	46%	31%	6%	3%	40%
4	FMCG, Retail and Packaging (n=37)	16%	3%	5%	30%	30%	16%	76%
5	Textiles (n=11)	18%	27%	18%	18%	9%	9%	36%
6	Construction and related (n=44)	11%	20%	16%	11%	32%	9%	52%

To further delve into the sector level scenario among top companies, a look at the trends of sampled companies with sectors having major representation, i.e., more than 10 companies, it was found that among the sectors with largest representation of contractual workers (companies

having >50 percent contractual labour), automobile sector was at the top with 65 percent of the companies falling in this bracket. The second was FMCG, retail and packaging sector followed by construction and related sectors with 46 percent and 41 percent companies having more

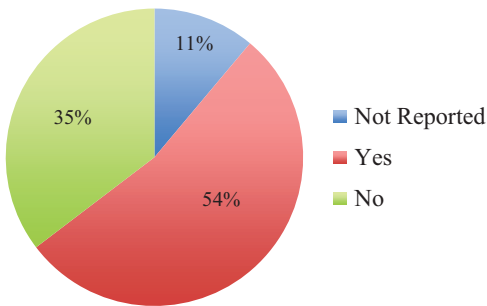
³ <https://www.businesstoday.in/current/economy-politics/privatisation-spree-govt-may-bring-down-number-of-psus-to-around-24/story/430622.html>

than 50 percent contractual workforce.

Collectivisation: a grim reality

While the recently passed Code on Industrial Relations made it difficult for workers to form unions or go on strike, data analysis based on the sample of top listed companies points to an already grim situation of unionisation. The actual situation would come out as grave considering that unionisation in these companies is limited to permanent workforce and a large number of contractual and casual workforce is not even accounted for.

Figure 1.3 : Percentage of companies recognising permanent employee associations (n=300)



Among the sampled companies, it was found that of the 300 companies, 35 percent did not have recognised unions or associations representing workers, while 11 percent did not

report this data. Effectively it can be inferred that among top companies in India, only 54 percent explicitly recognise having workers' unions or any associations. This data needs to be placed in the context of the recently passed labour codes wherein for any negotiating union a threshold of 51 percent of worker support has been prescribed and in absence of this a negotiating council would deliberate wherein only unions with support of 20 percent workers will be included⁴. In a scenario where based on disclosures, 49 (16 percent) companies have less than 50 percent employees being part of recognised associations or unions and 35 percent do not have recognised unions, almost half the companies by default would fall out of this pre-condition. It is evident from the disclosures that even 20 percent threshold is not an easy condition to meet in the current scenario.

With respect to the relation between unionisation and ownership, it emerges that PSUs have higher prevalence of unionisation compared to the private sector. Of the 54 percent companies that disclosed data for the existence of unions, it was found that private companies (119) as per disaggregated data had almost 28 percent companies having less than 25 percent employees as part of the unions.

Percentage of Employees	Private		PSU	
	Number of companies	Percentage of companies	Number of companies	Percentage of companies
Companies that have recognised employee associations	119		40	
Recognise but not reported	26	21.8	5	12.5
Less than 25% workers in association	33	27.7	3	7.5
26-50% workers in association	18	15.1	0	0.0
51-75% workers in association	19	16.0	5	12.5
76% and above workers in association	23	19.3	27	67.5

This percentage was around 8 percent for PSUs. In case of PSUs, around 80 percent companies

reported having more than 50 percent or more employees as part of the unions.

4 <https://www.theleaflet.in/new-labour-codes-undo-the-law-on-workers-rights-and-collective-bargaining/#>

Analysis of sector level disaggregated data depicts that the automobile and auto parts sector has highest percentage of companies (45 percent) with 50 percent or more employees forming part of the unions. Banking and finance and textiles with 35 percent and 27 percent respectively follow the automobile sector. The representation of employees in unions was found abysmally low

in the pharmaceutical and healthcare sector with only 9 percent of the companies having more than 50 percent employees forming the unions. In terms of non-recognition of unions, banking and finance and textiles perform low with 45 percent of the top companies in both these sectors stating that they do not recognise unions.

Representation of marginalised identities

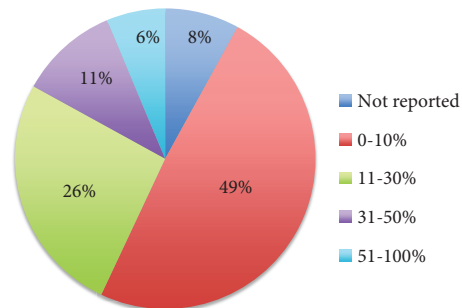
S. No	Category	Year 1 (2017-18)	Year 3 (2019-20)	Difference	% change
1	Permanent employees	35,52,309	36,47,682	95,373	2.6%
2	Permanent women employees	7,30,071	6,90,633	-39,438	-5.7%
3	Permanent employees with disability	21,777	21,165	-612	-2.9%

Representation of women and People with Disabilities (PWDs) in business has remained a challenge for long. An analysis of sampled 200 top listed companies over the period of 3 years strikingly shows that overall though permanent workforce has increased by 2.6 percent, there has been decline in the permanent women workforce (- 5.7 percent) and the permanent workforce with disability (- 2.9 percent).

Around 49 percent of the companies disclosed having less than 10 percent women as forming their workforce. These figures are stark considering the fact that this data corresponds to the top listed companies in India. Moreover, only

11 percent of the companies had a workforce of women that was more than 30 percent.

Figure 1.4: Distribution of companies as per percentage representation of women in permanent workforce (n=300)

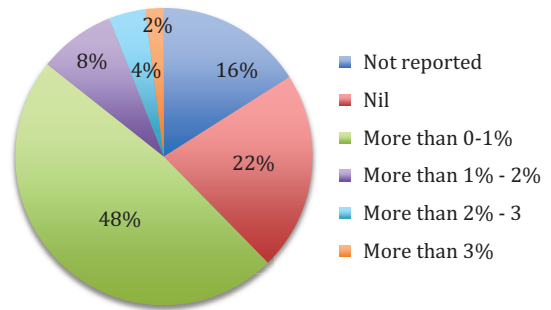


S.No.	Percentage of Employees	Not reported	More than 0 to 10%	11-30%	31-50%	51-100%
1	Banking and Finance (n=56)	5%	9%	58%	22%	5%
2	Automobiles and Auto parts (n=31)	6%	71%	16%	3%	3%
3	Pharmaceutical and Healthcare (n=35)	9%	46%	31%	6%	9%
4	FMCG, Retail and Packaging (n=37)	16%	41%	22%	5%	16%
5	Textiles (n=11)	18%	27%	18%	27%	9%
6	Construction and related (n=44)	2%	82%	9%	7%	0%

Sector level analysis of representation of women employees in workforce shows that in the automobile and auto parts sector around 70 percent companies had a representation of less than 10 percent women in the workforce. When we look at sectors with more than 30 percent workforce comprising of women, textiles sector leads the way with 36 percent of the textile sector companies falling in this bracket. This is followed by banking and finance (27 percent) and FMCG, retail and marketing (22 percent) sectors.

The systematic exclusion of people with disabilities in the workforce is visible in this year's data too. Among the permanent workforce around 48 percent of the companies have less than 1 percent representation of people with disabilities, whereas, 22 percent companies stated having no representation of people with disabilities in the permanent workforce.

Figure 1.5: Distribution of companies as per percentage representation of employees with disabilities in permanent workforce (n=300)



The underrepresentation of marginalised identities in the workforce is not the only concern. A recent study⁵ based on the data from 2019-20 for the NIFTY 50 companies points to the extreme disparity in wage ratios of top paid executive and the median wage of the permanent employee. It was highlighted that top paid executives for Hero Motocorp, Infosys, Tech Mahindra, Bajaj Auto and Hindalco Industries earned more than 500 times. Further, among the NIFTY 50 companies, it was found that among the top paid executives, there was only one woman and one person from Muslim community, while there was not a single person from Dalit or Adivasi communities.

Redressal: a weak link

S. No.	No. of complaint	Nil	Not reported	Reported
1	Sexual harassment	162	17	121
2	Child/forced labour	262	38	0
3	Discriminatory employment	254	44	2

In this scenario of weak representation of marginalised identities, workforce and withering collectivisation, workers need to have a strong and responsive grievance redressal mechanism to ensure that their voices are heard and addressed. Data from sampled top 300 listed companies depicts a sordid state of grievance redressal

mechanisms with 54 percent companies reporting nil complaints received for sexual harassment, while for child labour or forced labour no company has reported receiving any complaints. In light of the fear that large number of children entering the labour market and increased indebtedness among workers as a result of the

5 <https://thewire.in/business/nifty-50-employee-ceo-salary-wage-gap>

pandemic, the non-functional redressal systems would make conditions worse for the workers.

Only two companies have reported receiving complaints for discriminatory employment.

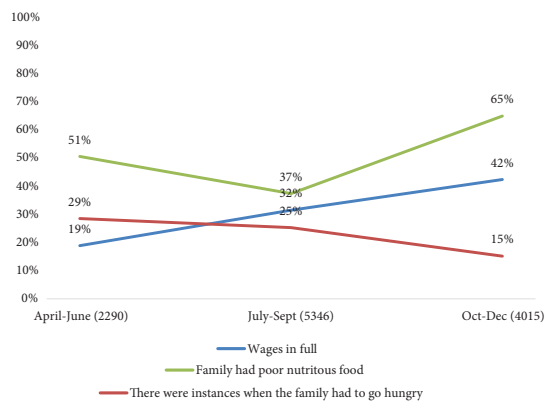
Pandemic and the Apathy for Workers

During the lockdown, unemployment increased from 8 percent to 24.3 percent between March and May.⁶ With the lockdown there was consequent loss of wages⁷, and conditions for indebtedness increased.⁸ In the absence of wages and an extended lockdown period, it became difficult for the workers to meet family expenses with just the government schemes. Indebtedness makes the situation conducive to child labour, child trafficking and bonded labour.

A primary data collection from workers during the pandemic, done as part of the COLLECT (Community-Led Local Entitlements & Claims Tracker)⁹ initiative, provides insights with regard to workers particularly engaged in construction (11 to 16 percent of sample), textile¹⁰ (10 to 18 percent of the sample), beedi making (3 to 5 percent of the sample) and agriculture (14 to 26 percent of the sample). Interestingly, around 12 to 19 percent of the workers over these three rounds reported to be unemployed. Considering the presence of a large number of companies from these sectors in the top 500 listed companies makes it easy to infer that it won't be difficult to trace many of these workers back to the supply chain of big companies in these sectors. As part of this initiative, data was collected from workers from more than 80 districts with particular focus on workers coming from Dalit, Adivasi, De-notified and Nomadic Tribes and minority communities. Data was gathered over three rounds and used for engaging with local stakeholders for better access to social security programmes. Analysis of data on indicators corresponding to payment of wages, access to food and access to nutrition over three

rounds (April-June covering 2290 workers, July-September covering 5346 workers and October-December covering 4015 workers) pointed to the worsening circumstances for workers in the mentioned sectors.

Figure 1.6: Distribution of wages, nutrition and access to food



Data clearly shows that initially with the announcements of lockdowns during the April to June period, only 19 percent of the workers reported receiving full wages and with gradual increase, this reached 42 percent in September to December period. But at the same time, it is distressing to see that till December around 15 percent worker households reported instances when the family had to go hungry. Though the overall picture seems to be improving, it is alarming to see that access to nutritious food is under threat with around 65 percent households reporting that they had poor nutritious food in September to December round. This is a

6 <https://unemploymentinindia.cmie.com/> (accessed on 26th February, 2021).

7 Ibid.

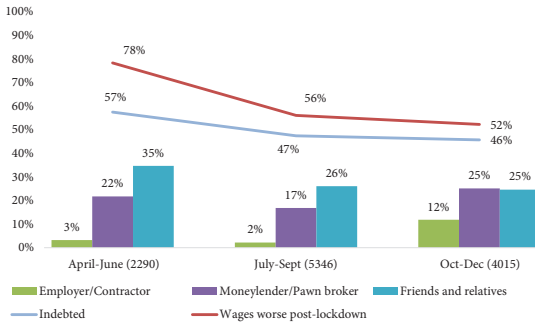
8 To gauge the impact Praxis Institute for Participatory Practices (www.praxisindia.org) and Partners in Change (<http://www.picindia.org/>), organised the Voices from the Margins, COVID 19 Webinar series brought many such voices to the platform. (can be accessed here <http://www.praxisindia.org/covid19.php>) In all these social dialogue processes that was conducted by Praxis, it became clear that with the lockdown and the consequent loss of wages, conditions for indebtedness had increased.

9 More details can be found at www.communitycollect.info

10 A detailed analysis will soon be released as part of the State of Garment Workers Report 2020 by Partners in Change

significant increase from the June to August period when this had gone down to 37 percent. This can be attributed to the worsening of wages for these worker households, which is depicted in the next graph.

Figure 1.7: Distribution of wages, nutrition and access to food



In these tough circumstances, workers relied on loans (57 percent to 46 percent) as the primary means for accessing resources to meet ends. Data reflects that workers primarily relied on friends and relatives (ranging from 35 percent to 25 percent), moneylenders or pawn-brokers (ranging from 22 percent to 25 percent) and employers/contractors (ranging from 3 percent to 12 percent). There is a clear trend pointing to the increased dependency on moneylenders and employers and contractors. This needs to be placed against the forced labour scenario in many industries and this would further accentuate the same.

Another threat is in terms of influx of large number of children in labour market in the

given circumstances. Almost 54 percent of the worker households covered as part of October-December round agreed that there is a risk that children from households will be engaged in remunerative labour. In such a reality there is a need for stringent supply chain compliance from large businesses to ensure that their supply chains are not reaping the vulnerabilities of the labour market. However, what we witnessed was views by prominent figures urging the Government to exempt all employers of child labour from prosecution or other punitive action for three months, should they voluntarily release children confined inside factories and the various state governments bringing in ordinances to increase working hours to 12 hours per day from 8 hours per day.¹¹ The proposal for amnesty on child labour prosecutions gives both the state as well as offenders, who traffic and employ children with impunity, an escape route.¹² While the Covid-19 pandemic scenario created a difficult situation, it brought to light some of the violations of labour rights to the fore and highlighted the importance to integrate the concept of labour rights as human rights in businesses.

In a way, the pandemic has exposed fault-lines in the existing economic model and relations of production, but it would be an over-simplification to infer that it was the only the pandemic which led to the vulnerability of workers. Data analysis¹³ of disclosures by randomly selected top 300 companies, based on the annual reports and business responsibility reports, pointed to the fact that the status of workers' was already in a dismal state, even before the pandemic.

11 <https://www.thehindubusinessline.com/news/national/up-government-suspends-all-labor-laws-except-three-to-lure-industrialists/article31531867.ece> (accessed on 25th February, 2021)

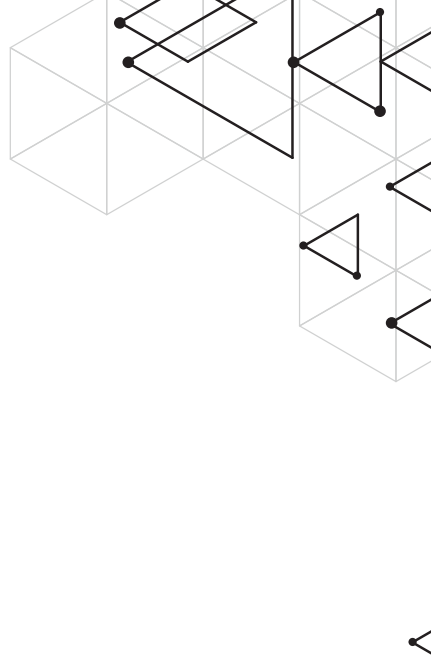
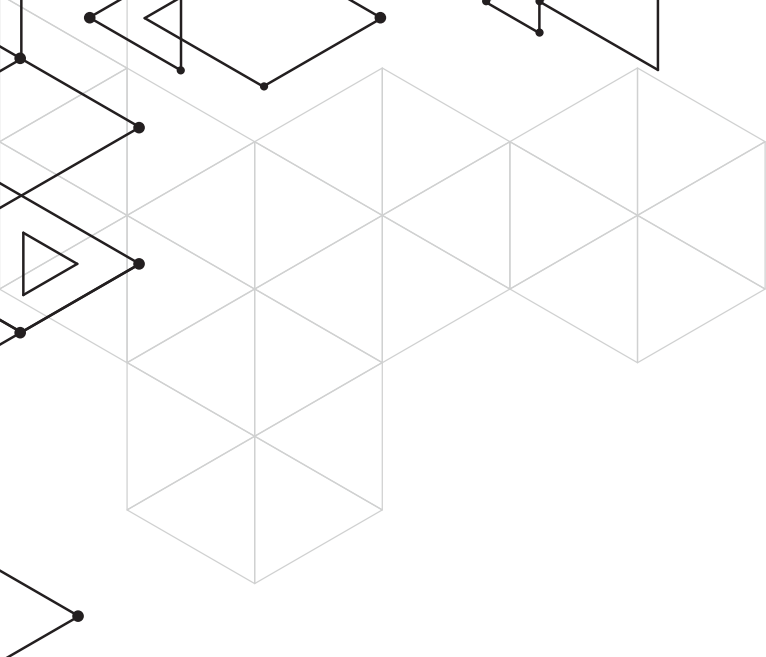
12 <https://thewire.in/rights/kailash-satyarthi-should-know-theres-no-place-for-dilemmas-when-it-comes-to-child-labour> (accessed on 15th February, 2021).

13 Analysis is based on BRRs for the last three financial years; annual reports (2017-18 to 2019-20). This report is based exclusively on company disclosed information available in the public domain. The self-reported information is taken at face value and has not been validated through independent assessments nor has any related information in the public domain been factored into the assessment. The study analyses the Business Responsibility Reports of 300 randomly selected private and public sector companies from the top 500 BSE listed companies. The sample comprises 251 private companies and 49 public sector companies. The companies are spread across 16 sectors with the highest representation from banking and finance (56), construction and infrastructure (44), pharmaceuticals and healthcare (35), FMCG, retail and packaging (37) and automobiles and auto parts (31).

Way forward

The National Action Plan on Business and Human Rights needs to recognise this context and provide certain strategic shifts for redefining the responsible business landscape. It is evident that workers as a constituency have lost their strength. The view of the worker as a stakeholder is steadily disappearing from the vision of policy makers. The Economic Survey 2020-21, despite an exclusive chapter on the pandemic, does not even use the term migrant worker, a spectre that we thought would haunt the policy makers for years. The recently passed labour codes further threaten the constituency of workers, while the pandemic has pushed them to margins resulting in vicious debt cycles, job loss and low wages. Adding to this there is a push for including “industry friendly” approaches to instill confidence in businesses.

There is a need to reclaim laws and institutions, that workers are losing in the Government’s battle to enhance ranking of Ease of Doing Business. Inspectors are becoming facilitators, laws are becoming guidelines, nexuses are being legitimised and various instruments are being marginalised. At this point of time, every institution that has the capacity to enhance the voices of the workers is important. There is a need to bring the focus back to Social and Environment Impact assessment, Business Responsibility Reports, social audits, collective bargaining, people’s participation in providing license to operate and protection of whistleblowers and human rights defenders. From the workers perspective, it may not be wrong to say that we are what we were 100 years ago, when the first trade union federation was formed in India.



Part 2

Pandemic and Its Challenges

Chapter 2:

Corporatisation of Healthcare in India: Covid-19 Pandemic and Beyond

Malini Aisola and Inayat Singh Kakar¹

Globally and in India, the healthcare industry is expanding through private equity investments and venture capital,^{2,3} the significant role of Foreign Direct Investment (FDI) and also development finance and financial and technical support from institutions like the World Bank.⁴ Investment in the healthcare industry is increasingly an attractive business opportunity⁵ with the Indian healthcare market projected to reach Rs 24 lakh crore by 2022 from Rs 9 lakh crore in 2016, an estimated Compound Annual Growth Rate (CAGR) of 17.7 percent.⁶

The healthcare industry subsumes hospitals, diagnostic centres and pharmaceutical manufacturers, medical equipment and device manufacturers, medical tourism, health insurance, telemedicine, etc. The hospitals sector, comprising over 55,000 hospitals and lakhs of clinics and healthcare delivery centres, is reportedly the largest segment of the Indian healthcare industry and is forecast to reach Rs 8.6 lakh crore by 2022 (a CAGR of 16-17 percent from its estimated value of Rs 4 lakh crore in 2017).⁷

The last few decades since the 1980s has seen an exponential growth in corporate hospitals supported by favourable government policies, tax breaks and subsidies. The rise of multi-speciality

and single-speciality hospitals in particular has been fueled by private equity (PE). Since the year 2000, when India permitted 100 percent FDI in the hospital sector, investments through foreign capital intensified. It is estimated that PE funds invested approximately \$5 billion into hospitals over the last 12 years.⁸

The unbridled growth of private hospitals, coupled with, and indeed enabled by, the lack of regulations, has resulted in healthcare provisions in India being dominated by the private sector. The private sector caters to about 74 percent of outpatient care, 65 percent of hospitalisation care in urban areas⁹ and accounts for 60 percent of all beds and 80-85 percent of all doctors in India.¹⁰

Whereas the private sector is majorly engaged in providing tertiary and speciality care, business interests of for-profit healthcare companies and corporate hospital chains has led to continuous expansion in metros, tier I and tier II cities. A rapid restructuring and consolidation of healthcare in India is taking place – corporate entities have diversified into healthcare segments like pharmacies, diagnostics, small nursing homes, private clinics and hospitals are getting integrated with large hospital players.

Caught within this paradigm of the intense

1 Malini Aisola works on public health issues, particularly on access to medicines and is also affiliated with Campaign for Dignified and Affordable Healthcare. Inayat Singh Kakar is a public health practitioner engaged in research and advocacy on the right to health. She is a member of various rights based coalitions and groups advocating for health and allied rights.

2 Babu, G. (2013, August 29). Health care to attract more PE investment: Experts. *Business Standard*.

3 Malhotra, S. (2014, June 22). Health Draws Wealth: Why Healthcare has become a Preferred Sector for Private Equity Firms. *Business Today*.

4 Chanda, R. (2010). Constraints To Foreign Direct Investment In Indian Hospitals, *Journal of International Commerce Economics and Policy*, 1(1), 121–143.

5 Marathe, S., Hunter, B. M., Chakravarthi, I., Shukla, A., & Murray, S. F. (2020). The impacts of corporatisation of healthcare on medical practice and professionals in Maharashtra, India. *BMJ Global Health*, 5(2), e002026. <https://doi.org/10.1136/bmjgh-2019-002026>

6 SMERGERS Investing Banking for SMES, <https://www.smergers.com/industry-watch/indian-hospital-industry/>

7 India Brand Equity Foundation (IBEF) (November 2020). Indian Healthcare Industry Report.

8 ICICI Direct Research (10 December 2019). Sector Report on Hospitals, http://content.icicidirect.com/mailimages/IDirect_Healthcare_SectorReport.pdf

9 Economic Survey 2020-21 Volume 1, Government of India, Ministry of Finance Department of Economic Affairs, January 2021.

10 ICICI Direct Research (10 December 2019). *Ibid*.

corporatisation of healthcare is the patient. Overdependence on the private sector is a reflection of the weakened and neglected state of the public health system. The Central Government's strong thrust for privatisation of the healthcare,^{11 12 13} combined with a regulatory

vacuum within which private hospitals are operating, risks patients remaining vulnerable with few avenues to escape exploitation at the hands of a profit-driven model of healthcare delivery.

Business ethics in healthcare

In the context of healthcare delivery, there is a close link between the quality of care and social responsibility. Ethical hospital governance is important to prevent unethical practices such as 'cream skimming' or inducing demand.¹⁴ Managerial activities influence the quality of care by influencing the behaviour of healthcare providers, or influencing the comfort and safety of patients. Private hospitals need to take active social responsibility to fulfill their obligations to respect and to not undermine the right to health.

In the context of healthcare, this means implementing internal mechanisms such as internal ethical codes of conduct, marketing strategies that are in accordance with ethical standards, and instituting external mechanisms such as public accountability, fair grievance redressal, transparent procedures for evaluating healthcare delivery, external audits, etc.¹⁵

Corporate ethics demands that companies incorporate ethical values in internal corporate policies and abide by these in their organisational conduct/behaviour. Corporate Social Responsibility (CSR), on the other hand, is a legal

requirement in India mandating that companies with a net worth of Rs 500 crore or more dedicate a percentage of their funds on activities deemed to be beneficial to local communities, such as promoting education, health, employment and other social goods. So, while the legal requirement for CSR involves undertaking activities in addition to the business, corporate ethics posits that corporations have a moral and ethical liability towards society, and that their business goals should be in accordance with the goals of society at large.¹⁶ Therefore an important distinction should be clarified in respect of corporate responsibility in healthcare which goes beyond charity, and is about ensuring that all health services are provided in an ethical manner, which respect the human rights of patients.

The concept of business ethics has evolved significantly over the decades. While the earlier view was that the greatest social responsibility of businesses is to maximise profits¹⁷, it is now believed that while generating profits for shareholders is a necessary condition, it is not the only one. The UN Guiding Principles on Business and Human Rights¹⁸ recognise that

11 <https://www.livemint.com/news/india/govt-to-rejig-viability-gap-funding-norm-to-attract-private-invest-in-healthcare-11591603194535.html>

12 <https://thewire.in/health/ayushman-bharat-private-hospitals>

13 Comments by Jan Swasthya Abhiyan on the Niti Aayog's scheme to link new and existing private medical colleges with functional district hospitals and the related 'Concession Agreement Guiding Principles for Setting up Medical Colleges through PPP', 10 January 2020, http://phmindia.org/wp-content/uploads/2020/01/Comments-by-JSA-on-Model-Agreement-by-Niti-Aayog-for-PPP_DH-and-medical-colleges.pdf

14 Whincop, M. J. (2001). *Bridging the entrepreneurial financial gap. Linking governance with regulatory policy*. Ashgate Publishing Limited.

15 Brandão, C., Rego, G., Duarte, I., & Nunes, R. (2013). Social responsibility: A new paradigm of hospital governance? *Health Care Analysis*, 21(4), 390–402. <https://doi.org/10.1007/s10728-012-0206-3>

16 Abolaji Joachim, A., & Omotayo Joseph, O. (2007). Ethical Dilemmas in Management: An African Perspective. *Journal of Business Systems, Governance and Ethics*, 6(2), 36–44. <http://www.jbsge.vu.edu.au/issues/vol04no3/JBSGE-04-3.pdf#page=31>

17 Friedman, M. (1970). The Social Responsibility of Business is to Increase its Profits. *The New York Times Magazine*, 122–126. https://doi.org/10.1007/978-3-540-70818-6_14

18 United Nations Office of the High Commissioner. (2011). *The UN Guiding Principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. <https://doi.org/10.4324/9781351171922-3>

business enterprises are 'specialised organs' of the society and are required to respect human rights. It lays down 24 foundational and operational principles for corporations to follow in order to promote and respect human rights. The Guiding Principles lay down that businesses have a duty to take measures to prevent, mitigate and where appropriate, remedy any human rights impacts. Corporations are obligated to put in place policies and due diligence processes for the same. Since corporations have the potential to impact all areas of a person's life, their activities (defined as both actions and omissions) are bound by human rights standards laid down in international instruments which recognise the Right to Health such as the Universal Declaration of Human Rights, Article 12 of the International Covenant on Economic, Social and Cultural Rights reinforced by the Committee on Economic, Social and Cultural Rights's General

Comment 14. In India, Courts have interpreted the right to health as enshrined in Article 21 of the Constitution of India.

In 2011 the Ministry of Corporate Affairs released guidelines for ethical conduct of business in India.¹⁹ These laid down nine principles which all businesses, including multinational corporations, must follow in conducting their business, but these were not deemed compulsory and in principle, remain voluntary in nature. The principles laid down include ethical, transparent and accountable conduct of business; being responsive to needs of all stakeholders including those who are disadvantaged, vulnerable and marginalised; respect and protect human rights, being responsible while influencing public and regulatory policy, and support inclusive growth and applicable development.

Overcharging by private hospitals for Covid-19 treatment

In the initial period of the pandemic, the major burden of Covid-19 treatment was borne by government hospitals.²⁰ As health services geared up for the pandemic, there were widespread disruptions in non-Covid services like cancer treatment, tuberculosis treatment, dialysis, maternal and child health services, etc.^{21 22} As the number of Covid-19 cases in India grew, the public health system in badly affected parts of the country became overwhelmed as the demand for hospital beds outgrew the supply. Seeking Covid-19 treatment in private hospitals, thus, was no longer a choice for patients needing hospitalisation, but an unavoidable necessity.

The lack of pre-existing regulatory provisions to

curb the cost of treatment in private hospitals led to exorbitant treatment charges and widespread reports of profiteering by private hospitals offering Covid-19 treatment.²³ Patients were billed for the Personal Protective Equipment (PPE) used by healthcare workers at inflated charges (some hospitals levied charges of Rs 10,000-15,000 per day) and for quantities that could not reasonably be justified for the care of an individual patient. PPE remained one the most highly billed components of Covid-19 treatment for which patients paid large sums of money out-of-pocket.²⁴ Other questionable charges on hospital bills included Resident Medical Officer (RMO) charges, biomedical waste disposal, admission charges, medical history assessment charges, equipment

19 Ministry of Corporate Affairs Government of India. (2011). *National Voluntary Guidelines on Social, Environmental & Economic Responsibilities of Business*. <http://library1.nida.ac.th/termpaper6/sd/2554/19755.pdf>

20 Raghavan, P, Barnagarwala, T., & Ghosh, A. (2020, April 30). Covid fight: Govt system in front, private hospitals do the distancing. *Indian Express*. <https://indianexpress.com/article/india/coronavirus-Covid-19-private-hospitals-6385631/>

21 Duggal, R. (2020). *Covid-19 Impact: Huge Decline in People Accessing Health Services*. The Leaflet. <https://www.theleaflet.in/Covid-19-impact-huge-decline-in-people-accessing-health-services/#>

22 Prasad, N., Bhatt, M., Agarwal, S. K., Kohli, H. S., Gopalakrishnan, N., Fernando, E., Sahay, M., Rajapurkar, M., Chowdhary, A. R., Rathi, M., Jeloka, T., Lobo, V., Singh, S., Bhalla, A. K., Khanna, U., Bansal, S. B., Rai, P. K., Bhawane, A., Anandh, U., ... Jha, V. (2020). The Adverse Effect of Covid Pandemic on the Care of Patients With Kidney Diseases in India. *Kidney International Reports*, 5(9), 1545–1550. <https://doi.org/https://doi.org/10.1016/j.ekir.2020.06.034>

23 <https://mumbaimirror.indiatimes.com/coronavirus/news/private-hospitals-have-used-the-pandemic-to-profiteer/articleshow/75566265.cms>

24 <https://scroll.in/article/964534/private-hospitals-in-india-are-overcharging-for-safety-gear-in-the-absence-of-government-regulation>

use charges, universal precaution charges and even parking charges.

Prior to the pandemic, overbilling by private hospitals was a common practice. The National Pharmaceutical Pricing Authority had previously documented huge, unethical margins of up to 1700 percent being charged by corporate hospitals on drugs, consumables and diagnostics.²⁵ Unfortunately, not only did this trend continue into the pandemic, but there were indications that overcharging may have intensified with private hospitals treating the health crisis as sanction to loot patients.

Even health insurance coverage did not guarantee financial protection for patients because Covid-19 treatment costs could quickly exceed coverage limits, especially when patients had severe disease and required extensive critical care interventions and support. Depletion of insurance cover during the course of Covid-19 treatment had particularly adverse implications when the coverage for multiple family members under a joint policy was exhausted or when a patient with an existing chronic and life-threatening conditions like cancer, would be left vulnerable and without sufficient future coverage.

Privately insured patients were also liable to incur high out-of-pocket expenditure due to insurance companies refusing to reimburse many charges that they claimed were arbitrary and unreasonable.²⁶ In a submission before the Supreme Court, the General Insurance Council (GIC), alleged inconsistencies in billing by private hospitals and lack of transparency and uniformity – such as privately insured patients were being billed on a higher schedule of charges than uninsured patients. GIC also claimed that because limited insurance cover is not sufficient to take care of exorbitant charges being levied by private hospitals, patients were becoming uninsured for a period of time during their treatment and as a result sustaining substantial out-of-pocket expenditure.²⁷

A range of violations of patients' rights have been observed including refusal to provide detailed and itemised bills, providing all patient medical records, unlawfully taking the patient as a 'medical hostage', detaining the dead body for non-fulfillment of the bill,^{28 29} and administering multiple experimental drugs and therapies without due regard to current scientific evidence or in conformity with clinical guidelines, often without taking the informed consent of the patient.³⁰

Government's attempts to improve access and affordability of Covid-19 treatment

At the start of the pandemic, some states such as Maharashtra and West Bengal that were facing serious outbreaks took early measures to enlist the capacity of private hospitals and also to restrict the charges for Covid-19 treatment in private hospitals. This was done not only to bolster the capability to combat the growing outbreak, but also as a response to rampant complaints of

overcharging and exploitation by private hospitals.

In June 2020, the Ministry of Health and Family Welfare issued a direction to all state governments and union territories to *“engage with the private healthcare providers to facilitate enhanced bed availability and critical care health facilities as well as to ensure fair and transparent charges for*

25 http://www.nppaindia.nic.in/wp-content/uploads/2019/02/overcharging_Details20022018.pdf

26 Economic Times *“Covered under Medical Insurance Umbrella? You may still get wet”* <https://economictimes.indiatimes.com/industry/banking/finance/insure/covered-under-medical-insurance-umbrella-you-may-still-get-wet-in-case-of-corona-hospitalisation/articleshow/76416048.cms?from=mdr>

27 <https://www.telegraphindia.com/india/private-hospitals-overcharging-Covid-patients-alleges-general-insurance-council/cid/1791104>

28 <https://timesofindia.indiatimes.com/india/hospitals-defy-courts-hold-patients-hostage-over-bills/articleshow/79094533.cms>

29 <https://thewire.in/health/private-hospital-bills-patients-hostage>

30 <https://timesofindia.indiatimes.com/city/delhi/bill-wrong-patient-asked-to-sign-non-disclosure-papers-for-refund/articleshow/77309298.cms>

services provided”³¹. It was suggested that states have consultations with local private healthcare providers and arrive at reasonable rates for healthcare services. However, the direction was non-binding and failed to lay down a concrete framework to regulate prices of Covid-19 treatment in private hospitals.

As the pandemic progressed, and based on the nudge by the directions of the Central Government, several more state governments took steps to regulate treatment costs by requisitioning capacity of private/corporate hospitals, particularly advanced critical care facilities which were sorely needed. State governments used a mix of strategies to curtail treatment costs borne by individuals. While some states had rate caps on treatment, in some states, governments requisitioned hospital facilities on the basis of pre-approved reimbursement rates and provided free treatment to Covid-19 patients. Other states fixed maximum per day charges to be borne by patients, and some used a mix of approaches.

More than a dozen state governments have instituted policies to regulate the charges for Covid-19 treatment in private hospitals, often through powers vested in emergency laws such as the Disaster Management Act, 2005 and Epidemic Diseases Act, 1897. It is important to note that while the wide adoption of regulation by state governments to provide financial relief to patients during the public health emergency was unprecedented, treatment under the rates set would still be financially unsustainable for majority of families.³² Thus the lack of emphasis

on effectively expanding provisioning of free treatment for COVID-19 was a major failure.

These rate-capping policies have often been poorly designed, and plagued by ambiguities and loopholes. Reports continue to come in of patients being turned away from hospitals, of overcharging and inflated bills, and violations of treatment rates caps by private hospitals.^{33 34} While states consulted private hospitals when fixing the rates^{35 36 37}, patients and patients groups were not a part of the consultations.³⁸

In the case of West Bengal, for example, some private hospitals were requisitioned to provide free care to patients and were provided with funds to meet running costs for hospitals. The cost of care was to be borne by the government. However, the majority of large corporate hospitals who had much-needed critical care facilities were not requisitioned, thus failing to achieve the crucial expansion of critical care services at affordable rates for people.

In states like Maharashtra where the government set fixed rates for Covid-19 treatment, exclusion of critical elements such as Personal Protective Equipment (PPE), interventional procedures, high-end drugs and investigations which significantly added to the cost of treatment, left patients vulnerable to exploitation. In Delhi, where the government had fixed rates for Covid-19 treatment, ambiguity about the applicability of the fixed rates to patients covered by private insurance allowed private hospitals to charge privately insured patients at hospital rates, while

31 Letter dated 15.06.2020, the Ministry of Health & Family Welfare, Union of India to States and UTs

32 <https://timesofindia.indiatimes.com/india/hospital-cost-capped-but-covid-can-cripple-80-of-families/articleshow/78610372.cms>

33 <https://timesofindia.indiatimes.com/city/bengaluru/Bengaluru-Woman-dies-day-after-admission-bereaved-family-gets-Rs-3-lakh-bill/articleshow/81202377.cms>

34 <https://timesofindia.indiatimes.com/city/nagpur/813-patients-saved-rs94l-as-nmc-stops-excess-billing-at-pvt-Covid-hospitals/articleshow/81215530.cms>

35 DHNS Panaji. (2021, September 15). Goa caps Covid-19 treatment charges in private hospitals. *Deccan Herald*. <https://www.deccanherald.com/national/west/goa-caps-Covid-19-treatment-charges-in-private-hospitals-888039.html>

36 Express News Service. (2020, September 5). Rajasthan govt revises rates for Covid treatment in private hospitals. *Indian Express*. <https://indianexpress.com/article/india/rajasthan-govt-revises-rates-for-Covid-treatment-in-private-hospitals6583594/>

37 Poovanna, S. (2020, June 23). Karnataka fixes Covid-19 treatment charges in private hospitals. *Mint*. <https://www.livemint.com/news/india/karnataka-fixes-Covid-19-treatment-charges-in-private-hospitals-11592917455984.html>

38 TNM Staff. (2020, June 25). Covid-19 price cap for private hospitals : Docs , public health experts , patients slam K ' taka govt. *The News Minute*, 1-5. <https://www.thenewsminute.com/article/Covid-19-price-cap-private-hospitals-docs-public-health-experts-patients-slam-ktaka-govt>

insurance companies refused to pay more than the government fixed rates³⁹. This forced patients to pay out of their own pockets to cover the cost of their care.

Private hospital bills analysed by us have revealed excessive charges, including inflating the charges for PPE, medicines and ambulance charges in the medical bills of patients; billing the full cost of PPE used in a ward to each patient; and even forcing patients to pay for unrealistic quantities of PPE. Consumables and medicines accounted for huge expenses and were often the largest components of bills. Apart from this, patients were being forced to pay hefty deposits as a precondition of admission, and corporate hospitals were reportedly indulging in financial “cherry picking” of patients to admit only patients with a high ability to pay. Patients were often being subjected to prolonged admission & ICU care which was not in line with their medical needs. Private hospitals were not informing patients about government rates at the time of admission, and/or were actively misleading patients that the government rate caps did not apply to them.

In states like Delhi where government treatment rate caps were applicable to only a certain percentage of beds, hospitals were found to be fraudulently obtaining 'consent' from family members to apply the higher hospital rates instead of the government-issued treatment rate caps. In some instances, this was done through promises of better treatment. In at least one case, when the family of a patient asked for the

billing to be revised in line with the government fixed rates, the quality of care being provided to the patient deteriorated significantly. Private hospitals were also found to be billing separately for the components which were already included in the treatment rate caps. Hospitals were not transparent in providing information about the exact availability and occupancy of rate capped beds. Thereby, patients were being forced to opt for the expensive hospital rate beds, even when the government fixed rate beds were available.⁴⁰

Enforcement of the rate cap orders have remained a challenge. While some states took cognisance of complaints made by patients and conducted audits^{41 42}, others have not been responsive to official complaints made by patients and have shown hesitation in holding private hospitals accountable.⁴³

Where audits were conducted by government authorities, evidence of rampant overcharging by private hospitals was found. Audits of private hospitals by audit committees of municipal authorities in Mumbai, Pune, Thane and Nagpur showed massive overcharging by private hospitals. The Thane Municipal Corporation recovered Rs 97.36 Lakhs from private hospitals in excessive charges levied by hospitals on Covid-19 patients.⁴⁴ 11 hospitals alone were found to have overcharged Covid-19 patients to the tune of Rs 32 Lakh.⁴⁵ The Brihanmumbai Municipal Corporation found hospitals overcharging on drugs, oxygen, investigations and PPE, and made hospitals refund Rs 14 crore worth of hospital bills to patients.

39 <https://www.nationalheraldindia.com/india/hospitals-have-free-run-in-absence-of-grievance-redressal-system-for-patients-getting-overcharged-in-delhi>

40 All India Drug Action Network. (2020). *Civil Society Letter regarding non-compliance of private hospitals and lack of enforcement of the Delhi treatment rate caps for Covid-19 treatment*. All India Drug Action Network. <https://aidanindia.wordpress.com/2020/07/25/civil-society-letter-regarding-non-compliance-of-private-hospitals-and-lack-of-enforcement-of-the-delhi-treatment-rate-caps-for-Covid-19-treatment/>

41 Shaikh, M. (2020, July 19). BMC pulls up 37 private Mumbai hospitals for inflated bills to coronavirus patients. *India Today*, 1–11. <https://www.indiatoday.in/india/story/bmc-pulls-up-private-mumbai-hospitals-inflated-bills-coronavirus-patients-1702294-2020-07-19>

42 Vadlapatla, S. (2020, September 15). Audit of Covid beds begins in Telangana. *The Times of India*. <https://timesofindia.indiatimes.com/city/hyderabad/audit-of-Covid-beds-begins-in-telangana/articleshow/78120814.cms>

43 Mathew, A. (2020, August 18). *Hospitals have free run in absence of grievance redressal system for patients getting overcharged in Delhi*. <https://www.nationalheraldindia.com/india/hospitals-have-free-run-in-absence-of-grievance-redressal-system-for-patients-getting-overcharged-in-delhi>

44 Pol, M. (2020, August 7). TMC recovers ₹97.36 lakhs overcharged by Covid hospitals. *Hindustan Times*. <https://www.hindustantimes.com/cities/tmc-recovers-97-36-lakhs-overcharged-by-Covid-hospitals/story-y3iHJ4n7EkeNKRRNRLmQ5N.html>

45 Srivastava, A. (2020, September 14). *Coronavirus in Navi Mumbai : NMMC's Special Audit Committee nds 11 private hospitals overcharging Covid-19 patients*. <https://www.freepressjournal.in/mumbai/coronavirus-in-navi-mumbai-nmmcs-special-audit-committee-finds-11-private-hospitals-overcharging-Covid-19-patients>

Of 7,145 inquiries or complaints made against hospitals up till October 2020, 294 complaints were of overcharging.⁴⁶ The audit teams appointed by the Pune Municipal Corporation found overcharging to the tune of Rs 4.31 crores upon checking on 2,578 bills. However, given the limited capacity of the audit teams to check each and every bill the actual extent of overcharging may be much higher.⁴⁷

The profiteering practices of corporate hospitals thus contributed to undue financial hardship/

strain on families of patients at a time when people had fewer resources due to lockdown and other hardships. At a time when families had few resources at their disposal, bearing the costs of private treatment was frequently catastrophic. Due to significant limitations of the Ayushman Bharat PM-JAY scheme and state-sponsored insurance schemes in providing free treatment in private hospitals (limited insurance cover, low participation of hospitals offering COVID treatment, restricted to certain beneficiaries, etc.), they too failed to meet the need of the hour.

Private hospitals' resistance to regulation

A chief argument used to obstruct and weaken regulation was that the running of private hospitals would become unviable due to losses faced because of decrease in footfall from non-Covid patients, additional costs of procuring materials and manpower, infrastructural adjustments for Covid, etc. Private hospitals justified the exorbitant costs being borne by patients for treatment as a result of increased costs of protecting health workers through regular testing, treatment, PPE and other protective measures. However, there were reports of hospitals violating the rights of healthcare workers by not providing them with adequate and good quality PPE, not covering the cost of Covid-19 treatment and laying-off health workers who objected to the lack of necessary protections.^{48 49 50}

While all industry sectors were grappling with short-term losses arising from the pandemic and measures to curtail the spread of infection, hospitals managed to create new avenues of

business to overcome the impact of the loss in revenue. 'Hotel isolation' and 'home care packages' for asymptomatic and Covid-19 patients with mild symptoms provided very high margins. Telemedicine and Covid testing were also lucrative. Many hospitals were found to be flouting the maximum rates set by Indian Council of Medical Research (ICMR) or state governments for Covid tests. Hospitals also introduced antibody testing at high rates due to the lack of any regulation of prices on this front. Private hospitals also profited from receiving high volumes of Covid-19 patients. As lockdown measures were lifted, regular medical services were also resumed. Evidence that the losses suffered were only short-lived is that large hospital chains have recorded high profits ever since the lockdown lifted and medical services were restored.^{51 52 53}

It should be recorded that rather than committing to providing accessible healthcare during the pandemic, there were intense lobbying efforts by

46 Barnagarwala, T. (2020, October 23). BMC auditors inspect over 6,000 hospital bills worth Rs 112 crore, bring down refund amount to Rs 14 crore. *The Indian Express*. <https://indianexpress.com/article/cities/mumbai/bmc-auditors-inspect-over-6000-hospital-bills-worth-rs-112-crore-bring-down-refund-amount-to-rs-14-crore-6843069/>

47 Torgalkar, V. (2020, October 14). Covid-19 : In Pune , Measures to Stop Private Hospitals From Overcharging Prove Ineffective. *The Wire*. <https://thewire.in/health/Covid-19-in-pune-measures-to-stop-private-hospitals-from-overcharging-prove-ineffective>

48 <https://www.hindustantimes.com/mumbai-news/wockhardt-hospital-sealed-off-after-52-staffers-test-positive/story-M39fOFZJYN3JwPuqjcMQzL.html>

49 <https://www.thehindu.com/news/national/nurses-move-sc-say-health-staff-ill-equipped/article31265606.ece>

50 <https://www.nationalheraldindia.com/india/handard-hospital-fires-84-nurses-who-demanded-better-working-conditions-in-Covid-19-wards>

51 <https://www.businesstoday.in/current/corporate/apollo-hospitals-q3-profit-rises-49-to-rs-134-crore/story/431208.html>

52 <https://www.moneycontrol.com/news/business/earnings/fortis-healthcare-posts-rs-53-88-crore-net-profit-for-december-quarter-6462311.html>

53 <https://www.moneycontrol.com/news/business/earnings/max-healthcare-reports-q3-pat-at-rs-90-36-crore-6462451.html>

hospital associations like AHPI, NATHEALTH, FICCI and state-level hospital formations to subvert attempts to bring in regulation for

expanding access and affordability of COVID-19 treatment.

Building solutions beyond the pandemic

Private healthcare has, till now, evaded any form of systematic or meaningful regulation. Even though the Central Government's Clinical Establishments Act, 2010, brought with the objective of regulating clinical establishments and prescribing minimum standards of facilities and services, has been adopted by 11 states and five union territories, no minimum standards have been notified to date. Some states have also pursued their own Acts to regulate clinical establishments, however, none of the Acts, other than in West Bengal, introduced any provisions to regulate hospital charges.

The experience of the pandemic indicates that regulation is highly possible through the will of the State. The actions of state governments in regulating treatment costs, supported by the Central Government, could be considered a watershed moment. Lessons drawn from rate regulation policies in the pandemic, enabled also by increased public consciousness, must be carried forward and applied so that governments can move towards putting in place watertight, effective regulations even after the orders issued for Covid-19 treatment under emergency laws expire.

One of the most important lessons to be drawn from the pandemic - the importance of strengthening public healthcare - appears to have which seems to be lost as the NITI Aayog continued to push for private/corporate takeover of public health infrastructure⁵⁴ even during the pandemic⁵⁵. Even the budget 2021-22 has seen only a meagre increase which is not enough to achieve the goal of increasing public health spending to 2.5 per cent of GDP by 2025 as stated in the National Health Policy 2017.⁵⁶

The experience and knowledge gleaned over the last year has potential to directly inform policy

decision making, not just for course correction in the ongoing pandemic, but also for proposing a pathway for future systematic regulation of the costs of private healthcare.

Towards this end, we offer some broad recommendations.

Even though cases in India are receding, there is a consistent risk of new waves of infection and the added threat of new variants of the virus. There has been a resurgence of fresh cases in many states such as Maharashtra, Kerala and Gujarat. While the effort to fix rates to curb profiteering are welcome, the Orders issued by state governments have many ambiguities, loopholes and lacunae, which private hospitals continue to leverage. The benefits of the regulations did not fully materialise for patients due to the lack of oversight and loopholes.

State government should actively conduct transparent audits of Covid-19 treatment bills from private/corporate hospitals, since the implementation of Orders, to curb treatment charges, assess compliance and also retrospectively look into complaints and irregularities emerging from the audits.

State-level regulations should be continued for the duration of the pandemic with suitable amendments to close off loopholes and gaps that permit hospitals to profiteer. Enforcement must be strengthened through creation of oversight mechanisms for ensuring monitoring and implementation of rate capping orders, with penal actions against violators, and grievance redressal systems.

It is critical to take lessons from the pandemic

54 <https://www.newindianexpress.com/nation/2020/jan/02/niti-aayog-unveils-plan-on-takeover-of-district-government-hospitals-by-private-players-2083954.html>

55 <https://www.hindustantimes.com/chandigarh/handing-over-gmsh-16-to-private-player-to-set-up-medical-college-on-chandigarh-admn-s-mind/story-6LzoDnylRU5HzmxRdsM0vM.html>

56 <https://www.newsclick.in/Budget-2021-22-Govt-Fails-Strengthen-Public-Healthcare>

in shaping future strategies to introduce and implement systematic regulation of private clinical establishments. There has been a clear gap in the ability of patients and their families to engage with these processes and their voices and experiences must also be documented to inform better policy making as India continues to grapple with the pandemic.

There is also a need for regulatory reforms that carry forward and have relevance in the long-term. As the Orders under emergency laws expire, there is a need for watertight legislations which states must gear towards. The regulatory frameworks must be crafted to include rate regulations for future engagement of private hospitals in provisioning of affordable healthcare.

The situation is further worsened by the lack of any regulatory framework to enforce the rights of patients. It is imperative that corporate social responsibility and ethical principles be adopted by the hospital industry. While businesses must be encouraged to develop internal policies and mechanisms to ensure ethical conduct, a legal framework to enforce these is a must to ensure compliance^{57 58} [13, 51]. Therefore, any legislation to regulate clinical establishments should include a justiciable charter of patients' rights, oversight of unethical practices and be developed through consultation and participation with patient groups and civil society.

A renewed focus on strengthening of the public health system is a must in order to overcome the traditional neglect and underfunding that plagues it. The pandemic clearly indicates the dire need for strengthening through increases in public investments and systematic measures. It follows that the Government's current tendency towards privatisation of the health system is counterintuitive to the roadmap that is needed

and must stop.

The situation is further worsened by the lack of any regulatory framework to enforce the rights of patients. It is imperative that corporate social responsibility and ethical principles be adopted by the hospital industry. While businesses must be encouraged to develop internal policies and mechanisms to ensure ethical conduct, a legal framework to enforce these is a must to ensure compliance^{59 60}. Therefore, any legislation to regulate clinical establishments should include a justiciable charter of patients' rights, oversight of unethical practices and be developed through consultation with and participation of the key stakeholders in healthcare delivery- patients and civil society groups..

A renewed focus on strengthening of the public health system is a must in order to overcome the traditional neglect and underfunding that plagues public health facilities. The pandemic clearly indicates the dire need for strengthening through increases in public investments and systematic measures. It follows that the Government's current tendency towards privatisation of the health system is counterintuitive to the roadmap that is needed and must be aborted.

The healthcare landscape in India is riddled with an ever-intensifying corporatisation, driven by commercial interest. There is no doubt that to have a realistic chance to bring regulatory reforms and a greater focus on public health strengthening, as the pandemic has taught us is necessary, the undue influence of the powerful industry and its lobbies must be checked. Lastly, to realise our long-term objective of creating affordable healthcare for millions of Indians, it is essential we harness the increasing public consciousness that has been brought about by this pandemic.

57 Brandão, C., Rego, G., Duarte, I., & Nunes, R. (2013). Social responsibility: A new paradigm of hospital governance? *Health Care Analysis*, 21(4), 390–402. <https://doi.org/10.1007/s10728-012-0206-3>

58 Singh, V. K. (2014). Enforcing "Corporate Ethics" through Law: Is it the Right Option? National Seminar on 'Law and Ethics in Public Domain: Contemporary Issues and Challenges in India, 20 September. <https://doi.org/10.2139/ssrn.2972572>

59 Brandão, C., Rego, G., Duarte, I., & Nunes, R. (2013). Social responsibility: A new paradigm of hospital governance? *Health Care Analysis*, 21(4), 390–402. <https://doi.org/10.1007/s10728-012-0206-3>

60 Singh, V. K. (2014). Enforcing "Corporate Ethics" through Law: Is it the Right Option? National Seminar on 'Law and Ethics in Public Domain: Contemporary Issues and Challenges in India, 20 September. <https://doi.org/10.2139/ssrn.2972572>

Chapter 3:

The Business of Education: Growing Divide Among Students, Aided By An Ed-Tech Revolution

By Abid Shah¹

It can well or rather safely be said that through the current scourge of Covid-19 the online education systems too have inadvertently gone viral. This is generally thought to have happened for good, and it is often flaunted by government and corporate higher-ups via mass media to underplay the widespread hardship, dreariness and even hundreds of thousands of deaths caused by the pandemic. So much so that it is taken as a proof of the digital outreach and prowess of India. Indeed, information technology is being harnessed at a fairly large scale to the benefit of young and upcoming learners whose classrooms remain shut ever since the Covid-19 induced lockdown came into effect in March 2020.

Yet, the question is how many of India's 260 million students are covered by the online mode that education has gone into, to beat the threat posed by the virus? And what about those who don't have means to access and, thus, cannot attend the online classes?

A recent report in the media says, "Two-thirds of all the children of school age across the world don't have access to the internet at home, which is essential for school education amid the ongoing Covid-19 pandemic, a report submitted by the United Nations stated on Tuesday (December 1, 2020)"²

Figures about internet access in South Asia have recently been released by the UNICEF. Though the countries in the region have not individually been segregated for this, India forms a large part of South Asia and thus these may well approximately

apply to the country. As per the UNICEF report, only 59 million children in the age group of 3 to 17 years in the region have internet access as against 449 million who don't have it. This may look to be all the more glaring if it is to be viewed against the corresponding figures for the larger age bracket of 0 to 25 which is 117 and 768 million. Only the age-wise middle level group is somehow a bit better off in internet accessibility. Those between the age of 15 and 24 have internet access in case of 57 million against 282 million who lack it.³ All these figures stretch over to mostly, if not unexceptionally, cover the learning age of students from childhood to adulthood where in the wake of Covid-19, online access to education becomes impossible without internet.

So, children from schools' entry-level age to teens are worse off in terms of online accessibility. Besides this, there are other kinds of disparities that bog learners as per the UNICEF report. Female students and those inhabiting rural areas are at a further disadvantage with respect to internet accessibility as compared to boys and students studying in cities or urban areas. Other issues in the Indian context that may lead or add to inaccessibility to an internet connection are related to caste, community and ethnicity.

But before coming to these, or the last category to be more precise, a few random questions put by a teacher of a Delhi University college to her students, who are thought to be relatively better off because of being in the capital city than their rural counterparts, about issues related to the inevitability of current online education

1 Independent journalist and researcher based in Delhi.

2 Two-thirds of all school age kids lack internet access for online classes: UN report, India Today, December 4, https://www.indiatoday.in/education-today/news/story/two-thirds-of-all-school-age-kids-lack-internet-access-for-online-classes-un-report-1746049-2020-12-02?utm_source=recengine&utm_medium=web&referral=yes&utm_content=footerstrip-4&t_source=recengine&t_medium=web&t_content=footerstrip-4&t_psl=False accessed on December 7, 2020.

3 How many children and young people have internet access at home? UNICEF, <https://www.unicef.org/media/88381/file/How-many-children-and-young-people-have-internet-access-at-home-2020.pdf> accessed on December 7, 2020.

may throw more light on its challenges. The students made to elicit their impressions about online education show varying concerns over connectivity, availability of right kinds of gadgets to access online classes and write the examination from home, besides worries about students facing deprivation and, thus, missing online instructions.⁴

Students' responses reflect woes like lack of laptop (in one case) and, thus, use of "mom's smart phone" which cannot be sufficient to appear in an exam. Moreover, reports like a student shown as absent from the last university examination taken from home was mentioned as a disconcerting possibility by one of the students. This could have been so because of snapping of the connectivity at some stage of the examination. In another case, poor and at times nil connectivity through Wi-Fi was the cause of worry.⁵

The group of students who offered their opinion included those from late teens to young adults. And they appeared to be worried about those among their peers who were financially hard pressed. Some of the students interviewed bemoaned their dependence on their parents for their expenses. They were also worried about the children from even poorer sections of the society than their own families. In the conversation, the story of a housemaid came up who needed shoes and clothes for her child. But what one of the students saw as quite agonising was a media report about a poor girl who had to go to a police station to complain about her wayward father. She claimed that the father forcefully took away Rs 15 that she used to get every day in lieu of her midday meal from her school, after its closure due to the lockdown.⁶

There have been even more shocking incidents for Delhi than this. In November this year, a highly

promising and meritorious second-year student of Delhi University's prestigious Lady Shri Ram College died by suicide at her Telangana home. Daughter of a poor motorcycle mechanic, she allegedly took the extreme step because her father could not buy her a laptop after she went home in February due to the closure of her college and its hostel in view of the Covid-19 crisis.

Weeks after the incident, an educationist wrote, "Ever since the young student, Aishwarya Reddy from Lady Shri Ram College, died by suicide, the media, political activists and civil society in general, besides expressing shock, grief and concern, have been busy identifying the culprits responsible for her untimely death. Aishwarya's story apparently has a "simple" narrative — an ambitious, bright girl from a poor family took her life due to her inability to buy gadgets required by her to continue her online education."⁷

And the writer goes on to say, "Aishwarya would have also had her share of troubles but the change in environment from college to home must have made matters worse — the biggest of which was no access to those very gadgets which would allow her to continue her education, something she was so passionate about. She would have also experienced the painful everyday struggle of her parents, the inability, desperation and frustration of her father to buy her a laptop and the guilt of pushing him to mortgage their house and forcing her younger sister to drop out of school".⁸

To add to her problems, the Department of Science and Technology scholarship won by her was not paid for a whole year. The fact that the government scholarship amounting to over a lakh of rupees remained unpaid was mentioned in the suicide note left by her. This has also been affirmed by the media reports about her death, pointing to official' apathy in case of even meritorious and

4 A few undergraduate college students from Delhi University were interviewed online by their teacher regarding the challenges of online learning on December 4, 2020 for this article on strict condition of anonymity of both students and the teacher as also their college for the sake of privacy which was thought to be ideal for eliciting uninhibited and true views of the students.

5 Ibid.

6 Ibid.

7 Death of a Student by Disha Nawani, *The Indian Express*, New Delhi, December 1, 2020.

8 Ibid.

deserving students.

Strangely though, and in rather sharp contrast to this, there is another world of highly privileged students coming from well-heeled and quite moneyed families who often go to the privately run virtual halls of ivy. These have been built by major corporate houses in and around Delhi and also other major cities of the country. They charge a hefty fee and often even more staggering donations for their breezily swanky environs, including centrally air-conditioned lecture theatres and hostel rooms. This on the one hand may suit the needs of children of the rich and keep wards of the poor out of bounds. To illustrate the kind of affluence that is spilled around such prohibitively high-cost new bastions of knowledge an incident comes to mind. Once a contemporary of the writer of these lines took to teaching in media studies department of one such institute in a Delhi suburb; and he got quite stunned when one of his students asked him about the cost of setting up a satellite-run television channel.

“I was zapped beyond my wits by the query made with great ease and in an abjectly matter of fact manner and took a little time to say that it may be a few million dollars to tens of millions,” he told his colleagues and peers after the class.

So, the gap between asking for a laptop to face a contingency brought by colleges going online due to the lockdown and longing for setting up a TV channel at the end of an academic course is perhaps as wide as sea. Yet, such monstrous extremes are being created by allotting acreages of lands around metropolises at quite a subsidised cost by the government to select corporate houses and similarly pushy social and educational entrepreneurs. The State’s support to select business houses became too obvious to be missed when the Central Government declared a university that is yet to become operative as an eminent institution. “Jio University, which is said to be a centre for medicine, liberal arts and sports,

was accorded the ‘institution of eminence’ tag by the NDA government in 2018”.⁹

Delhi’s southeastward township of Greater Noida has come to have multiple ‘Knowledge Parks’ that look more fanciful than any Delhi University college. The numerous learning institutes strewn all over these parks offer incredibly expensive education that only the super-rich can afford for their offspring.

Yet, the students charmed by these institutes to get enrolled in them have to face the same vagaries after their closure as was the case with the humbler government-run colleges as well, amid both the students’ and teachers’ need to escape and avoid the spread of the pathogen. Thus, Covid-19 was thought to be a leveler of sorts, bringing the rich, not-so-rich as also quite poor kids to the same predicament of staying off from classrooms while compulsorily taking to online learning offered by their respective institutions. But somehow this could not be so, courtesy the education-tech companies that stepped up their hunt for clients looking for supplementary lessons and learning aids to add to the online training offered by the regular colleges to their students.

From parents’ point of view, this, of course, comes for their wards at an additional cost or premium that is added to the college fee. There are an over 4,000 Ed-Tech companies in India catering to myriad needs of learners of all sorts. Many of these companies offer online coaching to their clients’ children to compete in admission tests for various professional courses like engineering and medical sciences. The companies also cater to those who aspire for government jobs by taking its recruitment tests via UPSC or Staff Selection Commission of both Centre and states for entry into various services.

Outbreak of the pandemic has given a sudden and yet sure spurt to the business of Ed-Tech companies. Many new companies and startups have been added and many traditional, or legacy,

9 Jio University to start academic sessions in 2021; students can apply for these course, Business Today, December 7, 2020, <https://www.businesstoday.in/current/corporate/jio-university-to-start-academic-sessions-in-2021-students-can-apply-for-these-course/story/390755.html#:~:text=Jio%20University%2C%20which%20is%20said,the%20NDA%20government%20in%202018.> accessed on December 7, 2020.

coaching centres have gone online to meet the needs of those preparing for different exams and competitive tests. According to an IT specialist, a frantic race for video recording of lectures for their online streaming to learners has led the companies to hire videographers who earlier ran studios from small shops and shot wedding ceremonies and other social gatherings in order to make a living. The pandemic had thrown such lens-men out of work but the Ed-Tech boom has virtually come to their rescue. But this points to a rather odd choice that is being made by the companies for a business as serious and crucial as education, which calls for a more specialised training for good quality video recording worth uninterrupted online streaming.

About Ed-Tech companies a media report says, "... with the change in consumer behavior, especially in parents who have higher disposable income, the education technology start-ups are substituting coaching classes, by offering customised, personalised, and round-the-clock content for the sustainable growth of the child".¹⁰

Another report has this to say, "From an estimated size of \$700 million today, the Ed-Tech market (that includes higher education, professional skilling courses and of course the primary education) is headed for 8x to 10x growth in next 60 months (5-years). Why? Because of the massive adoption of online education post the outbreak of pandemic that brought with itself lockdown of most institutions including the schools, colleges and the professional institutes".¹¹

Thus, woes of the pandemic for most people have also given way to substantial gains and, thus, route to prosperity in some cases. As for the Ed-Tech companies, the period through the pandemic is said to have added an estimate of over 400 new startups in the field and their numbers are growing by the day. Yet, all of them are unexceptionally aiming to cater to those who can pay amounts which are simply unaffordable

for the bulk of people for their children's sake. The reach of these companies, as also with regular educational institutions through online systems, is mostly confined to big cities and second-rung towns, says Ashok Bharti, a former government engineer-turned-Dalit-rights-activist. This has hardly reached beyond the confines of a few cities and is yet far from touching villages, he adds.

Bharti has now for years been engaged in a computer literacy programme for government school children in the impoverished Bundelkhand region that spreads across parts of Uttar Pradesh and Madhya Pradesh. A project called Bridge IT to initiate computer-aided-learning for government schoolchildren was conceptualised by him and it has been introduced in many village schools in Bundelkhand.

Tata Consultancy Services, or TCS, have been providing funds and technical support for the Bridge IT project under its Corporate Social Responsibility (CSR) programme. This was confirmed by TCS India leader for CSR Joseph Sunil Nallapally on being asked about it on December 4.

Bharti says that the pandemic has badly affected schools all over Bundelkhand since no online classes like cities are held for village schoolchildren. This has also hit the Bridge IT project which is however continuing its adult literacy drive in villages through its volunteers who are paid an honorarium in lieu of their work.

Asked why similar CSR-backed efforts can't be initiated to help online education of poorer sections of children facing closure in Bundelkhand and elsewhere, Bharti shot back that this the move has to first come through the state governments and then others, including people like him, can well do their bit and maybe more.

He also expressed his reservation regarding the Central Government's move to divert CSR funds

10 Important tech trends that will reshape Indian Ed-Tech in 2021, India Today, November 9, 2020, <https://www.indiatoday.in/education-today/featurephilia/story/important-tech-trends-that-will-reshape-indian-ed-tech-in-2021-1738849-2020-11-07#:~:text=According%20to%20a%20KPMG%20study,worth%20%241.96%20billion%20by%202021.> accessed on December 7, 2020.

11 EdTech Market Is Booming In India, by Prarthana Banerjee, BusinessWorld, September 20, 2020, <http://www.businessworld.in/article/EdTech-Market-Is-Booming-In-India-/20-09-2020-322696/> accessed on December 7, 2020.

as contribution to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund to fight Covid-19. A more decentralised approach could have been more helpful for the

education of poor children, whose parents don't have smart phones and other similar resources.

This is more so among Dalits and Adivasis, he remarks wryly.

Chapter 4: Pandemic, the Perfect Opportunity for Environmental Destruction

Lara Jesani¹

The first case of novel coronavirus in India was detected on January 30, 2020 in Kerala.² In the one year since, several critical and overhauling changes have been introduced to social and protective legislations in the country, even while facing an unprecedented crisis. Meanwhile, even as the people were subjected to complete suspension of their constitutional freedoms, the government machinery was in hyperactive mode granting permissions to new projects and businesses

online and without any public consultation. The government also used this time for further privatisation of public services and allow commercial exploitation of natural resources and mining. The last year has also witnessed a spate of industrial, man-made and natural disasters that left the country and its people battered. These events do not occur in isolation but point to systemic flaws in the existing governance policies and processes.

Overhauling environmental impact assessment process in a lockdown situation

The World Health Organisation (WHO) declared Covid-19 a global pandemic on March 11, 2020³, acknowledging that more than 118,000 cases had been reported in 114 countries and 4,291 people had lost their lives to the pandemic. In spite of this, on March 23, 2020, the Ministry of Environment, Forest and Climate Change (MoEF&CC) introduced the Draft Environmental Impact Assessment (EIA) Notification, 2020⁴, seeking to substitute the existing EIA Notification, 2006. On the very next day, i.e., March 24, 2020, a national lockdown was imposed by the Central Government with few hours' notice, effective from midnight on March 25, 2020⁵. The sudden lockdown resulted in an enormous economic and resource crisis in the country, severely impacting the most poor and marginalised communities.

Despite a restrictive lockdown being put in place, the proposed EIA law was published in the official gazette on April 11, 2020 and 60 days' time was granted to the public to submit their objections and suggestions. Owing to severe criticism from the civil society and environmental rights community and around 4,000 objections⁶ being received by the Ministry in less than a month, the time limit was initially extended to June 30, 2020⁷ and later on to August 11, 2020⁸ after intervention by the courts. However, despite India being a diverse and multi-lingual country, the draft law has not been released in local languages, thereby excluding local and indigenous communities from participating in the process of submitting objections to the proposed law. Although multiple courts raised the issue of non-availability of

1 Lara Jesani is an environmental and constitutional lawyer practicing in Indian courts

2 <https://www.thehindu.com/news/national/indias-first-coronavirus-infection-confirmed-in-kerala/article30691004.ece>

3 <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19--11-march-2020>

4 http://parivesh.nic.in/writereaddata/Draft_EIA_2020.pdf

5 https://www.mha.gov.in/sites/default/files/MHAorder%20copy_0.pdf

6 <https://www.hindustantimes.com/mumbai-news/around-4k-objections-against-draft-eia-rules-filed-from-maharashtra/story-dA1vUTFV0Bs0UeWJ1hfYTL.html>

7 <https://pib.gov.in/PressReleasePage.aspx?PRID=1621800>

8 <https://www.livelaw.in/top-stories/delhi-hc-extends-time-for-filing-objections-to-draft-eia-notification-2020-till-august-11-159131>

translations, the government has shown no intent to publish the legislation in local languages. The proposed law has been vehemently opposed by the public and environmentalists all over the country, and about 2 million comments have been received by MoEF&CC⁹ in response to the draft.

Environmental Impact Assessment (EIA) in India

EIA is the process of evaluating the likely environmental, social and economic impacts of a proposed project or activity, before allowing it. The impacts could be beneficial or detrimental, which would form the determining factor for whether permission should be given or denied to a project. EIA aims to prevent adverse environmental impacts at the planning stage itself and to provide appropriate mitigation measures. For the purpose of EIA, it is essential that vital information on the project be made available to the local community affected by the project, environmental experts and other stakeholders and that they be consulted and involved in the decision-making process. It is pertinent that under the process, a comprehensive evaluation of the socio-economic and environmental impact is conducted before any authorisation is granted to proceed with the project. It also follows that projects and activities with harmful impact should not be permitted.

The process was made mandatory through the EIA Notification 1994¹⁰ passed under the Environment Protection Act, 1986¹¹, which provided for obtaining prior environmental clearance for the categories of projects listed in the notification such as river valley projects, nuclear power plants, chemical fertilizers industries, pharmaceuticals, etc. This notification was later superseded by the EIA Notification 2006¹², which is currently in force. The EIA Notification 2006 imposes certain restrictions and prohibitions on new projects or activities and on their expansion and modernisation based on their

potential environmental impacts. It makes it mandatory to obtain prior environmental clearance from the concerned authority after undergoing the EIA process for any project or activity listed in the notification before commencement of construction. Projects and activities are classified according to the industry, size and impact into two broad categories, A and B, which also determine the degree of scrutiny they will be subjected to and by which authority. A four-stage process is set out for obtaining environmental clearance which involves – (1) *Screening* of the applications; (2) *Scoping* by the Expert Appraisal Committee (EAC) to draw up the comprehensive Terms of Reference addressing all relevant environmental concerns for preparation of the EIA Report; (3) *Public Consultation* process by which concerns of local affected persons and all stakeholders are to be taken into account and addressed before submitting final EIA Report; (4) *Appraisal* involving detailed scrutiny by the EAC to decide whether to grant/reject environmental clearance to the project or activity.

The EIA process under the existing EIA Notification, 2006 has suffered massive dilutions in the last several years, made at the behest of industry.¹³ Being a notification under the parent law — Environment Protection Act, 1986 — amendments have been brought in without parliamentary scrutiny and debate that would be necessitated for an Act of Parliament. The draft EIA Notification, 2020 goes on to further concretise these dilutions, while weakening the already watered-down EIA process considerably and rendering it a mere formality. While stating its objective and reasons for introducing a new law to supersede the EIA Notification 2006, the MoEF&CC acknowledged the several amendments made to the latter and claimed that it seeks to “make the process more transparent and expedient through implementation of an

9 <https://www.bbc.com/news/world-asia-india-53879052>

10 <https://parivesh.nic.in/writereaddata/ENV/EnvironmentalClearance-General/20.pdf>

11 https://www.indiacode.nic.in/bitstream/123456789/6196/1/the_environment_protection_act%2C1986.pdf

12 <http://parivesh.nic.in/writereaddata/ENV/EnvironmentalClearance-General/18.pdf>

13 http://www.corporatewatch.in/images/CSR_Report_2018__CH_3.pdf

online system, further delegations, rationalisation, standardisation of the process, etc.” by way of the Draft EIA Notification 2020.

A Retrograde Move

To begin with, the Draft EIA Notification 2020 has been drafted without consulting environmental activists and experts across the country, who have been invested in the cause of environmental protection, or the communities bound to be affected by these legislative changes. Moreover, the move of the MoEF&CC to overhaul the existing governance on EIA in the midst of the pandemic, when people were in no position to engage with it or object to it and public consultation and debate was impossible, is itself questionable. During the entire period of public objections for the Draft EIA Notification, 2020, India was at the epicenter of the global pandemic and the country was facing different levels of lockdown. There is no plausible explanation as to why the Ministry would choose such a difficult time to introduce the Draft EIA Notification 2020, except to avoid public scrutiny. Further, the failure to provide translations in local/regional languages has effectively excluded the local and indigenous communities, who would be most affected, from even participating in the process of public objections.

The proposed law itself violates well-established principles of environmental jurisprudence such as polluter pays principle, precautionary principle and public trust doctrine. It fails in its fundamental purpose of environmental protection. It is unscientific, unconstitutional and contrary to the provisions of its parent Act – the Environment Protection Act, 1986. The amended provisions are undemocratic and take away the right to public participation in decision making. The proposed law violates international principles of environmental law and international documents to which India is a signatory such as the Rio Declaration¹⁴, United Nations Framework

on Climate Change¹⁵ and Paris Agreement, 2015¹⁶. It further impinges upon the effectiveness of the United Nations Guiding Principles (UNGPs) on Business and Human Rights¹⁷ and the National Action Plan¹⁸ being proposed by India for its execution, which presupposes and relies on the existence of a strong environmental governance.

Exemption from EIA

Several detrimental changes have been proposed under the new law, the most dangerous being the free pass given to certain projects and activities from conducting EIA. Projects have been reclassified from the more onerous category ‘A’ to category ‘B1’ and ‘B2’, in order to avoid assessment by central authority and to bypass public consultation. Several categories of polluting projects such as ports, harbours, backwaters and capital dredging (inside and outside the ports or harbours and channels) in inland waterways, certain SEZs, irrigation, mining projects up to a certain threshold that were earlier required to undergo the rigorous EIA process, have been reclassified in the ‘B2’ category which does not require submission of an EIA report or public consultation. A new diluted variation of environmental clearance, namely, ‘environment permission’, has been introduced under the Draft EIA Notification 2020 for certain ‘B2’ category projects, which does not require undergoing the four-stage EIA process. Several types of projects have been shifted to this category to avoid EIA altogether. This includes projects such as commercial heliports, projects in respect of inland waterways and building construction projects up to 50,000 sq. m built up area. Certain medium enterprises involved in petroleum product processing, cement plants, mineral beneficiation, etc. have been included in this sub-category. The Draft EIA Notification 2020 removes several types of projects from the requirement of environmental clearance or permission. Under clause 26, 40

14 <https://www.jus.uio.no/lm/environmental.development.rio.declaration.1992/portrait.a4.pdf>

15 https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf

16 https://unfccc.int/sites/default/files/english_paris_agreement.pdf

17 https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf

18 http://www.mca.gov.in/Ministry/pdf/NationalPlanBusinessHumanRight_13022019.pdf

types of projects and activities are exempted from requirement of environmental clearance, which includes potentially high-impact projects such as solar thermal power plants, common effluent treatment plants, dredging for dams, extraction for linear projects such as roads, pipelines, manufacturing units under Ministry of Defence, etc.

Right of local communities to information, public participation

The Draft EIA Notification 2020 effectively removes the requirement for mandatory public consultation process for most projects, thereby taking away the right of public participation in the decision-making process for local and indigenous communities affected by such projects. For those projects required to undergo the full EIA process including the stage of public consultation, the time to file objections in public consultation process by the public has been reduced from the already insufficient 30 days to 20 days. Expansion and modernisation of a project is exempted from EIA if it is not more than 25 percent original capacity and is further exempted from public consultation if it is not more than 50 percent original capacity, completely disregarding that the slightest increase in certain high-impact industries can have a huge bearing on the environment. The proposed law fails to provide for public access to EIA Report in local languages and only provides for an English copy of the report, with a summary in local language. Under clause 5 (7) of the Draft EIA Notification 2020, no information regarding projects concerning “national defence or security or involving other strategic considerations, as determined by the Central Government” will be provided to the public. Such projects are also exempted from public consultation. The term “other strategic considerations” is vague, overreaching and ambiguous, leaving its application open to interpretation and arbitrary exercise of discretion.

Regularising Violations and Providing Impunity

The Draft EIA Notification 2020 seeks to regularise violations by businesses and project proponents

who commenced projects and activities without obtaining the mandatory prior environmental clearance, thereby defeating the entire purpose of the legislation. This provision under clause 22 for grant of post-facto clearance not only provides impunity to offenders, but also encourages violations by businesses who are effectively being allowed to bypass the EIA process knowing that they can regularise their operations by presenting a *fait accompli* situation. The apprehension that this provision will be misused by the most polluting and high-impact industries to avoid undergoing the rigors of EIA is not unfounded. The proposed law also excludes the provision of reporting by the public of violations. On the other hand, there is provision for reporting by violator promoter and government authority. This will gravely impact access to redressal mechanisms and justice and people’s participation in environmental decision making. The proposed law fails to provide strict penalties for violations and instead only requires the project proponent to furnish bank guarantee under clause 23 (10).

Ease of Environmental Clearance

At a time when the environment is rapidly changing and the impact of climate change events on the communities has been severe, the validity of environmental clearance has been increased considerably despite the technological advances and decrease in construction time. The validity has been increased from 30 to 50 years for mining projects, from 10 to 15 years for river valley projects and from 5 to 10 years for all other projects when compared with the original EIA Notification, 2006. The amendment to the definition of several terms such as “construction work”, “study area” and General Conditions under the Draft EIA Notification 2020, have the effect of diluting their meaning and effect. Social impact assessment is altogether missing from the proposed law. In spite of the dismal compliance and monitoring with respect to conditions stipulated in the environmental clearance granted under the existing law, which required the project proponent to submit compliance report every 6 months, under the proposed law the requirement has been eased and the compliance report is to be

submitted on a yearly basis.

Voices of opposition to the Draft EIA Notification, 2020

Environmental groups and people's struggles have strongly opposed the Draft EIA Notification 2020, knowing the high stakes for the environmental protection movement. Three such environmental groups - Let India Breathe, Fridays for Future and There is no Earth B - that were involved in advocacy against the proposed law faced several attacks, including online surveillance and internet bans¹⁹ and have also received notices under the draconian organised terror law — Unlawful Activities Prevention Act (UAPA) — which were later withdrawn²⁰. On August 31, 2020, United Nations Special Rapporteurs holding different mandates jointly issued communication

demanding several clarifications and an explanation on how the draft law corresponds with India's obligations under international law²¹. Despite severe opposition to the Draft EIA Notification, 2020, the government has not yet taken back the proposed legislation. Not only does this regressive law proposed by the government need to be rolled back, but the existing EIA process which is marred with hundreds of dilutions and suffers from inadequacies, needs thorough re-evaluation and strengthening. What we need is a strong and robust law that guarantees environmental protection and justice in place of the existing environmental regime, developed in consultation with public stakeholders and subjected through the parliamentary process of lawmaking. Not a policy in the amenable and amendable form of a notification.

Privatisation of coal mining and reforms in mining laws

On May 16, 2020, the Indian Government made an announcement under the 'Atma Nirbhar Bharat Abhiyan' for enhancing private investments in the mineral sector and bringing reforms in the mining sector, on the excuse of economic revival from the Covid-19 lockdown induced crisis.²² Following this, on June 18, 2020, an auction of 41 coal blocks was launched through video-conferencing in order to allow private sector investment in commercial coal mining²³ and turning the Covid-19 crisis into an opportunity to open up the market for coal. At a time when there is a worldwide attempt to reduce the reliance on coal as an energy source, the Prime Minister announced that India will invest 20,000 crore to convert 100 MT of coal

into gas by 2030 and will spend 50,000 crore to create infrastructure around coal mining²⁴, with the aim of become the largest exporter of coal in the world. Many of these coal mines, being opened up for private profit, are in dense forested regions that are rich in biodiversity and Schedule V areas under the Indian Constitution²⁵. Gram Sabha permissions which are mandatory before proceeding with projects in such protected areas were not obtained and this decision which will destroy huge tracts of forest land and violate rights of indigenous communities, was made without public consultation²⁶. Meanwhile coal-fired power plants are some of the most polluting industries in the world and account for 60 percent of the total particulate matter emissions from all industry,

19 <https://theprint.in/india/our-websites-blocked-say-3-environmental-groups-campaigning-against-contentious-draft-policy/460530/>

20 https://www.huffingtonpost.in/entry/eia-2020-news-narendra-modi-government-environment_in_5f19a50dc5b6296fb3eeced

21 <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25513>

22 <https://pib.gov.in/PressReleaseDetailm.aspx?PRID=1624536>

23 <https://www.thehindu.com/news/national/narendra-modi-launches-auction-process-for-41-coal-blocks-for-commercial-mining/article31858048.ece>

24 <https://energy.economictimes.indiatimes.com/news/coal/pm-modi-says-india-will-invest-rs-20000-crore-to-convert-100-mt-of-coal-into-gas-by-2030/76441438>

25 <https://www.hindustantimes.com/india-news/coal-mine-auction-opens-up-vast-stretches-of-forests-in-central-india-for-mining-show-documents/story-1SdToixA4Dcomld0p8lzH.html>

26 <https://www.cag.org.in/blogs/coal-block-allocation-scuttling-voices-people-and-environment>

as well as 42 percent of the SO₂, 30 percent of oxides of Nitrogen and 80 percent of the mercury emissions.²⁷ For a country at the receiving end of climate change events and facing severe environmental crises, this is an entirely retrograde move which goes against the very objective of the Paris Agreement²⁸ and puts a question mark on India's commitment to reduce energy production through fossil fuels and to reduce carbon emissions by 2030. Owing to the Central Government's move to commercialise coal mining and further large-scale privatisation under the pretext of the pandemic, on August 9, 2020, one crore working people, which included farmers, scheme workers and public sector employees, responded to a call issued by 10 central labour unions calling for nationwide strike.²⁹

In order to implement the announcement made

under the Atma Nirbhar Bharat scheme, the government published a notice dated August 24, 2020 along with a note containing provisions of proposals on the website of the Ministry of Mines seeking comments/suggestions from general public, in response to which a large number of public objections were received by the Ministry.³⁰ The proposed reforms would allow further exploration of other deep-seated minerals like gold, diamond, platinum, copper, zinc and lead by the private sector and will pave the way for auctioning of at least 500 mineral blocks³¹. On January 13, 2021, the Union Cabinet approved the reform package for facilitating mining reforms by amending three laws³² and has notified the Mineral (Auction) Amendment Rules, 2021³³, seeking to amend the Mineral (Auction) Rules, 2015 in a step towards commercial auction of the mines.

Paving the way for destructive projects in the midst of a restrictive lockdown

In the initial weeks of the national lockdown, the government authorities sprang into action to consider proposals for grant of clearances to infrastructure, mining and other high-impact developmental projects affecting huge tracts of forest land, protected wild life areas and ecologically sensitive zones. On March 27, 2020 a few days into the lockdown, the National Board of Wildlife approved projects affecting wildlife areas, including a limestone mine in the

eco-sensitive zone of Gir National Park³⁴ and on April 7, 2020 alone, the National Board of Wildlife recommended 31 projects by way of video-conferencing, adversely impacting tiger reserves, wildlife sanctuaries, wildlife corridors, eco-sensitive zones, etc., 16 of which relate to linear infrastructure projects such as highways, railway lines, transmission lines that pass through protected areas.³⁵ None of these projects recommended during the heat of the pandemic³⁶,

27 <https://timesofindia.indiatimes.com/business/india-business/new-emission-norms-70-of-indias-coal-fired-power-plants-wont-meet-2022-deadline-report-says/articleshow/75865595.cms>

28 <https://www.downtoearth.org.in/interviews/energy/-no-foreign-players-will-bid-in-india-s-auction-of-coal-blocks--72014>

29 <https://www.newsclick.in/nationwide-call-save-india-observed-over-1-crore-working-people-CTUS>

30 <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1654633>

31 <https://www.hindustantimes.com/business-news/india-s-mining-sector-to-witness-reforms-flurry-of-activities-in-2021/story-HH7Crj9hFhCumGolkFLG5O.html>

32 https://www.business-standard.com/article/economy-policy/boost-to-production-and-pvt-investment-as-mining-reforms-get-green-signal-121011301250_1.html

33 <https://www.mines.gov.in/writereaddata/UploadFile/notice23012021.pdf>

34 <https://timesofindia.indiatimes.com/city/ahmedabad/nbwl-ignores-hc-order-approves-mining-in-gir-eco-sensitive-zone/articleshow/64264196.cms>

35 <https://science.thewire.in/environment/national-board-for-wildlife-prakash-javadekar-environment-ministry-destruction-protected-areas/>

36 http://forestsclearance.nic.in/writereaddata/Order_and_Release/41120122312171Minutesof57thMeetingoftheStandingCommitteeofNationalBoardforWildLifeheldon07.04.2020.pdf

were even designed to protect the wildlife and biodiversity of the affected area. The projects include a railway line through Kawal tiger corridor in Telangana requiring diversion of 168.43 ha forest land³⁷; diversion of 768 ha of forest land for the Lakhwar Vyasi hydroelectric project in Uttarakhand which will involve axing of three lakh trees³⁸; coal mining by violator Coal India Limited in Dehing Patkai Elephant Reserve in Assam³⁹ (while also considering regularising 16 years of illegal mining in the area); proposed Sharavathi Pumped storage Project in Sharavathi Lion Tailed Macaque Sanctuary in Karnataka State⁴⁰; the highway expansion through the Mollem National Park, Goa; and several such projects in dense forest areas. The latter is one part of three infrastructure linear infrastructure projects in the state of Goa – namely, double tracking of railway line, 4 laning of NH4A highway and a transmission lines project – being simultaneously proposed in the biodiverse forest region of Mollem National Park and Bhagwan Mahaveer Wildlife Sanctuary, which would not only destroy more than 60,000 trees in Goa but will fragment the forest land and wildlife corridor in the Western Ghats irreversibly.⁴¹ These linear infrastructure projects which are being seen as part of the plans envisioned by the central government to convert Goa into a coal transport hub, have led to mass

citizen protests in the form of a movement to save Mollem, in which citizens and youth of Goa have faced detentions and criminalisation⁴² while fighting the state and big corporates like Adani, Vedanta and Jindal Group with investments in the area.⁴³

Meanwhile, the Forest Advisory Committee met on April 23, 2020, to discuss the diversion of huge tracts of forest land in several projects⁴⁴. The projects placed on the agenda included the controversial Etalin Dam in Dibang Valley, Arunachal Pradesh which will require felling of 2.7 lakh trees⁴⁵. During the critical months of April-June, 2020, 10 Expert Appraisal Committees (EAC) that assess projects for their environmental impact held 15 meetings by video conferencing, reportedly spending 10 minutes per project.⁴⁶ Between April 22 and 24, 2020, the EACs cleared several high-impact infrastructure projects including the Central Vista re-development project for renovation of the existing Parliament building, in its bid to clear 191 projects amid the pandemic crisis.⁴⁷ Environmentalists and citizens have demanded⁴⁸ that the government authorities stop granting clearances to projects adding to people's anxieties during the pandemic and withdraw the clearances granted to destructive development projects, however the authorities have continued unabated.

37 http://www.forestsclearance.nic.in/writereaddata/Addinfo/0_0_81113122912181Part-I&IWLcopy.pdf

38 <https://m.dailyhunt.in/news/india/english/go+news-epaper-gonews/en/lakhwar+dam+on+yamuna+cleared+ignoring+laws+latest+articles-newsid-n196325982>

39 <https://www.thehindu.com/news/national/other-states/nbwl-nod-for-coal-mining-in-assam-elephant-reserve/article31427115.ece>

40 <https://www.article-14.com/post/india-s-wildlife-protection-in-hands-of-those-with-interests-in-its-destruction>

41 <https://www.livemint.com/news/india/inside-the-race-to-save-mollem-11607008178992.html>

42 <https://www.newsclick.in/Save-Mollem-Protests-Detention-Youths-Minors-Goa-Liberation-Day-Sparks-Outrage>

43 <https://thewire.in/environment/mormugao-port-vasco-coal-iron-ore-adani-jindal-steel-dredging>

44 <http://forestsclearance.nic.in/AgendaDetail.aspx?id=233!dis1>

45 <https://www.hindustantimes.com/india-news/2-7-lakh-trees-to-be-felled-for-hydropower-project-in-arunachal-s-dibang-valley/story-i0GVuHt8nHF4JbxeM4birM.html>

46 <https://scroll.in/article/961214/indias-environment-ministry-is-in-a-hurry-to-clear-191-projects-amid-coronavirus-crisis>

47 [http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/010520204CHXC31250thEAC\(Infra-2\)FinalMinutes.pdf](http://environmentclearance.nic.in/writereaddata/Form-1A/Minutes/010520204CHXC31250thEAC(Infra-2)FinalMinutes.pdf)

48 <https://www.hindustantimes.com/mumbai-news/withdraw-green-nods-given-during-lockdown-conservationists-to-minister/story-mz0KMoglaHT6uSzuHvMAWL.html>

Series of industrial disasters

The pandemic has witnessed a series of industrial disasters during the lockdown, attributable to planning and safety violations, impunity to offenders, contractualisation of labour, breach of regulations and even lack of maintenance leading to accidents on restarting operations during relaxation of lockdown⁴⁹. On May 7, 2020, 15 people lost their lives⁵⁰ and hundreds were left injured in an industrial disaster that took place in the LG Polymers Unit in Visakhapatnam, Andhra Pradesh, resulting in leakage of toxic Styrene gas. What is most appalling is that the unit was running and allowed to operate illegally without a valid environmental clearance from 1997 to 2019 when it submitted an application for post-facto clearance to regularise its operations⁵¹ and even expanded its operations in 2018 illegally. It is not far to seek that had the LG Polymers Unit not been allowed to operate without clearance, this unfortunate accident could have been avoided⁵². A provision to allow regularisation of projects and activities by granting post-facto clearance is being proposed as law under the Draft EIA Notification, 2020. In just three months in Visakhapatnam alone, four industrial disasters took place during the lockdown.⁵³

On the same day as the blast at LG Polymers Unit, seven workers were hospitalised and three rendered critical following a gas leak in a paper mill at Rajgarh, Chhatisgarh.⁵⁴ At least

10 workers died and over 70 were injured in a blast in the boiler of agrochemical company Yashashvi Rasayan Private Limited at Dahej in Gujarat's Bharuch district on June 3, 2020.⁵⁵ A fire was caused on June 9, 2020 due to a leak in an oil and gas well owned by Oil India Limited in Upper Assam's Baghjan which was neglected for a fortnight.⁵⁶ On July 1, 2020, a boiler blast in the Unit 5 of the Thermal Power Station-2 of the NLC India Limited at Neyveli, Tamil Nadu, caused the death of 13 workers, with 10 more critically injured, attributable to cost-cutting and poor safety standards in the unit.⁵⁷ A blast in Unit 6, two months before this incident, had already claimed five lives and injured three people critically. In Gujarat alone, between April and July 2020 when industries were opening up post-lockdown, 51 industrial accidents took place, in which 74 workers died.⁵⁸ In a latest incident on January 6, 2021, four contractual workers of Star Constructions working in the Coal Chemicals Department of SAIL, Rourkela Steel Plant, Orissa lost their lives due to inhalation of toxic gas.⁵⁹ Without strict compliance to regulations and adherence to safety protocols, constant monitoring and inspection by government authorities, prosecution of violators, proper maintenance and planning of units and employment of skilled manpower⁶⁰, the possibility of such accidents taking place looms large as more and more industries open post lockdown.

49 <https://www.thehindubusinessline.com/news/post-lockdown-industrial-accidents-have-killed-75-people-in-india-global-workers-union/article32014407.ece>

50 <https://www.newindianexpress.com/states/andhra-pradesh/2020/jun/09/58-year-old-lg-polymers-gas-leak-victim-dies-in-visakhapatnam-2154128.html>

51 <https://indianexpress.com/article/india/vizag-gas-leak-lg-polymers-india-green-nod-6399440/>

52 https://www.downtoearth.org.in/dte-infographics/vizag_gas_leak/index.html

53 <https://www.thehindu.com/news/national/andhra-pradesh/fourth-industrial-accident-in-vizag-in-3-months/article32249904.ece>

54 <https://www.firstpost.com/india/seven-workers-at-paper-mill-in-chhattisgarh-raigarh-hospitalised-after-gas-leakage-three-in-critical-condition-says-police-official-8343331.html>

55 <https://thewire.in/rights/death-toll-rises-to-10-in-bharuch-chemical-factory-blast>

56 <https://www.downtoearth.org.in/news/environment/leaking-oil-india-gas-well-near-assam-s-dibru-saikhowa-national-park-catches-fire-71662>

57 <https://scroll.in/article/966998/the-reasons-for-the-boiler-blast-at-neyveli-power-plant-in-tamil-nadu>

58 <https://indianexpress.com/article/india/post-lockdown-74-workers-killed-in-51-industrial-accidents-in-state-6564682/>

59 <https://www.thehindu.com/news/national/other-states/4-workers-die-of-exposure-to-toxic-gas-in-rourkela-steel-plant/article33511502.ece>

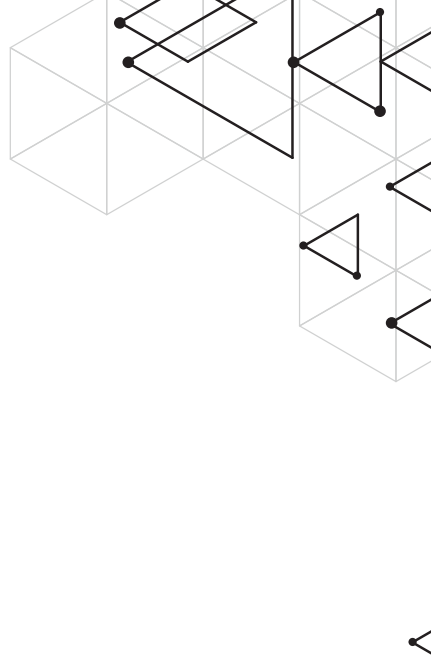
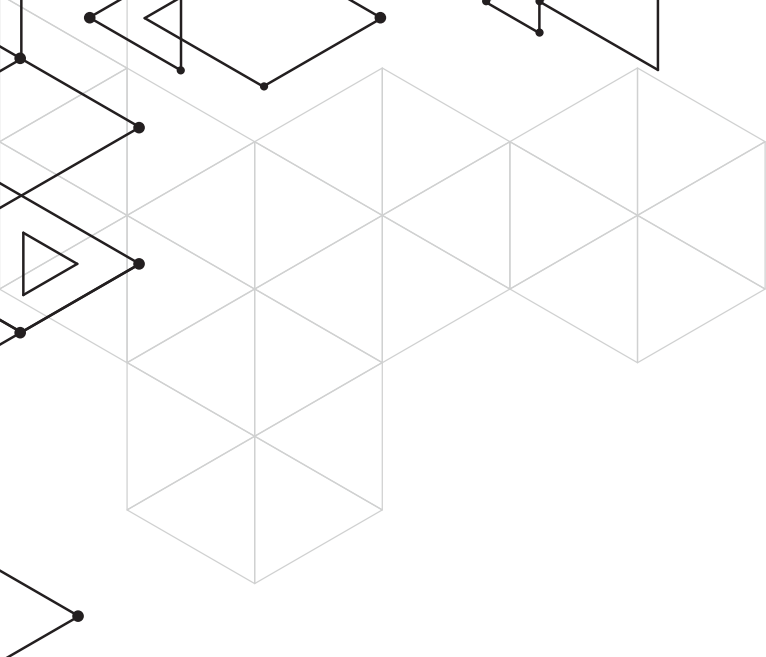
60 <https://www.downtoearth.org.in/blog/governance/prioritise-safety-in-industry-during-the-covid-19-era-71067>

In conclusion, on this year of destruction

Environment protection regulations stand in the way of destructive development and diversion of natural resources. It is hence, not surprising that the demands to deregulate often and always come from business interests, since their profit model depends on the commercial exploitation of resources. The Covid-19 global pandemic presented a perfect opportunity for the Indian Government to introduce policy dilutions and to push destructive projects to benefit businesses. The discourse on the economic impact of Covid-19 on businesses and the national economy created an enabling environment in which protective policy was meted the worst blows. The restrictive lockdown imposed by the government to contain spread of the infection, enabled the government to avoid public scrutiny and consultation on their policy decisions. The proposed legislative changes and the developmental decisions taken during the pandemic are not only environmentally unfriendly but also unscientific, retrograde and capable of causing unparalleled and irreparable damage for times to come. These changes further

the destructive developmental agenda already in praxis and under which environmental policy has seen steady dilutions in the last several years in the name of “ease of doing business” (EODB). While India’s ranking in the World Bank’s Doing Business, 2020 report has risen to 63 in 2020⁶¹ from 130 in just four years, this jump attributed to regulatory reforms that ease construction permits, entrepreneurship and trading, is at the cost of India’s environment and rights of the people. The pandemic ought to have served as a wake-up call to the State to prioritise climate concerns, protect biodiversity and ensure intergenerational equity, instead, it has presented itself as a site of unfettered destruction. If we do not acknowledge and remedy these wrongs, reverse the dilutions to environmental policy and introduce stringent protections following a thorough review of the existing legal framework, it will be too late for us to undo the damage, much of it being unaccounted.

61 <http://documents1.worldbank.org/curated/en/688761571934946384/pdf/Doing-Business-2020-Comparing-Business-Regulation-in-190-Economies.pdf>



Part 3

Sectoral Issues

Chapter 5:

Could This be a New Dawn for the Rajasthan Sandstone Industry?

Dr Rana Sengupta¹ and Krishnendu Mukherjee²

The United States Department of Labor's Bureau of International Labour Affairs (ILAB) included Indian Sandstone in its 2020 *List of Goods Produced by Child Labour and Forced Labour* ("the List") for the first time.³ It is worth setting out the findings contained in the List in full. In relation to child labour, the List states:

"There are reports that children ages 6 to 17 produce sandstone in India. In Rajasthan, which produces 90 percent of India's sandstone, boys and girls as young as age 6 or 7 work chiselling sandstone cobblestones, and boys ages 13 to 17 quarry sandstone. Children from migrant families or children belonging to scheduled castes, a socially disadvantaged group in India, are particularly vulnerable to child labor in producing sandstone. Based on estimates from international organizations, NGOs, and academic researchers, thousands of children work in Rajasthan's sandstone quarries. Children working in the quarries are rarely given protective equipment such as goggles or masks, and are exposed to hazards including severe injury from stone chips; hearing loss from drilling and blasting noise; extreme heat; and inhalation of silica dust, which can lead to chronic lung disease and death. Some children also work at night or operate dangerous equipment."⁴

In relation to forced labour, the List finds:

"There are reports that adult workers are forced to work in the production of sandstone in India.

Migrant workers and individuals from scheduled castes, a socially disadvantaged group in India, are especially vulnerable to forced labor in sandstone quarries. According to international organizations, NGOs, and academic researchers, incidents of forced labor and debt bondage are widespread in sandstone quarries in Rajasthan, which is the source of 90 percent of India's sandstone. Migrant and marginalized workers are lured to the quarries with the promise of well-paying jobs, only to work in dangerous conditions for pay at a daily or per piece rate that is too low to manage basic expenses. Sandstone quarry workers are highly vulnerable to silicosis, a fatal lung disease caused by breathing the dust produced by drilling or breaking quartz-rich rocks. In many cases quarry owners give workers advances and loans to pay for growing household and medical expenses related to silicosis. Quarry owners withhold workers' wages as repayment for this debt, which in turn continuously accumulates due to compound interest and additional expenses. Employers record attendance informally and rarely issue written accounts of debt owed, enabling quarry owners to deduct money from the workers' wages and inflate debts. When an indebted worker grows too ill to work or dies, this debt is transferred to his or her family, who must forfeit property or themselves labor in the quarry to pay off the debt."⁵

The fact that the Rajasthan state recognised the prevalence of silicosis in legislation as far back

1 Managing Partner of Mines Labour Protection Campaign (MLPC)

2 Barrister and advocate at Doughty Street Chambers, London. He is also director and co-founder of Ethical Certification for Trading LLP, Jodhpur

3 Sweat and Toil, Asking the Right Questions to Trace Labor Abuses in Global Supply Chains, Department of Labour, USA, September, 2020, available on https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2019_Sweat_And_Toil_Magazine.pdf (accessed on 28th November, 2020)

4 Ibid, page 110

5 Ibid, page 111

as 1955⁶, indicates that these labour violations are both *historic* and *endemic*. It is this level of exploitation and precariousness of work that has been graphically seen during the Covid-19 pandemic, where workers immediately lost their jobs, were left without support and made more vulnerable to the virus because of silicosis and other dust-related pneumoconiosis.⁷ The findings in the List were made following consideration of a number of other reports on the Rajasthan sandstone quarries, including the American Bar Association Centre for Human Rights Report (ABAHR), “*Tainted Stones: Bonded Labour and Child Labour in the India-US Sandstone Supply Chain*”, August 2020⁸ (the Report). The Report itself relied heavily on the work of NGOs and activists who have been working on the ground for many years, in some cases, even decades. In particular, the Report has relied on the work of Mines Labour Protection Campaign (MLPC), a not-for-profit, set up in 1994,⁹ and Ethical Certification for Trading LLP (ECT),¹⁰ a human rights due diligence company, which conducted in-depth interviews with 120 mineworkers across three districts in 2019.¹¹ It is understood that the work of both organisations was highly persuasive in obtaining the List.

The purpose of the List is to:

“provide specific, actionable information to governments, businesses, non-profits, and other key actors in the global economy on how to combat child labor and forced labor in more than 145 countries and territories. Policymakers and companies can rely on these reports to conduct risk assessments, perform due diligence on supply chains, and develop strategies to address child labor and forced labor.”¹²

The added value of the List may be, therefore, to highlight on a global level what was already known on a local and national level, and try and apply the United Nations Guiding Principles on Business and Human Rights (UNGP). This is a voluntary instrument consisting of 31 principles implementing the ‘Protect, Respect and Remedy’ framework on the issue of human rights and transnational corporations and other business enterprises. This requires States to protect against human rights abuses; corporations to respect human rights; and greater access to rights-holders to effective remedy. The UNGP was endorsed by the UN Human Rights Council in 2011. Looking at the sandstone industry through the lens of the UNGP, we can highlight the deficiencies in its application nearly 10 years after the principles were formally adopted.

State’s duty to protect

The Report highlights numerous deficiencies in the duty of the Indian State to protect against human rights abuses in the Rajasthan sandstone industry. Take for example one significant issue.

A major lacuna in protection is caused in India’s federal system by the fact that the responsibility for providing the licences for operation lies with Rajasthan state’s mining department, whilst

6 Rajasthan Silicosis Rules, 1955, <http://www.bareactslive.com/RAJ/RJ515.HTM>

7 Rajasthan Miners Worst-hit Among Labourers During COVID-19 Lockdown, May 17, 2020

<https://www.outlookindia.com/website/story/india-news-rajasthan-miners-worst-hit-among-labourers-during-covid-19-lockdown/352944> (accessed on 18th December, 2020)

8 India Tainted Stones: Bonded Labor and Child Labor in the India-U.S. Sandstone Supply Chain, August 2020, available on https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/tainted-stones-rajasthan-2020.pdf (accessed on 18th December, 2020)

9 Mine Labour Protection Campaign Trust, please see <https://minelabour.org/> (accessed on 18th December, 2020)

10 Ethical Trading, <http://www.ethicaltrading.org/> (accessed on 18th December, 2020)

11 Ibid page 6.

12 Sweat and Toil, Forward, Asking the Right Questions to Trace Labor Abuses in Global Supply Chains, Department of Labour, USA, September, 2020, available on https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2019_Sweat_And_Toil_Magazine.pdf

the registration for mines safety, and therefore the provisions for keeping records of workers and protecting their safety, lies with the central Director General of Mines Safety (DGMS). This is highlighted in the Report in the following way:

“The unlicensed and unregulated nature of the industry has driven thousands of laborers in poverty by keeping them outside the gambit of law. Lack of proper documentation and formal contracts of employment prevents them from being recognized as valuable contributors to the economy of the country. As a first step, the mines and mineworkers need to be registered so that they are covered under the Mines Act, 1952 and Director General of Mines Safety (DGMS), the apex body responsible for the well-being of the mine workers in the country.”¹³

The Report cites the fact that just over 10 percent of mining leases are registered with the DGMS, leaving almost 70 percent of workers unprotected by the central government.¹⁴ Many of the recommendations in the Report simply require the effective implementation of already existing laws that penalise bonded labour, child bonded labour, child labour, sexual harassment, caste discrimination and other labour violations in the industry.¹⁵ A recent Rajasthan State Notification

requiring mines to keep lists of the workers who are employed has not been implemented. Such a situation externalises the costs of production and allows the sandstone to be sold cheaper domestically and abroad, including the US, UK, Belgium and France.¹⁶ This of course occurs in other Indian industries, and it is worth noting, in the case of a violation in the garment industry, why external commentators believe India is such an attractive production hub:¹⁷

“Allegations such as these are not confined to the garment industry. Low wages and weak labour laws have long made India an attractive place for foreign brands looking to outsource work. Unions are rare and virtually absent in the private sector, making informal and contract workers especially vulnerable. While inspections are mandatory, rampant corruption and a sluggish system has meant that factories are rarely held to account for breaking the law.”

Organisations such as MLPC will continue to campaign for better enforcement of laws in the sandstone sector, but for India to become a developed country, there is simply no alternative than putting resources into improving its responsibility to protect all its own citizens.

Corporations’ duty to respect human rights

The Report recommends that US companies that procure sandstone from India conduct human rights and environmental due diligence (HREDD) in line with US law, the UNGP, OECD Guidelines, and ILO principles.¹⁸ This is the process set out in the UNGP for enterprises to proactively manage potential and actual adverse human

rights impacts with which they are involved. The UNGP outline the four-step process, an assessment of human rights violations caused or contributed by a company; acting on the findings; tracking responses and communicating how the impacts are addressed. It is already part of US law and there are proposals for an EU law on

13 Ibid https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/tainted-stones-rajasthan-2020.pdf, page 32.

14 Ibid, page 32

15 Ibid, page 34

16 Ibid, page 32

17 Indian factory workers supplying major brands allege routine exploitation, November 17,2020, available on <https://www.bbc.co.uk/news/world-asia-54960346> (accessed on 18th December, 2020)

18 Op cit. https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/tainted-stones-rajasthan-2020.pdf, page 35.

mandatory HREDD for which there is an on-going consultation,¹⁹ which MLPC and ECT will be involved in. However, the Rajasthan sandstone experience provides us with a basis on which to argue what should be the *sine qua non* of any law, which a failure to properly follow without reasonable justification results in sanctions.²⁰

We would suggest that these sanctions are not only financial, but also administrative, including suspension of licence to operate. We would also commend that India could lead the world in being the first country from the so-called developing world to pass a law mandating HREDD also.

Non state-based grievance mechanism (An assessment tool)

The Rajasthan sandstone industry is exemplified by its lack of transparency, where it is difficult to identify those involved in buyer-supplier relationships. As a first step to identifying suppliers and human rights violations, buyers and suppliers should provide workers with an industry and/or multi-stakeholder based non state-based

grievance mechanism with safeguards against retaliation as a source of continuous learning.²¹ Once suppliers have been identified, buyers should produce a list of approved Tier 1 and Tier 2 suppliers, with the goal of reducing and ultimately eliminating sub-contracting and publish its list of suppliers and sub-contractors annually.

Supply chain compliance (Acting on findings and tracking responses)

The buyer should contact all suppliers and sub-contractors on the list and inform them of designated parameters for passing spot checks and audits such as, payment of the minimum wage; proof of working hours; right to work documentation; health and safety; no unauthorised sub-contracting (to include both sub-contracting without buyer's knowledge as well as to non-approved companies); and a requirement of keeping a copy of all essential paperwork on the premises available, for immediate inspection by auditors and in-house compliance teams. The parameters should be

clearly categorised as zero-tolerance, critical, major and minor. The onus is therefore on the supplier to show that they have complied, not on the buyer to show that they have not. If there is insufficient evidence for a supplier to show compliance with a particular measure, this will be recorded as 'fail' and appropriate measures taken. The buyer should form a *Supply Chain Compliance Committee* in order to create a supply chain road map and ensure that *effective* third-party audits are supplemented by its own in-house compliance spot-checks.

Leverage, and communicating how the impacts are addressed (Improving brand image)

The UNGP advocate a concept known as 'leverage'. Leverage is an advantage that gives a company the power to influence others through

its business relationships. Through building leverage, a company(s) can improve its ability to deal with these violations. In the case of

¹⁹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/public-consultation>

²⁰ See Robert McCorquodale and Martijn Scheltema, Core Elements of an EU Regulation on Mandatory Human Rights and Environmental Due Diligence, <https://media.business-humanrights.org/media/documents/94663bf5d5e81b55fa716bc9c31bd0293513ba61.pdf>

²¹ See Policy Objective 13 of the Report to the Human Rights Council, available on https://www.ohchr.org/Documents/Issues/Business/ARP/ARPIII_MainReport_AdvanceEditedVersion.pdf

child labour, this may mean engaging with the supplier to improve wages, limit working hours, allow workers to organise and find educational options for the children or hire other members of the households. An effective engagement with suppliers leading to an incremental improvement in the above conditions, if communicated widely, can only enhance the brand image of a company, both buyers and suppliers. However, a failure to effectively engage can only lead to their brand image being tarnished and shareholder value being diminished. An example of this is when Boohoo Group PLC (Boohoo) shares dove nearly 18 percent on concerns that revelations about poor conditions in Leicester garment factories might hit sales growth and increase costs.²² The allegations led Boohoo to commission an independent inquiry²³ by Alison Levitt QC, a leading English barrister, which found *inter alia* that Boohoo's monitoring of even its UK-based supply chain had been inadequate for many years. However, it

is probably the following paragraph which is an important comment on how the law is hardening and what companies across the globe are required to do in order to carry on procuring goods from across the world:

“The failure to recognise the damage to shareholders’ interests caused by not getting a proper grip on compliance issues even in the face of numerous warnings is one upon which the Board must reflect. I have concluded that what is needed is a realignment of the Board’s priorities to recognise that running a great public company is not simply about profit. When the Chief Executive speaks warmly about taking the Boohoo workforce with them on the journey, the Board should ensure that those who make the clothes upon which their profits are founded are allowed to share in that success too. This is not merely a moral imperative; it makes sound business sense.”²⁴

Access to effective remedy

In 75 years after Indian independence, and in 65 years after the health and safety conditions of workers in the Rajasthan sandstone industry were first recognised in subordinate legislation, little has changed. The litmus test of whether we are, *in fact*, ‘building back better’ after the Covid pandemic, is a tangible and recorded improvement in the plight of these most vulnerable of workers, otherwise the words are just empty rhetoric. An effective remedy is something that is most needed by the workers who were interviewed by ECT, with over 50 percent unaware of their most basic rights²⁵, and it would be hoped that this could be achieved through the state-based and non state-based mechanisms outlined above. Ultimately, it should be the needs of the affected rights-holders that

should be the guiding principle in the response to human rights and environmental violations. The Report begins with a quote attributed to a Dalit miner of sandstone quarries from the Sukhpura village, Bijolia district in Rajasthan when asked about his knowledge of the supply chain of sandstones mined in Rajasthan:

“All that we wish for is that someday our kids do not have to work in the mines and our employers be held accountable for the expenses we incur in fighting occupational injuries and diseases.”²⁶

We agree.

22 Sustainable Corporate Governance, please see <https://www.theguardian.com/business/2020/jul/13/boohoo-shares-drop-18-as-new-leicester-factory-reports-threaten-sales> (accessed on 18th December, 2020)

23 Alison Levitt QC, Independent Review into the boohoo Group PLC’s Leicester supply chain, September 24, 2020, available on <https://www.boohooplc.com/sites/boohoo-corp/files/final-report-open-version-24.9.2020.pdf> (accessed on 18th December, 2020)

24 Ibid. page 216

25 Op cit. https://www.americanbar.org/content/dam/aba/administrative/human_rights/justice-defenders/tainted-stones-rajasthan-2020.pdf, page 12.

26 Ibid, page 3

Chapter 6:

Failure to Recognise Farmers' Claims with Regard to Land Acquisition: The Case of Transmission Lines

Easan¹

Context

Over the years, there has been rampant increase in infrastructural development projects in India. One such project, which has seen a surge, is that of the overhead transmission power lines. However, like in the case of many other development projects, we tend to ignore the diverse hazards that come along with these projects. With various national and international conventions like the United Nations Guiding Principles on Business and Human Rights, National Action Plan on Business and Human Rights in place, it is the responsibility of every individual involved in businesses to act responsibly and transparently. In the state of Tamil Nadu, there are many private sector companies that are running projects to produce electricity using non-conventional methods such as windfarms, solar energy, etc. The electricity thus produced, is brought to the demanding markets by power lines passing through high-tension overhead towers, which are installed and pass through agricultural fields and lands of

small farmers/land owners. Some of the recent transmission projects are listed below:

1. 400 KV DC Line with Quad Moose ACSR – Line 1 – from Rasipalayam 400 KV SS to Dharmapuri (Palavadi) 400 KV SS Tamil Nadu Transmission Corporation Limited (TANTRANSCO)
2. 400 KV DC Line with Quad Moose ACSR – Line 2 – from Rasipalayam 400 KV SS to Dharmapuri (Palavadi) 400 KV SS (TANTRANSCO)
3. 230 KV SC Line on DC Towers from Ingur 230 KV SS to Arasur PGCIL 400 KV SS (TANTRANSCO)
4. Raigarh to Pugalur 6000 MV HVDC Line Power Grid Corporation of India Limited (PGCIL)
5. Pugalur HVDC Station – Arasur 400 KV (Quad) D/C Line (PGCIL)

Impacts of power transmission lines

Power Transmission Lines have been known to cause a great deal of damage not only to the land, but also to human health. A few key impacts are listed below:

1. **Damage caused to the land:** Fragmentation and infertility of agricultural lands, existing bore wells, wells and water tanks are rendered un-usable.²
2. **Damage caused at individual level:** Loss of

marketability of the land and reduction in yield³; restriction in cultivation; diminution/fall of land value (present & future); problems in family in situation of family partition; rejection of loan against property by banks, financial institutions or private bankers;⁴ difficulty in using personal roadways; lack of adequate compensation for the towers and tower lines by the licensees.

1 Advocate at Madras High Court and president of Farmers Protection Association

2 Available at <https://countercurrents.org/2017/01/the-fear-of-bhangar-a-case-against-power-grid-and-high-voltage-transmission-line/>

3 <https://timesofindia.indiatimes.com/blogs/tracking-indian-communities/high-tension-tamil-nadu-in-a-power-struggle-with-farmers/>

4 <https://www.thenewsminute.com/article/why-farmers-13-tn-districts-are-opposing-power-transmission-towers-their-lands-93669>

3. **Damage caused to human health:** The impact of the transmission lines on health can be both short or long term. Short term health hazards include headaches, fatigue, digestive disorders, nausea and other symptoms of biological disorders. One notable exception to this is the association with childhood leukemia, which the International Agency for Research on Cancer regards as sufficiently well established to rate extremely low frequency magnetic fields as a “possible” human carcinogen.⁵
4. **Damage caused to the environment:** During

the implementation of the above mentioned projects, many trees (including fruit-bearing & non-fruit-bearing) were cut down, and the “Licensees” never considered any other options of conserving those trees such as relocating the existing trees, etc. These power lines also cause great damage to the wildlife in surrounding areas.⁶ Now, when climate change is a globally growing concern, such unchecked felling of trees will result in further ecological disasters. Such scenarios where, in the name of development, the environment is being exploited, cannot be sustainable.

What Farmers Have to Pay in Return for Implementation of the Projects

There have been several contentions on the diverse impacts of the transmission lines, ranging from the impact on human health to environment. In addition to the impacts caused due to the transmission lines, there are conditions laid in front of farmers before they implement these projects. The conditions laid are such that they infringe the basic rights of the farmers, leaving the farmers with large parts of their land rendered useless – they are prohibited from farming or cannot raise any structure or dig under the tower as well as adjoining the tower, there are restrictions in laying of bore wells even for the purpose of irrigation.²

Lack of studies highlighting the effects of electro magnetic field (emf) radiation

Although there seems to be awareness amongst the licensees (regarding the projects mentioned above) about the effects of EMF radiation, they do not acknowledge the ill-effects of this radiation. In addition to the already existent non-acceptance amongst companies, the lack of studies highlighting the effects of EMF radiation has also worked in their favor. The reasons for imposing restrictions on growing trees beneath the transmission lines, is due to the electro-magnetic radiation and electric field induction. There have been instances shared by land owners of tube lights lighting up in their hands whenever they pass beneath the transmission lines. Land owners have also shared such instances with the

“Licensees” and concerned District Collectors, along with photographic proof, but the concerned authorities turned a blind-eye towards these effects.

To prevent health-relevant interactions with the Electric Fields, International Commission on Non-Ionizing Radiation Protocol (ICNIRP) recommends limiting exposure to such fields so that the threshold at which the interactions between the body and the external electric and magnetic field shows adverse effects is never reached inside the body.⁷ But the EMF radiation levels of the present transmission projects exceeds the ICNIRP recommendations.

5 Available at: <https://countercurrents.org/2017/01/the-fear-of-bhangar-a-case-against-power-grid-and-high-voltage-transmission-line/>

6 <https://thewire.in/environment/environment-ministry-power-lines-elephants-wildlife>

7 Available at: https://journals.lww.com/healthphysics/Fulltext/2020/05000/Guidelines_for_Limiting_Exposure_to_2.aspx

In the public domain, PGCIL mentions that it conducts Environmental Impact Assessments/ Studies.⁸ However, when several Right To Information applications were filed before the National Environmental Engineering Research Institute (NEERI), All India Institute of Medical

Sciences (AIIMS), etc. seeking information about existence of any study to ascertain the extent of ill effects of the EMF of transmission lines, their replies to those RTI applications states that no such studies have been conducted in India.

Legal rights and compensation denied to the affected farmers/land owners

Across India, there are a range of legal challenges faced by farmers and land owners whose lands fall under power transmission lines. The following is a list of some of these challenges, which were documented over the course of our work as lawyers supporting these affected groups.

- **Compensation for diminution of land value as mentioned under Section 16 of the Indian Telegraph Act and Rule 3(2) of the Works of Licensees Rules, 2006**

Companies shrug from their responsibility of providing compensation to the affected people, as entitled under the provisions mentioned above. The compensation is for the damages caused while implementing the power transmission lines as well as for the inability of farmers to use their land. In cases where the companies do pay compensation, it is not paid in full and farmers forced to take whatever amount they are offered, with no avenue for redressal.⁹

Additionally, at present compensation is only provided for crops, base area and corridor area. Even these compensations are computed and calculated in a restrictive manner.

- **Annual rent**

As per the Works of Licensees Rules, 2006, land owners can avail annual rent as stipulated under Rule 3(2). However, during our discussions with the affected farmers and land owners, we found that there was no implementation of this rule and none of the eligible owners received any annual

rent as stated by the rule.

- **Arbitrary invocation of Section: 164 of the Electricity Act, 2003**

Companies often illegally & arbitrarily invoke Section 164 of the Electricity Act, 2003¹⁰ even though they are not allowed to do so as the “Prior Approval” were provided under section 68(1) of the Electricity Act, 2003. This was done by PGCIL & TANTRANSCO to use the authoritarian provisions of the Indian Telegraph Act, 1885 but hiding under the veil of “Public Interest”.

- **No proper notification for erecting tower lines**

The land owners are never properly notified about the land details of the tower lines or towers. They are made to object blindly, so that their objections could be set aside as per the whims & fancies of Companies. The Paper Publications notify and inform that the “Licensees” called for observations/representations/objections from the potential affected land owners to ascertain whether they are an affected land owner or not. However, the essential details of the land such as survey number, revenue village name seem to be intentionally withheld by the “Licensees”. In the absence of disclosure of such important details related to land it is almost impossible for any individual to make any objections or observations. So, it is evident that the “Licensees” were trying to attract observations/representations/objections, which would never arise, thus favoring them. This violates the Principles of Natural Justice –

8 https://www.powergridindia.com/sites/default/files/NSE_AR_dt29082020.pdf

9 <https://www.landconflictwatch.org/conflicts/farmers-in-karnataka-s-tumkur-allege-discrimination-in-land-relief-for-powergrid-project>

10 Available at: <http://www.cercind.gov.in/act-with-amendment.pdf>

that “no one should be the judge in their own case”. In acquisition proceedings enshrined in the Petroleum & Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962, the Metro Railways (Construction of Works) Act, 1978, The Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, etc., it has been stated that the competent authority to hear the objections will be a third party (usually the revenue authorities), not the implementing officials themselves.

Even in the absence of any specific legal provision which mandates for identity of the land, it is the duty of the authority to specifically identify the land which may ultimately be affected by the said “projects” as observed in one of the judgements by Supreme Court - *Om Prakash Sharma & Ors*

*v. M.P. Audyogik Kendra Vikas Nigam & Ors.*¹¹, where it was held that notification to be vitiated due to the reason that the said notification was vague and neither description of the lands, i.e., survey number or khasra number was given, nor names of land owners whose lands were sought to be acquired.

- **Non-disclosure of project-related information**

The land owners are not provided with project related vital land documents such as route maps, etc. The project routes are often altered as per the whims and fancies of the Licensees. This non-disclosure of documents aids companies to get away with several violations. On the contrary, they share all the documentation and information with the funding agencies/foreign banks.

Overhead high-tension towers vs. Underground cables

Many countries are turning towards underground cables. Even Indian states like Mumbai, Delhi and Kerala have shifted to this system of underground cables. While the initial cost of installing the underground cable may be higher, the transmission loss is lower in such scenarios.¹² A report by World Bank in December, 2018 states that India loses 4 percent of its GDP due to inefficiency in power distribution, ranking it 80th among 137 economies in terms of “reliability of power supply”.¹³ India has the distinction of losing 20 percent of electricity in transmission and distribution, one of the highest in the world.¹⁴ As mentioned in the magazine, “The Electrical India”¹⁵ (One of the oldest magazine on power and electrical products in India), it is interesting to note that they discuss the advantages of moving towards underground cables for which the initial lower cost of installation of the

overhead transmission may be higher as against the overhead transmission which demands for less installation cost however followed by higher maintenance cost. Thinking of the pros and cons of the underground cables, the pros seems to be wide in nature, thus benefitting the environment, wildlife, human beings, however, the cons are largely cost related only.¹⁶

Even the Hon’ble Prime Minister called upon for ‘**One World, One Sun, One Grid**’ - A Grid with a Capacity of **1100 kV** for flow of Electricity across Continents, connecting a) Djibouti - Kerala [3600 Kms of Underground Cables] & b) Porbandar - Djibouti (via Saudi Arabia) [3200 Kms of Underground Cables]. However, the affected land owners/farmers’ proposal of implementing the project through underground cables, were simply snubbed by the “Licensees” that the project cannot be implemented with

11 Available at: <https://www.lawyerservices.in/Om-Prakash-Sharma-and-Others-Versus-MP-Audyogik-Kendra-Vikas-Nigam-and-Others-2004-10-06>

12 https://www.researchgate.net/publication/224697827_The_Impact_of_Underground_Cables_on_Power_Transmission_and_Distribution_Networks

13 <https://www.worldbank.org/en/news/feature/2018/12/17/new-report-power-sector-distortions-cost-india-billions>

14 Available at: <https://thewire.in/energy/underground-electricity-cables-odisha-cyclone-fani>

15 Available at: <https://www.electricalindia.in/package-underground-cables-underground-smart-grid/>

16 *ibid*

underground cables, which is factually wrong. In the state of Kerala, 400 KV Transmission is presently being implemented using underground cables, and there is also an International Power

Transmission Project Proposal (525 KV Capacity) connecting Madurai with Anuradhapura, Sri Lanka.

Table 1: Comparison between Overhead high-tension towers and Underground cables

Indicators	Over Head High Tension Towers	UG Cables
Damages to Agricultural Lands	High. Rendering land useless	None
Transmission Loss	10%. Costing around 42,000 Crores p.a.	None
EMF Effects - Risks	High Risk	None
Future Food Security	High Risk	None
Initial Implementation Cost	1 time	2.5 times
Technology	Almost outdated	Latest

The struggle continues

For these issues in the state of Tamil Nadu, nine Farmers Associations including AIKS Tamil Nadu Branch joined forces and formed a federation with a vision to “Ban Towerlines, Go Cable”. With the efforts taken up by the federation, nearly 11 power transmission projects in 13 districts of the state, which were intended to be implemented by overhead towers, were stopped. Several rallies, awareness camps, protests and state-level conventions were held with the participation of more than 7000 farmers and representatives from different political parties. The farmers remain undeterred and determined in their legal demands and strive to continue their fight for rights, despite the various threats and harassment that they face from different wings of the State and company officials.

Annexure

1. WORKS OF LICENSEES RULES, 2006

As per these Rules, Rule: 3(2), the District Magistrate i.e. the District Collector is vested with ample authority to fix & provide the compensation for the Land to the tune as he thinks fit in his opinion. The area taken up for the calculation for the diminution of land value, is not restricted only to the tower leg area or the line corridor area, but the entire extent of the Land on which the tower is erected or through which the wirelines are

stringed shall be taken in to account.

2. THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

In addition to the above Rules, as per the provisions of this Act, the compensation amount shall be computed based on the market value not on the guideline value. Even that compensation amount may be increased 3-4 times.

3. WORKS OF LICENSEES RULES, 2006

As per these Rules, the District Magistrate i.e. the District Collector can also fix the annual rent, for the land upon which the tower is being erected or the wirelines being stringed.

Chapter 7:

Safety First: The responsibility of India's Auto Industry to Save Workers from Life-Altering Accidents and Improve Worker Productivity

Sandeep Sachdeva¹ and Chitra Khanna²

First, the invisible people

“More than 20 workers in auto sector factories lose their hands or fingers every day just in Gurgaon.”³

Behind the statistics, there's people.

People like Shyam Dev Pandit, 22⁴, who chooses to live only on the top floor of a building, though the space can simmer in summer. He says he wants to avoid people because they can make hurtful comments about his handicap.

He lost the middle and index fingers of his left hand to a power press machine in an auto-component making factory in Manesar.

Then there is Neetu Devi, 37,⁵ who met with accidents in 2013, 2017 and 2019 while working on a power press machine, losing a finger each time. Yet, she continues to operate this machine to support her family.

On the midsummer afternoon when Shyam and Neetu shared their stories, in a sprawling shantytown of patchwork homes, inside their sweltering rooms, their battles felt epic – battles of dream versus despair.

Indian auto industry and the productivity vs. safety debate

Shyam's and Neetu's stories echo that of thousands, if not lacs, of others, who are part of a workforce of 8 million in India's mammoth auto industry, which is a key driver of Indian's GDP. The industry's contribution to India's growth is ever-increasing: As of September 2020, it contributed 7.1% to India's GDP⁶ and 22% to its manufacturing GDP⁷, a number that is expected to increase to 40% of the manufacturing GDP.⁸ Any action, good or bad, taken by the industry makes a dramatic difference to the Indian people and it is therefore the industry's – specifically the brands' –

responsibility to create safer working conditions in its supply chain.

For an industry that is eyeing a top spot on the global stage, is worker safety and therefore better working conditions an enabler or as some believe compromise on worker safety in supply chain should be tolerated to achieve the country's sustainable growth?

In a research⁹ done on labour productivity in the Indian construction industry, which is not even as formal as the auto- sector, worker safety

1 Co-founder & CEO, Safe in India Foundation

2 Chitra Khanna, Head of Safety initiative, Safe in India Foundation

3 <https://scroll.in/article/692477/your-car-has-been-built-on-an-assembly-line-of-broken-fingers>

4 <https://www.youtube.com/watch?v=1yvBEot9BL0&t=3s>

5 <https://www.youtube.com/watch?v=ckoSqg0kLAI>

6 <https://www.investindia.gov.in/sector/automobile>

7 <https://www.makeinindia.com/article/-/v/make-in-india-sector-survey-automobile>

8 <https://www.insightsonindia.com/2019/12/02/automotive-mission-plan>

9 <http://www.ijesrt.com/issues/pdf/file/Archive-2018/April-2018/71.pdf>

was among the top attributes that negatively impact productivity. A National Safety Council (US-based) estimate¹⁰ for 2018 shows the cost and work days lost due to workplace accidents; while the numbers may not be similar for Indian manufacturing, the fact that the total cost of work injuries was \$170.8 billion and that 103,000,000 worker days were lost due to work-related injuries sheds light on the negative impact that work injuries have on productivity.

A worker injury, while obviously a personal tragedy, also results in high costs to both businesses and to the country. Such direct costs include lost labour time, loss of skills, stoppage costs, and medical/compensation costs. Injuries also result in less recognized, especially in the lower tiers of supply chain managed by relatively

less professional owners and managers, significant indirect costs of business interruption, quality, low morale, increased compliance related costs, etc. Automobile Component Manufacturing Association (ACMA) Centre for Technology states that “in case of an accident, indirect cost is six times the direct expenses”; we believe that this is an understatement.

As IV Rao, former Executive Director (R&D) of Maruti-Suzuki says, “factories that deliver good quality are also better run in most operational practices, including better working conditions and safe working practices”.

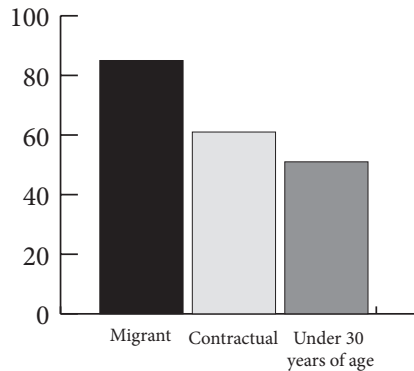
There is clearly an incentive for auto brands in India to do more in ensuring worker safety across their supply chains.

An injury-prone supply chain in the Indian auto-sector does not help anyone

On the contrary, the Indian auto industry might as well be an assembly line of broken hands or fingers.

Just one civil society organization, Safe in India Foundation, has assisted over 2,000 injured workers in only Gurgaon in around four years since setting up their first Worker Assistance Centre in December 2016.

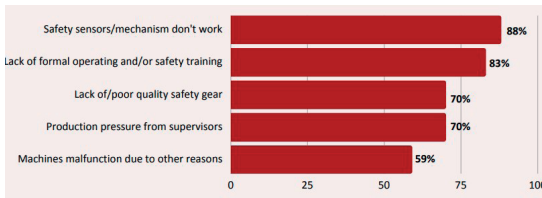
In its annual report, CRUSHED 2020,¹¹ Safe in India details several aspects of these injuries. We take you back, once again, to Shyam Dev Pandit. Like Shyam, most workers that Safe in India assisted in 2019-20 are young migrants on contractual work —among the most vulnerable worker demographic.



They are often forced to do jobs beyond their technical proficiency and operate hazardous machines without basic safety equipment/gear. A large number of injured workers are unskilled helpers, working in place of skilled machine operators, untrained and inadequately paid – all illegal practices. It is hardly surprising that these were among the major causes of accidents in 2019-20.

10 <https://injuryfacts.nsc.org/work/costs/work-injury-costs/>

11 <https://www.safeinindia.org/report-crushed2020>



More than 70% of these injured workers had lost their fingers or hands – a permanent disability. Many employers let go of injured workers eventually; their injuries often leave them incapable of performing even everyday tasks independently.



Shyam Dev Pandit, 22, lost his fingers to a power press accident. He is now dependent on others to carry out everyday tasks.

All these aren't workers labouring away for obscure companies in the informal sector. Almost

Regulation or compliance issue?

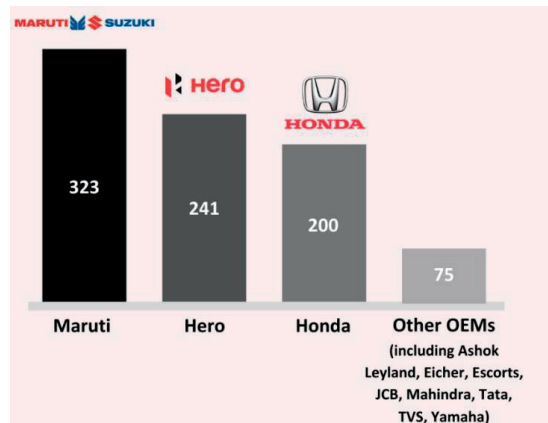
Adequate laws exist in India that classify the largest culprit for worker accidents in the auto industry – the power press machine – as 'dangerous' and detail worker safety obligations:

- The Punjab Factory Rules, 1952 classifies the power press as a 'dangerous machine' in Rule 56 of the Schedule VIII framed u/s 23(2) of The Factories Act.
- Poorly maintained machines of all types are punishable by law under Section 287 of the Indian Penal Code (IPC).

'Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other

all workers that Safe in India has supported since 2016 were registered with ESIC and say that they were injured in the factories that supplied to brands that are household names: Maruti, Hero, and Honda, Ashok Leyland, Eicher, Escorts, JCB, Mahindra, Tata, TVS, and Yamaha.

This is a national issue with these national brands and other similar auto-supply chains in Maharashtra, Tamil Nadu, and increasingly Gujarat.



Of the above three, Hero has the largest increase in proportion of accidents in the three financial years that Safe in India has been tracking these accidents as reported in CRUSHED2020.¹²

person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.'

- Under Section 7B of The Factories Act, every person who designs, manufactures, imports or supplies any article for use in any factory shall:

12 <https://www.safeinindia.org/report-crushed2020>

(a) ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used; (b) carry out or arrange for the carrying out of such tests and examination.

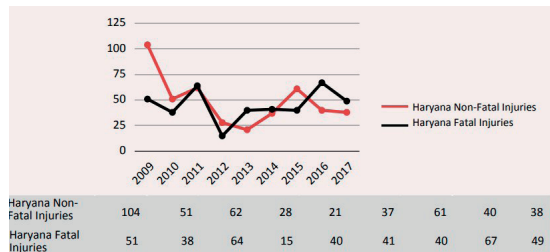
In addition:

- National Guidelines for Responsible Business Conduct (NGRBC) asks businesses to be responsible for human rights, including safety, in their “value chains” and asks top 1,000 listed businesses to submit annually a Business Responsibility Report (BRR) demonstrating compliance to these guidelines.
- BSE has included Supplier Code of Conduct (SCoC) in the Governance pillar of their Guidance document for ESG disclosures.¹³

However, Safe in India’s early analysis reveals that most auto brands do not have a policy and implementation framework that aims to improve working conditions, specifically OSH, in their deeper supply chains. Economic benefits can hardly justify this; eg. Power press components reportedly constitute less than 7-10% of an automobile cost, which implies an insignificant

cost difference to a vehicle even if some of the safety initiatives increased the cost marginally.

Government data is also incomplete and points to fewer inspections, which compounds the compliance problem: In the last reported year 2017, Haryana reported only 38 non-fatal injuries, which is less than 10% of injured workers that the relatively small, single-location Worker Assistance Centre managed by Safe in India in Gurgaon, has supported since then.



With the forthcoming implementation of the new OSH Code, it remains to be seen whether the safety and welfare provisions in the Code and the yet-t-be-finalised Rules, will be sufficient to improve the brands’ accountability and actions towards the safety of workers in their value chain.

Are auto-sector brands conducting business with their supply chain responsibly?

Evidence obtained by Safe in India would suggest that they are not. To dig deeper, the Safe in India team has been assessing the OSH policies publicly declared by the top 10 auto brands in India and is currently communicating with them to confirm its analysis. Six of these 10 have engaged constructively. Some early observations below, until the report “Safety-Niti” is formally launched in April 2021 with detailed findings and specific OEM names:

1. OSH Policies appear adequate for workers in their own factories, and indeed Safe in India has no evidence of large number of accidents in their own factories, but most of them do not cover their contract workers as well as

permanent workers. 50-70% of workers even in these brand’s own factories are contract workers.

2. The main problem in this context is that their OSH Policies appear inadequate for supply chain, especially Tiers 2/3/4. Where they do have some policies, Safe in India could not find adequate evidence or reporting on implementation of OSH Policies in the supply chain.
3. Reporting against SDG Indicator 8.8 (Safe and Secure working environment) is practically non-existent.
4. A few of them do have a Supplier Code of Conduct and there are a number of good

practices that can be replicated across the industry. One of them has now acknowledged Tiers 2/3/4 in their policies and they report on Tier 2 audits. Another promotes sustainability in their supply chain. One has a charter of contract workers and another has a Supplier

Code of Conduct that includes Occupational Safety and Health.

It is clear that there are large gaps to be bridged to reduce these accidents and there are opportunities for spreading a few good practices across the sector.

Conclusion and actions needed

Safe in India believes that lacs of Indian workers have lost their hands and/or fingers in Indian manufacturing over the past decades, especially in the auto sector. Can the country afford to keep repeating it? Can the Indian auto industry become world-leading without improving safety for workers that make components for them in the formal and informal sector?

The answer can't be anything but a resounding NO. Auto sector brands—the ultimate beneficiaries of these supply chains—have the most power to influence the working conditions of their millions of workers. They also have the financial clout and the technical expertise to drive this change most effectively.

The government obviously has a role and needs to play that role, but in today's world, Safe in India believes that the businesses are often more powerful than the governments and needs to play the driving role in solving this problem and has therefore been engaging with the OEMs to agree initiatives to improve this situation and thankfully at least two have come forward to start a few actions. Central and Haryana state governments too have constituted working groups to consider this issue and a few actions have been agreed with Gurgaon ISH.

However, there is a long way to go. One of the key next steps is for the auto sector to improve its supply chain policies consistently across the sector and its manufacturing hubs, as indeed already sought by the NGRBC.

Call to action for the reader

Safe in India is grateful for any input. Please write to team@safeinindia.org including any evidence the reader has for good or bad practices in the auto sector supply chain and any suggestions for improvement. All previous reports are available at www.safeinindia.org/research-report.

Chapter 8:

Prioritising Investments: The Tricky Landscape of Human Rights Obligation of Financial Institutions

Amita Puri¹

During the fiscal year 2016, the National Stock Exchange traded shares worth over 130 billion Indian rupees², while India's real GDP at constant (2011-12) prices in the year 2019-20 is estimated at Rs 145.66 lakh crore³ (nearly 146 trillion rupees). The numbers reflect the scale and role played by the financial sector in India. Since their investments, products and services span diverse sectors and industries, financial institutions are uniquely positioned to influence, not only their own, but also the human rights impact of their business relationships.

This is also in alignment with the United Nations Guiding Principles which require businesses

to take steps to address adverse human rights impacts with which they are involved, which pursuant to UNGP 13, includes not only adverse human rights impacts they have "caused" or "contributed" to through their own activities, but also those that are "directly linked" to their operations, products or services by their business relationships, even if they have not *contributed* to those impacts.

Are policies and practices of financial institutions in India, however, truly adapted to mitigate human rights violations internally as well in their span of influence?

Through the Lens of the NPAs

An Reserve Bank of India report of July 2020 warns of a steep rise in the loan default rate from 8.5 percent in FY20 to 14.7 percent in FY21. A global study shows the Indian corporate sector was most debt-stressed with 43 percent of long-term loans vulnerable to default even before the COVID-19 pandemic hit,⁴ although the relaxation in computation of bad loans and the loan restructuring announced by the RBI in the wake of the pandemic, has offered a temporary reprieve to companies to help tide over the crisis.⁵ This has also led to a corresponding reduction

in stressed assets reporting by banks, the time frame for which has again been extended via an interim order by Supreme Court of September 3, which held that accounts not declared as non-performing assets till August 31 this year are not to be declared Non Performing Assets (NPAs) till further orders. On November 5, the RBI had urged the apex court to lift its interim order, saying it was facing difficulty due to the directive.⁶ The true extent of NPAs will not be known till this time frame elapses, although former finance secretary Subhash Chandra Garg says NPAs

1 An Independent Development Professional

2 Market Volume of Shares traded IN National Stock Exchange (NSE) across India from FY 2012 to FY 2017 available on <https://www.statista.com/statistics/720132/india-market-volume-of-shares-traded-in-nse/>

3 Ibid.

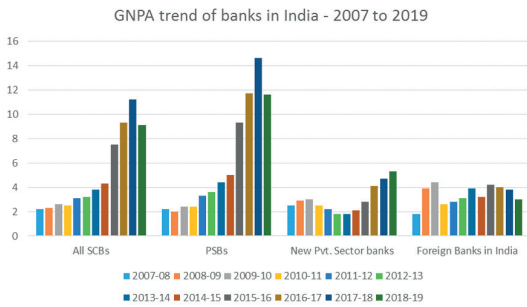
4 Rebooting Economy XIII: Why Indian corporates are debt-ridden, September 4, 2020. available on <https://www.businesstoday.in/opinion/columns/indian-economy-npas-why-indian-corporates-are-debt-driven-non-performing-assets/story/412124.html> (accessed on 24th November, 2020)

5 Banks weather pandemic impact as moratorium helps to report lower NPAs, November 12, 2020. available on, <https://indianexpress.com/article/business/banking-and-finance/banks-weather-pandemic-impact-as-moratorium-helps-to-report-lower-npas-7048414/> (accessed on 26th November, 2020)

6 Loan moratorium is fiscal policy matter, govt on top of it & required steps taken: Centre to SC | Business Standard News ([business-standard.com](https://www.business-standard.com))

resulting from the coronavirus crisis could be as high as Rs 10 lakh crore.⁷

Over the period 2014-2019, Indian banks wrote off nearly US\$85 billion of which state owned banks contributed nearly 80 percent.⁸ Additionally, as of March 31, 2019, India's scheduled commercial banks had gross NPAs worth Rs 9.49 lakh crore of which the top 30 NPA borrowers account for nearly one third at Rs 2.86 lakh crore.⁹



Source: Handbook of statistics on the Indian Economy, 2019-20¹⁰

The recent decision to privatise Public Sector Banks starting with two in this fiscal year, may reduce the need for the Government to inject equity into Banks weakened as a result of high NPAs, but will bring other issues and risks into its wake including a dilution of the social objective, and the risk of State capture by Private Banks. Similarly the decision to Institute a Bad Bank, will primarily shift the bad loans from the books of the banks to that of the asset reconstruction company instead of fixing underlying issues.

McKinsey & Company's July 2019 report, "Signs of stress in the Asian financial system"¹¹ states that this corporate debt-stress was spread across sectors: industrial (capital goods, commercial professional services, transportation etc.), utilities,

energy, real estate, and materials. The recent Lakshmi Vilas Bank and the earlier Yes Bank financial failures reveal risky corporate exposures. The McKinsey report also highlighted a structural weakness in India's lending system: high-risk lending by poorly regulated non-banking financial institutions (NBFCs). It says: "In India, while (regulated) banks reduced lending as defaults showed signs of growing around 2014, non-bank financial intermediaries continued to lend. The Reserve Bank of India, estimates that 99.7 percent of non-bank finance companies (NBFCs) and housing companies make long-term loans against short-term funding." This was one of the causes for the collapse of NBFC's like Infrastructure Leasing & Financial Services (IL&FS) and Dewan Housing Finance Limited (DHFL). In case of IL&FS, the company defaulted on some payments and failed to service its Commercial Paper on the due date. It had debt to pay in the short term, while revenues from assets were skewed towards the long term¹². DHFL had liquidity issues to meet its commitments as well, additionally many of its loans had turned into bad debts.

The high ratio of NPAs are, both, representative of irresponsible investment and risk-taking behaviour of financial institutions and the over borrowing by Corporates, as well as a by-product of the crony capitalism that exists in India. The (equity capital-weighted) mean ratio of debt to equity for Indian nonfinancial companies increased from 40 percent in 2001 to 83 percent in 2012.¹³ Financial frauds including cases of cheating and forgery, money laundering and suspected tax evasion, sometimes alleged to have been done in collusion with the lending institution also lead to

7 How healthy Are Our Banks, India Today, December 28th available on PressReader.com - Your favorite newspapers and magazines. (accessed on 7th January, 2021)

8 Examining the rise of Non-Performing Assets in India, September 13, 2018. available on, <https://www.prsindia.org/content/examining-rise-non-performing-assets-india> (accessed on 2nd December, 2020)

9 Top 30 Defaulters Account for One-Third of Gross NPAs, Reveals RTI, July 1, 2019, available on <https://thewire.in/banking/rbi-npa-wilful-defaulters-supreme-court> (accessed on 18th December, 2020)

10 Stop Crazy Lending, lazy lending, write Rajan and Acharya, September 21, 2020, available on, <http://vinodkothari.com/2020/09/stop-crazy-lending-lazy-lending-write-rajan-and-acharya/> (accessed on 3rd December, 2020)

11 McKinsey and Company, Global Banking Practice Signs of stress in the Asian financial system, July, 2019, available on Signs of stress in the Asian financial system (mckinsey.com) (accessed on 4th December, 2020)

12 Explained: What is IL&FS crisis and how bad it is? - The Week

13 Peter Lindner and Sung Eun Jung, Corporate Vulnerabilities in India and Banks' Loan Performance, IMF, 2014, available on <https://www.imf.org/external/pubs/ft/wp/2014/wp14232.pdf> (accessed on 4th December, 2020)

an increase in stressed assets. Like in the case of Housing Development and Infrastructure Limited (HDIL) promoters who had fraudulently availed of six loans from Yes Bank Limited and used the same to evergreen their previous loans with Yes Bank (YBL), which were turning into NPAs. This was supposedly done with the knowledge of the then YBL chief Rana Kapoor. “There is strong evidence against the accused to ascertain our point that the promoters and Kapoor cheated the bank and their joint venture partner (DE Shaw Group) for the purpose of ever greening of loans.”¹⁴ This, of course is besides the loan of Rs 6500 crores that HDIL owed the Punjab and Maharashtra Co-operative Bank (PMC) which led to the latter’s collapse.¹⁵ Similarly, in another

case, the Videocon Group promoter Venugopal Dhoot had allegedly invested in Deepak Kochhar’s (ICICI Bank CEO’s husband) company NuPower through his firm Supreme Energy as a quid pro quo to loans cleared by ICICI Bank after Chanda Kochhar took over as the CEO on May 1, 2009. The list of financial frauds committed by high-profile private entrepreneurs then turning fugitive is long: Nirav Modi, Mehul Choksi, Vijay Mallya, Jatin Mehta (Winsome Diamonds), Sandesara brothers (Sterling Biotech) and many more. A response to a question raised in Parliament quoted the Central Bureau of Investigation (CBI) that 38 people involved in financial irregularities with banks fled from India between January 1, 2015, and December 12, 2019.¹⁶

Implications of high NPAs

Escalating NPAs require a bank to make higher provisions for losses in their books leading to a decline in their profitability making them vulnerable to adverse economic shocks and consequently putting consumer deposits at risk. Financially, reckless lending by locking up finance to help inefficient borrowers, undermines growth and the possibility of improving the standard of living of many of its citizens. As a result of substantial capital being locked up due to NPAs, the borrowing cost of everyone in the economy

increases. Writing off NPAs are a double loss to the economy, the loss of public money (deposits in the bank) and the subsequent recapitalisation of the banks with more public money. These actions as well as corruption and collusion between the lender and borrower, also affect vulnerable communities—either by misdirecting funds that could be spent on healthcare, education, or other public goods, or by preventing participation in the democratic process.

Economics at the cost of Human Rights

India ranks 19th among 180 countries in terms of the number of names that appeared in the Paradise Paper a global media exposé of offshore tax evasions in 2017.¹⁷ This is similar to the numbers quoted at the time of the Panama Papers

just eighteen months earlier to the second expose. Audit Firms and Banks are largely complicit in facilitating financial flows to tax havens through shell companies for tax evasion purposes by shifting revenue and profits of their clients. These

14 Yes Bank behind ‘evergreening’ of loans: Former HDIL executive, October 22, 2020, available on https://economictimes.indiatimes.com/news/politics-and-nation/yes-bank-behind-evergreening-of-loans-former-hdil-exec/articleshow/78796822.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (accessed on 18th December, 2020)

15 Behind HDIL downfall lies a failed slum project that became financial drain, 4th October, 2019, 2020, available on <https://www.livemint.com/industry/infrastructure/rise-and-fall-of-hdil-a-story-of-flashy-cars-and-crisis-ridden-infra-projects-11570193940389.html> (accessed on 18th December, 2020)

16 38 economic offenders fled India in last 5 years, September 15, 2020, available on <https://www.businesstoday.in/current/economy-politics/38-economic-offenders-fled-india-in-last-5-years/story/416067.html> (accessed on 18th December, 2020)

17 Interview: Why aren’t any big Indian names in the Panama-Paradise Papers corruption leaks, Dec 31, 2017, available on <https://scroll.in/article/862001/no-big-indian-names-in-panama-paradise-papers-as-we-dont-have-the-right-law-firm-icij-reporter> (accessed on 18th December, 2020)

kinds of tax practices, have a significantly negative impact on the realisation of people's economic, social and cultural rights. Profits flowing out of

the country can deprive the State of the resources that they may need to alleviate poverty and uphold international human rights standards.

Playing with client money and confidentiality

In November 2019, the case of Karvy Stock Broking Limited came to light. The broking firm transferred securities unauthorisedly into one of its demat accounts by misusing the Power of Attorney given by its clients. It then pledged these shares to raise money and transfer it to its real estate arm. The NSE subsequently declared it a

defaulter and expelled it from its membership.¹⁸ Besides the harm done to the customers as a result of the misappropriation of funds, the data breach, misuse of customer information and mandate and interference with privacy are a human rights violation.

Investments in controversial organisations and sectors

The Guiding Principles clearly state that companies must examine all their relationships—including those with their customers—for potential human rights impacts. All financial institutions, are therefore expected to engage in environmental, social, and governance due diligence before issuing loans, else it may result in the facilitation of human rights violations. But this kind of due diligence is the exception rather than the norm. Lending by financial institutions continues as in the case of Jindal Steel and Power Limited whose power plant and mines in Chhattisgarh were resisted by local communities and whose coal blocks in India are in forested regions with high livelihood dependence from local communities and wildlife preserves, where livelihoods and health have been negatively impacted. The group is also under investigation for its role in the Coalgate scandal. A Delhi court ordered framing of charges against Naveen Jindal in July 2019 for the same.¹⁹

A similar case is that of the Adani Group which has coal mining interests in India, Indonesia,

Australia and Bhutan and operates a series of massive coal power plants in India. It has a questionable track record of fraud and corruption allegations and human rights abuses. Its coal mines and coal power plants are responsible for severe adverse impacts on the environment and climate change.²⁰ Adani is building thousands of megawatts worth of new coal power plants capacity. The State Bank of India is set to offer a Rs 5,000-crore loan to Adani Enterprises Ltd.'s Australian mining company, now renamed Bravus Mining & Resources, as per media reports of November 2020.²¹ Whether an evaluation of customer, sector and project finance due diligence norms to understand issues of land rights, displacement and relocations and adherence to domestic and international norms regarding consultation, compensation etc. were carried out, and if yes, what the results were, is unknown in the public domain. Investments also need to be evaluated against the risk of clients contributing to forced labour and human trafficking or other human rights violations.

18 Explained: What is the case against Karvy Broking Limited? What next for its clients? December 1, 2020, <https://indianexpress.com/article/explained/explained-with-karvy-expelled-from-exchange-what-happens-to-its-clients-7064258/> (accessed on 18th December, 2020)

19 Naveen Jindal charged in Coal allocation scam, July 25, 2019, available on <https://www.livemint.com/news/india/coal-scam-delhi-court-frames-charges-against-naveen-jindal-others-1564059837313.html> (accessed on 18th December, 2020)

20 <https://www.banktrack.org/company/adani> (accessed on 18th December, 2020)

21 SBI set to offer Rs 5000 cr loan to Adani coal project in Australia: Report, November 17, 2020, available on https://www.business-standard.com/article/companies/sbi-set-to-offer-rs-5000-cr-loan-to-adani-coal-project-in-australia-report-120111701051_1.html (accessed on 18th December, 2020)

The Global Slavery Index estimates that on any given day in 2016 there were nearly 8 million people living in modern slavery in India.²² An anti-slavery report identifies the use of slavery-like practices involved in the manufacture of garments in India for international markets, the use of forced labour of young women and girls in

the factories of Southern India, particularly the spinning mills around Tirupur. It also identifies the routine use of child labour in garment finishing in Delhi. The company mentioned by the report in Tirupur indulging in such practices has both public and private banks as the organisation's asset holders.

Investments by international financial institutions

Criticism levelled against International Financial Institutions such as the World Bank and IFC includes discrimination in the distribution of development aid, projects that have harmed community members and reprisals against critics of 'development' initiatives. IFC invested substantially in APPL plantation (a hived off entity of Tata Tea) where violations of human

rights of workers has been widely documented. Human Rights Watch's report –'At Your Own Risk' documents how people in many countries, including India, have faced reprisals from government and powerful companies for criticising projects financed by the World Bank and the International Finance Corporation.²³

The role of the State

Fundamental rights and its protection is the primary responsibility of the state. When the State is also a stakeholder in the ownership of the business, the responsibility and accountability increase manifold. Lending to a business group such as Adani by State Bank of India when there is definite criticism by media and other stakeholders of human rights practices by the project holders, sends a negative signal, and has the ability to influence similar practices by other institutions. Similar is the case of Life Insurance Corporation of India, again a state-owned Institution which owns a substantial stake in ITC which is part of a sector known to result in human rights abuses through its manufacture of harmful products.

Through the Central Bank, its policies and safeguards, its supervisory role and as the lender of last resort, RBI can have a direct influence on how banks deliver on good governance and abide by their obligation to respect human rights in their own work as well as their clients' through their lending operations. In 2016, RBI had instituted an Insolvency and Bankruptcy Code, which

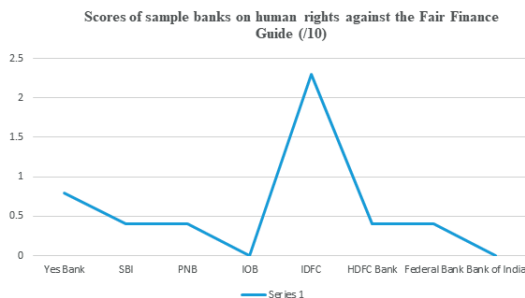
removed all leeway banks had to go easy on large and influential corporate defaulters. The new process replaced banks' discretion to treat defaults on a case-by-case basis with a rule for starting resolutions within a day of missing a debt service payment. However, with subsequent dilution of this code, the risk of misappropriation of public money is enhanced. Its decision to stop providing data on the non-performing assets (NPAs) and its writing off every year, (it hasn't revealed the GNPA for FY20 in absolute numbers) blunts accountability and transparency not only in its operations but increases the opaqueness that is alleged against this sector. The current discourse as a result of a recommendation by its internal working group, that corporate houses be given bank licences is also of concern because of the risks of interconnected lending and concentration of economic power.

²² India | Global Slavery Index

²³ Human Rights Watch Submission re International Financial Institutions and Human Rights | Human Rights Watch (hrw.org)- accessed on January 8th, 2021.

Benchmarks – do they exist?

A policy evaluation in 2019 by Fair Finance India, (a civil society led coalition working towards ensuring a sustainable financial sector) of eight Indian banks (public and private) under the thematic areas of Environment, Social and Governance showed a low commitment by banks on human rights. Two of the eight sampled banks had no policy commitment to national and international human rights standards. The other banks indicated some kind of commitment to human rights in their policies. Five of the eight banks made varying commitments to human rights, referencing the United Nations Declaration, non-discrimination, equality, harassment free workplace and unions and grievance mechanisms to address human rights violations. One of the banks was committed to the United Nations Global Compact.



Source: - https://fairfinanceindia.org/media/495381/fair-finance-india-report_1311_final.pdf

Socially responsible investing

ESG (Environmental, Social and Governance) funds which incorporate environmental, social responsibility and corporate governance in their investing process are at a nascent stage in India. Worldwide there are 3300 funds with US\$40.5 trillion in assets applying these criteria against India's 4,500 crores.²⁵ A push to adopt these criteria not only by investors, but by financial institutions in their lending process will lead

Only IDFC First Bank from India is a signatory (amongst 111 world wide members) to The Equator Principles (EPs) a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in projects.

Another initiative, The World Benchmarking Alliance (WBA) identifies seven transformations that need to take place towards a more sustainable pathway to achieving the SDG's by the world economy. Financial system transformation is a critical element of these transformations. In case of the financial sector specifically, WBA mentions challenges that include the fact that sustainability factors are often treated as an externality and are not incorporated into companies' balance sheets, leading to the cost of capital rarely reflecting the true cost of business activities across equity, debt and insurance. Also, rules governing the financial system do not ensure that financial decision-making takes social and environmental risks and opportunities into account so as to better align investments with long-term value creation.²⁴

to companies being forced to follow better governance, ethical practices, and environmentally friendly measures and incorporate human rights standards in their approach.

24 Measuring What Matters Most, July 2019 available on WBA-sevensystemstransformations-report.pdf (worldbenchmarkingalliance.org)

25 Explained: What are ESG funds, big abroad, and now finding interest in India too, September, 29, 2020, available on <https://indianexpress.com/article/explained/explained-what-are-esg-funds-and-why-are-they-becoming-popular-6619234/> (accessed on 18th December, 2020)

Way ahead-the imperatives

The basic hygiene and non-negotiables for all businesses include the presence of a policy commitment to meet their responsibility to respect human rights; a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights and processes to enable the remediation of any adverse human rights impacts they cause or contribute. While all the aforesaid apply to financial institutions, in addition, when providing funding or financial advice to a client, a financial institution can be exposed to the human rights concerns which relate to that business and its sector which need to be recognised and addressed. The commitments need to be accompanied by adequate accountability mechanisms.

Human Rights due diligence needs to be made mandatory for corporates, the results of which should be submitted on a periodic basis to their lenders. Financial Institutions need to have a grievance redressal mechanism linked to companies they have made loans to. The action taken through this mechanism needs to be shared publicly.

Criteria used for investing in socially responsible portfolios could be extended to all investments. Companies need to disclose their product details and the extent to which they contribute to their total portfolio. Companies with products that violate human rights (even when made by other group companies) should not be financially

supported by the State or other State owned entities.

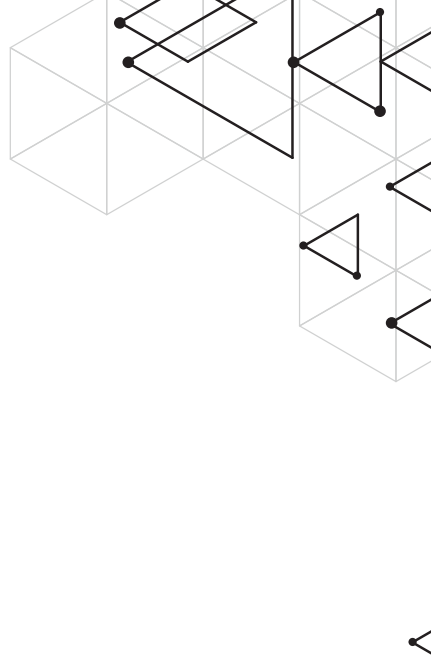
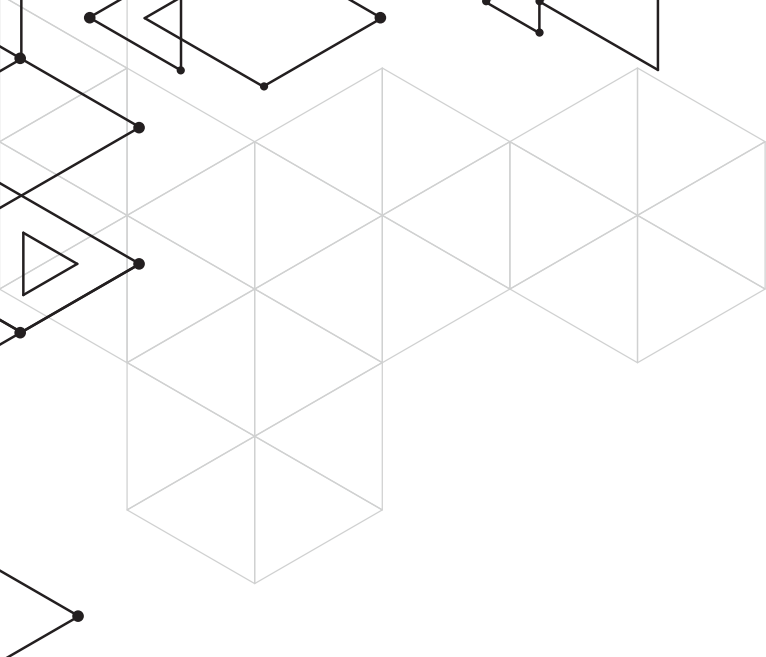
The State needs to bring in stronger legal frameworks that incorporate human rights standards and promote greater transparency across financial institutions. It also needs to give RBI more independence to help it to proactively supervise banks and deal with issues such as government appointed directors on bank boards.²⁶ This will also obviate the apparent State Business Nexus which can result in gross violations.

Where there is direct State involvement or ownership, it should commit to fully integrating human rights considerations into all facets of its business operations and relationships. It cannot invest in companies whose products or services violate human rights.

There is an urgent need to establish and strengthen credible Institutions, for the establishment of mechanisms for monitoring and impact evaluation, as well as accountability and better coordination.

The State ultimately needs to ensure adherence to its primary responsibility of protecting public interest and safeguarding human rights.

26 Give RBI More Independence & Power Over Public Sector Banks: IMF (thequint.com)



Part 4

CSR – A Critical Lens

Chapter 9:

Synopsis of CSR Legislation: Covering Legal Amendments Up To January 2021

*Subhash Mittal*¹

This article provides a comprehensive position of the legislative status of Corporate Social Responsibility (CSR) under Companies Act 2013 and covers all changes upto 22 January 2021. It also refers to High Level Committee (HLC) recommendations, wherever relevant.

Evolution of CSR

While there is long history of philanthropy by merchants and rulers during the times of distress, however CSR in a more formative way came into being during the freedom movement. Gandhiji's concept of 'trusteeship' for businesses has been a definitive point in the evolution of CSR. Several industrialists of the time, Jamanalal Bajaj, GD Birla, Sarabhai, to name a few wholeheartedly supported freedom movement as well as his constructive works on removal of untouchability, popularization of khadi and village industries, promotion of basic education and Hindu-Muslim unity.

Several well-known institutions of today are the result of social programmes undertaken during pre-independence or immediately after independence. BITS Pilani (Birla Institute of Technology) was founded by GD Birla.

Human Rights and CSR

What was the driver for the Government to making CSR mandatory through the Companies Act 2013? Well, it certainly was not about promoting Human Right compliances in businesses. It seems like more of a brain-wave to involve companies in social good and also to attract positive vibes before the 2014 election, by

Further to help understand the provisions better a critique has been included, wherever considered appropriate. However, it may be worth understanding that social contributions by corporates did not start from this legislation.

Kasturbhai Lalbhai of Ahmedabad, along with other prominent Gujaratis started Ahmedabad Education Society, which was instrumental in establishing a number of institutions, including IIM, Ahmedabad and Physical Research Laboratory among several others. In Delhi, Lala Shri Ram, founder of the DCM Group, set up some of the most important colleges for technical education and for women, including the Shri Ram College of Commerce and the Lady Shri Ram College for Girls. In south India, the Murugappa Group and Kuppuswamy Naidu established a number of educational institutions and hospitals, which still sustain and serve society. The Tata group institutionalised its CSR by contributing to social development as part of its good principles of governance, and even incorporated these practices in its objectives in its memorandum.

hoping to have large corporate funds available for the social sector, creating a 'Feel Good' factor. In an interview the then Corporate Affairs Minister, Sachin Pilot, said that he expected an annual corporate spending of Rs 15,000-Rs 20,000 crore on CSR by India Inc. He implored the businesses not to see it as a forced expenditure, but an

¹ Subhash Mittal is Secretary, Socio Research and Reform Foundation

investment opportunity to create a better work environment.

In fact the Business Responsibility Report Framework based on NVG is far more attuned to probing the status of a company's track record in maintaining some basic Human Rights, whether towards workers, concerns towards social and environmental factors, identification of marginalised and disadvantaged stakeholders, etc.

The initial stand of the Government was that the 2% CSR money is not a resource for its own programmes. The idea was to involve the corporate sector in discharging their social responsibility with their innovative ideas and management skills of greater efficiency and better outcomes. In its Circular 01/2016 dated 12-1-2016, the Ministry of Corporate Affairs specifically stated that CSR should not be interpreted as a source of financing the resource gaps in Government schemes. It further stated that the use of corporate innovations and management skills in the delivery of 'public goods' is the core of CSR implementation by companies and that the CSR projects should have a larger multiplier effects than other Government schemes.

Schedule VII, which when initially promulgated only had The Prime Minister's National Relief Fund, to which companies could donate, however as on date, there are a number of such 'Government' funds, where CSR donations can be made.

Apart from the PM National Relief Fund, these include State Disaster Management Authority,

PM CARES Fund

The PM CARES fund was established on 27 March 2020, three days after declaration of the Covid lockdown. It received backdated approval from almost all Departments. In fact a circular dated 26 May 2020 was brought out by the Ministry of Corporate Affairs that the PM Cares Fund notification would be made effective retrospectively from 28 March 2020. Again, the Ministry of Finance not only gave it a 100%

Swacch Bharat Kosh, Clean Ganga Fund, Contribution to incubators/R and D projects funded by Central or State Governments, contribution to public funded universities, IITs, National Laboratories and autonomous bodies established under Department of Atomic Energy, Department of Biotechnology, Department of Science and Technology, Department of Pharmaceuticals, Ministry of AYUSH, Ministry of Electronics and Information Technology, DRDO, Indian Council of Agriculture Research (ICAR), Indian Council of Medical Research, (ICMR) and Council of Scientific and Industrial Research (CSIR).

However lately, more schemes are being devised, which require CSR funds. For example, some state Governments have constituted State CSR Authorities, which are societies set up in the state with the task of coordinating all CSR projects coming into a state.

Further, often Government departments do twist companies' arms to fund some projects, which may not be covered under the CSR rules. And companies have to oblige the departments, as they need cooperation of these very agencies in the areas that they work in. Thus, the fact is, though officially, the Government did not intend CSR to contribute towards Government schemes, however in reality, companies are being implored, in one way or another to contribute to Government schemes. There cannot be a more explicit example than the PM CARES Fund, to which almost all large companies have donated a large amount of CSR funds.

exemption certificate under 80G (same as allowed under the PM National Relief Fund), it allowed all donations made to the fund till 30-6-2020 (i.e. 3 months after year-end) eligible for 100% deduction for FY 2019-20. Further, it has also removed the restriction of maximum allowance of upto 10% of Gross Total Income, thus one could donate as much as one wanted without any restriction.

As mentioned above, the PM CARES is an eligible fund for CSR contribution. If a company contributes in excess of the requirement of CSR contribution during FY 2019-20, it may carry forward the excess amount to the subsequent FY.

It may be noted that within 3 days of FY 2019-20, PM CARES Fund received more than Rs 3000 crore. Huge amounts of funds both by public and private sectors have been diverted to this Fund. This has created a shortage of funds under most CSR projects that the companies were running.

It may be noted that a Company which donates to either PM CARES fund or PM National Relief Fund, is entitled to claim the same as CSR contribution, however if a company, which is located in a state, contributes to CM Relief Fund of that State, it will not be treated as CSR contribution.

Who all have to undertake CSR

1. Section 135 of the Companies Act 2013 requires that every company,² which meets the eligible criteria, should undertake CSR activities.
2. Eligibility Criteria:
 - Net worth of rupees five hundred crore or more, or
 - Turnover of rupees one thousand crore or more, or
 - A net profit of rupees five crore or more during any financial year.
3. It may be noted that CSR is applicable to every company, thus a subsidiary would need to undertake CSR in its own right. Similarly a holding company registered in India would also need to undertake CSR, but only on its standalone balance sheet and not on the consolidated balance sheet. In fact even for its standalone balance sheet, it doesn't need to

include dividend received from its subsidiary company, as long as the subsidiary is also subject to S.135 provisions and complying with the same.

4. CSR not applicable on foreign profits: A company which receives profits / dividend from its foreign operations need not include such profits / dividend from such foreign company / subsidiary.

Comment: As a foreign company operating in India is required to undertake CSR in India based on its profits in India, an Indian entity based in a foreign land should undertake CSR in its area of operations abroad, out of its foreign profits, hence these are exempted from CSR in India.

5. What happens if a company is no longer eligible: Only once a company becomes non-eligible for three consecutive financial years under S.135(1), it need not comply with CSR provisions. However during the interregnum (i.e. the period when it does not have sufficient profits to spend on CSR) it would need to continue to comply with other provisions, like constitution of CSR Committee, disclosure of 2% CSR contribution and actual amount spent, etc³
6. Foreign Company: Question does arise, on what the status of a foreign company as far as CSR implementation is concerned, would be:
 - CSR provisions cover any foreign company or its branches / project offices operating in India⁴.
 - A foreign company while constituting CSR Committee, shall include at least 2 persons, one of which would be a person specified under S.380(1)(d) and another person as nominated by that person.

CSR Committee

² Includes all companies, whether a Private Ltd, foreign company or a branch office or a project office of a foreign company. Even a subsidiary or a holding company is covered by these provisions. In this regard, basis for calculation of eligibility as well as CSR contribution would be the standalone accounts of that company.

³ CSR Rule 3(2)

⁴ A foreign company would calculate its net profit on average net profits from its Indian operations, in accordance with S.381 and S.198 of the Companies Act : Source CSR Rule 3(1).

1. Once CSR is applicable to a company, it needs to constitute a CSR Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director. If the company does not have three directors or does not have any independent directors, then it can form a committee of two directors and without any independent directors⁵.
2. Board Report should disclose Composition of the CSR committee.

CSR Committee Responsibilities

1. A CSR Committee needs to undertake at least the following tasks:
 - Formulate and recommend the Board, a CSR Policy which shall indicate the activities to be undertaken by the company
 - Recommend the amount of expenditure to be incurred under CSR
 - Be responsible for preparing detailed CSR plan, including project-wise list
 - It shall monitor the CSR Policy of the company from time to time
 - Institute a transparent monitoring mechanism to monitor implementation of CSR programmes/ projects
 - Also needs to ensure that funds are transferred to Schedule VII funds or Unspent fund A/c if not spend as required.

***Comment:* CSR Committee's major role is framing CSR policy, annual business plan and setting up of monitoring mechanisms for execution of an annual action plan. These are to be approved by the Board, based on the CSR Committee's recommendation. Annual action plans have to have approved projects, specifying amount, implementation method, fund utilisation modalities, etc. A provision has been included for alteration in the plan by the Board.**

It may be noted that the CSR Annual Report

disclosed on a company's website, is required to disclose how often the Committee met.

Though not required by law, it is strongly suggested that the monitoring mechanisms that the CSR Committee recommends should have a certain independence element built in it. This would provide credibility on the information/ advice that the Committee receives of the ground situation of projects.

CSR Policy

1. The board also needs to approve the CSR Policy indicating the activities on which the company CSR would focus. The policy needs to be either directly disclosed in the Director's Report or a web link for the same be provided.
2. A new CSR Policy definition has been given vide. As per this definition, CSR Policy means a statement containing the approach and direction and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan. Policy has to be decided by the Board, based on CSR Committee's recommendations. [Rule 2(1)(f)]

***Comment:* This is the latest definition and incorporates suggestions of HLC as well as given in the Draft rules. It is much better than the earlier definition, which only suggested a list of projects and activities.**

3. Generally essential elements of a CSR Policy are commented upon below for better understanding and are not part of legislative provisions.
 - A company would need to align its CSR policy with its business policy
 - Policy would clearly indicate the type of projects, that the company would undertake indicating reasons thereof
 - It should include a list of projects / programmes along with modalities of execution and implementation schedules

⁵ CSR Rule 5

- Policy should identify monitoring processes in place for these projects
- Policy needs to clearly indicate that any income arising out of CSR activities has to be part of CSR funds.
- The company while undertaking CSR activities shall give preference to local surrounding areas around where it operates

***Comment:* To make CSR sustainable, a company's CSR Goals should align with its Business Goals, i.e. community wellbeing should be an integral part of the business. Any action, which results in harm to community, may get short-term benefit, but could become a long-term loss for the company.**

Board's Responsibility

1. Board needs to appoint a CSR Committee in accordance with the CSR Rules.
2. It needs to approve CSR Policy.
3. It is the Board's responsibility to ensure that at least 2% of average net profits made during three immediately preceding financial years is spent on CSR in pursuance of CSR Policy (*Average Net profit is to be calculated in accordance with S.198 of the Companies Act 2013*). In case the company has not completed 3 years, average net profit will be calculated for the period so completed⁶.
4. In case the company fails to spend such an amount as specified above, the Board shall, in its Directors' report, specify the reasons for not spending the amount.
5. *Transfer of unspent funds to Schedule VII specified fund:* Further in such cases, where the unspent amount relates to a project which is not an ongoing project, the amount allocated for such a project would need to be transferred to a fund specified under Schedule VII. This transfer has to be done within six

months of the expiry of the FY.⁷

6. *Transfer of unspent funds to an exclusive Bank Account:* In case the unspent amount can be traced to an ongoing project, then the unspent amount needs to be transferred to a separate account named 'Unspent CSR Contribution A/c' in a scheduled bank within 30 days of the end of the FY. The amount so transferred needs to be spent within next three FYs. In case the amount still remains unspent, then it must be transferred to a Fund Account as specified under Schedule VII.⁸ [Not yet made effective.]
7. *Comment:* Through Ongoing Project⁹ concept, MCA has now allowed the postponement of CSR except for three years, however it is also ensuring that once CSR amount is allocated, it is to be spent, whether in this year or during next three years.
8. *Penalties for non-compliance:* Any contravention of the above provisions of transferring the unspent funds to a schedule VII fund or special account, the company shall be liable to a penalty of twice the amount required to be so transferred or Rs 1 crore, whichever is less. Further every company officer which is in default, shall be liable to pay a penalty of 1/10th of the amount required to be so transferred or Rs 2 lakh, whichever is less.¹⁰ [Not yet made effective.]
9. *Excess Expenditure:* In case a company incurs CSR expenditure in excess of its obligations, then such expenditure may be carried forward and set-off against its CSR obligations over the next three years. However excess amount so carried forward must not include any surplus arising out of CSR activities. Further the Board must pass a resolution to the effect of carrying forward any excess expenditure.

⁶ Amendment in S.135(5) of Companies Amendment Act 2019 made effective 22-1-2021

⁷ Amendment in 2nd proviso of S.135(5) through Companies Amendment Act 2019, made effective 22-1-2021.

⁸ Insertion of a new sub-section 135(6) through Companies Amendment Act 2019, made effective 22-1-2021.

⁹ CSR Mar'20 Draft rules defined Ongoing Project as multi-year but not exceeding three years.

¹⁰ Insertion of a new sub-section 135(7) through Companies Amendment Act 2020, made effective 22-1-2021.

What is CSR Expenditure?

1. CSR expenditure to be incurred on activities is included in Schedule VII. While interpreting Schedule VII, it may be interpreted liberally so as to capture the essence of the activities so enumerated in it¹¹.

***Comment:* Circular 21/2014 specified that Schedule VII should be interpreted liberally, so that the purpose of the CSR is not defeated by narrow interpretation. This direction of the Government was further codified in 2018 by bringing term ‘areas or subjects’ in the S.135 and Rules for addressing list included in Schedule VII. This amply made clear that the company could consider all those areas or related subjects mentioned under Schedule VII.**

However caution is necessary, as often such government directions of ‘interpreting liberally’ are misinterpreted by companies to mean that all rules of CSR are to be interpreted liberally.

2. Schedule VII should cover activities on which CSR is to be undertaken. These should also be authorized by the Board by specifically including them in CSR Policy.
3. Contribution towards the corpus of a non-profit created exclusively for undertaking CSR activities or where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII.
4. Any surplus arising out of CSR activities need to be reinvested on the same project, or be transferred to the Unspent CSR Account. This surplus must be spent within six months of the end of the FY.
5. *Capital Asset*
6. Any asset created/ procured from CSR funds shall be held by a NPO having CSR Registration Number or beneficiaries of the project in the form of an SHG or CBO, etc. or a Public Authority. Any asset created prior to 2021 rules, would need to be transferred within a specified time-limit to such agencies.

What does not constitute CSR

1. This raises a pertinent question of what exactly does not constitute CSR. Expenditure on following activities would not constitute CSR
 - CSR Activities falling outside the purview of Schedule VII or if not included in its CSR Policy.
 - *Normal Course of Business* CSR would not include any activity, which is undertaken in pursuance of normal course of business of the company. However, in view of the Covid pandemic, this rule has been amended recently to allow a company involved in R and D activities in normal course to undertake the same for a new vaccine, drugs and medical devices for Covid 19 to be treated as CSR. As long as these expenditures are done during the three-year period of 2020-21 to 2022-23 and reported as CSR expenditure in the Board report. Further this R and D activity has to be undertaken in collaboration with any of the institutes mentioned under item (ix) of Schedule VII and disclosed in the annual report. [R2(1)(d)(i)]

***Comment:* However one needs to wait and see, how useful this provision would be, since CSR expenditure does not get any tax benefit, while in normal course, a company may claim its R and D expenditure as revenue expenditure and get tax benefit. Although a company which can take benefit under S.35(2AB) may consider it.**

- Expenses incurred by companies under fulfilment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act, etc.) would not count as CSR expenditure.
- *Employees:* Earlier the rule only forbid CSR activities which were exclusively meant for employees, however it allowed any such activities, which had both community at large and employees. It did not prohibit such CSR activities. However the new rules have now gone to the other

11 Circular No. 21/2014 dt 18th June 2014

extreme and do not allow any activity under CSR, under which employees (as defined under S.2(k) of Code on Wages 2019) benefit.

Comment: Earlier the rule could be easily circumvented to beat the spirit of law. However under the new rule, no expenditure which benefits employees of the company is allowed as CSR Exp. [R2(1)(d)(iv)]. This would mean, if a dispensary is being run, which covers both employees as well as community, the company probably cannot claim it as CSR expenditure or at least take out expenditure relating to employees. March 2020 draft rules were more practical, which put a cap of 25% on employees, it would have reduced unnecessary complications.

- Any CSR activity undertaken outside India, but excludes training of Indian sports personnel representing State/ UT at national level or India at international level.
- Any contribution to a political party under S.182 of the Companies Act.
- Any activity benefitting employees of the company.
- **Sponsorship of events:** Any activity supported by a company on a sponsorship basis, which provides marketing benefits for a company's products/ services.

Comment: This means if an event is sponsored for an activity falling under Schedule VII, and if only a company's name is used, without advertising company's products / services, then it may be allowed as CSR.

2. Any activity carried out for fulfillment of any statutory obligation under any law in force in India.
3. **Comment:** This could include expenditure incurred for compliance of environmental laws or land acquisition laws.

How to implement CSR activities (Rule 4(2))

1. Companies can undertake CSR activities

through any of the following entities:

- Company itself
- A non-profit established by the company or jointly with another company
- A non-profit entity established by Central Government or State Government
- Any entity established by an Act of Parliament or State legislature
- Any other non-profit entity, however in such case, entity must have successful track record of at least 3 years of implementation of similar programs / projects.

Comment: The Government has dropped the proposal of only Section 8 companies to undertake CSR, which is better sense prevailing as the earlier proposal was ill conceived and would have thrown spanner in the CSR execution programmes.

However every entity which is likely to undertake CSR programs, must obtain a CSR Registration No., by registering itself with Registrar of Companies by filing Form CSR 1 (effective 1-4-21). This form has to be certified by a Chartered Accountant.

2. A company can collaborate with other companies for undertaking bigger CSR projects, as long as each company is able to report its contribution, as required.
3. As mentioned elsewhere, a company may collaborate with a UN agency in designing, monitoring and evaluation of CSR projects, as well as capacity building of their own personnel under CSR.
4. The Board would also need to monitor 'Ongoing Projects' to ensure that ongoing projects are completed within approved timelines and allocations. However the Board may modify the project as considered necessary for its completion within the overall permissible time limit.
5. Rules now require that the expenditure incurred on CSR would need to be certified by head of finance stating that the funds have

been utilized for the purposes and in manner as approved by the Board.

Comment: This is a new proposal and seems to have been put in place to help the Board satisfy itself that the Annual Report statement that the Board has signed, would be first certified by its CFO. However this is a poor control, as the CFO is very much part of all the decisions being taken by the management - an independent audit of CSR cannot replace an internal certificate.

Ongoing Projects

1. The Companies Amendment Act 2019 brought the concept of 'Ongoing Project'. In a way the department realised that it may not be possible for companies to spend the entire amount of CSR in a year, particularly on large projects and hence allowed money to be spent in three years. It stated that any fund not spent after the maximum period of three years will be transferred to one of the funds listed in Schedule VII. It also required that any CSR funds remaining unspent at the end of the year on other than 'ongoing project' would also be transferred to a fund under Schedule VII and in case of Ongoing projects funds were to be transferred to an 'Unspent CSR A/c'. It also put in place penalty provisions, including against officers in default.
2. It also put in a provision in Companies Amendment Act 2020, that in case in any FY, if a company spends more funds than required, the same may be adjusted in future years.

Comment: However the above provisions have not yet been made effective, and hence not implementable. Now rules have been made defining an ongoing project, and requiring that the funds can be spent over a three year period and need to be monitored by the Board. A bit of inconsistency, hopefully Government would soon notify the relevant sub-sections of S.135.

Administrative Expenses Limit relaxed

3. New rules as released on 22 January 2021, have now given a definition of Administrative expenses [Rule 2(b)]. As per this definition only expenses incurred by companies have to be treated as Administrative expenses. Further only expenses, which have been incurred for general management and administration, would be covered by this. It would not include any expenditure incurred directly for designing, implementation, monitoring and evaluation of a specific CSR project or programme.
 - This means any expenditure incurred on baseline study or such similar study to ***design*** a project would not be treated as Admin Expense. It may be noted under new Rule 4(3), a company may engage an international organisation for designing, monitoring and evaluation of CSR projects. It may be noted such expenditure may not be treated as admin cost any longer. An international Organisation has been defined under Rule 2(g) as an organisation defined under S.3 of UN (Privileges and Immunities) Act 1947.
 - However with any capacity building of the company's own personnel, while allowed under rules by an International Organisation, it is not clear if such expenditure is allowed to be treated as CSR. Even if it is, it would fall within the ambit of 5% limit of overheads, since general capacity building is not a project expenditure per se.
 - Any expenses incurred in the ***execution*** of a project/programme would not be considered as Admin. Thus it is likely that any expenditure incurred by implementing agencies (NGOs) on their overheads would not fall in the category of Admin and hence need not be restricted to 5%.
 - Monitoring and Evaluation expenses: Expenditure incurred by the companies on M and E of projects would not fall under Administration any longer.

However the limit of 5% of CSR Expenditure continues over Admin Expenses.

***Comment:* This is a big relief for companies. Though Administrative expenses continue to remain 5% of the overall CSR expenditure, now by excluding several types of expenditure from its definition, companies can consider these as CSR expenditure. Earlier all company staff costs, monitoring costs, studies, etc. were treated as administrative expenses and anything above 5% was not CSR.**

CSR Reporting

Director's report to include annual CSR Report. CSR Report should include:

- A brief outline of the company's CSR

policy, including overview of projects or programs undertaken and a reference to the web-link to the CSR policy

- The Composition of the CSR Committee
- Average net profit of the company for last three financial years
- Prescribed CSR Expenditure to be spent for the financial year
- Details of CSR spent during the financial year
- Amount unspent, if any
- Admin Costs
- Costs incurred on R and D relating to Covid-19
- Above details should be given for each project in following format:

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
S. No.	CSR project	Thematic domain	Area – specify Local or Other. Give Dist and State	Outlay (budget)	Amount spent differentiating between (1)Direct exp on projects (2)Overheads	Cumulative exp upto to the reporting period	Implementation Mode (Direct / Implementing agency (Give name and address)
1.							
2.							
	TOTAL						

- The above report needs to be submitted along with a Responsibility Statement that the implementation and monitoring of CSR Policy is in compliance with CSR objectives of the Policy of the Company. To enhance accountability, the statement should be signed by CEO/ MD/ Director (anyone) and the Chairman, CSR Committee.

***Comment:* There is no legal requirement for companies to get the above statement audited, which is a major lacuna. Even HLC recognised this gap and recommended CSR reporting to be covered by an audit.**

Impact Studies

- A company having more than Rs 10 crore average (based on last 3 FYs) CSR obligation, needs to have all projects having outlays of more than Rs 1 crore, and undertake an Impact Study after the project has been completed for more than one year.
- Reports shall not only be placed before the Board, but also be annexed to the Annual CSR Report. Expenditure on such assessment should not be more than 5% of the CSR Expenditure for that FY or Rs 50 lakh, whichever is lower.

Chapter 10:

Reverberation of a Corporate Takeover of a Panchayat: The Kitex Model

Tom Thomas¹

The company Anna-Kitex and its billionaire Chairman and MD, Sabu Jacob, made headlines in 2015 by becoming the first corporate entity in India to take over the reins of a Panchayat via its Corporate Social Responsibility arm, Twenty20. Kizhakambalam Panchayat, about 30 km from Kochi, the commercial hub of Kerala, came to be known as the first ‘Corporate Panchayat’ in India. Kitex Group achieved this feat by winning 17 out of 19 seats in the Panchayat in 2015. What facilitated this takeover, many believe, was the company’s feud with the local Panchayat, which refused to renew the company’s licence to operate there (Kitex factories are situated in the Panchayat) on the grounds of pollution.

The 73rd constitutional amendment has always been an irritant to errant corporates, particularly in states where Panchayats were empowered as institutions of self-governance, and not just left to function as the lowest ranked implementing agency of government programmes. The assertion by Plachimada Panchayat in 2003 against Coca Cola is fresh in the minds of corporates. With global giants tasting their David vs Goliath reckoning with India’s 73rd constitutional amendment, Panchayats have never been on the ‘favourites’ list of the corporates. Article 243G of the amendment devolves 29 functions and gives full power to Panchayats to function outside of state policy in those areas. These include functions like land improvement, soil conservation, water management, maintenance of community assets and social welfare. That is power enough to bring transgressing corporates to account. This, coupled with Panchayats showing maturity as able governments, makes the threat very real and perennial for corporates like Kitex that are almost entirely rooted in Kerala.

Sabu Jacob sought to remedy this by taking over the Panchayat instead of continuously challenging or pandering to the demands of politicians. He did so by endearing the electorate with doles ranging from free education, housing, healthcare, heavily subsidised essentials and jobs in the factory for those who needed it. Over 80 percent of the 36,000 residents of the village were enrolled and issued electronic cards to enable them to avail of these goodies. The supermarket sold goods discounted at 50-60 percent of its retail price. All this was bankrolled by CSR funds and branded as Twenty20, its NGO entity. This enrolment drive also served to establish Twenty20 as a brand and over 80 percent of the Panchayat residents as its members. It may not be a coincidence that this dole was what probably resulted in candidates put up by Twenty20 gaining 70 percent of votes polled in the 2015 Panchayat election. That too, a Panchayat that has been a microcosm of Kerala’s politics of rotating governance each term between the two dominant political fronts – the Left Democratic Front and the United Democratic Front.

While observers and critics were quick to write this off as a one-off phenomenon that is doomed to fail by design, drawing parallels to the George Pullman experiment in the US or closer home, Tata Nagar in Jharkhand, they have been proven wrong by the 2020 elections. They not only continued their win in Kizhakkambalam, but also captured a significant number of seats in three other neighbouring Panchayats. This happened despite the cracks in the line-up of mascots of Twenty20, such as the resignation of K.V Jacob, Panchayat president and the most visible face of the movement in the run up to the 2015 elections. After raising a slew of complaints against Sabu Jacob, ranging from democratic impropriety to

¹ Convenor, Corporate Responsibility Watch and Chief Executive, Praxis

corruption, high handedness and autocracy, he said to reporters after resigning as Panchayat president, “Twenty20 will end in 2020”! Though a seasoned politician himself, he was proven wrong by the juggernaut of Sabu Jacob and his deep pockets.

Considering that it is turning out to be a model with more staying power than what most critics would have attributed to it, it becomes imperative that the Kizhakkambalam model is given more serious scrutiny. While there may be many issues about the intent, the style, the legality and so on, what probably deserves most attention is the model as a direct threat to the letter and spirit of the agenda of local self-governance – the most critical building block of deepening our democracy and making it more direct, transparent, responsive and accountable.

This hypothesis that the model poses a direct threat is not without its problems. It could be argued that democracy is about people’s will and if they willed this, and they did, what is the problem? Sabu Jacob, in an interview to the Mint, said; “This is the first time a corporate (entity) has taken the reins of power. So, many people are alleging that it’s like British rule or it is like bourgeois rule. I feel, at the end of the day, (what matters is) whether people benefit or not, whether people are happy. If they don’t like me, they will throw me out”². And he definitely has a point. The glibness probably emanates from the fact that he isn’t bribing the politicians, but the entire electorate!

While Sabu Jacob might have cleverly navigated the illegality of such a model, it sure is problematic from an ethical and philosophical perspective. From an ethical point of view, a corporate takeover of Panchayat governance is a clear conflict of interest particularly when its business interests and operations are meant to be judged impartially by the Panchayat. Take the issue of licensing its operations, checking its compliance under pollution, the environment and use of

commons like water, etc. In the case of KiteX, there have been several allegations of pollution, misuse of Panchayat funds to prioritise infrastructure around the company, and so on. This conflict of being the beneficiary and sanctioning authority is clearly a violation of ethics – be it business ethics or political ones, even with the most lenient view one may take.

From a business ethics perspective, it is violative of principle 1 of the National Guidelines on Responsible Business Conduct (NGRBC)³. Issued by the Ministry of Corporate Affairs, the NGRBC guide businesses on what constitutes responsible business conduct. It is also designed to assist businesses to perform above and beyond the requirements of regulatory compliance. Principle 1 states that ‘Businesses should conduct and govern themselves with integrity, and in a manner that is ethical, transparent, and accountable’ and covers issues such as conflict of interest and corruption. It urges the corporate leadership to respect these not just in the letter of law, but also the ‘spirit of law’. Sabu Jacob, however, is in no mood for ethics or even legality. “Legal or illegal, I want to make a model village here,” he said in the same interview to the Mint. Onerous as that may be, and the possibility of such top-down models meeting their own destruction by design apart, the ethical violations and conflict of interest cannot be ignored when looking at this as a model.

The company’s lack of disclosure of this takeover of the Panchayat in their Director’s report nor on their website is also problematic from a shareholder perspective. There is no mention of the fielding of candidates or the use of CSR funds to woo the voters or to pay the elected members in the Corporate Social Responsibility, Related Party Transactions or the Business Risk Management sections of the report. And this is no small matter for a company, 44 percent of whose current market capital of Rs 713 crores comes from public.

At a philosophical level this model’s potential to turn the clock back on democratic progression

2 <https://www.livemint.com/news/india/inside-india-s-first-corporate-panchayat-11579449480244.html>

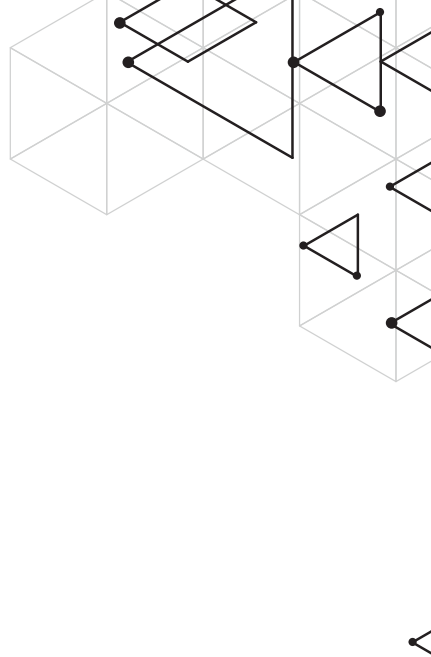
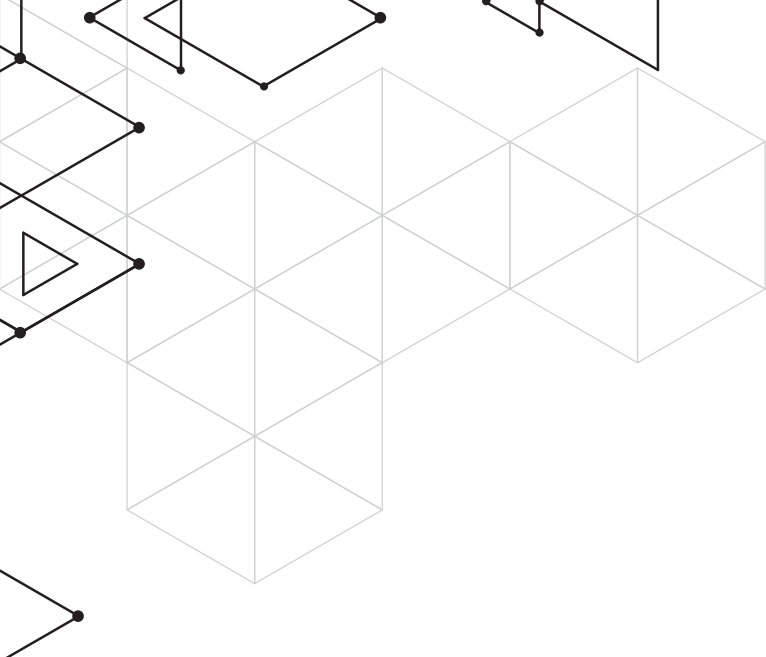
3 https://www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf

and lead the populous on a garden path back into feudalism and servitude is very real, considering it is already happening even in a Panchayat with 100 percent literacy and one that is very high on political awareness. Start replicating this in the other parts of the country where corporates have an interest and the Panchayats stop being that last entity standing against the corporate free ride aided by the central and state governments' 'ease of doing business' policies. This could be the apocalypse for protection of natural resources, commons and democracy itself. Why this has not happened so far is not probably because it took a billionaire businessman to create the Eureka moment, but more because of the easier route of crony capitalism that ensures an opportune coexistence of politics, corruption and governance by proxy. Why deal with the ward members and Panchayat presidents when a larger area and interest can be covered by dealing with the State

and Central Legislatures? The zero draft of the National Action Plan on Business and Human Rights by the Ministry of Corporate Affairs⁴ underlines the State-Corporate nexus as a real threat to the realisation of the agenda of Business and Human Rights.

Writing this model off merely as a Machiavellian neoliberal capitalist move or as a recreation of the feudal fantasy of a billionaire, will not do justice to what is playing out in Kizhakambalam and its surrounds. If and when more states start devolving powers to Panchayats and when they start to become empowered local self-governments, more corporates will turn to Sabu's model. This will be problematic, to say the least, not just from a corporate ethics point of view, but also from how we are chiselling out the democracy that we wish to give to ourselves.

4 http://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf



Part 5

Looking Ahead

Chapter 11:

Progressive Dilution: Takeaways from the Last Decade of Business and Human Rights¹

Pradeep Narayanan²

Exactly 100 years ago, India had its first trade union federation when the All India Trade Union Congress was formed in 1920. The power of trade unionism influenced a number of legislations in the subsequent seven decades. Nevertheless, the businesses were successful in mainstreaming a narrative of unions being bottlenecks for them as well as for the national economy, and things changed considerably in the past two decades. Now, the national budgets talk rarely about workers; a number of official labour surveys have stopped providing information about workers' membership in unions; and in 2020, we have seen the enacting of the labour codes that now scuttle the institution of collective bargaining itself. The Ease of Doing Business Index is no longer a set of indicators, but has evolved into an ideology by itself.

Ironically, during these times, we also saw the firming of the paradigm on business and human rights. In India, it aligned with the introduction of the National Voluntary Guidelines on business responsibility (NVG) launched in 2011, followed by the mandatory disclosure system introduced by the Securities and Exchange Board of India (SEBI) in the form of Business Responsibility Reports (BRRs) in 2012; and now there is the National Guidelines on Responsible Business Conduct (NGRBC), 2019 and a new disclosure template, Business Responsibility and Sustainability Reporting (BRSR) launched in 2020. Further, the government has embarked into evolving the National Action Plan on Business and Human Rights (NAP), which has been awaiting its long-delayed unveiling for months now.

Over these years, what has also happened is that the term, human rights, is no longer a taboo

among the businesses. According to an analysis of BRRs of the top-150 companies by Corporate Responsibility Watch (CRW), 93 percent companies claim that they have policies on human rights, with 71 percent even claiming that they regularly organise independent evaluations of the implementation of these policies. However, only 54 percent companies recognise the principle of collective bargaining. 21 among top 100 companies already have more than 50 percent of their workforce as contractual; and only 6 percent extend the social security policies applicable to their permanent employees to contractual employees.

The corporate boards continue to be as non-diverse as ever. Among 83 board members of the top 10 listed companies, 77 belonged to dominant caste categories (Brahmin, Kshatriya, Kayastha, Jain or Parsi); and none from the Dalit or Vimukt or Adivasi community. So, the narrative of 'human rights' is surging among the businesses, without really benefiting the workers or other marginalised. What is alarming, therefore, is this rapid de-politicisation of the term 'human rights'!

Often we try to see a 'company as an entity', being socially responsible or irresponsible, but a glance at the business operations of different companies would reveal that almost every company has some of the following four categories of operations.

The first category of business operations are inherently premised on the violations of human rights; for example, a number of companies subcontract their operations to petty contractors who often would not be able to even provide minimum wage to workers; or where the companies set up their factories circumventing

1 This article is based on the piece originally published in <https://www.news18.com/news/opinion/being-in-good-company-business-and-human-rights-movement-cannot-be-apolitical-3074669.html>

2 Director - Partners in Change

environmental and social audit mechanisms and clearances. There are also a number of examples where business operations displace communities without prior consent; or impact the health and livelihood of the communities living around the operations. In these cases, human rights violations have become very 'normal' for almost every company.

The second category comprises those operations, which follow a "do no further harm" principle, that is, these operations would cause much harm to persons as is the practice by society or by other businesses. For example, if a society were undignified about menstruating women, such business operations would not make any attempt to prevent those socio-cultural norms from appearing in business workplaces and systems.

Next, there is the third category of business operations, which follow a 'do no harm' principle. Here, operations do not cause any harm, although other companies or stakeholders in society would be causing such harm. Such operations of businesses include practices like ensuring provident fund or health insurance even for contractual employees; or proactively eliminating all discriminatory practices within their systems to promote diversity within the organisation.

The ideal category is the fourth category, which is premised on ensuring and promoting human rights of all business stakeholders, individuals and communities irrespective of local practices. For example, the Lemon Tree Hotel's inclusion programme employs more than 600 persons with multiple kinds of disabilities in core operations; or such operations of Tatas in terms of having affirmative action policies in employment, employability, entrepreneurship and education basis gender and caste; or those activities of Zomato, that ensure providing entitlements to menstrual leave. The challenge remains on how to ensure that such transformative experiences are seen among contractual workers, displaced communities and those whose health and livelihood are affected by company operations. Unfortunately many 'harms' caused by businesses have been normalised and seen as accepted

practice; and the spaces for dialogue on them are shrinking.

On the other side, the civil society groups involved in facilitating the business and human rights discourse itself are also divided. There are three categories here.

The first category includes those who feel that the need is to showcase the business case for human rights, and they focus on popularising case studies where particular operations of companies respect human rights. The businesses themselves are keen to invest in these groups as these examples end up building a false narrative that businesses are overall doing incredible work on human rights.

The second category, is one which constantly visibilises business violations, but often with the premise that the businesses are not aware or sensitised; and that if corporates were provided appropriate knowledge and solutions they would comply with human rights. What is overlooked is that it is not ignorance but often the knowledge, which makes businesses continue violating or ignoring human rights for they know how to deal with disclosure risks. This category of civil society also disregards the nexus that businesses build with the state as well as with wider society. They seem to constantly convince themselves that everything that is happening is because of lack of awareness, sensitivity and creativity among businesses.

The last category comprises human rights defenders, who constantly stand up against violations. The challenge for them is that there is no business and human rights jurisprudence to facilitate their action and link them to the current remedy machinery. Many demand accountability from the state, with less focus on making businesses responsible. Now, these three categories rarely talk to each other.

The UN Guiding Principles on Business and Human Rights (UNGPs) with three pillars could well have become a tool to get these constituencies to talk to each other. But the UNGPs and the way the principles are converted into manuals and modules often end up distracting the attention

of the people from ground realities and the real contestation that is happening on the ground between the businesses and the communities. For example, even now it looks like businesses have nothing to do with the 'Black Lives Matter' or 'Dalit Lives Matter' or gender-based discrimination, as if these are happening on different planes. Ideally, a global instrument of this comprehensive nature should have helped alert businesses to their continued commanding role in preserving patriarchy, racism and casteism. But, instead, the attempt is to derail the instrument with a narrow definition of 'human rights' as well as of 'business'.

Often, it is a struggle to explain that an incident like sugarcane plantation workers 'voluntarily' removing their uterus to work uninterruptedly in the field that do not have adequate toilet facilities or menstruation rest hours³, amount to violation of human rights in the production of sugar or all sugar products that companies market. Or, Nestle not 'removing' the MSG from its instant noodles and its products actually having had a 'no added MSG' label citing that common local practice,⁴ is actually a violation of human rights of consumers from the lens of right to health as well as right to information. Or for example the media companies violating the rights to privacy of mental health patients or of the caregivers are not yet even perceived as a business and human rights issue⁵. It is difficult today to claim an apposite definition of business and human rights that is inclusive and all encompassing.

What is needed is, therefore, to evolve an ideological opposition to the Ease of Doing Business policy worldview. The UNGP is in the end a product that has evolved from the same ideology that crafted the Ease of Doing

Business Index. There is an urgent need to build a platform that combines the values of equity and collectivisation to look at human rights violations from the lens of workers and communities. The ideology that nurtured trade unionism is currently not informing this mandate of business and human rights. If the police firing that killed 14 protestors against expansion of a copper smelter plant run by Sterlite Corporation in Thoothukudi⁶ town is an indication, there is clearly a nexus between business and the state that needs to be acknowledged and challenged. In some cases, it becomes visible; in others it remains invisible. The need is to evolve an ideological lens to comprehensively understand the crime and the criminals. A quote from Marx, here, will be self-explanatory:

“A philosopher produces ideas, a poet poems, a clergyman sermons, a professor compendia and so on. A criminal produces crimes. If we look a little closer at the connection between this latter branch of production and society as a whole, we shall rid ourselves of many prejudices. The criminal produces not only crimes but also criminal law, and with this also the professor who gives lectures on criminal law and in addition to this the inevitable compendium in which this same professor throws his lectures onto the general market as 'commodities'...The criminal moreover produces the whole of the police and of criminal justice, constables, judges, hangmen, juries, etc.”

Isn't the urgent need, today, to rescue UNGP from becoming a commodity of the Ease of Doing Business index ideology? Business and human rights require a powerful ideology, similar to the one that epitomised trade unionism for decades. There is a need to seize certain opportunities to reclaim the shrinking spaces of collectivisation

3 Mulye, Abhijit. Over 13,000 female sugarcane workers in Beed have undergone uterus removal surgery, says probe panel, The New Indian Express, 29 August 2019. <https://www.newindianexpress.com/nation/2019/aug/29/over-13000-female-sugarcane-labourers-in-beed-have-undergone-uterus-removal-surgery-says-probe-pan-2026166.html>

4 Kurian, Shireen and Narayanan, Pradeep. Tasty Bhi, Healthy Bhi! Maggi's Instant Violation of Consumer Rights, Status of Corporate Responsibility in India, 2019, p. 75, Praxis 2019, <https://www.corporatewatch.in/status-of-corporate-responsibility--1>

5 Mental Health: We Have Violated Sushant Singh Rajput's Right To Privacy, The Wire, 24th August 2020, <https://science.thewire.in/health/sushant-singh-rajput-patient-confidentiality-mental-health-mhc-act-2017/>

6 Rajavelu, K. and Joseph, Stanley. Justice: A distant dream in Thoothukudi, Status of Corporate Responsibility in India, 2019, p. 69, Praxis 2019, <https://www.corporatewatch.in/status-of-corporate-responsibility--1>

and advocacy. The business and human rights paradigm rests on transparent disclosure, which in turn requires enhanced confidence of workers and communities on the regulatory system to deliver on adverse findings from these disclosures.

It should not be that we fight the battle of transparent disclosure at the cost of a strong regulatory system. It is going to be a challenge.

Corporate Responsibility Watch members

.....





Corporate Responsibility Watch

Secretariat, Praxis Institute for Participatory Practices
BB-5, Second Floor, Greater Kailash Enclave II, New Delhi – 110048
Tel: 011 4107 5550/29223588
www.corporatewatch.in
crw@praxisindia.org