

# **Status of Corporate Responsibility in India, 2017**

**CSR not a bandaid solution for irresponsible practices**

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## Preface

Corporate Responsibility Watch launched its first ever CSR in India Report in the year 2016 with the objective of providing an overall status of Business Responsibility. CSR in its original avatar was considered as Responsible operations by businesses in their Core Business. In its new avatar, the Companies Act 2013, Corporate Social Responsibilities (CSR) initiatives are often talked about or undertaken as if they were something special, which is rather problematic. Separating CSR from core business operations might reduce CSR to acts of philanthropy, as companies continue being irresponsible in their primary business activities. While aligning both aspects, compliance becomes a given when discussing CSR. It is detrimental for a company's long term sustainability strategy to implement activities that have limited or no relationship to a company's operations, as this exercise will have limited contribution in realising social, environmental and ethical business practices.

Through its efforts, Corporate Responsibility Watch (CRW) is among one of the initiatives in the country that is attempting to unpack, track and monitor corporate responsibility. With an aim to enhance the dimensions of transparency and accountability of corporates towards society, the tool of advocacy and engagement with the Ministry of Corporate Affairs and corporates has been the National Voluntary Guidelines (NVG) framework for business responsibility. This framework has been a starting point to steer the discussion on business responsibility back to a wider scope covering social and environmental practices. Over the past couple of years, CRW has published analyses of Business Responsibility Reports through the series Disclosure Matters and created two editions of the India Responsible Business Index. This report which is the second edition of the CSR in India aims to maintain the continuity in compelling companies to go beyond the mandated two per cent CSR spent and examine how the profits are made, rather than how it is being spent. Coupled with our analyses of the BRR, authors have outlined the ground realities of CSR practices through the lens of labour reform, worker rights and current trends within the policy environment. The report is based on information available in the public domain, largely put across by companies themselves through their business responsibility reports, annual reports and annual CSR reports

This report would not have been possible without the valuable contributions by the organisations and networks associated with Corporate Responsibility Watch. We would like to express our immense gratitude and appreciation to Amita Joseph, Subhash Mittal, Pradeep Narayanan, Shireen and Dheeraj for providing overall support in making this report possible. We would also like to place on record our sincere thanks to the distinguished authors - Dr Archana Shukla Mukherjee, Anusha Chandrasekharan, Aruna Chandrasekhar, Dheeraj, Prof Jagdeep S Chhokar, Jhumki Dutta Kashyap, Manoranjan Pegu, Neeraj Thakur, Pradeep Narayanan, Pradeep Patra, Rijit Sengupta, Sandeep Sachdeva, Subhash Mittal, Tom Thomas and the supporting team of Rohan Preece, Shireen Kurian, Sowmyaa Bharadwaj and Urvashi Mitra.

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

Section 1:

# Big picture

## Chapter 1:

### CSR not a Panacea for Corporate Irresponsibility: A Review

- Tom Thomas<sup>1</sup>  
With Inputs<sup>2</sup>

“What corporations do *to* society is far more important than what corporations can do *for* society” - Peter Drucker

Corporate leadership has more responsibility today than ever before to dispel the Marxist suspicion that business ethics is an oxymoron as ‘capitalism itself tends to produce greedy, overreaching, and unethical business behaviour’. In India, in the 25 years of economic liberalisation, we had a whopping 2216 per cent jump in GDP and 1388 per cent growth in per capita income with just 0.7 per cent reduction in unemployment rate and extreme poverty remaining unchanged<sup>3</sup>! Undoubtedly, businesses have both contributed to and benefitted significantly from this growth. Wealth at the top echelons have skyrocketed in economically liberalised India. The country is home to some of the richest people in the world even as a third of its population lives in abject poverty.

For us, in India, one of the world’s most vibrant democracies, it becomes imperative to examine the relationship between democracy and corporations<sup>4</sup>. Companies need to be more responsible and accountable for the social and environmental consequences of their core operations. The way in which these profits are made in the first place, needs to be constantly examined and improvised from a social, environmental and even financial lens. In a study of Fortune 500 companies<sup>5</sup>, “it was found that firms that engage in socially responsible behaviour towards their stakeholders are subsequently more likely to engage in socially irresponsible behaviour towards their same stakeholders at a later point.”

The ‘social’ in Corporate Social Responsibility waters down, to a large extent, this idea of accountability, by turning the more comprehensive principle of corporate responsibility into merely corporate ‘social’ responsibility – shifting focus to ‘what corporates can do *for* society’ from what its business *does to* society. It quietly pushes into the shadows, corporate economic responsibility, corporate environmental responsibility, corporate human rights responsibility, etc. The state, which should safeguard society against inequitable wealth creation and damage to common resources and the environment seems content with a tiny CSR hand-out. What seems to be sacrificed at the altar of capitalism is the very essence of democracy – the collective interest and progress of the society, in favour of the riches for a few. And the silence of the media, that should ideally act as a watchdog, in a world that continues to be more connected where actions of corporations can be easily scrutinised is a telling sign of the malfunctioning of the essential components of democracy.

One of the best examples to illustrate this is that of Enron<sup>6</sup>. Despite giving for public good it is also known to have swindled the same public by engaging in surreptitious accounting fraud that eventually cost shareholders USD 11bn (£6.73 bn) when its stock price dropped from nearly USD 100 per share to USD 1 at the end of 2001. Regardless of how much money Enron has contributed to development projects, it is irresponsible for having suppressed knowledge about the adverse impacts of its fraudulent practices. In a similar act, from a different context, a well-known FMCG company not revealing the contents and ingredients of a food product, is violating the right of the consumer by withholding valuable information of the harmful effects that the ingredients might have on the health of population.

Cementing this narrative are the several CSR awards that have been institutionalised by various

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<sup>1</sup> Praxis – Institute for Participatory Practices

<sup>2</sup> Shireen Kurian, Praxis – Institute for Participatory Practices

<sup>3</sup> <http://www.firstpost.com/business/25-years-of-liberalisation-a-glimpse-of-indias-growth-in-14-charts-2877654.html>

<sup>5</sup> <http://onlinelibrary.wiley.com/doi/10.1111/peps.12029/abstract>

<sup>5</sup> <http://onlinelibrary.wiley.com/doi/10.1111/peps.12029/abstract>

<sup>6</sup> <https://www.theguardian.com/sustainable-business/companies-csr-policies-corporate-irresponsibility-new-study>

businesses and industry chambers in recognition of executing effective welfare projects for the community. Approximately 20 companies in the top 100 companies that have been reviewed in this report have received CSR awards in the last year. Out of these, at least five companies have flouted social and environmental norms within their business operations. A look at who walks away with these awards should be compelling enough reason to reiterate the principles put forth by Peter Drucker and others – corporate responsibility is more about how profits are made and less about how profits are used.

**Table 1. Theme-wise percentage spend of CSR allocation for top 100 companies (n=100<sup>7</sup>)**

Theme	Percentage of Spent	Theme	Percentage of Spent
Education	27.1	Overheads	2.07
Health	14.86	<a href="#">Disability</a>	0.24
Rural Development	13.82	Women and Children	0.90
Water and Sanitation	10.2	Sports	0.66
Environment and wildlife conservation	6.98	Promotion of Heritage/Art & Culture	0.69
Skills and vocational training	5.49	Financial Literacy and Financial Inclusion	0.51
Community Development/ Social Empowerment	4.74	Scheduled Castes, Scheduled Tribes, Nomadic, Semi-Nomadic and Denotified Tribes	1.61
Common/ Other CSR Activities	3.89	Renewable Energy	0.05
Livelihood	3.88	Elderly	0.04
Disasters	2.28		

The total amount to be spent by top 100 companies was Rs 6653 crore, of which Rs 5908 crore was spent during the year. CSR expenditure percentage was the highest in areas of education and health. Companies are spending only 0.24 per cent of CSR grants on disability and a mere 0.04 per cent is being spent on the elderly. In funding various government schemes, we see that 10.2 per cent of the CSR expenditure is being spent on water and sanitation.

Is CSR the panacea to correct the wrongs of such obscenely inequitable wealth creation and distribution? Definitely not, especially given the reductionist discourse on CSR in India since the famous two per cent law of 2013, which effectively equates it with acts of philanthropy or, at best, corporate-sponsored development work. While these projects may be well intended, well designed and even impactful, a holistic imagination is required to locate the proper role of business vis-a-vis society. The government through its two per cent legislation and the increased demand on corporations to fund its various schemes ranging from cleaning of the Ganga to funding of health schemes, is actively encouraging this narrative. The National Health Policy 2017, for example, makes a reference to CSR for financing public health. In section 13.3, it mentions, “CSR is an important area which should be leveraged for filling health infrastructure in public health across the country.” The policy<sup>8</sup> speaks about collaborating with civil society organisations and leveraging CSR support to strengthen existing gaps. This is problematic in its implementation given that public healthcare is an area that should primarily be in the domain of the state. CSR dependency jeopardises the state’s duty to deliver effective and timely healthcare to its citizens.

<sup>7</sup> Compilation of publically available CSR annual reports by top-100 companies for 2015-16

<sup>8</sup> <https://kafila.online/2017/04/06/indias-health-policy-a-long-tale-of-underachievement-prakash-gupta/>

**Table 2. Status of implementation mechanism related to National Voluntary Guideline Principles 2015-16<sup>9</sup>**

	Indicator	Ethics, Transparency & Accountability	Product Life Cycle sustainability	Employee Well Being	Stakeholder engagement	Human rights	Environment	Public Advocacy	Inclusive Growth	Customer Value
1	Policy formulation in consultation with relevant stakeholders	74	66	74	70	65	74	43	60	62
2	Policy has been approved by the board	74	66	71	71	65	73	47	75	64
3	Policy communicated to all relevant stakeholders	71	63	71	70	64	71	46	70	61
4	Existence of the grievance redressal mechanism	77	68	76	73	71	71	51	69	75
5	Carried out independent audit of the working of the policy	60	51	58	55	52	58	40	56	51

Only 77 out of the top 100 companies acknowledge the existence of grievance redressal mechanisms to address issues related to ethics, transparency and governance under Principle 1 of the NVGs. This, despite the recent scams and governance failures that plague some of the big corporate names. In this context, corporate whistleblowing, which is considered globally as one of the best tools to ensure good corporate governance, is said to be in its infancy in India. In a study released by ASSOCHAM-Ernst & Young in 2013<sup>10</sup>, "Most frauds result in some form of business disruption as well as reputational and financial losses. Whistle-blowing is still at a nascent stage in India, and most Indian companies do not use it as an effective tool against fraud." In table 2, above we see that only half the companies answered in the affirmative regarding carrying out an independent audit of the working of the policy on employee well being. Considering this is a sample of top 100 companies the expectations of shareholders would be that all companies disclosed information, having followed procedures and carrying out internal and external audits.

**Table 3: Are companies becoming socially responsible towards communities?**

Index Elements	Score Bands			
	0 to 0.25	> 0.2 to 0.50	> 0.50 to 0.75	> 0.75 to 1
Non-Discrimination in the Workplace	0	12	51	37
Employees Dignity and Human Rights	17	43	40	0
Community Development	2	29	67	2
Inclusive Supply Chain	26	48	25	1
Community as Business Stakeholder	92	8	0	0

The analysis of corporate disclosures done as part of the India Responsible Business Index<sup>11</sup> shows that companies are still wary of seeing the community as an important business stakeholder. 92

<sup>9</sup> Compilation of publically available business responsibility and annual reports by top-100 companies for 2015-16

<sup>10</sup> <http://timesofindia.indiatimes.com/life-style/relationships/work/whistleblowing-policy-in-a-company/articleshow/22433696.cms>

<sup>11</sup> The India Responsible Business Index measures 100 listed companies on five criteria to see how socially inclusive they are. The index is an outcome of a collaborative partnership between Corporate Responsibility Watch (CRW), Oxfam India, Change Alliance, Praxis Institute for Participatory Practices (Praxis) and Partners in Change (PiC)



companies fall within the score band of 0 to 0.25<sup>12</sup>. According to the index in 2016, there were only 13 companies that had held public hearings regarding project impact with communities. Similarly, there were only 31 firms<sup>13</sup> with a provision for conducting impact assessments in 2016. Here it is noteworthy to mention that IRBI distinguishes between community development under CSR and community as stakeholders. “The latter deals with companies<sup>13</sup> going beyond the norms specified by the ministry of corporate affairs, which many firms are not practising.” For example as per the index, only 41 companies<sup>13</sup> had policies on the need for impact assessment in 2016.

While the CSR two per cent mandate is a step in the right direction it should not be used to ‘mask’ corporate irresponsibility in its core operations. It is a positive development that CSR is now in the vocabulary across businesses in a big way. However, the entire debate<sup>14</sup> on wider social responsibility which has been overshadowed by the assumed prominence of the two per cent mandate, should not be side lined. Two per cent CSR has started being used synonymously with community development by companies and making core business operations responsible is not seen as so much of a priority. **The** Company Act seems to have defined CSR not only as beyond compliance but also beyond core operations. It is important to note that this is a time when businesses are reluctant to perform even their mandatory tasks, especially when it relates to contract workers or the supply chain; for example, their living wage, skill development, associations, safe and secure space for women and disability. The companies’ CSR activities would now be largely with “adopted” communities beyond their operations rather than with families of their contractual workers or members of supply chain or communities that may have been resettled by them, beyond their legally mandated activities. The companies need to examine their preference in wanting to spend CSR expenses on “external communities” or to donate to Government programmes rather than spending on their own workers or supply chain fearing that the expense might get disallowed.

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<sup>12</sup> [http://www.responsiblebiz.org/irbf\\_index/](http://www.responsiblebiz.org/irbf_index/)

<sup>13</sup> <http://www.livemint.com/Companies/3bTodoRzklluq20saQoInO/Companies-turning-more-responsible-but-still-a-long-way-to.html>

<sup>14</sup> <https://corresponsibilitywatchindia.wordpress.com/>

Section 2:

## Equity and Inclusion: Whose Responsibility

## Chapter 2:

### Inclusion in the Private Sector: Building the Case for Regulatory Push

- Anusha Chandrasekharan<sup>1</sup>, Jhumki Dutta Kashyap<sup>15</sup>, Dr. Archana Shukla Mukherjee<sup>16</sup>  
With inputs<sup>17</sup>

Sustainable Development Goals (SDGs) have prominently placed inclusion as a development agenda through Goal 10, which aims at reducing inequalities. Towards achieving this, it has committed to “ensure steps to achieve and sustain income growth for the poor and vulnerable sections of the population”, “ensure adaptation of measures to achieve greater equality through fiscal, wage and social protection system” and “ensure steps to provide equal opportunity and reduce inequalities”. Globally, this is the first time that an instrument of this scale has recognised that addressing inequality is an important goal.

What is needed is for Corporate India to recognise that (a) inequalities based on caste, religion, gender and disability do exist in and are perpetuated by business; and (b) it is the responsibility of corporates to address it, whether there is a business case for it or not.

There will always be examples of a number of individuals from vulnerable communities who would have overcome poverty and become successful entrepreneurs in private enterprises. Probably, this trend is now on the rise. Nevertheless, a number of studies in the last two decades have pointed out the very intrinsic presence of discrimination in corporate India, hinting at a lack of equity in its ethos.

There are enough studies to indicate that Dalit businesses face discrimination at every step – from leasing business places, to obtaining initial formal credit for setting up an enterprise, to having to charge less for products than their upper-caste peers and to being branded negatively<sup>18</sup>. When Chandrabhan Prasad, advisor to the Dalit Indian Chambers of Commerce and Industry (DICC), who was born into a family of pig-farmers, launched his venture “Dalit Foods”, he had a very conscious aim – to give visibility to Dalit farmers and producers whose products were, until now, branded and sold in the market by others as their own<sup>19</sup>. By openly declaring his caste status and thus challenging society to integrate diversity in the food business, he set a precedent for others. But he is among the very few.

Gender, caste, disability, religion and various other vulnerabilities matter vastly at the time of recruitment, from the point of time of deciding whether the applicants get to the interview, to

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<sup>15</sup> Independent Researcher

<sup>16</sup> Change Alliance Private Limited

<sup>17</sup> Pradeep Narayanan, Shireen Kurian, Urvashi Mitra - Praxis – Institute for Participatory Practices

<sup>18</sup> Some examples of articles that talk about challenges faced by Dalit entrepreneurs are listed below: Lum, Kathryn; Why are there so few Dalit entrepreneurs? The Wire; January 19, 2016

<https://thewire.in/19585/why-are-there-so-few-dalit-entrepreneurs-the-problem-of-indias-casted-capitalism/> and Jodhka, Surinder S.; Dalits in Business: Self-Employed Scheduled Castes in North-West India; Indian Institute of Dalit Studies; 2010

<sup>19</sup><https://www.voanews.com/a/in-india-food-business-challenges-caste-based-discrimination/3520796.html>; and

<http://www.livemint.com/Companies/YbUASVvd6m8mbffOFNW2uM/With-Dalit-Foods-entrepreneur-looks-to-conquer-caste-prejud.html>

whether they get selected and if they do, then whether they get promoted. Anu Oza, writing on the subject, cites a 2009 study by Sukhadeo Thorat to suggest that social exclusion on the basis of caste and religion (for Muslim applicants) occurs at the stage of application sorting<sup>20</sup>. “Statistically... applications that had high-caste Hindu names were more likely to result in a positive job outcome than those with Muslim or Dalit names, despite their identical qualifications. The odds of a Dalit being invited for an interview were about two-thirds of the odds of a high-caste Hindu applicant. The odds of a Muslim applicant being invited for an interview were about one-third of the odds of a high-caste Hindu applicant”<sup>21</sup>.

The jarring numbers worsen as one moves up the corporate ladder. Only 68 companies explicitly stated the diversity of their Board as an explicit principle; 31 companies stated the need for diversity in board in terms of gender; and only 1 company stated People With Disability as an important inclusion criteria<sup>21</sup>. Another study points out that there is no diversity at all in the boards of 1,000 top Indian companies, which are nothing better than “old boys’ clubs” based on caste affiliation<sup>22</sup>.

The same is true for other marginalised identities also – be it gender, disability status, tribal or minority identities and would have remained so, were it not for regulatory mechanisms. For example, the female representation in the Board composition of top 500 Nifty companies was just about 5 per cent in 2012 before the Companies Act made it mandatory for the Board to have at least one woman as director.

### **Business case for diversity: Where do companies stand?**

Social inclusion implies a process of improving the terms on which people take part in society — improving the ability, opportunity, and dignity of those disadvantaged on the basis of their identity<sup>23</sup>. In the context of business, social inclusion is a process whereby all individuals, including those who otherwise are traditionally excluded and discriminated against in the economic and social sphere, are integrated into its operations. A study<sup>24</sup> conducted on Nokia is often quoted in this context; where the predominantly white, male, Finnish employee base was found to contribute to a monoculture that did not accommodate diverse ideas and hence led to the company’s failure. The bottom line is - discrimination is wrong. Addressing it does not require any business case.

In the context of workforce diversity closer home, CSR in India, 2016<sup>25</sup> highlighted how women in the workforce contribute to effective and sustainable CSR; and women as consumers, who make up almost 70 per cent of global consumer spending, can drive markets for eco-friendly products and practically result in increasingly sustainable production methods by many companies. However, participation of women at the workplace, in terms of India’s overall labour force participation rate

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<sup>20</sup> Oza, Anu; Corporate India Must Face the Truth; The Hindu Businessline; December 15, 2015.

<http://www.thehindubusinessline.com/opinion/corporate-india-must-face-the-truth/article7992608.ece>

<sup>21</sup> Making Growth Inclusive – 2017: Analysing Inclusive Policies, Disclosures and Mechanisms of Top 100 companies; Praxis, Oxfam India, Corporate Responsibility Watch 2017; P27. Available here:

<http://www.corporatewatch.in/reports/241-making-growth-inclusive-analysing-inclusive-policies,-disclosures-and-mechanisms-of-top-100-companies-2017.html>

<sup>22</sup> D. Ajit et al; *Corporate Boards in India: Blocked by Caste?* Economic and Political Weekly; August 11, 2012

<sup>23</sup> As defined by World Bank

<sup>24</sup> <http://www.forbesindia.com/blog/work-place-human-resources/unconscious-bias-roadblock-to-promoting-diversity-in-the-workplace/>

<sup>25</sup> [http://www.corporatewatch.in/images/CSR\\_in\\_India.pdf](http://www.corporatewatch.in/images/CSR_in_India.pdf)

remains low, and has in fact, dropped from 35 per cent in 1991 to 23.7 per cent in 2015-16<sup>26</sup>. An analysis of Annual Reports 2015-2016 of top 100 companies listed on the Bombay Stock Exchange shows that no company has more than 50 per cent of its workforce as women. As many as 57 per cent companies have employed women, but they form less than 10 per cent of the workforce.

**Table 1. Distribution of top 100 companies as per the percentage of permanent women employees (n=100)**

Percentage of women employees	Not reported	More than 0 to 10%	11-30%	31-50%	51-100%
No. of companies	9	57	29	5	0

The above data begs the question, why is it that female participation in labour forces is declining; and despite companies having hard evidence of the need to increase these ratios, why is the change not more forthcoming?

After SEBI mandated the top 100 companies, as listed on the Bombay Stock Exchange to fill out Business Responsibility Reports; the framework of which was provided by the National Voluntary Guidelines, it made available data on companies' processes and mechanisms based upon their own disclosure. So where do companies stand on equality and non-discrimination? An analysis of the disclosures made by the top 100 companies by Corporate Responsibility Watch shows that 83 have recognised the principle of "Equal Opportunity in recruitment" explicitly in the public domain, with 56 having detailed out systems to ensure the same<sup>27</sup>.

**Table 2. Number of companies among top 100 listed companies identifying specific groups vulnerable to discrimination at recruitment, through policies (n=100)<sup>28</sup>**

Stage in career	Person with Disability	Women	Sexual Minorities	Scheduled Castes	Scheduled Tribes	Religious Minorities
<i>Initial recruitment</i>	70	71	38	62	27	68
<i>Career Advancement</i>	36	41	23	33	15	35

Sixty-two companies explicitly mentioned the need to ensure non-discrimination on the basis of 'caste' in their recruitment policy. Similarly, a number of companies mentioned gender (71), tribal

<sup>26</sup> Fifth Annual Employment Unemployment Survey (EUS), Labour Bureau, Chandigarh. Available at [http://labourbureaunew.gov.in/UserContent/EUS\\_5th\\_1.pdf](http://labourbureaunew.gov.in/UserContent/EUS_5th_1.pdf)

<sup>27</sup> Making Growth Inclusive – 2017: Analysing Inclusive Policies, Disclosures and Mechanisms of Top 100 companies; Praxis, Oxfam India, Corporate Responsibility Watch 2017; P27. Available here: <http://www.corporatewatch.in/reports/241-making-growth-inclusive-analysing-inclusive-policies,-disclosures-and-mechanisms-of-top-100-companies-2017.html>

<sup>28</sup> Ibid.

status (27), disability (70) religion (68) and even sexual orientation (38) in the context of non-discrimination in initial recruitments.

While 92 companies publicly committed to the presence of their Anti-Sexual Harassment policies, thanks to legal mandate<sup>29</sup>, only 49 companies have disclosed explicit provisions for disabled-friendly workspace.

If we leave out the public sector, then of the 81 private companies, only 53 per cent mentioned caste and 12 per cent mentioned ST. In their BRRs, 94 and 73 companies respectively have provided disaggregated data of employees based on gender and disabilities.

The issue seems to be that companies are probably not interested in knowing the situation of workers in the workspace. Only six companies have committed to making assessments on the situation of workers' rights and labour issues in their policies. Only 62 companies have enumerated employees having become part of employee associations. In this scenario, there is very little possibility of any discriminatory practice getting noticed by the management.

An analysis of Annual Reports 2015-16 of companies shows that only five companies have disclosed that between 2 and 3 per cent of their permanent employees are people with disability. Sixty companies have people with disability forming between 0 and 1 per cent of the permanent workforce. It would be interesting to see whether the recently passed Rights of Persons with Disabilities Bill, 2016, increasing reservation in government sector jobs from 3 per cent to 4 per cent will rub off on the private sector too.

**Table 3. Distribution of top 100 companies as per the percentage of permanent employees with disability (n=100)**

Percentage of employees with disability	Not reported	Nil	More than 0 to 1%	More than 1% to 2 %	More than 2% to 3 %
No. of companies	25	10	50	10	5

### **Social inclusion: Awaiting the regulatory push?**

In India, the Constitution contains provisions for the individual's right to equality and protection against discrimination, including equality before the law, prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth, and equality of opportunity in matters of public employment. While this principle binds the state and public institutions and companies, the private sector, in the absence of a comprehensive anti-discrimination legislation, may have felt less pressured to address diversity and inclusion from a regulatory compliance perspective.

The Department of Public Enterprises Guidelines lay down the manner in which public sector companies are mandated to function and report the same. As a part of the reporting, PSUs in India are required to submit disaggregated data about their employees across caste, gender, disability, religion, ethnicity, etc. The disclosure and presence of SC/ST among employees in the PSUs as against private companies makes an assertion that unless there is a regulatory push, companies may

<sup>29</sup> [http://lawmin.nic.in/ld/P-ACT/2013/The%20Sexual%20Harassment%20of%20Women%20at%20Workplace%20\(Prevention,%20Prohibition%20and%20Redressal\)%20Act,%202013.pdf](http://lawmin.nic.in/ld/P-ACT/2013/The%20Sexual%20Harassment%20of%20Women%20at%20Workplace%20(Prevention,%20Prohibition%20and%20Redressal)%20Act,%202013.pdf)

not disclose on and or explicitly push for diversity. While 74 per cent PSUs among top 100 listed companies provide disaggregated information about number of SC and ST employees only 0.02% of private companies mentioned SC and ST numbers.

However, there have been certain regulatory pushes which have delivered initial results in promoting socially inclusive business practices that go beyond recruitments.

A May 2017 study on women in Boards of companies pointed out: “The board composition is significantly more inclusive now with women constituting around 13 per cent (622) of the total directors (4690) in the Nifty 500 companies. Without accounting for multiple directorships, there were a total of 477 unique women directors in these companies as on 31 March 2017”<sup>30</sup>.

Three-fourth the number of companies on the Nifty 500 has just one woman director as mandated and there are still 15 companies without a single woman director. That said, 107 companies have exceeded the one-woman-on-the-board quota and four companies (Ultratech Cement Limited, Cipla Limited, Apollo Hospitals Enterprise Limited and Idea Cellular Limited) had four women directors each on their boards. Nevertheless, the significance of regulatory push cannot be underscored, especially when the cause is in the interest of social inclusion.

Similarly, the Supreme Court’s judgment<sup>31</sup> in 2014 giving recognition to ‘third gender’, is progressively leading to a growing number of Indian companies such as Godrej, IBM, Kochi Metro Rail Limited hiring transgender people and drafting policies to ensure they are not discriminated against in the workplace<sup>32</sup>. For instance, Kochi Metro Rail became the first government-owned company to recruit staff from the transgender community as part of the Kerala government’s initiative to give the marginalised group better access to job opportunities. Many companies, including Kochi Metro, have modified the existing disability restrooms into all-gender, all-abilities restrooms, promoting them in a way that there is no stigma attached to them. One hopes that other companies do not stop at fulfilling basic mandated requirements.

### **Way forward: A Comprehensive No-Discrimination in Employment Policy**

“Thanks for your application. We regret to inform you that we hire only non-Muslim candidates.” This reply sent by M/S Hare Krishna Exports Pvt Ltd to an applicant in 2015 led to the company being booked under the Indian Penal Code. Certain legal experts contested this, arguing that neither the Constitution nor any legal precedent places any regulations on a private company in the matter of selection of its employees<sup>33</sup>. In fact, some even dismissed the case on the grounds that employment was a “contract” between two private parties, which is subject to consent on both sides. It was argued that the company could not be held liable under grounds violating the constitutional provision of protection from religious discrimination. The sum of the argument seemed to make it clear that the discrimination itself was not the problem, but the “crude” language used therein.

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<sup>30</sup> Corporate India: Women on Boards; May 2017

[http://www.primedatabasegroup.com/primegroup\\_logo/Women%20Directors%20In%20India.pdf](http://www.primedatabasegroup.com/primegroup_logo/Women%20Directors%20In%20India.pdf)

<sup>31</sup> Supreme Court recognises transgenders as third gender; Indian Express; April 15, 2014;

<http://www.thehindu.com/news/national/supreme-court-recognises-transgenders-as-third-gender/article5914572.ece>

<sup>32</sup> From bathrooms to buddies - Indian workplaces get transgender-friendly

<http://www.thehindu.com/society/indian-workplaces-get-transgender-friendly/article19114564.ece>

<sup>33</sup> <http://tilakmarg.com/opinion/zeeshan-khan-vs-hari-krishna-exports-is-law-against-religious-discrimination-applicable-to-a-private-company/>

Therefore there would not be many cases of discrimination like that of M/S Hare Krishna Exports Pvt Ltd that could be cited, because they would be more discrete.

The challenge here is that some businesses are comfortable and equipped to talk legalese, rather than advocate for inclusion and non-discrimination.

There is no denial that the Constitution of India guarantees equality of law and equal opportunity however, it explicitly mentions only public employment. There are a number of laws that are specific to affirmative action for SCs, STs, women and people with disability – but all in the government departments and companies.

It is important that there exist a comprehensive law that not only promotes diversity in the workplace but also addresses discrimination vis-à-vis non-State actors like private sector, trusts, NGOs and societies. Various institutions should also be mandated to produce a report that unpacks their human resource and policy environment (on the lines of Diversity and Inclusion Index<sup>34</sup>) on a periodic basis and make their policies public with respect to recruitment and career advancement.

In the end, it is not even about affirmative action or reservation in employment – but about non-discrimination, which is the need of the hour.

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<sup>34</sup> <https://www.thomsonreuters.com/en/press-releases/2016/september/thomson-reuters-launches-di-index-reveals-top-100-most-diverse-inclusive-organizations-globally.html>



## Chapter 3:

### Labour Pains: State of the Makers of India

- Dheerajl, Manoranjan Pegu<sup>35</sup>, Pradeep Narayanan I  
With inputs<sup>36</sup>

India's growth story presents an interesting paradox. As countries across the globe struggle to stay adrift at a time of economic crisis, India positions itself as a shining example of growth and economic transformation. While the world average GDP growth rate stood at 2.46 per cent in 2016 projecting a downward trend, India at 7.1 per cent, a drop from 8.01 per cent in 2015, was among the top performing countries in the world<sup>37</sup>. Ironically though, this does not translate into a positive scenario for the labour market.

According to the Government's Fifth Annual Employment Unemployment Survey (2015-16)<sup>38</sup> only 50 per cent of Indians aged 15 years and above is either working or seeking work. The worker population comprises 72 per cent men and 21.7 per cent women. Further, 24 per cent of sample households benefited from employment generating schemes like Mahatma Gandhi National Rural Employment Guarantee Scheme, Prime Minister Employment Generation Programme, Swarnajayanti Gram Swarozgar Yojana and Swarna Jayanti Shahari Rozgar Yojana, suggesting that the situation could have been worse if not for the Government schemes. India's unemployment rate is the highest in 5 years at 5 per cent with the female unemployment rate as high as 8.7 per cent and 4.0 per cent for males.

With respect to the nature of work, the scenario is grimmer. The labour market in India shows the three following trends. First, the employment is shifting from the primary sector to the secondary and tertiary sectors. Between 2011-12 and 2015-16, employment in primary sector reduced from 52.9 per cent to 46.1 per cent. The employment in secondary and tertiary sectors grew by 2.5 per cent and 4.2 per cent respectively<sup>39</sup>. Second, the informal sector accounts for most employment growth in the last two decades.<sup>40</sup> Third, in the same period of just four years, the proportion of contract workers and casual workers grew by more than 3 per cent and 1 per cent respectively, while proportion of wages/ salaried category and self-employed category workers together reduced by 4 per cent. The table below shows the distribution across the categories.

Category	Female	Male	Total
Self-Employed	39.9	48.4	44.1
Wage/Salaried	14.8	17.6	19.6
Contract workers	3.1	3.8	4.9
Casual labour	42.1	30.2	31.4

Source: EUS 5<sup>th</sup> Round (Page No 37) available at [http://labourbureaunew.gov.in/UserContent/EUS\\_5th\\_1.pdf](http://labourbureaunew.gov.in/UserContent/EUS_5th_1.pdf)

<sup>35</sup> SASK Coordinator

<sup>36</sup> Anusha Chandrasekharan – Institute for Participatory Practices

<sup>37</sup> World Bank GDP Growth Data, Available on

[http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?name\\_desc=false&page](http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?name_desc=false&page)

<sup>38</sup> Fifth Annual Employment Unemployment Survey (EUS), Labour Bureau, Chandigarh. Available at

[http://labourbureaunew.gov.in/UserContent/EUS\\_5th\\_1.pdf](http://labourbureaunew.gov.in/UserContent/EUS_5th_1.pdf)

<sup>39</sup> EUS 5<sup>th</sup> Round

<sup>40</sup> Of the 10.5 million new manufacturing jobs created between 1989 and 2010, only 3.7 million—about 35 per cent—were in the formal sector. (Union Budget 2015-16 p141)

It is important to note that a high proportion of people in the self-employed category does not necessarily mean decent work or wages for them. Of the self-employed workers, 67.5 per cent had average monthly earnings up to Rs 7500 only. Only 0.1 per cent of the self-employed were estimated to have earnings above Rs 1 lakh per month. A little more than 67 per cent of the surveyed households had average monthly earnings not exceeding Rs 10,000. This is far short of the stipulated monthly minimum wages for unskilled work. About 38.5 per cent of the contract workers and 59.3 per cent of the casual workers had monthly earnings of up to Rs 5000. What is required in such a context, is a platform or provision that can reflect the interest of workers and one of the key institutions are trade unions - as the right to form a association is enshrined in the constitution.

### Collective Bargaining: A systematically buried narrative

Institutionalising collective bargaining through trade unions and employee associations is cited as an impediment to growth by businesses and state attempts to discourage the same through policies. An analysis of Business Responsibility Reports of top 100 listed companies on the Bombay Stock Exchange found that only 64 per cent of companies reported that they recognised employee associations in their workplace.

	<b>Number of Companies</b>	<b>PSUs (N=19)</b>	<b>Private (N=81)</b>	<b>Total (N=100)</b>
A	Have recognised employee associations	14 (74%)*	50 (61%)*	64
B	Do not recognise associations	3 (16%)	17 (21%)	20
C	Have not reported	2 (11%)	14 (17%)	16

\* Percentage of companies against column category

Of the 64 that have recognised employee associations, only 55 report details about membership. It is significant that 16 of them have reported that more than 75 per cent of their employees are part of associations; 7 (N=14) of them are PSUs and 9 (N=50) private companies. Twenty six companies have less than 25 per cent employees unionized; and only twenty one have more than 50 per cent employees unionized. Overall the unionization among top 100 companies is very low. Given this scenario, it is pertinent to ask why a concerted effort is being made to further weaken trade unions in the name of Ease of Doing Business<sup>41</sup>.

		<b>PSU (N=14)</b>	<b>Private (N=50)</b>	<b>Total (N=64)</b>
1	Recognised but did not report on number of employees represented in Associations	3	6	9
2	Recognised and reported the following as part of Associations			
A	Less than 25% of employees	2	24	26
B	26-50%	1	7	8
C	51-75%	1	4	5
D	Above 75%	7	9	16

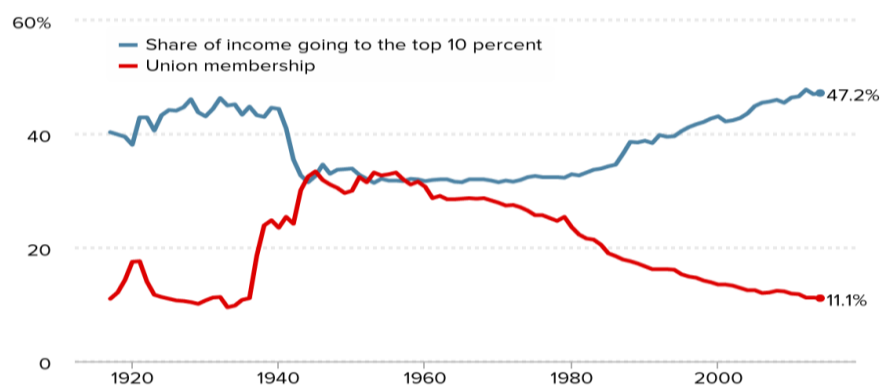
<sup>41</sup> <http://www.thehindu.com/news/cities/Visakhapatnam/trade-unions-decry-dilution-of-labour-laws/article7576711.ece>

The growing reach and impact of business enterprises across the world gave rise to deliberations about the responsibilities of these new actors towards human rights of their stakeholders. These discussions eventually led to the framing of the UN Guiding Principles on Business and Human Rights in 2011. Benefits notwithstanding, trade unions all over expressed concerns that neither did the principles provide a specific list of those human rights that must be respected by business nor do they include workers’ right to form unions and collectively bargain within businesses.

The relevance of the principle of collective bargaining clearly stands out in the following analysis of the association between union membership and the share of income of the top 10 per cent in the United States of America – a country that is a model for Ease of Business. An analysis of data by Lawrence Mishel and Jessica Scheider<sup>42</sup> shows that union membership is inversely proportional to the income share of the top 10 per cent in the American economy. For example, in 2014, when the income of the top 10 per cent was among the highest at 47.2 per cent, union membership fell to 11.1 per cent. On the other hand, when union membership was at its peak (33.4 per cent in 1945), the top 10 per cent cornered only 32.6 per cent of the income share. The study concludes that strengthening the rights of workers to collective bargaining not only ensures negotiation for better wages and benefits, but also bridges the income gap.

### As union membership has fallen, the top 10 percent have been getting a larger share of income

Union membership and share of income going to the top 10%, 1917–2014



Source: Piketty and Saez (2014), Gordon (2013), and Bureau of Labor Statistics Current Population Survey public data series

Economic Policy Institute

India may not be an exception. A look at the sample data for 10 companies among top 100 BSE listed companies’ points to the need to have a similar analysis in the context of India. The table below details the ratio of wages of the highest paid director of the company to median wages of the company.

<sup>42</sup> <http://www.epi.org/publication/as-union-membership-has-fallen-the-top-10-percent-have-been-getting-a-larger-share-of-income/>

<b>Table 4. Top companies as per the ratio of remuneration of the highest paid director to the median remuneration of the employees of the Companies along with the status of unionisation for the year 2016</b>				
<b>S.No.</b>	<b>Company Name</b>	<b>Wage Ratio of highest paid director to median of employee wage</b>	<b>Existence of Employee Associations</b>	<b>% of employees part of associations</b>
1	Lupin Ltd	1317	Yes	6.00
2	Larsen And Toubro Limited	1005	Yes	8.34
3	Infosys Ltd	935	No	
4	Interglobe Aviation	770	No	
5	Hero Motocorp Limited	755	Yes	22.72
6	Cadila Healthcare Ltd	600	Yes	0.04
7	Indiabulls Housing Finance Limited	531	Not reported	
8	Shree Cements Ltd	497	Yes	9.60
9	Bajaj Auto Limited	469	Yes	51.00
10	Tata Consultancy Services Ltd	460	Yes	0.05

In India, it has not been conclusively proved that unionization has led to increased income but it does have an impact on better working conditions and better wages. According to the Labour Bureau data, only 15 per cent of India's workforce in 2015-16 had a monthly income of Rs 10,000 or more. In other words, 85 per cent workers struggle to survive as they are caught in the low productivity-low wage trap<sup>43</sup>.

#### **Contract Workers: Circumventing Labour Laws**

The above analysis focused on unionisation among permanent employees. Contractualisation of the labour force in big companies, both PSUs and private, is a prominent feature of the labour market today. There are two reasons for this trend - on one hand, we see that having a large contractual labour force translates as less compliance with minimum labour standards and thereby ensures higher profits for the company. While the contractual job is packaged as a viable, non-complicated, free-of-red tape "good job" and is justified as a response to the rigidity of labour laws, it actually places the worker in a position of disadvantage. When the possibility of collective bargaining is limited even for permanent employees in most companies as seen above, it is difficult to believe that contract workers will have any better voice, without the freedom of association. This huge "hidden" labour force is devoid of basic rights as part of the employment process as they are either recruited through placement agencies or through local contractors. These workers don't enjoy even the basic worker rights like social protection and safety. What was sold as the "good job", in reality transforms into a "bad job".

While in a welcome move for contractual workers in government departments and agencies, the Supreme Court mandated wages on a par with permanent employees<sup>44</sup>, this is absent in the context of private companies. The dismal levels of unionisation among top 100 companies presents a challenge where mere recognition of unions is not going to be enough as most of the informal workers and casual workers are unrepresented even in Unions.

<sup>43</sup> <http://www.hindustantimes.com/columns/where-are-the-jobs-being-in-denial-over-unemployment-woes-won-t-help-modi-govt/story-Ade7EbbD5Qk6QfdDH5XDIP.html>

<sup>44</sup> <http://www.hindustantimes.com/india-news/contractual-staff-must-get-at-par-wages-supreme-court/story-xLVvtjK2rOQZjGY7JvRbK.html>

Among top 100 listed companies, only 5 have reported that they have no contractual workers (State Bank of India, Yes Bank, Bajaj Finserv, DLF Limited and Shriram Transport and Finance) and 22 companies have not reported any details. Of those reported (n=78), 27 per cent companies have more than 50 per cent employees as contractual.

	<b>Number of companies that</b>	<b>PSUs</b>	<b>Private</b>	<b>Total (N=100)</b>
1	Have no contractual workers	1	4	5
2	Have contract workers but not reported details	5	17	22
3	Have reported (percentage of their work force being contractual)			
A	Less than 25%	6	22	28
B	26-50%	3	21	24
C	51-75%	2	14	16
D	Above 75%	2	3	5

An analysis of Business Responsibility Reports of top 100 companies for 2015-16 shows that only six companies have publicly stated their commitment and have detailed systems of their human rights due diligence of their workers rights, including the rights related to freedom of association. The top 100 companies that have a combined market capitalisation of 90 trillions demonstrate that workers are merely input and are far from influencing the policy decisions of companies given their limited right to participation in management in the absence of strong trade unions; workers are merely passive participants if not cogs in the wheel. The worry is that businesses do not see workers as integral let alone core of the business. As suggested by Mishel and Scheider for the scenario in USA, the absence of collective bargaining strength of workers, would probably contribute prominently to the rising income disparity in India as well as loss of accountability to workers by the businesses.

### **Does the State represent workers?**

The Economic Survey 2015-16<sup>45</sup> cites a study to state that labour regulations, especially the dismissal norms under the Industrial Disputes Act and the nature of compliance in general, were viewed as a barrier to growth. It notes that numerous regulations also “encourage rent-seeking behaviour”, which in turn could lead to lower growth in formal sector employment. The survey states that its quest is for “good jobs” which only the formal sector can ensure and looks at ways of “incentivizing more people into formality, where productivity levels and growth is higher”. Policy makers, it is clear, understand that what is called “regulatory cholesterol” is not regulations themselves, but the corruption and nexus associated with it and that the solution is creating more jobs in the formal sector. However, the language of the state is tilted against workers. That the same chapter concludes with the role of the private sector, the state governments and the Centre in meeting the challenges of the labour market, and makes no mention of the possible contributions of workers or labour unions is indicative of the same.

The Economic Survey 2016-17 (Volume 2), which was released in August 2017, in the 58-page first chapter, titled “State of the Economy: An Analytical Overview and Outlook for Policy” does not make a single mention of the words ‘labour’, ‘trade union’ or ‘employees’. A chapter on the state of the economy without these words would be difficult to imagine two decades ago. The fifth-annual Employment-Unemployment Survey 2015-16 in its 4 volumes does not talk about unionisation of workers either. This raises concerns about the systematic erosion of the significance of labour as a

<sup>45</sup> Structural Changes in India’s Labour Market; Economic Survey 2015-16. Available at <http://indiabudget.nic.in/es2015-16/echapvol1-10.pdf>

constituency, which was central to any economy.

In fact, the issue of labour appears in the policy domain of the state as a challenge to economic growth. For example, hiring of contractual workers by firms is seen as their *unwilling reaction* to rigid labour laws, when The Economic Survey states, “It also indicates preference by employers away from regular/ formal employment to circumvent labour laws”<sup>46</sup>. The language of the state and its officials about a “pernicious set of labour laws” impeding growth comes to the fore in many ways<sup>47</sup>. The Centre’s conscious move to make hiring of contractual workers easier in the name of efficiency is another case in point<sup>48</sup>. Government agencies have themselves been inclined towards engaging contractual workers than permanent staff.

## Conclusion

There are clearly conflicting realities. On one hand is the existence of the laws that provide protection to workers, given that constitutionally, workers have the freedom to form associations. There is no doubt that there are regulations in place that companies must follow to protect the interests of the workers. On the other hand, even the top 100 listed companies manage to circumvent workers’ right, especially the freedom of association. Very few companies do human rights due diligence in their workplaces to ensure that the companies have knowledge about their workers. Citing labour rigidities as important impediments to economic growth, NITI Aayog in its appraisal of the 12<sup>th</sup> Five year plan notes that more the number of workers, the more stringent the laws.<sup>49</sup>

The government has also been cherry picking and quoting certain studies in the Economic Surveys and the Budget, which strengthens its argument that the labour reform is key to growth. However, even in those studies the indictment is not unequivocally of the labour laws, but of corruption and rent-seeking behaviour – which in a way creates a long-term nexus between state and business – which actively erodes the agency of workers and their interests.

The diagnosis presents itself. First, the state should efficiently implement labour regulations, ensuring that the companies do not get away with the above-mentioned deviations. Alongside the acknowledgement that good jobs in the formal economy can boost growth, the missing piece to the puzzle is aligning good jobs with workers’ rights. The corruption leading to the nexus, rather than collective bargaining power of workers or laws protecting them from violation by businesses, is the key problem here, and that is what must be addressed.

Second, addressing inequality is as important as growth. There are numerous reports standing testimony to the wage disparity and oversight of the rights of workers. In such a scenario, the instrument of collective bargaining emerges unparalleled as an efficient instrument to prevent rising inequalities. This cannot be diluted in the name of ease of doing business or encouraging economic growth.

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<sup>46</sup> Economic Survey 2016-17 (Volume 1) p162

<sup>47</sup> <https://thewire.in/164939/arvind-panagariya-labour-law-reforms/>

<sup>48</sup> [http://www.business-standard.com/article/economy-policy/rules-for-hiring-contract-workers-may-be-eased-115060900054\\_1.html](http://www.business-standard.com/article/economy-policy/rules-for-hiring-contract-workers-may-be-eased-115060900054_1.html)

<sup>49</sup> <http://indianexpress.com/article/business/economy/niti-aayogs-appraisal-of-the-twelfth-five-year-plan-low-manufacturing-growth-holds-back-job-creation/>

## Chapter 4:

### Role of Corporate Social Responsibility for Development of Scheduled Caste (SC) and Scheduled Tribe in India (ST)

- Pradeep Patra<sup>50</sup>

#### Introduction

India is a country with complex social stratifications, manifested with unequal socio-economic positioning of different communities. Various constitutional and legal provisions have tried to provide preferential mechanism that would benefit the backward communities to catch up with the more advanced communities. Reservations in education and employment being the most cited examples of such a move. However, the results have been mixed and much remains to be done.

It was hoped that with the onset and strengthening of globalisation, market opportunities, the resultant benefits would reach out to all sections. However, the evidence points towards a contradictory scenario, since then Governments have had to constitute further mechanisms for an “Inclusive growth” scenario. The recent provision of mandatory Corporate Social Responsibility expenditure by the private sector is one such proposition.

The current paper aims at looking at how the private sector response has been to that proposition, especially with regard to the Scheduled Caste (SC) and Scheduled Tribe (ST) community in the country.

#### Why focus on SC and ST communities?

The Scheduled Caste community has been at the bottom of the Hindu social hierarchy, with limited acceptability as a social group. Thus, leading to practices such as untouchability and limited opportunities for social mobility and growth. Scheduled Tribes on the other hand, have mostly been people living in and around forest areas with severe challenges by way of socio-economic mobility. Their religious affiliation still remains debatable. Nevertheless, this group is largely considered as a part of the Hindu religion, unless otherwise specified.

These two social groups remain, even after years of Government initiatives, as the two most backward communities in India. Most of the development indicators convey a dismal picture when it comes to these two communities.

**Table 1. Disaggregated performance indicators of SC/ ST communities**

Indicator	SC	ST	OBC	Others	Overall
Poverty	36.8	47.3	26.7	16.1	27.5
School Dropout (class I to X)	56	70.9	-	-	49.3
Child Mortality (per 1000)	66	62	56	48	52
Landless Households	45	30	-	26	29

The above table includes a select set of indicators to demonstrate the lack of progress made by two of the social communities. SC/STs not only lag behind other social groups virtually in most development indicators, they also drag down the overall all India performance on these indicators. Apart from dismal development indicators, SC-STs also face a lot of social discrimination and

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<sup>50</sup> National Foundation for India

stigmatisation at different spheres which limits their choice of occupation, social interaction with other groups, living and food habits, health status, education as well as opportunities for social mobilisation.

SC-ST communities are also the ones to be the most affected by industrial displacements, especially by mining activities. On several occasions this has led not only to social unrest but also to violent clashes leading to death of lives and destruction of property i.e. Niyamgiri and Kalinganagar. Aptly Forbes magazine recently stated, “the future of mining depends on social change and community partnerships”. It’s only natural that the private sector does more for the people who are impacted the most.

It is clear that unless the situation of these two communities improve, the overall performance of India will remain the same. It is not only the responsibility of the Government but also of the development agencies and the private sector alike. With the CSR mandate to contribute towards development, the private sector can do a lot to fill in the gap areas, for these communities.

### **India Responsible Business Index (IRBI)<sup>51</sup>**

This index measures alignment of policies available in the public domain with the National Voluntary Guidelines and the disclosure of systems of information on the company’s performance on elements as detailed below. It does not measure the compliance or performance of the company against these elements below:

1. Non-discrimination in the workplace
2. Respecting employee dignity and human rights
3. Community Development
4. Inclusiveness in supply chain
5. Community as business stakeholders

Under Parameter 5, businesses yet have not demonstrated existence of systems, mechanisms for need assessment and evaluation, especially with respect to participation of communities

**Table 2. Recognition and related knowledge systems on community development**

(IRBI 2016, N=100, 31<sup>st</sup> October, 2016)

<b><i>Recognition of key aspects:</i></b>	<b><i>Number of companies</i></b>
Identification of backward regions for implementing community development projects	32
Identify and specify some distinct vulnerable identities as target stakeholders with whom companies plan to implement their CSR programme	85
<b><i>Presence of system for/to</i></b>	
Needs assessment for initiating CSR projects	11
Stakeholder consultation for formulating CSR policy	1
Independent impact assessment of CSR projects	14
Estimate number of beneficiaries	80
Determine distribution of expenses on CSR across themes	90

### **Current state of Corporate Social Responsibility**

<sup>51</sup> The India Responsible Business Index measures 100 listed companies on five criteria to see how socially inclusive they are



1. **Policy recognition of SC-ST as CSR stakeholder and reporting:** One of the first steps in working towards any specific marginalised section of society is recognising the community as a critical stakeholder and then reporting disaggregated information on the initiatives to engage with the community. The performance of the Indian private sector is disappointing in this regard, to say the least. In a study carried out on the top 50 (by profit) listed companies in India, **only 18 companies have mentioned SC-ST development as one of the agenda items for CSR initiatives.** In most cases however, it's mentioned as one of the several areas listed by Schedule VII for CSR initiatives by corporates.
2. **SC-ST focused CSR Initiatives:** Of the top 50, only 3 companies have reported any CSR initiative that directly engages with SC-ST community, in a focussed manner. While most companies adhere to the practice of reporting CSR activities on a thematic basis, a few also report initiatives by clubbing the beneficiaries in a way that not only takes away the seriousness of the initiative but also shows lacks of focus i.e. "Initiatives for SC/ST/Women and Minorities".
3. **Earmarked funds for SC-ST development:** Only two companies i.e. ONGC and HPCL have had some earmarked funds for SC-ST focussed initiatives.
4. **Affirmative Action:** Most public sector companies have to adhere to two specific Government mandates to benefit SC-ST community beyond CSR i.e. the job reservation policy and the national procurement policy. In most PSU reports, sections mentioning these provisions are also the only places where the mention of SC-ST is done. Only two private companies Tata and Bajaj have a publicly declared affirmative action plan to benefit SC-ST community.
5. **CSR implementation strategy and partnerships:** The continued backwardness SC-ST community is complex and multi-faceted as the community is caught in the web of existing social power relations and distribution of resources. Effective addressal of these requires multi-faceted interventions that go beyond thematic interventions in any particular area and need to adhere to a social justice approach rather than a charitable framework of service delivery.

Organisations dedicated to SC or ST community development in a holistic manner are often small, grassroot level based and are many times headed by a members from the community itself. Scale driven CSR initiatives most often overlook such organisations as potential partners. CSR that is aiming to do impactful work towards the development of the SC-ST community needs to increasingly partner with such organisations, for they are best placed to reach out to the most marginalised.

### **Other policy provisions and potential initiatives**

Limiting private sector engagement with the SC-ST community development only to CSR will be a futile exercise, both theoretically as well as operationally. Alongwith uneven socio-political power relations disproportionate resource distribution lies at the core of the backwardness of these communities. While the private sector is usually wary of a rights-based approach in its CSR implementation, many of the services made available to these communities are not charitable benefits but most often their rights. The government apart from the much debated job reservation provision has also enacted a few more provisions to benefit these two communities with compels the direct participation of the private sector:

**National Procurement Policy:** The policy mandates four per cent of the total purchase by PSUs to be made from SC-ST owned MSME. In 2015-16 the PSUs total procurement from SC-ST enterprises was a mere 0.39 per cent. A similar policy in USA is worth discussing here. The policy mandate for the private sector in USA is to allot 23 per cent of all procurement from small and medium scale enterprises, out of which 5 per cent should be from the marginalised community (minority, African-American, Hispanic, Asian), 5 per cent from women owned businesses and three per cent from

disabled veterans. While the Indian mandate is only for PSUs, the private sector can take a cue and increasingly engage SC/ST entrepreneurs in their supply and distribution chain.

**Specialised Funds for mining affected population:** District Mineral Fund is an initiative to where mining companies have to set aside a fund for the development of the affected population and the fund has to be utilised locally. A recent study by Centre for Science and Environment states that the total collected funds in various districts is well over INR 5800 crore. However, much of it remained either unutilised or is being utilised in a manner which subverts the original intention. **CAMPA (Compensatory Afforestation fund)** is another provision to restore the natural habitat (and to some extent livelihood) of the affected population. In 2015-16, the state of Chattisgarh has collected over INR 280 crore, as CAMPA fund to restore the natural habitat that is critical for communities, especially for the ST community.

**Skill Training and entrepreneurship Development:** The private sector has been a critical partner in Government of India's "Skill India and Start up India" campaign. While accepting the fact that skill is a generic need of the Indian youth, the most it can benefit will be the youth from SC-ST communities. While many companies do cover funds towards SC-ST youth skill training, it has to be more proactive not only in identifying them but also in communication to the outside world. Thereby, creating an awareness among employees and others alike.

**Measures against discrimination at workplace and supply chain:** While most companies have now taken up measures under the VISHAKHA guidelines to install policies and mechanisms to curb sexual harassment at workplace, similar policies need to be developed, adopted and communicated to minimise any kind of harassment at work place and supply chain, on the basis of caste and religion.

**Measuring and reporting of Company engagement with SC/ST:** Most companies agree that the SC-ST community is marginalised and should be a focus stakeholder for business engagement, CSR and otherwise. However, most companies also state that they do not record data on their engagement with SC-ST because - i) Their hiring practices are based on merit and they do not want to discriminate on the basis of caste or religion, ii) many global companies have a diversity policy which they think is applicable world over and need not be contextualised for India. The first case is a little peculiar. In a caste dominated society where one's surname gives away the caste most of the time, not measuring recruitment of SC-ST employees is an avenue to discriminate against them. On the other hand active measurement of such data can push a company to take proactive measures to recruit more SC-STs as well as to monitor and stop any discrimination against their hiring. The second standpoint is similarly flawed. The global diversity practice of inclusion of women, ethnicity and race do not do justice to the Indian system, where caste is a unique feature. Companies need to understand that the argument of merit and equal opportunity subsumes discrimination against SC-ST community.

### **A few things private sector can do to benefit SC-ST community**

1. **Proactively map CSR stakeholders and engage long term:** Stakeholder identification and engagement, especially at the community level is an exercise that's at a nascent stage in most Indian companies. While many companies identify "Community" as a stakeholder, it is of little strategic use unless the local community is clearly identified and the complexities understood. A local community in Niyamgiri hills is different from a general local community or a local community in an urban area, each having different needs and requiring different engagement strategies. This "stakeholder identification and engagement strategy" is often the first stage of not only developing a CSR strategy but many a time a business strategy. This is even more critical for some sectors as stated by Forbes "the future of mining depends on social change and community engagement".
2. **Diversify Supply and distribution Chain:** Companies can ideally engage the community in their supply chain. Besides being a long term engagement it also indirectly benefits the community.

While some companies like the Tata and Bajaj are taking a proactive stand on this, many more have to follow similar steps.

3. **Partner with SC-ST development focussed organisations for CSR implementation:** While large national organisations are good at scaling up, grassroots organisations are best placed to address most pressing issues for the maximum benefit of the community. Any company looking to make a difference in the lives of SC-ST community must identify and build equal partnerships with such community level organisations who directly work with SC-ST communities. These organisations work for a long term with a focussed approach, as opposed to a framework of a time bound project implementation.
4. **Invest in long term social change initiatives as against service delivery projects:** Given the backwardness of the SC-ST community is a complex issue, with regards to both availability of welfare services as well as mindset of other social groups towards them, any project-based thematic intervention has its limitations. The needs of these communities are often broad and the project designs also have to sustain on a long term basis. We are yet to see a single project that addresses the issue of caste based discrimination as a CSR initiative, on the lines of discrimination against girl child. Feasibility or caste discrimination not being within the CSR mandate is not the issue. What it requires is a change in mindset.
5. **Measure, Monitor and report:** One of the most critical things that companies can start doing is to record their level and extent of coverage of SC-ST community in their various CSR projects. This would help to internally monitor whether companies are reaching out to and benefitting the most needy. Given that the current level of reporting by Indian companies on their engagement with SC-ST leaves much to be desired, the saying "You can't manage, what you don't measure," holds true.

Section 3:

## Sectoral Dive of Corporate Responsibility

***Chapter 5:***

## **New Labour Laws Need to Promote Make-in-India but with Safety: The role of OEMs and ESIC**

- Sandeep Sachdeva<sup>52</sup>

*“We see about 20 cases of crush injuries everyday. In most cases, the fingers are auto-amputated, which means they have been lost even before the worker has come to us. In some cases, the entire hand is lost.”* said Dr Pankaj Bansal, the orthopaedic surgeon at the ESIC’s Manesar hospital\*.

Disturbed by the above article, and shocked by its assertion that 20 such accidents happen in just NCR every day, we started Safe-in-India in September 2015. Our aim is to help such injured workers--with permanent, incapacitating crush injuries--in the auto-sector in Gurgaon-Manesar. In the past year, we have assisted more than 600 such workers, with their health-care, and more than 135 of these with ESIC compensation. The observations drawn below are from this real experience and robust data collection.

### **The role of OEMs:**

To begin with, 100 per cent of the injured workers who come to us were not working directly in OEM factories (Original Equipment Manufacturers). However, almost all of them were working in the supply-chain of these large local auto-sector OEMs - Maruti, Hero or Honda. These degrees of separation offer large OEM ‘plausibly deniability’ when it comes to responsibility for these injuries.

Clearly, as pressure for low cost manufacturing is passed down to sub-contractors, they compromise on safety. Workers are seldom, if at all, trained for the job, or provided reasonable safety gear. They are often given machine-operator roles, after being recruited as lowly paid “helpers”. These factors, along with the inexperience of young workers, result in more than 75 per cent of injuries to workers below the age of 30 years.

Almost all of our cases are of contract workers, reflecting not only an increasing proportion of contract labour in the country, but also worsening working conditions for them. Not one of them was assisted by any labour union. More than 75 per cent of them are immigrants from other Indian states with no local voting rights. Clearly, local politics was not something that extended them recourse..

About two-thirds of accidents happen on just two types of machines – power presses and moulding machines. Many of these accidents could be avoided by simply installing relatively low-cost safety sensors in these machines, Regrettably, such sensors are instead often removed or left dysfunctional, so that machines can be run faster. In effect, the responsibility of managing safety risk is passed from a simple technological intervention to a human who races against time, day after day, six days a week, sometimes 18 hours a day, with very short breaks if at all, to produce as many components as possible. Accidents are then an inevitability, an occupational hazard, that many workers accept as their destiny. They know it is only a matter of time before they lose one or more fingers or, even worse, a whole hand.

Clearly, the OEMs ought to improve safety in their supply chain but it appears that they do not consider this in their economic interest. They demand price and quality from their suppliers but safety rarely figures in their contracts, requirements or process-audits. A business case for safety is never established.

There is a need and an opportunity for the authors of the new labour laws to address this issue if India has to develop a Make-in-India brand that is associated with non-exploitative working conditions. Sooner or later, ignoring this issue to the extent it is now, will hurt India’s image in the global supply chain and impact businesses negatively.

### **The role of ESIC**

ESIC (Employee State Insurance Corporation) runs a number of hospitals for Indian workers across the country and is also responsible for providing compensation to sick, injured or dead workers and

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<sup>52</sup> Safe in India initiative

their families. It runs on the insurance premiums paid by the workers and their employers. On paper, ESIC insurance scheme is probably one of the best in the world. However, unsurprisingly, the actual services leave a lot to be desired. Sadly, workers are treated as an inconvenience by the system and most of its staff, instead of fee-paying customers.

In order to uphold several rights enshrined in the Indian Constitution with regard to respecting employee dignity and human rights, the National Voluntary Guidelines reaffirm through Principle 3 that businesses should promote the well being of all employees, including those in the supply chain and through Principle 5 a much-needed rights-based perspective, urging companies to “respect and promote human rights.”

**The IRBI Index<sup>51</sup>, Element 2, focussed on the following domain areas:**

- Policies related to **fair living wages, safe, healthy and harassment-free workplaces and prohibition of forced and child labour** be brought into the public domain, so as to provide job applicants, the opportunity to make an informed choice
- Recognising the right of employees to **freedom of association**, the **ability to organise and join unions in order to develop the bargaining power** to protect their interests and **participate in key decisions affecting their lives**
- Systems to evaluate **workers’ rights, labour issues and safety training** to help the companies take corrective measures

Article 42 stands for providing just and human conditions of work and maternity relief.

**Recognition for workers’ dignity and human rights**

The index aims to understand whether in the wide range of issues that can be subsumed under workers’ rights, there is recognition of some key aspects like the recognition and prohibition of forced labour of various forms and non-violence in the workplace, a fair living wage and freedom of association for employees as well as the health and safety of all employees. Beyond recognition or acknowledgement of these aspects, the index then measures whether there are also systems in place to ensure that these aspects of workers rights are upheld and whether such information is available in the public domain for all employees to access.

**Table 1. Policy commitment to recognition of workers’ dignity and human rights** (IRBI 2015, N=99, 30<sup>th</sup> September, 2015; IRBI 2016, N=100, 31<sup>st</sup> October, 2016)

<i>Aspects of Element 2</i>	<b>No. of companies across levels of policy comprehensiveness</b>					
	<b>IRBI 2015</b>			<b>IRBI 2016</b>		
	<b>No recognition</b>	<b>Explicitly States</b>	<b>Provides for Systems</b>	<b>No recognition</b>	<b>Explicitly States</b>	<b>Provides for Systems</b>
Minimum wage and fair living wages	61	27*	11**	53	31*	16**
Prohibition of forced labour	37	36	26	28	42	30
Freedom of association	55	29	15	32	48	20

<i>Aspects of Element 2</i>	No. of companies across levels of policy comprehensiveness					
	IRBI 2015			IRBI 2016		
	No recognition	Explicitly States	Provides for Systems	No recognition	Explicitly States	Provides for Systems
Health and Safety of employees	17	27	55	9	14	77
Zero tolerance towards any form of violence	61	19	19	51	22	27
*Minimum wage**Fair living wage						

Table 1 shows that there is a higher level on recognition as well as provision of systems of different components of respecting employee dignity and human right. More companies in IRBI 2016 (77) than those in IRBI 2015 (55) have a system in place to ensure the health and safety of employees, followed by prohibition of forced labour. Fair living wages though, is a component that the fewest companies (16) recognize.

At least one-third of the workers experience significant difficulties in following complex processes that are designed for convenience of ESIC, rather than of a sick or injured worker. There is a perpetual shortage of beds and medicine. ESIC Hospital capacity in Gurgaon-Manesar is about 250 beds, compared to the 700 required per the government's own regulations. Doctors are not using the computer systems given to them and continue with manual forms and prescriptions, which confuse the workers and the ESIC staff, delaying recovery and compensation. Workers sometime have to do 4 visits, often to different offices, to get their sick leave approved.

Experience is even worse when it comes to compensations. Of the 125+ compensation claims we have been assisting workers with, more than half have been delayed by more than two months. There is no real adherence to turn-around service levels. Most of the pension cases we are assisting with are more than a year old. Many of our workers have visited ESIC offices 10-20 times, each time losing their daily wage and spending their own money to claim what is their due.

Documentation is often unclear to or misunderstood by even ESIC staff. As a result, misleading or unclear advice is often provided to workers. **Many a time, even after submitting documents, the files remain "incomplete" as documents are "lost"**. We are indeed aware of corrupt practices by a few of the ESIC staff and sadly that should surprise no reader.

One of the most problematic areas is the need for an "Accident Form" which states the details of the accident. The ESIC process, rightly, is to demand this document from the factories within 24 hours of the accident, and if not received, their officials are required to follow up and obtain this. However, in more than one-third of our cases, this Form is not available after two months of the accident and in a quarter of cases, it is not available even after 4 months of the accident. In about 15% of the cases, Accidents Forms were never received and these workers lost hope and went back to their villages.

The reason for this is simple: this Form can trigger a safety inspection in the culprit factory. We are aware of more than 10 factories where we have more than 3 injured workers with us from each one of them. The reality is probably far worse.

The result of all the above is that injured workers, most of whom lose their employment and/or earning capacity significantly or completely, do not get their pensions for months and in many cases years. The system should be helping them get back on their feet as productive Indians, but instead it forces them further down the poverty cycle. About a quarter of workers who seek our help disappear back in their villages because they are unable to stay in the city fighting the system.

The above situation is not for lack of money or resources. In FY2015-16, ESIC had revenues in excess of Rs14000cr (USD 2.2bn) and spent only Rs7800 (USD 1.2bn). Why is this surplus not used to help improve services? Or is ESIC a cash-generating machine for the government at the cost of our productive labour? Are the interest of ESIC and its customers ie premium paying workers aligned?

Again, the ESIC Act is now being merged in the new Labour laws so there is an opportunity to correct the situation. We have made numerous strategic and tactical recommendation to more than 20 sections of ESIC Act and Regulations 1952 including:

- ESIC Act Preamble (or its replacement) should not only address the delivery of health and insurance services but the **quality** of such delivery, and this should drive the detail of the Act.
- The Act does not appear to recognise the fact that more than 25% (and increasing proportion) of Indian labour is now contractual. **None of the ESIC governing bodies have any representative of contract workers.**
- The minutes of governing bodies' meetings should be made public on-line, and management information improved to drive performance and efficiency (and not only report simple gross numbers, which are inadequate and outdated to manage this complexity).
- We have advised a number of process improvements for worker-experience, many of which will also improve the cost-effectiveness of ESIC eg. every document submitted should be acknowledged, every ESIC staff should have a standard check-list of documents to advise workers (thankfully, this is now being implemented at least in Gurgaon-Manesar), online/SMS update for workers and increasing penalty on manufacturers for non-compliance. These improvements do not need to wait for changes in laws which will in any case not deal with the detail at this level but can improve services immediately.

**Table 2: Recognition and related knowledge systems that support the creation of an enabling environment for better working conditions**

(IRBI 2015, N=99, 30<sup>th</sup> September, 2015; IRBI 2016, N=100, 31<sup>st</sup> October, 2016)

<i><b>Recognition of key aspects</b></i>	<b>Number of companies</b>	
	<b>IRBI 2015</b>	<b>IRBI 2016</b>
Contractual employees to be provided with social benefits	20	18
Engagement with unions (including collective bargaining principle)	41	59
<i><b>Presence of system on</b></i>		
Assessments on health and safety conditions	42	46
Assessments on situation of workers' rights and labour issues	9	6
Enumerating employees who are members of employees' association	59	62



Complaints received for child labour, forced labour and involuntary labour	84	79
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As seen in table 2 above, while, there is an increase in the number of companies having systems on health and safety and enumeration of employees who are members of employee associations, there is a decrease in the workers' and labour rights and complaints received for different kinds of illegal labour practices (from 84 in IRBI 2015 to 79 in IRBI 2016). There has also been a drop in the number of companies in IRBI 2016 that have recognised provision of social benefits to contractual employees. The number of companies that conduct assessments on the situation of workers' rights and labour issues is dismally low with only six companies having systems related to this area.

In the category of providing safety training, as seen in table 3 below, to permanent, permanent women, contractual and disabled employees there is an increase of 3 companies as compared to IRBI 2015. In the category of disclosing training data for employees with disability, there is a drop in the already low reporting from 38 companies in IRBI 2015 to 36 companies in IRBI 2016.

**Table 3: Number of companies disclosing data on safety trainings provided to different categories of employees**

(IRBI 2015, N=99, 30<sup>th</sup> September, 2015; IRBI 2016, N=100, 31<sup>st</sup> October, 2016)

	Permanent employees		Permanent Women employees		Contractual employees		Employees with disabilities	
	IRBI 2015	IRBI 2016	IRBI 2015	IRBI 2016	IRBI 2015	IRBI 2016	IRBI 2015	IRBI 2016
Safety training provided to employees	68	<b>71</b>	52	<b>55</b>	49	<b>52</b>	38	<b>36</b>

The new labour laws <sup>53</sup>currently being drafted should take all these factors into account. They should remove the safety of 'plausible-deniability' for OEMs and shift the responsibility of safety on to them. ESIC should be reorganised on more modern lines and with the ethos of serving its customers who pay the bills of its staff. If Contract workers are the future of Indian manufacturing, we need to find ways to **make in India safely** for these workers and enhance India's reputation, rather than be marred with instances like Rana Plaza in Bangladesh and continue to be seen as a sweat-shop for cheap products.

## Chapter 6:

### A Trojan Horse Called Development: CSR Not Answer to State Enabled Human Rights Violations in India's Mining Belts

- Aruna Chandrasekhar<sup>54</sup>

<sup>53</sup> <https://scroll.in/article/692477/your-car-has-been-built-on-an-assembly-line-of-broken-fingers>

<sup>54</sup> Independent Journalist

If the promise of ‘change’ had millions in America rooting for Barack Obama, India’s Prime Minister Narendra Modi rode into power on the back of a campaign horse called ‘development’, vowing to banish the scepter of crony-capitalism that had the nation on the boil. Three years since, it is acutely apparent that neither has been achieved in areas that are amongst India’s most impoverished, despite being the most resource rich.

The CSR brochures and annual reports have certainly gotten glossier, the Twitter handles more responsive, but it’s the support for government welfare schemes that have gone up. From the mandatory 2% companies must cough up under the Companies Act, 2013, donations to District Mineral Foundations<sup>55</sup> or the Clean Energy Cess<sup>56</sup>, there are more outlets than ever before for mining companies to offset the costs of their negative operations. Never mind that these funds have extremely poor accountability mechanisms, contributing little, if any relief, to communities shouldering the heaviest burden of the nation’s development. Instead these have gone to pet government schemes.

Debate in India related to business responsibility has continued to revolve around the soft, “values” and philanthropy-based language of Corporate Social Responsibility (CSR), while deliberately shying away from the “rigid” backbone of rights that governments must protect and companies must respect and remedy.

### **The State Duty to Protect**

If that backbone was weak to begin with, what remnants of it remain are being steadily dismantled by the state itself. The last three years- particularly 2014 and 2015, have seen an aggressive rollback of due diligence requirements that exist to protect, consult, inform, safeguard and seek the consent of mining affected communities in the country.

An amendment to India’s Right To Fair Compensation in Land Acquisition, Rehabilitation and Resettlement Act<sup>57</sup> was introduced as an ordinance on the last day of 2014, removing the need to seek consent and conduct social impact assessments for an even broader series of industries. While the ordinance and bill that followed were scuttled after wide-spread protests, states including Gujarat, Tamil Nadu, Maharashtra, Telangana and Rajasthan were quick to draft their own diluted versions of land acquisition laws, ignoring the Central Act’s provisions that rehabilitation provisions could only be enhanced.

India’s environmental<sup>58</sup> laws have been more artfully undone, without even having to go through Parliamentary debate. Between January 2014 to September 2014, mandatory requirements under India’s EIA Notification, 2006 to consult affected communities on the impacts of coal mine expansions were steadily removed through a series of office memoranda issued by India’s environment ministry. These continue to remain in force; long after India’s coal shortage was heralded as officially over.

It wasn’t just laws- even institutions have come under fire through underhanded means. In July 2017, the authority and autonomy of India’s National Green Tribunal- its only environmental court that continues to provide a semblance of justice for communities- was undermined by amendments quietly pushed in to the Finance Act, 2017. On the other hand of the spectrum, however, political parties

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<sup>55</sup> <http://www.cseindia.org/userfiles/District-Mineral-Foundation-DMF-Report.pdf>

<sup>56</sup> <https://scroll.in/article/841910/how-the-ganga-and-gst-are-hijacking-indias-clean-energy-fund>

<sup>57</sup>

<http://dolr.nic.in/dolr/downloads/pdfs/Right%20to%20Fair%20Compensation%20and%20Transparency%20in%20Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Act,%202013.pdf>

<sup>58</sup> <https://www.amnesty.org.in/show/news/changes-to-environment-land-acquisition-laws-jeopardize-human-rights/>

found guilty<sup>59</sup> of receiving funds from foreign mining companies with troubling human rights track records such as Vedanta Resources Plc's subsidiaries were quietly<sup>60</sup> exonerated of violating India's Foreign Contribution Regulation Act<sup>61</sup> (2010), pushed through as part of India's budget proposals in February 2016. Scientists in the Environment Ministry's impact assessment division that looked at mining and power projects were rooted out of expert bodies<sup>62</sup>, while expert panels deem civil society complaints too 'frivolous<sup>63</sup>' to entertain. The government is also exploring options to see how it can limit the compensation and relief<sup>64</sup> courts can grant in the execution of damaging development projects.



**Figure 1:** A meeting of villagers in Khodri in Chhattisgarh, two days before the environmental public hearing for the expansion of South Eastern Coalfields Ltd's (SECL) Kusbunda mine, amongst Asia's biggest. Of 81 people from five affected villages, not a single person knew where they could find the draft or summary EIA reports. "SECL should present this before the public and first discuss the impacts with us, point by point before holding this kind of a hearing."

*Courtesy: Aruna Chandrasekhar/Amnesty International India*

## On Ground

The trickle-down effects of these policy dilutions are slowly making their way to the ground. In mining districts where barely half the population is formally literate, where Pollution Control Boards and Forest departments are woefully and willingly disempowered, it isn't surprising that there is 'company raj', both on the ground and on the top. A report by India's Comptroller and Auditor General of India tabled in March 2017<sup>65</sup> found that there were irregularities in 32 per cent of all mandatory public consultations for development projects cleared between 2011 and 2015.

The Indian government has continued to use eminent domain laws to make it even easier for mining companies to acquire land. In its stated goal to double Coal India's production, for instance, it extensively used the Coal Bearing Areas (Development and Regulation) Act 1957<sup>66</sup> that allows for the compulsory acquisition of land without seeking the Free Prior Informed Consent of affected indigenous communities or conducting social impact assessments.

Forced evictions were observed in public-sector mines- including the Gevra<sup>67</sup>, Kusbunda<sup>68</sup>, Tetariakhar and Chhal<sup>69</sup> coal mines- with Gond, Kavar, Oraon and Turi families being pushed off their lands to meet Coal India's production targets. This is not to say that evictions were also carried in

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<sup>59</sup> <http://www.livemint.com/Politics/VZinsJYcuZfRKGsys4GvaK/Vedanta-donations-to-BJP-Congress-ruled-illegal-by-Delhi-HC.html>

<sup>60</sup> <https://thewire.in/83388/bjp-congress-fcra-foreign-funds-supreme-court/>

<sup>61</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E>

<sup>62</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E>

<sup>63</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E>

<sup>64</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E>

<sup>65</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E>

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<sup>68</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E>

<sup>69</sup> <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20112&LangID=E>



privately-operated mines<sup>70</sup>- for instance, Hindalco's mines, where Birhor and Gond Adivasi families were evicted in April 2016, as the company took over the operations of the Gare Pelma IV/4 and IV/5 mines that it had won in a new round of coal auctions. As the Indian government put mineral blocks under the auction hammer without conducting fresh environmental or social impact assessments, these conflicts are set to rise, as mine owners- old and new- have been virtually absolved of responsibility for persisting human rights violations.

Disenfranchisement is peaking around existing mines, as employment promises failed to keep pace with the rapid expansion and businesses looking to cut costs. With legally existing avenues of communication shut down or community concerns ignored, strikes are becoming the only way to get attention of companies. Pending jobs and land acquisition issues lead to massive strikes in mines in Korba, Chhattisgarh and in Angul, Odisha in 2015 and 2016. In May, 2016 679 persons were detained in Korba<sup>71</sup> as farmers demanded that the Land Acquisition Act 2013 be implemented, and they receive the jobs, rehabilitation and compensation they were promised nearly two decades ago.

In Angul, Odisha, operations at Mahanadi Coalfields' Kaniha open cast mines<sup>72</sup> were paralysed for five days in November 2016, as women and men from Jarada village courted arrest, demanding a resettlement colony that was never built for them. Dalit and OBC families continue to live in ghost colonies under the mine's waste dumps. "MCL asks us to break down our homes and then they will

give us jobs; we say give us our jobs and resettlement, and then we will move." Worker strikes led by unions have also been on the rise, protesting poor wages and fears of job cuts as a result of

disinvestment. Losses from the 2015 coal strike were estimated at a staggering Rs. 300 crore<sup>73</sup>.

**Figure 2:** Protests at an environmental public hearing for the Kusmunda coal mine's expansion from 18.75 to 62.50 mtpa, in Korba, February 2015  
*Courtesy: Aruna Chandrasekhar/Amnesty International India*

As public-sector entities are increasingly privatising their operations, new conflicts are emerging<sup>74</sup>, as the State takes on the role of obtaining regulatory clearances, but contractors are given charge of rehabilitation processes. On 1 October, 2016, four people, including three children, were shot dead by the police following protests over land acquisition for NTPC's Pakri Barwadih mine in Hazaribagh, Jharkhand. Protests had begun as NTPC and its contractor Thriveni Sainik had begun illegally mining on forest land<sup>75</sup> that communities depend on for their livelihoods, while failing to disclose that it had acquired their private lands as well. Thriveni Sainik is the second contractor to attempt to mine here, after Thiess Minecs India. The fact that NTPC was allocated the block in 2004 and is only now beginning to mine is a testament to the roadblocks this current public-private model will face.<sup>76</sup>



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<sup>74</sup> <http://www.newindianexpress.com/states/odisha/2016/nov/14/kaniha-coal-mine-paralysed-for-five-days-1538355.html>

<sup>75</sup> <http://energy.economictimes.indiatimes.com/news/coal/amnesty-blames-ntpc-for-acquiring-land-unlawfully-in-hazaribag/55217219>

<sup>76</sup> <http://economictimes.indiatimes.com/news/economy/policy/coal-mining-govt-needs-to-fix-various-flaws-that-plague-current-public-private-partnership-models/articleshow/40022496.cms>

Communities and human rights defenders- the only independent compliance checks that the state has to monitor violations- have had to face the brunt of their outspokenness. In 2016 alone, 16 environmental defenders in India were killed, mostly linked to mining projects, according to a Global Witness report <sup>77</sup>published last month.

**Figure 3:** Two teenage boys- one an Oraon Adivasi, the other from the Dalit Turi community- push coal on their cycles that they have collected from the nearby Tetariakhar coal mine, operated by Central Coalfields Limited (CCL). Communities who live along this stretch of road to the mine that trucks have plied on have not been compensated for the last 15 years.

*Courtesy: Aruna Chandraskhar/Amnesty International India*

The Indian government has engaged in a deliberate campaign to discredit those who work for human rights in these spaces. In June 2014, a leaked report by India's Intelligence Bureau<sup>78</sup> listed prominent human rights and environmental groups looking at violations in its mining sector as being harmful to India's economic interests and even setting back India's GDP by 2-3%, while "serving as tools for foreign policy interests of western governments". Organisations like Greenpeace India<sup>79</sup> that campaigned against Essar's Mahan coal mine have had their access to funding frozen, even as India's Environment Ministry took Mahan off the coal auction block.

"How many projects will you take to court? Who will take them to court?" asked Ramesh Agrawal<sup>80</sup>, Goldman Prize winner who was shot in the foot in broad daylight, after he repeatedly challenged environmental permits granted to mining companies illegally acquiring Adivasi land. In February 2017, all suspects accused in the shooting- including security personnel of Jindal Steel and Power Limited- were let off the hook<sup>81</sup> by a Chhattisgarh Court.

Tired of civil lawsuits yielding no relief, historically marginalized communities are now turning to the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 2016. Under the act, displacing an Adivasi or Dalit from their land is a criminal act, as are polluting the environment, blocking access to forest rights or to commons. On 14<sup>th</sup> July, Adivasi communities in the villages of Benghari and Khokhroama in Chhattisgarh filed 80 complaints of fraudulent land transactions<sup>82</sup> by TRN Energy- a power-producing entity of Aryan Coal Beneficiations, India's largest coal transportation company. If the First Information Reports (FIRs) are admitted, companies will now have to face criminal charges and company officials could potentially face jail time, if proven guilty.

With rising risk involved with mining projects, foreign investors are already staying away. The Norwegian Pension Fund continued to not only blacklist firms<sup>83</sup> like Vedanta for their environmental and human rights track record, but also sidelined 13 coal mining firms including NTPC, Reliance Power and Gujarat Mineral Development Corporation, citing climate change risks.

As long as CSR is divorced from human rights in India, companies, governments must realize that these very real costs of conflicts- legal, financial and operational- add up. These will only rise, causing companies to shell out even more, in addition to what they're already paying the state for welfare schemes. Instead of coming up short in an investor's ethics assessment, companies would do well to conduct and listen to their own human rights impact assessments, and to shareholders that matter most- the workers who lift companies up and the communities that let them in.

Because philanthropy without due diligence is a recipe for risky business.

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<sup>77</sup> <https://www.globalwitness.org/en/campaigns/environmental-activists/defenders-earth/>

<sup>78</sup> <https://www.theguardian.com/global-development-professionals-network/2016/sep/07/the-indian-government-has-shut-the-door-on-ngos>

<sup>79</sup> <https://www.amnesty.org.in/show/entry/india-curbs-on-greenpeace-violate-right-to-freedom-of-expression>

<sup>80</sup> <https://www.amnesty.org.in/show/entry/exclusive-interview-with-goldman-prize-winner-ramesh-agarwal/>

<sup>81</sup> <https://twitter.com/janchetana/status/827753734155464704>

<sup>82</sup> <https://www.thequint.com/environment/2017/07/03/land-grab-in-raigarh-chhatisgarh-tribals-renew-fight-for-fair-deal>

<sup>83</sup> <https://thewire.in/117267/norway-wealth-fund-blacklists-vedanta-indian-firms/>



## **Chapter 7:**

### **Bad blood: Poor and Middle Class bail Corporates in Banking Crisis**

- Neeraj Thakur<sup>84</sup>  
With inputs<sup>85</sup>

"If you owe your bank a hundred pounds, you have a problem. But if you owe a million, it has," said British economist John Maynard Keynes. No other statement explains better the conundrum that the Indian banking sector faces today. The stressed assets in the Indian banking sector have crossed Rs 10 lakh crore with a provisioning for only a third of that amount<sup>86</sup>. This has left public sector banks with a capital adequacy ratio of just 13.3 per cent, leading to the lowest bank credit growth in 60 years at 5.1 per cent in 2016-17<sup>87</sup>

#### **Government remedy**

If a common man ever misses paying his monthly instalment on a housing or a car loan, he or she is humiliated, and often harassed by the bank's recovery staff. Should these tactics fail, the collateral, as well as the property bought with the loan amount, is seized by the lender. In dealing with big corporates though, the approach is different and the term 'bad bank' finds currency.

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<sup>84</sup> Catch News

<sup>85</sup> Rohan Preece, Partners in Change

<sup>86</sup> <http://www.thehindubusinessline.com/money-and-banking/stressed-assets-of-indian-banks-exceed-their-networth-says-mckinsey-report/article9705952.ece>

<sup>87</sup> <http://timesofindia.indiatimes.com/business/india-business/at-5-1-fy17-bank-credit-grows-lowest-in-over-60-yrs/articleshow/58187037.cms>

As the name suggests, a bad bank is supposed to take over all the corporate sector bad loans from the banks - at a discounted rate, and sell those loans to third parties who are interested in running the businesses on their own, or selling the assets attached with the loan amount.

India's chief economic advisor Arvind Subramanian's views on farm loans waivers are well known - he considers them problematic for fiscal consolidation in the budget and the progress of the economy- but in the economic survey for 2017-18, there is a long argument justifying the idea of a bad bank.

But, where will the capital for this 'bad bank' come from? The government has not decided this yet, but in low-pitched whispers, there is the talk of using the tax-payer's money to do so. It needs some creative thinking to understand how a government owned 'bad bank' would succeed in dealing with loans that many private sector asset restructuring companies (ARCs) have given a pass.

Even as the government builds "political consensus" on creating a 'bad bank'<sup>88</sup>, it has already allocated an amount of Rs 70,000 crore under the Indradhanush scheme that will be used to re-capitalise banks between 2015 and 2019. But that amount is a fraction of the capital required by the public sector banks (PSBs). And it is believed that the government is planning Indradhanush 2.0 to flush more funds into the banking sector that will allow banks to remain solvent and comply with the global capital adequacy norms, Basel-III<sup>89</sup>.

### **Who is responsible for this mess?**

When the Indian economy was in good shape, the banks, in order to increase their loan books, adopted an altruistic approach to lending. Irrespective of what the future prospects of a project were, loans were sanctioned on the basis of company promoters' relationship with the bank's management. Closeness to government officials and politicians was an important criterion for getting approval for loans.

Commenting on the excesses of the bank's management, in 2014, Dr KC Chakrabarty, the then Deputy Governor of the RBI, said, "A very disturbing fact which hits us is the quality of equity that has been brought in by the promoters. The banks, to put it mildly, have been very lackadaisical in the credit appraisals. Most of the time it is debt raised elsewhere by the promoter, either in the holding company or in a Special Purpose Vehicle, which is used to fund their portion of the equity. Effectively, promoters do not have any 'skin' in the game and they are least bothered whether or not the projects see the light of the day<sup>90</sup>."

It is not a surprise then that the chairman of Kingfisher Airlines, Vijay Mallya, who owes Rs 9000 crore to a consortium of Indian banks, is attending cricket matches in the UK, while his lenders managed to recover just Rs 73 crore by selling one of his confiscated villas in their fourth attempt in a year<sup>91</sup>.

Mallya's loan default is just the tip of the iceberg. According to a report in March 2016, as much as Rs 1.14 lakh crore of bad loans were written off by public sector banks between 2013 and 2015. The report mentions the case of Punjab National Bank, which filed cases against 904 companies for wilfully defaulting on loan payments. The amount these companies owed to the public sector banks was Rs 10,869 crore out of the total NPA portfolio of Rs 34,338 crore<sup>92</sup>.

Interestingly, even as a report leaked to the media mentioned the names of loan defaulters accounting for Rs 5 lakh crore of NPAs, the RBI till date has not come clean on the names of the companies that have failed to pay their loans. The country finds out about a defaulting company as and when the fight between the lenders and the corporate goes public due to disclosure norms of

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<sup>88</sup> <http://economictimes.indiatimes.com/news/economy/policy/india-needs-to-create-bad-bank-quickly-finmin-aid/articleshow/57292595.cms>

<sup>89</sup> <http://economictimes.indiatimes.com/news/economy/policy/govt-plans-indradhanush-2-0-for-recapitalisation-of-public-sector-banks/articleshow/57108572.cms>

<sup>90</sup> <http://www.catchnews.com/business-economy-news/notesformrjaitley-2-let-raghuram-rajan-clean-up-the-bad-loan-mess-1454674354.html>

<sup>91</sup> [http://www.business-standard.com/article/current-affairs/mallya-s-kingfisher-villa-sold-for-73-crore-to-actor-sachin-joshi-117040800600\\_1.html](http://www.business-standard.com/article/current-affairs/mallya-s-kingfisher-villa-sold-for-73-crore-to-actor-sachin-joshi-117040800600_1.html)

<sup>92</sup> <http://www.financialexpress.com/economy/wilful-defaulters-list-names-and-amounts-all-you-ever-wanted-to-know/226791/>

Securities and Exchange Board of India. But this works only in the case of listed companies. There are hundreds of unlisted companies - mentioned in the report, whose promoters are accused of wilful default. In April 2017, the Central government handed over to the Supreme Court a confidential list of corporate entities which owed more than Rs 500 crore each to banks<sup>93</sup> - the secrecy around the identities was to ensure protection of the interests of the defaulters, even at the cost of public sector banks and public money.

### **Who foots the bill for bailing out corporates?**

The poor and the middle class are paying for the defaulters' careless ways with money. Despite defaulting on over ten lakh crore worth of loans, the industry has had the audacity to demand a low interest rate regime in the country. Knowing well that the banks did not have enough capital to loan out, the government in November 2016 announced that currency notes of Rs 500 and Rs 1,000 would no more be legal tender, except when deposited in the banks within a 60 day time period<sup>94</sup>.

Even as the decision to demonetise 86 per cent of the currency in circulation was officially projected as a battle against black money, its real intentions seem to be to increase the deposit base of banks to allow them to reduce interest rates on savings and fixed deposits. Within weeks of demonetisation, the State Bank of India (SBI) cut its interest rate to 6.50 per cent for maturity periods between three years and 10 years. The rate for one-year Fixed Deposit (FD) was reduced to 6.90 per cent. In July 2017, the SBI further cut interest rates on one-year FD to 6.75 per cent<sup>95</sup>. By August 2017, saddled with additional deposits during demonetisation, the SBI reduced its interest rates on savings accounts to 3.5 per cent, which is the lowest since 2003<sup>96</sup>.

As far as the rhetoric of attacking black economy was concerned, the Pradhan Mantri Garib Kalyan Yojana - a black money amnesty scheme announced post-demonetisation fetched an amount of only Rs 5,000 crore<sup>97</sup>. According to global estimates, India's black economy is pegged at 30 per cent of the GDP or Rs 28 lakh crore<sup>98</sup>. Therefore, the paltry amount that government collected under its grand amnesty scheme is telling of the real story behind demonetisation.

But flawed as the demonetisation scheme was, it seems to have got the Public Sector Banks into more trouble. Seven months after the last date for depositing old notes, the government has not been able to calculate the total amount of currency that has come back into the system. As a result, the RBI, for the first time, skipped publishing the balance sheet for the week ended June 30, 2017, which is the day the central bank officially closes its accounting year<sup>99</sup>. But that was not the end of woes for the RBI and the government. The central bank's dividend to the government for 2016-17 was reduced to Rs 30,659 crore - less than half the amount (Rs 65,876 crore) transferred last year<sup>100</sup>. The reduction in dividend came as an anti-thesis to the theory of the windfall gain for the RBI due to demonetisation, promoted by a section of pro-government economists in the country.

### **Where is the NPA saga headed?**

The RBI and the government so far have relied on hit and trial methods to resolve the NPA issue. Unfortunately, all attempts so far have yielded negative results. First, the banks attempted a simple scheme of corporate debt restructuring (CDR) - that involves moratorium on repayment for some time, but very few companies started servicing their debts after the deadlines had lapsed. Then, the RBI

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<sup>93</sup> <http://indianexpress.com/article/india/india-news-india/bank-defaulter-bad-debts-rbi-gives-supreme-court-defaulter-list-with-confidentiality-rider/>

<sup>94</sup> <http://www.thehindu.com/news/national/Rs.-500-Rs.-1000-notes-no-longer-legal-tender/article16440921.ece>

<sup>95</sup> <http://www.livemint.com/Money/EytOCCMfpFh5jGQOMLyTMJ/Fixed-deposit-rates-down-Should-you-lock-in-or-look-for-alt.html>

<sup>96</sup> <http://www.catchnews.com/business-economy-news/sbi-cuts-savings-a-c-interest-rates-bure-din-for-poor-pensioners-housewives-75145.html>

<sup>97</sup> <http://timesofindia.indiatimes.com/business/india-business/only-5000-crore-declared-under-pmgy-response-not-so-good-govt/articleshow/58945908.cms>

<sup>98</sup> [http://www.business-standard.com/article/economy-policy/black-money-estimated-at-30-of-gdp-113011300067\\_1.html](http://www.business-standard.com/article/economy-policy/black-money-estimated-at-30-of-gdp-113011300067_1.html)

<sup>99</sup> <http://economictimes.indiatimes.com/news/economy/finance/rbi-skips-releasing-balance-sheet-for-the-week-ended-june-30-for-first-time-ever/articleshow/59624375.cms>

<sup>100</sup> <http://www.hindustantimes.com/business-news/rbi-halves-dividend-paid-to-govt-to-rs-30-659-crore-in-2016-17/story-TK3cHSvnZhn2Hmjph3CNJ.html>



came up with a complex version of CDR, known as Strategic Debt Restructuring (SDR). Under this scheme, lenders were given sweeping powers to throw out managements of companies whose loans had turned bad. The banks were required to find a new buyer for those assets within 18 months of change of original management. But, there were no takers for the stressed assets of about a dozen companies that had tried under the SDR mechanism to resolve the bad loan problem.

Realising that banks do not have the ability to run the management of distressed companies, the RBI has now asked lenders to invoke the insolvency code by referring the chosen accounts to the National Company Law Tribunal (NCLT), which can recommend these companies for liquidation of assets.

At a time when country's 10 biggest business houses are saddled with over seven lakh crore worth of debt<sup>101</sup>, every promoter of a small company sees himself as a small fish, in the ocean of loan defaulters. Moreover, the debtors are well aware of the fact that liquidation will result in not more than 20-30 per cent of the amount due to the banks, forcing the lenders to take a big cut. The RBI has already asked banks to have 100 per cent provisioning for the unsecured loans that are referred to the NCLT, which will further reduce the capital base of the banks<sup>102</sup>.

In such a scenario, the lenders as well as the debtors are expecting the government to offer a bail out plan that would come at the cost of the general masses' hard earned money. Memories of the USD 700 billion bail out scheme announced by the US government for its banks in 2008 are still fresh. Indian corporates know only too well, that with each passing day, the pressure is building upon the government bail out banks.

While the management of banks are responsible for the current bad loan mess in the banking sector, the government's aggressive push for growth also contributed to this.

Post the 2008-09 financial crisis, when the GDP growth of India fell to 6.7 per cent<sup>103</sup> a way out of the slowdown was seen to be the thoughtless investment in the infrastructure sector by allowing sanctioning of all high-ticket loans of the corporate sector without worrying much about the viability of projects. As mentioned above, the loans in this period were sanctioned without much due-diligence, allowing the promoters to finance their own portion of equity through a loan from another bank. A system that allows entrepreneurs to start projects without having their own stake in projects is doomed to fail in the long run.

### **Inadequate risk evaluation of projects**

An analysis of the projects associated with the NPAs in the banking sector reveals that a large number of them are stalled due to environmental issues.

A report published in 2014 stated that 40 per cent of the 419 stalled large investment projects were stuck due to environmental clearances<sup>104</sup>. A December 2015 report said that "as many as 23 steel projects across the country, including those of Tata Steel, JSW Steel, Essar Steel and Posco's joint venture in Maharashtra, are stuck due to grant of environment clearance<sup>105</sup>."

There are only two ways of dealing with such a conundrum. The first requires abandoning these projects to save the environment and forgetting the crores worth of investment that has gone into them, duly financed by the Indian banks. The other option is to change all the environmental laws in the country to allow completion of these projects, at the cost of natural resources and flora and fauna, harming the native communities in the areas where these projects are located.

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<sup>101</sup> <http://www.catchnews.com/business-economy-news/shock-and-awe-the-top-10-indebted-companies-in-india-1451572290.html>

<sup>102</sup> <http://indianexpress.com/article/business/banking-and-finance/rbi-asks-banks-to-make-higher-provisioning-for-12-large-loans-4723550/>

<sup>103</sup> [http://www.business-standard.com/article/economy-policy/gdp-growth-rates-revised-for-3-yrs-from-2008-09-112020100090\\_1.html](http://www.business-standard.com/article/economy-policy/gdp-growth-rates-revised-for-3-yrs-from-2008-09-112020100090_1.html)

<sup>104</sup> [http://www.business-standard.com/article/economy-policy/40-projects-stuck-due-to-environmental-issues-114013101208\\_1.html](http://www.business-standard.com/article/economy-policy/40-projects-stuck-due-to-environmental-issues-114013101208_1.html)

<sup>105</sup> <http://economictimes.indiatimes.com/industry/indl-goods/svs/steel/23-steel-projects-stuck-due-to-green-clearance/articleshow/50268102.cms>

To boost the country's GDP, governments often argue in favour of completing stalled projects on the ground that a large amount of money will be wasted in case of non-clearance of such projects. What such arguments do not incorporate is the cost to be paid by the residents of the said area. A better approach to avoid a clash between the environment and development would be to have a system that vetoes environmentally hazardous projects at the approval stage itself.

An analysis on the human rights and responsibility parameters of the Indian banks exposes low commitment towards these issues, making the whole system vulnerable. An example is presented in the table below:

**Table 1. Bank Commitments to Responsibility: Some key Indicators**

		IDFC Bank	ICICI Bank	Punjab National Bank	IndusInd Bank	Bank of Baroda	State Bank of India	Kotak Mahindra Bank	YES Bank
Human Rights and Social Responsibility	Level of policy commitment to human rights (Stages 0-5)	4	1	1	1	1	1	1	1
	Whether financial institutions have a system for assessing social risks associated with their investments	Yes	No	No	No	No	No	No	Yes
	Whether financial institutions integrate human rights due diligence into their E&S risk assessments	No	No	No	No	No	No	No	No
Environment	Level of policy commitment to environment (Stages 0-5)	5	0	1	2	0	0	1	2
	Whether financial institutions assess environmental risks associated with their investments	Yes	No	No	No	No	No	No	Yes
Corruption	Whether financial institutions have a statement on non-acceptance of gifts	Yes	Yes	Yes	Yes	Yes	No	No	Yes
	Whether financial institutions have a statement on corruption	Yes	Yes	Yes	No	Yes	Yes	No	No
	Whether financial institutions have a statement on bribery	Yes	Yes	No	No	No	Yes	No	Yes

Sources: *Partners in Change and Praxis; 2015-16 Annual/BRR/Sustainability Reports and data available on Bank Website*

A majority of the banks surveyed, do not pay heed to social risks associated with their investments. The survey that assessed financial institutions like IDFC, ICICI, Punjab National Bank, IndusInd and State Bank of India among others, found that not a single one of them integrated human rights due diligence into their environment and social risk assessments. Most of the banks considered for the survey were found wanting in various other areas that has contributed to the present day malady of the Indian banking sector.

### Remedy for the banks

To avoid mistakes of the past, the RBI must ensure responsibility fixing on the top management for sanction of big corporate loans, especially, when they are found to have gone bad due to flawed business models/ environmental clearance and human rights issues. It has been noticed that often the loans for big corporate houses are passed due to the promoters' personal relationships with the bank's management, rather than the merit of the projects.

The government knows well that a transparent investigation into the loan defaults by corporates can open a Pandora's box, leaving many of the powerful in the country vulnerable. But a government that came to power on the anti-corruption plank must have the ability to prosecute those responsible for the current situation of the banking sector. An independent scrutiny of large defaulters will set the tone for responsible banking in the country. Apart from this, the RBI must come up with a set of guidelines

for the banks that requires them to incorporate environmental and human rights risks in their evaluation of projects. Additionally, to heal the damage that has already been done, the RBI should take the lead in demanding investigations into the bad loans and share findings in the public domain.

The banking sector is the backbone of a country's economy, and a bad loan crisis, if allowed to remain unresolved for a long period, will have far reaching effects and bring down job growth, investment and spending among other things. The sooner the RBI and the government resolve this crisis, the easier it will be for India to continue on it's road to progress.

Section 4:

## Way Forward in the Contemporary Policy Environment

## Chapter 8

### Corporate Social Responsibility: An International Comparison

- Jagdeep S. Chhokar<sup>106</sup>

Corporate social responsibility (CSR) has been, and continues to be, a very live issue for discussion since August 30, 2013, when the Companies Act 2013 specified, in Section 135, that “(1) Every company having 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 shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director,...(and) (5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.”<sup>107</sup> Schedule VII of the Act also listed the activities that were to qualify as CSR activities under the Act.

The discussion became more immediate from February 27, 2014 when the Ministry of Corporate Affairs notified the Companies (Corporate Social Responsibility Policy) Rules, 2014, to come into force with effect from April 01, 2014. As a possible interim response to the discussion, the Ministry of Corporate Affairs issued a “General Circular” on June 18, 2014, clarifying that “The statutory provision and provisions of CSR Rules, 2014, is to ensure that while activities undertaken in pursuance of the CSR policy must be relatable to Schedule VII of the Companies Act 2013, *the entries in the said Schedule VII must be **interpreted liberally** so as to capture the essence of the subjects enumerated in the said Schedule.* The items enlisted in the amended Schedule VII of the Act, are *broad-based and are intended to cover a wide range of activities as illustratively mentioned in the Annexure*” (Italics added, bold in the original)<sup>108</sup>.

The above brief and factual sequence of events does not capture the intense behind the scenes activities that went on before and during this period. The confusion, and anxiety, are not only that the government is trying to “tell” corporates how to spend a portion of their profits but also what exactly is CSR and why should companies be “forced” to engage in that *by law*.

#### What is CSR?

It is not an easy question to answer. Some pointers are available from international experience. Arguably, the most evolved form of CSR is prevalent in Europe. Looking at their concepts may therefore be instructive.

On 25.10.2011, the European Commission came up with a new definition of CSR as “the responsibility of enterprises for their impacts on society”<sup>109</sup>. It went on to explain it as follows: “Respect for applicable legislation, and for collective agreements between social partners, is a prerequisite for meeting that responsibility. To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of:

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<sup>107</sup> <http://indiacode.nic.in/acts-in-pdf/182013.pdf>, accessed on July 12, 2014

<sup>108</sup> [http://www.mca.gov.in/Ministry/pdf/General\\_Circular\\_21\\_2014.pdf](http://www.mca.gov.in/Ministry/pdf/General_Circular_21_2014.pdf), accessed on July 12, 2014

<sup>109</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>, accessed on July 12, 2014

- maximising the creation of shared value for their owners/shareholders and for their other stakeholders and society at large;
- identifying, preventing and mitigating their possible adverse impacts.”

In the US, the Department of State has a Corporate Social Responsibility team in the Bureau of Economic and Business Affairs which “coordinates a cross-functional, intra-departmental, and interagency team to provide support and guidance on major areas of responsible corporate conduct, including:

- Good Corporate Citizenship
- Contribution to the Growth and Development of the Local Economy
- Innovation
- Employment and Industrial Relations
- Human Rights
- Environmental Protection
- Natural Resources Governance, including the Kimberley Process
- Transparency
- Anti-Corruption
- Trade and Supply Chain Management
- Intellectual Property
- Women's Economic Empowerment”<sup>110</sup>

The OECD, on the other hand, refers to “Responsible Business Conduct” (RBC) which it describes to mean “above all complying with laws, such as those on respecting human rights, environmental protection, labour relations and financial accountability, even where these are poorly enforced. It also involves responding to societal expectations communicated by channels other than the law, e.g. inter-governmental organisations, within the workplace, by local communities and trade unions, or via the press. Private voluntary initiatives addressing this latter aspect of RBC are often referred to as corporate social responsibility (CSR).”<sup>111</sup>

The OECD also maintains that “Companies are best able to promote RBC when governments fulfil their own distinctive roles effectively.” It is also unequivocal about the impact of CSR, “At the same time, firms that adhere to high RBC standards are more likely to bring lasting benefits to employees, customers and the societies in which they operate. The roles of government, business and civil society are both complementary and interdependent.”

OECD also lays down what the government and business can do to promote CSR. The government, according to OECD, can “support” CSR initiatives in “three main ways:

- Facilitating – setting clear overall policy frameworks;
- Partnering – combining public resources with those of business and other actors to leverage complementary skills and resources, and
- Endorsing – showing public political support for particular kinds of RBC practice in the market place or for particular companies.”

For companies, according to OECD, a commitment to CSR “does not begin and end with legal compliance.” It goes on to recommend three specific types of actions for companies to take:

- “Essential actions refer to minimum business standards defined by national and international law.

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<sup>110</sup> <http://www.state.gov/e/eb/eppd/csr/>, accessed on July 12, 2014

<sup>111</sup> <http://www.oecd.org/investment/toolkit/policyareas/responsiblebusinessconduct/42267935.pdf>, accessed on July 12, 2014

- Expected actions go beyond what is legally required to meet the additional expectations of key stakeholders such as investors, employees, customers, and suppliers as well as NGOs and the wider community. As standards improve, some of today's expectations could become tomorrow's essential requirements.
- Desirable actions are often company-specific and may include pioneering philanthropic or community-based initiatives."

In keeping with the overall philosophy, the OECD specifically recognizes that the process of promoting CSR requires "consultation and cooperation among government, companies, professional associations and other civil society."

### **The comparison**

What does a comparison of the stipulations in the Companies Act, particularly as shown in the Annexure, with international practice indicate?

It is clear from a simple reading of Section 135 of the Companies Act and the Companies (Corporate Social Responsibility Policy) Rules, that the underlying approach is one of command and control. The underlying philosophy of the EU, the US, and the OECD seems to be one of encouraging, motivating, and nudging rather than forcing. The EU's stress on integrating "social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders" stands in sharp contrast to the activities listed in the Annexure. The "major areas of responsible corporate conduct" recommended by the US Bureau of Economic and Business Affairs, and the "expected actions" recommended by the OECD which "go beyond what is legally required to meet the additional expectations of key stakeholders such as investors, employees, customers, and suppliers as well as NGOs and the wider community" are obviously much wider in scope that even what the clarificatory circular of June 18, 2014 aims at.

Why is this so? Is it solely because of the control orientation that has been the hallmark of the governmental bureaucracy in India for a long time, or are there some other contributory factors? Has business, and particularly big business, "earned" the right to let the government know that it knows best what to do in the overall interest of society and the country?

As the old saying goes "you cannot clap with one hand", the reality is that there is more than a grain of truth in both. The government does have a control orientation but it is also a widespread feeling that business has not behaved in a socially responsible manner over time. This is not the occasion to cite examples but the cornering of licenses during the license-permit raj, and adopting dubious means to gain control over natural resources are much too glaring example to avoid. While it is true that generalizations are best avoided and obviously, not all businesses are unscrupulous but the fact that the government has been able to bring in Section 135 during the time of a divided Parliament shows that the house of business also stands divided.

One can look at it in two ways. One, had business been demonstrably socially responsible or had it been proactive in taking up CSR, either there would have been no need for the government to bring in Section 135 or it might have been possible for business to successfully resist its enactment. Two, had business not been a divided house, its capacity to resist or influence the specifics of enactment would have been much higher.

Business enterprises have been known to "manage" their environment through a variety of means. A large majority of business enterprises or business persons tend to think and work individually, for taking care of their individual interest. Those who think about business as a very significant sector in the national economy and society are a small minority. Even among them, there are a number of groups, associations, etc. each focusing in its specific interest.

There is also a tendency to think that so long as I am not violating any law, I can do what I like. This is not really conducive to effective CSR. Business has to realize that *ethics begins where law ends*. Keeping this in mind, IF business is able to come together and is able to itself and proactively undertake the “expected actions” recommended by the OECD which “go beyond what is legally required to meet the additional expectations of key stakeholders such as investors, employees, customers, and suppliers as well as NGOs and the wider community”, it might still be able to mitigate some of the potential hazards of the CSR stipulations brought in by the government. But if each enterprise continues to look for the easiest and most convenient ways to merely, and meekly, “comply” with the regulations, the interference of the government in business will not only continue but might also grow.

*(The article was first published in CFO Connect<sup>112</sup>, August 2014)*

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<sup>112</sup> [http://cfo-connect.com/title\\_detail.asp?art\\_id=1530&cat\\_id=6](http://cfo-connect.com/title_detail.asp?art_id=1530&cat_id=6)



## Chapter 9:

### Emerging role of NGOs Under CSR

- Subhash Mitta<sup>113</sup>

#### Introduction

While there is no doubt that non-governmental organisations (NGOs) would remain an essential part of any social development programme, whether implemented by the government or by corporates, this write-up looks into the increasingly subservient role that the NGOs are being asked to play.

#### Historical Evidence

Non-profit institutions perform a vital role in improving the socio-economic conditions of society. Historically, though several social reformers initiated the reform in medieval Indian society, the ground work undertaken by non-profit institutions established by these reformers or their followers, helped the changes to become widespread. For example, while social reformers like Raja Ram Mohan Roy, Swami Dayanand Saraswati and even leaders like Mahatma Gandhi took initiatives for removal of Sati practice, emancipation of women, bringing scientific temper in religious practices, or removal of untouchability, etc. However, on the ground-level, several non-profit entities like Brahmo Samaj, Arya Samaj or several Gandhian institutions carried on these initiatives bringing perceptible changes within the Indian society. In fact, it will not be wrong to state that Gandhian institutions have been instrumental in shaping the advent of NGOs in contemporary times.

#### Achievements of NGO Sector

Availability of organised charitable funds grew, particularly after 70s, giving a major fillip to the non-profit institutions which have acquired greater knowledge and experience. This is reflected in the evolution of social development approaches within the Sector, which started as *Religious Philanthropy* and moved to *Doing Good*. From *Supply Driven* to *Participative & Demand Driven*, and currently generally follow the *Rights-based* approach.

In fact, NGOs have also played an important role in government policy changes through their advocacy efforts. Several initiatives originating in the Sector have ultimately resulted in improvement of legal frameworks strengthening the *Rights-Based* approach. Some of these cover eradication of leprosy, enhancing protection and livelihood for single women headed households, Mental Health Act, Right to Information, Right to Education, Right to Food Act, etc.<sup>114</sup>

#### CSR Model

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<sup>113</sup> Socio Research and Reform Foundation

<sup>114</sup> Based on A Million Missions, The Non-Profit Sector in India by Mathew Cherian

This scenario of unstinted growth of the Corporate Social Responsibility (CSR) sector is undergoing a major shift in last few years. The NGO sector is facing major fund crunch situations due to stringent FCRA rules and departure of many traditional foreign donors from the country, several NGOs complain of loss of their moorings as they increasingly become reliant on CSR funds. Initially, when the compulsory CSR proposal was mooted by the Government in 2013, there were great expectations from the Sector, who saw in it an opportunity for getting additional resources for it. But as the scenario unfolded, many are not so optimistic any longer.

Many NGOs have misgivings about companies forming their own foundations. On its own, this move should not be seen as being against NGOs, since the companies need to put in internal mechanisms which help them comply with the Companies Act 2013 requirements. The Act, for example, requires that the Board certify the 'CSR expenditure incurred'. They have also been made responsible for ensuring the programme's effective monitoring. Hence, such moves help companies make certain institutions / officers responsible for ensuring compliance with CSR provisions and correct reporting, for which ultimately, the Board of Directors is accountable.

In fact, NGOs continue to be involved in CSR implementation. A recent KPMG Survey of 100 top companies based on FY 2015-16 indicates NGO involvement in most CSR programs is around 89 per cent, including through corporate foundations. Thus this indicates that even if foundations have been formed, they do need non-profits to implement the programmes.

### **Changing role of NGOs under CSR**

Problem is the role that is being increasingly assigned to the NGOs in CSR implementation. There are several irritants in the relationship between NGOs and corporates which need to be identified and deliberated upon.

It seems most of these misunderstandings arise as the companies who mainly deal with for-profit entities, do not have exposure to the environment in which non-profits operate. To start with, most companies which sign agreements with NGOs use standard formats which the companies have developed (after being vetted by their legal experts) for their vendors. The language in such contracts is that of a Principal and Agent and not of equal partnership. This creates a negative environment amongst the NGO community, which feels that they are not an equal partner in the implementation of the CSR projects. It may be mentioned that this is not just an emotional reason, but since NGOs directly interact with the community, they consider themselves accountable to the community. When they find that their role in designing of the project has significantly diminished, disenchantment sets in.

It may be mentioned that often Companies' boards decide on the CSR policy, but it is not clear how this policy is arrived at. Generally, the processes (such as baseline survey, method of undertaking such surveys, etc) are not laid down. Often, projects to be undertaken are based on perceptions of the CSR staff or at worse, whims & fancies of the senior executives of the company. On the other hand, NGOs implementing the project may get consulted on implementation methodologies, but do they really have final say, even on this, is another question. Perhaps there is the need for voluntary sector

representative organisations like VANI (Voluntary Action Network India) to come out with model guidelines of partnership between companies & NGOs for effective and accountable implementation of projects.

Overall, an environment is created in which the contract language, lack of participation in project assessment and formulation, etc. lead to conditions where the NGOs start feeling that they are being treated more like a vendor providing a service. This could even impact the quality of programme implementation as the NGOs do not feel the ownership towards the programmes.

### **Impact of deduction of TDS from CSR Grants**

On a practical level, NGOs have generally been facing some new situations which they generally have not faced in past. Several companies deduct TDS (Tax Deducted at Source) from the CSR grants, treating it more like a service contract. This not only reduces cash-flow, but also gives rise to other complications. For example, NGOs are not sure whether companies would require them to certify utilisation against the actual net amount received or the gross CSR grant, since the TDS amount can be received by NGOs as refund from the Income Tax department, but that generally could take 2-3 years.

Another major complication has been observed: at times, the Income Tax department takes a position that if the TDS has been deducted, that Income must be 'for profit' and decides to treat the same accordingly<sup>115</sup>. Although courts have generally not accepted such interpretations, deduction of TDS creates a situation that tax authorities could interpret it against the interests of NGOs and make such income subject to tax.

### **GST and likely impact on NGOs**

As currently, the Goods & Services Tax (GST) is in early stage of implementation, it may be of interest to understand how it could impact NGOs while they implement CSR projects. Per se, NGOs are not exempt from GST, as the exemption notification is applicable to very few charitable activities, leaving most NGOs out of scope of exemption. However, GST is applicable only if the activity is undertaken in furtherance of business and for consideration. In our view, this should keep a large number of NGOs out of the ambit of GST, while their only income is CSR grants. But this is an interpretation and not based on any direct circular / clarification by the Government, leaving NGOs vulnerable to different type of interpretations, particularly if a company insists that an invoice has to be raised for payment of CSR grant. This could adversely impact NGOs, as Income Tax authorities may treat this as service and include it as Business Income under Section S.2(15) of Income Tax rules.

Further, there is always a possibility that a company may decide to pay GST on reverse charge mechanism, thereby reducing the total CSR grant amount.

To conclude, while issues of Income Tax and GST have direct impact on fund-flow to the NGOs, there is a need for the companies to look at their own role in the social development sector. Companies undoubtedly are taking the mantle of funding agencies;

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<sup>115</sup> Heart Care Management versus Director of Income Tax Exemptions (New Delhi) *citation*: [2012] 22 taxmann.com 105 (Delhi)

in such a scenario they need to understand what kind of relationships fo they want to have with NGOs. Are they to be treated as vendors or partners in development? NGOs need money to grow, to improve, to build their own capacities. From our past experience, we know that organisations like CSE, PRIA, SEWA to name a few, are recognised authorities in the area of their expertise. Creating such models should be an object worth pursuing. Are companies prepared to invest in long-term growth of its NGO partners?

Yet, the sector has to also introspect regarding their own long-term position. The sector traditionally has been known for its role of activism, which has resulted in a number of policy changes. But it has to recognise that no company would fund activism, particularly that which is against government policies. Forget funding, a company may not want to even associate with an NGO (by funding other non-controversial projects) which is involved in such activism. How would the Sector find money to fulfil this role?

In the new emergent scenario, there are several questions which both the voluntary sector, as well as the companies implementing CSR need to introspect upon.**Introduction**

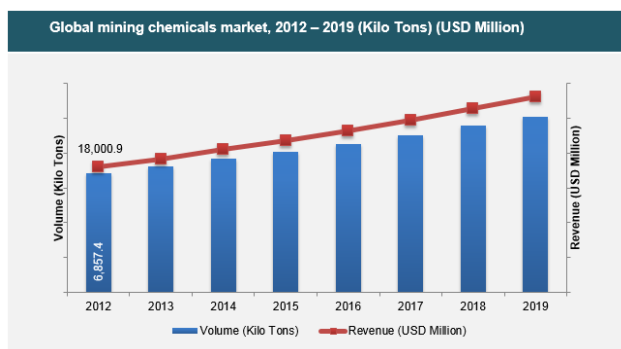
## ***Chapter 10:***

### **Sustainable Consumption and Production: Current Status and Way Forward for India**

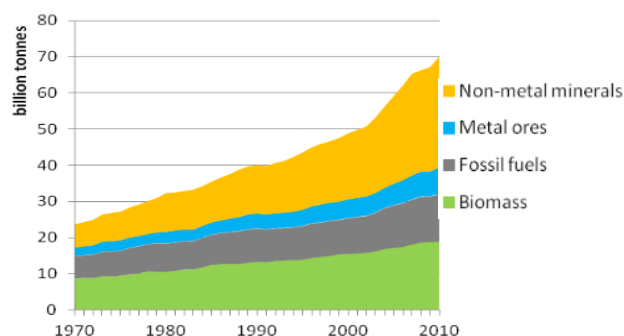
## The Global landscape

The current model of industrial growth and economic development (and associated anthropogenic activities) has created considerable stress on world resources, in terms of how goods are produced, consumed and finally disposed. As is evidenced in the figure below (Figure 1), the growth in sectors (mining and chemicals) that exploit natural resources is set to continue on an upward trajectory in the foreseeable future. Figure 2 demonstrates the exponential growth in material use in India, on account of India's economic development and growth patterns in recent times. Further, around 97% of all materials consumed are extracted within India, while only 3% are net imports<sup>117</sup>. The question does arise – if this is sustainable in the long run?

**Fig 1: Global mining and chemicals market (2012-19)**



**Fig 2: Material consumption in India<sup>118</sup> (1970-2010)**



It would be naïve to assume that industrial growth and commerce alone is responsible for such injudicious use of natural resources. Consumer behaviour is to be equally blamed. According to Food Tank, a US based think-tank, consumers in high-income countries discard up to 30 per cent of fruit and vegetable purchases and trim products up to 33 per cent by weight during household preparation<sup>119</sup>.

Changing our production and consumption pattern, in such a way that the stress on the world's finite natural resources is reduced, is not only an imperative but an obligation for all of us, especially for our future generation. It is critical equally for industries and consumers to resort to reduction, reuse and recycling methods and processes much more than before. The Sustainable Development Goals (SDGs), specifically SDG-12 on Sustainable Consumption and Production emphasises on this need and has identified a number of indicators for guidance<sup>120</sup>. Eight other SDG goals (2, 6, 7, 8, 9, 11, 14 and 15) also have a bearing on resource efficiency and therefore on sustainable consumption and production. This does present some 'opportunities' for industries and communities, and there is gradual realisation of the same.

Some advanced economies especially in Europe motivated by the European Union's (EU's) leadership have started to make a shift towards a smart, inclusive and sustainable economy – thereby aligning with the Europe 2020 Strategy<sup>121</sup>. This strategy supports the shift towards sustainable growth based on a resource-efficient, low-carbon economy. Given the globalisation of trade and investment, the effective implementation of this strategy would also entail influencing such transformation among EU's trade and investment partners including developing countries (like India). At the multilateral level, UN Environment (UNEP) has championed the agenda to promote resource efficiency and

<sup>116</sup> Centre for Responsible Business

<sup>117</sup> [http://www.devalt.org/images/L2\\_ProjectPdfs/MaterialconsumptionpatternsinIndiareport.pdf?Oid=121](http://www.devalt.org/images/L2_ProjectPdfs/MaterialconsumptionpatternsinIndiareport.pdf?Oid=121)

<sup>118</sup>

[http://niti.gov.in/writereaddata/files/document\\_publication/Strategy%20Paper%20on%20Resource%20Efficiency.pdf](http://niti.gov.in/writereaddata/files/document_publication/Strategy%20Paper%20on%20Resource%20Efficiency.pdf)

<sup>119</sup> <https://foodtank.com/news/2015/06/world-environment-day-10-facts-about-food-waste-from-bcfn/>

<sup>120</sup> <http://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-12-responsible-consumption-and-production.html>

<sup>121</sup> [https://ec.europa.eu/info/strategy/european-semester/framework/europe-2020-strategy\\_en](https://ec.europa.eu/info/strategy/european-semester/framework/europe-2020-strategy_en)

sustainable consumption and production (SCP) in both developed and developing countries<sup>122</sup>. UN Environment has been pursuing this agenda through the 10YFP programme (10 year framework programme on sustainable consumption and production)– which focuses on the following elements: consumer information; sustainable procurement; sustainable tourism; sustainable lifestyle and education; sustainable building and construction and sustainable food systems.

The focus of these initiatives is on achieving an increased understanding of policies and actions for resource efficiency and sustainable consumption and production among public and private decision makers and civil society organisations. This includes the promotion of sustainable resource management in a life cycle perspective for goods and services – especially focusing on a number of key sectors<sup>123</sup>. A number of leading research organisations and think-tanks are also working on this subject led by the likes of Ellen MacArthur Foundation (EMF), especially promoting a change in the model of economic development from the conventional linear (take-make-dispose) model to a circular approach (mining - manufacturing - consumption - post-consumption)<sup>124</sup>. In recent times, EU, EMF and bilateral development partners like GIZ (Germany) have invested considerable attention to promoting resource efficiency/circular economy in India as well.

### **Current scenario in India**

It will not be right to say that this movement towards resource efficiency and circular thinking is a 'foreign' concept for India. Some of the elements of resource efficiency and indeed targets of SDG-12 (e.g., '*....substantially reduce waste generation through prevention, reduction, recycling and reuse*') are deeply ingrained in the Indian culture of frugality. So, a turn-around from the present unsustainable production and consumption is possible and is perfectly in *sync* with the Indian culture and tradition. One of the key determinants of such a shift would be consumer behavior changes - thereby prompting transforming production and materials used by businesses. India had already exceeded its bio-capacity, and hence to achieve sustainable development, it is critical to find appropriate models of production and consumption – and a lifestyle of moderation can be a strong tool in achieving this<sup>125</sup>.

Needless to say that certain enabling conditions and the necessary infrastructure would be required to facilitate such a transition. Government of India has realised the need for this transition, especially in the interest of its trade and investment relations, and has taken a brave step by establishing the Indian Resource Panel (InRP) – the first time in the history of the country. InRP is an advisory body established under the Ministry of Environment, Forest and Climate Change (MoEFCC) – through the support of an Indo-German bilateral cooperation project, to assess resource-related issues facing India and advise the government on a comprehensive strategy for resource efficiency. A draft 'strategy paper' has been developed by this Panel and is up for comments.<sup>126</sup> One of the challenges encountered in the process as attested by some of the key actors engaged with the process, has been to find the right custodian within the government to push this strategy into implementation. For the time being, NITI-Aayog has taken up this responsibility. However, observers feel that NITI-Aayog will need to do much more than act as an arm-chair advisor to ensure the strategy is implemented and its objectives achieved.

It is logical to believe that businesses would need to play a lead role in ensuring the transformation towards sustainable consumption and production. Gradually, businesses are also realising the 'business case' of this transformation. One of the key triggers is capturing new markets achieved on account of better visibility across consumers. Manufacturers will need to provide information to consumers to encourage more sustainable consumption patterns via the choice, usage and disposal of consumer products. In addition to individual companies, industry associations (especially in resource intense manufacturing sectors) need to play a key role to facilitate this. The 'business case' for sustainable production and consumption is clear: from cost savings through optimisation of

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<sup>122</sup> <http://www.unep.org/10yfp>

<sup>123</sup> <https://www.unep.org/resourceefficiency>

<sup>124</sup> <https://www.ellenmacarthurfoundation.org/circular-economy/overview/concept>

<sup>125</sup> <http://www.researchtrend.net/ijet/pdf/51->

[%20163%20International%20Journal%20on%20Emerging%20Technologies%207.pdf](http://www.researchtrend.net/ijet/pdf/51-%20163%20International%20Journal%20on%20Emerging%20Technologies%207.pdf)

<sup>126</sup>

[http://niti.gov.in/writereaddata/files/document\\_publication/Strategy%20Paper%20on%20Resource%20Efficiency.pdf](http://niti.gov.in/writereaddata/files/document_publication/Strategy%20Paper%20on%20Resource%20Efficiency.pdf)

material/ resource use; to shifting to cleaner energy options thereby improving processes; gaining new markets/consumers; or reducing risks through effective pollution mitigation. A number of steps are being taken by some Indian businesses as indicated below, and these actions are likely to motivate others in the industry as well.

## Sustainable consumption and production in practice – some illustrations

An illustrative list of some of the initiatives taken by leading India firms has been provided in this section. It needs to be mentioned here that these examples were readily available in the public domain and hence have been provided here.

- **Waste to Wealth (business model):** For some companies like Mahindra Sanyo Special Steel Ltd (MSSSPL), the core model of doing business is based on 're-use', whereby scrap steel is used to manufacture special steel, which is sold to other businesses as inputs or after some value-addition.
- **Material use efficiency:** A fair bit of background work has been undertaken in the automobile sector (a 'hot-spot' for material use given the expanding market of owned vehicles in India) and construction sectors (pressure on construction materials, given the growth of the sector) in India, and several recommendations have been made for ensuring better management of material flows, extending product life, changes in design, categorisation and inventorisation of wastes, etc. Further, there are some regulations which help advance the idea, viz. Fly Ash Notification (1999), which urges all construction agencies within a radius of 100 km from a coal or lignite based thermal power plant shall to use only fly ash based products for construction. Further, properly processed Construction and Demolition (C&D) waste can be used as a raw material for construction. In India, management of C&D waste assumes prime importance given the potential to reduce environmental pollution as well as contributing to the sustainable consumption of resources in the construction sector.
- **Renewable energy:** There is an overall transformation in the Indian power sector/ market, given the government's unprecedented zeal in promoting renewable energy. The result has been an overall growth in the sector, currently contributing towards 17.5 per cent of the total energy mix in India – with the government fixing a target of 40 per cent by the year 2030<sup>127</sup>. A number of players (traditional and new) have taken advantage of the enabling policies and market conditions to strengthen their renewable energy (RE) portfolio in India. This momentum (paradigm shift) would reduce the overall stress on non-renewable resources/ materials for meeting the country's energy needs.
- **Industrial symbiosis:** Industrial symbiosis engages traditionally separate industries in a collective approach to competitive advantage involving physical exchange of materials, energy, water and by-products<sup>128</sup>. Gujarat Cleaner Production Centre has been pursuing the development of Eco Industrial Parks in the industrial estates of Dahej and Nandesari in Gujarat<sup>129</sup>.
- **Product lifetime extension:** refers to a strategy to extend the lifetime of the product by making small improvements without any additional costs.

## In Conclusion

Some of the key elements that emerge from the analysis and are relevant for India, have been enumerated here:

- The government of India would need to create an appropriate enabling environment (through policies, legislations, strategies and programmes) to facilitate the transition towards resource efficiency for India businesses. The strategy paper developed under the aegis of the 'India Resource Panel'<sup>130</sup> should come up with these recommendations.

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<sup>127</sup> <http://pib.nic.in/newsite/PrintRelease.aspx?relid=155612>

<sup>128</sup> Brief of GSDR 2015, Industrial Symbiosis: powerful mechanisms for sustainable use of resources

<sup>129</sup> [http://www.gcpcenvvis.nic.in/E-Bulletin/Eco\\_Industrial\\_Parks.pdf](http://www.gcpcenvvis.nic.in/E-Bulletin/Eco_Industrial_Parks.pdf)

<sup>130</sup>

[http://www.igep.in/live/hrdpmp/hrdpmaster/igep/content/e48745/e49028/e63437/e63438/e63451/FrameworkIRP151013\\_FinalWB.pdf](http://www.igep.in/live/hrdpmp/hrdpmaster/igep/content/e48745/e49028/e63437/e63438/e63451/FrameworkIRP151013_FinalWB.pdf)

- Some of the businesses have realised the advantages of resorting to resource efficiency – and have not only integrated this in their operations (recycling, re-use, renewable energy use, etc.) but also as part of their business model/ strategy (waste to wealth).
  - Consumer awareness and understanding is a key to enable the market transformation towards sustainable production and consumption. Businesses should realise this opportunity and communicate accordingly to the Indian consumers, especially the middle-class.
  - Engaging with India's trade and economic partners to ensure that the gains from resource efficiency is understood and utilised by the domestic suppliers when they engage with partners from advanced countries like the EU Member States.
  - There is an urgent need for capacity building at various levels, especially industry bodies (for their members), relevant government agencies and regulators on various elements of sustainable consumption and production, resource efficiency and circular economy/ approach.
-