



The United Nations Guiding Principles and Business and Human Rights in India*

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Background

Land in India is a scarce resource, but a source of livelihood for over half of its population. Agriculture is not a productive contributor to the economy, accounting for only 17.9 percent of the Gross Domestic Product (GDP), but half of the country depends on agricultural activity for their means of livelihood. Therefore, agriculture either needs to be more efficient or land made more productive by utilizing it for other purposes.

A large-scale governmental effort to modernize agriculture, combined with a massive drive to urbanize, was the prescription for India's growth and development. Both cases require massive land acquisition.

The Land Acquisition Law from 1894 dealt with fragmentation of land holdings to remove the problem of land-holdouts and disputed land-titles. Affecting almost 50 million people, more than six (6) percent of India's total land has been acquired since 1947. Landowners were poorly paid, interests of farmers and peasants hurt. Very little rehabilitation was organized, and tribals were the most affected. The acquisition law failed to recognize the country's geographical and economic diversity and specific local land cultures and histories.

Overview of Land and Resource Conflicts in the Country

Nature of the Conflicts

Land acquisition in India is mainly done by government and the private sector to build public infrastructure or establish industries. But under the garb

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of public purpose, human rights are often violated. Unfair compensation, threat to life, and use of force to push people out of the area to be acquired are some of the instances of human rights violations. The arbitrary manner of land acquisition leads to land conflict.

There are 660 land conflicts currently ongoing in India (Land Conflict Watch, n.d.). Most land acquisition schemes are carried out in common lands, which affects a large number of people. The area of lands

acquired varies from five to fifty *lakhs* (500 thousand to 5 million hectares).

The Land Acquisition Act of 1894 is in place, but it is full of loopholes and has undergone many amendments. The National Human Rights Commission's stakeholders' report for India's Second Universal Periodic Review (UPR) states that "usually those displaced are given neither adequate relief nor the proper means of rehabilitation" (Chodavadiya, n.d.).

Even the Constitution of India, under Article 46, provides that the State shall promote with special care the education and economic interest of the disadvantaged members of the population, and in particular the *Scheduled Castes* and *Scheduled Tribes*, and shall protect them from social injustice and all forms of exploitation. In almost all land acquisition cases, the victims of land acquisition are the marginalized. Hence, if they get evicted from their land, there would be great social injustice towards them (Debbarma, 2015).

Rise of Business and Human Rights Violations in the Agricultural Sector

Gaps in land policies and administrative hindrances have increased with more agricultural investment for corporate benefits. This has resulted in human rights abuses among agricultural farmers and indigenous communities.

Various basic and heavy industries were created in order to boost India's economic growth. While these projects boosted productivity, they gave rise to a spate of violations of human rights of farmers and tribal communities as their lands were converted for industrial purposes. These projects no doubt helped a lot in achieving the goals of the State like power generation, flood control, and irrigation. However, these projects physically uprooted a sizable number of



people from their lands – causing them not only to lose their homes and sources of livelihood but also shattering their culture and kinship linkages built over several generations.

Businesses undertake large-scale displacement of rural families without rehabilitation owing to their interests in Special Economic Zones (SEZs). For large infrastructure projects, including dams, ports, mines, and environmental conservation projects, large and tax-free areas are designated as such. Majority of resource-rich areas are inhabited by indigenous peoples who face the onslaught of natural resource extraction projects. States like Chhatisgarh, Jharkhand, Andhra Pradesh, Odisha, and the north-eastern States of Manipur, Meghalaya, Sikkim, Arunachal Pradesh, Mizoram, and Tripura, in particular, face acute threats of displacement due to such projects. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006, aimed at recognizing rights of forest dwellers, is not being adequately implemented and many tribals are being denied their right to forest resources.

Rehabilitation measures extended to affected communities have been unsatisfactory and inadequate. The living conditions of those displaced remain deplorable, characterized even by lack of basic facilities.

Since the early 2000s India has witnessed an alarming number of farmer suicides with a baseline of 15,000 each year primarily due to indebtedness and agrarian distress. Hunger among the producers of food is a reality in a country that ranks second worldwide in farm production. Liberalized trade, patenting of agricultural products, and the introduction of Genetically Modified Organisms (GMOs) under the draft Biotechnology Regulatory Authority of India Bill, could further aggravate India's food crisis.

It is because of these factors weighing heavy upon the basic human rights of the farmers that a comprehensive Business and Human Rights (BHR) framework is required in India's agricultural sector. In keeping with the context of the three pillars of UNGP BHR:

1. There is an urgent need for the State to take responsibility to protect the human rights of the marginalized farmers and tribals against abuse by third parties. As there is a lack of a legal framework and zero accountability, business enterprises continue with the rampant exploitation. There is a need for the State to have a framework wherein it can prevent, investigate, punish, and redress the abuse by private actors.



2. The multipurpose projects set up by the multinational corporations acquire the land of the farmers and displace them arbitrarily. A comprehensive legislation formulated under the BHR framework must be enacted, mandating the business sector to respect human rights.
3. The State should have a comprehensive mechanism wherein all the grievances of farmers can be addressed easily. Due to lack of education and resources, farmers are not able to reach out to the available judicial mechanism to defend their rights. This leaves them helpless and at the mercy of exploitative moneylenders and private actors.
4. It is important for States to periodically review laws governing access to land, credit facilities, insurance, and entitlements in relation to ownership of land, given the evolving trends in business and economics.
5. There is a lack of a body that acts as an interface between the State and business enterprises to ensure best policies are formulated to promote respect of human rights. The exploitation of farmers can be checked if the BHR framework is adopted, under which not only the business enterprises are guided as to what kind of policies they should incorporate in their business modules, but there is also a regular communication from their side where they convey the manner and efficacy with which they implement them in their projects.
6. A framework is required wherein the business enterprises are able to meet their responsibility to respect human rights through policies and processes appropriate to their size and circumstances. Human rights due diligence process to identify, prevent, mitigate, and account for how businesses address their actual or potential impacts on human rights, is urgently required in the agricultural sector.

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Recent Developments/Emerging Issues

It remains a fact that the government has a responsibility and has to take initiatives to protect the people against human rights violations. At the same time, businesses need to hold themselves accountable with respect to their share of human rights abuses in order to maximize private gains. It is crucial that the



conduct and operation of businesses should respect the human rights culture of the country.

The National Human Rights Commission of India (NHRCI) plays an important role insofar as BHR is concerned. It has been nominated by the Commonwealth Forum of National Human Rights Institutions (CFNHRI) to be the focal point for the subject. The Commission therefore organized a meeting with trade and industry associations to discuss and prepare a roadmap of engagements with business enterprises.

On 2 June 2017, the NHRCI, in collaboration with the Confederation of Indian Industry (CII), organized the *East Regional Conference on Business and Human Rights* in Kolkata. The main objective of the conference was to share the developments of the region in business and human rights. The pertinence of universal availability and accessibility of human rights was discussed.

More recently, the NHRCI organized a *National Conference on Business and Human Rights* along with Bharat Heavy Electricals Limited (BHEL). The conference delved into concerns for State duty to protect human rights and upholding corporate responsibility.

This was followed by a series of meetings with industry federations to encourage voluntary compliance to human rights principles by business enterprises. This gave birth to the draft self-assessment tool that was to be voluntarily used by the private sector. Regional conferences throughout Kolkata, Chennai, and Mumbai were held thereafter.

While the UNGP BHR are not still fully in place in India, many organizations, such as the Ethical Trade Initiative (ETI), have been actively working to start a conversation on the implementation and operation of a binding framework. The idea is to raise awareness and development of indicators towards monitoring the conformance of business enterprises to the UNGP BHR and other international covenants.

The Dialogue for Change Conference by the ETI collated perspectives from different stakeholders -- government, civil society, and businesses. These dialogues led to a need to raise awareness on the BHR through:

- ❑ Educating stakeholders about the UNGP BHR;
- ❑ Comprehensively discussing human rights and their abuses;
- ❑ Impactful business decisions and their financial repercussions due to human rights considerations; and,



- ❑ Gauging the enterprises towards an innovative framework harmonizing business and human rights.

Land Conflict Resolution Mechanisms

A number of remedial institutions are already existent in India (Deva, 2016). These almost match the range of remedial recommendatory mechanisms that the Guiding Principles mandate. Apart from the NHRCI, there are special commissions for marginalized classes, women and children. Certain non-State mechanisms are also present that are not as well organized as the State mechanisms are. Owing to the myriad limitations and administrative hindrances in State-run mechanisms, however, the situation might change for the non-State mechanisms in the near future.


BHR National Action Plan (NAP) in India

The NHRCI unfortunately lacks the capacity to provide technical and objective inputs on business and human rights (FORUM-ASIA, 2016) as it is only a recommendatory body. The auxiliary mechanisms present are not as well-endowed to compensate for the NHRCI's shortcomings. This forms the primary rationale behind establishing a framework dedicated only to monitor business regulations respecting human rights in India.

India has ratified several international laws that seek protection of human rights – the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR). Developing a BHR framework secures consistency of Article 51 of the Constitution stating that the State *“shall endeavour to foster respect for international law.”* Additionally, establishing a Business and Human Rights framework within the purview of the Government of India, is imperative as it can leverage and claim its position in the business and human rights governance.

Key benefits of formulating a NAP/BHR framework:

- ❑ It ensures that business enterprises operating within Indian Territory or jurisdiction do not commit human rights abuses.

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- ❑ It will allow the government to draw a holistic assessment of the current legal framework in order to identify the pros and cons of business regulations and prospects respecting human rights.
 - ❑ It could be responsive to a range of contexts like violations of human rights by Indian corporations and their subsidiaries, foreign companies, and the informal sector.
 - ❑ It will enable the conduct of informed discussions on how the companies in a mixed economy like India can do good business without violating labor laws and exploiting administrative loopholes.
 - ❑ Corporate Social Responsibilities (CSRs) like the National Voluntary Guidelines, Environmental and Economic Responsibilities of Business, the Companies Act of 2013, and the Bilateral Investment Treaty 2015 will be overseen and encouraged.
 - ❑ Development of projects will not be slowed down due to resistance from affected communities if the framework is allowed to properly function.
 - ❑ It empowers all sectors of the economy by avoiding social conflicts and equitably sharing the gains from growth.
 - ❑ It will create an environment conducive to private investment and growth-led development, at the same time being inclusive and sustainable.

Recommendations

There is a need for a fuller adoption of the UNGP on Business and Human Rights in India. While laws are in place to address human rights and their violations regarding businesses and private welfare (Smith, 2014), their practical contributions are rather underwhelming. It gives rise to the need to undertake more studies to make laws realistically effective, founded on the guiding principles as a harmonious framework.

According to Surya Deva, Professor at City University of Hong Kong, the necessity of a BHR framework depends on how effective the current mechanisms are. On one hand, it is ideal for the business sector and the legal regulators to host only one framework at the national and international level. On the other hand, however, a multitude of frameworks might be necessary since no single framework could capture all issues related to human rights and its interactions



with business expansion. The very idea behind establishing a new framework is the need for an update in the future to respond effectively to newer challenges. It becomes imperative to establish guiding regulations which are systematic and more binding to foster agreements and check violations of fundamental rights.

Thus, there is a need to:


- ❑ Initiate dialogues with the business sector on better application of the concordant corporate responsibilities, and on improved documentation and accountability;
- ❑ Conduct studies to simplify the adoption of the guiding principles, analyze loopholes in the Indian legal framework on BHR, and to infer how compliance to human rights measures improves ease of doing business in the country; and,
- ❑ Establish regular consultations with stakeholders on how to develop a national action plan on incorporating the UNGP BHR more holistically.

The implementation of the UNGP BHR in India is important for two main reasons:

First, it will serve as a responsible government body dedicated to rectifying business-oriented human rights violations. This even serves to fight future injustices related to land rights and illegal labor practices that are still prevalent in the country. *Second*, it will answer the call for immediate response to the adverse impact of mining and corporate businesses in ancestral lands that affect indigenous communities.

There is also a need to start a debate on the recognition of land rights as human rights. The goal of the BHR framework is to mediate such dialogues in a more transparent environment. A framework can assist the NHRCI and complement additional mechanisms to understand the complex nature of human rights. A scrutiny into land rights and draconian agricultural practices holds importance in terms of deliverance of justice and upholding law and order. This is a democratic need, rather than an institutional mandate, in the sense that India is a labour intensive economy.

Structural reforms such as commissioning a BHR framework will create a favorable environment for investment and employment (The Times of India, 2017). Information symmetry plays a crucial role in investing such cases with business activities. However, the governance in States and at the national level suffer deeply from information asymmetry and incomplete knowledge of



undercurrents in exploitative measures. This deems the government agencies structurally ineffective in fulfilling oversight functions. As a body dedicated to just one of the many human rights affairs in India, the BHR framework can help improve the business regulations and industrial policies by providing educative insight and focused approach. ■

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