

# **THE APPLICABILITY AND ALIGNMENT OF CONSTITUTIONAL PROVISIONS, IDEALS AND PRINCIPLES INTO THE LAW GOVERNING COMPANIES IN INDIA**

**PRAKHAR GUPTA<sup>1</sup>**

## **Abstract**

This article probes and documents the alignment of constitutional goals and ideals into the laws governing the companies in India. The article delves deeper into the contributions made by corporate India towards nation building by supporting various governmental schemes/ initiatives. These governmental schemes, fosters the promotion of Fundamental Rights guaranteed by the Constitution of India to the common man of India. The Corporate India has also helped the government to remain compliant with various interpretations given by the Courts to the concept of Fundamental Rights from time to time. The main argument of this paper is that companies, if managed well, are a true asset to the country and they must be utilised to foster, promote and strengthen the Constitutional goals, ideals and principles. The paper underscored the actual as well as the potential role that could be played by the companies in building the nation's infrastructure, and in empowering the common man in the country by providing better access to goods, services, connectivity and power (both political and economic) at a reasonable price. Access to data and internet, for instance, has provided a better access to information, like never before. This would not have been possible without the assistance of corporate India. A considerable portion of this article also delves deeper into the laws that govern companies in India and mandates that these companies should respect human rights through its various provisions. Also, the paper discusses the various government schemes in which the corporate India participated actively to make it a huge success.

**Key words** – *Constitutional Ideals, laws governing companies, Human Rights, Constitution of India, Companies Act, 2013.*

## **Introduction**

The enduring roots of India's commitment towards Human Rights could be spotted enshrined within the Constitution of India. Part three of the

---

<sup>1</sup> STUDENT OF BBA LLB IN RAMA UNIVERSITY (10<sup>TH</sup> SEMESTER)

Constitution of India, deals with the inviolable Fundamental Rights guaranteed to the people of India. The fundamental rights guaranteed by the Constitution of India, embraces within its ambit the duty of preserving life, the right to personal liberty, the right to equality, the right to freedom of speech and the right to seek the Hon'ble Supreme Court's intervention(s) for their enforcement, in the case of their infringement by the state or any other person. The judiciary also played an active role and has often offered an expansive interpretation to broaden the scope of the various fundamental rights like the right to life and liberty in order to include right to privacy, access to medical facilities, right to a clean environment, and right to speedy trials as a part of the right to life and liberty.<sup>2</sup>

### **Judicial path in the internalization of constitutional values**

The Hon'ble Supreme Court of India has, through its various judgments and rulings, endeavoured to extend fundamental rights of persons to companies. In the case of *Chiranjitlal Chaudhari v. Union of India*<sup>3</sup>, the Hon'ble Supreme Court of India conferred certain categories of fundamental rights on the companies as judicial person and held that fundamental rights guaranteed by the Constitution of India are available not merely to individual citizens but to corporate bodies as well except as well except where the language of the provision or the nature of the right compels the inference that they are applicable only to natural persons. Similarly in *Bennet and Coleman Co. v Union of India* [1972] S.C.C. 788, 806, the Supreme Court extended the ruling in Chiranjit Lal case and held "it is now clear that the fundamental rights of shareholders as citizens are not lost when they associate to form the company. When their fundamental rights as shareholders are impaired by the State action, their rights as shareholders are protected. The reason is that the shareholders' rights are equally and necessarily affected if the rights of the company are affected. Likewise in the case of *National Textile Workers Union v P R Ramakrishnan and Ors.* [1983] SC the Supreme Court upheld the worker's / employees right to be heard in the process of winding up of a company. In order to promote transparency, better corporate governance and protection of depositors, section 274 (1) (g)

---

<sup>2</sup> Nisha Gandhi, "Expanding and Evolving the Ambit of Article 21 of the Constitution of India with the Developing Scenario" 2 (IV) *Indian Journal of Integrated Research in Law* 1-22 (2022).

<sup>3</sup> [1951] 21 Comp Cas 33

was inserted to the Companies Act 1956, requiring the public companies to file annual returns and making stringent provisions about disqualification of defaulting directors. When challenged, the Karnataka High Court, Bombay High Court and Gujarat High Courts have upheld the amendment as not violative of Articles 19 (1) (g), 14 and 21.<sup>4</sup> In *Association for Democratic Reforms* (Electoral Bond) case,<sup>5</sup> the Supreme Court addressed the issue of constitutionality of an amendment to section 182 of the Companies Act, 2013 brought in 2017. By removing its first proviso, the limit imposed upon companies that they shall not make contributions to political parties beyond seven and a half percent (7.5 %) of the average net profits in the preceding three financial years on contributions by companies was removed from the statute. The five judges Bench of the Supreme Court held this legal position manifestly arbitrary and violative of Article 14. Chief Justice D Y Chandrachud observed for the Court, “A company, whatever may be its form or character, is principally incorporated to carry out the objects contained in the memorandum. However, the amendment now allows a company, through its Board of Directors, to contribute unlimited amounts to political parties without any accountability and scrutiny. Unlimited contribution by companies to political parties is antithetical to free and fair elections because it allows certain persons/companies to wield their clout and resources to influence policy making. The purpose of Section 182 is to curb corruption in electoral financing.”<sup>6</sup> The case is instrumental in upholding the sanctity of free and fair election and the concept of “one person one vote”.

### **India’s International Obligations Towards the Protection of Human Rights**

The first Pillar of the United Nation’s Guiding Principles on Business and Human Rights (hereinafter referred to as “UNGPs”) mandates States to safeguard individuals from human-rights-abuses linked to business

---

<sup>4</sup> *Yashodhara Shroff v. Union of India*, AIR Online 201Assoc9 Kar 933; *Snowcem India Limited v. Union of India*, [(2005) 124 Comp.Cases 161 Bom.]; *Sourashtra Cement Limited and Another v. Union of India* (UOI), [(2007)2 GLR 1384];

<sup>5</sup> *Association for Democratic Reforms v. Union of India*, AIR 2024 SC 1441.

<sup>6</sup> *Ibid* para 210.

activities, outlining the operational principles for States to fulfil this duty.<sup>7</sup> The following thematic issues explore the application of Pillar I principles within India's legal framework.

Being an integral part of the United Nations (hereinafter referred to as "UN"), as a member and other international bodies, India is dedicated to working with other countries and organizations to preserve human rights domestically and globally. India has ratified numerous international human rights treaties, including the International Covenant on Civil and Political Rights (hereinafter referred to as "ICCPR"),<sup>8</sup> the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as "CEDAW"), the Convention on the Rights of the Child, the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as "ICESCR"), and the Convention on the Rights of Persons with Disabilities, which goes to show the commitment of the State towards Human Rights.<sup>9</sup> Additionally, India has ratified forty-seven International Labour Organization conventions along with one ILO protocol.<sup>10</sup>

India also continues to actively participate in and contribute towards the Universal Periodic Review (hereinafter referred to as "UPR") process,<sup>11</sup> which assesses the reports pertaining to human rights of each and every UN member states.<sup>12</sup> India continues to engage with the United Nations Human Rights Commission (hereinafter referred to as "UNHRC") by submitting

---

<sup>7</sup> United Nations Human Rights Council, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, Human Rights Council Resolution 17/4 (June 16, 2011).

<sup>8</sup> International Covenant on Civil and Political Rights (By General Assembly Resolution 2200A (XXI)).

<sup>9</sup> National Human Rights Commission, India, "International Declaration/ Covenants on Human Rights Ratified by India", available at: <https://nhrc.nic.in/acts-&rules/declarationcovenants-1> (last visited on Dec. 6, 2024).

<sup>10</sup> Government of India, Ministry of Labour and Employment, "India and ILO", available at: <https://labour.gov.in/lcandilasdivision/india-ilo> (last visited on Dec. 6, 2024).

<sup>11</sup> Economic and Social Council, *Universal Periodic Review, India Published by UN Human Rights Council*, UN ESCOR (July 17, 2023).

<sup>12</sup> chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://nludelhi.ac.in/download/publication/2017/India%20Third%20Universal%20Periodic%20Review.pdf

national reports.<sup>13</sup> Recognizing the importance of corporate responsibility for the preservation of human rights, India favoured the UNHRC resolution 26/9 by voting towards establishing the Open-ended Intergovernmental Working Group (hereinafter referred to as “OIWG”) to develop an international legally binding instrument for regulating transnational corporations and other entrepreneurial activities.<sup>14</sup> India has also vigorously participated in sessions of the working group, where the discussions were focused on the zero draft of the proposed instrument.

### **Section 135 of the Companies Act, 2013 and Statutory Recognition of Corporate Social Responsibility**

The upheaval of the corporate law regime in India, through the Companies Act, 2013 (“the CA 2013”) has led to a significant shift in corporate governance. This shift changed the focus from a shareholder-oriented model to a stakeholder-focused model of governance.<sup>15</sup> The Act mandates that directors have a fiduciary duty to shareholders as well as towards employees, the community at large and also towards the environment.<sup>15</sup> Additionally, the Code of Conduct for independent directors, outlined in Schedule IV of the Act, mandates to protect the interests of all stakeholders, especially minority shareholders, while balancing the often-conflicting interests of different groups. India has been one of the early adopters of mandatory corporate social responsibility (CSR) regulations for certain types of companies under the Companies Act of 2013.<sup>16</sup>

---

<sup>13</sup> United Nations Human Rights Council, “Membership of the Human Rights Council for the 18th Cycle (1 January - 31 December 2024)”, available at: <https://www.ohchr.org/en/hr-bodies/hrc/current-members> (last visited on Dec. 6, 2024).

<sup>14</sup> UN Human Rights Council, Business and human rights: improving accountability and access to remedy: resolution / adopted by the Human Rights Council, A/HRC/RES/32/10, 15 July 2016, <https://www.refworld.org/legal/resolution/unhrc/2016/en/112393> [accessed 26 November 2024].

<sup>15</sup> Ministry of Corporate Affairs, Government of India, “History”, *National CSR Portal*, available at: <https://www.csr.gov.in/content/csr/global/master/home/aboutcsr/history.html> (last visited on Dec. 6, 2024).<sup>15</sup>

The Companies Act, 2013. s. 166 (2)

<sup>16</sup> Ibid. s. 135

---

**The Companies Act mandates specific companies to invest a minimum of 2% of their average net profits earned over the previous three years on avenues which are beneficial for the societies. These activities include:**

- **Social welfare:** Eradicating poverty, combating hunger and malnutrition; supporting healthcare, sanitation, and safe drinking water; and enhancing education and livelihoods, especially for marginalized groups like children, women, the elderly, and the differently abled.
- **Gender equality:** Empowerment of women, constructing and operationalizing women's and children's homes, and providing facilities for senior citizens.
- **Environmental sustainability:** Protecting the environment, conserving natural resources, and contributing to initiatives like the Clean Ganga Fund.
- **Cultural heritage:** Preserving national heritage, art, and culture and promoting traditional arts and handicrafts.
- **Social causes:** Supporting armed forces veterans, promoting sports, and contributing to government funds for socio-economic development and welfare of marginalized groups.
- **Technological advancement:** Funding technology incubators in academic institutions.
- **Rural development:** Investing in rural development projects and slum area development.

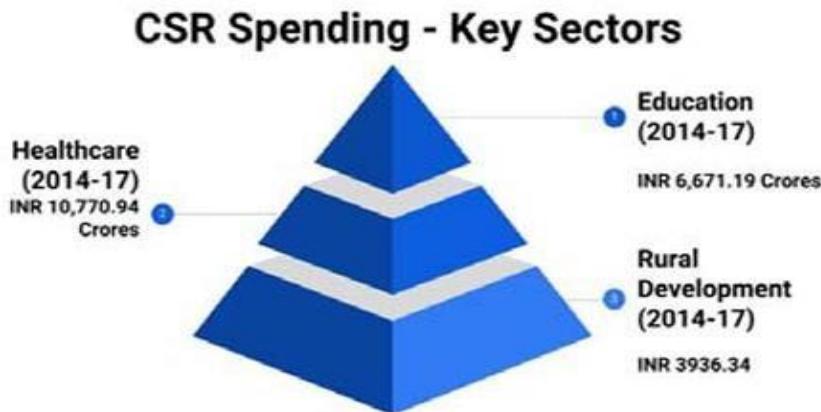
Under the CA 2013 framework, companies have a mandate to form a Corporate Social Responsibility (CSR) Committee which formulates the CSR policy of the company. As per statistics, companies have spent around INR 37,897 crores towards CSR.<sup>17</sup> The CSR requirement has been formed with the goal of achieving economic, social and environmental well-being for all through the responsible contributions of corporations. In order to ensure smooth functioning and to enable incentivize corporates to comply

---

<sup>17</sup> Ministry of Corporate Affairs, Government of India, "CSR Legislation", *National CSR Portal*, available at: <https://www.csr.gov.in/content/csr/global/master/home/aboutcsr/csr-legislation.html> (last visited on Dec. 6, 2024).

with CSR mandates. The Ministry of Corporate Affairs (“MCA”) has also set up the National CSR Award, which grants recognition to companies who comply with the framework.<sup>18</sup>

### CSR Spending - Key Sectors



**Figure 2: CSR Spending – Key Sectors**

Source: National Action Plan on Business and Human Rights<sup>19</sup>

---

<sup>18</sup> Ministry of Corporate Affairs, Government of India, “National CSR Awards”, *National CSR Portal*, available at: <https://www.csr.gov.in/content/csr/> global/master/home/national-csr-awards/national-csr-awards.html (last visited on Dec. 6, 2024).

<sup>19</sup> Ministry of Corporate Affairs, Government of India, “National Actional Plan on Business and Human Rights, Zero Draft”, Dec. 10, 2018, available at: [chromeextension://efaidnbmnnibpcajpcglclefindmkaj/https://www.mca.gov.in/Ministry/pdf/ZeroDraft\\_11032020.pdf](chromeextension://efaidnbmnnibpcajpcglclefindmkaj/https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf) (last visited on Dec. 6, 2024).

| Key Indicators                                | 2014-15 | 2015-16 | 2016-17 |
|---|---------|---------|---------|
| <b>CSR Amount Spent (in INR Crores.)</b>      | 10,066  | 14,366  | 13,465  |
| <b>Number of Companies (in Nos.)</b>          | 16785   | 21498   | 19933   |
| <b>Total Number of CSR Projects (in Nos.)</b> | 9391    | 18044   | 21171   |

**Figure 3: CSR – Key Indicators**

Source: National Action Plan on Business and Human Rights<sup>20</sup>

### CSR - Key Indicators

The CA 2013 consider the auditors as 'gatekeepers' because they are under the obligation to ensure financial transparency in the operations of companies, and to further this goal, the Government of India has set up the National Financial Reporting Authority (hereinafter referred to as "NFRA") on the 1<sup>st</sup> day of Oct, 2018.<sup>21</sup> NFRA is formed under sub-section one of section 132 of the CA, 2013.<sup>22</sup> NFRA is an independent regulator for the auditing profession which ensures compliance with accounting standards and investigates and penalizes misconduct by auditors. Recently NFRA published the Responsibilities of the Principal Auditor and other auditors in group audits.<sup>23</sup>

The above-mentioned statutory mandates have been complemented by voluntary measures such as the 2011 National Voluntary Guidelines (hereinafter referred to as "NVGs") and the 2018 National Guidelines on Responsible Business Conduct (hereinafter referred to as "NGBRC") released by MCA. Notably, Principle 5 of 2018 NGRBC explicitly provides that companies must respect human rights as envisaged under the UNGP

<sup>20</sup> Ibid.

<sup>21</sup> Government of India, *National Financial Reporting Authority*, Oct. 01, 2018, available at: <https://nfra.gov.in/> (last visited on Dec. 6, 2024). <sup>22</sup> Ibid

<sup>22</sup> Government of India, *National Financial Reporting Authority*, Oct. 01, 2018, available at: <https://nfra.gov.in/> (last visited on Dec. 6, 2024).

framework.<sup>23</sup> The 2018 NGRBC has made salient progress by recognizing 'human rights due diligence' as an critical component of the Principle, which requires businesses "*to identify, prevent, mitigate, and account for how they address adverse human rights impacts*".<sup>24</sup> Also, Non-Financial Reporting SEBI required top 500 listed companies(in terms of market capitalization) to prepare Business Responsibility Reports(herein after referred to as "BRRs") stating the initiatives taken by them from an environmental, social and governance (ESG) perspective. The BRR, which is a part of the Annual Report of any company, seeks to evaluate the company's commitment towards the 2011 NVGs.

### **Protection of the Environment**

The Supreme Court has acknowledged that a person's right to a clean environment is a component of their constitutionally guaranteed right to life, which includes the right to prevent and take precautions. The Environment (Protection) Act, 1986 (hereinafter referred to as "EP Act"), the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, and the Forest

Conservation Act, 1980 are just a few of the strong environmental laws in India.<sup>25</sup> The majority of these legislations also seek to carry out India's obligations abroad.<sup>26</sup> Furthermore, an environmental impact assessment of certain projects and activities is also planned by the EP Act. The Central Government's key agency for monitoring the application of environmental laws and policies is the Ministry of Environment, Forests & Climate Change, Government of India (hereinafter referred to as "MoEF & CC").<sup>27</sup> The principles of sustainable development serve as a guide for MoEF& CC

---

<sup>23</sup> Ministry of Corporate Affairs, *National Guidelines on Responsible Business Conduct*, 2018. Principle 5.

<sup>24</sup> Ibid.

<sup>25</sup> Government of India, "Environment Protection", *Ministry of Environment, Forests and Climate Change*, available at: <https://moef.gov.in/environment-protection> (last visited on Dec. 6, 2024).

<sup>26</sup> Government of India, "Environmental Protection", *Ministry of Environment, Forests and Climate Change*, available at: <https://moef.gov.in/bilaterals> (last visited on Dec. 6, 2024).

<sup>27</sup> Government of India, "Home Page", *The Ministry of Environment, Forest and Climate Change (MoEFCC)*, available at: <https://moef.gov.in/> (last visited on Dec. 6, 2024).

---

as it implements these laws and policies. To ensure a clean environment, the Central Government has started a number of initiatives across the country.

### **Clean India Mission Swachh Bharat Abhiyaan (Clean India Mission)**

Inspired by Mahatma Gandhi's life and teachings, the Central Government started the "Swachh Bharat Abhiyaan" (Clean India Mission) on October 02, 2014.<sup>28</sup> Its objective is to eradicate defecation and promote cleanliness in India by the 150th anniversary of Mahatma Gandhi's birth. As a result of this initiative, almost 8.823 crore toilets have been constructed in India. The material and immaterial advantages of clearing have been brought to light by this campaign. This goal has motivated many groups, including businesses, to support our initiative. As part of their CSR spending mandate, over 200 companies contributed to the Swachh Bharat Kosh<sup>29</sup> (Swachh Bharat Fund) in 2016–17. *Contributions to the "Swachh Bharat Kosh", apart from the sums spent by the companies for CSR activities, under sub-section (5) of Section 135 of the Companies Act, 2013 have been made eligible for 100% tax deductions under section 80G of the Income-tax Act, 1961.*<sup>30</sup> This has been made applicable from the assessment year 2015-16 and subsequent years. A new tax called the Swachh Bharat Cess (Clean India Cess) was introduced to generate funds for the Clean India Mission.

### **Namami Gange (Clean Ganga) Programme**

In terms of culture and religion, the river Ganges, is the lifeblood of the Indian subcontinent. One of the main initiatives under the Swachh Bharat Abhiyaan was to clean river Ganga. The government of India's "Namami Gange" (Clean Ganga) program was a massive step towards objective. Sewage development projects, riverfront development projects, entrylevel projects for the building, refurbishment, and modernization of riverbanks or ghats and development of crematoria have all been established under this program.<sup>31</sup> Corporates are engaged/allowed to either make financial

---

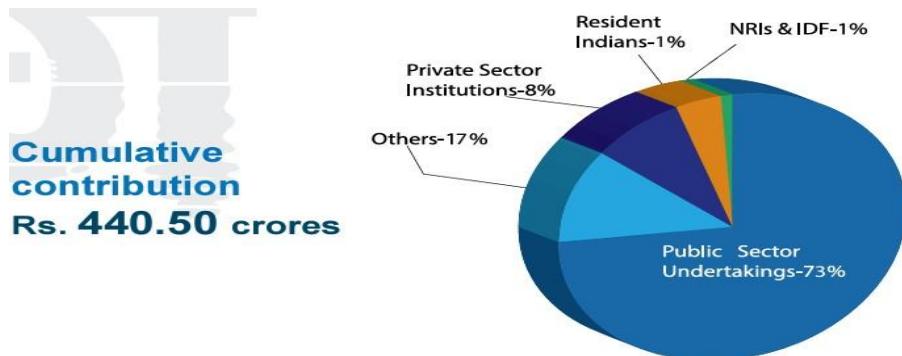
<sup>28</sup> Government of India, "Swachh Bharat Abhiyaan: Ek Kadam Swachhata Ki Ore", *National Portal of India, available at: <https://www.india.gov.in/spotlight/swachhbharatabhiyaan-ek-kadam-swachhata-ki-ore>* (last visited on Dec. 6, 2024).

<sup>29</sup> Government of India, *Swachh Bharat Kosh (ABK)*, available at: <https://sbkosh.gov.in/> (last visited on Dec. 6, 2024).

<sup>30</sup> Ibid.

<sup>31</sup> Supra Fn 17.

contributions to the Clean Ganga Fund (as CSR) or carry out specific tasks, including adopting ghats, testing different technologies, gathering and destroying/decomposing of solid waste and floating debris, conducting research, raising awareness, and planting trees. The public sector enterprises (including government companies) as well as private sector institutions/ corporate bodies alone have contributed around eighty-one percent to the Clean Ganga Fund (CFG). The following figure demonstrates the same.



Source: Clean Ganga Fund<sup>3233</sup>

### Protecting the Rights of Workers

India has always been committed to preserving the right of the labourers to fair work opportunities. As such corporate houses and business entities bound to respect the rights of labourers and the laws enacted to foster the wellbeing of the labourers. Numerous state and national labour laws exists in India. A wide range of subjects are covered by the central labour laws, including industrial relations, worker health and safety, social security, and salary payment. Indian labour regulations provide a practical way to resolve issues at work. Both aggressive and nonadversarial approaches are used in these forums to make decisions. In an effort to ensure uniformity and transparency, India has combined all its labour laws into four codes in order to get rid of the web legislations in the area of labour and employment. These four labour codes are Code on Wages, 2019, Industrial

<sup>32</sup> Ministry of Jal Shakti, "Namami Gange Programme", *National Mission for Clean Ganga*, Sept. 30, 2020, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://nmcg.nic.in/pdf/NGP-At%20a%20Glance%

<sup>33</sup> (Final%20Version%20Printed).pdf (last visited on Dec. 6, 2024).

Relations Code, 2020, Occupational Safety, Health and Working Conditions Code, 2020 and the Social Security Code, 2020.<sup>34</sup> The Union government has reformed the mechanism for appraising the compliance of enterprises with the existing labour laws. The Government of India will be shortly implementing the four labour codes. Business enterprises and companies are mandated to abide by the labour laws in India and any violation of the same entail's strict penalties for the Directors on Board of the defaulting company.

Employers are now required to use the Shram Suvidha platform,<sup>35</sup> a single labour web platform, to submit returns specifying their amenability with labour laws. This site is designed to act as a "single point of contact" for businesses, employees, and law enforcement to promote transparency in their everyday dealings. The Central Government has enacted specific laws to safeguard the welfare, health, and safety of construction workers. The Building and Other Construction Workers Welfare Cess Act, 1996 mandates that employers pay a cess that is no greater than 2% of the construction cost. This cess is used to fund welfare programs for construction workers through the building and other Construction Workers Welfare Board, which was founded at the State level.

## Women

Statutorily, companies incorporated in India are mandated to respect rights of women employees at workplace. India has made a number of actions to support women's socio-economic empowerment generally, to provide a safe and respectable workplace, and to encourage equitable participation of women in the workforce. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

(SHWW Act) was passed with the intention of giving women a safe and comfortable working environment. At present, all companies engaging more ten employees are mandated to constitute an Internal Complaints Committee in accordance with the SHWW Act, 2013. In order to handle complaints against sexual harassment in the workplace, businesses are

---

<sup>34</sup> Government of India, "Labour Codes", *Ministry of Labour and Employment*, available at: <https://labour.gov.in/labour-codes> (last visited on Dec. 6, 2024).

<sup>35</sup> Government of India, "Shram Suvidha (One-Stop-Shop for Labour Law Compliance)", *Ministry of Labour and Employment*, available at: <https://shramsuvidha.gov.in/home> (last visited on Dec. 6, 2024).

required by the SHWW Act to establish an Internal Complaints Committee (ICC) as an efficient redressal process. The MCA<sup>36</sup> mandates that the Director's report, which has to be submitted under the CA 2013, include a statement confirming that the company is in compliance with the SHWW Act's provisions pertaining to the establishment of an ICC in order to guarantee that businesses follow this statutory requirement. Recently the MCA levied 4.5 lakhs fine on a company for not including the composition of the Internal Complaints Committee in its Director's Report.<sup>37</sup> The status of women has significantly improved as a result of a number of laws passed by the Parliament. Acid assaults, stalking, voyeurism, and other types of violence have also been added to the Indian Penal Code of 1860 (now Bharatiya Nyaya Sanhita, 2023) as separate offences. The National Commission for Women<sup>38</sup> is established under the National Commission for Women Act, 1990<sup>39</sup> to expressly to address issues that impact women.

In order to enhance gender diversity on boards, the CA 2013 (under the second proviso to section 149 of CA, 2013) and SEBI mandated that certain categories of companies must have at least one female (director) on the board of the companies (who meet certain specific threshold criteria in terms of paid-up capital, networth etc.). In addition, SEBI (Listing

<sup>36</sup> Government of India, *Ministry of Corporate Affairs*, available at: <https://www.mca.gov.in/content/mca/global/en/home.html> (last visited on Dec. 6, 2024).

<sup>37</sup> Editor, "MCA Fines 4.5 Lakh for Omission of Sexual Harassment Committee Statement in Board Report Read More At: [Https://Taxguru.in/Company-Law/Mca-Fines-4-5-Lakh-Omission-Sexual-Harassment-Committee-Statement-Board-Report.Html](https://Taxguru.in/Company-Law/Mca-Fines-4-5-Lakh-Omission-Sexual-Harassment-Committee-Statement-Board-Report.Html) Copyright © Taxguru.In", *TaxGuru*, Oct. 12, 2023, available at: <https://taxguru.in/company-law/mca-fines-4-5-lakh-omission-sexual-harassmentcommittee-statement-board-report.html> (last visited on Dec. 6, 2024).

<sup>38</sup> Government of India, *National Commission for Women*, available at: <http://ncw.nic.in/> (last visited on Dec. 6, 2024).

<sup>39</sup> Government of India, "National Commission for Women Act, 1990", *National Commission for Women*, available at: <http://ncw.nic.in/Acts-and-rules/nationalcommission-women-act-1990-act-no-20-1990-govt-of-india> (last visited on Dec. 6, 2024).

Obligations and Disclosure Requirements) Regulations, 2015 mandated that by April 1, 2019, the top 500 listed businesses which is based on market capitalisation must have at least one independent female director on their board, and by April 1, 2020, the top 1000 listed companies, which are

demarcated on the basis of their market capitalisation. The Union government implemented Gender Budgeting as a mechanism in 2004-05 to ensure gender diversity across sectors and all levels of administration are fulfilled. In order to determine the effects of gender disparities and make sure that gender commitments are reflected in financial commitments, gender budgeting is included in the analysis of government budgets.

## **Children**

The companies in India are prohibited (by legislative enactments), from engaging children between the age of 6 to 14, in any form of hazardous employment. The constitutional mandate that forbids children from working in dangerous jobs and guarantees them the right to education for children aged 6 to 14 is the foundation of India's dedication to the safety and welfare of children. The Government of India has enacted around sixteen legislations in order to secure and protect various rights of the children living in the country.<sup>36</sup> It is worth mentioning here that education (including primary education) finds its mention in Schedule seven of the CA, 2013 and companies have made substantial contribution to promote children's Right to Education (RTE). The Child Labour (Prohibition and Regulation) Act of 1986, the Juvenile Justice (Care and Protection of Children) Act of 2000 (JJ Act), the Right of Children to Free and Compulsory Education Act of 2009, the Protection of Children from Sexual Offenses Act of 2012 (POCSO Act), and other laws serve as a supplement to this. With regard to juvenile offenders and children in need of care and protection, the JJ Act has completely redesigned the legal system. Also, the enactment and subsequent adoption of the POCSO Act and the constitution of the National Commission for Protection of Child Rights<sup>37</sup> indicate India's goals align with its commitment to international law.

## **Beti Bachao Beti Padhao (Save the Girl Child, Educate the Girl Child)**

Many policies have been implemented to advance gender equality. For instance, the Government of India's Beti Bachao Beti Padhao (Save the Girl

---

<sup>36</sup> Government of India, "Bare Acts Related to Children (NCPCR, Government of India)", *National Commission for Protection of Child Rights*, available at: <https://ncpcr.gov.in/bare-acts-related-children> (last visited on Dec. 7, 2024).

<sup>37</sup> Government of India, "Home- National Commission for Protection of Child Rights", *National Commission for Protection of Child Rights*, available at: <https://ncpcr.gov.in/> (last visited on Dec. 7, 2024).

Child, Educate the Girl Child) campaign aims to provide a wide-ranging set of initiatives for girls, including those related to education and protection.<sup>38</sup> The Indian government has begun efforts to rescue missing children in awareness of their unique susceptibility to human trafficking and associated abuses. For example, in 2015–2016 alone, more than 28,000 children were rescued through Operation Smile and Operation Muskaan. The Khoya Paaya program<sup>39</sup> allows the public to get involved in the search for trafficked children.

## **Gender Identity**

In the case of *Navtej Singh Johar v. the Union of India*<sup>40</sup>, the Supreme Court struck down Section 377 of the Indian Penal Code, 1860 as unconstitutional to the extent of decriminalizing homosexuality.

## **Persons With Disability or Divyang Jan**

Around 2.21 percent, accounting for around 2.68 crores of the total population of the country, suffer from some form of disability(ies), as per the 2011 census.<sup>41</sup> Hence, the Government of India has committed to enhance the safety of individuals with disabilities and prioritizing equal educational opportunities for children with disabilities. India approved the Rights of Persons with Disabilities Act 2016 (hereinafter referred to as "RPD Act") in 2016 to strengthen protection for individuals with disabilities. This law seeks to give these individuals better access to public areas, healthcare, work, and education. The Act significantly broadens the list of recognized disabilities. Among other things, the Chief Commissioner for Persons with Disabilities and two other commissioners are in charge of examining the measures taken to protect these individuals' rights under the Act or other

---

<sup>38</sup> Government of India, "Beti Bachao Beti Padhao", *Women and Child Development Department*, Jan. 22, 2015, available at: <https://wcdhry.gov.in/schemes-for-women/betibachao-beti-padhao/> (last visited on Dec. 7, 2024).

<sup>39</sup> Government of India, "Khoya Paya Portal", *Ministry of Parliamentary Affairs*, available at: <https://trackthemissingchild.gov.in/trackchild/home.php> (last visited on Dec. 7, 2024).

<sup>40</sup> AIR 2018 SC 4321.

<sup>41</sup> Government of India, "Home Page", *Department of Empowerment of Persons with Disabilities*, available at: <https://depwd.gov.in/hi/> (last visited on Dec. 7, 2024).

relevant rules and regulations and recommending to the government how best to implement them.

### **Transparency and Accountability**

All government companies and their activities fall under the purview of The Right to Information Act, 2005 (RTI Act)<sup>42</sup> which was enacted by the Government of India, with the intent of advancing accountability and openness in governance of public agencies and institutions, including public sector undertakings and enterprises. It aims to give citizens the framework of the right to information so they can safely obtain information under the supervision of public agencies. Information on any private entity that is accessible to a public authority under any other law is likewise included in the information that can be accessed through the RTI Act. As envisioned under the RTI Act, India has pledged to keep promoting an open, accountable, and transparent culture in government operations. Also to deal with corruption and increase accountability, Lokpal and Lokayuktas Act, 2013<sup>43</sup> was enacted, which aims to establish an ombudsman for investigating into allegations relating to corruption against public bodies.

The primary anti-corruption law in India is the Prevention of Corruption Act, 1988 (PCA).<sup>44</sup> In addition to making it illegal for public servants to receive financial or other forms of reward for official actions, it also aims to punish both active and passive corruption. India made a deliberate effort to bring its legislation into compliance with the UN Convention against Corruption<sup>45</sup> by amending the PCA recently. These changes aim to prosecute commercial enterprises, their officials, and bribe-givers. The Whistle Blowers Protection Act of 2011 was passed in order to safeguard those who employ the aforementioned legislation as well as those who reveal instances of corruption or deliberate abuse of authority or discretion by public servants.

---

<sup>42</sup> The Right to Information Act, 2005 (No. 22 of 2005), ss. Preamble to RTI Act, 2005.

<sup>43</sup> The Lokpal and Lokayuktas Act, 2013 (No. 1 of 2014), ss. Preamble to The Lokpal and Lokayuktas Act, 2013.

<sup>44</sup> Government of Telengana, "Prevention of Corruption Act, 1988 (With Latest Amendments)", *Dr. MCR HRD Institute, Premier Administrative Training Institute of the Government of Telengana*, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://mcrhrdi.gov.in/splfc2023/week5/The%20Prevention%20of%20Corrup

## Financial Transparency

Since tax evasion deprives the State of essential resources for implementing different policies and programs to fulfil the Government's commitments to human rights, it can have an adverse impact on the enjoyment of human rights. The Union government has undertaken a strong stance against tax evasion leading to aggravated efforts to stop the growth of the shadow economy through laws and regulations. Tax evasion carries severe consequences, including as fines and jail term, under both the Income Tax Act of 1961 and the Central Goods and Services Tax Act of 2017. Because black money, also known as undisclosed income, has become linked to tax evasion, India also passed the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, which addresses untraced foreign income and assets, the process for handling such income and assets, and the imposition of tax on any undisclosed foreign income and asset held outside of India. Illicit cash may be converted into property with a fictitious owner. Such property is generally referred to as benami property. The Benami Transactions (Prohibition) Amendment Act of 2016<sup>50</sup> gives the designated authorities

tion%20Act%201988%20%20PVK%20Ramana%20prasad.pdf (last visited on Dec. 7, 2024).

<sup>49</sup> United Nations Organisation, "United Nations Convention Against Corruption", *United Nations Office on Drugs and Crimes*, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://www.unodc.org/documents/brussels/UN\_Convention\_Against\_Corruption.pdf (last visited on Dec. 7, 2024).

<sup>50</sup> Department of Economic Affairs, Government of India., "The Prohibition of Benami Transactions Act, 1988", *India Code*, available at: chrome-extension://efaidnbmnnni the authority to temporarily seize Benami properties, with the possibility of confiscation in the future.

Furthermore, a person who is found conducting a benami transaction by the appropriate court faces a harsh prison sentence of one to seven years as well as a fine of up to 25% of the property's fair market value. Accused individuals may flee to other nations in order to avoid the legal system. In order to prevent fugitive economic criminals from avoiding the Indian legal system by avoiding the jurisdiction of Indian courts, India passed the Fugitive Economic Offenders Act of 2018.<sup>51</sup> Information on beneficial

ownership must be promptly accessible to enforcement bodies in charge of anti-money laundering and anti-corruption frameworks. There are already provisions pertaining to the same under section 177 of CA 2013 and the rules issued thereunder, including the Companies (Significant Beneficial Owners) Rules, 2018.<sup>52</sup>

### **Pradhan Mantri Jan Dhan Yojana Protection of Human Rights Defenders /Whistleblowers**

The Whistle Blowers Protection Act, 2011<sup>53</sup> is the main piece of legislation that India has passed in order to safeguard these human rights advocates and whistleblowers. The Whistleblowers Protection Act, 2011 was later named as The Whistle Blowers Protection Act, 2014. Additionally, some

bpcajpcglclefindmkaj/https://www.indiacode.nic.in/bitstream/123456789/1840/6/A198845.pdf (last visited on Dec. 7, 2024).

<sup>51</sup> Government of India., “The Fugitive Economic Offenders Act, 2018”, *Department of Economic Affairs*, available at: chrome-extension://efaidnbmnni bpcajpcglclefindmkaj/ https://dea.gov.in/sites/default/files/FEO%20Act%202018.pdf (last visited on Dec. 7, 2024).

<sup>52</sup> Government of India., “Companies (Significant Beneficial Owners) Rules, 2018”, *Ministry of Corporate Affairs*, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://www.mca.gov.in/Ministry/pdf/CompaniesSignificantBeneficial1306\_14062018.pdf (last visited on Dec. 7, 2024).

<sup>53</sup> Government of India, “The Protection of Whistleblowers Act, 2011”, *Government of Assam*, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/ https://dgvigilance.assam.gov.in/sites/default/files/swf\_utility\_folder/departments/vig\_ac\_webcomindia\_org\_oid\_9/menu/document/Whistle%20Blowers%20Act.pdf (last visited on Dec. 7, 2024).

companies are required by SEBI and the CA 2013 to have a scheme framework for protecting whistleblowers.

### **Consumer Protection**

Companies in India are made accountable to its consumers, as the rights of consumers in India are protected by the Consumer Protection Act, 2019. The main piece of legislation pertaining to consumer protection is the Consumer Protection Act, 2019 (CPA). In order to resolve consumer disputes, it calls for the establishment of a District Dispute Consumer Redressal Forum, a State Consumer Dispute Redressal Commission, and a National Consumer

Disputes Redressal Commission (NCDRC). Customers may file complaints against companies in these forums over unfair business practices, faulty products, inadequate services, etc. These forums have been given the authority to compensate customers for losses or injuries resulting from businesses' negligence, among other things. The Consumer Protection Bill, 2018 was created by the Central Government in an effort to fill in the loopholes in the CPA, 1986. The Central Consumer Protection Authority is an executive agency created by this bill, which also includes online markets. Its duties include promoting, protecting, and enforcing consumer rights, intervening to prevent harm to consumers from unfair trade practices, and initiating class-action lawsuits to enforce product recalls, refunds, and returns, among other measures.

The protection of consumers and fair competition are closely related. Consumer protection is specifically acknowledged as one of the main goals of the Competition Act, 2002 (hereinafter referred to as "Competition Act")<sup>45</sup> in India. The Competition Act establishes the Competition Commission of India (hereinafter referred to as "CCI"),<sup>46</sup> an antitrust body with the authority to punish businesses that engage in anticompetitive agreements that significantly harm Indian competition and that misuse their dominant market position.

### **Transparency through Financial Inclusion**

The Banking Companies in India played a vital role in one of the most celebrated and ambitious financial inclusion initiative/ programs of the government of India. The *Pradhan Mantri Jan Dhan Yojana* (hereinafter referred to as "PMJDY")<sup>47</sup> is the largest financial inclusion programme. PMJDY seeks to ensure that everyone has access to banking services, that

---

<sup>45</sup> Government of India, "The Competition Act, 2002 (12 of 2003)", *Competition Commission of India*, available at: chrome-extension://efaidnbmnni\_bpcajpcglclefindmkaj/https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act20021652103427.pdf (last visited on Dec. 7, 2024).

<sup>46</sup> Government of India, *Competition Commission of India*, available at: https://www.cci.gov.in/ (last visited on Dec. 7, 2024).

<sup>47</sup> Ministry of Finance, Government of India, "Pradhan Mantri Jan Dhan Yojana", *Department of Financial Services*, available at: https://pmjdy.gov.in/ (last visited on Dec. 7, 2024).

every household has at least one basic bank account, that everyone is financially literate, that everyone has access to credit, and that everyone has social security coverage. Direct benefit transfer payments are made to the recipients of government programs in these accounts. As a result, the government can close gaps in its welfare and public subsidy systems. Since its launch, around 54.08 crores new beneficiaries have been banked through various bank accounts opened under PMJDY as of Dec. 7<sup>th</sup>, 2024.<sup>48</sup> India's Direct Benefit Transfer mission is made possible by the PMJDY.

### **Community Consultation**

Companies and business enterprises are often in need land area, for carrying out their business operations, including setting-up of the manufacturing units in various locations that may be deemed appropriate for such activities/ projects. The Indian framework for evaluating environmental impacts includes a public consultation with those who would be impacted locally and with those who may have a legitimate interest in the project's or activity's effects on the environment. Furthermore, the opinions of families who have been impacted be provided a public hearing to understand the social impact assessment study, which is mandated by the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act,

2013 (Land Acquisition Act).<sup>49</sup> The study and the objections raised at the hearing must next be assessed by a diverse expert group. The property Acquisition Act also requires that affected landholders' approval be sought when buying property for public-private partnership projects or private companies for public uses. When forest land is diverted for nonforest activities, consent is also needed under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.<sup>59</sup> Additionally, SEBI requires businesses to state in their BRR whether or not they consulted with pertinent parties before to establishing policies according to pertinent principles.

---

<sup>48</sup> Ministry of Finance, Government of India, "Pradhan Mantri Jan Dhan Yojana", *Department of Financial Services*, available at: <https://pmjdy.gov.in/> (last visited on Dec. 7, 2024). Refer to the official website of the PMJDY.

<sup>49</sup> National Portal of India, Government of India, "The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013", *India Code*, available at: <chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/>

## Extractive Industries

The Indian mining sector is governed by the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "Minerals Act"),<sup>60</sup> which also outlines the process for acquiring and awarding mining leases. Through the creation of the District Mineral Foundation (hereinafter referred to as "DMF"), the 2015 amendment to the Minerals Act established the concept of "peripheral development." Companies that have obtained mining leases are also required to pay a certain sum to the DMF, which is charged with looking out for the interests of individuals and communities affected by mine-related operations, in addition to the royalty. A total of INR 13,398 crores has been collected by DMFs since their establishment until October 30, 2017, and they are spread throughout 338 districts in 12 major mineral-rich states.<sup>61</sup>

The Central Public Sector Enterprises (hereinafter referred to as "CPSEs") has developed and implemented a variety of programs for the upliftment

<https://www.indiacode.nic.in/bitstream/123456789/2121/1/A2013-30.pdf> (last visited on Dec. 7, 2024).

<sup>59</sup> Government of India, "The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (No.2 of 2007)", *Ministry of Tribal Affairs*, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/ <https://forestrights.nic.in/pdf/FRAAct.pdf> (last visited on Dec. 7, 2024).

<sup>60</sup> Government of India, "Mines and Minerals (Development and Regulation) Act, 1957(No. 67 of 1957)", *Indian Bureau of Mines*, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/[https://ibm.gov.in/writereaddata/files/07102014115602MMDR%20Act%201957\\_10052012.pdf](https://ibm.gov.in/writereaddata/files/07102014115602MMDR%20Act%201957_10052012.pdf) (last visited on Dec. 7, 2024).

<sup>61</sup> Supra Fn 17.

of the weaker segments of society in the surrounding areas of their units/locations using this system. Additionally, the Pradhan Mantri Khanij Kshetra Kalyan Yojana (hereinafter referred to as "PMKKKY")<sup>50</sup> seeks to employ DMF funding in the ways listed below:

---

<sup>50</sup> Government of India, "The Pradhan Mantri Khanij Kshetra Kalyan Yojana (Hereinafter Referred to As "PMKKKY")", *Ministry of Mines*, available at: chromeextension://efaidnbmnnibpcajpcglclefindmkaj/<https://mines.gov.in/>

**PMKKKY Fund Allocation<sup>51</sup>**

- (i) Drinking water supply
- (ii) Environment preservation and pollution control measures;
- (iii) Health care;
- (iv) Education
- (v) Welfare of women and children;
- (vi) Welfare of aged and disabled people
- (vii) Skill development; and (viii) Sanitation.
- (ix) Physical Infrastructure
- (x) Irrigation;
- (xi) Energy and Watershed Development; and
- (xii) any other measures for enhancing environmental quality in mining district.<sup>52</sup>

**State - Business Nexus**

Regarding several corporate governance aspects of CPSEs, the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises (hereinafter referred to as "DPE"), published the CPSE Guidelines,<sup>53</sup> which include a model code of conduct. The values expressed in this code of conduct demonstrate the government's dedication to moral business conduct. Notably, CPSEs must be evaluated and graded by administrative ministries based on how well they follow the CPSE Guidelines. **Public Procurement**

The Indian government is pledged to maintaining accountability and responsibility in order to foster economy, efficiency, and transparency in sectors related to public procurement of goods and services. The qualified

---

admin/storage/ckeditor/Annexure\_I\_PMKKKY\_Guidelines\_16\_1712904663.pdf (last visited on Dec. 7, 2024).

<sup>51</sup> The Pradhan Mantri Khanij Kshetra Kalyan Yojana No. 16/7/2015-M VI (Part), GOI, Ministry of Mines.

<sup>52</sup> *Ibid.*

<sup>53</sup> Government of India, "Guidelines on Corporate Governance for Central Public Sector Enterprises Public (CPSEs)", *Ministry of Heavy Industries and Public Enterprises*, May 14, 2010, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/ <https://dpe.gov.in/sites/default/files/R-2.pdf> (last visited on Dec. 7, 2024).

bidder must abide by environmental or pollution control legislation and sustainability criteria, as stated in the 2017 Manual for Procurement of Goods.<sup>54</sup>

According to the Manual for Procurement of Consultancy and Other Services (2017),<sup>55</sup> many services are subject to various statutory provisions relating to labour, taxation, workmen's safety, environmental protection, forest clearance, child and women's labour, mining, employment reservations, etc., with which the relevant service provider must comply. In an effort to increase procurement transparency, the Indian government launched the "Central Public Procurement Portal," which serves as the "single point access to the information on procurements made across various central government organizations." Establishing a transparent and uniform procurement process on an internet platform was the aim of this.

### **CCI's Diagnostic Tool Fair Competition in Public Procurement**

In India, public procurement makes up over 25% of the country's GDP. It is imperative that India maintains the fairness and transparency of public procurement. In this context, the Indian antitrust authority, CCI, has published a useful manual for procurement professionals to evaluate their public procurement system called CCI's Diagnostic Tool Towards Competitive Tenders.<sup>56</sup> It was created using both national and international policy texts and real-world experience from cases the CCI has handled. In addition to helping with tender design, which would encourage fair competition, the tool would make it easier to identify instances of bid

---

<sup>54</sup> Ministry of Finance, Government of India, "Manual for Procurement of Goods 2017", *Department of Expenditure*, Apr. 05, 2017, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://doe.gov.in/files/manuals\_documents/Manual\_for\_Procurement\_of\_Goods%202017\_0\_0.pdf (last visited on Dec. 7, 2024).

<sup>55</sup> Ministry of Finance, Government of India, "Manual for Procurement of Consultancy and Other Services (2017)", *Department of Expenditure*, Apr. 18, 2017, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://doe.gov.in/files/manuals\_documents/Manual\_for\_Procurement\_of\_Consultancy\_and\_Other\_Services\_2017\_0.pdf (last visited on Dec. 7, 2024).

<sup>56</sup> Government of India, "CCI's Diagnostic Tool for Public Procurement Officers", *Competition Commission of India*, Aug. 08, 2019, available at: https://www.cci.gov.in/advocacy/publications/diagnostics-tool-for-public-procurement-officers (last visited on Dec. 7, 2024).

rigging in public procurement. Procurement competition would lower costs, encourage innovation, and foster dynamic, productive, and allocative efficiencies.

### **Government's e-Marketplace**

The Government e-Marketplace (herein after referred to as "GeM"),<sup>57</sup> also referred to as the National Public Procurement Portal, was established by the Indian government on August 9, 2018. GeM makes it easier for different government departments, organizations, and public sector enterprises to purchase common goods and services online. The government wants to improve public procurement's speed, efficiency, and openness with GeM. As of August 2018, GeM had transacted over 6.16 lacs on the platform, generating gross merchandise value of over INR 10,000 crores.<sup>58</sup> More than 25,000 government organizations—including the Union Government, state governments, and various other public sector undertakings—that have registered on the platform are purchasing these goods and services. Additionally, a formal agreement of understanding has been signed by 24 States and Union Territories with GeM to use GeM as the primary procurement platform in their territories.<sup>59</sup>

### **Pillar II - The CSR to Respect Human Rights and Constitutional Ideals**

The obligation of companies to uphold human rights in their operations is included in this pillar. An outline of the government's requirements for socially conscious company practices, as outlined in the 2018 National Guidelines on Responsible Business Conduct (NGRBC),<sup>60</sup> is provided below. In addition to the statutory provisions mentioned above, it outlines some voluntary actions taken by Indian companies.

---

<sup>57</sup> Government of India, "Government eMarketplace", *Central Public Procurement Portal*, available at: <https://eprocure.gov.in/cppp/> (last visited on Dec. 7, 2024).

<sup>58</sup> Supra Fn 17.

<sup>59</sup> *Ibid.*

<sup>60</sup> Government of India, "National Guidelines on Responsible Business Conduct", *Ministry of Corporate Affairs*, Dec. 10, 2018, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://www.mca.gov.in/Ministry/pdf/NationalGuideline\_15032019.pdf (last visited on Dec. 7, 2024).

## **National Voluntary Guidelines (NVG) 2011 and National Guidelines on Responsible Business Conduct (NGRBC) 2018**

To get Indian firms to recognize their need to protect human rights, the MCA has employed a soft-law approach. In order to promote a "culture of social responsibility" among businesses, the MCA published the CSR Voluntary Guidelines in 2009<sup>61</sup> before UNGPs<sup>62</sup> were established and CSR became a legal mandate. The 2011 NVGs<sup>63</sup> are a thorough collection of

---

<sup>61</sup> Government of India, "CSR Voluntary Guidelines, 2009", *Ministry of Corporate Affairs*, available at: chrome-extension://efaidnbmnnibpcajpcgl clefindmkaj/ [https://www.mca.gov.in/Ministry/latestnews/CSR\\_Voluntary\\_Guidelines\\_24dec2009.pdf](https://www.mca.gov.in/Ministry/latestnews/CSR_Voluntary_Guidelines_24dec2009.pdf) (last visited on Dec. 7, 2024).

<sup>62</sup> United Nations Organisation, "United Nations Guiding Principles on Business and Human Rights", *Office of the High Commissioner for Human Rights (OHCHR)*, June 16, 2011, available at: chrome-extension://efaidnbmnni bpcajpcglclefindmkaj/ [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf) (last visited on Dec. 7, 2024).

<sup>63</sup> Government of India, "National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business", *Ministry of Corporate Affairs*, available at: chrome-extension://efaidnbmnnibpcajpcgl clefindmkaj/ [https://www.mca.gov.in/Ministry/latestnews/National\\_Voluntary\\_Guidelines\\_2011\\_12jul2011.pdf](https://www.mca.gov.in/Ministry/latestnews/National_Voluntary_Guidelines_2011_12jul2011.pdf) (last visited on Dec. 7, 2024).

guidelines that include businesses' social, financial, and environmental responsibilities. MCA received feedback from a range of stakeholders before deciding to issue them in 2011.<sup>64</sup> The goal of the 2011 NVGs was to encourage businesses to adopt stricter corporate governance standards. These guidelines specifically encourage corporations to include the UNGPs into the value chain and all facets of their business operations.

The 2011 NVGs emphasize that businesses should strive to move beyond merely reaching the basic minimum required standards and instead strive for higher standards, even when they are optional. Within the five years of the publication of the 2011 NVGs, MCA issued the 2018 NGRBC in an attempt bring within its ambit various important national and international developments in the areas of corporate responsibility and the sustainable development agenda. Remarkably, the 2018 NGRBC was created with the goal of harmonizing it with the UNGPs and was also voluntary. Although the 2011 NVGs were also based on global best practices, the 2018 NGRBC was primarily driven by the International Labour Organization's Core Conventions 138 (minimum age of employment of children), SDGs, UNGPs, 182 (worst forms of child labour), Paris Agreement on Climate Change (2015), the CA 2013 and the BRR framework. The 2018 NGRBC was meant to be used by all businesses, regardless of ownership, size, industry, structure, or location. Additionally, they state that foreign multinational corporations and other companies who invest or conduct business in India are expected to follow these guidelines.<sup>65</sup>

The 2018 NGRBC reiterates that businesses must support and encourage their partners, suppliers, distributors, and other collaborators to follow the rules as well as follow them in circumstances that are directly within their power or influence. The 2018 NGRBC has nine guiding principles. Prior to being operationalized, each principle has a set of requirements and actions that must be taken.<sup>66</sup>

The principles adopted under the 2018 NGRBC are as follows<sup>67</sup>:

- Businesses should be promoting and respecting human rights.

---

<sup>64</sup> Supra Fn 17.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid

<sup>67</sup> National Guidelines on Responsible Business Conduct, 2018

- Businesses should be protecting, respecting and making efforts to restore the environment.
- Businesses should be responsive towards all its stakeholders and respect the interests of all its stakeholders.
- Businesses should be governing themselves with integrity and conducting in a transparent, ethical, and accountable manner.
- Businesses should be supporting equitable development and promoting inclusive growth.
- Businesses should adopt sustainable and safe manner of providing for goods and services.
- Businesses should be promoting the wellbeing of all employees, inclusive of those employed in their value chains.
- Businesses, should conduct in a transparent and responsible manner when engaged in any activity that could influence the public and regulatory policy.
- Businesses should be engaging in a responsible manner, while creating value for their consumers and customers"<sup>68</sup>.

The 2018 NGRBC lists a few essential facilitators for integrating sustainable business practices into daily operations, including the company's leadership's dedication, employee and stakeholder participation, and disclosure and reporting.

### **Responsibility of business to respect and promote Constitutional Ideals.**

Principle 5 of the 2018 NGRBC's expressly acknowledges that companies must uphold and advance human rights in their activities. It recommends that companies have procedures, structures, and policies that show human rights are respected. Due diligence on human rights must be part of these procedures in order "to identify, prevent, mitigate, and account for how they address adverse human rights impacts."<sup>69</sup> This Principle calls on

---

<sup>68</sup> Ibid

<sup>69</sup> Government of India, "National Guidelines on Responsible Business Conduct", *Ministry of Corporate Affairs*, Dec. 10, 2018, available at: chrome-extension://

companies to pay particular attention to those who are most at risk of or sensitive to such negative human rights effects. Furthermore, it mandates that companies encourage human rights understanding and realization across their value chain.

### **Pillar I**

- 2018 NGRBC are based on the proposition that businesses must remain compliant with existing laws in force in the country.
- 2018 NGRBC sets forth the benchmark standards that are beyond the purview of mere regulatory compliances with the prevailing legal architecture.

### **Pillar II**

- 2018 NGRBC stimulates businesses to honor and provide recognition to UNGPs.
- Unify and recognize human rights in all its strategies and procedures.
- Acknowledge and appreciate the importance of human rights of all parties having a stake in the business.
- Realization of human rights throughout the chain of its activities.

### **Pillar III**

Principle 3 (in relation or pertaining to the employees),

Principle 5 (with respect to all individuals, affected by all the operations of the business) and

Principle 9 (for consumers) of 2018 NGRBC, state that companies should establish a dispute resolution/ grievance handling mechanism to redress their grievances.

### **Grievance Redressal**

Principle 3 (pertaining to the employees),

Principle 5 (with respect to all individuals, affected by all the operations of the business) and

Principle9 (for consumers) of 2018 NGRBC, state that companies should establish a dispute resolution/ grievance handling mechanism to redress their grievances.

An analogous clause is also conceived in the SEBI BRR structure,<sup>70</sup> which is based on the 2011 NVGs.<sup>71</sup> Such grievance redressal processes must be accessible, transparent, predictable, equitable, and based on mutual interactions, consent and mediation, according to both covenants i.e. the 2018 NGRBC and the 2011 NVGs.<sup>72</sup>

### **Stakeholder engagement**

The involvement of stakeholders throughout the whole policy-making and implementation process is one of the primary metrics used to assess the 2018 NGRBC's<sup>73</sup> implementation. In order to implement the 2018 NGRBC, firms are required to identify and interact with their priority stakeholders. Recent national and international trends were taken into consideration when preparing the 2018 NGRBC,<sup>74</sup> which is the outcome of ongoing input from pertinent parties.

---

<sup>70</sup> Government of India, "Format of SEBI's Business Responsibility Report (BRR)", *Securities and Exchange Board of India*, Nov. 04, 2015, available at: [https://www.sebi.gov.in/legal/circulars/nov-2015/format-for-business-responsibility-report-brr\\_30954.html](https://www.sebi.gov.in/legal/circulars/nov-2015/format-for-business-responsibility-report-brr_30954.html) (last visited on Dec. 8, 2024).

<sup>71</sup> Government of India, "National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business", *Ministry of Corporate Affairs*, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://www.mca.gov.in/Ministry/latestnews/National\_Voluntary\_Guidelines\_2011\_12jul2011.pdf (last visited on Dec. 8, 2024).

<sup>72</sup> Ibid.

<sup>73</sup> Government of India, "National Guidelines on Responsible Business Conduct", *Ministry of Corporate Affairs*, Dec. 10, 2018, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://www.mca.gov.in/Ministry/pdf/NationalGuidelines\_15032019.pdf (last visited on Dec. 8, 2024).

<sup>74</sup> Ibid.

## Reporting framework

A voluntary reporting mechanism based on specific metrics is another goal of the 2018 NGRBC. This reporting framework's main function is to act as an internal tool for companies looking to align with the 2018 NGRBC.<sup>75</sup>

## UNGP and NVGs and Other Voluntary Measures

There are over 357 Indian companies<sup>76</sup> that are participants of the United Nations Global Compact (UNGC),<sup>77</sup> including well-known brands from both the public and commercial sectors. The United Nations Global Compact (UNGC) is the largest corporate sustainability initiative in the world. In addition to committing to upholding the UNGC's ten principles—which include anti-corruption, employee rights, the environment, and human rights—signatories also submit regular reports on their compliance. Additionally, a voluntary code of conduct has been published by an Indian business association, which its member companies are free to follow. The code of conduct covers, among other things, the following topics: preventing bribery in all business dealings, adhering to anti-money laundering regulations, prohibiting discrimination, preventing sexual harassment, promoting social welfare initiatives, and sustainability to reduce the negative environmental effects of business operations.

The Ministry of Corporate Affairs (MCA) also received a draft guideline on business and human rights from a certain Indian industry body. Its dedication to UNGPs is reaffirmed in this draft recommendation. Among other things, these draft advisory offers member companies action items such as creating and publishing a "Human Rights Policy Statement" and conducting "Human Rights Due-Diligence" to first identify and prevent, then gradually mitigate and account for the company's most significant or serious human rights risks. Businesses are thought to perform better when

---

<sup>75</sup> Ibid.

<sup>76</sup> United Nations Organisation, "Participants, Country - India", *United Nations Global Compact*, available at: [https://unglobalcompact.org/what-is-gc/participants/search?search%5Bkeywords%5D=&search%5Bcountries%5D%5B%5D=86&search%5Bsort\\_field%5D=&search%5Bsort\\_direction%5D=asc&search%5Bper\\_page%5D=10](https://unglobalcompact.org/what-is-gc/participants/search?search%5Bkeywords%5D=&search%5Bcountries%5D%5B%5D=86&search%5Bsort_field%5D=&search%5Bsort_direction%5D=asc&search%5Bper_page%5D=10) (last visited on Dec. 8, 2024).

<sup>77</sup> United Nations Organisation, "The World's Largest Corporate Sustainability Initiative", *United Nations Global Compact*, available at: <https://unglobalcompact.org/> (last visited on Dec. 8, 2024).

they report on governance, social, and environmental issues. As mandated by the Global Reporting Initiative Standards, which establish guidelines for sustainability reporting, certain Indian businesses still publish Sustainability Reports every year. The private sector may choose to voluntarily embrace a corporate anti-bribery code developed by the Institute of Company Secretaries of India (ICSI), which oversees the company secretary's profession in India.

### **Pillar III - Access to Remedy**

Pillar III emphasizes and outlines the obligation of both the State and companies to guarantee improved access to remedies for victims of human rights violations related to business. The following list of thematic concerns can be used to understand the ideas outlined in Pillar III as they are applied in the Indian legal system.

#### **State-Based-Judicial/Quasi-Judicial Mechanism to Redress Human Rights Violations Supreme Court and High Court**

For India, access to justice is still a top issue. The Indian Constitution allows a person who feels wronged to go straight to the Supreme Court of India,<sup>78</sup> the country's highest court, to have their fundamental rights upheld. For the purpose of upholding fundamental rights, the Supreme Court and the High Courts have plenary authority. It is acknowledged that the Supreme Court of India is obligated under the Constitution to develop new instruments that may be required to uphold basic rights and administer full justice. The subordinate judiciary, consumer forums,<sup>79</sup> and labor courts<sup>80</sup> (described below) are additional state-based judicial systems.

---

<sup>78</sup> The Honourable Supreme Court of India, "Home Page", *Supreme Court of India*, available at: <https://www.sci.gov.in/> (last visited on Dec. 8, 2024).

<sup>79</sup> Government of India, "Consumer Court System in India", *Ministry of Consumer Affairs*, available at: chrome-extension://efaidnbmnnibpcajpcgcl/clefindmkaj/https://consumeraffairs.nic.in/sites/default/files/file-uploads/consumer\_information/ConsumerCourt.pdf (last visited on Dec. 8, 2024).

<sup>80</sup> Government of India, "Consumer Court System in India", *Ministry of Labour and Employment*, available at: <https://labour.gov.in/organizations/omole/centralgovernment-industrial-tribunal-cgit-cum-labour-courts#:~:text=Central%20>

## National Green Tribunal (NGT)

In India, the Supreme Court, High Court, and lower courts are supplemented with specialized quasi-judicial authorities and tribunals. The National Green Tribunal (NGT),<sup>93</sup> which was established in 2010 to effectively and quickly handle disputes involving environmental protection, forest conservation, etc., may be mentioned in this context. After Australia and New Zealand, India became the third nation in the world to establish a specialized environmental tribunal with the creation of the NGT. When issuing orders, the NGT is required to follow the principles of polluter pays, precaution, and sustainable development. It is admirable that NGT has been working to provide prompt and efficient justice. Approximately 26,952 cases have been submitted before the NGT from its founding till August 31, 2018, from which 23,536 cases have been disposed.

## Specialized Commissions

Specialized commissions have been established to safeguard the rights of particular groups, including women, children, people with disabilities, members of Scheduled Castes, Scheduled Tribes, and others. The National Commission for Women (NCW)<sup>94</sup> is a legislative organization whose duties include protecting women's constitutional and legal rights, investigating complaints of rights violations, providing funding for legal actions addressing matters that impact a significant number of women, and more. The Commissions for Protection of Child Rights Act, 2005

<sup>93</sup> Government%20Industrial%20Tribunal%2Dcum%2DLabour%20Courts%20(CGIT%2D, and%2012%20under%20Plan%20Scheme. (last visited on Dec. 8, 2024).

<sup>94</sup> National Green Tribunal, "Home Page", available at: <https://www.greentribunal.gov.in/> (last visited on Dec. 8, 2024).

<sup>94</sup> Government of India, "Home Page", *National Commission for Women*, available at: <http://ncw.nic.in/> (last visited on Dec. 8, 2024).

(CPCR Act)<sup>81</sup> established the National Commission for Protection of Child Rights (NCPCR),<sup>82</sup> a statutory agency.

The NCPCR is in charge of examining the protections for children's rights under applicable laws, suggesting actions to ensure that these actions are carried out effectively, looking into complaints about child rights violations, and more. Following an investigation that reveals a grave violation of a child's rights or a breach of any legal provisions, NCPCR may advise the relevant government or authority to start legal action. In order to protect the rights of people with disabilities, the Central Government also established a Chief Commissioner for Persons with Disabilities<sup>83</sup> under the RPD Act.

### **Labour Courts**

Labour courts and industrial tribunals have been established to decide "industrial disputes." To settle labor disputes in organizations where the Central Government is the proper government, 22 Central Government labor courts and industrial tribunals have been established in various states.

### **State-Based Non-Judicial Mechanism**

In India, non-judicial dispute resolution procedures including arbitration, mediation and conciliation are also accepted by legislation like the Code of Civil Procedure, 1908 (herein after referred to as "CPC") and the Arbitration and Conciliation Act, 1996. Additionally, Lok Adalats, which have been granted statutory status under the Legal Services Authorities Act, 1987 (LSA Act), serves as a forum for the compromise or amicable settlement of cases and either disputes that are pending in the courts or at the pre-litigation

---

<sup>81</sup> Government of India, "Commissions for Protection of Child Rights Act, 2005 (No. 4 of 2006)", *Ministry of Women and Child Development*, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj/https://missionvatsalya.wcd.gov.in/public/pdf/children-related-law/The%20Commissions%20for%20Protection%20of%20Child%20Rights%20Act,%202005.pdf (last visited on Dec. 8, 2024).

<sup>82</sup> Government of India, "Home Page", *National Commission for Protection of Child Rights*, available at: <https://ncpcr.gov.in/> (last visited on Dec. 8, 2024).

<sup>83</sup> Ministry of Social Justice and Empowerment, Government of India, "Home Page", *Office of Chief Commissioner for Persons with Disability*, available at: <https://ccpd.nic.in/> (last visited on Dec. 8, 2024).

stage. The State legal services authorities held 1,09,695 Lok Adalats nationwide between April 2017 and March 2018.<sup>84</sup>

The Gram Nyayalayas Act of 2008 calls for the creation of grassroots Gram Nyayalayas to guarantee that no citizen is denied the opportunity to obtain justice because of social, economic, or other disabilities and to give citizens access to justice at their doorstep.

### **The Existence of a National Human Rights Institution**

India's ongoing dedication to the efficient application of human rights is demonstrated by the establishment of an independent statutory body such as the NHRC.<sup>85</sup> The NHRC investigates human rights abuses and public servants' carelessness in preventing them, among other things. Following the conclusion of an investigation that reveals the breach, the NHRC may suggest to the relevant government or authority that the victim be compensated, that legal action be taken against the offending individual or individuals, etc. India now has 26 State Human Rights Commissions in operation. The NHRC received about 61,532 cases between April 1, 2017, and December 31, 2017, of which 66,248 cases—including those carried over from prior years—were resolved. In 570 cases at that time, the NHRC approved interim relief payments of INR 16,33,10,000.<sup>86</sup> The Global Alliance of National Human Rights Institutions granted the NHRC "A" status certification in 2017 in recognition of the important work it has done to uphold human rights and raise awareness of them in the nation.

### **Corporate Frauds**

Companies, despite their contribution towards the furtherance of constitutional goals, particularly contributing towards the 'ease of living' for common man, empowering them with technological advancement in the area of access to data and (right to) information, are often found grappling with fraudulent promoters, directors and top management. The Satyam Case, the Punjab National Bank fraud Case, ICICI Bank –

Videocon scam, IL&FS scam, DHFL scam, NSE Co-location scam are glaring examples of internal mismanagement in the companies, in recent times.

---

<sup>84</sup> Supra Fn17.

<sup>85</sup> Government of India, "Home Page", *National Human Rights Commission, India*, available at: <https://nhrc.nic.in/> (last visited on Dec. 8, 2024).

<sup>86</sup> Supre Fn 17.

This frequent unfolding of corporate scams and scandals in the recent past, begs for immediate intervention of authorities to remedy the situation. Care should be taken that a company doesn't fall into the hands of unscrupulous individuals and elements acting with vested interests.

### **Available Remedies Under Law**

India's current legal system acknowledges both civil and criminal punishments, including fines, imprisonment, and penalties for breaking existing statutory requirements. Certain laws additionally recognize remedies like compensation, damages, restoration of the environment or property (in certain situations), rehabilitation and resettlement (in certain cases), etc. State governments have established victim compensation programs in compliance with the legislation.<sup>87</sup> Additionally, Indian courts have the authority to issue injunctions and other forms of temporary or preventive relief. Through its public interest litigation for protection against serious human rights breaches, the Indian courts has been instrumental in creating new means for ensuring total justice between parties. In the exercise of its writ authority, the Supreme Court of India has awarded compensation in situations involving fundamental rights violations brought on by unlawful detention, deaths in custody, etc. Additional remedies provided by the Supreme Court include ecological restoration in cases of environmental pollution and worker rehabilitation in cases of Supreme Court-ordered industry closures. The Indian legal system also recognizes remedies under tort law.

Indian courts have established the concept of "absolute liability," which states that a business that engages in a risky or intrinsically dangerous activity has an unassignable, absolute obligation to the community to make sure that no harm is done to anyone; if this is not done, the business will be held fully responsible for paying compensation to everyone impacted. Furthermore, because the purpose of the pay is to deter, the Supreme Court has made it clear that the amount of compensation in certain situations is related to the size and capability of the business. Courts have acknowledged

---

<sup>87</sup> Government of India, "Victim Compensation", *National Judicial Academy*, available at: chrome-extension://efaidnbmnnibpcajpcglclefindmkaj /[https://www.nja.gov.in/Concluded\\_Programmes/2020-21/P-1230\\_PPTs/2.Victim%20Compensation.pdf](https://www.nja.gov.in/Concluded_Programmes/2020-21/P-1230_PPTs/2.Victim%20Compensation.pdf) (last visited on Dec. 8, 2024).

in some instances that the State may be held vicariously accountable for the actions of its workers in the same way that a regular employer would have been held accountable for the wrongful actions of its employees. Availability of right to legal aid under Article 21 read with Article 39-A has strengthened the efficacy of legal remedies.

### **Access to Information**

It is frequently noted that one of the obstacles that people may have when bringing legal action against corporations for human rights breaches is the lack of or inefficiency of a framework for granting access to information. In the Indian context, the sources of information necessary to file a lawsuit against a company can be linked to the RTI Act's framework, the Securities Law's and the CA 2013's requirements for reporting information on Indian companies, and the CPCs' discovery procedures.

### **Promotion of Public Awareness**

It might be argued that public awareness of such measures is important for the successful execution of legislation safeguarding human rights and for ensuring access to justice. Accordingly, the State and relevant authorities are required under several Indian laws to educate the public about the protection of specific human rights. The Protection of Human Rights Act of 1993, the POCSO Act, the SHWW Act, the CPCR Act, the RPD Act, and others are examples of such laws. Additionally, organizations like the NHRC, NCW, and NALSA are always running these kinds of public awareness campaigns. For example, State Legal Service Authorities performed approximately 1,65,124 legal literacy/legal awareness programs between April 2017 and March 2018.<sup>88</sup>

### **Other State-Based Grievance/Complaints Mechanism**

The Centralised Public Grievance Redress and Monitoring System, an online web-enabled system, was established by the Indian government to enable citizens who feel wronged to file complaints with the appropriate government ministries, departments, or organizations. A Joint Secretary or a Director/Deputy Secretary has been appointed as the "Director of Grievances" by each Central Ministry/Department. They serve as the point

---

<sup>88</sup> Supra Fn 17.

of contact for complaints regarding job areas assigned to that specific Ministry or Department.

## **Conclusion**

The success of a number of governmental schemes/ ambitious projects that are listed and discussed elsewhere in this paper would not have witnessed the day light but for the enthusiastic support and participation from the corporate sector in India. The Jan Dhan scheme (leading to financial inclusion of a population size covering one billion people) would not have been a reality today, without the cooperation and participation from banking companies in India. Likewise Clean Ganga (Namami Gange project) would not have made substantial progress without participation from Corporate India. Be it Jan Dhan, Swachh Bharat Abhiyaan (Clean and Green India Mission), Namami Gange, any major infrastructure project or telecommunication project (by telecom service provider companies etc.), the government of India has immensely benefitted by the involvement of corporate sector. The corporate sector have been forthcoming to participate and support in many governmental initiative, and has made a huge positive impact on Indian society. However, the recent set of financial frauds and irregularities committed by some of the corporate entities puts the companies in India in bad light and tarnishes their image, which begs immediate attention by policy makers and the government. A stricter monitoring regime to address the issues of corporate frauds and stronger punishment for misuse of corporate entity for personal gains, may make these set entities grow and contribute better to the overall protection of constitutional goals, human rights and sustainable development and growth of the nation.

\*\*\*\*\*