



Part 6

Conclusion and Way Forward

Chapter 12:

Towards a National Action Plan on Business and Human Rights: Is This Going To Be Business as Usual?

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In June 2019, a Thompson Reuters Foundation study found that all 100 women garment workers in Tamil Nadu, who were interviewed stated that they were given un-labelled drugs at work for menstrual cramps, and more than half said their health suffered owing to that.ⁱⁱⁱ In the same month, 26 child labourers were rescued from a Parle-G factory in Chhattisgarh.^{iv} In January 2019, the Supreme Court lifted the stay on the proceedings of a class-action suit filed by the central government against the maker of Maggi noodles in the apex consumer court for the presence of lead in the product, beyond the permissible limit.^v The most important segment of consumers of Maggi noodles is children. While India's ranking in the Ease of Doing Business Index is improving, India ranks poorly, at 53rd, in the prevalence of bonded labour as per the Global Slavery Index or ranking 108th in the Gender Gap index. The urgency to evolve a business and human rights jurisprudence that could take such companies to task for violating human rights cannot be underemphasised.

The UN Guiding Principles on Business and Human Rights (UNGPR) envisages a Protect-Respect-Remedy framework locating the State's role primarily in the first pillar. However, it is also the role of the State to ensure that all three pillars are grounded in reality. The National Action Plan, therefore, ideally, needs to set clear targets for all the three pillars and prepare an activity plan, along with a financial memorandum to achieve the same. Its significance lies in its power to create a discourse on business and human rights, which became a non-starter since the two per cent corporate social responsibility (CSR) discourse completely took over any discussion on social responsibilities of businesses. The National Action

Plan is an opportunity to visibilise such human rights violations by businesses and at the same time, to appreciate efforts from such businesses, which are willing to look into their supply chain through a due-diligence mechanism.

The zero draft of the National Action Plan on Business and Human Rights (NAP) is, although too limited, definitely a welcome step from the Ministry of Corporate Affairs. The zero draft has embarked into certain domains, which are conventionally left out of the State agenda. If one looks deeper, the State has been seen from four roles: (a) setting legislative agenda for businesses; (b) facilitating an enabling environment for business; (c) redressing the grievance and rendering justice; and (d) in the current scenario of extreme privatisation which has been extended to even defence supplies, the State is a significant procurer of products from businesses.

For two reasons, one can say that the zero draft has shown eagerness to take on hard issues. The fact that public procurement has been discussed as an instrument to promote human rights is an important first step. Secondly, the zero draft is probably among the first instruments from the Government that has acknowledged that the State-business nexus is a problem; and there is a need for an action plan to be drafted on the issue. It is important that the discussion is extended to strengthening and protecting the whistle-blowers and human rights defenders. However, as of now, the zero draft is primarily an amalgamation and update of what is existing today in terms of legislations, schemes, programmes and also listing of various institutions that have the mandate related to Business and Human Rights (BHR). To that extent, it is good, but listing of a number of

existing programmes should not give a ‘feel good’ sense to the Government – as if things are fine vis-à-vis the business and human rights agenda. It takes away the need to ‘revamp’, if not overhaul these institutions to do justice to the BHR agenda. The gruesome corporate murder of 15 citizens protesting against violations by the Sterlite Plant

or deaths of 32 workers owing to an explosion in the NTPC plant or 377 miners deaths in the last three years or India continuing to use 350,000 tonnes of asbestos annually – there is clearly a lot wanting in terms of implementing the human rights agenda within businesses.

Key Challenges for NAP

The big picture question looming is whether the NAP will be another toothless ‘feel good’ instrument. In a series of consultations, that Partners in Change organised with hundreds of organisations and groups working at the grassroots, there was clearly despair, for they have seen a number of such toothless instruments that have emerged from the State, which seldom protect communities at the margins. The NAP, it is feared, would sidestep the following five questions:

The wage question - It is important to note that as per the National Sample Survey Office’s Periodic Labour Force Survey, 2017-18, the unemployment rate is 6.1 per cent, which is the highest in the last 45 years. For educated rural females, the unemployment rate stands at 17.3 per cent. With high unemployment rates, even among educated females, the supply of the labour force would be high and therefore their ability to negotiate wages would be limited. From garments to tea plantations to the construction sector, and from primary to manufacturing to service sectors, there is one common concern – the workers deep in the supply chain do not even get a minimum wage. This even includes teachers in the private schools in a number of rural areas and smaller towns. It is a shame that as early as the 1950s, the Constitution of India under Article 43, the Directive Principles of State Policy, directed the State to secure for every worker, a living wage. Seven decades hence, we have not been able to go beyond the minimum wage debate. Strong unionisation and collective bargaining institutions will play a significant role in determining wages and need to be strengthened as well. The NAP would probably just reiterate that every worker should get the minimum wage, rather than embarking into measures that could

make the concept of minimum wage a reality.

The supply chain development question - The fear is that a NAP would list all progressive labour legislations, which cease to be applicable beyond the workspace. The Economic Survey of 2018-19 states that almost 93 per cent of the total workforce is ‘informal’. Many of them work under the piece-rate system, and often within the household space, but still contribute to big national and international brands. In the third tier of the supply chain and beyond, one may see migrants trapped into bonded labour and trafficking, the presence of child labour and commercial and sexual exploitation of workers. Unless the NAP devises a system that makes big corporates accountable for various violations in the supply chain, the NAP would just be a toothless paper.

The Ease of Doing Business Index question – This takes the focus away from workers and centres on encouraging investments. All the efforts on the ground are meaningless, if the macro-policy is centred on promoting businesses at the cost of workers, communities and the environment. The pace at which ‘flexibility’ is being brought in at the cost of labour and the environment, needs to be tamed. This means that the NAP should clearly encourage debates around looking at businesses from the lens of human rights of workers and communities and should be a non-negotiable.

State-business nexus challenge question – This poses a potential challenge especially in a scenario when the interests of businesses are competing with the interests of communities; and the State articulates its role as ‘protecting investment so that

it could provide benefits to the community'. In other words, there is increasingly a scenario where the State aligns with the interests of business, most often 'legitimately' and many times covertly. Of course, one can see how a two per cent CSR policy is used to foster a legitimate and illegitimate nexus between corporates and the government.

The inclusion question - This remains the most significant aspect. There are enough studies that have pointed out that the board and senior management team of most of the companies are not diverse from the lens of gender, caste or disability. The absence of diversity in the workspace is not natural – it is a result of discrimination embedded in the society. The question is whether this would even be problematised by the NAP. Surely, a NAP, in the current mainstreamed anti-reservation narrative, would shy away from recommending affirmative action in the private sector?

There is a strong feeling that these five significant questions will be sidestepped because of the

lack of clarity on whether the NAP development process itself would be inclusive. Who will be playing the lead in this process is ambiguous. Government officials, UN agencies, big corporates and large national level CSOs are definitely engaging. Probably, some of the large trade unions would get into the consultations at a later stage. The constituencies that would be left out are communities at the margins, grass root organisations, human rights defenders, micro-enterprises, petty contractors and unorganised workers. Even if they get engaged, their opinions would be scattered as they are not organised enough to push an agenda. Another constituency that would be ignored is that of the government and quasi-state regulators, such as pharmaceutical pricing authority or consumer commissions. Invariably, the votaries of these questions are not yet in the world of policy-making. Unless an effective mechanism to foster their effective participation is evolved, the NAP would probably be another paper tiger.

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