

Chapter 3

THE POLICIES: What is the policy framework to understand responsible business conduct?

Quick-Read

- National and international laws & guidelines give a framework for responsible business conduct.
- Following it in letter and spirit means businesses engage meaningfully with stakeholders, going beyond just regulatory compliance.

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How is the concept of business responsibility approached globally?

“Sixty nine of the largest economies of the world today are businesses. If you have these kinds of companies who are bigger than many countries, it is all the more important that businesses adopt a rights-based approach.”

Harpreet Kaur, Business & Human Rights Specialist, *United Nations Development Programme (UNDP)*.

Expecting businesses to act responsibly is not a novel idea, nor a recent one. As social anthropologist and business and human rights expert Viraf Mehta recalls, some of the early companies in India were very cognisant of the basic rights of their workers. And these companies - such as those started by Jamsetji Tata - were founded during colonial times, over a hundred years ago, much before the Universal Declaration of Human Rights had been conceived and adopted. The companies were mindful of basic human rights of workers, including working hours, maternity leaves, the right to form associations etc, Mehta explains.

However, over time a conversation on businesses and human rights emerged and evolved to give way to various legal and policy frameworks, most notably the United Nations Guiding Principles on Business and Human Rights.

Companies and expectations about responsible behaviour had [been on the radar](#) of the United Nations from the 1970s, when the UN's Economic and Social Council suggested constituting a Group of Eminent Persons to study the impact of transnational corporations on the development process (especially in developing countries) and international relations.

While conversations and ideas were floated, more concrete developments at the level of the international organisation started taking shape close to the turn of the new millennium.

In August 1998, a five-member Working Group on the Working Methods and Activities of Transnational Corporations was established by the Sub-commission on the Promotion and Protection of Human Rights.

In January 1999, The UN Secretary General, Kofi Annan [proposed the idea](#) of a Global Compact at the World Economic Forum. Officially launched a year later, the Compact comprised ten principles in the areas of human rights, labour, environment and anti-corruption.

This Working Group came up with a set of draft norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights in 2003. However, owing to strong opposition from the business communities, and even several states, these norms did not see the light of day.

In 2005, John Ruggie was [appointed](#) a Special Representative on the issue of human rights and transnational corporations. He proposed the framework, which later took shape as the [UN Guiding Principles on Business and Human Rights](#) in 2011.

The UN Guiding Principles on Business and Human Rights are a set of 31 principles, and they aim to enhance standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalisation.

The principles are grounded in the recognition of three pillars:

- ✓ The State's obligations to protect.
- ✓ Businesses' obligations to comply.
- ✓ Appropriate remedial measures when needed.

The full list of principles is [available here](#).

Across the principles, there is an emphasis on keeping human rights at the forefront of designing policies regarding business conduct. Similarly, reporters should be familiar with and conscious of this when they look at a corporate story.

“For journalists, it is important to be mindful of the lens from which you are reporting. On the one hand, we are still focussed on mergers and acquisitions, large companies and deals etc. Human rights isn't necessarily seen as something 'cool'. And while there is a growing focus on sustainability, carbon footprints etc. (which are important concerns), there isn't enough conversation on the rights of workers and marginalised identities.

“Some of the issues such as gender representation among the workforce in top listed companies, levels of unionisation or disparities in median pay levels of employees and top management don't get much attention. It is especially important to be reporting all this because otherwise companies will keep getting away with violations,” says Dheeraj of Praxis - Institute for Participatory Practices.

We need to look at businesses more comprehensively, because over time more and more aspects of our economy have been privatised, and businesses are now providing even essential services. “So we cannot be only looking at the State as the significant actor,” says Dheeraj explaining that issues of human rights violations cannot be looked at only from a monetary or business lens. Because if we started doing that, many corporate projects would have an upper hand and get easy validation. People's cultural and social rights cannot be articulated in terms of money.

“Above all, it needs to be recognised that businesses are made out of public money and enjoy large subsidies in form of capital, land etc. SEBI also clearly stated in its 2011 circular that businesses by virtue of accessing public money, have to be

accountable to larger society taking steps beyond the domain of shareholders and investors,” added Dheeraj.

How can you adopt this framework in your reportage?

Given the span and scale of business operations, a human rights framework to business stories is applicable across themes and beats. However, this is an approach that not many in the media may be familiar with.

Harpreet Kaur, Business & Human Rights Specialist at UNDP’s Asia-Pacific Regional Centre explains that while the media covers a lot of issues that fall at the intersection of business and rights, they rarely report them as so.

“You will find stories on child labour, for example, but you would rarely see the business angle in it. These stories would mostly be covered from a social/development or welfare approach. This is clearly a business and human rights issue, but it is not framed as such in the reportage,” Kaur explains.

As part of her work at UNDP, when Kaur engaged with journalists, she found that there was a limited understanding of this framework. Many asked us, “what beat does business and human rights fit in?” Kaur says. “Should the business reporter be writing about it or should a journalist working on development issues be covering it?”

“Our response to them was that whichever beat you may be covering, there are stories on business and human rights to be found there.”

- Harpreet Kaur, Business & Human Rights Specialist, UNDP

For example, someone writing on fashion can do so much on the garment industry and how clothes are made. Someone writing on agriculture can write about forced labour in the supply chains. There is much to cover on sugar, or cocoa, or even seeds. If you are covering education, think of private providers of education and the impact they have on human rights, Kaur says.

What is considered as a Responsible Business Conduct by the Indian State?

In December 2009, the Ministry of Corporate Affairs released the Corporate Social Responsibility Voluntary Guidelines. They were revised in 2011 when they

became National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business, 2011 (NVGs).

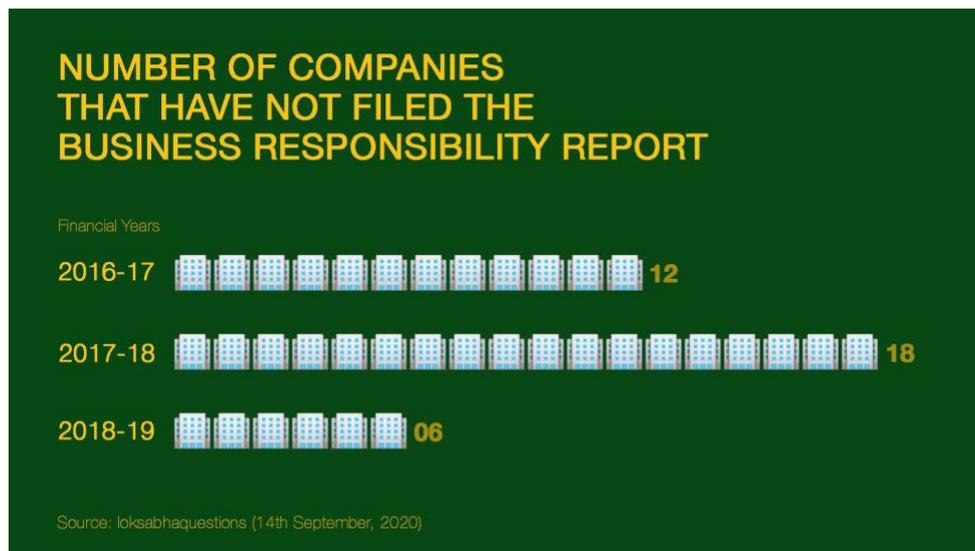
In 2019, the NVGs were updated to National Guidelines on Responsible Business Conduct ([NGRBC](#)).

These principles are:

- 1 Businesses should conduct and govern themselves with **integrity** in a manner that is ethical, transparent and accountable.
- 2 Businesses should provide goods and services in a manner that is **sustainable** and safe.
- 3 Businesses should respect and promote the **well-being** of all employees, including those in their value chains.
- 4 Businesses should respect the interests of and be **responsive** to all their stakeholders.
- 5 Businesses should respect and promote **human rights**.
- 6 Businesses should respect and make efforts to **protect** and restore the environment.
- 7 Businesses, when engaging in influencing public and regulatory policy, should do so in a manner that is responsible and **transparent**.
- 8 Businesses should promote **inclusive** growth and equitable development.
- 9 Businesses should engage with and provide value to their consumers in a **responsible** manner.

In addition, the Companies Act of 2013 also mandates certain requirements of businesses (see the following section). The Securities and Exchange Board of India (SEBI) through its 'Listing Regulations' in 2012 mandated the top 100 listed entities by market capitalisation to file Business Responsibility Reports (BRRs, soon to be updated to Business Responsibility and Sustainability Reports) from an environmental, social and governance perspective.

These BRRs enabled businesses to demonstrate the adoption of the NVG principles. The intent was that businesses would engage more meaningfully with stakeholders going beyond just regulatory financial compliance. This was extended to top 1,00 companies in 2019.



In June 2014, the UNHRC called upon its member states to develop a National Action Plan to promote the effective implementation of the UNGPs. India is currently in the process of drafting its National Action Plan (NAP), the zero-draft version of which is available on [the MCA website](#).

As a reporter, awareness of the NAP, the UN Guiding Principles and other similar policy frameworks can help in many ways, says Arpitha Kodiveri, a legal researcher focusing on issues of environmental justice.

“Policies are sites where norm-incubation happens - these are guiding documents as to where the law would go in the future. If journalists look at it like that, they can push and shape the discourse towards higher standards. It also gives them the tools to assess current laws and policies as to where these may be falling short of higher standards,” explains Kodiveri.

If a reporter or researcher is examining violations committed by a particular company, awareness of policies such as the NAP can help with the right legal vocabulary to articulate the gravity of the situation, adds Kodiveri.

“If we look at Tuticorin, one of my observations on the reporting around it was that there was usage of a lot of loosely informed legal terms like. ‘Activists assassinated’ or ‘shoot at sight’. But someone more familiar with our policies could have articulated these as ‘violations of the rights of environmental defenders’ or ‘violations of the right to protest’,” Kodiveri adds.

What are the important responsibilities of Indian businesses as defined by the Companies Act, 2013?

The Act casts [fiduciary duties](#) on the Directors of a Company (S. 166) requiring them to *promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of the environment.*

The Act also requires every company with a net worth of Rs. 500 crore or more, or a turnover of Rs. 1,000 crore or more, or a net profit of Rs. 500 crore or more during any financial year, to spend two per cent of their average profits of the previous three years on “social” responsibilities each year.

Companies are required to have at least one woman director on their boards.

“While the focus of the Companies Act relates to the complete lifecycle of a company, there is a lot that needs addition in the Act in relation to the responsibilities of companies towards, say, human rights. Till the time that happens, it is essential that companies act on their own accord, or through critical scrutiny of third parties like civil society and media, to bring about a considerable and all-encompassing betterment through their responsible and sustainable business conduct”, says Ranjana Das, Lead – Private Sector Engagement, Oxfam India.

In addition to the requirements under the act, a wide range of laws exists in India that defines what companies can and cannot do. Some of the most relevant ones are listed below in the resources section.

Awareness of these laws and frameworks can also enable a kind of reporting that is not very common in the Indian media. Kodiveri laments that it takes a big crisis like the Bhopal Gas Tragedy, or large-scale protests and ensuing deaths as seen in Tuticorin or Niyamgiri, for the media to turn its attention to these issues.

“I think we need reporting to cover the subtler issues as well. Looking at the corporate world, sector wise, trying to understand the human rights violations involved at different points, and reporting even the “smaller” episodes, or what we could call the micro-aggressions of the corporate world. It’s in the everyday spaces from where one can build a broader understanding of what leads to moments of exasperation. I haven’t seen that kind of reporting.”

- Arpitha Kodiveri, a legal researcher focusing on issues of environmental justice

Another aspect that needs more attention in the media according to Kodiveri is how companies use laws and legal avenues to shy away from human rights and environmental obligations. For example, at the time of writing this, renewable

energy companies [were planning to move the Supreme](#) Court with a plea to reduce the area of the Great Indian bustard because some pipelines have to pass through protected areas. Similarly, internationally, fossil fuel companies [have used treaties to sue governments](#) for compensation arguing that green policies would be damaging to them.

An understanding of the policy and legal framework, therefore, holds significant potential for research and journalistic work.

How can this policy framework help a journalist?

👉 Awareness and knowledge of international and national laws, principles and guidelines enable journalists to ask the right questions of companies, and hold them to account in case of violations.

👉 Use them as a normative framework to critically assess policies of both the State and businesses.

👉 Articulate these violations in the appropriate and responsible legal language.

👉 They can help you understand the links between the State and the corporate world. How does the State drive compliance (or are some of these “voluntary”)? On what matters does the State treat companies with a strict hand, and where does it take a soft approach?

👉 How do businesses respond to attempts by the State to push them to behave responsibly?

👉 Do companies take only those responsibilities seriously which are clearly spelt in law, or do some companies go beyond those?

👉 How do companies use the law and legal avenues to further their cause?

👉 What are the costs (financial, legal, social) of non-compliance for companies?

👉 What are the values companies claim to stand for on their websites, in their advertisements, branding etc. as opposed to what the principles recommend?

RESOURCES | INSPIRATIONS

◆ [Primer on Business and Human Rights](#) | Change Alliance

◆ [FAQs on the UN Guiding Principles](#)

◆ [UN Guiding Principles: The Next Decade](#)
◆ [Submission made to the Ministry of Corporate Affairs on the Draft NAP on business and human rights](#)

◆ [Background Paper for India's National Framework on Business and Human Rights](#)

◆ [The Existing Regulatory Framework in India](#)

◆ Deva, Surya, Guiding Principles on Business and Human Rights: Implications for Companies (March 26, 2012). *European Company Law*, Vol. 9, No. 2, pp. 101-109, 2012, University of Oslo Faculty of Law Research Paper No. 2012-10, [Available at SSRN](#)

📱 **PEOPLE TO FOLLOW**

◆ [Surya Deva](#)

◆ [Harpreet Kaur](#)

◆ [Namit Agarwal](#)

◆ [Arpitha Kodiveri](#)

◆ [Praxis Institute for Participatory Practices](#)

◆ [UNDP Business and Human Rights Asia](#)

◆ [BHR Journal](#)

◆ [Good Business Lab](#)