

# Indian companies and the issue of Human Rights

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## ABSTRACT

*At a time when India is gradually emerging a strong global player the issue of Human Rights in Indian Companies cannot be ignored. Companies are 'legal persons', having all the rights available to human beings except the right to vote. The companies are expected to take adequate care of all stakeholders be they employees, customers, shareholders, investors etc. The recent trend towards liberalization, privatization and globalization has resulted in a mad chase to earn profits at whatever cost. The protection of basic human rights seems to have taken a back seat.*

*Despite the fact that countries all over the world advocate for globalisation by enacting business-friendly' policy changes. Nations are increasingly attempting to attract foreign direct investment.*

*A debate appears to be raging over whether recent globalisation initiatives have resulted in truly inclusive development and whether the rights of various stakeholders have been adequately protected. Various case studies conducted by the United Nations and other world bodies clearly show that such efforts have resulted in the "undermining of human rights protection and realisation.*

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## Introduction

Former UN Secretary General Kofi Anan said, "Human rights are what reason requires and what conscience demands",

The entire Human Rights debate stems from the 1948 Universal Declaration of Human Rights (UDHR), which established a "common standard of achievement" for the future of human rights. The number, scope, and implementation strategies of international human rights treaties and conventions have increased over the last fifty years or so, resulting in a large body of human rights law.

The crux of the various legal provisions on human rights recognises the dignity inherent in every person as a human being, regardless of nationality, race, ethnic affiliation, religion, gender, class, or any other such distinction. Despite the fact that human rights are universal, an intense debate appears to be raging among academics about their existence, enumeration, and international enforcement. Which, if any, rights are truly fundamental and universal? If specific human rights or even the concept of human rights in general, are not universally recognised, can nations that do subscribe to human rights legitimately participate in the human rights violations of nations that do not? Is it realistic to believe that we can reach a truly universal agreement on what human rights are?

Since the end of the Cold War, the process of globalisation has become more complex, entangled in a web of political, economic, social, and cultural relationships. Relationships of this type are not limited by territorial

boundaries. Technological and communication advancements have exacerbated the problem even more. The term "globalisation" has been used in a variety of contexts, and there is no universally accepted definition. "We may best consider contemporary globalisation in its most general sense as a form of institutionalisation of the two-fold process involving the universalization of particularism and the particularization of universalism," Robertson writes, capturing the contradictory elements of globalisation. There are numerous aspects to this two-step process. It is obviously a political, social, and cultural process, but it is primarily an economic process.

The establishment of globalised economic institutions has been both a symptom and a driver of globalisation. The rise of the World Bank, the International Monetary Fund (IMF), regional development banks like the European Bank for Reconstruction and Development (EBRD), and, more recently, multilateral trade organisations like the World Trade Organization (WTO) indicates a shift away from the state as the sole unit of analysis in international affairs. Recognizing this trend, the World Bank stated: The state continues to define policies and rules for those under its jurisdiction, but global events and international agreements are influencing its decisions more and more. People are more mobile, educated, and aware of conditions in other parts of the world. And participation in the global economy tightens constraints on arbitrary state action, reduces the state's ability to tax capital, and brings monetary and fiscal policies under much closer

financial market scrutiny. Globalization has thus been transformative in terms of rethinking state sovereignty in international relations and international law.

### Review of Literature

According to Engobo Emeseh and Ondotimi Songi (2014), because a corporation's image and reputation are linked to the information in sustainability reports, an appropriate framework utilising corporate accountability for misleading statements could result in more effective CSR compliance. Thomas Kimeli Cheruiyot and Loice Chemnetich Maru (2014) performed a PCA (Principal component analysis) on 32 CHRSR-related items (corporate human rights social responsibility). The results of the regression revealed that CHSR had a significant effect on employee job outcomes such as employee retention, satisfaction, commitment, and pride. Emily F. Carasco and Jang B. Singh (2010) discovered that over the last decade, the UN has explicitly recognised the need for action, and the most recent convention emanating from the UN, the Norms, may evolve into a binding instrument on TNCs (transnational corporations). According to Shaomin Li and Ajai Gaur (2014), in a country with a high level of human rights abuses, a firm will have to lower its human rights standards to survive; however, a collective effort by all firms is required to improve the human rights conditions in the host environment; and third, a firm's human rights practices may have a multiplicative effect that can significantly affect a firm's human rights practices. Barcelona Panda (2013) supports the view that human rights violations in multinational corporations are on the rise due to a lack of good governance and vigilance machinery in his study. To maintain balance and control such issues, he advocates for progressive laws at both the international and national levels. Aurora Voiculescu (2011) observed a renewed focus at the international level on business and human rights in his study, and the United Nations (UN) recently produced a framework document mapping corporate and state responsibilities in the area of human rights (the UN SRSG Ruggie Framework). The paper investigates how far the European CSR context can provide tools and instruments for such an operationalization of corporate responsibility for human rights and social values in general. The article examines the dynamic relationship between the EU's soft regulatory efforts and the community's mandatory legislation. These define the EU's CSR and human rights policy as a whole. Human rights issues posed a serious dilemma for the Australian managers who took part in this study, according to Kerry Lynne Pedigo and Verena Mary Marshall (2011). Respondents in this study report perceived limitations in dealing with crosscultural ethical issues, owing to their international business counterparts' economic and social reliance on such practises. According to C.M. van der Bank (2010), while the current South African Constitution protects individual human rights, there is a need to include ethnic

minority rights in the document. According to Adrian Henriques (2010), the development of ISO 26000 (relating to Human Rights in Business) was fraught with politics, but it is a powerful statement of the moral and practical issues confronting companies and other organisations. According to Diego QuirozOnate and Mhairi Aitken (2007), there is a need to develop a single standardised mechanism for measuring CSR performance in order to eliminate the current confusion and uncertainty.

The studies cited above attempted to examine issues such as business ethics, human rights, corporate social responsibility, and constitutional safeguards. The majority of the studies have been conducted in developed countries where human rights are treated more favourably than in developing countries such as India. As a result, it is necessary to investigate the state of human rights observance from the perspective of developing countries, particularly India.

### Objectives of the study

The current globalised world has posed diverse and far-reaching challenges to the economy, politics, and international relations. In recent years, corporations, particularly transnational corporations, have come to the fore in terms of human rights. Is it appropriate for corporations to prioritise profit over human rights? The current study attempted to examine the state of human rights in businesses, particularly in India, in light of globalisation pressures. It has also examined the impact of various laws on the protection of human rights.

### Methodology of Research

The study will be based on secondary sources of information such as books, journals, company annual reports, and other publicly available information. Content analysis is the methodology. C.R. Kothari defines content analysis as "the analysis of the contents of documentary materials such as books, magazines, and newspapers, as well as the contents of all other verbal materials that can be either spoken or printed."

### Key Findings

Human rights are the fundamental rights of all people, regardless of race, gender, religion, political beliefs, social status, or any other characteristic. Governments commit to respecting, protecting, promoting, and realising their citizens' human rights through international human rights conventions. The Universal Declaration of Human Rights, which is provided as an annex to this document, is the foundational document for understanding human rights. Businesses should also be aware of the International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social, and Cultural Rights, which are the International Labour Organization's core conventions (ILO). Furthermore, in situations of armed conflict, a distinct body of law applies: international humanitarian law.

The question that arises is how business and human rights are related, and how far business can go to address these rights. Discussions among participants at the India CEO Forum on Business and Human Rights – Launch of a GCN India initiative, 13 February 2012, crystallized into the following views.

**Dinesh Agrawal**, India's National Thermal Power Corporation's Head of Corporate Responsibility, opines that, business cannot leave issues such as the right to health, the right to education, the right to development, and fundamental democratic rights to its communities or governments alone. The lack of these rights creates gaps, weakens the foundation of business, and renders it unsustainable. Businesses must be proactive in ensuring and facilitating access to these rights. This is no longer a choice, but rather a business necessity.

Examples of internationally agreed-upon human rights on which businesses can have an impact fall into two categories:

➤ Labour rights include freedom of association, equal pay for equal work, the right to organise and participate in collective bargaining, the right to non-discrimination, the right to just and favourable remuneration, the abolition of slavery and forced labour, the right to a safe working environment, the right to rest and leisure, the right to work, and the right to family life.

➤ Non-labour rights include the right to life, liberty, and security of the person, the right to peaceful assembly, the right to an adequate standard of living (including food, clothing, and housing), the right to physical and mental health, access to medical services, equal recognition and protection under the law, the right to education, the right to hold opinions, and the right to information.

Businesses are not solely responsible for the human rights consequences of economic activity; government and civil society are also important actors. Governments have a responsibility to respect, protect, promote, and fulfil human rights. These terms are used in connection with state obligations under the human rights instruments to which they have committed. To summarise, promote is concerned with raising awareness of the right; respect is concerned with not violating a right; protect is concerned with ensuring that others (e.g., companies, individuals, etc.) do not violate a right; and fulfil is concerned with actually implementing the right, for example, by providing healthcare facilities to fulfil the right to health. It is clear from this that states have a duty to protect against human rights violations by businesses and may also engage in promotional awareness raising activities. There is now a recognised corporate responsibility to respect human rights that applies to business actors. At the United Nations in 2008, governments unanimously affirmed the existence of this responsibility, and the UN Human Rights Council unanimously endorsed the UN SRSG. Professor John Ruggie's Guiding Principles in 2011. The responsibility to respect essentially means not infringing on the rights of others and

addressing negative consequences when they occur. Companies can take steps to meet their responsibility to respect human rights by conducting human rights due diligence. Furthermore, companies should have a statement or policy in place that expresses the company's commitment to respecting human rights.

To meet their responsibility to respect human rights, businesses should have policies and processes in place that are appropriate for their size and circumstances, such as:

(a) A policy commitment to meet their responsibility to respect human rights;

(b) A human rights due-diligence process to identify, prevent, mitigate, and account for how they address their impacts on human rights;

(c) Processes for mitigating any negative human rights impacts they cause or contribute to.

Businesses are simply expected to “know and show” how they manage their human rights impacts through due diligence.

#### **Indian Companies and the issue of Human Rights**

It is an undeniable fact that Business Concerns in general and Multinational Companies in particular wield enormous economic and political clout, making them more powerful than many nations. They pay a lot of taxes, which helps the economy grow. At the same time, they have gained notoriety for flagrant violations such as corruption, environmental degradation, providing substandard working conditions, unethical labour practices, and so on. India is not immune from these violations. Several cases have recently made headlines, including the Bhopal Union Carbide Gas leak and the Bichhri Village Rajasthan case.

#### **Companies' legal liability in India is governed by a variety of laws.**

Victims can seek justice in India under the following laws, according to the International Commission of Jurists.

**International Human Rights Law.** India has ratified a large number of international human rights treaties. Despite the fact that the government has weakened many of these laws, the Supreme Court has ruled in their favour (*Vishakha vs State of Rajasthan*)

**Constitutional provisions.** Fundamental rights are enshrined in articles 12–35. The Supreme Court, through various pronouncements, has broadened the scope to include the right to a livelihood, the right to health, the right to live with dignity, the right to an education up to the age of 14, clean drinking water, and so on. Articles 21 and 12 can also be interpreted as safeguards for human rights.

**Companies Act of 2013.** This act requires companies with a net worth of more than Rs 500 crore or an equivalent turnover of more than Rs 1000 crore to spend 2% of their average net profit over the last three years on CSR.

**Criminal Law.** Section 2 of the Indian Penal Code states that "every person shall be liable for punishment under the Code and not otherwise for every act or omission contrary to

the provisions thereof of which he should be guilty within India." Section 11 of the Code defines 'person' as any Company, association, or Body of Persons, whether incorporated or not.

**Tort law.** Tort law can be used to hold corporations accountable for human rights violations. As in the case of *Union Carbide vs. Union of India*, the corporate veil can be lifted and directors and agents held liable (1988).

**Laws governing the environment.** Various laws such as wild life protection, forest conservation, and control of water and air pollution have long been in place in India, but the Bhopal Gas tragedy resulted in the passage of the Environment (Protection) Act in 1988. The Act imposed harsh penalties and criminal prosecution on Company officials who violated environmental laws.

**Labor Law and Welfare.** In India, various labour welfare legislations are in place that provide for worker health and safety as well as the prevention of worker exploitation.

**The Land Acquisition Act.** The act imposes procedural and substantive constraints on the sovereign powers of government to acquire land. It also gives landowners the right to challenge acquisition in court.

**Information Technology and Freedom of Information.** The Information Technology Act of 2000 includes provisions for dealing with corporate violations of human rights. The objective of the Act is to improve corporate governance and transparency.

**Legal Recourse for Corporate Human Rights Violations.** According to the International Commission of Jurists, in cases of HR violations, the aggrieved have several options for redress. These include monetary damages and injunctions, criminal sanctions, writ petitions, public interest litigation (PIL), and intervention by the Human Rights Commission.

#### **Obstacles in the Procedural Process**

The International Commission of Jurists has identified the following barriers to seeking redress.

**Inadequate legislation and lax enforcement.** It has been observed that current laws are insufficient to act as a deterrent. At the same time, both the federal and state governments have been found wanting in their efforts to provide justice to victims of human rights violations.

**Inadequate institutional mechanisms.** There is a virtual absence of non-judicial and quasi-judicial mechanisms in the Indian judicial system that can promote alternative dispute resolution, improve access to justice, and eliminate judicial flaws.

**Corrupt practices.** The all pervasive corruption has two direct implications for access to justice: first, companies may be able to influence the course of justice through their economic power and political connections; second, victims may lose confidence and incentive to seek redress for violations of their human rights through the legal system.

**Procedural Delays in seeking Justice.** A variety of reasons for judicial process delays have been identified, ranging from population and litigation explosion to an insufficient number of judges, insufficient resources and infrastructure, cumbersome court procedures, and delaying tactics used by lawyers, such as seeking unnecessary adjournments and filing frivolous applications. To remedy this situation, a number of steps must be taken immediately.

**Ignorance of one's own rights and indifference to the rights of others.** The uncertainty – social and economic – of the world around him focuses the individual's attention on survival for his own sake and for those for whom he is primarily responsible, his family," Austin writes. Individualism may have a negative impact on commitment to community values and public interests such as human rights and environmental protection.

**Expensive legal action.** In India, the cost of expensive litigation is considered so high that many victims are discouraged from seeking justice.

**Class actions and undeveloped tort law.** Mass torts and a large number of victims present substantive and procedural issues that traditional tort law does not address. Attempts to identify individual victims and the extent of injury and loss caused to each of them create an overwhelming situation of mass tort, testing the potential and capacity of the judicial process.

**Difficulties in prosecuting corporations criminally.** Companies and their officers can be held criminally liable under Indian law for specific wrongdoings. In practise, however, prosecuting and convicting corporations and their officers is difficult. The Bhopal disaster is a prime example of this.

**Difficulties in breaking through the Corporate Veil.** Companies in India have separate legal personalities, as do most other common and civil law countries. The same principle applies to companies within a corporate group, though courts may pierce the corporate veil in limited circumstances, such as when the subsidiary is formed to evade taxes or engage in other fraudulent conduct, or when it acts as an agent of the parent company. However, convincing the courts to pierce the veil is not always easy.

**Poor implementation.** Even if they are successful, there is no guarantee that a court order in their favour will be fully implemented. Leaving aside cases where it may be impracticable to carry out the idealistic orders of the courts, weak implementation of judicial orders occurs primarily as a result of corruption, powerful actors whose interests are at stake, governmental indifference, or institutional incapacity to carry out orders.

#### **Conclusion**

Human rights have earned a distinct place in academic debates. International organisations such as the United Nations are deeply concerned about human rights violations. In this

age of globalisation, when trade barriers are being removed and the world is becoming a village, the need for human rights protection is becoming increasingly apparent. Globalization has increased human greed, and as a result, governments are emphasising development at any cost. This implies a lack of regard for human values. Business organisations, particularly those operating under the corporate form, have a reputation for violating human rights, whether it is labour rights,

environmental degradation, corruption, or compromises with worker health and safety. As a result, in 2011, the United Nations requested a report from the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. The report emphasised various human rights issues that businesses should consider. In India, both the government and industry took steps in this direction.

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