

# An analysis of the implementation challenges and opportunities facing the National Action Plan on Business and Human Rights in India.

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## ABSTRACT

National Action Plans (NAPs) focused on enterprise and human rights are becoming an increasingly important concept and a growing trend. This paper highlights NAPs as a crucial tool for integrating business practices with human rights governance, offering a framework to assess how they contribute to fostering respect for human rights in the business world. It also provides an overview of NAPs policy in India, particularly in light of the impact of COVID-19. The article evaluates the effectiveness of NAPs based on six key criteria: scope, content and priorities; baseline assessments; stakeholder engagement; transparency; accountability; and resources. It discusses the potential of NAPs to promote a strong respect for human rights in the business context moving forward. Drawing on the authors' development of influential guidance on NAPs published in 2014, as well as their experiences supporting NAPs processes in various countries, the article provides valuable insights. In November 2018, during the Business and Human Rights Forum in Geneva, India officially announced its intention to create a National Action Plan (NAP) on Business and Human Rights. This positions India among 45 countries that either have a NAP or are in the process of finalizing one. The aim is to hold businesses accountable for their impact on communities and the environment, striving for sustainable and responsible corporate actions. While the initial draft of the plan has been in development for nearly a year, it is now in the final stages of extensive consultations with stakeholders, led by the Ministry of Corporate Affairs.

**KEYWORDS:** Human rights, governance, covid 19, company obligation to admire human rights, UN Guiding Principles on Business and Human Rights, corporate duty.

## OBJECTIVE OF STUDY

To understand the overview concept of national action plan on business.

To Understand the national action plan on business and human right in India.

To Role of national action plan in growth and development businesses and human rights in India.

To define all the guidance and importance regarding NAPs

## RESEARCH METHODOLOGY

This research paper is of a doctrinal nature and is very descriptive. The review and analysis were conducted by compiling secondary data from a variety of sources, including published reports, books, articles from different journals and newspapers, working research papers from various organizations or individuals, as well as blogs and other research papers presented at international conferences that are relevant to the topic.

## INTRODUCTION

The NAP is a policy by which a government articulates its action to fulfil its commitment to implementing the UNGPs. The vision of India's NAP stems from the Gandhian precept of trusteeship that defines that the reason of commercial enterprise is to serve all stakeholders.<sup>1</sup>

In November 2018, India made a formal announcement about its intention to broaden its National Action Plan (NAP) on business and human rights at the Business and Human Rights Forum in Geneva. By December of the same year, the government had started the process of developing this NAP by releasing a zero draft, committing to submit the final version by 2020. This initiative to create a NAP is part of the state's responsibility to implement the UN Guiding Principles (UNGPs). The zero draft usually consists of a list of relevant existing laws and regulations organized under the three pillars of the UNGPs: protect, respect, and remedy.

The NAP serves as a policy document that a central authority uses to express its commitment to implementing the UNGPs. The COVID-19 pandemic has acted as a real test for the notion of stakeholder capitalism. Moving forward, the relevance of an NAP will only grow, especially since the pandemic has revealed numerous systemic flaws in organizational performance.

In India, informal migrant workers are bearing the worst of it, suddenly finding themselves out of work and without food, shelter, or any social safety nets – all overnight. According to the International Labour Organization (ILO), about 400 million Indian workers are at risk of slipping further into poverty. More than ten years ago, India committed to the United Nations Guiding Principles (UNGP) on Business and Human Rights. This meant that the country needed to create a National Action Plan on Business and Human Rights (NAP) to ensure that businesses uphold human rights.

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<sup>1</sup>What is India's Business & Human Rights National Action Plan? Developing a NAP on business and human rights is part of the State responsibility to implement the UNGPs <https://indiaccsr.in/what-is-indias-business-human-rights-national-action-plan/>

In February 2019, India published a draft NAP on Business and Human Rights, known as the ‘Zero Draft’, and additionally devoted to publishing the very last NAP in 2020. However, the final NAP continues to be no longer framed yet <sup>2</sup>

## NATIONAL ACTION PLAN IN INDIA AND COVID 19

The Indian Ministry of Corporate Affairs took the lead in drafting the National Action Plan (NAP) by collaborating with various Central and State ministries. The initial draft primarily consists of a compilation of relevant existing laws and regulations categorized under the three pillars set out in the UN Guiding Principles for Business and Human Rights (UNGPs): protect, respect, and remedy. However, it doesn’t provide an analysis of the current status or any gaps in these laws and regulations. The most crucial aspect of this zero draft is its declaration of commitment and a roadmap for future actions.

The NAP is a coverage record by way of which a government articulates its movement to fulfil its commitment to implementing the UNGPs. The imaginative and prescient of India’s NAP stems from the Gandhian precept of trusteeship that defines that the reason of enterprise is to serve all stakeholders.

Experts suggest that the COVID-19 pandemic serves as a crucial test for the concept of stakeholder capitalism. A National Action Plan (NAP) is becoming increasingly relevant in light of COVID-19, as the pandemic has revealed several systemic weaknesses in corporate operations. Informal migrant workers in India have been hit the hardest, suddenly losing their jobs and access to food, shelter, and social safety nets—essentially overnight. The International Labour Organization (ILO) estimates that around 400 million people in India are at risk of falling even deeper into poverty. The NAP’s relevance has grown because the pandemic has laid bare these vulnerabilities in how businesses function. The guidance for developing the NAP outlines a five-step approach: initiation, assessment and consultation, drafting the initial NAP, implementation, and review. Since 2011, the Indian government has emphasized the importance of responsible business practices by introducing the National Voluntary Guidelines on Social, Environmental, and Economic Responsibilities of Business (NVGs). Recently, these guidelines have been updated to the National Guidelines on Responsible Business Conduct (NGRBC). Alongside these voluntary measures, the Securities and Exchange Board of

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<sup>2</sup>This article is based on **“Would cats bell themselves? The wait for the National Action Plan on Business and Human Rights”** which was published in *The Down to Earth* on 31/03/2021. It talks about the prospects of the National Action Plan on Business and Human Rights. <https://www.drishtiias.com/daily-news-editorials/national-action-plan-on-business-and-human-rights>

India (SEBI), which oversees stock markets in the country, has mandated environmental, social, and governance (ESG) disclosures for the top 100 companies listed on Indian stock exchanges since 2012. These mandatory ESG disclosures have gradually expanded to include the top 1,000 businesses. Together, these guidelines and required disclosures provide a solid foundation for India's NAP.<sup>3</sup>

In February 2020, the NAP method transitioned to the second phase, focusing on assessments and consultations. The Ministry of Corporate Affairs reached out to the public for feedback, encouraging everyone to share their thoughts on the NAP development process. A key aspect of this second phase is the nationwide baseline assessment, which currently seems to be a significant gap. Without a thorough baseline, the NAP may struggle to identify and tackle crucial implementation challenges. For the NAP to truly work in the Indian context, it needs to place the rights-holder at its core. Intersectionality plays a vital role in shaping the NAP's effectiveness, especially for the most marginalized and vulnerable groups, including Dalits (those who are economically and socially disadvantaged at the bottom of India's unequal caste system), Adivasis (indigenous communities), women, children, and informal sector workers. One major issue the NAP must address is the dispossession of communities from their rightful access to and control over land, water, and other natural resources.

## ISSUES THAT INDIA'S NAP MUST ADDRESS

One major issue that the NAP needs to tackle is the dispossession of communities from their rights to access and control essential resources like land, water, and other natural assets that are crucial for their survival and livelihoods. In India, over 6.8 million people are caught up in more than 700 land conflicts. Another significant challenge for the NAP is the lack of decent job opportunities. The country is grappling with a wave of informal work, low-quality and poorly paid jobs, a gender wage gap, child labor, and forced or bonded labor. Social protection, occupational health and safety, unionization, and collective bargaining remain tough challenges, especially for casual workers. Certain laws, such as the Labour Codes, Child Labour Regulation, Maternity Benefit Act, Land Acquisition Act, and the Recognition of Forest Rights Act, could conflict with the NAP's implementation. For example, the Child Labour (Prohibition and Regulation) Amendment Act of 2016 permits children to work in family businesses after school hours, raising concerns about the rise of hidden forms of child labor. Trade unions in India have pushed back against recent labor law reforms, labeling them as 'anti-worker' because they make it easier for companies to hire and fire employees while complicating

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<sup>3</sup>Article India's business and human rights on national action plan *Written by Namit Agarwal, Asia Public Policy Lead, World Benchmarking Alliance* <https://www.ihrb.org/other/governments-role/commentary-indias-national-action-plan>

collective bargaining for workers. Additionally, state governments often sidestep the land acquisition process by creating 'land banks,' which leads to more land conflicts.

Taking a close look at the current legal guidelines, while engaging with the groups and rights-holders affected by them, is a vital first step in identifying any gaps in legislation and its implementation. The National Action Plan (NAP) should clearly outline its goals and establish accountability at local levels. The success of India's NAP hinges on the ability of micro, small, and medium enterprises (MSMEs) to embrace it. With a significant number of MSMEs in India, their engagement is crucial. The government and larger corporations play a key role in empowering the MSME sector through education, awareness, and incentives. As technology increasingly shapes the future of work, privacy, and inequality, it raises growing concerns in India. The NAP must take proactive measures to hold tech companies accountable for human rights issues, particularly regarding the rights of individuals in the gig economy. A balanced approach that combines both voluntary and mandatory provisions is essential for the NAP to create a fair playing field for businesses, including the establishment of necessary minimum standards and a mandatory Human Rights Due Diligence mechanism. The financial sector can support this by aligning its policies with the National Guidelines on Responsible Business Conduct (NGRBC) and the NAP, advocating for mandatory disclosures, due diligence, and grievance mechanisms in investment and lending selections.<sup>4</sup>

Indian National Action Plan is primarily based on the Gandhian principle of trusteeship. It defines that the purpose of commercial enterprise is to serve all stakeholders.

The NAP draft ought to be in keeping with the three pillars of UNGPs:

- 1.The State Duty to Protect Human Rights
- 2.The Corporate Responsibility to Respect Human Rights
- 3.Access to Remedy.

### **Elements which contributions to Business and Human Rights NAP**

A Working Group constituting representatives from relevant Ministries/Government Departments, NHRC, SEBI, and so forth. Will collectively work on drafting and implementation of the NAP draft. The elements which want to be kept in consideration include:<sup>5</sup>

- 1.Undertake a complete examine to assess the implementation of UNGPs in India thru a evaluate of India's prison and coverage framework

<sup>4</sup> [https://www.mca.gov.in/Ministry/pdf/NationalPlanBusinessHumanRight\\_13022019.pdf](https://www.mca.gov.in/Ministry/pdf/NationalPlanBusinessHumanRight_13022019.pdf)

<sup>5</sup> <https://byjus.com/free-ias-prep/national-action-plan-business-human-rights/>



2. Identify key precedence areas for the Government for effective implementation of the standards envisaged under the UNGPs and therefore set targets
3. Prepare time-certain coverage moves to attain targets
4. Articulate clean obligations of applicable Ministries/Department of the Government of India

### **Examples of Conflict in Business and Human Rights**

In recent years, there have been numerous cases filed for violations of Business and Human Rights. Here are a few notable examples: The Nestle Maggi case involved a complaint because the packaging claimed “no added MSG.” This sparked quite a controversy, and Nestle SA defended their stance by saying, “Everyone in the industry was doing it.” It’s illegal to market tobacco products near school premises, yet tobacco giant ITC Ltd. has school notebooks that kids are using in class. Over the past decade, several plants and offices have been shut down for breaching business and human rights regulations. This includes the Coca Cola Co. plant in Plachimada, which was closed in 2004, Hindustan Unilever Ltd.’s mercury plant in Kodaikanal in 2001, and the Sterlite Copper plant in Thoothukudi in 2018, among others. Therefore, it’s crucial for the relevant government bodies to establish legal and ethical guidelines for the Business and Human Rights National Action Plan.

### **STATUS OF DRAFT NATIONAL ACTION PLAN IN INDIA**

India has put out a draft National Action Plan (NAP) on Business and Human Rights. In creating this draft, the Ministry of Corporate Affairs (MCA) held a series of conferences and multi-stakeholder consultations with various relevant ministries, the National Human Rights Commission (NHRC), the Securities and Exchange Board of India (SEBI), area experts, and other important stakeholders. They also included representatives from industry institutions to discuss the intersection of business practices and human rights. Additionally, local consultations took place in cities like Kolkata, Mumbai, Bengaluru, and New Delhi. During some of these discussions, the MCA informed participants about the National Action Plan under the UN Guiding Principles (UNGPs) and encouraged active Ministerial involvement to help shape and finalize India’s National Action Plan.<sup>6</sup>

The draft National Action Plan (NAP) emphasizes that educating stakeholders about the NAP will involve open dialogue and collaboration with all Ministries and Departments of the Government of India, State Governments, and other relevant parties. A Working Group has been formed, including representatives from various Ministries, Government Departments, the National Human Rights Commission (NHRC), the Securities and Exchange Board of India (SEBI), and more. This group aims to explore and monitor the

<sup>6</sup> Article on national action plan on businesses and human right: <https://globalnaps.org/country/india/>

implementation of the UN Guiding Principles (UNGP) framework by assessing existing laws and policies. Additionally, the Working Group will facilitate discussions that involve multiple stakeholders at both national and state levels, including representatives from industry, trade unions, civil society organizations, marginalized communities, and relevant State Governments. Based on the observations and consultations mentioned earlier, the Working Group/Committee will conduct a thorough study to evaluate how UNGPs are being implemented in India. This will involve reviewing India's legal and policy framework, identifying key priority areas for the Government to ensure effective implementation of the principles outlined in the UNGPs, setting specific targets, and developing timely policy actions to achieve these goals. They will also clarify the responsibilities of the relevant Ministries and Departments of the Government of India. On December 17, 2019, UNDP India hosted a roundtable conference focused on the NAP for the IT sector. An opinion piece in the Delhi Post highlights how the draft NAP on Business and Human Rights represents a significant step forward and discusses how its framework can address issues in various conflict-ridden sectors, such as land rights in agriculture.

The Institute for Human Rights and Business has also shared some insights on India's draft National Action Plan (NAP). Their commentary dives into the context surrounding India's NAP and points out key issues that need to be tackled for it to be truly effective. According to the statement, these issues include access to land and natural resources, support for micro, small, and medium enterprises, and the generation sector, among others. The statement also stresses the importance of ensuring effective access to remedies and highlights the need for the NAP to address this challenge head-on.

## NATIONAL ACTION PLAN GUIDE

The NAP Guide aims to promote and enhance NAP techniques that lead to coherent and robust NAPs, which play a vital role in advancing respect for human rights within the business sector. These techniques serve as effective and valuable governance tools, contributing to meaningful and lasting changes in the public sphere and beyond. At the same time, the Guide seeks to encourage NAP strategies that are inclusive, transparent, and empowering for rights-holders. It also outlines a set of criteria for NAPs across six key areas.<sup>7</sup>

1. Governance and sources
2. Stakeholder participation
3. National Baseline Assessment (NBA)
4. Compass, content, and precedence's

<sup>7</sup> National Action Plan on Business and Human rights: A Critique *Vedangini Bisht* is a third-year student at National Law University Delhi. <https://indiacorplaw.in/2020/04/national-action-plan-on-business-and-human-rights-a-critique.html>

## 5. Translucency

## 6 Responsibility and follow-up.

The UN Working Group (UNWG) shares its perspective on how countries should approach the development, expansion, content, and implementation of successive versions of their National Action Plans (NAPs). The main goals are to promote effective NAP processes that can prevent, mitigate, and address negative business-related human rights impacts while also improving access to remedies. Additionally, it encourages more countries, civil society, and businesses to enhance and support these NAP strategies. This guidance is rooted in the understanding that there's no "one-size-fits-all" method for creating NAPs. It doesn't prescribe a specific way to develop them or dictate what content should be included. Instead, it offers guidance on procedural and content elements to consider based on the national context in which NAPs are developed. This guidance serves as a practical tool for all stakeholders involved in NAP processes within companies. It aims to assist government institutions leading the NAP development process and to provide a benchmark for other stakeholders to evaluate government actions. It's important to highlight that the responsibilities of states and businesses under the UN Guiding Principles (UNGPs) exist independently of NAPs. Nothing in this guidance or in NAPs should be interpreted as altering the terms of the UNGPs or hindering their implementation by states or businesses. The guidance incorporates lessons learned by the UNWG in fulfilling its mandate, including engaging with and actively supporting the development of NAPs in various countries. It is further enriched by numerous discussions held by the UNWG with diverse stakeholders across different regions and the feedback received from its open call for written comments on version 2.0 of this guidance.

This steering document acts as a 'living record' that can be updated by the UNWG as needed. Here's how this Guidance is structured: Section 2 lays out what a NAP is and highlights the four key standards that the UNWG believes are essential for effective and progressive NAP processes. In Section 3, we discuss how to develop a NAP. The NAP process is broken down into five phases, and for each phase, we provide a set of recommended practical steps. Finally, Section 4 offers general recommendations on the topics that should be included in a NAP.

## OVERVIEW AND ANALYSIS OF NATIONAL ACTION PLAN

In 1999, the United Nations organized an Inter-sessional Workshop in Bangkok focused on creating a National Plan of Action to promote and safeguard Human Rights. Shri A. Gopinathan, the Joint Secretary (UN) from the Ministry of External Affairs, who attended the workshop, sent a copy of the notes along with some practical suggestions to help develop the National Action Plan (NAP). This information was presented to the Commission during its meeting on August 13, 1999. By the year 2000, the Ministry of Home Affairs expressed



that developing such a National Action Plan would be both beneficial and necessary. The Ministry believed that steps like conducting a baseline study on this issue across the country, as well as establishing priorities and strategies, were crucial for formulating a solid plan. Regarding who should carry out the baseline study, the Ministry felt that the National Human Rights Commission (NHRC) was the right organization for the job. The Commission was clear that the responsibility for preparing the National Action Plan ultimately lay with the State parties, particularly the Government. However, since the Government had asked the NHRC to take the lead, the Commission thought this opportunity could be used to guide the Government in drafting the Plan of Action..<sup>8</sup>

The Ministry of Home Affairs sent over a draft created by Shri Shankar Sen from the Institute of Social Sciences in New Delhi, asking the Commission for assistance in putting together a National Action Plan. This topic came up during the Commission's meeting on May 27, 2004, where it was agreed that the Commission had no fundamental objections to the idea of adopting the National Action Plan. However, they made it clear that they would approach this work on their own terms, keeping in mind their status as an independent National Institution. The Commission revisited the National Action Plan's educational aspects on February 18, 2005. They decided to take on this project, using the draft prepared by Shri Shankar Sen as a foundational document, and planned to engage in ongoing discussions and consultations with the MHA before finalizing the draft. To help formulate the National Action Plan, the Commission set up a Working Group and an Advisory Committee. Meetings for the Working Group on NAP for Human Rights took place within the Commission during February and June 2006. They decided to focus on areas that would need ongoing dialogue and discussions before finalizing the documentation for the National Action Plan on human rights. The first meeting of the Advisory Committee was held on December 19, 2006. It was agreed to form smaller groups for each topic, which would include one or two experts from the relevant field, along with representatives from the concerned Ministry and State Governments. The insights provided by these experts would be used to shape the National Action Plan.

The specialists of the small organization submitted draft National Action Plan on the following subjects: Right to Health, Right to Food, Right to Housing, Right to Custodial Justice, Prevention of Human Trafficking with Special Focus on Children and Women and Right to Education. The second assembly of the Advisory Committee became hung on October 30, 2007 within the Commission.

In the meeting, it was decided to convene the conferences of the Advisory Committee within the Commission below the Chairmanship of Dr. Justice Shri Shivaraj V. Patil on each of the subjects. The method of

<sup>8</sup> National human right commission <https://nhrc.nic.in/press-release/national-action-plan>

finalization of the National Action Plan on all of the above issues is in complete swing and is anticipated to be completed earlier than December 31, 2007.<sup>9</sup>

## CONCLUSION

In this discussion, we wrap up by highlighting that the National Action Plan (NAP) is not just a process but also a chance for India to take the lead in fostering sustainable and inclusive growth. NAP has the potential to reshape the business landscape by prioritizing human rights. The primary aim here is to outline India's legal framework that defines the state's responsibility to safeguard human rights, establish corporate accountability to respect these rights, and provide avenues for remedy in cases of business-related human rights violations. Through the current National Action Plan for Business and Human Rights, India seeks to enhance the global human rights landscape and infuse a social dimension into globalization, aligning with the 2030 Agenda for Sustainable Development. The existing Action Plan is designed to create a roadmap for effectively implementing the Guiding Principles. Its objective is to harness the strengths of various stakeholders, including government, businesses, civil society, and trade unions, to actively improve human rights conditions throughout supply and value chains both in Germany and globally. By establishing reliable foundational conditions for German companies, the Federal Government aims to promote a level playing field on an international scale and continue the momentum initiated in 2015 when the G7 leaders endorsed their commitment to sustainable supply chains. Achieving a shared understanding of due diligence, as outlined in the UN Guiding Principles, is essential to reaching this goal.

The UN Working Group suggests that countries develop their own National Action Plans (NAPs) focused on business and human rights. However, it also acknowledges that in certain national contexts, it might be beneficial to integrate the NAP within broader government strategies, such as those related to development, human rights, labor rights, or corporate social responsibility. Regardless, governments need to ensure that their NAPs align with the key criteria outlined in this guidance, as well as their legal obligations at both national and international levels. We identified the following objectives and significance of NAPs: The Federal Government places great importance on global safety and the promotion of human rights. In its 2011 Communication titled “A renewed EU strategy 2011-14 for Corporate Social Responsibility,” the European Commission urged all EU Member States to create their own national action plans to implement the UN Guiding Principles. The Federal Government, as part of the coalition agreement in 2013, committed to enforcing the UN Guiding Principles in Germany. The goals of the NAP are to make the UN Guiding

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<sup>9</sup> NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS A Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks [https://media.business-humanrights.org/media/documents/files/documents/DIHR\\_-\\_ICAR\\_National\\_Action\\_Plans\\_NAPs\\_Report.pdf](https://media.business-humanrights.org/media/documents/files/documents/DIHR_-_ICAR_National_Action_Plans_NAPs_Report.pdf)

Principles on Business and Human Rights practically relevant for all stakeholders, to clarify the responsibilities of both the state and businesses, to ensure policy coherence, and to maintain the sustainability and competitiveness of German enterprises.

NAPs create a great opportunity for strong collaboration, open discussions, and trust-building among stakeholders. Acting as centralized national coverage files, NAPs allow governments to communicate a clear policy stance, even when dealing with complex and diverse topics. The national action plan helps to eliminate duplication or inconsistencies between different government departments, which ultimately leads to a more efficient use of resources. The current Action Plan is designed to develop a roadmap for the practical application of the Guiding Principles. Its aim is to unite the capabilities of various players from government, business, civil society, and trade unions, specifically to actively enhance the human rights situation throughout supply and value chains in Germany and globally. By establishing reliable foundational conditions for German businesses, the Federal Government is working towards a fair global playing field and continuing the process initiated in 2015 when the G7 leaders endorsed their declaration on sustainable supply chains. A common understanding of due diligence, as defined in the UN Guiding Principles, is a key approach to achieving this goal.

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