



D.O.NoR-17/19/2020-PRP&P

5<sup>th</sup> October, 2020

Respected *Sir/Madam,*

The National Human Rights Commission (NHRC) is mandated by the Protection of Human Rights Act, 1993 to promote and protect the human rights of all in the country. Towards fulfillment of its mandate, the Commission is deeply concerned about the rights of employees, employers and other stakeholders, who have suffered unprecedented livelihood disruptions due to COVID-19 pandemic and resultant lockdowns and felt a need to prepare advisory to uphold their rights.

2. In order to assess the impact of the pandemic on realization of the rights of the employees, employers and other stakeholders, the Commission constituted a Committee of Experts on Impact of COVID-19 Pandemic on Businesses & Human Rights and Future Response including the representatives from the concerned ministries, private sector representatives, civil society organizations and independent domain experts.

3. On the basis of impact assessment done by the Committee of Experts and recommendations made by it, the Commission hereby issues an advisory on **"Impact of COVID 19 Pandemic: Businesses & Human Rights and Future Response"**, as given in the annexure.

4. May I please request you to direct the concerned department(s) in your Ministry (ies)/States/UT (s) to implement the recommendations made in the advisory and to submit the action taken report for information of the Commission.

With regards,

Yours Sincerely,

Encl: As above

*(Signature)*  
(Surajit Dey)  
Registrar (Law)

To

**The Secretary,**  
Ministry of Corporate Affairs, M/o MSME and Mo Heavy Industry and Public Enterprises  
North Block  
New Delhi-11000

**The Chief Secretary/Administrators of all States and UTs**



## **Advisory on Impact of COVID 19 Pandemic: Businesses & Human Rights and Future Response**

### **Background**

The COVID-19 global pandemic first outbreak was reported in early December 2019, in Chinese city of Wuhan, when 41 patients were diagnosed with pneumonia with no clear cause. Now, on end of September 2020, COVID-19 has around 33 Millions confirmed positive cases globally and spread its infectious footprints across 188 countries across the globe living behind more than 0.9 Million deaths tolls. This has been further followed by unprecedented and large-scale disruptions in human lives & livelihood affairs resulted due to series of lockdowns, which are being imposed even since start of year 2020 across many countries to check the spread of virus from person to person or and community spread.

With more than 188 affected countries, the global environment seems to be of caution and preparedness to deal with a lingering pandemic. However, the rapid increase of person to-person & community transmissions followed by failed containment measures are collectively slowing down the global economy into a state of flux, raising unpredictability and, consequently, market volatility. As far as India is concerned, it reported its first novel Corona virus (nCoV) case on 30th of January 2020 in its State of Kerala, when an Indian Student studying in Wuhan University travelled back to India. Presently, India has more than 6.07 Millions of confirmed cases of COVID-19 with the official death counts of more than 95 thousands and recovered number of cases is approximately 4.85 Millions (as on September 29, 2020).

With large parts of the country being placed under an effective lockdowns (4 phases of nationwide lockdowns from 25th March to 31st May, 2020 & 4 phases of unlock ranging between 1 June to 30th September, 2020), as a result businesses have been facing a future of uncertainty and supply chain disruptions, including for procurement of raw materials for production. Anticipation of an economic slowdown has already led several businesses to pull back from agreements for fear of non-performance, leading to a fall in the overall volume of business activity in February 2020 to the lowest level recorded in the past 6 years.

Although, a slowdown in raw material supply may hurt certain dependent industries, it also presents an opportunity for the Indian companies to fill the void around



the globe. Meanwhile, based on the rapid spread of the virus around the globe, the World Health Organization (WHO) continues to upgrade its global risk assessment. In addition to the grave health consequences of COVID-19, the virus is having a major negative effect on international business, disrupting numerous global supply chains. The sectors most affected are Aviation, Shipping, Transport & Tourism, Hospitality, Manufacturing and Retail.

COVID-19 outbreak also caused disruption in supply chain, which resulted in cancellation /delay in contracts. Further, companies may not be able to perform their obligations under their customer agreements because of their supplier's non-performance and may in turn seek to delay and/or avoid performance (or liability for non-performance) of their contractual obligations and/or terminate contracts.

As the scale of COVID-19's impact on people, economy and planet continues to emerge, "the relevance of the values and standards of the UN Guiding Principles for Business and Human Rights grows exponentially". Thorough human rights actions and due diligence are key to responsible business conduct both in the immediate and in the wake of the crisis.

There is, therefore, a need to prepare advisory to uphold the Human Rights. The Advisory has been framed in consultations with **various stakeholders including representatives from Ministry of Corporate Affairs & MSMEs, International Labour Organisation (ILO), Quality Council of India (QCI), Confederation of Indian Industries (CII), Private Sector Representatives, N.G.Os, Civil Society & others.**

The Advisory is aimed at serving as an orientation for business heads/leaders/enterprises/MSMEs etc to help them integrate the human rights & human rights approaches into their decision making process and communications, in the backdrop of COVID-19 crisis management. As the global pandemic has turned both employees as well as employer into ultimate victim, there is need to adopt a balancing approach to embark upon the COVID induced shocks on businesses across formal & informal sectors in order to create such ecosystem or business modules amid and post-COVID, where sustainable business activities continue uninterrupted, while keeping safeguarding human rights of all stakeholders at highest priority.





### **1. Need for responsible business practices to protect informal workers during COVID19 pandemic**

Major apparel brands and retailers have cancelled or delayed payment for orders from suppliers in response to the COVID-19 crisis, **risking the livelihoods of millions of informal workers in their supply chains**. Many factories have had to reduce or cease operations, and as a result millions of **workers have been furloughed or laid off** - often without severance pay or adequate social protection. Where factories remain in operation producing apparel or Protective Personal Equipments (PPEs) as retailers, re-purpose their supply chain workers are reporting being forced to **work without adequate precautions**, leaving them, their families and communities at **risk of infection**.

### **2. Governments & Financiers can increasingly urge companies to use (emergency) funds to support stakeholders not shareholders**

As the scale and scope of the COVID-19 pandemic, and the impacts on business and workers and communities, continue to grow, so do calls for a 'new social contract'. Increasingly, companies are urged by governments and investors to focus not only on shareholders but to **prioritise key stakeholders, particularly employees**, in their responses to the pandemic. India can also take lessons from some global practices. The European Union Parliament, in a resolution adopted on 17 April 2020, for instance, insists public financial support should be conditional on companies using funds "to benefit employees [and] **refraining from tax evasion [and] paying out dividends**".

### **3. Due Diligence Framework for Businesses to manage the COVID-19 shocks**

Ministry of Corporate Affairs (MoCA) may propose businesses to use **human rights due diligence framework** as a starting point to approach the crisis in the context of their business. It is intended to be a practical contribution to illuminate the key concepts and the rationale of the Guiding Principles on Business and Human Rights in the context of the COVID-19 crisis. Businesses having already have human rights due diligence procedure in place; will have stronger capacity to react in a more effective and faster manner. As the MoCA has already released the National



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Guidelines on Responsible Business Conduct (NGRBC) in year 2019 & under the NGRBC, Principle 5 deals with the clause that businesses should respect & promote human rights.

Furthermore, the due diligence framework being a methodological structure, need not necessarily orient only to the identification of risks and impacts and its management, but also to **build differentiated capacities in terms of learning, anticipation and organizational resilience.**

#### **4. Prevention of Human Trafficking**

Businesses should also closely examine their supply chains to ensure **labour trafficking** is not occurring as part of the creation and distribution of products. Widespread **unemployment rates** have many individuals taking greater risks to find work, which **increases their likelihood of being trafficked**. Fewer employment opportunities also increase survivors' vulnerability to being re-trafficked.

#### **5. Business Continuity and Risk Management**

To ensure business continuity, having an emergency scenario is essential. In the current situation, it is vital to react as fast as possible in order to mitigate impacts and other risks and to prepare the organisation for the further development of the COVID-19 pandemic and its possible scenarios. **Business continuity management** covers infrastructure, cyber, employee, business, operational and communication risks, with the aim of managing an organisation that has to face new challenges and risks and wants to ensure continuity of operations and production.

#### **6. Advisory for business heads or employers; mitigating employee and infrastructural risks and resolving workplace issues**

##### **A) For Employers/ Business Heads (including MSMEs):**

i. Conduct a **mapping exercise** to identify, who might be most impacted by the crisis. For the mapping exercise, taking a sector wise and affected stakeholder approach can be considered, while including areas of forced labour, child labour, discrimination, unfair wages, etc. This should also be further applied in developing an index and dynamic dashboard to promote disclosures in terms of sustainable human rights practices across business firms.



- ii. Adopting a **sector wise approach** and **vulnerability approach** for the **mapping exercise** based upon the nature of the workforce involvement & affected intensity /impact on the sector amid and post-COVID
- iii. Prioritize **workers' safety** and/or their financial security over executive pay and/or shortterm returns to shareholders, as recommended by UNPRI (Principles for Responsible Investment).
- iv. Get prepared to **address potential discrimination (gender etc.) in the workplace.**
- v. Create a **Crisis Management Committees (CMC)** to tackle COVID-19 situation & inclusion of CSR representatives in the CMC.
- vi. Encouraging businesses and employers to build a system on place particularly on **Human Rights Policy** not only on COVID but also on similar Human Rights potential issues in future (if any).
- vii. Give special attention to **workers along supply chains.**
- viii. Support **local communities** located in the influence area of businesses operations.
- ix. Public positioning on the support of appropriate action.
- x. For the FY beginning 2021-22, for two years companies in the sector, which are badly hit on account of COVID, should be allowed to adjust the employees/workers salary against their CSR Obligations.
- xi. With the aforesaid as the proposal, layoff on account of COVID-19 shouldn't be the rational provided by the Company however restructuring of the Company in ordinary course shouldn't be impacted.
- xii. Workers- Employers should ensure that all employees are provided with health insurance either directly or through Government, but companies should have record.
- xiii. Developing a system or mechanism for self assessment and on-site assessment by the business entities in the pioneered stand by the top management /heads regarding keep an eye upon frequent status reporting on safeguarding comprehensive human rights. It should also be ensured that NHRC's Advisory & other advisories



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issued by different Ministries/agencies (if any) particularly focusing upon protection of human rights across businesses are being implemented on de facto basis.

xiv. Freedom of association and the right to collective bargaining should be respected, also as a basis for a joint employer – workers response to the crisis.

xv. Any form of human trafficking and exploitation with child worker, migrant worker should be discouraged by the employer/ contractors followed by strict adherence to the global (ILO Standards, Conventions )& Constitutional obligations related to Right to Work, Minimum Wages etc.

xvi. Encouraging Unregistered Contractors should be bring under temporary framework/system through the governmental schemes

#### **B) Mitigating Employee Risks:**

i. Analyse key roles that require **on-site access**, plan a backup plan in case of their absence (e.g. substitutability).

ii. Design measures to help employees' with management of stress and stressful situations.

iii. Arrange a method of **assigning and distributing employees** at various levels of operational reduction.

iv. Set up access for **employee mobility** (division of shifts, transport, etc.).

v. The Advisory needs to have more **gender focused** than now. It needs to acknowledge that gender based discrimination is increasing; indebtedness and forced labour causing scope for sexual harassment. Businesses are advised to track discrimination and proactively ensure clean toilets, menstruation pad.

vi. Guidance on conducting awareness **trainings of employees on human rights** to overcome the hindrances available in the human rights awareness among employees/workers. Conducting trainings of senior management on dealing situations of unforeseen and exceptional risks.

vii. Providing **health insurance** cover for every employees, which may cover hospitalisation including medicine and provision for usage of any kind of kits may be encouraged



viii. Safeguarding the human rights of workers indulged in informal sector works, who are largely affected by this Corona Financial Crisis, while keeping in view that large chunk of workers who have lost their jobs & gradually returning to the urban industrial clusters from their native places

**C) Mitigating Infrastructure Risks:**

- i. Check the readiness of infrastructure and other services (**Software as a Service (SaaS) etc.**) for the higher load of employees working remotely.
- ii. Check if the **corporate systems can be managed remotely** without the physical presence of IT employees (Operations, Support etc.).
- iii. **Map single points of failure in the infrastructure** in case of remote operations, design counter-measures.
- iv. Prioritising **Cyber Security risks** from human rights perspective (**right to privacy & Intellectual Property Rights**) in order to safeguard the vital data footprints, which are being transmitted through multiple channels (IT Firms/Banking etc.).
- v. Define the **responsibilities of suppliers** according to SLAs in case of emergency situations, draft any required amendments.
- vi. Set up **sufficient IT support infrastructure for remotely working employees**. Social engineering attack strategy needs to be framed so for mitigating Phishing, Spear phishing, Pretexting etc.
- vii. Prioritising **access to corporate systems** (Top Management priority etc.)
- viii. Review the numbers of application licences that ensure remote access.

**D) Resolving Workplace Issues:**

The COVID-19 outbreak could begin to throw up a variety of employment law issues relating to travel, health and safety concerns, sickness and absence. To ensure a safe and healthy working environment, employers should do '**everything reasonably possible**' to ensure prevention. Below is an overview of the key workplace related issues that employers should consider:





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- i. **Check with official sources** (e.g. website of the Ministry of Health and Family Welfare, Government of India, official sources such as the World Health Organization) to see if there is an official recommendation and implement them.
- ii. Inform employees unambiguously about steps, including measures to be taken including certain hygiene guidelines. Workplace guidelines should be strictly followed.
- iii. **Keep the lines or channels of communication open** Educate the staff without causing panic by keeping them up to-date with factual and accurate information from reliable sources.
- iv. **Grievance Redressal Cell** for reporting & tackling **Human Rights Issues** specifically
- v. Make **provision** of specific equipment such as **hand sanitizers** and **face masks**, if the risk becomes real.
- vi. **Travel-** Employers should review how best to protect **staff travelling on business**, especially if they are travelling abroad, when tailored guidance and support may be appropriate. Further it would need to be considered whether measures are in place to deal with staff being quarantined or falling ill when abroad.
- vii. **Leave entitlement-** Given the communicable nature of the disease, it may be advisable for the employers to allow **affected employees to proceed on paid leave**.
- viii. **Termination-** It is advisable that the employers do not terminate any employee on the ground of him/her being a COVID-19 patient or suspected patient.
- ix. **Work from Home-** The employer may, in principle, allow an employee to work from home. Inclusion of management of cyber security risks due to remote nature of work.
- x. **Entry into workplace-** An employer has a legal right and an obligation to prevent an employee who is suffering from communicable diseases like COVID-19 from entering the workplace for the protection of other employees.
- xi. **Respect Employee Privacy and Avoid Discrimination** - Employers should treat **employee health information as confidential** and should ensure that their policies apply to all employees equally and not single out those of a particular nationality, ethnicity or other protected class, or those perceived to have contracted COVID-19.



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- xii. It is important that formal workplace mechanisms for resolving workplace issues need to be promoted. This would include mechanisms such as Grievance Settlement Authorities and Works Committees (as provided for in the Industrial Disputes Act, 1947).
- xiii. Arranging **regular Safety Drills** at work place across Manufacturing & Service Sectors (particularly say at Construction places)
- xiv. **Staggered or Shift based working hours** might be promoted across businesses

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