

Business and Human Rights Violation: A Study on Selected Corporate Human Rights Violation Cases in Indian As Well As Global Context

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ABSTRACT

Business and its key stakeholders are entitled to share responsibility of each other, but this responsibility is primarily monetary in nature. This monetary relationship only encompasses the profit as a key characteristic to define it. The stakeholders i.e. shareholders, employees, owners, suppliers, distributors and society take keen interest in securing each other's stake in business but the interest term lacks humane character. Due to this, void the humane character even if violated goes unnoticed, unattended and unheard. This in turn imbalances the relationship that exists between business and its key stakeholders whereby the society and its members feel the heat of neglect and history has got number of cases in its lap to present this generation a challenge, a query to introspect that where lies the responsibility, who to share this responsibility, the key beneficiaries of business end products and proper check and balance system to evaluate the business motives. This paper is intended to study the cases of business and human rights in context of the policy practice and law not only limited to Indian Territory but as a world whole. On global front International standards, addressing business and human rights have begun to emerge recently, with a binding international regime yet to be developed. Various Initiatives such as the United Nations Global Compact and the OECD Guidelines for Multinational Enterprises comprise voluntary and legally unenforceable standards which have served to bring some prominence to the issue of business and human rights internationally. Human rights bodies have also addressed the human rights obligations of States about private actors, including businesses. With the wave of globalization, the human rights and its relationships with business have gained dynamic definition. The law and policies have to be global at one end and country specific on other. This in turn makes the role of state more critical in terms of policy formulation and implementation. We as a researcher will make a sincere attempt to investigate this matter and come up to a conclusive model.

Keywords: Business, International standards, Monetary, Multinational enterprises, Stakeholders.

1. INTRODUCTION

Business as a term was defined in late 18th and 19th century by production, materials and labor. These three variables used to determine the overall health of an enterprise, which in collective form defined the industry parameters. The industry parameters hereby include growth, market share and its relative importance to the economy. The era of industrial revolution paved the way for new business term i.e. profitability. Industrialists, academicians and behavioral scientists rigorously researched on the paradigm shift from productivity to profitability. The profitability encompassed in itself a variety of dimensions that productivity never thought of. An organization's importance in industry that earlier was a domestic affair now adopted an international character. The international character grew at an enormous pace because of the involvement of regional economic bodies such as OECD and UN agencies. Profitability, which earlier was a function of tangible variables such as productivity, economic growth, market share and customer count incorporated intangible and unexplored organizational variables. The intangible variables in this context were employees, employee welfare, code of discipline, grievance mechanism and business code of conduct. Enterprises at an individual level were dormant in adopting a business code of conduct based on humanistic values and legal grounds. It was a boundary less effort from various international agencies that sparked a sense of urgency amongst the enterprises to consider human rights as the basis for evaluation of their credit worthiness in the market place. This phenomenon if evaluated on a global scale will reflect disparity and

disproportionate results between developing and developed countries. The reason for the disparity lays in the fact that state and policy makers in developing economies were and are enchanting the verses of productivity and profitability without taking into consideration the material power of human rights. The basic notion of enterprises in developing economies lies on policy formulation rather than its equitable enforcement. In Indian context, the history validates the above said proposition with the case of Bhopal gas tragedy; the recent international case of BP oil spillage strongly supports the validation. In today's economic environment the overall health of an economy and its indices is monitored not only on domestic front but also on an international arena. The organizations that top the list of most productive and preferred are the one with socially responsive character with societal obligations and responsibility. In short, the reason this topic is important is that business can potentially affect all internationally recognized human rights. The impact is primarily in the processes of the enterprise right from in house activities to market place. Therefore, the international community has been wrestling with this complex area for some time especially since the impact of some businesses on rights began to outpace that of some rubber stamp institutions. Globalization and technology have been the key drivers in this respect. One of the marked event in this context was in 2005, the Secretary-General of the United Nations, Kofi Annan, appointed Professor John Ruggie as the Special Representative of the Secretary-General on the issues of human rights, transnational corporations and other business enterprises. This mandate saw the 2008

approval by the Human Rights Council of a United Nations Framework for Business and Human Rights, and culminated in the 2011 endorsement of Guiding Principles prepared by the Special Representative with a view to implementing the UN Framework. Such mandates and policy initiation catalyses the process of recognition of human rights as the basic policy measure to be taken at front by the corporations. The United Nations growing realization towards the issue of human rights hold relevance in this context. The transnational corporations increasingly are penetrating into the geographical boundaries of other nations thus increasing the level of labor mobility and technology prowess. This cross border trade equation needs regular monitoring and check as the recent past depicts the cases wherein the breach of rights have been witnessed. The UN in response to this has come with the framework that rests upon three pillars "protect, respect and remedy". Protect refers to the safeguarding the rights of all the key stakeholders associated with the enterprise. Respect refers to the degree to which the transnational organizations comply with the host country trade policies and guidelines without diluting their essence. Remedy refers to the policy framework of the nations to combat against the proliferation of rights. The competition across the globe has forced the corporations to enter into the league marked with profitability and output concerns rather than the wholesome health of the organization. Recent past has witnessed the expansion of multinational corporations not only in terms of number but in the size also. This influences the decision-making ability of the apex institutions responsible for the policy formulation. The reason being for this anomaly is that there are nations where the annual turnover of the MNC's is greater than the GDP thus affecting the policy making of these nations. The intersection of these challenges bring forth the need to research into the unexplored insights so that a concrete body of literature arises to support the factual evidence. In developing economies especially India, which is a subject under consideration for this research paper, highlights the grey areas to take under study.

2. NEED FOR THE STUDY

The current human right scenario across the globe demands the state and its stakeholders to cater to the uprising issues of violation. The developing countries whose economies are primarily state dominated and possess intervention power can come up with the domestic regulations in order to protect and safe guard the rights of workers at each level of an enterprise. The established duty of government, corporations, international agencies and civil society to protect human rights from being violated by third parties, including business should be of topmost concern. The duty acceptance is largely dependent on the international human rights regime, in which States bear interrelated obligations to respect, protect, promote and fulfill human rights within their territory and/or jurisdiction. The research findings suggest that the correlation between the human rights and business operations across the globe is not positive and there are cases in history of trade that

supports the proposition, one among them being international slave trade. We as a global community where domestication is losing its relevance need to consider relevant regulation and adjudication at the domestic, regional and international levels for the fulfillment of the duty to protect human rights in the context of business. The concept of extraterritorial jurisdiction as a means of ensuring and improving the ethics of globalization is highly debatable issue. The home and host country international laws and their complementary behavior determine the impact of MNC's on the host country environment. In certain cases, the powerful economies who operate in underdeveloped economies like African countries exploit the resources of the host nation that contribute to the term of trade abuse. The State's protection against human rights violations by business when acting outside of its territory is particularly relevant in the context of a globalised economy and the transnational nature of many business activities. The UN Guiding Principles clearly dictates, "States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations". Certain historical landmark achievements in the field of human rights reveals that OECD as a body actively established the guidelines for the multinational enterprises in 1976 which was later refreshed in its context in the year 2000 whereby the supervisory mechanisms were developed. The member countries of OECD and other nations made it clear for the multinational companies operating in the host country to 'respect the human rights of those affected by their activities consistent with the host government's international obligations and commitments. In response to the above said initiatives, the need for choosing the theme stands clear that multinational corporations have penetrated in each corner of the world. Nothing is untouched or unexposed to the businesses in this era. At present, we need to create a universal conscience (individuals, trade bodies, policy makers, regional associations) to create international cooperation for the human rights and at the same time extend the cooperative benefits to the countries. This will promote the promotion of equitable humanitarian society build on the pillars of respect, rights and justice. The literature and the policy documents on the issue of human rights across the globe extensively show the legalities but the missing part of the documents remains untouched. We as an international community have created regional blocs with priorities of trade, profit and growth as the regional agenda. At the regional level, we have failed to incorporate the human rights issue as it affects the every stakeholder of an enterprise. Trade agreements, negotiations tax benefits and custom clearances are the most discussed and debated issues whereas the human rights violation hardly finds a recognized platform to be discussed. This void created at the nascent stage of international developments create the future gorges of violation and human race suffers primarily at the base of pyramid first and then shook the whole economic trade web. At an international level the legally binding instruments can't be facilitated at the economies although being global do possesses individual

local character also. The local character if complements the international guidelines create a synergistic impact otherwise lead to a zero sum game. The violations committed by the transnational corporations in their mainly transboundary activities do not come within the competence of a single State/government and, to prevent contradictions and inadequacies in the remedies and sanctions decided upon by States individually or as a group, these violations should form the subject of special attention. In developed countries the attention paid to these cases are mostly handled by the process of arbitration or conciliation but in the context of developing countries where success if arbitration falls prey to the clutches of poor arbitration body and mechanisms the 'special attention' should ne adjudication. The global trading community and the international civil society should combine their efforts to contain such activities by the establishment of legal standards capable of achieving that objective. It seems uncontested that the regulation of international human rights needs to address the cases of violation in a systematic manner by taking the consultation of the nations competing for the justice. Different regional bodies need to come up with the policy measures to cater to the existing menace as they are sensitive to the local environment and can come up with concrete and adaptable mechanisms.

3. REVIEW OF LITERATURE

The human rights primarily were the relationship between the government and the society and were administered by the internal policies of the nation. The subject with the advent of time gained the interest of foreign politics and a matter of international attention (Vladimir Makei Minister of Foreign Affairs Republic of Belarus). The three principles of human rights quoted by Margaret Jungk in his paper titled "complicity in human rights violation" can be connected and applied to the above said context. The three basic human rights principles are enabling principle, causality principle, severity principle and power principle. The enabling principle provides the concerned state the empowerment to deliver on the issues of human rights provided the intention to deliver should be present there. The state especially in developing economies should build up the empowering institutions that can direct their working

efforts towards diagnosing the infected areas of the society where the violations are intense or are a future concern. This step being more proactive in the nature provides the policy makers the opportunity to brainstorm all the available options for building up the methodology of empowering institutions. There is a need for the realization of the importance of human rights standards and principles in policy formulation and its implementation. A role for a human rights-based approach in policy making to support and sustain human development is critical. Our state that acts as the custodian of the citizens of India need to create awareness so that the enlightenment in terms of capabilities of individuals and their basic entitlements in terms of economic, social and cultural rights and civil and political rights is felt. State should continuously strive to overcome the artificial dichotomy between the two sets of rights (human rights and business rights) and pointed out the need for appropriate prioritisation referring to issues, such as human deprivations, inequality and social exclusion. In the Indian context, several policy gaps and issues identified by the National human rights commission of the India include the directed approach towards the programme implementation that could benefit from a rights framework, including those related to employment guarantees in rural areas. The inadequacy of social security system in reaching out to the excluded and the marginalised that need public support more than the others is key concern. Bureaucratic bottlenecks, coverage of targeted population groups under the public programmes, leakages and corruption that characterized these interventions need to be eliminated. The second principle that takes into consideration the causality factors explains the corporations' response towards the responsibility sharing. There are cases wherein the corporations actively participate in the human rights issues the reason being that those selective human rights are directly associated with the business. Hence, the need for response is felt and causal in nature rather than intentional or proactive. India as a state need to address this situation by benchmarking some of the best practices in terms of human rights violation so that we can come up with the set of indicators that can be used to evaluate the human rights sustainability. An example in this direction is mentioned below

Table 1:

List of illustrative indicators on the right to enjoyment of the highest attainable standard of physical and mental health (ICESCR, art.12) (* MDG indicators)

	Reproductive health	Child mortality and health care	Natural and occupational environment	Prevention, treatment and control of diseases	Accessibility to health facilities and essential medicines
Structural	<ul style="list-style-type: none"> International human rights instruments, relevant to the right to health, ratified by the State Date of entry into force and coverage of the right to health in the Constitution or other forms of Superior Law Date of entry into force and coverage of domestic laws relevant to the implementation of the right to health Number of registered/ operational civil society organisations involved in the promotion and protection of the right to health Estimated proportions of births, deaths and marriages recorded through vital registration system 	<ul style="list-style-type: none"> Time frame and coverage of national policy on maternal and reproductive health Time frame and coverage of national policy on abortion and foetal sex-determination 	<ul style="list-style-type: none"> Time frame and coverage of national policy on child health and nutrition 	<ul style="list-style-type: none"> Time frame and coverage of national policy on health Time frame and coverage of national policy for mentally challenged and disabled Time frame and coverage of national policy on drugs, including on generic drugs 	
Process	<ul style="list-style-type: none"> Number of complaints on the right to health received, investigated and adjudicated by the National Human Rights Institution, Human Rights Ombudsman and other mechanisms and the proportion responded effectively by the Government, as applicable, in the reporting period Net ODA for the promotion of health sector received/ provided as a proportion of public expenditure on health/ Gross National Income* 	<ul style="list-style-type: none"> Proportion of births attended by skilled health personnel* Proportion of women receiving pre- and post-natal care Proportion of women of child-bearing age using contraception or whose partner is using contraception (CPR) Medical terminations of pregnancy as a proportion of live births Total and adolescent fertility rates Reported cases of genital mutilation, rape and other violence restricting women's sexual and reproductive freedom 	<ul style="list-style-type: none"> Proportion of school-going children educated on health issues Proportion of children having regular medical check-up Proportion of children covered under public nutrition supplement programmes Proportion of one-year-old immunised against vaccine-preventable diseases (e.g. measles*) 	<ul style="list-style-type: none"> Proportion of population with sustainable access to an improved water source* Proportion of population with access to improved sanitation* Proportion of population using solid fuels* Number of cases of deterioration of water sources brought to justice Proportion of population living/ working in hazardous conditions 	<ul style="list-style-type: none"> Proportion of population covered under awareness raising programmes on transmission of diseases (e.g. HIV/AIDS)* Proportion of population (above age 1) immunised against vaccine-preventable diseases Proportion of population applying effective preventive measures against diseases (e.g. HIV/AIDS, malaria*) Proportion of disease cases detected and cured (e.g. tuberculosis*) Incidence of substance abuse (e.g. drug, alcohol, chemical and psychoactive substance)
Outcome	<ul style="list-style-type: none"> Proportion of live births with low birth-weight Perinatal mortality rate Maternal mortality ratio* 	<ul style="list-style-type: none"> Infant and under-five mortality rates* Prevalence of underweight children under-five years of age* 	<ul style="list-style-type: none"> Incidence of deaths/ diseases/ injuries caused by unsafe natural and occupational environment 	<ul style="list-style-type: none"> Prevalence and death rates associated with communicable and non-communicable diseases (e.g. HIV/AIDS, malaria, tuberculosis*) Prevalence of disability/ proportion of mentally challenged persons Life expectancy at birth/age 1/ health-adjusted life expectancy Suicide rates 	<ul style="list-style-type: none"> Per capita government expenditure on primary health care Density of medical and para-medical personnel, hospital beds Proportion of population with access to affordable essential drugs on a sustainable basis* Proportion of people covered by health insurance Proportion of people covered under indigenous/ alternative systems of health care Proportion of disabled and mentally challenged persons accessing public/ social institutional services Share of public expenditure on essential medicines met through international aid

Source: Report of Asian sub regional workshop titled "Using indicators to promote and monitor the implementation of human rights".

The third principle refers to the severity where in the intention and responsibility are adhoc and quasi entities extensively exploited by the corporations India's cotton farmer suicide crisis, like its causes and effects, is complex. The manifestation of the crisis also varies from state to state. The prominent causes, patterns, and impacts that have been observed in many states in India. A number of studies reveal that indebtedness is a major and proximate cause of farmer suicides in India. The opening of Indian agriculture to the global market and the increasing role of multinational agribusiness giants in cotton production have increased costs, while reducing yields and profits for many farmers, to the point of great financial and emotional distress. The government's response to the crisis, and the ways in which these responses have, by and large, failed to address the magnitude and scope of the problem. This shows the severity of the state in terms of providing the social security and assistance to the farmers. The power principle refers to the responsibility of the corporations. Based on their size, structure and market position, companies greater in size and having dominant position in the market should contribute regularly to the human rights issue and concerns. Statoil, the Norwegian energy company, has expressed the view that it will seek to

achieve and demonstrate that its presence has a positive impact on human rights conditions, and may choose not to operate in countries where that are not possible. This view is a positive one, which appears to assume that the presence of business can be a liberalizing factor, yet does not automatically have such an impact.

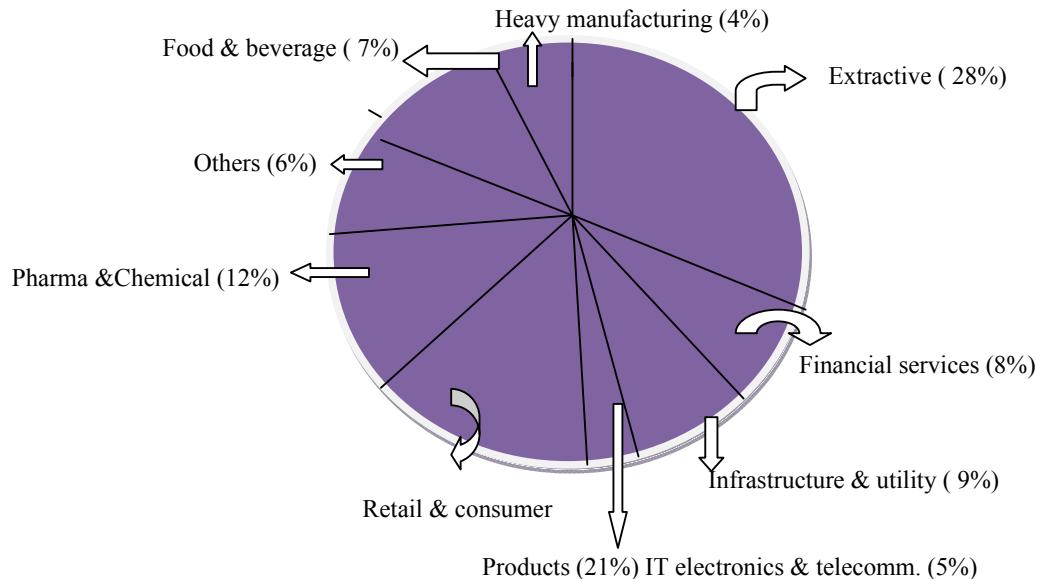
4. GLOBAL BUSINESSES INITIATIVES

As the recognition of human rights has become key parameter in deciding the degree of sensitivity of corporation against the society and its stakeholders, companies have begun to address human rights issues, several initiatives have been undertaken that demonstrate the ways that companies can positively influence the extension of human rights around the world. As reflected in the Global Compact, there is much companies can do to address the growing societal expectation that companies have responsibility for the impact of their presence, and that acting in this way can help create a more stable climate for commercial activities. A key solution in this direction is the partnerships at the grass root level. In India as an example, the community programs and NGO's collaboration with the media and the business houses have paved the way for increased human rights awareness among the parties that are directly exposed to the vagaries

of human rights. A number of innovative partnerships between companies, international and local human rights groups, labor unions, religious institutions, and charitable foundations have been undertaken in recent years. These include the Global Alliance for Workers, the global collective bargaining agreement between Statoil and the International Federation of Chemical, Energy, Mine and General Workers' Union, the Fair Labor Association, and the collaborative consultation that yielded the Global Sullivan Principles. In recent years, multinational companies such as Royal Dutch Shell, BP Amoco, and Novo Nordisk have formally and publicly acknowledged responsibility for ensuring that their actions are consistent with human rights, often explicitly invoking the Universal Declaration. This is a critical initial step toward public accountability, as companies have stepped forward to add

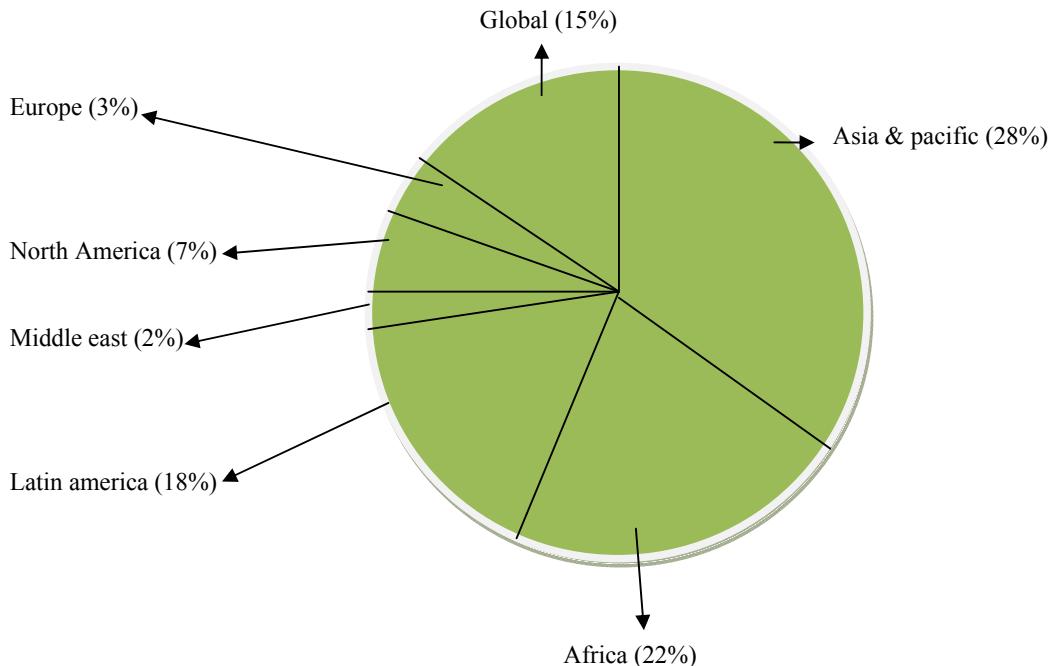
human rights concerns to their global business principles. This development potentially is as important as when, a generation ago, business first began to acknowledge that it could contribute to—and benefit from—environmental safeguards. In Indian context, the sectors themselves discriminate between the rights; financial companies give priority to the privacy rights. Extraction companies focus more on community rights and security of persons. So keeping these differences in mind companies prefer adopting international rights and conventions rather than focusing on domestic policies. However, the language of the standards is rarely identical and in some instances, standards lose meaning making it difficult for the corporations itself, let alone the public, to assess performance against the commitments.

5. ALLEGATIONS BY SECTOR



Source: www.business-humanrights.org/Documents/update-charts

6. REGIONS OF ALLEGED INCIDENCE



Source: www.business-humanrights.org/Documents/update-charts

The above diagrams represent the policy gaps and implementation disparities across the globe. So the future course of action in this case would be development of regional, national as well as international agencies with universal call for maintenance of human rights. In general, extant literature is already sensitive to potentially fruitful interactions between the universal regime of human rights in international and domestic law, the soft law instruments of corporate responsibility, and formally private-law instruments. One example is the inclusion of social responsibility commitments in commercial contracts between corporations and their sub-contractors. Another example is the attempt to sue corporations that fail to comply with their own voluntary codes of conduct or public declarations concerning their social and environmental responsibilities. As the social sphere increases from employer to employees, to citizens and then to nation as a whole, the responsibility thread loses its tensile strength. Therefore, we need to develop "specialties" marked by contractual obligations so that the duty enforcement becomes a corporate policy instrument.

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