

## ***IALS 2013 Annual Meeting***

### **Plenary Session: Teaching the Relationship Between Business and Human Rights**



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#### ***Shashikala Gurpur and Bindu Ronald***

The interpretive guide was designed to support the process of effective implementation of the United Nations Guiding Principles on Business and Human Rights. The Interpretative Guide focuses on the Guiding Principles that address the corporate responsibility to respect human rights. It was developed in full collaboration with the former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Professor John Ruggie. One of the most shocking findings in Ruggie's report is that states have not met their duty to regulate corporations to protect human rights." "Companies are going to increasingly understand that they need to lobby states to set more clear regulation on human rights--they did it on corruption, and more recently on climate change and greenhouse gas emissions," Prof. Aaronson told SocialFunds.com. "The best way to have stable economic growth is to have clear international standards." Prof. Ruggie cites three as representing best practice: the Extractive Industries Transparency Initiative (EITI) whereby companies disclose payments to host governments, the Kimberley Process that seeks to stem the flow of conflict diamonds, and the Voluntary Principles on Security and Human Rights that promotes human rights impact assessments (HRIAs) in the extractive sector. However, Prof. Ruggie finds these self-regulation schemes lacking in accountability. Prof. Ruggie suggests that voluntary initiatives are drawing a blueprint of the architecture for binding standards.

"As they strengthen their accountability mechanisms, they also begin to blur the lines between the strictly voluntary and mandatory spheres for participants," Prof. Ruggie writes. "Once in, exiting can be costly." Prof. Ruggie cites the efficacy of human rights impact assessments. Prof. Ruggie ends the report by not-so-coyly noting he "would welcome a one-year extension to complete the assignment" by submitting "recommendations in his next (and final) report to the Council," a sentiment almost universally shared in the human rights advocacy community.

HR's should be made a mandatory value and parameter across disciplines within regulatory framework like how environmental education is.

- Business law and Human rights have a symbiotic relationship.
- John Ruggie Report 2011 states that *“Escalating charges of corporate-related human rights abuses are the canary in the coal mine, signalling that all is not well”*. It also states that:
  1. It is the duty of state to protect Human Rights and prevent violation.
  2. Corporate social responsibility of protecting Human rights.
  3. Access to remedy provided by the state and the corporates
- Steiner argues that: *“the international human rights movement can never be a finished or uncontested project. It will remain a work in process within a framework of on going criticism, self-assessment, and rethinking. Students and scholars will be vital contributors to that process. Many of them may see their task as suggesting how the movement can better proceed toward the realization of its ideals. But first they must see the movement as it is, and to that task they must bring their critical faculties”*
- Why to break the Silos of Human rights and Business Law?
  1. Confusion of legal scholarship and professional engagement confused by the contradictory contours of human rights and business.
  2. Relationship of human rights with the comfort of capital and hence the unquestionable nature of the pains of profit and corporate power.
  3. Coinciding with critical moments in the recent history when globalization confronts human rights in general.
  4. Debating whether business entities being legal cognates of human persons are entitled to such rights. Restriction on their rights, it is feared, may also affect the interest of human beings.
  5. The arrogance between power of trade and business. The complexity is evident in the WTO Director General's statement which in fact, echoes the Sullivan Report, *‘one could almost say that trade is human rights in practice’*
- How do these silos exist:
  1. The enquiry proceeded on the basis of three questions across the top 10 law schools in the country, barring among them those affiliated to state universities as their autonomy is limited to the letter of the UGC mandate:
  2. What sets the context for the law school curriculum or its review? Whether that context is truly reflected in the curriculum with reference to business and human rights?
    - The Curriculum Development Committee (hereinafter CDC Report) of the UGC (the University Grants Commission) and the similar report from the BCI (Bar Council of India) -both lack any focus on centre-staging or linking business and human rights
    - The stakeholder matrix which ought to have informed the curriculum includes quality aspects of satisfaction across all seven types as prescribed in the official standards of National Accreditation Council (NAAC). However, the curriculum with reference to these themes, does not reflect any of the global standards either.
    - A Comparison between East and West: Global relevance is imminent.
  3. Are there exclusive courses or programs (as a set of courses) on business and human rights?
    - This question was answered in the negative, as proved by data elicited through telephonic interviews and web information. New courses are under consideration for being developed in some of the law schools with a view to teach business and human rights as an academic discipline.
  4. How far do human rights law courses get reflected in Business or corporate law courses or how far do the corporate or business law courses reflect the components of human rights law?
    - This question was answered in a mosaic fashion. Currently, law schools in India teach business and human rights as a module in the ethics curriculum or as part of corporate law syllabus..
    - In spite of realities of corporations and business enterprises violating human rights as in the case of *Nandigram* incident or *Sivakasi*, there is no defined syllabus exclusively on the subject as yet.

- Take on the existing silo:
  1. The pedagogy and approach ask for crossing the illusory boundaries of class room, discipline, specialization and methodology.
  2. Steiner himself argues how the range of issues, activities and projects could enrich the landscape of teaching human rights.
  3. The omniscience of human rights as a touch stone to very area of law and business law discipline in particular.
  4. US case of *John Doe v. Unocal Corporation* in December 2004
  5. *IRATE v. ExxonMobil, et al.*
- Symbiosis experience
  - The experience a private deemed university law school has been quite diverse.
  - Human Rights Cell and by virtue of National Human Rights Commission (NHRC) grants, SLS, Pune has imparted two one-day workshops on Human rights
  - Exposure to global context of Indian realities by case studies, visits and internships with local human rights NGOs through international exchange of students and faculty choosing courses.
  - Institute has recorded an upward trend in favor of human rights courses in the interest of its students as suggested by the SIU curriculum review committee in 2011
- We suggest corporate neutrality and take a middle path.
  1. The footsteps of global human rights movement and the ensuing influence on Indian legal education
  2. Serving the ends of justice ought to remain as the indispensable mission of every legal education enterprise; lest one confronts the larger question: is India a liberal democracy or a mere guise of an authoritarian oligarchy?
  3. The need emerges when one honestly and courageously abandons the belief that current Indian approach is perfect and relevant. The dominant paradigm of civil and political rights in 25.
  4. Emerging out of the fear of being brandished as 'theoretical' , ' activist (aka emotional and impulsive), not providing proper jobs. Perhaps, this accounts for the lack of exclusive the course title or program title with human rights alongside its successful, attractive, maximum takers' choice of 'business or corporate law'.
  5. Changing globalizing context of states and non-state actors breaking their own silos of activity and power.
  6. Law School curriculum in India in developing different levels of courses with different learners in view as prescribed by UGC and drawing on international best practices.
  7. The law schools are also required to sound the demise of corporate neutrality as did the states and the UN

Notes by: Satyabrata Mishra & Sparsh Prasad

## **Poonam Puri**

There are various ways in which HR can be discussed in law schools. There are a multitude of stakeholders who are impacted by decisions made by corporate actors. Though most corporate law statutes around the world do not speak to HR directly they do impose a duty on the directors to act in the best interest of the organization, including the interests of shareholders and other stake holders who are affected by the corporation's action. When considering HR in business, its necessary to look at how those stakeholders who are not shareholders are not impacted by business corporations. So the ultimate goal is to address how HR can be advanced through teaching corporate law, and specifically through discussion and analysis of the role of

1. Non-corporate law statutes that specifically protects HR
2. Corporate culture and discretionary decision making
3. Voluntary soft law principle based mechanisms like equator principles.

- The role of business law education in advancing Human Rights.
- Reasons of viewing Human rights and Business law together.
- How law school contribute towards this goal.
- How individual faculty contribute to the integration of business law with human rights issues.
- Importance of the Equator Principles. It is a credit risk management framework for determining, assessing and managing environmental and social risk in Project Finance transactions. Project Finance is often used to fund the development and construction of major infrastructure and industrial projects. The EPs are primarily intended to provide a minimum standard for due diligence to support responsible risk decision-making.

*Notes by: Satyabrata Mishra & Sparsh Prasad*

## **Moussa Samb**

Issues of HR and business are very important for underdeveloped countries and equally for Africa are becoming a destination for foreign investment private and public. Current performance of the African economy which occurs in a context of crisis financial market internationally is very attractive to international investors. During the last decade, emerging economies are competing to become one or on the most country investors in Africa. The interface between business and society has been framed predominantly in such terms as business ethics, corporate social responsibility, corporate environmentalism and sustainable development. However an increasingly prominent debate is emerging around business and HR. The debate is about which international or national HR law is applicable to the private sector companies.

*Notes by: Satyabrata Mishra*

## **Ashok Patil**

Consumer rights are the rights of individuals and not of the groups. Every human being is a consumer at some point of time be it a seller or a buyer, he gets the goods by acting only as a consumer. The acknowledgement that HR's protect individual's prosperity, honor and development makes consumer rights suitable to be declare as HR. This result in the fact that a consumer's right is an individual's right and hence a HR. Aim of HR is to protect human dignity and it has been recognized in many documents of the UN like the UDHR, UNGCR, and ICESCR. In a consumer society protecting the rights of consumer is like protecting the HR for maintaining the human dignity. If not given the right to fair trade, fair contract, access to court a person's dignity is disregarded. Hence main aim of consumer rights and HR is to protect human dignity and hence the consumer's rights should be also included under the broad head of HR.

*Notes by: Satyabrata Mishra*