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# BUSINESS & HUMAN RIGHTS: An Introduction

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**BUSINESS & HUMAN RIGHTS :**  
Competing Frameworks  
or  
Allied Forces?

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# INTERNATIONAL HUMAN RIGHTS FRAMEWORK

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Human rights, to put it simplistically, is concerned primarily with welfare and well-being of humans. They are hailed as the "*common language of humanity*".

The Universal Declaration of Human Rights hails them as the "*foundation of freedom, justice and peace in the world*" assuring personal dignity, respect, equality, fairness, freedom from want and thus consequently promoting better social progress and better standard of living.

Their various manifestations are found in the UDHR and the core human rights treaties including ICCPR, ICESCR, CRC, CEDAW, CERD, CPD, CED, CMW as well.

This is the '*Age of Human Rights*' where rights have been divided into 3 generations that range from civil and political rights to social, cultural and also collective rights of individuals.

Learn more on : [Three Generations of Human Rights](#)

The Human Rights framework includes several mechanisms to fulfil the following functions;

implementation, enforcement, monitoring and redressal.

# What's wrong with this "Age of Human Rights"?

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Several scholars argue that the human rights framework is not adequate to address violations by businesses. A few do make a convincing argument for having a binding treaty or dedicated mechanisms to cover the impact of business on human rights.

- Serious doubts have been raised regarding sufficiency of human rights language to effectively address human rights violations since the presence of a language does not by itself guarantee that all human rights violations will be identified and redressed.
- As per Prof. Baxi, there are categories that are altogether excluded from the existing human rights namely the "*stateless, refugees, impoverished human beings, indigenous people and people with disabilities.*"
- The potential of human rights language, thus, is diminished to that of *mere utopia* which has resulted in no real upliftment of the downtrodden due to the absence of strong enforcement mechanisms to ensure that human rights treaties are observed. (Reference : Upendra Baxi, *The Future of Human Rights*, 2006).

# What's wrong with this "Age of Human Rights"?

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- David Kinley highlights two categories of human rights :

"Transcendental  
Fundamentalism"

The first category means that human rights are inspiring, fundamental and form the foundation of our social order today. But there is non-observance of them as they are treated as optional to be availed of as and when situation demands and *in reality*, human rights are actually only availed of by the downtrodden and human rights of the well-off are usually not violated.

"Reactionary  
Fundamentalism"

The second category is more prevalent today and hails human rights as the medicine to cure all "social, political, legal and economic" ills. It gives human rights a divine status as the redeemer of all and obviously, impervious to critique. This is seen as a threat by the author as well as dangerous because it alleviates any kind of challenge or even inquiry into the human rights discourse.

# BUSINESS AND HUMAN RIGHTS

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- Business has tremendous power. On the other hand, the fundamental human rights flow in international instruments from the inherent dignity of persons. It is a fundamental value that lies in human life. If so, human rights are universal for all humans and cannot be renounced, lost or even forfeited. Herein lies the justification for basic protection of fundamental interests of individuals against the untrammelled power of business corporations.
- Developments on the subject have indicated that *collaboration* is the key between the State and Business Corporations rather than competition in trying to forward human rights interest in society. [Illustration: the SDG's Agenda]
- There are several cross-cutting agendas to study the interface between human rights framework and business practices , including:
  1. Profit
  2. Responsibility
  3. Cooperation
  4. Services

## THE BUSINESS FRAMEWORK, 1980's

- The business framework concerned primarily with profit making and viability of the enterprise undertaken, in other words, *only economic welfare of the corporations.*
- Given further impetus by Milton Friedman's thesis (pictured on right) businesses have justified their sole responsibility, which is to do anything and everything in the blind-race and greed for increasing profits.
- Milton was a proponent of free-market capitalism free-market theories and his ideas majorly influenced government policies, especially during the 1980s.

*"The social responsibility of business is to increase profits"*



# What was wrong with the profit maximisation narrative?

BUSINESS PRACTICES

IMPACT ON HUMAN RIGHTS OF BUSINESS PRACTICES

Sole motive of business is profit maximisation

No social responsibility of business

Only care about their shareholders

Impact on human rights by global corporation's; on employment practices, environmental impact, support for corrupt regimes for lucrative gains or bringing about political changes.\*

\*Source : United Nations Development Report, 2000. available at : : [http://hdr.undp.org/sites/default/files/reports/261/hdr\\_2000\\_en.pdf](http://hdr.undp.org/sites/default/files/reports/261/hdr_2000_en.pdf)

# GROWTH AND IMPACT OF BUSINESS

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Business and Human Rights "... are like two stage actors competing with each other for attention in the same scene. While at the same time knowing that key to success lies in working together to ensure each other's success."

- David Kinley

- The tremendous growth and reach of business enterprise has added impetus to the deliberations on adoption of laws/standards to protect and provide for human rights.
- Also, the process of globalisation in the last twenty years has intensified the interdependence and interconnectedness of economies around the world
- It has been evident that the increasing de-regulation of trade and commerce led to emergence of influential non-State actors like the business enterprises, multinational corporations, transnational corporations and companies.

# GROWTH AND IMPACT OF BUSINESS

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- The wide influence and deep reach of transnational corporations can be gauged from some examples :
- ✓ The General Motors Corporation's sales in a single year are greater than the gross national product of 179 countries, including Malaysia, Norway, Saudi Arabia, and South Africa. \*
- ✓ Transnational corporations (TNCs) hold 90% of all technology and product patents worldwide and are involved in 70% of world trade.\*\*
- ✓ TNCs directly employ ninety million people (some twenty million of whom live in developing countries) and produce 25% of the world's gross product. The top thousand of these TNCs account for 80% of the world's industrial output.\*\*

Reference : \* Global Inc. : An Atlas of Multinational Corporations (2003),

\*\* See UNCTAD, World Investment Report

# CONVERGENCES AND DIVERGENCES

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- Advantage of TNCs for HR

The resources and innovation of business/TNC's can be harnessed for the enjoyment of human rights.

The adoption of the "compassionate approach"\* has been advocated in this regard, where the foreign investment by multinational corporations have the potential to "act as catalyst for the enjoyment of individual's human rights, particularly in developing countries leading to increased economic wealth and thus contributing to better enjoyment of human rights."

\*Source : Borrowed from Walden Bello who has called globalisation as a "compassionate globalisation" .

- Disadvantage of TNCs for HR

With the resources greater than even some of the nation States, the businesses operating at global level have potential to violate human rights not even contemplated during the development of modern human rights movement.

Businesses can influence adversely across sectors, social, political, and economic.

# Changing Role of the 'Modern' State

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## THE CURIOUS CASE OF "*TRADE RELATED, MARKET-FRIENDLY HUMAN RIGHTS*"

Today, a progressive state is conceived as a good "host state" for global capitalists when it is able to provide protection against political instability and market failure. Such a "soft" state is accountable more to the World Bank or the International Monetary Fund who are possible investors in its economic future than to its own people who are left vulnerable and prone to corporate abuse unchecked by State action.

There is an effective denial of the redistributive role of State which had aimed to construct a just social order and meet at least the basic human needs. This agenda has been pushed aside.

Prof. Baxi argues that today, have emerged "*trade related, market-friendly human rights*". This means that businesses are now using the language of human rights to demand their own rights. Herein the notion of human rights itself is reversed to promote and protect the collective rights of the global capital.

# CHALLENGES

The key challenge for all actors here is to strike a balance between the *competing* and *opposing* demands of human rights lobby and TNCs.

Several challenges to establishing adequate standards for businesses have been identified and deliberated upon in the last many years, namely;

- **RESPONSIBILITY:** The primary responsibility to protect, respect *and* promote was and still is, of the State. The legal regime was not designed to regulate, much less affix, responsibility on these non-State actors for human rights violations by them.
- **INVESTMENTS:** Practically, States themselves resist affixing responsibility on TNCs as they are reluctant to 'displease' their 'strategic' business investors and cut short 'money flow' that helps survives their economies.
- **CONDUCT AND IMPACT:** Human rights regime *only* focuses on the conduct of governments and pays insufficient attention to the impact of such corporations.

# CHALLENGES

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- **ECONOMIC GROWTH AND PROFIT:** TNCs argue that their only duty is to observe the law and focus on economic growth, job creation, economic development and expansion of financial resources and facilitating tax bases etc.
- **CONFLICTS WITHIN LAWS;** In international law, how the business and human rights operate have significant policy contradiction. For example, Pregs Govender highlights the issue of The United Nations treaties that have recognised the socio-economic necessity like water as a human right. But, General Agreement on Trade in Services (GATT) recognises them not as rights but as commodities, to be bought and sold on the open market.

*Herein the question arises of coherence of policy co-terminus with the significant question that who holds the power to dictate policy – making. Should it be State driven law or a regime of legal provisions and private business codes of conduct?*

# HUMAN RIGHTS AND BUSINESS: TRACING THE DEVELOPMENTS IN INTERNATIONAL LAW

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The decades before the new millennium many efforts were made to address these concerns by way of voluntary initiatives :

- ✓ Organisation for Economic Development and Co-operation (OECD) promoted the *Guidelines for Multinational Enterprises*.
- ✓ International Labour Organisation (ILO) 1977 *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy*.
- ✓ **The United Nations *Global Compact*** in 1999. The Global Compact actually started the movement for explicitly linking human rights and businesses but due its non-regulatory nature and vague formulation it could not serve as the envisaged platform for facilitators and dialogue forum for discussion between governments, corporations and stakeholders. [Reference: For critique of the Global Compact see Surya Deva.]. *Global Compact: A Critique of UN's Public-Private Partnership for Promoting Corporate Citizenship* 34 *Syracuse Journal of International Law and Communication* (2006)

## HUMAN RIGHTS AND BUSINESS: TRACING THE DEVELOPMENTS IN INTERNATIONAL LAW

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✓ In 2003, in an effort to create global human rights standards for business, the **"Norms on responsibility of TNCs and Other Business Enterprises with regard to Human Rights"** were proposed recognising TNCs as an organ of society and making it incumbent upon them to promote and secure human rights within areas of their operations. However, these norms were not acceptable to TNCs due to their binding nature making them akin a 'hard' law.

✓ **The United Nations Guiding Principles, 2011 :**

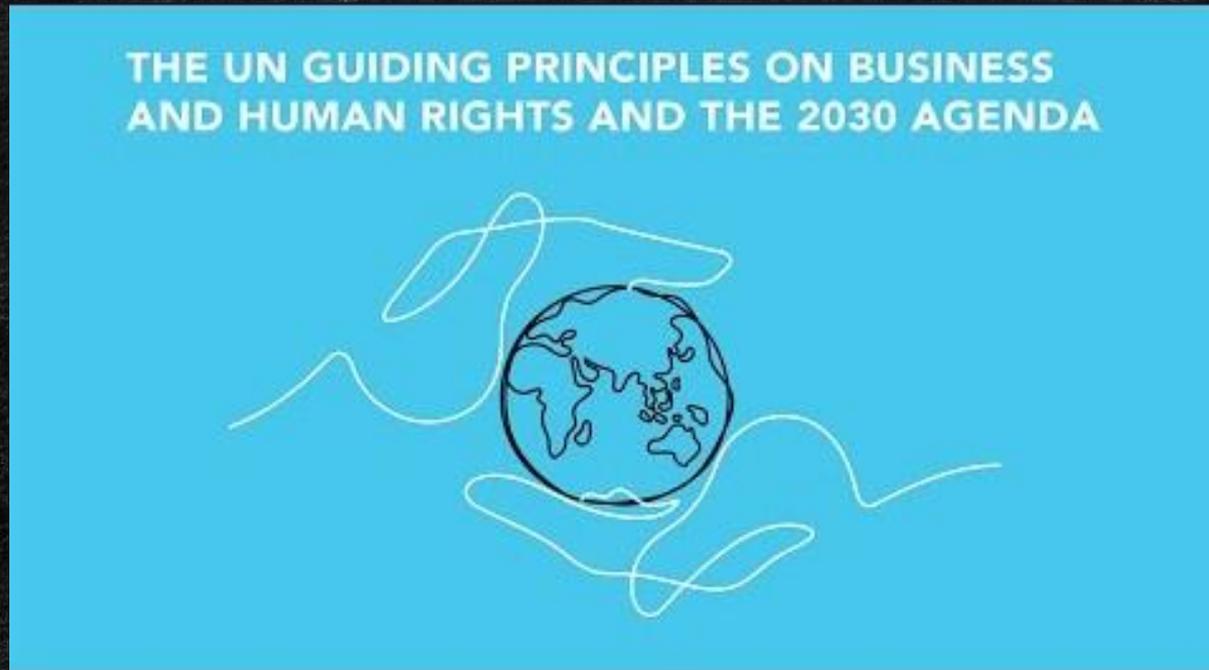
The failure of the 2003 Norms led to the appointment of Prof. John Ruggie as the UN Special Representative for Business and Human Rights. In 2008, Prof. Ruggie presented to the United Nations Human Rights Council the **"Protect, Respect and Remedy"** framework as the conceptual way to bring together business and human rights.

# UN Guiding Principles on Business and Human Rights [Video]

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Learn more about the Guiding Principles, 2011 :

[United Nations Guiding Principles on Business and Human Rights](#)



## PROTECT-REMEDY-RESPECT FRAMEWORK

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This approach envisages a 'non-binding', 'soft law' approach. It does not create specific international law obligations. The "*Protect, Respect and Remedy*" framework is based on the following principles :

(a) States existing obligations to respect, protect and fulfil human rights and fundamental freedoms; (b) The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and to respect human rights; (c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.

*These Guiding Principles apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.*

***The more recent of the developments in international law include attempts to formulate a 'binding' treaty to deal with activities of business corporations vis-a-vis human rights, initiated by a Group of Countries at the 24<sup>th</sup> Session of the Human Rights Council, September 2013. The deliberations on the agenda are on-going at the moment.***

## POINTS FOR DISCUSSION

1. The controversial position taken by the Guiding Principles is that corporations lack binding legal obligation in relation to fundamental human rights to respect them but the responsibility to respect flows from social expectations. How far is this justified in light of the human rights framework?
2. Have the 2011 Principles hampered the process of emergence and recognition of binding norms and taken a regressive step back?
3. Can we really demand that companies abide by social expectations of 2011 principles? How do we determine them in a complex world with competing ideologies?
4. What can be possible 'common languages' between human rights and businesses which speaks both for identifying human rights abuses and at the same time does not deter the businesses from playing an active role in securing them.
5. What key provisions and responsibilities are being incorporated within draft treaty proposals for a binding treaty on business and human rights?

## RESPONSE TO CRISIS: OBLIGATIONS DURING PANDEMIC

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- The lockdowns affecting some 2.7 billion workers worldwide, as estimated by ILO, and the global economy facing the worst recession since the 1930s' Great Depression, according to IMF.
- **UN Working Group on Business and Human Rights** issued a statement that during the pandemic, business must ensure that human rights are respected during the Covid-19 crisis.
- The “*Protect, Respect and Remedy*” is yet again projected as the blueprint for all businesses, governments and other actors to be followed.
- It stresses that States as well as businesses should strengthen accountability mechanisms and empower affected rights-holders to come forward to voice their concerns and sound the alarm when abuses occur.\*

# Obligations of States and Business during Pandemic

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## a) Role of States\*

Governments must pay special attention to individuals and groups that are particularly vulnerable.

The financial support by the State to businesses should comply with standards for responsible business conduct, notably respect for human rights and dignity of people – ensuring that workers are not put at health and safety risk, are allowed sick leave with pay, and not exploited with the justification of crisis and emergency. While masks may be disposable, workers are not.

\*Source : [Statement by the UN Working Group on Business and Human Rights](#)

## b) Responsibility of Business\*

Companies have a responsibility to observe “Human rights due diligence” so that any risks to people are identified and mitigated.

This involves meaningful consultation with potentially affected groups and other relevant stakeholders.

Both during time of crisis and for the recovery, collective action (for example industry collaboration) will be more effective than individual business responses to tackling systemic challenges.

## SUGGESTED READINGS

- Milton Friedman, "The Social Responsibility of Business is to Increase profits" New York Times magazine, September 13<sup>th</sup>, 1970 available at : <http://umich.edu/~thecore/doc/Friedman.pdf>
- David Kinley, "Human Rights Fundamentalism", 29 *Sydney L. Rev.* 545 (2007)
- David Kinley, *Civilising Globalisation : Human Rights and Global Economy* (Cambridge University Press, New York, 2009).
- David Bilchitz, "The Ruggie Framework : An adequate rubric for corporate human rights obligations?" 12 *SUR - Int'l J. on Hum Rts.* 199 (2010)
- John G. Ruggie, *A UN Business and Human Rights Treaty?* (Jan. 28, 2014), available at : <http://business-humanrights.org/sites/default/files/media/documents/ruggie-on-un-business-human-rights-treaty-jan-2014.pdf>.
- For latest developments on this issue follow : Business & Human Rights Resource Centre, available at : <https://www.business-humanrights.org/en>

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