Reflections on Laws relating to companies in transnational trade in India—An Appraisal

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Introduction

• Definition, nature, scope and extent of the TNT
• Why TNC/TNT concern of Law? why India relevant?
• Aspect of compatibility with the legal system of its operation
• Constitutional mandate with reference to India
• Transitions due to LPG era-impact—Indian scenario
• FDI-SEZs an unavoidable necessity—however under the SJ umbrella
• The east–west dialogue
• Variations in polities, and socio-economic conditions
• Concept of development-macro and micro levels
Corporate lawyering – legal and ethical issues

- Adherence to the basic, universally recognized and well established norms of HR (aspirational and operational)
- Adherence to the Legal standards laid down by the international instruments
- ILO declaration on social justice for a fair globalization 13th June 2008
- MNC /TNC role in humanitarian approach and attitude
- Cross boarder net working – investment, mergers and takeovers, licensing agreements, franchising, strategic alliances, joint ventures, subcontracting and out sourcing to low wage countries.

- Ill practices of exit route, relocate
- Denial of rule of law
- Social dumping and ‘race to bottom’ to remain competitive & attractive
- Employment laws, environmental laws,
- Globalization vis-à-vis globalization
- ILO vs. WTO
- Membership to WTO must be conditional upon ratification of some ILO, UN conventions
• Need of social clause in trade agreements
• Right to development Geneva April 2009
• Role of UNDP—minimum development goals
• Without development of developing country not possible to address current economic crisis-national and international obligations
• Public Meets Private: The International Unification and Harmonisation of Private International Trade Law—A. Claire Cutler
• blurs the distinction between public and private authority

• Globalization has offered enormous opportunities to corporates for expanding their international trade by establishing access to global markets. However, with the sole objective of gaining more profits, the corporates are not only resorting to illegal trade practices, but also unethical trade practices that violate the human rights. These abuses normally result from the weak regulatory frameworks, more so in the developing countries. Such violations of human rights include environmental degradation, forced labour, sexual harassment of workers, corruption, torture, discrimination, extra-judicial killing and forcible displacement. The human rights responsibility of the corporates may be observed in three directions. The first viewpoint is the direct responsibility of the state, which ensures that the corporates act in conformity with the human rights. The second viewpoint is responsibility directly held by the corporates themselves and the third viewpoint is that the corporates have to respect and promote the human rights under the ambit of corporate social responsibility.
• MNCs in developing country like India the big question before us is whether MNCs play positive or negative role in developing countries? Generally the governments of developing countries don’t keep control on the working of MNCs, which is major fault on their side. MNCs can be helpful for developing countries only when they are kept under control. We should not give incentives to the MNCs only because they are coming from some powerful advanced countries. So MNCs should face same rules and regulations as the domestic industries of the developing countries are facing.

• No doubt MNCs bring foreign capital in India but this capital later becomes the cause of reimbursement of profit to the MNC’s parent countries, which cause capital flight from the country...by sumesh Kumar.

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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

• Protect, Respect and Remedy: a Framework for Business and Human Rights
  — Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, by:- John Ruggie

• Summary
• Responding to the invitation by the Human Rights Council for the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises to submit his views and recommendations for its consideration, this report presents a conceptual and policy framework to anchor the business and human rights debate, and to help guide all relevant actors. The framework comprises three core principles: the State duty to protect against human rights abuses by third parties, including business; the corporate responsibility to respect human rights; and the need for more effective access to remedies. The three principles form a complementary whole in that each supports the others in achieving sustainable progress.
• It should be remembered that without a sustainable and productive growth of the agricultural sector, the other types of development in any sphere will be unstable and illusory. Despite the concerted development in manufacturing and service sectors, despite the remarkable inflow and overflow of foreign reserves, agriculture is still the largest industry providing employment to about 60 per cent of the workforce in the country.
• Mere growth of the GDP and others at the macro level in billions does not solve the chronic poverty and backward level of living norms of the people at the micro level. The growth should be sustainable with human development and decent employment potential. The welfare of a country does not percolate from the top, but should be built upon development from the bottom...by loveleen chawala

Maria Ellinikos and Jane Hong in their separate writings have many tragic situations to narrate
• Multiple level of contractors to distance themselves from all liabilities
• Incidences of forced labour and slavery system in apparel and garment industry and treated like recruits in boot camps
• If Nike can do it why can’t we attitude florishes
How can we achieve just and equal transnational corporate order..

• Adam Smith - A theory of moral sentiments
• Mahatma Gandhi - Sarvodaya
• Concept of CSR achieving commercial success in way that honours and respect communities, people and natural environment
• CSR... An agenda of teaching in modern business school for requisite skills and sensitivity
• Not merely financial accountability but social and environmental responsibility - triple bottom line of good governance
• Credential is not in monitory terms but also goodwill and patronage feel good factor
• Consumer response to it-free range eggs/eggs by battery hens

• Not merely to donate benches for parks and old computers but contribute to sustainable development
• In the interest of the corporation to avoid full blown crisis
• Business viability and CSR go together e.g.. Merck pharmaceutical, Strabuck’s CSR made the company popular among the investors, consumers and employees
• Stakeholder of CSR (6)

Customers      Employees      Shareholder & Investors
Environment & community  suppliers  & the Government
• Optimism, attitude and attempt is the key to success
• Unity in diversity. be unites for just and sustainable global order so that the dark history of past is not repeated and save the human race on humanitarian foundations.

THANK YOU....