



## **CHILD RIGHTS AND BUSINESS**

**Not if, not why, but how;**

*Parul Sharma*

# Curriculum Vitae of Parul Sharma

Parul Sharma is Head of CSR Compliance at Advokatfirman Vinge. Parul has many years' experience of CSR in the supply chain, human rights and anti-corruption in high risk markets. For a number of years Parul has been ranked as one of the most influential CSR experts in the Nordic region.

Parul is also the Principal at the Academy for Human Rights in Business, which has provided training on CSR related issues to more than 400 companies. Parul has also worked at, inter alia, EU Commission DG Aid, Amnesty Business Group, Stora Enso and Sandvik AB.

She has also been appointed as Chairman of the Swedish Government's delegation for implementation of the UN's Agenda 2030 and its Global Goals for Sustainable Development. Parul Sharma's practise areas within Vinge are:

- Corporate risk and compliance
- CSR and ESG Due Diligence
- Anti-corruption Programmes
- Business and Human Rights



# Vinge's Risk and Compliance team offers:

## Routines and procedures

- Risk analysis
- Development of tailored compliance programs
- Evaluation of compliance programs' effectiveness
- Implementation of the UN Guiding Principles on Business and Human Rights
- Training of board members, management and employees

## Business partners

- Background checks
- CSR and ESG audits of supply chain in high risk markets
- Development of action plan

## M&A/Listing

- Identification of compliance risks in connection with M&A activities and stock market listings
- Recommendation on how to manage identified risks in a contractual context and after closing

## Incident management

- Internal investigations
- Interaction with law enforcement authorities and public prosecution agencies
- Legal counsel in connection with civil proceedings and other claims due to alleged non-compliance
- Compliance monitor under the World Bank's sanctions regime

**Countries and number of audits i.e. auditing of human rights, labour standards, anti-corruption and environment standards. Conducted between 2008-2016:**

Countries	Number of audits	Industries
India	76	Factories, mines, foundries, textiles, wood pallets-boxes, heavy engg., IT, pharmaceutical, and automobile.
China	21	Factories, foundries, IT
Brazil	6	Factories and foundries
Bangladesh	6	Textile and agriculture
Malaysia	7	Factories and foundries
Thailand	8	Factories and foundries
South Africa	3	Factories and foundries
Rwanda	2	Mines
Burundi	2	Mines
DRC	1	Mines
Australia	3	Factories; casting, fabrication
Pakistan	5	Farming and agriculture, textiles, surgical instruments,
Turkey	4	Mines and carpet industry

CHILD RIGHTS  
PERSPECTIVE  
IN BUSINESS ?



As put by a Canadian lawyer:

“Naturally kid’s courts matters aren’t as serious as other matters. I think representing children is very good grounding for a new lawyer. You are not playing for terribly high stakes...also the complexity of matters ...is not as serious”.

(Source: Edited by, Philip Alston, Stephen Parker, John Seymour, *Children, Rights, and the Law*, Clarendon Press, Oxford, (1992) p.87.)

A 9 year old deaf and mute girl institutionalised in an observation home, was raped and the medical examination indicated, “Skin injury mark.<sup>[1]</sup> Bite mark on right cheek and multiple abrasion marks over skin, buttocks and both legs”. The medical examination mentioned the possibility of violent sexual assault, and the teeth bite marks were of the adult sexual assailant. By the interim order the Court directed the removal of the victim girl from the Observation Home. The girl was in a serious condition and required medical aid and good nutrition, according to the Court.

(<sup>[1]</sup> Criminal Writ Petition No. 585 of 2000, Bombay High Court)

## “Small adults”, is a global phenomenon

Professor of Procedural Law Mr. Christian Diesen at Stockholm university, stated in a recent controversial case that jurists still tend to believe that “the younger a child is the smaller the harm on the child”. The Swedish High Court (Svea Hovrätt) **had insensitively stated that children generally are less affected by a rape offence.**

(Source: Dagens Nyheter , [www.dn.se](http://www.dn.se), Barn mindre kränkta av våldtäkt, 17 November 2005)

# Defining Child

We can speak either of 'a' child or, more generally, of 'children'. In law, a person who is not yet a legal adult is known as a minor (known in some places as a *juvenile*, or, in others, as an *infant*). The Oxford Dictionary of Law defines "Child" in the following manner;

A young person. There is **no definitive definition of a child**: the term has been used for persons under the age of 14, under the age of 16, and sometimes under the age of 18.

(The Oxford Dictionary of Law, New Edition, Oxford University Press, Oxford/New York, (1997)).

# Convention Definition

- The United Nations Convention on the Rights of the Child defines a child as "every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier" (Article 1).
- Clearly, the legal definition of a “child” is handled with great flexibility, and becomes a more technical definition.
- Instead of understanding “child needs”.

- The UN General Assembly adopted the UN Convention on the Rights of the Child (CrC), in 1989, exactly thirty years after the 1959 Declaration.
- Ultimately, the CrC moved from the view that children are objects of international human rights law, to one that makes them **subjects of rights**.

## Framework of CrC

- violence (Art. 19),
- disease (Art. 24),
- discrimination (Art. 2),
- sexual abuse and exploitation (Art. 34, 32), substance abuse (Art. 33),
- emotional deprivation (Art. 19, 31),
- exploitative and harmful child labour (Art. 32),
- denial of rights within the juvenile justice system (Art. 37, 40),
- arbitrary execution (Art. 6),
- torture (Art. 37),
- lack of access to education (Art. 28, 29)
- and healthcare (Art. 24)
- and lack of identity documents (Art. 7)
- expression and participation (Art. 12)
- all in the best interest of a child (Art.3)

“Child” or “Childhood”?

# Child perspective

- The first mention of the “rights of the child” as such in an internationally recognised text dates back to 1924.

## A child is a:

- Spiritual,
- Material,
- Physical and
- Psychological being

# Path-breaking Questions

- What changes for a child who has been victim of trafficking?
- What changes for a child who is working day and night in a factory?
- What changes for a child who is living on the streets?
- What changes for a child who is arrested?
- What changes for a child who is beaten up by police?
- What changes for a child of poor parents?
- What changes for a child living in poverty?
- What changes for a child living in unhygienic conditions?
- What changes for a child discriminated in school?
- What changes for a child who no longer has a home?
- What changes for a child with weak and unhealthy parents?

# Three crucial steps (always on-going)

- Pre-due diligence  
(your health check)
- Cause and effect analysis  
(The Causality Principle: a causal connection creates responsibility)
- Due diligence process



# Health check/Pre-due diligence

- Is there a board decision to embed CSR into company due diligence process?
- Is top management competent to take ample business decisions in relation to CSR?
- What historical risk over-view do you have in your company?
- Do you have a mapping of extra risky business departments-internal department?
- What ethical levels do we actually have in our company?
- What mandate, support, budget does the CSR/sustainability person/team have?
- Greenwashing tendencies?
- Are we buying "free tickets"?



## Health check:

- Do we discuss child rights perspectives at all within our company and within our leadership? Is it clear what has to be done in the field of child rights within our company? What do our policies say?
- Have we conducted a mapping of the potential number of children affected by our business directly or indirectly?
- What experience do we have internally in foreseeing and solving child rights concerns? What are our strengths and weaknesses?
- On a scale from 1-10 (10 is most seriously) how seriously do we take child rights within our company? What should our plan of action be in implementing children's rights and business principles?

# Due diligence

- (Internal-due diligence and cause/effect analysis)
- Mapping of children affected (even potentially affected)
- Type of effects: risk analysis
- Intervention: risk management

# Cause and effect

Incident	Causes	Effects with a child rights perspective
You work for a small Danish financial services company where you spend many evenings with clients, at least four evenings a week taking clients to restaurants and bars.	Tradition Business style Lax leadership Perks	