

Violation of Human Rights by Corporate Houses: A Study from International Perspectives

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Abstract

Human rights protection has always been a primary objective of international and national instruments as an obligation towards the whole humanity. Despite of the presence of several instruments for the protection of human rights, these are the worst affected and violated rights by different stakeholders. In present time, the most talked about human rights violators are corporate houses who are running various kinds of business activities. The situation is more grave because in the present era of privatization and globalization, these corporate houses are the largest employers around the world and they not only cover their employees but also the consumers, supply chain and somehow the State also. Today the multinational corporate houses are operating in multiple countries and engaging human resources of the countries wherever they are operating. Every country has different kind of perspective towards dealing with multinational companies in their respective human rights regime. In this situation it becomes very necessary to have a detailed and binding international instrument so that, the State parties along with corporate houses around the world could be made accountable towards the human right protection. This paper is an attempt to look into the international instruments meant for the protection of human rights at universal level and making the business activities more inclusive towards human rights issues.

Key words: Human rights, corporate houses, business activities, Universal Declaration of Human Rights, corporate social responsibility

“There can be no peace without development, no development without peace and no lasting peace or sustainable development without the respect of human rights and the rule of law”¹

Introduction

Human rights are the inherent rights of human beings by virtue of their human existence. These rights were in existence from the very beginning of the various civilizations, i.e. from ancient to the modern time. All civilizations have their version of human rights and claims regarding them. With the advancement of time and civilizations the world has become an international community where all concerns and issues related to human rights are addressed and resolved.² In the present time, human rights are not only concentrated with the State but is extended to other stakeholders of the society. In this regard, there are several human rights instruments which are responsible for bringing human rights concerns into highlight, naming a few are UDHR, ICCPR, ICESCR, CRC, CEDAW and etc. These international instruments are more concerned about the obligation and role of State towards the protection of human rights of individuals in general and in particular. Besides States, there are certain other stakeholders in the society who are indulged in various kinds of human rights violations and require address at larger scale. Presently, the human rights violations by the corporate houses in their business activities are in very much highlight, where they touch the interests of their employees, consumers, supply chain system and somehow State also. The corporate houses around the world conduct their business activities in the form of multinational companies and for carrying on their business they employ the people of those countries where they go for the same. These people are the human resources and require the minimum standard of working conditions which must be provided by the companies to them. If such minimum facilities would not be provided to those employees, it will be the violation of international norms related to the human rights protection of workmen and employees. This paper is an attempt to explore the international instruments and judicial decisions for the purpose of establishing a relation between the international instruments and the obligations fulfilled by the corporate houses in terms of human rights protections of their employees and consumers.

¹Jan Eliasson, former UN Deputy Secretary - General

²Manoj Kumar Sinha, *Implementation of Basic Human Rights* 8 (Lexis Nexis, 1st edn. Bahadurgarh, 2013)

Definition, nature and scope of Human Rights

Human rights are the rights which are inherent in all human beings by the virtue of their birth as a human. These rights are very basic and must be availed by everyone without any discrimination. The UDHR defines human rights as, “human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion or any other status. Human Rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education and many more. Everyone is entitled to these rights, without discrimination”³. The nature of human rights is universal and it covers various areas which are responsible for the human rights violations of individuals. The business enterprises and their activities are not different in this regard and they also come under the human rights obligations which need to be fulfilled and protected. The scope of human rights is extended to the protection of human rights of workmen, employees and consumers who are the part of different business activities. Various international instruments have also recognized these rights. Since the advent of industrial revolution the economic interests have always been under the scanner of various organizations and State so that, business enterprises must not violate the basic rights of the workmen and employees working there⁴. But despite of all these measures human rights violations takes place and humanity seeks new measures to combat these violations. The inter relationship between human rights and business enterprises is dynamic because new advancements are taking place and the process of globalization has brought complexity to the situation. Presently, the scope of human rights in such matters is looking forward to cover both primary and subsidiary issues concerned with business enterprises. The concept of corporate social responsibility is one of the significant steps in bridging the gap between the business enterprises and their role towards human rights protections⁵.

³<https://www.un.org/en/global-issues/human-rights#:~:text=Human%20rights%20are%20rights%20inherent,and%20education%2C%20and%20many%20more> (Last visited on 05/06/2022)

⁴Michael Hass, *International Human Right* 161(Routledge (Taylor ad Francis), 2nd edn., New York 2014)

⁵Saud Akhtar and Pramod Kumar, *Human Rights in the World* 1-19(Sarup Book Publishers Pvt. Ltd, New Delhi, 2012)

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Violation of Human Rights by Corporate Houses in India

The human rights violations by the corporate houses are not new concept but it has been prevalent in India from the time of introduction of modern business system and corporate culture. The human rights violations by the corporate houses include various forms of it; sexual harassment at workplaces, child labor, bonded labor, lack of social security, inequality in payment between men and women etc. are few examples of human rights violations conducted by the corporate houses through their business activities. Such violations include employees, consumers and other persons who are indirectly associated with those business activities. One of the major issues related to human rights violation by corporate houses in India is globalization and privatization. After the opening of Indian market for private players in Indian economy, the role of business sector has increased and they became the large employers. India is also undergoing a transition phase where, corporate houses are taking the lead in the matters of job creation and adding to the growth of the economy of the country. The government is also trying to give better opportunities and easiness in the procedural aspects to the corporate so that they could take up more and more projects and establishments in India. All these are good for economic growth but what is lagging behind is human rights aspect. India has witnessed the worlds' worst industrial disaster in Bhopal⁶, where due to mishandling of a toxic gas led to the killing of thousands of people within a short span of time. Not only this but other incidents like, Sri Ram Gas leak⁷, gas leak in Vishakhapatnam⁸, child labor in Shivkasi cracker factory⁹, Vedanta Sterlite case¹⁰, POSCO case¹¹, sexual harassment at

⁶ Bhopal gas tragedy took place on December 2, 1984, when methyl isocyanate (MIC) spilt out from Union Carbide India Ltd.'s factory and killed more than 15000 and affected over lakhs of people, <https://www.business-standard.com/about/what-is-bhopal-gas-tragedy>

⁷ The gas leakage took place in December 1985, when oleum gas leaked and resulted into the death of a practicing lawyer in Tis Hazari court, New Delhi

⁸ A gas leak from the LG Polymer Ltd. Plant took place on May, 7, 2020 and killed 12 people and hundreds were sickened. That was a industrial disaster and violation of human rights and many laws of the country with regard to environment protection,

<https://www.thehindu.com/news/cities/Visakhapatnam/visakhapatnam-gas-leak-how-negligence-and-violations-led-to-a-deadly-disaster/article61675181.ece> (Last visited on 10/06/2022)

⁹ M.C. Mehta v. State of Tamil Nadu and Others, AIR 1997 SC 699

¹⁰ (2013) 6 SCR 573

¹¹ This case was related to the operation of POSCO, a multinational giant in the tribal areas of Odisha and establishing its plant. The project was opposed by the many indigenous people living their and having dependency on the natural resources available in that area for their livelihood.

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work place¹² and many more took place in India and set an alarming bell for the corporate looking after the human rights issues spread in different fields. One of the significant step has been introduced by the Indian parliament is the inclusion of the corporate social responsibility in the Company Act, 2013¹³. This responsibility is one of the steps to bring some accountability in corporate houses to repay to the society in which they are working and earning profits. Under this legal obligation, now many companies have taken various initiatives to serve the society, be it hospitals, schools, old age home, self help groups, shelter homes etc. to serve the society. Not only Indian companies but all the multinational companies who belong to big corporate houses are fulfilling this obligation in India¹⁴.

International legal instruments to prevent violation of Human Rights by Corporate Houses

The human rights issue related with business activities carried on by the corporate houses has always been a matter of concern. With the beginning of industrial revolution and employment of workmen into industries, the concern for human rights has also begun. Since the development of the company and corporate culture across the world it has been felt that there must be such international instrument which must regulate the business activities of the companies. In this context, there are international documents, organizations and instruments which advocate for the protection of human rights of the workmen and employees at their workplaces. In this regard the role played by the International Labor Organization¹⁵ is very appreciable because it has worked a lot in the field of protection of interests of the workmen and employees. The main principles on the basis of which ILO works are: (a) the international peace can only be achieved with social justice; (b) any kind of injustice, hardship and privatization of large number of people is not good for the world peace and harmony; and (c) every country must try to adopt humane condition

¹² Vishaka v. State of Rajasthan, AIR 1997 SC 3011

¹³ Section 135 of Companies Act, 2013 made it mandatory for the companies registered under it must comply with the certain CSR obligations and create and spend fund on these activities, <https://www.icnl.org/wp-content/uploads/India-FAQ-3---Corporate-Social-Responsibility-FINAL.pdf> (Last visited on 12/06/2022)

¹⁴ Many multinational companies like Toshiba, Toyota, Mercedes Benz, BMW etc are taking up the CSR initiatives to bring positive changes into the lives of local communities with who they are working.

¹⁵ ILO came into existence in 1919 and it works for the protection of interest of workmen and employees from any kind of injustice and hardship. This is an unique organization which is tripartite in nature as it brings together representatives of governments, employers and workers in executive bodies

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of work for its workmen without fail¹⁶. This organization completed its 100 years in the year 2019 and it is relevant in present context also as the basic document for the protection of workmen and employees across the world. Another important international instrument is OECD¹⁷, which works to find out the solutions of the problems related to social, economic and environmental challenges around the world. This organization work on the idea of Universal Declaration of Human Rights, 1948 and aims at making business activities more responsible towards the human rights aspect of business and promoting the international business enterprises more responsible towards the sustainable development. The United Nations besides the UDHR and other Covenants has framed United Nations Guiding Principle on Business and Human Rights in 2011, with a concept of 'Protect, Respect and Remedy'¹⁸. These guidelines are based on three pillars which are very relevant in the present context of human rights abuses by the business enterprises, they are: (a) the State duty to protect human rights, (b) the corporate social responsibility to respect human rights, and (c) the need for greater access to effective remedy. These Guidelines are a wholesome document bringing all forms of required attempts together for the protection of human rights from any abuse from business enterprise¹⁹. It not only talk about the private sector business enterprises but also covers the state owned enterprises for a wider obligation upon State and bring all the domestic laws in action for the protection of human rights²⁰. These guidelines must be implemented without any discrimination, with special attention to the rights and needs and challenges faced by the individuals and groups who are vulnerable and marginalized. These guidelines are in consonance with the inherent principle of United Nations of non discrimination between men and women in general and special care for women and other vulnerable groups in particular²¹.

¹⁶ Preamble to the ILO

¹⁷ The Organization of Economic Co-operation and Development was founded in 1961

¹⁸ The Human Rights Council endorsed these Guiding Principles in its resolution 17/4 of June 16, 2011

¹⁹ https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (last visited on 22/06/2022)

²⁰ State should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including where appropriate by requiring human rights due diligence

²¹ Markas Karavias, *Corporate Obligations under International Law* 166 (Oxford University Press, 1st edn. UK, 2013)

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Beside this, there are other organizations like WIPO²², WTO²³, TRIPS²⁴ etc. which are related with the different forms of trade and they have reach in all parts of the world are also considering the human rights aspects in the present context²⁵.

International Judicial decision

Judicial decisions have always played very important role in shaping the concepts related to legal matters. With respect to business enterprises and their activities affecting the human rights issues are spread through different forms of abuses. There are several judicial decisions from the different parts of the world depicting the stories of the human rights abuses by the corporate houses that carried their activities in different countries. Some of such cases are as follows:

Baby milk case (Africa): The baby milk case is related with the scandal carried on by the companies selling the formula milk in poverty driven African countries in 1970s. One of the multinational giants, Nestle was involved in selling infant formula milk powder by saying that it is better than the mother's milk for the infants. Meanwhile, there were several studies conducted by many researchers proving that the mother's milk is better than any infant formula milk²⁶. This case is a classical example of basic human rights violation by a multinational business enterprise for its own commercial benefit.

Chevron case (Equador): Chevron v. Equador is a very relevant case in terms of environmental pollution caused by the Chevron Texaco Oil Company in Amazon during its operation there in between 1964 to 1992. This pollution is also known as

²² World Intellectual Property Organization organized panel discussion to commemorate the 50th Anniversary of the Universal Declaration of Human Rights on November, 9, 1998 at Geneva, in collaboration with the Office of the United Nations High Commissioner for Human Rights. This discussion focused and explored the areas of WIPO in relation with human rights of individuals claiming for their intellectual property rights, https://www.wipo.int/edocs/pubdocs/en/wipo_pub_762.pdf (last visited on 20/06/2022)

²³ The World Trade Organization is still trying to balance the human rights issues with trade matters. Due to its conflicting fundamentals to promote trade and commerce, sometimes it neglect certain labor issues. But now it has also started considering the human rights as a part of trade and business activities, https://www.wto.org/english/thewto_e/minist_e/min99_e/english/misinf_e/03lab_e.html (last visited on 20/06/2022)

²⁴ Article 39 & 40 of TRIPS Agreement, 1995, https://www.wto.org/english/docs_e/legal_e/27-trips_04d_e.html

²⁵ Dr. Bhagyashree A. Deshpande, *Human Rights Law and Practice* 297-304 (Central Law Publications, 1st edn. Allahabad, 2017)

²⁶ <https://www.businessinsider.com/nestles-infant-formula-scandal-2012-6?IR=T> (Last visited on 22/06/2022)

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“Amazonian Chernobyl”. The Company was imposed with a fine of 9,500 million dollar for polluting Amazon²⁷ by an Equadorean court.

Biocom case, Brazil: This case was related with the inhuman treatment of the workers working in the biofuel plant, Biocom in the Brazilian construction firm Odebrecht. It was submitted by the prosecutors counsel that, “workers, hundreds of them, were subjected to degrading working conditions incompatible with human dignity and that their freedom curtailed, being deprived of their right to come and go”²⁸. In September, 2015 the Labor court convicted the Odebrecht group and ordered it to pay 13 million dollars as damages²⁹.

Nevsun Resources Ltd. v. Araya³⁰: This is a landmark judgment in relation to the human rights violation committed by a Canadian firm. In this case it was alleged that, the firm had committed human rights abuses by making the workers work for minimum twelve hours a day and six days a week in its Eritrean establishment. The courts in British Columbia found it as a gross violation of human rights which are important to everyone, everywhere³¹.

All these cases are covering different kinds of human rights violations committed by the corporate houses during their business operations. With the decision of courts in different cases it must be noted that, the judiciary is standing with the protection of human rights everywhere for everyone, i.e. for human rights abuses by the corporate houses also.

Conclusion & suggestions

The situation of human rights abuses by the business enterprises is alarming because there is no end of the different formats for such abuses. Ever since the advent of the business enterprises, they have been engaging human resources to carry on their activities. With the involvement of human resources the chances of human rights abuses also increases and many times these abuses take very distinct shape, as we see

²⁷<https://www.opendemocracy.net/en/democraciaabierta/chevron-vs-ecuador-international-arbitration-and-corporate-impunity> (Last visited on 25/06/2022)

²⁸<https://www.telesurenglish.net/news/Brazilian-Construction-Firm-Accused-of-Human-Trafficking-20140718-0112.html> (Last visited on 25/06/2022)

²⁹<https://www.business-humanrights.org/en/latest-news/odebrecht-lawsuit-re-forced-labour-in-angola> (Last visited on 25/06/2022)

³⁰2020 SCC 5

³¹<https://www.scc-csc.ca/case-dossier/cb/2020/37919-eng.pdf> (last visited on 28/06/2022)

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in the different nature of cases. In the present time, there are several initiatives taken at international and domestic levels to reduce the amount of human rights violations by the business enterprises and bring them on the discussion table and fix their accountability towards human rights obligations.

In this regard some suggestions can be proposed which will be very helpful for the improvement of the data related to human rights protection from business related abuses. There is a need to develop a platform by all the corporate houses to address the human rights issues of the employees and workmen at their workplace so that in any situation of human rights abuse matter could be reported properly at right time. Such platform will work along with the State and non- government organizations for bringing more transparency and accountability in the Redressal mechanism. It should also be done that the awareness towards human rights sensitization be increased among the workers and employees.

Along with all the suggestions and steps, it is very necessary that the corporate houses must pay attention on their operating style which must not be violative of human rights at any level. They must try to inculcate such policies which are worker and employee friendly so that everyone get just, humane and a safe environment to work. The corporate houses have a bigger responsibility towards the human rights as they are dealing with the different human characters during their business operations' I.e. workmen, employees and consumers. Human rights must not be left behind in race of profit making as ultimately we have to serve the humanity altogether.