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EXPLORING THE LEGAL LANDSCAPE: CORPORATE CRIMINAL LIABILITY AND ITS RAMIFICATIONS FOR HUMAN RIGHTS BREACHES

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INTRODUCTION

Corporation is defined as, "*a large business or organisation that under the law has the rights and duties of an individual and follows a specific purpose*".Corporate bodies are more corrupt and profligate than individuals because they have more power to do mischief and are less amenable to disgrace or punishment. They neither feel shame, remorse, gratitude nor goodwill"[3]

Corporate criminal liability pertains to the legal obligation placed upon a corporation or any other legal body for engaging in criminal activities. Corporate criminal accountability acknowledges that organisations can also participate in illegal behaviour, in contrast to individual liability which assigns responsibility to specific individuals for their actions. Corporate criminal liability is a legal principle that recognises the ability to hold businesses accountable for committing criminal acts, such as fraud, environmental violations, bribery, or other unlawful activity, due to their separate legal existence.

Companies play a substantial role in fostering economic growth and technological progress, they have also been implicated in engaging in actions that violate the fundamental rights of both individuals and communities. Corporations have been accused of engaging in a range of human rights misconduct. These charges prompt significant inquiries regarding the

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effectiveness of current legal structures in dealing with corporate wrongdoing, particularly in terms of establishing criminal culpability."*A comparative analysis of corporate criminal liability demonstrates that there are shared conceptualizations between common law and civil law systems, rather than stark contrasts. These shared conceptualizations revolve around the fundamental dichotomy between law and police as governing mechanisms, which can be observed in both common law and civil law system*."[4]

LEGAL FRAMEWORK

India

In *Indian Constitution,* Part III, it contains a full list of essential rights. The crucial question is which fundamental rights, if any, could be utilized against corporations. It will be impossible to utilize such a clause directly against a corporation unless, as stated below, the corporation is constituted a"state" for the purposes of Article 12[5]. "Every person shall be liable to punishment under this Code", according to Section 2 of the *IPC.* According to Section 11, a "person" is "any Company or Association of body of persons, whether or not incorporated."

In 1993, India formed the *National Human Rights Commission (NHRC)* under the Protection of Human Rights Act. Even though the NHRC is not mandated by law to address corporate human rights violations in practice, the NHRC has intervened in several human rights matters, including multiple instances of companies employing enslaved workers and sexual harassment in the workplace.

International Law

The framework of the *UN Guiding Principles* on Business and Human Rights (UNGPs) places emphasis on the corporate obligation to uphold human rights, with a particular focus on corporations conducting thorough assessments, taking measures to prevent human rights abuses, and offering avenues for redress. Despite lacking legal enforceability, the United Nations Guiding Principles on Business and Human Rights (UNGPs) have garnered substantial acknowledgement and function as a benchmark for business conduct.

[4] Dubber, Markus D. "The Comparative History and Theory of Corporate Criminal Liability." New Crim. L. Rev. 16, no. 2 (2013): 203-240.
[5]Zee Telefilms v. Union of India, 4 S.C.C. 649 (India 2005).

The intersection of *International Humanitarian Law* (IHL) and corporate criminal culpability for human rights violations presents intricate and significant implications, prompting crucial inquiries on the responsibility of corporations in armed conflicts and other instances of violence.

The guiding principle in the report prepared by UN states that *"The role of business enterprises as specialized organs of society performing specialized functions, required to comply with all applicable laws and torespect human rights."*[6]

Evolution of Corporate Criminal Liability

The evolution of corporate criminal liability traces back to exclusive English corporation establishment and the Bubble Act's 1720 restriction. Despite legal challenges and the "societasdelinquere non potest" principle, 19th-century courts regulated corporations. The shift from nonfeasance to misfeasance led to the identification doctrine, embodying corporate responsibility in authoritative figures. The rejected ultra vires doctrine and growing vicarious liability posed challenges. In the 1980s, neoliberal ideals hindered regulation until recent UK legislation. Corporate status as legal persons complicate criminal liability, especially regarding human rights violations. Meanwhile, the vicarious responsibility concept falls short, hindering accountability when no identifiable person can be blamed. The identification doctrine holds influential individuals directly accountable, addressing challenges in attributing legal responsibility to intangible corporations.Derived from legal judgements, particularly **Lennard's Carrying Co Ltd v. Asiatic Petroleum Co. Ltd.**[7], this doctrine holds managerial individuals accountable for the conduct of the corporation, approximating a type of vicarious liability. This strategy addresses the difficulty of assigning legal responsibility to intangible corporate organisations by emphasising the blameworthiness of influential persons.

[6] United Nations Office of the High Commissioner for Human Rights. Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,2011.
[7]Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd [1915] AC 705

Implications of Human Rights Violations

Recent decisions by the Supreme Court, such as **Kiobel v. Royal Dutch Petroleum**[8] and **Nestle USA, Inc. v. Doe**,[9] lead to contemplation of the possible constraints of legal systems. The clear intention is to discourage and penalise violations of human rights. However, the restriction of the Alien Tort Statute's scope raises concerns about the effectiveness of existing legal frameworks. It is discouraging to observe the potential constraints in bringing corporations accountable for transnational crimes.

The Alien Tort Statute (ATS) is a critical aspect of modern legal systems, serving to hold corporations accountable for human rights violations. However, the narrowing scope of the ATS, as seen in Supreme Court decisions, raises concerns about the limitations of existing legal mechanisms in ensuring corporate accountability. This constraint impedes victims' ability to demand corporate responsibility for transnational offenses, introducing a void in the implementation of human rights norms. The absence of effective legal mechanisms to address human rights violations by corporations poses a potential threat to the foundational principles and standards of human rights. Legal frameworks must undergo continuous evolution, prioritizing human rights, international cooperation, and legislative reforms. Proactive measures, such as thorough due diligence procedures, active stakeholder involvement, and compliance with global human rights norms, are essential for preventing human rights violations.

Extraterritorial Jurisdiction and Corporate Impunity

The concept of extraterritorial jurisdiction gives rise to issues over the lack of accountability for corporations. Instances such as **Doe v. Unocal Corp**[10]. graphically exemplify the difficulties encountered when pursuing legal redress for human rights abuses perpetrated in other countries. This highlights the pressing necessity for the development of more efficient and universally applicable legal frameworks to deter businesses from escaping responsibility for their activities.

[8]Kiobel v. Royal Dutch Petroleum 569 U.S. 108 (2013
[9]Nestle USA, Inc. v. Doe 593 US _ (2021)
[10]Doe v. Unocal Corp 395 F. 3d 932 (9 Cir. 2002)

Extraterritorial jurisdiction can help address corporate impunity by granting courts authority over actions beyond their territorial boundaries. However, this approach has challenges, including sovereignty and comity issues and practical enforcement obstacles. Balancing accountability for corporate misconduct with other nations' sovereignty is challenging due to the absence of universally recognized legal frameworks. Addressing these limitations requires developing more effective and universally applicable legal frameworks, strengthening international human rights law, fostering collaboration among jurisdictions, and establishing clear principles for holding corporations accountable for their conduct. States must exercise their jurisdictional authority responsibly, implementing proactive investigations, providing redress for affected parties, and enforcing appropriate legal mechanisms to ensure corporate accountability.

Environmental and Human Rights Challenges

Environmental and human rights challenges are exemplified by tragic events such as the **Bhopal gas leak**[11]. The legal procedures related to such incidents highlight the ongoing deficiencies in ensuring corporate responsibility for environmental and human rights violations. This serves as a clear indication that legal norms must consistently adapt to tackle the increasingly intricate nature of company operations.

To address environmental and human rights violations, a comprehensive strategy is needed, emphasizing accountability, prevention, and remediation. Legally, strict regulations are needed to maintain environmental and human rights standards. Legal mechanisms must ensure victims have access to justice. Enforcement of corporate criminal liability is crucial for holding corporations accountable for human rights violations and environmental damage. Penalties for corporate wrongdoing should be proportional to the damage caused. Legal standards must adapt to the growing complexity of business activities, such as global supply chains and new technologies. Continuous dialogue among policymakers, legal experts, civil society organizations, and affected communities is needed to identify deficiencies and propose solutions.

[11]Union Carbide Corporation vs Union Of India 1990 AIR 273

Prospects and Challenges

Although recent legal decisions such as **Vedanta Resources PLC v. Lungowe**[12]provide some hope, personal optimism is restrained by an awareness of the complex obstacles at hand. The intricate interaction of legal frameworks, jurisdictional intricacies, and societal norms is intricate and necessitates meticulous deliberation. Although acknowledging possible methods of holding corporations accountable, it is believed that continuous endeavours and ongoing dialogues are crucial in surmounting the difficulties involved in establishing and enforcing legal responsibility for human rights violations committed by corporations.

Empirical Data

- Violations of human rights are prevalent within the extractive industry. In 2019, there were a total of 572 attacks on defenders of human rights and 143 of those cases were associated with mining companies. Business and Human Rights Resource Centre.[13]
- Even after reforms were introduced following the collapse of Rana Plaza in 2013, the Bangladeshi garment industry still suffers from labor abuse such as poorly compensating workers and overworking them in subcontracting factories.[14]
- Studies show that shrimp aquaculture in Vietnam, as well as in Indonesia and India, tend towards abusive practices. Workers are at risk of not been paid enough for the work they do, and therefore, are forced to work more than their fair share due to the demands set by major supermarket chains in the United States, European Union, United Kingdom and Japan. [15]
- Evidence from Saudi Arabia's NEOM project suggest that there have been excessive violations of human rights, with more than twenty-one thousand workers reported

[12]Vedanta Resources PLC v. Lungowe [2019] UKSC 20

[13] Business & Human Rights Resource Centre, *"Corporate Human Rights Litigation: Trends from 200 Seminal Lawsuits"*, BUS. & HUM. RTS. RES. CTR https://www.business-humanrights.org/en/blog/corporate-human-rights-litigation-trends-from-200-seminal-lawsuits.

[14] Jason Judd, *"Letter: A Climate Challenge for Britain's Fashion Buyers"*, FINANCIAL TIMEShttps://www.ft.com/content/c860c7a0-a3b6-48bb-8209-bdfcf259dc7d.

[15]"Abuses Lurk Deep in Fashion Supply Chain", FINANCIAL TIMES, https://www.ft.com/content/3fb4043b-19af-4a28-bde6-78d1d7d120eb.

dead since its opening due to harsh working conditions bordering on modern slavery.[16]

Conclusion And Suggestions

The existing agreement acknowledges the significant influence that corporations wield in the advancement and safeguarding of human rights, encompassing both beneficial and detrimental outcomes. The adverse ramifications of their behaviour have garnered significant attention in recent years. A few recommendations to improve the circumstances would include the following:

Create a Corporate Human Rights Court on an International Scale

Establish an international tribunal whose sole purpose would be to adjudicate cases involving violations of corporate human rights. The court would possess authority over transnational corporations and would facilitate legal processes by offering a centralised platform for victims to pursue remedies.

Corporate Human Rights Impact Assessment Implementation

It is imperative to mandate that corporations integrate thorough human rights impact assessments into their operational frameworks. These evaluations would enable organisations to proactively confront human rights concerns prior to their escalation into violations, thereby identifying potential hazards.

Propose Liability Insurance for Business Entities

It is imperative to enforce the requirement for corporations to acquire liability insurance to safeguard against potential damages that may arise from infringements of human rights. Compensation for victims and an incentive for businesses to prioritise risk management and adherence to human rights standards would result from this.

[16]“ *Inside Saudi Arabia's Bloody £1TN Neom Megaproject 'with 21k Workers Mysteriously Dying & Labourers Trapped Like Slaves”,* THE SUN https://www.thesun.co.uk/news/31302725/saudi-arabia-neom-workers-dying-slaves/

Encourage for Collective Redress Mechanisms

Support the establishment of collective redress mechanisms that enable groups of victims to pursue legal remedies collectively, such as class action litigation or representative actions. This measure would provide marginalised communities with greater access to justice while reducing the burden on individual plaintiffs.

Foster Incentive for Whistleblower Protections

Provide whistleblowers who bring to light corporate misconduct, including violations of human rights, with both financial incentives and legal safeguards. Programmes that offer incentives for whistleblowers may inspire stakeholders and employees to disclose instances of unethical or unlawful behaviour within organisations.

Incorporate Human Rights Education into the Culture of the Organisation

Foster a corporate culture that integrates human rights education and training initiatives, with the aim of enhancing stakeholders' and employees' understanding of their duties and obligations in relation to human rights. This would encourage corporations to cultivate a culture that values accountability and ethical behaviour.

Bibliography

1. John Ruggie, Protect, Respect and Remedy: A Framework for Business and Human Rights, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008).
2. David Kinley & John Ruggie, Human Rights Benchmarks for Companies: A Progress Report, BUS. & HUM. RTS. J. 1, no. 1, 11-29 (2016).
3. Robert C. Thompson, Piercing the Corporate Veil—An Empirical Study, 76 Cornell L. Rev. 1036 (1991).
4. Anita Ramasastry, Corporate Complicity: From Nuremberg to Rangoon—An Examination of Forced Labour Cases and Their Impact on the Liability of Multinational Corporations, 20 Berkeley J. Int'l L. 91 (2002).

5. Sheldon Leader, Corporate Liability for Human Rights Abuses, 52 DePaul L. Rev. 385 (2002).
6. James A. Fanto, Comparing UK and US Corporate Governance: Issues and Controversies, 30 Fordham Int'l L.J. 617 (2007).
7. John G. Ruggie, Just Business: Multinational Corporations and Human Rights (W.W. Norton & Company 2013).
8. David Kinley, Civilising Global Capital: On Corporations and Human Rights (Cambridge University Press 2009)
9. *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013).
10. *Nestlé USA, Inc. v. Doe*, 141 S. Ct. 1931 (2021).
11. *Doe v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002).
12. *Vedanta Resources PLC v. Lungowe*, [2019] UKSC 20.
13. *Lennard's Carrying Co Ltd v. Asiatic Petroleum Co Ltd*, [1915] AC 705.
14. United Nations Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011).
15. The Constitution of India, 1950.
16. The Indian Penal Code, 1860.
17. The Protection of Human Rights Act, 1993