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“CORPORATE BUSINESS IN INDIA: A MENACE TO HUMAN RIGHTS.”

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I. ABSTRACT:

“The world has turned out to be a global village and standards such as the preservation of human rights are shared globally. The concept of corporate business and its devastating on humans must be juxtaposed against the concept of the right to development, international treaties and binding covenants between nation states. Companies have a powerful influence on all our lives. In the fold of the foremost abuses in recent decades, civil society has progressively called for Human rights standards to be held by companies. This article emphasises on contemporary debate i.e., in relation to the safeguarding of human rights and the responsibility of corporate personnel to carry the additional responsibility of human rights promotion, with special reference to health, social welfare and natural environment concerns, and the interface between corporate obligations and human rights owed to individuals, also focussing on regional human rights enforcement and monitoring structures, judicial decisions towards protecting the human rights with reference to case laws and the need of having human right standards which a corporate entity should adhere at the time of incorporation of a company.”

KEYWORDS: *Human rights, corporate social responsibility, corporate entity, judicial decisions.*

II. INTRODUCTION:

Globalisation is robbing all humans of their humanity. The poor, the marginalised, the excluded are not just losing their humanity by being denied livelihood, jobs, security- they are losing the most fundamental rights of all i.e., the right to live. As every resource is commodified, plants and seeds are patented, water is privatised, the poor are robbed of their means to create livelihoods and sustain their lives. Corporate profits are no longer based on the extraction of surplus value. They are based on the extraction of people's very lives. Thousands of Indian peasants have been pushed to suicide as corporate monopolies on seeds lock them into a debt trap. Thousands are being denied their right to food and water as these most basic needs are also transformed from means of life support and sustenance into commodities that generate corporate super profits.¹

In the midst of globalisation in the world, it is clear that company whether public or private have both positive and negative impact on human rights. There are new-fangled social challenges each day that ranged starting from forced labour, to large scale conflicts which are in a straight line are not directly linked to human right abuses. Companies can crash the intact range of human rights matter optimistically and pessimistically, together with inequality, sexual harassment, freedom of association and to form unions, health and safety, rape, torment, freedom of expression, privacy, poverty, food and water, education and housing.²

III. MEANING AND CONCEPT OF HUMAN RIGHTS:

It is difficult to define the concept of human rights. However, D.D. Basu³ defines Human rights are minimum rights which every individual must have against the state or other public authority by virtue of his being a member of the human family, irrespective of any other consideration. In the words of the United Nations Universal Declaration of Human Rights,

¹ DR. VANDANA SHIVA, *Research Foundation for Science, Technology and Ecology (RFSTE)*.

² *Business & Human Rights: A Brief Introduction*, BUSINESS & HUMAN RIGHTS RESOURCE CENTRE (Feb. 21, 2019, 3:00 P.M.), <https://www.business-humanrights.org/en/business-human-rights-a-brief-introduction>.

³ *Indian Jurist and Lawyer*.

human rights refer to “basic rights and freedoms to which all humans are entitled.” All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

IV. CORPORATE GLOBALISATION: IMPACT ON HUMAN RIGHTS:

Globalisation is widely used in reference to corporate business and international trade. At present in the name of globalisation, the international and national corporations are eroding not just their own human rights, but those of their sisters and brothers around the planet. Human rights are deliberately ignored and violated when global trade decisions are based on getting the cheapest labour, slackest environmental and labour regulations, and huge tax cuts for transnational operations and freedom from any kind of long-term commitment to the region in which these corporations operate. Poor countries are pitted against each other in a self-destructive competition to attract foreign investment, in the name of development. Though importing and exporting is done it should be fair to both domestic players as well as foreigners and not to exploit the domestic markets.

One of the debating issues at WTO is TRIPS (trade-related intellectual property rights). ‘Before TRIPs, International laws on patents, especially in developing countries would not allow the patenting of food and drugs and other essential products but due to pressure from American and Japanese multinationals, TRIPS was introduced against the will of developing countries. Business interests clearly override health interests for the WTO, since TRIPS requirements make it very difficult for governments to obtain medicines, including in emergency situations.

And developments of intellectual property rights can be seen in the field of biotechnology, biodiversity and traditional knowledge. The patent has been extended to the traditional knowledge of the tribal population in the third world countries like human life, animals, plants, microorganisms, etc. There must be free access to these resources for the survival of mankind on the globe. The traditional knowledge is always associated with the biological

resources, which is to be preserved and protected from outside agencies from being utilized at the cost of the possessor of such knowledge. Till recently, the world's richest man was an oil worker. Today he is a knowledge worker. This statement sums up the importance of the knowledge in a rapidly changing society, the world over. It is this recognition that justifies the protection of intellectual property created either by individuals or by communities.⁴

Corporations of the western world have since past two decades or so, been reaping immense profit by patenting the knowledge and genetic resources of Third World Communities, which also forms biodiversity hotspots. Once patented the patent owner can effectively prevent competitors from producing the product, occasionally even interfering with the lifestyles of the community which is the original source of the patented information. In such cases, farmer and community livelihoods are threatened and their rights have been commercially exploited by big multinational companies.

Many mega projects in the name of development has devastated the rights of local people living in that region as well as the environment by negating a whole array of fundamental rights from individual freedoms i.e., right to human dignity, right to national sovereignty to the global right i.e., to protect and equitably share the earth's resources.

Let us take the example of the Narmada valley dam projects which has been called "India's Greatest Planned Environmental Disaster" which displaces approximately 1.5 million people from their land in three states, not to mention the annihilation of biodiversity that will occur due to inundating thousands of acres of forests and agricultural land. Arundhati Roy⁵ challenges the position of the state that building these dams are in the national interest of development by asking 'How can you measure progress if you don't know what it costs and who has paid it? The World Bank had supported one of these dams i.e., the Sardar Sarovar Project, with a loan of \$450 million, but this case acted more responsibly than had in the past

⁴ G B REDDY, INTELLECTUAL PROPERTY RIGHTS AND THE LAW, 395 (7th ed. 2009).

⁵ *Indian Author, Human Rights Activist.*

by organising an independent study group to assess the impacts. Once it became clear how grave the environmental and social consequences would be, the World Bank withdrew the loan. The indigenous population of this area stood firm against the Indian government; they organised massive marches, rallies, and hunger strikes, and declared that they would stay on their land and drown when it was flooded. Roy observes that ‘no one has ever managed to make the World Bank step back from a project before. Least of all a ragtag army of the poorest countries’, suggesting that perhaps the public attention received by Narmada Bachao Andolan, The save the Narmada Movement’ had at least as much to do with the Bank’s decision as to the scientific assessment.

Unbiased scientists, environmentalists, human rights activists and members of the local movement agree with Roy that ‘big dams are obsolete’ they lay the earth to waste. The consequences of the construction of a dam lead to floods, water logging salinity and they even spread disease. There is supporting evidence that links big dams to Earthquakes.

Unfortunately, even after losing the World Bank loan, the government with the support of the Supreme Court continues to move ahead with the projects, instead of looking at sustainable energy sources. This on-going battle demonstrates that development is commercial, political and, is inextricably involved in human rights issues.

IV. I VEDANTA STERLITE PLANT ISSUE:

“In 1994 ADMK Jayalalitha party had laid the foundation stone of steel plant in Tamilnadu. At DMK regime, in 1996 Tamilnadu pollution control board (TNPCB) issued a license to the steel plant for operation (wherein they did not seek for NoC from Environmental Impact Assessment). In 1998 locals complained that they are suffering from headache, coughing, choking due to smoke emanating from the steel plant and also groundwater is polluted with metals like arsines, lead, selenium, cadmium, copper and aluminium.

In 1998 the factory was shut down by the verdict given by Madras High Court for the reasons listed by National Environmental Research Institute (NEERI). But unfortunately, NEERI again gave clean chit to Sterlite to operate as usual. In 2005 Tuticorin residents complained regarding toxic waste water. Due to this in 2013 TNPCB issued a closure order as Sterlite's Sulphuric Acid Plant-I, emission of sulphur dioxide is nearly three times more than the permissible limits and they operated without taking renewal consents from TNPCB. But Tribunal said TN government order is void and slashed a minimum penalty i.e., 100 crores and gave them clean chit to operate. In 2016 TNPCB issued a notice for dumping copper slag in Upper River in Tamilnadu which lead to pollution of water.

Again in 2018, they established the second unit in the factory for expansion. Massive protests took place in the vicinity of the factory by local people and protestors rushed into collector office for justice. Due to violent incidents, police opened fire on the innocent people and killed 12 civilians and 90 people were injured due to this brutal action.⁶

Supreme Court of India as on 18th of Feb 2019 set aside NGT order allowing the reopening of Sterlite plant in Thoothukudi. A Bench led by Justice Rohinton Nariman concluded that the tribunal lacked jurisdiction to entertain the appeal by the plant's owner, Vedanta, against the shutdown. Allowing the Tamil Nadu government's appeal against the NGT decision, the judgment by Justice Nariman gave Vedanta liberty to move the Madras High Court for any interim reliefs. Meanwhile, the plant remains closed.⁷

In the name of development, the so-called powerful people are lobbying the basic human rights of the innocent people i.e., right to live in a healthy environment which is also a fundamental right enshrined in our Constitution.

⁶ SHALINI LOBO, *Vedanta's Tuticorin Copper Plant Gets NGT Nod for Reopening Months after Protests Killed 13*, INDIA TODAY (Mar. 03, 2019, 11:00 AM), <https://www.indiatoday.in/india/story/vedanta-sterlite-plant-ngt-tuticorin-tamil-nadu-1410106-2018-12-15>.

⁷ KRISHNADAS RAJAGOPAL, *SC Sets Aside NGT Order Allowing Reopening of Sterlite Plant in Thoothukudi*, THE HINDU (Mar. 03, 2019, 11:55 AM), <https://www.thehindu.com/news/national/tamil-nadu/sc-sets-aside-ngt-order-allowing-re-opening-of-sterlite-plant-in-thoothukudi/article26301590.ece>.

V. COMPANIES LEGAL OBLIGATION TO VENERATE HUMAN RIGHT:

Company and the concept of human rights should go hand in hand. The company has the duty to provide the human right to the customer and the employee and as well the general public. The human rights obligations of corporations derive from three levels of legal sources.⁸ Firstly, from national legal orders, secondly, they derive from international level and thirdly from unilateral voluntary commitments by corporations themselves. In national legal orders, human rights obligations of corporations can be found in constitutions or under ordinary legislation. In other words, the fundamental human rights obligations of corporations within the various national legal orders can readily be identified in most instances.

In 2011, the UN Human Rights Council endorsed guiding principles on Business and Human Rights. The Impact of businesses can have both optimistic and pessimistic implications on society. Whilst few of the positive externalities of a booming corporate existence are growth, development, employment and infrastructure whereas negative externalities frequently are inclined to outweigh their positive impacts by marring human rights and interfering in the primary responsibility of the government to shield its citizens.

The United Nations endorsed the ‘Protect, Respect and Remedy Framework’, developed between 2005 and 2011 under the mandate of John Ruggie. He was the then-Special Representative of the UN Secretary-General for business and human rights. The corporate obligation of business is not to infringe human rights wherever and whenever they operate. The main focus of this framework is to create awareness on the end of corporate houses on their potential and concrete impacts. The corporate social responsibility must be independent of the State’s duty to shield human rights. It signifies that there should be effortless access to remedial issues by individuals and communities. Implementing corporate responsibility is temporal in nature. Implementation of those principles is a dynamic process since the nature

⁸ J. LETNAR CERNIC, HUMAN RIGHTS LAW AND BUSINESS (Gronigen: Europa Law Publishing, 2010).

of human rights infringement risk changes with operations, time contexts, and business relationships. The Guiding Principles can be classified into three pillars: protect, respect and remedy. The entire three pillars tackle concrete individual steps to be taken on aspects of government and corporate obligation not to violate human rights.⁹

Recently the Zero draft has been drafted in order to regulate international human rights law, the activities of transnational corporations and other business enterprises. The obligations and primary responsibility is to promote, respect protect and fulfil human rights and fundamental freedoms lie with the State, and that States must protect the third parties, including business enterprises against human rights abuse within their territory or otherwise under their jurisdiction or control, and guarantee respect for and implementation of international human rights law.¹⁰

VI. REMEDY:

The obligation of the state to shield human rights by regulating the conduct of private actors is for the most part well understood, and it now belongs to the acquis of international human rights law.¹¹ The states are expected to take all measures that could reasonably be taken, in accordance with international law, to avert private actors from adopting demeanour that may lead to human rights violations. The international duty of the state shall be occupied where such violations occur which the state could have not permitted without imposing an irrational burden on such a state. The duty to protect includes a duty to grant access to remedies where a violation did take place¹².

⁹ADRIJ CHAKRABORTY AND ANAHITA MEHRA, *United Nations Guiding Principles and the Business and Human Rights in India* MPRA (Feb. 26, 2019, 9:30 AM), https://mpr.ub.uniuenchen.de/86318/1/MPRA_paper_86318.pdf.

¹⁰*Legally Binding Instrument to Regulate, In International Human Rights Law, The Activities of Transnational Corporations and Other Business Enterprises*, (Mar. 1, 2019, 9:30 AM), <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf>.

¹¹OLIVIER DE SCHUTTER, *INTERNATIONAL HUMAN RIGHTS LAW*, CUP, 427–526, (2014).

¹²*The UN Charter, Article 13, para. 1, Article 15 of the Statute of the International Law Commission.*

The extraterritorial human rights obligations of states, including, in particular, the duty of states to direct the corporations they are in a place to influence, wherever such corporations manoeuvre. In contrast to this position, the United Nations treaty bodies have time after time articulated that states should take measures to avert human rights contraventions abroad by business enterprises that are included under their laws, or that have their core seat or their core place of business under their jurisdiction. The Committee on Economic, Social and Cultural Rights, in particular, affirms that states parties should ‘prevent third parties from violating the right in other countries, In case they are capable to manipulate these third parties byroad of legal or political means, in accordance with the Charter of the United Nations and applicable international law.¹³

The corporate veil would also assist in overcoming a problem that the Guiding Principles have not adequately addressed. The corporate veil, the Guiding Principles includes human rights due to diligence requirement as a piece of the corporate responsibility to esteem human rights. However, the extent to which this condition imposes liability on a corporation to make sure that other corporate entities with which it has an investment link act in accordance with human rights remain unspecified. Yet, in practice, in the absence of such a responsibility being imposed, victims of transnational corporate human rights abuses may face important hurdles.

The key principle for safeguarding people's rights in industrial development is the established mechanisms that ensure a full and effective participation, and a 'free and prior informed consent' of the communities concerned like what happen in Jagatsinghpur, Orissa where Orissa state government entered into an agreement with POSCO to enable an integrated steel plant, which later witnessed frequent protests. Therefore in order to escape from that situation, the companies and the government together must realise that the principle of FPIC

¹³ *Committee on Economic, Social and Cultural Rights*, ‘General Comment No. 14 (2000): *The Right to the Highest Attainable Standard of Health (Art. 12 of the International Covenant on Economic, Social and Cultural Rights)*’, E/C.12/2000/4 (2000), para. 39; ‘General Comment No. 15 (2002): *The Right to Water (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights)*’, E/C.12/2002/11 (26 November 2002), para. 31.

(free, prior, informed, and consent) is emerging as a methodology for designing programmes. 'Free' should imply no coercion, intimidation or manipulation. 'Prior' should imply consent has been sought sufficiently in advance of any authorisation or commencement of activities, and respect time requirements of the indigenous consultation process. 'Informed' should imply that information is provided that covers the nature, size, pace, reversibility and scope of any proposed project; the reason of project; the duration of the above; the locality and area being affected; preliminary assessment of economic, social, cultural and environmental impact, including potential risks; and fair and equitable benefit sharing in a context that respects the precautionary principle. The 'Consent', consultation should be undertaken in good faith. The parties should establish a dialogue, allowing them to find appropriate solutions in an atmosphere of mutual respect and full and equitable participation.

VII. CASE STUDIES:

In *Plachimada v Coca Cola*, as per the agreement struck by the company with the KSPCB (Karnataka State Pollution Control Board), up to 1.5 million litres of water were haggard commercially from 6 bore-wells to be found inside the factory compound. The permit granted Coca-Cola the right to extract groundwater to meet its production demands of 3.8 litres of water for a litre of cola. The water table receded, as did the quality of groundwater and from the region revealed a high concentration of calcium, and magnesium ions detailed sampling of the water was collected. In addition, the colloidal slurry that was generated as a by-product was initially sold to villagers as fertilizer and dangerous levels of toxic metals and the known carcinogen, cadmium was found. The health of local people have been put at risk in addition to the area's farming industry has been devastated.¹⁴

In *Vishakha and others v State of Rajasthan*¹⁵ Public Interest Litigation was filed against State of Rajasthan and Union of India to put in force the fundamental rights under Articles

¹⁴Water Wars: *Plachimada Vs Coca-Cola*, THE HINDU (Mar. 1, 2019, 8:25 AM), <https://www.thehindu.com/sci-tech/energy-and-environment/water-wars-plachimada-vs-coca-cola/article19284658.ece>.

¹⁵(1997) 6 S.C.C. 241 (India).

14, 19 and 21 of the Constitution of India for working women.¹⁶ The petition was filed subsequent to Bhanwari Devi, a social worker in Rajasthan was cruelly gang-raped for stopping child marriage. In this case, the matter of sexual harassment in working place was put forward before the court. It was decided by the court that the "International Conventions are important for the purpose of analysis of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment inherent therein." Supreme Court of India defined sexual harassment and set guidelines for employers working in corporations.

The Bhopal gas tragedy,¹⁷ when the entire town slept, a highly toxic chemical named methyl Isocyanate-2 (MIC) escaped from the Union Carbide India Limited in 4th December 1984 in Bhopal killing and crippling thousands in its wake. Estimated 40 tonnes of toxic gases from the pesticide plant at Bhopal spread throughout the city. The reason for the accident was the runaway reaction of the MIC with water. As a repercussion of the leakage, people and animals dropped dead on the street in astonishing numbers. During this incident, there was no alarm sounding warnings were given out and neither was there any chance for preparation for evacuation. This aggravated the tragedy as an estimated number of 10,000 people died immediately while almost 50,000 were too ill to return to their jobs.¹⁸

The ***Mahanadi Coalfields Limited Controversy***¹⁹, It is situated at Talcher coalfields in Angul district of Odisha. It is one of the prime and most profitable coal producing subsidiaries in India. The people complained that the productivity of the farmlands is negatively affected by pollutants such as coal dust and fly ashes. In addition to the biggest problem was opencast mines that are not filled by the workers get filled with water and become breeding grounds for mosquitoes, furthermore insufficient filling of land holes also a reason for land depression. Excessive mining activities take over agricultural lands, encroach on forest land

¹⁶ The Constitution of India, 1950 (India).

¹⁷ Union Carbide Corporation v. Union of India, 1990 A.I.R. 273: 1989 S.C.C. (2) 540 (India).

¹⁸ *supra* note 9.

¹⁹ State of Orissa and Others v. Mahanadi Coalfields Ltd, A.I.R. 1995 S.C. 1868 (India): JT 1995 (3) S.C. 662 (India): 1995 (2) SCALE 900 (India): 1995 Supp (2) S.C.C. 686 (India): 1995 3 S.C.R. 639 (India).

and cause topsoil loss. It also affects the water table, soil micro-organism, vegetation coverage, drainage, etc. The sounds of blasting, motor vehicles and coal loaded trains on merry go round railway has been causing ground vibration, landslide, joint fractures and cracks in the mining area. It also adversely affects the health of insects, birds, animals and human beings those who are living in the locality.²⁰

The above cases are mounting examples where corporations are in the name of development violating human rights.

VIII. CONCLUSION:

Protection of Human Rights is paramount in this globalised world. Human rights abuse in the sphere of business has reached such an extent where the violated right cannot be compensated. Corporations are reaping immense profits at the cost of innocent people rights and as well as degrading the environment. In the present world, development has become the core truth of human life. But development does not take care of human beings. Commitment towards corporate social responsibility should adhere by corporations which they tend to break this promise. It is the obligation of the states to take appropriate measures in accordance with international laws while taking punitive actions against the corporate entities that violate human rights at the time of incorporation of the company as there is a saying “prevention is better than cure”.

²⁰ *supra* note 9.

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