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ACCOUNTABILITY OF TRANSNATIONAL CORPORATIONS (TNCs) IN HOME STATES FOR BUSINESS-RELATED HUMAN RIGHTS ABUSES IN HOST STATES: A COMPARATIVE STUDY

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ABSTRACT

TNCs allegedly violate rights of the human beings in the form of child labour, trafficking, long work hours, sweatshops in the industry, and so on throughout their complex operations but accounting for TNCs under international law for these poignant activities is almost impossible. The impossibility staggeringly increases as TNCs do not have personhood under international law and of TNCs and there is 'lax of relevant law' or 'inability of the host states to regulate' the TNCs operating in their territory. Moreover, the International Covenant on Civil and Political Rights (ICCPR) confines state obligations to the territory and jurisdiction of the state party, whereas the International Covenant on Economic, Social and Cultural Rights (ICESCR) does not contain identical provisions. So, there is the option of the scholars to think about extraterritorial obligations of the state. This article argues that the home states may account the TNCs for human rights abuses in the business relations conducted in the host states in pursuance to ARSIWA, Maastricht Principles, and UNGPs as the home states have overall control on the overseas operations of TNCs. As the US and Canada are two dominant home states, this article explores the approaches of these two countries. After exploration, this article finds that a 'foreign claimant' may complain before the US court for human rights violations by US corporations under the Alien Tort Claims Act (ATCA) if the conduct (action or omission) of the corporation 'touches and concerns' the USA. Moreover, foreign claims in the Canadian Courts are also available if the Canadian TNCs violate binding 'customary international law' and the conduct of the corporations has a 'real and substantial connection' with Canada.

Keywords: Transnational Corporations (TNCs), International Law, Human Rights, Home states, Host States, USA, Canada.

1. INTRODUCTION

These days, TNCs have become indispensable actors in international law and they have economic and political dominance that compel the host states to make 'concession agreements' compromising the national interests. TNCs do not have personhood under international. As states are primarily under obligation to account for the TNCs in which territory they operate, both the home and host states have obligations to account for TNCs. The host states lack regulations or capability to account the TNCs for abuses of human rights in their territory and the home states do not have obligations to oversee TNCs' overseas operations, so the victims of the host states get access to remedy in neither state. However, reputed businesses, human rights defenders, and Non-Governmental Organisations (NGOs) have been campaigning for the accountability of TNCs since the 1960s. The objectives of this article are to figure out how the TNCs would account in the home state under international law for contravening the human rights of the host states. In doing so, this article will explore the jurisprudential foundation of the international human rights regime and explicate laws and judicial practices of the USA and Canada in comparison with the host states i.e., Vietnam and Bangladesh. Exploration of the areas

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of accountability of TNCs is inevitable to ensure 'rights to economic self-determination', rights of the people involved in the 'global supply chain' (GSC), 'corporate regulations', and 'pacta sunt servanda' in the business activities. This study has chosen the USA and Canada because these countries have a significant number of corporations operating globally in different sectors that are vulnerable to human rights abuses and environmental degradation. Conversely, Vietnam and Bangladesh are the worst 'victims of human rights violations' committed by TNCs. Moreover, the garment products of these two countries are largely destined for North America, so it is an urgent necessity to explore whether TNCs may account for the domestic mechanisms of the USA or Canada where the TNCs originated from.

2. WHAT DO TRANSNATIONAL CORPORATIONS (TNCS) MEAN?

The definition of Transnational Corporations (TNCs) is often varied and controversial. It is a popularly and widely circulated idea that TNCs are interchangeably used with multinational enterprises (MNEs), or multinational corporations (MNCs) (Wikipedia Encyclopaedia). TNCs/MNEs/MNCs are corporations that manage production or provide services in at least two countries and their budget sometimes exceeds the national budget of many countries (Wikipedia encyclopedia; Bantekas & Oette 2020; Sklair 2012).

Production of TNCs may be in one country and served in other countries (Biersteker 1978) irrespective of its legal formation, control, ownership, or management in a single hand or in conjunction with others (Deva 2003) having 'corporate capital, possessions, and expertise in different locations irrespective of domestic boundaries'(OECD 2011).

A TNC can be both a public and private corporation (Greer and Singh 2000). If TNC is a public corporation, it will trade in stock exchange or brokerage houses and buyers are shareholders who may be both individuals and institutions. For example, DuPont and Enron are publicly traded corporations. On the other hand, if TNC is private, it does not have publicly traded shares rather it is mostly a family-controlled firm. Cargill is a private firm controlled by two families. Government-owned corporations are different sorts of entities that once ruled many colonial states. For example, the East-India Company ruled the territory of India, Pakistan, Bangladesh, Sri Lanka, inter alia, Hongkong. hese days, this sort of corporation does not exist.

TNCs indicate enterprises as a whole or include various entities operating at home and abroad (ECOSOC 1988). This paper will reveal how TNCs divide their operations i.e., (i) parent corporations; (ii) subsidiary corporations and they exploit the divisions of TNCs to have legal opportunities in the host states including tax evasion, non-compliance with human and environmental norms that the hosts are under obligations to 'respect, protect and fulfill' in pursuance to international treaties or customary international human rights laws (Bantekas, & Oette 2020). Parent Corporation refers to the main source of influence of TNCs over other entities (ECOSOC 1988) and it operates in the home state where the company is originated and located, whereas the host country where the company is located other than the home country (ECOSOC 1988). Parent Corporations expand their trade extraterritorially. The entity of TNCs functioning extraterritorially (i.e., in the host state) is a 'subsidiary corporation'.

2.1. The Importance of Protecting Human Rights in the Business Sector and Obligations of TNCs

Traditionally there is the difficulty of accounting corporate zorganizations for human rights abuses as human rights obligations are state-centric and territorial (ICCPR 1966) whereas many corporate operations are mostly transnational with complex 'corporate structure' and 'global value chains' (Mende 2023). In the modern dynamics of globalization, it is manifested that states do not only affect human rights situations rather non-state actors like TNCs, 'International Non-Governmental Organisations (INGOs), 'Non-Governmental Organisations (NGOs), etc. have key roles in destroying human rights.

Business operation, a crucial entity to ensure the 'right to development', has a 'corporate social responsibility' (CSR) to serve society by respecting human rights, the environment, and morals. Therefore, corporate entities need to emphasize human rights and other legal obligations in their operation accommodating both society and profit in a balanced manner so that businesses may innovate 'new opportunities' and manage unknown risks

in 'global standards' (the Global Compact 2006). Compliance with CSR is not sufficient as it is mostly a private responsibility (Scherer & Palazzo, 2011) and corporate entities may accommodate human rights being 'self-developed, self-imposed, and self-motivated standards' (Mende 2023) in their own way not in the global benchmark. Thus, there may result in zprivatization in human rights protection that would safeguard the corporate interests rather than promoting public roles that companies need to take in the age of global governance (Wettstein 2012). Accommodation of 'human rights and environmental norms' would create 'sustainable markets', and 'level playing fields of opportunities' necessary for the resilient existence of 'business contexts'. (the Global Compact 2006).

International Bill of Human Rights i.e., Universal Declaration of Human Rights (UDHR), ICCPR, and ICESCR developed 'a universal benchmark' that requires states and every organ of the states to respond. Various domestic laws and policies also grow in consonance with the state's obligations to implement 'human rights standards. Business entities need to comply with those 'domestic regulations' in which jurisdiction they operate a business. If the TNCs have room to deny them, denials of TNCs would attribute the states to put responsibility for wrongful acts on the state that has created the TNCs (Clapham 2006) or have control (ARSIWA 2001).

A number of international measures succeeded in setting a standard for business behaviors. 'Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights' was the most pragmatic but it failed to develop a political consensus among the nations (Mantilla 2009).

The private nature of CSR and aspects of state centricity of human rights regime enliven the dichotomous positions of human rights enforcement. Though international, regional, and national initiatives sought to regulate the human rights obligations of private corporations relying on 'voluntary norms', the differences in obligations of state and corporate entities remain (UNGPs 2011; Bentaks & Oette 2020). The positive aspect is that they acknowledged the extent of human rights obligations beyond the domain of states (Mende 2023). UNGPs admit the 'polycentric character' of 'global governance of human rights' where both public and private entities have the role to play for public goods 'in a complementary manner'. So, the legal obligation of the state is 'to protect human rights in its territory' and corporations have the 'responsibility to respect human rights' (UNGPs 2011) throughout its operation. However, the use of 'respect' for TNCs/corporations in UNGPs relaxed corporate obligation though it is unavoidably added due to social expectations

There may be debate that if the obligations of the corporate entities are so important, then, why obligatory legal mechanisms are not possible to develop? In respect of the 'international human rights regime', attempts to adopt binding conventions are underway and numerous national and regional legislations have already adopted to account for business corporations. Many European Countries adopted due diligence legislation and the UK, Australia, and the USA have transparency laws in respect of 'global supply chain'. (California (2010; UK (2015; Australia 2018; Dutch 2019; EU 2017; Germany 2023; EU 2024).

Finally, TNCs expanded their business so widely that they have avenues to contribute in the field of public importance in both the country of operation and host states. Moreover, only states are not solely able to ensure safeguarding issues of a public nature that require extensive budgets but, corporations need to take protective measures for human rights, rights to health, and rights to environment during operating public services.

2.2. TNC's Responsibility for Human Rights Violation in the Country of Operation

UDHR in its preamble addresses 'every organ of the society' and Article 2(e) CEDAW and Article 2(1)(d) of the ICERD require the state parties to take initiatives to eliminate the discrimination by both public and private entities. General Comment 31 envisages that the positive duty of the states' obligation 'to implement covenant rights will be discharged not only by protecting the individual from the violations of state agents but also from acts of private persons of entities' (General Comment 31). Eight Core Labour Conventions have posed obligations on the state to ensure 'prohibition of forced labour, freedom of association, right of organizing collective bargaining, equal remuneration' etc. These are related not only to states but also to corporations.

OECD and corruption conventions advanced in identifying the responsibility of TNCs in specifying the punishments. For example, articles 2 and 3(2) of the 1997 OECD convention require the state party to 'establish the liability of legal persons [TNC] for the bribery of a foreign public official'. So, the corporate institutions, being legal persons of the country of operation or origin, are accountable for criminal activity like bribery. In pursuance to Article 3(2) of the OECD convention, if the corporations are not criminally accountable under the domestic law of the state party, they may be accountable with 'effective, proportionate and dissuasive non-criminal sanctions'. For example, monetary compensation is for the crime of bribery offered to overseas personnel. Article 26 of the corruption convention outgoes over OECD convention by specifying the liability of the corporations by adding the administrative liability (OECD convention 1997). Corporations operating nationally or internationally are under obligations to 'protect economic, social and cultural rights' (General Comment 24).

From the above international Treaties, it may be reached in conclusion that the responsibility of the TNCs in international law is not impossible. As the human rights regime does not directly address the responsibility of the TNC, socio-political reality should not allow to regulation the TNCs in an unchecked manner (Bantekas 2021). A growing trend among human rights advocates and activists to account for TNCs for human rights in the supply chain since the 1960s and it is argued that states cannot oppose the responsibility of its creation (corporations) for breaching the duty of protecting human rights that shoulder on states. Therefore, states have the obligation to regulate the corporations that operate in their territory and/or are subject to its jurisdiction or its control (including exterritoriality (Schutter 2016; McCorquodale & Simons 2007; O'Brien C. 2018).

In the beginning, corporations also responded enthusiastically to 'comply with the human rights obligations' (Bantekas 2020). The continuous compliance of businesses with voluntary initiatives proposed by NGOs may make us exhilarated to feel that business corporations would not be defiant of compulsory treaty obligations. This belief was supposed to be proved erroneous as the Norms (2003) were rejected by the business community (Mende 2023). These Norms tended to oblige corporations considered equivalent to states, meaning corporate entities are to 'promote, respect and fulfill human rights' (McBrearty 2016). The development through these Norms is that corporate liability is not only linked to the specific conduct of the corporations but also the areas of corporations' influence and benefit. However, the cooperative approach of Human Rights advocates and the business community ended but the advocacy for a special procedure of internal assessment of human rights by TNCs developed.

The division between the business community and human rights advocates on account of the Norms was wake-up call for the activists and they rejuvenated global leaders to think differently. UN responded appropriately and appointed John Ruggie in 2005 in order to explore dimensions of human rights in business operations. In 2008, John Ruggie identified the 'core principle for business enterprises' in the areas of human rights in the framework of 'differentiated but complementary' responsibilities of states and TNCs. These principles are (i) 'State duty to protect human rights abuses by third parties including corporations; (ii) the responsibility of corporations 'to respect human rights'; and (ii) Both duty to ensure 'effective Access to justice' (UN 2008; Ruggie 2008).

In 2011, this set of principles was formalised into a 'Guiding Principles on Business and Human Rights: Implementing the UN Protect, Respect and Remedy Framework' and the Human Rights Council endorsed it unanimously. (UNGPs 2011). Johon Ruggie' proposed the framework after long work with the business community, support of civil society, and unanimity of members during endorsement made UNGPs authoritative statement regarding human rights responsibility corporations irrespective of size, and place of operation. As per the UNGPS, the states should take legislative, administrative, and enforcement measures and they will develop corporate laws, and enable business entities to comply with human rights. It also envisages that States will take measures not only for corporate conduct in its territory but also in its territory/or jurisdiction throughout its operations. On the other hand, UNGPs address that business operations should avoid human rights breaches in the activities in which they are involved.

Now questions arise if the home states have obligations to protect the rights under the human rights conventions extraterritorially. In pursuance to Article 2 of the ICCPR, the states parties have to

'undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction'. ICESCR does not contain any indication about the territorial limitations of obligations of state parties but article 2, para 1 states each state party to the convention may undertake steps 'individually and through international assistance and cooperation' in respect of economic and technical aspects for the progressive realization of the rights recognized in the ICESCR 'to the maximum of the states' available resources'. So, assuming obligations of state parties extraterritorially is not prevented under the ICESCR. Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social, and Cultural Rights (2011) extended this scope authoritatively. According to Maastricht Principles, the state parties have 'to respect, protect and fulfill economic, social and cultural rights in the situations over which states have authority or effective control, whether within or outside territory is immaterial' (ARSIWA 2001; Maastricht Principle 2011). A state must respect and ensure the rights enshrined in ICCPR to anyone within the state's power and 'effective control' even though not within the territory and how such power or 'effective control' is achieved is immaterial (General Comment 31). Covenant's rights are not limited to the citizens rather they are available to all individuals in the state territory (General Comment 15). Therefore, if there is control over individuals, it is sufficient to have the individual within state jurisdiction irrespective of effectiveness in control over the territory (Coard Vs United States of America 1999). A similar view we have seen in the decision of the European Court of held that the state will be responsible for the action or omission through their lawful agents or local administration where the state has lawful or unlawful control over the territory (Loizidou v Turkey 1996).

Thus, the jurisprudence of the international human rights treaty bodies made it clear that state may exercise their jurisdiction over extraterritorial corporate conduct over which the state has control by supporting through Export Credit Agency (ECA). So, TNCs have to 'respect, protect and fulfill' the human rights obligations of the states where they operate and the county that has the 'control' over the corporate operations.

3. INTERNATIONAL LEGAL FRAMEWORK ON TNC RESPONSIBILITIES

International legal framework on TNC responsibility being patchy and weak from an enforcement perspective (Oxfam India 2018) could compel very few companies 'to take human rights seriously' (World Benchmarking Alliance, 2020), however, scholarship of corporate responsibility of TNCs 'has gained momentum in the last two decades'.

3.1. Universal Declaration of Human Rights (UDHR)

The preamble of the UDHR delineates that 'every organ of the society shall strive to ensure the global standards of human rights in the national and international level'. As the TNCs have a dominant and organic position, they have to comply with the rights provided in the UDHR. UNGPs recognise corporate entities as 'specialized organ' of the society (UNGPs 2011).

TNCs operate their corporate ventures in different territories and jurisdictions. In pursuance of UDHR, they cannot take any initiatives promoting slavery, servitude, ill-treatment in their institutional operations as a creation of the state. Though the UDHR does not address corporations specifically, employees have the rights to be treated with equality, non-discrimination, etc. in the corporate environment and customers have the entitlement to be provided services that will not obstruct the enjoyment of the right to life, right to health, etc.

3.2. International Covenant on Civil and Political Rights (ICCPR):

In pursuance to Article 5, para 1, any 'group or person' does not have the right to involve in any activity or initiative that may destroy the rights and freedoms recognized in the ICCPR. Person includes both natural and legal persons. Though TNCs are not persons and are subject to international law, corporate entities of TNCs being legal persons (operated in the home or host state) may be subjected in the country of operations. So, if the TNCs commit a violation of human rights or complicity in the commission of the abuses of human rights specified in the ICCPR, the state has scope to account for the TNCs and avail

'effective remedy' to the victims through state-based judicial or non-judicial grievance mechanisms, or non-state-based non-judicial mechanisms.

In pursuance of corporate governance the parent corporation is a separate entity from the subsidiary entity (ICJ 1962). In practice, the parent corporations have the control and management of the subsidiary. Therefore, whether the violations of the subsidiary corporations are attributable to the parent corporations in the home states is a significant query. If the inviolability of TNCs is not considered, the state in which territory and jurisdiction the TNCs operate their business or TNCs abuse human rights is under obligation to bring the TNCs before the grievance mechanism.

3.3. International Covenant on Economic, Social, and Cultural Rights (ICESCR)

ICESCR does not impose obligations upon the TNCs and rights provided in the convention need significant budgetary allocation by the state. Therefore, it is not easy 'to respect, protect and fulfill economic, social and cultural' (ESC) rights only by the state. In these days, many corporations have larger economies than the gross domestic product (GDP) of many developing states and these corporations are investing money in those states that attracted TNCs for socio-economic development. For example, in many countries utility services like water, gas, electricity, inter alia, health services are in the hands of private entities. Against these backdrops, TNCS might not avoid the obligations during operations (Clapham 2006).

For example, the right to education, health, and water are public utility services. The government is under obligation to undertake steps to ensure these rights. Due to economic scarcity, the government may employ private organizations to serve these facilities to the individual. Of course, the corporate entity takes responsibility to provide services to the people for the economic benefit. Nevertheless, they cannot stop or otherwise prevent the people from having these rights on the grounds of consumers' failure to pay. This is considered as the positive obligation of the corporations as the treaty applies to all persons in it the territory of the state party or territory under its control.

3.4. UN Guiding Principles (UNGPs) on Business and Human Rights and GC 24

UNGPs recognized the existing obligations of the non-state actors i.e., corporations and a dedicated second part is for the 'responsibility of the corporations to respect' human rights (UNGPs 2011). These UNGPs are unique in the sense that they are not only applicable to the states but also to 'business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure'. Another significant aspect of these Guiding Principles is that they recognised the role of the business enterprises as 'specialized organs' of the society performing special functions pursuant to existing laws and human rights obligations and asked for 'appropriate and effective remedy' for corporate breaches.

UNGP should be interpreted to ensure socially sustainable globalization. However, UNGP does not create any new international law, and undermine or limit any existing legal obligations.

After 6 years of endorsement of UNGP by the Human Rights Council, the Committee on ESC rights adopted GC 24 to explain the state obligations towards the business enterprise in pursuance to the ICESCR in both territorially and exterritoriality.

The distinction between UNGP and GC 24 is that UNGP illustrates not only the obligations of the state and corporations to protect, and respect human rights but also ensures the remedy for the failure to do so whereas the GC 24 reiterates the obligations of the state to respect, protect and fulfill the international human rights obligation in both territorial and extraterritorial levels. Overall, the duty of states and corporations in the UNGPS is considered as differentiated but complementary. As the Part II of the UNGPs particularly reiterated that corporations have a direct responsibility to respect human rights, this portion of the guiding principles requires insightful exploration.

Firstly, principle 11 elucidates that business entities should respect human rights meaning that corporations should stay away from breaching the human rights of anyone and regard the impact of their activities towards human rights. So, if there is a breach of rights, there is a question of 'prevention, mitigation and, where appropriate, remediation' (Commentary

of the UNGPs 2011). Moreover, business enterprises may undertake other 'commitments or activities' in order to contribute smooth enjoyment of the rights but their undertaking and commitment could make the corporations get out of the responsible for the failure to respect human rights in any segment throughout their operation of them (Commentary of UNGPs 2011). On top of that, business initiatives, in no circumstances, may undermine states' abilities to meet human rights obligations i.e., corporate actions cannot supersede the national judicial process.

Secondly, principle 12 of the UNGPs envisions that business enterprises should respect internationally recognised human rights i.e., UDHR, ICCPR, ICESCR, 'fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work', etc. in order to uplift the responsibility compliance. Business enterprises also regard the special needs for any particular individual or group of individuals like women, or children (UNGPs 2011).

Thirdly, Principle 13 of the UNGP extended article 11 and explains that business enterprises should not take activities that impair human rights situations. If their operations adversely affect human rights, business enterprises should 'seek to prevent and mitigate' them.

Fourthly, in pursuance to principle 14 of UNGP, the responsibility to respect human rights is applicable for all companies irrespective of their 'size, sector, operational context, ownership and structure'.

Fifthly, principle 15 incorporates that corporate entities should have their policies to comply with human rights obligations so that they can 'identify, prevent, mitigate and account' for human rights abuses and ensure remediation including policies relating to (i) corporate operational principles, and (ii) corporate commitment to respect human rights.

TNCs have to reveal their human rights commitment in their policy statements (UNGPs 2011) and the corporations have to guarantee compliance with domestic laws and policies in their business operation with the rights set forth in the international covenants (General Comment 24) with corporate 'due diligence' (ECOSOC 2011).

Due diligence is the heart of the governing principles of corporate responsibility (Bonnitcha and McCorquodale 2017) and it develops an idea that a company may adopt a policy in order to 'prevent, mitigate and redress adverse human rights impacts (Ruggie 2008a). Business enterprises should maintain human rights 'due diligence' in identifying, preventing, mitigating, accounting, and addressing adverse human rights impacts (UNGPs 2011) from negotiation with states to in-field operation.

Finally, UNGPs is the yardstick of settling a 'cooperative responsibility of states and TNCs' in protecting human rights in business operations and these principles are baselines for all states, human rights activists, business entities, and victims. UNGPs significantly will reduce adverse human rights impacts in the business sectors with a cooperative approach (Prihandono 2011) Without collective and cooperative initiatives, human rights protection may thwart business operations.

4. TNC'S RESPONSIBILITY TO COMPLY WITH HUMAN RIGHTS IN THE HOST STATES

TNCs conduct business and offer services in the host country based on the Bilateral Investment Treaty (BIT) that enunciates 'stabilization Clause' to indemnify or facilitate the TNCs operating in the host states. Now there is a query whether TNCs would be held accountable for abusing rights in the territory of the host state.

4.1. Legal principles and host country jurisdiction over human rights violations:

In pursuance to Article 2, the states are under obligations to 'undertakes to respect and to ensure to all individuals within its territory and subject to its Jurisdiction the rights' of the Covenant (ICCPR 1966). Preventing and punishing human rights abuses shoulder primarily on the host states (Ruggie 2007). The host states can legally claim that TNCs would respect and protect the rights of the individuals staying in its territory. In order to oblige the TNCs, the host states may take 'legislative, executive, or judicial measures. So, if the host states do not have legislation to account for the TNCs for human rights violations, they may 'enact the laws or issue executive order' to

bring the TNCs under control. The judiciary may, inter alia, entertain cases over human rights violations in the business sectors resulting adverse impact on fundamental rights like rights to life, and freedom of expression.

The TNCs, doing business in the host state, have under obligated to respect the constitution, human rights, environment, anti-corruption laws, bribery laws, and other laws that are closely related to maintaining the rights of the people and ecology of the host country. Duty of care does not only include that the TNCs respect the national laws but also international law the host state ratifies or customarily is under obligation to comply. TNC will be accountable if the corporations harm human rights internationally or unintentionally (Nartey 2023) in its operation or supply chain. The responsibility of maintaining the human rights of the TNCs is more expected than the host state as some TNCs' economy is larger than the host state. So, TNCs are at the bargaining level. Therefore, the duty of care of the TNCs does not mean that they do not commit human rights abuses or are not in complicity human rights abuses rather they have to play a substantial role in preventing the deterioration of the human rights situations in the areas where they operate their business.

There are some obstacles to enforcing human rights violations against the TNCs and these obstacles are based on the 'territorial' issue. So, the host states need to take human rights seriously when violations happen in their territory. In 1984, the Bhopal Gas leak case failed to succeed in the USA on the grounds of forum non conveniens. In Das's case in 2018, the Canadian court dismissed the case on the grounds of lex loci delicit. Territorial obstacles would not arise if the host states could account for TNCs for human rights abuses in their territory.

4.2. Mechanism for Handling and Punishing Violations:

The state parties may empower the courts or any other administrative bodies to hold the business entities accountable for human rights violations (ICCPR 1966) and undertake measures individually or collectively to ensure the realisation of the rights (ICESCR 1966). UNGPs reiterates that states shall 'take judicial, administrative, legislative or other appropriate means to ensure effective remedy for the victims of the human rights abuses occurred within their territory and/or jurisdiction' of the states. So the states shall remove the 'legal, practical or any other relevant obstacles' that might lead to denial of access to justice (UNGPs 2011). Mechanism may be State meaning (i) Judicial Mechanisms i.e., Judiciary; (ii) Non-judicial Mechanism: NHC and Non-State based: (i) Industry Association; (ii) A Multi-Stakeholder Association; and (iii) regional and international human rights forum.

Judicial Mechanisms of states are the core body of adjudicating and offering the most appropriate remedy to victims or punishing the individuals who are involved in committing any crimes in business-related activities. The judiciary may play its role by having 'impartiality, integrity and ability' to apply due process free from any substantive and procedural obstacles. Substantive obstacles include 'economic or political pressures' from the state agents or business actors, obstruction of peaceful activities of human rights defenders, avoidance of corporate accountability in the court, absence of legal provisions of corporate accountability in the host state, or discrimination of any kind, etc. Procedural impediments include costs of litigation cost, lack of proper legal representation, inadequate options for aggregating claims, and ignorance of state prosecutors over business-related crimes. The state must take care of removing or at least progressively reducing these obstacles to ensure access to remedies for the victims of business-related human rights abuses.

State-based non-judicial bodies have the role to play where a judicial remedy is not required. This mechanism may resolve the issue as a mediator, adjudicator or any other authority that a particular state accepts in the context.

Non-state based Grievance mechanisms 'use adjudicative, dialogue-based or other culturally appropriate and rights-compatible process' to offer remedy and these mechanisms seem fascinating having the ability to speed up settlement, reducing the costs of litigations, and opportunity of transnational reach if needed.

Regional and International Human Rights Bodies contribute to adjudication if the states' mechanisms fail.

5. ARE TNCS DIRECTLY RESPONSIBLE UNDER INTERNATIONAL LAW OR RESPECT THE LAWS OF THE HOST STATE

TNCs operate their business in the host on the basis of BIT incorporating the shareholders from the host state or opening subsidiary bodies in the host states. On the face of it, TNCs are under obligations to comply with the laws accorded in the BIT or 'concession agreement'. However, if the operations of the business relate to the rights of the local people or the supply chain of the TNCs violates the rights of human beings, and destroys the environment in the chain, the corporations are ethically bound to respect. In order to strengthen the responsibility of corporations, UN Global Compact (2000) called to companies everywhere to respect and support human rights (principles 1 and 2), labour (principles 3-5), environment (principles 7-9), and anti-corruption (principle 10). Later on, Norms (2003) were adopted for the corporations, however, corporate entities and states did not respond spontaneously. Therefore, UNGPs were adopted where the responsibility of the TNCs to respect human rights is accommodated in a separate chapter.

In pursuance to Principles 11 and 12 of the UNGPs, every corporation is under obligations to respect human rights arising out of UDHR, ICCPR, and ICESCR coupled with eight ILO conventions everywhere independently of states. The steps of the State would not demolish the obligations of the corporations. If the corporations think appropriate, they may individually set different standards to respect the rights of any specific group of people. They may also adopt that distinct set of standards for vulnerable groups of people i.e., minorities, women, children, disabled etc. Principle 17 of the UNGPs states that business enterprises would assess actual and potential human rights impacts, integrate and act upon the findings, track responses, and communications in order to identify, prevent, mitigate human rights violations, and account for the officials or ensure remedy for the affected people (principle 22).

6. APPLICATION OF EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS IN DIFFERENT COUNTRIES

Implementation of economic social and cultural rights in different countries may vary because economic capability has a crucial role in ensuring these rights. It becomes more complicated if the violations of human rights are committed by the TNCs operating at both home and abroad. The author used the practices of the USA and Canada as the home state.

The US Transparency law obliges Californian TNCs to maintain transparency irrespective of the place of operation at home and abroad. So the Californian courts may take into account the Transparency laws in holding TNCs liable for breaches of obligations by not disclosing their disclosure policies on the websites and products.

First of all, there was an allegation against Nike manufactured products under inhuman conditions in Asia. In response to this, they used a false publicity campaign. Since there was a possibility to conceivably persuade consumers to buy its products, it was justified to restrict the freedom of expression (Kasky v. Nike 2002). In Doe v. Unocal, the plaintiffs relied on the US Aliens Tort Claims Act (ATCA) that states 'any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States'. Though Unocal had no involvement with the orchestration of violations of human rights, Unocal accepted the predicament of laborers with full knowledge. The court held that TNCs may be held liable for 'violations of treaties and customary law' irrespective of states' duty. In 2010, in Kiobel v. Royal Dutch Petroleum Co., they entertained a suit of Nigerian nationals alleging that various oil giants were complicit in human rights violations in Nigeria and the court dismissed the appeal the on ground that that the ATCA does not allow claims against corporations. However, upon certiorari, the Supreme Court of the US held that 'all the relevant conduct took place outside the United States' and "touch(ed) and concern(ed)", the territory of the United States will displace the presumption against extraterritorial applications. Corporations. The Supreme Court's opinion seems to include tort claims alleging violations of customary law based solely on conduct occurring abroad.

So, the TNCs of the US would not be exempt from responsibility for human rights violations on the ground of extraterritoriality.

Canadian courts also keep the door open for filing suit for extraterritorial human rights violations by the TNCs. The Canadian judiciary uses customary international law to account for the TNCs operating abroad but there are many complications in the corporate governance of Canada (Ahmad 2022).

To understand the most recent Development of the Canadian Judiciary, Nevsun Resources Ltd. v. Araya is worthy of discussion. A lawsuit was filed against a Canadian company named Nevsun Resources Ltd. for violation of customary international law in Eritrea. Usually, all Eritreans are legally bound 'to do military training or another public service when they turn eighteen' under the banner of 'National Service Program'. In a project titled 'The Bisha mine' managed by military and political party officials, the people who joined the 'National Service Program' had to work for years after years in harsh and dangerous conditions, with intolerable torture.

The court held that the suit would not fail on the ground of extraterritoriality if there were 'violations of customary international law' and 'corporations had to provide a remedy for those breaches'. Justice Abella wrote for the majority:

> 'Because some norms of customary international law are of a strictly interstate character, the trial judge will have to determine whether the specific norms relied on in this case are of such a character. If they are, the question for the court will be whether the common law should evolve so as to extend the scope of those norms to bind corporations.

In the next case ACCI v. Anvil Mining Ltd, the court of appeal found no 'real and substantial connection' between Quebec and the mine in the DRC and dismissed the transnational claims. It was progress in this case that if the claimant could prove the 'real and substantial connection' with Canada, they might succeed in getting a remedy for the transnational human rights violations. However, in a recent case, the Ontario Court of Appeal dismissed the claims brought by Bangladeshi plaintiffs being victims of Rana Plaza Collapse. However, the court held that the TNC defendant 'owed no duty of care' to the plaintiff, and subsidiary corporations were decided to be shareholders of the home corporations. So, the corporate veil was lifted to exempt the responsibility of human rights abuses. Finally, the connection of Canadian defendant Companies was insufficient with the local garment companies (in Bangladesh) that were responsible for maintaining the collapsed building. So proving the 'real and substantial connection' with Canada is sin qua non for extraterritorial claims.

Now, in the case of the host states like Bangladesh & Vietnam, there is no model bilateral treaty. So there is little opportunity for the host states to bargain with the investors. Moreover, foreign investment is indispensable for these countries to satisfy the economic needs of the people of them. In Vietnam, the adoption of the labour code 2019 is a legal progress, the protection will be a 'window dressing' if the corporate governance and investment practice is not overarchingly developed. How the socio-political situations of the host countries will allow the above host states to develop corporate and human rights governance?

7. CURRENT DEVELOPMENT FOR ACCESS TO REMEDY

'Access to remedy' is the third and 'most crucial' pillar of the UNGPS. Domestic and regional instruments, human rights regimes, and TNCs have already accommodated a few innovative ideas aligned with UNGPs. For example, the state-based judicial bodies namely, courts and tribunals, and non-judicial mechanisms namely, Human Rights Commission. Both UNGPs and the Draft treaty campaigned for the state parties to facilitate the forum for ensuring access to remedy.

To ensure and motivate both the states and corporations, the Human Rights Council adopted Resolution 26/22 in 2014 (HRC 2014) requested OHCHR 'to facilitate the sharing and exploration of the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses'(HRC 2014). OHCHR's Accountability and Remedy Project was a holistic report in 2016 and noted that poor access to judicial remedies was the result of 'fragmented, poorly designed or incomplete legal regimes; lack of legal development; lack of awareness of the scope and

operation of regimes; structural complexities within business enterprises; problems in gaining access to sufficient funding for private law claims; and a lack of enforcement' (HRC 2016). This report revealed the importance of enforcement mechanisms of human rights abuses in business operations (HRC 2016). It also identified that human rights accountability of the TNCs would be fruitfully enforced if the corporations may adopt agreements with the local people of the areas where the corporations run their business.

8. CONCLUSION

The home states have the jurisdiction to account for the TNCs irrespective of their place of operation because the home states have 'control' over the activities of the TNCs either diplomatically, or through financial institutions. In pursuance to human rights norms, the act or omission of the corporate entity would be attributed to the state if the particular state has 'control' over the activity of that entity. The home state has such links through diplomatic or financial mechanisms to sustain the control over the TNCs even operating abroad, so the state-based judicial mechanism of the home state may entertain the suits for extraterritorial abuses of human rights. In the age of globalization, state control does not coexist with the territory, and changing international law needs to be interpreted in an innovative manner. For example, the US courts interpreted that tort claims are possible to bring by an alien if the conduct 'touches and concerns' the US. Similarly, the Canadian court held that if the conduct in foreign territory has a 'real and substantial connection' with Canada, foreign claims in. However, this does not appear to be a nuanced solution. Therefore, the home and host states have to develop a 'cooperative approach' to ensure corporate compliance with human rights and every UN member state needs to have a Model Bilateral Investment Treaty (MBIT) so that the TNCs may not exploit economic and legal fragility of the host states to undermine human rights and environmental norms as well as allow the autocratic host states to survive. In addition, the TNCs need to adopt internal policies to respect human rights that are binding on the states where they operate irrespective of the home or host state.

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