

ACCOUNTABILITY OF CORPORATION AND ITS COMPLICITY UNDER ABUSE OF HUMAN RIGHTS

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ABSTRACT

The study discussed the development of globalization and how globalization has brought about changes in world markets. To grow the global economy, companies are spreading around the world, from developed to developing countries. The world has become much smaller with globalization, the whole world has grown into one big nation-state, and every person on earth has become a world citizen. Economic changes have played an important role in the era of globalization. Multinational companies were the first to show the world that they are global players and that the future of the world depends on them. A new capitalist movement arose, which raised concerns about the existence of dual power; one controlled by the capitalist and the other by the government. For example, the combined GDP of IBM, Microsoft, Toyota and General Motors would be 50 third world countries. Statistics show that the total sales of General Motors in 1980. Was equal to 40 percent of the total national product of Russia and all the civilian economy roughly. This is enough proof so that companies really lead the social and economic policy of the country, and also the international policy.

KEYWORDS:

Human Rights, Corporation, International Etc

INTRODUCTION

The genesis of human rights has been sprouted due to the gross violations of rights of the people committed by governments, states and their agents acting on behalf of their respective state "smachinery. Traditionally in international law and international human rights law violations of rights of people have been attributed to states and governments. Non-state entities such as corporations and individuals are not in the purview of international law and human rights. Individuals and corporations never been viewed as an entity and subject matter of normative practice of international law due to the basic elements of state sovereignty. Only after the Second World War, international law mechanisms have recognized the Non-state entities and attributed liability and responsibility. In recent past with explosion of economic liberalization promoted by international trade, non- state actors such as corporations, multinational companies and transnational companies are operating transnationally indifferent jurisdiction involving directly in contact with the local people and contributing their share to the fate of people living in different parts of the world. These companies operate in a different environment and act in a very hostile manner against the interest and rights of the people living in the vicinity of their business. In the process they are directly

involved in violating basic rights and dignity of human beings and they show no respect to the national and international standards and mechanisms which are providing protection to the local and indigenous people. The corporations are complacent towards the rights of the people and they do evade Liability for violations such as corporate crimes, tax evasions, bribery, corruption, environmental pollutions and damage, violation of labour laws, violations of rights of women and children, being complicit in war

crimes, crimes against peace and humanity and genocide, in those states where they are in complicit with the state and conduct gross human rights violations. The corporations take advantage of the host states, as the host state enjoys the financial supplement provided, the financial supplement could be either to foreign direct funds or the government is corrupt and wants to make illegal gains, other government takes help to control rebels. States to compete in the global market need to become financially stable and they require funds to develop economy. their Through the two major organizations the International Monetary Fund and the World Bank they receive loans and sanctions by way of Foreign Direct Investment, thus inviting the Transnational and the Multinational Corporations to enter and carry on business in the said state. When the corporations enter they seek relaxations in tax, labour regulations, and even relaxing control on environmental damages. As the states are economically poor, they are either developing or under developed nations, fall prey to these corporations and allow gross human rights violations upon themselves. In this backdrop it is an urgent necessity to look in to the problems and attributers possibility of protecting human rights of the people, by the non-state actors such as the Multinational Corporations²

THE ESSENCE OF HUMAN RIGHTS LAYS IN THE INTERNATIONAL INSTRUMENTS There are many situations where companies and their employees are straight and simple perpetrators of human rights abuse. Human rights are certain inherent rights, that all human being have it by virtue of they are born human regardless of nationality, place of residence or sex., national or ethnic origin, color, religion, language, or any other status. Each human has the right to be treated with dignity and without discrimination. Some of the rights are right to life, freedom from discrimination, freedom from unprovoked violence; They should be treated fairly and helped to give help when needed. Rights are interrelated and indivisible. Human rights are expressed from various sources and are guaranteed by law in the form of bilateral or multilateral agreements, international customary law, general principles of law. And other sources of International law. The purpose of the International Human Rights Law is to safe guard the individual of the supremacy of the state and government, so it imposes an obligation on states to take or withhold certain measures to promote and protect human rights. And fundamental rights of individuals and groups.

RESPONSIBILITY TO SAFEGUARD HUMAN RIGHTS

Before we can think about who should protect human rights, it is very important to understand why companies should care about human rights. According to Mary Robinson, UN Human Rights Commissioner business needs human rights and human rights need business. ‘, and the reason being that business can only prosper when human rights are respected and this will result in the prosperity of the business There fore, treating companies as accomplices reduces business activity, for example. The reputation of the corporation will be at stake? It is very necessary for the corporations to follow a code of conduct ‘which ensures and also projects those socially responsible closeness. operate. The

other way is to make the corporations legally binding, that it is the responsibility of the State to control the operations of the corporations and their subsidiaries, when they are operating within the territory or jurisdiction and abroad and where a domestic company has control over a subsidiary. UN Secretary General Kofi Annan first proposed the Global Compact in 1999, where he called on the world's companies to support and respect the protection of people's rights within their business and see that their fellow corporations are not complicit in human rights violations³

²Agarwal H.O, Human Rights (15th edn, Central Law Agency 2014)

³Janet Dine, Companies, International Trade and Human Rights (Cambridge University Press 2005) 168

RELEVANCE OF HUMAN RIGHTS TO CORPORATIONS

According to international law, it has always been said that only the state has the responsibility to protect and guarantee the human rights of individuals and groups. If this is the case, the question arises whether companies can be entrusted with the duty to protect and guarantee human rights. The Declaration of the Right to Development states that the state has the responsibility and obligation to protect human rights both nationally and globally. This led to a study of transnational corporations - their direct and indirect impact on human rights. National laws apply on the national front and therefore legal responsibility is enforced through the law of the land. Violations of human rights by companies can have positive or negative effects. In their business activities, they can affect customers, employees; The communities living around the operational area, a vulnerable part of society, suffer severely. Exposed discrimination and other adverse impacts. Corporate Complicity, though the rewash due When attention was paid to it, not much could be done because human rights were and are the domain of the state. Second, there were no international courts to hold them accountable. Third, somewhere the position that he can be prosecuted in two situations, namely codes of conduct and self-regulation and national or domestic legislation of the country. Therefore, according to international law, it is necessary to identify the illegal activities of the company, which may constitute complicity and which violate international human rights. At the same time, complicity was established according to international humanitarian law, for example in connection with armed conflicts - companies directly participate in armed hostilities - financing or supplying material for the conflict. The rights and obligations of companies or commercial enterprises have been developed and drafted according to international humanitarian law.

CONCEPT OF COMPLICITY

Complicit means a person who knowingly, voluntarily or intentionally helps another. In or in some cases fails to prevent another from the commission of a crime. An accomplice is criminally liable to the same extent as the principal. And an accomplice, unlike an accomplice, is usually present when the crime is committed. 26 Inclusion means different things in different contexts. That's it. Term complicities applied to the Corporations. Business complicity in Human Rights abuses 'has become the a commonly used phraseology that refers to corporate complicity in serious human rights violations, either directly or with the help of the perpetrators. Gross violation of human rights. can be under stood as an outright assault on inter nationally recognized human right sand it includes crimes

against humanity, enforced disappearance, long-term arbitrary detention, extrajudicial execution, slavery and torture. Their behavior makes it very difficult to find out what the company is doing. And will not constitute complicity. However there can always be venues that suggest the minimum conduct the Companies must take the following measures to help fellow lawyers, prosecutors and victims know how and when to hold companies accountable when they are involved in such human rights abuses. Therefore, for a company to be liable for complicity, the company's omission or commission of an act should be outside the scope of legal sanctions. It should be one where the public condemns the company's actions for lack of morals and ethics. And commitment. Under certain situations could be as such may seem wrong at the moment but it may hold good for future too. To improve this situation, the law should constantly change and evolve because it protects everyone. Situation system: Businesses should there for ealso be guided by public policy and ethical considerations, as we ll as market-place realities, beyond a technical appreciation of whether they currently could face allegation so flegal liability or legal sanctions⁴.

1.3.1 CORPORATIONS CAN BE HELD ACCOUNTABLE

The corporations after the 21st century now transact cross border, and the type of business and its

⁴Kamminga M. Tand Zia-

ZarifiS (eds), Liability of Multinational Corporation sunder International Law (Kluwer Law International 2000)139 the nature of the work has led to opportunities where companies are complicit with the government, individuals, armed groups and others and are involved in gross human rights abuses. The Victims of these violations, and the various groups working for the victims raised contention to hold the corporations liable for the wrong committed. While the question of liability arose, the rewash an argument as to whom to hold liable, as Corporation is a legal entity, secondly it is very powerful at times than that of the state so what kind of law can be considered to hold those powerful non-state actors accountable. That is why it is necessary to develop a law that is even strong enough to hold non-state actors accountable. The next question is whether international human rights law can hold them accountable and who can be held accountable. For being complicit the company entity or its officials or both. The advocates of Human Rights, argue that the companies definitely contribute to a systematic violations conducted by the state, but the world trade leaders feel as the definition to corporate complicity is not clear may lead to ill fame. The business. Complicity of ten implies that corporations may aid and abet serious violations of international law by the State. Advocates of greater corporate account ability for human rights violations argue that firms sometimes significantly advance the ability to a government to carry out systematic abuses of human rights. At the same time, business leaders have raised concerns on the ambiguity of the definition of corporate crime and its potential damages such accusations can cause to business reputations. Therefore, holding the corporations cannot beheld liable.

LIABILITY OF THE CORPORATION UNDER CIVIL AND CRIMINALLAW

Complicity is the undesirable interference of the corporation and their officials in the human rights abuses, which now has become the norm of the policy makers. Human rights organizations, government expert' shuman rights activists, term it as business complicity. In the first place, it is necessary to identify the complicity by business, find out the consequence of complicity, if proved

they can be held liable, or at the end they might avoid the complicity. To hold them liable only legal liability can be brought about, that under both civil and criminal law. To be held liable for complicity it is important for the corporations to understand the line of limitation, if crossed they can be held liable for complicity.⁵

CIVIL LIABILITY

Civil liability can arise at both general meetings (legal person) and for company officials (natural persons) across all type of jurisdiction. To give rise to a Civil liability the Courts need to look into various factors like the involvement of the company whether the company had intention/knowledge, of the harm that would occur, whether it has taken any precautionary measure any prudent company would, is wrong, as wrong as it can be. If human rights are grossly violated, the applicability of the law would be the constitution or tort law of that country, and if human rights laws exist, then it must be read in the light of the constitution. However, the Constitution can be applied only if many laws have been passed in the area of violation. Thus, it is consistent with the tort of non-contractual liability. Therefore, civil remedies found in both common law jurisdictions and civil law jurisdictions may be enforced on a jurisdictional and applicability basis.

CRIMINAL LIABILITY

Criminal liability often applies only to individuals (natural persons) and therefore in many jurisdictions, including only international criminal courts company officials and not company entities can be prosecuted. In an armed conflict, the standards of Humanitarian Law apply on Business

⁵International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes(n31) 16

companies and others want to directly participate in hostilities. Therefore, in cases of gross violation of human rights, courts must investigate aiding and abetting the company. However, it would be a challenge for the courts to prove the ingredients of crime to be established on the company like mens rea and attempted arrest. The applicability of the law would be international law, International human rights law and domestic law of the States. The criminal law applied is usually the international criminal law whose principles are those based on the ones that are common to the national system⁶.

CORPORATE CRIMINAL LIABILITY

Criminal Law as such is available in all systems, the aim of the criminal law is to deter the wrongdoer from doing wrong. Although the real purpose of criminal law is to punish the criminal, in civil law the victim also has the opportunity to take a stand and be part of the legal process and present his case and seek legal protection, and in some countries not even. -national organizations have the right to use legal means in judicial proceedings. However, this provision is not available in ordinary countries. The criminal law not only punishes the accused but also refrains from certain actions, especially in the case of a company, there are limitations on what a company can do and if not face consequences by following certain procedures and disciplinary rules and following a culture and comply by it. Then a true of the criminal law is giving punishments therefore for very long, the concept of compensation was not available in criminal law. But with the recognition of war crimes and crimes against humanity, a huge change took place. Concept and now compensation (monetary benefits) are awarded. Secondly the limitation for the war crimes and

crimes against the concept of compensation was not available in criminal law. But with the recognition of war crimes and crimes against humanity, a huge change took place. And under such circumstances the compensation is given from the trust funds for the victims and their families. Therefore the major part of the prosecution of crimes now is inclusive under National criminal law, and effected at the Domestic courts.

The reason is the beginning of conventions and agreements and the country. Becoming signatories or on ratification take upon them salvation incorporate the International Criminal law crimes in the National Criminal Law also. To deal with the war crimes humanitarian law, ad hoc international criminal courts. And crimes against humanity, and other gross violations of Human rights, and humanitarian law, ad hoc International criminal Tribunals were instituted like the, International Tribunal for former Yugoslavia 1993, International Tribunal for Rwanda 1994, where the crimes were committed with such heinous crimes and with such severity during the war, they committed genocide. These courts were the first to try individuals for war crimes under international law. Later in 1998, prepare an application. International Criminal Court (ICC) to the UN International Law Commission was made. On July 1st 2002, the court came into existence. The applicability of ICC can be achieved more effectively if. The nation-states to incorporate the provisions of the ICC into their national criminal law. ICC too clarified certain attitude, because the field of crime is constantly changing; initially international criminal law covered only international armed conflicts, now domestic armed conflicts are also included under war crimes. Therefore, the scope of various crimes expanded, because it included sexual violence - rape, robbery, even coercion of the civilian population, and the inclusion of these rules even in national laws becomes mandatory. When international law is also implemented in domestic law, discipline and a culture of compliance develops, leading to more responsible people.⁷. Companies also feel responsible because they have to comply with international criminal law in domestic criminal law, and prosecutors cannot only. Officials responsible but also the corporation and hold them liable for the gross human rights violations

⁶ibid ⁷international Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes (n31) 16 Amounting to crimes under International law.⁸⁹ Therefore, after the World War II, Corporate criminal liability

Has been brought in the fore front, and holding the corporate officials and the corporation liable for gross violations of human rights. Corporate liability depends on the relationship between the company and its employees and between the company and its agents, it arises from a legal fiction, That is the act conducted by the corporation is the state of mind of the employees and holding the corporation liable is at risk that needs careful applicability.

LIABILITY WITH A COMMON PURPOSE

Common purpose is another form of liability recognized by ad hoc courts. It includes participation in an offence with a common purpose, thus making the participants liable if they had in contributed in some way to the commission of the crime. Under whose jurisdiction to interpret this general responsibility - First, it is a concept of jurisprudence that is accepted. ad hoc tribunals. This is based on its applicability during the Wartimes by the ad hoc tribunals and in violation of Customary International Law, violations such as genocide and war crimes. They call it a joint venture (JCE). According to this jurisprudence, there are three types of JCE - first, the same criminal intent, second, its systematic execution, and finally, the extended type. In the first type, all like-minded people get together and decide to commit an act, such as murder. Here, everyone wants to kill, that's the motive, while everyone has a role to play. The second type is the systematic way of implementing the plan. Here it is important that the participant has knowledge of the system and plays his part as to how well he can contribute to the crime.

And finally, the extended format is the one where it is not the usual working model of the company, there is an extra effort to participate, as in a commitment. genocide, which is not the work of the Enterprise but participates with the precipitator. In Krajisnik Case, Momilo Krajisnik, was Politician, Speaker of the Parliament, member of Bosnian Serb Presidency and a close friend Radovan Karadzic in 1992. He participated in the JCE, whose main goal was the final removal of non-Serbs, Muslims and Bosnian Croats from the territory of Bosnia and Herzegovina through mass crime. Actions he took with other politicians, military and paramilitary and government officials such as creating policies to help them commit atrocities, encouraging the military not to investigate reported crimes but rather cover them up. The court held him liable for the crimes against humanity and sentenced him to 27yrs in prison⁸

1.6.1 EMPLOYER'S LIABILITY

This is in regards to the responsibility of the Superior or of the employer's liability, that is it is not just the military officials but also the civilians when they are operating in conflict zone areas such as mines or industries and their employees are complicit in the culprits, their obligations, if the employer of the company receives information or has reason to believe that their employee or employees are criminals, what actions such employer takes against his youths or employees. Second, there will be such an employer who knows what crimes he has committed. If you did nothing to prevent or stop the crime, you can be prosecuted under international criminal law. In addition to the ICC, the draft ILC Code reflects the same concept. The International Criminal Court for the Far East considered this concept in the case of Japan's war crimes and rape of Nanjing Foreign Minister Koki Hirota. He received reports of the atrocities committed by the Japanese soldiers and the same was informed to the War Minister, however, the atrocities continued for more than a month. The court said that after the information given to the Minister of War, Koki knew about the

ongoing atrocities, but did nothing to stop the atrocities, so he was held criminally responsible. In Flick Affair, Friedrich Flick and officials of Flick's company were tried for war crimes and. Crimes against humanity, where during the wart increase the production employed more slave labour. In this case

⁸Clapham and Jerbi (n11)

Flick was also held liable as a Superior he had knowledge about the acts carried out and also approved them. Another case of Corporate Superior liability was that of Alfred Musema. Crime against humanity, genocide and war Crimes. He was held liable as Superior for the crimes of Genocidean crimes against humanity committed by his employees at the Gisovu Tea factory. The museum had legal authority over the workers who wore industrial clothing and used company vehicles to commit genocide. He had complete control over his employees from appointment to dismissal. When he found out about the actions of the employees, he did nothing to prevent such actions, but instead encouraged them. Therefore, he was responsible individually and as a supervisor. Thus, not only the main criminal, but also the accomplice can be held responsible in all the wrong places and gross violations of human rights under the responsibility of the accomplice accompanied by the Attorney General. In many situations, the criminal is usually much stronger than the arsonist, in most cases companies are there to help. The principal precipitator to conduct the gross human rights violations. This task they carry out in many ways,

- 1) They aid and abet the crime, this can be conducted before, after or during the act, and that act should have a substantially effect. The company officials should have knowledge of, the act committed or willfully abstain from conducting the act that affects the situation.
- 2) It should be about achieving a common goal, ie. that the company and the main adapter had the same mindset and therefore acted to promote the wrong.
- 3) The supervisor of the activities performed by the employees of the company had to supervise the activities of the employees of the company and prevent the performance of the activity, instead the responsible supervisor. remains silent and does nothing to stop the atrocities can be held equally liable.

JURISDICTION TO DECIDE THE CRIMES UNDER INTERNATIONAL CRIMINAL LAW

Crimes are offenses and measures against an individual or society that are punished. It is the duty of the state to protect its people from crimes; therefore, the state can prosecute the offender. According to international criminal law, a wrong done is a wrong done to the whole world, and the question of who has the right to prosecute the wrongdoer is an important question that must be resolved. Under international criminal law, crimes that are recognized as crimes under customary international law. When this customary international criminal law is violated, the law establishes a rule of universal jurisdiction. Which means that any state finds a person violating the International Customary law can investigate, prosecute and punish that person in that state. Crimes recognized under international criminal law and universal jurisdiction are: crimes against peace, crimes against humanity, war crimes and genocide, available in both civil and common law countries. After the world. War atrocities and gross human rights violations committed during World War II were so high that the need to punishing violators became very important, therefore the International

Criminal Court was created to investigate and punish violators. The rulers directed the violence and the accomplice helped them achieve their goals. In particular, companies that worked in areas of military conflicts, owned their own industries or mining companies, or supplied goods and services, or even provided financial and technological support to the aggressive side. Therefore, it became necessary. To punish the violators; all the violators are governed under the International Criminal Law. But another question that was raised regarding the prosecution of violations of human rights, only the state can punish the violators, because only the state is the jurisdiction of international law, but. Of atrocities brought in new concepts and brought the individuals and the international organizations also into the ambit of the subject of International law. Every state has the authority to prosecute for the Crimes against human rights and humanitarian law conducted outside the traditional jurisdictions under the Universal jurisdiction⁹. The National Courts have incorporated the international criminal law in their national jurisdiction in deals with crimes such as genocide, crimes against humanity, crimes against peace and war. Crime under the universal jurisdiction theory. Under Universal jurisdiction the acts committed are condemned and every state must have jurisdiction over crimes, no matter where the crime is committed (anywhere in the world), if the criminal is found in any state, that state has the authority to investigate and prosecute the criminal. This means that there need not be any relationship between the limitation and the state. This exercise of jurisdiction is available in civil law and common law jurisdictions. The ICC encourages additional jurisdiction over these crimes, and some countries that are not signatories to the ICC Statute have also added certain provisions to the ICC Statute. Domestic law. The ICC statute gives the National Criminal law the authority to prosecute the individuals who have committed crimes and if the state is incapacitated for unspecified reasons, the RKK issues the indictment of the prosecutor. International Criminal Court. Nuremberg, International Criminal Tribunal for Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Tribunal for the Far East, were able to hold only the corporate officials to liability, but according to national criminal law, legal persons can also be held in possession liable. In ZyklonB case, The President of the gas distribution company Bruno, was well aware of the fact the poison gas he delivered should have been used for the good of the people, but he delivered it to the Nazi government, aiding human rights.

CONCLUSION

The present study explored the development of human rights, whose existence rests upon the development of the modern state system. With the development of the modern state system the state underwent tremendous change. The state developed from a community based system where people respected each other's rights and share everything with each other, and lived with the concept of equality. Then the states were ruled by emperors, who initially carried both the religious and administrative authority. When the authority of the King became atrocious, people rebelled and formed parliamentary system and laws safeguarding the human rights were adopted. The new states were entrusted the responsibility to safeguards human rights and welfare of its people. Slowly the trade and commerce developed and corporations started to collaborate with other states and carried on business. Human Rights developed with the capital market and nation state, to be more precise, when the process of urbanization and secularization, development of science and technology, and also the growing concept so individualism and egalitarianism. The globalization and liberalization was caused due development in science and technology. New polarization, where the financial market de

regularized and the goods and services were liberalized. The concept of Contemporary human rights is found in the United Nations guiding principles “Common standards of achievement for all peoples and all nations”. The Universal Declaration of Human rights, explains about the realization of full human rights of individuals, but there should be specific socio- economic protection. This is dependent on the political will of the state, to ensure distributive justice, and special attention given for the minorities, vulnerable groups, and socio- economic, effected people. To carry out the rights given under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, make the states bound to them

⁹ Corporate Complicity and Legal Accountability vol.3-Civil Remedies, Report of the International Commission of Jurists Expert Legal Panel on Corporate Complicity in International Crimes, Geneva,2008,p 16.

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