Multinationals and Human Rights

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1. Multinationals and Human Rights

The objection that corporations cannot be said to have, under international law, any human rights responsibility remains unpersuasive. Historically, the Nuremburg International war crimes Tribunal did, indeed, sentence two leading German Corporations for participation in genocide and crimes against humanity. Article IV of the Convention on the Prevention of Genocide, 1948 provides for punishment of persons committing genocide, 'whether they are constitutionally responsible rulers, public officials or private individuals.' Arguably, this inclusive definition may extend to corporate entities. Similarly, the convention on discrimination against Women, 1979, at several places imposes duties of respect and compliance to women's rights declared applicable to 'any person, organization and enterprise' (Article 2(e)). Numerous United Nations Submit Declarations and Programmes of Action and provisions of environmental treaties and arrangements are open to a reading that cast certain human rights responsibility upon global corporations. Of course such reading will initially provide exercise in subaltern construction of instruments that employ trade-offs. between human rights and the values of international social corporation. However, the most overarching principles of human rights responsibility of corporations are enshrined in Art. 28[1] and 30[2] of the UDHR. Art. 30 clearly extends to all the beneficiaries of human rights including aggregations of economic and technological power in the shape of business association groups or corporate legal persons. They have a duty, among others, to so behave and conduct themselves as not to engage in destruction of rights and freedoms thus enshrined.[3]

Global capital increasingly seeks to inscribe its rights through treaty regimes. The archetype of this is, of course, the WTO agreement in particular the agreement on trade-related intellectual property rights (TRIPS). The extensive regime of basic rights has been further codified in the world copyright Treaty, 1996, which now protects 'digital works' in particular ownership over electronic and genetic database. Corporation have also claimed and acquired the right to 'commercial free speech' as well as a right to reputation and honour, not just as a property but as a personality interest. The justification typically offered for this panoply of rights thrives on the logies, paralogics, and languages of human rights. Collective orders of capital and technology must have these rights as emanations of already existing human rights of individual human beings since these are human associations, collections of individual human pursuing in acts of social cooperation their common aims and aspirations. When severely interrogated, protagonists of these new rights justify these in terms of the legitimacy and potential of free markets to secure a better future for human rights as such. To take few examples that :-

- human right to health is best served, in a variety of contexts, by the protection of the research and development rights of pharmaceutical and diagnostic industries;
- the right to reproductive autonomy, the right of women over their bodies, becomes possible only in a technological era, based on protection of industry rights in reproductive technologies;
- a whole variety of sustainable development rights and processes depend on technological fixes that corporate *techno sciences* make possible in the form of new technologies inventing ways of biodegradable and other forms of recycling and treating of wastes;
- the menacing environmental problems confronting *human kind* as a species (depletion of Biodiversity, perforations in the ozone layer, and climate change) can best be redressed by *techno sciences*.

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[1]. *UDHR :* Art.28 "Everyone is entitled to a social and International Order in which the rights and freedoms set forth in this declaration can be fully realized.

[2]. *Ibidem.,* Art.30 : "Nothing in this declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedom set forth herein.

[3]. Upendra Baxi, *The Future of Human Rights*, New Delhi : Oxford University Press 2002) at 145-146.

- The right to food is best served by protection of the rights of agribusiness corporations.[4]

In sum, the promotion and protection of some of the most cherished contemporary human rights becomes possible only when the order of human rights for global capital is fully recognized. Contemporary movements aimed at making global corporate power accountable already address it in terms of human rights. But market competition serves, directly, or indirectly human rights, whether this occurs through ethical investment, fair, trading, customer accountability, or more recently in industry-wide leadership in banning the production and distribution of genetically mutated foodstuff. Also, increasingly, many human rights activist groups seek to influence global trade policy to arrest the massive violations of human rights of the vulnerable sectors of society. For example, child labour or gender based wage discrimination.[5]

For the purpose of understanding the direct obligations of multinationals, legal definitions of the 'enterprise' are of limited use. Practically speaking, it is not so important to define what is meant by a 'multinational' as to explain which components of the enterprise are responsible and why. But it has been seen that for every, wrongful acts or violations of law, the management of company or enterprise held guilty, because primarily, responsibility has shifted upon the management team. The issue of whether companies (and by extension, multinationals) can be subject to direct obligations under international law has generated a huge amount of literature of late. The general view is that such obligations not only are a theoretical possibility, but are justified by the enormous economic and political influence of multinationals, and their clear capacity to affect the enjoyment of human rights. For the time being, though, there is little in the way of jurisprudence on the substance of those rights, and a lack of proper enforcement mechanisms.[6]

The UN Sub-Commission on the Promotion and Protection of Human Rights, to be carried on by the UN's Special Representative, will help to shed some further light on the human rights standards expected of companies and particularly, the supervisory responsibilities of parent companies in respect of their subsdiaries, suppliers, distributors and other entities with which they have close relationships. It is relevant to note, again, that there are theories of liability under the domestic law of tort that could be of assistance here, although the precise implications of these for the liability of parent companies of multinational group are still unclear. Other sources of information on the potential responsibilities of multinationals are the different international 'codes of conduct' as well as the numerous other statements of principles that have been developed at national and corporate level, these suggest a number of possible procedural obligations, such as observance of the precautionary principles in corporate decision making, or the obligation to carry out environmental assessment, or obligations of transparency. While, it would be premature to claim customary status for these principles at present (at least in, so for as they apply directly to multinationals), it is likely that they will play an important part in future treaty regimes.[7]

In the meantime, the most promising avenue for enforcement of human rights obligations of multination's remains the national courts. Of course, it is not entirely correct to describe tort-based litigation as human rights litigation, as plaintiff must show, not a breach of human rights under International Law, but a cause of action under the domestic law of negligence. 'Re Bhopal' is a good example of just such a case. In the USA, parallel actions have been brought under the Alien Tort Claims Act of 1789 (which uniquely, does appear to offer a cause of action to foreign nationals against companies for human rights abuses abroad) and state tort law. Just as domestic decisions on the responsibility of parent companies can be expected to have an influence on the developing international law of CSR (human rights).[8]

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4. *Ibidem.,* at 147-148.

5. *Ibid.*

6. Zenifer A. Zerk, *Multinationals And Corporate Social Responsibility : Limitations And Aspirations in International Law* (New York : Cambridge University Press 2006) at 304.

7. *Ibidem.,* at 304-305.

8. *Ibid.*

There are two dimensions to the human rights regulation of multinationals by states : direct regulation by international law and indirect regulation through obligations imposed upon states to control private actors to ensure that human rights norms are not breached.

(A) Direct regulation

A theoretical possibility that international law could impose some human rights obligations directly on companies. The usual starting point is the preamble of 1948 UDHR, in which it is stated that 'every individual and every organ of society' keeping this declaration constantly in mind shall strive by teaching and education to promote respect for UDHR rights and freedoms and by progressive measures, national and international to secure their universal and effective recognition and observance. There are of course, strong arguments as to why human rights law should, in principle, be applied directly to companies. Central to these arguments is the notion that power must be balanced by responsibilities. The first point to make here is that multinationals can and do affect enjoyment of human rights and, as they already enjoy considerable rights and benefits under international law, it is only proper that they should also be subject to some obligations. The second point arises from the fact that the privatisation policies pursued at domestic level have meant that many tasks traditionally performed by government have now been handed over to private operators.

If human rights law obligations are extended to corporate actors they will need to reflect the different roles and capacities of companies vis-à-vis states. In translating human rights obligations for companies, there are two key questions to answer : *first*, what is the legal nature of human rights obligations for companies and *second*, what does this entails? To protect human rights entails three more specific obligations to prevent human rights violations, to provide the means to ensure human rights compliance and to promote understanding regarding the application of human rights standards. The liability of companies for the human rights violations of host states is a developing area in international human rights law. For instance :- human rights activist Ken Saro-Wiwa and eight others were executed in Nigeria for their role in supporting the movement for the survival of the Ogoni people. Questions were raised not only with the Nigerian officials but also with the multinational oil corp. shell, which has had considerable influence in Nigeria through its sizeable economic activities in and around the River Nizer delta. These activities were met with some opposition from tribal groups concerned about their environmental impact. Shell and other corporations with investments in Nigeria have at times needed to rely upon the protection of the police during protests. In November 1990, shell called in the paramilitary mobile police force to protect its sites and investments, and 80 members of the Etche ethnic group were massacred. shell distanced itself publicly from these events, and in 1994 established a policy of not accepting police or military help. This act of conscience was negated, though, by revelations in 1996 that for a decade and a half shell had been paying for and arranging for the import of various arms-from handguns to heavy weaponry for the use of Nigerian forces. Shell suffered further criticism for its alleged inadequacy in using its influence to speak out against the executions of the ogoni activists. Despite the fact that many corporations deny that they have any responsibility in such matters, human rights necessarily transcend all boundaries and can't be seen as solely the responsibility of the state to protect.[9]

Like shell, the sportswear manufacturer Nike has been subjected to criticism for contracting the manufacturer of its training shoes to companies in Asia which operated sweat, shops, in violation of even the most minimum labour standards and in clear violation of human rights regulation.

Despite attempts by nation states to regulate such transactions, these corporations have been able to manipulate the loopholes in the global market place to continue their trade. Similarly, those concerned with the deaths of numerous babies in economically poor countries due to an over-reliance upon artificial baby milk powder laid the blame firmly at the feet of multinational corporations such as Nestle. Transnational Corporations are key players in world politics. Only six nation-states have revenues larger than the nine largest transnational corporations, excluding transnational banks. Thus, there are clear inequalities in the distribution of power and resources.[10]

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[9]. Darren J.O. Byrne, *Human Rights : An Introduction* (New Delhi, Pearson Education 2007), at 381-383.

[10]. *Ibidem*.

Global Corporations may wield this economic power, but they not accountable to international law in the same way that nation-states are. In this respect, it is difficult to utilize campaigning techniques with a view to forcing these corporations to respect human right standards. Nevertheless, in so far as this economic power translates into political power (the power to influence decisions made by governments), transnational corporations must be a legimate target for human rights campaigns. At the same time, one of the defining traits of the new global market place is the decreasing power of nation-states to regulate the activities of such corporations, which can easily relocate their operations across borders in search of maximum profit. So there is much power and little or no accountability, except to shareholders. This points a depressing picture. Nevertheless, there is room for optimism. No corporation or nation state wants to be named and shamed as having played a part in some human rights violation somewhere in the world. Corporations rely on good publicity and, like shell, would want to be seen by the watching world to be implementing and enforcing an ethical business policy. It is now widely accepted that corporations, like nation-states, must play a part in protecting the environment, and the same ethics can be applies to the protection of human rights in an increasingly globalised world.[11]

Multinationals as subject to some direct obligations under international human rights law is slowly gaining momentum. In the absence of effective enforcement mechanisms, multinationals are likely to continue to regard human rights principles, at least as moral than legal obligations. Also, because of the lack of human rights instruments applying directly and expressly to companies, it is still only possible to speculate as to what might actually be required of multinationals in practice, based on existing human rights obligations of states, soft law instruments, judicial decisions, and other state practice.[12]

(B) Indirect regulation

The developed state is more likely to possess the requisite technical expertise to impose adequate safety standards, and to have a legal system able to cope with the proper attribution of responsibility within the complex corporate arrangements ... indeed it is common for developed nations to demand higher standards of behaviour from MNEs within their judications than do developing nations. But all states have not the same capacity to regulate companies effectively. The developing states, highly dependent on foreign investment, face a particular set of problems. *First*, in sectors where there is competition for inward investment with other states, host states may find themselves in a relatively weak bargaining position, and their governments may be concerned about the potential effect of higher regulatory standards on the country's attractiveness as a foreign investment destination. *Second*, government of poorer states may simply lack the technical and financial resources to monitor and enforce standards effectively. Where such disparity of power exists, it seems unrealistic to depend exclusively on host states to hold MNEs accountable for human rights violations.[13]

The territoriality of human rights obligations has been considered in a series of court cases under the European Convention on Human Rights and the UK Human Rights Act 1998. The ECHR requires state parties to secure to everyone within their jurisdiction the rights and freedoms set out in the convention. Both the European court of Human Rights and the British House of Lords have held that this wording does indeed give rise to extraterritorial obligations in exceptional cases where a contracting state has effective control over territory or individuals in other states. However, there are indications in General Comments of the Committee on Economic, social and cultural rights that home states may have some extraterritorial regulatory obligations in respect of multinationals. In relation to the right to health the Committee has stated as follows : 'To comply with their international obligations in relation to article 12, state parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries. If they are able to influence these third parties by way of legal or political means, in accordance with the charter of the United Nations and applicable international law.'[14]

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[11]. *Ibid.*

[12]. *Supra n.* 6, at 83.

[13]. *Ibidem.,* at 84-85.

[14]. *Ibid.,* at 87-88.

Clearly, multinational activity has the potential to impact on the enjoyment of human rights. Because of this, it has been argued that the obligation to protect against human rights violations does indeed create positive duties for home states to regulate multinationals. The Maastricht Guidelines on violations of Economic, social and cultural rights, produced at a conference of human rights lawyers held in 1997 at Maastricht University, had this to say about the relationship between states and multinationals, which are as follows :- 'The obligation to protect includes the state's responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-state actors.'[15] Further, there is also a close and necessary relation between trade and human rights.

2. Trade and Human Rights

Economic growth is a sine qua non for development. Such growth occurs 'best' in conditions of free market institutions and processes, fully respecting the rights of property and contract. Economic growth as development requires as free as humanly possible movement of global capital via international trade and commerce and facilitation of the flows of direct foreign investment.[16]

But in case of investment or flow of global capital the central point is human society, i.e. community who lives in different sphere. Some human communities live in coastal areas; some others remain landlocked. Some remain vulnerable to volcanic eruptions, earthquakes, tornadoes, cyclones and Tsunami; others live relatively free from this disruption. Some live in arid zones and in natural deserts and others live in rain fed areas. Some have huge petroleum, mineral, coal, diamond, and other resources including land, sound financial position but the main thing that persons related above to be affected in some way or other, i.e. directly or indirectly, by the trade or business. Kant and Wilson in his seminal work on the "Principles of Political Economy and Taxation" stated that under a system of perfectly free commerce, each country naturally devotes its capital and labour to such employments as beneficial to each. This pursuit of individual advantage is connected with the universal good of the whole. By stimulating industry, by rewarding ingenuity, and by using most efficaciously the peculiar power bestowed by nature, it distributes labour effectively and economically, while by increasing the general mass of productions, it diffuses general benefit, and binds together, by one common tie of interest and intercourse, the universal society of nations throughout the civilized world.[17]

Liberalism's embracement of free market capatalism was emphasized by Coporaso and Levine, that market is designed to free individual initiative and self interest while assuring that choice replaces coercion. The world's freedom requires open borders for business - that mass markets require consumer sovereignty and freedom to choose products. The idea of freedom of choice through a free market enterprise system is not new, however. In 1976, Adam Smith introduced the concept of free choice through a free market in his economic and moral treatise 'The Wealth of Nations', where he professed that commerce allows the exercise of moral liberty - the freedom to choose - in a civil society. An extension of the liberal paradigm was the globalization approach. Simply put, globalization entails the international expansion of laissez-faire Capitalism, or depend economic interdependence among nations. The major conduit of globalization was the multinational corporation. Globalization with its well-run multinationals, looks for good markets, good workers and they bring in exchange not private deals for officials but the promise of a better life for the people. Firms serve as facilitators for improved human rights practices in countries in which they are located, as well as, underscored the positive role corporations in promoting democratic values of individual freedom and human rights. Economic and political liberalists may exaggerate the role of corporations in their ability to enhance the standard of living of global citizenaries through economic exchange, or investment. Rawls insisted that the liberal

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[15]. *Id.*, at 85-86.

[16]. Upendra Baxi, *Human Rights in a Past Human World Critical Essays* (New Delhi : Oxford University Press 2007), at 117.

[17]. *Ibidem, at 104.* Referred to in : Susan C. Morris, *Trade and Human Rights : The Ethical Dimension in the U.S. China Relations* (Hampshrine : Ashgate Publishing Limited 2002), at 20.

priority of freedom sets the parameters for global justice. Within the frame work of liberalism, a global human rights regime has emerged in the 20th century, which has been witnessed in the evolution of such international governmental and non-governmental groups as the U.N. Human Rights Commission, the Amnesty International and other organizations that promote the cause of human rights throughout the world. From the liberal perspective, humanitarian values drive foreign policy.[18]

The U.S. linkage of trade and human rights occurred, for the most part, during the 1970s. Historically, however, the United States first linked trade and human rights more than a century ago through the Tariff Act of 1890, which banned imports of goods manufactured by convict labour. The trade and human rights linkage was further defined in the Treaty of Versailles of 1919, at the Paris Peace Conference, which stipulated that all nations - "endeavour to secure and maintain fair and human conditions of labour... in all countries in which their commercial and industrial relations extend. In 1945, the United States called for on International Conference on Trade and Employment and established a preparatory committee to develop on agenda. The United States recommended the establishment of an International Trade Organisation (ITO), and in March 1948 drafted a document known as the Havana Charter of 1948, the precursor to the ITO. Article I of the Havana Charter for an ITO, 1948 contained that "The members recognize that unfair labour conditions, particularly in production for export, create difficulties in international trade, and accordingly, each member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory." Although, the ITO never came into existence, provisions for labour standards were minimally incorporated into Article XX(e) of the GATT, permitting contracting parties to take measures to restrict products of prison labour. That the United States should address countries labour standards through a multilateral framework, was recommended by the Randall Commission of 1954. Multilateral approaches to trade and labour rights included U.S. Participation in such international conference and organizations as the International Labour Organizations and the GATT. Eventual U.S. multilateral mechanisms for conditioning economic relations on human rights improvements included the OECD, the IMF, world bank, and the UNCTAD. On such action on behalf of human rights, taken by the United States, was a call to attention on Four Minimum International Labour Standards (MILS) in the Tokyo Round of Trade Negotiations in September 1973. Such U.S. Stipulations included, for example, attention to slave or forced labour, child labour, and health and safety practices. The Unite States received scant support for these human rights concerns, with the exception of a few Scandinavian countries. Sec.502(a) of the 1974 U.S. Trade Act identified the term internationally recognized worker rights to include,

(A) the right of association,
(B) the right to organize and bargain collectively,
(C) prohibition on the use of any form of forced or compulsory labour.
(D) minimum age for the employment of children, and
(E) acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health.[19]

The trend toward the global privatization of public assets, which has often been referred to as part of the globalization process, has brought the role of the multinational corporation into the global limelight. The recent western-led growth strategy of most developing and transitional countries has been to follow a market oriented structure where the emphasis has been placed on growth through the private sector, patterned similarly after the economic growth experience of Japan and the Newly-industrialized countries in Asia. The increased privatization of global public assets had increased the intensity of cross-border corporate linkages and therefore the interdependencies of nations. The broader cross-border and cross-cultural transnational business and commercial activities were a major influence on the reasoning behind the delink age of human rights.[20]

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[18]. Morris, *Ibidem,* at 21, 23-24 and 26.

[19]. *Ibid*, at 49-51.

[20]. *Id., at 109-110.*

3. Multinationals and International Economic relations

The term MNCs, GCs, TNCs are used interchangeably. The term 'transnational corporation' generally refers to a corporation with affiliated business operations in more than one country. Art. 1 of the UN code of conduct of TNCs defines transnational corporations as "an enterprise, whether of public, private or mixed ownership, comprising entities in two or more countries regardless of the legal form and fields of activity of these entities, which operates under a system of decision-making, permitting coherent policies and a common strategy through one or more decision-making centers in which the entities are so linked, by ownership or otherwise, that one or more of them may be able to exercise a significant influence over the activities of others, and in particular, to share knowledge, resources and responsibilities with others." The OECD similarly defines multinational enterprises as "These usually comprise companies or other entities established in more than one country and so linked that they may co-ordinate their operations in various ways-ownership may be private, state or mixed."[21]

International economic relations of multinationals are as follows :-

(A) Commission on TNCs, 1975

This commission was established under ECOSOC to serve as an advisory body of ECOSOC to provide technical assistance to developing countries, and to examine the role of TNCs and their impact on the process of development, especially that of the developing countries.

(B) OECD Guidelines, 1976

TNCs now play an important part in the economies of member countries and in international economic relations, which is of increasing interest to governments. Through international direct investment, such enterprise can bring home substantial benefits to have and to host countries by contributing to the efficient utilization of capital technology and human resources between countries and can, thus, fulfil an important role in the promotion of economic and social welfare. But the advances made by MNCs in organizing their operations beyond the national framework may lead to abuse of concentration of economic power and conflicts with national policy objectives.

(C) The Draft United Nations Code of conduct of TNCs, 1983

The Code contains 71 Articles. The object of this code is that the U.N. commission on TNCs is required to undertake a comparative study of existing international code of conduct or guidelines and of existing national and regional legislation and regulations enacted with the purpose of regulating the operations and activities of TNCs, as well as suggestions which might help in formulating a code of conduct.

(D) Norms on the responsibilities of TNCs and other business enterprises with regard to Human Rights, 2003

The preamble of Norms contained 15 parts, each part is important but besides these the following parts of preamble is mentioning here :-

Third part : Recognizing that even though states have the primary responsibility to promote, secure the fulfillment of, respect, ensure respect of and protect human rights, transnational corporations and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth in the universal declaration of human rights.

Fourth part : Realising that TNCs and other business enterprises, their officers and persons working for them are also obligated to respect generally recognized responsibilities and norms contained in the UN treaties and other international instruments such as the Convention on the prevention and punishment of the crime of Genocide : the convention against Torture and other cruel, Inhuman or Degrading Treatment or punishment : the International Convention on the Elimination of All forms of Racial Discrimination, etc.

Fifth part : Taking into account the stands set forth in the Tripartite Declaration of principles concerning multinational Enterprises and social policy and the Declaration on Fundamental principles and rights at work of the International Labour Organization.

[21]. S.R. Myneni, *International Trade Law* (Faridabad : Allahabad Law Agency 2008), at 108-109.

Sixth part : Aware of the Guidelines for multinational Enterprises and the committee on International Investment and Multinational Enterprises of the Organisation for Economic Cooperation and Development.

Seventh part : Aware also of the United Nations Global Compact initiative which challenges business leaders to "embrace and enact" nine basic principles with respect to human rights, including labour rights and the environment.

Eleventh Part : Noting that transnational corporations and other business enterprises have the capacity to foster economic well being, development, technological improvement and wealth as well as the capacity to cause harmful impacts on the human rights and lives of individuals through their core business practices and operations, including employment practices, environment policies relationships with suppliers and consumers, interactions with Governments and other activities.

Fourteenth Part : Reaffirming that transnational corporations and other business enterprises, their officers - including managers, members of corporate boards or directors and other executives and persons working for them have, inter alia, human rights obligations and responsibilities and that these human rights norms will contribute to the making and development of international law as to those responsibilities and obligations.

(i) General Obligations

1. States have the primary responsibility to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including ensuring that TNCs and other business enterprises respect human rights. Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

(ii) Right to equal Opportunity and Non-discriminatory treatment

2. Transnational Corporations and other business enterprises shall ensure equality of opportunity and treatment, as provided in the relevant international instruments and national legislation as well as international human rights law, for the purpose of eliminating discrimination based on race, colour, sex, language, religion, political opinion, national or social origin, social status, indigenous status, disability, age - except for children, who may be given greater protection or other status of the individual unrelated to the inherent requirements to perform the job, or of complying with special measures designed to overcome past discrimination against certain groups.

(iii) Right to Security of Persons

3. TNCs and OBEs shall not engage in nor benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage - taking, extra judicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.

4. Security arrangements for transnational corporations and OBEs shall observe international human rights norms as well as the laws and professional standards of the country or countries in which they operate.

(iv) Rights of Workers

5. TNCs and OBEs shall not use forced or compulsory labour as forbidden by the relevant international instruments and national legislations as well as international human rights and humanitarian law.

8. TNCs and OBEs shall provide workers with remuneration that ensures an adequate standard of living for them and their families. Such remuneration shall take due account of their needs for adequate living conditions with a view towards progressive improvement.

(v) Respect for national sovereignty and human rights

10. TNCs and OBEs shall recognize and respect applicable norms of international law, national laws and regulations, as well as, administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and prohibition of corruption, and authority of the countries in which the enterprises operate.

(vi) Obligations with regard to Consumer Protection

13. TNCs and OBEs shall act in accordance with fair business, marketing and advertising practices and shall take all necessary steps to ensure the safety and quality of the goods and services they provide, including observance of the precautionary principle. Nor shall they produce, distribute, market, or advertise harmful or potentially harmful products for use by consumers.

(vii) Obligation with regard to environmental protection

14. TNCs and OBEs shall carry out their activities in accordance with national laws, regulations, administrative practices and policies relating to the preservation of the environment of the countries in which they operate, as well as in accordance with relevant international agreements, principles, objectives, responsibilities and standards, with regard to the environment, as well as human rights, public health and safety, bioethics and the precautionary principle, and shall generally conduct their activities in a manner contributing to the wider goal of sustainable developments.[22]

Comparison Between Norms, 2003 and Draft UN Code of 1983

The norm provide soft law for TNCs and OBEs to promote and protect human rights on an international scale. These norms may be viewed as a basis for the potential development of a treaty, establishing and confirming the rudimentary obligation of states, individuals and corporation to respect, ensure respect for, prevent abuses of, and promote human rights. While code, 1983 never adopted, but attempted to provide either mandatory requirements or voluntary guidelines for transnational corporations to follow, by encouraging contributions to the development goals and objectives of the countries in which they operates.[23]

4. Globalisation and Human Rights

The conceptual *frame work* of corporate governance and business conduct paints to the *inter connectivity* of within-nation and cross-nation business entities. Production, supply, distribution, commodity, and service chains increasingly, and heavily, intermesh the global with the regional, national, supranational and the intensely local. Severance of interlocking and intertwining constitute elements that constitute business activity, enterprise, and entities is no longer, on this conception, possible; devising human rights-oriented regimes of surveillance at any fixed nodal point is insufficient; indeed because the very notion of nodal points reaches its vanishing point in a post-fordist and post modern global economy. Globalisation of human rights is a process in search of a careful description. This process rests on two fallible but still powerful beliefs: the belief concerning the 'western' origin of human rights and the belief that only same leading Euro-American societies may most effectively promote global human rights cultures. One may characterize the first order of beliefs in terms of origin myths and the second in terms of the patrimony of the dominant. Analytically, it is at work when the dominant states selectively target the enforcement of certain sets of human rights, or sets of interpretation of human rights, upon the 'subaltern' state-members, and peoples, of the world system. The hegemon does not accept as a universal norm that its sovereign sphere, rife with human and human rights violations, ought to be equally liable to similar human rights-based intrusion/invigilation. Globalization of human rights proceeds on moral maxims which are, as yet, not fully enunciated as international norms governing state conduct because they are not acceptable to the hegemons themselves.[24]

Before the Human Rights Commission, the US has continually stressed the idea that development occurs thanks to economic liberties and private enterprises rather than a claimed right to development. In this commission we have beard transnational corporations maligned. But no single institution has been so responsible for the great leap forward of economic development in this century as the private business corporation. The large business corporation is relatively new in history. The private independent transnational corporation is even newer. Accordingly, the histories of liberal capitalist development provide demonstrably superior pathways of development than the nebulous values of human rights-based development fostered by the UNDRD [declaration on the Right to development, united nations commission on human Rights, 1986]. The tender solicitude entailing full recognition of

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[22]. *Ibidem,* at 111-136.

[23]. *Ibid,* at 158.

[24]. Baxi, *Supra n.* 3, Third Edition, at 170, 172 and 282.

the dignity and honour of much 'maligned' and politically innocent multinational corporations thus emerges as a sovereign norm of overall good global governance culture. This solicitude spills over to other arenas such as determined opposition to the recently formulated UN Human Rights commission norms of human rights responsibility for MNCS and other business entities; indeed a former US official, and now a freelance thinker in his role as a UN Special Representative on Human Rights and Transnational corporation leads a coalition of willing thinkers that seeks to provide a 'third class funeral' to such normative development. All these forms of free market fundamentalisms would not be worthy of the dignity of rational opposition but for the fact that they also signify a reconstitution of the ascendant global neoliberalism to which the right to development talks present an irritating moral nuisance contemporary process of global-capitalism threaten the languages, logics and paraplegics of human rights to near-obsolescence, especially through the paradigm shift from universal human rights of human being to trade-related market friendly human rights. Globalization processes systematically summon the three is of contemporary economic globalization: denationalization, Disinvestment, and deregulation. Each of these weakens the redistributional role of the nation-states, especially of the developing countries.[25]

Globalisation is a pervasive phenomenon of our times. An important trend in international life, it affects people in all parts of the globe. One of the lesser noted impacts of globalisation is its effect on human rights. Some of the rights of individuals and groups are enhanced by globalisation, but it also has negative effects on human rights. The term globalisation refers to the current transformation of the world economy: the reduction of national barriers to trade and investment, the expansion of telecommunications and information systems, the growth of off-shore financial markets, the increasing role of multinational enterprises, the explosion of mergers and acquisitions, global inter-firm networking arrangements and alliances, regional economic integration and the development of a single unified world market. The phenomenon of globalisation is accompanied by increasing international mobility: the migration of workers, the growth of tourism and the increasing ease of international travel. Communication across borders has become easier with access to Email, the internet and other communication channels. Regional trading blocs such as European Union and the North American free Trade Agreement and the Asia Pacific Economic co-operation promote trade liberalization. The establishment of WTO enhancing and supporting the GATT and other agreements adopted at the conclusion of the Uruguay Round has also contributed to trade liberalization. Going beyond the liberalization of trade in goods, the Uruguay Round added issues of agriculture and intellectual property to the more traditional GATT concerns.[26]

The World Bank and the IMF have imposed structure adjustment social policies on developing governments seeking their aid. These policies have required countries to cut food subsidies which aid the poor and to adopt labour practices that result in harm to workers. Under structural adjustment programmes, governments are less able to freely adopt economic and social policies; international financial institutions and TNCs are often the real influences in the adoption of such national policies. The free market ideology is pervasive and influential.

While these developments are viewed as means to improve the global economy, the persistence of serious social and economic problems is evidence that they are not a panacea. The workers' group of ILO Governing body pointed out in 1994 that there is generalized unemployment and underemployment throughout the world and social tensions are giving rise to internal political instability in many countries. Globalization has led to an intensification of international competitiveness. With the elimination of many barriers to free trade through membership in GATT, countries are less able to erect tariff and non tariff barriers to protect their own markets and products. The developed countries have to compete with countries where labour and basic commodities are cheaper. The developing countries have to use their comparative advantage and attempt to obtain access to the markets of the developing countries. The result is a 'race to the bottom' - a competition to have fewer social benefits and lower salaries in order to compete on the international market. In the economically developed countries, international

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[25]. Baxi, *Supra n.* 16, at 129-130 and 154.

[26]. Virginia A. Leary, *"Globalisation and Human Rights",*265-279 at 265 in : Janusz Symonidies (ed.), *Hyman Rights : New Dimensions and Challenges.* (Aldershot : Ashgate Publishing Limited 1998).

competitiveness is leading to demands for the cutting social expenses such as costs of health care, unemployment insurance, welfare of various kinds and day care programmes and salaries. Each day, in the United States, Canada and Western Europe, one may read of downsizing, dismissing workers in order to cut labour costs and increase the competitiveness of industry.[27]

The situation in developing countries is characterized by the serious problems of unemployment and poverty mentioned in the quotation above from the workers' Group of the ILO Governing body. While some few developing countries in Asia have recently developed rapidly and are providing the main competition to the developed country production, most developing countries remain locked in severe poverty and are not reaping profit from globalisation. In such an economic climate, the business sector has advantages over organised labour, and such international competition is putting pressure on business to adopt global best practice. Production methods and on workers to accept greater flexibility in working time, pay and the tasks that they perform. Labour's power to influence the adjustment process has declined for various reasons. Deconcentration of production units, increased use of decentralised bargaining and parallel sourcing and frequently high unemployment and weakened trade union power. Consequently the balance of power has shifted in favour of the business sector. The competitive pressures of the new international economy have had negative effects on the rights of workers. Low labour costs and low labour standards are important elements in the choice of location of branches or subsidiaries of transnational corporations or choice of suppliers for industrial development in the North. Textiles and other goods produced more cheaply in developing countries are taking over markets in the developed world. Governments thus have little or no incentive to improve working conditions on the contrary, their competitive advantage depends on these conditions. Developing countries oppose the linking of labour standards to trade issues, pointing out that such linkages would take away their competitive advantage through cheep labour and low labour standards. Their argument is understandable since it is essential to increase the trade of developing countries; however, the cost falls on the most vulnerable elements in the developing countries: unskilled or semiskilled labourers whose rights to organize labour unions, to engage in collective bargaining or to protest against unsafe working conditions and denied.[28]

Although unskilled workers in general are victims of globalization, the situation of women workers deserves particular attention. On the other hand, globalization has increased opportunities for women. Many women have entered the workforce through jobs in export processing zones or through becoming migrant domestic workers-both types of jobs created largely by globalization. Their work has contributed to family income and to a sense of independence and freedom for women workers. On the other hand, these jobs often lead to social disruption of the family and expose women to exploitation and on occasion, violence and sexual abuse. As a group lacking in power and status in society, their human rights are frequently violated. Economic development resulting from globalization produces dislocation of populations and migration pressures. The disparity in economic development between counties and the need for workers in the more developed countries has resulted in large numbers of workers migrating across borders. Women migrant workers are often drawn from the poorer segments of their own communities and are thus already in a situation of vulnerability. What should be done to improve the negative social situations arising from globalization ? A number of international agreements, in particular the international covenant on Economic, social and cultural Rights and the human rights conventions of the ILO, contain provisions relating to the protection of the rights most frequently endanger from globalization. The human rights movement and the labour movement should pay increased attention to these treaties and to promoting their implementation. But enforcement of these treaties depends on 'mobilization of shame' and the willingness of states to conform to the evaluations of monitoring organs. The weakness of these enforcement mechanisms, although continually being improved, has led to calls for linking human rights, particularly labour rights, with trade. However, the linking of trade and labour rights is highly controversial.[29]

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[27]. *Ibidem.,* at 265-267.

[28]. *Ibid.,* at 265-269.

[29]. *Id.,* at 270-271.

5. Indian Scenario

Globalisation of world economy offers both, Challenges as well as opportunities to the developing countries including India, because, they have lost a lot of time in preparing for global competitiveness. A higher level of world prices, continuing devaluation of their currencies and increase in the quantum of their imports are adding new complexities to their international marketing efforts. The opportunities that are opening for global marketing are further dampened by rising protectionism, discriminatory government procurement policies, offset requirements, forced technology transfers, local content requirements and other mechanisms used, and the growing trend towards bilateralism instead of multilateral trade agreements. Globalisation does not mean inviting foreign companies to do business in India but it also involves Indian companies penetrating global market. This would involve major investments in foreign markets to develop a quality image for products and brands, securing distribution and service networks and aggressive promotion. If the Indian companies have to seize the new opportunities created by the changing world economy, they have to think and compete globally. This requires more than a good product or services. It demands strategic thinking, ability to position their companies in a commitment to innovation, productivity and customer service.[30]

India participated in the Third ministerial conference of the WTO at seattle on 30 November to 3 December 1999. The conference assumed importance and attracted wide publicity because of the efforts by a large number of member countries to seek an endorsement from the conference for the launch of a comprehensive round of negotiations, covering a wide range of subjects. These include proposals to introduce regimes on investment, competition policy, transparency in government procurement, trade facilitation, trade labour standards and trade and environment. There was also a move to get the conference to endorse a fresh round of Industrial Tariff negotiations: strengthen the coherence between the working of WTO and other international organizations. India's proactive agenda focused on highlighting its concerns arising out of the imbalances in several of the WTO agreements, including those related to antidumping, subsidies, intellectual property, trade related investment measures, and the non-realization of benefits to the extent expected from Agreements such as those on Textiles and Agriculture. India has also emphasized the necessity of operationalising the special and differential treatment clauses in the WTO agreement and has brought out the difficulties faced through the increase in antidumping and ant subsidy investigations in areas where India and the developing countries have begun to acquire trade competitiveness. These concepts have been highlighted *inter alia,* through as many as 24 proposals circulated in the General council of WTO in the preparatory process leading to the Third ministerial conference. India also expressed concern regarding overloading of the WTOs agendas, especially with non-trade related issues. At the meeting, India resolutely opposed the inclusion of non-trade issues, like labour standards, in the agenda of WTO. It also effectively created pressure for taking on board its implementation concerns.[31]

The liberal economic environment should encourage the growth of labour intensive products and this would increase employment elasticity. The reforms may lead to increase in the cost of labour and this would encourage capital intensive industrialization. There are three reasons for likely rise in capital intensity :- (a) Increase in relative food price would increase the cost of labour in the form of higher wages. (b)Reductions of tariffs in capital goods sector may lead to cost advantage in favour of capital. (c) Foreign competition and greater export drive may also attract more capital intensity.[32]

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[30]. Raj Agrawal, *Business Environment,* Second Revised Edition (New Delhi : Excell Books 2006), at 570-571 and 576-577.

[31]. *Ibidem.,* at 571-572.

[32]. *Ibid.,* at 592.