

International Laws and The Reality: The Complexity of Corporate Law in Empowering Human Rights

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Abstract

Corporations inevitably violate human rights in a variety of ways. As corporations evolved into massive multinational businesses, corporate violence—which is a legacy of colonialism and corporate power—continues to exist today. Corporate players maintain their freedom in pursuing their objectives using convoluted and obscure multinational organizations and supply networks, through the utilization of corporate law principles like the veil of corporate ownership, and also through other practices like tax evasion and lobbying of political bodies. The objective of this article is to explore the legal aspects of the problem of corporate violence, and suggesting reforms to ensure justice for the affected parties. This article uses the doctrinal research method along with the comparative method, focusing on both primary and secondary data. This article makes the case that the issue stems from the structural and systemic flaws in the framework of international law as well as in corporate laws that continually preserve corporate institutions in frustrating the advancement of the cause for human rights. To effectively enhance the corporate and human rights environment, a framework of hard law, soft law, and non-law reforms and actions is needed.

1. Introduction

There are several different types of human rights violations committed by corporations, including those that compromise the health of individuals by way of pollution, accidental damage to the environment, inadequate safety measures, forced or child labor, underpaying employees, removing communities from their settlements, contaminating waterways, and using excessive extraction of resources.¹ Corporate violence,² which has its roots in a long tradition of colonization³ and corporate dominance, is still present today as companies have developed into formidable multinational conglomerates.⁴

Corporate players can freely pursue their corporate objectives through convoluted and obscure multinational organizations and supply chains, through the utilization of

¹ Subhan Ullah et al., “Multinational Corporations and Human Right Violations in Emerging Economies: Do Commitment to Social and Environmental Responsibility Matter?,” *Journal of Environmental Management* 280, no. November 2020 (2021): 111689–701, <https://doi.org/10.1016/j.jenvman.2020.111689>.

² The term “corporate violence” refers to all actions—legal or illegal—that corporations take or fail to take that adversely impact people. Yet again, the notion that corporate violence is not ‘real’ crime is related to traditional conceptions of criminality that focus on one-on-one instances of violent behavior. Due to these factors, a large portion of corporate violence remains to be completely concealed or justifiably acceptable, frequently even normalized and shielded by prevailing orthodoxy. Publicizing the harsh and egregious reality of corporate violence is one method by which it might be revealed and known to the general public. See Jasmine Hébert, Steven Bittle, and Steve Tombs, “Obscuring Corporate Violence: Corporate Manslaughter in Action,” *Howard Journal of Crime and Justice* 58, no. 4 (2019): 554–79, <https://doi.org/10.1111/hojo.12345>.

³ Statehood and colonization have long been associated with corporate power. William Blackstone (1723-1780) describes the idea of corporate personality, which ultimately proved crucial to the emergence of British personality through the liaison of both the private sector and the state itself. Blackstone claims that seeing as “all personal rights die with the person” it was found crucial, given that it is necessary for the public benefit to possess specific rights retained, thereby creating artificial persons, who could keep an everlasting succession and thus benefit from some sort of juridical immortality.” Blackstone makes the case that it is necessary to give non-human entities legal autonomy similar to personhood rights that last longer than one’s lifetime. By approving an entity, the sovereign established an “artificial person” with individual privileges but without the constraints of human life. Among the earliest applications of legal personhood, according to Blackstone, was the ability to secure the sovereign’s authority by means of autonomous rights of succession. Traditionally, the privileges of corporations alongside those of the sovereign were closely linked because “the monarch’s authorization is vital to the construction of any kind of entity, either implicitly or explicitly given.” See Leila Neti, “‘If You Were an Animal You Would Have Eaten Me’: Animal’s People and the History of Corporate Colonialism,” *Law and Humanities* 15, no. 1 (2021): 25–46, <https://doi.org/10.1080/17521483.2021.1918377>.

⁴ According to Berle and Means, today’s corporate structure could potentially—if not actually—be considered the dominating entity of the contemporary era rather than just a modest type of social organization. Companies had grown so big and powerful that their actions affected “the daily lives of the nation and every individual.” See Eric Hilt, “The ‘Berle and Means Corporation’ in Historical Perspective,” *Seattle University Law Review* 42, no. 2 (2019): 417–44.

corporate law ideas like the veil of corporate responsibility, and also other acts like tax evasion and influencing political bodies. As a result, a “wave of legislating and standards-setting across the company, national, and international,” has been implemented in response to a growing human rights movement and activism⁵—sadly with little success. Considering human rights-related legislation and regulations currently concentrated primarily on state actors as opposed to multinational enterprises, there are still substantial deficiencies in the international oversight necessary for ensuring human rights protection.

This article makes the case that this issue is founded in institutional and systemic injustices ingrained in corporate laws and the international law that impede the advancement of the protection of human rights. Corporations continually develop new strategies to combat individuals attempting to undermine their dominance or stop corporate violations against human rights. Corporations will keep growing and prospering while the world’s marginalized and oppressed perish as long as a greater counterbalance to corporate dominance is absent. To put a stop to such abuses, statutory and organizational mechanisms pertaining to corporations need to be touched on.

This article adds to the corpus of literature regarding corporate violence by presenting a more comprehensive explanation of corporate violence, which includes explanations of the role of international law and corporate law in it, as well as the manner in which corporate violence practices challenge human rights in every commercial aspect. The article is laid down in the following manner: The backdrop of corporate violence, institutional inequities which foster corporate dominance, and the inadequateness of the legislative measures to restrain the misuse of such authority will all be described in Section 4, which also explains how corporate abuses of human rights have endured until now. Section 5 demonstrates how corporate laws and governance systems reinforce systemic disparities and thwart efforts to stop corporate violations and disregard for human rights. Section 6 emphasizes the need for an equitable economical

⁵ Jenny Hahs and Ulrich Mückenberger, “Segmenting and Equalizing Narratives in the ILO’s Standard-Setting Practice,” *International Labour Review* 161, no. 4 (2022): 635–55, <https://doi.org/10.1111/ilr.12344>.

strategy and affirms the aforementioned demands an equitable shift, which includes changing corporate and global institutions to address human rights abuses and the disparities in resources and influence which facilitate such abuses.

2. Problem Statement

Corporations have been violating human rights for a long time, and they still do so today, despite the increased awareness and activism on these issues. These violations affect people, communities, and the environment in various ways, such as pollution, exploitation, displacement, and resource depletion. The root of this problem lies in the institutional and systemic injustices that are built into corporate laws and international law, which give corporations too much power and protection. The current legal systems and mechanisms are not enough to make corporations responsible for their actions and to safeguard the rights of the victims. This article will explore the legal aspects of the problem of corporate violence, and will suggest reforms that can tackle the underlying causes of the problem and ensure justice for the affected parties. The article will cover the historical and contemporary background of corporate violence, the influence of corporate laws and governance systems on it, and the legal reforms needed to fix it. The article will also advocate for a fairer economic approach that can challenge the dominance of corporations and uphold human rights for all.

3. Methods

The article will use a doctrinal research method to analyze the legal aspects of corporate violence and human rights. This means that the article will study the existing laws and legal principles that apply to the topic, such as the constitutions, statutes, regulations, and case law of different countries and regions, as well as the international law and treaties that deal with the issue. The article will also use a comparative method to contrast the legal systems and practices of different jurisdictions, and to find the best practices and models that can be used or adapted to solve the problem of corporate violence. The article will use both primary and secondary sources of information, and will reference them properly using a consistent citation style. The article will follow a clear and structured legal writing format, with an introduction, background, analysis, discussion, recommendations, and conclusion.

4. Corporate Dominance, Human Rights Abuses and Insufficient Legal Recourses

Colonialism, wealth exploitation, and aggression were characteristics of early English and European corporate activities.⁶ The East India Company (EIC) and the Dutch East India Company (VOC) are some feared examples of corporations operating internationally as an “aggressive colonial authority”⁷ committing acts of “armed conquest, subjugation, and plundering of vast areas of South Asia and South-East Asia.”⁸ Accounts about human rights abuses and infringements, such as killing, brutality, and ecological destruction, committed by corporate actors—or in which corporations around the world participate both historically and currently, are commonplace. Multinational Corporations (MNCs) have “migrated like locusts” over global boundaries throughout the fifteenth century, according to scholars from developing countries, with occasionally disastrous effects on the environment and human life.⁹ Nowadays, while poverty plagues a large portion of the developing nations, financialized colonialism and corruption still exist.¹⁰

The systemic socio-economic disparity within and across nations impedes meaningful progress in safeguarding human rights from corporate violations. International law’s fundamental deficiencies in protecting human rights are noted by researchers of “Third World Approaches to International Law” or “TWAIL,”¹¹ particularly because the

⁶ Adrienne Johnson et al., “Extraction, Entanglements, and (Im)Materialities: Reflections on the Methods and Methodologies of Natural Resource Industries Fieldwork,” *EPE: Nature and Space* 4, no. 2 (2021): 383–428, <https://doi.org/10.1177/2514848620907470>.

⁷ With greater military might than England’s, the English East India Company (EIC) which was chartered on New Year’s Eve, 1600, dominated over one-fifth of the globe by the late nineteenth century. See Swati Srivastava, “Corporate Sovereign Awakening and the Making of Modern State Sovereignty: New Archival Evidence from the English East India Company,” *International Organization* 76, no. 3 (2022): 690–712, <https://doi.org/10.1017/S002081832200008X>.

⁸ Philip J Stern, “The English East India Company and the Modern Corporation: Legacies, Lessons, and Limitations,” *Seattle University Law Review* 39, no. 2 (2016): 423–45.

⁹ Francisco Javier Forcadell and Elisa Aracil, “Can Multinational Companies Foster Institutional Change and Sustainable Development in Emerging Countries? A Case Study,” *Business Strategy and Development* 2, no. 2 (2019): 91–105, <https://doi.org/10.1002/bsd2.45>.

¹⁰ Penelope Simons, “International Law’s Invisible Hand and the Future of Corporate Accountability for Violations of Human Rights,” *Journal of Human Rights and the Environment* 3, no. 1 (2012): 5–43, <https://doi.org/10.4337/jhre.2012.01.01>.

¹¹ Third World Approaches to International Law (TWAIL) is a movement made up of international law and policymaking academics and professionals who are interested in problems affecting the Global South. Although TWAIL has a wide range of scholastic objectives, the projects it undertakes generally focus on deconstructing the legacy of colonialism within international law and working thus to

contemporary system of international law was developed “under the shadow” of colonialism and imperialism that still possess the common characteristics of Third World peoples’ subjection and abuse under “post-colonial” international law.¹² Furthermore, globalization has exacerbated such systemic issues as a result of increased investments by large multinational corporations in developing nations, many of which are now more financially capable compared to certain nations—hence, governments are left with nothing more than titular sovereignty.¹³ They are molded by capital dependence, social interaction, and networking agreements that they have with their affiliates or providers, along with in their interactions with their employees, consumers, societies, and authorities. Such authority may be either direct or indirect, monetary or non-monetary.¹⁴

Corporate behaviors have benefited structurally from such status quo, which have led to ‘very worrying’ human rights implications.¹⁵ The World Benchmarking Alliance’s project in 2022 shows the average score across 82 per cent of all corporations benchmarked as below the 30 percentile.¹⁶ The benchmark for 2022 also revealed that, among the 127 organizations, over half (52%) were the subject of at least one serious human rights allegation.¹⁷ It is clear that only a handful of corporations are prepared to treat human rights with seriousness, while actions and policies do not always translate into better outcome. Nonetheless, international law institutions and instruments still depend extensively on the less intrusive commitments of host countries, which seem to have adversely hindered international attempts to combat corporate human rights

decolonize the real-world experiences of those living in the Global South. See Usha Natarajan et al., “Introduction: TWAIL - on Praxis and the Intellectual,” *Third World Quarterly* 37, no. 11 (2016): 1946–56, <https://doi.org/10.1080/01436597.2016.1209971>.

¹² Natarajan et al., “Introduction: TWAIL - on Praxis and the Intellectual,” 1946.

¹³ Stephen D. Cohen, “Multinational Corporations versus the Nation-State: Has Sovereignty Been Outsourced?,” in *Multinational Corporations and Foreign Direct Investment: Avoiding Simplicity, Embracing Complexity*, ed. Stephen D. Cohen (New York: Oxford University Press, 2007), 233–51, <https://doi.org/10.1093/acprof:oso/9780195179354.003.0011>.

¹⁴ Stephen Chen, “Multinational Corporate Power, Influence and Responsibility in Global Supply Chains,” *Journal of Business Ethics* 148, no. 2 (2018): 365–74, <https://doi.org/10.1007/s10551-016-3033-x>.

¹⁵ World Benchmarking Alliance, “2022 Corporate Human Rights Benchmark Insights Report,” 2022 Corporate Human Rights Benchmark Insights Report, 2022.

¹⁶ World Benchmarking Alliance.”

¹⁷ World Benchmarking Alliance. “2022 Corporate Human Rights Benchmark Insights Report.”

violation.¹⁸ Yet since corporations do not qualify as signatories to treaties that can be enforced by international tribunals, attempts at imposing international law upon them have often faltered.¹⁹

One could ponder why international law should be used to hold corporations accountable for their violations of human rights as opposed to company law? One argument is that, despite continuously changing, corporate law is still founded on notions from earlier eras that are ineffective in dealing with the intricate systems that have developed.²⁰ Nick Friedman explained how the notion of the corporate legal entity, which dates back to the dawn of corporate legal personhood is the primary cause of the issue with corporate violence. For instance, corporate actors are free to violate human rights without consequence due to limited liability.²¹ Furthermore, in such a fast-paced world, global marketplace with complex technology and networks is intended to provide value maximization for the “owners” of such corporations, thus corporate structures have grown incredibly complex and sophisticated.²²

The question of why some businesses disregard or harm human rights is complex and multifaceted. It depends on the individual choices and reasons of each business person, who may be driven or influenced by various factors, such as: the desire to make money

¹⁸ Tom Ginsburg, “Authoritarian International Law?,” *American Journal of International Law* 114, no. 2 (2020): 221–60, <https://doi.org/10.1017/ajil.2020.3>.

¹⁹ Karen J. Alter, Laurence R. Helfer, and Mikael Rask Madsen, “How Context Shapes the Authority of International Courts,” *Law and Contemporary Problems* 79, no. 1 (2016): 1–36, <https://doi.org/10.2139/ssrn.2574233>.

²⁰ John Armour et al., “What Is Corporate Law?,” in *The Anatomy of Corporate Law: A Comparative and Functional Approach*, ed. Reinier Kraakman, 3rd ed. (New York: Oxford University Press, 2017), 1–28, <https://doi.org/10.1093/acprof:oso/9780198739630.003.0001>.

²¹ The corporation’s assets act as the maximum ability to pay for sanctions that it is able to pay. Its assets restrict its anticipated liabilities costs under the doctrine of limited liability. Thus, if a corporation is undercapitalized (which may have been on purpose) in relation to its risk profile, the sanction will be higher than the corporation’s capacity to pay. See Nick Friedman, “Corporate Liability Design for Human Rights Abuses: Individual and Entity Liability for Due Diligence,” *Oxford Journal of Legal Studies* 41, no. 2 (2021): 289–320, <https://doi.org/10.1093/ojls/gqaa052>.

²² Glenn Morgan, “Power Relations within Multinational Corporations,” in *Handbook of the International Political Economy of the Corporation*, ed. Andreas Nölke and Christian May (Cheltenham: Edward Elgar Publishing, 2018), 262–78.

(profit motive),²³ the pressure to compete,²⁴ the lack of clarity or consistency in the law,²⁵ and the low or weak sense of morality.²⁶ These factors are not the only ones, nor are they exclusive or independent of each other, and they may affect each other in different ways. Furthermore, they do not apply to every business or business person, as some may have a strong sense of duty and responsibility towards human rights, and may even use their power or resources to support or improve human rights in their activities and networks.

Profit motive is wanting to earn money by doing something. It is the main idea of the economy. It affects what people and businesses do, make, and risk. For example, a person may put money into something because they want more money back. Profit motive thinks that people and businesses do what is good for them, and that this also helps everyone. But profit motive also has problems.²⁷ For example, some people or businesses may care more about money than other things, like ethics, society, or nature. They may use or hurt others or nature to save money, make money, or not pay taxes. So, profit motive is a strong but complicated idea that has good and bad sides. Profit motive in businesses can hurt human rights in different ways. For example, some businesses may not respect their workers' rights,²⁸ like fair pay, safe work, or equal treatment, to save money or make money. Some businesses may harm nature by making it dirty or using it up, to make more or not follow rules. This can hurt the rights of people who need nature for their health, income, or culture. Some businesses may help bad regimes by giving them weapons, technology, or money, to reach markets or

²³ Ana Nave and João Ferreira, "Corporate Social Responsibility Strategies: Past Research and Future Challenges," *Corporate Social Responsibility and Environmental Management* 26, no. 4 (2019): 885–901, <https://doi.org/10.1002/csr.1729>.

²⁴ David Hess, "The Transparency Trap: Non-Financial Disclosure and the Responsibility of Business to Respect Human Rights," *American Business Law Journal* 56, no. 1 (2019): 5–53, <https://doi.org/10.1111/ablj.12134>.

²⁵ Elise Groulx Diggs, Mitt Regan, and Beatrice Parance, "Business and Human Rights As a Galaxy of Norms," *Georgetown Journal of International Law* 50, no. 2 (2019): 309–62.

²⁶ Anne Peters, "Corruption as a Violation of International Human Rights," *European Journal of International Law* 29, no. 4 (2018): 1251–87, <https://doi.org/10.1093/ejil/chy070>.

²⁷ Nave and Ferreira, "Corporate Social Responsibility Strategies: Past Research and Future Challenges."

²⁸ Christina Stringer and Snežina Michailova, "Why Modern Slavery Thrives in Multinational Corporations' Global Value Chains," *Multinational Business Review* 26, no. 3 (2018): 194–206, <https://doi.org/10.1108/MBR-04-2018-0032>.

get deals. This can help the regimes do bad things to people, like oppression, torture, or genocide.

Businesses have to compete with others that offer similar or better things, or with customers that want more or different things. This can make them hurt human rights by doing things like taking shortcuts, doing unfair things, or growing too fast or too much.²⁹ Taking shortcuts means making things worse or unsafe, or breaking workers', suppliers', or customers' rights, to save or make money. Doing unfair things means getting ahead or getting rid of competitors by doing things that are unfair or illegal, like changing prices, controlling markets, working together, or bribing.³⁰ Growing too fast or too much means making their businesses bigger or going to new places without caring about human rights. For example, some businesses may work in bad places, or push out or use local or native people for their land, resources, or work.

When the law is unclear or inconsistent, it can lead to businesses violating human rights in various ways. Businesses may not know what they have to do to respect human rights, because the legal rules are ambiguous or contradictory, the guidance is insufficient, or the enforcement is weak.³¹ Businesses may also take advantage of legal flaws or shortcomings to escape liability or accountability for human rights abuses, such as by working in places with low or no human rights safeguards, or by using complicated legal structures or contracts.³²

Businesses with a low or weak moral sense may disregard or harm the rights and dignity of others, or they may justify their actions as needed or reasonable. For instance, some businesses may underpay their workers, make them work extra hours without pay, or put them in dangerous situations, to increase their profits or lower their costs. Businesses with a low or weak moral sense may also prioritize their interests or relationships over the rights of others, or they may ignore the outcomes of their involvement. This can occur because they may see human rights as an obstacle or

²⁹ Hess, "The Transparency Trap: Non-Financial Disclosure and the Responsibility of Business to Respect Human Rights."

³⁰ Hess.

³¹ Diggs, Regan, and Parance, "Business and Human Rights As a Galaxy of Norms."

³² Diggs, Regan, and Parance.

a hassle to their operations, or they may try to dodge accountability or responsibility for their human rights effects.³³

These are not the only ways that profit motive in businesses can undermine human rights, and not all businesses or business people act in this way. However, these examples illustrate some of the potential risks and challenges that profit motive poses for human rights, and the need for effective regulation, oversight, and enforcement to ensure that businesses respect and protect human rights in their operations and value chains.

5. Company Laws as A Contributing Factor to the Issue

This section will demonstrate how corporate laws can support corporate oppression and abuse of power. By giving businesses “the judicial support,”³⁴ and the structural methods by which corporations build up and secure dominance,³⁵ these laws and rules support disparities. While there exist variations in corporate governance and legislation around the globe—as well as within regions,³⁶ most jurisdictions maintain a largely comparable emphasis on the essential elements and juridical traits of corporations.³⁷ The guiding corporate law concepts are limited responsibility for shareholders and distinct legal personalities for every corporation.³⁸ In the case of a group of company (holding company), the parent company and all of its subsidiary companies continue to enjoy legal separation.

The aforementioned concepts are further reinforced by a generic corporate law design which breaks up the company’s executives from the shareholders—which are especially prevalent in Anglo-American corporate law.³⁹ The executive suite is then

³³ Peters, “Corruption as a Violation of International Human Rights.”

³⁴ Beate Sjøfjell, “How Company Law Has Failed Human Rights - And What to Do about It,” *Business and Human Rights Journal* 5, no. 2 (2020): 179–99, <https://doi.org/10.1017/bhj.2020.9>.

³⁵ Andrea Boggio, “Linking Corporate Power to Corporate Structures: An Empirical Analysis,” *Social and Legal Studies* 22, no. 1 (2013): 107–31, <https://doi.org/10.1177/0964663912458447>.

³⁶ Cagman Palmer, “Has the Worldwide Convergence on the Anglo-American Style Shareholder Model of Corporate Law Yet Been Assured?,” *Opticon* 1826 6, no. 11 (2011): 1–12, <https://doi.org/10.5334/opt.111104>.

³⁷ Armour et al., “What Is Corporate Law?” 1.

³⁸ Armour et al., “What Is Corporate Law?” 1.

³⁹ Geofry Areneke, Fatima Yusuf, and Danson Kimani, “Anglo-American Governance Adoption in Non-Anglo-American Settings: Assessing Practitioner Perceptions of Corporate Governance across Three Emerging Economies,” *Managerial Auditing Journal* 34, no. 4 (2019): 482–510, <https://doi.org/10.1108/MAJ-12-2017-1733>.

responsible to make decisions about the business planning and has accountability to the shareholders in general meetings. Then with the help of the labor law, alongside a hierarchical structure whereby executives give orders to employees and staff members collaborate with each other in pursuing the corporation's goals, which are inevitably maximizing corporation's value. This partitioned structure of corporate management excludes employees and their appointed representatives from engaging on discussions on how the corporation ought to be run,⁴⁰ giving executives and shareholders the authority to siphon off revenues while simultaneously taking advantage over labors. In this sense, there is an effective commodification of labor⁴¹ and employees sit at the bottom of this hierarchical structure.⁴² Yet in every corporate management model, the primary mandate for boardroom executives is to perform their duties in the best interests of the corporation. Currently, corporate reporting and disclosure provisions are the main oversight mechanisms on corporate operations and accountability. Therefore, several of the above characteristics and their impacts are examined in the following subsections.

5.1. Distinct Legal Personality and Limited Liability

The founding principles of corporate law worldwide constitute distinct legal personalities for the corporation and limited liability for the shareholders.⁴³ A distinct legal personality refers to the corporation's ability to function as a separated juridical person with the ability to engage into binding agreements, conduct corporate affairs, and initiate legal actions (sued and be sued) before the court of law.⁴⁴ In the framework of international law and human rights, the concept of legal personality is also expanded

⁴⁰ Matthew T. Bodie, "Labor Interests and Corporate Power," *Boston University Law Review* 99, no. 3 (2019): 1123–49.

⁴¹ Charlotte Villiers, "Corporate Governance, Employee Voice and the Interests of Employees: The Broken Promise of a 'World Leading Package of Corporate Reforms,'" *Industrial Law Journal* 50, no. 2 (2021): 159–95, <https://doi.org/10.1093/indlaw/dwaa017>.

⁴² Considering the fact that many company law frameworks in continental Europe, including those in Germany, have a mandatory participation in decision-making provision that gives employees boardroom participation to strengthen their standing in the corporate structure. See Simon Jäger, Benjamin Schoefer, and Jörg Heining, "Labor in the Boardroom," *The Quarterly Journal of Economics* 136, no. 2 (2021): 669–725, <https://doi.org/10.1093/qje/qjaa038>. Advance.

⁴³ Ron Harris, "A New Understanding of the History of Limited Liability: An Invitation For Theoretical Reframing," *Journal of Institutional Economics* 16, no. 5 (2020): 643–64, <https://doi.org/10.1017/S1744137420000181>.

⁴⁴ Elizabeth Pollman, "Constitutionalizing Corporate Law," *Vanderbilt Law Review* 69, no. 3 (2016): 639–93, <https://doi.org/10.2139/ssrn.2661115>.

to permit corporations to assert their very own rights (corporate humanity). For instance, the European Convention on Human Rights (ECHR) Article 1, Protocol 1 stipulates that: “every natural or legal person is entitled to the peaceful enjoyment of his possessions.” As a result, corporations have argued that their property rights, due process right, along with the right to free expression are all protected.⁴⁵ The International Court of Justice also affirmed in 1970 that a transnational company (TNC) enjoys a legal status comparable to that of a state national, including a right to diplomatic assistance which a state may exercise on its behalf.⁴⁶ In this case, considering the likelihood that the selection of state for incorporating might have been decided on factors of convenience, among them taxes, the association between state and corporation could be characterized as artificially constructed. Therefore, the risk for wrongdoing is of importance because such corporations could benefit from diplomatic shielding or states might not fully utilize their powers to govern them or keep them accountable.⁴⁷

A separate juridical personality grants the corporation a standalone legal standing and shields it from legal liability, protected by a “veil of incorporation.” Corresponding to this, within a holding company, merely the offending corporation is liable. As long as the offending corporation is insolvent, none of the remaining solvent corporations inside the holding can be held accountable. Occasionally, such “veil of incorporation” may be “pierced,” which leaves the affiliated parties to be responsible. In such cases, a judicial body can attempt to determine the beneficiaries or the corporate parent and its affiliated businesses (for holding) and turn to them for reclaiming pertinent damages.⁴⁸

In the backdrop of international human rights proceedings, a distinct juridical personality plays a vital role. In fact, a rising, currently sizable array of legal action

⁴⁵ Lorenz Dopplinger, “Legal Persons as Bearers of Rights Under the ECHR,” *University of Vienna Law Review* 5, no. 1 (2021): 1–46, <https://doi.org/10.25365/vlr-2021-5-1-1>.

⁴⁶ The Barcelona Traction case. See Aniruddha Rajput, “Cross-Border Insolvency and International Investment Law,” *Manchester Journal of International Economic Law* 16, no. 3 (2019): 341–58.

⁴⁷ Muhammad Asif Khan and Pervaiz Khan, “Liabilities of Transnational Corporations: Empowering the State Courts Against Extraterritorial Wrongs by TNCs,” *Journal of Law and Society* 48, no. 71 (2017): 23–37.

⁴⁸ Adeline Michoud, “Aiming for Corporate Accountability’s Heart: Discussion on the Relevance of Corporate Veil Piercing,” *Bristol Law Review* 6 (2019): 134–68.

including tort liability and human rights has accomplished barely any progress in making parent corporations accountable for the misbehavior of their subsidiary. As claimants are routinely subjected to astronomical expenses, informational deficiencies, and delay tactics by corporations throughout the course of proceedings, a great deal of the case law highlights the procedure-related advantages enjoyed by corporations.⁴⁹ This highlight yet another instance of the corporations' advantage over claimants and once more highlights power disparities in the corporation's favor.⁵⁰ Even so, a settlement might not accurately depict the scope of the violation or the damage brought about since claimants could feel pressured towards taking the settlement instead of risking everything if they do not.⁵¹

The economic cohesion of the multinational corporation typically does not offer a justification for raising the veil, creating an important disparity in seeking compensation for violations of human rights while preserving the multinational corporation's "power, legitimacy, and relative autonomy."⁵² Human rights violations commonly take place in countries with lax legal enforcement, or the violations will result from actions performed by a subsidiary with minimal financial resources, occasionally as an accomplice to crimes or acts of violence by authority figures.⁵³ The individuals who were harmed will intend to proceed with their lawsuit against the wealthy parent corporation with headquarters in a developed nation with a robust legal framework. Regrettably for these sufferers, distinct personality and limited liability frequently result in getting hold of the "erroneous" corporation because the parent corporation, which is a separate entity from the perpetrator, is not obligated by law to make up for the damages sustained by those harmed. The chances of victims succeeding in a legal action, proving that the corporation has infringed on their human

⁴⁹ Almut Schilling-Vacaflor, "Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?," *Human Rights Review* 22, no. 1 (2021): 109–27, <https://doi.org/10.1007/s12142-020-00607-9>.

⁵⁰ For further enrichment, it is recommended to read the article by Marc Galanter entitled "Why the haves come out ahead: Speculations on the limits of legal change" published in *Law & Society Review* in 1974.

⁵¹ Howard M. Erichson, "Settlement in the Absence of Anticipated Adjudication," *Fordham Law Review* 85, no. 5 (2017): 2017–31.

⁵² John Gerard Ruggie, "Multinationals as Global Institution: Power, Authority and Relative Autonomy," *Regulation and Governance* 12, no. 3 (2018): 317–33, <https://doi.org/10.1111/rego.12154>.

⁵³ For instance, see *Kadie Kalma & ors v. African Minerals Ltd & ors*, [2020] EWCA Civ 144.

rights, and receiving full compensation for the damage they have incurred remain slim. Despite the fact that corporations “will never bear the full expense of the damages caused,” while the shareholders (and executives) will still occupy positions of authority in the corporation.⁵⁴

When companies are treated as separate entities from their shareholders and directors, and their liability is limited, this can lead to a disconnect between what companies do and how they affect human rights, and who is responsible and accountable for those effects.⁵⁵ This can make it hard to bring companies and their owners and managers to justice for human rights abuses, especially when they have cross-border or complex operations. They can also have more power and influence that enable them to abuse or ignore their human rights, especially in situations where there is no or weak law, governance, and regulation. They can also have different goals and values from society, focusing on profit and shareholders, rather than human rights and stakeholders.⁵⁶

5.2. Shareholder Primacy and Corporate Structure

The concept of “shareholder primacy” causes corporation law to prioritize issues regarding shareholders’ economic interests.⁵⁷ In the majority of jurisdictions, the primacy for pursuing the shareholders’ value approach is still commonly adopted. For instance, in Japan,⁵⁸ United States, and United Kingdom. However, the majority of the European Union rejects shareholder primacy,⁵⁹ instead they adhere to the stakeholder model. Research by Samanta shows that corporate governance laws all around the

⁵⁴ David Whyte, “The Autonomous Corporation: The Acceptable Mask of Capitalism,” *King’s Law Journal* 29, no. 1 (2018): 88–110, <https://doi.org/10.1080/09615768.2018.1475847>.

⁵⁵ Anil Yilmaz Vastardis and Rachel Chambers, “Overcoming the Corporate Veil Challenge: Could Investment Law Inspire the Proposed Business and Human Rights Treaty?,” *International and Comparative Law Quarterly* 67, no. 2 (2018): 389–423, <https://doi.org/10.1017/S0020589317000471>.

⁵⁶ Yilmaz Vastardis and Chambers.

⁵⁷ Jill Fisch and Steven Davidoff Solomon, “Centros, California’s ‘Women on Boards’ Statute and the Scope of Regulatory Competition,” *European Business Organization Law Review* 20, no. 3 (2019): 493–520, <https://doi.org/10.1007/s40804-019-00156-w>.

⁵⁸ Steven K. Vogel, “Japan’s Ambivalent Pursuit of Shareholder Capitalism,” *Politics and Society* 47, no. 1 (2019): 117–44, <https://doi.org/10.1177/0032329218825160>.

⁵⁹ Fisch and Davidoff Solomon, “Centros, California’s ‘Women on Boards’ Statute and the Scope of Regulatory Competition.” 495.

world are converging towards shareholders primacy, while also noting that most jurisdictions now resemble one another with regards to this.⁶⁰

In the end, regardless of whether there is ongoing discussion about how much shareholder primacy is currently incorporated into corporate legislation, numerous nations continue to uphold their stakeholder-oriented repute.⁶¹ Furthermore, the promotion of shareholder primacy by global financial bodies like the Organization for Economic Cooperation and Development (OECD), the International Accounting Standards Board (IASB), the International Monetary Fund (IMF), and the World Bank makes this point very evident.⁶² For instance, the OECD's Principles of Corporate Governance,⁶³ which are reinforced by the OECD's Guidelines for Multinational Enterprises, urge board members to make certain that the corporation is strategically guided, that executive leadership is effectively monitored and held accountable for the sake of the company and its shareholders. The principles emphasize the priorities of the shareholders and emphasize an Anglo-American orientation of corporate law. The Conceptual Framework for Financial Reporting of the IASB is explicit regarding its prioritization of the financial investors, declaring that the goal of general-purpose financial reporting primarily to give current shareholders accurate financial information concerning the reporting corporation that they can utilize to decide whether to contribute resources for the corporation.⁶⁴

Corresponding to this, the 2016 Global Financial Stability Report from the IMF demonstrated adherent behavior toward value maximization strategy to corporate

⁶⁰ Surprisingly, the majority of the nations examined in this study have surpassed the United Kingdom, which was among the nations that popularized shareholder primacy governance of corporations (in terms of enacting pro-shareholder laws and creating binding legal frameworks). See Navajyoti Samanta, "Convergence to Shareholder Holder Primacy Corporate Governance: Evidence from a Leximetric Analysis of the Evolution of Corporate Governance Regulations in 21 Countries, 1995-2014," *Corporate Governance* 19, no. 5 (2019): 849-83, <https://doi.org/10.1108/CG-07-2018-0249>.

⁶¹ David Gindis, Jeroen Veldman, and Hugh Willmott, "Convergent and Divergent Trajectories of Corporate Governance," *Competition and Change* 24, no. 5 (2020): 399-407, <https://doi.org/10.1177/1024529420944017>.

⁶² Shareholder primacy will always go against managerialism. This is because whenever executives lack scrutiny, they tend to pursue objectives which are not in the best interests of the shareholders. See Sanford M. Jacoby, "Shareholder Primacy and Labor," *Comparative Labor Law & Policy Journal* 43, no. 31 (2022): 101-19, <https://doi.org/10.2139/ssrn.4047194>.

⁶³ Organization for Economic Cooperation and Development, *G20/OECD Principles of Corporate Governance* (Paris: OECD Publishing, 2015), <https://doi.org/10.1787/9789264236882-en>.

⁶⁴ Para 1.2 of the Conceptual Framework for Financial Reporting.

governance,⁶⁵ while the shareholder primacy and Anglo-American corporate law approaches are also highlighted in the World Bank's yearly "Doing Business" publications.⁶⁶ The aforementioned international organizations may have had the effect of imposing an agenda centered on the Anglo-American shareholder primacy model on developing nations against their will, helping to strengthen this framework globally while setting up obstacles to the acceptance of stakeholder models. Employees are typically lowest on the corporate hierarchy according to this model; they are typically the most vulnerable when the corporation encounters financial issues. They are subject to monetary pressure from executives and the possibility of losing their jobs, while they are also unable to diversify their interests the way shareholders may.⁶⁷ Due to the fact that corporations now work as consortia or in networks of supply chains, globalization has made these structures far more complex. A similar set of obstacles prevents victims of human rights violations or employees in such supply chains who may be exploited from proving legal culpability against parent businesses,⁶⁸ posing a threat of injustice that could change their "legal consciousness" and cause them to stop engaging in struggles for rights.⁶⁹

5.3. Directors' Duties and Shareholder Primacy

The directors are essential players in these hierarchical and complicated corporation model. English corporate law serves as a good example, having the duties of directors being primarily derived from their fiduciary role but also being established in statutes. Directors hold a responsibility to behave within the authority entrusted to them by law and the charter of the corporation, use those authority for legitimate purposes, advance the corporation's success, exercise judgment independently, use reasonable

⁶⁵ International Monetary Fund, "Corporate Governance, Investor Protection, and Financial Stability in Emerging Markets," in *Global Financial Stability Report: Fostering Stability in a Low-Growth, Low-Rate Era* (Washington, DC: International Monetary Fund Publications Services, 2016), 81–111.

⁶⁶ One of the indicators measured by the World Bank is protecting minority investors. Sadly, the World Bank announced that they will discontinue the issuance of the Doing Business report starting from 2021. See World Bank, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (Washington, DC: World Bank Group, 2020).

⁶⁷ Bodie, "Labor Interests and Corporate Power." 1136.

⁶⁸ Carolijn Terwindt et al., "Supply Chain Liability: Pushing the Boundaries of the Common Law?," *Journal of European Tort Law* 8, no. 3 (2018): 261–96, <https://doi.org/10.1515/jetl-2017-0011>.

⁶⁹ For one of the noteworthy works on the changes in legal consciousness, see David M. Engel, "Globalization and the Decline of Legal Consciousness: Torts, Ghosts, and Karma in Thailand," *Law & Social Inquiry* 30, no. 3 (2005): 469–514, <https://doi.org/10.1111/j.1747-4469.2005.tb00351.x>.

expertise, care, and meticulousness, prevent conflicts of interest, and to promote value creation for the corporation for the benefit of the shareholders.⁷⁰ The United Kingdom's National Contact Point for the UN's Guiding Principles has acknowledged the responsibility to further the corporation's success.⁷¹

In general, company laws provide directors and shareholders with the greatest control of the corporation's decision-making and reporting processes thanks to their voting privileges. The general meeting of shareholders holds the members of the board of directors accountable, and the shareholders, with the help of the auditors, keep an eye on the manner in which the corporation is run.⁷² In actuality, the rights and responsibilities of employees are not explicitly stated in corporate law. The business judgment rule gives the board of directors the freedom to take into account a variety of corporate interests, but leaves out employees. Although it is frequently stated that fiduciary duties are owed to the corporation and its shareholders, employees are not technically covered by corporate law.⁷³ The fact remains that the dispersion of wealth has gotten more tightly concentrated due to the shareholder-oriented structure of the corporation and its dependency on shareholder primacy; such primacy is often taken advantage of by the shareholders.

Company law often gives shareholders more rights and less responsibility than others, such as choosing directors, making big decisions, and getting paid, while not being liable for what the company does.⁷⁴ This can make it harder to protect human rights in many ways, such as: it can make companies focus on making more money and spending less, even if this means harming or ignoring the human rights of others, it can make shareholders and other stakeholders have different or opposite expectations and demands about how the company should respect human rights, it can make it difficult to make companies and their shareholders responsible and accountable for human

⁷⁰ Pollman, "Constitutionalizing Corporate Law." 670.

⁷¹ UK HM Government, *Good Business: Implementing the UN Guiding Principles on Business and Human Rights* (London: Her Majesty's Stationery Office, 2016).

⁷² Pollman, "Constitutionalizing Corporate Law." 680.

⁷³ Pollman.

⁷⁴ Beate Sjøfjell and Mark B. Taylor, "Clash of Norms: Shareholder Primacy vs. Sustainable Corporate Purpose," *International and Comparative Corporate Law* 13, no. 3 (2019): 40–66, <https://doi.org/10.2139/ssrn.3444050>.

rights harms, and it can make shareholders oppose or resist human rights rules and initiatives, as they may see them as risks or costs to their interests and returns, and may use their power and influence to fight against them or to not follow them.⁷⁵

5.4. Corporate Detachment with Environmental and Social Issues

Notwithstanding the authority corporations have, several corporate rules seem to have encouraged executives and proprietors of businesses to give preference to growing shareholders' value while paying little attention to their greater stakeholders. Society becomes increasingly isolated. On the international scale, as factories and extraction sectors relocate their activities to the Global South in search of lesser operational and salary expenses as well as less burdensome governance, the damage that those companies induce to those impacted hundreds of thousands of miles away in another locations is efficiently detached into invisibility, concealed from the corporate headquarters as well as from the eyes of the public and customers in the Global North.⁷⁶

Corporate actors may be oblivious to their negative effects and the distress that they cause to individuals they abuse due to this corporate detachment. They do not live their lives in the exact same way as people who are affected by them. Attorneys for businesses that adopt a shareholder primacy approach will also focus on the risks to their corporate clients instead of concentrating on threats to stakeholders⁷⁷—making this dichotomy even worse. Human rights breaches in this situation may be challenging to recognize and assess in terms of their severity.

5.5. Human Rights Due Diligence

Considering the limitations of disclosure, an emerging legal phenomenon known as “human rights due diligence” has started to take shape. It mandates that parent corporations determine human rights risks within their operations among their holding companies as well as across their supply networks, take action to avert or mitigate those risks, and then share the actions that they took. The United Nations

⁷⁵ Sjøfjell and Taylor.

⁷⁶ Grietje Baars, “‘it’s Not Me, It’s the Corporation’: The Value of Corporate Accountability in the Global Political Economy,” *London Review of International Law* 4, no. 2 (2016): 127–63, <https://doi.org/10.1093/lril/lrw008>.

⁷⁷ Milton Regan and Kath Hall, “Lawyers in the Shadow of the Regulatory State,” *Fordham Law Review* 84, no. 5 (2016): 2001–37.

Guiding Principles on Business and Human Rights (UNGPs) in 2011 are based on the principle of due diligence, which requires businesses to detect, prevent, mitigate, and take responsibility for their negative effects on human rights. Corporations must proactively regulate their company's actual and prospective negative effects on human rights.⁷⁸ While the UNGPs' rules on due diligence are still voluntary, numerous governments have enacted laws requiring due diligence for specific issues.⁷⁹

The movement for due diligence legislation has gained traction, receiving backing from policymakers, academia, business actors, stakeholders, and members of the public. As part of its Green Deal agenda, the European Commission is considering proposals to introduce an EU-wide required due diligence law on human rights and ecological sustainability. This effort is backed by the European Parliament and is being done in response to the varying criteria that have arisen across member states.⁸⁰ Corporations will be mandated, pursuant to this plan, to identify and assess risks across their supply chains and to eliminate or decrease risks of unfavorable effects from any violations of pertinent international regulations. Legislation mandating due diligence might constitute a step up from disclosure filing and is more effective than voluntary policies, calling on business players to exercise greater proactivity and responsiveness.

Due diligence, however, requires prudence in other respects as well. For instance, Birchall observes that the utopian nature of due diligence regulations makes it ambiguous what is considered true compliance; "there is no singular solution" to how corporations ought to perform human rights due diligence and the result is expected to "vary" widely across various jurisdictions.⁸¹ In the end, corporations still have a lot

⁷⁸ David Birchall, "The Consequentialism of the UN Guiding Principles on Business and Human Rights : Towards the Fulfilment of 'Do No Harm'," *Electronic Journal of Business Ethics and Organization Studies* 24, no. 1 (2019): 28–39.

⁷⁹ For example, the Netherlands has introduced the Dutch Child Labor Due Diligence Law, France with its Vigilance Law in 2017, Norway Transparency Act in 2021, while both the United States of America and the European Union have introduced Conflict Minerals legislation.

⁸⁰ Livia Ventura, "Corporate Sustainability Due Diligence and the New Boundaries of the Firms in the European Union," *European Business Law Review* 34, no. 2 (2023): 239–68.

⁸¹ Birchall, "The Consequentialism of the UN Guiding Principles on Business and Human Rights : Towards the Fulfilment of 'Do No Harm.'" 34.

of leeway to carry out the necessary due diligence in manners that are in tune with their business agendas, possibly at the cost of more extensive improvements.⁸²

6. Legal Reforms Necessary to Rectify the Issue of Corporate Violence

The desire for sincere democratized conversations with and consent from those who have been impacted by such conduct, as well as for them to be given the opportunity to seek remedies, has been emphasized by current attempts to formulate a binding treaty that would govern in international law the conduct of transnational corporations and business enterprises that have an effect on human rights. The current proposed version of the treaty, nevertheless, undoubtedly falls short since it fails to address present-day challenging frameworks that gave rise to the immense power disparities highlighted in this paper, even though this treaty building procedure provides a significant contribution to establishing both regulatory and legal reactions at the global scale. Additionally, suggested treaties have hardly aimed at changing corporate laws, which may be a significant contributing factor to the systemic issues, especially those laws that firmly shield corporations from culpability for the actions of their subsidiaries or supply-chain collaborators.

Corporate law regulates how companies are created, run, and closed. It sets the rights and duties of shareholders, directors, managers, employees, creditors, and others. Corporate law affects the goals, strategies, and actions of companies, and their relations with society and the environment.⁸³ Corporate law can help human rights by: making companies respect human rights in their work and supply chains, and do human rights due diligence, making companies give remedy for human rights harms they cause or contribute to, and work with judicial and non-judicial grievance mechanisms, making corporate law consistent with other areas of law, such as human rights law, environmental law, labor law, consumer law, and making companies involve and represent affected stakeholders. To overcome these challenges, corporate law needs to follow the global standard for avoiding and addressing human rights risks by business,

⁸² Benjamin Gregg, "Beyond Due Diligence: The Human Rights Corporation," *Human Rights Review* 22, no. 1 (2021): 65–89, <https://doi.org/10.1007/s12142-020-00605-x>.

⁸³ Bruce A. Green and Rebecca Roiphe, "When Prosecutors Politick: Progressive Law Enforcers Then and Now," *Journal of Criminal Law and Criminology* 110, no. 4 (2020): 719–68.

such as the United Nations Guiding Principles on Business and Human Rights (UNGPs). Company laws need to be reformed more than ever since they constitute a component of the system that has led to systemic inequities. All corporation laws should reflect the realities of the existing business arrangements and govern them and lay down accountability instead of avoid it. The issues that result from applying the concept of distinct personality might be solved by a more thorough and practically useful embrace of the idea of group liability.⁸⁴ Reforming the law into group liability should, as Sjøfjell sensibly argues, take into account the intricate nature and opaqueness of business operations by assigning accountability for corporate structures, particularly global value chains, to specific legal bodies of corporations.⁸⁵ Transcend mere reactionary oversight, it must also transcend beyond leniency to responsibilities and societal accountability.⁸⁶

In this regard, it is recommended that using equitable governance and ownership structures in place of ethical conduct rules will also be a superior choice. This stage focuses on achieving two-fold objectives: firstly, adopting participatory boardroom systems and refocusing fiduciary duty of care to encompass obligations for impacted groups, legal and actual responsibility to the employees, the community, and various other stakeholders that are impacted by corporate actions. Secondly, making sure the people who contributed to the overall value of the corporation or whom that have been impacted by corporate operations will have the chance to participate in the ownership scheme and decision-making alongside being able to enjoy the benefits. Since shareholders (and perhaps investors in general) have made a handful headway in addressing the blatant abuses perpetrated by the corporations within which they make investments, they need to be demoted from being placed at the highest level of the hierarchy in this equitable governance and ownership system.

This necessitates accountable decision-making systems that are participatory and interconnected. To build confidence and increase the caliber of decisions, communities

⁸⁴ Sjøfjell, "How Company Law Has Failed Human Rights - And What to Do about It." 186.

⁸⁵ Sjøfjell and Taylor, "Clash of Norms: Shareholder Primacy vs. Sustainable Corporate Purpose."

⁸⁶ Sjøfjell, "How Company Law Has Failed Human Rights - And What to Do about It." "How Company Law Has Failed Human Rights - And What to Do about It," 186.

must be truly respected and included, not only through mere “consultation.” With a redefining of the corporation's goal and associated directors' duties, it is vital to address the primacy of shareholders. According to Sjøfjell, a corporation's overarching goal can be to “develop sustainable value inside the limits of the environment, while honoring the interests of its investors as well as other related and impacted stakeholders.”⁸⁷ Therefore, company law could potentially be altered to encourage corporations to create goods and services that respect the environment's limitations and safeguard the underlying social structures of individuals and groups, such as, for instance, the necessity of paying reasonable salaries and refrain from undermining the financial foundations of welfare systems.⁸⁸ It is necessary for spreading compensation and revenues equally, using a set ratio between the lowest and maximum levels of compensation and revenue shares.⁸⁹ In order to establish an equitable share of revenue made across the business or the supply network along with additional participatory choices, reasonable rates ought to be paid as well for outsourced workers, the commodities provided, and the methods by which they are produced.

The roles of corporate directors need to be revised with a focus on societal advantages above shareholders' interests, potentially by applying the universalism of the guiding principles of the beneficial corporation movement (B Corp Movement).⁹⁰ In order to place more of the spotlight on human rights, corporate law may need to incorporate a particular requirement to safeguard the human rights of all parties involved in the corporation as well as throughout any associated supply chains, in addition to human rights due diligence and disclosure requirements. By incorporating such an obligation, directors will be reminded of the importance of human rights for the profitability of

⁸⁷ Sjøfjell. “How Company Law Has Failed Human Rights - And What to Do about It,” 194.

⁸⁸ Sjøfjell. “How Company Law Has Failed Human Rights - And What to Do about It,” 196.

⁸⁹ Susanne Burri, Daniela Lup, and Alexander Pepper, “What Do Business Executives Think About Distributive Justice?,” *Journal of Business Ethics* 174, no. 1 (2021): 15–33, <https://doi.org/10.1007/s10551-020-04627-w>.

⁹⁰ By definition, B Corp's principal goal is to utilize the economy to address societal or ecological issues by requiring benefit corporations to provide information on their environmental and social accomplishments in comparison to a third-party benchmark and elevating the corporation's charitable objective to exactly the same degree as profit generating, it broadens the scope of directors' fiduciary duty to also take non-financial interests into account. See Joanne Bauer and Elizabeth Umlas, “Making Corporations Responsible: The Parallel Tracks of the B Corp Movement and the Business and Human Rights Movement,” *Business and Society Review* 122, no. 3 (2017): 285–325, <https://doi.org/10.1111/basr.12118>.

the corporation and the long-term well-being of all of its stakeholders. Such statutory provisions may be backed by a requirement that directors uphold the human rights of everyone who is involved with or affected by the corporation's operations, whether directly or indirectly, in their corporate charters.⁹¹ The requirement could possibly involve the possibility of individual culpability for any directors who violate it without being shielded by the corporate veil. Although it can be claimed by opponents that such a strategy could deter skilled candidates from accepting such directorships, it could additionally serve to emphasize the approach's basic significance for guaranteeing that human rights are actually maintained. As a result, while making choices and thinking about how to perform their duties, directors would be more immediately aware of these concerns thanks to this provision.

Because there are now limited penalties on corporate law enforcement and sanctions, corporate actors have yet to be motivated to alter their practices. Stakeholders must be granted an actual capacity to contest decisions in order for compliance to be more effective. For example, at the European Union level, compliance against corporate human rights due diligence recommends harmonizing and codifying both the substantive and procedural laws for providing tort and human rights infringement claims, and this might offer the impacted individuals and endeavors additional legal confidence and allow claimants to go after the parent corporations and lead undertakings of international supply networks.⁹² Significantly, such proposed regulations might be linked to the necessity of due diligence, creating a presumption of liability for the corporation and its governing board of directors in an instance that due diligence was not carried out.

A more substantial punishment compared to paying out compensation to the victims of egregious human rights infringements or failing to cooperate actively with the due diligence standards might be the likelihood of corporate dissolution. Additionally, the likelihood for corporate dissolution as a deterrent had been used productively in a comparable setting, namely the 2004 introduction of the gender parity mandate for

⁹¹ Sjøfjell, "How Company Law Has Failed Human Rights - And What to Do about It." 196.

⁹² Federica Agostini and Michele Corgatelli, "Article 25 of the Proposal for a Directive on Corporate Sustainability Due Diligence: Enlightened Shareholder Value or Pluralist Approach?," *European Company Law* 19, no. 4 (2022): 92–99.

Norwegian boardrooms. After the law went into force in 2008, it seemed that the availability of this consequence helped to ensure nearly 100% compliance rates in Norway.⁹³ The imposition of punitive sanctions, such as the requirement that corporations give a portion of their revenues to a regulatory body or a charitable organization that advocates for those who are the subjects of exploitation or abuse, could be another way to respond to abusive behaviors. This would help to reduce the disparities that result from such behaviors and deter them in the future.

5. Conclusion

The institutional, political, and socioeconomic disparities at the root of the wide disparity in the lives of individuals around the globe are company law-related. The statutory arrangements that are currently in place, particularly corporate law methods and concepts have been found to be nearly unsolvable in reality, supported by enormous corporate organizational frameworks and supply networks, making it difficult to challenge them. Successful lawsuits are prevented by separate legal personality and limited liability, and the court battle has merely served to underscore the asymmetrical capabilities at hand.

Additional systemic impediments and disparities in the allocation of the monetary benefits from the corporations' (sometimes abusive) economic endeavors exist within them. Enormous wealth and power are concentrated in the hands of a small group of people, frequently at the cost of large numbers of people, particularly those living in the Global South who are on the bottom end of the supply chain. These disparities have enabled corporate abuse and breaches of human rights that worsen the plight of those who live at the bottom of the hierarchical system.

Hard law is crucial, but it should not prevent businesses from being responsible for upholding human rights obligations. Hard law has certainly in actuality aided in the development of injustices and their subsequent effects. Although they do create normative obligations that have played a role in developing some of the contentions linking climate change to human rights in litigation against major companies, softer

⁹³ Heike Mensi-Klarbach and Cathrine Seierstad, "Gender Quotas on Corporate Boards: Similarities and Differences in Quota Scenarios," *European Management Review* 17, no. 3 (2020): 615–31, <https://doi.org/10.1111/emre.12374>.

regulatory approaches which typically demonstrate reverence toward the needs of dominant corporate actors have resulted in minimal effect.

In order to effectively address the damaging strategies both inside and outside of corporations and alter the balance of power, far-reaching statutory and regulatory reforms are needed. To effectively alter the corporate and human rights environment, a framework of hard law, soft law, and non-law reforms and actions is needed. There is very little likelihood of improving the lives of individuals who actually endure hardships, while there is even less chance of attaining true sustainability to safeguard everyone on the globe, unless more drastic structural reforms are made. More extensive studies and research are merited in the future to determine what kind of reform is appropriate in the context of each country.

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