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## Corporate Shirking; A Humane Approach

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### Abstract

The purpose of this essay is to examine how multinational enterprises ("MNEs") and their operational methods have posed a potential threat to corporate governance, sustainability, and labour protection through their subsidiaries in developing countries. This essay uses legal research compiled from a variety of reliable legal articles, journals, and reviews as primary sources. As part of the legal research, the post-pandemic layoffs, corporate failures, mass tort litigations and the MNEs as parent companies not coming out of the bedsheet of limited liability have been overlooked. In light of the author's observations, unaccountable international forum is suggested as a means to address corporate governance and sustainability issues, to hold multinational corporations accountable, to ensure that poor victims are compensated, along with pragmatic economic policies and to encourage companies to engage in voluntary CSR programs.

**Keywords:** Corporate governance, mass layoffs, sustainability, home and host country, corporate veil, labour exploitation

### Introduction

"A real international monopoly is created by multinational enterprises (MNEs) as a result of the accumulation of capital. Due to this, multinational corporations have become an extremely important and independent part of the world economy that cannot be ignored" [1]. In contrast, these contemporary capital expansion tools have become global goliaths in terms of corporate governance, sustainability, and labor protection in the host countries where they operate as subsidiaries by adapting to cost effective offshoring of manpower and raw materials. In this essay, Section 1 will examine the recent layoff issues in the context of corporate governance, in Section 2 we explore the four pillars of sustainability and also examine a few examples of failure of corporate social responsibility, sustainability caused by multinational corporations. In Section 3, this essay discusses mass torts caused by MNEs and provides examples of a few cases, in Section 4 we discuss outsourcing as an inefficient method followed by MNEs, Section 5 presents the arguments, and the Section 6 concludes the essay.

#### 1. The Post-Pandemic Layoff Havoc

##### i). Definition of MNE's according to Organization of Economic and Cultural Development. (OECD).

According to "OECD guidelines" [2], An MNE is typically composed of businesses or other organizations that operate in more than one country and are so closely associated that they are able to coordinate their operations in different ways. Although one or more of these entities may be able to exert a significant influence on the activities of others within an

organization, the degree to which they are autonomous within the organization may vary greatly from company to company. Ownership can be classified as private, public, or mixed.

Let's now turn our attention towards the "Umbrella of the Values" under which these MNE's has to operate: Corporate Governance and their 101's.

According to the former Prime minister of the United Kingdom, Theresa Mary May, "Britain needs strong, long-term value-creating businesses that command public confidence and respect in order to thrive in a global economy. Moreover, she added that good corporate governance involves having the proper checks and balances to strengthen decision-making and accountability within large corporations" [3]. When it comes to corporate governance and accountability, however, these giant corporations seem to not match their actions with the words that are written explicitly in the form of rules, regulations, frameworks, principles, guidelines, etc., without following the corporate governance 101s and tools. A perfect example of poor governance can be drawn out by pointing out the post-pandemic mass layoffs, by social media giants such as Twitter, as it sacked out 50% of its workforce on November 4, 2022, correspondingly Meta announced cutting 13% of its employees, the same way Amazon announced its plan to lay off more than 10,000 employees across all its major divisions. Furthermore, Goldman Sachs planned to slash the headcount in the beginning months of 2023 as well as CNN, BuzzFeed and Pepsi co and the list go on. "This is because the practice of shareholder activism in a negative way by managers being controlled by the board of directors is the active agent according to the agency theory.

By influencing managerial decisions that will impact corporate governance, they aim to maximize shareholder interests.”<sup>[4]</sup> However, if the shareholder's agenda is their personal growth, then it will lead to poor governance mechanisms like Mass Layoffs. There is no denying that layoffs can reduce costs and improve productivity, but they can also have considerable negative psychological, social, and economic effects. Perhaps most obvious are the emotional trauma and hardships that a laid-off employee goes through post-layoff. Layoffs can have the following long-term pernicious effects on a corporation, according to Harvard Business Review:

- a) **Loss of Trust:** “Trust is a domain where employees are being asked to be vulnerable to the power they possess as an employer and to trust that their employer will not violate their trust in any way. Moreover, in research, it has been proven that once trust has been betrayed, it is difficult to recover.”<sup>[5]</sup> As a result, employees who are fired suddenly will experience a lot of difficulties reestablishing trust and will constantly live in fear of losing their jobs, even if they find another position.
- b) **Post-layoff Effect on an Employee's Health and Economic Condition:** “Harvard Business Review reports that after 2 years, an employee who has been terminated will recover from his job loss. As a result of the loss of their jobs, many employees develop suicidal thoughts as a result of the destroyed financial situation caused by stress. As a result, they will also face stress-related issues such as arthritis, hypertension, and heart problems.”<sup>[7]</sup>
- c) **Immeasurable Adverse Effect on the Company:** Despite saving costs in the short run, multinational giants are saddling themselves with long-term losses as follows:
  - i). Return on assets, return on equity, and return on sales do not improve for the majority of firms that lay off staff.
  - ii). Bad publicity on social media
  - iii). Stock prices tend to drop after layoffs carried out solely to cut costs.
  - iv). Harvard Business Review reports that,<sup>[6]</sup> “In the first two years, firms that conducted layoffs underperformed firms that did not, but recovered by third year on economic growth, profit margin, and return on assets. From this it is clear that the downsized companies to gain a competitive advantage, it probably will take even longer.”
  - v). “In addition, there are unforeseen costs such as lawsuits by employees, diminished innovation and productivity among the survivors, consulting fees, hiring full or part-time employees to fill gaps, and adverse publicity that makes hiring difficult.”<sup>[8]</sup>
  - vi). Besides mass layoffs, corporate scandals such as the 2015 Volkswagen case, which we will discuss later in this essay, corporate social responsibility has not been adhered to in host countries where they operate their businesses had increased. MNEs are looked on as capital raisers, failing to support local economies bodies. Since the start of globalization, MNEs have been parties in various serious problems and cases such as environmental issues, labor exploitation, human right abuse, corruption and last but not least mass tort litigations which we will shed light upon in the following sections of this essay.

## 2. Sustainability and MNEs; a Saga of On-Off Relationships

- i). “In Indian mythology, the term Vasudhaiva Kutumbakam implies that the entire planet is one large family and it

aims for universal oneness.”<sup>[9]</sup> Similarly, Vasudhaiva Kutumbakam is described as “A new era of equal rights, compassion, care, and a renewed consciousness for the sustainability of the planet will surely dawn with this philosophy of collectivism and egalitarianism exemplified by its foundational pillars.”<sup>[10]</sup> Vasudhaiva Kutumbakam shares some similarities with Sustainability in that both are concerned with and coexistence, collectiveness and consciousness, which are challenges.

- ii). The University of California, Los Angeles, Sustainability charter defines sustainability as “integrating environmental health, social equity and economic vitality into sustainable communities that thrive, are healthy, diverse, and resilient for future generations. A system approach and an acknowledgement of complexity are necessary to practice sustainability, which recognizes how these issues are interconnected.”<sup>[11]</sup> On the basis of this definition a Forbes Council Member, Christopher Dipnarine addressed that there are four pillars to sustainability which ought to be followed by the MNEs.
  - a) **Social Sustainability:** Where connectivity towards the people and community is what the Christopher consider to be the key to social sustainability for the companies. Secondly.
  - b) **Economic Sustainability:** Where companies should inculcate activities which are economically conscious as well as not affect social, environmental and cultural aspects of a community.
  - c) **Environmental Sustainability** and it needs accountability to thrive. He added that MNEs in order to promote economic sustainability, should focus on smaller actions rather than pledging to go green vaguely.
  - d) **Finally, Yet Importantly He Discussed about Diplomatic Sustainability:** Where he replaced the original 4th pillar Human sustainability with Diplomatic Sustainability. Here he emphasized that companies should promote cooperation and prolong the duration of diplomatic encounters, thereby fostering mutual interests and solving bilateral or global problems through sustained effort and experimentation”<sup>[12]</sup>.
- iii). According to Allen L White, “Getting to sustainability requires a robust and focused business sector that works closely with governments and civil society at large.”<sup>[13]</sup> However, MNEs' recent behavior has decreased public trust in them, especially when it comes to corporate social responsibility, the hot button topic of the corporate world. The following corporate failures are the few examples of the bad governance, responsibility and accountability of the MNEs:
  - a) **Rana Plaza Massacre:** The Rana Plaza Incident in Bangladesh in 2013 which gave rise to the Fashion revolution by inculcating the idea of knowing and loving our clothes and who made them of the consumers of the multination fashion brands. Rana Plaza, located on the outskirts of Dhaka, was a building containing multiple clothing factories manufacturing clothes for the major multinational clothing outlets Mango, Primark, Bon Marché, Joe fresh, Benetton and Matalan. The owner of the plaza forced workers to work despite warnings that the building was unstable. More than 2,500 people were injured and 1,134 died in the collapse. Here the fashion brands totally ignore the work safety rules as

well as infrastructure. As a result of the pandemic, these MNE brands stopped placing orders, cancelled orders, and stopped paying for the already manufactured garments and raw materials used in production. Workers and the entire Bangladeshi garment industry have suffered from a financial crisis because of the brands suspending the payments.

- b) **Volks Wagon Emissions Scandal, 2015:** The U.S. Environmental Protection Agency (EPA) announced that the automobile manufacturing Mughal Volkswagen installed software to defeat emissions tests. According to EPA, Volkswagen installed illegal software, known as 'defeat devices,' which enabled them to recognize when they were being tested for emissions and change their performance accordingly. In real, these vehicles when drove will emit 40 percent more nitric oxide than normal, resulting in 59 premature deaths in the United States due to excess pollution from illegal Volkswagens.
- iv). In both above cases, MNE clothing brands as discussed in A and Volkswagen case in B neglected their responsibilities toward their employees, customers, shareholders, the environment, and society at large due to their lofty ambitions. In the ocean of irresponsibility and unaccountable MNEs, these are just two drops in the bucket. However, few companies as heroes take their responsibility and accountability seriously. A perfect example for this would be the Multinational Giant Procter and Gamble's powder laundry detergents which are beneficial for customers as well as the environment.
- v). Another eco-friendly P&G product, "Tide Cold Water. Consumers can save on their energy bills by using Tide Cold Water. It was introduced as liquid, powder, and soap with no need for hot water by P&G. In addition to saving energy, it would prevent millions of tons of carbon dioxide from entering the atmosphere every year."<sup>[14]</sup>

### 3. MNEs of Developed Countries vs Mass Tort Litigations; A Vendetta

- i). **Developing Country; A Labor Hub:** With the desire to expand their businesses and the desire to avoid tort liability in developed countries like the United Kingdom, MNEs are moving their harmful facilities to developing countries to reduce labor costs. As James Gobert points out, "whether or not accurate, there has been an impression that life is less dear in third world countries, law enforcement is more relaxed, and corrupted public officials. The MNEs may have hoped to avoid the jurisdiction of the U.K. criminal courts by delegating operating activities that were most likely to lead to prosecution to foreign subsidiaries. Further, government officials in the host country (where the subsidiary is located) will fear losing the investment since they may wish to keep the financial benefits accruing from the subsidiary within their borders without antagonizing or prodding the parent to relocate the subsidiary."<sup>[15]</sup>
- ii). **The Correlation between Parent Control and Subsidiary Functions:** When a parent company and its subsidiaries engage in mass tort litigation, the parent liability for the harm caused by the subsidiaries is the primary issue in court. As a result, if it were committed at the express direction of the parent company, prosecuting the parent might seem obvious because it is believed that,

the subsidiary would act as the parent's agent. In addition, two others, but equally important, obstacles before the victims as well as courts were:

- a) **Jurisdiction:** According to Richard Meeran, Firstly, there exists a variety of obstacles to victims' access to justice in their local courts, including intimidation, corruption, and a lack of access to legal resources necessary to prosecute well-funded multinational corporations. "However, the victims can approach the parent MNEs home court for justice. Initially, the parent MNEs home court did not encourage the host country's claims because the proper platform for them would be to approach the local courts where the tort had occurred rather than the home court where the parent company is based and held they don't jurisdiction as the cause of action has taken place in the host country."<sup>[16]</sup> Nevertheless, this approach was followed in the case of "Adams v. Cape Plc, 1998, UK court applied the 'forum non conveniens' principle to assess its jurisdiction because of which more than 7000 (Seven thousand) asbestos miners (claimants) claims were halted for more than 4 (four) years"<sup>[17]</sup>.
- b) **Difficulty to See through the Corporate Veil.** Secondly, it is extremely difficult to pierce the corporate veil and make the MNEs liable for the wrongs committed by their subsidiaries, since the limited liability principle of a company favors its shareholders. Moreover, the parent company that owns majority shares in its subsidiary is also a shareholder. However, most of the parent MNEs defends themselves by stating the subsidiary is a separate entity and its liability is extended up to company assets, not shareholder assets. As discussed above in "Adams v. Cape Plc, The Court of Appeal repeatedly emphasized that, while the company's efforts to avoid legal liability may not have been admirable, they were not illegal."<sup>[18]</sup> In addition, "it may be extremely difficult to establish the requisite principal agent relationship, parent's control over the subsidiary as well the duty of care a parent should have taken for its subsidiary to operate properly, if the corporate veil cannot be lifted."<sup>[15]</sup>
- iii). **The Bhopal Gas Tragedy:** "The Union Carbide pesticide (UK based MNE) plant in Bhopal, India, started leaking deadly methyl isocyanate gas on December 2nd, 1984. Trying to escape the clouds of toxic vapor, local residents searched in despair for their loved ones, eyes burning, lungs choking. A doctor described what has become an epidemic of cancer, menstrual disorders, and 'monstrous births' among survivors of the disaster in the 36 years since."<sup>[19]</sup> However, Mr. Anderson, who was Union Carbide's CEO at the time, declined to attend the trial in India and Dow, which acquired Union Carbide, refused to compensate the victims in full."
4. **Buy v. Make**
- i). **Better Option:** Who would choose an equity option when there is a cost-effective alternative. Just like that, the presence of specialized suppliers, MNEs wish don't to invest in foreign direct investment for sourcing abroad when they prefer offshore external sourcing of inputs, especially from the developing or underdeveloped nations. "Due to the standardization of information, multinational corporations are likely to choose to

outsource from local providers because there is a huge difference between Foreign Direct Investment (FDI) and outsourcing services in a host country. As a consequence, MNEs will take the form of non-equity engagements (i.e., outsourcing) than FDI in host countries.”<sup>[20]</sup>.

ii). **Strategic Outsourcing:** “Buying local intermediates and raw materials aren't limited to parent MNEs, as their affiliates may also outsource overseas.”<sup>[21]</sup>. As a result, both the parent MNE and its foreign affiliates are adopting strategic outsourcing to cut costs, improve quality, and remain competitive through strategic outsourcing.

## 5. Arguments

- i). To begin with Section 1, While fairness, accountability, and transparency are key components of good corporate governance, MNEs are not following a proper procedure when laying off their employees, as a consequence they are creating a long-term impact on themselves and their dependents which is leading to corporate misbehavior as a whole.
- ii). It is my opinion that MNEs, for example, should refocus on shareholder profit maximization theory, which focuses on a single group, rather than intensify their activities in favor of the stakeholder theory of corporate governance in order to achieve good results in an economy, since stakeholder theory seeks to integrate companies as efficiently and profitably as possible.
- iii). As a garment manufacturer for MNE clothing brand that is cost effective but of high quality, section 2 Rana Plaza is the best example of efficient outsourcing. In the Rana Plaza case, however, clothing brands were irresponsible and unaccountable as they were very negligent towards their stakeholders (workers). Therefore, the massacre occurred which is a result of bad corporate governance and sustainability. Based on the cases mentioned in section 2, multinational corporations gave little thought to their moral and social responsibilities towards supply chains.
- iv). In regard to Section 3, it is obvious that local courts in the host countries are unable to provide justice to victims who have been enormously impacted by the irresponsible and unaccountable actions of multinational corporations. A clear indication that MNEs need to strictly follow supply chain regulations can be found in Section 4 pertaining to the Rana Plaza case, which describes how labor exploitation is carried out without sufficient compensation.

## 6. Conclusion

In conclusion, as we emphasized on the concept of Vasudhaiva Kutumbakam in Section 2 of this essay, no company is following it rather they are only focused on their individual self-interests by the virtue the destruction of their employees, suppliers, environment and society as a whole. MNEs who involve in bad corporate practices, exploits labor by committing mass torts, damages environment should be brought In front an accountable international forum to deal with corporate governance and sustainability issues and make them accountable and do justice to the poor victims. Additionally, in developing countries, foreign direct investment is a crucial component of sustainable progress. However, only about 5% of FDI reaches least developed countries. It is important to establish transparent governance, stable regulatory systems, and pragmatic economic policies in

order to increase investment, especially in Africa. Lastly, voluntary CSR practices such as improving health care, infrastructure, and workplace safety for the host state can be used to contribute to the social welfare of the host state. By actively watching for violations of human rights and other abuses at work in order to prevent any adverse effects, it is also possible to prevent harm and provide justice.

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