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Foreign Direct Investment (FDI) and Protecting Bangladeshi Worker's Human Rights

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Abstract

It is the constitutional rights for every citizen to enjoy fundamental human rights. Despite ILO conventions, host countries like Bangladesh have failed to protect workers' human rights. In the name of business, the human rights of workers have been violated significantly in the poor host states. There are ample evidences, which show that their human rights were neglected by Multinational Enterprises (MNEs) or even by the host government. The objective of this study is to examine all the national laws and policies, FDI legislation, and BITs of Bangladesh that apply to labors to assess their adequacy, strength, weaknesses, and gaps in protecting the human rights of workers.

Keywords

Foreign direct investment; human rights; worker; Bangladesh; ILO.

1. Introduction

Concerning foreign direct investment (FDI), the protection of the human rights for workers in host countries is currently an emergent concern in national and international legal regimes (Li, 2005). This concern is growing daily due to the recent harmful activity and incidents of FDI in third-world host countries. The most notable incidents include the Bhopal disaster in India, Rana Plaza collapse in Bangladesh, Freeport McMoran in Indonesia, Royal Dutch Shell in Nigeria, Texaco in Ecuador, and soon. Bangladesh's most common violations concerning workers' rights are in the garments manufacturing sector, mining, and other development projects (Nakib, 2014). There are various infringements of worker's right occurs in Bangladesh,

such as - forced labour, child labour, non-payment or low payment of wages, poor health and safety standards, arbitrary hiring and firing, the right to freedom of association, inadequate working conditions, and soon (International Trade Union Confederation, 2013). There is no argument that FDI has a positive contribution to the economic development in the host states; at the same time, violations of human rights, including workers' rights, hamper and frustrate the positive contribution of FDI. Therefore, the violation of worker's human rights has raised the following questions against the MNEs:

- Do MNEs have workers human rights obligations?
- Should they be held accountable for human rights violations of workers where they operate?
- If so, should it be the relevant local subsidiary of the parent company or the parent company that is held responsible?
- If a parent company should be held accountable, what is the legal basis for holding it accountable for human rights violations of workers abroad?
- What legal mechanism should be used to ensure that MNEs are obliged to respect the human rights of workers affected by their activities abroad?

These are the questions raised as part of the debate on corporate responsibility. The debate on the accountability of MNEs for the human rights of workers is at a crossroads (Clapham, 1993). New developments in the human rights of workers have rendered the traditional public-private distinction increasingly redundant. Various strands of thought are emerging, which argue strongly in favour of making MNEs directly responsible for human rights violations of workers (Martin, 1989). There were attempts to lift the corporate veil of MNEs and make them accountable for human rights violations of workers. These are attempts, which pull together a range of legal doctrines, principles and nuances scattered across a whole range of legal regimes to offer some solution to the problems created by the absence of a cohesive body of law regulating the activities of MNEs (Chomsky & Herman, 1979; Eberlein & Matten, 2009).

This paper contributes to the literature by providing a review of Bangladeshi existing legal framework concerning FDI and the human rights of workers. This research is centred on a desk-based analysis of primary sources and the limited secondary literature on Bangladeshi law. Lack of access to materials has prevented analysis of some of the most recent legislative and case law developments. Therefore this article provides the first step toward a greater understanding of the subject matter. No empirical fieldwork was undertaken, and further research is needed to analyse the extent to which legislation has been implemented and its effectiveness; this article provides a firm foundation for such research.

This study argues that to achieve the objective of economic development, not only should FDI inflows be increased, but also the human rights of worker issues must be considered. In doing so, this article commences by discussing the allegations against the MNEs concerning human rights violations of workers. After that, the corporate responsibility of MNEs under international law and how to protect the human rights of workers under a global charter are discussed. Various legal frameworks and issues concerning the human rights of workers in Bangladesh are discussed, along with bilateral investment treaties (BITs). Moreover, based on the finding, conditional recommendations of areas are provided where governance, law, and policy might be enhanced (Amengual et al., 2022).

2. Protecting Human Rights of Workers Under a Global Charter

It is argued that MNEs would benefit from having a global corporate responsibility charter, as business people also want legal certainty. Responsible MNEs governed by sensible directors realize that they stand to gain by having internationally agreed rules in the area of human rights of workers:

- It would be much better for them to carry out their business worldwide if a harmonized international regulation existed.
- The legal and political certainty that such regulation would offer the business community would outweigh the costs of complying with it, which would be relatively small compared to other production and distribution costs.

In the absence of international regulation, some MNEs have been forced to cobble together their codes of conduct in the face of mounting public criticism of their trade practices. Those who argue for international regulation have advanced the idea of a corporate responsibility charter, which would require MNEs to respect the human rights of individuals in the countries where they operate (French, 1987). Those who have championed the idea of corporate responsibility have pointed out these weaknesses of the existing system and called for adopting a global charter outlining the responsibilities of MNEs (Watch, 1999). However, the developed world does not seem enthusiastic about adopting a legally binding charter. Some business leaders have argued that there is no need for a global one since they already have their own internal code of conduct (Muchlinski, 1999). Although these leaders have paid lip service to the Global Compact initiative, they are unlikely to accept an ambitious global charter. The corporate lobby opposed the UN move to adopt a code of conduct for MNEs, and the UN Commission on Transnational Corporations (CTC) was eventually scrapped. Much of the developed world and the corporate lobby are unlikely to accept a global instrument regulating the activities of the MNEs.

It can be argued that the activities of the MNEs must be regulated if society wishes them to conform to the values for which it stands, whether regulation is carried out by the WTO or the UN or by some other international organization. They must be regulated not only in the interests of their developing host countries and developed home countries but to ensure the human rights of workers. The old divide between developed and developing countries is becoming increasingly blurred as many developing countries are now the home states for many MNEs doing business in other developing countries. For instance, some of the MNEs investing heavily in the textile industry of Namibia are Malaysian. In such a changing pattern of economic relations between states, they can be defined only in terms of host and home countries *vis-à-vis* the regulation of foreign investment. If the interests of both host and home countries were properly balanced in a new instrument on FDI regulation, it would positively contribute to the development of the law on the human rights of workers (Yeung & Liu, 2008).

One of the main objectives of present-day international society is the promotion of the human rights of workers. The conventional concept that business and ethics do not go hand-in-hand is giving way to the adoption of ethical standards in business practice. This attitude change must be cultivated and translated into legally binding norms. Suppose the protection of human

rights of workers is a global responsibility. In that case, the regulation of MNEs in the interests of these values and principles should also be a matter of global responsibility, and thus discharged collectively. After all, human civilization must be about fairness, justice, and equality (Akehurst, 1997).

The law has already recognized MNEs as new duty-holders in various areas, including human rights. If there is a political will to grapple with the human rights deficit in this area, there are no doctrinal hurdles in the way (Kováčiková & Blažo, 2018, October). Developments in international law (especially in the human rights of workers) have breached the traditional public-private debate and made it possible for international law to impose direct human rights obligations on MNEs. By its very nature, international law is dynamic and it can (and should) hold MNEs accountable for human rights violations of workers. For this, it would be better for the international community to adopt a comprehensive and legally binding code of conduct requiring MNEs to abide by internationally accepted human rights norms in their business operations.

3. Allegations Against MNEs and Evidence of Worker's Human Rights Violations

Many multilateral enterprises (MNEs) are accused of violating the human rights of local workers in the host states (Muchlinski, 2001). Alleged human rights violations of workers by MNEs include:

- paying extremely low rates of wages to the local workforce;
- turning a blind eye to the exploitation of child and women labour by their subsidiaries abroad;
- not paid to the accident victims;
- ignoring health and safety standards at work.

Undeniably, there have been documented cases of MNEs showing that they pay wages to workers very close to the poverty line in host states, such as China, Bangladesh, India, Honduras, and Mexico. For example, Nike pays only \$2 in wage costs but sells a pair of trainers in the wholesale market for \$67. According to an Oxfam report, in Cambodia and Bangladesh, women workers' monthly earnings are less than \$40 for sewing clothes for MNEs such as Gap (Watkins, 2002). The situation seems equally unbalanced in the so-called 'export-processing zones' of countries such as China and Bangladesh. Workers are going through intense hardship in order to guarantee larger net income margins for bigger MNEs. It had been reported that to work in the special economic zones in Bangladesh workers were compelled to leave their employment rights at the factory gate. It appears that neither the international organization nor the host government is capable to protecting workers from such exploitative practices of MNEs. These multinational companies have no fixed international minimum wage rate (Ahonen, 2018). Like other developing countries, workers in Bangladesh have been working:

- in hazardous working conditions;
- for poverty-level wages;
- with inadequate social-insurance rights;
- with obligatory overtime work (Kinley & Joseph, 2002).

The MNEs has substantial amount of economic and political power, with them, they could control the host government and can employ a large quantity of cheap labour (Weschka, 2006; Barrie, 2014). They choose those host states where cheap labours are available, lax labour law exists and there is opportunity to terminate workers employment at their wishes, can easily escape from paying compensation to the victims and so on. Due to willingness to receive more FDI and mighty corporate power of the MNEs, the host states like Bangladesh just avoid taking action against them. Among others, the government also fears about the unemployment rates; as a result, it lost its strong bargaining power or takes any legal action against the MNEs. Moreover, inadequate laws and policies, widespread corruptions, non-implementation of regulations to regulate MNEs are also responsible for the said violations. Therefore, it is crucial to arrange compatible legal protection of human rights of workers in Bangladesh.

Furthermore, the MNEs also use their home states economic and political power to pressurise the host states as and when needed to get the outcome in their favour. It posses a challenge for the host states on how to tackle them. If the host state stands against them, the mighty developed states use United Nations to impose economic sanctions. This is evident in Iran, North Korea, and China. Moreover, various treaties under the auspices of the International Labour Organization (ILO) have provisions designed to protect workers' rights, but the implementation aspect of these treaties is weak. The core ILO conventions provide for basic rights for workers (ILO, 2010). They include: the freedom of association; the freedom to bargain collectively; the elimination of discrimination in the workplace; adequate wages; the elimination of workplace abuse (*e.g.* forced labour and certain types of child labour); proper working conditions; no obligatory overtime work; and adequate social-insurance rights. However, the ILO has not got much power to bring exploitative companies to justice. The host state is responsible for implementing the ILO conventions through national laws, but for the reasons stated earlier, many governments are either reluctant or unable to impose even minimum international standards on MNEs operating within their jurisdiction (Gopalakrishnan, 2007; Al Faruque, 2009).

4. Protecting Human Rights of Workers Under the BITs

Since independence, Bangladesh has signed 31 BITs with different countries worldwide. Bangladesh has signed its first BIT with United Kingdom in 1980.¹ The following table is the summary of the Bangladesh BITs with different countries in order to find out if they cover (fully or partly) human rights protection of workers:

Table 1. Bangladesh BITs with different countries

Country	Signing date & present status	Human rights protection of workers	FDI protections	Dispute settlement provisions
Austria	22/12/2000 In force	No	NT, MFN, FET	Yes
BLEU	22/05/1981 In force	No	MFN, FET	Yes
Cambodia	18/06/2018 Signed	--	--	--
China	13/09/2000 In force	--	--	--
Denmark	05/11/2009 In force	Yes	NT, MFN, FET	Yes
France	11/09/1989 In force	No	MFN, FET	Yes
Germany	06/05/1981 In force	No	NT, MFN, FET	Yes
India	09/02/2009 In force	No	NT, MFN, FET	Yes
Indonesia	10/02/2002 In force	No	MFN, FET	Yes
Iran	30/04/2005 In force	No	NT, MFN, FET	Yes
Italy	21/03/1994 In force	No	NT, MFN, FET	Yes
Japan	11/11/2002 In force	No	MFN	Yes
Korea	21/06/1999 Signed	No	NT, MFN, FET	Yes
Malaysia	20/10/1994 In force	No	MFN, FET	Yes
Netherlands	01/11/1994 In force	No	NT, MFN, FET	Yes
Pakistan	25/10/1999 Signed	--	--	Yes
Philippines	09/09/2001 In force	No	NT, MFN, FET	Yes
Poland	09/07/2001 In force	No	NT, MFN, FET	Yes
Romania	13/03/1987 In force	No	MFN	Yes
Singapore	25/06/2008 In force	No	NT, MFN, FET	Yes
Switzerland	14/10/2000 In force	No	NT, MFN, FET	Yes
Thailand	10/06/2006	No	NT, MFN, FET	Yes

Turkey	In force 12/04/2012 Signed	Yes	NT, MFN, FET	Yes
UAE	17/01/2011 Signed	No	NT, MFN, FET	Yes
UK	19/06/1980	No	NT, MFN, FET	Yes
USA	In force 13/03/1990	No	NT, MFN, FET	Yes
Uzbekistan	In force 18/07/2000	No	FET	Yes
Vietnam	In force 01/05/2005 Signed	No	MFN, FET	Yes

Note: NT=National treatment, MFN=Most-favoured nation treatment, FET=Fair and equitable treatment.

From Table 1, it can be seen that out of 28 BITs only 2 BITs (Bangladesh-Denmark, Bangladesh-Turkey) have specific reference to workers' human rights protection. Apart from these 2 BITs, rest has no specific reference at all. It is to be noted that three BITs information are not available on the UNCTAD website. All the BITs mainly cover dispute settlement mechanism and all of them have specific provisions for full and adequate protection and security, fair and equitable treatment, most-favoured nation treatment, national treatment, compensation for expropriation and nationalization as well as other benefits for the foreign investors.

The above discussions showed that there have been documented cases of MNEs worldwide, which shows that they are accused of violating the human rights of local workers in host states like Bangladesh (Al Faruque, 2009). There is a growing acceptance of the idea that MNEs have a duty to respect human rights of workers is due to the inability of host countries to regulate the activities of MNEs within their national borders and the absence of a mandatory global code of conduct for MNEs. Based on the findings above, the following recommendations could be considered by the government of Bangladesh in order to enhance the legal framework of protection human rights of workers. The government can assist the ILO to adopt a global corporate responsibility charter for the Multinational Enterprises (MNEs).

Implementation of the constitutional rights for labours need to be strengthen further. Specific provisions of workers right can be inserted into the FPIA 1980. The BLA 2006 should be applicable to all industries in Bangladesh including EPZs. In EPZs, there should be any kind of restrictions for association and the procedures should be based on international standards. The BLA 2006 should be amended to remove the stringent legal requirements, for establishing a trade union or becoming a union member. In the representative committee, there should a fair mechanism to select the representatives', who should not be biased towards the employers. The EPZ Workers Welfare Association and Industrial Relation 2010 need to be amended to ensure workers participation in trade union and other fundamental labour rights. In order to stop child labours, the BLA 2006 should define the term 'hazardous work' and minimum age should be 18 instead of 14. Private office or enterprises should be defined clearly in the Constitution of Bangladesh and in this regard, a separate provision can be inserted.

5. Conclusion

The legal framework for protecting human rights of workers is quite inadequate and need significant development. In this relation, this study has shown huge gaps, loopholes, inadequacies of the existing laws, and shortcomings and weaknesses in the enforcement mechanisms. There are many multinational companies, which are operating in a grey area in the host countries. Most responsible MNEs are in favour of adopting a comprehensive set of internationally agreed rules or guidelines, which will define their rights and obligations in the host countries. Thus, they would have some legal predictability when deciding to expand their commercial enterprise in new sectors in the host states. Bangladesh is in fierce competition with the neighbouring countries to attract more FDI for its economic development; but it should not be done with sacrificing the human rights of workers. It is their constitutional rights that should be protected at any cost.

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