Multinational Enterprises and Consumer Human Rights

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Abstract. In the last few decades, most lawsuits alleging human rights violations by multinational enterprises reveal massive infringements of labor standards or environmental pollution. Additionally, most domestic studies have focused on the choice of law in Conflict of Laws and the social responsibility of multinational enterprises. However, with the development of the market economy and the deepening of foreign relations, consumer rights and interest protection have become increasingly significant to individuals and countries. As a result, this paper, in addition to the international human rights obligations of MNEs, will further discuss the internal and external causes of MNEs' violations of consumers' human rights from the perspective of multinational enterprises, host states, home states, and international law. And its corresponding countermeasures from the parent company and host states which includes administrative actions, criminal penalties, consumers' civil remedies, and the broad influence of the media, will provide access to protection for a wide range of consumers.

Keywords: Multinational Enterprises; Consumer; Human Rights.

1. Introduction

The wave of economic globalization in recent decades has promoted the global expansion of multinational enterprises. But while they have gained huge economic profits, they have also often violated human rights as a means to achieve their goals [1]. Since the 1990s, the international human rights responsibilities of MNEs have received increasing attention, especially in the areas of labor rights to life, health, and environmental rights. While in recent years, with the improvement of people's demand for living standards and quality of life, people are more concerned about the infringement of consumers' rights to life and health by MNEs in the fields of industrial product safety and food safety, etc.

Although there are close links between foreign consumer protection and domestic consumer protection, the differences are also obvious, and it is necessary to study the issue of foreign consumer protection in depth [2]. In recent years, most of the domestic research on foreign consumer protection rights and interests lies in the study of Conflict of Laws, such as the rules on the selection of contracts. Additionally, in fact, most of the foreign-related consumption occurs in multinational enterprises, so this paper focuses on the violation of consumers' human rights by multinational enterprises from the perspective of corporate law and international human rights, including the study of multinational enterprises, home states, host states, and the international law.

When foreign consumers are confronted with the unequal status of some rich multinational companies, and even some multinational enterprises apply double standards and differentiate between inside and outside, the significance of this study is to call on them to fulfill their social responsibility while seeking solutions to reconcile conflicting interests and achieve a harmonious and balanced socio-economic structure.

In the following, this essay introduces the current situation of multinational enterprises' violation of consumers' human rights from case studies, discusses the special features of consumer protection in foreign countries, explains the reasons for the frequent occurrence of this problem, and as well as the ways of consumer protection and remedy.

2. Background Information

2.1 Definition and characteristics of MNE

The definition of the concept of MNE in the Draft Code of Conduct for Multinational Corporations developed by the United Nations in 1983 is currently the more authoritative conclusion in the international context [3]. Generally speaking, MNE is composed of a complete structural system that has set up branches in multiple countries or regions through capital export, and the related entities share resources or policies. Unlike domestic enterprises, multinational corporations directly take the international market as their strategic goal, and control other related entities through the possession of equity, ultimately achieving market share, resource allocation, and profit maximization on a global scale [3].

However, due to the scope of activities of MNEs and global strategy, they will adopt various behaviors to circumvent the laws and jurisdictions of the countries where they operate, and ultimately to avoid punishment for their human rights violations. In 2022, the China Consumers Association and the People's Daily Online Public Opinion Data Center, based on the results of big data and public opinion social influence measurement, jointly sorted out the "Top 10 Hotspots of Consumer Rights in 2021", in which Tesla's 'roofing rights' incident exposed the car companies' service loopholes. The third one is the unreasonable refusal of individual multinational enterprises to infringe on consumers' rights and interests in Xinjiang products [4].

Therefore, in today's globalization of commodities, violations of consumer rights by multinational companies are becoming more frequent and are receiving more and more attention.

2.2 The Rights and Obligations of MNEs

The human rights obligations of MNEs have evolved from the corporate human rights doctrine. British scholars Barnali Choudhury and Martin Petrin summarize some reasons why MNEs should fulfill their human rights obligations [5]. In short, there are as many rights as there are obligations. MNEs are obligated to fulfill their international human rights responsibilities while enjoying the following rights or power.

2.2.1 Power

Theorists contend that there are numerous facets to power. Along with the capacity for influence, the other facet of power is the potential to make decisions that have an impact on other people [5].

Rankings of businesses and nations on a regular basis are proof of pervasive corporate dominance. According to a 2016 study comparing the annual income of firms in various nations, Walmart outperformed Spain, Australia, and the Netherlands; Royal Dutch & Shell outperformed Mexico and Sweden; and Apple outperformed Belgium, Switzerland, Austria, and Denmark. In fact, just 31 of the top 100 economies studied belonged to nations, with the remaining 80 being owned by businesses [5].

It is clear, then, that the power of the company justifies the corresponding imposition of public obligations on it due to the principle of right equal to obligation.

2.2.2 Corporations as Rule Makers

Corporations now actively participate in establishing laws and norms. In many fields, businesses work with other actors to either create or implement regulations.

The reasons for corporations to engage in rulemaking are manifold. They could entail boosting the validity of their acts, preserving or enhancing the partners' credibility and confidence, and lowering transaction costs. By adopting a governance function, companies may in some cases appropriate the role of government and, of course, they may privately appropriate the public interest when the issue at hand involves the public.

2.2.3 International Arbitrage

Here the meaning of international arbitrage is the increasing practice of MNEs to exploit different strengths in national regulatory regimes by virtue of their status as global actors. The constant push by corporations to take advantage of regulatory advantages that have a significant impact on the public, without a global regulator to oversee corporate arbitrage and without the corresponding power to counteract this push, allows corporations to operate in a transnational context of imperfect legal and ethical regulations.

In summary, it is multinational enterprises that have the power, are the rule makers, and enjoy international arbitrage. According to the principle of right equal to the obligation MNEs should have the corresponding obligation, including the protection of laborers' and residents' rights to life, body, health, as well as the human rights of consumers.

3. Reason Analysis for Consumer Rights Violation by MNEs.

With all the rights violations of consumers by MNEs, it is imperative to discuss what causes them so that solutions can be found accordingly.

3.1 MNEs

Starting from the economic man hypothesis, individual interests represented by enterprises are not naturally in harmony with social interests, and their conflicts are constant. As a form of a company organized by investors, MNEs also have a profit motive. MNEs' main goal is to maximize profits; thus, they cut expenses as much as possible to achieve this. Any business that wants to produce high-quality goods, improve employee working conditions, or manage the environment must spend money to comply with corporate ethics, but many multinational firms opt not to do so since doing so is considerably less expensive than adhering to the code of ethics [6].

Therefore, the nature of profit-seeking is the fundamental reason and realistic motive for the problems of multinational companies in fulfilling corporate social responsibility in China.

3.2 Host states

In the contemporary era of economic globalization, all countries have the same opportunities and meanwhile compete with one another. As a result, the competing host states who are seeking foreign direct investment are in a race to secure it by promising little or no regulation on the MNEs, which renders regulatory blackhole and "race-to-the-bottom" [7]. It refers to the deregulation of the business environment or the lowering of corporation tax rates by the government in order to draw or keep, typically, international economic activity inside its borders. These activities have the impact of lowering labor costs, company costs, or other externalities that are under the authority of the government, such as pensions, environmental protection, and other externalities. Therefore there is a race to have the lowest regulatory requirements because countries or regions with higher labor, environmental, or tax standards risk losing business to others with fewer rules. As a result, they strive to reduce restrictions to maintain businesses' output within their borders.

3.3 Home states

Theoretically, both host country regulations and home country regulations have great regulatory superiority. Because both are sovereign states, they can take legally binding and compulsory measures against human rights violations by MNEs. However, with the further development of economic globalization, there is inevitably a major conflict of interest between the host country and the home country on the issue of dealing with human rights violations by MNEs [3]. This will also affect the effectiveness of both countries in regulating human rights violations by MNEs.

First off, the subsidiaries or branches that MNEs create in the host nation are founded in accordance with local laws and based on the concept of territorial jurisdiction over personal jurisdiction; hence the host country's jurisdiction should take precedence. [8].

However, in fact, most home states are reluctant to actively regulate the overseas behavior of MNEs due to national interests[8]. As international monopoly capital, MNEs represent the economic expansion and control power of the home country, but in order to survive and develop better under globalization and maximize the interests of monopoly capital and national interests, they often partially reflect and satisfy the interests of the host country. However, once the interests of the host country conflict with the interests of monopoly capital and the national interests of the home country, MNEs will not hesitate to side with the home country. MNEs identify with the home country much more than with the host country. On the one hand, host countries and MNEs achieve mutually beneficial cooperation through mutual advantages; on the other hand, host countries and MNEs have conflicting goals: MNEs are for higher monopoly profits, while host countries are for promoting their own economic development; MNEs are using the unique advantages of host countries such as abundant natural resources or cheap labor to internationalize production or occupy host country markets. And the host country is to use the capital of MNEs to make up the gap in national savings and investment, to use the market channels of MNEs to expand foreign trade, or attract the technology and management of MNEs to promote the development of related industries in the country. As a result, Robert Gilpin, a leading American scholar, has pointed out that the activities of U.S. multinational enterprises, in most cases, promote the interests of their home countries [9].

3.4 International law

The growing convergence of national consumer protection laws since World War II has led to a movement toward international harmonization of the legal regime for consumer protection, which has evolved over the past 70 years into an international legal order in the field of consumer protection which is called "International Consumer Protection Law" [10].

However, The majority of these international human rights instruments, meanwhile, are soft law standards that are not strictly legally enforceable and have no influence on companies directly or mandatorily [1]. At the same time, MNEs have a low cost of breaking the law because of the inadequate monitoring and implementation procedures of soft law standards at the international level, making it challenging to successfully uphold and enforce their human rights commitments.

4. Remedies for Consumer Human Rights Violations by MNEs

4.1 Parent company

Corporate law establishes the principle of separate legal personality and limited liability of the corporation, thus separating the legal liability of the company's shareholders from the corporation. In special statutory circumstances, the corporate veil principle allows for exceptions, i.e., piercing the corporation's veil [1].

However, the conditions under which the corporate veil is pierced differ between nations and request for strict legal requirements to be met; as a result, they may be interpreted narrowly to bar human rights violations by MNEs and shield parent companies from liability for violations committed by their subsidiaries [11]. In Adams v. Cape Industries Plc (UK), for instance, despite a class of employees' health rights being violated winning in the U.S. subsidiary of the Cape's U.S. courts, the workers sought to determine the U.K. company's responsibility. As the Cape's U.S. subsidiary entered liquidation, advocates for considering the parent and subsidiary as one business and penetrating the corporate veil made their case. The English Court of Appeal, however, denied this plea and ruled that the idea of limited liability was ingrained in English corporation law as a whole. This case highlights how the conventional corporate veil concept protects the parent company's interests while also making it more difficult to track down human rights culpability [1].

So instead, Consumers can seek damages from the parent company through 'duty of care' [12] which may arise where the parent company has effectively taken over the management of the relevant activity of the subsidiary in place of or in conjunction with the subsidiary's own management and when the parent has provided the subsidiary with pertinent advice regarding how it should manage a specific risk, consumers may pursue damages from the parent company.

4.2 Host states

4.2.1 Administrative law

Administrative control to the prevention of such damages is more conducive than legal protection, which focuses on remedying damages to foreign consumers, and is more efficient than litigation.

Local government plays two important roles in the protection of foreign consumers: first, they check the production or equipment used by operators and enforce the legal provisions relating to the conduct of transactions; second, they provide advice and information to foreign consumers. Moreover, by granting licenses to specific operators, the administrative authorities will likely prevent operators who may infringe on the interests of foreign consumers from entering the consumer market. In addition, the government's mandatory recall or ordering operators to voluntarily recall defective products which are not only the government's duty to protect the legitimate rights and interests of foreign consumers, but also its practical need to perform its economic management function and effectively intervene in the market [1].

4.2.2 Criminal law

The filing of civil cases generally follows the principle of no trial without complaint and relies on the initiative of the foreign consumer. On the contrary, the state judiciary can take the initiative to prosecute criminal acts ex officio and is more dynamic in protecting foreign consumers. The judiciary is responsible for the judicial protection of the rights and interests of foreign consumers, which is the last line of defense of the state in the protection of foreign consumers.

In the consumer field, crimes against the interests of foreign-related consumers are frequent. For example, the manufacture and sale of poisonous and spoiled food often bring great harm to foreign consumers, thus constituting a crime. For these crimes, the use of civil and administrative legal means is not sufficient, and criminal legal means must be used to punish them [1].

4.3 Consumers and media

Although the state can strengthen the protection of foreign consumers' rights and interests by enacting appropriate laws, regulations, and policies, foreign consumers cannot rely on the state to protect their own interests. It is neither possible nor desirable for the state to "put a policeman" behind each operator [2]. Therefore, improving their awareness and ability to protect their rights by utilizing contractual and tort liability becomes necessary to effectively protect foreign-related consumer rights.

Additionally, in recent years, newspapers, television, and other news outlets have frequently highlighted issues with products manufactured by multinational corporations that violate labor rights, pollute the environment, and fail to meet standards. As a result, pressure from the public has been placed on these businesses to build their social responsibility, and this has led multinational corporations to continuously improve their socially responsible behavior in China. At the same time, companies that fulfill their social responsibility well will establish a good image in China through the news media. Therefore, the propaganda and guiding role of social opinion prompt the media to actively report the social responsibility performance of multinational companies and form the public opinion environment of social responsibility to create a good external environment for MNEs to fulfill their social responsibility [13].

5. Conclusion

The problem of infringement of foreign consumers' rights, in a sense, is a specific manifestation of the weakness of the market economy in consumer relations and is also a common phenomenon in the development of market economies in all countries. In foreign consumer tort, consumers are in a vulnerable position, so it is imperative to provide them with reasonable protections to safeguard their legal rights and interests. However, the protection of foreign consumer rights is a complex issue that also requires coordinated efforts between countries and the translation of international law into domestic law before it can be applied which is a long way to go. Therefore, this paper does not discuss international and inter-country solutions but is limited only to the measures of the parent company, host states, foreign-related consumers, and the media.

The emphasis on protecting the human rights of foreign consumers is not intended to create a strong group but rather to protect and integrate the normal trading relationship between foreign consumers and MNEs, and to promote normal social and economic development. Therefore, this paper hopes to provide a way of thinking about the causes and solutions to the problem of human rights violations by foreign consumers.

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