

## TRANSNATIONAL CORPORATIONS AS A MENACE TO THE ENVIRONMENTAL DEVELOPMENT

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### ABSTRACT

*Transnational Corporations are important entities with regard to economic development, however they are also responsible for major environmental degradation throughout the world. They chose developing countries strategically because they offer opportunity to expand the market and also there regulatory framework is weaker to control transnational corporations. Their assets are their power, which are enormous than GDP of several countries. Thus their powerful position enables them to exploit the natural resources that sometimes even food, water and health becomes scarce for everybody. The paper is classified into 4 major portions. The first one discusses introduction and historical development. In second part the paper has discussed various cases in which environmental degradation was found to be rampant. It also discusses the ways through which influence is exercised to get favour. The third part deals with the legal framework to properly regulate the TNCs. It discusses the entire journey whenever attempts were made to influence others. Lastly, the fourth portion contains the findings of the research and conclusion along with the suggestions. The author through this paper makes an attempt to thoroughly understand the issue of environmental degradation due to the actions of Transnational Corporations and further,*

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*explore the areas which are generally not analysed but plays crucial role in exposing the topic.*

## **1. INTRODUCTION**

The 21<sup>st</sup> Century is an era of globalisation that is responsible for interconnection of human societies and activities beyond the national borders. Among these activities, when reference is made to economic activities, the economy is called global economy wherein production, exchanges and consumption are not limited to territorial borders.

In modern day global economy, number of non-state actors is growing at rapid speed. Among these non-state actors, corporate entities that are operating across borders can be classified into two- (1) Multinational Corporations, and (2) Transnational Corporations. Generally, the terms are used interchangeably, but there lies a thin line of difference between the two. Multinational corporations (MNCs) are companies or enterprises those are registered or having registered operations in more than one countries but have headquarters in one country that is their home country. On the other hand the transnational corporations (Hereinafter referred as TNCs) do not have any single home country. They operate more in a decentralized manner. If a look is taken of decision making process performed, in case of an MNCs at home country but in case of TNCs decision making is done by senior executives of different nationalities, and their business strategy of global perspective plays vital role as a lighthouse in their decision making process.<sup>1</sup>

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<sup>1</sup> UNDERSTANDING PUBLIC HEALTH: GLOBLISATION AND HEALTH, 30 (Johanna Hanefeld ed., RawatPublicaitions, 2015)

Since long times the TNCs have been found guilty of mass human rights violations. They alleged to influence national and international authorities to obtain favour from them or to satisfy their profit driven mind. Thus, the author in this paper attempts to enquire about the allegations and to check whether there is any mechanism to regulate the TNCs. The scope of this paper shall be limited to cover the allegations as to human rights violations and then to look into the regulatory measures, if available.

## **2. HISTORICAL DEVELOPMENT OF TRANSNATIONAL CORPORATIONS**

Historical development of the TNCs can be traced back to the end of 16<sup>th</sup> century when, in Europe, trade and related activities were given boost through formation of companies for specific purposes. Some of those companies were the East India Company of Netherlands, English East India Company, and French East India Company etc. Companies of that time were also conferred powers to engage in war along with trade. Thus these corporations carried on for several hundred years and performed trade and territorial acquisitions for their own country across the globe. Over a period of time this led to setting the premise for two infamous world wars in 19<sup>th</sup> century. This was the time when TNCs took shape as these are known today. There were several factors responsible for growth of TNCs of modern era like- industrialisation, development of capitalist markets, development of factories involving more efficient and accurate manufacturing processes, faster delivery of services, transportation etc. and also requirements of that time creating pressure to search more resources, energy and foodstuff along with protecting and

conserving the same, resulted into development and expansion of modern day transnational corporate giants, like Mitsubishi.

After Second World War, transnational corporations started mushrooming very fast. It is evident from the fact that where in 1906 only two or three such corporations having assets of about US\$500 million were there, in 1971 their number rose to 333 corporations of which some leading corporations were holding assets of about US\$ 1 billion.<sup>2</sup> This rise in number was the result of high investment in industrial stocks and encouragement to the corporate activities. Technological advancement of that time facilitated smooth transportation by all means road, rail, water, air and computerisation and faster modes communication gave boost to the economic activities across the globe. This trend kept gaining momentum and about in the last decade of 20<sup>th</sup> century TNCs began to deliver their goods and services to the foreign market, especially the less developed countries, just because the less-developed countries offer not just the potential for market expansion but also lower wages and fewer & week health and environmental regulations than i highly industrialized and developed countries.<sup>3</sup>

### 3. TRANSNATIONAL CORPORATIONS

Transnational Corporations are crucial players in the modern capitalist global economy. In last few decades they emerged and developed in rapid manner. TNCs are responsible for major portion of the

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<sup>2</sup> Jed Greer & Kavaljeet Singh, *A Brief History of Transnational Corporations*, Global Policy Forum (2000), <https://www.globalpolicy.org/empire/47068-a-brief-history-of-transnational-corporations.html>

<sup>3</sup>*Id*

total investment and trade.<sup>4</sup>TNCs are comprised of a parent corporate entity which exercise control over the assets of other entities in countries other than their own home country and their foreign affiliates which are incorporated or unincorporated entities in which investor, a resident of another economy owns a stake permitting lasting interest in the management of the that entity. TNCs are engaged in production beyond the limitations of borders. With the operation of TNCs many advantages can be obtained like increase in Foreign Direct Investment, technology transfer, sharing of managerial and organisational skills, development of cross-cultural understandings etc. these factors benefit both developed and developing countries.<sup>5</sup>Some of the famous transnational corporations are Samsung, Shell, Unilever, and Coca-Cola etc.

TNCs having view of global economy are in itself so distinct as to their massive size, unique structure, organization, value etc. that their total annual sales are equal or more than the GDP most of the countries of the world. For example: Itochu Corporation's sales exceed the GDP of Austria, while Royal Dutch/Shell equals Iran's GDP and together, the sales of Mitsui and General Motors are greater than the GDPs of Denmark, Portugal, and Turkey combined together, and US\$50 billion more than all the GDPs of the countries in sub-Saharan Africa.<sup>6</sup>

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<sup>4</sup> LUCY FORD, *TRANSNATIONAL ACTORS IN GLOBAL ENVIRONMENTAL POLITICS*, 35 (Gabriela Kütting (ed.), Routledge, 2011)

<sup>5</sup> Alexandra Nicula & Amalia Niculs, *Development of Transnational Corporations in the World: Opportunities and Threats*, *Progress in Economic Sciences* 279 (2015), <http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.desklight-4b3b08d0-164d-4866-93a2-5548363a6a37/c/279.pdf>

<sup>6</sup> *Supra* 3

#### 4. TRANSNATIONAL CORPORATIONS AND GLOBAL ENVIRONMENT

Transnational Corporations are profit driven entities and are one of the most important transnational actors because when it comes to global environment TNCs are closely linked to global economic upgradation and global environmental degradation. It is argued that economic development is the key for human development, which is not so.

The key to human development lies in sustainable development. The concept of sustainable development first time published in Brundtland Report of 1987, namely 'Our Common Future'. The report provided definition to sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".<sup>7</sup> Thus sustainable development tries to create balance between economic development, environmental development, and social development by giving them all equal importance, not through preference to one over another.

Some important cases reflecting the position of the transnational corporations concerning the human development are given below-

##### 4.1 BHOPAL GAS LEAK CASE

In December 1984, extremely poisonous gas methylisocyanate (MIC) leaked from a plant of Union Carbide Corporation in Bhopal, India. In the aftermath of that leak several thousand persons died due to exposure and others suffered permanent loss to their physical well-being. This did

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<sup>7</sup>*What is sustainable development?*, <http://www.sd-commission.org.uk/pages/what-is-sustainable-development.html>

not last up to them but carried through generations. Those born to the exposed persons also showed symptoms of affected by gas. Also it affected environment to a large extent, even today actions for cleansing are being carried on.

The corporation kept claiming that their safety measures were of high standards and the accident was caused due to activities of a disgruntled employee while investigative facts prove that MIC is highly volatile gas that needs to be stored at 0 degree temperature but in the present case refrigeration unit was shut down to reduce costs as directed. Along with that other safety equipment were also found inactive, thereby leading towards a chemical disaster to occur.<sup>8</sup>

The Corporation fought vigorously to avoid compensation. It even persuaded the Indian Govt. to settle without consulting the victims of the disaster. Undue influence caused by the corporation upon Indian Government can be observed from the fact that it claimed US\$ 3Bn but settled for just US\$ 470 Million.<sup>9</sup> The corporation even fought to have legal case heard in India as it would reduce the cost of compensation as compared to in the US. Further it also delayed cases for long until the out of court settlement between the Indian Government and UCC came into picture.

#### **4.2 WIWA ET AL. V ROYAL DUTCH SHELL**

The defendants in this case were involved in extraction of oil from Ogoni Region of Niger Delta. Their activities gained attention of the

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<sup>8</sup> Barbara Dinham & Satinath Sarangi, *The Bhopal gas tragedy 1984 to The evasion of corporate responsibility, Environment&Urbanization* 89 (2002), <https://journals.sagepub.com/doi/abs/10.1177/095624780201400108>

<sup>9</sup> *Id.*, at 90

global community when Ogoni people, in 1990s, began protesting against environmental degradation and harm caused to the local community due to oil extracting activities. In 1995, with the help of Niger Government and Military, the protests were suppressed violently. Several of them including Ken Saro Wiwa, an acclaimed writer and environmentalist<sup>10</sup> and 8 others constituting “Ogoni Nine” (A group leading the protest) members were killed and many arrested, tortured etc. Royal Dutch Petroleum Company, Shell Transport and Trading, and a company official and Nigerian Affiliate were sued for human rights violations, arbitrary arrests and summary execution etc. Later this case was settled out of court for US\$ 15.5 Mn in 2009.<sup>11</sup>

There were two more lawsuits with regard to the Niger Delta. The first one *Kiobel v. Royal Dutch Petroleum Co.* case in which issue was with regard to environmental degradation in Ogoni region of Niger River delta. When protested protests were suppressed by violent means. Then the case was brought to the Court under Alien Tort Claims Act in US. The Second Circuit court of appeals rejected the proposition that the corporations may be held liable for torts in violation of international law under the ATS and this decision, on April 17, 2013, was affirmed by the US Supreme Court.

The second one, *Bodo v. Shell*, where the issue was of oil spill from very old and poorly maintained pipeline. The Bodo community

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<sup>10</sup> *Wiwa v. Royal Dutch Shell: Getting Away with Murder: Shell's Complicity with Crimes Against Humanity in Nigeria*, <https://earthrights.org/case/wiwa-v-royal-dutch-shell/>

<sup>11</sup> *Ingrid Wuerth, Wiwa v. Shell: The \$15.5 Million Settlement*, American Society of International Law (2009), <https://www.asil.org/insights/volume/13/issue/14/wiwa-v-shell-155-million-settlement>

claimed for cleanup of oil pollution against this environment hazard activity in London High Court in 2012. Two major incidents of spill over occurred in 2008 and 2009 due to which thousands of people suffered their land, livelihood and health. Shell admitted that its subsidiary in Nigeria Shell Petroleum Development Company is responsible for oil spill but at the same denied allegation by arguing that oil spill is due to activities of theft and sabotage. In this case Shell's offer for settlement was refused for being insignificant. Further in 2014, Shell was held responsible for spills from their pipelines as the company failed to take reasonable measures to protect them from malfunction or from oil theft.<sup>12</sup>

Later some documents also revealed that despite knowing poor condition of pipelines Shell continued use that old infrastructure consequently affecting the Bodo community. After this revelation in January 2015 Shell offered to pay £55Mn for cleanup purposes. For this, a mission Bodo Mediation Initiative was sponsored by the Dutch Government and parties decided to put the legal claim on hold but reserved a right to resume in case cleanup work is inadequately done. Further to avoid this, Shell tried to pursued member of the Bodo Community to include a clause avoiding any lawsuit in future, which was turned down by the UK judge by holding that right to revive legal claim by the Bodo community members cannot be taken away.<sup>13</sup>

#### **4.3 T&Cs IN GLOBAL ENVIRONMENTAL POLITICS**

Generally the role played by the transnational actors (including TNCs) in policy-making process is not matter of analysis. If we go deeper,

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<sup>12</sup> *Shell lawsuit (re oil spills & Bodo community in Nigeria)*, <https://www.business-humanrights.org/en/shell-lawsuit-re-oil-spills-bodo-community-in-nigeria>

<sup>13</sup> *Id*

there is more to be found than what the ideal system shows. TNCs are motivated by profit that means if there is more demand in the market that has to be satisfied by more supply thus maximising profits and causing extra burden on the natural resources and also maximising environmental degradation. This is also the reason behind presence of major sites for production units in environmental sensitive areas. Such areas may be sensitive because of their geographical location or may have become degraded to the extent that the areas are declared sensitive.

As Lucy Ford has cleared the position of TNCs in her paper, they are so much powerful that some of them have assets even more than the GDP of several countries. They have involvement in lobbying processes and attempt to influence the agenda to prevent the measures that could be harmful to business.<sup>14</sup> When in 1992, UN Conference on Environment and Development was going on, the same time a lobby group WBCSD came into being and influenced the negotiations to avoid the role of business groups in environmental degradation. Agenda 21 which was a comprehensive document on sustainable development includes role of corporations only with respect to the sustainable development and abstain from counting on the need for their regulation. During the UNCED Conference, the UN Centre on Transnational Corporations (UNCTC) was dismantled and its propositions to held corporations accountable under Agenda 21 were turned down by the developed countries. The aforementioned controversy got revealed after some corporations who

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<sup>14</sup> *Supra* 4, at 36

were found to be major polluters had track record of funding anti-environment lobby groups were also found to be funding UNCED.<sup>15</sup>

## 5. INTERNATIONAL LEGAL FRAMEWORK TO REGULATE TRANSNATIONAL CORPORATIONS

TNCs always prefer voluntary guidelines because these provide them with favourable conditions to work. Taking favours for long of these voluntary guidelines they act below the standards. Finally the idea for establishing a legal framework to regulate TNCs at international level was discussed in 1970s. Journey begins in 1974, when UN Economic and Social Council (ECOSOC) established the UN Commission of Transnational Corporations (UNCTC). The UNCTC prepared a draft Code of Conduct for Transnational Corporations which never saw the day light and finally both the bodies were dismantled in the year of 1993-1994.<sup>16</sup>

In 2000, UN Secretary General Kofi Annan, launched the Global Compact in which he envisaged to encourage the TNCs and work together for the development of human rights. The TNCs were made committed to respect the human rights and environmental standards on voluntary basis. This relationship of the United Nations and the TNCs gave opportunity to TNCs to achieve their goals irrespective of human rights violations and they were also able to justify their actions. Later on two research reports of the United Nations Research Institute for Social Development (UNRISD) emphasizing that this partnership gives TNCs the “means of pursue their particular political interests within the United Nations” and further called upon the United Nations to “reinforce the procedures designed to control

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<sup>15</sup> *Id*

<sup>16</sup> *Transnational Corporations: What Regulations?*, <https://www.stopcorporateimpunity.org/transnational-corporations-what-regulations/>

the respect of ILO and of international human rights standards, to support complaint procedures...”<sup>17</sup>

In another report published in 2010, the United Nations Joint Inspection Unit (JIU) expressed concerns about the “risks associated with the use of the United Nations brand by companies that may benefit from their association with the Organization without having proven their conformity with United Nations core values and principles.” This body clearly pointed out that the Global Compact was lacking a proper regulatory governmental and institutional framework.<sup>18</sup> It can be easily ascertained the fact that the UN Global Compact directed at “corporate sustainability” though they were endorsed by more than 8,500 signatories from 135 countries, as it gave very little relevance to the accountability of TNCs.<sup>19</sup>

On the other hand the UN Commission of Human Rights, in 2005, appointed John Ruggie (also known as the Father of Global Compact), as the Special Representative of the Secretary-General on Human Rights and Transnational Corporations and Other Business Enterprises.<sup>20</sup> He clearly opposed the possibility for receiving complaints from the NGOs with regard to the human rights violations done by the TNCs. In June 2011, he presented his principles, to the Human Rights Council, entitled “Guiding Principles on Business and Human Rights: Implementing the United Nations Protect, Respect and Remedy Framework”.<sup>21</sup> The principles

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<sup>17</sup> *Id*

<sup>18</sup> *Id*

<sup>19</sup> *Accountability of Transnational corporations*, 59 Emerald Insight, <https://doi.org/10.1108/cpoib-08-2014-0040>

<sup>20</sup> *Supra* 18

<sup>21</sup> *Id*

contained in his report were voluntary in nature as can be seen from the following provisions: “Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”<sup>22</sup>

Further in principle 23:

*In all contexts, business enterprises should:*

- a) *Comply with all applicable laws and respect internationally recognized human rights, wherever they operate*
- b) *Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements*
- c) *Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate*<sup>23</sup>

In aforementioned both principles of the report of Ruggie principles are loosely knitted as reflected from the term ‘should’ rather ‘must’ which would have made the obligation mandatory upon the transnational corporations. Thus leaving path for TNCs to commit human rights violations and get away.

With tenure of Ruggie getting away in 2011, the UN Human Rights Council approved his report and new working group of human rights and transnational corporations including other business enterprises and a Forum on Business and Human Rights were formed. But this mandate proved to worthless because the fundamental substance running

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<sup>22</sup> *Guiding Principles on Business and Human rights: Implementing the United Nations “Protect, Respect and Remedy*

*Framework,*

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[https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr\\_eN.pdf](https://www.ohchr.org/documents/publications/GuidingprinciplesBusinesshr_eN.pdf)

<sup>23</sup> *Id.*, at 25

this mandate was based on Ruggie's Report. Thus no human rights violation cases could have been presented.

Recently, in 2014, the Human Rights Council (HRC) adopted a resolution for the establishment of an open-ended intergovernmental working group (IGWG) 'to elaborate an international legally-binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises'.<sup>24</sup> The working group recently submitted their "report on the fourth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights" in 2019.<sup>25</sup>

## 6. FINDINGS

Transnational corporations can have bases in two or more countries and are not restricted to one country like multi-national country. This feature of transnational corporations make them free to choose any place where they can easily carry on their business activities without any sort of resistance. This is the reason that they generally go for developing countries because, firstly, there laws and their enforcement are not strong enough to make them bend their practices thus they go on with what practices they were earlier practicing, example, McDonald, business model of McDonald is considered to be very strict as they never change their practices and standards according to the place, secondly, in developing countries they gain importance over all other local business

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<sup>24</sup>Olivier De Schutter, *Towards a New Treaty on Business and Human Rights*, 41, [https://law.yale.edu/system/files/bhrj-treaty\\_on\\_business\\_and\\_human\\_rights-2015\\_0.pdf](https://law.yale.edu/system/files/bhrj-treaty_on_business_and_human_rights-2015_0.pdf)

<sup>25</sup> Report on the fourth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, <https://daccess-ods.un.org/TMP/9545667.17147827.html>

groups and sometime even influence the governments to favour them because their assets are higher than the local business groups and sometimes they hold assets even larger than the GDP of any country or group of countries collectively.

With change in time, transnational corporations have changed so far that their nature and activity got also changed. History is evident as to how the companies changed their activities from trade to gain control over the kingdoms and become ruler and then rampant human rights violations can also be witnessed under their regime. This can be termed as power hunger which in the long run brought the world two world wars killing more than millions of people across the world.

Transnational corporations of the modern times can also be said not less than the earlier ones. Their immense power makes them capable of influencing and sometimes even controlling the governments of some of the states. Cases of *Bhopal Gas Tragedy*, *Wiwa et al v. Royal Dutch Shell* are the cases which clearly reflect how government or the leading personalities settled for very insignificant amount. In *Wiwa* and other cases it was also alleged that their own government took part in committing violence upon for protesting against the activities of the transnational corporations which were degrading the environment and also caused harm to health.

It seems to be the history repeating itself as can be observed from the cases of Niger River Delta Region and callous attitude of transnational corporations towards human rights violations and non-admittance and shifting of the burden of their faults etc. are the incidents proving lack of

ethics and values in them and their activities. Hence it can be made to understand that they not even trustworthy.

The aforementioned character sketch of transnational corporations is also reflected in their response to their liability. They prefer those places to work where their liability for anything done is voluntary in nature. That means they attempts to avoid liabilities so that in no case they suffer harm regardless of the fact that the cost of their profit is paid by other persons' health, food, water and sometimes lives. In order to keep themselves motivated for gains they have been found lobbying into policy making process to turn policies in their favour. Example of UNCED conference is in itself a disastrous event as policies and laws are made after utilization of vast number of resources and hard-work to achieve major targets but actions of some selfish persons cause them to be worthless. Gravity of the issue can be mapped by the above example because if they are able to influence at international level then what would be the position of a small country. Thus the position of transnational corporations can be better understood by the words of David Korten who described TNCs as "instruments of a market tyranny that is extending its reach across the planet like a cancer, colonising ever more of the planet's living spaces, destroying livelihoods, displacing people, rendering democratic institutions impotent, and feeding on life in an insatiable quest for money".<sup>26</sup>

The concept of Sustainable Development talks about proper balance among Economic Development, Environmental Development and Social Development. But the activity of TNCs clearly shows their

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<sup>26</sup> *Supra* 5, at 281

motivation towards economic growth at the cost of the other two. While doing so TNCs fail to understand the basic spirit of the concept of Sustainable Development that is to use natural resources in a manner that they remain available to the future generations as well. Therefore it is need of hour to strike down balance among all the components of the sustainable development. The case here is not to suppress the economic development because it also plays important role in keeping sustainable development especially by provision of technology and other effective ways to conserve the natural environment.

Now the question arises as to how to obtain such balance? As here the issue is of transnational corporations and as per the observation in an aforementioned paragraph that the transnational corporations act as unruly horse who doesn't want to be tied. Thus it becomes most important to control the transnational corporations. Such efforts have been taking place since 1974. Few years ago a resolution was passed to adopt a legally binding treaty to regulate the TNCs and their activities. Recently in 2019 a report of 4<sup>th</sup> session of the working group has been submitted. Hence it can be said that we are on the right track to promote human rights, environmental rights, and health care rights?

## **7. CONCLUSION**

Transnational corporations are motivated by profit and do not care about anything till they are being benefitted. In history once such corporations had created chaos and made the world face two world wars. Even today they are found involved in corrupt practices, human rights violations, environmental degradation, and causing social disorder etc. Here they fail to understand that everything is knitted together, if one

thread is untied the whole society face the consequences. Environmental degradation more than the regeneration capacity of nature will definitely lead to imbalance and as human society is closely linked to natural environment, in some cases it is their life because they get food, shelter, wood etc. from it. To protect the environment the global community is making efforts to reduce the emission of greenhouse gases and to prevent other activities harmful to the environment. But TNCs and such other persons are only concerned with making profits. They forget that everything is perished if not maintained properly.

Their callous nature is reflected in facts of the cases of MIC Leak, Oil Pollution, Oil Spillover etc. shows their insensitiveness and overexploitation of resources and not maintaining according to the proper standards. Apart from this they even made effort lot to keep their liability voluntary in nature and pursued countries to reduce the settlement amounts. This all raises question over their intentions which does not seem good. No one can be allowed to take law into their own hands and for this person must be in control. This indicates towards regulation of transnational persons.

## **8. SUGGESTIONS**

Through the findings, it can be observed that there is a need to make trans-national corporations accountable for their actions, and therefore, there can be some steps taken in furtherance of meeting this goal, which are as follows:

1. To adopt a legally binding treaty making transnational corporations accountable

2. To create a proper mechanism to strike a balance among the 3 components of sustainable development.
3. To ensure proper implementation of treaties.
4. To provide a proper dispute resolution mechanism.
5. To spread sensitization among the persons involved in corporate world towards the human rights and environmental issues.
6. To adopt high standards in order to meet with the regeneration capacity of nature.