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Multinational companies: "The descendants of chartered companies" aka "torchbearers of colonialism"

Anupama Arigala[1]

Abstract: *This article examines the historical continuity between chartered trading companies and modern day multinational corporations (MNCs), arguing that contemporary corporate structures retain core attributes of their colonial predecessors. Chartered companies, such as the British East India Company, functioned as hybrid entities – merging commerce, governance, and military power – operating with State-like authority while pursuing profit. Despite formal decolonisation, the legacy of these entities persists in MNCs through corporate immunity, regulatory arbitrage, and economic coercion in the Global South. This article explores how MNCs leverage their vast capital and transnational presence to influence policy decisions, exploit labour, and contribute to environmental degradation, particularly in the Global South. Case studies such as Freeport McMoRan Inc.'s operations in West Papua illustrate how MNCs, often in collusion with host Governments, engage in practices that parallel the exploitative and racially hierarchical structures of colonial rule. The article argues that MNCs function as instruments of capitalism in much the same way chartered companies served as instruments of colonialism. By drawing attention to labour exploitation, environmental destruction, and the strategic manipulation of governance structures, it contends that the global economic order remains entrenched in colonial legacies. The discussion underscores the urgent need for stronger regulatory mechanisms to ensure corporate accountability, prevent human rights violations, and dismantle economic structures that sustain post-colonial dependency and inequality.*

Keywords: *business and human rights; neocolonialism; extractive capitalism; multinational companies; human rights abuse.*

1 Anupama Arigala has been a legal practitioner with over a decade of experience in the Indian courts. Presently, she is working as an Assistant Professor of Practice at BITS Law School, Mumbai (India). She is the alumna of SOAS, University of London and National Law University, Delhi; arigala.anupama@gmail.com

1. Introduction

While analysing multinational companies (MNCs) one is reminded of "Red Riding Hood," a story from children's story books. In the story, a wolf disguises itself as the grandmother of a little girl in an attempt to pounce upon her. This act indicates two things: firstly, the change in clothes does not change the nature of the wolf. A predator will remain a predator irrespective of the change in the form. Secondly, the change in clothes was not an unintentional act but a step towards a well thought out plan of luring the prey by appearing harmless. Similarly, MNCs are the present-day wolves dressed as friendly grandmothers. However, once the veil is lifted, the reality becomes visible. MNCs are essentially modern versions of chartered companies carrying on the ideology of capitalism (modern day colonialism). This article attempts to establish this idea by drawing the link between the traits of MNCs and chartered companies.

In this context, this chapter proceeds on the hypothesis that the substance and structure of MNCs can be traced back to the chartered companies. The nature of operations is extractive mimicking the colonial empires.

In pursuance thereof, the methodology adopted by the author was primarily doctrinal whereby the evolution of the chartered companies was studied in parallel to the MNCs whilst critically analysing the characteristics of the two. The doctrinal research was followed by problem- and policy-based non-doctrinal research to understand the flaws crippling the current capitalistic structure followed by the MNCs. Furthermore, effort was made to conduct the study by resorting to interdisciplinary legal research particularly while examining the operations of Freeport McMoRan, Inc. and the State of Indonesia in West Papua. The reason for picking West Papua as a case study is because it is the perfect example that supports the hypothesis of the article. It shows the MNCs as descendants of chartered companies in the most raw and primal form. Additionally, comparative legal research involved studying the conduct of MNCs in the Global South nations as compared to the Global North.

The article is divided into five parts. Part two lays down a brief understanding of the exploitative nature of chartered companies with special emphasis on the colonial rule of British East India Company (EIC) in India. Part three explores the similarities between MNCs and the chartered companies with relevant examples. Part four is a case study of the nexus between Freeport McMoRan, Inc. and Indonesia in the colonisation of West Papua. Part five is the conclusion that summarises the article.

2. Chartered companies: Vehicles of colonialism

It may be hard to believe but the truth is that "spice," a harmless commodity, played a pivotal role in shaping the world not just in terms of trade but in determining the fate of nations for years to come (Mishan 2019). It led to the discovery of the trade routes opening up the gates for the Western chartered trading companies to reach the East and South-eastern regions of the world (Hancock 2022). Little could Emperor Jehangir of the Mughal Dynasty of India predict the destruction that would follow with the grant of a simple "*farman*" (license) to the EIC for establishing a factory in Surat (a port place in the western part of India). With such a small request, the EIC made inroads in India as a trading company. EIC was one of many such chartered companies that were ambitiously looking for regions to plunder (Ward 1994, 45–47).

2.1. Birth of the chartered companies

With change in the needs of the population and the prevalence of new philosophies and inventions during and post the Industrial revolution, new forms of economic activities came up. First to emerge were the guild merchants and later the craft guilds (Anderson and Tollison 1982, 1240–43). However, in the sixteenth century, joint-stock companies came into picture (Schmitthoff 1939, 80–90). One of the prime examples of the joint-stock companies were the chartered trading companies. A number of these companies were incorporated essentially and exclusively for overseas trade (Boardman-Weston 2012, 21). Chartered companies were based on monopoly and played a critical role in the rise of commercial capitalism and establishment of colonialism (Carlos and Nicholas 1996, 916). These companies though, organised as private companies, were dependent on the imperial powers of their home country for grant of exclusive trading rights. Around 40 such companies had secured grants of trading monopolies for long-distance trade over many parts of the world (McLean 2004, 363–67). Some of the known companies were EIC, Dutch East India Company, the Royal African Company, and the Hudson Bay Company.

2.2. Identifiable characteristics of the chartered companies

It may be noted that the chartered trading companies were distinct from each other in terms of the stipulations in the charter, the region of operation and incorporation, and size, however, the *modus operandi* and organisational systems were similar.

The primary functions of these chartered companies were capital accumulation and establishment of colonial empires (George 2013, 935-940). Although they would enter a country for trading, later on they would ensure the expansion of the colonial interests of their home country. To achieve the objective, these companies would perform Government-like functions and sometimes act as the Government in these potential colonies. For instance, in India, EIC obtained the rights to collect taxes in the province of Bengal (Marshall 1985, 164–66). There was a gradual transformation from a trading company to a governing one. There came a time, when the British Government and EIC became almost synonymous in terms of power and the nature of work. The trade was exploitative in nature. The real governing head, the Crown, ensured its rule on the people of India through the EIC and the British officers posted in India. EIC essentially played the role of the facilitator that made the ground fertile enough for the Crown to take over. There was a time when EIC was ruling around one-fifth of the population of the world and earning more than Britain (Ciepley 2013, 139).

The British rule was disastrous for the Indian economy as the Indian continent was robbed of the raw materials like cotton for manufacturing of products in England which were sold at greater prices to the West. Due to mechanisation of production leading to greater quantities of products being produced with cheaper cost of production, the British products completely destroyed the Indian village handicraft industry. The farmers were forced by the British Government to produce only those raw materials that were required for British markets (like indigo), thereby snatching the freedom of the farmers and consequently leading to a decrease in the food production. This economic drain drove the Indian population into poverty and famine (Roy 1987, 39-42). The Great Bengal famine in 1770 was one the worst famines in history wherein ten million Indians died (Mallik 2024, 1–18).

3. Multinational companies – Vehicles of capitalism (cousin of colonialism)

In the late-nineteenth and twentieth centuries the world of politics underwent a change with the formation of new institutions regulating international relations and trade. There were great advances in the technology, transport, and communication sectors. These developments made it imperative for the corporate world to come up with a new system of functioning. It is in these conditions that the MNCs were formed (Stern 2016, 434–38). However, the new international economic order is founded on the cemetery of colonialism with the emergence of MNCs as the successors of chartered companies. Mercantilism was replaced by liberalism which brought in the divide of public and private domain and eliminated the sovereign or sovereign-like powers that the chartered companies were exercising in the sixteenth and seventeenth centuries. However, when viewed from a colonised person's lens, the core ideology of operation of these MNCs is no different than that of the chartered companies.

An MNC is defined as a company which has its headquarters in the home country but has operations in more than one country called the host country. The objective is maximisation of profit through diversification of activities (Köksal 2006, 6-9). MNCs enabled foreign direct investment by the companies of the former colonisers like Britain and those who benefitted from colonialism like Switzerland. These companies could now engage in international trade with their headquarters in their home countries. MNCs provide transfer of organisational practices from the home country to the host country.

3.1. Neocolonialism, dependency, and capitalism

Additionally, MNCs enable colonialism like their predecessors (chartered companies) in an indirect manner to be in consonance with the “civilised,” “developed” world that we presently live in. Social Darwinism (Misra 2003, 141), which was used to justify imperialism, is inherent in the operational schemes of the MNCs. The notion that the companies based in the rich “developed” nations are far superior to the domestic companies in the “developing” or “underdeveloped” countries is what drives the sales and marketing strategies of the MNCs. In the garb of investments and transfer of technology, capitalism is used to maintain the power of the West in the Global South.

In the present times, colonialism is manifesting in the form of capitalism. One can even term it as a form of “neo-colonialism” as MNCs promote economic dependency in the developing countries in order to gain control of the economic and consequently the political structures of these countries. Capitalism ensures that the supremacy of the former colonies is maintained in the developing economies by increasing their dependence on MNCs and in the process is ignorant of the impact of such unrequited exploitation which in many instances leads to infringement of the basic human rights in the host countries.

It is interesting to note that the chartered companies possessed structural and organisational features similar to the present day MNCs. The chartered companies functioned on stock shares and capital that was pooled. The employees were salaried and operated in a hierarchal bureaucratic manner (Erikson and Assenova 2015, 1–3) while making decisions associated with the company. The managers of the trading companies faced issues with coordination with the central authority in the colonising country about production, distribution, and services. The modern day MNCs also face similar issues as the central head is situated miles away in the home country. This similarity of real power lying in the home country and delegated power with the managers in the host country links MNCs to the chartered companies.

Further, the most significant feature that makes it tough to distinguish between the two is the fact that chartered companies were the “prime instrument of colonization” (Bedjaoui 1979, 36) and, thus, were equipped with sovereign-like powers to achieve the goal of establishing the empire of the colonising country. Similarly, the present day MNCs possess enormous capital enabling the exercise of influence and control in developing economies. As discussed above, the dependency created by these MNCs in the host country makes these companies more powerful than the sovereign Governments of the host country. The headquarters of most MNCs are situated in the former colonising countries, so in effect, these colonisers still wield the real power over their former colonies through capitalism (Bedjaoui 1979, 36–39). Thus, it would not be wrong to conclude that the MNCs are now the "prime instruments of capitalism."

The chartered companies were not just the agents of the colonising State but were the colonisers themselves like EIC in India had the power to take military decisions, impose taxes, enact laws, and adjudicate disputes (Bedjaoui 1979, 36–39). In the same fashion, some of the big MNCs completely influence the political, economic, and administrative decisions in the developing countries where they operate (Sundhya and Saunders 2019, 141–48), like, for instance, Freeport McMoRan, Inc. in West Papua (discussed in the succeeding paragraphs). Alternatively, due to their huge capital, these MNCs tend to resort to intimidation tactics on the developing nations for favourable policies. Philip Morris International, a tobacco giant, filed a lawsuit against the Uruguay Government on the ground that the anti-tobacco policies of the Government were unreasonable and hampered the sale of cigarettes in the country (*Philip Morris Brands Sàrl, Philip Morris Products SA and Abal Hermanos SA v. Oriental Republic of Uruguay* ICSID ARB/10/7).

3.2. Exploitation of labour

Another significant similarity is that the nature of operation of both the MNCs and chartered companies is exploitative and racialised in nature (Mehta n.d., 6–8). The EIC employed the local Indian population as labour for their activities in India. Moreover, some Indian population were forced to work in other colonies of the British empire for EIC. A number of Indians were transported to South Africa, Sri Lanka, or Indonesia by EIC against their will. Forced labour was a characteristic feature of colonialism. As a strategic move, EIC introduced education in India, to provide basic education for the Indians to work as the clerical staff in India, whereas the managerial positions were always exclusively held by the British. The "higher than thou attitude" and "white man's supremacy" underlined such policies. Similarly, the MNCs look towards the Global South as a haven of cheap labour. Exploitation of labour brings down the cost of production for the MNCs which reap profit but at the cost of extreme human rights violations. Nestle admitted to the possibility of indulging in slave trade in the chain of production in Brazilian coffee plantations (Hodal 2016). The news hit the headlines and that is it. There is no accountability or measures of correction taken in this light by Nestle.

As per Principle 11 of the UN Guiding Principles on Business and Human Rights (UNGP), the MNCs are under an obligation to respect the global human rights regime which includes measures for prevention as well as remediation. Thus, MNCs are bound to follow the eight core conventions of the International Labour Organisation, the Universal Declaration of Human Rights (UDHR, articles 7 and 23), International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966) and the entire established international human rights jurisprudence.

Furthermore, human rights due diligence is the basic responsibility to be carried out by these enterprises under UNGP (UN Guiding Principles on Business and Human Rights 2011, principle 17). However, when companies like GAP or ZARA are ridiculed for engaging in child labour in India (McDougall 2007) or linked to forced labour from Uyghur region and benefitting out of the conflict in the region (Sheffield Hallam University Helena Kennedy Centre for International Justice 2023), it does not produce any meaningful change in the operations of these companies. It is business as usual for them (Muchlinski 2001, 38-39). The clear indifference displayed by most of these MNCs is no different to the chartered companies that engaged in slavery and some of the highest forms of human rights abuse.

While the chartered companies caused economic drain of their colonies, MNCs cause "brain drain." Human resource is an important factor for the development of a nation. However, with the promise of a beautiful life most of these MNCs lure the best of the people from the developing economies to work for them. For instance, a significant population of the Silicon Valley of the United States is composed of Indians. Moreover, major big firms are being led by Indian CEOs for instance Google and Alphabet's Sundar Pichai and Microsoft's Satya Nadella (Gibbs 2014). This brain drain ensures that the emerging economies remain underdeveloped or stagnant in their growth.

3.3. Environmental degradation

Lastly, environmental destruction is a trait that the chartered companies and the MNCs share. Chartered companies in the selfish pursuit of wealth ignored the consequences of such plunder on the environment. The present day issues of climate change and global warming are a result of mindless colonisation and industrialisation. Following the same path, MNCs prefer countries where the environmental laws are lenient. Taking advantage of the poor environmental regulations, European oil trading companies like Trafigura and Vitol export sulphur rich fuel which is beyond the permissible limits in Europe to African countries. This has caused serious health issues in Africa as the "dirty fuel" is the major contributor to respiratory issues (Ross 2016). However, these companies see nothing illegal about the business as they are following the laws. The fact that the ethics of doing business is absent and is primarily driven by profit irrespective of the damage caused is an ideology of colonialism. Something that is unfit for the European population is considered to be fine for the former colonies. The idea of superiority and inferiority rooted in racism is reflected from the capitalistic mindset. Under the UNGP, the companies have an obligation to respect the internationally recognised human rights (UNGP, principle 12) which is inclusive of the right to a clean environment. Moreover, in several instances the deforestation by MNCs causes adverse impact on the indigenous tribes that are deprived of their livelihoods and often displaced. A classic example of such environmental social injustice is the aluminium refinery project by an Indian MNC Vedanta Ltd. in the Indian State of Orissa which has affected the local tribe, Kondh. The nexus of the State and the MNC ensured that the project got the environmental clearance even though 118 acres of forest land was included in the project (Xaxa 2012, 188).

4. MNC – State nexus: Freeport McMoRan, Inc. and Indonesia in West Papua

4.1. A brief history of West Papua

Freeport McMoRan Inc. (Freeport) is an American mining company that has been a key player in the colonisation of West Papua in modern times. West Papua was previously a colony of the Dutch Government along with Indonesia. While Indonesia became an independent nation in 1949, the Dutch Government intended to declare West Papua as a separate independent State. However, the Indonesian Government claimed its right over the region and thus began an intense conflict between the Dutch Government and Indonesia.

When Indonesia sought the support of Soviet Union against the Dutch, the United States intervened to limit the influence of the communist bloc and brokered peace between the two nations through New York Agreement 1962 whereby the Dutch transferred the region to the United Nations Temporary Executive Authority and thereafter to Indonesia in 1963 without the knowledge of the West Papuans. In accordance with the 1962 Agreement, a referendum was held to decide on the status of West Papua: independent State or part of Indonesia. As the region was under military dictatorship (supported indirectly by the Americans), the Papuans could not exercise free will and the referendum resulted in West Papua becoming a part of Indonesia (HRW 2001, 7).

Soon thereafter, the American MNC, Freeport, entered into a 30-year contract to undertake mining activity in Papua. It is important to note, that under the said contract, Freeport was under no obligation towards the environmental regulations or for that matter the rights of the indigenous landowners (Kusumaryati 2021, 889–90). Freeport's association with the

White House is speculated to be the crucial factor in the securing of such "free-hand" contract (Kusumaryati 2021, 890–94).

4.2. Unhindered exploitation of West Papua

The Freeport's mining range slowly moved towards the Grasberg site which is the world's biggest gold mine and one of the largest copper mines. Freeport has been accused of committing extreme human rights violations in the region since the commencement of mining operations. The Indonesian State is aiding the company in this process with deployment of military power. According to a fact-finding committee, "slow-motion genocide" is being undertaken for decades in West Papua (Catholic Justice and Peace Commission of the Archdiocese of Brisbane 2016, 24). The indigenous population has been subjected to torture with instances of people being picked up by the military in Freeport's vehicles.

Moreover, Freeport is responsible for polluting the Aikjwa river system by releasing around 200,000 tonnes of toxic waste (Schulman 2016). The environmental degradation by destruction of mangroves, fertile lands, rivers, and land grabbing has resulted in forced displacement, loss of livelihood, and poverty of the locals. However, the Company prides in bringing culture and development (Kusumaryati 2021, 889–90) to the region as its largest employer and largest tax payer in Indonesia and declares its resolve to respect human rights in consonance with the UDHR and UNGP (Kusumaryati 2021, 889–90).

Freeport's case is a great example which confirms that MNCs are embodiments of chartered companies. Neo-colonial policies of the Freeport along with the support of the Indonesian Government has snatched away the autonomy, security, right to life, and livelihood of the West Papuans whilst destroying the rivers and forests, and filling the environment with toxic substances, all in pursuit of power and profit. In today's so-called "modern" times, an entire population is being wiped away in the name of capitalism by the capitalist forces. Racism which forms the core of colonialism is evident in this capitalistic venture. The indigenous population is deprived of education and any manner of development to ensure easy exploitation. It is a sad reality that despite the existence of the several international organisations that advocate for human rights and environmental rights, a region is being colonised in broad day light.

The only difference in the West Papua case is that the host country is one of the agents of the modern colonisers. Military power of the Indonesian Government is what facilitates Freeport's ventures. Police power was a major instrument used by EIC to ensure success and continuation of British rule in India. A totalitarian State uses the might of the police to impose its rule on the voiceless people and to suppress the voices of those who dare to fight against the injustice (Ghosh 2017, 31–32). The three pillars of the UDHR, freedom, equality, and dignity, form the bedrock of human existence. These rights are neither inviolable nor non-derogable. However, the racism intrinsic to the concept of capitalism and colonialism is antithetical to these rights.

5. Conclusion

Although it looks like the world has come a long way since the abolition of colonialism, a close study indicates the contrary. The form may have changed but the nature remains the same. Colonialism and capitalism can be used interchangeably depending on the times one is referring to. The two pre-requisites for the chartered companies to flourish were monopoly and free trade. These pre-requites become equally important for capitalism to spread and sustain itself.

Ideologies require agents to achieve the final goal, and similarly colonialism and capitalism have founded chartered companies and MNCs as the respective agents.

While the chartered companies were a creation of the State and MNCs are creations of the market, the support of the State becomes fundamental for functioning of these companies. MNCs are credited for transferring technology and capital from the West to the emerging economies but the reality is that these companies are gaining more from this association. The cost of production due to the domestic sources and cheap labour and the ease of doing business due to lenient or poor environmental regulations and land regulations which helps the companies to produce more at lesser prices. Moreover, the huge population of these developing nations like India and China provide a great market for the goods produced. Further, the enormous capital that these companies possess vests greater power in MNCs to influence the laws of the land of the host country.

Today, MNCs are not mere corporate players but have a great role in shaping international relations during the times of peace and war. The role of some major MNCs in funding the wars occurring in present times where millions of lives have been murdered in the name of politics and profit cannot be unseen. The influence of the former colonisers along with the MNCs in world politics is immense. In short, the prequel to capitalism and MNCs was colonialism and chartered companies.

Thus, it is pertinent to incorporate the UNGP in the daily operations of the MNCs, more so when operating in the Global South nations. Responsible business and corporate accountability should go deep into every step of the organisation including maintenance of a clean supply chain. To achieve success in this area, the role of both the home State and the host State becomes crucial. Regulations should be brought into force that align businesses with human rights instead of mere national level frameworks that lack any teeth. Moreover, the global community should come together to reprimand corporations. In extreme situations the States should not hesitate from imposing economic sanctions to contain human rights abuse by MNCs.

Apart from legal measures, the need of the hour is also an evolution of the individual mind. The predominance of excessive greed stemming from the fear of scarcity of resources leads to lack of respect for a living being. It is essential to change this mindset for the success of the legal framework. This change may take centuries or may not ever happen. But hope is what one needs to carry in their hearts to see a world which values life and nature.

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