

**TRANSPPOSITION OF UNITED NATIONS GUIDING PRINCIPLES ON  
BUSINESS AND HUMAN RIGHTS IN PAKISTAN:  
AN ANALYTICAL STUDY**



*(Thesis submitted in partial fulfillment for the award of LLM in International Trade Law)*

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## **Dedication**

This dissertation is lovingly dedicated to my grandfather who lightened the candle of knowledge in our hearts, to my soul and world my grandmother; whose unconditional love and support have been the driving force behind my academic pursuits, and to my life partner for her encouragement and belief in me.

I would also like to dedicate this research to all the aggrieved and vulnerable people affected by business activities/ abuses across Pakistan, their plight and exploitation at the hands of business entities motivated me to delve into this topic. It is my hope that this research work will bring positive change for the protection of their rights.

## **Acknowledgement**

First of all, I must thank Allah Almighty that I have been blessed to complete this thesis. I am grateful to the faculty of Shari 'ah and Law which gave me the opportunity to pursue my higher studies.

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## **Abstract**

The International Human Rights Framework provides a universally recognized, people-centered approach to companies' social & environmental adverse impacts on human rights. In 2011, the United Nations Human Rights Council endorsed the Guiding Principles on Business and Human Rights which mandate implementation of the United Nations 'Protect, Respect and Remedy' Framework. The significance of BHR Framework is also amplified under the pretext of Germany's Supply Chain Act and the EU's Corporate Sustainability Due Diligence Directive which can reshape international trade for the better. Recently, Pakistan has launched its first National Action Plan on Business and Human Rights in 2021 (making it the first South Asian country to have this plan) to transpose UNGPs in Pakistan. The United Nations Guiding Principles and the National Action Plan on Business and Human Rights propose a reformatory approach to address human rights abuses ensuing from the business activity. Therefore, an analytical socio-legal research study has been preferred to ponder upon the transposition of UNGPs on BHR in Pakistan. The findings revealed that more than 350 laws exist regulating different areas of BHR in Pakistan but lack enforcement mechanisms and synergies across provinces. Human Rights Due Diligence introduced under NAP-BHR is voluntary whereas remedial judicial and non-judicial mechanisms to redress human rights violations from business activity are primordial. In order to ensure effective transposition of UNGPs on BHR, it is recommended that a National level Business and Human Rights Act is enacted mandating Human Rights Due Diligence in the supply chains and value chains for all public and private business ventures. Dedicated and specialized Human Rights Tribunals/ courts must be established. Alternate Dispute Resolution or multi-stakeholder collaboration forums can also be promoted to remediate the adverse impact on human rights.



## **LIST OF ABBREVIATIONS**

3TG	Tin, Tungsten, Tantalum, and Gold
ADR	Alternate Dispute Resolution
BHR	Business and Human Rights
BWI	Building & Wood Workers' International
CAT	Convention Against Torture and other cruel, inhuman or degrading treatment or punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CO <sub>2</sub>	Carbon Dioxide
COVID-19	Coronavirus Disease 2019
CrPC	Code of Criminal Procedure
CSDDD	Corporate Sustainability Due Diligence Directive
CSOs	Civil Society Organizations
CSR	Corporate Social Responsibility
CSRD	Corporate Sustainability Reporting Directive
DVCs	District Vigilance Committees
EC	European Commission
EIAs	Environmental Impact Assessments
EOBI	Employees Old-Age Benefits Institution
EPA	Environmental Protection Agency
EU	European Union
EWCA	England and Wales Court of Appeal
FPCCI	Federation of Pakistan Chambers of Commerce & Industry
FTA	Free Trade Agreements

GSP	Generalized Scheme of Preferences
HR	Human Rights
HRDD	Human Rights Due Diligence
ICAR	International Corporate Accountability Roundtable
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Islamabad Capital Territory
IFC	International Finance Corporation
ILO	International Labour Organization
INGOs	International Non-Governmental Organizations
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
KCM	Konkola Copper Mine
KP	Khyber Pakhtunkhwa
MNCs	Multinational Corporations
MNEs	Multinational Enterprises
NAP-BHR	National Action Plan on Business and Human Rights
NGOs	Non-Governmental Organizations
NHRIs	National Human Rights Institutions
NIRA	National Industrial Relations Act
OAS	Organization of American States
OECD	The Organization for Economic Co-operation and Development
OICCI	The Overseas Investors Chamber of Commerce & Industry

PBS	Pakistan Bureau of Statistics
PFBWW	Pakistan Federation of Building and Wood Workers
PPC	Pakistan Penal Code
PPRA	Public Procurement Regulatory Authority
PWDs	People with Disabilities
PWF	Pakistan Workers' Federation
R2P	Right to Protect
SCOMET	Special Chemicals, Organisms, Materials, Equipment and Technologies
SDGs	Sustainable Development Goals
SECP	Securities and Exchange Commission of Pakistan
SLF	Sindh Labour Federation
SMEs	Small and Medium Enterprises
SPS	Sanitary and Phytosanitary Standards
SROs	Statutory Regulatory Orders
TBT	Technical Barriers to Trade
TETF	Trade Enforcement and Trade Facilitation Act 2015
TNCs	Transnational Companies
u/s	Under Section
UDHR	Universal Declaration on Human Rights
UK	United Kingdom
UKSC	United Kingdom Supreme Court
UN	United Nations
UNCRC	United Nations Convention on the Rights of Child
UNDP	United Nations Development Program

UNFCCC	United Nations Framework Convention on Climate Change
UNGPs	United Nations Guiding Principles
UNICEF	United Nations International Children's Emergency Fund
US/ USA	United States of America
VSS	Voluntary Sustainability Standards
WTO	World Trade Organization

## **LIST OF LEGISLATION RELATED TO BUSINESS ACTIVITIES IN PAKISTAN**

- Pakistan Penal Code 1860
- Explosives Act 1884
- Code of Criminal Procedure 1898
- Electricity Act, 1910
- Workmen's Compensation Act 1923
- Coal Mines Regulation 1923
- Mines Act 1923
- Metalliferous Mines Regulations, 1926
- Children (Pledging of Labour) Act, 1933
- Factories Act, 1934
- Dock Laborers Act, 1934
- Payment of Wages Act 1936
- Electricity Rules, 1937
- Employer's Liability Act 1938
- Mines Maternity Benefits Act 1941
- Weekly Holidays Act 1942
- Prevention of Corruption Act 1947
- Pakistan Commission of Inquiry Act 1956
- Pakistan Criminal Law Amendment Act, 1958
- West Pakistan Maternity Benefit Ordinance 1958
- Punjab Maternity Benefits Ordinance 1958
- Payment of Wages Rules 1960
- West Pakistan Anti-Corruption Establishment Ordinance 1961
- Road Transport Workers Ordinance 1961
- The Minimum Wages Ordinance, 1961
- West Pakistan Minimum Wage Rules 1962
- The Industrial and Commercial Employment (Standing Order) Ordinance, 1968
- Companies Profit (Workers Participation) Act 1968
- Civil Servants Leave Rules 1968

- The Shops and Establishments Ordinance 1969
- Minimum Wages for Unskilled Workers Ordinance 1969
- Workers Children (Education) Ordinance 1972
- Employee Cost of Living (Relief) Act 1973
- Newspaper Employees (Conditions of Service) Act 1973
- Dock Workers (Regulation of Employment) Act 1974
- Employees' Old-Age Benefits Act 1976
- Punjab Factories Rules 1978
- Punjab Factories Rules 1978
- Revised Punjab Leave Rules 1981
- Punjab Coal Mines Rescue Rules 1988
- Punjab Judicial Service Rules 1994
- Disabled Persons (Employment and Rehabilitation) Ordinance 1981
- Employment of Children Act 1991
- Bonded Labour System (Abolition) Act 1992
- Employment of Children Rules 1995
- Pakistan Environmental Protection Act 1997
- Prevention and Control of Human Trafficking Ordinance 2002
- Industrial Relations Ordinance, 2002
- Punjab Mining Concession Rules 2002
- Sindh Mining Concession Rules 2002
- Hazardous Substance Rules, 2003
- NWFP Mining Concession Rules 2005
- The Agricultural Pesticide Rules, 1973 (as amended in 2007)
- Workers Welfare Fund Ordinance 1971 (as amended in 2008)
- Protection against Harassment of Women at Workplace Act 2010
- Industrial Relations Act 2012
- Punjab Industrial Relations Act 2010
- Khyber Pakhtunkhwa Industrial Relations Act 2010
- Balochistan Industrial Relations Act 2010
- The Punjab Protection Against Harassment of Women at the Workplace (Amendment) Act, 2012

- Balochistan Environmental Protection Act 2012
- The Punjab Protection Against Harassment of Women at the Workplace Rules, 2013
- Khyber Pakhtunkhwa Factories Act 2013
- Khyber Pakhtunkhwa Minimum Wages Act 2013
- Khyber Pakhtunkhwa Maternity Benefits Act 2013
- Khyber Pakhtunkhwa Explosives Act 2013
- The Punjab Commission on the Status of Women Act, 2014
- Sindh Workers Welfare Fund Act 2014
- Employees Old-age Benefits Act in 2014
- Sindh Differently Abled Persons (Employment, Rehabilitation and Welfare) Act, 2014
- Khyber Pakhtunkhwa Environmental Protection Act 2014
- Sindh Bonded Labour System (Abolition) Act, 2015
- Sindh Minimum Wages Act 2015
- Sindh Factories Act 2015
- The Sindh Terms of Employment (Standing Orders) Act 2015
- Sindh Bonded Workers Act 2015
- Hazardous Occupation Rules (Silicon) 2015
- Khyber Pakhtunkhwa Prohibition of Employment of Children Act 2015
- The Sindh Employees Social Security Act 2016
- Balochistan Protection Against Harassment of Women at Workplace Act 2016
- Balochistan Witness Protection Act 2016
- The Companies Act 2017
- Sindh Prohibition of Employment of Children Act 2017
- Khyber Pakhtunkhwa Mines and Mineral Act 2017
- Balochistan Persons with Disability Act 2017
- Balochistan Senior Citizens Act 2017
- Balochistan Commission on the Status of Women Act 2017
- Transgender Persons (Protection of Rights) Act 2018
- The Punjab Bonded Labour System (Abolition) (Amendment) Act 2018

## **LIST OF CASES**

- Vedanta Resources plc v. Lungowe (2019) UKSC
- Okpabi v Royal Dutch Shell Plc (2019)
- Four Nigerian Farmers and Milieudefensie v. Shell (2022)
- Hamida Begum v Maran (UK) Ltd [2021] EWCA Civ 326
- Nevsun Resources Ltd. v. Araya



# CHAPTER 1

## INTRODUCTION, SIGNIFICANCE AND SCOPE OF THE STUDY

### 1.1. Thesis Statement

The United Nations Guiding Principles on Business and Human Rights if implemented in practice can help the State and policy makers in addressing adverse human rights impacts of business activities on people and seek greater market access for exports in the world.

### 1.2. Introduction

Companies usually tend to approach social issues through their Corporate Social Responsibility (CSR) programmes. However, many CSR initiatives are undertaken selectively, based on what the company voluntarily chooses to address. In contrast, a human rights approach requires these companies to respect all human rights; they do not have the option of picking and choosing to deal with only those issues with which they feel comfortable<sup>1</sup>. The human rights violations in the wake of ever-increasing certification and standard requirements i.e., Commitment to HR conventions of European Union for GSP Plus concessions<sup>2</sup>, Commitment to HR conventions of USA<sup>3</sup>, Australia<sup>4</sup> and New Zealand for GSP concessions can have serious consequences on the bilateral trade of Pakistan with its partners.

In this regard, a Human Rights framework provides a universally recognized, people-centered approach to companies' social & environmental impacts. In 2011, the United Nations Human Rights Council endorsed the "Guiding Principles on Business and Human Rights (BHR)<sup>5</sup>" which also entails implementation of the United Nations 'Protect, Respect and

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<sup>1</sup> Wettstein, "CSR And the Debate on Business and Human Rights: Bridging the Great Divide."

<sup>2</sup> EU GSP+ Commitments, available at:

<https://trade.ec.europa.eu/access-to-markets/en/content/generalised-scheme-preferences-plus-gsp>

<sup>3</sup> Principles of fifteen core conventions on human rights and labor rights listed in the GSP regulation of USA, available at:

<https://sgp.fas.org/crs/misc/RL33663.pdf>

<sup>4</sup> Australia's commitment to Human rights, labour and environmental standards, available at:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Joint\\_Standing\\_Committee\\_on\\_Trade\\_and\\_Investment\\_Growth/Approachtotrade/Report/Chapter\\_4\\_-\\_Human\\_rights\\_labour\\_and\\_environmental\\_standards](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Joint_Standing_Committee_on_Trade_and_Investment_Growth/Approachtotrade/Report/Chapter_4_-_Human_rights_labour_and_environmental_standards)

<sup>5</sup> UN Guiding Principles on Business and Human Rights. Available at:

[https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)

Remedy' Framework<sup>6</sup>. The Council had also established a Working Group on Business & Human Rights (BHR), and an annual Forum on business & human rights, organized by the Working Group.

### Three Pillars of UN Framework on BHR

- a) **Protect:** the state duty to protect against human rights abuses;

The Guiding Principles affirm that under existing international human rights law, States have the 'duty to protect against human rights abuses' by all actors in society, including businesses. This means that States must prevent, investigate, punish and redress human rights abuses that take place in domestic business operations. Furthermore, The Guiding Principles recommend that States set clear expectations that companies domiciled in their territory/ jurisdiction respect human rights in every country and context in which they operate.

- b) **Respect:** the corporate responsibility to respect human rights; and

The Guiding Principles affirm that business enterprises must prevent, mitigate and where appropriate, remedy human rights abuses that they cause or contribute to. Businesses must seek to prevent or mitigate any adverse impacts related to their operations, products or services, even if these impacts have been carried out by suppliers or business partners.

- c) **Remedy:** greater access by victims to effective remedies.

One of the fundamental principles of the international human rights system is that when a right is violated, victims must have access to an effective remedy. The Guiding Principles affirm that the State duty to protect rights includes ensuring that when human rights are violated by companies within their territory and/or jurisdiction, the State must ensure access to an effective remedy for those affected. The state duty to provide access to effective remedy includes taking appropriate steps to ensure that State-based domestic judicial mechanisms are able to effectively address business-related human rights abuses. States should also provide effective and appropriate non-judicial grievance mechanisms with the capacity to hear and adjudicate business-related human rights complaints and provide remedy.

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<sup>6</sup> UN Working Group, "THE UN Guiding Principles on Business and Human Rights: An Introduction".

### 1.2.1. Business related Human Rights Issues in Pakistan

Pakistan is a country with the densest population of 287 per square kilometer where approximately 60 million workers continue to experience numerous obstacles, including income and wealth inequality, wage inequality and gender disparity, inequality of opportunity, lack occupational health and safety, poor working conditions, denial of minimum wages, unregistered workers, informal economy, difficulties in forming trade unions, and child and bonded labour among others. The human rights violations emanating from business activities are innumerable.

Business-related human rights issues significantly impact the lives of all Pakistanis in one way or the other. It is imperative for a corporation to recognize the adverse human rights impacts it poses to the human rights of others. There is a growing literature to advocate for the corporate responsibility to operate diligently, which was once solely considered the responsibility of the State. There are other international initiatives and standards related to corporate diligence such as “OECD Guidelines for Multinational Enterprises”<sup>7</sup>, “ILO’s Fundamental Principles and Rights at Work”<sup>8</sup>, “OECD Due Diligence Guidance for Responsible Business Conduct”<sup>9</sup>, and “Ten Principles of the United Nations Global Compact”<sup>10</sup> etc. but these are voluntarily in nature. UNGPs, on the other hand, provide a practical guide to businesses to respect human rights. The aim of UNGPs is not to introduce any new obligations on governments, businesses or any other part. Rather UNGPs aims to provide a framework through which governments, businesses, and any other entity can ensure business activities are conducted in a way that respects human rights.

The State and the Corporations significantly influence the positive or negative impact of economic activity on human rights, contingent upon their approach to the issue. UNGP dictate that State authorities and businesses must adhere to the highest international standards for human and labour rights in alignment with global human rights norms. These standards are also delineated in several international treaties, guidelines, and frameworks published by numerous global organizations. The European Union has granted Pakistan General Scheme of

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<sup>7</sup> “OECD Guidelines for Multinational Enterprises”, available at: [https://www.oecd.org/en/publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct\\_81f92357-en.html](https://www.oecd.org/en/publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en.html)

<sup>8</sup> “ILO’s Fundamental Principles and Rights at Work”, available at: <https://www.ilo.org/media/267421/download>

<sup>9</sup> “OECD Due Diligence Guidance for Responsible Business Conduct”, available at: <https://www.oecd.org/en/topics/sub-issues/due-diligence-guidance-for-responsible-business-conduct.html>

<sup>10</sup> “Ten Principles of the United Nations Global Compact”, available at: <https://unglobalcompact.org/what-is-gc/mission/principles>

Preference Plus (GSP+) status, requiring the country to adhere to 27 conventions on human and labour rights, environmental protection and governance<sup>11</sup>. These conventions in totality codify essential standards that embody the principles embedded in the UNGPs. Therefore, it is sufficed to say that UNGPs do not compel the Government of Pakistan or the corporations therein to embark any additional obligation rather these duties and responsibilities are inherent in our bilateral or multi-lateral trade relations with the world.

Some of the key Human and labour rights risks related to business activities faced by Pakistan, requiring State intervention through NAP-BHR are detailed as under:

- a) **Gender and Racial Discrimination:** Women, religious & ethnic minorities and PWDs are often subjected to intolerable degree of discrimination which negatively impacts their access to healthcare, justice, and employment opportunities. It is however illegal for employers to discriminate against women and minorities based on their social status, ethnic affinity, gender or sex. Consequently, the affected persistently earn over 58% less than their counterparts (Compendium on Gender Statistics 2019 - PBS<sup>12</sup>).
- b) **Unregistered labour and wage issues:** Under UNGPs, companies are required to hire employees through formal contracts and register them with EOBI for benefits and protections such as social security and old age pension benefits. Unfortunately, in Pakistan, companies continue to exploit employees because workers are hired without formal contracts which exclude them for benefits and protections. Besides, wage inequality is still a major issue in Pakistan especially in textile industry despite the enactment of minimum wages ordinance in 1961. Unfortunately, lack effective implementation.
- c) **Lack of decent Working Conditions:** The working conditions of factories, especially the garment industry, mining, and agriculture are considered worst against the international standards of modern times. Every six out of 10 workers are at the risk of unregulated working terms and is bound to accept employment under dangerous working conditions<sup>13</sup>.

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<sup>11</sup> 27 Conventions of EU GSP+, available at: <https://trade.ec.europa.eu/access-to-markets/en/content/generalised-scheme-preferences-plus-gsp>

<sup>12</sup> Compendium of Gender Statistics 2019 by PBS, available at: [https://www.pbs.gov.pk/sites/default/files/social\\_statistics/publications/Compendium\\_of\\_Gender\\_Statistics\\_2019.pdf](https://www.pbs.gov.pk/sites/default/files/social_statistics/publications/Compendium_of_Gender_Statistics_2019.pdf).

<sup>13</sup> Saroop Ijaz, "No Room to Bargain - Unfair and Abusive Labor Practices in Pakistan", Human Right Watch, January 23, 2019, accessed at: <https://www.hrw.org/report/2019/01/23/no-room-bargain/unfair-and-abusive-labor-practices-pakistan>.

- d) Child and bonded labour:** According to Global Slavery Index 2023, there are approximately 2.4 to 3.2 million people working in bonded labor in Pakistan<sup>14</sup>. Despite adoption of ILO convention no. 105 and enactment of various laws at federal and provincial level to prevent child and bonded labor, these practices prevail in several regions and sectors especially in sectors such as agriculture, mining, surgical instruments, sports goods, fisheries, and small cottage industries.
- e) Union busting at workplace:** The International Labour Organization (ILO) in its report "A Profile of Trade Unionism and Industrial Relations in Pakistan 2018"<sup>15</sup> highlighted that merely 441,000 individuals, or 1.2%, of Pakistan's urban workforce are union members. Although unionization is a fundamental right of workers, considerable obstacles impede their ability to exercise these rights, participate in collective bargaining, undertake industrial action, and obtain union representation during negotiations and disputes. The rights to freedom of expression, peaceful assembly, and protest have been infringed upon by workers and activists who have faced threats, intimidation, and, at times, prosecution for exercising these rights.

Over the years, Pakistan has ratified several key international Human Rights instruments<sup>16</sup> which have been transposed into the domestic regime through a wide variety of federal and provincial laws and policies. These laws have, however been inadequate to address a wide range of human rights violations in economic activities, including violations at workplaces and in business operations. Effective implementation of policy instruments has remained a key challenge in the country, where Pakistan had lacked a comprehensive National Action Plan on Business & Human Rights compelling the government and the businesses to respect human rights throughout their business activities. Therefore, after an extensive series of dialogues and consultation sessions, the Cabinet has approved the National Action Plan on Business and Human Rights (NAP-BHR) on 28<sup>th</sup> September 2021, making Pakistan the first South Asian country to have this plan.

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<sup>14</sup> Modern slavery in Pakistan - Global Slavery Index 2023, available at:

<https://cdn.walkfree.org/content/uploads/2023/09/27164917/GSI-Snapshot-Pakistan.pdf>

<sup>15</sup> ILO Report: A profile of trade unionism and industrial relations in Pakistan, available at:

<https://www.ilo.org/media/417381/download>

<sup>16</sup> UN Human Rights Treaties Database, available at:

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=131&Lang=EN)

### 1.2.2. National Action Plan on Business and Human Rights (NAP-BHR)<sup>17</sup>

Recently, Pakistan has launched its first National Action Plan on Business and Human Rights (making it the first South Asian country to have this plan) which aims at fulfilling Pakistan's commitment to protect against adverse human rights impacts resulting from business activity, and creating an environment conducive to fostering corporate respect for human rights. NAP-BHR aims to curtail human rights violations resulting from business activity and envisages a reformatory approach to remedy such abuses through legislative, judicial & administrative means. In this regard, eight priority areas comprising of over 69 Actions have been identified for implementation both at Federal and Provincial level. These priorities areas are:

- i. Financial Transparency, Corruption and Human Rights Standards in Public Procurement Contracts
- ii. Anti-Discrimination, Equal Opportunity, and Inclusion
- iii. Human Rights Due Diligence
- iv. Labour Standards and the Informal Economy
- v. Child Labour
- vi. Forced or Bonded Labour
- vii. Occupational Health and Safety
- viii. Access to Remedy

The National Action Plan on Business and Human Rights lays out the necessary steps for businesses in Pakistan to adapt the three pillars of the National Action Plan at strategic, portfolio and transaction level. Indeed, the National Action Plan sets out how financial sectors must take on board these three pillars and respect the labour laws in the country, give employees equal opportunities and respect collective bargaining for their living wages etc. In the next phase of GSP+ status in Pakistan where a monitoring mechanism will be put in place from 2023, there is a need that this Action Plan translates into the policies and practices for

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<sup>17</sup> On 28th September 2021, the Government of Pakistan approved the National Action Plan on Business and Human Rights. Pakistan is now the first country in South Asia to have a National Action Plan aimed at preventing human rights violations resulting from business activity. Available at: [http://mohr.gov.pk/SiteImage/Misc/files/NAP-BHR\(1\).pdf](http://mohr.gov.pk/SiteImage/Misc/files/NAP-BHR(1).pdf)

clear compliance on human rights treaties and best practices in the area of environment, social and labour laws.

Since the approval of National Action Plan on Business & Human Rights from the Cabinet, the Government of Pakistan has undertaken a number of initiatives on the implementation of its eight (08) priority areas, including notification of an Inter-Ministerial & Inter-Provincial Steering Committee of National Action Plan on Business & Human Rights (formed to oversee the implementation at the national level under the Chair of Ministry for Human Rights in 2022), stakeholder consultations, dialogues with national & international partners, and trainings on BHR Framework. The NAP-BHR Secretariat has been established at the Ministry of Human Rights. The steering committee comprises of 32 notable policy makers, secretaries, businessmen & decision makers and convenes at least one meeting every year. The Secretariat has identified relevant over 350 stakeholders at the federal, provincial and district level, both in the public and private sectors to provide support and implement 69 Actions of NAP-BHR.

The Inter-ministerial Inter-provincial Steering Committee chalked out a detailed roadmap to implement the framework by bridging gaps in the existing legal framework; especially in Balochistan and Khyber Pakhtukhwa provinces in areas such as health, safety of miners, protection of home-based workers, preventing night shift women workers, consensus on age of child to work, discrimination, forced/ bonded labour, and other issue. In course of implementation, Pakistan has made great strides for the ratification, adoption and implementation of ILO conventions (i.e., Convention 190 on Elimination of violence and Harassment in world of work, Convention 175 regarding Safety and Health in Construction, and Convention 155 concerning Occupation Safety & Health). In order to ensure protection of adverse human rights impacts at the provincial and district level, the Inter-ministerial Inter-provincial Steering Committee has also established Provincial Steering Committees & District Vigilance Committees (DVCs), mandated to focus on each specific priority area of the NAP-BHR under the Chair of respective Human Rights Departments in all the four provinces. The NAP-BHR provides for initiating a dialogue on HRDD in Pakistan by making it one of the eight priority areas. Accordingly, MoHR in collaboration with UNDP through Research Society of International Law has prepared a comprehensive set of Business & Human Rights Guidelines documenting process of Human Rights Due Diligence<sup>18</sup> for businesses, which is

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<sup>18</sup> BHR Guidelines - Human Rights Due Diligence, available at: <https://www.bhrpak.org/wp-content/uploads/2023/09/BHR-Guidelines.pdf>

based on the nature and scale of different business entities and their work. In this regard, a set of nine guidelines ensuring the minimum HRDD standards have been disseminated with all the relevant stakeholders.

The subject of Business and Human Rights and UNGPs on BHR have become a new mandate for the States and Corporations. The enforcement of BHR has become an obligation, therefore, implementation of NAP-BHR must be taken seriously. Pakistan needs to be adequately prepared and well positioned for potential international human rights obligations and requirements for future trade relations with the world.

### **1.3. Significance of the Study**

The United Nations Guiding Principles and the National Action Plan on Business and Human Rights propose a reformatory approach to address human rights abuses ensuing from the business activity. These reformatory interventions propose taking actions through legislative, judicial & administrative means. Therefore, it is pertinent to study the transposition of UN Guiding Principles on Business and Human Rights in Pakistan and their implications for the protection and promotion of Human rights in business activities so that their adverse impact on Human Rights and Pakistan's exports may be avoided. Moreover, in the wake of new export controls, erected by the U.S., Germany, Australia, Denmark, Norway, Canada, France, the Netherlands and the United Kingdom in the joint statement on the eve of "Summit of Democracy 2021", under "Export Controls and Human Rights Initiative" presents a glaring case for the importance of studying this topic<sup>19</sup>. In turn, the study will also explore whether fulfilling International Human Right commitments and adoption of HR conventions enforced by European Union for GSP+ and other GSP Schemes i.e., USA, Australia and Japan will help Pakistan increase its trade volume and market access in the developed market.

### **1.4. Literature Review**

Ruggie has documented the evolutionary nature of Business and Human Rights in international politics. In his paper titled 'Business and Human Rights: The Evolving

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<sup>19</sup> Milton, "Leveraging Export Controls to Promote Human Rights." Available at: <https://www.crdglobal.org/insights/leveraging-export-controls-promote-human-rights>.



International Agenda', he reported that efforts to introduce binding international rules to regulate businesses and corporations first started in 1970s<sup>20</sup>. However, it took over decades for the UN sub-commission on the Promotion and Protection of Human Rights to establish a working group in 1998. The Working Group in 2003 presented its "Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights<sup>21</sup>" which provided Human Rights standards for companies/ corporation covering the protection of civil, political, economic, social and cultural rights, consumer protection, and promoted environment-friendly corporate practices. Apart from states' Duty to Protect, the newly emerging regulations laid individual responsibility on the corporations to protect corporate human rights abuses including international crimes<sup>22</sup>. The framework expanded the scope of corporate human rights abuses whereby companies were subjected to the risk of civil or criminal liability for violating these standards. Nonetheless, this doctrine was initially viewed as an international human rights instrument that imposes indirect responsibility on corporations to be exercise under domestic law but in the last decade, these soft laws, self-regulations, and voluntary compliances have acquired the status of international law obligations & commitments and have been associated with the market access and export controls<sup>23</sup>.

In her essay, 'The Amoral of Profit: Transnational Corporations and Human Rights', Stephens does a nice job of establishing that corporations' violation of human rights is not just a recent development. She established the importance of providing remedies in a timely fashion. According to Stephens, if a remedy is not provided immediately, it is easy to lose site of the impact that initial violations have on humanity. Businesses are made to increase profits. When decisions are made regarding businesses, the sole goal is to maximize profit with little regard to the effect that might have on human rights or the environment. Justification for this approach regarding profit maximization can be found in Safire's claims that "the primary social responsibilities of a corporation are to serve its owners by returning a profit and its community by paying taxes; to earn the allegiance of customers by delivering value, and to provide a secure future for employees who help it succeed in the marketplace." Stephens goes on to reiterate

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<sup>20</sup> Ruggie, "Business and Human Rights: The Evolving International Agenda. 819-840.

<sup>21</sup> "Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights", available at: [https://www.digitallibrary.un.org/record/498842/files/E\\_CN.4\\_Sub.2\\_2003\\_12-EN.pdf](https://www.digitallibrary.un.org/record/498842/files/E_CN.4_Sub.2_2003_12-EN.pdf)

<sup>22</sup> Gomez and Robin, "Business and human rights in Asia: duty of the state to protect."

<sup>23</sup> Pinkert, "Export Controls and Human Rights." Available at: <https://corpaccountabilitylab.org/calblog/2021/12/21/export-controls-and-human-rights>.

that many corporations have grown to a level of economic power, which often supersedes that of most nation-states. With the vast power, corporations often chose to set up shop in locations where governments are not strong enough to monitor the corporate actions.

Schutter explored the political feasibility of emerging new regime of Business and Human Rights and published his findings in the paper titled “Towards a New Treaty on Business and Human Rights”. He presented that the states have four viable scenarios to inculcate the doctrine of Business and Human Rights which has now become a binding commitment for states in the 21<sup>st</sup> Century<sup>24</sup>. The first option that international community can opt is to strengthen the states’ duty to protect human rights. Strengthening the states’ duty to protect under international conventions such as “The International Covenant on Civil and Political Rights” (ICCPR), “The Convention on the Elimination of All Forms of Discrimination against Women” (CEDAW), and “The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (CAT) etc., entails protection of individual’s rights not only by the state or its agents but also from the private persons including companies/ corporations. The second option which is considered most viable now-a-days is to oblige states in adoption and implementation of national action plans on business and human rights so that a regulatory framework protecting human rights is established from the ground. This approach helps establish an institutionalized approach towards promoting and protecting human rights. UN Guiding Principles in this regard facilitate both the state and individuals to place all the necessary policies, laws, and processes to implement their commitments. National Action Plan on Business and Human Rights promotes vertical policy coherence, accelerates collective learning, and provides room for gradual convergence. Globally, this option is being widely incorporated and incentivized for securing investment, export credits, market access, trade and labour movement. Third approach considered for implementing Business & Human Rights doctrine is to impose direct legal obligations on corporation which given the sheer number of corporations is often argued to fail. The fourth policy option recommended for implementation of BHR regime is to establish a framework for Mutual Legal Assistance. In today’s globalized world, transnational companies (TNCs) operate in more one or two countries whereas in order to prevent corporate human rights abuses and environmental degradation, a cooperation among countries is paramount.

Norton Rose published a report titled “Law around the World” while documenting the Business Human Rights stated that since 2020, a bundle of developments around the globe

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<sup>24</sup> Schutter, "Towards a New Treaty on Business and Human Rights."

have taken place in this area. The businesses are now increasingly being required to report and manage their potential human rights impacts<sup>25</sup>. Stakeholders, including investors, employees and customers are incorporating human rights performance into their decision-making and planning processes. The report stated that USA and Canada are leading the legal framework on business and human rights whereby the regulatory regime for business and human rights has drastically changed from soft law and CSR into hard law<sup>26</sup>. Even though the doctrine is yet to fully mature but the regulatory climate on BHR is becoming an essential part of businesses. Many countries in America Region i.e., Ecuador, Argentina and Peru, Colombia and Chile have already developed their National Action Plans. Moreover, in the Asia Pacific, Australia, Japan, Thailand, Singapore, and Hong Kong have taken great strides in the development and implementation of National Action Plans<sup>27</sup>. The Europe region is leading the way when it comes to legislation on business and human rights; their due diligence, as well as reporting obligations which extend to the full range of internationally respected human rights. In Africa, Kenya announced its National Action Plan (NAP) on business and human rights in July 2019 whereas Tanzania, Morocco, Uganda, Mozambique, and many other countries are in the process of developing their NAPs.

European Law Institute in its publication “Business and Human Rights: Access to Justice and Effective Remedies” gave an account of European legislation on Business and Human Rights and stated that MNCs in Europe can exercise social and economic influence over their counterparts if their actions fall in contravention to the human rights. EU Law requires businesses around the globe to respect human rights standards whether they are located inside Europe or abroad<sup>28</sup>. In this regard, if the European Union or any of the enterprise/ corporation/ consumer reports the violations of human rights (business or otherwise) will lead to negative consequences which under normal circumstances is a restriction on access to European markets. However, in connection with the UN Guiding Principles on Business and Human Rights, if the act/ action of a corporation/ business entity/ state amount to abuse of human rights; an effective remedy to rectify the situation must be rendered. The National Action Plan on Business and Human Rights (NAP-BHR) provides a mechanism on how to remedy human rights abuses caused by economic/ business activity. Therefore, an examination of human right

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<sup>25</sup> Norton Rose Fulbright Institute, “Law around the World: Business and Human Rights.”

<sup>26</sup> Wettstein, Florian. 2009. "Beyond voluntariness, beyond CSR: Making a case for human rights and justice." 125–152.

<sup>27</sup> Mapping National Action Plans on business and human rights globally, available at: <https://globalnaps.org/>

<sup>28</sup> European Law Institute. “Business and Human Rights: Access to Justice and Effective Remedies.”

due diligence, and collective redressal of human rights abuses in lieu of Business and Human Rights is highly desirable.

After comprehensive examination of literature review, it has been observed that Pakistan is the first South Asian country to introduce the ‘National Action Plan on Business and Human Rights’ and no research study has ever been conducted in Pakistan to evaluate the implications and challenges in the transposition of United Nations Guiding Principles on Business and Human Rights in Pakistan. The research gap provides a glaring impetus and encouragement to conduct this research study.

### **1.5. Research Questions**

- a) What are the theoretical foundations of the newly emerging concept ‘Business and Human Rights’ and its legal implications/ responsibility on Corporations?
- b) What is the interplay between UNGPs on BHR, New Corporate Social Responsibility Framework, and Human Rights?
- c) Whether the proposed reforms/ interventions under NAP-BHR are sufficient to transpose UNGPs and improve the regulatory framework for businesses in Pakistan?
- d) Whether the National Action Plan on Business and Human Rights, if implemented, can help the State in addressing Human Rights situation in Pakistan?

### **1.6. Objectives of the Research**

The research aims to explore the evolving concept of Business and Human Rights (BHR), focusing on its theoretical foundations and the legal responsibilities it places on corporations. It will investigate the theoretical origins of BHR, the emerging role of businesses in respecting human rights, and the legal implications of corporate accountability for human rights violations. The study will also analyze the interplay between the UN Guiding Principles on Business and Human Rights (UNGPs), New Corporate Social Responsibility (CSR), and human rights, evaluating how New CSR framework aligns with or complements

the UNGPs on BHR. The research will assess whether the inculcation of these principles within business activities can enhance corporate respect for human rights. Furthermore, the research will critically assess the National Action Plan on Business and Human Rights (NAP-BHR) in Pakistan, specifically evaluating whether the proposed reforms are sufficient to transpose the UNGPs into Pakistan's legal and regulatory framework. The study will examine whether these reforms are adequate to foster corporate accountability and respect for human rights in businesses operating in Pakistan; identifying potential gaps in enforcement and implementation.

Finally, the study will evaluate the potential impact of NAP-BHR on improving human rights in Pakistan. It will assess how effective the NAP-BHR can be in addressing critical human rights issues such as labor rights abuses, child rights, minorities rights, women rights, environmental rights and corporate exploitation in business activities, and whether its implementation can help Pakistan align more closely with international human rights standards. The research will provide policy and legal recommendations to strengthen the transposition of the UNGPs in Pakistan and contribute to global discourse on BHR, particularly in developing countries. By examining these dimensions, the research will offer insights into improving corporate accountability and advancing human rights protections in Pakistan.

## **1.7. Research Methodology**

In this research, Socio-Legal approach has been applied to analyze different perspectives related to business and human rights. In this regard, public welfare theories have been studied to understand different aspects of businesses, human rights and social welfare which are being affected by the business activities. An extensive review of literature and theoretical framework based on treaties, conventions, different regimes, law journals, legislations, writings of legal experts, policy papers, UN working papers and UN guiding

principles has been done to understand the relation and impacts of business activity, corporate responsibility, and human rights.

Legal framework alone cannot lead to critical analysis. Therefore, grounded theory approach has been used in this thesis to directly interact with the industry personnel, government official, and human rights activists working for the promotion of exports & human rights. Furthermore, specific consultative sessions and seminars of Ministry of Human Rights were attended to understand the historical roots, cultural sensitivities, industry divides and Human Rights dynamics of Pakistan. The research design is qualitative in nature based upon interactive sessions and observation findings acquired from industry visits and seminars. Later on, inductive reasoning has been used to augment understanding of the topic. All citations within this research paper will follow the guidelines of the ‘Chicago 16<sup>th</sup> Edition referencing’ style.

This dissertation includes the analysis of extensive literature review for which many journal articles, books, resolutions, case studies and legislation have been selected, followed by the extensive analyses of theoretical foundations which led to the development of the business and human rights framework in Chapter 2. Commentary on the UN Working Group on BHR (its mandate, functions, and impact) and UNGP on Business and Human Rights which serve as the umbrella for all action plans has been recorded in Chapter 3 whereas Chapter 4 focuses on the transposition of UNGP on BHR in Pakistan. It covers the review of existing laws prior to introduction of National Action Plan on BHR, salient features of the action plan. Implementation/ progress, and critical analyses of the transposition efforts regarding NAP on BHR in Chapter 5. Finally, the Chapter 6 presents the recommendations and conclusion of this study.

## **CHAPTER 2**

# **BUSINESS AND HUMAN RIGHTS: THEORETICAL FOUNDATIONS**

### **2.1. Introduction**

Human rights have evolved further from the protection of fundamental rights, the discussion on human rights today is focused on the role of businesses and their responsibility to protect and promote human rights and provide remedy to the violations of human rights abuses arising from business activity. In this chapter, the theoretical foundations of Business and Human Rights Framework including, the role of businesses as a political actor, corporate social responsibility with regard to human rights, and the intersection of export control and human rights have been examined in depth. First half of this chapter is devoted to a consideration of the relevance of human rights to the business world. Additionally, shedding light on the intersection of export control and human rights, this chapter provides a comprehensive theoretical analysis of human rights issues in corporations which goes beyond corporate social responsibility.

### **2.2. What is distinctive about Business and Human Rights?**

Defining human rights is an important academic question with far-reaching real-world implications. According to prominent corporate ethicists, the discussion on human rights needs a solid ethical foundation and demands reasoned dedication to build a stable intellectual stance". Therefore, human rights are a) rights; b) acquired by individuals; c) subjects of considerable concern; and d) inalienable, i.e., they cannot be waived. In actuality, there are three major viewpoints among business ethicists regarding the breadth of human rights. Relativists argue that human rights have cultural origins that emanate primarily from western cultures. They consider human rights subject to the values of a culture and therefore believe that human rights cannot be universal. The universalists, on the other hand, are utilitarian and believe in the principles of universality that human beings, irrespective of their age, gender, sex, nationality, religion, ethnicity, caste, or political affinity, have certain universal

fundamental rights that are inalienable, inseparable, and indivisible<sup>29</sup>. Nonetheless, the Universalists take a quite restrictive point of view, maintaining that basic human rights are limited in scope. They do not acknowledge various aspects of morality or positive human rights (economic and social human rights) to be of significance in their discourse for the protection of human rights in general and protection of human rights from business activity in specific. Some business ethicists hold a more expansionist approach to human rights. Expansionists do not distinguish between basic or non-basic human rights rather perceive human rights as something that should be ideally desired for as an end including rights, duties, morality, and values. In conclusion, the range of opinions on this initial query is both wide and disconcerting. Some business ethicists argue that businesses only have a responsibility to respect negative human rights, such as the right to not be subjected to torture or slavery. Others believe that businesses also have a duty to promote positive human rights, like the right to education or healthcare. Some take a middle-ground approach, advocating for a focus on core human rights that are essential for human dignity and well-being. The debate surrounding human rights and businesses is ongoing and complex. Therefore, Human rights standards are generally believed the product of international agreements. Regardless of one's stance/ view point on human rights, it is clear that human rights are essential principles that should be upheld in all aspects of society, whether it be in private or public settings, at home or in the workplace. It is important for businesses to consider these ethical principles when making decisions that impact individuals' rights and well-being.

The concept of Business and Human rights continues to evolve. Human rights violations committed by business enterprises and their management are a major focus of our inquiry. This section's goal is to set these statements apart from those that rely on the wider ethical duties of business enterprises and their administrators. As such, the question at hand is what, if anything, separates business and human rights from merely being an expansion or subgroup of the research of the moral responsibility of multinational firms and their management. The then UN Secretary General Kofi Annan unveiled a Global Compact initiative on Human Rights at Davos in 1999 which encourages businesses to "support and honor the protection of nationally and internationally declared human rights within their influence and to ensure that they are not implicated in human rights abuses"<sup>30</sup>. This approach established distinct foundations for defining a company's responsibility based on the issue at hand by

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<sup>29</sup> Brenkert, "Business ethics and human rights: An overview." 277-306.

<sup>30</sup> Robinson, "Business and Human Rights: A Progress Report."



differentiating between circumstances over which a business has direct impact and those in which it may be merely one participant among many with diverse roles. The Global Compact on Human Rights is an effort by the United Nations to encourage businesses to uphold human rights in their operations and decision-making processes. The goal of the Global Compact on Human Rights is to foster a culture of corporate responsibility and accountability with regards to human rights. By participating in this initiative, businesses are encouraged to continuously review and improve their practices in order to uphold the highest standards of human rights protection. Launched in 2000, this initiative is part of the larger UN Global Compact program and is based on 10 principles that are aligned with international human rights standards. These principles encompass areas such as labour rights, environmental protection, anti-corruption measures, and respect for human rights.

### **Human Rights**

These principles should guide a corporation's actions within its area of influence:

- i. the company should advocate for and support the protection of human rights around the world;
- ii. determine whether any of their own businesses are violating human rights;

### **Labor:**

- iii. employers have an obligation to defend employees' rights to collectively bargain and form unions;
- iv. ensure the elimination of all types of forced labor and abusive labor practices;
- v. ensure the abolition of child labor entirely;
- vi. eliminate occupational and job bias.

### **Environment:**

- vii. businesses ought to support a conservative approach to environmental challenges;
- viii. encourage more environmental stewardship by taking actions; and
- ix. encourage the development and wide adoption of eco-friendly technologies.

### **Anti-Corruption:**

- x. eliminate corruption in all forms, including bribery and extortion.

Most of the mentioned areas/ challenges covered in the BHR framework originate from the international conventions/ treaties related to human rights. These agreements act as the foundation for developing systems of accountability and standards for enterprises to adhere to while defending human rights. Owing to the increasing engagement of the public sector in the development of many human rights standards, companies are often required to take additional measures to implement the standards<sup>31</sup>.

Human rights are seen by many as the bedrock upon which society can build a comfortable existence and achieve fulfilment. When people's basic liberties are fully realized, society advances. Access to rights that goes backward is a symptom of a deteriorating society. Understanding and challenging the (new) mechanisms by which realization may be impeded and retrogression fostered is essential in the era of globalization. One of the distinctive aspects of business and human rights is the recognition that corporations have a responsibility to respect human rights, beyond their obligations under the law. This responsibility is grounded in the idea that businesses, as economic actors, can have a significant impact on the enjoyment of human rights by individuals and communities, and that they therefore have a duty to take active steps to avoid causing harm and to prevent such harm from occurring. This responsibility extends beyond the boundaries of a company's own operations to encompass its entire value chain, including suppliers, contractors, and other business partners. Another distinctive aspect of business and human rights is the importance placed on the principle of due diligence. This refers to the obligation of companies to take proactive steps to identify and mitigate the potential impact of their operations and business relationships on human rights, and to take effective measures to prevent or address adverse human rights impacts that do occur. Due diligence is a key component of the human rights responsibility of companies, and is seen as a means to help ensure that companies are held accountable for their human rights impacts.

Business and Human Rights Framework focuses on the promotion of international human rights standards which include the “Universal Declaration of Human Rights (UDHR)”, “the International Covenant on Civil and Political Rights (ICCPR)”, and “the International Covenant on Economic, Social and Cultural Rights (ICESCR)”, among others. These international human rights instruments provide a common framework for the protection and promotion of human rights around the world, and serve as the basis for the business and human rights standards that are relevant to companies. Similarly, the concepts such as equality,

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<sup>31</sup> Ibid.

freedom of association, collective bargaining, the abolition of child labor and forced labor have already been covered in various conventions of the International Labor Organization. A larger number of state parties have recognized, ratified and adopted these standards into domestic legislation. These rights serve as the foundation for the majority of business codes of conduct in addressing labor abuses. They act as the standards to ensure, evaluate and guarantee humane working conditions in all facets of the global supply chain. International conventions are greatly useful in disseminating guidance on particular human rights issue like racial discrimination at workplace, rights of child, the employment of security forces, the rights of migrant workers, and the rights of PWDs. The United Nations Code of Conduct for Law Enforcement Personnel<sup>32</sup> provides guidance on these issues in addition to “the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families”. The challenge for businesses in this context is the practical implementation of these standards and the creation of efficient public accountability systems.

Business and Human Rights framework also lays emphasis on the need for transparency and accountability which includes the requirement for companies to be transparent about their human rights practices, including the measures taken to identify and prevent adverse human rights impacts, refrain from engaging in bribery/ corruption and to be accountable for the impacts of their operations and business relationships on human rights. Business and human rights framework mandates stakeholder engagement and collaboration. This encompasses the obligation upon businesses to engage in meaningful consultations and engagements with the affected communities, governments, civil society organizations, and other stakeholders to promote the respect of human rights in business operations and relationships, to foster greater accountability for human rights abuses, and to provide effective remedies for human rights abuses. Stakeholder engagement and collaboration can help in building trust between companies & affected communities and in addressing human rights challenges stemming from the business sector.

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<sup>32</sup> The Economic and Social Council in 1973 and the General Assembly of the United Nations in 1974 requested the drafting of a code of conduct for law enforcement officials. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/code-conduct-law-enforcement-officials>

### 2.2.1. Moral Obligations Versus Economic Incentives

Throughout history, the majority of influential cultures and their philosophical ideologies have revolved around the ethical quandary and morality, particularly in relation to economic decision-making. Organizations and their managers in the contemporary world encounter intricate ethical dilemmas and obstacles during their daily activities, similar to individuals. In modern economic theory, individuals and businesses are presumed to act in their own self-interest or in accordance with rational monetary incentives. Modern economic theory believes that all players in a given system are primarily motivated by the goal of maximizing profits. Therefore, it is logical to presume that business owners and managers strive to enhance the financial performance of their organizations. Although moral violations and immoral behaviour within commercial organisations are frequently discussed in current policy debates, it is remarkable how little attention modern economic analysis devotes to these matters. There is a common belief that individuals strive to maximize their enjoyment when buying consumer items, whereas firms and their managers priorities profit growth. Modern economic theory mostly disregards ethical factors such as altruism and acting in the public interest<sup>33</sup>.

There is a growing field of research that examines the relationship between ethics and economics. However, ethical issues are still not commonly included in traditional economic models. Economists often overlook the moral dilemmas faced by entities, organisations, and their leaders in today's global society, despite the fact that the moral decay and ethical shortcomings within commercial firms frequently become the focus of legal disputes<sup>34</sup>.

Morals in economic thought, morals in business thought: The Theory of Moral Sentiments, authored by Adam Smith, who is often regarded as the "Father of Modern Economics," was the pioneering work that examined the intricate relationship between moral principles and self-interest in the realm of business, published in 1759. The primary sources are derived from Eatwell, Milgate, and Newman's work in 1987. According to Adam Smith, so long as there is sufficient competition and the majority of people have assimilated a general moral code, the self-interest of people ensures common good in a community<sup>35</sup>. Smith put out the concept of a "sympathetic and informed spectator," whose "sympathy" or concern for others serves as the foundation for a social code of ethics. Smith contends that people behave ethically

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<sup>33</sup> Kulshreshtha, "Business ethics versus economic incentives: Contemporary issues and dilemmas." 393-410.

<sup>34</sup> Eatwell, Milgate, and Newman. "The New: Palgrave: A Dictionary of Economics."

<sup>35</sup> Evensky, "Retrospectives: Ethics and the invisible hand." 197-205.

(or stop from doing so) in order to gain (or avoid) the favor of their peers. According to Smith, the previously described balance between self-interest and moral behavior is only possible if there is access to all information pertaining to every individual's action, allowing for the societal acceptance or rejection of each deed. Everyone's best interest is served by ensuring that they get a good education, which will enable them to act morally and in their own self-interest by adopting ethics. However, in practice, efforts to obtain information about individual actions can be costly, and people may conceal information pertinent to their actions (private information) or be unable to use the information that is readily available effectively, which may cause a conflict between self-interest and moral behavior<sup>36</sup>. When it comes to the cost afforded by businesses to ensure the protection of human rights, the theory suggests pre-dominance of self-regard and conceit over morality. Since human interaction cannot be reduced to a simple calculation of self-interest<sup>37, 38</sup>, the economists believe that altruism and the public interest are the key ethical motivations for actions that are distinct and independent from self-interest<sup>39</sup>. Economists argue that ethical motivations play a crucial role in decision-making and should not be overshadowed by mere self-interest<sup>40</sup>.

## **2.2.2. Move Beyond Corporate Social Responsibility: Collective Redressal of Human Rights**

When it comes to defending human rights, it is frequently anticipated that businesses should behave as responsible corporate citizens. One of the key arguments for segregating the obligations of business enterprises from the state is that human rights are the purview of governments, not private enterprises. It has been a common belief that the rights lie only with the state. In the past, states' responsibility to protect against third-party rights abuses, including businesses, has received very little to no attention from the international community, whereas the majority of the debate concerning Right to Protect (R2P) revolved around the accountability for the actions of a public or state-controlled enterprises. International law provides that the

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<sup>36</sup> Smith, "The Theory of Moral Sentiments."

<sup>37</sup> Phelps, "The indeterminacy of game-equilibrium growth in the absence of an ethic." 87-106.

<sup>38</sup> Sen, "Rational fools: A critique of the behavioral foundations of economic theory." 317-344.

<sup>39</sup> "Eatwell argues that people in major democracies often go to considerable lengths to vote even when they know their vote won't matter in the grand scheme of things. These kinds of behavior do not originate from people acting in their own self-interest or from a code of conduct, as embodied by the dispassionate observer in ethical society of Adam Smith."

<sup>40</sup> Jones, "The role of business ethics in economic performance."

state has a duty within its authority to protect its citizens. It is the right of utmost importance incorporated in almost all the UN Human Rights related instruments, which in fact has evolved as a customary international law<sup>41</sup>. The United Nations and other Regional Human Rights bodies have emphatically strengthened this doctrine of Responsibility to Protect (R2P) but the purview of this doctrine remained constrained to just violence and persecution only.

Article 7 of the “Universal Declaration of Human Rights” entails that all people are equal before the law and everyone should be treated fairly. The Article lays emphasis on the equality of protection of their rights to every human being against the harassment and discrimination. The obligations in UDHR have further been enshrined in a number of international instruments and treaties to combat discrimination in all forms against women, migrants, workers, people with disabilities, and minorities including the discrimination on the basis of religion, gender, race, ethnicity or sexual association. The principles of non-discrimination and equality before law covered in UDHR form the basis for rule of law promote good governance, and provide a platform for sustainable development. Equality and non-discrimination do not only apply to the state but also cover the equality and non-discrimination at the workplace and in businesses. The State is primarily responsible for protecting and enforcing citizens' rights<sup>42</sup>. In addition, businesses' responsibilities in this area do not relieve the State of its duty to ensure that human rights are protected. The duty to respect human rights means that businesses should avoid infringing others' rights and remediate human rights abuses/ violations<sup>43</sup>. A company has a duty to protect human rights if it is aware or suspects that the business activity undertaken at their enterprises/ affiliates can be detrimental to human rights of its workers. Businesses also have a responsibility to refrain from contributing to human rights abuses. In order to fulfill their responsibility to promote and protect human rights, enterprises must engage in advocacy and awareness campaign to inform the employees about their rights, abuses, violations and legal remedy available to them to address the grievances. Moreover, the companies should also provide a mechanism for judicious redressal of worker's human rights violations<sup>44</sup>.

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<sup>41</sup> UN Human Rights Treaty Bodies regard nations' duties to apply solely to goods in their "power or effective control." International law holds a state accountable for the actions of a public or state-controlled enterprise too. General Assembly Resolution 162 (noting the International Law Commission's Articles on State Responsibility for Internationally Wrongful Acts) is an example (January 28, 2002).

<sup>42</sup> Muswaka, "The Corporate Responsibility for Human Rights: A Conceptual Framework." 219.

<sup>43</sup> Note: It is important to realize that "business activities" cover both doing things and not doing things.

<sup>44</sup> Ibid, Note 42.

It has been observed that the older UN human rights accords, such as the “International Convention on Elimination of All Forms of Racial Discrimination” (ICERD adopted in 1969), “the International Covenant on Economic, Social and Cultural Rights” (ICESCR adopted in 1976), and “the International Covenant on Civil and Political Rights” (ICCPR adopted in 1976), do not address state duties towards business. They set general obligations to protect rights from non-state abuse. ICERD prohibits racial discrimination by "any person, group, or organization" (Art. 2.1(d)). ICESCR and ICCPR recognize rights relating to business, such as employment, health, and protection of indigenous communities. Starting with the Convention on “the Elimination of Discrimination Against Women” (CEDAW enacted in 1979), adoption of “the Convention on Rights of Child” (CRC adopted in 1990) and the newly adopted “Convention on the Rights of Persons with Disabilities” (CRPD adopted in 2008), business is addressed more directly and in more detail. CEDAW mandates states to eradicate discrimination against women by any "business" (Art. 2(e)) and in "bank loans, mortgages and other kinds of financial credit" (Art. 13(c)). These accords specifically allow governments to regulate and adjudicate non-state abuses. Protection of Human Rights in businesses is no longer seen merely a Corporate Social Responsibility of the enterprise rather a binding obligation upon the state and businesses by the international law and international community.

In 2004, the Human Rights Committee released a commentary titled "Nature of States Parties' General Legal Obligation" under “the International Covenant on Civil and Political Rights (ICCPR)” which emphasized that 'positive obligations on states parties to secure Covenant rights will only be completely discharged if individuals are protected by the state against the violations of Covenant rights, not just by its agents but also against the acts committed by private persons or corporations...' The statement further asserted that states may breach their Covenant obligations if they do not "adequately take measures or exercise due diligence to prevent, punish, investigate, or provide redress for harm caused by private individuals or organisations." The Human Rights Committee expressed concerns over state inability to protect against business related violations under themes such as non-discrimination, indigenous peoples' rights, labour rights, and health-related rights. The recognition of duty to protect from business activity as a substantive right signposts the assertion that private parties can commit abuses, which should be addressed collectively by both the State Party concerned and the business enterprise. Similarly, the regional human rights frameworks also recognize states' duty to protect against abuse by non-state actors and assign governmental obligations to regulate and adjudicate corporate behaviour. The growing interest in corporate

misconduct by UN treaty bodies and regional organizations reflects a growing worry that governments lack full understanding or willingness to undertake their committed obligations. Only a small number of states have implemented regulations, initiatives, or allocated resources to tackle corporate human rights issues. The majority of states primarily rely on more comprehensive non-binding corporate responsibility standards, accords, or policies, such as the “OECD Guidelines for Multinational Enterprises on Responsible Business Conduct”, also known as the 'UN Global Compact' etc. Additionally, there is an emerging legal framework targeting export controls, foreign direct investments, investment promotion policies, bilateral trade, and investment treaties so that business activity may be regulated for protection of human rights. The underlying contention is that although states have the primary responsibility to safeguard human rights, corporations should not be exempted from similar obligations. Businesses also have an obligation to uphold human rights, regardless of whether the State fails to fulfill or execute its responsibility to protect human rights<sup>45</sup>.

### **2.3. Moral Responsibility, Legal Responsibility and Accountability; New Framework for Regulating CSR**

The concepts of moral responsibility, legal responsibility and accountability reflect an evolving role of corporations in society, emphasizing upon their corporate responsibilities beyond mere profit-making. Corporate Social Responsibility (CSR) refers to the ethical and sustainable practices that businesses adopt to contribute positively to society and the environment, including philanthropy, environmental sustainability, employee well-being, and community engagement<sup>46</sup>. Companies that embrace CSR recognize that they have a moral responsibility to balance economic, social, and environmental concerns, creating a harmonious relationship with all stakeholders. Corporate Accountability, on the other hand, refers to the transparency and responsibility that companies must demonstrate for their actions, decisions, and impacts on various stakeholders, both internally and externally. This includes being accountable for their financial performance, adherence to laws & regulations, ethical conduct, and the consequences of their operations on the environment and society. Accountability ensures that businesses are held responsible for their actions, promoting trust, credibility, and

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<sup>45</sup> Birchall, "Corporate power over human rights: An analytical framework." 42-66.

<sup>46</sup> Aguinis and Glavas. "What we know and don't know about corporate social responsibility: A review and research agenda." 932-968.



long-term sustainability. Ethical business practices, social and environmental responsibility, and respect for human rights are interconnected, fostering a holistic approach to corporate behavior. Responsible and accountable businesses integrate CSR principles into their core strategies, ensuring that their operations align with societal expectations and environmental sustainability. By being accountable for their CSR initiatives, companies build trust with stakeholders and create positive reputation. Conversely, corporate accountability mechanisms, such as transparent reporting and implementation of laws & regulations help assess the effectiveness of CSR efforts; ensuring that they yield meaningful social and environmental benefits. Embracing these principles leads to a positive impact on various stakeholders, enhancing a company's reputation, brand value, and long-term viability<sup>47</sup>.

For the most part of the last few decades, CSR has been considered primarily as a moral and normative role that firms might undertake on their own initiative. However, in recent times, there have been fresh suggestions made to give CSR official sanctions under the law<sup>48,49</sup>. According to research conducted by Amao and Zerk, perceiving corporate social responsibility as a moral obligation broadens the scope of activities, making it more difficult for the state to enforce legal protections and ensure MNE corporate accountability<sup>50,51</sup>. By reconceptualizing corporate social responsibility (CSR) as CSR regulation that encompasses ethical and legal obligations upon multinational enterprises (MNEs), there is potential for enhancing corporate accountability and enforcing business responsibility beyond morality. Consequently, binding obligations on businesses and their conduct will help reap the benefits for a more socially responsible, accountable, and sustainable economic growth and development<sup>52</sup>. Before we delve into the challenges faced in imposing regulations on enterprises for CSR, it is imperative to explore the relationship between legal and moral responsibility, and accountability of businesses. Legal responsibilities and moral responsibilities are often overlapping and intertwined. Each organization in the fulfillment of their operations performs certain functions which are derived by their contractual obligations. These obligations are legally binding upon

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<sup>47</sup> Davis, "The case for and against business assumption of social responsibilities." 312-322.

<sup>48</sup> Kara, "The role of corporate social responsibility in corporate accountability of multinationals: is it ever enough without 'hard law'?"

<sup>49</sup> Okoye, "Legal approaches and corporate social responsibility: towards a Llewellyn's law-jobs approach".

<sup>50</sup> Amao, "Corporate social responsibility, human rights and the law: Multinational corporations in developing countries."

<sup>51</sup> Zerk, "Multinationals and corporate social responsibility: Limitations and opportunities in international law."

<sup>52</sup> McInerney, "Putting Regulation before Responsibility: Towards Binding Norms of Corporate Social Responsibility." 171-200.

the entity to perform but during the course of discharging their legal binding performance, corporations also have a moral responsibility (associated with their main function) to act in a way that is not detrimental to people/ society. So, fulfillment of legal responsibilities and moral responsibilities go hand-in-hand. Corporations in order to fulfill their contractual obligations must refrain from infringing the rights of others. Legal responsibilities and moral responsibilities both refer to the causation of corporate action. Corporation in the new CSR framework are accountable for the breach of their legal and moral responsibilities caused by the fulfillment of their primary functions. Legal responsibility mandates enterprises to perform their business activities in conjunction with the local laws & regulations, moral responsibility mandates enterprises to ensure compliance of all legal requirements and also protect others from the impacts of their fulfillment of legal obligations. Corporate Social Responsibility covers both the legal responsibility “business activities” and the moral responsibility “the impacts of business activities”. Corporations have responsibilities to their communities, particularly in terms of where they operate and what activity they do. Corporate social responsibility has largely been used as a tool for business strategy rather than a requirement because there is no direct regulation. In addition, misperceptions about transparency and openness have led corporations to adopt CSR while neglecting accountability. Since Corporate Social Responsibility has a direct relation with the core business activities of enterprises which in turn, have a direct bearing on legal obligations and responsibilities, therefore, the new CSR framework proposes it to be a mandatory requirement enforced by regulations. In the absence of strong regulations, the discharge of responsibilities both legal and moral, and accountability thereon cannot be ensured.

### **2.3.1. Corporate Responsibility for Human Rights**

It is an undeniable assertion that enterprises must prioritize and safeguard human rights to the fullest extent. The concept of corporate accountability for human rights has gained considerable recognition and significance in recent years. As multinational corporations expand their commercial endeavours all over the world, they have inherited the capacity to influence human rights in ways which can be both beneficial and detrimental for humans. Ensuring corporate responsibility for human rights is essential for protecting human dignity, advancing sustainable development, and supporting social progress. Businesses have a responsibility to respect human rights and avoid causing or contributing to human rights

abuses. Corporations have a responsibility to ensure fair working conditions and labor rights for their employees; including elimination of child labor and forced labor, providing fair wages, reasonable working hours, and ensuring workplace safety<sup>53</sup>. Furthermore, corporations must address human rights abuses within their supply chains both within the borders and abroad. In recent times, responsible sourcing practices, transparency, traceability requirements, environment sustainability practices (such as carbon emissions, water and air pollution) have also gained traction to avoid adverse impact of their operations on humans<sup>54</sup>. Failure to do so can disproportionately affect marginalized communities and violate their rights to a clean, safe and healthy environment.

In the contemporary International Human Rights Law, Corporate accountability for human rights is now guided by legal frameworks and international standards. The United Nations Guiding Principles on Business and Human Rights provide a foundation for corporate responsibility. National legislation and regulatory mechanisms also play a crucial role in holding corporations accountable for human rights violations. Stakeholders, including civil society organizations, human rights advocates, investors, and consumers, have an essential role in ensuring corporate accountability. They can apply pressure through activism, shareholder engagement, and consumer choices, prompting corporations to adopt responsible practices and be accountable for their actions.

The Rana Plaza factory case in Dhaka Bangladesh in 2013, in which more than 1100 people lost their lives is a stark example/ case for the enforcement of business and human rights framework which entails implementation of UN Guiding Principles on Business and Human Rights beyond corporate responsibility. The calamitous incident revealed the systematic abuse of workers and the inept working conditions in the textile industry in Bangladesh. The incident highlighted the dire need for stronger regulations and oversight in the garment industry in particular and over enterprises in general. As a result, brands around the globe introduced inspections and implemented protective measures to enhance working conditions for the labour and tightened safety protocols in their supplier networks. Similarly, the conflict minerals such as tantalum, tin, tungsten & gold; from the mineral extraction industries of Congo, Argentina & Russia have been linked to finance armed conflicts, human rights abuses and violence across the globe. The profits from the sale of these minerals in the world eventually go to the rebel

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<sup>53</sup> Bowen, "Social Responsibility of the Businessman."

<sup>54</sup> Dahlsrud, "How corporate social responsibility is defined: an analysis of 37 definitions." 1-13.

groups, banned terrorist outfits and dissident armies. In this regard, the concept of Human Rights Due Diligence in Business and Human Rights which aims to ensure responsible sourcing and prevent the financing of armed conflict and human rights violations in corporations plays a pivotal role to prevent human rights violations.

### **2.3.2. Businesses as ‘political actors’**

Human rights obligations are normally attributed to states as her duty to protect her citizen but if we ascribe these obligations to Multinational Enterprises (MNEs), it may imply that businesses in their utmost existence are also political actors too. This assertion, in the face of it, posits two critical concerns upon the role of businesses. The first concern is that obligating businesses to protect citizens privileges MNEs with an equal status to the one vested with the state. Another associated concern is that arguments of this nature undermine the ideals encapsulated in human rights framework. When it comes to politics, only government organizations are perceived as the only entities that have a direct focus on the welfare of society. Businesses, on the other hand, are perceived entirely through the lens of economic and financial gains. Corporations may lobby or engage in corporate philanthropy to affect the political system, but their vested interests supersede public good<sup>55</sup>. They do not suddenly become political agents by working for the public good as a result of these actions. On the other hand, it is believed that their participation in political processes only helps them achieve their economic objectives.

As corporations continue to assert their control and dominance in spheres that were traditionally considered public, researchers in academia have started investigating what it implies for businesses to have a democratic/ political influence on society in general and on human rights in particular. Scherer and Palazzo emphasized that the growing influence of businesses in shaping global regulatory frameworks is a serious concern for safeguarding human rights. They promoted a concept known as "political CSR." This model incorporates a range of phenomena and is commonly known as an "expanded governance model" which emphasizes upon the democratic behaviour of multinational businesses (MNEs). It advocates the need for self-regulations & public good within the business organizations so that enterprises

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<sup>55</sup> Scherer, Palazzo, and Matten. "The business firm as a political actor: A new theory of the firm for a globalized world." 143-156.

may fill in the gaps where governments may be lacking delivery & performance<sup>56</sup>. It advocates for a more responsible and ethical approach to business operations but it neither undermines the role of state nor grants enterprises with the authority of the state.

Businesses can engage in politics through three main methods: participating in "rule-setting relationships," which involves traditional engagement with policymakers, or by taking part in "discussions, debates and consultations," which aims at building a shared understanding of mutual interests, or by being critical to the policies of the government and in turn, propose reforms<sup>57</sup>. It is a renowned fact that private companies/ enterprises often participate in political processes but the degree to which private companies are recognized as political players on equal footing with the government is somewhat constrained yet ever-increasing. Scholars worry about the growing role of companies in politics, which is controversial for a number of reasons, including the fact that it calls into question the long-held beliefs about the appropriate place for businesses in societal hierarchy and the fact that there are serious worries about this transformation which could potentially have negative effects on democracy, people, and their rights. To sum it up, the concept of businesses as political actors encompasses a range of activities such as addressing issues of general public through political CSR,<sup>58,59</sup> participating in decision making process taking part in political discourse; and raising public responsiveness to political issues.

Businesses exercise socio-political authority on different levels, at the community level, at the provincial level and at the national level, influencing policies and shaping public opinion. Their form of participation varies. In the new paradigm, developed by Ekman and Amna (2012), the political participation level of an enterprise determines the political role of the MNEs as political actor. Ekman and Amna believe that voting for a certain political party, supporting certain electoral candidate, acquiring membership of a political party or trade union indicates that the business has formal political participation. It has contacts within the political spheres and may hold political appointments in the advisory bodies or committees. Businesses with membership in or participation in groups that protest against stringent state policies and

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<sup>56</sup> Scherer and Palazzo. "Toward a political conception of corporate responsibility: Business and society seen from a Habermasian perspective." 1096-1120.

<sup>57</sup> Pies, Beckmann, and Hielscher. "The political role of the business firm: An ordonomic concept of corporate citizenship developed in comparison with the Aristotelian idea of individual citizenship." 226-259.

<sup>58</sup> Néron, "Business and the polis: What does it mean to see corporations as political actors?" 333-352.

<sup>59</sup> Wickert, "'Political' corporate social responsibility in small-and medium-sized enterprises: A conceptual framework." 792-824.

regulations are the activists who participate in the political process through policy-oriented organizations from outside the state machinery. These businesses engage with informal networks such as lobbying groups and industry coalition against the government apparatus and their policies. The third form of participation comes from the businesses that participate in civic engagement, focusing on addressing issues related to the protection of rights (human rights, environmental sustainability, conservation of energy, workers' rights, homelessness, youth activities, etc.). Such businesses, either through individual or collective actions, attempt to yield societal benefits for the general masses. Lastly, businesses that identify their alignment with a specific school of political thought (such as leftists, feminists, liberals, neo-liberals, etc.) are fully involved in the political role. Their socio-political participation is mandated to foster a certain cause agenda based on the ideology they pursue. The new paradigm regards all business activities as political within their varying degrees and forms of participation.

## **2.4. Preventing and Addressing the Human Rights Impact of Business**

Human rights due diligence Framework (HRDD) has gained prominence as a tool for addressing human rights violations by businesses over the past decade. Although its ability to actually avoid such violations remains contentious but many countries in the Europe have adopted them as guidebook for ensuring protection of human rights. The notion of avoidance is fundamental to the rapidly expanding domain of business and human rights, as it pertains to the complete eradication of any potential activity capable of causing adverse impacts on human rights resulting from the activities of firms in the world<sup>60</sup>. While there are many ways in which businesses can violate workers' rights, much of the concern is usually directed towards supply chains, which, all too often, prioritize efficiency and profits over workers' safety, fair treatment, and rights. <sup>61</sup> Regrettably, no sector/ industry is immune to the human right violations. Businesses themselves may be contributing towards these violations either directly, indirectly, purposefully or unintentionally. A worldwide framework of Human Rights Due Diligence (HRDD), that stems from the United Nations Guiding Principles on Business and Human

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<sup>60</sup> UN Guiding Principle 13 of the Human Rights Council's, "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect, and Remedy" Framework".

<sup>61</sup> Ibid.

Rights 2011 ('UNGP on BHR') ensures that human rights are protected from the impacts of business activities<sup>62</sup>.

#### **2.4.1. Prevention under Business and Human Rights Law**

HRDD was developed under the UNGPs on Business and Human Rights as a means for corporations to anticipate, reduce, and, if necessary, remedy negative consequences for human rights. The strategy was developed to make sure corporations completed their research and avoided doing anything that could negatively affect people's civil liberties. John Ruggie, a key contributor to the UNGPs, characterized HRDD as "a systematic yet aggressive endeavor to find human rights hazards both existing and projected, over the whole duration of a venture or commercial activity with the goal of preventing and managing those hazards".<sup>63</sup> Human Rights Due Diligence (HRDD), first introduced in the UNGPs has subsequently been embraced by successive international treaties and bodies. For instance, the "OECD Principles and Recommendation 2011" for multinational companies<sup>64</sup>, the "Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy 2019", Standard for Environmental and Social Performance 2012, accepted by the International Finance Corporation (IFC)<sup>65</sup> and the "Equator Principles 2013"<sup>66</sup> have been founded on the guidelines laid down in HRDD Framework. The most concise reference to the process of HRDD can be found in Guiding Principle 17 of the UNGPs on BHR<sup>67</sup>, which includes assessment of actual and potential abuses to human rights, integration of findings into actions, tracking and reporting, and the strategy to mitigate the impacts of business activities on human rights. HRDD framework under UNGP-BHR 17 mandates firms to acknowledge and mitigate any possible adverse impacts on human rights resulting from their own operations be it from the products they produce, the services they render or from their strategic business partners in the

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<sup>62</sup> Deva, "Guiding principles on business and human rights: implications for companies."

<sup>63</sup> Human Rights Council, "Business and Human Rights: Towards Implementing the "Protect, Respect, and Remedy" Model" para.

<sup>64</sup> OECD, "Principles and recommendations for Multinational Enterprises (2011)", available at: <https://www.oecd.org/investment/mne/48004323.pdf>.

<sup>65</sup> International Finance Corporation, "Standard for Environmental and Social Performance 2012."

<sup>66</sup> Equator Principles 2013; Third Version; available at: [https://equator-principles.com/app/uploads/The-Equator-Principles\\_EP4\\_July2020.pdf](https://equator-principles.com/app/uploads/The-Equator-Principles_EP4_July2020.pdf).

<sup>67</sup> Working Group Report on the issue of human rights and transnational corporations and other business enterprises, "Corporate human rights due diligence: emerging practices, challenges and ways forward", available at: <https://ohchr.org/sites/default/files/Documents/Issues/Business/ExecutiveSummaryA73163.pdf>

supply chain. HRDD is a continuous process that requires ongoing monitoring and evaluation into risks to ensure compliance with human rights standards over the span of time.

HRDD is a collection of interconnected components; therefore, it should be regarded as an ongoing process<sup>68</sup> through which corporations can assess, mitigate, and interpret the detrimental impacts of their business activities on human rights. The UNGPs' use of HRDD seems inventive and purposeful, as 'due diligence' is a phrase that businessmen, human rights defenders, activists, lawyer and governments all use but each has its own distinctive interpretation. McCorquodale & Nolan have argued that the use of HRDD by UNGPs is a way to bridge corporate operations and their corporate responsibility and creates a common understanding of what is required of businesses. They assert that due diligence is a well-known phenomenon used widely in the public and private affairs of both the state and corporations, but the implementation of due diligence in a human rights context is relatively new, which has shaken up the obligations of business entities<sup>69</sup>. It is imperative that human rights are upheld in all aspects of a company's operations, from those carried out directly to those carried out by its affiliates or other business partners. That's what sets HRDD apart from merely a one-off or company centered approach towards due diligence. As a result, businesses have a duty to all stakeholders, not just those with whom they have a formal contract, as well as to all holders of rights, such as employees, customers, and localities. Human Rights Due Diligence (HRDD) applies to human rights impacts in various segments/ areas such as war times, protection of workers' rights, protection from fraudulent activities, public reporting and protection of consumers, and the distribution networks etc.<sup>70</sup> In this regard, the OECD has also identified a series of "Due Diligence Guidance for Responsible Business Conduct" for businesses, individuals, and human rights defenders to seek guidance from, which can be instrumental while conducting human rights due diligence.

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<sup>68</sup> Ibid.

<sup>69</sup> McCorquodale and Nolan, "The effectiveness of human rights due diligence for preventing business human rights abuses." 455-478.

<sup>70</sup> OECD, "Responsible Business Conduct for Institutional Investors" available at: <https://www.mnenguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>



## 2.4.2. Actions by States to Prevent Human Rights Abuse by Business

Currently, four different states in the world are actively enforcing the implementation of various provisions of the UNGPs and OECD Guidelines pertaining to HRDD and Business & Human Rights (BHR). These include the German Corporate Due Diligence in Supply Chains Act of 2021 (also named as ‘Lieferkettensorgfaltspflichtengesetz’), the Norwegian Transparency Act of 2021, the French Duty of Vigilance Act of 2017, and European Union Corporate Sustainability Due Diligence Directive (CSDDD), approved on 24th April 2024. Some of the domestic and sub-national laws introduced in consonance with the UNGPs on BHR and HRDD include the UK Modern Slavery Act 2015 and the Australian Modern Slavery Act 2018 in addition to certain laws in the countries of the Global South (34 legislations in developing countries since 2011)<sup>71</sup>. In 2010, the European Union (EU) adopted the EU Timber Regulation No. 995/2010<sup>72</sup> to counter illegal logging of trees and trade associated with it. Followed by the EU Conflict Minerals Regulations 2014 prohibiting trade of minerals (such as tin, tungsten, gold, and tantalum), commonly known as 3TG, from the areas under conflict or under control of armed groups<sup>73</sup>. These laws further the concept of Human Rights Due Diligence (HRDD) in various industries. Such initiatives / regulations honing into the business practices detrimental to human rights have gathered support from a number of civil society organizations and governments in the world.

A growing number of arbitration cases are now incorporating CSR regulations and HRDD principles to hold multinational corporations accountable for their actions towards human rights violations, including the actions of their overseas subsidiaries and supply chain partners. The adoption of these regulations is a positive development towards ensuring corporate accountability and promoting human rights globally. In the matter *Vedanta Resources plc v. Lungowe* (2019) UKSC<sup>74</sup>, the Supreme Court of the United Kingdom upheld the decision of the Court of Appeals in a conflict brought before the bench by the Zambian villagers against the UK based parent company Vedanta. Konkola Copper Mine (KCM), the

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<sup>71</sup> There have been 34 legislations passed since 2011 that influence business and human rights, including the Peru Labor Code 2014 (covering child labor) and the Indian National Guidelines on Concerned Business Conduct (2018).

<sup>72</sup> According to EU Regulation No. 995/2010, adopted by the European Parliament and the Council on 20 October 2010, published in the Official Reporter of the European Union, it is made clear in Section 301 that businesses who sell timber and wood products are exempt from these provisions.

<sup>73</sup> EU legislation (COM/2014/0111 final—2014/0059) requires responsible distributors of metal, super alloys, titanium, and gems from conflict-affected and high-risk countries to self-certify compliance (COD).

<sup>74</sup> *Vedanta Resources plc v. Lungowe* (2019) UKSC, available at: <https://supremecourt.uk/cases/uksc-2017-0185.html>

subsidiary of Vedanta in Zambia, was involved in copper mining operations in Zambia in 2015. The claimants alleged that KCM has been discharging toxic emissions from the mines into the water, which adversely affected the health of villagers, the environment, drinking water, irrigation, and farming in the region. Since KCM is the subsidiary of Vedanta Company, based in UK, the court admitted the civil claims for negligence. The matter has utmost significance for the implementation of BHR Framework and has the potential to transform corporate responsibility and accountability. Justice Lord Briggs, in his judgement, stressed on the duty of care that is binding upon the parent company to oversee the protection of human rights, environmental impacts, social repercussions, and enforcement of labour standards by their subsidiaries<sup>75</sup>. The decision in *Vedanta Resources plc v. Lungowe* implies that parent companies are not only liable for the adverse actions of their subsidiaries but also responsible for the damages caused by the operations of their subsidiaries. In another landmark case titled '*Okpabi v Royal Dutch Shell Plc*'<sup>76</sup>, the supreme court unanimously reversed the order of the Court of Appeal and acknowledged that the parent company, Royal Dutch Shell Plc in this instance, was liable for the actions of her subsidiary 'Shell Petroleum Development Company' in Nigeria, causing environmental damage from the oil spills, water pollution destroying drinking water supplies, fishing, and agriculture. The court realized the importance of corporate governance and took cognizance of lack of due diligence, duty to care, and poor internal control for addressing human rights abuses and environmental corporate risks. In both the cases, the Supreme Court in the United Kingdom has unequivocally rejected the notion of corporate separation between the parent company and her subsidiaries. Taking a claimant friendly approach for the protection of environment and human rights, the courts in English Law have placed corporate responsibility and respect for human rights on the highest pedestal.

Four Nigerian Farmers and *Milieudefensie v. Shell* in the Netherlands ruled in favour of Farmers for environmental damage caused by the corporation in negligence to its duty of care<sup>77</sup>. In the matter pertaining to sale of a ship by the UK based shipping company to a third-party shipping company, which then dismantled the ship in an unsafe manner, causing death of a worker on site. The wife of the deceased preferred a claim against the UK domiciled company for its negligence of duty to care, in selling to a company which didn't comply with the safety standards and protocols for disposing off the ship. The court of appeals in the matter titled

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<sup>75</sup> Dahlsrud, "How corporate social responsibility is defined: an analysis of 37 definitions." 1-13.

<sup>76</sup> *Okpabi v. Shell* (2019), available at <https://supremecourt.uk/cases/uksc-2018-0068.html>

<sup>77</sup> *Four Nigerian Farmers and Milieudefensie v. Shell*, available at: <https://eser-net.org/caselaw/2022/four-nigerian-farmers-and-milieudefensie-v-shell/>

Hamida Begum v Maran (UK) Ltd [2021] EWCA Civ 326 refused to dismiss the claim for summary judgment<sup>78</sup>. Although the case lacked merits for accepting the claims but the refusal to summarily dismiss the claim and exploration into the negligence of duty to care in the 'value chain' of corporations has long lasting ramifications for the scope of corporate risk, corporate responsibility, and corporate accountability. This signposts the alleged negligence and irresponsible attitude of businesses to indulge in business transactions without realizing the implications upon humans, their rights and the environment. The refusal to dismiss the claim summarily further highlights the vitality of corporate accountability in their global value chains.

Similarly, the Supreme Court of Canada in a landmark order, accepted the claims of Eritrean refugees against the Canadian mining company named Nevsun Resources Ltd based in Vancouver<sup>79</sup>. The court in the matter, Nevsun Resources Ltd. v. Araya, also dismissed the appeal of the company for their cruel, inhumane and degrading treatment of Eritrean mining workers, who were indefinitely subjected to forced labour, slavery, and tortured to work in mines by the company at the Bisha Mine in Eritrea. The Canada domiciled company collaborated with Eritrea for the exploration and development of the mine but in doing so, indulged in unlawful confinement and committed crimes against humanity. The court accepted the claims brought by the Eritrean workers under the Customary international law. Although the parties settled the dispute amicably in a confidential settlement yet contrary to the traditional viewpoint, the Supreme Court laid the foundation stone for transnational litigation in Canada to protect violations of human rights from business activities.

In certain cases, legal authorities have gone further than the primary scope of UNGPs by placing responsibilities on companies against the human rights violations caused due to their business activity of their operations. One can easily draw inference from these developments that there is a notable push for stringent legislations, both at the international and national levels to mandate HRDD framework compulsory for all companies. The current state of affairs regarding protection of human rights, role of corporations, and the adverse consequences thereon, is somewhat fragmented. Nonetheless, it also demonstrates that governments around the world especially the developed countries are cognizant of the issue and are taking steps to

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<sup>78</sup> Hamida Begum v Maran (2021), available at: <https://traverssmith.com/knowledge/knowledge-container/value-chain-negligence-claims-the-door-has-been-opened/>

<sup>79</sup> Nevsun Resources Ltd. v. Araya 2020 SCC 5, available at: <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/18169/index.do>

address it through various laws, regulations, guidelines, action plans, and initiatives. There is a growing realization, aided greatly by the adjudicature in most of the jurisdictions, that corporations must bear responsibilities for the conduct of their operations adversely affecting human rights, the environment, and causing global warming<sup>80</sup>.

In the wake of COVID-19 pandemic, a survey was conducted by the Corporate Human Rights Benchmark in the year 2020<sup>81</sup>. The survey findings revealed that most of the businesses in the early phases of outbreak failed to restrict the impacts of worldwide closure onto the employees, their business activity, and human rights; especially on the human rights abuses caused by their supply chain partners. The lack of preparation and response strategies led to significant negative consequences for employees, business activity, and human rights. However, businesses which had concrete risk mitigation strategy with comprehensive human right protection framework in place were better equipped to handle impending circumstances and protect the well-being of their employees. Post COVID scenario offers an opportunity for the law makers and businesses to integrate HRDD framework into their policies and operations so that the negative impacts of any catastrophe on human rights may be effectively neutralized in the future. Notwithstanding the growing popularity of Human Rights Due Diligence over the past decade, its effectiveness in preventing and addressing human rights abuses at the workplace has been a topic of debate. The implementation of HRDD in the corporate sector necessitates a nuanced combination of public and private regulatory actions, which must be carried out with the participation of a wide range of stakeholders having converging interests. In order for states to adequately uphold their duty to protect its people vis-a-vis human rights; the member states must possess the capacity and willingness to introduce & regulate ever-changing HRDD framework in their respective country. These regulations, enacted from time to time, may alter the character and viability of creating a well-governed corporate society. However, it is for sure that implementing the HRDD framework across the country in partnership with the business community has the utmost potential to modify the nature and feasibility of establishing a well-regulated and accountable corporate society.

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<sup>80</sup> Bowen, H. R. 1953. Social Responsibility of the Businessman. New York: Harper and Row.

<sup>81</sup> Corporate Human Rights Benchmark: COVID-19 Study 2020, available at: <https://www.worldbenchmarkingalliance.org/research/covid-19-and-human-rights-study/>

## **2.5. Intersection of Export Controls, Market Access and Human Rights**

Export control is a sub-field of international law, situated at the convergence of international security and trade law<sup>82</sup>. Export controls are usually implemented by governments to mitigate the risks that threaten global security. In doing so, countries restrict the exports of certain goods and technologies that pose threat to national security, human rights, or foreign policy interests, be it civilian or military goods (dual use)<sup>83</sup>. Market access in international trade, contrary to export controls, refers to the permission granted to the international businesses/ companies, products, and countries to enter foreign/ host market, often on concessionary tariffs. Greater market access refers to the lesser trade barriers (tariffs and non-tariff barriers). In international trade, market access is believed to be instrumental for economic growth of any country for expanding commercial activities and diversifying revenue sources. Exports, be it the export controls or the market access, have now been subjected to the Business and Human Rights framework<sup>84</sup>.

### **2.5.1. Export Controls and Human Rights**

The Treaty on the ‘Non-Proliferation of Nuclear Weapons’ is the glaring example of global efforts to limit the transmission of nuclear, chemical, or chemical weapons which provides a constitutional ground for imposing export controls<sup>85</sup>. The Australia Group established in 1985, Nuclear Suppliers Group established in 1974, as well as the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies<sup>86</sup> are all examples of non-binding export control international treaties. Export Controls in the European Union is governed by Council Regulation (EC) No 428/2009, adopted 5 May 2009. It includes a unified EU control list and harmonized implementation policies. EU

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<sup>82</sup> Balance Between National Security and Global Trade and Investment: The Theory as well as Practice of International Regulations (Springer, 2017).

<sup>83</sup> Article 2 of the European Union's Regulation (EC) No. 428/2009, establishing a Society government for the regulation of exports, transfers, brokers, and transportation of dual-use items can be found in the UN Journal (oj 2009 L134/1). (1).

<sup>84</sup> Kanetake, "Balancing innovation, development, and security: dual-use concepts in export control laws."

<sup>85</sup> Among the contributors to N. Craik, C.S. Jefferies, S.L. Seck, and T. 184–185 in M. Stephens (ed.), Environmental Protection Change as well as Innovation in International Law, Cambridge: Cambridge Press, 2018. Throughout his article, Kanetake emphasises the need for export control laws to strike a balance between stifling innovation and hampering economic growth and national security.

<sup>86</sup> The Wassenaar Arrangement was created to assist to regional and international stability and safety by increasing transparency and responsibility in transfers of conventional armaments and dual-use commodities and technologies.

Regulation 428/2009 is a consolidated document comprising a number of revisions to Regulation 1334/2000 into a single, clearer instrument to facilitate implementation and future amendments<sup>87</sup>. These export control regulations not only restrict the export of goods, but also limit the scope of product being imported into the country too. These multilateral regimes are crucial in determining which military weaponry or the civilian products of dual use are subject to export restrictions<sup>88</sup>. While the authority to issue licenses ultimately lies with the legal systems of individual countries, the existence of international regimes provides a degree of predictability and regulatory harmonization to the otherwise scattered export control procedures<sup>89</sup>. If we look at the export control regulations at the national level, Pakistan enacted its export control law titled “Export Control on Goods, Technologies, Material and Equipment related to Nuclear and Biological Weapons and the Delivery Systems Act 2004”. India on the other hand regulates her trade relations through The Foreign Trade (Development & Regulation) Act, 1992 and maintains a “Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET)” list to control the export and import of restricted goods and technologies. Although export controls as a tool have traditionally been openly used and justified on the grounds to avert terrorist attacks or incidents. However, the defence centered approach towards exports has lost its rigour in the modern times. It has become increasingly critical to adapt to the evolving technological advancements; exports of which were previously considered a threat to national security. The liberalization of trade has effectively addressed one particular issue of stringent export controls. The transfer and export of goods, services (software), and technologies is easier and more convenient. Nonetheless, apprehensions arising from security mindset have now permeated the discourse surrounding protection of human rights. The exports or the imports in today’s modern era have both been linked directly with the adherence and protection of human rights<sup>90</sup>.

When it comes to protection of human rights, the European Union has made considerable advances in developing a comprehensive legislative framework on human rights, characterized by emphasis on transparency, accountability and disclosure. The Corporate Sustainability Reporting Directive (CSRD) and Human Rights Due Diligence framework serve

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<sup>87</sup> EU Regulation 428/2009 governs export controls. The regulation defines a single strategy for export controls but allows each state to implement it, including license decision making. Coordination and administrative procedures promote common implementation.

<sup>88</sup> Zanders and Anthony, "Multilateral Security-Related Export Controls".

<sup>89</sup> Wagner, "Whose Politics? Whose Rights? Transparency, Capture and Dual-Use Export Controls." 35-46.

<sup>90</sup> Kanetake, "Controlling the Export of Digital and Emerging Technologies: Security and Human Rights Perspectives." 1-10. doi: <https://doi.org/10.1163/18750230-31010005>.

as the fundamentals for proposed consolidated enactment titled 'Corporate Sustainability Due Diligence Directive (CSDDD)'. On the other hand, following the second Summit for Democracy, United States has also been advocating for a specific framework of human rights-related regulatory reforms. In this regard, US has made two notable commitments during the summit including the release of a 'Code of Conduct' that highlights human rights in the assessment of potential exports of goods and services to prevent infringement of human rights, and the Directive for companies to perform Due Diligence on Human Rights. These recent announcements indicate an ongoing incorporation of human rights considerations and due diligence into the framework of international regulatory compliances related to export control.

The US government has issued a voluntary Code of Conduct requiring subscribing states, including the US, to consider human rights when considering possible exports of dual-use commodities, software, and technologies that could be used to commit significant human rights violations or abuses. The Code also requires private sector players to do human rights due diligence in accordance with national legislation and the UN Guiding Principles on Business and Human Rights. “The Export Controls and Human Rights Initiative”<sup>91</sup> is a collaboration between the United States and its allies with the goal of combating digital oppression in nations where surveillance, cyber intrusion, and other technologies with dual-use capabilities have been employed to suppress human rights defenders and journalists. The primary objective of these Code of Conduct is to deploy export control measures in order to hinder the widespread distribution of software and technology that have the potential to facilitate severe violations of human rights around the globe<sup>92</sup>.

### **2.5.2. Market Access and Human Rights**

In international trade, high performance with integrity is crucial for corporations and in the new corporate social environmental governance system, neglecting human rights can cost market access. In this new order, enterprises failing to uphold human rights often face consumer boycotts, liability & responsibility for non-compliance, and reputational losses. Moreover, beyond morality, the stringent laws and regulations concerning trade have further streamlined

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<sup>91</sup> Export Control & Human Rights Initiative, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/10/fact-sheet-export-controls-and-human-rights-initiative-launched-at-the-summit-for-democracy/>

<sup>92</sup> Ibid, Note 90.

the process. In the United States, the “Trade Enforcement and Trade Facilitation Act 2015” (TETF), especially the ‘consumptive demand clause’ requires businesses to ensure adherence to labour standards (i.e., no forced labour, prison/ convict and child labour in the supply chain). In Germany, the “Supply Chain Due Diligence Act 2021” (enforced in 2023) necessitates companies having more than 1,000 employees to introduce due diligence processes, to identify and address human rights and environmental risks in their supply chains. The German Law emphasizes upon preventive measures, redressal of grievances, and reporting obligations for the supply chain. In the United Kingdom, the Modern Slavery Act (2015) which requires companies to report the steps being taken to curtail modern slavery in their supply chains. Similarly, the Corporate Duty of Vigilance Law (also known as Loi de Vigilance 2017 in France) made it compulsory for companies to develop and implement vigilance plans to identify risks and foil violations of human rights, fundamental freedoms, health of the local community & resources, and environmental impacts of their operations. These regulations are enforced on businesses with more than 5,000 employees within the France or 10,000 overseas employees. “The European Union Directives on Supply Chain Due Diligence (EU- CSDDD)” also advocate upon the mandatory requirements on businesses to conduct due diligence across their supply chains within the region and abroad. This involves identifying, preventing, and mitigating adverse human rights and environmental impacts linked to their operations, products, or services. Companies under the directives, are expected to map their supply chains, assess risks, and implement measures to address identified risks. EU further requires regular monitoring and reporting on due diligence activities, with a focus on continuous improvement.

Globalization has transformed the international trade, with companies and private entities becoming more important than many states. Their actions directly affect the lives of thousands of people, affecting the effectiveness of human rights and sustainable development goals. Although, many national governments in the developing world do not exercise their capacity to regulate compliances with social and environmental standards but when exporting to developed markets (such as America, European Union, Japan, Australia, & New Zealand), market access is often subjected to fulfillment of certain conformities, mandatory & non-mandatory requirements, and private initiatives. These restrictions are usually regulated under the multilateral system in international trade, commonly referred to as “Trade Barriers” including the Tariff Barriers and Non-Tariff Barriers (further classified as Technical Barriers to Trade - TBT and Sanitary and Phytosanitary Measures - SPS). Technical Barriers to Trade are the technical regulatory sanctions covering standards, technical regulations, conformity



assessment procedures (production methods, specific characteristics, processes, terminology, symbols, packaging, marketing, or labeling requirements etc.). Sanitary and Phytosanitary Measures are the quarantine, hygiene and bio-security requirements that are erected by the host state to protect human, animal or plant life or health, or the environment from the risks of diseases, chemical toxins, residue, substances and contaminants etc. (World Trade Organization 2014). The conformity to the non-tariff barriers is often fulfilled either through testing or verification or inspections or through some specific certification<sup>93</sup>. Nonetheless, adherence to all these legal (binding/ mandatory and non-binding) regulations and standards also unlocks all the door to the lucrative trade opportunities and market access. There exist certain complexities in associating trade with human rights as to the quantification of social environmental sustainability, assessment of risks, and their mitigation or redressal. Business and Human Rights is an intricate yet substantial trans-discipline of international trade and Human Rights which requires in-depth examination of its potential for both enhancement of trade and protection of human rights.

International trade has evolved greatly in the 21<sup>st</sup> century; from trade liberalization and preferential trade in the 20<sup>th</sup> century to the negotiations and implementation of multilateral trade agreements for the establishment of a coherent, convergent, and cooperation-based trade regulatory system. Apart from the above stated mandatory requirements, the recent trends have given birth to the new form of Voluntary Sustainability Standards (VSS). These voluntary standards have been introduced by the private sector and are not-mandatory, not-binding yet adherence to these standards is openly acknowledged and supported by governments to grant market access. Even though fulfillment of VSS is voluntary yet failing to adhere to these standards could systematically result in exclusion from a particular market or loss of clients<sup>94</sup>. Nevertheless, these sustainability standards carry significant weightage as they can effectively become obligatory/ binding, only if the government recognizes them as a prerequisite for market entry. Moreover, it is quite normal in international trade that widespread acceptance of any standard by a considerable number of buyers/ purchasers eventually become a norm within the global value chain. In recent times, such non-binding regulations (related to human rights, environment, labour rights, child labour and governance), in addition to the mandatory compliances have become the biggest trade barrier for market access into the developed

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<sup>93</sup> Romanchyshyna, "Technical Barriers to Trade in "New Generation" RTAs and in the WTO Agreements: Conflict or Complementarity?" doi: <https://doi.org/10.1007/978-3-031-25791-9>.

<sup>94</sup> Hoffmann, Ulrich and Bhutani, "Voluntary Sustainability Standards: Illusions of Progress and a Way Forward." doi: <http://public.eblib.com/choice/PublicFullRecord.aspx?p=6785130>.

markets<sup>95</sup>. Henceforth, in order to stay competitive and ensure steady market access, the implementation of the international legal frameworks like “Global Compact Initiative”, “UN Guiding Principles on Business and Human Rights”, “Human Rights Due Diligence framework”, “EU Guidelines on Supply Chain Due Diligence” becomes imperative because these legal frameworks provide a roadmap for companies to steer through the contemporary trade barriers in identifying, preventing, and addressing potential human rights risks in their overall operations.

## **2.6. Conclusion**

Business and human rights are intertwined themes with varying viewpoints on their scope. The debate continues, with international agreements like the Global Compact on Human Rights among others, arguing for human rights standards. In a nutshell, businesses are expected to uphold human rights beyond legislative standards, throughout their entire value chain. Due diligence, transparency, and accountability are critical components of this commitment. It is agreed upon that the Business and Human Rights Framework promotes international human rights principles, requiring businesses to act as responsible corporate citizens. The United Nations Guiding Principles on Business and Human Rights provide a new reformatory approach towards corporate accountability, going beyond voluntary CSR. In this regard, Human Rights Due Diligence (HRDD) is a mechanism aggressively proposed under UNGPs to regulate the actions of corporations and reduce impacts on human rights. It helps to evaluate, alleviate, and explain the consequences of their activities on human rights. For effective implementation of these principles, it is imperative that both public and private sectors actively engage in the efforts.

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<sup>95</sup> Negi, Archana, Pineda, and Blankenbach, “Sustainability Standards and Global Governance: Experiences of Emerging Economies.” doi: <https://doi.org/10.1007/978-981-15-3473-7>.

## **CHAPTER 3**

# **UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: AN ANALYSIS**

### **3.1. Introduction**

This section provides an overview of the UN Guiding Principles on Business and Human Rights, details the UN Working Group on Business and Human Rights, which was established to ensure the implementation, promotion and adoption of UNGPs. Human rights related to business operations must be safeguarded by the State, respected by the corporations, and remediated through state and non-state grievance redressal mechanism; this chapter focusses on the dynamics and implications of foundational and operational principles of Business and Human Rights Framework.

### **3.2. The UN Working Group on Business and Human Rights**

The UN Working Group on Business and Human Rights was established in 2011 to advocate for the respect & protection of human rights, which are affected by the operations of enterprises. The Group functions as one of the specialized agencies within the United Nations framework and operates under the auspices of the United Nations Human Rights Council. The UN Working Group comprises of five impartial experts from evenly distributed geographic regions appointed for the tenure of three (03) years and conducts selected case investigations and submit findings and conclusions to the Council<sup>96</sup>. The Working Group convenes its meetings in Geneva, three (03) times a year. The members of the UN Working Group on BHR are responsible for promoting, and implementing the Guiding Principles on Business and Human Rights into actions<sup>97</sup>. UN Working Group also evaluates the enforceability of UN Guiding Principles on BHR, shares the best approaches and insights gained with other partner states, and recommends reforms & improvements<sup>98</sup>.

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<sup>96</sup> Addo, "The reality of the United Nations guiding principles on business and human rights." 133-147.

<sup>97</sup> UN Working Group Members - <https://www.ohchr.org/en/special-procedures/wg-business/members>

<sup>98</sup> Greene, "Rewarding performance: Guiding principles; custom strategies.

### **3.2.1. Mandate and Functions of the UN Working Group on Business and Human Rights**

The United Nations Human Rights Council established the UN Working Group on Business and Human Rights through a resolution No. 17/4 in 2011. Later on, the mandate of UN Working Group on BHR was extended vide Resolution 26/22 in 2014. As per mandate, the Working group conducts three sessions every year spanning over four consecutive days, undertaking conferences, panel discussions, as well as state visits. The Working Group looks after the realization of the United Nations Guiding Principles on Business and Human Rights to engage stakeholders in debate and nurture cooperation with pertinent stakeholders, both state and non-state actors. UNGPs on BHR provide a structured approach that ensures protection of human right in businesses. These principles are categorized into three foundational pillar such as the duty of the state to protect human rights, the responsibility of corporations to safeguard human rights, and the need for redressal of grievances through an efficient remedy mechanism.

The UN Working Group on Business and Human Rights carries out a range of functions. Firstly, the group engages with the governments, companies, CSOs, and international NGOs to foster an environment suitable for the promotion of United Nations Guiding Principles on Business and Human Rights. In doing so, the members of the working group conduct a gap analysis of the existing position of the stakeholders and, based on their findings, propose interventions, including awareness raising among masses and businesses, and conduct capacity building of professionals (government officials, managers, & lawyers). Secondly, the Working Group from time to time offers advice and opinions to governments, companies, and other relevant stakeholders on the strategies to implement the BHR framework. This includes providing professional and technical assistance in framing policies, regulations, procedures, conduct of due diligence, and remedies to victims. Thirdly, the members of the group visit partner countries to evaluate and review the progress on the implementation of guiding principles on BHR. Based on their meetings with government officials, business community and civil society organizations, the group proposes policy recommendations in the form of a report to further boost the efforts. In the last 10 years, the working group has convened over 20 country visits to countries such as Colombia, Japan, Argentina, Canada, Thailand, Italy, Kenya, Azerbaijan, Ghana, Brazil, Mexico, Peru, Republic of Korea, and others. These visits allow working group to ascertain the level of progress on implementation of Business and Human Rights framework and the challenges being faced in the process (lack of awareness,

poor understanding, and lack of access to remedies or inadequate accountability). Lastly, the working group endeavours to promote cooperation and dialogue between stakeholders. Country visits also allow the working group members to create synergies among the committed states and share best practices from around the world for a well-coordinated effort in protecting human rights. Since business and human rights framework has been linked with the trade barriers, the working group attempts to build bridges between governments and companies through consultations and workshops. The aim is to engage parties concerned into discussions & negotiations to address challenges in the implementation process.

### **3.2.2. Impact of the UN Working Group on Business and Human Rights**

The UN Working Group on Business and Human Rights has had a significant impact since its creation in 2011. The working group celebrated its 10th anniversary on 16th June 2021 for their continued efforts in promoting respect for human rights and corporate sustainability. In its first decade, Business and Human Rights of UN has become a common framework for all the stakeholders, including companies, countries, and regions. The efforts of the UN Working Group over the years have encouraged public corporate commitments toward human rights, transparency, accountability, and corporate responsibility. The Human Rights Due Diligence framework under UNGPs has mandated benchmarking and reporting in supply chains. HRDD has brought about transformational changes in many companies, enabling them to induce internal changes needed to prevent, mitigate, and remedy human rights abuses. Over the span of the last decade, a growing number of corporate HR policies, due diligence frameworks, grievance redressal mechanisms, and awareness raising programs have been devised by the working group. In consequence of the efforts of the UN Working Group, the processes for identifying and preventing risks to human rights have strengthened, and businesses have adjusted their priorities towards the risks faced by people rather than the risks faced by corporations. The UN Working group has impacted greatly to the Business and Human Rights especially with its interventions through country visits, advocacy campaigns, progress reports and Action Plans. The UN Working Group has conducted country visits to over 20 countries to enhance awareness regarding Business and Human Rights at the national, regional and international level. The working group through its insightful reports and publications has been building capacity of the stakeholders. The key areas of resource materials cover topics such as "Investors, environmental, social and governance approaches",

"Development finance institutions and human rights", "Issue of human rights and transnational corporations and other business enterprises", "Implementing the third pillar: lessons from transitional justice guidance", "Role of national human rights institutions in facilitating access to remedy for business-related human rights abuses", "Connecting the business and human rights and the anti-corruption agendas", "Economic diplomacy" as a tool for States to promote corporate respect for human rights, "Gender dimensions of the Guiding Principles on BHR", "Opportunities for small and medium-sized enterprises in BHR", "Best practices and how to improve on the effectiveness of cross-border cooperation between States with respect to law enforcement on BHR", "Leading by example - The State, State-owned enterprises, and Human Rights", "Improving policy coherence for inclusive and sustainable development", and "Corporate influence in the political and regulatory sphere: Ensuring business practice in line with the Guiding Principles on BHR", among other. Lastly, the efforts of Working Group in the last decade has led to adoption of a dedicated national Action Plan on Business and Human Rights by over 34 countries whereas China, Georgia, South Korea, and Mexico have incorporated the provisions and themes of BHR into their respective Human Rights Actions Plans. In the advisory role, many states including Denmark, Canada, Finland, Costa Rica, France, Germany, Mongolia, Chile, Portugal, United States of America, and many others have sought advisory from the UN working Group. Since 2011, owing to the efforts of the working group, the UN Guiding Principles have become an authority in Business and Human Rights for international, regional and national agencies, including the International Labour Organization (ILO), the Organization for Economic Co-operation and Development (OECD), regional organizations, in particular, the European Union (EU) and the Organization of American States (OAS), trade unions, international financial institutions, regional human rights mechanisms, corporations, and national human rights institutions.

### **3.2.3. UN Working Group on Business & Human Rights and engagements with Pakistan**

Pakistan as a civilized state to ensure protection of human rights has endorsed the United Nations Guiding Principles on Business and Human Rights. The country has always endeavored to foster respect for human rights especially in business. The UN Working Group on Business and Human Rights has been actively involved with the Government of Pakistan and the civil society in supporting these efforts since 2016. In 2017, the UN Working Group

on Business and Human Rights conducted a country visit to Pakistan to assess the adoption efforts on the Guiding Principles in the country. The Working Group during its visit engaged with the representatives from the government, civil society organizations, businesses, and other stakeholders for the implementation of UN guiding principles. The Working Group's report on the visit highlighted several challenges and made recommendations for improving the implementation of the Guiding Principles on BHR in Pakistan. The report highlighted that government officials and businesses lack awareness and understanding of Business and Human Right Framework and recommended Government of Pakistan to take steps for advocacy on BHR Framework. The Working Group raised a critical issue that the judicial system of Pakistan lacks a mechanism to provide effective remedy to the aggrieved parties of human rights abuses especially by business activity. The Working Group proposed number of recommendations including, development of a National Action Plan on Business and Human Rights to address and improve key areas of concern, appointment of independent commission on human rights, and strengthening of judicial framework to expedite dispensation of remedies to the victims. Moreover, the working group emphasized upon the need for businesses to conduct HRDD in their operations to identify and address the risks associated with their operations.

In response to the findings of the UN Working Group, Government of Pakistan officially engaged with the UN in October 2018 and held initial discussions for adopting UNGPs on BHR. In November 2018, Pakistan attended the UN Forum on Business and Human Rights in Geneva which resulted in a collaboration between Ministry of Human Rights and UNDP for the development of National Baseline Assessment to analyze Pakistan's legal and regulatory framework, implementing BHR. In the same year, the government appointed a new national commission on human rights to promote and protect human rights in the country. Later on in April 2019, Pakistani delegation visited Bangkok to learn from the experiences of Government of Thailand in developing a National Action Plan on BHR followed by the participation in a regional consultation in Davao, Philippines. Consequently, the zero draft was prepared in February 2020 and finally, Pakistan's first ever NAP on Business and Human Rights was launched in December 2021, which is currently being implemented by the Ministry of Human Rights. The action plan provides a framework for the implementation of the Guiding Principles in Pakistan and includes measures to promote respect for human rights by businesses, to provide effective remedies for victims of human rights abuses, and to encourage businesses to conduct human rights due diligence.

The UN Working Group on Business and Human Rights has significantly contributed to advancing the agenda of Business and Human Rights in Pakistan. Over the years, Pakistan has achieved tremendous milestones in protecting human rights from business activity. Pakistan's efforts towards implementation of UNGPs on BHR have allowed the country to adhere to the treaty obligations under GSP+, as well as in maintaining its market access to one of the most important trade markets (i.e., European Union). Nonetheless, further efforts are warranted to guarantee that businesses in Pakistan uphold human rights and that the victims of human rights violations have access to speedy and judicious remedies. The continued involvement of the UN Working Group with Pakistan will be instrumental in tackling these challenges.

### **3.3. UN Guiding Principles on Business and Human Rights**

The UN Guiding Principles on BHR, introduced in the year 2012 are the basis for all relevant legislation on Business and Human Rights including the National Action Plan, and Human Rights Due Diligence framework among others laws & policies. These guiding principles are rooted in the existing international human rights framework and have been founded on rights enshrined in the International Bill of Human Rights (i.e., the Universal Declaration of Human Rights (UDHR), International Covenant on Economic Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR)). UNGPs on BHR provide a set of international frameworks for governments, law makers, and businesses and are believed to be the first formal attempt at the international level to define the duties of states and responsibilities of enterprises in global supply chains. The United Nations Guiding Principles have been categorized into three pillars comprising; (a) States' duty to protect human rights, (b) Corporate responsibility to respect human rights, and (c) Access to remedy. In total, there are 31 guiding principles broken into foundational and operational principles within each pillar<sup>99</sup>.

The Guiding Principles 1 through 10 cover the first pillar imposing a duty on states for "taking necessary measures to prohibit, examine, condemn, and restore" violations of human rights committed by commercial activity "inside their realm and/or authority." Although

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<sup>99</sup> Kokabisaghi, "Assessment of the effects of economic sanctions on Iranians' right to health by using human rights impact assessment tool: a systematic review." 374.



nations are "not normally obligated under worldwide human rights laws" to control the trans-border operations of corporations but the Guiding Principles encourage states to exercise such authority within their grasp<sup>100</sup>. The principles advise states to clearly define the parameters for companies in the form of enactments, policies and regulations. State must ensure that the legal framework is set in place to prevent, investigate, punish and redress adverse human rights impacts.

The second pillar of the UNGP cover principles from 11 through 24, outlining the responsibility of corporations and how they can refrain from violating the right of individuals. The principles require corporations to introduce adequate policies and procedures for protecting human rights. This entails that corporations should institutionalize a policy commitment, undertake human rights due diligence to identify, prevent and mitigate human rights abuses, and take effective measures for remediation of any adverse impact on human rights<sup>101</sup>.

The pillar 3 principles (from Principle 25 through 31) outline that how enterprises and States can work together to provide effective remedy to a violation which is legitimate, accessible, predictable, equitable, transparent and rights compatible. These remedies may either be judicial, quasi-judicial, or non-judicial in nature but the process must engage the concerned stakeholder whose rights have been violated.

### **3.4. Pillar I: The State Duty to Protect Human Rights**

The 'responsibility to protect' as a concept has developed in less than four-year time period during 2000s. R2P was first suggested in the report of then Secretary General Kofi Annan in 2000, which in no time flourished as an international norm by 2005. It was proceeded by an independent and autonomous commission of professionals which has now been validated by the UN General Assembly. This concept has been the topic of discussion and reference in many Resolutions of General Assembly and Security Council and has been debated for protection of people and their rights in general and for their protection from massacre at a large

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<sup>100</sup> Fransen and LeBaron, "Big audit firms as regulatory intermediaries in transnational labor governance." 260-279.

<sup>101</sup> Broberg and Sano, "Strengths and weaknesses in a human rights-based approach to international development—an analysis of a rights-based approach to development assistance based on practical experiences." 664-680.

scale such as genocide, humanitarian crimes, war crimes, and ethnic cleansing in particular. This theoretical notion has been used largely by many international players i.e., states, international media, social media, non-governmental organisations (NGOs & INGOs) during the conflicts in countries such as Darfur (Sudan) Gaza (Palestine), Myanmar, Kenya, Georgia, Sri Lanka, the North Korea, Congo, Libya, Syria, Tunisia, Egypt, Yemen and other conflicts.

Three-point synopsis of R2P describes the following responsibilities of state to fulfil which will help preventing violence and atrocities against humanity. The ‘Responsibility to Prevent’ requires states to containing the root causes of internal conflicts as her ultimate responsibility. The ‘Responsibility to React’ states that government has the responsibility to respond through coercive measures either by dialogues or by force to maintain peace and security. The ‘Responsibility to Rebuild’ mandates governments to rehabilitate and reconstruct the country after violation of their rights or after conflict. This regime enforcing the ‘Duty of State’ to protect its people has also been validated in the General Assembly's World Summit Agreement in 2005, which means that “No state from onwards can refute this duty”. It necessitates states to have effective policies, laws, rules, regulation, and enforcement mechanisms in place to protect the rights of individuals, whose liberties have been violated by others including the business enterprise, and also provide remedy for the violations thereon through the legal, judicial or quasi-judicial system<sup>102</sup>. The UN Guiding Principles assert that states are obligated to protect their citizens against human rights abuses perpetrated by third parties, particularly companies. This also entails that States must curtail, investigate, penalize, and address human rights violations, occurring due to business activity within their jurisdictions<sup>103,104,105,106</sup>.

### **3.4.1. Pillar I: Foundational Principles**

Foundational principles set out the theoretical part of Business and Human Rights framework. The first principle, therefore, imposes a responsibility upon state to undertake measures to stop human rights violations by third parties, like commercial enterprises, that take

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<sup>102</sup> Ganson and Wennmann, “Business and conflict in fragile states: The case for pragmatic solutions.”

<sup>103</sup> Enderle, "How can business ethics strengthen the social cohesion of a society?" 619-629.

<sup>104</sup> Smith, “International human rights law.”

<sup>105</sup> Elfert, "Lifelong learning in Sustainable Development Goal 4: What does it mean for UNESCO’s rights-based approach to adult learning and education?" 537-556.

<sup>106</sup> De Schutter, “International human rights law.”

place in their territory or under their jurisdiction<sup>107</sup>. International Human Rights law makes it obligatory upon states to ensure protection of people's right. Although state herself is not directly responsible for the abuses or violations but it has been bestowed upon with this moral duty to protect its citizens (Watson, Anderson, Wilson, & Anderson, 2022). In the absence of a preventive mechanism protecting its people or the state herself being involved in the abuses, the state stands in breach of its international treaty obligations. UNGPs leave it on the discretion of the state to employ a full range of permissible and preventive measures including, policies, laws, regulations, guidelines, and adjudication. States also have a duty to protect and enhance the legal system, which includes making sure that the justice system is fair, that everyone is treated equally under the law, and that there is enough accountability, legal coherence, and administrative and judicial effectiveness.

In today's globalized world, corporations have trans-national presence spanning across the globe for cheap labour or raw material or for conducive policies. However, their presence abroad does not absolve them of their responsibility to protect people from harm caused by their operations. The second principle of UNGPs advocates for a clear set out instructions defining the acceptable range of behavior by the large enterprises, while conducting their operations within the borders or abroad. States must have clear set of laws/ guidelines/ standards in place to regulate that all businesses based within the borders or under their control uphold protection of human rights at all times. The existing international human rights framework does not bind states to regulate the conduct of their domiciled companies in foreign jurisdiction, however, states are being compelled to keep track of the operations of companies abroad, especially those involved in activities; in contravention to the International Human Rights Law. The emerging norms under Business and Human Rights framework deem it imperative for states to regulate the respect for human rights in the supply chains and value chain of corporations domiciled within their territory<sup>108</sup>. In compliance, States have endorsed a number of legislative & policy adjustments that proved helpful in regulating the corporations' behavior especially in their trans-national engagements. OECD Guidelines for "Multinational Enterprises" is one the strategies employed in this regard, which imposes a reporting requirement on parent company domiciled within State's jurisdiction. These guidelines advocate for domestic measures with extra-territorial jurisdiction, mandating MNCs to report

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<sup>107</sup> Healy, Stephens, and Malin, "Embodied energy injustices: Unveiling and politicizing the transboundary harms of fossil fuel extra-activism and fossil fuel supply chains." 219-234.

<sup>108</sup> Altwicker, "Transnationalizing rights: international human rights law in cross-border contexts." 581-606.

the global operations of their entire enterprise. The recent developments such as “German Supply Chain Act 2021”, the “Norwegian Transparency Act of 2021”, the “French Duty of Vigilance Act of 2017” and the “EU Supply Chain Due Diligence Directives” are the manifestations of this approach<sup>109</sup>. Similarly, imposition of performance standards is another strategy that requires corporations seeking overseas investment to meet a certain normative criterion. One of the evolving approaches to the enforcement of Business and Human Rights framework is the enforcement of direct extraterritorial criminal regime. Under this approach, states can hold parent domiciled companies criminally liable for human rights abuses abroad. Although no such instance of such magnitude has been brought to justice but the idea has gained immense traction in the past decade. In 2016, the Committee of Ministers of the Council of Europe promoted the idea that companies may be held criminally liable for the serious violations of human rights committed by them abroad. Although there is no existing law to the effect but efforts are underway to work out the technicalities. Nonetheless, it has been proposed that the directors of the company may be held criminally liable for failure to discharge their duty. The idea has drawn sustenance from the imposition of “Bribery Act 2010” in the United Kingdom which impose transnational criminal liability upon the Directors of the parent company for her involvement in bribery, corruption, kickbacks or fraud anywhere in the world. Since the imposition of Bribery Act 2010, a positive shift in company’s behavior and culture has been witnessed. UNGPs perceive to achieve the same level of deterrence for the protection of Human Rights.

### **3.4.2. Pillar I: Operational Principles**

Operational principles provide a practical guidance and direction for the state to fulfill their duty to protect its people. Understanding the duty to protect its people and clearly explaining the expectations from the business enterprises is the first part but states cannot just assume that businesses will live up to the expectation of the state and will refrain from activities that adversely affect human rights. States will need to take proactive measures to bolster business respect for human rights. The UN guiding principle necessitates that state should introduce stringent laws, policies and guidelines from time to time requiring business

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<sup>109</sup> Di Vaio, Palladino, Hassan, and Alvino, "Human resources disclosure in the EU Directive 2014/95/EU perspective: A systematic literature review." 257.

enterprises to assess their operations<sup>110</sup>. Utmost effort must be made by the state to ensure that all the concerning laws, rules and regulations promote respect for human rights which was be frequently revisited to ensure that the legislative framework is adequate and effective in regulating business corporations. Since businesses can violate human rights in a range of areas such as environment, protection of property, privacy, non-discrimination, and enforcement of labour laws (labour unions, trade union, wages, working environment & conditions etc.), it is imperative for the state to review these laws in consonance with the changing trends and evolving circumstances. Laws, policies and regulations relating to corporations dictate the governance structures of enterprises, which in turn shapes the Boards and behavior of enterprises<sup>111</sup>. State should lay out sufficient guidelines from time to time, advocating the permissible acts and norms of companies and their officers. In doing so, communicating best practices, risks, and challenges is an advisable strategy that states can employ to convince other businesses to respect human rights. More often, respecting human rights and maintaining performance come with a trade-off but by sharing the success stories and by establishing a communication channel between state and businesses, States can effectively encourage businesses to respect for human rights<sup>112</sup>.

States are the primary duty bearer of International Human Rights Law but states themselves own, control, and operate businesses, any violation of human rights by such enterprises tantamount to the violation of State's international law obligations. UNGPs advocate that having state owned enterprises offers an opportunity to the State to set an example for the protection of human rights. Companies that rely heavily on the state and directly report to the government agencies or departments should induct greater scrutiny and oversight in their operations and be presented as role model for the business community<sup>113</sup>. UNGPs profess that state should declare implementation of Human Right Due Diligence framework mandatory for companies that deal with government agencies and departments, formally or informally concerning matters ancillary to government support, export credit, seeking investments from financial institutions, insurance, re-insurance, or guarantees from state institutions<sup>114</sup>. In doing

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<sup>110</sup> Pillar I: Operational Principles (General State regulatory and policy functions), UNGP Principle 3.

<sup>111</sup> Akimova, Levytska, Pavlov, Kupchak, and Karpa, "The role of accounting in providing sustainable development and national safety of Ukraine." 54-61.

<sup>112</sup> Sierra-Garcia, Garcia-Benau, and Bollas-Araya, "Empirical analysis of non-financial reporting by Spanish companies." 29.

<sup>113</sup> Fleacă, Fleacă, and Maiduc, "Aligning strategy with sustainable development goals (SDGs): Process scoping diagram for entrepreneurial higher education institutions (HEIs)." 1032.

<sup>114</sup> Pillar I: Operational Principles (The State Business Nexus), UNGP Principle 4.

so, State explicitly neutralizes the actual and potential adverse impacts on human rights<sup>115,116</sup>. In certain instances, states privatize delivery of services to the corporations or private sector. Business enterprises operate for profits, therefore, private companies performing these services, which were once public may adversely impact or affect the enjoyment of basic human rights. UNGPs propose that by privatizing the delivery of services, states neither relinquish their authority nor are absolved of their human rights law obligations. The guiding principle emphasizes upon the state's duty to maintain its oversight on the services privatized to companies<sup>117</sup>. It proposes states to introduce a permanent independent monitoring and accountability mechanism during the privatization process. State as a party interacts with numerous stakeholders either for procurement, privatizations, service delivery or any other commercial transaction. This provides state an advantage in implementing BHR framework. The UNGP encourages that States should take advantage of their capacity and promote respect for human rights by dictating terms of contracts favorable for human rights<sup>118</sup>.

It is a well-recognized fact that conflict zones witness the worst human rights violations. In this tug of war between the state and non-state actors for resources or control of territory, human rights are the first calamity. In such circumstances, states and the corporations need to be innovative and improvise while conducting their operations. The principle requires states to engage with the business enterprises in the earliest stage of the conflict and should coordinate with the home country through diplomatic channels to identify, prevent and mitigate risks for the violation of human rights. Governments in collaboration with the support of the home country of the company, embassy, diplomatic mission, and development partners must provide adequate assistance to avert the risk of human rights abuses especially the gender based and sexual violence against women<sup>119</sup>. In most of the armed conflicts, rights of women and children are exploited by the belligerents as a tool to defeat the spirits of the enemy. UNGP warns States of the precautions in the event if the corporations become non-responsive and non-cooperative, the State must have policies, legislations and enforcement mechanism in place to deal with such enterprises, including denying present or future public support or amenities and penalizing the perpetrators for their actions against humanity.

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<sup>115</sup> Slaughter, "Hijacking Human Rights: Neoliberalism, the New Historiography, and the End of the Third World." 735.

<sup>116</sup> Loeffler, "Rooted Cosmopolitans: Jews and Human Rights in the Twentieth Century."

<sup>117</sup> Pillar I: Operational Principles (The State Business Nexus), UNGP Principle 5.

<sup>118</sup> Ibid, UNGP Principle 6 "States should promote respect for human rights by business enterprises with which they conduct commercial transactions."

<sup>119</sup> Ibid, UNGP Principle 7.

States function through its governmental departments, agencies and institutions; therefore, it is imperative that these stakeholders involved in the execution of State's duty are well-equipped with the knowledge, skills and training to deal with the business practices which may affect human rights. In order to enforce preventive measures and implement HRDD framework, State should maintain coherence in both horizontal and vertical policy levels<sup>120</sup>. Vertical policy coherence refers to the adoption and enactment of necessary laws, policies, processes, rules and regulation covering each aspect of business relations. Horizontal policy coherence on other hand, refers to the capacity, capability and competences of the local, provincial or national departments, authorities, and judiciary involved, to enforce and implement the laws, policies and processes in letter and spirit. The advocacy and training of government officials serve two key interests for the State<sup>121</sup>. First, it allows government officials to implement and regulate corporate entities in line with the Business and Human Rights framework. Secondly, it facilitates a State in making informed decisions especially in economic & trade agreements (Free Trade Agreements, Foreign Investment Projects, Bilateral Investment Treaties etc.) either with other States or the business entities. International economic, trade or investment agreements are constrained with international arbitration; binding states to fulfill their commitments. Training, awareness and advocacy of UNGPs will help State to retain adequate domestic policy space while contracting with other parties<sup>122</sup>. UNGPs draw up on the issue of international investment treaties and contracts, and caution States to ensure that the member states/ corporate parties in the multilateral arrangement promote respect for human rights, and adhere to the duties of state/ corporation to protect people against human right abuses<sup>123</sup>. Engaging with a multilateral institution that promotes respect for human rights will further garner support in building a cooperative environment for flourishing Business and Human Rights framework.

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<sup>120</sup> Pillar I: Operational Principles (Ensuring Policy Coherence), UNGP Principle 8

<sup>121</sup> Gatto, "A pluralistic approach to economic and business sustainability: A critical meta-synthesis of foundations, metrics, and evidence of human and local development." 1525-153.

<sup>122</sup> Ibid, Note 120, UNGP Principle 9

<sup>123</sup> Ibid, Note 120, UNGP Principle 10

### **3.5. Pillar II: The Corporate Responsibility to Respect Human Rights**

Regardless of the state duty to protect, UNGPs on BHR also obligate businesses to ensure protection of human rights<sup>124</sup>. The United Nations Guiding Principles from 11 through 24 relate to the ‘Corporate Responsibility to respect Human Rights’. International Human Rights Law does not apply directly to corporations rather this obligation is enshrined in the domestic national laws. Since the actions of the enterprise are consequential and affect the enjoyment of basic rights of people around them, either positively or negatively. Businesses either cause Human Rights violations, or contribute towards infringement through third party, or are linked to the infringement of human rights via their operations (products or services). Therefore, businesses need to be held responsible for the rights of the people working as employees, people working in the supply chains, people dealing with the enterprise (the customers), and the rights of the people being affected by the operations of the enterprises (the communities). Pillar II of the Guiding Principles makes reference to the conduct of the businesses in understanding what Human Rights are; how businesses affect them; and how businesses can mitigate the adverse impacts on human rights<sup>125</sup>.

UNGP's relating to ‘The Corporate Responsibility to respect Human Rights’ set forth what is anticipated of commercial corporations in terms of respecting human rights. It also describes the foundation of the responsibility that businesses should recognize, commit and make efforts to remediate. According to the Guiding Principles, businesses must take steps to prevent, minimize, and, when appropriate, rectify human rights violations for which they may be held accountable. Companies must take action to avoid or reduce any bad consequences associated with their operations, products, or solutions, even if such effects were brought on by manufacturers, suppliers or business partners. The operational principles then mandate corporations to induct operational policies and procedures in their operations, partake Human Rights Due Diligence (identify activities detrimental to infringement of human rights, assess actual or potential adverse impacts, conduct impact assessments, take remedial measure, and track effectiveness of strategy), and remediation through legitimate channels.

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<sup>124</sup> Turker, "Social Responsibility and Human Resource Management." 131-144.

<sup>125</sup> Domaradzki, Khvostova, and Pupovac., "Karel Vasak's generations of rights and the contemporary human rights discourse." 423-443.



### 3.5.1. Pillar II: Foundational Principles

The idea of human rights is simple yet powerful, derives mainly from the Universal Declaration of Human Rights<sup>126</sup> that “all human beings are born free and equal in dignity and rights” without discrimination, and businesses should recognize human dignity and respect human rights. This implies that businesses must abstain from infringing human rights and should go about their operations within the law (for instance conduct business activities without polluting the water resources, contaminating land with poisonous waste etc.)<sup>127</sup>. The question emerges that what is the legal internationally recognized baseline for businesses to abstain from. The Core internationally recognized human rights treaties, subject to the periodic review and their respective optional protocols along with the eight (08) convention of ILO are believed to be the benchmark for assessing protection of human rights from business activity<sup>128</sup>. Respect for human rights by enterprises is largely governed through domestic legislation but the concept in practice is often engulfed by morality<sup>129</sup>. UNGP imposes a responsibility upon enterprises to take adequate measures for their prevention, mitigation and, where appropriate, remediation of adverse human rights impacts. Business activity does not only refer to the ‘acts and omissions’ of the enterprise only rather encompasses the activities of all the business partners (third party enterprises and Foreign Governments) involved in the process, including the entities in the traceable supply chains and value chains<sup>130</sup>. Businesses either cause Human Rights violations, or contribute towards infringement through third party, or are linked to the infringement of human rights via their operations (products or services). Some of the illustrations where business entities cause adverse human rights impacts include, racial discrimination of customers by the café, workers exposed to hazardous working conditions without protective equipment. Illustrations where business contribute towards adverse human rights impacts would include marketing sugary drinks and foods to Children, selling cigarettes unauthorized vendors who sell them to underage teens, and political persecution of dissident based on their data demographics. Illustration of indirect infringement of human rights via operations comprise providing insurance/ export finance to the enterprise involved in Child Labour, Product order to a firm/ company disposing off their waste in the river. These

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<sup>126</sup> The Universal Declaration of Human Rights (UDHR) 1948 is a milestone document in the history of human rights, sets out 30 rights and freedoms.

<sup>127</sup> Pillar II: Foundational Principles, UNGP Principle 11.

<sup>128</sup> Ibid, UNGP Principle 12

<sup>129</sup> Muawanah et al., "Review of national laws and regulation in Indonesia in relation to an ecosystem approach to fisheries management." 150-160.

<sup>130</sup> Ibid, Note 128, UNGP Principle 13

illustrations affirm that human rights abuses can take effect regardless, of the scale, complexity, size and location of the enterprise. Human Rights abuses can take place in Small and Medium Enterprises, in Family-owned businesses, or in Large Scale Multinational Corporations. However, the scale and magnitude of infringement of human rights may vary in severity depending upon the scale and scope of operations<sup>131</sup>. Nonetheless, the UNGP impose equal responsibility upon corporate entities, large or small, to respect human rights and employ policy commitment and introduce HRDD in their operations, suitable to the size and human rights risks<sup>132</sup>. Large corporations typically have complex operations spanning over continents, more employees, complex systems and procedures and more business partners as compared to the SMEs. This signposts that large corporation also pose a higher human rights risk, therefore, the advocacy policies and remedial measures must be reflective of the magnitude, extending upon the all the subsidiary entities including its transnational activities and business partners and should embed respect for human rights across all relevant functions of the corporation<sup>133,134</sup>. SMEs, on the other hand, have few employees, less capacity, limited business partners, and informal systems; hence, less risk. Consequently, their commitment policies will generally be less formal and oversight simple.

### **3.5.2. Pillar II: Operational Principles**

Operational principles from 16 through 24 provide detail of practical measures that corporations are required to partake to ensure that their operations do not adversely impact human rights violations. It has been established that businesses especially large-scale corporations should express their policy commitment affirming responsibility to respect human rights in a ‘statement’<sup>135</sup>. Since corporation have complex operations, process, and hierarchy, it is imperative that the responsibilities, policy commitment, and expectation of corporations are clear and concise, drafted by the experts, duly approved by the most senior executives, communicated internally and externally with all personnel and enterprises in their supply

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<sup>131</sup> Pillar II: Foundational Principles, UNGP Principle 14

<sup>132</sup> Lancaster, “Rainwater harvesting for drylands and beyond, volume 1: guiding principles to welcome rain into your life and landscape. Vol. 1. Rain source Press.”

<sup>133</sup> Altwicker, "Transnationalizing rights: international human rights law in cross-border contexts." 581-606.

<sup>134</sup> Ibid, Note 131, UNGP Principle 15

<sup>135</sup> Pillar II: Operational Principles (Policy Commitment), UNGP Principle 16

chains, and displayed publicly in open spaces<sup>136</sup>. These policy commitments may vary from industry to industry based on their operations. For instance, a food or beverages company may face Human Rights risks related to labour rights, impacts of waste on land/ water and the health of the buyers. A footwear company will be concerned with the labour rights and cruelty to animals within its supply chain. An oil extraction company will be at risk of causing adverse impact to the rights of indigenous people, the land, and the environment. In short, these commitments should be custom-made and embedded through all the functions of corporation from top to bottom<sup>137</sup>.

Statement on Responsibilities, Policy commitments and expectations indicates positive intentions of the corporations but in order to identify, prevent and protect adverse human rights impacts from their business activity, corporations should carry out Human Rights Due Diligence. HRDD is a continued process similar to the enterprise risk management systems, which includes identification of operational activities in the whole supply chain that can be detrimental to the infringement of human rights to ascertain the factors involved (such as suppliers, clients, operations, product, or service) impacting violations, followed by the assessment of actual or potential risk of adverse impacts caused by these factors in the supply chain<sup>138</sup>. Assessment of risks helps corporations in three ways. First, it helps them to understand the specific cause/ activity of adverse impact and then the nature of impacts and finally the recipients facing adverse impacts (specific individuals, people, community, climate, or environment). UNGP recommends that identification and assessment of risks is preferably carried out beforehand prior to any product launch, new market entry, major policy change or international agreement with business partners etc.<sup>139</sup>. Corporation should have a catalogued impact assessment answering questions such as what activity is being carried out, who may be affected, what are the standards and issues and how will they be affected? Assessment of risks allows corporations to anticipate actual or potential risks in advance, providing corporations with an opportunity to effectively integrate the risk in its operations and act upon the findings in accordance with the situational sensitivities of the issue; provided that the findings of assessment are understood correctly, allocated sufficient budget and given due importance. In this regard, UNGPs recommend that potential risks can be easily addressed through horizontal

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<sup>136</sup> Watson, Anderson, Wilson, Anderson, "The impact of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) on Victorian guardianship practice." 2806-2814.

<sup>137</sup> Healy, Stephens, and Malin, "Embodied energy injustices: Unveiling and politicizing the transboundary harms of fossil fuel extra activism and fossil fuel supply chains." 219-234.

<sup>138</sup> Pillar II: Operational Principles (Human Rights Due Diligence), UNGP Principle 17

<sup>139</sup> Ibid, UNGP Principle 18

integration of findings<sup>140</sup>. The principles suggests that when policy commitments to respect and protect human rights are clearly embedded in company's operations and functions, the potential adverse risk to human rights can be averted whereas actual impacts are ones that have already occurred which can only be mitigated through redressal of the wrongful practices. In practice, horizontal integration of findings may naturally take effect in day-to-day interaction but corporations lack such ease of interaction. Therefore, corporations would require a more robust and systematic approach to integration involving structured collaboration across departments, consistent follow-up and reporting within the organizations, interaction with other stakeholders in the industry and interaction with policy specialists.

Human Rights Due Diligence is a process and an attempt to prevent any prevalent or unforeseen adverse impact on human rights emanating from the business activity. Remediation/ addressal of grievances, on the other hand, is the real challenge faced by organizations. Despite best policies, due diligence, there is always a possibility that in a multi-tiered complex value chain, rights of people might be infringed due to any unforeseen circumstances. Remediation through legitimate processes is the solution to put right any actual adverse human rights impacts. When the violations stem directly from the operational activity of the business entity, an operational level grievance mechanism engaging the affected parties and achieving a coordinated settlement would be sufficed to address the impacts<sup>141</sup>. However, the situation gets complicated when an actual adverse human rights impact is identified in the operations but caused by the business partners in the supply chain. For instance, if the supplier in contravention to the agreed terms employs children and exploits them through bonded labour without any pressure or direction from the enterprise, in such circumstance, UNGPs advice enterprises to take steps to cease violations and use leverage over the business partner to address actual adverse human rights risk. Leverage over an entity refers to the ability of the corporation to affect the wrongful practices of its business partners in the supply chain. Leverage depends upon a number of factors i.e., the direct control over the partner, the business relation between the parties, the proportion of business reliance over each, the ability of the company to incentivize the performance, the level of toll on company's reputation and the ability of the company to engage the State requiring compliance of human rights laws. Whenever faced with such circumstances, UNGPs advise corporations to consult decision matrix to evaluate its leverage and decide whether a company should end its relationship or

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<sup>140</sup> Ibid, UNGP Principle 19

<sup>141</sup> Pillar II: Operational Principles (Human Rights Due Diligence), UNGP Principle 22

proceed for the mitigation of adverse human rights impacts. The decision matrix assesses company's leverage on the horizontal axis and the business relation on the vertical axis. The corporation is believed to have crucial relation with the partner if the service or product provided by them has no alternate source. In this case, ending business relation for the sake of adverse human rights impact relies mainly on the severity of human rights violation. Companies may continue to work with the partners under the premise to mitigate the risks and find new supplier. However, companies must consider reputational, legal and financial consequences of continued business relation. In other scenarios, where company has leverage over the business partner or the product supplied is either less crucial or the alternate supply source is available, the corporation are advised to continue business relations so long that they can assert leverage to affect partner's approach towards human rights. When it comes to remediation for the violations caused due to the product or service by the business partners or the abuse is contested for a crime, a remedy through an institutionalized judicial mechanism is preferred.

Human Rights Due Diligence is a continued process; therefore, it is essential to keep track of the effective implementation of policy commitments, effective redressal of identified actual and potential human rights impacts and foster continual progress. Keeping track of enterprise's responses to identified actual and potential risks provides direct feedback from the aggrieved<sup>142</sup>. It helps corporations to assess whether their efforts have yielded any result to the betterment of vulnerable and marginalized people or not. Tracking human rights abuses, both actual or potential, also help identify trends and possible risks associated within a certain activity/ sector/ industry/ market, presenting a bigger picture of the dynamics of the product/ market/ country. In order to embed respect for human rights in true letter and spirit, a number of models, metrics, and standards are already available to effectively track implementation of policies and initiatives. For instance, the difference between environmental impacts of business activity and effectiveness of environmental policies can be measured using quantitative data and indicators related to water, temperature, climate, diseases and land etc. However, when it comes to qualitative assessment there is no specific measure to track implementation. UNGPs propose by establishing a joint fact-finding committee by the company or by engaging a third-party organization, corporations can alternatively measure the implementation progress. Accountability is paramount in ensuring corporate responsibility therefore, the last process in

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<sup>142</sup> Pillar II: Operational Principles (Human Rights Due Diligence), UNGP Principle 20

Human Right Due Diligence requires corporations to communicate and publicize that they are fulfilling their responsibility to respect human rights<sup>143</sup>. Communicating human rights related compliance foresees that in doing so, the businesses will conduct an internal information gathering round, followed by an internal accountability check to identify actual and potential human rights impacts, how the company acted on the findings, tracking whether policy commitments and redressal of adverse human rights has been effective or not<sup>144</sup>. In practice, for instance, the communication from a pharmaceutical company will generally focus on safety, informed consent of participants in the drug trial. Similarly, a mining operation will communicate about the risks related to working conditions, safety standards, environmental impacts, ethical concerns for life in the mine and will inform how it has addressed each concern or is addressing the potential and actual risks<sup>145</sup>.

Corporations have their operations spanning all over the globe, dealing with various local and national laws. The responsibility of corporations to respect human rights starts with the legal compliances with the national laws and regulations of the foreign State. Although states have a duty to protect human rights and local laws are in fact the reflection of international human rights law, which are universal and uniform yet UNGPs recognize that in some States where local laws are silent or weak, corporation would still be held accountable against the higher standards as per Intl Human Rights framework<sup>146</sup>. Responsibility to respect human rights is global whereas international human rights law is universal and internationally recognized. The enforcement of global standards brings uniformity and predictability for enterprises while conducting business. It also implies that corporations should not exploit the operating environment and weaknesses of laws in the foreign State. All human rights are equal, indivisible, interdependent, and inalienable. However, in the event if corporations are to make a choice among a number of adverse human rights impacts, Human Right Due Diligence process advocates to prioritize and minimize the impact linked to their operations that causes the greatest harm and is irremediable<sup>147</sup>. Nonetheless, once the most severe impact is dealt with, corporations should also adhere to the risks with next greatest severity until all actual and potential human rights impacts are addressed.

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<sup>143</sup> Ibid, UNGP Principle 21

<sup>144</sup> Hess, "The transparency trap: Non-financial disclosure and the responsibility of business to respect human rights." 5-53.

<sup>145</sup> Bueno and Bright, "Implementing human rights due diligence through corporate civil liability." 789-818.

<sup>146</sup> Pillar II: Operational Principles (Issues of Context), UNGP Principle 23

<sup>147</sup> Ibid, UNGP Principle 24

### 3.6. Pillar III: Access to Remedy

The tenants of natural justice profess that recognition of rights and duties should match appropriate remedy when they are infringed. When a breach occurs, the aggrieved must be compensated with an adequate remedy parallel to the actual human rights impact<sup>148</sup>. Taking account of momentous deficiencies of the judicial systems around the globe, pillar 3 of the United Nations Guiding Principle from principle 25 through 31 provides an insightful account of mechanism, to fortify state's duty to protect, reinforce corporate accountability & respect for human rights, and provide access to remedy for the aggrieved. The foundational principle of pillar 3 implicates States to fulfill their duty to protect its citizens and provide access to remedy for the same. In order to do so, there must be a judicial, administrative, legislative or other appropriate forum established by the State to provide effective remedy to the victims. Operational principles focus on the establishment and effectiveness of Judicial mechanisms (includes courts through civil suits, criminal prosecutions, and constitutional writs), State-based non-judicial grievance mechanisms (includes remedy through ombudspersons, regulatory bodies, NHRIs<sup>149</sup>, tribunals and other quasi-judicial & administrative bodies), and non-State-based grievance mechanisms (include operational level grievance mechanisms of corporations, regional and international human rights bodies, and multi-stakeholder mechanisms of industry etc.).

#### 3.6.1. Pillar III: Foundational Principle

International Human Rights law implicates States by obligation under international law to protect its people from abuses by the third parties including corporations. The duty to protect also necessitates proper investigation, adequate punishment and effective redressal of human rights violations by the State within her territory or jurisdiction<sup>150</sup>. Some the core international and regional treaties explicitly obligate States to provide remedies for the infringement of their rights and liberties. The International Covenant on Civil and Political Rights (ICCPR) under Article 2.3(a) & (b)<sup>151</sup> specifically obligates States to develop mechanism for judicial remedy

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<sup>148</sup> Broberg and Sano, "Strengths and weaknesses in a human rights-based approach to international development—an analysis of a rights-based approach to development assistance based on practical experiences." 664-680.

<sup>149</sup> National Human Rights Institutions (Independent Human Rights related Commissions established under Paris Principle such as NCHR, NCRC, NCSW, CRPD in Pakistan).

<sup>150</sup> Pillar III: Foundational Principle, UNGP Principle 25.

<sup>151</sup> ICCPR Article 2.3 (a) Each State Party to the present Covenant undertakes; To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the

for the violations of rights and freedoms of any person. Similarly, Article 6 of the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD) imposes the same assertions upon state to provide access to remedy against violation of human rights through competent national tribunals to the satisfaction of the aggrieved. UNGPs direct States to guarantee both substantive and procedural aspects of access to remedy. Substantive aspect of remedies for the adverse human rights impacts generally include any action aimed to rectify the abuse/ violation<sup>152</sup>. It may include apology from the perpetrator (cessation of violation), restitution (restoration to the original condition i.e., property or employment), rehabilitation (recovery from the injury/ harm i.e., medical or psychological recovery), financial or non-financial compensation for the loss, and guarantee of non-repetition (avoid recurrence by amending/ framing laws & policies to remediate). Procedural aspects revolve around the conduct of the authorities and the procedure adopted. UNGPs mandates the States to ensure that an impartial, honest, and unbiased procedure has been adopted while providing remedy through judicial, administrative, or legislative means<sup>153</sup>. Judicial mechanism lies at the core of access to remedy. It is the traditional forum through which affected individuals or community plead for their rights through a legal action and can seek remedy for the infringement of their rights. State should take measures to strengthen the capacity of judges, administration and remedy mechanism as a whole to critical respond to the adverse human rights impacts emanating from business activity<sup>154</sup>. An effective judicial mechanism should encompass five key attributes to ensue effective remedy. Firstly, enactment & enforcement of stringent domestic laws & policies (covering rights, responsibilities and legal rules for conducting businesses). Secondly, training of members of judiciary on international standards, prevention of protection of business-related human rights abuses in different industries. Thirdly, adequate capacity and mandate of State agencies to investigate allegations of violations from business activity<sup>155</sup>. Fourthly, cooperation on exchange of information, evidence gathering and enforcement of judgements between and among domestic, national & international

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violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

<sup>152</sup> Orzes et. al., "United Nations Global Compact: Literature review and theory-based research agenda." 633-654.

<sup>153</sup> Lu et. al., "Policies to promote corporate social responsibility (CSR) and assessment of CSR impacts."

<sup>154</sup> Peters, "Corruption as a violation of international human rights." 1251-1287.

<sup>155</sup> Hathaway, "The global cop-out on refugees." 591-604.



authorities<sup>156</sup>. Lastly, awareness among masses about their rights, adverse impacts of business entities, about role of judicial mechanisms, and remedies available to them.

### **3.6.2. Pillar III: Operational Principles**

State-based Judicial mechanisms are the heart and soul of the redressal mechanism due to their exclusiveness to interpret and apply laws and regulations to the satisfaction of a judicious remedy. The stronger the judicial mechanism the stronger is the rule of law, therefore, UNGPs lay great deal of emphasis on the effectiveness of a domestic judicial mechanism<sup>157</sup>. The effectiveness does not only mean that the courts (through civil suits, criminal prosecutions, and constitutional writs) are dispensing justice, rather it involves a range of factors such as lower cost of bringing a dispute in court, clarity in cause of action for a case, ease in engaging a legal representation, speedy trials/ proceedings, remarkable prosecution & investigation and finally the compelling enforcement of judicial pronouncements<sup>158</sup>. If the judicial system is strong, people prefer to seek remedy for the violations and the corporations remain well-cognizant of their responsibilities<sup>159</sup>. State-based judicial mechanisms are the judicial branch of the State, exercising the authority bestowed upon by the government. The binding nature of judicial verdicts resonates the significance of the mechanisms in creating deterrence against human rights abuses. It is State's duty to provide a conducive environment and remove all hurdles in the independence of judicial processes.

State-based judicial mechanisms are arduous, lengthy, and highly formal whereas non-judicial mechanisms are instrumental in bridging the shortcoming of the judicial processes<sup>160</sup>. Non-judicial mechanisms such as ombudspersons, labour inspectorates, regulatory bodies, NHRIs, tribunals and other quasi-judicial & administrative bodies complement the traditional mechanisms and are favoured by the claimants. Administrative, legislative and other non-judicial mechanisms are the specialized forums with specific focus, dedicated to resolve grievances of certain nature. For instance, the remedy related to business related human rights

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<sup>156</sup> Tomislav, "The concept of sustainable development: From its beginning to the contemporary issues." 67-94.

<sup>157</sup> Pillar III: Operational Principles (State-based Judicial Grievance Mechanism), UNGP Principle 26

<sup>158</sup> Muawanah et. al., "Review of national laws and regulation in Indonesia in relation to an ecosystem approach to fisheries management." 150-160.

<sup>159</sup> Lindholt, "Questioning the universality of human rights: The African charter on human and peoples' rights in Botswana, Malawi and Mozambique."

<sup>160</sup> Parsa, Roper, Muller-Camen, and Szigetvari, "Have labour practices and human rights disclosures enhanced corporate accountability? The case of the GRI framework".

violations or the mechanism addressing matters related to labour, environment, consumer protection, oil and gas, non-discrimination, PWDs, employment related matters, women, children, slavery, and issues related to indigenous people etc. Similarly, National Human Rights Commission (NHRI) also function as a quasi-judicial organ of the State enforcing protection of human rights. UNGPs stresses upon the establishment of an effective and appropriate non-judicial grievance mechanisms which imposes an obligatory restriction upon the State to entrust the redressal of grievances in the hands of an authority, which understands the gravity of adverse human rights abuses emanating from business activity, understand the dynamics and structure of abuses in line with International Human Rights standards, and has power, skills & resources to render remedy to the aggrieved<sup>161</sup>. Irrespective of the fact that non-judicial mechanisms are expeditious and robust but the importance of formal legally binding pronouncements can never be ignored. Induction of both remedy procedures forms a comprehensive and inclusive state-based grievance mechanism.

United Nations Guiding Principles recognize that state-based judicial and non-judicial grievance redressal mechanisms are not the only remediation processes. UNGPs also acknowledge that the non-state mechanisms, managed by the corporations or third parties or the multistakeholder initiatives of the industry/ association, can also provide effective remedy against adverse human rights impacts<sup>162</sup>. Non-state grievance mechanisms have potential to unburden the conventional judicial system and can serve as an additional venue for the aggrieved, if supported and endorsed by the state<sup>163</sup>. Therefore, it is the duty of the State to foster a positive environment for access to remedy through non-state grievance mechanisms. As far as binding obligation is concerned, non-state grievance mechanisms are non-judicial and non-binding but the process may employ adjudication or dialogue to resolve the dispute. For instance, operational grievance mechanisms established by corporations could be a community liaison office of the company attending to the complaints of local members of community or a human resource department or worker complaint hotline or an internal mechanism for labour disputes<sup>164</sup>. In contrast to operational level remediation efforts by the corporations, mechanisms of multi-stakeholder initiatives, industry or association are more systematic, based on structured process. For instance, industry specific redressal of human rights violations will be evaluated against certain safety protocol/ certification standards. Similarly, multi-stakeholder

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<sup>161</sup> Pillar III: Operational Principles (State-based Non-Judicial Grievance Mechanism), UNGP Principle 27.

<sup>162</sup> Pillar III: Operational Principles (Non-State-based Grievance Mechanisms), UNGP Principle 28

<sup>163</sup> The White House, "Interim national security strategic guidance." 2021.

<sup>164</sup> Ibid, UNGP Principle 29

initiatives involving multilateral partners would rely upon the Code of Conduct, Global multilateral agreements to administer the redressal of adverse human rights abuses<sup>165</sup>. Alternatively, given the transnational nature of global corporations, human rights bodies both at the regional and international level such as regional Human Rights Commissions, international courts & tribunals, UN treaty bodies, and Human Rights Councils are also recognized by the UNGPs as an effective way to facilitate business related human rights impacts.

### **3.7. Conclusion**

This chapter has examined the foundational and operational principles of the Business and Human Rights Framework, with a particular focus on the UN Guiding Principles on Business and Human Rights (UNGPs), the role of the UN Working Group on Business and Human Rights, the State, and the Corporations in promoting their adoption and implementation. States hold the primary duty to protect human rights, corporations bear the responsibility to respect these rights, and effective remediation requires accessible and efficient grievance mechanisms involving both state and non-state actors. It also sheds light on the practical challenges and implications of applying the UNGPs across diverse contexts, reinforcing the importance of collaboration, accountability, and adaptability in addressing human rights risks.

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<sup>165</sup> Ibid, UNGP Principle 30

## **CHAPTER 4**

### **BUSINESS AND HUMAN RIGHTS IN PAKISTAN**

#### **4.1. Introduction**

The concept of 'business and human rights' (BHR) has emerged in global politics, with a new Corporate Social Responsibility framework mandating States to hold businesses accountable for their operations and adverse impacts on human rights. Pakistan is a signatory to several international human rights conventions and treaties which create an obligation on Pakistan to protect human rights in business activity. In compliance, Pakistan has promulgated over 350 laws addressing business-related human rights, but these laws are often outdated and silent, limiting their effectiveness in addressing contemporary business-related human rights abuses. This section provides an insightful study of the existing laws enacted to protect human rights from business activity, in connection with Pakistan's International Human Rights obligations. In order to protect human rights affected by business activities, the Government of Pakistan has launched a 'National Action Plan on Business and Human Rights (2021-2026)', which aims to protect human rights, labor rights, and environmental sustainability in Pakistan in line with its duty and international obligations. The plan consists of eight priority areas, with 69 proposed actions disaggregated at both federal and provincial levels and propose reforms to existing laws and regulations, improved access to justice, and the development of Corporate Remedy Strategies for corporations. These areas, in practice, transpose the "United Nations Guiding Principles on Business and Human Rights", focusing on state duty to protect human rights, corporate responsibility to respect human rights, and access to remedy.

#### **4.2. Laws Protecting Human Rights in Commercial Activities in Pakistan**

The concept of 'business and human rights' (BHR) has newly emerged in global politics in the last few decades. Taking a closer look at how businesses intersect with human rights is a relatively new development in the international community, as human rights have traditionally been considered issues requiring the state's intervention and enforcement. In the new paradigm, a new Corporate Social Responsibility framework is emerging which goes beyond morality and mandates states to hold businesses accountable for their operations and impacts on human rights thereon. In order to enforce and implement new developments, there

is a dire need for States to have in place a well-structured, clear and inclusive domestic legislative framework/ plan of action. Before we delve into the emerging legislative needs for the implementation of United National Guiding Principles vis-à-vis Business and Human Rights (BHR) framework and Human Rights Due Diligence, an examination of existing domestic laws before the adoption of National Action Plan on Business and Human Rights is warranted to understand the prevailing condition of laws, policies, rules and regulations. Pakistan is a signatory to a number of international human rights conventions/ treaties/ schemes. International Human Rights Conventions/ Treaties ratified by Pakistan include:

- a) **“The International Convention on the Elimination of All Forms of Racial Discrimination” – ICERD**, ensuring right to work, right to just & favorable working condition, right to housing, access to justice);
- b) **“The International Covenant on Civil and Political Rights” – ICCPR**, (relating to right to non-discriminations on the basis of race, sex, language, or religion, freedom of association, freedom of expression, right to fair trial, prohibition of forced labour & right to participation);
- c) **“The International Convention on the Elimination of all Forms of Discrimination Against Women” – CEDAW**, ensuring right to equal employment opportunities for women, elimination of sexual violence, corporate leadership and support for entrepreneurs;
- d) **“The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment” – CAT**, bestows the responsibility on corporations to prevent torture, conduct due diligence, protection from inhumane or degrading treatment & redressal for victims;
- e) **“The Convention on The Rights of The Child” – CRC**, prohibiting child labour, protection of children from harmful goods & practices, supply chain responsibility, prevention from economic and sexual exploitation & child trafficking, online protection in digital & social media.
- f) **“The International Covenant on Economic, Social and Cultural Rights” – ICESCR**, emphasizes upon right to work, right to just and favorable working conditions, right to form and participate in trade unions, supply chain responsibility, right to social security & protection;

- g) **“The Convention on the Rights of Persons with Disabilities”**, stresses upon non-discrimination against PWDs in employment, ensure accessibility at workplaces, provide reasonable accommodation, and ensure supply chain responsibility.
- h) Additionally, the Pakistan is also a signatory to several environmental treaties including **“UN Framework Convention on Climate Change” (UNFCCC)**, **“Kyoto Protocol to UNFCCC”** and the **“Paris Agreement”**.

Moreover, Pakistan has also ratified 36 out of 191 conventions & protocols of International Labour Organization<sup>166</sup>. Of the total, eight (08) conventions relate to fundamental rights of labour (i.e., forced labour, freedom of association, right to organize and collective bargaining, equal remuneration, abolition of forced labour, minimum age convention, non-discrimination and child labour). Two (02) conventions relate to governance including labour inspection and tripartite consultation on ILO standards whereas 27 conventions are of technical nature. Similarly, as part of European Union’s trade policy while ensuring human rights mandates the eligible States to ratify conventions (27) to enjoy preferential tariffs and access under Generalized Scheme of Preferences (GSP+). The scheme allows developing and least developed countries to integrate into the trade with EU for the promotion and protection of human rights through incentivizing trade subsidies. Most of the 27 GSP+ conventions overlap with International Human Rights Framework, nonetheless, they can be classified into four categories i.e., Labour Rights, Human Rights, Environmental Rights and Governance which in principle also have a substantial impact on protection of human rights in business operations.

Based on the ‘Dualism Principle of International Laws<sup>167</sup>’, States require transposition of all these rights and obligations to be adopted into the national/ domestic human rights legal framework. Therefore, in order to regulate the relations and activities of businesses, the Federal and Provincial Governments in Pakistan have promulgated more than 350 legislations, encompassing business related human rights. However, the following most relevant business-related domestic laws, rights, rules & regulations relating to human rights have been reviewed in detail:

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<sup>166</sup> List of ILO Conventions ratified by Pakistan available at: [https://www.normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200\\_COUNTRY\\_ID:103166](https://www.normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103166)

<sup>167</sup> Dualism State in International Constitutional Law: A dualist state system treats the international and domestic systems of law as separate and independent. The law must first be translated into national legislation before it can be applied and enforced by the national courts.

#### 4.2.1. Federal Laws protecting human rights from business activities

Laws protecting human rights from business activities at the national level are as follows:

**Pakistan Penal Code 1860** under section 374 declares forced labor as illegal and devises penalty for anyone who forces someone to work against their will with imprisonment or fine or both. The definitions covered in this section are vague and can hinder effective prosecution, leaving room for misinterpretation.

**Explosives Act 1884** controls how explosives are made, owned, used, sold, moved, imported, and exported to keep people safe. Important parts include definitions, a rule that young people can't handle explosives, and rules for getting licenses. Breaking this law can result in fines and jail time. The Explosives Act of 1884 faces challenges due to outdated provisions that may not adequately address modern safety concerns and advancements in explosive industry. Furthermore, inconsistent enforcement and lack of regulatory oversight can lead to increased risks of accidents and misuse.

**Section 491 of the Code of Criminal Procedure 1898** protects people from being held without reason. It allows the High Court to order the release of anyone who is detained wrongly. This provision ensures personal freedom and allows for the release of individuals in certain circumstances, but its vague criteria can lead to inconsistent application and potential misuse. Additionally, limited awareness and access to legal recourse may prevent eligible individuals from benefiting from its provisions.

**Electricity Act, 1910** sets rules for making, moving, and using electricity. It ensures workers safety when working with electrical equipment. Regular safety checks and maintenance of electrical systems are required to ensure safety of workers employed. The Act also protects people from electrical dangers. The Electricity Act of 1910 is often criticized for being outdated, failing to address modern challenges such as renewable energy integration and consumer rights. Additionally, weak enforcement mechanisms and regulatory oversight can lead to inefficiencies and inadequate service provision in the electricity sector.

**Coal Mines Regulation 1923** provides mechanism for keeping workers safe and healthy in coal mines. The key points of the regulations are that mines must have enough ventilation and lighting (Section3). Machinery must be fenced off to avoid

accidents (Section 5). Safety measures must be in place for workers using dangerous machines (Section 6). Every mine must have first aid supplies (Section 10). The regulation also covers working hours, rest breaks, and bans child labor (Section 15). The Coal Mines Regulation of 1923 is often seen as outdated, lacking provisions to ensure modern safety standards and workers' rights in coal mining. Additionally, enforcement of these regulations is weak, leaving miners vulnerable to hazardous conditions and inadequate protections.

**Mines Act 1923** governs the health, safety, and working conditions in mines across Pakistan. The Act has been promulgated to protect the workers in mines from adverse impacts of mining activities. It outlines health and safety provisions concerning proper ventilation, protective equipment, and use of safe machinery to prevent accidents and occupational diseases. The law also introduces strict regulations for the working hours, overtime pay, leave with pay, rest & recreation of miners. The act details a procedure for inspections of mines and imposes penalties for non-compliance of standards. The Act is criticized for being outdated, failing to adapt to contemporary mining practices and safety standards.

**Metalliferous Mines Regulations, 1926** are the rules for keeping workers safe and healthy in metal mines. Section 3 states that mines must have good air and light. Section 5 provides that machines must be fenced off to prevent accidents. Safety measures are needed for workers using dangerous machines under Section 6. The law mandates that every mine must have first aid supplies (Section 10). The rules also cover working hours, breaks, and ban child labor under Section 15.

**Children (Pledging of Labour) Act, 1933** makes any agreement to use a child's (under 15 years) labor invalid. It punishes parents or guardians who make such agreements. Key parts include that these agreements don't count, penalties for the parents, and penalties for hiring a child whose labor has been promised. Fines for breaking the law range from 5,000 to 20,000 rupees. The Act aims to protect children from being forced into labor, but it often struggles with enforcement and widespread poverty that pushes families to rely on their children's income. As a result, many vulnerable kids still end up working in harmful conditions, despite clear intentions of the law.

**Factories Act, 1934** regulates the factories in ensuring healthy working environment and welfare of labour. Key provisions include adequate ventilation and lighting, fencing



of machinery to prevent accidents. It proposes safety measures for workers operating dangerous machinery, ensures first aid appliances in every factory, and enforces reasonable working hours, rest intervals, and the prohibition of child labor.

**Dock Laborers Act, 1934** sets rules for safety and work conditions in docks. Key provisions are: Section 3 states that docks must have good air flow and light, machines must be fenced off to avoid accidents (Section 5), safety measures must be in place for workers using dangerous machines (Section 6), every dock must have first aid supplies (Section 10), and there should be clear rules about working hours, breaks, and no child labor (Section 15). The Act aims to protect dock workers and regulate their employment, but it often lacks effective enforcement and fails to address the modern challenges they face. As a result, many dock laborers still work in precarious conditions without adequate rights or support.

**Payment of Wages Act 1936** provides mechanism about how workers should be paid. The law enforces that the wages must be paid on time (Section 3), employers cannot take money from wages without permission (Section 4), workers should get pay slips that show how much they earned and any deductions (Section 5), there are rules for settling disputes about wages (Section 15). The Act was enacted to ensure timely wage payments to workers, but it often struggles with weak enforcement by the labour departments and limited awareness among employees about their rights. Consequently, many workers still face delays and disputes over wages, leaving them vulnerable to exploitation.

**Electricity Rules, 1937** ensure that workers who handle electrical equipment are safe and healthy. They rules incorporate that the workers must wear protective gear and clothing, workers must undergo regular training on how to handle electrical equipment safely, and there should be routine inspections to manage electrical dangers in the workplace. The Electricity Rules of 1937 are intended to regulate the electricity sector, but they often feel outdated and do not address current issues like renewable energy and consumer protection.

**Employer's Liability Act 1938** imposes a liability upon the employers to compensate for the injuries sustained by employees during work. It obligates employers to pay compensation for work-related injuries and illnesses (occupational diseases). The Act aims to ensure workplace safety and accountability so that employers are inclined to

take preventive measures to avoid accident & injuries. The law also provides a grievance redressal mechanism for compensation related claims.

**Mines Maternity Benefits Act 1941** sets rules for maternity benefits for women working in mines. It provides that women can take 12 weeks of paid maternity leave. Employers must also provide medical care during pregnancy and childbirth. The Act protects women's job rights while they are on maternity leave.

**Weekly Holidays Act 1942** requires that workers get regular days off. The salient features of the act include One Day Off (Employers must give workers at least one day off each week), extra days off (If workers have to work on their day off, they get another day off as compensation), and penalties for employers upon violations of rules. The Act stresses upon the health and well-being of workers to help them rest and recover from stress. The law lays down mechanism for routine inspections and mandates it compulsory for employers to maintain record of holidays to ensure fairness and accountability.

**Prevention of Corruption Act 1947** aims to effectively combat bribery and corruption. It declares corruption a cognizable offence and declares presumption of guilt u/s 4 if a public servant accepts gratification other than legal remuneration, unless proven otherwise. It also mandates public servants to declare their assets u/s 5B, ensuring transparency. The Act seeks to combat corruption, but it often suffers from weak enforcement, poor prosecution and limited resources, making it difficult to hold offenders accountable. As a result, many cases of corruption go unpunished, undermining public trust in institutions.

**Pakistan Commission of Inquiry Act 1956** provides a framework for establishing commissions to investigate specific issues of public concern. The commission has the authority to summon witnesses, collect evidence, and publish reports. Under this act, the government can form commissions to inquire matters ranging from human rights violations to corruption, ensuring accountability and transparency in governance. The Act allows for the investigation of various issues, but it often faces challenges with limited independence and transparency, which can undermine its effectiveness.

**Pakistan Criminal Law Amendment Act, 1958** aims to expedite the trial and enhance the punishment of certain offences u/s 161 to 166, 168, 217, 218, 403 to 409, 417 to 420, 465 to 468, 471 and 477-A relating to attempt, abetments and conspiracies

connected with any public servant. The amendment also extends to the offences defined under the Prevention of Corruption Act, 1947.

**West Pakistan Maternity Benefit Ordinance 1958** enforces maternity benefits for women who work. The law provides that women can take 12 weeks of paid maternity leave, employers must give medical care during pregnancy and childbirth, and protects women's job rights are protected while they are on maternity leave. The law aims to provide maternity leave and benefits but it lacks proper enforcement and does not cover all workers, leaving many women without the support they need especially in the private sector. This gap means that many expectant mothers face financial and job insecurity during a critical time in their lives.

**Payment of Wages Rules 1960** ensure that workers get paid properly. Under Section 3, the law says that workers must be paid on time. Section 4 entails that employers can't take money out of wages without permission. Section 5 requires employers to give workers pay slips showing how much they earned and any deductions. The rules also lay down a way to solve wage disputes under Section 15. The rules do not address modern employment realities, leaving many vulnerable to wage delays and exploitation.

**West Pakistan Anti-Corruption Establishment Ordinance 1961** deals with corruption among public servants. Section 3 of the ordinance proposes constitution of Anti-Corruption Establishments in Pakistan under the supervision of Director Generals. It empowers these establishments to hold inquiries and investigate into the conduct of public servants. These establishments have been dormant due to limited resources and political interference that hinder effective investigations.

**Road Transport Workers Ordinance 1961** deals with the working conditions, health, safety and welfare of road transport workers. The ordinance ensures provision of fair wages, reasonable working hours, rest hours, overtime wages, and adequate leave entitlements (annual leave, sick leave, and casual leave). It also includes provisions for the welfare of workers (restrooms and first aid facilities at the workplace).

**The Minimum Wages Ordinance, 1961** followed by **West Pakistan Minimum Wage Rules 1962** apply in Islamabad, Punjab, and Balochistan; sets rules for minimum wages for workers. It says that minimum wage boards must be created to decide and update minimum wages. Employers must pay at least the minimum wage set by the

concerned Board. The law also includes rules for paying extra for overtime work and bans child labor.

**The Industrial and Commercial Employment (Standing Order) Ordinance, 1968** applies to the industrial and commercial establishments with twenty or more than twenty workmen. The ordinance regulates the terms and conditions of employment (such as working hours, rest intervals, overtime, drinking water, facility of latrines etc.), payment of wages, process for the termination of employment. The law is applicable in Islamabad, Punjab, and Balochistan, whereas Khyber Pakhtunkhwa promulgated its law in 2013 as The Khyber Pakhtunkhwa Industrial and Commercial Employment (Standing Order) Act, 2013.

**Companies Profit (Workers Participation) Act 1968** requires companies to share some of their profits with workers. Section 3: Sets up a fund to hold the profits that will be shared with workers. Section 4: Explains how the profits are divided among workers based on their pay and how long they've worked. Section 7: Ensures the fund is managed in a clear and efficient way. The Act aims to help workers feel financially secure and motivated by giving them a share in the company's success. It also provides a way for workers to resolve any disputes about profit sharing, making sure they get their fair share on time. Overall, the Act helps create a fairer workplace where workers benefit from the company's success.

**Civil Servants Leave Rules 1968** explain the types of leave for government workers. Section 2 lists the kinds of leave: casual leave, earned leave, and medical leave. Section 3 says that government workers must get these leaves. Section 4 requires employers to keep records of the leave taken. The rules also say workers should still get paid while on leave and that child labor is not allowed.

**The Shops and Establishments Ordinance 1969** regulates the conditions of work and employment in shops and commercial establishments (excluding factories) including their registration, adherence to labour laws, working hours, rest intervals, and holidays (annual leave, casual leave, sick leave and wages during leave periods), provision of safe drinking water, rules for overtime work, and child labour etc. This law applies to the ICT and Balochistan, whereas Punjab adopted the law as The Punjab Shops and Establishments Ordinance, 1969, Khyber Pakhtunkhwa and Sindh introduced the law

in 2015 as The Khyber Pakhtunkhwa Shops and Establishments Act, 2015 and The Sindh Shops and Commercial Establishment Act, 2015 respectively.

**Minimum Wages for Unskilled Workers Ordinance 1969** sets the minimum pay for unskilled workers. It requires groups to decide and update these minimum wages. Employers must pay at least this amount. The law also says that workers should be paid extra for overtime and that child labor is not allowed.

**Workers Children (Education) Ordinance 1972** ensures that children of workers can get a good education. Section 3: Sets up schools for workers' children where they live. Section 4: Requires employers to help pay for building and maintaining these schools. Section 7: Ensures that the schools are checked to meet education standards. The goal is to help workers' children get a quality education, no matter how much money their families have. This Ordinance also manages the schools to ensure the funds are used properly. By providing education, it helps break the cycle of poverty and gives workers' children a chance to succeed.

**Employee Cost of Living (Relief) Act 1973** says that employees should get extra money to help with living costs. It requires employers to pay this extra money and to give workers slips showing how much they received. The Act also has rules for solving problems related to these payments.

**Newspaper Employees (Conditions of Service) Act 1973** regulates the provision of fair wages, reasonable working hours, rest hours, overtime wages, and adequate leave entitlements (annual leave, sick leave, and casual leave). The act also lays down a mechanism for handling grievances and workplace disputes.

**Dock Workers (Regulation of Employment) Act 1974** sets rules for dock workers' jobs and working conditions. It requires dock workers to be registered to follow labor laws. It also outlines their working hours, rest breaks, and days off. Workers must have clean drinking water and restroom facilities. The Act includes rules for paying wages, overtime, and prohibits child labor.

**Employees' Old-Age Benefits Act 1976** mandates for the establishment of a dedicated institution to minimize the old-age risks to employees such as Old-Age Pension, Survivor's Pension, Invalidity Pension, and Old-Age Grant. It applies to every establishment employing ten or more than 10 employees. The act requires every

organization to contribute 6% of the minimum wage to the benefits (5% from the establishment/ employer and 1% from the employee). It lays down eligibility criteria for old age pensions, survivor pension for spouse and old age grants. The law also imposes penalties for infringement of provisions under this act.

**Disabled Persons (Employment and Rehabilitation) Ordinance 1981** helps disabled people find jobs, being enforced in Punjab and Khyber Pakhtunkhwa. The law mandates that companies must hire a certain number of disabled workers. Employers also need to make adjustments to help these workers do their jobs. The Ordinance also plans to set up training and rehabilitation centers to support disabled individuals.

**Employment of Children Act 1991** prohibits children from working in certain jobs. It bans child labor in dangerous & hazardous work and requires safety measures for children in safer jobs. It also sets rules about how many hours children can work and when they can take breaks.

**Bonded Labour System (Abolition) Act 1992** eliminates bonded labor and helps workers who were freed from it. It makes bonded labor illegal and cancels all related agreements. It requires that all bonded laborers be released and their belongings returned. The Act also has rules to support the rehabilitation of these freed workers.

**Employment of Children Rules 1995** help enforce the Employment of Children Act, 1991. The rules require places that hire children to register and keep records of child workers, like their age and hours. There are also rules for checking these places to make sure they follow child labor laws.

**Pakistan Environmental Protection Act 1997** establishes a Pakistan Environmental Protection Council headed by the Prime Minister of Pakistan and mandates the establishment of Pak Environmental Protection Agency (Pak EPA). The agency offers technical support to the Federal government and conducts inquiries of investigation into environmental issues. The agency has been empowered to summon and enforce attendance, enter and inspect premises by the warrant of environmental magistrate (appointed u/s 24 of the act). The act provides cover for the establishment of provincial Environmental Protection Agencies in respective provinces. The agency is mandated under act to conduct initial examination & environmental impact assessments, prohibit import of hazardous waste, regulate motor vehicles for emission or noise violating

standards. In order to adjudicate the matters, the federal government has established one Environmental Tribunals in each province.

**Prevention and Control of Human Trafficking Ordinance 2002** is about stopping human trafficking. It defines what trafficking is and explains the punishments for it. It says there should be special courts for these cases. It also includes ways to help and support victims of trafficking.

**Industrial Relations Ordinance, 2002** is about managing relationships in industries and solving work-related problems. It provides that commissions must be set up to make sure labor laws are followed. Employers have to recognize and talk to trade unions. It also protects workers' rights to join together and negotiate for better conditions.

**Hazardous Substance Rules, 2003** focus on keeping workers safe when they handle dangerous substances. Section 3: Requires protective gear for workers. Section 5: Requires regular health check-ups for those exposed to these substances. Section 10: Includes rules for checking and controlling the number of hazardous substances in the workplace.

**The Agricultural Pesticide Rules, 1973 (as amended in 2007)** deal with the use and handling of agricultural pesticides safely. Section 3: Workers must have protective gear when handling pesticides. Section 5: Workers need regular training on how to use pesticides safely. Section 10: There are rules for checking and controlling pesticide levels in the workplace.

**Workers Welfare Fund Ordinance 1971 (as amended in 2008)** creates a fund to help workers with money for housing, education, healthcare, and other support. Section 3: Sets up the fund and makes sure employers pay into it to help workers. Section 4: Requires employers to give a part of their profits to the fund. Section 7: Explains how the money can be used for building homes for workers, providing school scholarships for their kids, and setting up healthcare services for workers and their families. The 2008 amendment allowed for more types of help for workers. The goal is to improve workers' living conditions and support their health and education. The Ordinance also includes rules for managing the fund to make sure the money is used properly and fairly.

**Protection against Harassment of Women at Workplace Act 2010** deals with the issue of harassment and aims to provide women with safe environment at workplace. Section 3 explains what harassment is and what employers must do to prevent it. Section 8 says that Inquiry Committees must be set up to look into complaints. Section 11 talks about punishments for those who harass women. The Act helps women work with respect and fairness.

**Industrial Relations Act 2012** sets rules for how workers and employers should get along and solve problems. It says that special groups called industrial relations commissions must be created to make sure labor laws are followed. Employers must accept and talk to trade unions. The Act also protects workers' rights to form groups and negotiate together.

**Workmen's Compensation Act 1923** has been amended a number of times in 1972, 1986 and 2013. It provides compensation to workers for injuries sustained during employment detailing the fair & reasonable compensation pursuant to severity of their injuries. The recent amendment in 2013 enhanced the compensation amount as per economic conditions. The injuries covered by the Act are classified into 5 types (Injuries resulting in the death of a workman, Permanent total disablement, Temporary total disablement, Permanent partial disablement, and Temporary partial disablement). However, injuries resulting from influence of alcohol or substance, willful negligence of safety standards, and removal of protective gears do not cover compensation. In line with the enforcement of the act, Khyber Pakhtunkhwa and Sindh provinces have enacted their respective Khyber Pakhtunkhwa Workers' Compensation Act 2013 and Sindh Workers' Compensation Act 2016.

**Hazardous Occupation Rules (Silicon) 2015** are about keeping workers safe in jobs that involve silicon. They ensure that workers must get protective gear and clothing. Workers exposed to silicon dust need regular health check-ups. There should be checks to control the amount of silicon dust in the workplace.

**The Companies Act 2017** replaced the Companies Ordinance 1984, introducing significant reforms in corporate governance and compliance. The Act emphasizes greater transparency, requiring more detailed financial disclosures and accountability from directors. It also strengthens minority shareholders' rights and mandates corporate



social responsibility initiatives. Additionally, the Act focuses on modernizing practices such as electronic filing and e-governance, promoting efficiency and accessibility.

**Transgender Persons (Protection of Rights) Act 2018** gives legal rights and protection to transgender people. It discourages discrimination in education, jobs, healthcare, and public spaces. Important parts include banning discrimination, recognizing transgender identities, and requiring the government to help. It also allows people to identify themselves as they choose and ensures support for their well-being.

#### **4.2.2. Punjab Laws protecting human rights from business activities**

Laws protecting human rights from business activities in the Punjab province at provincial level are as follows:

**Punjab Maternity Benefits Ordinance 1958** ensures that female workers in Punjab get benefits during pregnancy. They can take 12 weeks off with full pay. Employers must also provide medical care during pregnancy and childbirth. The law protects women's jobs while they are on maternity leave.

**Punjab Factories Rules 1978** ensure that factories in Punjab are safe for workers. They define work hours, breaks, and overtime. Factories must provide clean drinking water and restrooms. The rules also cover pay, job termination, and ban child labor.

**Punjab Factories Rules 1978** set rules for keeping factories safe and healthy for workers in Punjab. Rule 3 focuses on health, making sure factories are clean, well-ventilated, and properly dispose of waste. Rule 4 talks about safety, requiring factories to use safety equipment, like guards on machines and protective gear for workers, to avoid accidents. Rule 5 explains welfare measures like providing restrooms, canteens, and first aid for workers. The rules are made to prevent accidents and illnesses at work and to keep factories regularly inspected. By following these standards, the rules aim to create a fair and safe working environment for all factory workers.

**Revised Punjab Leave Rules 1981** explain the types of leave employees in Punjab can take to rest and recover. Annual Leave: Employees get paid time off every year. Sick Leave: Employees can take time off to get better when they are sick without losing pay. Casual Leave: Employees can take short breaks for personal reasons. Maternity Leave:

Women receive paid leave when they are pregnant and giving birth. These rules help keep workers healthy and ensure they can rest from stress and sickness. They also stress the need to keep good records about leave to make sure everything is fair and clear for workers. Overall, the rules support workers' rights and well-being.

**Punjab Coal Mines Rescue Rules 1988** are about how to run rescue operations in coal mines in Punjab. The rules provide that rescue stations must be set up with the right tools and trained people. Rescue teams must have regular training and practice drills. The rules also state that rescue equipment should be checked and maintained regularly.

**Punjab Judicial Service Rules 1994** govern the recruitment, training, and conduct of judicial officers in Punjab. They aim to ensure a fair and efficient judicial system, promoting integrity, professionalism, and accountability among the judiciary in the province.

**Punjab Mining Concession Rules 2002** set safety standards for mining in Punjab. They require good ventilation and lighting in mines. Machinery must be fenced to prevent accidents, and safety measures must be in place for workers using dangerous machines. First aid supplies must be available in every mine. The rules also cover working hours, rest breaks, and ban child labor.

**Punjab Industrial Relations Act 2010** is about managing workplace relationships and solving disputes in Punjab. It says that industrial relations commissions must be set up to ensure labor laws are followed. Employers must recognize and talk with trade unions. The Act also protects workers' rights to form groups and negotiate together.

**The Punjab protection against harassment of women at the workplace (Amendment) Act, 2012** strengthens provisions against workplace harassment, introducing more robust reporting mechanisms and protections for victims. It aims to create a safer, more equitable work environment for women across Punjab.

**The Punjab protection against harassment of women at the workplace Rules, 2013** provide guidelines for preventing and addressing workplace harassment. They establish reporting mechanisms and disciplinary procedures, aiming to create a safe and respectful work environment for women in Punjab.

**The Punjab Commission on the Status of Women Act, 2014** establishes a commission to monitor and promote women's rights and empowerment. It aims to

address gender-based discrimination and enhance women's participation in socio-economic and political spheres in Punjab.

**The Punjab Bonded Labour System (Abolition) (Amendment) Act 2018** strengthened the original law, enhancing protections for bonded laborers. It introduced stricter penalties for violations and promotes rehabilitation, aiming to eradicate bonded labor practices and ensure dignity and freedom for affected individuals in Punjab.

#### **4.2.3. Sindh Laws protecting human rights from business activities**

Laws protecting human rights from business activities in the Sindh province at provincial level are as follows:

**Sindh Mining Concession Rules 2002** regulate mining in Sindh province to ensure safety. The rules require good air and light in mines, and machinery must be fenced off to prevent accidents. There are safety measures for workers using dangerous machines and first aid kits must be available in every mine. The rules also cover working hours, breaks, and ban child labor.

**Sindh Workers Welfare Fund Act 2014** creates a fund to help workers in Sindh with money for housing, education, healthcare, and other support. Section 3: Sets up the fund and makes sure employers pay into it to help workers. Section 4: Requires employers to give a part of their profits to the fund. Section 7: Explains how the money should be used, like building homes for workers, giving scholarships for their children, and providing healthcare services for workers and their families. The Act aims to make workers' lives better by supporting their health and education. It also includes rules for managing the fund, ensuring that the money is used properly and that good records are kept to show how the funds are spent.

Sindh promulgated it **Employees Old-age Benefits Act in 2014**, which aims to provide financial security to employees in the province upon retirement. The Act mandates establishments to contribute 5% of the minimum wages of employees to the Old-Age Benefits Fund. The law under section 16 sheds light on the benefits such as old-age pension, survivor grants for the dependents of deceased employees, invalidity benefits. The law further provides criteria for eligibility to old age benefits and also ensures transparency & accountability in the process.

**Sindh Differently Abled Persons (Employment, Rehabilitation and Welfare) Act, 2014** helps differently-abled people in Sindh get jobs and support. It says that there must be a certain number of jobs for them in both government and private sectors. Employers must also make adjustments to help these employees work better. The Act plans to set up training and rehabilitation centers to assist them.

**Sindh Bonded Labour System (Abolition) Act, 2015** prohibits bonded labor in Sindh and helps freed bonded laborers. It ensures that bonded labor is abolished and cancels all agreements related to it. The law provides mechanisms for the rehabilitation of affected individuals. It establishes penalties for offenders and promotes awareness of labor rights, aiming to eradicate exploitative practices and enhance dignity and freedom for workers in Sindh. It requires all bonded laborers to be released and have their property returned. The Act also has plans to help rehabilitate these freed workers.

**Sindh Minimum Wages Act 2015** sets the rules for minimum wages for workers in Sindh. It says that minimum wage boards must be created to decide and update the minimum pay. Employers must pay at least the minimum wage set by these boards. The Act also covers rules for paying extra wages for overtime and bans child labor.

**Sindh Factories Act 2015** lays extended emphasis on health & safety standard, limits working per week, prohibits employment of children under the age of 14 with complete restriction in hazardous industries. Non-compliance has been penalized with heavy fines whereas labour inspectors have been granted more powers.

**The Sindh Terms of Employment (Standing Orders) Act 2015** applies to all industrial and commercial establishments and regulates the terms and conditions of employment in Sindh. The law aims to provide fair treatment and non-discrimination at workplace in the matters relating to working hours, conditions of service, leave entitlements (including annual leave, sick leave, and casual leave ensuring rest & recreation), and termination (lawful or arbitrary dismissal) of employees. The law mandates for the establishment of a dispute redressal mechanism to remediate the grievance of employees.

**The Sindh Employees Social Security Act 2016** gives workers in Sindh benefits like medical care, sick pay, maternity leave, and injury pay. It defines key terms like “employee” and “employer.” The Act ensures workers can get healthcare for any illness or injury, and it provides paid maternity leave and care for pregnant women. It also

supports workers financially when they are sick. The Act aims to help workers stay healthy and secure. It includes rules for managing the social security fund, making sure benefits are given out fairly and clearly. It also stresses the importance of keeping good records about social security, so workers get their benefits on time. Section 2 explains work rules like hours, breaks, and overtime. Section 3 says that clean drinking water must be provided. Section 4 requires toilets to be available. The Act also covers paying workers, ending jobs, and banning child labor under Section 10.

**Sindh Prohibition of Employment of Children Act 2017** prohibits children from working in certain jobs in Sindh. It bans child labor in dangerous & hazardous jobs and requires safety measures for children in safer jobs. It also sets rules for how long children can work and when they can take breaks. It establishes penalties for violations and promotes awareness, aiming to protect children and improve their quality of life in Sindh.

**Sindh Bonded Workers Act 2015** provides protections for bonded workers, ensuring their rights are upheld. It mandates rehabilitation measures and establishes legal remedies for exploitation, aiming to empower bonded laborers and facilitate their reintegration into society in Sindh.

#### **4.2.4. Khyber Pakhtunkhwa Laws protecting human rights from business activities**

Laws protecting human rights from business activities in the Khyber Pakhtunkhwa province at provincial level are as follows:

**NWFP Mining Concession Rules 2005** set safety and working conditions for mines in Khyber Pakhtunkhwa. Section 3: Mines must have good air and light. Section 5: Machinery must be fenced to avoid accidents. Section 6: Safety measures must be in place for workers using dangerous machines. Section 10: Every mine must have first aid supplies. The rules also cover working hours, breaks, and ban child labor.

**Khyber Pakhtunkhwa Industrial Relations Act 2010** sets rules for how workers and employers interact in Khyber Pakhtunkhwa. It creates commissions to ensure labor laws are followed and requires employers to work with trade unions. It also protects workers' rights to join together and negotiate for better conditions.

**Khyber Pakhtunkhwa Factories Act 2013** adopted the federal legislation with some reforms. In addition to the provisions of original legislation, the law also focuses on the regular cleaning & maintenance of factories, provision of drinking water, availability of latrine and urinal facilities, and regular inspections & maintenance of machines. It extended the scope beyond factories to welfare of workers through provisions for the establishment of canteens, restrooms, and crèches.

**Khyber Pakhtunkhwa Minimum Wages Act 2013** sets rules for minimum wages for workers in Khyber Pakhtunkhwa. It says that minimum wage board must be created to set and update minimum wages. Employers must pay at least the minimum wage decided by the board. The Act also requires payment for overtime work and bans child labor.

**Khyber Pakhtunkhwa Maternity Benefits Act 2013** provides maternity benefits to women workers in Khyber Pakhtunkhwa. The law provides mandatory 12 weeks of paid maternity leave. Employers must also provide medical care during pregnancy and childbirth. The Act protects women's job rights while they are on maternity leave.

**Khyber Pakhtunkhwa Explosives Act 2013** controls how explosives are made, owned, used, sold, and moved in Khyber Pakhtunkhwa. Important parts include punishments for causing dangerous explosions, trying to cause explosions, and taking away property involved in these actions. Penalties can be life in prison and fines.

**Khyber Pakhtunkhwa Environmental Protection Act 2014** provides a framework for environmental protection, mandating assessments for development projects. It aims to control pollution, promote sustainable practices, and enhance public awareness about environmental issues, contributing to ecological conservation in the region.

**Khyber Pakhtunkhwa Prohibition of Employment of Children Act 2015** prohibits children from working in certain jobs in Khyber Pakhtunkhwa. It bans child labor in dangerous jobs and requires safety measures for children in safer jobs. It also sets rules for how long children can work and when they can take breaks.

**Khyber Pakhtunkhwa Mines and Mineral Act 2017** governs the exploration and extraction of minerals, ensuring sustainable practices. It establishes licensing requirements, promotes local investment, and enhances revenue generation while protecting the environment and community rights in resource-rich areas.

#### 4.2.5. Balochistan Laws protecting human rights from business activities

Laws protecting human rights from business activities in the Balochistan province at provincial level are as follows:

**Balochistan Industrial Relations Act 2010** provides for the regulation of industrial relations and the resolution of industrial disputes in Balochistan. Section 3 mandates the establishment of industrial relations commissions to oversee the implementation of labor laws. Section 5 requires employers to recognize and negotiate with trade unions. The Act also includes provisions for the protection of workers' rights to organize and bargain collectively under Section 10.

**Balochistan Environmental Protection Act 2012** provides a framework for environmental protection, mandating pollution control and resource conservation. It requires environmental impact assessments for projects, fostering public awareness and participation to ensure sustainable development in Balochistan.

**Balochistan Protection Against Harassment of Women at Workplace Act 2016** provides a framework for preventing harassment at the workplace. It establishes reporting mechanisms, mandates employer responsibilities, and promotes a safe work environment, aiming to protect women's rights and enhance gender equality in employment settings.

**Balochistan Witness Protection Act 2016** provides protection for witnesses involved in legal proceedings, ensuring their safety and encouraging cooperation with law enforcement. It establishes mechanisms for witness relocation and support, aiming to strengthen the justice system and combat crime in Balochistan.

**Balochistan Persons with Disability Act 2017** protects the rights of persons with disabilities, promoting their inclusion and access to services. It mandates reasonable accommodations in public spaces and employment, aiming to enhance the quality of life and ensure equal opportunities for individuals with disabilities.

**Balochistan Senior Citizens Act 2017** provides for the welfare of senior citizens, ensuring access to healthcare, social services, and protection from neglect and abuse. It mandates the establishment of programs to support the elderly, aiming to enhance their quality of life and promote dignity in aging.

**Balochistan Commission on the Status of Women Act 2017** establishes a commission to advocate for women's rights and address gender-based issues. It promotes policy development and implementation to enhance women's empowerment and ensure gender equality across various sectors in Balochistan.

#### **4.2.6. Gap Analysis of Existing Laws protecting human rights from business activities**

Pakistan as a responsible State fulfilled its constitutional duty and obligations to protect the rights enriched in the conventions. As a result, Pakistan has promulgated a wide range of laws and policies, aimed to address issues related to environmental protection, labour rights & welfare, health and safety, anti-corruption and so on. Detailed examination of these laws reveals that these laws primarily deal with the issues related to labour rights and have largely been enacted decades ago (for instance the oldest being the Coal Mines Regulation 1923, Metalliferous Mines Regulations, 1926, the Factories Act 1923, the Mines Act 1923 etc.), which entails that in order to cater to contemporary business-related human rights abuses, the existing laws are silent, ineffective, and outdated. Additionally, it is crucial for any state to ensure effective implementation of laws, conduct awareness among masses and build capacity of public officials to mitigate the adverse effects of human rights.

In the absence of effective enforcement of laws, the rights of the vulnerable segments in society are infringed. For instance, Pakistan adopted Industrial Relations Act 2012 which ensures freedom of association and collective bargaining through trade unions for workmen but in practice, the NIRA 2012 has a very limited scope as it does not apply to agriculture sector (excluding 37.5% of the total labour force of Pakistan<sup>168</sup>), contract workers, and informal workers (72% jobs in non-agriculture sector are informal<sup>169</sup>). On the other hand, the legal requirements for the formation of a trade union are tiresome which in turn undermines the ability of labour to negotiate collectively with the employer. Bonded Labour System (Abolition) Act 1992 abolishes and criminalizes forced/ bonded labour yet as per Global Slavery Index 2023, atleast 2.3 million people especially in the agriculture sector are working in bonded labour. Despite being the signatory of ILO Convention No. 105 on Abolition of

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<sup>168</sup> As per Labour Force Survey 2020-21, 25.2 million people (37.5%) of total labour force work in Agriculture.  
<sup>169</sup> Global Economic Prospects Report on Informal Sector Workforce 2019.



Forced Labour Convention, the prevalence of forced labour in Carpet weaving industry, cotton production, and brick kilns is rampant. Same has been the fate of child labour<sup>170</sup>. The enforcement of Employment of Children Act 1992 and respective provincial acts prohibiting Child Labour at hazardous work is weak, non-existent, and largely unregulated; especially in agriculture & domestic work. The Protection Against Harassment of Women at the Workplace Act 2010 (amended in 2022) has been in force for over a decade but the enforcement is a challenge as there exist substantial barriers to the protection of women from harassment. Women on the other hand face hardships, discrimination, gender & financial inequality which conflicts with the principles enshrined in the Convention on Elimination of Discrimination Against Women (CEDAW). Although Pakistan contributes a mere 0.55% of world's carbon dioxide emissions, emitting only 199.3 million tons of CO<sub>2</sub><sup>171</sup> against China emitting 12.6 trillion tons in 2022 but the environmental laws, rules and regulations are disconnected from international obligations. Pakistan Environmental Protection Act 1997 promotes protection conservation, and rehabilitation of the environment but contrary to the provisions of law, the industries in Pakistan are blatantly affecting the health and livelihoods of local communities without any remorse. The industrial pollution, especially from chemicals, pharmaceuticals, fertilizers, cement, dyeing, textiles, paper & paper board, minerals, and mining industries, is the root cause of hazardous waste and toxic gaseous pollutants into the environment. It seems as if the private sector in Pakistan is oblivious of its environmental prevention responsibilities and is deteriorating environment without accountability. In contrast, the ICESCR and UNGP on BHR strongly emphasize upon State parties and corporation to adapt Climate Change policies to deter the impacts of climate Change on marginalized and disadvantaged individuals and ensure people's right to health and adequate living conditions. Businesses in Pakistan are poorly regulated; their business relationships are exploitative, supply chains contain vendors engaged in child labour, forced labour, corruption, discrimination and inhumane & degrading working environment whereas Human Rights Due Diligence framework to identify, prevent and mitigate human rights risks is non-existent amongst local producers/ manufacturer and businesses. When it comes to access to effective remedy through judicial, administrative or legislative mechanisms, Pakistan has some serious deficiencies to provide justice and remedy to the aggrieved affected by the business operations of enterprises. The judicial system in Pakistan is archaic, irresponsive, corrupt, expensive, and inaccessible to the masses whereas

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<sup>170</sup> ILO Convention No. 182 on Worst Forms of Child Labour

<sup>171</sup> Fossil Carbon Dioxide (CO<sub>2</sub>) emissions of Pakistan (2022) available at 'Worldometer'.

non-judicial or administrative grievance redressal mechanisms to redress corporate human rights abuses are defunct. Unfortunately, owing to this dismal state of access to justice, Pakistan is reported to have a large number of impending cases in the International Labour Organization concerning violation of labour rights in Pakistan. Some of the recent cases in ILO are from Sindh Labour Federation (SLF) dated 6<sup>th</sup> March 2023, the Building & Wood Workers' International (BWI), the Pakistan Workers' Federation (PWF) and the Pakistan Federation of Building and Wood Workers (PFBWW) dated 17 August 2022 for their violation of trade union and collective bargaining rights, complaint by Pakistan Workers Federation (PWF) for violation of trade union, against International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) dated 8<sup>th</sup> April 2023 and many more.

In Pakistan, the absence of a comprehensive human rights enforcement mechanism has led to severe consequences for individuals, businesses and the economy. The rights of individuals are frequently violated, businesses are denied market access unless they meet voluntary non-binding requirements<sup>172</sup>. Therefore, it was realized that human rights in business related activities need to be safeguarded through a comprehensive mechanism to address the rights, freedoms and obligations enshrined in the International Human Rights framework and United Nations Guiding Principles on Business and Human Rights.

#### **4.3. Pakistan's National Action Plan on Business and Human Rights (NAP-BHR)**

The members of the UN Working Group after their visit to Pakistan in 2017, the recommendations amongst others included the development of a National Action Plan on Business and Human Rights to address and improve key areas of concern. UNGPs consider National Action Plan to be the cornerstone in prevention against adverse human rights impacts of business-related activities. In response to the findings of the UN Working Group, Government of Pakistan officially engaged with the UN in October 2018 and held initial discussions for adopting UNGPs on BHR. In November 2018, Pakistan attended the UN Forum on Business and Human Rights in Geneva which resulted in a collaboration between Ministry

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<sup>172</sup> In 2013, Walt Disney removed Pakistan from its list of Permitting Sourcing Countries for human right violations. Consequently, brands like Adidas, Reebok, Puma refused to source from Pakistan.

of Human Rights and United Nations Development Program for the development of National Baseline Assessment to analyse Pakistan's legal and regulatory framework. Later on in April 2019, Pakistani delegation visited Bangkok to learn from the experiences of Government of Thailand in developing a National Action Plan on BHR followed by the participation in a regional consultation in Davao, Philippines. Consequently, the zero draft was prepared in February 2020 and finally, Pakistan's first ever NAP on Business and Human Rights was launched in December 2021, which is currently being implemented by the Ministry of Human Rights. The action plan provides a framework for the implementation of the UN Guiding Principles in Pakistan and includes measures to introduce policy reforms, enact & enforce new laws, promote respect for human rights by businesses, provide effective remedies for victims of human rights abuses, and encourage businesses to conduct Human Rights Due Diligence.

The National Action Plan on BHR of Pakistan (2021-2026) lays down intended priorities and actions along with an implementation plan to execute the initiatives and achieve expected level of protection for human rights, labour rights, and environmental sustainability in conformity with Pakistan's duty and international obligations. In order to transpose the dictum of UN Guiding Principles on Business and Human Rights, the NAP BHR has been initiated with five phases. First being the initiation of State's Commitment at the Annual Forum on BHR in Geneva in 2018 followed by a national level consensus amongst the Federal and Provincial stakeholders through exhaustive assessment & consultation. In the process, a National Baseline Assessment using International Corporate Accountability Roundtable (ICAR) Framework<sup>173</sup>, review of Pakistan's international obligations, international laws, domestic legislation, judicial precedents, surveys, and multi-stakeholder consultations was conducted against Pakistan's Commitment under Sustainable Development Goals (SDGs). National and international stakeholders were identified (who committed to carry the agenda forward). Because without general agreement of the ministries, provincial departments, business community, NGOs, INGOs, Commissions, and Judiciary the transposition of UNGP would remain an elusive dream. The findings disclosed deficiencies beyond comprehension ranging from corruption to gender-based discrimination, poor occupational health and safety standards, forced overtime, denying minimum wage, union busting, prevalence of child and bonded labour, vulnerable employees, lack of rest & recreation, no medical or maternity leave,

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<sup>173</sup> The International Corporate Accountability Roundtable (ICAR) is a coalition of human rights groups focused on corporate accountability. It helps governments to create and enforce rules over corporations that promote human rights and reduce inequality.

sexual harassment at workplace, inhumane & dangerous working conditions, irregular hiring mostly informal with no concept of human rights due diligence, and lack of access to remedy. However, businesses had fair understanding of Corporate Social Responsibility and some corporations had also developed, communicated and disseminated company Codes of Conduct on harassment, non-discrimination, and human rights. In the fourth phase, the draft of the Action Plan was developed in accordance with the Guidelines of UN Working Group on Business and Human Rights<sup>174</sup>, which requires consultations with all the relevant stakeholders and incorporation of their input. Consultations were conducted in all the four provincial Capitals; the draft was shared with over 170 relevant public sector stakeholders for feedback. In addition, the feedback of general public, academia, civil society organizations and INGOs was also invited. The draft was finalized after review and incorporation of recommendations & feedback. In order to implement the plan, a National Action Plan Secretariat has been established in the Ministry of Human Rights which supervises the implementation of NAP-BHR.

Pakistan is the first country in South Asia to adopt a National Action Plan on Business and Human Rights (NAP-BHR 2021-2026). It was adopted after the approval of Federal Cabinet on 21<sup>st</sup> September, 2021 and launched in December, 2021. Pakistan's National Action Plan on Business and Human Rights consists of eight (08) priority areas with 69 proposed actions disaggregated at the Federal and Provincial levels. These priority areas in totality transpose the United Nations Guiding Principles on BHR (i.e., state duty to protect human rights, corporate responsibility to respect human rights, and access to remedy) in Pakistan. The 69 Action Points divided under these priority areas mainly stipulate conducting mapping exercises, research, amendments in laws, strengthening the judicial system and ratifying relevant International Conventions. Relevant Ministries, Provincial Departments, independent commissions/ NHRIs, and private business sectors have been given shared roles in achieving these objectives at both Federal and Provincial levels. The first eight (8) actions are general in nature, proposed to establish a conducive environment for the implementation of the interventions of the BHR Framework. The actions relate to conducting mapping exercises (four key elements of fundamental principles of ILO<sup>175</sup> and human rights in digital economy), review of laws within the context of BHR, dissemination of BHR guidelines among stakeholders, and

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<sup>174</sup> UNWG Guidance on National Action Plans on Business and Human Rights available at: [http://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG\\_NAPGuidance.pdf](http://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNWG_NAPGuidance.pdf)

<sup>175</sup> Four key elements of fundamental Principles of ILO are eradication of slavery, abolishment of child labour, non-discrimination in business operations and at workplace and freedom of association.

incorporation of UNGPs, and National Action Plan into the curricula of technical and vocational training. The rest of the action points complement following eight priority areas:

**a) Financial Transparency, Corruption and Human Rights Standards in Public Procurement Contracts (Actions 9 – 12)**

The Action Plan while realizing the nexus between corruption and human rights abuses pays utmost heed to ensuring financial transparency, tackling corruption, and conducting human rights due diligence in the procurement process. Lack of financial transparency breeds tax evasion, money laundering, and financial terrorism. In the absence of financial transparency, corporations are inclined to evade taxes which is laundered abroad to tax havens to avoid any punitive action by the authorities. Supposedly, when authorities sniff out such practices, corporation again in order to avoid punishment indulge in bribery and corruption; consequently, affecting revenue collection, social development programs, and human rights. NAP-BHR proposes enactment of a Whistleblower Protection and Vigilance Commission Bill and development of a Code of Conduct for corporations to explicitly discourage and prosecute corrupt practices in business activities (aligned with UNGP Principles 1, 2, 3, 4, 5, 6, 8 & 9). The enforcement of human rights standards in public procurement is a testament to the transposition of UNGP Principle 6 regarding State's engagement with businesses in commercial transactions. Since Public Procurement Regulatory Authority enforces rules for all public tenders & procurement, the NAP-BHR recommends PPRA to update procurement rules and inculcate human right due diligence as a mandatory requirement for future procurements.

**b) Anti-Discrimination, Equal Opportunity, and Inclusion (Actions 13 – 30);**

The Constitution of Pakistan promotes equality for all as a fundamental right whereas international frameworks such as CEDAW, ICCPR, ICESCR, and ILO Convention 100 (equal remuneration) & 111 (employment & occupation discrimination) also obligate states to take preventive measure. In compliance, Pakistan has also number of legislations both at Federal and Provincial levels

yet the elimination of discrimination & harassment against the vulnerable and marginalized (especially against women, people with disabilities & minorities) persists to be a challenge. Therefore, at the federal level, NAP-BHR proposes actions for the ratification & enactment of ILO Convention no. 190 on violence & harassment (UNGPs 1, 3), and amendment of Protection Against Harassment of Women at workplace Act 2010 (UNGPs 1, 3, 25, 26, 27, 28). It further mandates the Government of Pakistan to conduct nationwide study on the prevalence of Gender Disparity for future policy initiatives (UNGPs 1, 2, 3, 8). At the National level, NAP-BHR proposes strengthening & development of laws, policies, regulations and remedies for discriminatory abuses (UNGPs 25, 26, 29), capacity building for women & marginalized (UNGPs 1, 2, 3, 8, 11, 12, 25, 26, 27, 28, 29), and create funding opportunities for women & transgender (UNGPs 1, 2, 3, 5, 8, 12). At the Provincial level, NAP- BHR proposes Provincial governments to actively engage with corporations/ business entities to develop policies, conduct mapping exercises, create awareness campaigns, conduct consultations & training, allocate budget, establish Entrepreneurial Advisory Cells on Non-Discrimination, and encourage private & public sector to ensure inclusion of women, minorities & PWDs into the workforce.

**c) Human Rights Due Diligence (Action 31 – 36)**

Human rights due diligence is the backbone of the NAP-BHR and has gained immense prominence in the world. It has now become one of the key requirements for exporting markets to address human rights risks in their supply chain. Adoption of international standards on human rights due diligence bears significant costs to businesses which will be a challenge; especially in countries like Pakistan where there is no legislative framework as yet to implement HRDD & enforce compliance. However, irrespective of the circumstances, strengthening Human Rights protection mechanisms is the need of the hour for seamless access in export markets, foreign direct investments and share in global supply chain across the globe, which requires strong coordination among stakeholders and unwavering support of the Parliament to legislate on the issue. The actions proposed under NAP-BHR suggest soft intervention by the Federal

and provincial governments. It mandates development of Human Rights Due Diligence Guidelines documenting international best practices and minimum Human Rights standards for conducting business activity and reporting human rights due diligence for both private and public entities (UNGPs 1, 2, 3, 11, 12, 15, 17, 23). The Action Plan also advocates for linking human right due diligence reporting for the approval of mega projects with high human rights risks (UNGPs 1, 2, 3, 4, 5, 6, 8, 17, 23). Since the concept of HRDD is novel to Pakistani market, feasibility studies regarding human rights certifications & incentives, legislative enactment of HRDD on the line of German Supply Chain Act 2021 or EU HRDD Directives, and an assessment study to explore the potential impacts of mandatory HRDD in consonance with trade opportunities have also been proposed.

**d) Labour Standards and the Informal Economy (Actions 37 – 50)**

Pakistan has ratified 36 ILO conventions whereas each province is implementing their respective Labour Policies (approved in 2018) yet the situation of labour standards (such as poor working condition of domestic workers, curbs on trade unions, sexual and physical abuse at workplace, child labour, forced labour, unsanitary working conditions, salary below the statutory minimum wage, discrimination against women & minorities in employment & occupation, arbitrary dismissal, extremely long working hours, and denial of compensation for accidents or injuries etc.) is dismal, especially in the informal economy. The laws enforcing labour rights are archaic incapacitated to address modern challenges of the industry, therefore, action plan proposes ratification, adoption, enactment of key conventions of ILO (including Convention No. 177 on home workers, convention 189 on domestic workers), and review of all labour laws, policies, and standards to synergize domestic legislations in line with international obligations (UNGPs 1, 2, 3, 8). Moreover, the action plan entails federal and provincial governments to strengthen labour inspection mechanisms (UNGPs 1, 2, 3, 4), initiate registration drive for all labour force in Labour Management Information Systems (UNGPs 1, 3, 8), maintain digital data of all formal and informal enterprises (UNGPs 1, 3, 8, 11, 15, 21), digitize

wage payment mechanisms (UNGPs 1, 3, 8, 11, 13, 15, 17, 22, 23), ensure compulsory EOBI registration (UNGPs 1, 2, 3, 8), and enforce employment contracts in practice (UNGPs 1, 2, 3, 11), to regulate labour standards in informal businesses.

**e) Child Labour (Actions 51 – 54)**

Pakistan has made great stride in prohibiting child labour, however, enforcement of laws & ILO conventions remains a challenge at the ground level. Besides, lack of uniformity in defining child labour, hazardous work, and worst form of child labour is another contention in prohibition of child labour in letter and spirit. Action Plan vows to enforce ILO Conventions No 138 & 182 on Minimum age for labour & Worst Form of Child Labour respectively and proposes reforms to the child rights laws regarding enforcement of Article 25-A of the Constitution of Pakistan to set the compulsory school going age at 16 and in turn prohibit child labour below the age of sixteen, exclude child labour from hazardous work, raise the age of hazardous work to 18, and finally revise penalties and fines in all the enacted laws (UNGPs 1, 3).

**f) Forced or Bonded Labour (Action 55 – 58)**

The Constitution of Pakistan 1973, the Pakistan Penal Code vide section 374, effective domestic legislation, and ratified ILO conventions 29 (Forced Labour) and convention no. 105 (abolition of forced labour) provide a comprehensive prevention mechanism to address the issue. However, the implementation and awareness of these laws at the grassroot level is a daunting task, especially when such practices are deep rooted in the culture (mostly in rural areas of Sindh). NAP-BHR among other interventions to amend the laws with stringent punishments, also proposes to notify new ‘District Vigilance Committees’. Since bonded labour/ forced labour takes place at the grassroot level, therefore, a regulatory mechanism well equipped and trained with effective skillset to enforce the right will do the trick (UNGPs 1, 3, 8).



**g) Occupational Health and Safety (Actions 59 – 62);**

The horrors and deaths of CoVID-19 have highlighted the issue of occupational health and safe working environment in Pakistan. The sanitary compulsions, social distancing, and mandatory protective gears have redefined a safe and healthy working environment. These requirements when compared to the existing legislation in Pakistan (i.e., Factories Act 1923 and Workmen's Compensation Act 1923) present glaring deficiencies between the international standards and domestic legal framework. The action plan proposes that federal and provincial governments should reform their respective health and safety laws, rules, regulations, policies, guidelines and standards in consonance with the ILO conventions no. 155 and 187 concerning Occupational Safety and Health and Promotional Framework for Occupational Safety and Health respectively (UNGPs 1, 3).

**h) Access to Remedy (Actions 63 – 69)**

The State of Pakistan as her duty to protect human rights is committed to enhance access to justice through state based judicial and non-judicial grievance redressal mechanisms. Unfortunately, the foundational and operational aspects of pillar II of UNGPs (access to remedy) suffer immensely for want of procedural inadequacies in Pakistan; in lieu of poor investigation, incompetent prosecution, insufficient punishment and ineffective redressal mechanism (higher cost of litigation, difficult to frame cause of action, expensive legal counsel, lengthy court proceedings, and flawed judgements of courts and administrative forums etc.). On the other hand, non-judicial and non-state internal or multi-stakeholder redressal mechanisms are non-existent. The National Action Plan on Business and Human Rights puts forth a reformative approach to conduct a mapping exercise to identify a reporting process for redressal of a violation emanating from business activity and devise toolkits (including best practices, guidelines, relevant sections & provisions of law, and checklist) for the judiciary to deal with matters related to human rights

violations from business activities. NAP-BHR mandates federal and provincial governments to establish specialized courts (i.e., Labour Courts and Child Protection Courts) in all the districts across Pakistan, and requires public and private business establishments to have in place a gender responsive organizational mechanism in the forms of inquiry committees.

The State has a duty to protect human rights, majority of the actions signpost the commitment and dedication of Government of Pakistan to transpose the United Nations Guiding Principles on Business and Human Rights (UNGPs on BHR). Nonetheless, the government through National Action Plan on BHR also expects businesses to ensure compliance and integration of NAP priority areas and UNGPs. In this regard, businesses should ensure compliance to the domestic legislation related to human rights and make amends for the ongoing potential and actual human rights risks. NAP-BHR categorically prohibits child labour, forced labour, harassments & discrimination of vulnerable & marginalized (women, minorities, and PWDs), and informal contracts promoting modern slavery. In response, corporations must develop a Human Rights Corporate Policy, publish it, disseminate it and conduct mandatory training of employees on specific issues and make efforts to effectively root out human rights adverse impacts from their supply chains. Human Rights Due Diligence, at the moments, is a voluntary requirement for our export partners but the framework is garnishing support for mandatory HRDD to trade with countries in the European Union, Japan, USA, Australia, New Zealand, and Canada etc. HRDD necessitates corporations, irrespective of their size, nature of activity or jurisdiction; to identify, assess, prevent/ integrate, remediate adverse actual and potential human rights impacts (both internal and external), and communicate publicly the steps taken to respect human rights across all projects, engagements & activities in their value chain. In pursuance to the transposition of Pillar III, corporations are encouraged to remediate internal and external human rights abuses amicably in the supply chains and value chains of their operations. Corporations are encouraged to have in place a Corporate Remedy Strategy documenting its processes for a non-state non-judicial or administrative grievances redressal mechanisms and provide a judicious avenue for redressal for the labour, for the individuals where commercial/ corporate activity takes place, and for the communities whose environmental rights may be violated by the business activity. UNGPs on Business and Human Rights are one of the international guidelines ensuring minimum standards of due diligence by corporations. Action Plan invites businesses and corporations to

seek guidance and implement Human Right corporate standards from other frameworks, initiatives & safety standards too. List of other initiatives place at **Appendix-I**.

#### **4.4. Conclusion**

The concept of business and human rights (BHR) has been evolving within the context of Pakistan's legal and policy framework. Pakistan is a signatory to numerous international human rights conventions and treaties which obligate the Government of Pakistan to safeguard human rights from adverse impacts of business activities and provide effective remedy to the aggrieved. In this regard, Pakistan has enacted over 350 laws to address business-related human rights concerns but their outdated and often ambiguous nature has limited their effectiveness in tackling modern challenges.

Pakistan's National Action Plan on Business and Human Rights (2021-2026) is a significant step toward aligning the country's policies with international standards, particularly the United Nations Guiding Principles on Business and Human Rights. With its eight priority areas and 69 proposed actions, the plan aims to bridge legislative gaps, ensure labor rights, promote environmental sustainability, and enhance access to justice through innovative corporate remedy strategies and legal reforms. While Pakistan's commitment to BHR is evident through its legislative initiatives and policy developments, the successful implementation of these measures will require sustained political will, capacity building, and multi-stakeholder collaboration. By embracing reforms and adopting a proactive approach, Pakistan has the opportunity to set a regional example in balancing economic development with the protection and promotion of human rights.

## **CHAPTER 5**

# **ANALYSIS OF THE TRANSPOSITION OF UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS IN PAKISTAN**

### **5.1. Introduction**

This section provides a critical study of the efforts made by Pakistan covering the implementation progress/ interventions made thereon to implement NAP-BHR in Pakistan. In the past two years, Pakistan has laid down a strong foundation for the adoption of UNGP on business and human rights. The Ministry of Human Rights has been collaborating with other stakeholders to develop Human Rights Due Diligence guideline for state enterprises and business entities. In pursuance to the transposition of UNGP on BHR, Federal government and provincial departments have also enacted a number of legislations to streamline the implementation process. However, there are still challenges and limitations in transposing the UNGPs on BHR in letter and spirit. This section provides detailed commentary on these limitations, gaps and inadequacies.

### **5.2. Implementation Progress/ interventions made to implement National Action Plan on Business and Human Rights (through legislative, judicial & administrative means)**

National Action Plan (NAP) on Business and Human Rights is a progressive policy developed by Pakistan to protect labour, individuals, and communities in the affected regions by corporate activities. The document has been prepared in conformity with the UN Guiding Principles on Business and Human Rights and aims to reform the legislative, regulatory, judicial landscape of Pakistan. It is welcoming that companies in Pakistan recognize their responsibility to protect and promote human rights. Some multinational companies and state-owned enterprises have already implemented human rights policies that align with UNGPs on BHR. Compliance with the State's expectations outlined in the NAP, and by staying abreast with new legislative and regulatory developments, businesses can easily integrate the BHR framework into their operations.

The Action Plan was approved by the Cabinet on 21<sup>st</sup> September 2021 and launched in December 2021. The start of a new calendar year marked the implementation of action plan in play as the first Inter-Ministerial and Inter-Provincial Steering Committee for Implementation of NAP-BHR was notified on 3<sup>rd</sup> January 2022 which was reconstituted on 22<sup>nd</sup> February 2023 after co-opting two key stakeholders (Ministry of Overseas Pakistanis & Human Resource Development & Securities & Exchange Commission of Pakistan - SECP).

The first meeting of the ‘23-member steering committee’ was convened on 19<sup>th</sup> January 2022 under the Chair of the then Minister for Human Rights, Dr. Shireen Mazari. The committee ensured participation from public sector (at federal and provincial levels), and from the business community as well, including representatives from Ministry of Law & Justice, Ministry of Industries & Production, Ministry of Commerce, respective Provincial Human Rights, Labour, Industries & Commerce departments. The representatives from Federation of Pakistan Chamber of Commerce & Industries (FPCCI), Pakistan Workers Federation (PWF), and Overseas Investment Chamber of Commerce & Industry (OICCI). While opening the floor, the Chair reiterated the mandate of the Steering Committee and affirmed that BHR is neither a new framework nor is the steering committee a watchdog but rather an ‘Advisory Group’ to facilitate state functionaries in realizing their duty of care and private entities in developing respect for human rights. Given the expansive nature of actions proposed and the novelty of the concept, the steering committee for effective implementation of actions agreed to execute initiatives into two phases (short-term and long-term targets). The forum stressed upon the completion of mapping exercises proposed, which are the basis of further initiatives and agreed to conduct mapping exercises, assessment studies, and review studies in the first phase. In order to identify relevant stakeholders, assign concerned tasks/ initiatives, and devise a comprehensive workplan for the strategic implementation of actions, the chair suggested to prepare an Annual Workplan. Pakistan is the first country in the South Asia to introduce a national level action plan on human rights in December 2022, it was important to build a strong foundation for the implementation of UNGPs on BHR therefore, interventions were directed to large-scale consultations with stakeholders, awareness campaigns across the country, advocacy & training, mapping exercises, and review of laws & policies related to business activity. In the initial two (02) years of implementation, of the total 14 proposed mapping exercises in the action plan, five (05) mapping exercises have been concluded whereas two (02) desk review are in process.

Mapping exercises were focused on the advancements made for the (a) eradication of modern slavery, (b) elimination of discrimination & discriminatory practices against at workplace, (c) abolishment of child labour, and (d) freedom of association. These mapping exercises included the assessment of national level, policy and regulatory mechanism in place, determine the progress made against these issues, identification of industries and regions where these abuses are still prevalent, and identification of challenges & deficits being faced to eliminate human rights risks.

“**Modern Slavery** is a servitude based on exploitation and its various connotations including trafficking in persons, slavery, servitude, debt bondage, forced marriage, forced labour, deceptive recruiting for labour or services, and the worst forms of child labour” (Article 18 of ICCPR). The study revealed three (3) major types of modern slavery practices in Pakistan. The first type of modern slavery is the bonded labour takes many forms of modern slavery in the shape of debt bondage, generational debt bondage or wage slavery which is exploited by withholding their wages, through confinement, and physical or psychological control of people into unfair labour relations. The victims of such slavery are usually the women or children in debt, poor and illiterate people in villages. This type of slavery is perpetrated by middlemen and landowners in a feudalistic setting. Child labour is another manifestation of modern slavery. It can also be exploited through bonded labour where a child is either sold by the family for the payment of a loan or kidnapped & abducted and forced into child labour or psychologically traumatized into slavery and work. In certain circumstances, it was found that separation from parents also became a cause for child labour forcing the kid into work to earn a living for his family. Children forced into labour are often subjected to sexual exploitation, commercial sexual exploitation, physical and psychological abuse, domestic servitude and confinement. The most common perpetrators of child labour were found to be traffickers and agents, urban and rural landlords, and in some cases trusted community figures/ leaders. Human trafficking is also a type of modern slavery manifested in the form of deception where people are lured to jobs and higher income, deceived with fake documents or fake marriages and trafficked to a place where they have no other alternative but to surrender to the worst circumstances. The victims of such abuse are poor children, men and women

with challenging circumstances. Pakistan has laws in place including ‘Bonded Labour System Abolition Act, 1992’ and the ‘Prevention of Trafficking in Person Act 2018’ but there exist gaps in the current practices of modern slavery and the enforcing provisions of laws. The study proposed to incorporate a broader definition of slavery facilitating the acceptable degree of restriction of the individual’s inherent right to freedom of movement, the acceptable degree of control of the individual’s personal belongings; and the existence of informed consent and a full understanding of the nature of the relationship between the parties. It was recommended that Human Rights Due Diligence should be introduced for companies and labour inspection mechanism should be expanded and strengthened covering agents, middlemen, and sub-contractors. It was also recommended that State should introduce economic incentives & schemes for micro-financing and training on financial literacy whereas the scope of intervention should be informal sectors.

**“Discrimination**, is the unequal or disadvantageous treatment of an individual or group based on sex, ethnicity or disability and may manifest in different forms at workplace including restriction of benefits, pay parity and harassment.” The Constitution of Pakistan 1973 guarantees equality of all and calls upon the State to eliminate all forms of sex-based discrimination (Article 25) and guarantees the right to all citizens to engage in any legitimate profession or vocation and to engage in any authorized trade or business (Article 18) without any discrimination (Article 27). Moreover, affirmative action for women is also proposed under Principles of Policy through Articles 34 requiring “State to take appropriate measures to enable women to participate in all spheres of life and social activities” and Article 37(e) requiring “State to make provisions for securing just and humane conditions of work ensuring that children and women are not employed in vocations unsuited to their age or sex, and for ensuring maternity benefits for women in employment”. The mapping exercise identified that discriminatory hiring, promotion, and dismissal, pay gaps, pregnancy-based discrimination, denial of maternity leave & benefits (ILO Convention 183), harassment (ILO Convention 190) are some of the key issues related to discrimination at workplace in Pakistan. The Government of Pakistan including

provinces have erected their respective legislations<sup>176</sup> to protect equality in the payment of statutory minimum wages for all, to protect home-based workers, to ensure maternity leave with full pay, and to protect women against harassment, intimidation & abuse at workplace. It was observed in the study that the discrimination related to pay parity, maternity leaves, and harassment are excessively predominant in the private sector. The mapping exercise has identified huge gaps in the legislative framework against the international best practices for eradication of discrimination at workplace. The recommendations include extending the enforcement of “Protection of Women against Harassment at Workplace (Amendment) Act, 2022” across Pakistan, harmonization of maternity & paternity leave period in all provinces in line with “The Maternity and Paternity Leave Act 2020 (amended in 2023)”, protection from termination during pregnancy & maternal leave, enactment of domestic workers laws in all provinces, establishment of Internal Equal Opportunities Commission/ Committees in all public and large-scale private offices, and standardization of payment of wages, hiring and working conditions on the principle of non-discrimination.

**“Child Labour**, according to ILO, UNICEF and UNCRC, refers to any work that interferes with the education/ childhood, is hazardous and has the potential to damage the mental or physical being of the child is child labour”. However, a child after school can work for a few hours, provided the work does not demand undue physical or mental stress and that it is not prohibited by the minimum age restriction by the domestic law in place. The ILO Conventions no. 138 interlinks minimum age with the compulsory schooling, which under normal circumstance is 15 years or passing of tenth grade whereas for hazardous work, the minimum age of 18 is recommended. Some forms of child labour found in the mining, slavery, trafficking and bonded labour are strictly prohibited. In Pakistan, child labour is common in brick kilns, domestic service/

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<sup>176</sup> The Punjab Minimum Wages Act 2019; Khyber Pakhtunkhwa Payment of Wages Act, 2013; Balochistan Minimum Wage Act 2021; Sindh Minimum Wage Act, 2015; ICT Domestic Workers Act 2019; Punjab Domestic Workers Act 2019; Khyber Pakhtunkhwa Home Based Workers (Welfare and Protection) Act 2021; The Maternity and Paternity Leave Act 2020; The Punjab Maternity Benefits Ordinance 1958 (amended in 2012 and 2016); The Sindh Maternity Benefit Act 2018; The Khyber Pakhtunkhwa Maternity Benefit Act 2013; The Balochistan Maternity Benefits Act 2022; The Protection against Harassment of Women at Workplace Act, 2010 (amended in 2022); Disabled Persons (Employment And Rehabilitation) Ordinance, 1986; ICT Rights of Persons with Disability Act 2020; Pakistan Minorities Rights Commission Act 2016.



help, carpet weaving, garment factories and fisheries. In Pakistan, there is plethora of legislation regulating issue of child labour at the federal and provincial level<sup>177</sup> which have their deficiencies but there exists a huge gap on the responsibility of corporations for violating laws against child labour. The study highlighted the need for separate laws for the enforcement of Human Rights Due Diligence for corporate entities and proposed a National level Human Rights Policy for corporations. It was recommended that regulations related to the conduct of child labour within the permissible limits must also developed covering, minimum hours of child work, special safety and health measures for child labour, Child labour reporting in the supply chain, restrict doing business with responsible business entities, and maintenance of proper record of child labour. The study examined an interesting phenomenon that children of poor families resorted to employment of a child and recommended to ensure minimum wages for all workers across all industries and occupations. It was also discovered that the federal and provincial regulations have different requirements regarding minimum wage, minimum age of child labour, minimum age for hazardous work, working hours and penalties for violations. The employment age of child at Federal level<sup>178</sup> is 14 years whereas in Punjab<sup>179</sup> and Sindh it is 15 years of age. The minimum age for hazardous work across Pakistan (Federal, Punjab, Sindh, KP) has been amended and raised to 18 years whereas Balochistan province is yet to adopt the amendments.

**Freedom of Association** is the right of workers to join organizations of their own choosing without previous authorization and without interference from the government or from the employers, protected under ILO convention 87. The freedom of association coincides with the right to organize and right to collective bargaining (ILO Convention 98). The UN Guiding Principle 12 also reinforces “ILO’s Declaration on Fundamental Principles and Rights at Work”

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<sup>177</sup> Laws related to Child Labour include: At Federal level, Pakistan Employment of Children’s Act of 1991; The Children (Pledging of Labour) Act 1933 (amended 2022); the Shops and Establishments Ordinance 1969; Mines Act 1923; The Road Transport Workers Ordinance, 1961; Guardianship and Ward Act of 1890 and the ICT Compulsory Education Act 2012. At Provincial level, Punjab Restriction on Employment of Children Act 2016; the Khyber Pakhtunkhwa Prohibition of Employment of Children Act 2015; Sindh Prohibition on Employment of Children Act 2017; and the Balochistan Child Protection Act, 2016. Additionally for compulsory education the provinces also enacted Compulsory Education Acts (Punjab 2012, KP 2017, Sindh 2013, Balochistan 2014, Gilgit Baltistan 2020).

<sup>178</sup> The Employment of Children Act 1991

<sup>179</sup> Punjab Restriction on Employment of Children Act, 2016

and imposes responsibility on business enterprises to protect & respect labour rights related to trade unions. Article 17 of the Constitution of Pakistan 1973 also guarantees right to association or collective bargaining, as it reiterates that “Every citizen shall have the right to form associations or unions, subject to any reasonable restriction imposed by law”. Although Government of Pakistan and Provincial Governments in all the four provinces have enacted their respective Industrial Relations Acts; (Federal 2012, Punjab 2010, Sindh 2013, KP 2010, Balochistan 2010), however, these legislations are deficient in protecting the rights of workers in the informal sector, home based workers, fishing industry, agriculture sector, and in Police & Armed Forces. Moreover, the mapping exercise revealed a greater degree of restrictions placed on the formation, registration and functions of trade unions in Pakistan.

### **5.2.1. Development of Human Rights Due Diligence Guidelines**

Human Rights Due Diligence (HRDD) is a continuous process whereby businesses identify, prevent, mitigate, and account for the human rights impacts and risks related to the business operations, value chains and business relationships. It involves a systematic process of assessing human rights risks, integrating policies and practices to address those risks, providing remedies for any adverse impacts, and communicating the outcomes of their corrective actions. Through HRDD, businesses can try to meet their corporate responsibility to uphold fundamental human rights principles and avoid contributing to or being complicit in human rights abuses. The NAP-BHR, approved in 2021, provides an impetus for initiating a dialogue on HRDD in Pakistan by making it one of the eight priority areas. Therefore, Ministry of Human Rights in collaboration with United Nations Development Program through Research Society of International Law has drafted a comprehensive set of nine Human Rights Due Diligence Guidelines based on nature and scale of different business entities and their work. These general set of nine guidelines are based on the international normative framework providing recommendations on best practices for businesses and are the minimum HRDD standards required for enterprises to adhere to in their operational dealings with employees, individuals, and communities. These HRDD guidelines are the product of extensive consultations with the relevant stakeholders including preliminary consultative meetings with Ministry of Commerce and Securities & Exchange Commission of Pakistan, Federal Ministries, Provincial departments, and business community across Pakistan regarding introduction of a Human Rights Due Diligence Regulatory Framework for business entities.

Although businesses are responsible to carry out Human Right Due Diligence in their operations to avoid human rights risks but the “General Comment No. 24 (2017) on State obligations in the context of business activities” by ICESCR treaty body clarifies the duties of States parties in situations where the business activities affect the enjoyment of specific Covenant rights relating to health, housing, food, water, social security, the right to work, the right to just and favourable conditions of work and the right to form and join trade unions, with a view to preventing and addressing the adverse impacts of business activities on human rights. In this regard, NAP-BHR alongside international human rights treaty obligations through Action points number 31 to 36 mandate the Government of Pakistan to carry out certain actions to introduce HRDD in Pakistan.

The adoption of HRDD within the business sector of Pakistan offers several benefits, both in terms of safeguarding human rights and enhancing environmentally friendly economic development. This framework assists State and businesses in implementing Pakistan’s international commitments related to Human Rights, particularly under the “International Covenant on Civil and Political Rights” and “International Covenant on Economic, Social and Cultural Rights”. This framework encourages businesses to prioritize ethical practices over profit maximization and actively engage in Corporate Social Responsibility, contributing positively to Pakistan's progress towards the Sustainable Development Goals. Enforcement of HRDD will serve as a means for protecting the rights of local communities & indigenous communities, particularly those with limited capacity to voice their concerns or navigate legal complexities to seek redressal against abuses. Implementing HRDD will also help businesses prevent any potential risks emerging from the legal consequences, negative publicity, and damage to their brand reputation, while also mitigating harm to the vulnerable employees, individuals, and communities affected by their operations. Moreover, under BHR framework, companies that carry out HRDD will have incentives in acquiring financing, insurance, government contracts, and market access in host countries. Companies that actively engage in HRDD are encouraged to seek more environmentally friendly and socially responsible approaches to their operations. By doing so, they can reduce negative impacts on the environment and society, leading to long-term sustainability.

In line with the implementation of Action 36 of NAP BHR, the HRDD guidelines were developed for conducting and reporting human rights due diligence in business activity. The guidelines are placed at **Appendix-II**:

In pursuance to the HRDD guidelines, relevant organizations such as Ministry of Commerce, Ministry of Industries & Production, Ministry of Overseas Pakistanis & Human Resource Development, Securities & Exchange Commission of Pakistan, Public Procurement Regulatory Authority, Environmental Protection Agency, Provincial Human Rights Departments, Provincial Labour Departments, and Provincial Commerce & Industries Departments are some of the key public sector stakeholders vested with the responsibility to ensure adoption of HRDD guidelines by the corporations in their operations. For instance, under state's duty to protect, the Public Procurement Regulatory Authority and relevant provincial procurement authorities are required to insert human rights clauses in procurement rules and contracts, encourage public sector organizations to prefer bidders with strong human rights records & due diligence, and develop training programs for procurement officers. The Environment Protection Agency (EPA) is mandated to amend existing Environmental Impact Assessments (EIAs) to incorporate HRDD with a focus on community impacts. The Ministry of Planning and Provincial Planning Development Departments are required to introduce HRDD guidelines in public sector development project-related frameworks, policies, and checklists. The Securities and Exchange Commission of Pakistan can introduce and implement the concept of HRDD to business companies including publicly listed companies, financial institutions and lending companies. SECP either through Companies Act 2017 or through regulations, circulars or through SRO's can obligate companies to develop codes of corporate governance and HRDD. Similarly, the role of Ministry of Commerce and Ministry of Industries & Production, along with other provincial departments, is to coordinate business entities to integrate HRDD guidelines, establish redressal mechanisms, and ensure reporting on human rights impacts & risks. These are the illustrations of state-level intervention to induct, integrate, and enforce the concept of HRDD in business operations.

### **5.2.2. New legislations influenced by the National Action Plan on Business and Human Rights**

Since the implementation of the National Action Plan on BHR in 2021, the plan has inspired a number of key legislations across the country to protect human rights from business activity. The following laws have so far been enacted to bridge the gap between international obligations, UN Guiding Principles on BHR and the national legal framework protecting adverse impacts of business activity:

**Price Control and Prevention of Profiteering Act 2023** is designed to regulate prices of essential goods and prevent unethical business practices such as hoarding and profiteering. Under this Act, the government set price ceilings for essential commodities, imposed penalties, conducted price inspections and revoked licenses of businesses for violation of the provisions. The act addressed Business and Human Rights by ensuring that businesses respect the economic rights of consumers, particularly low-income households, who are most vulnerable to price exploitation. This law aligns with the UNGP's State Duty to Protect by mandating government intervention to safeguard consumer rights. It also encourages Corporate Responsibility to Respect, as businesses are required to conduct fair pricing practices that respect the purchasing power and economic security of all citizens. The act serves as a critical tool in ensuring fair business practices and maintaining market stability, ultimately protecting the human right to affordable goods and services.

**The Companies Regulations 2024** introduced updated corporate governance measures to ensure transparency, accountability, and ethical behaviour in business operations. Under this Act, companies are required to maintain transparent financial records, undergo regular audits to prevent corruption and fraud, adopt corporate social responsibility (CSR) policies and mechanisms for whistle-blower protection and impose penalties. This regulation aligns with Business and Human Rights by emphasizing the importance of ethical business practices and the protection of stakeholders, including employees and consumers, from corporate misconduct. The regulation supports the UNGP's principles by encouraging Corporate Responsibility to Respect through responsible and transparent business operations and also aligns with its principle of Access to Remedy, providing a clear path for employees to raise concerns about human rights violations within corporate settings. The Companies Regulations 2024 provides a robust legal framework that balances corporate growth with social responsibility and human rights protection.

**The Protection Against Harassment of Women at the Workplace (Amendment) Act, 2022** strengthened the existing legal framework for protecting women from harassment in the workplace. This Act expanded the definition of harassment, mandated

the establishment of inquiry committees within organizations, outlined the penalties for non-compliance and introduced a reporting obligation for businesses. In terms of Business and Human Rights, the act reinforces the Corporate Responsibility to Respect by obligating businesses to create a harassment-free environment and actively protect the dignity and safety of women at work. This aligns with the UNGP's principle of Access to Remedy, as it ensures that women have a clear and efficient path to seek justice. By strengthening workplace protections, this act ensures that businesses uphold the human rights of women, promoting a culture of equality and respect in professional environments.

**Punjab Empowerment of Persons with Disabilities Act 2022** focused on the rights and integration of persons with disabilities (PWDs) in Pakistan. This Act mandates that businesses, public, and private institutions ensure accessibility in their premises, requires the reservation of at least 2% of jobs in every establishment for PWDs, ensures the provision of vocational training programs, highlights the role of government and private sectors in collaborating for the social and economic inclusion of PWDs and imposes penalties on businesses. This section aligns with the concept of Business and Human Rights by addressing corporate responsibility to respect the rights of PWDs in the workforce. Furthermore, the Act emphasizes the need for businesses to create an inclusive environment for PWDs, ensuring that they are not subjected to discrimination and supports the concept of Business and Human Rights by aligning with the UN Guiding Principles on Business and Human Rights (UNGPs), specifically the Corporate Responsibility to Respect human rights, which includes making reasonable accommodations for vulnerable groups. The act is a critical step in ensuring that businesses are held accountable for creating accessible and non-discriminatory workplaces, making it a key piece of legislation in promoting human rights in Pakistan.

**The Punjab Anti-Corruption Establishment (Amendment) Ordinance 2023:** This amendment strengthened the legal framework for investigating and prosecuting corruption in both public and private sectors. This Act expands the scope of anti-corruption bodies, allows for the seizure of assets and financial records of companies involved in corruption and imposes penalties for individuals involved in corruption, and

restrictions on business operations. The act is relevant to Business and Human Rights as it addresses the corporate responsibility to operate with integrity and refrain from practices that could undermine the rights of consumers, employees, and other stakeholders. The ordinance promotes the State Duty to Protect by strengthening legal mechanisms to combat corporate malfeasance. Furthermore, it aligns with the Corporate Responsibility to Respect, ensuring that businesses engage in fair practices, which is essential for protecting the rights and welfare of all stakeholders affected by corporate activities.

**The Punjab Home-Based Workers Act 2023:** This act provided legal recognition and protection for home-based workers, particularly women who constitute the majority of this labor force. This Act ensures that home-based workers are entitled to minimum wages and social security benefits, mandates the registration of home-based workers and imposes penalties on businesses that fail to provide fair wages or violate the rights of home-based workers. The act addresses Business and Human Rights by ensuring that home-based workers are not exploited due to their informal status. This act aligns with the UNGP's Corporate Responsibility to Respect, ensuring that businesses respect the rights of all workers, including those in informal sectors, and Access to Remedy, as home-based workers now have a legal avenue to address grievances. The legislation also reinforces the State Duty to Protect by formalizing the rights of a previously neglected labor group.

**The Punjab Occupational Safety and Health Act, 2019:** This law mandates comprehensive safety standards in all workplaces to ensure the health and safety of workers. This Act requires employers to conduct regular safety audits, gives labor inspectors the authority to monitor compliance and impose fines for violations and introduces stringent penalties for non-compliance. This act aligns with Business and Human Rights by addressing the Corporate Responsibility to Respect the right to a safe working environment. The act also promotes Access to Remedy by allowing workers to report safety violations and seek redress without fear of retaliation. By enforcing stringent safety measures, the law protects the fundamental human right to a safe and healthy work environment, aligning with international labor standards and the UNGPs.

**The Punjab Protection of Women Against Violence (Amendment) Act, 2022:** This amendment strengthened legal protections for women facing domestic violence, ensuring swift justice and greater support services. This Act allows for the issuance of protection orders, mandates the establishment of shelters and legal aid services for women in distress and penalizes employers if they fail to support female employees facing domestic violence. This law is crucial in terms of Business and Human Rights as it obligates businesses, especially in the service sector, to provide safe and supportive environments for women. The law promotes Corporate Responsibility to Respect the rights of women, ensuring that workplaces are safe and supportive environments. Additionally, the amendment aligns with Access to Remedy by providing women with the means to seek legal protection and support.

**The Sugar Factories Control (Amendment) Act 2021:** This act regulates the operations of sugar factories, with a particular focus on fair treatment of sugarcane farmers. The Act mandates timely payments to farmers for their produce and imposes penalties on factories that fail to adhere to fair pricing agreements or delay payments. In terms of Business and Human Rights, the act ensures that sugarcane farmers are treated fairly and that their economic rights are protected. This law aligns with the UNGP's Corporate Responsibility to Respect, as it holds businesses accountable for fair trade practices and the rights of farmers. The timely payment and fair pricing mechanisms ensure that farmers can sustain their livelihoods, which is a key element of protecting economic rights.

**The Sindh Women Agricultural Workers Act, 2019:** This law provides specific protections for women working in the agricultural sector, ensuring they receive fair wages, safe working conditions, and access to social security benefits. This Act mandates that employers provide agricultural workers with contracts outlining their wages, work hours, and benefits, ensures that agricultural workers have access to healthcare and maternity benefits and introduces penalties for employers who fail to comply. The act aligns with Business and Human Rights by ensuring that women in the informal agricultural sector are not exploited. It supports the Corporate Responsibility to Respect human rights by requiring fair treatment and equal pay for women workers.



This law also promotes Access to Remedy, providing women agricultural workers with legal pathways to address violations of their rights.

**Sindh Agricultural Procedure Markets (Amendment) Act, 2019** amended the original framework governing agricultural markets. This Act establishes agricultural market committees, plays a critical role in safeguarding the rights of small-scale farmers, mandates that no person shall engage in trading activities without obtaining a license from the market committee and imposes penalties for violations such as market manipulation or collusion to fix prices, including fines or imprisonment. The act supports Business and Human Rights by addressing the Corporate Responsibility to Respect farmers' rights, ensuring fair trade, transparency, and accountability. The law aligns with the UNGP's principles by ensuring that businesses respect farmers' rights to fair economic participation, ensuring their livelihood and economic security.

**Sindh Factories (Amendment) Act, 2022** strengthened worker protections within factories, particularly concerning labor rights and workplace safety. This Act requires factory owners to ensure regular safety inspections and compliance with health standards, introduces mandatory provisions for workers' welfare and stipulates strict penalties. This amendment aligns with Business and Human Rights by ensuring that factory owners respect the right to safe and dignified working conditions for laborers. The act also promotes Access to Remedy by providing mechanisms through which workers can report unsafe working conditions or violations. By reinforcing workplace safety and workers' rights, this law supports the UNGP's Corporate Responsibility to Respect and protects labor rights in factory settings.

**Sindh Home Based Workers Rules, 2020** provide a legal framework to protect home-based workers, a significant portion of the informal labor force, especially women. This Act mandates the registration of home-based workers, outlines the minimum wage requirements for home-based workers and imposes penalties for businesses that fail to adhere to these rules. This rule addresses Business and Human Rights by ensuring that businesses respect the rights of informal workers and protect them from exploitation.

This aligns with the UNGP's Corporate Responsibility to Respect, as it obligates businesses to treat informal workers fairly and provides them with legal avenues to seek redress for any violations of their rights. The rules ensure that home-based workers have access to social security, healthcare, and fair wages, improving their overall economic and social well-being.

**Sindh Metalliferous Mines Act, 2021** is designed to regulate safety and labor practices within the mining sector. This Act mandates that mining companies provide workers with protective equipment, ensure safety audits, focuses on worker health and introduces penalties for non-compliance with safety regulations. The Act supports Business and Human Rights by ensuring that mining companies respect the health and safety of their workers, aligning with the UNGP's Corporate Responsibility to Respect. The act also promotes Access to Remedy by ensuring that workers who suffer injuries or health issues due to unsafe working conditions can seek compensation. This law ensures that mining companies are held accountable for worker safety and provides mechanisms for workers to raise concerns and seek redress in cases of exploitation or unsafe practices.

**Sindh Occupational Safety & Health Rules, 2019** set forth comprehensive regulations to ensure workplace safety and health across all sectors. This Act mandates that businesses provide protective gear, conduct regular safety training, maintain a hazard-free environment, establish safety committees and outlines penalties for violations. In relation to Business and Human Rights, this rule enforces the Corporate Responsibility to Respect by obligating companies to ensure safe working conditions. This law aligns with the UNGP's principles by promoting the right to safe working conditions and ensuring that businesses take active steps to prevent workplace accidents and occupational diseases. Additionally, the law offers workers a clear mechanism to seek remedy in cases of non-compliance, ensuring accountability and transparency in occupational safety practices.

**Protection of Human Rights (Amendment) Act, 2023** enhances the capacity of human rights institutions in Pakistan, ensuring that they have the authority and resources to address human rights violations effectively. This Act expanded the jurisdiction of human rights commissions to include private sector violations, mandated the creation of mechanisms for individuals to report human rights violations and introduced penalties for businesses that are found guilty of violating human rights. This act is relevant to Business and Human Rights as it ensures that businesses respect human rights, in line with the UNGP's Corporate Responsibility to Respect. The act emphasizes transparency, accountability, and the role of businesses in upholding human rights standards, providing a strong legal framework to prevent corporate abuse and ensure that victims have access to justice.

**Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act, 2019** protects women's rights to inherit, own, and manage property. This Act mandates that courts ensure the timely transfer of property to women who are entitled to inherit, introduces mechanisms for women to file complaints and seek legal assistance and provides penalties for those who unlawfully withhold property from women. This law supports Business and Human Rights by ensuring that women are not discriminated against in matters of property and economic rights. This aligns with the UNGP's Corporate Responsibility to Respect, as businesses involved in real estate or inheritance matters must ensure that they do not discriminate against women. The law also emphasizes Access to Remedy, providing clear legal channels for women to assert their rights and seek redress in cases of discrimination or exploitation.

**Khyber Pakhtunkhwa Home Based Workers (Welfare and Protection) Act, 2021:** This act provided legal protection and welfare benefits to home-based workers in Khyber Pakhtunkhwa. This Act requires the registration of home-based workers, mandates that employers provide fair wages to home-based workers and introduces penalties for businesses that fail to comply. This act addresses Business and Human Rights by ensuring that businesses respect the rights of informal workers. The act supports the Corporate Responsibility to Respect, requiring businesses to treat home-based workers fairly, and ensures Access to Remedy by providing legal avenues for

workers to seek redress in cases of rights violations. By formalizing the rights of home-based workers, this act ensures that they receive the same protections as formal sector employees.

**Khyber Pakhtunkhwa Industrial Relations Rules 2021** established guidelines for labor relations, particularly concerning collective bargaining and dispute resolution. This Act mandates that employers allow workers to form and join unions, outlines the procedures for dispute resolution and imposes penalties on employers who attempt to prevent unionization or interfere with workers' rights, aligning with the Corporate Responsibility to Respect under the UNGPs. This law is crucial for Business and Human Rights, as it ensures that workers' rights to freedom of association and collective bargaining are respected. The law also promotes Access to Remedy, providing workers with legal channels to resolve disputes and seek justice in cases of unfair treatment or rights violations. By supporting labor rights, this act ensures that workers can participate in decisions that affect their working conditions and livelihoods.

**Balochistan Home-Based Workers Act, 2022** provides legal recognition and protection to home-based workers (a vulnerable segment of the workforce often excluded from formal labor laws). This Act mandates that home-based workers be registered and recognized as part of the workforce, outlines the minimum wage and working conditions applicable to home-based workers and introduces penalties for businesses that exploit home-based workers. This act supports Business and Human Rights by ensuring that businesses respect the rights of home-based workers, in line with the Corporate Responsibility to Respect under the UNGPs. The law promotes Access to Remedy by providing home-based workers with legal avenues to file complaints against unfair treatment or wage theft. By formally recognizing home-based workers and ensuring they receive the same protections as other workers, this law advances labor rights and economic security for a marginalized group.

**Balochistan Industrial Relations Act, 2022** governs the relationship between employers and employees in industrial sectors, ensuring the protection of workers'

rights to organize, bargain collectively, and resolve disputes. This Act guarantees the right of workers to form unions and engage in collective bargaining, establishes mechanisms for resolving labor disputes and introduces penalties for employers who engage in anti-union practices or refuse to negotiate in good faith. This act is critical for Business and Human Rights as it ensures that businesses respect the rights of workers to organize and engage in collective action, as per the Corporate Responsibility to Respect in the UNGPs. The law also ensures Access to Remedy by providing workers with legal mechanisms to challenge unfair labor practices and resolve disputes. By promoting fair labor relations and protecting workers' rights, the act ensures that businesses operate responsibly and transparently in their treatment of employees.

**Balochistan Maternity Benefits Act, 2022** ensures that women workers in Balochistan have access to maternity leave and other benefits. This Act provides for a minimum of 12 weeks of paid maternity leave for women workers, mandates that employers cannot terminate or discriminate against women workers due to pregnancy or maternity leave and introduces penalties for employers who fail to comply with the provisions of the law. This act supports Business and Human Rights by ensuring that businesses respect the rights of women to health and family life, in line with the Corporate Responsibility to Respect under the UNGPs. The law promotes Access to Remedy by allowing women workers to file complaints if they are denied their maternity rights. By providing maternity benefits and protections, the act promotes gender equality in the workplace and ensures that businesses support the well-being of women workers.

**Balochistan Occupational Safety and Health Act, 2022** establishes comprehensive safety standards to protect workers from workplace hazards. This Act requires employers to maintain safe and healthy working conditions and provide protective equipment to their employees, mandates regular inspections of workplaces to ensure compliance with safety regulations and imposes penalties on employers who fail to comply with safety standards. This law aligns with Business and Human Rights by ensuring that businesses respect the right of workers to a safe and healthy workplace, consistent with the Corporate Responsibility to Respect under the UNGPs. The law

promotes Access to Remedy by providing legal channels for workers to seek compensation if they are injured or harmed due to unsafe working conditions. By enforcing stringent safety standards, the act ensures that businesses take responsibility for the well-being of their workers, preventing occupational hazards and ensuring a safer work environment.

**Balochistan Persons with Disabilities (Amendment) Act, 2022** updated earlier legislation to provide enhanced protections for persons with disabilities in employment, education, and public services. This Act mandates that businesses employ a certain percentage of persons with disabilities and provide reasonable accommodation, requires that all public buildings and workplaces be accessible to individuals with disabilities and introduces penalties for businesses that fail to comply with these provisions, including fines and legal action. This act supports Business and Human Rights by ensuring that businesses respect the rights of persons with disabilities to equal employment opportunities, in line with the Corporate Responsibility to Respect under the UNGPs. The law promotes Access to Remedy by providing persons with disabilities with legal mechanisms to challenge discrimination or denial of reasonable accommodations in the workplace. By promoting inclusion and equal opportunities for persons with disabilities, the act fosters a more inclusive society and ensures businesses contribute to social justice and equality.

**Balochistan Prohibition of Employment of Children (Amendment) Act, 2022:** This amendment strengthened the existing laws prohibiting the employment of children in Balochistan by expanding the list of hazardous occupations and increasing penalties for violations. This Act prohibits the employment of children under the age of 14 in any occupation and restricts the employment of children between 14 and 18 in hazardous industries and introduces penalties for employers found to be in violation of these child labor laws. This act supports Business and Human Rights by ensuring that businesses respect the rights of children to education and a safe childhood, consistent with the Corporate Responsibility to Respect under the UNGPs. The law promotes Access to Remedy by allowing children or their guardians to file complaints against employers who engage in child labor practices. By enforcing strict penalties for child labor and

expanding protections for young workers, the act ensures that businesses operate responsibly and respect the rights of children to education, safety, and well-being.

**Balochistan Shops and Establishments (Amendment) Act, 2022:** This amendment to the Balochistan Shops and Establishments Act strengthened labor protections for workers employed in shops, offices, and commercial establishments. This Act mandates that all shops and establishments register with the relevant authorities and comply with labor regulations, establishes penalties for employers who violate labor standards. This law addresses Business and Human Rights by ensuring that businesses respect the labor rights of their employees, including the right to fair wages, safe working conditions, and adequate rest, as outlined in the Corporate Responsibility to Respect under the UNGPs. The law promotes Access to Remedy by providing workers with legal avenues to challenge unfair labor practices or violations of their rights. By ensuring that businesses adhere to labor standards and treat their workers fairly, the act promotes ethical business practices and strengthens the protection of workers' rights in the retail and service sectors.

**Balochistan Workers Compensation Act, 2022** ensures that workers who suffer injuries or disabilities due to workplace accidents are compensated by their employers. This Act mandates that employers provide financial compensation to workers who are injured or disabled while performing their duties, establishes the procedures for determining the amount of compensation based on the severity of the injury or disability and introduces penalties for employers who fail to provide compensation. This law supports Business and Human Rights by ensuring that businesses respect the right of workers to be compensated for workplace injuries, in alignment with the Corporate Responsibility to Respect under the UNGPs. The law promotes Access to Remedy by providing workers with legal mechanisms to claim compensation if they are denied their rights. By enforcing compensation for workplace injuries, the act ensures that businesses take responsibility for the well-being of their workers and contribute to their financial security in times of need.

**Balochistan Worker's Welfare Fund Act, 2022** established a welfare fund to provide financial assistance and social benefits to workers in Balochistan. This Act mandates that businesses contribute to the welfare fund based on their annual profits, outlines the benefits workers are entitled to and introduces penalties for businesses that fail to contribute to the welfare fund. This law supports Business and Human Rights by ensuring that businesses respect the economic and social rights of their workers, as outlined in the Corporate Responsibility to Respect under the UNGPs. The law promotes Access to Remedy by providing workers with legal avenues to claim their welfare benefits. By ensuring that businesses contribute to the social and economic well-being of their workers, the act fosters responsible business practices and promotes social justice in the workplace.

**The Balochistan Factories Act, 2021** is a comprehensive legal framework regulating the working conditions, safety measures, and welfare of workers employed in factories across the province. This Act mandates that all factories be registered with the appropriate authorities, provides for the health and safety of workers and introduces penalties for non-compliance. This law supports Business and Human Rights by ensuring that businesses respect the right of workers to safe and healthy working conditions, in alignment with the Corporate Responsibility to Respect under the UNGPs. The act promotes Access to Remedy by providing workers with mechanisms to report unsafe conditions or workplace accidents, ensuring they are compensated for injuries or health issues arising from unsafe practices. By enforcing workplace safety standards, the act ensures that businesses uphold the dignity and rights of their workers, contributing to their physical and financial well-being.

**The Balochistan Food Fortification Act, 2021** aimed to improve public health by mandating the fortification of staple foods with essential nutrients. This Act requires that producers of wheat flour, edible oils, and salt fortify their products, establishes a monitoring and regulatory framework to ensure compliance with food fortification standards and introduces penalties for manufacturers who fail to comply with fortification requirements. This act supports Business and Human Rights by ensuring that businesses contribute to public health and respect the right to adequate nutrition, as



outlined in the Corporate Responsibility to Respect under the UNGPs. The act promotes Access to Remedy by providing legal avenues for consumers to report non-compliant products and seek recourse for health-related issues caused by poor nutrition. By mandating the fortification of staple foods, the act ensures that businesses play an active role in addressing public health challenges and contribute to the overall well-being of the population.

**The Balochistan Minimum Wages Act, 2021** set the minimum wage that employers must pay workers in various sectors, ensuring fair compensation for their labor. This Act established a wage board responsible for periodically reviewing and adjusting the minimum wage, mandates that all employers comply with the minimum wage standards and introduces penalties for employers who pay less than the prescribed minimum wage. This law supports Business and Human Rights by ensuring that businesses respect the right of workers to fair and adequate compensation for their labor, consistent with the Corporate Responsibility to Respect under the UNGPs. The act promotes Access to Remedy by providing workers with legal mechanisms to report wage violations and recover unpaid wages. By establishing and enforcing minimum wage standards, the act ensures that businesses contribute to the financial security and dignity of their workers, promoting fair and equitable treatment in the labor market.

**The Balochistan Payment of Wages Act, 2021** regulates the timely and accurate payment of wages to workers, ensuring they are compensated fairly for their work. This Act mandates that wages be paid on a monthly or weekly basis and that all deductions must be clearly stated and lawful, ensures that employers provide wage slips to their workers and introduces penalties for employers who delay or withhold wages. This law supports Business and Human Rights by ensuring that businesses respect the right of workers to receive fair and timely compensation, as outlined in the Corporate Responsibility to Respect under the UNGPs. The act promotes Access to Remedy by allowing workers to file complaints with labor courts if their wages are withheld or underpaid. By regulating wage payments and ensuring transparency in wage practices, the act fosters a fairer working environment and ensures that businesses uphold their financial obligations to workers.

### **5.3. Critical Analysis of efforts regarding Transposition of UN Guiding Principles on BHR in Pakistan**

Pakistan's National Action Plan (NAP) on Business and Human Rights, developed in line with the UN Guiding Principles on Business and Human Rights (UNGPs), represents a step toward aligning the country's business practices with international human rights standards. However, there are several shortcomings in Pakistan's NAP when compared to the comprehensive framework outlined by the UNGPs on Business and Human Rights;

#### **5.3.1. Limited Focus on Pillar 1 (State Duty to Protect)**

The UNGPs Pillar 1 emphasizes upon the state's duty to protect human rights by preventing, investigating, and addressing business-related human rights abuses through legislation and effective enforcement. Although Pakistan has enacted a sufficient number of laws protecting human rights but majority of the existing laws dealing with business activities and their risks are often outdated, fragmented, incoherent across provinces, and poorly enforced. For instance, one province has achieved greater regulatory sustenance in Labour Rights, the other has stringent environmental laws. The local legislations across the country lack synergies. NAP-BHR lacks effective mechanisms for the enforcement of these laws (labor laws, harassment-related laws, environmental laws, and human rights standards, particularly in industries where labor rights violations, discrimination, corruption and other abuses are prevalent such as textiles, fisheries, brick kilns, and agriculture etc.). NAP-BHR acknowledges gaps between international human rights standards and local legislation but fails to introduce binding corporate human rights due diligence requirements or corporate social accountability mechanisms in the plan.

Pillar 1 of the UNGPs proposes legal reforms and requirements for business enterprises, which must be binding upon companies but contrary to the guidelines, the Government of Pakistan has developed guidelines for the Human Right Due Diligence framework that are voluntary in nature. The State has also prepared a checklist to support HRDD guidelines but in the absence of mandatory reporting requirements, businesses will likely refrain from disclosing human rights impacts from their business activities. Lack of binding human rights reporting will breed corruption and adversely affect accountability. Consequently, factories/ industries with high risks and higher stakes (i.e., Sugar Industry, Flour Mills, Textiles, Construction, and

Mining etc.) will tend to prioritize profits and economic gains over redressal of human rights impacts. When it comes to State-Business Nexus, the Government of Pakistan under NAP-BHR has shirked its duty in proposing enforceable actions for the state-owned/ state-controlled enterprises. Moreover, the NAP-BHR lacks clarity to address the issue of policy coherence and weak institutional oversight at the national and provincial level. In a number of instances (i.e., Reko Diq, Saindak, Malir Expressway, Soapstone Mining, Salt Mining, Lead-Zinc Project, and Coal Mining), governments in Pakistan have often prioritized economic growth and development of mega-infrastructure projects over human rights to attract investment. One of the conspicuous deficiencies in NAP-BHR is the neglect of informal sectors in the approved plan. State has the duty to protect all citizens from all business activities, including the informal economy, which as of 2023 statistics stands at over USD 340 billion<sup>180</sup> but millions of workers in the informal sector have been neglected and kept out of the scope of NAP-BHR.

### **5.3.2. Gaps in Pillar 2 (Corporate Responsibility to Respect Human Rights)**

The UNGPs' Pillar 2 focuses on corporate responsibility to respect human rights, requiring businesses to avoid infringing on human rights and address any adverse impacts. UNGPs advocate for a mandatory corporate social responsibility and accountability and expect corporations to integrate human right due diligence reporting into their corporate governance and decision making whereas NAP-BHR imposes no such obligation upon businesses to partake New CSR in their operations. The framework issued by the Ministry of Human Rights regarding HRDD is very basic and all-purpose policy document; it does not account for the sector-specific risks and how businesses should mitigate & remediate such violations/ concerns. UN Guiding Principle 16 advocates for an inclusive & comprehensive Human Right policy documenting company's commitment towards protecting human rights, capacity building of employees, training of managers/ directors, and mitigation of human rights risks across their entire value chain (suppliers, contractors, and subsidiaries etc.). Since HRDD framework is voluntary, small-scale firms and even large multinational corporations would evade such responsibility and accountability for assessing, monitoring, documenting and reporting their compliances. Besides, it is a fact that over 60% of the businesses in Pakistan are small and medium enterprises and are neither aware of the UNGPs on BHR nor the action plan.

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<sup>180</sup> Small and Medium Enterprises Development Authority and International Labour Organization, "Mapping of Barriers and Opportunities to Reduce the Informality of Enterprises in Pakistan."

There are no awareness campaigns proposed in the action plan to educate businesses, students, entrepreneurs, professionals and innovators about the UNGPs and the necessity of integrating human rights into corporate governance. SMEs on the other hand lack resources and expertise to prepare human rights policies, training employees, and ensure human rights protection in their supply chains. The NAP-BHR provides no such initiatives to offer technical assistance, capacity-building programs, or multi-channel monitoring of human rights risks.

### **5.3.3. Inadequate Remedies in Pillar 3 (Access to Remedy)**

Pillar 3 of the UNGPs requires states to ensure that victims of business-related human rights abuses have access to effective remedy, either through state-based judicial or state-based non-judicial or non-state-based grievance mechanisms. Under this pillar, both states and businesses are expected to provide effective judicial, administrative, legislative mechanisms for the redressal of grievances. NAP-BHR recognizes the need to strengthen judicial processes but proposes no reforms or initiatives for addressing key issues in the judicial system of Pakistan (i.e., lengthy & delayed court proceedings, slow & inaccessible justice, higher cost of litigation, corruption, poor management of court facilities, and training of professionals, prosecutors and judges on business and human rights). Likewise, non-judicial remedies are also inaccessible in Pakistan. NAP-BHR provides no direction for the redressal of human rights violations through arbitration, mediation, or through quasi-judicial forums (NHRI & labour grievance mechanism).

NAP-BHR does not propose creating a specialized state-based grievance mechanism tailored to address business-related human rights abuses. Unfortunately, the victims of corporate misconduct and human rights abuses often face challenges (such as issues related to supply chains, multinational corporations, and cross-border operations), which are distinct from other types of human rights violations and require a dedicated judicial hand for redressal. Moreover, there is no judicial or non-judicial remedy mechanism for cross-border human rights abuses since the majority of the large-scale corporations operating in Pakistan have cross-border trading partners. NAP-BHR does not indulge in cross-border corporate jurisdiction and accountability at all. The NAP-BHR does not hold businesses sufficiently accountable for remedying human rights abuses. There is also a lack of effective monitoring and evaluation oversight by the State to regulate the non-state grievance redressal mechanisms of the

corporations. It is the duty of the State to ensure effective enforcement of remediation/compensation to the aggrieved for the violations caused by the companies.

While Pakistan's National Action Plan on Business and Human Rights is a step in the right direction, it falls short in several critical areas when compared to the UN Guiding Principles on Business and Human Rights. The primary shortcomings include weak enforcement of human rights protections, inadequate corporate responsibility mechanisms, limited access to justice for victims, insufficient stakeholder engagement, and a lack of focus on labor and environmental rights. To fully align with the UNGPs, Pakistan needs to strengthen its legal framework, implement mandatory due diligence for businesses, and establish more effective remedies for those affected by corporate human rights abuses.

## **5.4. Conclusion**

This chapter has critically examined Pakistan's progress and challenges in implementing the National Action Plan on Business and Human Rights (NAP-BHR) and aligning its policies with the United Nations Guiding Principles (UNGPs) on Business and Human Rights. Over the past two years, Pakistan has made commendable strides by establishing a robust foundation for the adoption of the UNGPs, including enactments of laws, ratification of ILO conventions, mapping exercises, and collaborative efforts by the Ministry of Human Rights and stakeholders to develop Human Rights Due Diligence guidelines for state enterprises and private business entities. The analysis highlights legislative advancements at both the federal and provincial levels, reflecting the government's commitment to streamlining the implementation of the UNGP framework. However, despite these achievements, significant challenges remain in transposing the UNGPs fully into practice. These include gaps in legislative harmonization, lack of institutional capacity, inadequate awareness among stakeholders, and insufficient regulatory mechanisms for monitoring and accountability.

To realize the full potential of the NAP-BHR and ensure the effective protection of human rights in business operations, these limitations must be addressed through sustained efforts. Enhanced coordination among stakeholders, targeted capacity-building initiatives, and a stronger emphasis on enforcement and compliance will be critical. By addressing these gaps, Pakistan can advance its commitment to embedding human rights principles within its business practices and achieve more meaningful progress toward sustainable and inclusive development.

## CHAPTER 6

### CONCLUSION & RECOMMENDATIONS

#### 6.1. Conclusion

The United Nations Guiding Principles on BHR provide a framework based on three pillars; Protect, Respect, and Remedy. UNGPs mandate that States have a duty to protect people against human rights abuses, corporations have a responsibility to respect human rights, whereas both state and corporations are duty bound to ensure greater access for victims to an effective remedy. This development of business and human rights framework is being termed as ‘New Corporate Social Responsibility’, which moves beyond CSR into corporate accountability and collective redressal of adverse human rights impacts and abuses caused due to business activity. The patterns of international trade as we know it are changing. The world is moving beyond trade liberalization to promotion of human rights. Export controls and Market access limitations are being erected against exploitative practices in the value chains and supply chains. Human Rights Due Diligence framework is being boasted as a roadmap for companies to steer through the contemporary trade barriers in identifying, preventing, and addressing potential human rights risks in their overall operations. In the wake of this new paradigm, Pakistan finds itself immersed with plethora of Human and labour rights risks emanating from business activities including gender and racial discrimination, unregistered labour and wage issues, lack of decent working conditions, child and bonded labour, and union busting among others.

Pakistan, in these changing patterns, has taken cognizance of the situation and in turn has made significant strides in aligning its policies with the UNGPs, as evidenced by the launching of National Action Plan on Business and Human Rights; approved in December 2021. The launching of NAP-BHR signposts government’s commitment to transpose UNGPs on BHR into domestic legal framework and ensure that corporations/ business enterprises adhere to human rights standards. However, the extent of implementation and actual impact remains an area needing deeper scrutiny and sustained effort. NAP-BHR has certainly facilitated a number of new legislations to provide a strong foundation for protection of human rights but there existed over 350 laws prior to the launch of NAP-BHR. These laws are mainly the product of International Human Rights Commitments/ treaties that Pakistan has ratified over the course of its international obligations, including ILO Conventions, convention of elimination of racial

& gender discrimination, covenants on civil, political, economic, cultural and social rights, convention on torture, rights of PWDs, rights of child, and GSP + conventions etc. Despite a hefty number of laws enacted before and after the approval of NAP-BHR, gaps still exist in fully addressing the unique challenges posed by business activities, particularly in sectors like manufacturing, agriculture, and mining. Laws on labor rights, environmental protections, and corporate accountability need further harmonization with the UNGPs to close regulatory gaps and fulfil state duty to protect human rights.

There is an increasing awareness among corporations and business enterprises regarding human rights standards and their responsibility to respect them within their operations but private sector's adherence to protect Human Rights from adverse impacts in their value chains and supply chains remains a challenge. Germany's Supply Chain Act 2021 and the ongoing debate on The European Union Directives on Supply Chain Due Diligence (EU-DSCDD) pose a glaring challenge to Pakistan's international trade opportunities and market access to the European Market. European Union is the biggest export market of Pakistan with a total export volume of USD 9.3 billion (30% of Pak total exports) in 2022-23, followed by the United States with an export volume of USD 6 billion, and the United Kingdom with an export volume of USD 1.98 billion. In a scenario where the top export destinations of Pakistani goods (i.e., European Union, United Kingdom, and United States) are moving from traditional international trade approaches to Human Rights based market access approach, the significance of adjusting our supply chains and in turn ensuring implementation of NAP-BHR in line with UNGPs on BHR carries weight. Therefore, the Government of Pakistan must address the challenges in the transposition and implementation of NAP-BHR including factors such as inadequate understanding, lack of resources, adoption of Human Rights Due Diligence, and weak enforcement of legal & administrative mechanisms. Strengthening corporate responsibility and building capacity through obligatory HRDD within businesses are essential steps forward. Access to Remedy is an area of the UNGPs where Pakistan faces challenges in providing effective remedies for human rights grievances caused due to business activities. Judicial and non-judicial mechanisms are often inadequate, inaccessible, or slow which deter aggrieved from seeking justice from the courts. Enhancing remedial mechanisms and making redressal more accessible will be critical to achieving meaningful progress under NAP-BHR.

All in all, it is sufficed to say that Pakistan has timely realized the significance of Business and Human Rights Framework and is making efforts to protect human rights impacts caused by corporations. NAP-BHR is an effort to transpose UNGPs into the domestic legal framework

whereas Human Rights Due Diligence (HRDD) framework serves as a stitch in time to fulfill the international commitments, standards and challenges in international trade. The adoption of the National Action Plan on Business and Human Rights has laid the groundwork, but much remains to be done. NAP-BHR proposes action for five years from 2021-2026, therefore, it can be expected that upon completion of first phase of Action Plan, Pakistan will successfully and effectively integrate UNGPs into Pakistan's business environment. Nonetheless, achieving this feat requires a concerted effort from all stakeholders, including the government, the private sector, civil society, and the international community. By adopting a comprehensive and collaborative approach, Pakistan has the potential to establish a business environment that respects and promotes human rights. The continued commitment to reform, awareness-building, and capacity-building will also be essential in translating the guiding principles of the UN into a sustainable change, benefiting the people of Pakistan, the country's reputation in the world, and will also help promote economic interests in international trade.



## 6.2. Recommendations

In order to transpose the UNGPs on Business and Human Rights in Pakistan, a collaborative effort from all the relevant stakeholders involving the federal and provincial governments, the private sector, civil society, and the international community is mandated. After a comprehensive analysis of Pakistan's efforts to implement a National Action Plan on Business and Human Rights across the country, the following policy recommendations/measures are proposed for consideration to enhance the implementation of UNGPs:

### **a) Strengthen Legislative and Regulatory Frameworks**

Protection of human rights is unimaginable in the absence of a comprehensive legislative and regulatory framework. Pakistan needs to partake a holistic review of all the existing federal and provincial human rights, labour, environment, construction, energy, mining, security, agriculture, and industry-specific laws/ policies/ practices to identify gaps in implementation and enforcement. The gaps identified must be then inculcated in the NAP-BHR. More so, it is recommended that a national-level Business and Human Rights Act is enacted through Parliament providing clear guidelines for businesses, mandating due diligence & impact assessments, and imposing penalties for violations. Apart from stringent legislation, it is highly recommended that regulatory bodies must be equipped with BHR-specific awareness & training to ensure their effectiveness while enforcing human rights compliances.

### **b) Mandatory Human Right Due Diligence (HRDD)**

HRDD is a process that includes company's policy commitment, corporate training programs (responsible supply chain management, labor rights, anti-corruption practices, and environmental protection etc.), initial assessments of actual and potential human rights risks, integration of findings, tracking, public disclosure & reporting, and finally mitigation of adverse impacts. Therefore, it is highly recommended that a culture of Mandatory HRDD must flourish in Pakistan in phases; initially in high-risk sectors like textiles, agriculture, and mining.

### **c) Strengthen Judicial & Non-Judicial Mechanisms**

It is an unfortunate reality that the courts in Pakistan are swamped with pending cases and are incapable of sustaining BHR-related cases too. BHR is a specialized subject

requiring enhanced knowledge and skillset, therefore, it is recommended that dedicated Human Rights Tribunals/ courts dealing with BHR cases must be established throughout the country. Alternate Dispute Resolution (ADR) mechanisms can also be promoted to address business-related human rights grievances outside of the court system through mediation and arbitration. In private spheres, the government should mandate large-scale corporations, businesses, and SMEs to establish internal/ multistakeholder grievance committees on the lines of harassment committees established under the Protection Against Harassment of Women at Workplace Act 2010. The internal/ multistakeholder grievance committees should be responsible for handling complaints related to human rights violations quickly and fairly.

**d) Awareness and Capacity Building of Stakeholders**

The concept of BHR is novel. The stakeholders (the government officials, regulatory departments, judiciary, academia, legal fraternity, civil society organizations, and the business) need to be made aware of the rights which can be affected by business activity. Awareness and capacity building of the stakeholders on issues such as human rights, labor rights, environmental protections, non-discrimination, and available legal recourse is paramount for effective enforcement of the regime.

**e) Integrate BHR into educational & training curricula**

Apart from awareness campaigns, BHR courses including UNGPs, ethical business practices, and corporate accountability should also be incorporated into the curricula of higher education and training modules of professional academies. At the university level, academia should encourage and promote research into the BHR framework. Moreover, businesses should partake in mandatory vocational training programs at workplace on UNGPs, BHR, and corporate accountability for employees, managers & decision makers.

**f) Establish Multi-stakeholder Collaboration Forum**

The UNGPs propose establishing multi-stakeholder collaborations among government, judiciary, business enterprises, CSOs, INGOs, and academia to work together and address BHR-related challenges. Under such collaborations, public and private working works can be established to promote human rights standards within businesses, support

awareness campaigns, launch capacity-building programs, develop innovative approaches to eliminate human rights adverse impact, and also develop a multi-stakeholder grievance redressal mechanism in Pakistan. In this regard, international organizations especially the UNDP, ILO, OECD, World Bank, and European Union can be approached to leverage the expertise and resources of development partners. International partnership and assistance can help Pakistan with technical assistance, funding for training programs, and resources for strengthening judicial mechanisms.

These above-stated recommendations provide a multi-layered approach to transposing UNGPs on BHR in Pakistan. A sustained commitment from the government, business enterprises, and civil society, alongside targeted legal reforms, enforcement of HRDD, capacity-building efforts, and public awareness initiatives, is essential to create a more responsible and transparent business environment in Pakistan. Through these collective efforts, Pakistan can foster sustainable development, enhance corporate accountability, and improve the human rights situation across all business sectors.

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## **APPENDIX- I**

### **Human Right Corporate Standards**

- *Gender Dimensions of the UNGPs;*
- *OECD Guidelines for Multinational Enterprises;*
- *OECD Due Diligence Guidance for Responsible Business Conduct;*
- *ILO's Fundamental Principles and Rights at Work;*
- *The Ten Principles of the United Nations Global Compact*
- *Women's Empowerment Principles;*
- *OECD-FAO Guidance for Responsible Agricultural Supply Chains;*
- *OECD Due Diligence Guidelines for Responsible Supply Chains in the Garment and Footwear Sector;*
- *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector;*
- *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas;*
- *OECD Practical Actions for Companies to Identify and Address the Worst Forms of Child Labour in Mineral Supply Chains;*
- *IFC Performance Standards;*
- *ISO Standard 26000 – Social Responsibility;*
- *ISO Standard 45001 – Occupational Health and Safety;*
- *UN Global Compact;*
- *Fair Labor Association;*
- *Global Network Initiative;*
- *Ethical Trading Initiative;*
- *Extractive Industries Transparency Initiative.*

## **APPENDIX- II**

### **Human Right Due Diligence Guidelines by Ministry of Human Rights**

- **Guideline 1:** Business should be cognizant of Pakistan's NAP on BHR, including its priority areas, actions pledged by the Government of Pakistan, and its expectations of businesses as stated in the NAP.
- **Guideline 2:** Businesses should be cognizant of their corporate responsibility to respect human rights under the UNGPs and should conduct internal trainings to raise awareness of the UNGPs amongst their staff, including senior management.
- **Guidelines 3:** Businesses must establish a clear policy for the protection of human rights within their operations. This may take the form of a voluntary code of conduct to establish a commitment to respect human rights within their activities and must be approved and endorsed by senior management.
- **Guidelines 4:** Businesses must conduct an exercise to identify the human rights risks and impacts that their activities have and must, at the minimum, strive to prioritize those rights which have been identified in Pakistan's NAP on BHR.
- **Guideline 5:** Businesses should conduct HRDD as a corporate best practice within their operations and across their value chains, which must be contextualized to the specific locations or unique operating context of their activities. To this end, tools such as self-assessment checklists, and guidelines developed at an international level must be used.
- **Guideline 6:** Businesses should identify the potential impact that their operations and value chains may have on the rights of local communities and should take efforts to consult local communities in decisions which impact their rights.
- **Guideline 7:** Businesses should establish effective redressal mechanisms to provide remedies in cases where they have caused or contributed to human rights impacts throughout their operations and value chains.
- **Guideline 8:** Businesses operating in conflict or post-conflict areas should conduct heightened HRDD.
- **Guideline 9:** Businesses must present annual strategic reports highlighting the material human rights impacts that have taken place and how they have dealt with it. These reports may be aligned with the Sustainable Development Goals as well to identify which activities have been conducted in pursuance of a specific goal.