

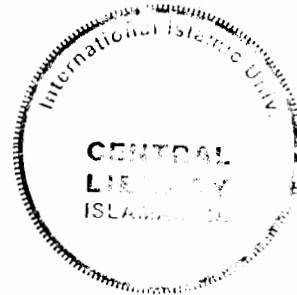
**MAPPING OF CORPORATE SOCIAL  
ACCOUNTABILITY  
IN LABOUR LAWS OF PAKISTAN**

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by

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**Arshad Farid Khan**



**A thesis submitted in partial fulfillment of the  
Requirements for the degree of  
LL.M. (CORPORATE LAW),  
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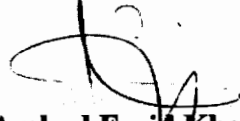
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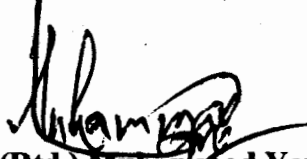
# Mapping of Corporate Social Accountability in the Labour laws of Pakistan

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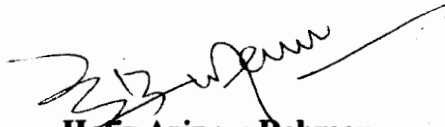


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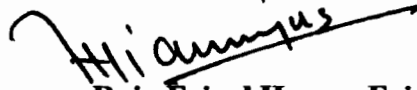
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## **LIST OF ABBREVIATIONS**

<b>CEPAA:</b>	<b>Council of Economic Priority Accreditation Agency</b>
<b>CSA:</b>	<b>Corporate Social Accountability</b>
<b>CSR:</b>	<b>Corporate Social Responsibility</b>
<b>EPG:</b>	<b>Eminent Persons Group</b>
<b>EU</b>	<b>European Union</b>
<b>GATT:</b>	<b>General Agreement on Tariff and Trade</b>
<b>GSP:</b>	<b>Generalized System of Preferences</b>
<b>ILO:</b>	<b>International Labour Organization</b>
<b>MDGs:</b>	<b>Millenium Development Goals</b>
<b>MNEs:</b>	<b>Multinational Enterprises</b>
<b>OECD:</b>	<b>Organization for Economic Corporation and Development</b>
<b>PoA</b>	<b>Plan of Action</b>
<b>PRSP:</b>	<b>Poverty Reduction Strategy Papers</b>
<b>SA-8000:</b>	<b>Social Accountability – 8000</b>
<b>SME:</b>	<b>Small and Medium Enterprises</b>
<b>TNCs:</b>	<b>Transnational Corporations</b>
<b>UN:</b>	<b>United Nations</b>
<b>USA:</b>	<b>United States of America</b>
<b>WSSD:</b>	<b>World Summit on Sustainable Development</b>

<b>WTO:</b>	<b>World Trade Organization</b>
<b>GoP:</b>	<b>Government of Pakistan</b>
<b>IRO:</b>	<b>Industrial Relations Ordinance</b>
<b>LIP:</b>	<b>Labour Inspection Policy</b>
<b>LPP:</b>	<b>Labour Protection Policy</b>
<b>CBA:</b>	<b>Collective Bargaining Agent</b>
<b>OSH:</b>	<b>Occupational Safety and Health</b>
<b>SECP:</b>	<b>Securities and Exchange Commission of Pakistan</b>
<b>DVCs:</b>	<b>District Vigilance Committees</b>
<b>BLSA:</b>	<b>Bonded Labour (Abolition) Act</b>
<b>MoA:</b>	<b>Memorandum of Association</b>
<b>MWO:</b>	<b>Minimum Wages Ordinance</b>
<b>UNGA:</b>	<b>United Nations General Assembly</b>
<b>ISO:</b>	<b>International Standards Organization</b>
<b>GRI:</b>	<b>General Reporting Initiatives</b>
<b>PEPA:</b>	<b>Pakistan Environmental Protection Act</b>
<b>NEQS:</b>	<b>National Environmental Quality Standards</b>
<b>MRTPO:</b>	<b>Monopoly and Restrictive Trade Practices Ordinance</b>



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May Allah bless all these kind people for their generosity.

## **ABSTRACT**

The modern economic and legal world order has brought in a quantum change in traditional concepts, approaches and strategies of corporate operations. Profit maximization does not remain the sole objective of corporate enterprises; sphere of corporate accountability has been extended from 'shareholders' to 'stakeholders'. Companies are required to quantify and internalize their costs for human, social and environmental capital alongside the financial capital.

Companies are now required to integrate social considerations such as freedom of association, right to collective bargaining, safety and health, fair remuneration, non-discrimination and decent work into their corporate planning, budgeting and project execution. These changes have led to development of a very demanding legal framework and efficient audit standards at the international level. Governments are hard pressed to putting in place enabling policy as well as legal system to ensure compliance with these requirements. Economically, it has a direct bearing on such important issues as corporate investment, productivity, competitiveness, export and employment.

This study is a pioneering attempt at defining and highlighting the subject within the context of Pakistan. By drawing parallels against the internationally acknowledged standards of corporate social accountability, a case has been made out for a credible

legal framework on corporate social conduct in the national jurisdiction. Strategic analysis of the domestic labour legislation confirms a close substantive proximity with the international model. It also lays bare flaws in the procedural mechanism like, inefficient inspection system, lengthy and cumbersome judicial process, nominal and ineffective punitive measures etc., which ultimately tend to impede the implementation of the relevant laws and hence realization of a socially accountable corporate culture in the country.

Beside, anticipating future development and making some pragmatic suggestion for improvement in the statutory framework, the paper also develops linkages with broader aspects of corporate social accountability such as economic transparency, consumer protection and environmental conservation for further research by interested scholars.

# **CHAPTER -1**

## **INTRODUCTION**

### **1.1 The Concept of Corporate Social Accountability (CSA)**

Corporate Social Accountability (CSA) refers to a legal situation whereby companies are required to integrate social considerations in their business operations with a view to avoid allocating unjustified externalities and contribute towards sustainable development of the society. The traditional concept of corporate endeavors solely concerns with maximization of shareholders' wealth<sup>1</sup>. The CSA, however, envisages a much broader range of corporate objectives, which, beside the traditional goal, aims at:-

- ◆ Fair treatment of workers, by respecting their right of association and collective bargaining, investing in safe and healthy work environment and decent living;
- ◆ Non-exploitation of labour, by avoiding and abolishing child and forced labour;
- ◆ Non-discrimination in employment and payment of wages;
- ◆ Conservation and austere use of natural resources; and

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<sup>1</sup> DTI, *Modern Company Law for a Competitive Economy, the Strategic Framework*, U.K.1999 Ch.2.p.7

- ◆ Fair commercial practices such as denunciation of bribery, cartelization and artificial market barriers<sup>2</sup>.

These are the areas wherein companies usually transfer heavy external costs to society in terms of exploitation of labour, unfair competition and environmental pollution. Wealth of few shareholders is maximized at the cost of millions of stakeholders who get directly and indirectly affected by such externalities. The management is legally and constitutionally considered accountable to the shareholders only. The concept of CSA challenges this myopic corporate theory and seeks to redefine its limits so as to include employees, consumers and society at large amongst the legitimate beneficiaries of corporate operations.

Contextually, corporate social accountability has developed as an offshoot of the global movement on corporate social responsibility (CSR), which got currency in the backdrop of the deliberations at the 1992 Earth Summit in Rio de-Jeniro and gathered momentum in the wake of 2002 World Summit on Sustainable Development (WSSD), held in Johannesburg<sup>3</sup>. The Rio Declaration, for the first time, took formal note of the long-term adverse impact of *laissez fair* approach of corporate operations on the society. It called upon the governments to encourage enterprises to improve their social and environmental performance through voluntary initiatives with the view to

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<sup>2</sup> Friends of Earth International's (FoEI) Position Paper for WSSD, *Towards Binding Corporate Accountability*, available at [www.foei.org/corporates](http://www.foei.org/corporates); visited on 25/5/2006.

<sup>3</sup> *World Summit on Sustainable Development* (2002). [www.johannesburgsummit.org](http://www.johannesburgsummit.org)

contribute towards sustainable development. Ten years later, the WSSD held in Johannesburg from 24<sup>th</sup> August to 20<sup>th</sup> September 2002 reconfirmed the commitment to sustainable development. It further emphasized upon active promotion of corporate responsibility and accountability to strengthen its three pillars viz eradication of poverty; change in consumption/production pattern and protection of natural resource base.<sup>4</sup> In between Rio Declaration and Johannesburg Summit, world trade and economic order also underwent a major transformation; the GATT regime gave way to neo liberal world trade order in the form of WTO. Based on the principles of deregulation, de-centralization, privatization, labour flexibility and free market access, the new change saw in market mechanisms a credible system of economic growth. This placed companies, in general, and Transnational Corporations (TNCs) in particular, at the helms of economic affairs.<sup>5</sup> Averse to regulation, the corporate elite led by World Business Council for Sustainable Development lobbied and launched a concept of CSR based on adoption of voluntary initiatives of social and environmental protection by companies.<sup>6</sup> Supported by vague language of Rio Declaration and partisan position of the developed countries, the voluntary approach on CSR came to be adopted as the standard definition of the concept and its objectives.

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<sup>4</sup> *Johannesburg Declaration on Sustainable Development* (2002) Paras 5,7,11 and 21; online at [www.johannesburgsummit.org](http://www.johannesburgsummit.org)

<sup>5</sup> Hassan N. Gardezi, *Globalization and Pakistan's Dilemma of Development*, in the Pakistan Development review, PIDE, Ibid. p.429. Vol.43, winter 2004.

<sup>6</sup> Judith Richter, *Codes in Context: TNC regulation in an era of dialogues and partnerships*; Cornehouse, UK, 2002.

Consequently, a large number of voluntary codes of conduct, social audit templates, reporting indices and CSR instruments have sprung up in the corporate world<sup>7</sup>. These, however, lack in authenticity of origin, coherence of purpose, and above all, element of responsibility<sup>8</sup>. Companies may pick and chose from amongst hundreds of these codes and standards, keeping their business interest as prime consideration. When, how and what to adopt in terms of CSR initiatives, thus, entirely rests with the discretion of corporate management. Imperative of social consideration and an all-inclusive paradigm of development do not figure as the basic determinant of corporate responsibility. The size of business, sphere of market operation, and degree of social awareness, however, do influence the understanding and response of companies towards CSR requirements. Small, medium and local companies consider it to be an unnecessary additional cost; TNCs promote it as a strategy to make local suppliers and competitors compliant with the prescribed labour and environmental standards with a view to balancing the comparative advantage in commercial competition. Similarly, an informed consumer market also pressurizes companies to behave responsibly with regard to treatment of workers and observance of environmental austerity in their business processes.

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<sup>7</sup> As of December 2005 the ILO's Business and Social Initiatives Database (BASI) registered over 500 initiatives compared with 300 in November 2003. See for details, *Organizing for Social Justice, Global Report under the Follow-up of Fundamental Principles and Rights at Work*, ILO, Geneva, 2004. P.77. ( hereinafter referred to as *Organizing for Social Justice*).

<sup>8</sup> ILO: *Information note on Corporate Social Responsibility and International Labour Standards*, Governing Body doc. GB288/WP/SDG/3, 288<sup>th</sup> Session, Geneva, November, 2003 Para 9-14

The degree of CSR compliance in this case is directly correlated with the degree of social awareness.<sup>9</sup>

Politically, the developed countries such as USA and EU members have adopted a multi-pronged approach towards the CSR. They favor a voluntary framework for CSR, allowing their corporate sectors to decide the time, place and choice of CSR initiatives without any independent monitoring mechanism.<sup>10</sup> Legally, they have put in place trade regimes such as General System of Preferences (GSP) which requires of the developing countries and their corporate sector to per force comply with the international labour and environmental standards as a condition precedent to get access to western markets and qualify for preferential tariff treatment.<sup>11</sup> This places the developing countries under pressure and at a great risk of loosing comparative advantage in terms of their lower costs of production. Arbitrary and parallel inspections of local supply chains by the western CSR auditors lead to confusion, misplaced financial out lay and, in certain cases, loss of export contracts.<sup>12</sup> Lack of knowledge, expertise and inadequate or absolute absence of a national statutory framework corresponding to international social standards; place the economies of these countries at the mercy of TNCs and their home governments in the west.

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<sup>9</sup> Christian Aid; Behind the Mask-The Real Face of Corporate Social Responsibility UK, 2004 (hereinafter after referred to as Behind The Mask) , available on line at [www.christianaid.org.uk](http://www.christianaid.org.uk)

<sup>10</sup> European Commission. *Green Paper – Promoting a European Framework for Corporate Social responsibility*, Brussels, 2001, P.4. (hereinafter referred as the Green Paper)

<sup>11</sup> Wikipedia: *Generalized System of Preferences*, online at [www.wikipedia.com](http://www.wikipedia.com) also at <http://ec.europa.eu/comm/trade/issues/global/gsp/gspguide.htm>.

<sup>12</sup> ILO, *Organizing for Social Justice*, Geneva, 2004 p.79.



This whole scenario has led the workers' unions, multilateral organizations and developing countries to call for legally binding CSR or a shift from voluntary 'responsibility' to legal 'accountability'. Ever since Rio declaration, through the establishment of WTO in 1995 and to 2002 WSSD the concept of and demand for development of a CSA culture based on internationally agreed labour and human right instruments within national jurisdictions has become a politico-economic reality.

## **1.2 From Responsibility to Accountability–Legal Basis**

Much prior to 1992 Rio Earth Summit, concerted efforts had been made to check and control possible abuse of economic power by the big corporate businesses, particularly the TNCs. The UN, in the early 1970s, appointed an Eminent Persons Group (EPG) for making recommendations on the issue. The EPG recognized the limitations of national regulations of host countries, particularly developing ones, in regulating the activities of TNCs, and emphasized upon the need for an international framework to serve as a reference point for national jurisdictions.<sup>13</sup> The Group's recommendations led to set up of a UN Commission and a Center on TNCs. The Center after extensive consultations with a wide range of stakeholders, produced a code of conduct for TNCs. The code, among other objectives, aimed at protecting the interests of developing countries, strengthening their capacity to ensure conformity of TNCs with host country's national development priorities and promoting compliance with international and national regulatory framework on

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<sup>13</sup> *Behind the Mask* p.6.

social issues.<sup>14</sup> It was presented on the occasion of 1992 Earth Summit to become part of the plan of action. Western states and businesses, however, abandoned it for a manifesto of voluntary initiatives on CSR, drafted by the World Business Council.<sup>15</sup>

The coming years saw a mushroom growth of company made codes and audit instruments without any tangible improvement on performance side. The UNDP Human Development Report 1999 acknowledged that voluntary codes were not enough to ensure socially responsible corporate behavior and stressed upon putting in place globally agreed principles and policies to ensure compliance with labour standards, economic efficiency and environmental sustainability. The UN General Assembly in its Special Session to review the progress since 1995 Copenhagen World Summit for Social Development also took note of the emerging trend and identified the need to support CSR by setting up a legal framework.<sup>16</sup> This provided a relevant context to Johannesburg declaration and consequent Plan of Implementation (PoI) in 2002 to record a shift from 'responsibility' to 'accountability' and enhanced government's role to deliver corporate accountability.<sup>17</sup>

Paras 29, 45 and 49 of the Johannesburg PoI read together, categorically call upon corporations to comply with the requirement of

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<sup>14</sup> Chatham House Sustainable Development Programme, *Following Up the World Summit on Sustainable Development, Commitments on Corporate Social Responsibility; Options for Action by Governments*., UK, 2005. p.22.

<sup>15</sup> Ibid. p.40.

<sup>16</sup> UN General Assembly Resolution S-242 of 1 July 2000.

<sup>17</sup> *World Summit on Sustainable Development, Plan of Implementation*, (2002), on line at [www.johannesburgsummit.org](http://www.johannesburgsummit.org).

corporate social accountability, which should take place within transparent and stable regulatory environment. In overall estimate, the PoI emphasizes both the needs to promote corporate sector's compliance with national and international norms, laws and regulations and to ensure that businesses are held accountable in case of default. It further recommends to engage the private sector in delivering sustainable development by encouraging businesses to move 'beyond compliance' with such laws and regulations.<sup>18</sup>

In order for national laws to be able to deliver the objectives of the recommendations made in the Johannesburg PoI, these may draw upon the ILO's eight core conventions<sup>19</sup> as well as the 1998 Declaration on the Fundamental Principles and Rights at Work. Together, these instruments provide an authentic international legal reference point on such important areas of corporate responsibility as the respect for freedom of association and collective bargaining, non exploitation of labour, decent working conditions, non discrimination etc.<sup>20</sup>

The ILO is constitutionally mandated international organization, with a membership of 182 states, to set and deal with international labour standards. Its tripartite composition comprising governments', workers' and employers' representatives places it in a unique position to develop international consensus

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<sup>18</sup> *Following up the World Summit*, p.14.

<sup>19</sup> *Freedom of Association and Right to Organize (C-87); Collective Bargaining (C-98); Abolition of Child Labour and Forced Labour (C-29,105, 182); Minimum Age (C-138); Equal Remuneration(C-100), and Non discrimination(111).*

<sup>20</sup> For textual exposition, see *Appendix A* to this Study.

on standards for regulation of social issues in the world of work and industry.<sup>21</sup> Its membership requires of the concerned states to promote fair and humane treatment to workers, protection of children, young persons and women, provision for old age and injury and recognition of right of association and collective bargaining, as fundamental principles of sustained growth.<sup>22</sup> These principles have been translated into conventions and recommendations through an elaborate process of intensive consultations and debates with a view to providing a legal framework for attaining the shared objectives of equitable economic growth and social justice. Conventions are instruments, which on ratification create legal obligations; recommendations, however, give guidance as to policy, legislation and practice. The member states are obliged to place these instruments before their legislative authorities and periodically report to the ILO upon measures taken to give effect to these provisions.<sup>23</sup> Failure on the part of governments to provide for an enabling policy and legal framework to ensure compliance by the management of enterprises may lead to imposition of sanctions or reference of the case to the ICJ for its decision.<sup>24</sup>

As it is, the legal force and mandate of the ILO's instruments, particularly the core conventions, dealing with the requirement of providing a credible policy and legislative framework for ensuring social justice, accountability and inclusive growth, also cut across the major multilateral and private sector

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<sup>21</sup> *The ILO's Constitution*, Geneva May, 2004, Art.3.

<sup>22</sup> *Ibid.* Art.1.

<sup>23</sup> *Ibid.* Art. 19 – 22.

<sup>24</sup> *Ibid.* Art 27-34.

initiatives on CSR.<sup>25</sup> Besides, the US and EU's GSP criteria also refer to compliance with these standards as mandatory requirements for tariff waiver.<sup>26</sup> The standards, therefore, provide an authentic reference point for developing an efficient, globally shared and legally binding framework for CSA in national jurisdictions<sup>27</sup>.

### **1.3 Compliance - An Empirical Overview of the Need for a Statutory Framework on CSA**

Rejection of UN sponsored set of regulations on the corporate conduct and adoption of World Business Council's' manifesto for a non binding, voluntary consideration of social concerns in business processes at the Earth Summit in 1992 set the stage for the controversy on the nature, intent and scope of corporate responsibility. It has come to be regarded as a concept whereby companies voluntarily decide to integrate social objectives in their business operations.<sup>28</sup> A plethora of corporate-led codes and standards have thus grown around this version of CSR.

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<sup>25</sup> For a survey of the major multilateral and private sector CSR/CSA initiatives see Appendix-B to this Study.

<sup>26</sup> European Commission; *User's Guide to European Union's Scheme of Generalized Tariff Preferences*, Feb 2003. Online at <http://ec.europa.eu/comm./issues/global/gsp/gspguide.htm>

<sup>27</sup> Para 47 of the World Summit Outcome Document, 2005 also reaffirms the world community's resolve to make the principles envisaged in the ILO's Core Conventions a central objective of national and international policies as well as development strategies; for further details see the UN: *The Millennium Development Goals Report 2005* (NY), 2005, p.3.

<sup>28</sup> *Green Paper*, p.6

Besides, many of the inter-governmental initiatives such as OECD's Guidelines<sup>29</sup>, ILO's Tripartite Declaration on MNEs<sup>30</sup> and UN Global Compact<sup>31</sup>, have also given currency to this understanding. Long term commercial interests such as business reputation, productivity of workers, competitiveness and cost reduction are seen, in this case, as effective incentives to make companies rise above the legal floorings of social considerations. Moreover, in a globalized economy, an informed consumer market provides a credible sanctioning mechanism to ensure social compliance by faltering as well as defaulting companies. Thus, management of CSR is increasingly considered by companies to be a competitive instrument, necessary to satisfy the needs of today's well-informed stakeholders<sup>32</sup>. The government, in this scenario, is seen in the role of a facilitator, engaged in providing a level playing field to businesses through deregulation and decentralization of the economy.<sup>33</sup>

Besides, in the context of developing countries, it is believed that governments do not have the capacity and resources to deliver at the social front. Corporations should, therefore, take on the challenge themselves. Aret Van Heerdan, President/CEO Fair Labour Association USA, maintains that;

*"In many regions, state actors are either unable (e.g. failed or failing states) or unwilling (e.g. for political reasons) to enforce the rule of law. MNCs remain the*

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<sup>29</sup> [www.foei.org/occdguidelines](http://www.foei.org/occdguidelines)

<sup>30</sup> [www.ilo.org](http://www.ilo.org)

<sup>31</sup> [www.unglobalcompat.org](http://www.unglobalcompat.org)

<sup>32</sup> Global Solidarity, *Corporate Social Responsibility; A Guide for Trade Unionists*, Dublin, January, 2006, p.8 (hereinafter Guide for Trade Unionists ).

<sup>33</sup> *Behind the Mask*, p.4.

*only actors that have the expertise and resources to restore lawful conditions and implement labour rights*<sup>34</sup>.

In a broader context, it is apprehended that legally binding international framework for multinational companies may divert attention and energy away from encouraging CSR towards legal process.<sup>35</sup> This may not only result in wastage of resources but may also deepen the cleavage between the corporate interests and social goals.

The above premise has, however, been ardently contested on empirical grounds. Corporations by their very constitution are committed to enhancement of shareholders' wealth. They neither have capacity nor authority to act out of this ambit and advance social cause at the risk of shareholders' interest. Being a creation of law, they are to be husbanded through legally binding instruments and standards. Left to their choice as determined by the market forces, they tend to promote social cause only when it is commercially advantageous but will just as quickly sacrifice it when it lowers the value of their shares. A statement of a Garment Factory Manager, reported in the China Financial Times (21 April, 2005) is reflective of this mind set; it goes;

*"We are under enormous stress. Customers place late orders, change their orders and pay their bills late. At the same time they ask us to provide better*

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<sup>34</sup> *Guide for Trade Unionists*, p.9.

<sup>35</sup> *Ibid.*

*training, better health, safety and accommodation for our staff. We just can not do it all*'.

Results of a survey conducted in early 2005 reveal that out of 65000 MNCs worldwide only about 4000 produce any kind of report on their social or environmental performance.<sup>36</sup> A number of case studies conducted on corporate world's commitment to responsible behavior have shown that Shell in Nigeria, British American Tobacco in Kenyan and Brazil, Coca Cola in India and Nike in Pakistan had been involved in child and forced labour, unfair treatment of workers and depleting of natural resources.<sup>37</sup>

This directly leads to the question of credibility and efficiency of voluntary CSR initiatives. Most of the existing intergovernmental and private CSR codes do not provide for independent and effective monitoring mechanisms to verify consistency and degree of compliance by the companies.<sup>38</sup> They merely allow for periodic reporting with no follow-up or corrective process in the case of default. A CSR audit industry has emerged in the private sector, which does it not for social cause but for monetary considerations. This provides enough room for collusive trade off and compromise of the corporate responsibility.<sup>39</sup> Even the World Bank, itself a CSR player, could not but acknowledge that “*despite*

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<sup>36</sup> Ibid. p.7.

<sup>37</sup> *Behind the Mask*, p.62.

<sup>38</sup> See *Appendix B* to this Study.

<sup>39</sup> Christian Aid, *Hooked on Tobacco*, UK, 2002 also see *Behind the Mask* pp.22-44; online at [www.itglwf.org](http://www.itglwf.org)



*widespread rhetoric, impact is still patchy; in practice many companies' implementation of CSR strategy is shallow and fragmented*'.<sup>40</sup>

Similarly, brand and business reputation does not quite often provide an incentive for a uniform and sustained social compliance by all corporate actors. While some may have real interest in CSR based on reputation factor, there could be others operating as sub-contractors at the lower level of the supply chain, who would comfortably avoid additional cost factor by remaining non compliant. Besides, in none of the voluntary CSR initiatives, aggrieved parties are promised easy, effective and adequate redressal of their grievances arising out of non-compliance. In majority of such cases affectees are pressurized, harassed and forced to settle for nominal reparation outside the court. Other practical problems such as question of *forum conveniense*, fixation of responsibility through corporate supply chain which transcends national boundaries and consequent heavy cost involved in trial process, serve the defaulting companies in good stead in escaping the legal accountability.<sup>41</sup> This brings forth the logic for developing a statutory framework for binding CSR or what is termed as Corporate Social Accountability (CSA)<sup>42</sup>.

The 2002 WSSD Summit categorically acknowledged the importance and need for gradual shift from voluntary responsibility to accountability to ensure

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<sup>40</sup> <http://www.worldbank.org/privatesector/csr/>

<sup>41</sup> International Institute for Environment and Development, *Legal Issues in Corporate Citizenship*; London, UK, February 2003, p.9 and 19.

<sup>42</sup> In the remainder of this study, unless the context provides otherwise, both the terms have been used interchangeably.

sustainable development. This realization echoed even at the Ministerial level meeting of the OECD Council when its Trade Union Advisory Committee (TUAC) acknowledged that:-

*"Corporate governance is a public good and should firmly remain in the hands of governments' agenda. 'Self-regulation or explain' mechanisms are no substitutes for real public enforcement system".<sup>43</sup>*

For such an enforcement system to be credible and responsive to national development priorities, fair competition and international commercial interests, it has to conform to globally binding standards. This may not only protect domestic corporate sector against arbitrary and multiple audits of the foreign companies and TNCs but would also enhance productivity, investment and an inclusive economic growth.

#### **1.4 Relevance of CSA for Developing Countries**

The emerging CSA factor in the global economy presents a number of opportunities as well as challenges for developing countries. The western enterprises seriously suspect the labour and human right situations in these countries. They see exploitation of workers, in the form of forced and child labour, precarious health and safety conditions and lack or absolute absence of social protection as the major factors conducing to cost disparities and an un-fair competitive edge in the international export market.<sup>44</sup>

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<sup>43</sup> TUAC's Statement to the OECD Council Meeting at Ministerial Level, May, 2005, also on line at [www.oecd.org](http://www.oecd.org)

<sup>44</sup> *Following Up the World Summit* p-17.

In order to address this issue they have adopted a two pronged strategy: oblige the supplier companies in the developing countries to comply with self improvised social codes as condition precedent for market access and subject exports from these countries to trade tariffs on the ground of non compliance under GSP regulations. The ceiling of GSP tariff is worked out in such a way so as to set off possible cost benefits that may accrue to non-compliant companies. In both the cases, initiative remains with the developed countries and their corporate sector to make or mar the economies of the developing countries. This also allows them to exploit the social and natural resources by establishing their local subsidiaries in these countries. While the parent companies maintain good record of social compliance in the home countries, they conveniently connive at the social irresponsibility of their subsidiaries, in the host countries, with a view to get cheap supply of trade items. The cases of Shell in Nigeria, British American Tobacco in Kenyan and Brazil, Coca-Cola in India and Nike in Pakistan are but a few instances of such hideous practices.<sup>45</sup>

On the brighter side, an effective CSA framework within the domestic jurisdiction may help check the arbitrary social inspection of domestic corporate sector by the western companies and TNCs. It may also bring huge dividends in terms of tariff waiver under GSP, enhanced market access and increased foreign direct investment (FDI) in the developing countries. Given the apprehensions of the western governments and corporations, the developing countries need to establish their credibility by showing desired standard of objectivity, reliability

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<sup>45</sup> *Behind the Mask*, pp.22-44.

and efficiency of the domestic CSA framework. This, in turn, necessitates linkage of domestic CSA framework with the internationally agreed and binding social standards on the one hand and a transparent implementation mechanism, on the other hand.

For a country like Pakistan, where the major economic turn over comes from labour intensive industries, need for a credible CSA system becomes all the more imperative. The outcomes of government's initiatives to promote corporate agriculture farming, develop SME sector, expand export base, enhance market access and encourage decent work culture as measures of a steady economic take off, heavily hinge upon handling of corporate social compliance issue. Effective policy and legal environment for CSA may, therefore, greatly help improve the productivity of the labour force, positively impact the consumption pattern, attract foreign and local investment, create employment and attain overall economic growth. This sets in motion a virtuous cycle of sustainable development in the long run.

The present study seeks to investigate the premise that Pakistan's labour laws provide a substantial framework for CSA. Strong constitutional will, international commitments and national policy environment furnish an authentic context for an informed statutory mechanism of CSA in the national jurisdiction.

Given the time frame for finalization of this work, the research focuses only on the labour laws of the country with a view to map out statutory contours

of the CSA. In the context of Pakistan, labour sector provides a junction point for other two elements of the corporate social accountability viz, fair economic endeavor and conscious natural resource conservation. While economic growth can be defined in quantitative terms, sustainable development is related to social objectives, which is a qualitative function. In Pakistan, macro level economic and development targets are seen in terms of social achievements measured against the thresholds set out in the Millennium Development Goals (MDGs) and the Poverty Reduction Strategy Papers (PRSP).<sup>46</sup> This places labour policies and laws at the center of economic and environmental interventions.

Unlike corporate laws, which deal with corporate structures and governance from financial standpoint, the labour laws govern the human rights and relationships in the context of work and workplace with the objective of ensuring social and distributive justice in the society. These laws seek to balance the corporate interest against the needs of job creation for an ever expanding work force, decent working conditions, non exploitation of labour, observance of health and safety standards at work places and consideration of an overall impact of the business process on the community and environment. Moreover, the tripartite involvement of workers', employers' and government's representation in legislation, administration and implementation of labour policies and laws make them credible measures for mapping CSA mechanism in the country. An overview of consumer and environmental laws of the country has, also, been

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<sup>46</sup> Ministry of Finance, Government of Pakistan, *Accelerating Economic Growth and Reducing Poverty: The Road Ahead* (PRSP). Islamabad December, 2003. pp.1-6

given in the Appendix,<sup>47</sup> to hint at the broader socio-economic linkage of the CSA and provide lead for further research in this area. The study specifically aims at: -

- ◆ Identifying underlying approaches towards development of CSA as a concept and tool of sustainable development;
- ◆ Mapping the CSA framework in the domestic labour laws across internationally agreed standards; and
- ◆ Exploring gaps in the existing CSA system, anticipating future developments and making suggestions for improvement.

The study relies on an analytical approach to survey the existing literature on the subject for building a premise for strategic mapping of a framework on CSA through the labour laws of the country. The ILO's core conventions and Social Accountability Standard-8000 (SA-8000)<sup>48</sup> serve as matching criteria for the mapping exercise. The ILO's eight core conventions viz Freedom of Association and Right to Organize (C-87); Collective Bargaining (C-98), Abolition of Child and Forced Labour (C-29, 105 and 182), Minimum Age (C138), Equal Remuneration (100) and Non discrimination (111) call upon member states to give effect to the objectives of these conventions through domestic policies and laws.

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<sup>47</sup> See Appendix-C to this Study.

<sup>48</sup> For details see *Appendix-A*.

SA-8000, launched by Council of Economic Priority Accreditation Agency (CEPAA), is a private sector initiative which distills objectives of the ILO core conventions and 1998 Declaration on Fundamental Principles and Rights at Work, into verifiable standards of conduct for the companies on the issue of child and forced labour, health and safety, freedom of association and right of collective bargaining, working hours and wages, non discrimination and enabling management system at corporate level.

Combination of the two provides a measure, which simultaneously covers the broader legislative requirements of a CSA framework at the governmental level as well as its integration in the corporate operations at the management level.

Ratification of the core conventions and official promotion of SA-8000, by the Government of Pakistan<sup>49</sup>, make them an authentic reference point for domestic framework on CSA. Besides, the consensual and invariable reliance of a host of existing multilateral standards and corporate sector's codes on these conventions make them an appropriate and credible parallel for the purposes of this research study.

A functional layout has been followed to delineate a coherent framework on strategic areas of CSA out of the scattered statutory sources.

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<sup>49</sup> Ministry of Commerce has planned to launch a project for promotion of SA-8000 in the Country. EU's help has been sought to fund the project to the tune of Rs.116.82 million. See Sajid Ch, EU to provide financial help to launch SA-8000, The Daily Times, Lhr 12-4-2005, online at [www.dailytimes.com.pk](http://www.dailytimes.com.pk)

This introductory chapter builds a conceptual premise for the research and leads to an extensive survey of the existing literature on CSR as well as on CSA, in the next chapter. Chapter three examines the constitutional and policy environment for a statutory framework on the CSA in the context of Pakistan. Chapter four gives a functional lay out of the statutory framework, mapped out across the strategic areas of the CSA. Chapter five, finally gives an over-all analysis of the research findings, lays bare the gaps, suggests improvements and leads to further research.

The study also includes three appendices. Appendix A contains a quintessential exposition of the ILO's eight core conventions, 1998 Declaration on Fundamental Principles and Basic Rights at Work, and SA-8000. Appendix B, gives a round up of major CSR/CSA initiatives and instruments and Appendix C, develops a broader linkage of the present study with the other two areas of the CSA viz, economic transparency and environment protection.



## **CHAPTER - 2**

### **LITERATURE REVIEW**

Legal personality of corporations makes them a unique part of the socio-economic fabric of the society. Born with a myopic approach of self-enrichment, they tend to enhance their profits by externalizing risks and cost of businesses to the maximum possible degree. These costs get transferred to different social segments in terms of starvation wages, exploitation of labour, poor health and safety conditions, environmental pollution and unfair economic competition. The traditional corporate law, being solely concerned with corporate structures and financial functioning, does not provide for such social externalities. Constitutionally, limited to bare financial liability of their paid up capital, corporations conveniently walk over the abuse and exploitation of social capital with impunity. But this introvert cooperate behavior has now came to be considered as detrimental to sustained economic as well as social progress, in the long run.

Elauge has investigated propriety of restructuring law with a view to streamlining social processes within corporate activities. His findings conclude that companies need only maximize profit within the law to assure that their behavior is socially desirable<sup>1</sup>. Clark gives a multi pronged analysis of corporate behavior and lays out that profit maximization is desirable only so long as corporations function within legal framework that makes market competitive and prevents corporations from imposing negative externalities on society. “Various non-corporate laws”, the argument goes on, “embody public policy determinations of the extent to which the interests of non-shareholder groups such as workers etc, merit protection from business activity”<sup>2</sup>.

In the post neo-liberal economic world, a parallel interest in seeing companies run for and on behalf of all stakeholders has dramatically increased. The 1992 Rio Earth Summit and 2002 Johannesburg World Summit on Sustainable Development (WSSD) set the international stage for promotion of socially responsible corporate sector. Fanny and Malaika, give an incisive analysis of the WSSD’s Plan of Action. According to their interpretation, it generally includes commitments to promoting both corporate responsibility as well as accountability. While the former refers to adoption of voluntary initiatives by the companies, the latter calls for public endeavors in terms of providing enabling policy and legal

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<sup>1</sup> Einer Elhauge, *Sacrificing Corporate Profit in Public Interest*, Harv.L.Rev. 2004.

<sup>2</sup> Robert Clark, *Corporate Law*, 17-18, 688, 690, UK, (1986)

environment for promotion of corporate social responsibility. This reflects a dual focus both on requirement for corporate sector's compliance with national and international law on the social accountability and the need to encourage voluntary good practices. The authors, however, apprehend that the multiplicity of voluntary codes and proliferation of non-binding guidelines without credible implementation mechanism, may lead to confusion and frustration of social objectives. The national governments are the only actors with jurisdiction over the private sector and are therefore best placed to ensure that companies adhere to CSR standard even when there is not a business case for them to do so and create a level playing field which ensures that companies which do uphold CSR norms are not competitively disadvantaged<sup>3</sup>.

The European Commission's Green Paper, however, maintains that it is for the companies to voluntarily integrate social and environmental concerns in their business operations. This responsibility is expressed towards employees and more generally towards all stakeholders affected by business and which in turn can influence its success. Although the prime responsibility of a company is generating profits, companies can at the same time contribute to social and environmental objectives through integrating corporate social responsibility as a strategic investment into their core business strategy, their management instruments and their

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<sup>3</sup> Fanny Clader and Malaika Culverwell, *Following Up the WSSD Commitments on CSR-Options for Action by Governments*, Chatham House, UK, 2005

operations. They can thereby have an inclusive financial, commercial and social approach, leading to long-term strategy of minimizing risk linked to uncertainty. It concludes that while corporate social responsibility can only be taken on by the companies themselves, stakeholders, particularly employees, consumers and investors can play a decisive role- in their own interest or on behalf of other stakeholders in areas such as working conditions, human rights and environments - in prompting companies to adopt socially responsible practices.<sup>4</sup>

Joel Bakan challenges the concept of voluntary assumption of responsibility by companies for social good. Under the law, corporation is legally designated person who must promote its self-interest and can not do otherwise. So, for corporate managements social goals are strategies to advance shareholder's interest. They can never be ends in themselves. Bakan takes the standard diagnostic checklist of psychopathic traits and measures corporate behaviour against it. He finds corporations irresponsible, manipulative and lacking in empathy. His findings suggest that community activism; political dissent and market choices can not substitute government regulation<sup>5</sup>.

In an age of increasing global interconnection, where TNCs have unprecedented reach, legally binding international social rules have become more

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<sup>4</sup> EC's Green Paper on Promoting a European Framework for Corporate Social Responsibility, Brussels, 2001.

<sup>5</sup> Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power*, University of British Columbia, Canada, 2004

necessary. The profusion of voluntary codes, agreements and commitments are insufficiently bindings to change corporate behavior and do not offer adequate legal redress to the victims of corporate abuse. Through investigative case studies of Shell in Nigeria, British American Tobacco in Kenya and Brazil, Coca Cola in India, Nike in Bangladesh and Pakistan, the Christian Aid brings out the inadequacies of voluntary approach to corporate responsibility. The studies reveal that multinational companies fail to live up to their own standards and tend to abuse human and natural resources wherever they find gap in the regulatory mechanisms. Parent companies establish separate entities to operate in different countries, which have the effect of limiting their liabilities. Legally it becomes difficult to hold parent companies accountable for misconduct of their subsidiaries despite their close connection. This clearly means that current standards for multinationals' social accountability are ambiguous and that avenues for redress when they are breached are limited.<sup>6</sup>

The developing countries, given their desperation for FDI, are particularly vulnerable to exploitation by the TNCs in the form of labour law exemption, tax holidays and equity transfer etc. The Christian Aids concludes that a transparent and rigorous system of enlisting, monitoring and verifying company performance against agreed international standards with a clear system of penalties when standards are

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<sup>6</sup> Christian Aid, *Behind the Mask – The Real Face of Corporate Social Responsibility*, London, available on Line at [www.christianaid.org.UK](http://www.christianaid.org.UK)

breached is urgently needed. This must, in turn, be reflected into national laws and regulations<sup>7</sup>.

At the national level, this means arguing for greater government intervention to restrain corporate behavior and renew public enforcement agencies and inspectorates. Global Solidarity after analysing a lot of empirical data on growth and efficiency of voluntary codes from across northern Europe proves that contents of company codes on social responsibility vary enormously. Most of these are just vague assertions of good intention. Moreover, their long scale proliferation has led to a lot of confusion on the ground. Multiplicity of inspections and plurality of audits make it a hard bargain for smaller companies in the supply chain. So an internationally aligned, national statutory framework remains the only workable solution to this problem. It suggests that such a system should, at minimum, refer to core conventions and Declaration on Fundamental Principles and Rights at Work.<sup>8</sup> While rendering its opinion on information and measurement instruments for corporate social responsibility in a globalized economy, the European Economic and Social Committee undertakes an exhaustive stock of the existing CSR instruments and holds that the ILO core conventions provide credible benchmarks for greater social transparency<sup>9</sup>.

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<sup>7</sup> Ibid.

<sup>8</sup> Global Solidarity, *Corporate Social Responsibility – A Guide for Trade Unionists*, Dublin, January 2006.

<sup>9</sup> European Economic and Social Committee, *Opinion on Information and Measurement Instruments for CSR in a Globalized Economy* Brussels, July, 2005

Though consistent evidence is available on a visible shift from voluntary to legally binding corporate social responsibility, which is now distinctly termed as corporate social accountability, in the developed world<sup>10</sup>, there appears least awareness on the subject in Pakistan.

The domestic corporate sector exhibits a general lack of awareness on the social compliance. Sporadic initiatives by a few companies reflect more of a public relation approach than a sense of binding responsibility. This has much to do with inadequate or absolute lack of knowledge of the legal obligations and inefficiency of monitoring system<sup>11</sup>. Investigations reveal an aversion of enterprises towards self compliance and reporting on social issues<sup>12</sup>. An objective legal framework based on core conventions and supported by an efficient institutional mechanism is, therefore, expected to promote a sustained culture of CSA in the country<sup>13</sup>.

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<sup>10</sup> FoEI's Position Paper, *Toward Binding Corporate Accountability* online at: [www.foei.org/corporate](http://www.foei.org/corporate) Alan Boyd, *Multinationals and Accountability*, Asia Times, Hongkong, 2003. Anil Arora, *Perspective on Corporate Social Responsibility* online at: [www.infochangeindia.org](http://www.infochangeindia.org). Jem Bendell, *Barricades ad Boardrooms; A Contemporary History of the Corporate Accountability Movement*, online at: [www.jembendell.com](http://www.jembendell.com). Stephen Lendman, *The Corporate Control of Society and Human Life*, online at: [www.countercurrents.org](http://www.countercurrents.org) and also see, Save the Children's, *Response to EU Green Paper* online at [www.savethechildren.org](http://www.savethechildren.org).

<sup>11</sup> Employers' Organization of Pakistan, *Report on Good Corporate Social Responsibilities Examples*, Presented at 10<sup>th</sup> NICC/South Asian Employers' Organization workshop, Colombo, 1-2 October, 2003

<sup>12</sup> Government of Pakistan, M/o Labour, *Working of Labour Laws*, 2000, Islamabad.

<sup>13</sup> Pakistan Institute of Labour Education and Research (PILER), *Realizing Universal Labour Rights*, October 2005.

Akbar makes out an assessment of the overall situation viz-a-viz social and environmental compliance requirement in Pakistan. Highlighting the needs for compliance with these requirements within the context of OECD, WTO and US-led trade block, he recommends a persuasive awareness campaign, institutional strengthening, enabling legislative framework and an effective enforcement mechanism to ensure viable CSA system in the country.<sup>14</sup>

There is an absolute absence of evidence on examination of the existing statutory sources with a view to trace a viable framework on corporate social accountability in the domestic jurisdiction. Neither public nor private sector exhibits a clear understanding of the subject. Whatever rudimentary concepts are detectable grow out of a compulsive reaction towards western social compliance codes and GSP requirements. Companies follow them not as standards of sustained social conduct but as conditionalities to be fulfilled in order to retain export contracts on stand alone basis. The policy makers and administrators in the public sector too take it for an export market issue, thus placing the whole matter out of its policy and legal context. The confusion consequently leads to enhanced compliance costs for the local companies, on the one hand, and to discredit of national legal and administrative system, on the other hand. Such misgivings could only be dispelled by understanding the subject in its true perspective. This, in turn, calls for a thorough

<sup>14</sup> Dr. Muhammad Akbar, *Study on Social and Environmental Compliance Issues*, ADB, Islamabad, 2004

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## CHAPTER - 3

### NATIONAL CONSTITUTIONAL AND POLICY ENVIRONMENT FOR CSA

The national context for CSA could best be explained and understood from a multidimensional perspective based upon constitutional obligations, international commitments and framework of socio-economic development policies.

#### 3.1 Constitutional Obligations

The Constitution of Islamic Republic of Pakistan lays foundation of a rights and commitment-based approach. The State is declared responsible for protecting the fundamental rights of association, and expression. It is obliged to establish a governance system, based upon principles of social and distributive justice, fair economic dispensation, personal development, and social protection<sup>1</sup>. The Constitution specifically requires of the State to ensure elimination of all

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<sup>1</sup> *The Constitution of Islamic Republic of Pakistan, 1973, updated as of 2001 (hereinafter referred to as the Constitution) Art.2-A*

forms of exploitation and general fulfillment of the fundamental principle, 'from each according to his ability to each according to his work'<sup>2</sup>. This primary responsibility is further linked to and reinforced by the constitutional guarantee that prohibits all form of forced labour and traffic in human beings. Particularly, no child below the age of fourteen years is to be engaged in any factory, mine or other hazardous employment<sup>3</sup>.

The Constitution is fully alive to the fact that these fundamental rights can not be effectively claimed and protected unless the incumbents are allowed freedom of associations against the forces of exploitation<sup>4</sup>. Thus constitutional guarantees are available to all segments of the society and as such can be effectively claimed against natural as well as legal persons.

The State is, however, specifically called upon to provide for an enabling policy and governance system to ensure compliance with just and humane conditions of work, ensuring children and women are not employed in vocations unsuited to their age or sex and women in employment are allowed maternity benefits<sup>5</sup>. In a broader context, the Constitution aims at an inclusive economic progress and social development by requiring the national policies and institutions to discourage concentration of wealth, means of production and distribution in a few hands. This postulates equitable adjustment of rights

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<sup>2</sup> Ibid, *Art.3*.

<sup>3</sup> Ibid, *Art.11 (2)*.

<sup>4</sup> Ibid, *Art.17 (1)*.

<sup>5</sup> Ibid, *Ch.2, Principles of Policy, Art.35 and 37 (e)*

between employer and employee, decent working conditions and protection against infirmity, sickness and unemployment<sup>6</sup>.

With a view to ensuring coordination of these objectives, direction of policies and focus of efforts, the task of national planning and economic coordination has been assigned to the federal government<sup>7</sup>. Its executive authority extends to all matters with respect to which the parliament can make laws<sup>8</sup>. Article 70 (a) read with the Forth Schedule of the Constitution, empowers the federal government to make policies and laws on the subjects which specifically address the issues of CSA, such as welfare of labour, working conditions, employer's liability and workmen's compensation, health and safety, right of association, invalidity and old age pension etc<sup>9</sup>. Scope and strength of these provisions have been examined according to the central theme of CSA as envisaged in SA-8000 and the Core Conventions, against the criteria of *coverage*, *enforceability* and *exclusion*, in Table 1 below.

**Table-1: Appraisal of Constitutional Provisions having a bearing on CSA**

Constitutional Provision	Objective	Core Conventions	Enforceability	Exclusion (Number of Application)
Article. 2-A:	The principles and provisions of the objective Resolution made substantive part of the constitution.	<ul style="list-style-type: none"> <li>◆ Non exploitation</li> <li>◆ Freedom of Association</li> <li>◆ Non-discrimination</li> </ul>	<ul style="list-style-type: none"> <li>◆ Enforceable as substantive provision of the constitution</li> <li>◆ Laws inconsistent with the provision are void.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Public morality</li> <li>◆ State Security</li> </ul>
Article. 3	<ul style="list-style-type: none"> <li>◆ Elimination of exploitation</li> </ul>	<ul style="list-style-type: none"> <li>◆ Non exploitation</li> <li>◆ Forced Labour</li> </ul>	--	--
Article. 11(2)	<ul style="list-style-type: none"> <li>◆ All forms of forced labour prohibited;</li> </ul>	<ul style="list-style-type: none"> <li>◆ Abolition of Forced Labour</li> <li>◆ Elimination of Child</li> </ul>	--	<ul style="list-style-type: none"> <li>◆ As punishment under law .</li> </ul>

<sup>6</sup> Ibid Art. 38.

<sup>7</sup> Ibid, Fourth Schedule, Part-I Federal Legislative List, Serial 32.

<sup>8</sup> Ibid, Art. 97.

<sup>9</sup> Ibid, Forth Schedule, Part-1, Concurrent Legislative List Serial 26, 27, 28, 30 and 31.

	<ul style="list-style-type: none"> <li>◆ Child below the age of fourteen not to be employed in any factory, mine or hazardous employment</li> </ul>	Labour		<ul style="list-style-type: none"> <li>◆ Service for public cause under law.</li> </ul>
17(1):	<ul style="list-style-type: none"> <li>◆ Freedom to form Association and Unions.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Freedom of Association</li> <li>◆ Collective Bargaining</li> </ul>	--	<ul style="list-style-type: none"> <li>◆ Public morality</li> <li>◆ State Security.</li> </ul>
35.	<ul style="list-style-type: none"> <li>◆ Child to be protected</li> </ul>	<ul style="list-style-type: none"> <li>◆ Non-exploitation</li> <li>◆ Child Labour</li> </ul>	<ul style="list-style-type: none"> <li>◆ Each org/authority of State made responsible to act in accordance with these Principles.</li> <li>◆ Parliamentary oversight</li> </ul>	--
37. (a)(e)	<ul style="list-style-type: none"> <li>◆ Promotion of Social justice...by securing just and humane conditions of work, ensuring that women, children are not employed in hazardous vocations.</li> <li>◆ Human resource development</li> </ul>	<ul style="list-style-type: none"> <li>◆ Decent working conditions</li> <li>◆ Non-exploitation</li> <li>◆ Forced and Child Labour</li> <li>◆ Occupational Health and Safety</li> </ul>	--	--
38 (a) and (d):	<ul style="list-style-type: none"> <li>◆ Social and economic well being of people, irrespective of sex, caste, creed or race, to be promoted and secured by preventing concentration of wealth, means of production and distribution in a few hands.</li> <li>◆ Adjustment of rights between employers and employees.</li> <li>◆ Provide basic necessities of life such as housing and medical relief, to infirm, sick or unemployed.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Social Welfare</li> <li>◆ Non exploitation</li> <li>◆ Non discrimination</li> </ul>	--	--
Forth Schedule, Legislative Lists, Concurrent Legislative List Part-I, Entries, 26, 27, 28, 30 and 31	<ul style="list-style-type: none"> <li>◆ Welfare of labour, conditions of labour, provident funds, employers' liability.</li> <li>◆ Trade unions' industrial and labour disputes.</li> <li>◆ The setting up and carrying on of labour exchanges, employment information bureaux and training establishments.</li> <li>◆ Occupational Health and Safety.</li> <li>◆ Unemployment Insurance</li> </ul>	<ul style="list-style-type: none"> <li>◆ Working conditions</li> <li>◆ Right of Association and Collective Bargaining</li> <li>◆ Health and Safety</li> <li>◆ Non exploitation and non discrimination</li> </ul>	<ul style="list-style-type: none"> <li>◆ Relevant labour laws.</li> </ul>	--

Compared to the standards set in the ILO's core conventions and SA-8000<sup>10</sup>, the Constitution of Pakistan provides a broader guarantees and guidelines for an effective and inclusive framework of CSA. The goals of social

<sup>10</sup> See *Appendix-A*.

and distributive justice, decent working conditions and shared economic development are not mere ideals. These are substantive thresholds for individual rights and efficient governance, enforceable through the process of law. Specific reference to adjustment between rights of employers and employees, prohibition of forced labour and outright condemnation of all forms of exploitation and discrimination, bring out an uncompromising constitutional resolve to ensure accountability across the board.

### **3.2 International Commitments**

Pakistan's ratification of a total of 34 of the ILO's conventions, which include eight core conventions<sup>11</sup>, provides a credible reference point to its national policy and statutory framework on CSA. Particularly, the core conventions set out internationally agreed standards for a fair social dispensation in the course of economic endeavors.

Article 19(5)(a) of the ILO's constitution obliges the member states to ensure implementation of these standards in national law and practice. The significant implication of this obligation is that the standards set in the core conventions are not to be taken as mere recommendatory guidelines. Requirement of their implementation in national jurisdiction through law and practice makes them mandatory benchmarks for an accountable social conduct. Table-2 below shows the status of incorporation of core conventions in the

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<sup>11</sup> ILO, *List of Ratifications by Convention and by Country* ILC, 90<sup>th</sup> Session, 2002, Geneva.  
 \* see Federal Secretary M/o Labor's Statement in the 95<sup>th</sup> Session of the ILC, 29 May –16 June, 2006, online at : [www.ilo.org](http://www.ilo.org)

national labour laws of Pakistan. Strategic areas of CSA serve as a measure of assessment.

**Table-2: Status of incorporation of ILO's Core Conventions in national laws**

Strategic Area of CSA	Convention/Instrument	Substance	Date of Ratification	Status of Incorporation
Freedom of Association	C-87: Freedom of Association and Protection of Rights to Organize, 1948.	No restriction on freedom of association and organization of workers.	14-02-1951	Incorporated with a few exceptions in the case of services related to state security and public interest.
	C-98: Right to Organize and Collective Bargaining, 1949	Protection of workers against acts of anti union discrimination	26-05-1952	- do -
Forced Labour, Child Labour and Non-Exploitation	C-29: Convention on Forced Labour	Abolition of Forced Labour	23-12-1957	Incorporated in the National Laws
	C-105: Abolition of worst form of Forced Labour	Obliges member states to prohibit/abolish worst forms of Forced Labour	15-02-1960	-do-
	C-138: Minimum Age for admission to Employment, 1973	Ensure effective abolition of child labour and to raise progressively minimum age for admission to employment which should not be less than 15 years. The developing countries may however, fix it at 14 years.	5-6-2006*	The principles/standards envisaged in the convention already stand incorporated in the relevant statutes.
	C-182: Worst Forms of Child Labour, 1999	Prohibition and elimination of worst forms of child labour such as debt bondage, forced labour, prostitution, drug trafficking etc on urgent basis.	11-10-2001	Incorporated
Non-Discrimination	C-100 Equal Remuneration 1951	Equal remuneration for men and women workers for work of equal value	11-10-2001	Incorporated
	C-111: Discrimination (Employment and Occupation) Convention, 1958	Equality of opportunity and treatment in respect of employment and occupation with a view to eliminate any discrimination based on race, color, sex, etc.	24-01-1961	incorporated

Ratification of all the eight-core conventions reflects Pakistan's commitment to internationally agreed principles of social justice and sustainable economic development. Ratification of most of them in early part of the country's politico-economic life, further alludes to the sincerity of purpose and

direction of efforts towards development of an objective and credible system of social accountability.

Moreover, the status of incorporation bears out that a substantial statutory framework based on these principles does exist in the national jurisdiction.

### 3.3 Policy Premise

The overall national policy environment is informed and guided by constitutional principles of economic and social justice, non-discrimination and non-exploitation<sup>12</sup>. It also draws inspiration from international standards on socially accountable economic conduct.

The national labour policy 2002 makes specific reference to a range of issues which form part and substance of modern CSA regime, such as strengthening of social dialogue, promotion of trade unionism, respect for international labour standards, elimination of child and bonded labour and ensuring decent working conditions<sup>13</sup>. It adopts a participatory approach to encourage enterprises and workers to evolve bilateral codes based on respect for reciprocal rights through collective settlement<sup>14</sup>. Social dialogue is seen as an effective mechanism for promoting understanding and cooperation between the enterprises and their social environment<sup>15</sup>. A Plan of Action (PoA) has been

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<sup>12</sup> The Constitution, Ch.1, Part-II Principles of Policies.

<sup>13</sup> GoP, M/o Labour, Labour Policy 2002, Ibid, 2002 (hereinafter referred to as the Labour Policy 2002), p.8.

<sup>14</sup> Collective Settlement between employers and employees enjoys protection and enforceability under Section 25 of the IRO 2002.

<sup>15</sup>, Labour Policy 2002, p.16-17

proposed to rationalize, simplify and consolidate the existing plethora of labour laws into following five functional categories which bear a direct linkage with the strategic areas of CSA: -

- Law relating to industrial relations,
- Law relating to employment and service conditions,
- Law relating to human resource development,
- Law relating to occupational safety and health; and
- Law relating to labour welfare and social safety nets<sup>16</sup>.

The PoA makes categorical references to ILO's core conventions as basis of its strategy to eliminate bonded and child labour, non-discrimination and promote fair working conditions<sup>17</sup>.

Moreover, the labour policy leads to focused initiatives on bonded / child labour and protection against exploitation. Through National Policy and Plan of Action on Bonded Labour 2001, the government pledges to adhere to all international instruments, commitments, conventions and protocols whether ratified or not which protect fundamental human rights; it commits itself to eliminate bonded labour through transformation of traditional socio-economic structure<sup>18</sup>. The policy seeks to secure these objectives through promulgation of enabling law and establishment of an effective institutional mechanism. Accordingly, an elaborate statutory framework along with multi tier

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<sup>16</sup> Ibid, p.25

<sup>17</sup> Ibid, p.25.

<sup>18</sup> GoP, M/o Labour, *National Policy and Plan of Action for Bonded Labour*, 2001, Ibid, p.8.



administrative set up has been put in place to prevent and eliminate bonded labour from the country<sup>19</sup>.

Similarly, National Policy and Plan Action to Combat Child Labour, undertakes to progressively eliminate child labour from all sector of the economy, withdraw children from the worst forms of child labour, prevent entry of children in to labour market through universalisation of primary education and family empowerment and rehabilitate working children through non formal and vocational training<sup>20</sup>. The policy has strong linkage with the Employment of Children Act, 1991 which prevents and regulates the employment of children in accordance with the constitutional principles and international standards on non-exploitation of child labour. Besides, it also launches a time bound programme for elimination of worst forms of child labour from the country by end 2005<sup>21</sup>.

With a view to ensuring the protection of employees against unfair working conditions, exploitations, and discrimination, the policy framework is being further fine-tuned. Besides, a full-fledged labour protection policy (LPP) has been launched with specific objectives to cover such important area as the:-

- Basic rights viz, right of association and collective bargaining, equal treatment, non discrimination, absence of forced and child labour;

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<sup>19</sup> The Government has Passed Bonded Labour System (Abolition) Act, in 1992. A National Steering Committee Aided by District Vigilance Committees has also been set up to ensure implementation of the law and prevent incidence of Bonded Labour. For details see Ibid, pp.9-18.

<sup>20</sup> GoP, M/o Labour, *National Policy and Plan of Action to Combat Child Labour*, 2000, Ibid.

<sup>21</sup> The time frame has been extend upto end 2006; see Labour Protection Policy 2006.

- Working conditions, including maximum wages, hours of work, rest break and leaves etc;
- Working environment involving issues of work safety and health;
- Social security, to protect employees against effect of economic and social hardship resulting from work related issues; and
- Living environment, such as housing, health, and living conditions at off-the work places<sup>22</sup>.

These objectives are sought to be achieved through a reliable and dynamic inspection system. A separate Labour Inspection Policy (LIP) has also been formulated to achieve objectives of LPP by ensuring compliance with the labour legislation. The LIP envisages a multi pronged strategy to encourage enterprises to become compliant through a participatory process, against pre-determined benchmarks. Private sector expertise is also proposed to be officially accredited for carrying out compliance audits. Such private involvement will, however, be subject to regular periodic evaluation and authentication by the government<sup>23</sup>. The over-all supervision of the inspection system is to rest with the federal government. This not only conforms to the requirement of Article 4(1) of the ILO Convention 81 on inspections, but also helps establish objective, uniform and fair mechanism for social compliance through out the country. A proposed central inspectorate is to advise the government on inspection policies, legislative requirements to support policy implementation, develop standards for inspection, maintain a comprehensive data base on inspection activities to assist in monitoring the overall performance of labour inspection system and help build

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<sup>22</sup> GoP, M/o Labour, *Labour Protection Policy*, 2006, Ibid

<sup>23</sup> GoP, M/o Labour, *Labour Inspection Policy*, 2006, Ibid.

the capacity of the field inspectors<sup>24</sup>. The system holds promise for an effective social compliance within the domestic jurisdiction. It is also expected to adequately respond to the conditionalities of the western GSPs as well as to the requirements of TNCs social codes.

### 3.4 Case Law

Constitutional case law of the country has also led to growth and refinement of statutory sources on social justice and an accountable behavior viz-a-viz rights of the individuals. In its historic decision in Darshan Masih V/s the State<sup>25</sup>, the Supreme Court of Pakistan directed the government to put important elements of the fundamental rights regarding prohibition of forced labour, dignity of man, freedom of movement, freedom of trade and profession etc. in consolidated form. Their lordships observed that:

*“It might be necessary to define the expression ‘forced labour’ with illustrations of its different forms in such manner so as to minimize any confusion about its real purport as also the resultant unproductive litigation. For the same purpose the other important elements in these fundamental rights may be collected and put in a self-contained code. It might cover all aspects of human dignity, deprivations and misery, including those rights in this behalf, which are ensured, in addition, as basic human rights, in Islam.... This comprehensive law should deal with the compulsory education of the classes concerned for making them aware of their rights, detection of the infringement thereof as the duty of the state and providing remedial mechanism also at the instance of the*

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<sup>24</sup> Ibid, p.28. Both, LPP and LIP have been launched in 2007.

<sup>25</sup> PLD 1990 SC 513.

*state whenever the will to assert or exercise them is lacking on the part of a citizen*"<sup>26</sup>

The legislative character of the judgment is marked by its categorical demand upon the government to put important elements of fundamental rights in a self-contained code. Un-regulated and arbitrary interpretation of these elements is held to be a cause of confusion. This underlines the significance of uniform standards of conduct and a binding accountability for their breaches.

The ultimate duty to create awareness about these standards, ensure compliance and detect their violation lies on the state. Any suggestion of voluntary self-regulation is, therefore, implicitly as well as explicitly precluded in cases where rights of the people are involved. State is unmistakably required to put in place adequate remedial mechanism wherever individual conduct falls short of these standards.

Decision in *Shela Zia Vs Wapda*<sup>27</sup> is a quantum leap towards laying down a universal standard of conduct, which transcends the western voluntary codes and serves as a touchstone for a fair, just and mutually accountable interaction amongst the social segments. By putting a wider meaning upon the term, 'Life' the court held that it includes all personal rights and enjoyment of faculties... freedom of contract, speech, occupation assembly and press. The court concluded that:-

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<sup>26</sup> Ibid, p.515.

<sup>27</sup> PLD 1994 SC 693.

*“The word ‘life’, in the constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only sustain life but to enjoy it. The constitution guarantees dignity of man and also right to ‘life’ under Article 14 and 9, respectively. If both the Articles are read together, question will arise whether a person can be said to have dignity if his right to life is below bare necessity line without proper food, clothing, shelter, education, health care and unpolluted atmosphere ”<sup>28</sup>.*

Here lays an unambiguous standard for individual entrepreneurs as well as corporate businesses to gauge and fix their responsibility to their employees in particular and to society in general. The principle was reiterated and upheld by the apex court in a subsequent judgment in the General Secretary West Pakistan Miners Labour Union (CBA) Khewra Vs the Director Industries and Mineral Development Punjab<sup>29</sup>.

The case law thus exhibits a consistent trend<sup>30</sup> and maturity of approach towards developing a functional framework on social accountability in the national jurisdiction. The following flow chart sums up the Constitution, policy and legal nexus of the national statutory framework on CSA.

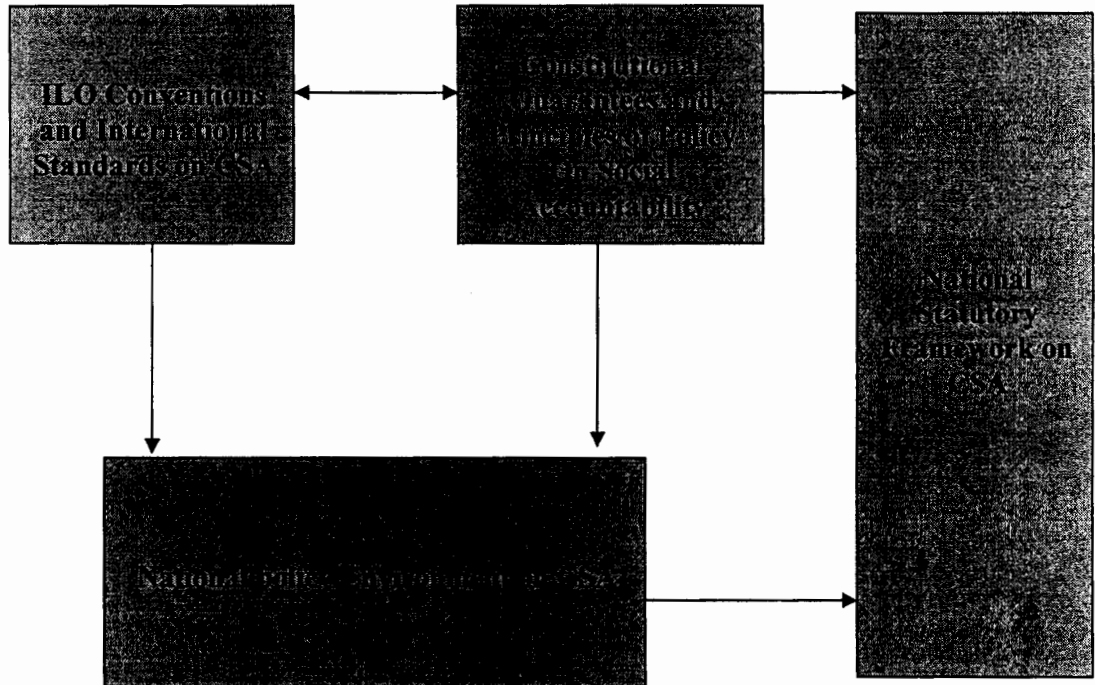
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<sup>28</sup> Ibid.

<sup>29</sup> 1994 SCMR 2061

<sup>30</sup> 1994 SCMR 2061; also see FSC judgement in SP 36-L/92, 37-L/92, 6-L/93, 8 to 10-L/93 dated 2005

### Elements of National Statutory Framework On CSA



## CHAPTER 4

### STRATEGIC MAPPING OF CSA IN NATIONAL LABOUR LEGISLATION

The constitutional thrust and policy premise for socio-economic justice and an accountable conduct get translated in the labour laws of the country. Grown over the period of national history, these laws seek to temper the desire for quantitative economic growth with the need for a qualitative social development. The objective is sought to be achieved by making equitable adjustment of rights between employers and employees<sup>1</sup>. The term 'employer' includes natural as well as corporate persons. The Industrial Relation Ordinance (IRO) 2002, defines it to be, "any person or body of persons whether incorporated or not, who or which employs workmen in the establishment..."<sup>2</sup>. A number of other labour statutes also subscribe to the same definition<sup>3</sup>. Quite a few adopt a functional approach and specifically refer to include

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<sup>1</sup> *The Constitution Pakistan 1973*, Art. 38 (9); hereinafter referred to as The Constitution.

<sup>2</sup> *IRO 2002*, Section 2 (x).

<sup>3</sup> *Workers Welfare Fund Ordinance 1971*, Sec.2(b); *Employee Cost of Living (Relief) Act 1973*, Sec 2(c); *Employment (Record of Service) Act 1951* Sec.2(c); *Employer's Liability Act 1938*, sec 2(b);

managing agent, managing director, secretary or any other person who ultimately own or controls the affairs of an establishment in the category of employer<sup>4</sup>. This not only covers immediate management of corporation, but also extend upto parent companies in the case of subsidiaries. The corporate right of maximizing profit is thus qualified with responsibility for the rights of employees, consumers, and society at large. Corporations are required to respect the right of association and collective bargaining of their employees, provide them with decent, safe, and healthy work environment; neither exploits nor discriminates amongst workers on the basis of race, colour, creed or sex. They are held accountable against the statutory standards of social responsibility, based on the principles envisaged in the national Constitution, ILO's core conventions and the relevant policies.

The statutory standards of corporate social conduct are dispersed over a number of labour laws<sup>5</sup>. The study attempts to measure these holistically across nine strategic areas of the CSA viz, forced labour, child labour, occupational safety and health (OSH), freedom of association and right to collective bargaining, discrimination, working hours, remuneration and management system. The ILO's

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*Workman's Compensation Act 1923, Sec 2(e); Bonded Labour System (Abolition) Act 1992, Sec.18; The Factories Act 1934., Sec.70*

<sup>4</sup> *The Employees Old Age Benefits Act 1976, Sec 2(C); Apprenticeship Ordinance 1962, Sec.2(e); The Minimum Wage Ordinance 1961, Sec.2(4); Worker's Children (Education) Ordinance 1972 Sec.2(a), The West Pakistan Industrial and Commercial Employment (Standing Order) Ordinance 1968, Sec.2(c); West Pakistan Employees Social Security Ordinance 1965, Sec.2(9); W. P. Minimum Wages for Unskilled Workers Ordinance 1969, Sec.2(c).*

<sup>5</sup> The Corporate Statutes such as the Company Ordinance 1984, SECP Act 1976 and rules made thereunder do not cover issues relating to social impact of corporate conduct.



core conventions and SA-8000 provide the performance thresholds for comparison while parameters of 'exclusion' and 'implementation' give the range and efficiency of the statutory frame work on CSA, in the national jurisdiction.

#### 4.1 Forced Labour

Convention 29 of the ILO defines forced labour<sup>6</sup> as all works or services, which are extracted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily<sup>7</sup>. Convention 105 calls upon states not to make use of any form of forced labour as means of political coercion, economic development, labour discipline, punishment for strike or social, religious, or national discrimination<sup>8</sup>. Read together, the conventions aim at prohibition and elimination of exploitation of labour against the free will of workers. Any economic or financial interest cannot thus be made ground of restricting the employee's option to work.

On the management level, companies are required not to engage in or support use of forced labour as a stated policy<sup>9</sup>. Table-3 below gives a measure of the national statutory sources across these standards: -

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<sup>6</sup> The terms 'forced labour', 'bonded labour' or 'compulsory labour' are used interchangeably to refer to a same situation.

<sup>7</sup> C-29: *Convention concerning Forced Labour*, Art.2(1); (hereinafter referred as C-29)

<sup>8</sup> C-105; *Convention concerning Abolition of Forced Labour*, 1999 Art.1 (hereinafter referred to as C-105).

<sup>9</sup> SA-8000, para 2.1, *Appendix A*.

**Table-3: National Statutory Standards on Forced Labour**

CSA Standard on Forced Labour (Performance Threshold)	Statutory Framework in National Jurisdiction			
	Legislation	Statutory Thresholds	Exclusion	Implementation Mechanism
<ul style="list-style-type: none"> <li>◆ Suppress forced Labour in all its form;</li> <li>◆ No concession to companies to involve in forced labour</li> <li>◆ Companies not to use or support forced labour</li> </ul> <p><i>(The Standards do not apply to compulsory military service, certain civic obligations, prison labour, work in emergency and minor community service)</i></p>	Bonded Labour System (Abolition) Act, 1992	<ul style="list-style-type: none"> <li>◆ No person can be compelled to render any form of forced labour.</li> <li>◆ Any custom, tradition, contract or practice to the contrary is void.</li> <li>◆ Management of Companies as well as the companies made vicariously liable for breach of statutory provisions.</li> </ul>	None	<ul style="list-style-type: none"> <li>◆ DVCs to check, prevent and rehabilitate bonded labour</li> <li>◆ Cognizable offences punishable with imprisonment and fine.</li> </ul>

The statutory provisions on prohibition and prevention of forced labour set a very stringent standard. It not only precludes use or support to any form of forced labour<sup>10</sup> but also nullifies any custom, tradition, practice or contract which tends to encourage such an exploitative situation<sup>11</sup>. The law does not make any exception so as not to compromise on these very important issues. Companies are particularly made accountable for use of forced labour. The operation of the law pierces through the corporate veil and holds the management and the company jointly as well as severally liable for breach of the statutory standard of conduct<sup>12</sup>. The District Vigilance Committees (DVCs) serve as a representative institution to create awareness on forced labour, check its incidence, help the victims and monitor working of the law<sup>13</sup>. Inclusion of representatives of the employer, workers and a wide range of social segments in the DVCs, ensures the objectivity of the monitoring

<sup>10</sup>The Bonded Labour System (Abolition) Act 1992, Sec.4 (hereinafter as BLSA, 1992).

<sup>11</sup> Ibid, Sec. 5.

<sup>12</sup> Ibid. Sec.18.

<sup>13</sup> Ibid. Sec.15; also see rule 6 of the Bonded Labour System (Abolition) Rules, 1995.

process, on the one hand, and helps encourage the enterprises to play a lead role in elimination of this menace, on the other hand. The Committees can call upon any company or firm to furnish it such information as may attest to compliance with the statutory standard. Failure to provide information or default in compliance may lead to initiation of legal proceedings against such companies<sup>14</sup>. Besides, a standard Memorandum of Association (MOA) of the companies, registered in Pakistan, obliges them to abide by the national laws. Thus MOA read with the relevant provisions of BLSA, 1992, makes it mandatory for them to reflect a stated commitment to elimination of forced labour in their policy as well as the management system.

#### **4.2 Child Labour**

Cognizant of the fact that in a free market, economic order tends to use cheap labour with a view to reducing costs and maximizing profits, the ILO Conventions-138 on the Minimum Age (1973) and C-182, on the Worst Forms of Child Labour (1999) prescribe universal standards for abolition of child labour and particularly elimination of its worst form such as debt-bondage, forced labour, drug – trafficking, prostitution etc.

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<sup>14</sup> Ibid, rule 7.

Minimum age for admission to employment or work as a general principle can not be less than 15 years. In the case of developing countries, however, it could be fixed at 14 years. National laws may also permit employment of persons between 13 to 15 years of age on light work which is neither harmful to their health nor is obstructive of their education or development. Particularly, for jobs which could be hazardous to health, safety or morals of young persons, the age may not be less than 18 years.<sup>15</sup> The national laws should provide for maintenance of complete record of workers below the prescribed minimum age by the employers. The companies, on their part must maintain document and communicate information on child workers to the concerned public authorities. They must ensure that child workers are not exposed to hazardous jobs and are progressively rehabilitated<sup>16</sup>. Table-4 below gives an estimate of the national statutory standards on prevention, control and elimination of child labour across these international benchmarks: -

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<sup>15</sup> C-138, *Appendix-A*

<sup>16</sup> SA-8000, paras 1.1-1.4

Table-4. National Statutory Standards on Child Labour

CSA Standard on Child Labour (Performance Thresholds)	Statutory Framework in National Jurisdiction			
	Legislation	Statutory Thresholds	Exclusion	Implementation Mechanism
<ul style="list-style-type: none"> <li>◆ States to eliminate child labour</li> <li>◆ Minimum age for work not to be less than 15 years, except in case of developing countries where it could be 14 years</li> <li>◆ Worst forms of child labour to be eliminated on urgent basis</li> <li>◆ National laws to provide for maintenance of record on young workers and prescribe sever sanctions for default</li> <li>◆ Companies not to use or support child labour; maintain record on their employment and help rehabilitate them.</li> </ul>	<ul style="list-style-type: none"> <li>◆ The Children (Pledging of) Labour Act 1933.</li> <li>◆ The Employment of Children Act 1991.</li> <li>◆ The Factories Act, 1934.</li> <li>◆ Mines Act 1923.</li> </ul>	<ul style="list-style-type: none"> <li>◆ No child below fourteen years of age to be employed in certain notified occupations or jobs and processes.</li> <li>◆ No forced labour from the child.</li> <li>◆ Children may work at jobs which are not hazardous under prescribed safety and health arrangements.</li> <li>◆ The total daily working time may not exceed 7 hours and after every three hours there should be half an hour's rest.</li> <li>◆ Employer to keep record of child workers and report it to the labour inspector.</li> <li>◆ Companies made accountable for non compliance with the statutory standards.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Family work, school work and vocational trainings.</li> </ul>	<ul style="list-style-type: none"> <li>◆ National Committee on Rights of the Child to advice the govt on occupations fit for child workers.</li> <li>◆ Inspectors to check incidence of illegal child labour.</li> <li>◆ Non-compliance punished with imprisonment and/or fine.</li> </ul>

Pakistan has ratified both, convention 138 and 182. Accordingly national laws consciously guard against exploitation of child labour in the country. Practically all occupations and works involving hazardous processes have been notified as prohibited for child workers of or below the age of 14 years<sup>17</sup>. The only exception allows these works to be done within the family as domestic undertaking, school education or as vocational training. This does not strictly tantamount to a case of child labour.

<sup>17</sup> *Employment of Children Act 1991, Sec.3 read with Schedule to part-1.*

In keeping with the limits set by the ILO conventions, child workers may be employed on light and non-hazardous jobs under proper health and safety precautions<sup>18</sup>. Even in that case the total working time in a day may not exceed 7 hours, including time spent in waiting for work. The over all spread over is required to be arranged in such a way so as to provide half an hours' rest after every three hours of continuous work. Child workers could neither be asked to do over-time nor to work between 7.00 p.m. and 6.00 a.m<sup>19</sup>.

The law explicitly makes corporations liable for compliance at the risk of legal action in case of default<sup>20</sup>. Companies are required to obtain medical certification from a qualified surgeon with regard to age of young workers and maintain proper record of their employment<sup>21</sup>. They are also required to report such information to the labour inspectorate<sup>22</sup>.

Companies engaged in the manufacturing business, usually tend to resort to child and forced labour<sup>23</sup>. In an anticipatory move, the law, therefore, requires of each manufacturing business where ten or more workers are employed to provide detailed information on name and situation of the factory, nature of the

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<sup>18</sup> Ibid, Sec.6, 13; also see the *Employment of Children Rules 1995* rule, 6-15.

<sup>19</sup> Ibid Sec.7; also see the *Factories Act 1934* Sec.54 (3) & (4).

<sup>20</sup> *The Factories Act 1934*, Sec.70.

<sup>21</sup> Ibid, Sec 51.

<sup>22</sup> *The Employment of Children Act 1991* Sec. 11; also see the *Factories Act 1934*, Sec.56; and the *Employment of Children Rules 1995*, rule 5.

<sup>23</sup> Yousaf Kamal, *Child Labour-National Portfolio*, M/o Labour, Ibd; 2000, p.13.

manufacturing process to be carried out, name of the manager and particulars of workers to the concerned labour inspector before commencement of its operation<sup>24</sup>. The law obliges Provincial Governments to put in place efficient inspection machinery to prevent and control child labour within their jurisdiction. Apart from inspectors of provincial labour departments, every District Magistrate is an ex-post facto inspector for elimination of child labour<sup>25</sup>. These inspectors are empowered to carry out physical inspections and take such measures as may be necessary to prevent, check and control child labour within their jurisdiction<sup>26</sup>.

With a view to creating a national consensus and support for elimination of child labour, a National Committee on the Rights of the Child has been statutorily mandated to advise the government on this issue. The Committee is to comprise persons of high social standing and knowledge in the relevant field<sup>27</sup>. This provides credible public – private partnership to encourage compliance with the statutory standards on the child labour, as well as serve as useful channel for social feedback on the need for improvement in the existing law.

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<sup>24</sup> *The Factories Act 1934, Sec.9*; also see *the Employment of Children Act, 1991, Sec.9*.

<sup>25</sup> *Ibid, Sec.10*; also see *the Employment of Children Act 1991, Sec.17*.

<sup>26</sup> *The Employment of Children Act 1991, Sec.17*; also *The Factories Act 1934, Sec.11*. After Promulgation of Local Govts. Act 2001, the Zila Nazims may also exercise these powers.

<sup>27</sup> *The Employment of Children Act, 1991, sec.5*

### 4.3: Occupational Safety and Health (OSH)

Occupational Safety and Health conditions at work places bear an inverse correlation with cost of production. Particularly, in the short run, compromise on OSH saves 'extra' expenditure, lowers production costs, enhances competitiveness and increases profits for the enterprises. The risk and costs for safety and health are, however, transferred to the employees, who are thus compelled to spend on these heads out of their own meager financial resources. Nonetheless, businesses cannot avoid adverse financial impact of such a trend in the long run. Frequent sickness, leave or absence and poor health of the workers, decrease productivity and increase costs of production<sup>28</sup>.

Socially, the issue of OSH is directly related to the dignity of workers as human beings and partners in economic value addition. Decent, safe and healthy working conditions are, therefore, fundamental to protection and promotion of this basic right. The ILO has adopted a number of conventions and recommendations based on specific health and safety considerations of different economic sectors<sup>29</sup>. Convention-155 on Occupational Safety and Health (1981) lays out broad principles

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<sup>28</sup> WHO: *Macroeconomics and Health: Investing in Health for Economic Development; Report of the Commission on Macroeconomics and Health, 2002*, Geneva.

<sup>29</sup> ILO, *Decent Work – Safe Work, Introductory Report to XVIth World Congress on Safety and Health at Work, 2005*, Geneva, also online at [www.ILO.Org](http://www.ILO.Org)



for the member states, employers and workers to be followed at collective as well as individual levels<sup>30</sup>. SA-8000 also subscribes to the standards set out in this convention<sup>31</sup>.

Together, these instruments call upon governments, companies and employees to cooperate for creation of a safe and healthy working environment at workplaces<sup>32</sup>. The governments are required to provide necessary policy and legal framework for OSH at national level<sup>33</sup>. The companies should also develop and put in place efficient OSH measures in their management systems with a view to protecting workers against physical, mechanical, chemical and biological risks. Proper awareness and training of the employees on these hazards and their safety measures must be ensured at all levels to prevent and minimize chance and impact of adverse outcomes<sup>34</sup>. Similarly, authorities are to be nominated at government and enterprise level to ensure proper compliance with OSH standards<sup>35</sup>

The labour laws in Pakistan broadly incorporate the major OSH principles as envisaged in the international standards. Table-5 below specifically maps the degree of conformity between the two systems: -

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<sup>30</sup> Pakistan has not ratified this Convention but it has adopted ILO's Recommendation-97 on protection of Workers' Health, which substantially draws upon C-155.

<sup>31</sup> See *Appendix-A*.

<sup>32</sup> *C-155*, Art .8, 15 and 19.

<sup>33</sup> *Ibid*, Art.4 and 8.

<sup>34</sup> S.A-8000 para 3.3; also see *C-155*, Art.14, 19(c) and (d); *Appendix- A*.

<sup>35</sup> SA-8000, para 3.2; also see *C-155*. *Appendix-A*.

**Table 5: National Statutory Standards on Occupational Safety and Health**

CSA Standard on Occupational Safety and Health (OSH) (Performance Thresholds)	Statutory Framework in National Jurisdiction			
	Legislation	Statutory Thresholds	Exclusion	Implementation Mechanism
<ul style="list-style-type: none"> <li>◆ Formulation, implementation and review of a coherent national policy on OHS and working environment.</li> <li>◆ Laws/regulations to be promulgated to give effect to the objectives of OSH Policy.</li> <li>◆ Ensure that equipment's are designed and provided with safety precaution and information.</li> <li>◆ Employers to ensure that workplaces, machinery equipment and processes are safe and with out risk to health.</li> <li>◆ Provide protective clothing and equipments to workers.</li> <li>◆ Companies to provide training and information on OSH, to workers.</li> <li>◆ Companies to appoint a senior management representative for implementation of OSH.</li> <li>◆ Inspection system to ensure compliance/accountability.</li> </ul>	<ul style="list-style-type: none"> <li>◆ The Mines Act, 1923</li> <li>◆ The Factories Act, 1934.</li> <li>◆ The Employment of Children Act, 1991</li> </ul>	<ul style="list-style-type: none"> <li>◆ Every business involving manufacturing process or mining activities to strictly follow prescribed OSH precautions/ standards.</li> <li>◆ Management is responsible to provide first aid, clean, healthy work environment.</li> <li>◆ Safety precautions and equipment to be provided in work involving mechanical, chemical, gaseous and heat processes.</li> <li>◆ Management to appoint doctor to provide medical care to employees.</li> <li>◆ Employees to be checked semi-annually for occupational/ infections disease.</li> <li>◆ OSH instructions to be given to employees and posted at workplaces.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Government may by notification allow exemption.</li> <li>◆ Applicable to workplaces which employ 20 or more workers.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Management accountable for OSH at workplace.</li> <li>◆ Government Inspectors to check breaches and ensure compliance.</li> <li>◆ Violation of OSH rules punishable with fine.</li> </ul>

The OSH finds special emphasis in the national labour laws governing manufacturing and mining industries. Managements in these businesses are clearly required to follow the prescribed OHS standards.

The very commencement of business is legally conditioned with a prior notice to the concerned inspectorate regarding nature of work process, number of

workers employed and physical facilities provided for the business<sup>36</sup>. This helps the concerned public authorities to determine the general and special OSH requirements in a given case. As a matter of general principle, all manufacturing and mining operations are required to be conducted under safe and healthy conditions. This specifically means the provision of adequate arrangement for light, air, and pollution free atmospheres<sup>37</sup>. Special safety precautions have been prescribed for work involving mechanical, chemical and other hazardous processes. Management in such cases is obliged to provide safety gear and equipment to employees with a view to reducing risk of accident or harm to their health<sup>38</sup>. Administratively, a system of periodical medical check-up and reporting of accidents and occupational diseases is required to be established by managements at every work place employing twenty or more workers<sup>39</sup>.

This channel of feedback is further linked to a public OSH system, where government's inspectors investigate risk and accident factors with a view to preventing and controlling any mishap, on the one hand, and ensure compliance with the statutory OSH thresholds by managements, on the other hand<sup>40</sup>. The inspectors are empowered to physically check the workplaces across prescribed OSH standards

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<sup>36</sup> *The Factories Act 1934 Sec.9; The Mines Act 1923, Sec.14.*

<sup>37</sup> *The Factories Act, 1934, Sec.13-22; The Mines Act, 1923 Sec.29 (m).*

<sup>38</sup> *The Factories Act, 1934, Sec 26, 27, 29 –33 G and 33.Q (4).*

<sup>39</sup> *Ibid, 23, 23-A and 33-N*

<sup>40</sup> *Ibid. Sec 10, 11. The Mines Act, 1923, Sec.4-9-A.*

and ensure maximum compliance. The law specifically holds every director of a defaulting company responsible for contravention of relevant OSH directives, unless one of them or any manager on their behalf has already been designated to be accountable for such matters<sup>41</sup>. Apart from taking specific safety and health precautions, management is to make sure that all employees fully understand the importance and procedures of maintaining OSH standards within the enterprise. This is to be done through dissemination of relevant information and posting of necessary safety and health instructions at key areas of the workplace<sup>42</sup>.

The existing legal system on OSH, however, does not provide for OSH concerns in the service sector. Such important areas as medical care, hotel industry, food chains etc, do not find any mention in the law. Besides, though the national labour policy 2002 does promise the updation of law relating to occupational health and safety and establishment of a National Occupational Safety and Health Council, no tangible progress is visible on the ground<sup>43</sup>.

Nonetheless, the existing legal framework on OSH effectively concerns the domestic manufacturing export sector and provides a substantial match with the international benchmarks.

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<sup>41</sup> The Factories Act, 1934 Sec,70.

<sup>42</sup> Ibid.25 (7) and 76.

<sup>43</sup> Ministry of Labour, *The Labour Policy 2002*, Ibid, para 30 , 47, p.21 and 27. The Labour Protection Policy 2006 also reiterates establishment of a National OSH Council.

#### 4.4 Working Hours

Though convention on working hours does not strictly form the part of core conventions, it is nonetheless, historically the oldest convention. Convention-1 on Hours of Work (Industry), 1919, lays the universal principle of '8 hours a day, 48 hours a week' working time. The principle has also been adopted and reiterated in a number of subsequent conventions<sup>44</sup>. Together these conventions envisage international standards for working hours, overtime and employment of women and young persons during the night. The standards find specific mention in SA-8000 as well<sup>45</sup>. Collective scope of these standards requires governments as well as companies to legally and practically adhere to a work schedule comprising 8 hours a day and 48 hours a week. Overtime work can only be taken with the consent of employees and in no case is to exceed 12 hours a week. The payment for overtime should be made at a premium rate. Women and young persons are not allowed to be employed at night work.

The labour laws in Pakistan adequately incorporate these standards in the statutory rules and regulations. Table-5 gives an estimate of statutory benchmarks across the international standards on hours of work.

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<sup>44</sup> *Hours of Work Convention 1919; Night Work (Women) Convention (Revised) 1948, Night Work of Young Persons Convention (revised) 1949; Weekly Rest Convention 1957.*

<sup>45</sup> SA-8000, para 7.1-7.3; for details see *Appendix-A*.

Table-6 : National Statutory Standards on Hours of Work

CSA Standard on Working Hours(Performance Thresholds)	Statutory Framework in National Jurisdiction			
	Legislation	Statutory Thresholds	Exclusion	Implementation Mechanism
<ul style="list-style-type: none"> <li>◆ Work spread over – 8 hours a day, 48 hours a week.</li> <li>◆ Overtime work to be done voluntarily or under terms of collective agreement and paid at a premium rate.</li> <li>◆ Overtime not to exceed 12 hours a week.</li> <li>◆ Young person and Women not to be employed during night.</li> </ul>	<ul style="list-style-type: none"> <li>◆ The Factories Act, 1934.</li> <li>◆ West Pakistan Industrial and Commercial Employment (Standing Order) Ordinance, 1968.</li> <li>◆ The Mines Act, 1923.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Spread over: 8 hours a day, 48 hours a week.</li> <li>◆ Overtime not to exceed 12 hours a week and to be paid at double of the wage.</li> <li>◆ No overtime allowed for women.</li> <li>◆ Women and Children not to be employed during night.</li> <li>◆ Women workers may work with their consent upto 10 p.m. in two shifts.</li> <li>◆ Weekly paid holiday.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Working in seasonal Factories may extend to ten hours (including one hour rest break).</li> <li>◆ Provincial governments may by notification make exemption keeping in view nature of work and allied circumstances.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Working hours to be displayed at workplace.</li> <li>◆ A notice of working hours to be sent to the inspector concerned.</li> <li>◆ Government's Inspector to check compliance.</li> <li>◆ Default punishable with fine.</li> </ul>

The national statutory ceilings bear an absolute conformity with the international standards on hours of work. No employer, individual or corporate, can extend the spread over beyond 8 hours a day and 48 hours a week, except by way of overtime<sup>46</sup>. Even overtime is capped with a ceiling of a maximum of 3 hours a day and 12 hours a week, in to<sup>47</sup>.

<sup>46</sup> *The Factories Act, 1934*. Sec.34,36 and 38; *The Mines Act, 1923*, Sec.22-A

<sup>47</sup> *The Factories Act, 1934*, Sec 38 as amended vide the Finance Act, 2006.

The daily working hours as well as weekly working days are punctuated with reasonable interval of rest. Workers are allowed an hour's break after a continuous work of six hours and a paid weekly holiday<sup>48</sup>. The law prescribes special timings for female and child workers. The women workers may work upto 10.00 p.m. in two shifts provided employers arrange for their transport. The choice to work in the second shift, ending at 10.00 p.m. rests with the female workers. Moreover, neither women nor child workers can be asked or allowed to do overtime<sup>49</sup>.

Wherever law specifically allows employment of young workers below the age of 14 years, the total working spread over may not extend beyond seven hours, in toto. This time includes half an hours rest time after every three hours of continuous work plus the time spent in waiting for work<sup>50</sup>.

The national statutory standards, however, display a minor departure from the international benchmarks in that employees can be legally required by an employer to do overtime. Nonetheless, rationalization of daily and weekly ceiling of overtime – i.e. maximum 3 hours per day and 12 hours per week – and its payment at the double of the ordinary wage adequately guard against exploitation of employees by employers<sup>51</sup>.

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<sup>48</sup> Ibid. 35 and 37; *The W.P. Industrial and Commercial Establishment Employment (Standing Order) Ordinance 1968*, S.0.8.

<sup>49</sup> *The Factories Act, 1934*, Sec.45 as amended vide the Finance Act, 2006.

<sup>50</sup> *The Employment of Children Act, 1991* Sec.7.

<sup>51</sup> Ibid. Sec.47 and 47-A.

With a view to further minimizing any probability of exploitation of employees, the law not only obliges employers to display working hours at premises of the workplace, but also send a notice thereof to concerned labour inspector<sup>52</sup>. Compliance with the statutory ceilings is, therefore, ensured by the inspecting staff that is empowered to initiate legal action against the defaulters<sup>53</sup>.

The provincial governments, through rules, in cases where nature of work and work process warrant special considerations, may allow exception to these standards<sup>54</sup>. This, however, does not restrict the general application and import of the statutory ceilings on working hours.

#### 4.5 Remuneration

Remuneration of the workers has come to be acknowledged as a multifaceted factor in socio-economic development. On the social level, it refers to question of distributive justice; economically it pertains to such important issues as price stability, investment and competitiveness and individually it directly impacts purchasing power, consumption pattern and living standards of workers<sup>55</sup>. As an important tool of socio-economic equity, it therefore needs to be carefully supervised

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<sup>52</sup> Ibid. Sec.39, 40; *The W.P. Industrial and Commercial Establishment Employment (Standing Order) Ordinance 1968*, S.0.3.

<sup>53</sup> *The Factories Act, 1934*, Sec.10; *The W.P. Industrial and Commercial Establishment Employment (Standing Order) Ordinance, 1968*, Sec.6.

<sup>54</sup> Ibid, Sec. 8; *The Factories Act, 1934*, Sec.43.

<sup>55</sup> Dr. Gamini Abe Ysekara, *A General Income and Wage Policy*, Paper No.22, in, ILO, Issues in Labour Policy Administration, Bangkok, 1981, p.231-32.



and monitored<sup>56</sup>. ILO's Convention 26 pertaining to minimum wage fixing machinery, clearly calls upon the member states for establishment of a tripartite national body to guide and supervise wage determination within their national jurisdictions. Convention-100 on Equal Remuneration 1951, which is one of the core conventions, further lays the principle of equal remuneration for men and women workers for work of equal value. SA-8000 specifically requires of corporate managements to ensure payment of legal or industry minimum wage to the workers. Such payment should be made regularly and in manners convenient to the workers. No deductions for disciplinary purposes are allowed to be made from the wages<sup>57</sup>.

Pakistan's labour laws incorporate the principles set forth in C-26 and C-100. The minimum national rates of wages for various categories of workers are fixed through a consultative process to serve as legal floorings for employers. While recession below the prescribed minimum rates is statutorily prohibited, settlement above them through collective bargaining is legally protected. Table-6 below gauges the degree of conformity between the national statutory system of wages and the international standards on equal remuneration: -

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<sup>56</sup> The *laissez fair* approach favours a voluntary, market driven mechanism for determination of wages. Empirical evidence, however, reveal that market failures, imperfections and externalities seriously mar such a proposition. Some degree of government intervention is therefore imperative. U.K., for example, since 1948, switched from a voluntary application to a statutory or compulsory determination/implementation, see for details *ibid.* p.233.

<sup>57</sup> For details see *Appendix-A*.

Table-7: National Statutory Standards on Remuneration

CSA Standard on Remuneration (Performance Thresholds)	Statutory Framework in National Jurisdiction			
	Legislation	Statutory Thresholds	Exclusion	Implementation Mechanism
<ul style="list-style-type: none"> <li>◆ Equal remuneration for work of equal value without discrimination based on sex.</li> <li>◆ Promote and insure compliance to the above principle through national law, legally established machinery for wage determination, collective agreements or combination of these means.</li> <li>◆ Companies must pay wages at least at the legal minimum rate and not to make deduction for disciplinary purposes.</li> </ul>	<ul style="list-style-type: none"> <li>◆ The payment of Wage Act, 1936.</li> <li>◆ The Minimum Wages Ordinance, 1961.</li> <li>◆ The W. P. Minimum Wages for Un-skilled Workers Ordinance, 1969</li> </ul>	<ul style="list-style-type: none"> <li>◆ Determination of minimum wage for various categories of workers, through Provincial Minimum Wage Boards.</li> <li>◆ Employers to comply with minimum wage rates.</li> <li>◆ Payment of wages at predetermined regular intervals.</li> <li>◆ Deductions may be made for loss and unauthorized absence.</li> <li>◆ Employers and workers may settle for higher rates through collective agreements.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Government servants.</li> <li>◆ Public utilities (The wages in this case are determined through a different set of laws/rules which does not fall within the ambit of the study).</li> </ul>	<ul style="list-style-type: none"> <li>◆ Public Inspector to ensure compliance and prosecute violation.</li> </ul>

A substantive compatibility is exhibited between the national statutory standards and the principles envisaged in SA-8000 as well as in the relevant ILO conventions. Determination of minimum rates of wage for various categories of workers is carried out through respective provincial wage boards, which comprise the tripartite representatives<sup>58</sup>. Besides, the federal government, through an

<sup>58</sup> *The Minimum Wages Ordinance (MWO), 1961 Sec.3, 4, 5, 6.*

administrative order has also constituted a National Tripartite Wage Council with the objective to determine minimum wage rates in the country<sup>59</sup>.

An apparent over-lapping amongst the relevant laws, however, conduces to a certain degree of confusion on the issue. The Minimum Wage Ordinance, 1961 as well as the W.P. Minimum Wages for Unskilled Workers Ordinance 1969 both provide for determination of minimum rate of wage for unskilled workers. In the former case it is done through the mechanism of provincial wage boards<sup>60</sup> while in the latter case the federal government can effect a change in the Act through the Parliament<sup>61</sup>. Moreover, constitution of a National Tripartite Wage Council, over and above the aforesaid statutory arrangements, further complicates the issue.

A close examination, however, brings out that the National Tripartite Minimum Wage Council is an advisory body whose primary objective is to undertake inter-provincial consultation on the principles/norms for determination of uniform minimum wage rates, conduct surveys and research on wage structures, evaluate trends in wage increase through collective agreements, advise provincial governments/wage boards on wage determination and propose amendments in the existing laws to make them more efficient and responsive to operations of private

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<sup>59</sup> No.LR-1(2)/94, *The Gazette of Pakistan, Extra (Part-III)*, March 16, 1999, p.201-202.

<sup>60</sup> *MWO, 1961*, Sec 5.

<sup>61</sup> *The W. P. Minimum Wages for Unskilled Workers Ordinance, 1969*, Sec.3.

sector. The federal government under the W.P. Minimum Wages for Unskilled workers Ordinance, 1969, may however fix minimum wage for unskilled workers across the private sector, which serves as a reference point for the Provincial Wage Boards in making recommendation on determination of wage structure for different categories of semi-skilled and skilled workers<sup>62</sup>.

The law ensures compliance with the prescribed wages through inspection system, established at provincial level<sup>63</sup>. Employers are required to pay workers wages, not below the minimum rates, at fixed regular intervals<sup>64</sup>. It, however, registers a departure from SA-8000 in that it allows deductions from wages against loss, unauthorized absence and as fine for acts duly notified by the provincial governments<sup>65</sup>. Practically, the procedure and ceiling of such deductions do not amount to any substantial financial burden on the workers. No deduction or fine could be charged except after affording the worker reasonable opportunity of showing cause. In the case of disciplinary fines the maximum limit is not to exceed an 'Aana' (i.e. three paisa) per rupee of the wage<sup>66</sup>.

The law places a categorical accountability upon employers for compliance with the statutory requirements and prescribed minimum rates of wage. Default may

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<sup>62</sup> Ibid. Sec. 6 read with *MWO 1961*, Sec.6 and 7.

<sup>63</sup> *The Payment of Wages Act 1936*, Sec.10.

<sup>64</sup> Ibid. Sec 3-5; also Sec *MWO 1961*, Sec.9.

<sup>65</sup> Ibid. also see *The Payment of Wages Act, 1936* Sec.7-10.

<sup>66</sup> Ibid. Sec.8.

lead to prosecution and ultimately to imposition of fine<sup>67</sup>. Settlement between employers and employee above the minimum wage rates as a result of collective agreement is legally acknowledged and enforceable through appropriate legal forum<sup>68</sup>.

More importantly, the national legal framework displays an absolute conformity with the international standards in making no distinction between male and female workers for the purpose of wages. None of the statutes makes any explicit or implicit differentiation on the basis of sex for payment of wage<sup>69</sup>. Male and female employees are thus guaranteed equal treatment under the law.

#### 4.6 Discrimination

The social dimension of economic endeavor consciously precludes any discrimination amongst the economic partners on the basis sex, color, race, religion or political opinion. ILO's core convention (C-111) on Discrimination in Employment and Occupation 1958, specifically calls upon the member states to pursue a national policy of equality of opportunity and treatment in respect of employment and occupation. The policy objective is to be achieved through a multi-pronged strategy involving legislation, consultation and capacity building of the

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<sup>67</sup> Ibid. Sec.20; also Sec *MWO 1961*, Sec.9.

<sup>68</sup> *The W.P. Minimum Wages for Unskilled Workers Ordinance, 1969*, Sec.6.

<sup>69</sup> *The Payment of Wages Act, 1936*, Sec.1(4); *MWO, 1961* Sec.2(9); *The W.P. Minimum Wage for Unskilled Workers Ordinance, 1969*, Sec.2(i).

economic partners. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof is not deemed to be discrimination<sup>70</sup>.

Similarly, SA-8000 also reiterates need for commitment to elimination of discrimination in hiring, remuneration, access to training and promotion etc. It further requires of companies not to interfere with rights of personnel to observe their religious creed, political affiliation and union membership. Moreover, companies should continuously guard against sexual exploitation and harassment at the workplace<sup>71</sup>.

No explicit distinction in terms of sex, colour, creed or political affiliation is detected in the labour laws of Pakistan. The West Pakistan Industrial and Commercial Employment (Standing Order) Ordinance, 1969, the Factories Act 1934 and/or the Payment of Wages Act, 1936 do not make any exception on these grounds. However, the law does protect female and child workers against possible exploitation by statutorily mandating special timings and working hours for them<sup>72</sup>. Similarly they cannot be put to hazardous jobs<sup>73</sup>.

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<sup>70</sup> See Appendix-A.

<sup>71</sup> S.A. 8000, Appendix A, paras 5.1-5.3.

<sup>72</sup> The Factories Act 1934, 45, 50-56; the Employment of Children Act, 1991 Sec.7.

<sup>73</sup> Ibid. Sec 3; The Factories Act Sec 28, 32, 33-Jand33-M.

Practically, the reason for relative low ratio of female employment at the national level can be traced to peculiar cultural and socio-economic composition of the domestic economy. The low literacy rate, lack of professional exposure, socio-cultural traditions and non-acknowledgement of their economic contribution mainly account for comparatively lesser participation rate of female workforce in the country<sup>74</sup>. A turn around in the situation postulates an attitudinal change at all levels of planning and execution. A number of important policy measures undertaken at the national level show a certain degree of movement in this direction<sup>75</sup>

Categoric legal resolve is exhibited to check discriminatory treatment of workers by the employers with a view to impeding or discouraging healthy unionism. Such conduct on the part of employers is legally held to be unfair trade practice and punishable with heavy fine<sup>76</sup>.

A practical dichotomy is however, exhibited in the provisions of IRO 2002, with regard to treatment of workers whose length of employment does not exceed three months. The legal recognition accorded to such workers under section 2(xxx) *ibid* is virtually ignored by debarring them from voting for their CBA<sup>77</sup>. Nonetheless,

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<sup>74</sup> Rehana Siddiqui, Overcoming the Gender Employment and Skill gap, Paper presented on Pakistan Employment and skill form, M/o Labour, April, 25-26, 2006 *Ibd*

<sup>75</sup> For detail see M/o Women Development, National Plan of Action, Sept, 1998 *Ibd*.

<sup>76</sup> IRO, 2002, sec. 63, 65.

<sup>77</sup> IRO 2002, sec. 20(4)(5).

they can join trade unions and as such can seek the help and protection of the CBA in an industrial dispute<sup>78</sup>.

Similarly, through an amendment in the Standing Order 1(a) of the W.P Industrial and Commercial Establishment (Standing Orders) Ordinance, 1968, 'Contract Worker' has been formally acknowledged as a workman for the purposes of legal protection and benefits under the Ordinance *ibid*. Now no distinction is made nor allowed to be made amongst the workers in terms of their nature of employment. As such companies are obliged to treat them at par with regular workers for the purposes of leaves, bonus and other statutory benefits<sup>79</sup>. Non compliance may incur direct liability for the management under the Ordinance *ibid*<sup>80</sup>.

#### **4.7 Freedom of Association and Right to Collective Bargaining**

Economic production as well as value addition process by its very nature tends to invest with the employers a considerable bargaining power viz-a-viz the employees. Particularly, in the context of a developing economy like Pakistan where labour force far exceeds the number of employment opportunities, the workers in their individual capacity, do not enjoy enough economic clout to negotiate with the employers a fair deal for themselves. In a labour versus wage bargain they are

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<sup>78</sup> *Ibid*, section 3(a) read with section 20(13).

<sup>79</sup> The Finance Act, 2006, sec.6.

<sup>80</sup> The WP Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, s.o.20.



considered as an expendable commodity. That, in turn, opens up the possibility for financial and social exploitation of workers by the employers

Rectification of such a situation involves a normative adjustment between the rights of employers and employees. On international level, ILO's core conventions on Freedom of Association (C-87) and Right to Collective Bargaining (C-98) lay down the pristine principles of freedom of association both for workers as well as employers, protection of workers against discriminatory treatment for joining or participating in union activities and encouragement of social dialogue between employers and employees with a view to settle terms and conditions of employment through collective agreements. SA-8000 makes specific demand upon companies to respect these rights and allow parallel means of free association and bargaining where national law falls short of the international standards. Nationally, the 1973 Constitution categorically calls upon the authorities of the State to guarantee freedom of association and secure well being of people by preventing concentration of wealth and ensuring equitable adjustment of rights between employers and employees<sup>81</sup>. Statutorily, Industrial Relation Ordinance (IRO) 2002 provides for such an adjustment with the view to promoting harmonious and productive industrial relations in the country. Table-7 below gives a measure of the national statutory

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<sup>81</sup> The Constitution, Art.38.

benchmarks across the international standards on freedom of association and collective bargaining.

**Table-8: National Statutory Standards on Freedom of Association and Right to Collective Bargaining**

CSA Standard on Freedom of Association and Right to Collective Bargaining (Performance Threshold)	Statutory Framework in National Jurisdiction			
	Legislation	Statutory Thresholds	Exclusion	Implementation Mechanism
<ul style="list-style-type: none"> <li>◆ Right to establish and/or join organization of own choice.</li> <li>◆ Right to collective negotiation and agreement.</li> <li>◆ National policy and law to encourage and promote these rights. (Security forces not strictly fall within this ambit).</li> <li>◆ Protection of workers against discriminating treatment for joining unions.</li> <li>◆ Companies to respect and acknowledge these rights.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Industrial Relation Ordinance (IRO) 2002.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Employees in all companies allowed freedom of association and right of collective bargaining.</li> <li>◆ Employers are prohibited to discourage, impede or interfere with exercise of these rights</li> </ul>	<ul style="list-style-type: none"> <li>◆ Certain government controlled corporations viz, Pakistan security Printing Corporation, Pakistan Mint etc.</li> </ul>	<ul style="list-style-type: none"> <li>◆ Registrar Trade Union to register labour union and regulate their internal discipline etc.</li> <li>◆ NIRC to register Inter-provincial trade unions and federations and settle industrial dispute etc.</li> <li>◆ Labour Courts to provide legal remedies for practices violative of the IRO.</li> </ul>

As a general principle, the law allows freedom of association and collective bargaining to all employees of corporate sector except the managers and administrators. Exception is also made in case of government controlled corporations dealing in Security Printing and provision of utilities<sup>82</sup>. Besides, armed forces and public employees have also been kept out of the ambit of the law<sup>83</sup>.

<sup>82</sup> IRO 2002, Sec 1(4), Sec.2(xxx) read with Sec.3.

<sup>83</sup> Ibid. The Essential Services Maintenance Act 1952, Chief Executive Order No.6 of 2000 and NIRC decision also exclude WAPDA, PIA and KESC respectively from the application of IRO-2002.

These exclusions are, however, justified on the grounds of wider economic and public interests. None of the private sector corporations has, however, been subjected to application of these exceptions. The employees of corporate sector can freely exercise their right of association and collective bargaining.

While no statutory compulsion is imposed upon the workers to seek prior authorization or permission to form or join a trade union<sup>84</sup>, the law does encourage registration of such organizations. Only registered trade unions can run for election of collective bargaining agents, refer disputes to Registrar of Trade Union or the Labour Court and represent workers during negotiations<sup>85</sup>. This practically necessitates registration of trade unions, on the one hand, and disciplines their internal<sup>86</sup> functioning on the other hand. A fair degree of compatibility is thus found between the national statutory mechanism and the international standards on grant and promotion of freedom of association and right of collective bargaining.

Settlement between the employers and the employees through their collective bargaining agents is legally protected and enforced<sup>87</sup>. Subject to certain precautionary provisions of the law, the workers are allowed to call a strike as an ultimate expression of their rights of freedom of association and expression<sup>88</sup>. The

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<sup>84</sup> Ibid. Sec.3.

<sup>85</sup> Ibid. Sec.20, 22, 31 and 36.

<sup>86</sup> Ibid. 8, 19.

<sup>87</sup> Ibid. Sec 20 (13); 38 (1) (d) 59 or 67.

<sup>88</sup> Ibid. Sec.31.

law, however, does empower the official as well judicial authorities to prohibit a strike or declare it as illegal on the grounds of public interest<sup>89</sup>.

As a check against arbitrary treatment and exploitation of employees, the law requires nomination of shop stewards and set up of joint work council<sup>90</sup>. These arrangements are intended to not only serve as a link between the management and employees but also develop a shared approach on functioning of the enterprise to the benefit of both the parties. Prohibition to interfere with rights of worker to join trade union, discriminate them for their union activities and influence working of such organizations finds an emphatic mention in the law. A default on these grounds is linked to pecuniary liability<sup>91</sup>.

Besides, Schedule-I to Section 83(2) of the IRO-2002, envisages specific right and duties of both employers as well as employees with a view to ensuring promotion of bilateral dialogue, mutual trust, harmonious relationship and welfare of the workers. It exactly replicates the spirit of C-87, 98 and SA-8000, in tangible statutory requirements. Freedom of association and right of collective bargaining have been acknowledged as inherent rights of workers. The explicit as well as

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<sup>89</sup> Ibid. Sec.31 (3) (4) and (5); Sec.32.

<sup>90</sup> Ibid. Sec.23, 24.

<sup>91</sup> Ibid. Sec.63 read with Sec.65.

implicit import of such an acknowledgement set a visible benchmark for corporate accountability on these counts.

#### **4.8 Management System**

While the core conventions ensure provision of a legislative framework for CSA on government level, the SA-8000 particularly lays downs for corporations to include effective mechanisms for a stated adherence to promote social accountability within their management systems. This requires incorporation of social concerns in the corporate management policy, putting in place of administrative arrangements for effective implementation of relevant standards, maintenance and updating of record and dissemination of information to employees, business partners and concerned public authorities<sup>92</sup>. Accountability for compliance with the social standards, in this case, is not seen as a management issue but is considered as a systemic requirement of the management itself. This postulates integration of social concerns in the very functioning of the management. Pakistan's corporate laws exhibit glaring ignorance of such concerns and restrict their operations to pure structural and financial functioning of corporate entities. Issues of transparency and accountability figure with strict reference to directors and shareholders only<sup>93</sup>. No specific statutory requirement is spelt out for companies to put in place effective mechanism in their management systems with a view to ensuring compliance with CSA benchmarks.

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<sup>92</sup> See Appendix-A.

<sup>93</sup> See for details – The Companies Ordinance 1984 and also The Code of Corporate Good Governance, 2004.

The labour laws, however, fill this gap. Companies are generally required to designate an executive for fulfilling the objectives of the law<sup>94</sup>. Failure to do this may result in direct accountability of every director of the defaulting company<sup>95</sup>. Legally, corporate employers are required to notify designation of this responsibility to the concerned labour inspectorate before commencement of their business. The executive or manager so designated in that case is particularly held accountable on behalf of the concerned company for compliance with the statutory standards<sup>96</sup>.

Besides, an emphatic stress is also laid on dissemination of information on legal benchmarks for social conduct of business, amongst the employees as well as to the public authorities. Compliance reports on health and safety standards, working hours, employment of children, elimination of forced labour and grant of freedom of association and collective bargaining to employees figure as consistent feature of national labour laws<sup>97</sup>. This logically necessitates and legally envisages maintenance of complete record of the management efficiency on CSA concerns, for inspection by the concerned public authorities.

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<sup>94</sup> The Factories Act, 1934, Sec.9.

<sup>95</sup> Ibid. Sec.70; also the Bonded Labour System (Abolition) Act, 1992 Sec.18; IRO-2002 Sec.73.

<sup>96</sup> Ibid. Sec 18(2) and also The Factories Act, 1934 Sec 71; IRO-2002, Sec.73.

<sup>97</sup> The Factories Act, 1934. Sec. 33-N, 39, 41, 55, 56 and 76; The Bonded Labour (Abolition) Act, 1992, Sec.15; the Employment of Children Act, 1991 Sec.8, 9, 11 and 12; the W.P. Industrial and Commercial Employment (Standing Orders) Ordinance 1968. S.0.3 and IRO 2002 Sec.20(4).

Similarly, companies are legally obliged to set up mechanism within their management systems to provide for workers' participation in corporate profit, insurance against old age, and compensation for occupational accidents and diseases<sup>98</sup>. Contributions towards these objectives are exempted from tax or any other levy, and take precedence on all other charges on corporate assets in case of insolvency<sup>99</sup>. A stated prohibition restricts the power of employers to dismiss or issue disciplinary notices to employees during the period of their maternity, sickness or disability etc<sup>100</sup>. Onus is placed on the employers for establishing due diligence and putting in place of all precautionary measures to avoid health and safety risks to employees. The employees are thus not legally deemed to have undertaken any risk attaching to employment unless the employers prove that the risk was fully explained and understood by the employees and the latter took it voluntarily<sup>101</sup>. This legal presumption necessitates for companies to ensure effective management measure, so as to be able to avoid legal accountability.

Strategic mapping of the framework on CSA through labour laws, therefore, exhibits a fair degree of substantive compatibility with the international standards. Normatively, hardly any major departure from the research criteria is detected. All of

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<sup>98</sup> The Companies Profits (Workers Participation) Act, 1968, Sec.2, 3; The Employees Old-Age Benefits Act, 1976 Sec.2, 3, 22, 22-A; The Provincial Employee's Social Security Ordinance, 1965, Sec. 2, 20, 21, 35-44.

<sup>99</sup> Ibid. Sec.68, 69; The Companies Profits Act, 1968 Sec.8.

<sup>100</sup> The Provincial Employees' Social Security Ordinance 1965 Sec.72; The W. P. Maternity Benefits Ordinance 1958, Sec.7.

<sup>101</sup> The Employer's Liability Act, 1938 Sec.4.

the main CSA concerns find adequate coverage in different statutes. The element of dispersal, however, tends to obscure an immediate notice and comprehension of the statutory framework on CSA in the national jurisdiction.

The next chapter sums up the analysis of the CSA system to bring out its practical relevance and credibility. It also hints at latest developments and concludes the research findings with a few suggestions for improvement.



## CHAPTER -5

### ANALYSIS AND CONCLUSION

#### 5.1 Analysis

Evidence in the preceding chapters leads to the conclusion that inspite of partisan positions on thematic exposition of social accountability of corporate behaviour; there is an implicit consensus on the need to monitor the corporate operations against measurable social benchmarks. Exponents of both, the voluntary as well as regulatory approaches stress upon integration of social concerns in the business processes in such a way that they become a part of the overall corporate functioning. This, therefore, precludes any suggestions of sporadic charitable, explanatory or good will measures to be taken by companies in the name of social responsibility.

The otherwise voluntary initiatives such as OECD's Guidelines or UN Global Compact etc. bear a strong linkage with the internationally acknowledged standards which lend them a force to regulate corporate conduct.

The system of national focal points within the EU to monitor compliance with the Guidelines and requirement of reporting adherence to the Global Compact of the UN Secretary General's Office are symbolic of the inherent compulsion of the social standards for corporate conduct.

A categoric shift towards binding corporate accountability and enhanced regulatory role of governments, reflected in the Johannesburg Plan of Action on the Sustainable Development, marks the degree of change in approach which has taken place since the days of OECD's Guidelines, through 90s upto the Rio World Summit, establishment of WTO and 1998 Copenhagen World Summit on Social Development. The increasing global interconnectivity, where national and multinational corporations enjoy unprecedented reach, necessitates the need for legally binding social and environmental standards evermore. Thus a clear move beyond a reliance on voluntary approach is expressed in the Johannesburg Plan. Signatory governments are required to actively promote corporate responsibility and accountability including through the full development and effective implementation of intergovernmental agreements, measures, international initiatives, public – private partnerships and appropriate national regulations.

Internationally, ILO's Conventions convey the resolve of the world community to integrate social considerations in business operations with a view to avoid unjustified externalities, ensure distributive justice and create a decent work culture. These standards, set in the conventions, being reflective of

international commitment to social justice and an inclusive economic development, serve as reference point and behaviour benchmarks for most of the inter-governmental, national and private sector initiatives on CSA. The ILO's constitution not only requires of strict compliance with these standards but also provide effective mechanism for corrective measures in cases of default.

Commercial dimension of corporate social compliance further underlines the compulsory requirement for a credible and binding CSA matrix. The US, EU's and Japanese GSPs clearly link competitiveness and export market accessibility with corporate social conduct as measured against the internationally acknowledged benchmarks. That particularly obliges the developing countries to develop a culture of social compliance amongst their industrial and corporate sector. However, in most of the cases the legal systems and enforcement mechanisms of these countries are suspected of being inadequate, insufficient and partially applied so as to be able to fulfill the requirements of GSP thresholds.

One sure way to bridge this gap and dispel such an impression is to align national legal system with the international standards on CSA. That, in turn, leads to the ILO's conventions and social standards. Particularly, ILO's core conventions provide a comprehensive round-up of the major social concerns and spell out categorical policy as well as procedural guidelines for their incorporation and implementation through national legislation. Conformity of national

statutory framework on CSA with the standards, set in the core conventions, provides edge, which cuts across all intergovernmental, commercial, and unilateral social compliance codes. This also lends an element of authenticity and credibility to national CSA framework, helps avoid arbitrary social audits by the western companies and protects the local communities as well as resources against excesses of TNCs.

A convincing case is thus spelt out for a developing country like Pakistan to understand the issue of corporate social compliance in its true perspective, highlight national constitutional resolve, make out policy premise and underline the statutory framework on CSA within the domestic jurisdiction. Being a member of the ILO, a signatory of WTO and an active trading partner of USA and EU countries, Pakistan is inextricably committed to issues of corporate social accountability. The country's Constitution holds out an unflinching support to the dignity of labour, social justice, economic equity and elimination of all kinds of exploitation as well as discrimination from the society. A two pronged functional strategy guarantees protection of basic rights such as freedom of association, non-exploitation and discrimination, on the one hand, and obliges the public authorities to ensure that national policies carry out these constitutional promises by making equitable adjustment between rights of employers and employees, on the other hand.

This finds a stated expression in the country's National Labour Policy 2002. Carefully balancing the national economic priorities against the social participation and development, the policy seeks to promote bilateralism as core element of its strategy. The principles, objectives and action plan of the policy concentrate on creation of relationship of trust and cooperation between employers and employees under strategy of least state intervention. The approach adopted in the policy thus focuses on the dignity of labour, balancing of bargaining power and productivity based work culture with equitable distribution of gains of economic endeavour amongst employees, entrepreneurs and society at large. It serves as a lead to focused policy, institutional as well as legislative initiatives to lay basis of a decent work culture and a credible premise for socially responsible conduct of businesses.

The national policies and plans of actions on bonded and child labour display a participatory approach towards elimination of forced labour and prevention of exploitation of child workers. Inclusion of representatives of employers as well as of workers alongwith technocrats, legal experts and public servants in the vigilance and compliance arrangements, is not only reflective of the government's resolve to promote social dialogue as a means to responsible business conduct but also a proof of objectivity and credibility of the system.

Practically, a wide gap is however, detected between the policy promises and their implementation. The National Safety and Health Council promised in

the Labour Policy 2002, and the Vigilance Committees for Prevention and Control of Forced Labour envisaged in the National Policies and Plans of Action on the Bonded and Child Labour respectively, are yet to be materialized. Similarly, simplification, rationalization and consolidation of the existing labour laws into six functional categories also seriously lags behind the schedule. This not only puts a big question mark on the capacity of the government to establish an efficient monitoring system for social compliance but also leads to reactionary and adhoc legislative response to CSA concerns.

Legislatively, the CSA concerns are found dispersed over a number of statutes. Though the law addresses these issues more in terms of workers' interests, it does reveal an explicit focus on corporate conduct as well. Most of the statutes referred to in the study, statedly define the term 'employer' to include companies as well as corporate managements. Default in compliance with the statutory standards conduces to the liability of any of the directors unless one is specifically designated and so notified to the concerned public authorities.

## **5.2 Conclusion**

Substantively, a statutory framework on CSA, therefore, does exist in the national labour laws. All major areas of social compliance find an adequate mention and bear sufficient conformity with the standards set out in the ILO's core conventions and SA-8000. Forced labour, child labour, working hours and

OSH issues are fairly incorporated in the law. No major departure from the international standards is thus revealed.

The provisions regulating CSA being dispersed over a number of statutes, however, escape notice of a cursory analyst. Moreover, it obscures a comprehensive view of the CSA situation as well as leads to efficiency problem when it comes to implementations of the system in the national jurisdiction.

The provisions relating to reporting requirements reflect a perfunctory connotation in that no follow-up or certification is spelt out to attest degree of compliance by the companies. Mere reporting unless objected to by the concerned public authorities, suffices as a proof of compliance. Moreover piecemeal reporting on different CSA concerns by enterprises in different statutory context and under different procedural arrangements, seriously restricts realistic evaluation of compliance on the one hand and helps defaulting companies to get away with the violations of the relevant statutory standards, on the other hand.

The punitive action for non-reporting and non-compliance with the CSA standards as envisaged in the relevant statutory sources, does not provide credible and convincing deterrence to prevent and check erratic conduct. In most of the cases, the punishment merely involves fine upto a maximum of Rs.500/-. This practically makes compromise on social compliance a profitable deal for

corporate managements. Only the IRO 2002, spells out a fine of maximum Rs.30,000/- for denial of freedom of association and right of collective bargaining to workers. Even this pecuniary ceiling does not make unfair labour practices a bad bargain for irresponsible companies.

Administratively, lack of adequate legal deterrence renders the inspection system ineffective. Defaulting companies may conveniently opt for an administrative notice and consequent legal action rather than internalize heavy costs in terms of social compliance. Whatever nominal inspection system exists under the relevant statues presently stands suspended in the provinces of the Punjab and Sindh. Both the provincial governments through their respective industrial policies have prohibited the labour inspectors to visit enterprises for verification of social compliance. They have to accept whatever is reported and displayed by the management on the notice board, at the entrance of the premises. This whole scenario raises serious concern on the state of CSA and efficiency of its regulatory framework in the county.

A focused analysis of the specific statutory resources further reveals certain substantive issues which tend to impede a fair understanding of corporate social concerns by the stakeholders and hampers the implementation process. The Bonded Labour System (Abolition) Act, 1992 restricts the definition of 'bonded labour' to debtor-creditor situation where the workers is presumed to have put himself or any of his family member under a liability to serve the



employer in lieu of a prior pecuniary favour. Though this definition covers most of the forced labour situations in the national perspective, it falls short of taking cognizance of cases where workers may be compelled by employers to work extra hours without payment or are not allowed leaves and rests for legally prescribed period of time etc. These and other identical cases, however, do find a mention in the Factories Act, 1934 and the WP Industrial and Commercial Employment (Standing Orders) Ordinance, 1968, but under a different perspective. A different procedure and inspection mechanism is envisaged for ensuring compliance of the employers in this set of circumstances. The contextual and administrative variation in statutory expression of such issues thus tends to create misconception and confusion about comprehension, compliance and implementation of relevant standards at all stages.

Similarly, a big gap is found in coverage of OSH concerns under the existing law. The Factories Act 1934, which mainly addresses the subject, covers only the manufacturing businesses. Service and commercial sector is prominent by its absence in the law. Businesses such as health care, hospitality, construction etc, do not find any mention in the labour laws. Though the Factories Act 1934 does provide for the concerns of foreign trading partners on national OSH mechanism, there is a need to have a comprehensive system covering all facets of industrial and commercial activities to ensure full compliance of corporations with OSH standards.

Stipulation of a minimum period of three months of employment as condition precedent for eligibility to vote for CBA under section 20 of the IRO is yet another ground which provides companies with sufficient legal room for denying freedom of association and right to collective bargaining to a large number of employees such as the contract workers and daily wagers. Though SA-8000 requires of corporate managements to facilitate such workers with parallel means of independent and free association and bargaining, in absence of categoric statutory mechanism, compliance with this part of the standard remains an issue within the domestic CSA framework.

The payment of remuneration also suffers from serious procedural and implementation inadequacies. While the national statutory standard bear close substantive proximity with the ILO's C-100 and SA-8000 in that no discrimination based on sex is found in payment of wages to the employees, it does envisage a cumbersome procedure for prevention and rectification of non-compliance. Besides, nominal pecuniary punishments as the ultimate fall out of non compliance, do not serve as an effective deterrence. An aggrieved employee has to first seek the sanction of the authority empowered under section 15 of the Payment of Wages Act, 1934 for his claim in order for initiation of the trial of the alleged default. A maximum of Rs.500/- as fine may be charged for noncompliance which could involve a claim of thousands of rupees.

These gaps in procedural and implementation mechanisms coupled with global market pressure have, however, led to an extensive updation policy and legal environment for CSA. The Labour Policy 2002 acknowledges the need for simplification, rationalization and consolidation of a plethora of existing labour laws into six functional categories encompassing major areas of social compliance, such as working conditions, safety and health, remuneration and freedom of association and right to collective bargaining etc. Similarly, it promises establishment of a national OSH Council with a view to promoting healthy work environment and thereby raising overall level of productivity in the country.

Particularly, specific policy initiatives in the areas of labour protection and inspection reflect the change in the Government's approach towards social compliance issues and distributive justice. Protection of workers against exploitation and discrimination is now being considered as a means to productivity, investment and an inclusive socio-economic development. A conscious emphasis is being laid to highlight the economic value of the outcomes of labour protection strategies. Thus a clear shift from the traditional understanding of considering labour protection as a cost in production process, to a modern approach of integrating such initiatives into investment strategies of enterprises is quite obvious. The Labour Protection Policy (LPP), for example, seeks to contribute to the economic and social progress of the country by ensuring that workers' rights are protected, working conditions are fair and that

enterprise efficiency and competitiveness is encouraged. It rests on the premise that there is a clear linkage between development and labour protection. In a well managed enterprise the costs of labour protection are far outweighed by the economic benefits. An increased emphasis is laid on a proactive role of management and worker's organisations at enterprise level to encourage bilateral interactions, workplace cooperation and sharing of information. Coupled with the enabling statutory environment, this participatory approach is likely to motivate the corporate managements to become self-compliant with the social obligations.

Besides, the LPP echoes SA-8000 and ILO's C-155 in obliging all enterprises to have a written OSH policy which has been discussed with and communicated to workers, and supported by enabling rules to ensure that it is implemented in practice. A close collaboration between the provincial labour departments and enterprises is envisaged to help the latter prepare such policy instrument. The LPP further reiterates the government's resolve to establish a national OSH Council with the objective to advise the government on a wide range of policy and legislative matters covering occupational health and safety.

Most importantly, the policy brings out a clear linkage between the impact of enterprise work processes and practices on the wider environment and the labour productivity. Enterprises are primarily held responsible to ensure that

their work processes and disposal of waste products do not negatively impact the working lives and living conditions of the workers in the area around<sup>1</sup>.

A greater emphasis on these social concerns has been sought to be complimented and supported through strategies which lead the change process rather than respond to it. The Labour Inspection Policy (LIP), thus, spells out strategic guidance on new approach of social compliance. These include an emphasis on labour extension services, self reporting on labor protection systems' inspection instead of checking on specific details, the involvement of the private sector in inspection work and greater emphasis on integrated inspection under the principle of 'one inspector one enterprise. Of particular significance is the suggestion to utilize the third party audits and certification under a proper system of accreditation. That would bring the country's CSA mechanism in direct contact with credible international institutions and initiatives relating to CSA monitoring<sup>2</sup>.

These policy developments, in turn, bear a direct impact on the national legislation. A well thought out functional agenda has been chalked out for labour legislation with the view to bring about equilibrium between the rights of employers and employees. Peaceful industrial relations, categoric terms of employment, safe and healthy work environment and social protection are the

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<sup>1</sup> Government of Pakistan, Ministry of Labour, the Labour Protection Policy 2006, Ibd; also available online at [www.pakistan.gov.pk/labour-division/index.jsp](http://www.pakistan.gov.pk/labour-division/index.jsp).

<sup>2</sup> Government of Pakistan, Ministry of Labour, the Labour Inspection Policy 2006, Ibd; also available online at [www.pakistan.gov.pk/labour-division/index.jsp](http://www.pakistan.gov.pk/labour-division/index.jsp).

areas undergoing major legislative revision. The Industrial Relations Ordinance (IRO), the first in the series, has already seen the book of statutes, in 2002. As a result of its test run over a period of three years, an amendment bill has been drafted and sent to the cabinet for their approval<sup>3</sup>. The bill extends the operation of the IRO to educational and charitable institutions, takes away the element of discretion in the registration of trade unions, provides separate appellate forum for speedy dispensation of justice.

Similarly, the Bill on Employment and Service Conditions Act<sup>4</sup>, which is also ready to be sent to the Cabinet, adequately amends for the shortcomings of existing legislation on related areas. It does away with discrimination between workers in terms of permanent or contract employment<sup>5</sup>. Employers are to employ workers under a clear contract of service which in case of an employment beyond three months, has to be necessarily drawn in writing<sup>6</sup>. Every body so employed, is a worker and as such is eligible to legal protection in terms of working hours, payment of wages, compensation and arbitrary ouster. The Bill seeks to expand the scope of the law to include all sectors of the economy, including the service sector, within its ambit<sup>7</sup>. The existing Factories Act 1934, or the WP Industrial and Commercial Ordinance 1968, do not adequately cover the service sector.

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<sup>3</sup> The Government of Pakistan, Ministry of Labour, Year Book 2004-2005, ibd. p.8, 43

<sup>4</sup> ibid

<sup>5</sup> The Bill on the Employment and Service Conditions Act, section 3(xl), 5.

<sup>6</sup> Ibid, section 3(xii) read with section 4.

<sup>7</sup> Ibid. section 3(xvii)

Another major improvement upon the existing legislative framework is outright prohibition of child labour in the country<sup>8</sup>. The Bill on Employment and Service Conditions Act seeks to repeal the Employment of Children Act 1992 by prohibiting employment of children below 14 years of age. It, however, introduces the definition of 'young worker' to allow employment of youngsters between 14 to 18 years on light work.

Most importantly, the Bill on Employment and Service Conditions Act, seeks to prescribe deterrent punishments for violations of minimum wage rates, non payment or arbitrary deduction of wages to the workers. A pecuniary fine of not less than Rs.500,000 alongwith imprisonment which may extend to a period of six months is seen to serve as an effective deterrence to ensure compliance of the employers with statutory standards of remuneration<sup>9</sup>. The accountability for compliance not only rests with the immediate employer but also jointly with principal employer. This precludes possibility of exploitation of contract workers. Now the contractor as well as the principal employer both are jointly as well as severally accountable for compliance with the statutory benchmarks<sup>10</sup>. The Bill specifically extends the operation of law to corporations by holding their directors and management liable for legal consequences for non-compliance<sup>11</sup>.

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<sup>8</sup> *ibid.* section 15(a)

<sup>9</sup> *ibid.* section 25 read with 63

<sup>10</sup> *ibid.*, section 21

<sup>11</sup> *ibid.* section 73

### 5.3 Recommendations

The policy and legislative developments discussed above, on the whole, display a growing maturity and continuous improvement in the national statutory framework on corporate social accountability. However, there is still a wide room and need for increased government engagement to ensure that the corporate sector adheres to national and international norms on CSA. Based on the legislative initiatives analysed above, a 'Code of Good Corporate Social Governance' may be drafted on the pattern of 'Code of Good Corporate Governance'. This will help companies to understand the requirements of social compliance and relevant statutory mechanism in a focused perspective. The Security and Exchange Commission of Pakistan (SECP) could play a significant role in launching and promoting such a move. The lessons learnt subsequent to the introduction of the Code of Corporate Good Governance, may inform on better implementation and out comes in the proposed case.

Besides, conscious nexus of the social concerns with the corporate laws may add to the strength and meaning of national CSA framework. The Company's Ordinance 1984, may include provisions ensuring that companies directors are held accountable for the social and environmental impacts of the company's business. This may also be coupled with a legal duty requiring directors to take reasonable steps to reduce and mitigate those impacts. That, in turn, would require directors to integrate report on social compliance in statutory feed back on the overall corporate performance.



Moreover, combining regulatory framework with market mechanisms which enable businesses to meet their obligations at minimum costs e.g. emission trading systems, employee occupational risk and safety insurance etc. may greatly enhance compliance with the CSA standards through least enforcement. This would also help integration of CSA concerns in the mainstream business operations.

Similarly, statutory framework could be further reinforced by creating incentives for businesses to become socially compliant, through complimentary, parallel or subordinate legislation. The measures may range from strong commercial incentives such as tax holidays, government procurement policies, conditions linked to access to export credit etc, to softer incentives like award schemes or government endorsement.

One sure way of expression of such a public acknowledgement could be the official certification of the compliant status of companies. Based on reports and inspection of the enterprises, the social compliance certification may serve as a valuable good will asset for the incumbent companies.

This will, however, require an effective, efficient and credible inspection system. The modern approaches proposed to be adopted in the Labour Inspection Policy may go a long way in bringing about the desired change.

Particularly, establishment of a national inspectorate to coordinate and guide on social compliance, accreditation and involvement of private sector expertise and encouragement of self reporting may greatly supplement the limited inspection resources, enhance coverage, and lend credibility to ultimate certification of compliance. The existing inspection machinery which comprises only labour administration also needs to be expanded through enabling statutory amendments to include representatives of ministries of Industries, Commerce, Health as well as those of workers' and employers' organisations at the strategic level to ensure relevance, objectivity, efficiency and credibility of the system.

To sum up, while there is always a consistent need for improvement, the existing statutory framework on CSA, despite its operational and procedural limitations, does provide a reference point to draw a national parallel with the international regime on corporate social compliance. It also reminds the legal experts, administrators and researchers that shareholders give only one form of capital to a company i.e. financial capital. Companies use other forms of capital too, to deliver value e.g. environmental capital, human capital and social capital, most often provided by other stakeholders. There is little practical likelihood that having a singular duty to shareholders is likely to produce the best outcome for either business or society over all. Companies and directors must, therefore, be accountable for all forms of capital. This can best be achieved by adhering to a credible statutory framework, based on internationally shared norms of CSA.

**APPENDICES**

## APPENDIX - A

### Quintessential Exposition of ILO's Core Conventions<sup>1</sup> and SA-8000

#### A. C-87 Freedom of Association and Protection of the Right to Organise Convention, 1948

*Date of adoption: 09:07:1948*

*Date of Coming Forced: 04:07:1950.*

*Status: Up-to-date instrument. This instrument is one of the fundamental conventions.*

- ◆ Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization.
- ◆ Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
- ◆ Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.
- ◆ In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.

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<sup>1</sup> For detailed text of the ILO Conventions, see [www.ilo.org](http://www.ilo.org)

- ◆ The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.
- ◆ The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
- ◆ Each Member undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

#### **B. C-98 Right to Organise and Collective Bargaining Convention, 1949**

*Date of adoption: 01:07:1949*

*Date of Coming Forced: 18:07:1951*

*Status: Up-to-date instrument. This instrument is one of the fundamental conventions.*

- ◆ Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
- ◆ Such protection shall apply more particularly in respect of acts calculated to--
  - a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
  - b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.
- ◆ Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
- ◆ In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

- ◆ Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise.
- ◆ Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.
- ◆ The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.

**C. C-100 Equal Remuneration Convention, 1951**

*Date of adoption: 29:06:1951*

*Date of Coming Forced: 23:05:1953*

*Status: Up-to-date instrument. This instrument is one of the fundamental conventions.*

- ◆ For the purpose of this Convention: -
  - a) The term *remuneration* includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment;
  - b) The term equal remuneration for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.
- ◆ Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.
- ◆ This principle may be applied by means of—

- a) National laws or regulations;
  - b) Legally established or recognised machinery for wage determination;
  - c) Collective agreements between employers and workers; or
  - (d) A combination of these various means.
- ◆ Each Member shall co-operate as appropriate with the employers' and workers' organisations concerned for the purpose of giving effect to the provisions of this Convention.

#### **D. C-29 Forced Labour Convention 1930**

*Date of adoption: 28.06:1930.*

*Date of Coming Forced: 01:05:1932.*

*Status: Up-to-date instrument. This instrument is one of the fundamental conventions.*

- ◆ Each Member of the International Labour Organization, which ratifies this Convention, undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.
- ◆ For the purposes of this Convention the term *forced or compulsory labour* shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.
- ◆ Nevertheless, for the purposes of this Convention, the term *forced or compulsory labour* shall not include: -
  - (a) Any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
  - (b) Any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country;
  - (c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and

that the said person is not hired to or placed at the disposal of private individuals, companies or associations;

- (d) any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;
  - (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.
- ◆ The competent authority shall not impose or permit the imposition of forced or compulsory labour for the benefit of private individuals, companies or associations.
  - ◆ No concession granted to private individuals, companies or associations shall involve any form of forced or compulsory labour for the production or the collection of products which such private individuals, companies or associations utilize or in which they trade.
  - ◆ The responsibility for every decision to have recourse to forced or compulsory labour shall rest with the highest civil authority in the territory concerned.
  - ◆ Nevertheless, that authority may delegate powers to the highest local authorities to exact forced or compulsory labour, which does not involve the removal of the workers from their place of habitual residence.
  - ◆ Except as otherwise provided for in Article 10 of this Convention, any authority competent to exact forced or compulsory labour shall, before deciding to have recourse to such labour, satisfy itself—
    - (a) That the work to be done or the service to be rendered is of important direct interest for the community called upon to do work or render the service;
    - (b) That the work or service is of present or imminent necessity;



- ◆ Thereafter, this Convention shall come into force for any Member twelve months after the date on which the ratification has been registered.

**E. C-105 Abolition of Forced Labour Convention, 1957**

*Date of adoption: 25:06:1957*

*Date of Coming Forced: 17:01:1959*

*Status: Up-to-date instrument. This instrument is one of the fundamental conventions.*

- ◆ Each Member undertakes to suppress and not to make use of any form of forced or compulsory labour—
  - a) As a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
  - b) As a method of mobilising and using labour for purposes of economic development;
  - (c) As a means of labour discipline;
  - (d) As a punishment for having participated in strikes;
  - (e) As a means of racial, social, national or religious discrimination.
- ◆ Each Member further undertakes to take effective measures to secure the immediate and complete abolition of forced or compulsory labour.

**F. C-111 Discrimination (Employment and Occupation) Convention, 1958**

*Date of adoption: 25:06:1958*

*Date of Coming Forced: 15:06:1960*

*Status: Up-to-date instrument. This instrument is one of the fundamental conventions.*

- ◆ For the purpose of this Convention the term *discrimination* includes-- (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- c) Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or

occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

- ◆ Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.
- ◆ For the purpose of this Convention the terms *employment* and [ occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.
- ◆ Each Member undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.
- ◆ Each Member further undertakes, by methods appropriate to national conditions and practice--
  - a) To seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of this policy;
  - b) To enact such legislation and to promote such educational programmes as may be calculated to secure the acceptance and observance of the policy;
  - c) To repeal any statutory provisions and modify any administrative instructions or practices which are inconsistent with the policy;
  - d) To pursue the policy in respect of employment under the direct control of a national authority;
  - e) To ensure observance of the policy in the activities of vocational guidance, vocational training and placement services under the direction of a national authority;
  - f) To indicate in its annual reports on the application of the Convention the action taken in pursuance of the policy and the results secured by such action.

**G. C-138 Minimum Age Convention, 1973**

*Date of adoption: 26:06:1973*

*Date of Coming Forced: 19:06:1976*

*Status: Up-to-date instrument. This instrument is one of the fundamental conventions.*

- ◆ Each Member undertakes to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.
- ◆ Each Member shall specify, a minimum age for admission to employment or work within its territory. No one under that age shall be admitted to employment or work in any occupation.
- ◆ The minimum age specified shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.
- ◆ Notwithstanding the above provisions, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.
- ◆ The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.
- ◆ The types of employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist.
- ◆ Notwithstanding the above provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organisations of employers and workers concerned, where such exist, authorise employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

- ◆ In so far as necessary, the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise.
- ◆ A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.
- ◆ This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of--
  - a) a course of education or training for which a school or training institution is primarily responsible;
  - b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
  - c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.
- ◆ National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is—
  - a) not likely to be harmful to their health or development; and
  - b) not such as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.
- ◆ National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but have not yet completed their compulsory schooling on work which meets the requirements set forth in the preceding paragraphs.
- ◆ All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

- ◆ National laws or regulations or the competent authority shall define the persons responsible for compliance with the provisions giving effect to the Convention.
- ◆ National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

#### H. C-182 Worst Forms of Child Labour Convention, 1999

*Date of adoption: 17:06:1999*

*Date of Coming Forced: 19:11:2000*

*Status: Up-to-date instrument. This instrument is one of the fundamental conventions.*

- ◆ Each Member shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.
- ◆ For the purposes of this Convention, the term *child* shall apply to all persons under the age of 18.
- ◆ For the purposes of this Convention, the term *the worst forms of child labour* comprises:
  - a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
  - b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
  - c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
  - d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.
- ◆ Each Member shall, after consultation with employers' and workers' organizations, establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to this Convention.

- ◆ Each Member shall design and implement programmes of action to eliminate as a priority the worst forms of child labour.
- ◆ Such programmes of action shall be designed and implemented in consultation with relevant government institutions and employers' and workers' organizations, taking into consideration the views of other concerned groups as appropriate.
- ◆ Each Member shall take all necessary measures to ensure the effective implementation and enforcement of the provisions giving effect to this Convention including the provision and application of penal sanctions or, as appropriate, other sanctions.
- ◆ Each Member shall, taking into account the importance of education in eliminating child labour, take effective and time-bound measures to:
  - a) prevent the engagement of children in the worst forms of child labour;
  - b) provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration;
  - c) ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
  - d) identify and reach out to children at special risk; and
  - (e) take account of the special situation of girls.
- ◆ Each Member shall designate the competent authority responsible for the implementation of the provisions giving effect to this Convention.
- ◆ Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education.

**I. ILO Declaration of Fundamental Principles  
and rights at Work and it follow-up<sup>2</sup>**

*Adopted in 1998*

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- ◆ Economic growth is essential but not sufficient to ensure equity, social progress and the eradication of poverty, confirming the need for the ILO to promote strong social policies, justice and democratic institutions;
- ◆ The ILO should, no more than ever, draw upon all its standard-setting, technical cooperation and research resources in all its areas of competence, in particular employment, vocational training and working conditions, to ensure that, in the context of a global strategy for economic and social development, economic and social policies are mutually reinforcing components in order to create broad-based sustainable development;

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- ◆ In seeking to maintain the link between social progress and economic growth, the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned to claim freely and on the basis of equality of opportunity their fair share of the wealth which they have helped to generate, and to achieve fully their human potential;
- ◆ The ILO is the constitutionally mandated international organization and the competent body to set and deal with international labour standards, and enjoys universal support and acknowledgement in promoting fundamental rights at work and the expression of its constitutional principles;
- ◆ It is urgent, in a situation of growing economic interdependence, to reaffirm the immutable nature of the fundamental principles and rights embodied in the Constitution of the Organization and to promote their universal application;

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- ◆ All Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely:

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<sup>2</sup> The declaration has been purposely included in the appendix to highlight the resolve of the world community for social accountability, distributive justice and adherence to the principles laid down in the core conventions.

- a) freedom of association and the effective recognition of the right to collective bargaining;
- b) the elimination of all forms of forced or compulsory labour;
- c) the effective abolition of child labour; and
- d) the elimination of discrimination in respect of employment and occupation.

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- ◆ To give full effect to this Declaration, a promotional follow-up, which is meaningful and effective, shall be implemented.
- ◆ the labour standards should not be used for protectionist trade purposes, and that nothing in this Declaration and its follow-up shall be invoked or otherwise used for such purposes; in addition, the comparative advantage of any country should in no way be called into question by this Declaration and its follow-up.

**J. Social Accountability 8000(SA-8000)<sup>3</sup>**  
**Social Accountability International**  
*Launched in 2001*

**I. PROPOSE AND SCOPE**

This standard specifies requirements for social accountability to enable a company to:

- a) develop, maintain, and enforce policies and procedures in order to manage those issues which it can control or influence;
- b) demonstrate to interested parties that policies, procedures and practices are in conformity with the requirements of this standard.

The requirements of this standard shall apply universally with regard to geographic location, industry sector and company size.

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<sup>3</sup> See for details [www.cepaa.org/sa8000.htm](http://www.cepaa.org/sa8000.htm)



## II. *NORMATIVE ELEMENTS AND THEIR INTERPRETATION*

The company shall comply with national and other applicable law, other requirements to which the company subscribes, and this standard. When national and other applicable law, other requirements to which the company subscribes, and this standard address the same issue, that provision which is most stringent applies.

The company shall also respect the principles of the following international instruments:

ILO Conventions 29 and 105 (Forced & Bonded Labour)

ILO Convention 87 (Freedom of Association)

ILO Convention 98 (Right to Collective Bargaining)

ILO Conventions 100 and 111 (Equal remuneration for male and female workers for work of equal value; Discrimination)

ILO Conventions 135 (Workers' Representatives Convention)

ILO Convention 138 & Recommendation 146 (Occupational Safety & Health)

ILO Convention 159 (Vocational Rehabilitation & Employment/Disabled Persons)

ILO Convention 177 (Home Work)

ILO Convention 182 (Worst Forms of Child Labour)

Universal Declaration of Human Rights

The United Nations Convention on the rights of the Child

The United Nations Convention to Eliminate All Forms of Discrimination Against Women.

***Definition of Company:*** The entirety of any organization or business entity responsible for implementing the requirements of this standard, including all personnel (i.e., directors, executives, management, supervisors and non-management staff, whether directly employed, contracted or otherwise representing the company.

**Definition of Supplier/Sub-Contractor:** A business entity which provides the company with goods and/or services integral to, and utilized in/for, the production of the supplier's and/or company'

**Definition of Sub-Suppliers:** A business entity in the supply chain which, directly or indirectly, provides the supplier with goods and/or services integral to, and utilized in/for, the production of the supplier's and/or company's goods and/or services.

**Definition of Corrective Action:** The implementation of a systemic change or solution to ensure an immediate and ongoing remedy to nonconformance.

**Definition of Interested Party:** Individual or group concerned with or affected by social performance of company.

**Definition of Child:** Any person less than 15 years of age, unless local minimum age law stipulates a higher age for work or mandatory schooling, in which case the higher age would apply. If, however, local minimum age law is set at 14 years of age in accordance with developing-country exceptions under ILO Convention 138, the lower age will apply.

**Definition of Young Worker:** Any workers over the age of a child as defined above and under the age of 18

**Definition of child labour:** Any work by a child younger than the age (s) specified in the above definition of a child, except as provided for by ILO Recommendation 148.

**Definition of forced labour:** All work or service that is extracted from any person under the menace of any penalty for which said person has not offered him/herself voluntarily or for which such work or service is demanded as a means of repayment of debt.

**Definition of redemption of children:** All necessary support and actions to ensure the safety, health, education, and development of children who have been subjected to child labour, as defined above, and are dismissed.

**Definition of Homework:** A person who carries out work for a company under direct or indirect contract, other than on a company's for remuneration, which results in the provision of a product or service as specified by the employer, irrespective of who supplies the equipment, material or other inputs used.

### **III. SOCIAL ACCOUNTABILITY REQUIREMENTS**

#### **1. CHILD LABOUR**

*Criteria:*

- 1.1 The company shall not engage in or support the use of child labour as defined above.
- 1.2 The company shall establish, document, maintain, and effectively communicate to personnel and other interested parties policies and procedures for redemption of children found to be working in situations which fit the definition of child labour above, and shall provide adequate support to enable such children to attend and remain in school until not longer a child as defined above.
- 1.3 The company shall establish, document, maintain, and effectively communicate to personnel and other interested parties policies and procedures for promotion of education for children covered under ILO Recommendation 146 and young workers who are subject to local compulsory education laws or are attending school, including means to ensure that no such child or young worker is employed during school hours and that combined hours of daily transportation (to and from work and school), school, and work time does not exceed 10 hours a day.
- 1.4 The company shall not expose children or young workers to situations in or outside of the workplace that are hazardous, unsafe, or unhealthy.

#### **2. FORCED LABOUR**

*Criterion:*

- 2.1 The company shall not engaged in or support the use of forced labour, nor shall personnel be required to lodge 'deposits' or identity papers upon commencing employment with the company.

#### **3. HEALTH AND SAFETY**

*Criteria:*

- 3.1 The bearing in mind the prevailing knowledge of the industry and of any specific hazards, shall provide a safe and healthy working environment and shall take adequate steps to prevent accidents and injury to health arising out of, associated with or occurring in the course of work, by minimizing, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- 3.2 The company shall appoint a senior management representative responsible for the health and safety of all personnel, and accountable for the implementation of the Health and Safety elements of this standard.

- 3.3 The company shall ensure that all personnel receive regular and recorded health and safety training, and that such training is repeated for new and reassigned personnel.
- 3.4 The company shall establish systems to detect, avoid or respond to potential threats to the health and safety of all personnel.
- 3.5 The company shall provide, for use by all personnel, clean bathrooms, access to potable water and, if appropriate sanitary facilities for food storage.
- 3.6 The company shall ensure that, if provided for personnel, dormitory facilities are clean, safe, and meet the basic needs of the personnel.

**4. FREEDOM OF ASSOCIATION & RIGHT TO COLLECTIVE BARGAINING**

*Criteria:*

- 4.1 The company shall respect the right of all personnel to form and join trade unions of their choice and to bargain collectively.
- 4.2 The company shall, in those situations in which the right to freedom of association and collective bargaining are restricted under law, facilitate parallel means of independent and free association and bargaining for all such personnel.
- 4.3 The company shall ensure that representatives of such personnel are not the subject of discrimination and that such representatives have access to their members in the workplace.

**5. DISCRIMINATION**

*Criteria:*

- 5.1 The company shall no engage in or support discrimination in hiring, remuneration, access to training, promotion, termination or retirement based on race, caste, national origin, religion, disability, gender, sexual orientation, union membership, political affiliation, or age.
- 5.2 The company shall not interfere with the exercise of the rights of personnel to observe tenets or practices, or to meet needs relating to race, caste, national origin, religion, disability, gender, sexual orientation, union membership, or political affiliation.

5.3 The company shall not allow behavior, including gestures, language and physical contact, that is sexually coercive, threatening, abusive or exploitative.

## 6. DISCIPLINARY PRACTICES

### *Criterion:*

6.1 The company shall not engage in or support the use of corporal punishment, mental or physical coercion, and verbal abuse.

## 7. WORKING HOURS

### *Criteria:*

7.1 The company shall comply with applicable laws and industry standards on working hours. The normal workweek shall be as defined by law but shall not on a regular basis exceed 48 hours. Personnel shall be provided with at least one day off in every seven-day period. All overtime work shall be reimbursed at a premium rate and under no circumstances shall exceed 12 hours per employee per week

7.2 Other than as permitted in Section 7.3 (below), overtime work shall be voluntary.

7.3 Where the company is party to a collective bargaining agreement freely negotiated with worker organizations (as defined by the ILO) representing a significant portion of its workforce, it may require overtime work in accordance with such agreement to meet short-term business demand. Any such agreement must comply with the requirements of Section 7.1 (above).

## 8. REMUNERATION

### *Criteria:*

8.1 The company shall ensure that wages paid for a standard working week shall always meet at least legal or industry minimum standards and shall be sufficient to meet basic needs of personnel and to provide some discretionary income.

8.2 The company shall ensure that deductions from wages are not made for disciplinary purposes, and shall ensure that wage and benefits composition are detailed clearly and regularly for workers; the company shall also ensure that wages and benefits are rendered in full compliance with all applicable laws and that remuneration is rendered either in cash or check form, in a manner convenient to workers.

8.3 The company shall ensure that labour-only contracting arrangements and false apprenticeship schemes are not undertaken in an effort to avoid fulfilling its obligations to personnel under applicable laws pertaining to labour and social security.

9. MANAGEMENT SYSTEM

*Criteria:*

*Policy*

- 9.1 Top management shall define the company's policy for social accountability and labour conditions to ensure that it:
- a) includes a commitment to conform to all requirements of this standard;
  - b) includes a commitment to comply with national and other applicable law, other requirements to which the company subscribes and to respect the international instruments and their interpretation (as listed in Section II);
  - c) includes a commitment to continual improvement;
  - d) is effectively documents, implemented, maintained, communicated and is accessible in a comprehensible form to all personnel, including, directors, executives, management, supervisors, and staff, whether directly representing the company;
  - e) is publicly available.

*Management Review*

9.2 Top management shall periodically review the adequacy, suitability, and continuing effectiveness of the company's policy, procedures and performance results vis-a-vis the requirements of this standard and other requirements to which the company subscribes. System amendments and improvements shall be implemented where appropriate.

*Company Representatives*

- 9.3 The company shall appoint a senior management representative who, irrespective of other responsibilities, shall ensure that the requirements of this standard are met.
- 9.4 The company shall provide for non-management personnel to choose a representative from their own group to facilitate communication with senior management on matters related to this standard.

**Planing and Implementation**

- 9.5 The company shall ensure that the requirements of this standard are understood and implemented at all levels of the organization; methods shall include, but are not limited to:
- a) clear definition of roles, responsibilities, and authority;
  - b) training of new and/or temporary employees upon hiring;
  - c) periodic training and awareness programs for existing employees;
  - d) continuous monitoring of activities and results to demonstrate the effectiveness of systems implemented to meet the company's policy and the requirements of this standard.

**Control of Suppliers/Subcontractors and Sub-Suppliers**

- 9.6 The company shall establish and maintain appropriate procedures to evaluate and select suppliers/subcontractors (and, where appropriate, sub-suppliers) based on their ability to meet the requirements of the standard.
- 9.7 The company shall maintain appropriate records of suppliers/subcontractors (and, where appropriate, sub-suppliers') commitments to social accountability, including, but not limited to, the written commitment of those organizations to:
- a) conform to all requirements of this standard (including this clause);
  - b) participate in the company's monitoring activities as requested;
  - c) promptly implement remedial and corrective action to address any nonconformance identified against the requirements of this standard;
  - d) promptly and completely inform the company of any and all relevant business relationship(s) with other suppliers/subcontractors and sub-suppliers.
- 9.8 The company shall maintain reasonable evidence that the requirements of this standard are being met by suppliers and subcontractors.
- 9.9 In addition to the requirements of Sections 9.6 and 9.7 above, where the company receives, handles or promotes goods and/or services from suppliers/subcontractors or sub-suppliers who are classified as homeworks, the company shall take special steps to ensure that such homeworks are afforded a similar level of protection as would be afforded to directly employed personnel under the requirements of this standard. Such special steps shall include but not be limited to:
- a) establishing legally binding, written purchasing contracts requiring conformance to minimum criteria (in accordance with the requirements of this standard);

- b) ensuring that the requirements of the written purchasing contract are understood and implemented by homeworkers and all other parties involved in the purchasing contract;
- c) maintaining, on the company premises, comprehensive records detailing the identities of homeworkers; the quantities of goods produced/services provided and/or hours worked by each homeworker;

**Addressing Concerns and Taking Corrective Action**

- 9.10 The company shall investigate, address, and respond to the concerns of employees and other interested parties with regard to conformance/nonconformance with the company's policy and/or the requirements of the standard; the company shall refrain from disciplining, dismissing or otherwise discriminating against any employee for providing information concerning observance of the standard..
- 9.11 The company shall implement remedial and corrective action and allocate adequate resources appropriate to the nature and severity of any nonconformance identified against the company's policy and/or the requirements of the standard

**Outside Communication**

- 9.12 The company shall establish and maintain procedures to communicate regularly to all interested parties data and other information regarding performance against the requirements of this document, including, but not limited to, the results of management reviews and monitoring activities.

**Access for Verification**

- 9.13 Where required by contract, the company shall provide reasonable information and access to interested parties seeking to verify conformance to the requirements of this standard; where further required by contract, similar information and access shall also be afforded by the company's suppliers and subcontractors through the incorporation of such a requirement in the company's purchasing contracts.

**Records**

- 9.14 The company shall maintain appropriate records to demonstrate conformance to the requirements of this standard.



## APPENDIX - B

## Survey of Major International Initiatives on Corporate Social Responsibility/Accountability

## INTER GOVERNMENTAL

Initiative	Lead organization(s)	Description and objective
<b>The Universal declaration of Human Rights (1948)</b> <a href="http://www.un.org/overview/rights">www.un.org/overview/rights</a>	General Assembly of the United Nations	<ul style="list-style-type: none"> <li>◆ The Declaration has since served as the starting point for many emerging international human rights standards as well as standards adopted by both private and public sector entities with transnational operations.</li> <li>◆ The Declaration states that 'every individual and organ of society' has the responsibility to strive to 'promote respect for these rights and freedoms' and 'by progressive measures, national and international, to secure their universal and national recognition and observance'. As important 'organs' of society, businesses have a responsibility to promote worldwide respect of human right. Human rights concerns of particular interest for businesses and their employees include labour standards, management of security forces, and indigenous people's rights.</li> </ul>
<b>27 Principles of the Rio Declaration (1992)</b> <a href="http://www.worldsummit2002.org/index.htm?http://www.worldsummit2002.org/guide/riodeclar.htm">www.worldsummit2002.org/index.htm?http://www.worldsummit2002.org/guide/riodeclar.htm</a>	United Nations Conference on Environment and Development(UNCED)	<ul style="list-style-type: none"> <li>◆ A set of twenty-seven principles on the environment and development designed to promote international cooperation for sustainable development. They define the rights and responsibilities of nations as they pursue human development and well being.</li> <li>◆ Based on the notion of sustainable development, the Declaration defines a number of basic principles (e.g., precaution approach to environment polluter pays principle, the right to development). The meetings at Rio de Janeiro also produced other significant documents: Agenda 21 provides guidance for governments, business and individuals on how to contribute towards making development socially, economically and environmentally sustainable. If encourage voluntary adoption of CSR initiatives in business processes</li> <li>◆ The UN framework Convention on Climate Change, the convention on Bio-diversity and a statement of principle of corporate management were also signed by many governments during the Rio meetings.</li> </ul>
<b>UNCTC Voluntary Code of Conduct for Transnational Corporations (1977)</b> <a href="http://unctc.unctad.org/html/UNCTC Evolution htm">http://unctc.unctad.org/html/UNCTC Evolution htm</a>	United Nations Centre of Transnational Corporations(UNCTC)	<ul style="list-style-type: none"> <li>◆ In 1977, the UNCTC began negotiations to establish a voluntary Draft Code of Conduct on Transnational Corporations. The code, which included environmental objectives, delineated both the rights and the responsibilities of transnational corporations. But the UNCTC was eliminated in 1992 under pressure from the United States. The code was never finalized.</li> <li>◆ The Centre has since been disbanded and preparation of the code has been abandoned.</li> </ul>
<b>UN Convention Against Corruption</b>	General Assembly of	<ul style="list-style-type: none"> <li>◆ In January 2001, the UN general Assembly, recognizing the desirability of an effective international legal</li> </ul>

<p>(2001) - <i>coalitions/intern.institutions/un/un-convention.html</i></p>	<p>the United Nations</p>	<p>instrument against corruption, decided to given the elaboration of such an instrument and to establish an ad hoc committee for negotiation, pursuant to the adoption of the terms of reference for the negotiation. The terms of reference call for the convention to be developed through a comprehensive and Multidisciplinary Appraisal and importantly identifies some 'indicative elements'; i.e. definitions; scope; protection of Sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; commitment transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation.</p> <p>The Ad Hoc Committee concluded the drafting of the UN Convention against Corruption in October 2003, open Convention for signature on 9 December 2003.</p>
<p>The UN Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights.(Commonly non as UN Norms) <i>www.unhchr.ch/</i></p>	<p>UNHCR</p>	<ol style="list-style-type: none"> <li>1. States have primary responsibility for human rights. But 'within their respective aspheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfillment of, respect, ensure respect of and protect of and protect human rights.....'</li> <li>2. Right of equal opportunity and non-discriminatory treatment.</li> <li>3. No engaging in or benefiting from violations of law such as war crimes, forced labour, torture, etc.</li> <li>4. Observe international human rights norms and domestic law in security arrangements.</li> <li>5. No forced or compulsory labour.</li> <li>6. Protect rights of children to be protected from economic exploitation.</li> <li>7. Provide a safe and healthy working environment.</li> <li>8. Remuneration shall be enough to provide adequate standard of living, with a view to progressive improvement.</li> <li>9. Ensure freedom of association and collective bargaining.</li> <li>10. Recognize and respect norms of international law as well as national law, the rule of law, the prohibition of corruption, etc</li> <li>11. No offering or knowingly benefiting from or condoning bribery.</li> <li>12. Respect economic, social and cultural rights (ESCRs) as well as civil and political rights (CPRs) and contribute to their realization.</li> <li>13. Act in accordance with fair marketing, etc., observe precautionary principle and not produce harmful products.</li> <li>14. Act in accordance with domestic and international agreements on the environment, and contribute to the wiser goal of sustainable development.</li> <li>15. Adopt/disseminate/implement internal rules complying with UN Norms, including with subcontractors etc.</li> <li>16. Transparent, independent and periodic monitoring and verification of UN Norms application.</li> <li>17. States of establish necessary framework for UN Norms implementation.</li> </ol> <p>♦ The Global Compact is a voluntary corporate citizenship initiative with two objectives;</p>

<p><b>United Nation Global Compact (2002)</b> <i>www.unglobalcompact.org/portal/</i></p>	<p><b>A direct initiative of the Secretary General of the UN (Kofi Annan)</b></p>	<ol style="list-style-type: none"> <li>1. Mainstream the Nine Principles in business activities around the world; and</li> <li>2. Catalyze actions in support of UN goals.</li> </ol> <ul style="list-style-type: none"> <li>◆ The Nine Principles (which became ten principles in June 2004) draw upon the areas of human rights, labour and environment: <ol style="list-style-type: none"> <li>1. Business should support and respect the protection of internationally proclaimed human rights with their sphere of influence.</li> <li>2. Businesses should make sure that they are not complicit in human rights abuses.</li> <li>3. Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.</li> <li>4. Business should uphold the elimination of all forms of forced and compulsory labour.</li> <li>5. Business should uphold the effective abolition of child labour.</li> <li>6. Business should eliminate discrimination in respect of employment and occupation.</li> <li>7. Business should support a precautionary approach to environmental challenges.</li> <li>8. Business should undertake initiatives to promote greater environmental responsibility.</li> <li>9. Business should encourage the development and diffusion of environmentally friendly technologies; and</li> <li>10. Business should work against corruption in all its forms, including extortion and bribery.</li> </ol> </li> <li>◆ Global Compact operates through collective action, facilitation and engagement through several mechanisms, e.g. dialogues, learning, local structures and projects.</li> <li>◆ The Global Compact is a network, a truly global political forum, and an authoritative convener and facilitator. A are the Global compact Office and five Un agencies: the Office of the High Commissioner for Human Rights; to Nations environment Programme; the International labour Organization; the United Nations Development Programme and the United Nations Industrial Development Organization.</li> </ul>
<p><b>Global Reporting Initiative (1999)</b> <i>about/brief.asp</i></p>	<p><b>Started by the Coalition of Environmentally responsible economies (CERES)</b> <b>An official collaborating centre of the United Nations Environment Programme (UNEP) and works in co-operation with Global Compact</b></p>	<ul style="list-style-type: none"> <li>◆ An international reporting standard rather than a performance standard.</li> <li>◆ A permanent, independent, international body with multi-stakeholder governance structure. Incorporates the participation of corporations, non-governmental organizations, international organizations, United Nations agencies, consultant, accountancy organizations, business associations, universities and other stakeholders from around the world.</li> <li>◆ It aims to support global progress towards sustainable development. Intends the Sustainability Reporting Guideline to become the generally accepted, broadly adopted worldwide framework for preparing, communicating and requesting information about corporate performance.</li> <li>◆ Its mission is to promote international harmonization in the reporting of relevant and credible corporate environmental social and economic performance information to enhance responsible decision-making. The GRI pursues this mission through a multi-stakeholder process of open dialogue and collaboration in the design and implementation of widely applicable sustainability reporting guidelines.</li> <li>◆ It refers to International Labour Standards as reporting benchmarks on social performance</li> </ul>

<p><b>Engaging stakeholders and Global Reporters Programme (1995)</b></p>	<p><b>UNEP Division for Technology, Industry and Economics Sustainability Ltd</b></p>	<ul style="list-style-type: none"> <li>◆ The Engaging Stakeholders and Global Reporters Programme is a joint project between Sustainability Ltd and Division for technology, Industry and Economics.</li> <li>◆ The programme aims to assist corporate leaders to better understand their stakeholders' needs for communication accountability, to build trust and demonstrate accountability, and to understand the wider implication of being accountable for their own business. The programme also evaluates progress made by corporations in using the Global Reporting Initiative (GRI) Guidelines to develop and improve their sustainability reporting.</li> <li>◆ The programme aims to increase the number of companies producing sustainability reports, promotes quality and comprehensive reporting with stakeholder involvement, and promotes greater comparability of reporting within the industry sectors.</li> <li>◆ The most recent global benchmark survey of corporate sustainability reporting was published by UNEP and Sustainability with Standards &amp; Poors under the title 'Risk &amp; Opportunity' in November 2004.</li> </ul>
<p><b>The world Commission on the Social Dimension of globalization (2002)</b>  <a href="http://www.ilo.org/pubic/english/wcsdg/policy/index.htm">www.ilo.org/pubic/english/wcsdg/policy/index.htm</a></p>	<p><b>International Labour Organization (ILO)</b></p>	<ul style="list-style-type: none"> <li>◆ The Commission is an independent body. It was initiated to respond to the needs of people as they cope with the unprecedented changes that globalization has brought to their lives, their families and the societies in which they live.</li> <li>◆ Through a series of consultations with important actors in the globalization process the Commission looks at the facets of globalization, the diversity of public perceptions of the process, and its implications for economic and social progress.</li> <li>◆ It searches for innovative ways of combining economic, social and environmental objectives, based on worldwide expertise.</li> <li>◆ It examines the following topics:             <ol style="list-style-type: none"> <li>1. Values and goals in the context of globalization,</li> <li>2. Making the benefits of globalization more inclusive,</li> <li>3. Policies for inclusion at the national level,</li> <li>4. Local markets and policies in a global context,</li> <li>5. Cross-border networks of production and technology to promote decent work, growth and development,</li> <li>6. International migration and the global policy agenda.</li> <li>7. International governance for inclusive globalization, and</li> <li>8. Cross-cutting themes.</li> </ol> </li> <li>◆ The Commission publicized its recommendations in the report 'A Fair Globalization: Creating Opportunities for All' in February 2004.</li> </ul>
<p><b>ILO Declaration of Fundamental Principles and Rights of work (1998)</b>  <a href="http://www.ilo.org/public/english/standards/d ecl/declaration/text/">www.ilo.org/public/english/standards/d ecl/declaration/text/</a></p>	<p><b>International Labour Organization (ILO)</b></p>	<ul style="list-style-type: none"> <li>◆ Based on the core labour standards outlined in the ILO Conventions 87 and 98 (freedom of association and the recognition of the right to collective bargaining), Convention 29 and 105 (elimination of all forms of forced or compulsory labour), Conventions 138 and 182 (elimination of child labour) and Conventions 100 and 111 (elimination discrimination in respect of employment and occupation).</li> <li>◆ The aim of the Declaration is to reconcile the desire to stimulate national efforts to ensure that social</li> </ul>

		<p>progress go hand in hand with economic progress and the need to respect the diversity of circumstances, possibilities and preference individual countries.</p> <ul style="list-style-type: none"> <li>◆ The Declaration is not binding but applies to all ILO states by virtue of their membership in the ILO. It contains mechanism for annual review of the efforts made by member states that have not yet ratified the core labour standards conventions.</li> <li>◆ Its ultimate aim are to provide a basis for ILO assistance to member states in establishing these rights in law and to allow for ratification of the conventions.</li> </ul>
<b>ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977)</b>	<b>International Labour Organization (ILO)</b>	<ul style="list-style-type: none"> <li>◆ This is a global instrument designed to provide guidelines to governments, employers and workers in areas of employment raining, conditions of work and industrial relations. All core labour standards are covered in the Declaration. Is a non-binding instrument, its implementation is nevertheless the object of regular reviews and there is a process examining disagreements concerning its application by means of an interpretation of its provisions.</li> </ul>

**ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD)**

<b>Initiative</b>	<b>Lead organization (s)</b>	<b>Description and objective</b>
<b>OECD Guidelines for Multinational Enterprises (2000)</b>	<b>OECD</b>	<ul style="list-style-type: none"> <li>◆ A set of voluntary guidelines for promoting appropriate business conduct among multinational companies.</li> <li>◆ These Guidelines aim to help corporations, labour unions and NGOs meet this challenge by providing a solid framework for responsible corporate conduct. The guidelines cover topics such as disclosure, the environment, combating bribery, consumer interest, science and technology, taxation and competition.</li> <li>◆ Governments adhering to the guidelines encourage the companies operating within the countries to observe the guideline wherever they operate.</li> </ul>

**OTHER GLOBAL INITIATIVES, STANDARDS AND BENCHMARKS**

<b>The Global Sullivan Principles (1999)</b> <a href="http://globalsullivanprinciples.org/principles.htm">http://globalsullivanprinciples.org/principles.htm</a> .	<b>Written by Reverend Leon Sullivan, endorsed by several multinationals</b>	<ul style="list-style-type: none"> <li>◆ An aspirational standard.</li> <li>◆ The objectives of the Global Sullivan Principles are to support economic, social and political justice by companies where they do business; to support human rights and to encourage equal opportunity at all level of employment including racial and gender diversity on decision-making committees and boards; to train and advance disadvantaged workers for technical, supervisory and management opportunities; and to encourage greater tolerance and understanding among peoples; thereby helping to improve the quality of life for communities, workers and children with dignity and equality.</li> </ul>
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		<ul style="list-style-type: none"> <li>◆ Companies endorse the Principles by publicly pledging to integrate them into their operations.</li> <li>◆ Continuing support requires that companies provide an annual letter to Reverend Sullivan restating the companies commitment and outlining progress to date.</li> </ul>
<b>Global Framework Agreements</b>	<b>Negotiated by a trade union- usually an International Trade Secretariat (ITS) within an MNC</b>	<ul style="list-style-type: none"> <li>◆ Global Framework Agreements are agreements negotiated by a trade union organization, usually an International Trade Secretariat (ITS, with an MNC.</li> <li>◆ They specify minimum labour standards and rights associated with freedom of association and collective bargaining but can vary considerably in terms of their provisions for joint labour-management follow-up procedures and negotiations.</li> <li>◆ The agreements are increasingly being signed by union federations with major multinationals. By late 2002 there were a total of 20 Framework Agreements involving 20 corporations.</li> </ul>
<b>AA1000 Assurance Module (1999)</b> <i>www.accountability.org.uk/aa1000</i>	<b>Accountability</b>	<ul style="list-style-type: none"> <li>◆ The AA1000 series addresses the need for more credible reporting and corporate accountability.</li> <li>◆ The module is designed to engage a wide array of stakeholders, and calls for the integration of stakeholder dialogue processes into daily corporate activities and generation of effective indicators, targets and reporting systems. Through planning, accounting, and reporting the AA-100 Assurance Module attempts to facilitate the quest for sustainable development.</li> </ul>
<b>Fair Labour Association</b> <i>www.fairlabor.org/all/code/</i>	<b>Fair Labour Association</b>	<ul style="list-style-type: none"> <li>◆ In an effort to promote global adherence to international labour standards and improve working conditions, the Fair Labour Association has established a Workplace Code of Conduct, which is based on the core labour standards the International Labour Association.</li> <li>◆ The code deals with issues such as forced labour, child labour, overtime compensation, harassment and abuse, gender discrimination, health and safety, freedom of association, collective bargaining, wages and benefits, and hours of work, and is designed to advance fair, decent and humane working conditions.</li> </ul>
<b>Amnesty International's Human Rights Guidelines for Companies</b> <i>www/a,emstupr/il/business/pubs/hrgc.shtml</i>	<b>Amnesty</b>	<ul style="list-style-type: none"> <li>◆ The international human rights organization Amnesty International had developed a set of guidelines for companies wishing to integrate human rights policies into their management systems. These are based on international protocols founded on the Universal Declaration of Human rights. The guidelines' scope enshrined in the UDHR covers all aspects of companies' performances as it relates or potentially impacts on human rights. The company must implement policy in the following key area security, community engagement, and freedom from discrimination, freedom from slavery, and health and safety.</li> </ul>
<b>SIGMA Guidelines</b> <i>www.projectssigma.com</i>	<b>SIGMA</b>	<ul style="list-style-type: none"> <li>◆ Sigma stands for Sustainability, integrated guidelines for Management. In mathematics, the sigma symbol- { - represents the sum of several parts, which is appropriate for a project that's all about integration. The SIGMA Project is a partnership between the British Instruments Institution, Accountability and Forum for the Future. SIGMA aims to increase the social, economic and environmental performance of organizations - irrespective of size of sector - to develop and integrated approach to managing sustainability. It has developed a set of guidelines based upon a set of principles and management framework that brings together the following instruments. Balanced Scorecard; AA1000; the global Reporting Initiatives;</li> </ul>

## **APPENDIX-C**

### **A Triple Bottom Line Nexus of Corporate Social Accountability**

Traditionally, corporate operations seek to allocate a return only for financial capital, which is provided by the shareholders. However, financial capital alone cannot create economic value. Therefore, corporations need to employ social and environmental capital as well to earn a profit. Inherently, such an economic return, thus, includes allocations, which companies owe to their social and natural environment. Generally, the companies, however, shift the costs of such type of capital to society, in terms of social exploitation, environmental pollution, and unfair economic practices. Employees have to suffer arbitrary employment conditions, community has to pay fictitious prices for substandard commodities and society at large has to sustain irreparable damage to its environmental and material resources. In the long run, the process leads to an indecent work culture, unproductive work force, economic disparity, social tension, and environmental degradation and to an over-all economic regression.

Sustainability of development and an inclusive economic growth thus require of companies to also account for the costs and return on social and environmental capital. This is termed as triple bottom line approach to corporate accountability. Companies are required to observe internationally agreed standards to internalize and integrate their costs on creation of decent conditions at work places, environmental protection and fair competition in their mainstream business strategies.

The mainstay of corporate social accountability has been discussed at length in the proceeding chapters. A synoptic exposition of international principles and national legislation governing the environmental and economic transparency issues in corporate conduct is given here to hint at the broader ambit of the CSA.

Internationally as well as nationally, the commonly accepted principle of environment policy and management is that 'the polluter pays'. Legally it incurs a liability upon the polluters to pay an estimate of costs that they impose on the society. Failure to implement this principle or its non-compliance tantamount to allowing the defaulting businesses with an implicit subsidy. This not only leads to environmental degradation but also puts compliant companies at a competitive disadvantage compared to the defaulters.

Normatively, the 1972 Declaration of the UN Conference on Human Environment at Stockholm, in its famous Principle 21 acknowledged that; "*States*



*have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and responsibility to ensure that activities within their jurisdictions or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction”<sup>1</sup>.*

Later on Principal 4 of the 1992 Rio Declaration made environmental protection an integral part of development process. The Agenda 21 of the Rio Conference lays out long terms development and environmental objective and priority actions for the international community in the year upto and beyond 2000<sup>2</sup>. Besides, a host of multilateral conventions such as Geneva Convention on Long Range Transboundry Air Pollution 1979, Vienna Convention for the Protection of the Ozone Layer 1985, 1987 Montreal Protocol, 1989 Basal Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1992 Rio Convention on Biological Diversity and the 1992 Rio Framework Convention on Climate Change, provide the legal benchmarks for compliance with environmental concerns.

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<sup>1</sup> Resolution 2997 (xxiii), UNGA Official Records, 27<sup>th</sup> Session, Supp. no.30, p.43 (Dec, 15 1972), as quoted in the Ray August, *Public International Law-Text and Cases*, Prentice Hall, (New Jersey) USA, 1995. p.430

<sup>2</sup> *Rio Declaration on Environment and Development* UNCED Doc. A/CONF. 151 Rev. 16 June 13, 1992, as quoted Ibid.

The international performance and audit standards on environment protection such as ISO-14001, 14011 and 14012 distill the principles envisaged in the above-referred conventions, into effective environmental management systems for the governments and business<sup>3</sup>. Major CSA instruments viz, the UN Global Compact, EU ECO-Label and General Reporting Initiative Guidelines (GRI) as well as GSP schemes of the developed countries also heavily bank upon these benchmarks. Above all the WTO regime through its principles of non-discrimination, transparency and national treatment provides level playing fields for governments and business to become environmentally compliant.

In the context of Pakistan, the degree of environmental compliance can greatly make or mar the corporate business in the export sector. It may have a direct impact on the national balance of payment and ultimately the economic growth.

The national policy environment reflects a conscious realization of the issue. The 1992 National Conservation Strategy set the ground for institutional development and capacity building for ensuring effective compliance with the international environmental benchmarks. The National Environment Policy, 2005, updates and translates these benchmarks into national objectives of (a) conservation, restoration and efficient management of environment resources, (b) integration of

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<sup>3</sup> Muhammad Akbar, *Study on Social and Environmental Compliance Issues*, ADB, 2004, *Ibd*, p.43.

environmental considerations in the policy making and planning process, (c) capacity building at all levels for better environmental management, (d) meeting international obligations effectively, and (e) creation of demand for environment through mass awareness and community mobilization. These objectives are sought to be achieved through an effective regulatory framework as well as market based instruments which include reduced tariffs and tax concession for compliant companies, introduction of environmental accounting system in financial management, loan preferences, etc<sup>4</sup>.

Statutorily, the Pakistan Environmental Protection Act (PEPA) 1997 provides for an administrative, substantive, procedural and judicial framework to ensure compliance with National Environmental Quality Standards (NEQS). The law specifically subscribes to the major international conventions on environmental protection<sup>5</sup>. It defines the terms 'Environment' and 'Pollution' in a broader sense so as to adequately cover all compliance concerns<sup>6</sup>, and applies to all persons natural or legal including companies, corporations etc<sup>7</sup>. A broad-based 'Pakistan

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<sup>4</sup> Govt. of Pakistan M/o Environment, *National Environment Policy 2005*, Ibid. p.12, 13.

<sup>5</sup> *PEPA, 1997*, Sec.31 read with the Schedule.

<sup>6</sup> Ibid. Sec. 2 (x) and xxxiii).

<sup>7</sup> Ibid. Sec. 2 (xxxii).

Environmental Protection Council', headed by the Prime Minister himself and comprising 45 members from across the relevant federal ministries, provincial governments, civil society, chambers of commerce and industries, scientists, technical experts and lawyers etc., is responsible for supervision of the PEPA 1997, approval of national environmental policies, NEQS and integration of principles and concerns of sustainable development into national policies and plans. A Federal Environmental Protection Agency is entrusted with the job of preparing NEQs and enforcement of the Act within the national jurisdiction<sup>8</sup>. Violation of NEQs is punishable with heavy fine which may extend upto one million rupees in addition to recovery of financial benefits accrued to the defaulters as a result of such violations<sup>9</sup>. Repeated conviction for non compliance may further lead to imprisonment for a term upto two years, closure of business and / or confiscation of machinery, equipment, material, substance, record or documents involved in the violation<sup>10</sup>. The Act specifically holds body corporate and their defaulting directors, secretary, partners or other officers accountable for non-compliance<sup>11</sup>.

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<sup>8</sup> Ibid. Sec. 3-4.

<sup>9</sup> Ibid. Sec. 6.

<sup>10</sup> Ibid. Sec. 11-12 and 14 read with Sec. 17.

<sup>11</sup> Ibid. Sec. 17 (5).

Though the Pakistan Environmental Protection Agency, as statutorily mandated, has prescribed the NEQSS<sup>12</sup> for municipal and industrial effluents, the system suffers from serious capacity and resource problems. An incisive study on implementation, efficiency and impact of PEPA 1997, may shed sufficient light on the compliance issues in this area.

Corporate behavior and market forces by very nature of their operation aim at an inverted growth pattern and social exclusion with a view to maximize profits and minimize costs. Intangible capital factor in terms of brand reputation and social good will bear only a financial relevance for the business planning rather than as elements of corporate systemic accountability for fair play, transparency, and quality out put<sup>13</sup>. While a competitive economic environment spurs innovation, product quality and diversification, higher skill development and best prices for consumers, it tends to eliminate rivals, distort fair competition and abuse market power in the long run. Socio-economically, this results in concentration of wealth and means of production, exploitation of consumers and uneven financial growth. With a view to taming the corporate conduct towards a more inclusive and socially equitable growth, a certain

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<sup>12</sup> Ibid. Sec. 18.

<sup>13</sup> Simon C. Bell, *Role of Competition Policy in Eco. Development*, Paper presented in the M/o Finance's Workshop held on Competitive Policy and Law in Pakistan on May 04, 2006, Ibid.

degree of regulation is, therefore, considered indispensable. A number of international and regional multilateral instruments such as OECD's Guidelines, UN Global Compact, UN Convention against Corruption 2001, EU's Competition Law etc, set forth a convincing case for socio economic transparency of corporate businesses<sup>14</sup>.

In the context of Pakistan, Article 38 (a) of the 1973 Constitution underpins the importance and need for regulation of economic behavior to the benefit of society at large. It obliges the State to, "secure the well being of the people, ... by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest..."

Statutorily, the Monopoly and Restrictive Trade Practices Ordinance, 1970 (MRTPO) regulates corporate conduct with a view to prevent and control undue concentration of economic power, monopoly power and restrictive trade practices<sup>15</sup>. The law specifically focuses on companies, corporate subsidiaries and associate undertakings<sup>16</sup>. It prescribes statutory ceilings for economic and market share and unreasonably restrictive trade practices. Thus companies, corporate subsidiaries or

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<sup>14</sup> Ibid. Also See Appendix-B.

<sup>15</sup> Preamble read with Sec. 3, 4 and 5 of the MRTPO, 1970.

<sup>16</sup> Ibid. Sec. 2(1) (6).

associate undertakings having assets of a total value of four billion rupees or producing, supplying, distributing or providing 1/3<sup>rd</sup> of the total goods or services in the market, may be required, at the risk of punitive action, to convert into public companies or divest themselves of such number of shares or ownership of the undertakings as may be specified by the law with a view to rectify economic and market distortions<sup>17</sup>. Similarly, unfair trade practices such as price fixing, arbitrary division and control of market, cartelization etc, are also prohibited<sup>18</sup>. Besides, the Monopoly Control Authority, established under the MRTPO 1970, may by a general order prohibit any circumstances or conditions, which it considers restrictive of fair competition and trade practices<sup>19</sup>. The law obliges companies to register themselves with the MCA where they control not less than 1/3<sup>rd</sup> of market share, or not being a public company, have assets of a total value of not less than fifty million rupee. Similarly, agreements of corporate acquisition and merger, sole distributorship etc, are also required to be registered with the Authority. Non compliance with the orders of MCA with regard to aforesaid statutory benchmarks may be punished with a fine upto one hundred thousand rupees<sup>20</sup>.

The law, however, suffers from an inherent inefficiency in that it does not apply to govt-owned or controlled corporations. Companies, for which special

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<sup>17</sup> Ibid. Sec. 12.

<sup>18</sup> Ibid. Sec. 6.

<sup>19</sup> Ibid. 7.

<sup>20</sup> Ibid. Sec. 16.

regulatory authorities have been set up, are also exempted from the operation of MRTPO<sup>21</sup>. This virtually has taken away from the ambit of the law all corporate businesses, which were nationalized during mid 1970s. After the privatization of recent years, however, major service sector corporate concerns such as telecommunications, electricity, oil and gas are also not covered. These are regulated through their respective regulating authorities.

Institutionally, the recent price hike in cement and sugar sectors have revealed serious capacity limitations in the MCA<sup>22</sup>. This has led the Government to revisit the whole policy, legislative and institutional framework on market competition in the country. Reportedly, the Ministry of Finance in consultation with the World Bank has prepared the initial drafts on new competition policy and law, which suggest set up of an independent and fully empowered Commission to supervise policy implementation and law enforcement in the related areas.<sup>23</sup>

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<sup>21</sup> Ibid. Sec.19.

<sup>22</sup> [www.mca.gov.pk](http://www.mca.gov.pk)

<sup>23</sup> Dr. Joseph Wilson, *Overview of Modern Competition Law and Principles*; also see Giuliana Cane, *An Organizational Model of Competition Agency for Pakistan*, Papers presented at the M/o Finance's Consultative Workshop on Competition Policy and Law in Pakistan May, 04-08, 2006, Islamabad.



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