



# **Examining the Adequacy of Laws to Ensure the Protection of Human Rights in Business Corporations: Sri Lankan Perspective**

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## **Abstract**

*This article explores the State's responsibility in monitoring businesses that violate human rights, with a focus on Sri Lanka's legal framework. States are obligated to uphold human rights nationally and internationally, transcending cultural relativism. This study will follow the doctrinal research methodology and will analyze the infringement of human rights by businesses within the established realm of International Law, referencing key treaties like International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), and European Convention of Human Rights (ECHR) to recognize the state responsibility in monitoring businesses that violate human rights. John Ruggie's Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council in 2011 provides a global framework for governments and businesses, outlining their roles and responsibilities. Examining the legal landscape in Sri Lanka, the article reviews constitutional law, specialized legislation, and judicial activism guided by the Doctrine of Public Trust which focuses on the relationship between businesses and human rights. Business activities, vital for development, are regulated by laws including the Company Act, Environmental Law, and ESG Law. Violations lead to prosecution under the Penal Code, emphasizing the State's duty to scrutinize businesses infringing on human*

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*rights. In conclusion, this article highlights the State's pivotal role in overseeing businesses, ensuring adherence to national laws, norms, and regulations, and upholding individual rights while focusing on international conventions, judicial decisions and general principles of law.*

**Keywords:** *Human Rights, Business Corporations, Judicial activism, Doctrine of Public Trust*

## **Human Rights in Corporate Operations**

The concept of business and human rights pertains to the intricate relationship between corporations or businesses and the fundamental rights and well-being of individuals. This idea underscores the responsibility of businesses to uphold and respect human rights in the course of their activities. It is closely associated with the notion of corporate social responsibility (CSR), emphasizing that businesses should not only pursue profits along with considering their societal impact, including how their actions influence human rights. Hence, it is expected that businesses will honor the human rights of all individuals, including employees, customers, and the communities in the scope which they operate. This includes upholding rights; political, social, cultural and economic rights such as the right to life, liberty, security, and protection from discrimination. Additionally, business enterprises are accountable for ensuring fair and safe working conditions for their employees, providing fair wages, and refraining from forced or child labor. Moreover, as environmental issues can indirectly affect human rights, businesses should also give a good deal of emphasis on the environmental consequences of their operations, such as access to clean water and a healthy environment. Going beyond the individual responsibilities of an individual company, the business communities are required to ensure that their suppliers and partners as well stand by the human rights standards. Thus, transparency and accountability are crucial in ensuring protection of highest goals in businesses in line with human rights principles. Companies, as responsible legal entities, are responsible to disclose their practices and regularly assess their impact on human rights to ensure the access to effective remedies, including legal recourse

and compensation where human rights abuses occur in connection with business activities which affect individuals.

Though, the United Nations Guiding Principles on Business and Human Rights<sup>1</sup> introduced by Professor John Ruggie, could be recognized as the widely accepted framework on understanding responsibilities of businesses in balancing and implementing human rights in business platform. Regulations and guidelines to promote and implement human rights in the field of business developed by the countries and organizations have become a catalyst to strike a balance between economic development and social and environmental well-being with a responsible corporate conduct.

### **The Role of States in Regulating Business Enterprises**

The role of the state in regulating business enterprises is multifaceted, typically involving a combination of regulatory, legal, and policy measures aimed at ensuring that businesses operate in a manner that benefits society and minimizes negative impacts. Primarily, states are responsible for establishing a sound legal framework to ensure the good governance of business corporations. A kind of legal framework should focus on the formation, operation, and dissolution of business entities, encompassing laws related to business registration, corporate governance, taxation, intellectual property, and more. While the specific legal framework may vary from one country to another, its overarching goal is to create a level playing field for businesses and safeguard the rights of stakeholders.

Furthermore, governments need to shoulder the responsibility of regulating business activities to ensure compliance with established laws and regulations. Regulatory bodies oversee various industries, such as financial services, environmental protection, labor practices, and consumer protection. They establish standards and enforce compliance to prevent abuses and maintain fair competition. Additionally, states often promote corporate governance principles to ensure that businesses are managed responsibly

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<sup>1</sup> United Nations Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' (2011).

and ethically. Corporate governance guidelines typically address issues like the board of directors' composition, executive compensation, shareholder rights, and disclosure requirements. In many countries, states encourage or mandate corporate social responsibility (CSR) and sustainability practices, including addressing environmental concerns, promoting diversity and inclusion, and supporting community development.

Tax policies serve as another regulatory mechanism with an impact on corporations, encompassing corporate income taxes, value-added taxes (VAT), and other levies. Tax policies are utilized to fund public services and infrastructure and can influence corporate behavior, such as investment decisions and tax planning strategies. Moreover, States have a duty to protect consumers from harmful or fraudulent business practices and to ensure fair treatment of workers. This involves the enforcement of labor laws, consumer protection regulations, and occupational safety standards. Many states have implemented competition policies to promote healthy competition in the marketplace. Antitrust laws and competition policies aim to prevent monopolistic behavior and protect consumer interests. Furthermore, governments often participate in international agreements and trade pacts that impact the governance of business enterprises operating across borders. These agreements can influence trade regulations, intellectual property rights, and investment protection. Some governments provide incentives or support to businesses, such as grants, subsidies, or tax breaks, to stimulate economic growth, encourage innovation, or address regional development disparities. It is crucial to emphasize the state's responsibility in addressing malpractices by business corporations.

The precise role of the State in governing business enterprises can vary significantly between countries, reflecting differences in legal systems, economic philosophies, and political ideologies. Nevertheless, in most cases, the State strives to strike a balance between facilitating economic growth and safeguarding the public interest by ensuring that corporations operate responsibly and contribute to the overall welfare of society.

## Promoting Human Rights in Business Enterprises in Sri Lanka

It is imperative to acknowledge that certain business practices can be detrimental to employees, including the use of trafficked labor, discrimination against workers, intrusion into individuals' privacy, and the production of harmful environmental pollutants. Awareness of these violations resulting from corporate activities is of utmost importance.<sup>2</sup> At this juncture, the role of the state in regulating such activities, particularly those infringing on the human rights of businesses, becomes pivotal. This article will delve into how the State has played a role in regulating corporations whose operations negatively impact the environment and the right to life of individuals and assess whether the existing laws under Sri Lankan constitutional legislation and environmental law are sufficient enough.

The Universal Declaration of Human Rights (UDHR)<sup>3</sup>, considered as a major political heritage of the century, functions as a standard for advancing Business Human Rights (BHRs) and has been ratified by Sri Lanka. There is a significant judicial decision that highlights the crucial role of international instruments in offering essential guidance in matters concerning fundamental rights and freedoms. According to Justice Amarasinghe “International human rights instruments have proven to be important sources of guidance in cases concerning fundamental rights and freedoms.”<sup>4</sup> Hence, this study focuses on examining the worldwide acknowledgement and application of Business and Human Rights (BHRs) through international treaties and imposes obligations on states and promotes corporate commitment to universal human rights and other legal frameworks. Furthermore, this study extends its examination to

<sup>2</sup> Claire Methven O'Brien, *Business and Human Rights-A Handbook for Legal Practitioners* (Council of Europe 2019), 11 <<https://edoc.coe.int/en/fundamental-freedoms/7785-business-and-human-rights-a-handbook-for-legal-practitioners.html>> accessed 14 June 2023

<sup>3</sup> *UN General Assembly, Universal Declaration of Human Rights*, 10 December 1948, 217 A (II) <<https://www.refworld.org/docid/3ae6b3712c.html>> accessed 14 June 2023.

<sup>4</sup> *Sunila Abeysekera v Ariya Rubasinghe and Anuruddha Ratwatte and others SC Application No 9994/99*

the role of government in regulating and monitoring corporations for human rights violations within the framework of Sri Lankan constitutional law.

Amid the financial crisis and a critical juncture in its domestic politics, Sri Lanka finds itself in a crucial situation, emphasizing the imperative of ensuring human rights. This study also contends for highlighted transparency and overhaul of institutions and security industries.<sup>5</sup> It is well-known the endured conflicts, notably the ethnic civil war and incidents of violence took place in Sri Lanka, have gained global attention. Moreover, addressing environmental issues like pollution and soil and water contamination is vital.<sup>6</sup> Companies flouting regulations not only infringe upon environmental considerations but also compromise the rights of local workers seeking employment abroad.

While many businesses acknowledge environmental issues, only handfuls embrace eco-friendly practices, regulations, and standards. Unfortunately, due to certain business operations, this neglect impinges on the basic right to a healthy life. Consequently, the shift of companies towards environmentally friendly practices proves to be a considerable challenge. This article studies the Public Trust Doctrine (PTD) as a mechanism to oversee corporate entities that flout laws and regulations. It centers on the fiduciary relationship between the state and citizens, underscoring the responsibility of state officials to protect human rights and intervene for the welfare of the people. The study also addresses the right to domestic workers seeking foreign employment, recognizing their substantial contribution to the country's foreign currency earnings. It underscores the state's obligation to regulate conscientious employers and maintain elevated human rights standards, as these matters

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<sup>5</sup> UN, "Situation of Human rights in Sri Lanka, Comprehensive report for United Nations High Commissioner for Human Rights", Human Rights Council, fifty-first session, 6 September 2022 <<https://www.ohchr.org/en/press-releases/2022/09/sri-lanka-critical-juncture-un-report-urges-progress-accountability>> accessed on 14 June 2023

<sup>6</sup> Shastri, A., 'Ending Ethnic Civil War: The Peace Process in Sri Lanka' (2009) 47 Commonwealth & Comparative Politics, 76–99 <Ending Ethnic Civil War: The Peace Process in Sri Lanka: Commonwealth & Comparative Politics: Vol 47, No 1 (tand

are pressing and warrant the attention of responsible state actors.<sup>7</sup>

## **The International Legal Framework on Business and Human Rights**

It is crucial to emphasize the international human rights framework and the accountability of States in upholding these rights. Positive obligations compel states to protect their citizens from violations committed by non-state actors and corporations. Therefore, legislation serves a dual purpose, as it must delineate the duty-holders and their corresponding responsibilities, including defining the obligations of national entities within international treaties.<sup>8</sup> The European Convention of Human Rights (ECHR)<sup>9</sup> outlines the international human rights law obligations of governments. Additionally, States are bound by customary international law norms, which stem from the Universal Declaration of Human Rights (UDHR), although the UDHR does not establish legal responsibilities.<sup>10</sup> Moreover, the ECHR mandates signatory states to ensure the liberty and freedom of everyone, encompassing both negative and positive obligations as per the convention.<sup>11</sup> The responsibilities of states under these legal documents can be categorized into three (03) domains: “respect,” “protect,” and “fulfil” human rights.<sup>12</sup> It is imperative to assess the relevance and adequacy of these aspects of human rights concerning business corporations.<sup>13</sup>

### **Normative Basis for Businesses to Safeguard Human Rights**

Business corporations wield considerable influence over various aspects of individual’s lives, encompassing employment, human rights,

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<sup>7</sup> Environmental Foundation (Colombo, Sri Lanka) and Siemenpuu Foundation (Helsinki, Finland) (eds), *Hakgala under Threat: A Review of Conservation Status and Management Needs* (Environmental Foundation 2007) 40.

<sup>8</sup> O’Brien, *Handbook (n3)*, 15

<sup>9</sup> Council of Europe, ‘*European Convention of Human Rights*’, as amended by protocols no 11,14,15

<sup>10</sup> Dinah Shelton, Ariel Gould (ed), *The Oxford Handbook of International Human Rights Law* (First edition, Oxford University Press 2013) ch 24,562–584.

<sup>11</sup> O’Brien, *Handbook (n3)*, 16

<sup>12</sup> Shelton (n 13).

<sup>13</sup> O’Brien, *Handbook(n3)*, 16

and labor conditions. A case study featured in the journal “Rethinking Human Rights Due Diligence” underscores the nexus between human rights and business. In the Netherlands, two restaurant owners faced legal consequences for involvement on human trafficking. The victim, employed as a cook, found themselves unable to leave the premises at night due to a lack of knowledge about the alarm code. Additionally, the employer retained control over the cook’s debit card and bank records, and the salary received as below the legally stipulated amount. This situation prompted an inquiry into whether the bank handling these transactions bears any responsibility for preventing or alleviating adverse human rights repercussions stemming from commercial associations.<sup>14</sup> Consequently, States are bound by legal obligations to serve as guardians of human rights, guided by United Nations Standards.

As per the perspective of economist Milton Friedman,<sup>15</sup> in a free society, corporate responsibility boils down to “there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engage in open and free competition without deception or fraud”. However, as per stakeholders, there is current expectation for companies to give precedence to human rights and exhibit respect in their activities. While certain companies have proactively initiated essential reforms, others have displayed a more cautious approach.<sup>16</sup> Therefore, the adoption of the United Nations Guiding Principles on Business and Human Rights (UNGPs) by the United Nations Human Rights Council in 2011 underscores the

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<sup>14</sup> Maria Anne Van Dijk, Marjin De Haas and Ruben Zandvliet, *Bank and Human Trafficking: Rethinking Human Rights Due Diligence*, (2018), Business and Human Rights Journal 105, <<https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/abs/banks-and-human-trafficking-rethinking-human-rights-due-diligence/5C111C7131761E27F411B42DDAE1C713>> Accessed in 30 June 2023.

<sup>15</sup> Stockholm School of Economics, ‘Stakeholder Influences on the Sustainability Agenda of Milton Friedman, *The New York Times Magazine*, 13.09.1970 <<https://affarerezwek.web.app/89588/97721.html>> accessed 20 June 2023.

<sup>16</sup> Dorothee, *Business and Human Rights: From Principles to Practice*, 1.1.2.



significance of rights in the context of business.

### **State Obligation to Protect**

Human rights treaties require States to prevent corporate infringements on human rights. Many States typically fulfill these duties through enactment of national laws, adherence to norms, and the establishment of institutions. Those domestic legislations serve as a means for implementing the state's responsibility to shield against abuses linked to business operations in diverse thematic areas. These include planning, taxation, corporate governance, anti-corruption measures, product safety and consumer laws, environmental considerations (such as water and pollution permits), data protection and policies, discrimination in goods, services, and employment, labor relations, as well as health and safety, and employment-related pensions and benefits.

Under international law, the duty of the State comprises both positive and negative obligations. Positive obligations are designed to protect rights holders from infringements by individuals, including companies. States must thus implement appropriate and reasonable measures to regulate private companies whose activities may violate human rights guaranteed by the ECHR.<sup>17</sup> Furthermore, the European Court of Human Rights (ECtHR) has recognized the validity of positive duties to safeguard against human rights violations, particularly concerning the right to life (Article 2 ECHR).<sup>18</sup> In the case of *Eweida and Others v. the United Kingdom* in 2013, it was determined that the State holds an affirmative duty to protect rights under Article 9 ECHR.<sup>19</sup> Therefore, it is crucial to evaluate the applicability and anticipated scope of the State's positive obligations in protecting human rights when economic activities may conflict with rights safeguarded under the ECHR. Without such a framework, the ECHR may attribute state responsibility.

**In certain situations, licenses for infrastructure construction projects**

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<sup>17</sup> *Strock v. Germany* (16 June 2005)

<sup>18</sup> *Wilson, the National Union of Journalists and Others v. The United Kingdom* (2 July 2002)

<sup>19</sup> *Vilnes and Others v. Norway* (2014)

might have to be put hold until community engagement is secured to avert substantial and irreversible harm. The ECTHR, in the 2005 of *Siliadin v. France*, determined that member states bear a distinct affirmative duty to denounce and effectively prosecute any endeavors by non-state actors to subject an individual to slavery, servitude or forced labor. Additionally, States are obligated to institute a legal and administrative structure to forbid and sanction trafficking.<sup>20</sup>

### **State Obligation under the UNGP and Council of Europe Recommendations**

International treaties do not explicitly address the prevention of business-related human rights violations, nor do they contain extensive governmental duties. Nevertheless, some human rights documents reference corporate activities, and thus domestic courts and international tribunals should consider them as such when determining the scope of the “state duty to protect” against business-related violations.<sup>21</sup> It is worth noting that the International Labor Organization (ILO) sets standards for employee rights, duties, and business requirements in various fields.<sup>22</sup>

All the ratifying states, including Sri Lanka,<sup>23</sup> have ratified ILO conventions<sup>24</sup> that protect workers’ rights, address issues such as child labor, employment, occupational discrimination, occupational safety, and health.<sup>25</sup>

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<sup>20</sup> Rantsey v. Cyprus and Russia (2010)

<sup>21</sup> O’Brien, Handbook O’Brien, *Handbook* (3), 22

<sup>22</sup> ILO Declaration on Fundamental Principles and Rights at Work < <https://www.ilo.org/declaration/lang--en/index.htm>> Accessed in 21/06/2023.

<sup>23</sup> International Labour Organization, Sri Lanka <<https://www.ilo.org/colombo/lang--en/index.htm>> Accessed in 21/06/2023

<sup>24</sup> International Labour Organization, The ILO in Sri Lanka, [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms\\_245355.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_245355.pdf) > > Accessed in 21/06/2023

<sup>25</sup> International Convention on the Rights of Persons with Disabilities (ICPRD), International Convention on the Elimination of all forms of Discrimination Against Women (ICEDAW).

## Human Rights Treaties that Require States to Prevent Violations against Specific Individuals and Groups

The Guiding Principles on Business and Human Rights introduced by United Nations (UNGPs) and Council of Europe Recommendation on Business and Human Rights comprise 31 principles organized into three pillars, covering essential aspects of business and Human rights;

**Pillar 1:** The duty of State to protect rights-holders from business-related abuses.

**Pillar 2:** The obligation of all businesses to uphold human rights. The duty of State to protect right-holders from business-related abuses.

**Pillar 3:** The entitlement of victims of human rights abuses to business activities to seek adequate remedies.<sup>26</sup>

The UNGPs have delineated the expectation for both states and corporations in the context of human rights violations that might occur in the course of business operations, providing detailed guidance for each of the three pillars. The approach adopted by international human rights organizations, as reflected in the UNGPs,<sup>27</sup> is to further clarify the direct responsibilities of States and their “positive obligations” to prevent corporate human rights violations, while also outlining the logical consequences of these state duties of business entities.<sup>28</sup>

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<sup>26</sup> Ruggie, J., *Protect, Respect and Remedy; A Legal Framework for Business and Human Rights Report of the Special Representative of the United Nations Secretary- General on the issue of Human rights and transitional corporations and other business enterprises*, (2008),A/HRC/8/5<2008,A/HRC/8/5<[https://www.researchgate.net/profile/John-Ruggie/publication/24090059\\_Protect\\_Respect\\_Remedy\\_A\\_Framework\\_for\\_Business\\_and\\_Human\\_Rights/links/5729eca108aef5d48d30aa74/Protect-Respect-Remedy-A-Framework-for-Business-and-Human-Rights.pdf](https://www.researchgate.net/profile/John-Ruggie/publication/24090059_Protect_Respect_Remedy_A_Framework_for_Business_and_Human_Rights/links/5729eca108aef5d48d30aa74/Protect-Respect-Remedy-A-Framework-for-Business-and-Human-Rights.pdf)> Accessed on 23/06/2023. 3

<sup>27</sup> Report of the Special Representative of the Secretary General on the issue of Human Rights and Traditional corporation and other business enterprises, <[https://www.ohchr.org/sites/default/files/Documents/Issues/Business/A-HRC-17-31\\_AEV.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Business/A-HRC-17-31_AEV.pdf)> Accessed in 22/05/2023.

<sup>28</sup> O’Brein, Handbook (n3), 25

## **Recommendations of European Council on Human Rights and Business (2016)**

The European Council (COE) has endorsed a Declaration<sup>29</sup> as well as a Recommendation<sup>30</sup> on Human Rights and Business to bolster and add depth to the UNGPs, the European Convention on Human Rights (ECHR), and other human rights standards. In line with these recommendations, COE member states are obligated to implement the UNGPs, which serve as a universally recognized foundation comprised of three pillars.<sup>31</sup> The recommendations underscore the importance of regularly examining and assessing national legislation for compliance. It provides COE member States with guidance for adopting the UNGPs and introduces specific protections for workers, children, indigenous peoples, and human rights activists. Furthermore, it urges member's states of the council of Europe (COE) to create National Action Plans (NAPs)<sup>32</sup> for business and human rights and to share information via the COE human rights and business online portal. A growing number of COE member states have either embraced or are currently developing NAPs.

## **Business Related Human Rights Violations in Sri Lanka**

It is crucial to acknowledge that in Sri Lanka, the Fundamental Rights outlined in Chapter III of the Constitution<sup>33</sup> are rooted in the Universal declaration of Human Rights (UDHR).<sup>34</sup> Specially, Article 3 and Article 4 of the Constitution affirm that the right to vote and other fundamental rights are integral to the people's sovereignty and

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<sup>29</sup> Council of Europe, Declaration of the Committee of Ministers on the UN Guiding Principles on Business and Human Rights (2014) <[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805c6ee3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c6ee3)> Accessed in 23/06/2023.

<sup>30</sup> Council of Europe, Human Rights and Business- Recommendation CM/Rec (2016) 3 of the Committee of Ministers to Member States (2016) <<https://edoc.coe.int/en/fundamental-freedoms/7302-human-rights-and-business-recommendation-cmrec20163-of-the-committee-of-ministers-to-member-states.html>> Accessed in 23/06/2023.

<sup>31</sup> Recommendation CM/Rec (2016) 3 (n (11), Appendix to Recommendation I.a.1.

<sup>32</sup> National Action Plan

<sup>33</sup> Constitution

<sup>34</sup> S.C. Reference No. 1/2008.

cannot be withdrawn.<sup>35</sup> Article 4(d) of the constitution additionally directs all government institutions to uphold, safeguard, and advance these rights without imposing any restrictions or denials.<sup>36</sup>

Examining the State's duty to regulate business corporations for constitutional violations and revising concepts such as the "Right to Life" is crucial for discussion. It is worth noting that individuals have the recourse to apply to the Supreme Court<sup>37</sup> in cases where their fundamental rights, including provisions related to equality<sup>38</sup>, are violated due to executive or administrative actions<sup>39</sup>. The Supreme Court holds significant discretion in determining appropriate relief<sup>40</sup>. Certainly, the Supreme Court has adeptly the extensive jurisdiction granted to it under Article 126(1)<sup>41</sup> and Article 126(4) to address these applications and offer remedies, frequently employing the Public Trust Doctrine.

Detailed exploration of the obligations business must follow when operating in accordance with Sri Lankan Law will be discussed in the following paragraphs within the framework of the Companies Act. Nevertheless, when it comes to Article 3 and Article 4 of the Constitution, it is a matter of concern that the farmers of Sri Lanka's Second Republican Constitution in 1978 did not accord adequate consideration to the right to life as a fundamental right. As a result, the Sri Lankan Supreme Court has construed the "right to life" through the lens of Article 11<sup>42</sup> and Article 13(4)<sup>43</sup> of the Constitution.<sup>44</sup> The former stipulate that causing the demise of an individual without

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<sup>35</sup> Article 3, Constitution of Sri Lanka, 1978.

<sup>36</sup> Article 4(d), Constitution of Sri Lanka, 1978.

<sup>37</sup> Article 17, Constitution of Sri Lanka, 1978.

<sup>38</sup> Article 12, Constitution of Sri Lanka, 1978.

<sup>39</sup> Article 126, Constitution of Sri Lanka, 1978 6.

<sup>40</sup> Article 126(4), Constitution of Sri Lanka, 1978.

<sup>41</sup> Article 126(1), Constitution of Sri Lanka, 1978.

<sup>42</sup> Article 11, Constitution of Sri Lanka, 1978

<sup>43</sup> Article 13(4), Constitution of Sri Lanka, 1978

<sup>44</sup> Rupasinghe, R.A.D.S.T.; Udayajeewa, t.J., *The Modern Approaches Used by judges in the interpretation of the "Right to Life", under the Current Constitutional Framework of Sri Lanka* (2021) <<http://repository.rjt.ac.lk/handle/123456789/3563>> Accessed in 12.07.2023

a court order is illegal, whereas the latter implies that any kind of harassment, be it physical or mental, jeopardizes a person's right to live in tranquility. The right to life, initially established in a negative form under the Constitution, was later affirmed in a positive manner through judicial activism in the *Sriyani Silva v. Iddamaloda*<sup>45</sup> case. This ruling essentially proclaims that one can take another person's life without legitimate authority under Article 13(4)<sup>46</sup>. Consequently, through judicial activism, the courts have ensured a minimum level of protection for the people<sup>47</sup>, emphasizing that the Constitution is a "living document" to be interpreted broadly, taking into account its values and Sri Lanka's international obligations concerning the right to life<sup>48</sup>.

The Sri Lankan Supreme Court has demonstrated a deep understanding of the importance of right-to-life cases in various contexts. In a landmark decision, *Rathnayake Tharanga Lakmali v Abeykoon*<sup>49</sup>, the Supreme Court held that the extrajudicial death of a suspect in police custody violated the right to life.<sup>50</sup>

Several Western Nations, more advanced than Southeast Asia, have adopted a global framework to tackle human rights issues related to business.<sup>51</sup> It is noteworthy that Sri Lanka ratified the International

<sup>45</sup> *Sriyani Silva v Iddamaloda, OIC, Police Station Paiyagala and Others* [2003] 2 Sri L.R. 63

<sup>46</sup> *Sriyani Silva v Iddamaloda, OIC, Police Station Paiyagala and Others* [2003] 2 Sri L.R. 63

<sup>47</sup> Samangi Himasha Abeyrathne, 'Fight for Right to Clean and Healthy Environment in the Judicial Context of Sri Lanka with an International Perspective' [2021] SSRN Electronic Journal 4 <<https://www.ssrn.com/abstract=3808947>> accessed 12 July 2023.

<sup>48</sup> W.G.T.Y Thilakarathne, "Right to Life as A Fundamental Right; A Legal Analysis On Sri Lankan Constitution", Department of Legal Studies, The Open University of Sri Lanka, Sri Lanka, 2022, 4 < [https://ours.ou.ac.lk/wp-content/uploads/2022/12/ID\\_182\\_RIGHT-TO-LIFE-AS-A-FUNDAMENTAL-RIGHT-A-LEGALANALYSIS.pdf#:~:text=the%20Sri%20Lankan%20Constitution%20still%20does%20not%20include,his%20relations%20with%20the%20community%20and%20the%20state%223.>](https://ours.ou.ac.lk/wp-content/uploads/2022/12/ID_182_RIGHT-TO-LIFE-AS-A-FUNDAMENTAL-RIGHT-A-LEGALANALYSIS.pdf#:~:text=the%20Sri%20Lankan%20Constitution%20still%20does%20not%20include,his%20relations%20with%20the%20community%20and%20the%20state%223.>) accessed 12.07.2023

<sup>49</sup> *Rathnayake Tharanga Lakmali v Niroshan Abeykoon SC/ FR Application 577/2010*

<sup>50</sup> *Ibid*

<sup>51</sup> UN, '2022 UN South Asia Forum on Business and Human Rights' (OHCHR) <<https://www.ohchr.org/en/events/forums/2022/2022-un-south-asia-forum-business-and-human-rights>> accessed 12 July 2023.

Covenant on Civil and Political Rights (ICCPR)<sup>52, 53</sup> on June 11, 1980, and this Covenant aligns its rights and principles with the UDHR. The basic premise that Chapter III of Sri Lanka's 1978 constitution acknowledges fundamental rights is based on the UDHR.<sup>54</sup>

Upon careful scrutiny of the legal system in Sri Lanka, it becomes apparent that creating a structure similar to the European Union is improbable due to resource limitations and a lack of government interest. However, it is essential to emphasize that fundamental human rights, especially the right to life, necessitate that individuals possess that right to a standard of living conducive to their overall well-being and<sup>55</sup>health. The Sri Lankan constitution reveals a significant lacuna in fundamental rights to life. Upon closer examination of the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the Council of Europe Recommendations (COER), it becomes apparent that their core foundation primarily revolves around the promotion and safeguarding of the fundamental right to life.

### **Legal Structure Regulating the Right to Life within the context of Business and Human Rights in Sri Lanka**

It is imperative to acknowledge that courts have played a vital role in expanding the scope of rights within constitutions, including environmental and fundamental rights. In the context of Business and Human Rights (BHR), courts have a significant role to play when businesses harm the environment and violate citizens' right to life. BHR, environmental rights, and sustainable development should find legal recognized, especially within the constitution.

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<sup>52</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, 171, available at: <<https://www.refworld.org/docid/3ae6b3aa0.html>> accessed 12 July 2023

<sup>53</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171 <<https://www.refworld.org/docid/3ae6b3aa0.html>> Accessed 6.12.2023.

<sup>54</sup> *The Centre for Policy Alternatives Vs. Attorney General (SC Ref: No.1/2008)*

<sup>55</sup> UDHR (n5), Article 3

It can be argued that chapter III of the Constitution of Sri Lanka does not sufficiently recognize the right to clean and healthy environment or the right to life. Consequently, individuals wishing to invoke the Supreme Court's jurisdiction over Fundamental Rights (FRs)<sup>56</sup> may not claim a violation of their fundamental right related to environmental rights unless it is explicitly connected to other expressly recognized FRs. Therefore, there is a pressing need for greater inclusion of environmental rights within Sri Lanka's fundamental rights legislation.

The Constitution of Sri Lanka requires both the State and individuals to safeguard the environment. Article 27 dictates that the State must uphold, conserve, and enhance the environment for the welfare of the community, and Article 28 delineates the obligation of every individual to contribute to nature conservation. Sri Lanka places considerable importance on Corporate Social Responsibility (CSR) and is steadfast in its commitment to this concept.

In conducting operations within Sri Lanka, businesses are obliged to follow the nation's laws to uphold and conserve the environment for the welfare of the community. However, the Constitution does not explicitly confer upon citizens the right to a healthy environment, prompting the need for legal intervention to safeguard ecological rights. The judiciary's attempts to address systemic shortcomings underscore the essentiality of constitutionally securing individual rights to enhance their protection in cases of business-related infringements are commendable.

Enforcing the 22<sup>nd</sup> amendment to the Sri Lankan Constitution has become crucial for officially recognizing the right to life and personal liberty as fundamental rights, as delineated in Article 12 (1)(a).<sup>57</sup> Nevertheless, it is important to note that the timing of this

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<sup>56</sup> Abeyaratne (n 111) 4.

<sup>57</sup> 22<sup>nd</sup> Amendment to the Constitution, AN ACT TO AMEND THE CONSTITUTION OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA. <<https://www.parliament.lk/files/pdf/constitution/amendment-proposals/2022/independent-group-proposal-en.pdf>> accessed 12 July 2023



implementation coincide with a significant economic crisis in Sri Lanka. Unfortunately, the severe repercussions of this economic downturn have increasingly jeopardized these essential human rights.<sup>58</sup>

## **Business Regulations in Domestic Law**

The corporate sector, encompassing industries such as agriculture, manufacturing, construction, petroleum, garments, and textiles, plays a pivotal role in a country's economic growth. These industries, while contributing significantly to economic development, also bear responsibility for substantial environmental impact. Consequently, sustainability has emerged as a central element of business strategy, with a growing emphasis on people, the planet, and profit. The increasing pressure has resulted in the creation of instruments, measurements, and analytical methods for documenting advancements, risks, and opportunities in sustainability.<sup>59</sup>

Unfortunately, the Companies Act of 2007<sup>60</sup> in Sri Lanka does not sufficiently acknowledge the significance of environmental responsibilities, even though businesses are mandated to act responsibly and tackle environmental issues. The Companies Act (CA) fails to mandate that businesses annually report their positive and negative environmental impacts, as it primarily focuses on financial statement preparation (Sections 150-153). Directors may face criminal charges for non-compliance with financial statement regulations, but the CA does not extend its scope to address environmental concerns<sup>61</sup>.

The Sri Lanka Accounting and Auditing Standards Act No.15 of 1995 partially acknowledge environmental reporting and disclosure through standards like LKAS 01, LKAS 08, and LKAS 16. Nonetheless, this requirement is applicable only to a specific category of business.

<sup>58</sup> Right to Life in the Sri Lankan Constitution – Potentials and Possibilities - Newswire (NewsWire, June 4, 2023) <<https://www.newswire.lk/2023/06/04/right-to-life-in-the-sri-lankan-constitution-potentials-and-possibilities/>> accessed 12 July 2023

<sup>59</sup> Samarasinghe (n127) ,113

<sup>60</sup> Companies Act, No.07 of 2007.

<sup>61</sup> Samarasinghe (127),115

The Corporate Governance Code, jointly formulated by the Securities and Exchange Commission and the Institution of Chartered Accountants of Sri Lanka, acts as a fundamental structure for environmental responsibility. It urges directors to give concerns over the factors like adherence to best practice, financial and operational procedures, risk management and management deliberations on initiatives related to social and environmental protection. The Code strongly emphasizes sustainability reporting and an integrated approach to environmental governance, accounting for economic, social, health, and environmental impacts. While the Code urges listed companies to produce environmentally friendly products, it is not legally mandated. Non-publicly listed companies are not bound by the Code.<sup>62</sup>

Prominent Sri Lankan corporations like Hayley's Group, MAS Holdings, and Unilever place a strong emphasis on Corporate Social Responsibility (CSR) to protect the environment, promote economic and societal growth, and prevent adverse environmental consequences.

Corporate Social Responsibility (CSR) involves business activity contributing to the community and taking into account their environmental and social effects. It is closely linked with sustainability, aiming to generate economic, social and environmental value, along with the principles of Environmental, Social, and Governance (ESG).<sup>63</sup> These factors include non-financial aspects that businesses connected with socially responsible endeavors, emphasizing that financial advancements should lead to a more sustainable and ethical future.

To emphasize environmental responsibility, business can advocate for principles such as Precautionary Principle, Polluter Pays Principle, and Environmental Impact Assessments. This strategy aligns with the Public Trust Doctrine (PTD) and allows companies to reduce environmental damage while following CSR guidelines. Mandating

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<sup>62</sup> Samarasinghe (n127),116 (formatting should be consistent)

<sup>63</sup> Nadia Reckmann, 'Corporate Social Responsibility-business news daily.com'(2022), <<https://www.businessnewsdaily.com/4679-corporate-social-responsibility.html>>accessed 18 July 2023.

environmental protection within the Companies Act can contribute to sustainable growth while recognizing the environment as an integral aspect of business. This approach would have a positive impact on sustainable development and elevate environmental considerations to a fundamental component of business operations. Non-financial disclosures, including environmental impact assessment reports, should be legally required of directors, and businesses should view environmental consequences as an essential part of their operations, communicating them to stakeholders.<sup>64</sup>

The Companies Act in Sri Lanka does not directly address the corporate sector's environmental responsibilities. Nevertheless, the Code of Best Practice (2017) stipulates that corporations must include environmental information in their Annual Reports, although this requirement applies only to listed companies. To fully align businesses with societal expectations, the environment should be viewed as an integral part of their operations, and releasing environmentally sensitive information should be legally mandated in the Sri Lankan Companies Act.<sup>65</sup> As a result, regulations and criteria imposed by sectors, organizations, and nongovernmental entities that hold institutions responsible to the public and investors play a crucial role. Breaches can erode investor confidence and reduce public trust in products or services, underscoring the significance of corporate governance duties in environmental preservation, sustainable development, and resource conservation. Certain entities actively participate in safeguarding the environment through initiatives related to corporate social responsibility, with annual reports frequently incorporating details regarding their environmental impact.<sup>66</sup>

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<sup>64</sup> Samarasinghe (n129), 120

<sup>65</sup> Samarasinghe (n127),122

<sup>66</sup> Environmental Foundation (Colombo, Sri Lanka) and Siemenpuu Foundation (Helsinki, Finland) (n 9) 27.

## Conclusion

In conclusion, a thorough analysis of relevant information highlights the crucial necessity of incorporating Business Human Rights into the Sri Lankan legal system. This integration is essential for business to protect human rights by acknowledging their influence, preventing abuses, and taking responsibility for any harm caused. The framework presented by the United Nations Guiding Principles and Council of Europe recommendations guides both businesses and States in preventing and addressing adverse outcomes arising from business activities. While Sri Lanka is a signatory to international treaties, there remains a pressing need to incorporate the UNGPs into its domestic system, making the establishment of a national action plan a necessity.

On the global stage, it is the State's duty to protect individuals from human rights violations committed by Corporations. Governments should use policies, laws, regulations, and punitive measures to discourage, investigate, and remedy such abuses. Notably, the Sri Lankan government actively guides businesses to uphold human rights by enforcing relevant laws, policies, and mechanisms within government agencies.

In return, companies must demonstrate their commitment to human rights through distinct policies and processes, as previously discussed under applicable laws. They need to adhere to their policy pledges, practice due diligence to identify, mitigate, and be accountable for their impact, and establish procedures to handle adverse human rights outcomes. Particularly when corporations violate human rights due to their economic activities encroaching on the right to life, domestic legislation should encompass a mechanism to protect this fundamental right. The introduction of a recourse mechanism for the country's citizens through its Constitution, the sole repository of recognized fundamental rights, should be strongly considered, as elaborated earlier with relevant examples.

While the Sri Lankan Constitution guarantees certain fundamental rights, it is essential to broaden the interpretation of these rights by the judiciary. The delay in recognizing the right-to-life provision raises concerns about the government's commitment. Inclusion of human rights, particularly the right to a healthy environment, within the constitution is crucial, mirroring the approach adopted by other South Asian Nations and underscoring the significance of the Doctrine of Public Trust,

Unfortunately, a significant segment of Sri Lankans views human rights skeptically, perceiving them as a sham, and some individuals in positions of power deliberately instigate conflicts to maintain their control. This raises doubts about the effectiveness of human rights safeguards, which cannot be universally guaranteed. Therefore, it is obvious that State's accountability needs more legitimate and transparent framework, necessitating Sri Lanka's alignment with international human rights goals. The limited existing legal safeguards should be fully utilized to get rid of environmental harm caused by harmful business practices, which put lives at risk. One significant factor contributing to failures in Sri Lanka is the prevalence of corrupt State agencies, allowing influential corporations with resources to bypass their due diligence and corporate responsibilities for profit maximization.

A thorough review of cases like "Rathupaswala Case" highlights the need to tackle boarder concerns, including political influence, to ensure companies are held responsible for their conduct. The factory might be deemed liable for the incident due to circumstances evidence, like elevated chemical concentrations in water. Adequate treatment and purification of wastewater were imperative, yet untreated industrial waste may have been released into the environment. The entity must fulfill its due diligence responsibilities to ensure corporate accountability.

As the Sri Lankan government endeavors to rejuvenate the economy and initiate new developmental endeavors, it is essential to prioritize the development of policies that boost revenue generation while preserving economic, environmental, and social rights. Additionally, anti-corruption reforms should be put into effect to promote transparency and accountability within the system. Overlooking this fundamental principle in cases like “Ratupaswala” resulted in a cascade of harmful consequences, including the proliferation of diseases, erosion of livelihoods, environmental degradation, and social unrest and violence.

When tackling concerns related to corporate responsibility, minority and low-income workers, including migrants and tea plantation workers, face the highest risk of human rights violations. To address corporate responsibility, major corporations should comply with ILO standards and establish bilateral agreements to mitigate abuses. A governing board should supervise officials managing international affairs, have the power to address complaints, and ensure that state officials are held responsible for human rights violations, thereby enhancing transparency.

The responsibility to ensure actualize business human rights within society is not solely incumbent upon the State but also extends to other responsible communities, non-state actors, and civil societies. The implementation of laws promoting business human rights must encompass increased awareness across all sectors. Through such efforts, the country can safeguard the rights of both present and future generations. The efficiency of UNGPs rights standards hinges on the reduction of corruption, the practice of human rights due diligence, and the establishment of a legislative framework for sustainable development. Active involvement from civil society is indispensable for this analysis to yield meaningful results, Subsequent anti-corruption reforms must ensure that the government adheres to its own regulations and holds corrupt officials and private individuals accountable for misconduct, even for past transgressions.