

NOVA UNIVERSITY LISBON

European Master's Programme in Human Rights and Democratisation  
A.Y.2022/2023

**WOMEN'S RIGHTS IN THE SHADOW OF THE  
CORPORATE VEIL**

The Gendered Face of Discrimination in Bangladesh's Ready-  
Made Garment Industry.

**Author: Paula Muñoz Cano**

Supervisor: João Zenha Martins

Word Count Declaration: 27.573

## **ABSTRACT**

The Bangladeshi garment sector is characterised by a complex interplay between affordable fashion, multinational profits, and the exploitation of mostly female garment workers. Deeply entrenched gender inequalities in Bangladeshi society permeate work contexts, leading to discriminatory practices such as wage disparities, exploitative working conditions and incidents of violence. These practices have contributed to a significant decline in the number of women employed in the sector through voluntary departures. This alarming trend highlights the unsustainable nature of labour practices that hinder women's empowerment and economic stability, perpetuating a cycle that limits their access to secure employment opportunities. While initiatives such as corporate self-regulation, corporate social responsibility initiatives and human rights frameworks have been proposed, their effectiveness in eliminating discriminatory practices remains uncertain. Given the evolving political landscape regarding the possible development of a binding instrument for companies to hold them accountable for violations in global value chains, it is important to scrutinise the effectiveness of these efforts and the extent to which they actually prioritise workers' rights over economic interests. Accordingly, this study's main objective is to comprehensively explore the various dimensions that require careful consideration to facilitate a substantial transformation to address the pervasive problem of gender-based employment discrimination in garment value chains.

## TABLE OF CONTENTS

<b>ABSTRACT</b> .....	1
<b>ACKNOWLEDGEMENTS</b> .....	4
<b>LIST OF ABBREVIATIONS</b> .....	5
<b>CHAPTER I - INTRODUCTION</b> .....	6
1.1 Problem Statement and Research Questions .....	6
1.2 Significance of the Study .....	8
1.3 Scope and Structure of the Thesis .....	9
<b>CHAPTER II - THE GENDERED FACE OF LABOUR DISCRIMINATION</b> .....	10
2.1 Understanding Discrimination as a Multidimensional Concept.....	10
2.2 Gender Discrimination from the Social Dominance Theory.....	13
2.3 Challenges to Equality in the Labour Market.....	15
2.3.1 Stereotypes.....	15
2.3.2 Cultural and Social Norms .....	18
2.3.3 Structural Barriers.....	21
2.4 Pathways to Equality: Past Achievements and Future Perspectives .....	23
2.5 Preliminary Conclusions on Chapter II .....	25
<b>CHAPTER III - BEHIND THE SEAMS: THE IMPACT OF BANGLADESH’S EXPANDING GARMENT INDUSTRY ON FEMALE WORKERS</b> .....	27
3.1 Context.....	27
3.2 Overview of The Ready-Made Garment Sector .....	28
3.3 Cultural and Socioeconomic Profile of Bangladeshi Workers .....	31
3.4 Unveiling Discriminatory Practices.....	33
3.4.1 Women’s Underrepresentation in Leadership Roles .....	34
3.4.2 Discrimination Based on Women’s Reproductive Role.....	35
3.4.3 Harassment as a Form of Discrimination .....	36
3.5 Discrimination vs Empowerment: the Ongoing Women Struggle.....	39
3.6 The Right to a Safe and Dignified Work Environment.....	41
3.7 Preliminary Conclusion on Chapter III .....	43
<b>CHAPTER IV - GETTING IT RIGHT: TOWARDS A CORPORATE DUTY OF CARE IN GLOBAL VALUE CHAINS</b> .....	44
4.1 Shifting Perspectives: from Corporate Social Responsibility to Business and Human Rights .....	44
4.2 Shaping Business Human Rights Obligations .....	46

4.2.1	The Genesis of Soft Law Instruments .....	46
4.2.2	Human Rights Due Diligence as a Standard of Behaviour .....	48
4.3	Advancing Corporate Accountability Through Mandatory Due Diligence ...	50
4.3.1	Setting Precedents: Innovative Approaches Emerging from Civil Litigation	50
I.	Vedanta v. Lungowe.....	51
II.	Milieudefensie et al. v Royal Dutch Shell.....	53
4.3.2	Domestic Legislative Frameworks .....	55
4.3.3	Promising International and Regional Initiatives .....	58
I.	The Draft Treaty Proposed by UN Human Rights Council.....	58
II.	The Corporate Sustainability Due Diligence Directive.....	60
4.4	Preliminary Conclusion on Chapter IV .....	63
<b>CHAPTER V - WEAVING GARMENT WORKER’S RIGHTS: CHALLENGES AND OPPORTUNITIES IN BUSINESS PRACTICES.....</b>		<b>65</b>
5.1	Gender Mainstreaming in Human Rights Due Diligence.....	65
5.2	Examining Gender Responsiveness Approaches in Business and Human Rights Regulations.....	67
5.2.1	Recommended Amendments to the European CSDDD .....	70
I.	Article 2 on Scope and Annex .....	70
II.	Article 4 on Due Diligence.....	71
III.	Article 6 on Identifying Potential and Actual Impacts .....	72
IV.	Article 8 on Bringing Actual and Adverse Impacts to an End. ....	73
5.3	Compliance Social Audits for Gender Equality.....	73
5.4	Preliminary Conclusions on Chapter V .....	75
<b>CONCLUSION.....</b>		<b>76</b>
<b>BIBLIOGRAPHY.....</b>		<b>79</b>
BOOKS AND REPORTS.....		79
JOURNALS .....		81
LEGAL SOURCES .....		83
CASE LAW .....		84
THESIS .....		84
WEBSITES .....		84

## ACKNOWLEDGEMENTS

*As I conclude this thesis, it signifies the culmination of an extraordinary and challenging journey between Venice and Lisbon.*

*My deepest thanks to the friends I have met during this year of changes. Your presence has lit a spark of inspiration within me, forever in my soul. To the dedicated master's team, their exceptional guidance has given us experience and a unique perspective on human rights.*

*To the spiritual force that guides me every step of the way.*

*A mis padres por serlo todo*

## LIST OF ABBREVIATIONS

ACCORD	Accord on the Safety of Buildings and Fire Protection
BGMA	Bangladesh Garment Manufacturers and Exporters Association
BLA	Bangladesh Labour Act
CEDAW	Convention on Elimination of all Forms of Discrimination Against Women
CERD	Convention on Elimination of all forms of Racial Discrimination
CSDDD	Corporate Sustainability Due Diligence Directive
CSR	Corporate Social Responsibility
EC	European Commission
EPZ	Export Processing Zones
FLFP	Female Labour Force Participation
GBVH	Gender-Based Violence and Harassment
GRDD	Gender-Responsive Due Diligence
HRDD	Human Rights Due Diligence
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
LBI	Legally Binding Instrument
LFS	Bangladesh Labour Force Survey
MFA	Multifiber Agreement
NCPs	National Contract Points
OECD	Organisation for Economic Cooperation and Development
OEIWG	Open-Ended Intergovernmental Working Group
OHCHR	Office of the High Commissioner for Human Rights
RMG	Ready-Made Garment
SDGs	Sustainable Development Goals
SDO	Social Dominance Orientation
SDT	Social Dominance Theory
SIGI	Social Institution and Gender Index
SMEs	Small and Medium-Size Enterprises
UNPF	United Nations Population Fund
UNGP	United Nations Guiding Principles

# CHAPTER I

## INTRODUCTION

### 1.1 PROBLEM STATEMENT AND RESEARCH QUESTIONS

The concept of “fast fashion” represents a transformative movement within the fashion industry, characterised by the acceleration of production processes and the reduction of costs. The structure of production chains is inherently a manifestation of power differentials within the global economic system. This dynamic systematically unfolds predictably, with prominent fashion multinational corporations exercising significant influence over critical aspects such as investment strategies and supplier sourcing. Accordingly, they allocate the most lucrative activities to their operations while outsourcing labour-intensive tasks to third countries. From the perspective of the average consumer, this fast fashion phenomenon offers considerable advantages, facilitating the rapid acquisition of larger quantities of clothing at increasingly affordable prices. However, from the perspective of the textile workers, these benefits are far from equitable or desirable.

Bangladesh is the second leading hub for many well-known brands worldwide, operating as a critical nexus within their supply networks. Against this backdrop, the so-called Ready-Made Garment (RMG) industry thrives economically, although its resilience is notoriously precarious. Working conditions in factories have put this sector under the spotlight on multiple occasions, most notably after the catastrophic collapse of the Rana Plaza building in 2013 and the negative impact of the Covid-19 pandemic on the workforce.<sup>1</sup> However, beyond these specific cases, the predominantly female workforce of the industry endures a persistent continuum of exploitative labour practices. Their voices within the industry are frequently marginalised, greatly overshadowing their voice. These are some of the experiences described by female workers:

There are many things I dislike about the factory. The one I most dislike is the rude scolding and shouting of the supervisors. They physically abuse us by hitting or slapping us. They slap us to force us to work.<sup>2</sup>

---

<sup>1</sup> Muhammad Azizul Islam, et al., “The Impact of Covid-19 on Women Workers in the Bangladesh Garment Industry” (The University of Aberdeen and the Modern Slavery and Human Rights Policy and Evidence Centre, January 2022).

<sup>2</sup> Azizul Islam, et al., 8.

Workers who have been doing the job for a long time are the ones most likely to be terminated [...] Because of pregnancy; I had to give up my job. Pregnant workers get fired.<sup>3</sup>

A report published by the Ethical Trading Initiative reveals the profound impact of these working conditions in the garment industry, which induced a significant number to leave voluntarily. As a result, the female workforce no longer represents 80% -the most recent estimates are down to less than 60%.<sup>4</sup> This decline in representation is not accompanied by an increase in the number of women in alternative occupations but instead leaves them in predominantly domestic roles. Such a pattern, in effect, exposes the unsustainable nature of work practices while obstructing women's potential for economic advancement. Consequently, it perpetuates a continuous cycle in which women are systematically deprived of secure and stable employment prospects.

Meanwhile, corporate self-regulation through codes of conduct is rising in response to social pressure and demands for corporate accountability. Indeed, the prevalence of discriminatory practices is occurring in the current context of expanding binding and voluntary normative instruments in the field of Business and Human Rights (BHR) at the institutional level. These mechanisms strive to expand corporate accountability throughout the value chain to identify potential and actual risks to the planet and the individuals involved, yet, when considering the issues at stake, are they really effective? This work aims to explore this question, raising considerations as to whether the progress made so far really has the potential to impact directly on women workers and to ensure a discrimination-free working environment. To this end, this study will initially explore the underlying causes that give rise to discriminatory practices. By understanding the substance of employment discrimination in the context of women in the GMR, the aim is to illuminate the systemic issues that contribute to its persistence, thereby establishing a basis for examining the key areas that require attention to ensure the effectiveness of existing regulatory measures.

In addition, this examination will explore risk identification tools that can potentially impact uncovering corporate practices that are hidden behind a veil of secrecy. BHR scholars have advocated the implementation of due diligence mechanisms that require companies to identify risks throughout their value chain. However, there are substantial

---

<sup>3</sup> Azizul Islam, et al.

<sup>4</sup> Ethical Trading Initiative, "Where Are the Women? A Study on the Declining Number of Women Workers in the Bangladesh RMG Industry," March 6, 2023.

disparities in the approaches and implementation of these regulatory measures in practice. In this regard, this work adopts a certain scepticism as to whether the perspectives adopted so far on due diligence prioritise safeguarding workers' rights or maximising corporate profits.

## 1.2 SIGNIFICANCE OF THE STUDY

The imperative of eradicating gender discrimination in the workplace is a fundamental component of the human rights agenda. Article 23 of the Universal Declaration of Human Rights (UDHR) declares, “Everyone, without any discrimination, has the right to equal pay for equal work.”<sup>5</sup> Furthermore, Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) imposes on States the responsibility to take appropriate measures to eliminate gender discrimination in all areas, including employment.<sup>6</sup> An in-depth examination that delves into the realm of inequalities uncovers the considerable barriers that women face in their professional and personal careers. Familiarising oneself with these impediments not only contributes to achieving women's equality by addressing issues that transcend mere labour participation but also raises consumer awareness and engenders the societal transformation of practices. The research contributes to the ongoing discourse on corporate responsibility and the need for gender-sensitive approaches in the sector.

Shedding light on the need for companies to account for their potential and actual social impacts calls for action and helps build a future in which the state's duty to achieve social justice spills over into other decision-making environments. This issue is gaining ground in political debates. On 1 June 2023, the European Parliament adopted the European Commission's Corporate Sustainability Due Diligence Directive. This initiative has great potential, even within its inherent limitations, as it would be the first instrument that transcends national borders and requires binding corporate accountability. This study, therefore, allows for critical analysis and identification of areas that may require further attention or improvements, which will ultimately inform future policy debates and shape a more equitable and responsible business landscape.

---

<sup>5</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

<sup>6</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

### 1.3 SCOPE AND STRUCTURE OF THE THESIS

The selected case study focuses on the Bangladeshi garment industry, which provides an ideal context for exploring the study's objectives due to the notable trend of increasing female abandonment directly related to unfavourable working conditions. This alarming phenomenon highlights the persistent nature of discriminatory practices and underlines the urgent need to address them. In addition, Bangladesh presents valuable contextual material through the Accord on Building Safety and Fire Protection. This normative instrument to regulate the impacts in the factories contains both shortcomings and achievements that are of vital importance in facilitating positive transformations in the sector. However, it is crucial to recognise that this study has encountered certain limitations arising from the resources used. These limitations stem from the absence of an examination of the intersecting factors of gender with other variables, such as ethnicity or migration status. In addition, the limited amount of litigation on this issue poses a significant challenge in identifying effective remedies. Despite these limitations, the study strives to provide valuable insights and contribute to the ongoing discourse on promoting gender equality and improving working conditions in the Bangladeshi garment industry.

This thesis will first discuss the concept of discrimination and its foundations in Chapter 2. This section lays the groundwork by recognising discrimination as a complex and evolving phenomenon. It further investigates the root causes that drive and sustain gender inequality in the workplace. Through this examination, it is intended to improve understanding of the intricate interconnections between these causes and, ultimately, to discern the key points for advancing women's fundamental rights. Chapter 3 navigates the issue of discrimination in the Bangladeshi textile sector, analysing the industry dynamics that contribute to the persistence of discrimination. Chapter 4 then examines the remedies proposed so far and assesses their strengths and limitations in terms of engaging companies in risk prevention. Two case studies relevant to advancing litigation related to transnational violations are presented. Finally, Chapter 5 offers a practical approach that illustrates how the proposals under discussion can be gender-sensitive and generate positive impacts. It explores ways to make the proposed measures more inclusive and effective in promoting gender equality.

## CHAPTER II

### THE GENDERED FACE OF LABOUR DISCRIMINATION

"The first problem for all of us, men and women, is not to learn but to unlearn."  
Gloria Steinem.

#### 2.1 UNDERSTANDING DISCRIMINATION AS A MULTIDIMENSIONAL CONCEPT

As we move towards a more egalitarian and inclusive society, we must recognise the significant challenge of breaking down the entrenched chains of discrimination and bias. Discriminatory practices manifest in various ways and are influenced by multiple social, cultural, and political factors that shape a particular context. The International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work, adopted in 1998, confirmed the constitutional principle of eliminating discrimination concerning employment and occupation, solidifying the global commitment to eradicating discrimination in the realm of work by promoting equality of treatment and opportunity.<sup>7</sup> Part of the foundation of the ILO is the tripartite principle, which advocates for dialogue and cooperation between governments, employers, and workers at the transnational level. Consequently, the pursued objectives, derived from tripartite consultations and grounded in internationally recognised standards and norms, embody a sound and consensual approach to tackling the issue of discrimination.<sup>8</sup> One basic premise that must be considered when dealing with discrimination is its distinction from inequality. Following Reskin and Padavic, the situation of women is not limited only to inequality about men but also involves discriminatory treatment based on personal characteristics unrelated to their performance.<sup>9</sup> Hence, although discrimination and equality are often addressed in the same discourse, they belong to different situational levels. The establishment of ILO Convention No. 111 concerning Discrimination in Respect of Employment and

---

<sup>7</sup> International Labour Organization, "ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up," (International Labour Organization, 2022).

<sup>8</sup> International Labour Organization, "Time for Equality at Work. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work" (International Labour Organization, April 3, 1990), 3.

<sup>9</sup> Irene Padavic and Barbara F Reskin, *Women and Men at Work*, quoted in Donna Bobbitt-Zeher, "Gender Discrimination at Work: Connecting Gender Stereotypes, Institutional Policies, and Gender Composition of Workplace," *Gender and Society*, 25, no. 6 (December 2011): 766.

Occupation in 1958 lays down in Article 1 a definition of discrimination that sets out its basis:

Any distinction, exclusion or preference made based on 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.<sup>10</sup>

In this sense, discrimination does not provide direct information about the meaning of equality itself but rather represents its goal. Notably, the omission of the intentionality factor brings to light that discrimination can also arise unintentionally, making it imperative to recognise and address inadvertent discriminatory practices. At this point, it is crucial to elaborate on the concept of indirect discrimination, which arises when apparently neutral rules, policies or practices inadvertently disadvantage a substantial number of individuals from a specific group.<sup>11</sup> These provisions or guidelines may initially appear impartial or unavoidable but often carry underlying biases. An illustrative example of indirect discrimination in employment can be found in dress codes. While this dress policy assigns a uniform to all employees, attire requirements for women, such as skirts or heels, can put them at a disadvantage and reinforce gender stereotypes. Such dress presupposes certain gender expectations, which can contribute to feelings of objectification and inequality in the workplace. Beyond this matter, it follows from the ILO's description that distinctions based on individual merit are not considered discriminatory. Nor can measures taken to ensure in practice equal treatment and opportunities for persons with particular requirements, such as disability, be considered discriminatory.<sup>12</sup>

A comprehensive discussion of discrimination in the workplace requires an integrated approach that recognises the various employment situations and manifestations in which this practice occurs. As such, discrimination permeates all sectors, whether the work takes place in a formal or an informal economy.<sup>13</sup> Similarly, it is crucial to recognise the interconnected nature of oppression and discrimination, or in other words, to take intersectionality as a point of study. The concept of intersectionality is indebted to

---

<sup>10</sup> International Labour Organization (ILO), Discrimination (Employment and Occupation) Convention, C111, 25 June 1958 (accessed 5 May 2023).

<sup>11</sup> International Labour Organization, "Time for Equality at Work. Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work," 22.

<sup>12</sup> International Labour Organization, 16.

<sup>13</sup> International Labour Organization, 1

Crenshaw, who, from black feminist thought, sheds light on this concept in her struggle to demarginalise the intersection of race and sex.<sup>14</sup> Crenshaw shows how “monist definitions of discrimination, which define sex and race as mutually exclusive categories, render the simultaneous experience of gender racism invisible and legal claims of compound discrimination inadmissible.”<sup>15</sup> To put it in another way, traditional legal frameworks often approach discrimination by focusing on single-axis categories without considering how these identities intersect and complement one another.

Initially, the word "intersectionality" was used as a metaphor for understanding how different forms of oppression are intertwined with each other [...] However, it is more important to recognise how identity politics and its strategies have focused on addressing specific problems without considering the complexity of people and causes that are affected by multiple forms of oppression.<sup>16</sup>

Individuals can face overlapping forms of discrimination based on multiple aspects of their identities. In the specific context of employment discrimination, an indigenous woman may suffer a different form of discrimination than other women belonging to a majority ethnic group. This discourse has extended beyond academia to international human rights discussions, such as the United Nations Beijing Platform for Action (2000) and the Committee on the Elimination of Discrimination against Women (1982).<sup>17</sup> By building upon Carastathis' research, adopting an intersectionality approach elucidates the intricate dynamics through which oppression is perpetuated and maintained, encompassing several interconnected dimensions of power within social structures.<sup>18</sup> In the context of this work, a special focus is placed on the category of gender, focusing on the discrimination women face in the garment sector. However, it is imperative to acknowledge that discrimination can extend beyond gender boundaries, impacting individuals based on intersecting identities.

Elaborating on the scope of the study, Reskin and Padavic note that gender discrimination in employment can manifest itself in different ways, including (1) the sexual division of labour, in which certain occupations and industries are predominantly occupied by men or women (2) the devaluation of work through lower wages and fewer

---

<sup>14</sup> Anna Carastathis, “The Concept of Intersectionality in Feminist Theory,” *Philosophy Compass* 9, no. 5 (April 7, 2014): 306.

<sup>15</sup> Carastathis.

<sup>16</sup> Crenshaw, quoted in Carastathis, 305

<sup>17</sup> Carastathis, 304.

<sup>18</sup> Carastathis, 307.

opportunities for career advancement (3) and gender-based work constriction, that is, how employers and workers impose norms and expectations in hiring or promotion processes.<sup>19</sup> Addressing these disparities requires an approach that delves deeper into power relations and establishing social hierarchies.

## 2.2 GENDER DISCRIMINATION FROM THE SOCIAL DOMINANCE THEORY

Social Dominance Theory (SDT) is one of the foundational tenets of discrimination analysis which posits that human societies are hierarchically organised based on group identities.<sup>20</sup> This psychological theory holds that group-based hierarchies are pervasive features of human societies maintained through a combination of individual and institutional mechanisms.<sup>21</sup> Within these hierarchies, dominant groups enjoy specific privileges and unequal distribution of positive social values, such as power, resources, status, and opportunities. Conversely, subordinate groups experience extremely negative social values and stigmatisation.<sup>22</sup> In light of these considerations, it is interesting to explore how this psychological theory can be employed from a gender lens to understand better how domination translates into discrimination against women.

To speak about the gender lens requires beginning by exploring the concept of gender itself. Initially, gender served as a grammatical tool to differentiate between words that are “masculine or feminine.” It was also often used interchangeably with biological sex to refer to individuals as either male or female.<sup>23</sup> However, during the mid-twentieth century, social scientists underwent a significant conceptual shift. They began to recognise the historical and cultural variations in the archetypes of femininity and masculinity, highlighting that gender is not reducible to individual experiences but shaped by a broader collective.<sup>24</sup> Following Simone de Beauvoir's contributions in her world-famous work “The Second Sex”, gender is nothing innately possessed as part of genetics

---

<sup>19</sup> Irene Padavic and Barbara F Reskin, *Women and Men at Work*, quoted in Donna Bobbitt-Zeher, “Gender Discrimination at Work: Connecting Gender Stereotypes, Institutional Policies, and Gender Composition of Workplace,” 765.

<sup>20</sup> Jim Sidanius et al., “Social Dominance Theory: Explorations in the psychology of oppression,” in *Cambridge University Press Ebooks*, 2016, 150.

<sup>21</sup> Sidanius et al., 171.

<sup>22</sup> Jim Sidanius and Rosemary Veniegas, “Gender and race discrimination: The interactive nature of disadvantage,” In *Reducing prejudice and discrimination*, ed S. Oskamp, (Lawrence Erlbaum Associates Publishers, 2000), 47.

<sup>23</sup> Martha Miranda-Novoa, “Diferencia Entre La Perspectiva de Género y La Ideología de Género,” *Dikaion* 21, no. 2 (December 2012): 343.

<sup>24</sup> Miranda-Novoa

from birth, but rather is the result of collective processes of interaction and exchange of ideas. In her well-known phrase, “You are not born a woman: you become one,” de Beauvoir exemplifies this idea, highlighting the dynamic and ongoing processes that occur in social order and shape our gender identity.<sup>25</sup> This conceptualisation forms the foundation for many feminist theories that seek to dismantle traditional gender norms and promote gender equality. In this context, gender became a theoretical social construct that allowed us to understand how specific hierarchies, relations of domination, and collective social inequalities are generated and reproduced.<sup>26</sup> A crucial aspect to remember when discussing gender is that it does not refer exclusively to women but, as Scott argues, encompasses information about men as well.<sup>27</sup>

The expanded understanding of gender as a socially constructed concept paved the way for various feminist theories and movements. In this context, radical feminism provides a valuable perspective through a critical framework rooted in theoretical reflexivity. It recognises that the binary categorisation of male and female inherently perpetuates the oppression of women.<sup>28</sup> This theory highlights the existence of structural and systemic ideas that restrict women's autonomy and hinder their full potential. These socially accepted notions of femininity serve to legitimise their subordination to men. As Martha Miranda-Novoa suggests, the *raison d'être* of feminists lies in exposing the fallacy of objective and neutral truth, revealing that women's oppression goes beyond individual differences or personal choices.<sup>29</sup> Rather, it stems from an entrenched social structure with unequal power dynamics. Radical feminism seeks to dismantle these structural roots that underpin such subordination.

While SDT posits that societies are hierarchically organised based on group identities, radical feminists recognise that gender is a significant axis of power and oppression within these hierarchies. Radical feminists apply the precepts of SDT by taking on oppressive power dynamics and analysing how they manifest themselves in the gender hierarchy between men and women. This approach fosters a nuanced understanding of gender-related issues, empowering individuals to deconstruct and reconstruct prevailing narratives. Therefore, this approach will be used in the context of this study when it is

---

<sup>25</sup> Simone De Beauvoir, *El Segundo Sexo*, quoted in Miranda-Novoa, 349.

<sup>26</sup> Miranda-Novoa, “Diferencia Entre La Perspectiva de Género y La Ideología de Género,” 347.

<sup>27</sup> Joan Scott, “El Género: Una Categoría Útil Para El Análisis,” *Revista Del Centro De Investigaciones Históricas* 14 (2002): 15.

<sup>28</sup> Ana Marta González, *Género sin ideología*, quoted in Miranda-Novoa, 347.

<sup>29</sup> Miranda-Novoa, 350

assumed that gender-based hierarchies and the social, moral, and political domination of men over women are neither natural nor inevitable but are socially constructed and perpetuated through power dynamics and oppressive systems.

## **2.3 CHALLENGES TO EQUALITY IN THE LABOUR MARKET**

Gender biases have resulted in organisational cultures that disproportionately reward men, feminise women's responsibilities, and hinder their professional development. The consequences of discrimination are not only detrimental to the individuals affected but also to society as a whole. Therefore, we face a systemic problem of isolated boundaries with implications at multiple levels and aspects of life. Bobbitt-Zeher sheds light on this issue by exploring the relationship between gender stereotypes, institutional policies, and workplace gender composition.<sup>30</sup> The author revealed that individuals, consciously or not, translate their ideas about gender into discriminatory behaviours through gender categorisation and stereotypes.<sup>31</sup> She recognises that the primary causes of discrimination are rooted in cultural beliefs and social norms. In contrast, secondary causes are related to organisational structures and policies based on gender stereotypes, disparately affecting workers' opportunities.<sup>32</sup> This section delves into these obstacles to understand the challenges women face in advancing their careers and achieving leadership positions in the corporate world.

### **2.3.1 STEREOTYPES**

Stereotypes, as simplistic perceptions of particular collectives, can provide solid and plausible explanations of group disparities. The Office of the High Commissioner for Human Rights (OHCHR) defines the term stereotype as:

A generalised view of perception about attributes or characteristics that are or ought to be possessed by members of a particular social group, or the roles that are or should be performed by members of a particular group.<sup>33</sup>

---

<sup>30</sup> Bobbitt-Zeher, "Gender Discrimination at Work: Connecting Gender Stereotypes, Institutional Policies, and Gender Composition of Workplace," 765.

<sup>31</sup> Bobbitt-Zeher, 766.

<sup>32</sup> Bobbitt-Zeher, 767.

<sup>33</sup> Office of the High Commissioner for Human Rights, "Gender Stereotyping and Stereotyping and Women's Rights."

History is rich in situations in which stereotypes have been used to rationalise the exclusion or marginalisation of certain groups. Recognising their potential impact has led international human rights bodies to develop a range of measures and mechanisms to identify and combat them. The case of *Price Waterhouse v. Hopkins* was an essential landmark in this context.<sup>34</sup> The case involved a senior manager at Price Waterhouse, who was denied promotion opportunities because some partners believed she did not conform to their "feminine" gender stereotypes. After Hopkins filed a lawsuit, the U.S. Supreme Court held that stereotyping, including expectations of how people should behave based on their sex, is a form of discrimination prohibited by the Civil Rights Act Title VII. This case sets an important precedent by recognising that gender stereotypes can form the basis for unlawful employment discrimination. Despite the significant success of the fight against gender stereotypes as a violation of human rights, reality shows that stereotypes persist in shaping reality and constraining individuals' personal and professional growth.<sup>35</sup> Making autonomous decisions in a world still influenced by pervasive stereotypes often feels more like an idealised vision rather than an attainable reality.

When focusing on gender issues, given the above considerations of prevailing social dominance, stereotyping is determined by the dual identity of males and females, with gender roles being prescribed based on these categories.<sup>36</sup> In this context, women are often portrayed with negative stereotypes as weak or lacking competence, which perpetuates gender inequality and reinforces harmful norms. Madeline Heilman, in her study on Gender Stereotypes and Workplace Bias, speaks of two types of gender stereotypes: descriptive and prescriptive. While the former focuses on what women and men lack, the latter focuses on how they should be -that is, normative expectations.<sup>37</sup> According to Heilman's study, descriptive traditional gender stereotypes associate men with agency and women with community. The implications of this association are numerous and far-reaching; however, the significant consequence is women's attachment to the private and family environment. These stereotypes prescribe specific behaviours and roles depending on the environment, such as women being responsible, nurturing, or emotional, whereas men are breadwinners, dominant, and providers.<sup>38</sup> These attributes

---

<sup>34</sup> *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)

<sup>35</sup> Office of the High Commissioner for Human Rights, "Gender Stereotyping as a Human Rights Violation," October 2013, 17.

<sup>36</sup> Madeline E. Heilman, "Gender Stereotypes and Workplace Bias," *Research in Organizational Behaviour* 32 (January 1, 2012): 114.

<sup>37</sup> E. Heilman, 115.

<sup>38</sup> E. Heilman, 123.

are automatically activated when women are left without opportunities to participate in public life. Likewise, men may also experience negative performance on these stereotypes since they are often deprived of expressing emotions. Combating stereotypes requires addressing both negative and positive stereotypes. In other words, challenging beliefs such as “women are weak” and “women are emotional.”<sup>39</sup>

Considering the object of this study, it is pertinent to question what occurs with stereotypes in fields where women constitute the majority of the workforce. H.M. Clarke positions these gender-type works as a reinforcement of stereotypes and, therefore, discrimination.<sup>40</sup> Occupational segregation represents a barrier to achieving gender equality in the workforce as it reinforces what is deemed “appropriate” for men or women. This trend fosters assumptions about the gender-specific attributes required to succeed in a given occupation, such as skills or mindset. The cycle of discrimination is perpetuated when women are confined to domains typically designated as “women's jobs,” as systemic discrimination factors are often overlooked, and the prospects of gaining high status are frequently diminished, particularly when they remain subordinate to male superiors. A 2011 published study on this issue affirmed that stereotypes continue to be reinforced in women working in an integrated environment.<sup>41</sup> While this study shows that negative stereotypes are more likely to lead to discrimination in male-dominated settings, it is not denied that this situation occurs in a female-dominated setting. Indeed, according to its conclusions, discriminatory policies are among the most significant barriers in women-dominated environments.<sup>42</sup>

An important aspect to consider when examining stereotypes is the issue of naturalisation. The “women first, workers second” narrative portrays women prioritising their roles over employee responsibilities.<sup>43</sup> Sometimes, this external narrative becomes internalised by many female workers, leading to a self-description that conforms to the image of being “vulnerable” and the negative performance of their roles. Different studies in the RMG sector show that female workers often attribute gender disparities within the

---

<sup>39</sup> Office of the High Commissioner for Human Rights, “Gender Stereotyping as a Human Rights Violation.”

<sup>40</sup> Clarke Heather M, “Gender Stereotypes and Gender-Typed Work,” In *Handbook of Labour, Human Resources and Population Economics*, 1<sup>st</sup> ed. (Springer, Cham, 2020).

<sup>41</sup> Donna Bobbitt-Zeher, “Gender Discrimination at Work: Connecting Gender Stereotypes, Institutional Policies, and Gender Composition of Workplace,” 765.

<sup>42</sup> Bobbitt-Zeher, 782.

<sup>43</sup> Bobbitt-Zeher, 771.

workplace to dispositional characteristics rather than situational circumstances.<sup>44</sup> Specifically, they attribute disparities to inherent biological or personality traits rather than external factors. Coming back to Social Dominance Theory suggests that one of the individual-level factors contributing to hierarchies is what is called Social Dominance Orientation (SDO), or in other words, the desire to establish and maintain group-based hierarchies regardless of the group's position within the hierarchy.<sup>45</sup> Taking the example of a female employee with high SDO, a situation in which she would assume that men must exercise domination could arise, revealing that she would accept the given social hierarchy, as she would not want other women to dominate but to maintain men in the top position, even at the expense of women. This example clarifies that women may normativise their behaviour because of some cultural and social beliefs, which family members and public institutions such as education often perpetrate. Therefore, overcoming stereotypes requires work from the outside and within women themselves and promoting diversity and equal inclusion rather than gendered-type jobs.

### 2.3.2 CULTURAL AND SOCIAL NORMS

Closely intertwined with the issue of stereotypes is that of cultural and social norms. Human behaviour is not always a matter of choice; in most cases, it is automatic, involuntary, and responsive to others' expectations. According to Harper et al., social norms are “implicit and informal rules that most people accept; they are influenced by belief systems, economic contexts, and sometimes, by the benefits and penalties for adhering to or disobeying existing norms.”<sup>46</sup> Similarly, a recent report of United Nations Population Fund (UNFPA) conceptualised social norms as “unwritten rules governing behaviour shared by members of a given group or society and shaped by mutual expectations within a social network.”<sup>47</sup> In this regard, the Atlas of Social Norms adds that following or defying a norm depends on one's social capital -that is, one's resources through personal relationships, social position, or status.<sup>48</sup> According to these definitions,

---

<sup>44</sup> Aya Matsuura and Carly Teng, “Understanding the Gender Composition and Experience of Ready-Made Garment (RMG) Workers in Bangladesh,” *International Labour Organization*, September 2020, 6.

<sup>45</sup> Sidanius et al., “Social Dominance Theory: Explorations in the Psychology of Oppression,” 151.

<sup>46</sup> Caroline Harper et al., “Gender, Power, and Progress. How Norms Change” (Advancing Learning Innovation on Gender Norms (ALIGN) and Overseas Development Institute (ODI), December 2020), 11.

<sup>47</sup> United Nations Population Fund (UNFPA), “Technical Brief: How Changing Social Norms Is Crucial in Achieving Gender Equality,” April 2021, 3.

<sup>48</sup> Advancing Learning and Innovation on Gender Norms (ALIGN), “Social Norms Atlas: Understanding Global Social Norms and Related Concepts,” Social Norms Learning Collaborative, May 2021, 7.

it can be inferred that the process of norm formation is based on social interaction, whereby a given group of people agrees to naturalise beliefs about what is considered normal or appropriate for society. Therefore, changes in attitudes or circumstances may involve changes in social norms. Similarly, social norms can provide society with a sense of belonging, identity, or purpose and are therefore conceived as an embedded part of the culture. Culture and cultural norms serve as a way to regulate and limit specific identities, thereby distinguishing them from external ones.<sup>49</sup> However, cultural norms could be either positive -when they have approval and promote social cohesion - or negative -when they involve jokes, violence, or constraints on individual or group-specific development. Evaluating cultural norms as either positive or negative is a matter of ongoing discussion. While it is essential to recognise that certain norms that perpetuate injustices and oppression are not inherent to any culture, there will always be the potential risk of what is called "cultural imposition" by a dominant cultural group on a minority group. Notwithstanding this controversy, cultural norms must constantly be subjected to critically examining and reviewing the universal values of justice, equality, and respect for human rights. In light of oppressive practices, such as the non-consensual use of the female body, recognising the socially constructed nature of these norms is the initial step toward transforming negative dynamics.

A significant number of social norms are tied to gender-based ones.<sup>50</sup> If stereotypes inform our assumptions about someone based on sex, gender norms leverage the biological differences between women and men to regulate expected and accepted behaviour, often reinforcing gender stereotypes. Building upon Cislighi and Heise's (2019) insights, four core features of gender norms should be considered: (1) gender norms are learned from a very early age in socialisation processes and reinforced in family and social contexts; (2) inequitable gender norms engender structural power systems that are often disadvantageous to women; (3) policies and decision-making processes are a function of a given gender system and may reinforce gender norms; and (4) gender norms are produced and reproduced through social interaction, as individuals engage in practices that align or contest the notions of masculinity or femininity.<sup>51</sup> Examples of gender norms may include caring responsibility, which assigns women the primary duty of care and

---

<sup>49</sup> ALIGN, 7.

<sup>50</sup> Beniamino Cislighi and Lori Heise, "Gender Norms and Social Norms: Differences, similarities and why they matter in prevention science," *Sociology of Health & Illness* 42, no. 2 (December 13, 2019): 410.

<sup>51</sup> Cislighi and Heise, 411.

domestic work; the importance of maintaining respectability and purity, which is based on the idea that women's honour must be safeguarded; or norms that tolerate gender-based violence.<sup>52</sup>

Measuring the trends and gender norms that give rise to discrimination is a complex challenge. First, because of the invisibility of the norms to those who adhere to them, and second, because they require detailed and sex-disaggregated data on social attitudes and behaviours, as well as formal and informal laws that impact the lives of women and men differently. In light of these challenges, the Organisation for Economic Cooperation and Development (OECD) has developed the Social Institution and Gender Index (SIGI) as a data source to measure discriminatory social institutions. It uses 14 indicators grouped into five sub-indices: discriminatory family code, restricted physical integrity, intra-household biases towards the son, devaluation of the daughter, limited resources and entitlements, and restricted civil liberties. By quantifying the impact of discriminatory social norms, the OECD sheds light on the magnitude of the problem and helps policymakers identify cultural and social institutions, such as laws that need to be reformed. Using the SIGI Social 2021 Regional Report for Southeast Asia as a reference, empirical evidence shows that social norms are critical drivers of various gender outcomes in the region.<sup>53</sup> While many Southeast Asian countries have legal frameworks that address women's parental rights, customary, religious, and cultural laws often complicate the implementation of equality in some countries. In particular, countries like Brunei, Darussalam and Malaysia face challenges due to Islamic Family Law, which contains provisions requiring women to obey their husbands.<sup>54</sup> Similarly, Bangladesh is governed by the Muslim Family Law Ordinance, which contains provisions that limit a woman's agency over her marital control (Art. 7). Subsection (5) states that if the wife is pregnant at the time of divorce, it will not be effective until the pregnancy is finalised.<sup>55</sup> This provision burdens pregnant women more, potentially prolonging their dependence on their husbands. It should be noted that approximately 61% of Malaysia's population, 67% of Brunei's, and 89.7% of Bangladesh's are Muslim. These are merely examples of traditional norms embedded in regulations that legitimise women's subordination in the

---

<sup>52</sup> Advancing Learning and Innovation on Gender Norms, "Social Norms Atlas: Understanding Global Social Norms and Related Concepts," 100

<sup>53</sup> OECD, "SIGI 2021 Regional Report for Southeast Asia" (OECD Publishing, March 30, 2021).

<sup>54</sup> Malaysia. Islamic Family Law (federal territory) Act (1984), art 129; Brunei Darussalam. Islamic Family Law Act (cap.2017), art 61

<sup>55</sup> Bangladesh. The Muslim Marriages and Divorces (Registration) Act No. XXVI of 1974 to Ordinance No. L of 1976.

family sphere, preventing their economic and productive empowerment and leading to their exclusion from public life.

Drawing on the above example, a recent World Bank Group descriptive analysis of social norms in South Asia affirms that Female Labour Force Participation (FLFP) is one of the significant areas of concern in the region and is closely linked to prevailing family norms.<sup>56</sup> For example, FLFP outcomes are linked to practices, such as age at marriage, which is highly dependent on collective agreements and preferences derived from social norms. It also underscores the critical role of mobility restrictions, such as limited access to transportation or reduced ability to leave home, as significant impediments to accessing economic opportunities. Notably, in 2019, FLFP in the region stood at 25%, while for men, it was 80%.<sup>57</sup> Despite the general trend in the region of keeping women's economic participation low, Bangladesh appears to be a slight exception due to the growth of the garment sector. Nonetheless, many sociocultural norms remain entrenched or regressed, including the practice of child marriages.<sup>58</sup> Further analysis reveals that sexual harassment is a prevalent issue. The SIGI report shows that customary and traditional discriminatory practices exist in all Southeast Asian nations, except Lao PDR and Singapore, which undermine legal frameworks and restrict women's work-related rights.<sup>59</sup> Understanding the impact of gender norms in different contexts is crucial for recognising the deep-rooted barriers that hinder women's advancement in various spheres of life. The examples provided serve as a means to comprehend the complex interconnections between norms and gender inequality, highlighting the multifaceted nature of norms. Failure to recognise and challenge these norms can perpetuate a lifelong cycle of inequity, impeding progress towards gender equality.

### 2.3.3 STRUCTURAL BARRIERS

Analysing gender-based employment discrimination requires considering development opportunities, representing a third causal dimension. In the 1980s, feminist scholars began to examine poverty through a gender lens, identifying what is called the

---

<sup>56</sup> Maurizio Bussolo et al., "Social Norms and Gender Equality: A Descriptive Analysis for South Asia," World Bank Group, August 2022, 1.

<sup>57</sup> Bussolo et al., 13.

<sup>58</sup> Bussolo et al., 4.

<sup>59</sup> OECD, "SIGI 2021 Regional Report for Southeast Asia," 41.

"feminisation of poverty."<sup>60</sup> This term is used to denote situations whereby women who experience poverty are disproportionately affected, as resource allocation is often gender-biased within households. For instance, they encounter various disadvantages, such as *inter alia*, limited access to education, inadequate housing, and poor healthcare. This turns particularly challenging in rural areas, where communities face obstacles in accessing markets, communication, and technology services. This pattern can be illustrated in contexts where poverty restricts educational opportunities and a patriarchal system privileges men's access to resources while relegating women to care roles that limit their aspirations.<sup>61</sup> The economic disadvantages women face by poverty create a cycle of inequality that manifests itself in the employment context. This reduces the ability to access well-paid jobs, move up the employment hierarchy, and participate in decisions that affect well-being and career development. This dynamic hinders the economic and professional advancement of women in poverty, thus contributing to the persistence of the feminisation of poverty.<sup>62</sup> In other words, women's developmental deprivation is intrinsically intertwined with a patriarchal cultural framework that ultimately reinforces discrimination at all levels of life, including employment. This creates a self-perpetuating cycle that forms a complex nexus between poverty and gender discrimination. Consequently, a holistic and intersectional approach is imperative to address these multifaceted phenomena comprehensively. Gender discrimination in the workplace is the only manifestation of a deeply entrenched power imbalance in social and economic structures.

Bangladesh offers a particularly interesting case study in this regard, as the rapid growth of female employment with the rise of the RMG sector was accompanied by women's economic empowerment and, consequently, an improvement in their social status.<sup>63</sup> However, it is crucial to recognise that poverty measurement must encompass a multidimensional approach, going beyond an exclusive focus on income and considering various aspects of life that undermine human capabilities. Women who experienced new economic opportunities also encountered instances of sexual violence and other workplace discriminatory practices.<sup>64</sup> Violence is part of the analysis of poverty from a

---

<sup>60</sup> Women and Development Unit of the Economic Commission for Latin America and the Caribbean (ECLAC), "Understanding Poverty from a Gender Perspective," (CEPAL Publications, June 2004), 12.

<sup>61</sup> ECLAC, 13.

<sup>62</sup> ECLAC, 31.

<sup>63</sup> Sulagna Sen Sharma, "Women's Empowerment in Bangladesh: Understanding through the Case of Readymade Garment Sector," *Gender and Women Studies* 3, no. 1 (June 23, 2020): 4.

<sup>64</sup> Sen Sharma.

gender perspective because it is seen as a factor that impedes the individual enjoyment of autonomy insofar as it hinders women's access to the labour market.<sup>65</sup> Furthermore, many women could not exercise autonomous decision-making to meet their needs despite earning an income. Instead, they remained dependants to the head of the household, perpetuating another form of poverty: a lack of control over their own lives.<sup>66</sup> These observations compel us to delve into the notion of "capabilities." Amartya Sen developed this term and focused on the absolute freedom of individuals to choose the set of activities and situations that they recognise as necessary for their development and thus lead them to have a "good life."<sup>67</sup> Although some criticisms have followed Sen for not elaborating on what is considered a good life, it can be inferred that such a conception considers the most vital and full human right. Development must be viewed as a process that expands human capabilities; when insufficient resources support it, progress is significantly constrained. For a comprehensive analysis of gender discrimination in labour settings, it is crucial to elucidate the developmental deficits experienced by a significant proportion of the workforce in many contexts. Poverty encompasses material, non-material, symbolic, and cultural aspects and is fundamentally affected by power relations or social hierarchies.<sup>68</sup> By identifying these structural and systemic factors, one can understand and work towards creating a more equitable and inclusive work environment.

## **2.4 PATHWAYS TO EQUALITY: PAST ACHIEVEMENTS AND FUTURE PERSPECTIVES**

As social individuals, we are heirs to a social tradition of rights and obligations that has imbued the role of women in different spheres. The struggle for equality and non-discrimination in employment is an ongoing journey that requires constant effort and collective action. International and regional instruments provide a solid basis for addressing these issues, but their effectiveness depends on the commitment and involvement of all stakeholders. The principle of equal opportunities in the workplace is embraced by all member states of the United Nations (UN).<sup>69</sup> As such, Article 2 of the Universal Declaration of Human Rights (UDHR) clearly specifies that "everyone is

---

<sup>65</sup> ECLAC, "Understanding Poverty from a Gender Perspective," 15.

<sup>66</sup> ECLAC, 14.

<sup>67</sup> ECLAC, 10.

<sup>68</sup> ECLAC, 15.

<sup>69</sup> OHCHR, "Chapter 13: The Right to Equality and Non-Discrimination in the Administration of Justice" (UN Human Rights Office of the High Commissioner, May 7, 2001), 635.

entitled to all the rights and freedoms outlined in this Declaration, without distinction[s] of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status.”<sup>70</sup> It is important to note that the categories generally introduced are merely illustrative, not exhaustive.

Recognising equality and non-discrimination in employment is a cross-cutting issue of concern for various UN human rights instruments. The International Covenant on Civil and Political Rights (ICCPR) of 1966 addresses this matter primarily in Articles 2(1), 26, and 7, which explicitly emphasise the right to fair and non-discriminatory work conditions.<sup>71</sup> Similarly, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, in Article 2, paragraph 2, ensures protection against discrimination on various grounds, including sex.<sup>72</sup> The Committee on Economic, Social and Cultural Rights has further interpreted in General Comment no. 16 the ICESCR to impose the positive obligation on states (as outlined in Article 3 of the ICESCR) to provide men and women equal access to jobs at all levels and all occupations, vocational training and guidance programs, information, and knowledge necessary for them to benefit equally from the right to work.<sup>73</sup> Articles 6 and 7 develop these rights further, with Article 7(a) guaranteeing “fair and equal pay for work of equal value without distinction [...] guaranteeing in particular to women conditions of work not inferior to those of men and equal pay for equal work.”<sup>74</sup>

Additionally, two of the main UN human rights treaties are explicitly established to prohibit discrimination: the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) of 1965 and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979. Article 11 of the CEDAW provides explicitly that states shall take all appropriate measures to eliminate discrimination against women in the field of employment, for instance, prohibition of discrimination on the grounds of pregnancy and dismissal on the grounds of pregnancy or maternity.<sup>75</sup> These instruments collectively establish a comprehensive framework to combat discrimination in employment and promote equal opportunities. Progress has also

---

<sup>70</sup> OHCHR, 636.

<sup>71</sup> OHCHR, 638.

<sup>72</sup> OHCHR, 639.

<sup>73</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16: The Equal Rights of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)*, (2005), para. 16.

<sup>74</sup> CESCR, para 24.

<sup>75</sup> OHCHR, “Chap13: Right to Equality and Non-Discrimination in the Administration of Justice,” 641.

been made at a regional level. The Council of the European Union has implemented various directives that aim to tackle discrimination, including Directive 2006/54/EC, which focuses on equal opportunities and treatment of men and women in employment and occupation, and Directive 2000/78/EC, which establishes measures for equal treatment in employment.

Recognising equal labour rights is paramount when the ILO recognises multiple rights and principles as core international labour standards. Within the scope of this research, specific attention should be given to crucial conventions, such as C111, which addresses discrimination in employment; C100, which focuses on equal remuneration; and C190, which aims to eliminate sexual violence and harassment. The importance of gender equality in creating a fair, inclusive, and secure future for work is recognised in the ILO Strategic Plan for Gender Equality 2022–25.<sup>76</sup> The Action Plan 2022-25 also aligns with the UN System-wide Action Plan on Gender Equality and the Empowerment of Women (UN-SWAP), which aims to support the implementation of the goals outlined in the 2030 Sustainable Development Agenda.<sup>77</sup> Notably, the specific targets related to gender, equality, and labour rights outlined in Sustainable Development Goals (SDGs) 5, 8, and 10 are particularly important in this context. Senior management, regional directors, and program managers are responsible for implementing the ILO Action Plan.<sup>78</sup> In addition, gender specialists and focal points play unique roles as catalysts. While it is mentioned that the Staff Union Committee will be informed and consulted in the process, it is not specified whether they are given an active role in the decision-making and implementation of the action plan. This raises questions about workers' actual participation and representation in the design of policies and programs that directly affect their labour rights.

## 2.5 PRELIMINARY CONCLUSIONS ON CHAPTER II

Creating a just and inclusive working future requires a holistic approach where policy frameworks aim to challenge and dismantle the entrenched biases and prejudices that perpetuate gender expectations and stigmas that limit women's capabilities. Overcoming biological determinism in the workplace requires an appreciation of how people's abilities

---

<sup>76</sup> ILO, “ILO Strategic Plan for Gender Equality 2022–25” (International Labour Organization, 2022).

<sup>77</sup> ILO, 3.

<sup>78</sup> ILO, 31.

are not determined simply by their biology but by a complex combination of social factors. While many international instruments recognise the importance of leaving no one behind, concrete steps must be taken to translate commitments into action in contexts where cultural norms oppress women significantly. This means investing in training so that women can recognise the historically assigned roles and free themselves from the expectations imposed on them.

## CHAPTER III

### BEHIND THE SEAMS: THE IMPACT OF BANGLADESH'S EXPANDING GARMENT INDUSTRY ON FEMALE WORKERS.

"We feel like we are out of the world".  
Garment female worker.

#### 3.1 CONTEXT

Bangladesh emerged as a leading manufacturing country in the world since the establishment of its first export-oriented factory only around four decades ago, in 1977. According to Bangladesh Garment Manufacturers and Exporters Association (BGMA), the textile sector accounts for 83% of the country's total export earnings.<sup>79</sup> The main factor behind the industry's boom was, in BGMA's words, "the blessing of the MFA quota." MFA refers to the Multifiber Arrangement, approved by the GATT/WTO Trade Negotiations Committee in 1989. Under this agreement, newly industrialised East Asian economies like China and India faced binding export restraints. At the same time, less developed countries, including Bangladesh, provided market facilities through unrestricted and duty-free access.<sup>80</sup> These policies (implemented until 2004) were considered necessary for fully integrating the Global South into the world economy. As such, MFA led to significant outsourcing of textile production from relatively high-wage to low-wage locations, triggering the dynamic development of the global value chain.<sup>81</sup> Bangladeshi entrepreneurs found it relatively easy to enter the export garment sector, as technology was cheap, workforce intensive and "easy to manage."<sup>82</sup> Concerns about the country's continued success arose when quotas were removed; however, the post-MFA era was another success story, mainly because of continued government support, which enjoyed political stability, low wage rates, and competitive export prices.<sup>83</sup>

Despite its limited resources, Bangladesh has maintained strong economic growth with an average annual GDP rate of 6%, achieving remarkable social and human development.

---

<sup>79</sup> Data retrieved by Bangladesh Garment Manufacturers and Exporters Association.

<sup>80</sup> Auret Van Heerden et al, "SEED Working Paper No. 40: Rags or Riches? Phasing-Out the Multi-Fibre Arrangement" (International Labour Organization, 2003), 5.

<sup>81</sup> Van Heerden et al., 1.

<sup>82</sup> Van Heerden et al., 25.

<sup>83</sup> Van Heerden et al., 26.

Indeed, in 2010 it was ranked as the world's second-largest exporter after China.<sup>84</sup> From the beginning, garment entrepreneurs have shown a greater interest in recruiting female workers, accounting for approximately 80% of the workforce. Against this backdrop, recent sources have indicated a 20% decrease in this percentage in recent years.<sup>85</sup> Through a literature review, this chapter aims to examine whether this decline is due to voluntary abandonment because of an improvement in their standard of living or whether it is a result of abandonment induced by poor employment conditions. On a general level, the garment industry in Bangladesh is known for its low unit labour costs. For example, while producing a shirt cost 0.26\$ in India, 0.43\$ in Pakistan, and 0.79 in Sri Lanka, the same task would cost 0.11\$ in Bangladesh.<sup>86</sup> Local manufacturers have prioritised cost-cutting measures to maintain profitability and competitive prices, including paying lower wages to their workers. Consequently, women have been labelled victims of the industry's global expansion. Simultaneously, the participation of women in the labour force has been a significant advance in the country, as it has contributed to improving their social position. The garment sector weaves threads of empowerment among women while facing the challenges of precarious working conditions owing to the specificities of the industry.

### 3.2 OVERVIEW OF THE READY-MADE GARMENT SECTOR

In recent years, fashion retailers have positioned themselves in a dynamic landscape where they compete with each other to ensure that they can quickly market the latest fashion trends to a diverse customer base. If 50 billion garments were manufactured in 2000, almost 20 years later, twice as many were being produced.<sup>87</sup> The global phenomenon of rapid mass production of textile products has become a defining factor in today's apparel industry. In this line, Laudal described the fashion industry as:

One of the world's most global industries, with closely coordinated and regionally distributed production and distribution lines, but with wide variations in legal and commercial moral protection.<sup>88</sup>

---

<sup>84</sup> 2017 data retrieved by Bangladesh Garment Manufacturers and Exporters Association.

<sup>85</sup> Ethical Trading Initiative, "Where Are the Women? A Study on the Declining Number of Women Workers in the Bangladesh RMG Industry," March 6, 2023.

<sup>86</sup> Soma Dey and Palash Basak, "Out of the shadows: Women and wage struggle in the RMG industry of Bangladesh," *Asian Journal of Women's Studies* 23, no.2 (2017): 176.

<sup>87</sup> World Bank Group, "How Much Do Our Wardrobes Cost to the Environment?" World Bank, March 2022.

<sup>88</sup> Laudal, "An attempt to determine the CSR potential of the international clothing business", quoted in Patsy Perry and Neil Towers, "Conceptual Framework Development," (June 7, 2013): 483.

The term Ready Made Garment (RMG) refers to this phenomenon, shedding light on the specificities of the textile sector, which, according to Perry and Towers, boil down to pressure on prices, international sourcing, large product variety, high volatility, and low predictability.<sup>89</sup> The intensification of competition in the fashion market has increased pressure on profit margins, so large companies have been looking for ways to reduce production costs to keep their prices competitive and make a profit. One strategy that has become common is the use of offshore manufacturing facilities. The Asian region leads this process accounting for approximately 55% of global textile and clothing exports<sup>90</sup>. Perry and Towers noted that cost -labour and logistics, physical and cultural proximity, political factors, and quality were the main considerations for companies to source suppliers in Asia<sup>91</sup>. In this sense, Bangladesh is one of the most common manufacturing centres, producing for big companies such as Nike, H&M, Inditex, and Gap.

According to the IBISWorld 2023 global industry analysis, this sector is ranked 5th largest in employment<sup>92</sup>. The employment structure in the Asian garment sector has been organised around global supply chains. Thus, its garment production and distribution are closely linked to global networks involving multi-tier suppliers<sup>93</sup>. The global supply chain involves the cross-border organisation of activities necessary to produce goods or services and get them to consumers through various development and delivery stages<sup>94</sup>. For example, a supply chain in the Bangladesh garment industry may have different networks. (1) The fibre collection network, where raw materials are sourced generally through local suppliers; (2) the manufacturing network, which can be divided into component inspection with activities such as weaving, finishing and quality control, and the actual manufacturing process; (3) the export network, which involves transporting garments from warehouses within Bangladesh to export destinations through various distribution channels under international trade regulations; and (4) the marketing network, which connects garments to consumers. The final stage includes marketplaces and e-commerce platforms<sup>95</sup>. Large companies are increasingly opting for business-to-business relationships rather than direct contractual relationships with all entities involved in the

---

<sup>89</sup> Perry and Towers, 478.

<sup>90</sup> International Labour Office, “Report IV: Decent Work in Global Supply Chains” (ILO Publications, April 8, 2016), 14.

<sup>91</sup> Perry and Towers, 483.

<sup>92</sup> IBIS World – Industry Market Research, Reports and Statistics, “Global Biggest Industries by Employment in 2023,” 2023.

<sup>93</sup> International Labour Office, “Report IV: Decent Work in Global Supply Chains.”

<sup>94</sup> International Labour Office, 5.

<sup>95</sup> International Labour Office, 9.

value chain<sup>96</sup>. As a result, retailers often buy their products from suppliers without the ability to control where they come from or how they are produced, with little information about their sustainability or how far they go in the supply chain<sup>97</sup>. Less sustainable products are often priced lower, allowing retailers to make better margins to increase their competitiveness. At the same time, local businesses must be responsible for offering detailed product information to their communities<sup>98</sup>. Meanwhile, Emphasis on speed and volume has led to a decline in quality. Notably, consumers embrace this trend of buying lower-quality garments while throwing away old ones as quickly as they acquire the newest ones.

In this landscape, Small and Medium-Sized Enterprises (SMEs) play a crucial role, not only because they make up the majority of businesses worldwide but also because they have more direct contact with local and regional markets.<sup>99</sup> Smaller companies can operate in various sectors and play essential roles as suppliers and subcontractors in the textile supply chain.<sup>100</sup> For example, an SME could specialise in producing quality fabric finishes or specific pieces such as buttons. This specialisation is desirable to big companies, as it allows for adaptability when it comes to tailoring production to customer-specific needs in a fast way. In addition, large companies take advantage of SMEs since they typically offer services at a lower cost, given their small size and smaller scale of operations. However, it is essential to acknowledge that this “rapid response” often leads to an unsustainable work pace; indeed, according to the 2020 UN Global Compact Report, human rights violations increase significantly in the lower tiers of the supply chain.<sup>101</sup> Asian garment exporters generally compete at these stages of the garment chain and face high levels of uncertainty when reducing lead times, operating on tight margins, and investing in productivity enhancement.<sup>102</sup> This global supply chain dynamic sometimes makes these suppliers resort to flexible work arrangements such as temporary and home-based workers. Here, working conditions are generally shallow, as they are unprotected and far removed from contact with big businesses and their ethical responsibility codes.

---

<sup>96</sup> International Labour Office, 6.

<sup>97</sup> Francesca Dal Mas et al., “Corporate Social Responsibility in the Retail Business: A Case Study,” *Corporate Social Responsibility and Environmental Management* 29, no. 1 (August 22, 2021): 2.

<sup>98</sup> Dal Mas.

<sup>99</sup> They represent about 90% of business and 50% of employment worldwide. Data sourced from World Bank: Small and Medium Enterprises (SMEs) Finance.

<sup>100</sup> International Labour Office, “Report IV: Decent Work in Global Supply Chains,” 7.

<sup>101</sup> United Nations Global Compact. “Navigating Decent Work Challenges in Multi-Tiered Supply Chains: Leadership Brief,” 2020, 4.

<sup>102</sup> International Labour Office, “Report IV: Decent Work in Global Supply Chains,” 22.

Given the diversity and complexity of today's global supply chains, even well-intentioned companies may contribute to adverse human rights impacts at any operational level.

### **3.3 CULTURAL AND SOCIOECONOMIC PROFILE OF BANGLADESHI WORKERS**

Bangladesh has a unique cultural and socioeconomic landscape that shapes workers' lives. Understanding cultural and socioeconomic factors provides valuable insights into the dynamics and challenges RMG workers face. According to a study conducted by the ILO and UN Women in 2020, between 2012 and 2018, the estimated total number of workers in the RMG sector was approximately 4 million, of which 3.2 million were women.<sup>103</sup> Current estimates of the total number of employees are similar in number, according to the data provided by BGMEA. Additionally, the same study found that nearly 95% of the interviewed women identified their employment in the RMG sector as their first opportunity for paid work within the formal sector.<sup>104</sup> In this regard, the Bangladesh Labour Force Survey (LFS) conducted in 2016 revealed that 71.5 % of women and 59.6 % of men working in the RMG sector were 29 or younger.<sup>105</sup> Examining the educational aspect, the study indicated that 29,1% of the surveyed workers either had no formal education or had not completed primary education. This percentage was considerably higher for women than men, with 17,9% falling in the same category.<sup>106</sup> In general, economic reasons are the key motivating factors that prompted both female and male respondents to enter the RMG sector. While the majority of respondents indicated that it was their own decision, almost 20% of the women said their spouses influenced them.<sup>107</sup> The study also stated that female respondents, predominantly married (73,3%), listed various obstacles that men did not mention, such as disapproval from their families and being mums of young children. About one in three women surveyed experienced social barriers and religious objections to working in the public sphere.

At the cultural level, the majority of Bangladeshis are Muslims, representing more than 90 per cent of the population. The remaining religions mainly comprise Hindus, Christians, and ethnic minorities.<sup>108</sup> The influence of religious beliefs on identities has

---

<sup>103</sup> Matsuura and Teng, "Understanding the Gender Composition and Experience of Ready-Made Garment (RMG) Workers in Bangladesh," 3.

<sup>104</sup> Matsuura and Teng, 11.

<sup>105</sup> Matsuura and Teng, 9.

<sup>106</sup> Matsuura and Teng, 10.

<sup>107</sup> Matsuura and Teng, 19.

<sup>108</sup> According to the last Population and Housing Census (2011)

long been a crucial aspect of public debate. Religion can be instrumentalised to provide a framework by which individuals understand their roles, responsibilities, and moral guidelines within society. Islam is established in Bangladesh's Constitution 1972 as the state religion.<sup>109</sup> Islamic canons serve as a guide to maintain social harmony, and in the field of labour, they maintain standards free from discrimination and exploitation. For example, women's employment is encouraged in Islam and cannot be discriminated against based on gender or race.<sup>110</sup> Nevertheless, there are many instances in which patriarchal norms and practices are justified in the name of religion. It is important to understand that this does not position Islam as a patriarchal practice per se but as a spiritual practice often used to legitimise and perpetuate existing power structures and gender inequality in society. Many elements of "classical patriarchy" are common in the family and kinship systems that play a dominant role in the framework of gender-power relations in Bangladesh.<sup>111</sup> Thus, power relations within the family and work are close to the traditional gender roles and stigmas, which are represented through practices such as the transfer of property and lineage to males, patriarchal marriage practices in which women become part of their husband's patrilineal group, or the "Purdah."<sup>112</sup> The latter practice refers to women's isolation from their activities. Due to these and other unmentioned interconnected patriarchal constraints, women in Bangladesh have historically had minimal access to resources and high dependency on men throughout their lives.<sup>113</sup> This results in women, from childhood onwards, being seen but not heard and sometimes subjected to a sexual image.<sup>114</sup> Article 28 of the Constitution of the People's Republic of Bangladesh prohibits discrimination based on gender and states that men and women are equal in all areas of the state and public life;<sup>115</sup> however, this right seems to be only on paper. Although Bangladesh leads South Asia's performance in the Gender Gap Index, with more than 69% of its gender gap closed<sup>116</sup>, there are challenges and disparities in Bangladeshi society that are worth discussing. According to UN

---

<sup>109</sup> Md. Hasnath Kabir Fahim, "A Pragmatic Analysis of Labour Standards in Compliance with ILO and Islam: Bangladesh Perspective," *Beijing Law Review* 11, no. 02 (April 9, 2020): 547

<sup>110</sup> Kabir Fahim, 546.

<sup>111</sup> Abdullah Mamun and Mahmudul Hoque, "The Impact of Paid Employment on Women's Empowerment: A Case Study of Female Garment Workers in Bangladesh," *World Development Sustainability* 1 (July 2022): 3.

<sup>112</sup> Mamun and Hoque, 4.

<sup>113</sup> Mamun and Hoque

<sup>114</sup> Marjoke Oosterom et al., "The Gendered Price of Precarity: Voicing and Challenging Workplace Sexual Harassment," June 7, 2022, 37.

<sup>115</sup> Constitution of the People's Republic of Bangladesh (Bangladesh), 4 November 1972

<sup>116</sup> Data retrieved by: Global Gender Gap Report 2022 (World Economic Forum).

Women, the rates of violence against women remain high. More than 80 % of currently married women are abused at least once during their marriage, more than one in four women experience sexual or physical violence, and seven in ten women experience domestic violence at least once in their lifetime.<sup>117</sup> In Bangladesh, marriage, divorce, maintenance, and inheritance are subject to religious laws and these "personal laws" often discriminate against women. Even with the progress achieved through the emergence of the textile sector in empowering women through employment opportunities, it is important to acknowledge that Bangladeshi women still navigate and adhere to the entrenched social hierarchies that have long governed their social lives.

### 3.4 UNVEILING DISCRIMINATORY PRACTICES

Of all the aspects of the garment sector, the working conditions have garnered significant attention. According to the ILO, the average monthly wage of garment workers in Bangladesh in PPP terms was the lowest in the Asia-Pacific region (USD 48).<sup>118</sup> Thus, in 2017, it was estimated that half of the labour disputes recorded in the country occurred in the garment sector. There is also evidence that contract letters are uncommon in most factories. Kabeer and Mahmud argued that, although garment workers are employed in the formal economy, the nature of their conditions is more characteristic of the informal economy.<sup>119</sup> This is manifested by violating the legal requirement to pay monthly wages on time, or simply non-payment of salary, mistreatment in the workplace, extended overtime due to late shipping deadlines, and sudden factory closures, among other challenges.<sup>120</sup> Women face challenges that have significantly impacted their professional path and empowerment. First, they have had to deal with industry-specificities that have affected all workers. However, in addition to these shared obstacles, women have also had to contend with discriminatory practices deeply embedded in the industry's organisational culture.

---

<sup>117</sup> UN Women Asia and the Pacific. "UN Women Bangladesh."

<sup>118</sup> Mohammad Kamrul Hasan, *Everyday Life of Ready-Made Garment Kormi in Bangladesh: An Ethnography of Neoliberalism*, Springer EBooks, 2022, 6.

<sup>119</sup> Kamrul Hasan, 7.

<sup>120</sup> Matsuura and Teng, "Understanding the Gender Composition and Experience of Ready-Made Garment (RMG) Workers in Bangladesh," 9.

### 3.4.1 WOMEN'S UNDERREPRESENTATION IN LEADERSHIP ROLES

Labour relations are embedded in social structures, which affects the question of who takes on a leadership role. One of the women's most prominent challenges stems from the organisational culture perpetuating pay and promotion discrimination. A report by the ILO on gender composition in the RMG sector revealed a striking gender imbalance, with men occupying 95% of line supervisor positions.<sup>121</sup> Conversely, most women are operators, occupying the lowest segment in the workforce hierarchy. As a result of their work within the industry, these women possess limited bargaining power at the company level, severely hampers their ability to assert their rights.<sup>122</sup> This inequitable context manifests itself in discriminatory payments, with lower salaries for women. A study conducted in 2022 on finance corporations disclosed that female workers earned 25% less than their male counterparts in the same positions.<sup>123</sup> Such disparity perpetuates the cycle of underrepresentation by conveying the message that women's contributions to the sector are undervalued. Consequently, the proportion of women seeking leadership positions is relatively low as they frequently express disinterest in becoming supervisors. Surveyed women in ILO Report attribute this trend to the prevailing perception that men are perceived as more efficient and diligent in their roles.<sup>124</sup> There is a widespread belief that women's capacity to contribute to sector development cannot be as adequate as men's. These findings underscore the alarming reality that neither men nor women perceive the extent to which discrimination affects promotion opportunities for female workers, which is evidence of the entrenchment of a patriarchal culture in society. It also illustrates the point made in the previous chapter about how women assume gender stereotypes to be essentially inherent to them, i.e., biological, rather than derived from external factors. Another reason the women surveyed gave was related to the psychological burden that the leadership role placed on them. The fact that women are limited in leadership is not isolated to the textile sector but rooted in the negative image of female leadership, biased performance evaluation, or lack of flexibility in employment. Lack of education should not justify this under-representation, as few women in high-

---

<sup>121</sup> Matsuura and Teng, 15.

<sup>122</sup> Shoma Chowdhury, "Women's rights and Voice in Ready-Made Garments Sector Bangladesh: Evidence from Theory and Practice," *Journal of International Women's Studies* 18, no. 2 (January 2017): 123.

<sup>123</sup> Monira Munni, "'Women in RMG Sector Get Lower Wages than Men,'" *The Financial Express*, June 28, 2022.

<sup>124</sup> Matsuura and Teng, 16.

level positions tend to be more educated than men.<sup>125</sup> Instead, this disparity is rooted in the broader underlying factors. For instance, in Bangladesh, there is an under-representation of women leaders in politics, with only 18.5% being female members.<sup>126</sup> When these trends persist in politics as a means of citizen representation, it becomes challenging to create an inclusive culture.

### **3.4.2 DISCRIMINATION BASED ON WOMEN'S REPRODUCTIVE ROLE**

Pregnancy, a natural condition of women's reproductive life, can be a reason for discrimination in the work environment. In the RMG sector, more than half of the female workers were married.<sup>127</sup> Therefore, considering the abovementioned average age of female workers (26 years), pregnancies occur frequently among them. Under Section 45 of the Bangladesh Labour Act 2006, pregnant women are entitled to 16 weeks of maternity leave with full payment of their salaries.<sup>128</sup> Nevertheless, the prevailing reality paints a strongly contractionary picture. The findings of the ILO report on Gender Composition in the RMG industry revealed that many women suffer from discrimination at the time they announce their pregnancy. As such, they are often pressured to leave temporarily and are encouraged to resign due to a perceived “productivity decline” due to their pregnancy.<sup>129</sup> The main concern of these women is the potential loss of their jobs if they dare to avail themselves of their rightful maternity leave. Consequently, constrained by limited economic resources, many women are compelled to persist in their work and silently endure, jeopardising their well-being and that of their children.<sup>130</sup> On the other hand, many other women are forced out of employment; in effect, among the main reasons for the current decline in female participation in the RMG sector (20%) are pregnancy and childcare.<sup>131</sup> Poor working conditions also raise concerns about abortion, which is why many women quit or decide to postpone their pregnancies after several years of work and leave their jobs. A recent report addressing this issue highlights the case of a 22-year-old worker who had to work eight hours when she was eight months

---

<sup>125</sup> Matsuura and Teng, 18.

<sup>126</sup> “Facts & Figures,” UN Women – Asia-Pacific.

<sup>127</sup> 73,3% according to the study of Aya Matsuura and Carly Teng.

<sup>128</sup> Labour Act, 2006 (XLII of 2006), Chapter IV, sec 45.

<sup>129</sup> Matsuura and Teng, 31.

<sup>130</sup> Matsuura and Teng,

<sup>131</sup> Ethical Trading Initiative, “Where Are the Women? A Study on the Declining Number of Women Workers in the Bangladesh RMG Industry,” 6.

pregnant, as she was afraid to ask permission from her employers.<sup>132</sup> In light of prevalent maternity discrimination practices, many women feel compelled to hide their marital status during hiring. Recognising the existence of discrimination is vital to obtain a comprehensive picture of the situation faced by women within this context.

### 3.4.3 HARASSMENT AS A FORM OF DISCRIMINATION

Discrimination ranges from subtle, seemingly harmless attitudes to ongoing harassment or outright violence. Both the ILO and CEDAW identified harassment as a manifestation of discrimination based on sex and as a specific form of violence against women.<sup>133</sup> In General Recommendation No. 35, the CEDAW Committee recognised that the prohibition of any manifestation of gender-based violence against women has evolved into a principle of customary international law binding on all States.<sup>134</sup> The ILO in Convention No. 190 on Violence and Harassment (Article 1) defines these terms as follows:

*A range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aims at, result in, or are likely to result in physical, psychological, sexual, or economic harm, and includes gender-based violence and harassment.*<sup>135</sup>

By embracing this comprehensive description, the ILO covers not only physical violence in the form of power abuse but also focuses on emotional violence arising from verbal abuse, harassment, isolation of people, and similar tactics. Violence at work is a multidimensional problem that affects the health and safety of those who suffer from it.<sup>136</sup> In the context of Bangladesh, the workplace is the second most common setting in which harassment is experienced and a significant cause of job abandonment.<sup>137</sup> According to the 2020 ILO report, 60% of the workers surveyed, both women and men, experienced repeated insults, shouting, and occasional physical violence by their superiors.<sup>138</sup> One particularly alarming practice mentioned is known as "preventive imprisonment", whereby workers are forced to stand in isolation for 2-4 hours in a non-production plant.

---

<sup>132</sup> Sadika Haque, "Maternity Leave: Crying Need for RMG Workers," *The Business Standard*, April 13, 2021.

<sup>133</sup> OHCHR, "Gender-Based Violence against Women and Girls."

<sup>134</sup> OHCHR.

<sup>135</sup> International Labour Organization (ILO), Violence and Harassment Convention, C190, 25 June 2019).

<sup>136</sup> Sadika Akhter et al., "Suffering in Silence: Violence against Female Workers in Ready-Made Garment Industry in Bangladesh: A Qualitative Exploration," *Women's Health* 15 (December 20, 2019): 2.

<sup>137</sup> Ethical Trading Initiative., 5.

<sup>138</sup> Matsuura and Teng, 28.

Workers can face this practice for failing to achieve a particular goal or being unwilling to do extra work.<sup>139</sup> Studies have established a clear link between the recurrence of harassment in its different versions and the pressure generated by wage incentives when there is a daily production target. In many cases, workers are compelled to meet predetermined production quotas to secure a specific level of remuneration. Unfortunately, this relentless pursuit of targets often leads to the use of violence to achieve them.<sup>140</sup> In this connection, a study published in 2019, conducted in the Dhaka district, collected different testimonies from women in four factories in the sector. Among the findings was the account of one woman who reported abuses that went as far as depriving workers of their essential needs. For instance, it was argued that they were often prevented from drinking water to prevent them from wasting time in meeting their daily production quota. In addition, their belongings, such as cell phones, are confiscated upon entry to avoid external communication. This study also addressed employers' perspectives, arguing that female workers may show "disobedience" and "lack of cooperation." They also acknowledged that verbal violence was justified on the grounds that pressure is conducive to better work performance, but all cases of physical violence were denied.<sup>141</sup>

The government has driven several national mechanisms that complement CEDAW, to which Bangladesh has been a party since 1984, such as the National Women's Development Policy of 2011 and the Women and Children Repression Prevention Act of 2000. However, it is a matter of great sorrow that the people of Bangladesh do not have any specific laws relating to sexual harassment.<sup>142</sup> When it comes to this issue, extensive research consistently reveals that most, if not exclusively, of the victims are female workers. ILO Convention No. 190 does not provide a specific definition of sexual abuse; indeed, Article 7 requires each Member State to adopt regulations to define and prohibit sexual abuse as long as it is in line with the definition of Article 1.<sup>143</sup> The discretion given to states to formulate their purposes may result in inconsistencies and variations in how sexual abuse is addressed. For instance, the 2000 Prevention of Repression against Women and Children Act in Bangladesh, while introducing the term "Jounonipiron"

---

<sup>139</sup> Matsuura and Teng, 28.

<sup>140</sup> Oosterom et al., "The Gendered Price of Precarity: Voicing and Challenging Workplace Sexual Harassment," 17.

<sup>141</sup> Sadika Akhter, et al., 6.

<sup>142</sup> Mahabub Ul Alam Khan and Gita Debi Halder, "Sexual Harassment in Bangladesh: A Note on Legal Perspective," *Society & Sustainability* 4, no. 1 (August 24, 2022): 109

<sup>143</sup> International Labour Organization (ILO), Violence and Harassment Convention, C190, 25 June 2019.

(sexual offence), does not clearly articulate sexual harassment from a legal point of view but only includes physical characteristics such as touching various body parts or making an impolite gesture among others.<sup>144</sup> This lack of clear definition hampers the effective implementation and enforcement of laws related to sexual harassment. In *Bangladesh National Women Lawyers Association (BNWLA) v. Government of Bangladesh, et al.*, the High Court Division recognised that sexual harassment experienced by women in the workplace constitutes a violation of the constitutional provision of equal rights with men in all spheres of state and public life.<sup>145</sup> The Court ruled that the euphemistic term "eve-teasing" should not be used in place of sexual harassment.<sup>146</sup> Thus, it defined sexual harassment to include practices such as (a) following a woman, (b) demanding requests for sexual favours, (c) making unwanted contact, (d) showing pornography, and other acts that could reasonably be expected to place a woman in fear of her safety.<sup>147</sup> It also issued a set of guidelines that will be considered law until the government enacts the necessary legislation.

Nevertheless, the prevailing reality highlights a significant problem with the existing legal framework: it remains vague and has not effectively materialised into a solid protection framework. According to a report conducted in 2022 by the Institute of Development Studies, among the 60.8 million people employed, an estimated 5.5% have been sexually abused, a percentage that increases in urban women (7.4%).<sup>148</sup> These figures rise to 80% when it comes to witnessing abuse in and around the workplace, by an Action Aid study in 2021. Following the conclusions of this study, a quarter of the 200 workers surveyed claimed that most or all women in their factories had experienced sexual harassment or abuse while working. It also revealed that if a perpetrator did not carry out sexual harassment, he threatened the subordinate with relocation, a salary reduction or even humiliation in the workplace.<sup>149</sup> Victims who perceive a lack of effectiveness in the legal system may hesitate to come forward and report incidents of harassment or abuse.

One of the main barriers to addressing this issue is the low reporting rate. As highlighted by Akhter et al. in their report, government delegates acknowledge that while

---

<sup>144</sup> Mahabub Ul Alam Khan and Gita Debi Halder, 110.

<sup>145</sup> Supreme Court of Bangladesh, *BNWLA v. Government of Bangladesh*, no.5916 of 2008.

<sup>146</sup> *BNWLA v. Government of Bangladesh*, par 10.

<sup>147</sup> *BNWLA v. Government of Bangladesh*.

<sup>148</sup> Oosterom et al., 35.

<sup>149</sup> Action Aid, "Sexual Harassment and Violence against Garment Workers in Bangladesh," July 25, 2019.

they occasionally hear cases of verbal abuse at work, they do not receive any official notifications of physical violence. Indeed, a significant percentage of women, estimated at 60-80%, remain silent after being victims of sexual violence.<sup>150</sup> The underlying reason for this is the ingrained honour culture. Being a victim of harassment could impact the image and societal expectations to which they are expected to conform. Working outside the home alone represents a fundamental shift towards traditional norms, so many must prove they can maintain "purdah" while being exposed to men and the outside world. Besides, the lack of knowledge about what makes up sexual abuse and the lack of effective redress mechanisms for victims of sexual abuse further discourage victims from coming forward. The remediation mechanisms in place are also weak. In the case of *Shamsun Nahar vs. British American Tobacco Bangladesh*, the High Court stated that victims of workplace sexual harassment have the right to approach higher authorities and demand appropriate action against offenders directly.<sup>151</sup> However, if the authority fails to ensure preventive measures, it will breach its duty to care for the victim. Therefore, no clear guidelines or mechanisms are provided for adopting such measures. This lack of clarity can create confusion and make it difficult for victims to navigate the process effectively. These factors perpetuate a culture of silence, which hampers progress in addressing this issue.

### **3.5 DISCRIMINATION VS EMPOWERMENT: THE ONGOING WOMEN STRUGGLE**

The garment industry in Bangladesh has brought challenges and triumphs for women. When the RMG industry reached its pinnacle during the latest 90s, not only were employment opportunities created, but women were also provided with a platform to use their competence and aptitude for the betterment of society and the country as a whole.<sup>152</sup> Notably, women's increased participation correlates with a steady rise in the RMG export rate.<sup>153</sup> In this regard, Begum and Sarmin drew a positive relationship between the RMG sector and women's empowerment in their study. They argued that the social and cultural transformation brought about by the emergence of the industry empowered women, enabling them to exert more significant influence within their families. As a result,

---

<sup>150</sup> Oosterom et al., 35.

<sup>151</sup> *British American Tobacco Bangladesh (BATB) Company Ltd v. Begum Shamsun Nahar* (66 DLR (AD) 80).

<sup>152</sup> Sulagna Sen Sharma, "Women's Empowerment in Bangladesh: Understanding through the Case of Readymade Garment Sector," 4.

<sup>153</sup> Sen Sharma, 2.

women have experienced changes in their self-perception.<sup>154</sup> Likewise, this inclusive environment has positively impacted female educational attainment, contributing to a reduction in early marriage and fertility rates.<sup>155</sup> Consequently, it can be argued that the RMG sector has played a crucial role in enabling women in Bangladesh to develop their own voices and contribute to the country's sustainable development. However, in light of the above considerations, it is essential to acknowledge that not all studies yield positive results regarding women's ability to have greater control over their lives. In fact, the culture of silence after suffering violence or discriminatory practices is widespread among women. Akhter et al. collected different testimonies in this regard.<sup>156</sup> One of the workers surveyed shared her struggle with health problems due to the helplessness of being unable to report the rape she experienced because of the fear and stigma associated with it. This raises questions about the effectiveness of focusing solely on economic empowerment in achieving real agency among women. If discriminatory practices and prejudices persist, women's subordination will not cease, impeding progress in the other dimensions of empowerment. Empowerment is a multifaceted concept involving individual and collective awareness, beliefs, and behaviours embedded in the context-based social structure.<sup>157</sup> In essence, empowerment implies a process of bringing about change. According to Kabeer, empowerment entails making strategic life choices, such as freedom of association, and second-order life choices as the quality of life. Kabeer's explanation of the concept emphasises the exercise of agency, which encompasses making choices and challenging power relations.<sup>158</sup> Additionally, she underscores the significance of resources as a means of exercising agency effectively and the achievements that stem from such agency. On this basis, Begum and Sarmin indicated that empowerment is best measured along five primary dimensions: economic empowerment through financial independence, social and cultural empowerment through increased visibility in public spaces, legal empowerment through knowledge of their legal rights, political empowerment through access to voting and representation, and psychological empowerment by enhancing self-worth.<sup>159</sup> In this regard, addressing these

---

<sup>154</sup> Nargis Begum and Shaila Sarmin, "Women's Empowerment: Impact of RMG; Case from Gazipur District," *ASA University Review* 10, no. 2 (July-December 2016).

<sup>155</sup> Sulagna Sen Sharma, *Ibid.*, 3.

<sup>156</sup> Sadika Akhter, 6.

<sup>157</sup> Naila Kabeer, "Gender Equality and Women's Empowerment: A Critical Analysis of the Third Millennium Development Goal," *Gender and Development* 13, no 1 (March 2005): 13.

<sup>158</sup> *Ibid.*, 14.

<sup>159</sup> Begum and Sarmin, 32.

broader societal issues alongside economic empowerment is essential to ensure women's holistic and sustainable empowerment.

Nonetheless, a considerable number of women who, as agents capable of resisting deprivation and inequalities, have taken proactive measures to defend and uphold the empowerment process and refuse to retreat. Despite being confined to vulnerable groups, their agency and determination deserve recognition, as they have made remarkable strides independently. The journey of women seeking justice began in the earliest days of the RMG industry. A study on wage struggles in the Bangladeshi RMG industry documents this process, compiling testimonies of mainly first-generation female workers who began questioning the massive gap between factory owners and workers.<sup>160</sup> These women formed informal unions and engaged in sporadic protests outside factory complexes, fighting for their wage rights. These protests often developed into large peaceful movements.<sup>161</sup> The outrage of female garment workers took the form of numerous strikes on issues such as unpaid wages, unpaid overtime, inadequate wage increases, and other problems.<sup>162</sup> The tragic Rana Plaza accident in 2013 triggered a wave of strikes that strengthened women's leadership capacity, expanding support networks with labour rights advocating nationally and internationally. Throughout these demonstrations, many female workers were dismissed; however, these struggles did not cease, demonstrating that women, despite being affected collectives, are agents who want to be heard.

### **3.6 THE RIGHT TO A SAFE AND DIGNIFIED WORK ENVIRONMENT**

The Government of Bangladesh is responsible for providing adequate support to the RMG sector under the Labour Act 2006 (BLA).<sup>163</sup> Likewise, as an active member of the ILO since 1972 and has ratified 36 conventions, it strives to align its legislation with the principles enunciated by the ILO. The government's concerted efforts to enhance the RMG sector through implementing the BLA demonstrate its commitment to fostering a harmonious relationship between employers and workers, ensuring job security, and facilitating the rapid growth of production within commercial establishments. Thus, the

---

<sup>160</sup> Dey and Basak, "Out of the shadows: Women and wage struggle in the RMG industry of Bangladesh," 169.

<sup>161</sup> Dey and Basak., 171.

<sup>162</sup> See more in: "Bangladesh: Hundreds of Garment Factory Workers Protest over Unpaid Wages amid COVID-19 Lockdown - Business & Human Rights Resource Centre."

<sup>163</sup> Chowdhury, "Women's Rights and Voice in the Ready-Made Garments Sector of Bangladesh: Evidence from Theory and Practice," 122.

legislation includes a range of new provisions and improvements to the existing clauses before 2006.<sup>164</sup> Notable examples include the introduction of identification cards for all workers by employers (Section 5); the increase in maternity leave from 12 to 16 months after one month of employment (Section 117); financial support for damage caused if a worker has an accident (Section 150); clear definition and regulation of overtime work (Section 108); the right of workers to join trade unions (Section 176); prohibition of employment of children and adolescents (Section 34); or equal wages (Section 345).<sup>165</sup>

Whatsoever, it has been argued that BLA 2006 has many shortcomings that hinder any prospect of it becoming an essential source for the development of responsible management. For example, Section 179 establishes a new requirement that a workers' union shall only be entitled to form if it has a membership of at least 30% of the total number of workers employed in the establishment in which it is created.<sup>166</sup> This provision is not in line with the ILO Convention No. 87 standards, to which Bangladesh is a signatory. Moreover, it should be noted that this requirement exclusively applies to workers' unions, while employers' organisations are exempt. Further, although BLA 2006 includes a provision for equal pay, in line with ILO Convention No. 111, it only covers discrimination based on sex, ignoring the other categories that come into play (race, religion, ethnicity, age, etc.). This omission contradicts Bangladesh's constitutional rule of discrimination (Article 28).<sup>167</sup> Additionally, the legislation lacks provisions addressing discrimination in treatment and facilities within the workplace. Significantly, section 332 does not sufficiently address gender-based violence in employment, including sexual harassment.<sup>168</sup> As mentioned in the previous section, to effectively prevent sexual harassment, it is necessary to have clear guidelines that define sexual harassment, outline complaint mechanisms, and specify consequences for perpetrators.

One of the prevalent issues in enforcing labour regulations arises from the limitations present in Export Processing Zones (EPZs), which are zones designated to promote the production and export of goods. To ensure a basic level of labour rights, The Bangladesh Export Processing Zones Authority introduced instructions; however, they do not cover

---

<sup>164</sup> Kabir Fahim, "A Pragmatic Analysis of Labour Standards in Compliance with ILO and Islam: Bangladesh Perspective," 547.

<sup>165</sup> Labour Act, 2006 (XLII of 2006),

<sup>166</sup> Kabir Fahim, 554.

<sup>167</sup> Bangladesh Const., art 28(2): "Women shall have equal rights with men in all spheres of the State and of public life.

<sup>168</sup> Kabir Fahim, 551.

the fundamental rights of workers as BLA does.<sup>169</sup> For instance, leave permission is subject to the discretion of the factory manager, leaving workers unable to assert their rights, such as maternity leave.<sup>170</sup> Furthermore, the procedures for forming unions are burdensome as only one union is allowed in each establishment.<sup>171</sup> In light of these problems, an amended law was published in July 2013 to make it more effective in nature and to protect labour rights. This included provisions to improve workers' safety; however, most of the abovementioned issues need more attention. It might be inferred that the special attention given to employee safety can be traced back to the Tazreen factory fire in November 2012 and the collapse of the Rana Plaza building in April 2013. The latter event incentivised the enactment of several significant measures, such as the Accord on the Safety of Buildings and Fire Protection (Accord), the Bangladesh Garment Safety Alliance, and the Remediation Coordination Cell. These regulations have intensified factory inspections and audits to evaluate and oversee safety and working conditions within the garment industry.

### **3.7 PRELIMINARY CONCLUSION ON CHAPTER III**

After this overview of the regulatory framework, an important question arises: why do violations persist? The problem that causes most violations does not lie in the lack of ratification of conventions nor the implementation of new laws or modification of old ones. Instead, the main issue lies in the laws' need for practical application and performance. The severe challenges women face, as described in the previous section, show how many of these rules have yet to be effectively upheld in practice.<sup>172</sup> In line with Chowdhury, the only reason behind this is the lack of a compliance certification system that can function as a "bargaining tool" for factory owners to comply with codes of conduct. Such a system must involve all actors that are part of and benefit from the industry.<sup>173</sup>

---

<sup>169</sup> Kabir Fahim, 1551.

<sup>170</sup> Kabir Fahim.

<sup>171</sup> Kabir Fahim.

<sup>172</sup> Chowdhury, 118

<sup>173</sup> Chowdhury, 122.

## CHAPTER IV

### GETTING IT RIGHT: TOWARDS A CORPORATE DUTY OF CARE IN GLOBAL VALUE CHAINS.

“Businesses must create a just society beyond the boundaries of the business entity.”<sup>174</sup>

#### 4.1 SHIFTING PERSPECTIVES: FROM CORPORATE SOCIAL RESPONSIBILITY TO BUSINESS AND HUMAN RIGHTS

Corporate Social Responsibility (CSR) originates in moral philosophy and is commonly known as the normative case derived from the altruistic desire to do good.<sup>175</sup> While CSR does not have a universally agreed-upon definition, it encompasses several discussions about corporations' ethical responsibilities in their activities. The European Union (EU) has understood CSR as a “concept whereby companies voluntarily integrate social and environmental concerns in their business operations and interaction with their stakeholders.”<sup>176</sup> Historically, CSR has focused primarily on corporate volunteering, where companies exercise self-directed decisions and recognise their role as social agents. Over time, it has emerged as a core issue insofar as consumers increasingly demand genuine commitments to sustainability and a preference for products that align with their social values.<sup>177</sup> While employees and customers appreciate the attention towards responsible initiatives, the more these elements are communicated, the more engaged they feel, with a positive impact.<sup>178</sup>

Interestingly, Francesca Dal Mas et al. discuss that two opposing trends have shaped CSR: the growing consumer demand for ethical management and the tendency to look for lower-priced products to favour the personal economy. As a result, CSR sometimes adopts a selective approach to human rights to balance these two dominant trends in the best interests of business.<sup>179</sup> Wettstein has labelled this phenomenon as "human rights minimalism". In other words, companies may engage in CSR by focusing only on specific

---

<sup>174</sup> Anita Ramasastry, “Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability,” *Journal of Human Rights* 14, no. 2 (April 3, 2015): 239.

<sup>175</sup> Pasty and Towers, “Conceptual Framework Development,” 481.

<sup>176</sup> European Economic and Social Committee, quoted in Ramasastry, 239.

<sup>177</sup> Dal Mas et al., “Corporate Social Responsibility in the Retail Business: A Case Study,” 229.

<sup>178</sup> Dal Mas et al., 230.

<sup>179</sup> Dal Mas et al., 229.

issues that align with their business interests or public image rather than fully addressing all human rights issues across their operations. In this regard, Wettstein claims that "Attempts to integrate human rights into the concept's core have generally been meagre."<sup>180</sup> This critique sheds light on the limitations of CSR in effectively adopting human rights principles, as well as the corresponding legal obligations that stem from them.

Legal scholars and human rights advocates observed that endeavours to bridge the gap between CSR and human rights must strive for a more holistic and all-encompassing approach.<sup>181</sup> This aspiration materialised in the theory of Business and Human Rights (BHR). This movement, which originated in the late 1970s, cannot be attributed to a single catalyst; instead, it emerged following a series of incidents that exposed transnational human rights violations.<sup>182</sup> Here, the term transnational refers to violations perpetrated by companies generally located in Global South states with limited institutional oversight and operating under contracts with larger corporations domiciled in high-income countries. Globalisation has undeniably pushed transnational corporations to function as active participants within the international legal system, thus endowing them with the capacity to assume certain rights and responsibilities.<sup>183</sup> Thus, the initial focus was on the fundamental obligation of companies to respect human rights wherever they operate, not to harm and, if harm is caused, to provide meaningful remedies to victims.<sup>184</sup> One of the concepts incorporated from the BHR study is that of "corporate complicity", whereby companies should be held accountable for the negative impacts they cause directly and indirectly.<sup>185</sup> Therefore, it took shape as a movement that goes beyond positively recognising the role of business in protecting human rights, emphasising the responsibility of companies for the harms caused at all levels of their operations, and exploring issues such as the importance of access to remedy as a means of corporate accountability.<sup>186</sup> This is where BHR offers an alternative and an answer to the CSR gap.

---

<sup>180</sup> Wettstein, "CSR and the debate on business and human rights," quoted in Ramasastry, "Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability", 239

<sup>181</sup> Ramasastry, 242.

<sup>182</sup> Ramasastry.

<sup>183</sup> John Ruggie, "Business and Human Rights: The Evolving International Agenda," *The American Journal of International Law* 101, no. 4 (October 2007): 824

<sup>184</sup> Ramasastry, 240.

<sup>185</sup> Ramasastry.

<sup>186</sup> Ramasastry, 243.

## 4.2 SHAPING BUSINESS HUMAN RIGHTS OBLIGATIONS

### 4.2.1 THE GENESIS OF SOFT LAW INSTRUMENTS

The landscape of corporate human rights obligations has been significantly shaped by the widespread adoption of soft law instruments. The first signs of international standards to regulate business conduct can be traced back to the 1970s.<sup>187</sup> In 1976, the OECD introduced a set of non-binding Guidelines for Multinational Enterprises, albeit with limited impact. Nevertheless, the Guidelines have continuously been updated to align with the evolving societal challenges and subsequent instruments that have emerged at the international level. A notable development brought about by this document was the creation of National Contact Points (NCPs) as mechanisms to receive and evaluate civil society complaints regarding alleged violations by transnational corporations operating within the scope of the Guidelines.<sup>188</sup> While NCPs vary considerably from region to region, they provide mechanisms to hold companies accountable by facilitating the review and intermediation of consumer complaints, even without judicial authority.<sup>189</sup> One year after adopting the Guidelines, the Tripartite Declaration of Principles Concerning Multinational Enterprises was adopted, representing a pivotal document given its collaborative nature.<sup>190</sup> That said, the BHR movement gained momentum in the 1990s, especially with the creation of the UN Global Compact, an initiative spearheaded by Secretary-General Kofi Annan and the UN Secretary-General's Office in Geneva.<sup>191</sup>

The voluntary nature of the UN Global Compact makes it a CSR initiative; however, according to Ramasastry, it can be seen as an example of balancing CSR and BHR, as it directly asked companies to benchmark their conduct against international human rights law and to self-report on their human rights progress.<sup>192</sup> In 2003, the Sub-Commission on the Promotion and Protection of Human Rights -the forerunner of the UN Human Rights Council- issued a pathbreaking document known as the Draft Norms. Even so, its adoption remained controversial, mainly because it aimed to surpass voluntary measures and instead establish a framework of international legal principles for business, which

---

<sup>187</sup> Ramasastry, 240.

<sup>188</sup> Ramasastry.

<sup>189</sup> The NCPs do not have the authority to impose legally binding decisions or sanctions, but their existence provides an avenue in which Individuals/groups can submit complaints about a company's actions.

<sup>190</sup> Ruggie, "Business and Human Rights: The Evolving International Agenda," 819.

<sup>191</sup> Ruggie, 820.

<sup>192</sup> Ramasastry, 243.

provoked reluctance from both companies and states.<sup>193</sup> Thereafter, John Ruggie, serving as Special Representative of the Secretary-General on Business and Human Rights, undertook extensive consultations to develop a document that would reconcile corporate human rights responsibilities with the proposed limitations set by businesses. This resulted in the UN Guiding Principles on Business and Human Rights (UNGPs), which were finally adopted by the Human Rights Council in 2011 as a purely voluntary instrument.<sup>194</sup> It is now considered the primary benchmark framework in the field of BHR.

The UNGPs are based on three pillars - protection, respect, and remedy - constituting the fundamental principles guiding their implementation.<sup>195</sup> Regarding the first pillar, states possess regulatory powers through the principle of personal jurisdiction, granting them the ability to exercise control and regulation over the actions of a company's subsidiaries under a state's domestic law.<sup>196</sup> However, the situation becomes less clear when considering the extraterritorial dimension of the state's duty to protect. The Committee on Economic, Social and Cultural Rights stated in its General Comment No. 24 that:

Even though states would normally not be directly internationally responsible for a violation of human rights caused by a private entity, a state party would be in breach of its obligations under the Covenant where the violation reveals a failure by the State to take reasonable measures that could have prevented the occurrence of the event.<sup>197</sup>

The UNGPs approach this issue cautiously, acknowledging that international human rights law does not generally require states to regulate the extraterritorial activities of companies domiciled in their territory and/or jurisdiction. However, it is generally accepted that states are not prohibited from doing so, provided there is a recognised jurisdictional basis.<sup>198</sup> This lack of clear guidance or definitive position creates an element of uncertainty within the context of the guiding principles on extraterritorial obligation.

---

<sup>193</sup> Ruggie, 827.

<sup>194</sup> Ramastry, 244.

<sup>195</sup> Ramastry.

<sup>196</sup> UN Guiding Principles., Principle 1.

<sup>197</sup> Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, UN Doc E/C.12/GC/24 (23 June 2017) para 32.

<sup>198</sup> UN Guiding Principles., Commentary on Guiding Principle 2.

Meanwhile, Ruggie and Sherman argue that Pillar II is "rooted in a transnational social norm rather than an international legal norm."<sup>199</sup> Simply put, the corporate responsibility to uphold human rights under the Guiding Principles is not a legal standard but a social expectation. Guiding Principle 11 further clarifies this point by stating that it is "a global standard of expected conduct for all companies".<sup>200</sup> Accordingly, this responsibility applies irrespective of the size of the company, its industry, its ownership or the country in which it operates.<sup>201</sup> Finally, Pillar II operationalises the principle of "when there is a right, there is a remedy."<sup>202</sup> Guiding Principle 25 outlines three forms of remedy: the state judicial remedy, the non-judicial grievance mechanism, and other appropriate means. According to this principle, when states fail in their responsibility to address impacts, they undermine their duty to protect human rights. This implies that such neglect can breed mistrust; but trust alone does not guarantee adequate accountability and a sense of justice for victims. Restorative justice approaches embedded in the UNGPs lack punitive measures for the harm caused, nor is there an explicit obligation for extraterritorial accountability. Regrettably, as Bright et al. point out, the legal accountability of companies for their activities remains weak, and access to effective remedies is largely inadequate.<sup>203</sup>

#### **4.2.2 HUMAN RIGHTS DUE DILIGENCE AS A STANDARD OF BEHAVIOUR**

Human Rights Due Diligence (HRDD) is the main avenue the UNGPs prescribes for companies to discharge their responsibility to respect human rights.<sup>204</sup> Unlike traditional due diligence, HRDD shifts its focus from a company's internal risks to those faced by individuals affected by the company's activities.<sup>205</sup> It thus starts from a rights-holder-based approach as a means of addressing corporate risks. This "technicality" is simply conceptualised in Guiding Principle 17 as an ongoing behavioural expectation, outlining a blueprint of actions that companies should take to meet their responsibility to respect

---

<sup>199</sup> Surya Deva, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?", *Leiden Journal of International Law* 36, (February 2023), 396.

<sup>200</sup> UN Guiding Principles., Principle 11.

<sup>201</sup> UN Guiding Principles., Principle 14.

<sup>202</sup> Deva, 392.

<sup>203</sup> Claire Bright et al., "Toward a Corporate Duty for Lead Companies to Respect Human Rights in Their Global Value Chains?", 670.

<sup>204</sup> Deva, 400.

<sup>205</sup> Sean Lees, "Guía de Facilitación Para La Formación En Derechos Humanos y Debida Diligencia" (UNDP Business and Human Rights Asia, 2021), 40.

human rights.<sup>206</sup> A coherent reading of this process shows that protecting human rights cannot be reduced to a "tick box" exercise but invokes a series of step-by-step processes: (1) Identification and assessment of existing and potential human rights impacts; (2) Integration of findings and application of "rigorous" management practices; (3) Ongoing monitoring of responses, incorporating information from internal and external sources; and (4) Transparent and accessible communication about how impacts are addressed.<sup>207</sup> Through consultations, it is further recommended that companies pay particular attention to any specific impacts on groups at higher risk of vulnerability or marginalisation.<sup>208</sup> This is particularly positive when addressing the structural problems of women in value chains. This understanding is similarly outlined in the OECD Guidelines for Multinational Enterprises and in paragraph 10 of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.<sup>209</sup>

If undertaken significantly, HRDD could play a preventive role in addressing the risk of legal claims against companies by demonstrating that they took all reasonable steps to avoid being implicated in alleged human rights abuses.<sup>210</sup> In the specific context of the textile sector, the establishment of the Accord on Building and Fire Safety in Bangladesh (the Accord) is a clear example of a model that meets HRDD requirements.<sup>211</sup> As a binding agreement subscribed by international companies and trade unions, it aims to extend legal responsibility from the mere product itself to encompass the protection of human rights through safety at work.<sup>212</sup> It does so through corrective action plans, establishing a Health and Safety Committee and grievance mechanisms.<sup>213</sup> From a pragmatic perspective, the agreement has made a significant positive impact on ensuring safety by effectively reducing accidents in Bangladeshi factories.<sup>214</sup> Such success cannot be derived from anything else but the transformation of HRDD from a social expectation to a legal requirement.

---

<sup>206</sup> Lees, "Guía de Facilitación Para La Formación En Derechos Humanos y Debida Diligencia," 40

<sup>207</sup> Lees, 52.

<sup>208</sup> UN Guiding Principles., Commentary on Guiding Principle 20.

<sup>209</sup> Nicolas Bueno and Claire Bright, "Implementing human rights due diligence through corporate civil liability," *International and Comparative Law Quarterly* 69, no. 4 (September 7, 2020): 791.

<sup>210</sup> Deva, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?" 395.

<sup>211</sup> Joseph Wilde-Ramsing, "Amidst the Trend towards Mandatory Due Diligence, the Bangladesh Accord Model Should Not Be Abandoned," *Business & Human Rights Resource Centre*, April 16.

<sup>212</sup> Members include the Inditex group, Hema, C&A, H&M, Mango, Abercrombie & Fitch, and others.

<sup>213</sup> Mohammed Al Bhadily, "Does the Bangladesh Accord on Building and Fire Safety Provides a Sustainable Protection to Ready-Made Garment Workers?" *Review of Integrative Business and Economics Research* 4, no. 4 (October 2015): 165

<sup>214</sup> Al Bhadily, 166.

One might argue that adopting sectoral agreements similar to the Accord would be a viable solution to address the challenges posed by the industry, including those mentioned in the previous chapter. However, risks do not arise in isolation; instead, they are influenced by a myriad of interconnected variables. It thus seems logical that adopting a holistic approach that considers the interdependencies between different sectors and stakeholders would be a better strategy. At the same time, in light of the positive results achieved by the Accord, the absence of such a proposal raises questions about the credibility of companies' commitment to protecting human rights. Is their participation truly driven by a sense of responsibility towards human rights, or is it motivated by reputational considerations fuelled by the public pressure that followed the Rana Plaza incident? Far from clear answers, the only tangible evidence is that the current voluntary nature of HRDD under the Guiding Principles presents a significant limitation.<sup>215</sup> The OHCHR noted that "there is no single model for mandatory human rights due diligence regimes, so when one speaks of it, one is potentially referring to a wide range of legal and policy possibilities".<sup>216</sup> Indeed, different initiatives are underway since such an agreement could open up new avenues for corporate access to remedy and accountability.

### **4.3 ADVANCING CORPORATE ACCOUNTABILITY THROUGH MANDATORY HUMAN RIGHTS DUE DILIGENCE**

Recent years have seen multiple efforts to legalise Pillar II by means of binding Human Rights Due Diligence mechanisms. In line with Deva's position, such efforts should not subsume Pillar II under Pillar I but rather keep the two pillars in parallel and recognise their interdependence.<sup>217</sup> Whilst these initiatives come from different channels, they are all driven by the same objective: ending the culture of silence that veils transnational human rights abuses in value chains.

#### **4.3.1 SETTING PRECEDENTS: INNOVATIVE APPROACHES EMERGING FROM CIVIL LITIGATION**

Recent case law has brought significant developments to the longstanding principle of separate legal personality in company law. According to this, parent companies and subsidiaries are regarded as separate legal entities, each carrying its own level of

---

<sup>215</sup> Deva, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?" 399.

<sup>216</sup> Deva, 395.

<sup>217</sup> Deva, 397.

liability.<sup>218</sup> This legal characteristic is conferred on a company at the time of its incorporation, which usually exempts a parent company from being held liable for damages resulting from the actions of its subsidiary. Only in exceptional circumstances can this corporate veil be lifted. Yet, in recent decades, a shift in the legal perspective has emerged that, according to Leader, focuses on the “special relationship” between the parent company and its subsidiaries.<sup>219</sup> The latter concept recognises that a parent company may have significant influence over the actions or omissions of its subsidiary, even if it does not exercise full control over them. It thus considers both the expectations set out in that relationship and the corporate policies of the group as a whole. In particular, two English and Dutch case law cases will be presented in which this new approach has been put into practice.

### I. *Vedanta v. Lungowe*

The *Vedanta* case concerns proceedings brought in England and Wales by 1.826 Zambians, mostly farmers, against Vedanta Resources Plc, a UK-based mining company, and its Zambian subsidiary, KCM.<sup>220</sup> The lawsuit alleges that toxic materials discharged by a mine operated by KCM contaminated waterways since 2005, affecting the livelihoods of the plaintiffs who depended on these water sources for drinking water, causing personal injury, property damage, and loss of income.<sup>221</sup>

One of the preliminary issues was that of jurisdiction; that is, whether the courts in England have a legal right to adjudicate claims brought before them. The defendants challenged the English court's jurisdiction on the grounds that the case did not reveal a real justiciable issue,<sup>222</sup> arguing that Zambia was the appropriate forum for the case.<sup>223</sup> Both the High Court and the Court of Appeal agreed that Zambia was the appropriate

---

<sup>218</sup> Bueno and Bright, “Implementing human rights due diligence through corporate civil liability,” 16.

<sup>219</sup> Sheldon Leader, “parent Company Liability and Social Accountability: Innovation from the United Kingdom,” quoted in Bueno and Bright, 17.

<sup>220</sup> *Vedanta Resources Plc & Anor v Lungowe & Ors* [2019] UKSC 20, on appeal from [2017] EWCA Civ 1528 (*Vedanta*)

<sup>221</sup> However, as observed by the Court, “the essential business of this court is to deal with issues of law, rather than fact-finding [...] the pursuit of detailed matters of factual analysis in this court is inappropriate [...]”: *Vedanta*, para 12.

<sup>222</sup> As for *Vedanta*, jurisdiction was laid down in Article 4 of the Brussels Regulation; As for KMC, the claim was brought under English Law, paragraph 3.1(3) of Practice Direction 6B. This provision allows claims against non-EU domiciled defendants to be brought and tried in England alongside claims against EU-domiciled defendants, provided that there is between the claimant and the defendant a real issue that it is reasonable for the court to try.

<sup>223</sup> *Vedanta*, para 20 v).

venue, although "there was a real risk that the claimants would not obtain substantial justice in the Zambian jurisdiction."<sup>224</sup> As such, the burden of proof was on the applicants to demonstrate that effective litigation could not be obtained. In its judgment of 10 April 2019, the UK Supreme Court considered whether the financial, legal, and technical expertise was available to litigate this complex case effectively.<sup>225</sup> Ultimately, it concluded that there was a risk that substantial justice could not be obtained in Zambia, allowing the claim against Vedanta to proceed in England.

Another key legal question was whether Vedanta owed a duty of care to the plaintiffs for the damage caused by its Zambian subsidiary. The court examined both the degree of supervision exercised de facto by the parent company and the degree of control that should have been exercised based on the legitimate relationships arising from its group policy. This new approach was previously established by the Court of Appeal in *Chandler v Cape plc*.<sup>226</sup> In that instance, it was argued that the parent company, Cape plc, had a responsibility to care for and protect the employees of its subsidiary, even though they were separate legal entities.

Relying on the first-instance court decisions and the published material, the judge found sufficient evidence to suggest the extent of Vedanta's involvement.<sup>227</sup> It was also stated that no specific set of factors must exist for parent company liability to exist.<sup>228</sup> Instead, it acknowledged that group-wide policies could give rise to a duty of care for the parent company. In particular, the Court stated:

If the parent company implements active measures, through training, monitoring and enforcement, to ensure that relevant subsidiaries comply with group policies, this could create a reasonable expectation that the parent company assumes responsibility towards third parties [...] the parent may owe a duty of care to third parties if, in published materials, it holds itself out as exercising that degree of supervision and control of its subsidiaries, even if it does not do so, its very omission may constitute the abdication of a responsibility which it has publicly undertaken.<sup>229</sup>

*Vedanta* constitutes an important precedent for facilitating access to justice for foreign plaintiffs in transnational corporate liability litigation. The judgment opens the door to

---

<sup>224</sup> *Vedanta*, para 89.

<sup>225</sup> *Vedanta*, para 52.

<sup>226</sup> Bueno and Bright, "Implementing human rights due diligence through corporate civil liability," 17.

<sup>227</sup> *Vedanta*, para 58-52.

<sup>228</sup> *Vedanta*, para 51.

<sup>229</sup> *Vedanta*, para 53.

future claims for corporate damages. It is worth noting that the Court did not make specific decisions on penalties or awards. In addition, it set the limits of jurisdiction according to the specific characteristics of the plaintiffs. Accordingly, imposing a duty of due diligence depends largely on the individual facts. Moreover, from a critical perspective, experts have warned of the potentially perverse effect of the ruling, as it could encourage parent companies to be less accountable and transparent about their foreign operations. However, this position would be a risky strategy given the growing expectations for companies to carry out HRDD.<sup>230</sup> Adopting mandatory HRDD legislation that addresses the parent-subsidiary relationship would be the only way to counter this risk fully.

## II. *Milieudefensie et al. v Royal Dutch Shell*

In 2019, the Dutch environmental group Milieudefensie, along with six other non-governmental organisations and over 17,000 Dutch citizens, brought a collective lawsuit against the multinational oil company Royal Dutch Shell (RDS) before the District Court of The Hague in the Netherlands.<sup>231</sup> The aim of this lawsuit was to hold RDS, as the parent company of Shell group, accountable for its contribution to climate change and its alleged lack of diligence in reducing greenhouse gas emissions.

The claimants applied for a court decision requiring RDS to reduce its emissions - including those from the combustion of the oil and gas products it supplies to customers - by 45% by 2030, compared to 2019, in line with the Paris Climate Agreement.<sup>232</sup> They specifically based their claim on the *Urgenda v. The Netherlands* precedent on state obligations to mitigate climate change.<sup>233</sup> In *Urgenda*, the Court held that the Dutch government should be held liable for failing to do enough to prevent dangerous climate change and for failing to take adequate measures to mitigate the harmful effects of climate change, in violation of the State's positive obligations under Articles 2 (right to life) and 8 (family life) of the European Convention on Human Rights.<sup>234</sup> In *Milieudefensie et al.*, the claimants sought to apply it to private companies, arguing that RDS has a legal

---

<sup>230</sup> Bueno and Bright, "Implementing human rights due diligence through corporate civil liability," 20.

<sup>231</sup> *Milieudefensie et al. v. Royal Dutch Shell*, District Court of the Hague (DC), 26 May 2021, ECLI:NL:RBDHA:2021:5337 (English Translation) (*Milieudefensie*)

<sup>232</sup> *Milieudefensie.*, para 3.3.1

<sup>233</sup> See *Urgenda v. The Netherlands*, Supreme Court of the Netherlands (SC), 20 Dec 2019, ECLI:NL:HR:2019:2007.

<sup>234</sup> *Milieudefensie.*, para 4.4.10.

obligation to contribute to the prevention of climate change through the corporate policy it sets for the Shell group. In turn, RDS opposed the dismissal of the claims on the grounds that the decision on the remedy to achieve the Paris Agreement targets violates the limits of legislative power. It also argues that “the remedy should not come from a court but from the legislature and politics.”<sup>235</sup>

The legal issue before the court was whether the RDS breached the duty of care and related human rights obligations by failing to take adequate measures to curb its contribution to climate change. In this vein, the District Court held that the obligation to reduce the SDR derives from the implied "standard of care" set out in Volume 6, Article 162 of the Dutch Civil Code.<sup>236</sup> This obligation was interpreted based on (1) the relevant facts and circumstances, (2) the best available science on dangerous climate change, and (3) the broad international consensus on protection against dangerous climate change impacts and human rights.<sup>237</sup>

The Court ruled on 26 May 2021, concluding that there were no well-defined and concrete specifications for the method according to which the timing of the shell group must be applied in working towards the goal of net zero emissions in 2050.<sup>238</sup> As a result, it issued a compelling order to RDS, both directly and through the companies and legal entities with which it jointly forms the Shell group, to reduce the aggregate annual volume of all CO<sub>2</sub> emissions.<sup>239</sup> Significantly, the Court deemed this order provisionally enforceable, meaning that the order has immediate effect, even if one of the parties appeals the ruling.<sup>240</sup> Notably, as the Court has stated itself:

The responsibility of business exists independently of states’ abilities and/or willingness to fulfil their own human rights obligations [...] it is not an optional responsibility for companies, and it is not passive.<sup>241</sup> The undisputed circumstance that RDS is not the only party responsible for addressing dangerous climate change in the Netherlands does not relieve RDS of its individual partial responsibility to contribute to the fight against dangerous climate change to the best of its ability.<sup>242</sup>

---

<sup>235</sup> *Milieudéfensie.*, para 4.1.2

<sup>236</sup> The standard of care is a legal principle that establishes the level of diligence and responsibility that a party should exercise in their actions: *Milieudéfensie.*, para 4.4.1.

<sup>237</sup> *Milieudéfensie.*, para 4.1.3

<sup>238</sup> *Milieudéfensie.*, para 4.3.36

<sup>239</sup> *Milieudéfensie.*, para 5.3

<sup>240</sup> *Milieudéfensie.*, para 5.8

<sup>241</sup> *Milieudéfensie.*, para 4.4.15

<sup>242</sup> *Milieudéfensie.*, para 4.4.37

*Milieudefensie et al.* is a milestone in the growing trend to litigate climate change claims in human rights terms. A phenomenon that, in turn, imposes new ways of understanding law and jurisdiction. It should be noted that this is not a case of liability for specific environmental damage but rather a review of the environmental policies that a private company must adopt to align itself with international agreements on the matter. Recognising this importance sets a precedent for extrapolating this approach to other social issues, such as discrimination or sexual violence. This climate litigation is the way forward to ensure a comprehensive and practical approach to protecting human rights and social justice.

#### 4.3.2 DOMESTIC LEGISLATIVE FRAMEWORKS

As previously discussed, extraterritorial limitations on states' jurisdictional exercise pose significant legal obstacles to addressing transnational human rights violations.<sup>243</sup> However, some experts such as Gereffi and Mayer argue that “the rise of an increasingly global economy no longer firmly rooted in the nation-state [...] has led to a governance deficit of considerable magnitude and a demand for greater governance.”<sup>244</sup> This demand is born out of the close connection between parent companies and relevant states through their business relationships with their subsidiaries, thereby creating a need to extend regulation across borders. Several regulatory attempts have been made in this direction in recent years, which can be classified into three categories according to their regulatory orientation.<sup>245</sup>

The first category encompasses regulations that focus on mandatory disclosure of information as a means to enhance transparency and encourage companies to address critical environmental and human rights issues. The UK's Modern Slavery Act is a prominent example of an initiative that requires organisations with an annual turnover in excess of £36 million to disclose anti-slavery and anti-human trafficking measures.<sup>246</sup> Similarly, the EU Non-Financial Reporting Directive obliges large companies to report on sustainability aspects such as greenhouse emissions, energy efficiency, human rights

---

<sup>243</sup> See 4.1 above.

<sup>244</sup> Aristeia Koukiadaki, “Global Supply Chains and Labour Standards: From a Patchwork of Rules to a Web of Rules?” in *Protecting the Future of Work*, ed. Barry Colfer et al., (Emerald Publishing Limited, 2023).

<sup>245</sup> Koukiadaki, 129.

<sup>246</sup> UK Modern Slavery Act of 2015.

impacts, anti-corruption and bribery or diversity on company boards.<sup>247</sup> Outside the EU, notable initiatives include the 2012 California's Transparency in Supply Chains Act and the 2018 Australia's Modern Slavery Act.<sup>248</sup> While these policy innovations are praiseworthy, the main limitation stems from their purely descriptive nature, which leads to a restrictive rather than a proactive approach. In addition, the enforcement mechanisms lack robustness as they are based solely on compliance with minimum standards.<sup>249</sup>

The second category encompasses a more exhaustive regulatory approach that requires companies to carry out human rights due diligence in specific broadly affected sectors. Examples include the EU Timber Regulation, the EU Conflict Mineral Regulation, and the Dutch Child Labor Due Diligence Act.<sup>250</sup> The enforcement mechanisms of these laws rely on public authorities to monitor and enforce compliance with the obligations defined in their specific provisions.<sup>251</sup> However, experts argue that, despite the sanctions foreseen in case of negligence in complying with due diligence requirements, there is still a need for greater clarity on the conditions under which liability for damages arises.<sup>252</sup> Particularly striking is the fact that there is no comparable regulation for the textile industry, despite similarities with the mineral industry regarding so-called "neo-slavery" practices, unsafe conditions, and environmental impacts.

Sector-specific legislation allows companies to focus on crucial issues, facilitating concrete answers to urgent matters. In addition, smaller companies may find compliance with these regulations more feasible, as they require more restricted resources and less far-reaching operational plans. Conversely, the overarching regulations strive to provide holistic solutions that encompass multiple dimensions of responsible business conduct and address the fundamental systemic issues that affect the entire business sector. By setting high standards and expectations for all companies, these regulations can potentially induce lasting transformations in sector practices. It is within this framework that initiatives in the third category are built.<sup>253</sup>

---

<sup>247</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

<sup>248</sup> Bueno and Bright, "Implementing human rights due diligence through corporate civil liability," 10.

<sup>249</sup> Aristeia Koukiadaki, "Global Supply Chains and Labour Standards: From a Patchwork of Rules to a Web of Rules?" 130.

<sup>250</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 [...]; (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 [...]; and The Netherlands Child Labour Due Diligence Act 2019.

<sup>251</sup> Bueno and Bright, 11.

<sup>252</sup> Bueno and Bright.

<sup>253</sup> Bueno and Bright.

This category finds its most prominent example in the case of France. The French Duty of Vigilance Act, adopted in March 2017, obliges large national companies to adopt, publish and implement a monitoring plan, establishing legal, de facto, and contractual control to identify and prevent possible human rights violations.<sup>254</sup> Notably, the duty of care in French law extends to both actual and potential damages, enabling individuals to bring preventive claims against companies that fail to meet required standards.<sup>255</sup> Yet, French law limits a company's liability to its subcontractors only in "established business relationships".<sup>256</sup> This implies that it does not consider the ad hoc nature of commercial relations, thus departing from the recommendations of the UNGPs by requiring comprehensive due diligence along the entire supply chain, regardless of the type of relationship.<sup>257</sup> The Dutch Child Labor Due Diligence Act offers a good alternative to this concern as it prioritises the most critical risks, even without a direct business relationship with the suppliers or subcontractors involved.<sup>258</sup> Another concern relates to the liability regime for damages. Under French law, the burden of proof is on the claimant, despite the difficulties in obtaining the information that the company usually possesses.<sup>259</sup> The Swiss Responsible Business Initiative, proposed in 2020 but ultimately rejected, offered an alternative solution. It suggested a strict liability regime whereby the burden would be on the company to prove that it had exercised due diligence in the event of a breach.<sup>260</sup>

Following the groundbreaking French Law, Germany enacted the German Supply Chain Act in 2021, and the Norwegian Government launched the Transparency Act in the same year. Moreover, several other EU Member States, including the Netherlands, Austria, Belgium, and Finland, are actively taking steps towards similar proposals.<sup>261</sup>

---

<sup>254</sup> The law applies to French companies employing at least 5,000 employees in France; or at least 10,000 employees worldwide; between 200 and 250 companies would be eligible. See Bright et al., "Toward a Corporate Duty for Lead Companies to Respect Human Rights in Their Global Value Chains?", 685.

<sup>255</sup> Bright et al., 686.

<sup>256</sup> Defined as a stable, regular commercial relationship, taking place with or without a contract, with a certain volume of business, and under a reasonable expectation that the relationship will last.

<sup>257</sup> Bright et al., 686.

<sup>258</sup> Bueno and Bright, "Implementing human rights due diligence through corporate civil liability," 13.

<sup>259</sup> Bueno and Bright.

<sup>260</sup> Bueno and Bright, 14.

<sup>261</sup> Bright et al., 687.

### 4.3.3 PROMISING INTERNATIONAL AND REGIONAL INITIATIVES

As rational actors, states tend to engage in meticulous evaluation of the international agreements they adhere to, carefully weighing the potential and reputational benefits they might acquire. Simultaneously, they assess the potential associated costs for themselves and the companies within their jurisdiction regarding resources and efforts required to comply with commitments. Thus, attempts to create a binding instrument for all transnational corporations have faced resistance from many states. There are various reasons why a state might refuse to accept such an instrument; however, at the heart of any veto lies apprehension over the additional burden imposed on companies, particularly smaller ones that form the majority.<sup>262</sup> Nonetheless, international and European-level negotiations have remained at the forefront of policy discussions towards implementing mandatory human rights due diligence initiatives with associated civil liability regimes. While it is still being determined whether the current processes will result in BHR treaties per se, they have already yielded certain positive outcomes.

#### I. *The Draft Treaty Proposed by UN Human Rights Council*

The process of negotiating a treaty business and human rights began in 2014 under the auspices of the UN in direct response to Human Rights Council resolution 26/9, which was sponsored by Ecuador and South Africa.<sup>263</sup> The resolution established an Open-Ended Intergovernmental Working Group (OEIGWG) to develop an International Legally Binding Instrument (LBI) that would redefine the responsibility of transnational corporations and other business entities in accordance with international human rights law.<sup>264</sup> Up to now, seven annual sessions have been held as part of this process, and three revised drafts have been published for discussion, the last of which was adopted in October 2022.<sup>265</sup> Under the name “Third Revised Draft”, the treaty integrates the concept of Human Rights Due Diligence as a proactive mechanism to prevent human rights abuses by all businesses. As such, Article 6(3) provides that:

---

<sup>262</sup> World Bank SME Finance: Development News, Research, Data | World Bank.” World Bank, n.d.

<sup>263</sup> Surya Deva, “Treaty Tantrums: Past, Present and Future of a Business and Human Rights Treaty,” Netherlands *Quarterly of Human Rights* 40, no. 3 (August 4, 2022): 215.

<sup>264</sup> Deva.

<sup>265</sup> Deva, 216.

States Parties shall require business enterprises to undertake human rights due diligence proportionate to their size, risk of human rights abuse, and the nature and context of their business activities and relationships.<sup>266</sup>

This provision is followed by comprehensive guidelines for conducting due diligence to identify, assess, prevent, and monitor any actual or potential human rights violations or abuses arising from their business activities or relationships.<sup>267</sup> This builds on the broad scope of the treaty, which covers all business enterprises within their territory, including transnational corporations.<sup>268</sup> This, though, had attracted a great deal of criticism. From the right-holder's point of view, it makes little difference whether the abuse is committed by a multinational or a small national company, but many states are reluctant to this approach calling for limiting the scope to transnational corporations.<sup>269</sup> Conversely, other parties, such as the EU, back the treaty's provisions, which is certainly paradoxical given the restrictive scope included in its own proposal, as will be seen below.<sup>270</sup> It is noteworthy that the treaty introduces a significant linguistic adjustment by replacing the term “should” used in the Guiding Principles with the term “shall”. Such a refinement reinforces the imperative nature of compliance. In this regard, some civil society organisations and academics have argued that Article 6 should be redrafted to impose direct -and feasible- human rights obligations on companies, without the need for national law, so as to reduce the over-reliance on individual states.<sup>271</sup> Indeed, companies already have direct obligations under customary international law and certain instruments of environmental law or international humanitarian law. Yet, due to resistance from many states and business organisations, the drafts have deviated from this path.

On the other hand, Article 8 of the Third Revised Draft focuses on the issue of legal liability.<sup>272</sup> With a victim-centred approach, states shall establish comprehensive national laws that hold companies accountable for human rights abuses arising from their activities or business relationships.<sup>273</sup> Curiously, the treaty has not replaced the term “abuse” with “violation” despite clearly recognising the ability of companies to violate human rights. One of the most interesting aspects is developed in paragraph 8(7), which stipulates that the HRDD “does not automatically exempt a natural or legal person engaged in business

---

<sup>266</sup> OEIGWG Chairmanship Third Revised Draft (17 August 2021), Article 6(3).

<sup>267</sup> OEIGWG Chairmanship Third Revised Draft (17 August 2021), Article 6(3) and 6(4).

<sup>268</sup> OEIGWG Chairmanship Third Revised Draft (17 August 2021), Article 6(1)

<sup>269</sup> Deva, “Treaty Tantrums: Past, Present and Future of a Business and Human Rights Treaty,” 216

<sup>270</sup> Deva.

<sup>271</sup> Deva, 218.

<sup>272</sup> Bueno and Bright, “Implementing human rights due diligence through corporate civil liability,” 8.

<sup>273</sup> OEIGWG Chairmanship Third Revised Draft, Article 8(1).

activities from liability for causing or contributing to human rights violations or for failing to prevent such violations<sup>274</sup>. In other words, companies have a duty to go beyond a tick-box exercise and take concrete actions to prevent human rights abuses in their business relationships. The provision thus underlines the importance of effective actions and measures that lead to tangible results.

Overall, this LBI has the potential to align with the UNGPs, building on their wide recognition and strengthening Pillar II in a legally binding context. However, the main challenge facing the Draft Treaty is of a political nature, as its implementation depends on state parties.<sup>275</sup> To overcome this obstacle, Deva proposes a gradual approach that balances an “empty shell” framework convention with an “overly prescriptive conventional LBI” via a series of sequential treaties.<sup>276</sup> This approach would allow states and other stakeholders to develop and strengthen standards and obligations in this area progressively. However, it would require ensuring the coherence and consistency of the various proposed treaties and efficient management of resources and time. It is still being determined what direction this treaty would take. Yet, an important impetus for this proposal could arise from the emerging practice of mandatory HRDD laws in Europe, including the Directive on Corporate Sustainability Due Diligence (CSDDD), which will be explored in the following analysis.

## II. *The Corporate Sustainability Due Diligence Directive*

The European Commission (EC), as the governing body responsible for initiating and proposing legal acts within the Union, unveiled in February 2022 a proposal for a Directive on mandatory HRDD that encompasses two main objectives: first, to establish a framework that recognises and promotes the positive role of business in safeguarding human rights and, second, to address adverse impacts of business activities by ensuring access to justice for victims.<sup>277</sup> It is also underlined that the Directive is not intended to replace existing sectoral legislation or restrict the already-mentioned national initiatives.

As regards the personal scope, the proposal stipulates in Article 2 that the covered provisions apply to both EU and non-EU entities, subject to certain conditions depending

---

<sup>274</sup> OEIGWG Chairmanship Third Revised Draft, Article 8(7) see in Bueno and Bright, 8.

<sup>275</sup> Deva, “Treaty Tantrums: Past, Present and Future of a Business and Human Rights Treaty,” 221.

<sup>276</sup> Deva, 220.

<sup>277</sup> Gabrielle Holly and Sign Andreasen, “Legislating for impact: analysis of the proposed EU Corporate Sustainability Due Diligence Directive,” *The Danish Institute for Human Rights*, March 2022, 6.

on the number of employees and worldwide or EU net revenues. The criteria stipulated in the directive are (1) EU companies with over 500 personnel and €150 million in net turnover globally; (2) EU firms engaged in specific high-impact industries with over 250 employees and €40 million in net turnover globally; (3) non-EU businesses operating in the EU with a turnover threshold established in line with groups 1 and 2.<sup>278</sup> The Commission points out that it follows OECD's guidance on identifying high-impact sectors, i.e., textile manufacturing, agriculture, and the extraction of minerals.<sup>279</sup> This selection criterion is based on the size, resources and risk profile of the entities concerned and that a lower threshold set for high-impact sectors will reduce companies' financial and administrative burden.<sup>280</sup>

The proposed two-tier system, which imposes due diligence rules exclusively on large companies, is currently the subject of an open and ongoing debate.<sup>281</sup> In practice, by formally excluding small and medium-sized enterprises (SMEs), the Directive is expected to concern only 1% of European companies and a small portion of foreign companies operating within the internal market.<sup>282</sup> Likewise, it is crucial to recognise that most human rights violations occur at the lower levels of value chains, namely within subcontractors.<sup>283</sup> It is crucial to acknowledge that implementing an equivalent due diligence system could impose a substantial burden on small businesses, particularly regarding additional costs (costs of training, compliance, audits, or supply chain adjustments). This becomes even more challenging in countries with economic crises, wars, or health emergencies. In this regard, the EC proposes that SMEs could be affected by the directive's provisions as contractors or subcontractors, as large companies must assist them in complying with due diligence measures.<sup>284</sup> Again, this approach grants significant discretion to the state, prompting criticism from international organisations and experts in the field who call for a broader scope.<sup>285</sup>

---

<sup>278</sup> European Commission Directive 2022/0051, Proposal for a Regulation of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (23 February 2022), Article 2(1).

<sup>279</sup> European Commission Directive 2022/0051, page 15.

<sup>280</sup> Alp Cerrahoglu, "Defining the Scope of a Corporate Sustainability Due Diligence Directive: Concerns, High-Impact Sectors and Financial Institutions," *Nova Centre on Business, Human Rights and the Environment Blog*, February 15, 2023.

<sup>281</sup> Cerrahoglu.

<sup>282</sup> Cerrahoglu.

<sup>283</sup> United Nations Global Compact. "Navigating Decent Work Challenges in Multi-Tiered Supply Chains: Leadership Brief," 2020, 4.

<sup>284</sup> European Commission Directive 2022/0051, page 41(para 47).

<sup>285</sup> Holly and Andreasen, "Legislating for impact: analysis of the proposed EU Corporate Sustainability Due Diligence Directive," 11.

A possible solution to this issue could lie somewhere in between the overarching principle outlined in Guiding Principle 14 and the Directive. This could be achieved by introducing more specific guidelines for large companies to ensure that smaller entities comply with their obligations. Alternatively, establishing tailored and flexible rules that address the specific circumstances of SMEs would be even more effective. On the other hand, while including the textile sector as a high-impact sector is very welcome, it is inconsistent not to include other sectors such as technology, infrastructure, or finance.<sup>286</sup> In this respect, the question arises again as to why a binding sectoral treaty has not yet been established for the textile industry, given that it falls into this category.

In terms of material scope, contrary to the Third Draft, the directive sets out in the Annex a selective list of environmental and human rights and international human rights agreements covered.<sup>287</sup> This is combined with an umbrella clause covering any “violation of a prohibition or right not covered in Part I but included in the international human rights agreements mentioned.”<sup>288</sup> The proposed system does not provide legal clarity, as the list of human rights instruments is not exhaustive and excludes key human rights conventions, as detailed further below.<sup>289</sup> Finally, liability mechanisms in the Directive are supported by Articles 17 and 18, which require member states to establish national public oversight authorities to monitor compliance with due diligence obligations.<sup>290</sup> Furthermore, in accordance with Article 19, victims have the right to seek civil liability and damages before a court or public authority. In this regard, governments need to establish clear legal frameworks with rules and procedures for remediation mechanisms, including requirements for standing, funding and evidence.<sup>291</sup> In this connection, it is very welcome the establishment of a collaborative mechanism between national supervisory authorities in the EU and in third countries through the creation of the European Network of Supervisory Authorities.<sup>292</sup>

---

<sup>286</sup> Cerrahoglu.

<sup>287</sup> Holly and Andreasen, “Legislating for impact: analysis of the proposed EU Corporate Sustainability Due Diligence Directive,” 19.

<sup>288</sup> Paragraph 21, part 1 section 1 of the Annex.

<sup>289</sup> Sara Pacheco, “The notion of adverse human rights and environmental impacts within the Draft CSDD Directive: alignment of the draft Directive with the UNGPs,” *Nova Centre on Business, Human Rights and the Environment Blog.*, February 20, 2023.

<sup>290</sup> M. Scheltema and R. McCorquodale, “Supervisory Mechanisms and Directors Duties: Innovations in the Proposed EU Directive on Corporate Sustainability Due Diligence,” *Nova Centre on Business, Human Rights and the Environment Blog.*, 24 May 2022.

<sup>291</sup> Scheltema and McCorquodale.

<sup>292</sup> Scheltema and McCorquodale.

The parliament gave the directive the green light on 1 June. The next moves will be made in the coming months through tripartite discussions between the Parliament, the Council, and the European Commission. Thus, this directive has gone from being just another civil law instrument to enforce corporate liability to becoming the first extraterritorial attempt to turn words into deeds. The parliament gave the directive the green light on 1 June. The next moves will be made in the coming months through tripartite discussions between the Parliament, the Council, and the European Commission. Thus, this directive has attained an important status as the leading feasible extraterritorial proposal to harmonise corporate responsibility regulations in multiple jurisdictions, signalling to multinational companies the imperative to maintain ethical practices in all their global operations.

#### **4.4 PRELIMINARY CONCLUSION ON CHAPTER IV**

HRDD catalyses business transformation as it demands companies to engage in introspection and critically examine their practices. When assessing its added value as a mechanism for addressing transnational human rights violations, it becomes crucial to address a fundamental question: What are the key elements necessary for its effectiveness?

First and foremost, a due diligence regime must be mandatory. The imperative of moving beyond voluntarism is already an irreversible fact, particularly given forthcoming developments at the EU level. Adopting such legislation would bring the added value of bridging the gap between corporate intentions and practice, bringing to life the long-standing expectations enshrined in ethical codes into tangible practices rather than mere rhetoric on paper.

Second, due diligence laws must be comprehensive adopting an intersectional perspective. This implies recognising the interconnectedness and interdependence of different rights, encompassing civil, political, economic, social, cultural, and environmental dimensions. Such an approach adds the value of addressing the underlying causes of rights violations, working towards eliminating structural inequalities and systemic violations.

Third, it is of utmost importance that due diligence laws identify in a consistent and flexible manner the actual and potential risks associated with companies' operations. This requires the involvement of all stakeholders, avoiding a unilateral approach. Adopting

this participatory approach adds significant value to the process, as it allows for a concrete and precise identification of the relevant issues while ensuring that affected parties and society as a whole are well-informed and actively involved in the accountability process. It is crucial to ensure that due diligence is applied in a culturally responsive manner, respecting the rights and perspectives of the communities involved. Given these main requirements, it is arguable whether human rights due diligence has been integrated into potential forthcoming instruments effectively to address the issue of gender discrimination in Bangladeshi textile factories.

## CHAPTER V

### WEAVING GARMENT WORKER'S RIGHTS: CHALLENGES AND OPPORTUNITIES IN BUSINESS PRACTICES

#### 5.1 GENDER MAINSTREAMING IN HUMAN RIGHTS DUE DILIGENCE

Legislative proposals for Human Rights Due Diligence provide a vital opportunity to embed gender considerations into the business sphere and advance gender equality throughout all stages of the value chain stages. To fully capitalise on their benefits, it is imperative to adopt an approach that places the perspectives and experiences of rights-holders at the forefront.<sup>293</sup> By recognising their distinct challenges and vulnerabilities, companies can implement more effective measures and tailored policies to safeguard human rights.<sup>294</sup> In the specific context of the provided case study, failure to do so would perpetuate the concealment of gender discrimination issues behind the corporate veil, and as a result, the desired impact of these regulatory mechanisms may not be realised by garment workers. In other words, listening to garment workers' voices and concerns should not be conceived as a side effect of risk identification processes but as a fundamental and integral component thereof. Thus, in assessing the effectiveness of the due diligence instruments proposed at the international level for this case study, it is crucial to scrutinise their responsiveness to gender-related aspects.

Gender-Responsive Due Diligence (GRDD) has emerged as a concept advocated primarily by human rights organisations aimed at holding corporate accountability for gender omissions within business operations. It essentially describes the systematic integration of a gender perspective into each step of the due diligence process to minimise adverse business impacts on women and contribute to gender equality.<sup>295</sup> A collaborative endeavour by multiple human rights organisations has resulted in the creation of the GRDD platform, which serves as a valuable resource for companies seeking guidance on

---

<sup>293</sup> Justin Nolan, "Chasing the next shiny thing: Can human rights due diligence effectively address labour exploitation in global fashion supply chains?" *International Journal for Crime, Justice, and Social Democracy* 11, no 2 (2022): 7.

<sup>294</sup> Nolan, 8.

<sup>295</sup> Joanna Bourke Martignoni and Elizabeth Umlas, "Gender-Responsive Due Diligence for Business Actors: Human Rights Based Approaches" (The Geneva Academy of International Humanitarian Law and Human Rights, December 2018), 19.

integrating gender considerations into their self-driven policies.<sup>296</sup> In consonance with this initiative, the non-profit Girls Advocacy Alliance, in collaboration with Plan International Netherlands, published a report that builds on these recommendations and outlines practical steps for companies to incorporate into their organisational frameworks.<sup>297</sup>

Firstly, to operationalise a GRDD, companies must develop and integrate a corporate policy that explicitly focuses on attaining gender equality while ensuring widespread acceptance and endorsement from stakeholders.<sup>298</sup> An illustrative example was undertaken by Kering, a textile company that launched an ethical training campaign aimed at equipping all group employees with practical knowledge and skills related to women empowerment at the heart of its business operations.<sup>299</sup> As a next step, identifying and prioritising adverse gender impacts within the value chain emerge as critical considerations. This exercise requires a comprehensive assessment that meticulously discerns the likelihood and ramifications of risks, involving consultations with workers' representatives and engagement with local organisations.<sup>300</sup> An example of this can be observed in the recent introduction of a strategy against Gender-Based Violence and Harassment (GBVH) by the textile company VF Corporation. This strategy is specifically designed to provide comprehensive audit guidelines and a roadmap for addressing GBVH in the company's operations.<sup>301</sup> The third and fourth stages cover addressing the identified impacts and the ongoing monitoring and evaluation of results. The use of disaggregated data facilitates the systematic monitoring of the effectiveness of interventions undertaken by companies and the need to improve or adapt them.<sup>302</sup> The fifth step involves stakeholders by communicating how impacts are addressed and actively engaging them in pursuing gender equality objectives.<sup>303</sup> Finally, the sixth step necessitates that companies establish mechanisms for workers and other rights holders to report their grievances. Once reported, the company needs to investigate failures and provide

---

<sup>296</sup> See: Gender-Responsive Due Diligence Platform: <https://www.genderduediligence.org/>.

<sup>297</sup> Machteld Ooijens and Plan International Netherlands, "Applying Gender-Responsive Human Rights Due Diligence in Practice" (Girls Advocacy Alliance, December 2020).

<sup>298</sup> Ooijens and Plan International Netherlands, 7.

<sup>299</sup> Plan International and Partnering for Social Impact, "Decisive Leadership as a Way to Embed Women's Economic Resilience into Polices - Gender-Responsive Due Diligence," Gender-Responsive Due Diligence - (blog), February 7, 2022.

<sup>300</sup> Ooijens and Plan International Netherlands, 15.

<sup>301</sup> Johanna Howarth, "Identifying and Prioritising Adverse Impacts in a Global Apparel Supply Chain - Gender-Responsive Due Diligence," Gender-Responsive Due Diligence -(blog), June 29, 2022.

<sup>302</sup> Ooijens and Plan International Netherlands, 22-30

<sup>303</sup> Ooijens and Plan International Netherlands, 37

appropriate remedies, guaranteeing that workers' voices remain central to the whole process.<sup>304</sup>

These steps have deliberately been formulated to ensure the meaningful inclusion of rights holders' perspectives and experiences throughout the due diligence process. Although primarily intended for voluntary adoption by companies as part of their code of conduct, it is crucial to consider these parameters when developing legislative frameworks. Mandatory due diligence requirements call for a gender-sensitive approach. However, some inconsistencies have been identified in regulatory instruments, which pose an obstacle to effectively addressing the issue of discrimination.

## **5.2 EXAMINING GENDER RESPONSIVENESS APPROACHES IN BUSINESS AND HUMAN RIGHTS REGULATIONS**

In the lead-up to the fourth meeting of the OEIGWG at the UN Human Rights Council in October 2018, discussions were held on the "zero draft" of the proposed LBI, which was under review.<sup>305</sup> During this time, the Women's International League for Peace and Freedom issued a statement emphasising that adopting a gender-sensitive approach transcends mere consideration of women's circumstances. Accordingly, they called for an explicit requirement for gender impact assessments from an intersectional perspective to be conducted by an independent entity selected by women and communities themselves.<sup>306</sup> Although the statement concluded that the zero draft fell short of adequately addressing the specific risks faced by women<sup>307</sup>, subsequent amendments were made to the draft incorporating significant references that build upon the steps proposed in the GRDD framework. For example, Article 4 of the Third Revised Draft shifted its focus to the perspective of the victims, and Article 6 explicitly stipulated to "integrate a gender perspective, in consultation with women and potentially affected women's organisations, into all stages of human rights due diligence processes to identify and address the differentiated risks and impacts experienced by women and girls."<sup>308</sup>

These amendments were primarily influenced by a comprehensive report published by the UN Working Group on the issue of human rights and transnational corporations and

---

<sup>304</sup> Ooijens and Plan International Netherlands, 45.

<sup>305</sup> Bourke Martignoni and Umlas, "Gender-Responsive Due Diligence for Business Actors: Human Rights Based Approaches," 19.

<sup>306</sup> Bourke Martignoni and Umlas, 20.

<sup>307</sup> Bourke Martignoni and Umlas, 20.

<sup>308</sup> OEIGWG Chairmanship Third Revised Draft (17 August 2021), Article 6(4), b).

other business enterprises in 2019, which takes an in-depth look at the gender responsiveness of UNGPs.<sup>309</sup> The report calls for collective and productive efforts between states, businesses, women's organisations and other relevant actors to move beyond a gender-neutral approach and achieve substantive gender equality.<sup>310</sup> It underlines that addressing the root and systemic causes of gender inequality must be a priority for business and highlights the importance of an intersectional framework to address discrimination effectively.<sup>311</sup> This instrument provides a solid basis that the OEIGWG successfully integrated into the Third Draft. Nevertheless, as treaties are not without imperfections, a coalition of feminist organisations operating under the name "Feminists for a Binding Treaty" issued a statement highlighting the remaining gaps that demand attention and further refinement. A notable concern is the lack of explicit provisions for the implementation of measures aimed at nurturing an inclusive and supportive environment for gender-sensitive human rights defenders.<sup>312</sup> This issue takes on particular importance in the context of Bangladesh, as will be further elaborated below. It is also strongly recommended that references highlighting the importance of women's leadership and their meaningful participation in leadership roles be strengthened, as well as gathering disaggregated data as a means to integrate a gender perspective effectively.<sup>313</sup>

Beyond the provisions of the LBI, it is worth highlighting other relevant initiatives at the international level that have included gender-sensitive due diligence processes in the international human rights and development agenda. The OECD Due Diligence Guidance for Responsible Business Conduct is a good example, as it provides a more comprehensive breakdown of what is set out in the GRDD platform for companies to adopt a more nuanced approach that takes due account of the specific risks and impacts experienced by women.<sup>314</sup> By surpassing industry-focused publications, the guidelines explicitly advocate for recognising the intersectionality of identities, developing gender-responsive mechanisms for protecting whistleblowers, assessing the equitable distribution of compensation for women, and identifying gender-specific patterns and

---

<sup>309</sup> Working Group on the issue of human rights and transnational corporations and other business enterprises (WGBHR), "Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises," United Nations, A/HRC/17/31 (21 March 2011).

<sup>310</sup> WGBHR, para 34 c).

<sup>311</sup> WGBHR, para 56.

<sup>312</sup> Feminist for a Binding Treaty, "Key Recommendations on the Third Revised Draft Dated 17 August 2021 of the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises" (ActionAid, October 5, 2021), 5.

<sup>313</sup> Feminist for a Binding Treaty, 6.

<sup>314</sup> Organisation for Economic Cooperation and Development, "OECD Due Diligence Guidance for Responsible Business Conduct," 2018, 41.

trends related to negative impacts.<sup>315</sup> Besides, the Women's Empowerment Principles (WEP) deserve special recognition for elaborating a gender gap analysis tool that translates general gender equality principles into indicators that could help frame gender-sensitive due diligence.<sup>316</sup> These indicators provide tangible measures to assess progress in promoting gender equality in companies. For instance, they cover aspects such as the safety of women commuters, the existence of zero tolerance for violence in the workplace and the presence of responsible marketing practices that consider the representation of gender stereotypes.<sup>317</sup> In the same vein, it also includes measures related to men throughout the whole document, such as paid paternity leave.

The 2030 Agenda for Sustainable Development has emerged as a high-profile and politically relevant instrument that goes beyond the boundaries of the United Nations. Under the slogan of "leaving no one behind", the Sustainable Development Goals (SDGs) have unexpectedly become a yardstick for assessing the commitment of fashion companies to sustainability and workers' rights.<sup>318</sup> Their accessible and user-friendly nature has brought them closer to civil society, even becoming a "battle cry" for political parties. However, although the SDGs incorporate a specific goal to achieve gender equality (SDG 5), there are notable lacunae in the very gender responsiveness of the document. The main concern lies in a bias towards prioritising individual women's empowerment through training programmes, rather than addressing the collective responsibility of business in rectifying structural inequalities.<sup>319</sup> This emphasis on individual efforts may overlook the important role that companies can play in addressing systemic barriers and promoting gender equality. On the other hand, the broad social acceptance of the SDGs has inadvertently led to their use as a greenwashing mechanism, raising concerns about their true potential and the need for a possible re-evaluation.<sup>320</sup> Together, the OECD instruments, the SDGs and the WEP are clear expressions of practical guidance, frameworks, and gender-sensitive indicators. Despite certain perceived limitations, they offer comprehensive guidance for developing legislative processes.

---

<sup>315</sup> Bourke Martignoni and Umlas, "Gender-Responsive Due Diligence for Business Actors: Human Rights Based Approaches," 25.

<sup>316</sup> See: WEPs GAT Tool in <https://weps-gapanalysis.org/about-the-tool/>.

<sup>317</sup> Bourke Martignoni and Umlas, 26.

<sup>318</sup> Bourke Martignoni and Umlas, 27.

<sup>319</sup> Bourke Martignoni and Umlas, 27.

<sup>320</sup> Bourke Martignoni and Umlas, 28.

At the European level, the CSDDD presents an outstanding opportunity for advancing gender equality in the workplace. However, despite its innovative potential, the Directive's HRDD obligations are formulated gender-neutrally, operating without due consideration of the guidance provided by the UN Working Group on Business Human Rights guidance.<sup>321</sup> This lack of consistency with a gender perspective can be attributed primarily to the inherent nature of the directive as a business policy framework rather than as a comprehensive human rights instrument that places the affected victims at its centre, as the Third Revised Draft does.<sup>322</sup> Given the parliament's adoption of the CSDDD, it is worth exploring how the gender neutrality inherent in the whole text can be transformed.

### **5.2.1 RECOMMENDED AMENDMENTS TO THE EUROPEAN CSDDD**

#### *I. Article 2 on Scope and Annex*

The scope of application, as previously stated, has been the subject of much discussion, but how do women benefit from broadening the scope? To elaborate on this issue, the focus should be on the first step of the GRDD framework, which focuses on assessing gender sensitivity. A crucial component of this assessment involves recognising the importance of extending the provision outlined in the directive to cover all business relationships along the value chain, rather than limiting them only to “established business relationships.”<sup>323</sup> The experiences of women in the Bangladeshi textile sector, who suffer oppression in the context of informal subcontracting and home-based work, highlight the weaknesses of the current directive, which fails to address these specific challenges. A broader approach allows for a more nuanced examination of the various forms of oppression experienced by women and facilitates the implementation of specific measures to promote gender equality in employment practices.<sup>324</sup>

---

<sup>321</sup> Amnestía Internacional, “‘Eliminar Las Lagunas Jurídicas’. Recomendaciones Para Una Ley de La UE Sobre Empresas y Sostenibilidad Que Sirva Para Las Personas Titulares de Derechos,” 2023, 33.

<sup>322</sup> Amnestía Internacional, 34.

<sup>323</sup> European Commission Directive 2022/0051, Proposal for a Regulation of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (23 February 2022), para 20. For the purpose of this Directive, established business relationships should mean such direct and indirect business relationships which are, or which are expected to be lasting, in view of their intensity and duration and which do not represent a negligible or ancillary part of the value chain.

<sup>324</sup> Action Aid, “Ensuring Gender-Responsive Corporate Due Diligence Legislation in 10 Steps,” November 30, 2022, 8.

On the other hand, excluding small and medium-sized enterprises from Article 3 would mean, according to a study by the Clean Clothes Campaign, that only 5% of textile and clothing companies would be obliged to respect human rights and the environment in their value chains.<sup>325</sup> Additionally, several conventions of particular relevance to the object of the study, such as ILO Convention 190 on violence and harassment, should be included in the Annex. The exclusion of the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union also seems rather odd, as the duties will be interpreted without considering the values and standards enshrined in these instruments.<sup>326</sup> In practice, businesses can affect virtually all internationally recognised rights, so introducing a list of rights isolates them from their interdependent and indivisible nature, a principle enshrined in the Vienna Declaration.<sup>327</sup>

## II. *Article 4 on Due Diligence*

Article 4 on due diligence must explicitly recognise that different groups and individuals are affected differently by the actual and potential adverse impacts of business activities, accounting for gender disparities.<sup>328</sup> In the case study presented, Bangladeshi women risk bearing a disproportionate burden due to the country's limited economic resources. For example, limited access to health care may hinder their ability to cope with health problems caused by poor working conditions or pollution generated by the textile industry itself. Likewise, in relation to gendered environmental inequality, the deterioration of water quality intensifies the workload of women, who have to collect clean water sources for drinking and manage household chores. It should not be ignored that one of the causes of women's dropout from the garment sector in Bangladesh is the increase in unpaid care work.<sup>329</sup> When women are forced to devote more time and effort to these responsibilities, their participation in paid employment is negatively affected, thus perpetuating gender inequalities in the sector. All these factors demonstrate that the

---

<sup>325</sup> ActionAid, 10.

<sup>326</sup> Holly and Andreasen, "Legislating for impact: analysis of the proposed EU Corporate Sustainability Due Diligence Directive," 14.

<sup>327</sup> Pacheco, "The notion of adverse human rights and environmental impacts within the Draft CSDD Directive: alignment of the draft Directive with the UNGPs."

<sup>328</sup> ActionAid, 15.

<sup>329</sup> Ethical Trading Initiative, "Where Are the Women? A Study on the Declining Number of Women Workers in the Bangladesh RMG Industry," 6.

activities of enterprises are far from gender-neutral and therefore require recognition in such a high-profile instrument as the CSDDD.<sup>330</sup>

### III. *Article 6 on Identifying Potential and Actual Impacts*

Expanding on the guidance outlined in steps three and four of the GRDD, there is a pressing need to strengthen the effectiveness of Article 6 by obliging companies to use disaggregated quantitative and qualitative data along key dimensions -sex, gender, age, race, ethnicity, socio-economic class, immigration status, disability, and other relevant factors.<sup>331</sup> In addition, Article 6(4) mandates companies to “consult with potentially affected groups, including workers and other relevant stakeholders, to gather information on actual or potential adverse impacts.”<sup>332</sup> Building on the principles enshrined in step five of the GRDD framework, the organisation Action Aid International proposes an extension of the existing obligations, stipulating that companies not only consult but also ensure a safe environment where stakeholders may undertake comprehensive gender-sensitive risk identification.<sup>333</sup> Besides, it is recommended that alternative platforms be established where marginalised and vulnerable groups can freely express their views and actively contribute to identifying relevant company issues and to the decision-making process.

In the specific context of Bangladesh, the status quo regarding trade unions and civil organisations is of considerable concern, primarily due to the pervasive repression of these entities at the hands of the state.<sup>334</sup> Consequently, measures must be taken to ensure the protection and promotion of freedom of association, while upholding the right of women workers and civil organisations to participate in consultation and decision-making processes. These measures encompass a range of actions, including, but not limited to, strengthening labour legislation, establishing practical safeguards to protect them from reprisals -complaint channels-, encouraging inclusive and regular social dialogue between

---

<sup>330</sup> ActionAid, “Ensuring Gender-Responsive Corporate Due Diligence Legislation in 10 Steps,” 15.

<sup>331</sup> ActionAid, 20.

<sup>332</sup> European Commission Directive 2022/0051, Proposal for a Regulation of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (23 February 2022), art.

<sup>333</sup> ActionAid, 18.

<sup>334</sup> “Bangladesh: Labour Rights Orgs, Trade Unions & Workers Mark 10th Anniversary of Rana Plaza Collapse - Business & Human Rights Resource Centre,” Business & Human Rights Resource Centre. According to this article, Bangladeshi trade unions continue to confront repression, calling on the government to take the necessary steps to properly implement labour laws, such as including workers in a social safety net and removing all barriers to trade unions.

workers, employers, and government to address labour issues, and international cooperation with technical assistance programmes or exchange of good practices.<sup>335</sup>

#### IV. *Article 8 on Bringing Actual and Adverse Impacts to an End.*

The absence of explicit provisions on the obligation to provide or cooperate in providing redress is a notable limitation in the Directive's approach, which takes a neutral standpoint. This is particularly problematic for women victims of workplace violence, as redress requires sensitivity to the specificities of their circumstances. Relying solely on financial compensation may not fully meet their specific needs; Instead, a comprehensive approach to reparation should focus on rehabilitation, restitution, punitive sanctions (criminal or administrative) or preventive measures through court orders or guarantees of non-repetition.<sup>336</sup> To address this issue, it is recommended that Article 8 of the Directive obliges companies to provide redress for adverse impacts, tailored to the diverse needs of the victims while respecting their rights and cultural traditions.<sup>337</sup> Furthermore, the Directive should assess whether women benefit equitably from compensation payments or other forms of restitution.

Against this background, it is commendable to improve provisions for ensuring access to justice for people in vulnerable situations. Women, in particular, frequently face difficulties in accessing justice due to their economic dependence, which hampers their financial barriers to accessing legal remedies.<sup>338</sup> Moreover, some groups could encounter additional barriers, such as limited literacy, language barriers and cultural obstacles, which impede their access to justice at various stages.<sup>339</sup> It is paramount for the directive to acknowledge and actively address these barriers, ensuring equitable and inclusive access to justice for all individuals.

### **5.3 COMPLIANCE SOCIAL AUDITS FOR GENDER EQUALITY**

Export-oriented RMG factories often undergo, among other things, social compliance audits.<sup>340</sup> Social audits are widely recognised as valuable vehicles for identifying and

---

<sup>335</sup> Comisiones Obreras, “Propuesta de Directiva Sobre La Diligencia Debida En Materia de Sostenibilidad de Las Empresas (CSDD) - Hoja de Ruta Actualizada Para Movilizarse Antes Del Trilogo de La UE,” Press release, October 27, 2022,

<sup>336</sup> ActionAid, “Ensuring Gender-Responsive Corporate Due Diligence Legislation in 10 Steps, 22.

<sup>337</sup> ActionAid, 23.

<sup>338</sup> See point 3.3.

<sup>339</sup> ActionAid, 24.

<sup>340</sup> Islam, et al., “The Impact of Covid-19 on Women Workers in the Bangladesh Garment Industry,” 19.

assessing risks and bringing specific workplace issues to light.<sup>341</sup> Their specific nature varies depending on the sector and the entity responsible for conducting them. However, it usually involves an on-site inspection of facilities, such as factories, a thorough review of documentation and interviews with both management and, possibly, employees. In this regard, it is essential to note that audits should not be equated with due diligence, but seen as an integral component of the broader HRDD process as defined in the UNGPs.<sup>342</sup> De facto, social audits differ from due diligence in that they provide a snapshot of conditions at a particular point in time and often rely on checklists to issue statements of compliance.<sup>343</sup> As such, they do not provide a holistic approach to preventing and addressing workplace abuses, as they often overlook the role of the business model and purchasing practices in contributing to exploitative labour practices within the supply chain.

The audit selection plays a crucial role in determining its independence and objectivity. An important concern arises when a company engages an audit firm directly, as this direct contractual relationship can potentially create a conflict of interest. In such cases, the audit firm may be pressured to conceal or downplay issues identified, compromising the thorough examination and accurate interpretation of the audit findings. In contrast, when an audit is conducted by a non-governmental organisation or an international institution, a higher degree of impartiality is expected, with particular emphasis on adherence to international human rights norms and standards. In addition, independent certification organisations, contracted by any interested party with no direct affiliation to the audited company, can further enhance impartiality in the risk identification process.<sup>344</sup> Academics and NGOs have voiced concerns about the potential misuse of audits as a means of masking real working conditions and environmental impacts.<sup>345</sup> In certain instances, both workers and management receive training on how to respond to auditors' inquiries strategically. This dynamic highlights the weakness of audits as a sole control mechanism. A report on the Impact of Covid-19 on Women Garment Workers in Bangladesh revealed that after the pandemic, there were no areas that 100% of auditors included in their audits,

---

<sup>341</sup> Nolan, "Chasing the next shiny thing: Can human rights due diligence effectively address labour exploitation in global fashion supply chains?" 6.

<sup>342</sup> UN Guiding Principles., Principle 20.

<sup>343</sup> Saskia Wilks and Johannes Blankenbach, "Beyond Social Auditing: Key Considerations for Mandating Effective Due Diligence" (Business & Human Rights Resource Centre, October 2021), 2.

<sup>344</sup> Aruna Kashyap, "'Obsessed with Audit Tools, Missing the Goal,'" Human Rights Watch, March 28, 2023

<sup>345</sup> Wilks and Blankenbach, 1.

not even those that are legal requirements, such as maternity leave.<sup>346</sup> It was also reported that almost half of the auditors surveyed were less focused on assessing whether factory owners allowed or recognised the existence of trade unions.<sup>347</sup> These concerns become even more relevant in light of the tragic incidents at the Rana Plaza and Tazreen Fashions factories, which occurred despite the conduct of social audits.<sup>348</sup> These findings demonstrate that audits must be backed up by effective action and follow-up measures to address the shortcomings identified. Policymakers and regulators must ensure that laws requiring companies to conduct human rights and environmental due diligence do not equate compliance with conducting social audits or certifications.

#### **5.4 PRELIMINARY CONCLUSIONS ON CHAPTER V**

The discriminatory labour practices described in the Bangladeshi textile factories are not merely localised issues, but rather are pervasive and predictable outcomes of the business model, which can be addressed with a properly applied HRDD exercise, where workers' rights are at the forefront. Deva points out that prioritising process over outcomes becomes a less effective mechanism for preventing corporate human rights impacts.<sup>349</sup> In other words, this approach highlights the importance of ensuring that the company does not only use formal compliance as a way to legitimise its actions through its involvement in processes but in focusing on the tangible and measurable effects they have on people and their rights. With weak or unclear HRDD laws, there is a danger that companies will outsource risk assessment to third-party auditing firms without adequately addressing labour abuses. Legislative proposals currently under consideration constitute a major window of opportunity to strengthen the requirement for substantive engagement with rights holders through legislative channels.

---

<sup>346</sup> Islam, et al., “The Impact of Covid-19 on Women Workers in the Bangladesh Garment Industry,” 19.

<sup>347</sup> Islam, et al., 19.

<sup>348</sup> Nolan, 7.

<sup>349</sup> Nolan, 7.

## CONCLUSION

The challenges women face in Bangladesh's textile industries reveal a dissonance between the state's human rights obligations and the exemption of corporations from these responsibilities under international law. Outsourcing textile production provides an avenue for states to circumvent their regulatory duty while reaping exponential profits. In this context, a competitive logic is established in which the protection of human rights is perceived as a “zero-sum game,” assuming that increased regulation translates into decreased productivity and economic profits. Consequently, financial, and commercial interests take precedence, overshadowing exploitative practices that one can conceptualise as a contemporary manifestation of neo-slavery.

In the midst of this dynamic, many headlines highlight the contribution of the garment sector to the Bangladeshi economy and the empowerment of women through increased labour participation. Although this claim is not per se false, it lacks precision: can true empowerment be achieved if women workers remain unable to exercise their full capabilities and fundamental rights? Such empowerment will remain elusive if roles, stigmas, and structural barriers that encourage discriminatory workplace practices persist. Certainly, the recent decline in women's labour participation in the textile industry, mainly due to precarious working conditions, shows that this empowerment has not been made tangible for these women, perpetuating a vicious circle that deprives them of access to sustainable and decent employment opportunities.

One of the purposes of this thesis has been to examine the interdependent and interrelated variables that contribute to the persistent discrimination and violence experienced by garment workers in Bangladesh. It can be concluded that this issue reveals a complex nature, encompassing a variety of dimensions. Socially, it stems from deeply entrenched and socially constructed conceptions that unfairly assume women's inferiority. Economically, it stems from limited access to alternative economic opportunities. Organisationally, the dynamics of low-cost, high-speed production within the industry play an important role. Legally, the state's extraterritorial jurisdictional limitations pose difficulties in addressing transnational violations in value chains, compounded by the absence of a binding regulatory mechanism to compel companies to take factual and preventative measures. Recognising that mere participation can sometimes mask various forms of discrimination is at its most crucial. Inclusion alone is

insufficient to ensure genuine equality or fully realising women's rights. It is therefore essential to have a comprehensive understanding of these complex factors to develop effective strategies that can effectively address the broad challenges experienced by women garment workers in Bangladesh.

This thesis, in turn, aims to examine the mechanisms that navigate between the framework established by Ruggie's Guiding Principles - protect, respect, remedy - in addressing the issue of transnational violations, and assess their practical effectiveness. Considering the extensive array of conventions implemented and proposed, whether voluntary, mandatory, national, global, or regional in scope, it can be deduced that the concept of Corporate Social Responsibility itself functions as an empty signifier that takes on different meanings depending on how it is compiled and applied in the context of social institutions. In the realm of Business and Human Rights, the adoption of Human Rights Due Diligence plans emerges as a pivotal component of CSR, as it imbues it with specific meaning by establishing a series of proactive measures to anticipate potential risks and their legal implications. Thus, properly regulated HRDD essentially has great potential to be a strong regulatory instrument. Examples such as the French Vigilance Act or the Bangladesh Accord have served as notable models that, despite the inherent inconsistencies that may exist in their provisions, have yielded valuable results for standard-setting processes at both the European and global levels. Given the limitations of voluntarism, adopting such mechanisms emerges as the only viable approach to uncovering corporate accountability in the context of human rights abuses.

Europe is at the forefront of the effort to transform the paradigm from one of a “zero-sum game” to one of ethical competitiveness. It would be interesting if the proposed EU Directive, once finally adopted in tripartite discussions within the union, could be complemented by specific aspects of the UN Binding Treaty to fill existing gaps. For example, the Treaty's emphasis on victim support and reparations could serve as a valuable reference to incorporate elements that are currently not covered in the current version of the Directive, such as the comprehensive scope of application contained in the UNGPs or the coverage of human rights instruments such as ILO Convention 190 on violence and harassment. In addition, although the Directive focuses primarily on established commercial relations, it is essential to adopt rules and principles that align with the broader objectives and safeguards set out by the Treaty itself. Conversely, the proposed Directive provides more precise guidelines on the implementation and

enforcement of due diligence obligations, providing a basis for strengthening the potential of the Treaty.

Ending the discriminatory practices faced by women garment workers in Bangladesh is not a unilateral job, nor is it immediate; instead, it requires collaborative efforts involving all stakeholders. This encompasses the responsibility of citizens to adopt responsible consumption practices, the commitment of the Bangladeshi government to amplify the voices of trade unions and implement policies that promote equality to foster positive impacts and social transformation, and the active engagement of institutions and companies to align with the above proposals. Concurrently, academic research must persist in addressing these issues, guiding government initiatives, and raising awareness at the grassroots level.

## BIBLIOGRAPHY

### BOOKS AND REPORTS

Action Aid. “Ensuring a Gender-Responsive and Effective Corporate Due Diligence Legislation in 10 Steps.” November 30, 2022.

Action Aid. “Sexual Harassment and Violence against Garment Workers in Bangladesh.” July 25, 2019.

Advancing Learning and Innovation on Gender Norms (ALiGN). “Social Norms Atlas: Understanding Global Social Norms and Related Concepts.” Social Norms Learning Collaborative, May 2021.

Amnestía Internacional. “Eliminar Las Lagunas Jurídicas’. Recomendaciones Para Una Ley de La UE Sobre Empresas y Sostenibilidad Que Sirva Para Las Personas Titulares de Derechos.” 2023.

Azizul Islam, Muhammad, Pamela Abbott, Shamima Haque, Fiona Gooch, and Salma Akhte. “The Impact of Covid-19 on Women Workers in the Bangladesh Garment Industry.” The University of Aberdeen and the Modern Slavery and Human Rights Policy and Evidence Centre, January 2022.

Bourke Martignoni, Joanna, and Elizabeth Umlas. “Gender-Responsive Due Diligence for Business Actors: Human Rights Based Approaches.” The Geneva Academy of International Humanitarian Law and Human Rights, December 2018.

Bussolo, Maurizio, Jessy Amarachi Ezebuihe, Ana Maria Munoz Boudet, Stavros Poupakis, Tasmia Rahman, and Nayantara Sarma. “Social Norms and Gender Equality: A Descriptive Analysis for South Asia.” Open Knowledge World Bank, August 16, 2022.

Comisiones Obreras. “Propuesta de Directiva Sobre La Diligencia Debida En Materia de Sostenibilidad de Las Empresas (CSDD) - Hoja de Ruta Actualizada Para Movilizarse Antes Del Trío de La UE.” Press release, October 27, 2022.

Ethical Trading Initiative. “Where Are the Women? A Study on the Declining Number of Women Workers in the Bangladesh RMG Industry.” March 6, 2023.

Hasan, Mohammad Kamrul. *Everyday Life of Ready-Made Garment Kormi in Bangladesh an Ethnography of Neoliberalism*. Springer EBooks, 2022.

Heather M, Clarke. “Gender Stereotypes and Gender-Typed Work.”” In *Handbook of Labour, Human Resources and Population Economics*, 1st ed. Springer, Cham, 2020.

Holly, Gabrielle, and Signe Andreasen Lysgaard. “Legislar Para Impactar: Análisis de La Propuesta de La Directiva Corporativa de La UE Sobre La Debida Diligencia de Las

Empresas En Materia de Sostenibilidad.” *The Danish Institute for Human Rights* .  
Copenhagen, March 2022

International Labour Office. “Report IV: Decent Work in Global Supply Chains.” ILO  
Publications, April 8, 2016.

International Labour Organization, “Time for Equality at Work. Global Report under the  
Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work”  
(International Labour Organization, April 3, 1990).

Koukiadaki, Aristeia. “Global Supply Chains and Labour Standards: From a Patchwork  
of Rules to a Web of Rules?” in *Protecting the Future of Work*, ed. Barry Colfer et al.,  
(Emerald Publishing Limited, 2023).

Lees, Sean. “Guía de Facilitación Para La Formación En Derechos Humanos y Debida  
Diligencia.” UNDP Business and Human Rights Asia, 2021.

Machteld Ooijens and Plan International Netherlands. “Applying Gender-Responsive  
Human Rights Due Diligence in Practice” (Girls Advocacy Alliance, December 2020)

Matsuura, Aya, and Carly Teng. “Understanding the Gender Composition and Experience  
of Ready-Made Garment (RMG) Workers in Bangladesh.” International Labour  
Organization, September 2020.

OECD. “SIGI 2021 Regional Report for Southeast Asia. Social Institutions and Gender  
Index”. OECD Publishing, March 30, 2021.

OHCHR, “Chapter 13: The Right to Equality and Non-Discrimination in the  
Administration of Justice” (UN Human Rights Office of the High Commissioner, May 7,  
2001), 635.

Oosterom, Marjoke, Lopita Huq, Victoria Flavia Namuggala, Sohela Nazneen,  
Prosperous Nankindu, Maheen Sultan, Asifa Sultana, and Firdous Azim. “The Gendered  
Price of Precarity: Voicing and Challenging Workplace Sexual Harassment,” June 7,  
2022.

Organisation for Economic Cooperation and Development (OECD), *OECD Guidelines  
for Multinational Enterprises*, 27 June 2000.

Sidanius, Jim and Rosemary C.Veniegas. “Gender and race discrimination: The  
interactive nature of disadvantage.” In *Reducing prejudice and discrimination*, ed S.  
Oskamp, (Lawrence Erlbaum Associates Publishers, 2000).

United Nations Global Compact. “Navigating Decent Work Challenges in Multi-Tiered  
Supply Chains: Leadership Brief.” 2020.

United Nations Population Fund (UNFPA). “Technical Brief: How Changing Social  
Norms Is Crucial in Achieving Gender Equality.” April 2021.

United Nations. “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework.” *United Nations Human Rights Office of the High Commissioner*. New York, 2011.

Van Heerden, Auret, Maria Prieto Berhouet, and Cathrine Caspari. “SEED Working Paper No. 40: Rags or Riches? Phasing-Out the Multi-Fibre Arrangement.” International Labour Organización, 2003.

Wilks Saskia and Johannes Blankenbach. “Beyond Social Auditing: Key Considerations for Mandating Effective Due Diligence.” (Business & Human Rights Resource Centre, October 2021).

Women and Development Unit of the Economic Commission for Latin America and the Caribbean (ECLAC). “Understanding Poverty from a Gender Perspective.” CEPAL Publications, June 2004.

## JOURNALS

Akhter, Sadika, Shannon Rutherford, and Cordia Chu. “Sufferings in Silence: Violence against Female Workers in the Ready-Made Garment Industry in Bangladesh: A Qualitative Exploration.” *Women’s Health* 15 (December 20, 2019): 174550651989130. <https://doi.org/10.1177/1745506519891302>.

Al Bhadily, Mohammed. “Does the Bangladesh Accord on Building and Fire Safety Provides a Sustainable Protection to Ready-Made Garment Workers?” *Review of Integrative Business and Economics Research* 4, no. 4 (October 2015): 158–77. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2861143](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2861143).

Begum, Nargis, and Shaila Sarmin. “Women’s Empowerment: Impact of RMG; Case from Gazipur District.” *ASA University Review* 10, no. 2 (July-December 2016): 25-40.

Bobbitt-Zeher, Donna. “Gender Discrimination at Work: Connecting Gender Stereotypes, Institutional Policies, and Gender Composition of Workplace.” *Gender and Society*, 25, no. 6 (December 2011): 764 – 1786. <https://www.jstor.org/stable/23212199>.

Bright, Claire, Axel Marx, Nina Pineau, and Jan Wouters. “Toward a Corporate Duty for Lead Companies to Respect Human Rights in Their Global Value Chains?” *Business and Politics* 22, no. 4 (October 1, 2020): 667–97. <https://doi.org/10.1017/bap.2020.15>.

Bueno, Nicolas, and Claire Bright. “Implementing human rights due diligence through corporate civil liability.” *International and Comparative Law Quarterly* 69, no. 4 (September 7, 2020): 789 818. <https://doi.org/10.1017/s0020589320000305>.

Carastathis, Anna. “The Concept of Intersectionality in Feminist Theory.” *Philosophy Compass* 9, no. 5 (April 7, 2014): 304–14. <https://doi.org/10.1111/phc3.12129>.

Cerrahoglu, Alp. “Defining the Scope of a Corporate Sustainability Due Diligence Directive: Concerns, High-Impact Sectors and Financial Institutions.” *Nova Centre on Business, Human Rights and the Environment Blog.*, February 15, 2023.

Cislaghi, Beniamino, and Lori Heise. "Gender Norms and Social Norms: Differences, Similarities and Why They Matter in Prevention Science." *Sociology of Health & Illness* 42, no. 2 (December 13, 2019): 407–22. <https://doi.org/10.1111/1467-9566.13008>.

Deva, S. (2023). "Mandatory human rights due diligence laws in Europe: A mirage for rightsholders?" *Leiden Journal of International Law*, 36 (February 2023): 1–26. <https://doi.org/10.1017/s0922156522000802>.

Deva, Surya. "Treaty Tantrums: Past, Present and Future of a Business and Human Rights Treaty." *Netherlands Quarterly of Human Rights* 40, no. 3 (August 4, 2022): 211–21. <https://doi.org/10.1177/09240519221118706>.

Dey, Soma and Palash Basak. "Out of the shadows: Women and wage struggle in the RMG industry of Bangladesh." *Asian Journal of Women's Studies* 23, no.2 (2017): 163–182. <https://doi.org/10.1080/12259276.2017.1317702>.

Fahim, Md. Hasnath Kabir. "A Pragmatic Analysis of Labour Standards in Compliance with ILO and Islam: Bangladesh Perspective." *Beijing Law Review* 11, no. 02 (April 9, 2020): 544–60. <https://doi.org/10.4236/blr.2020.112033>.

Harper, Caroline, Rachel Marcus, Rachel George, Sophia D'Angelo, and Emma Samman. "Gender, Power, and Progress. How Norms Change." Advancing Learning and Innovation on Gender Norms (ALIGN) and Overseas Development Institute (ODI), December 2020.

Heilman, Madeline E. "Gender Stereotypes and Workplace Bias." *Research in Organizational Behaviour* 32 (January 1, 2012): 113–35. <https://doi.org/10.1016/j.riob.2012.11.003>.

Kabeer, Naila. "Gender Equality and Women's Empowerment: A Critical Analysis of the Third Millennium Development Goal." *Gender and Development* 13, no 1 (March 2005): 13–24.

Khan, Mahabub Ul Alam, and Gita Debi Halder. "Sexual Harassment in Bangladesh: A Note on Legal Perspective." *Society & Sustainability* 4, no. 1 (August 24, 2022): 107–13. <https://doi.org/10.38157/ss.v4i1.404>.

Mamun, Abdullah Al, and Mahmudul Hoque. "The Impact of Paid Employment on Women's Empowerment: A Case Study of Female Garment Workers in Bangladesh." *World Development Sustainability* 1 (July 1, 2022): 1–9. <https://doi.org/10.1016/j.wds.2022.100026>

Mas, Francesca Dal, William Tucker, Maurizio Massaro, and Carlo Bagnoli. "Corporate Social Responsibility in the Retail Business: A Case Study." *Corporate Social Responsibility and Environmental Management* 29, no. 1 (August 22, 2021): 223–32. <https://doi.org/10.1002/csr.2198>.

Miranda Novoa, Martha. “Diferencia Entre La Perspectiva de Género y La Ideología de Género.” *Dikaion* 21, no. 2 (December 2012): 337–54. <https://doi.org/10.5294/dika.2012.21.2.1>.

Nolan, J. “Chasing the next shiny thing: Can human rights due diligence effectively address labour exploitation in global fashion supply chains?” *International Journal for Crime, Justice, and Social Democracy* 11, no. 2 (2022): 1-14. <https://ssrn.com/abstract=4192262>

Pacheco, Sara. “The notion of adverse human rights and environmental impacts within the Draft CSDD Directive: alignment of the draft Directive with the UNGPs.” *Nova Centre on Business, Human Rights and the Environment Blog*, 20 February 2023.

Perry, Patsy, and Neil Towers. “Conceptual Framework Development.” *International Journal of Physical Distribution & Logistics Management* 43, no. 5/6 (June 7, 2013): 478–501. <https://doi.org/10.1108/ijpdlm-03-2012-0107>.

Ramasastry, Anita. “Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability.” *Journal of Human Rights* 14, no. 2 (April 3, 2015): 237–59. <https://doi.org/10.1080/14754835.2015.1037953>.

Ruggie, John. “Business and Human Rights: The Evolving International Agenda.” *The American Journal of International Law* 101, no. 4 (October 2007): 819-840. <https://www.jstor.org/stable/40006320>.

Scheltema, M and McCorquodale, R. “Supervisory Mechanisms and Directors Duties: Innovations in the Proposed EU Directive on Corporate Sustainability Due Diligence.” *Nova Centre on Business, Human Rights and the Environment Blog*, 24 May 2022.

Scott, Joan. “El Género: Una Categoría Útil Para El Análisis.” *Revista Del Centro De Investigaciones Históricas* 14 (2002): 9–45. <https://revistas.upr.edu/index.php/opcit/article/view/16994>.

Sharma, Sulagna Sen. “Women’s Empowerment in Bangladesh: Understanding through the Case of Readymade Garment Sector.” *Gender and Women Studies* 3, no. 1 (November 16, 2020): 1-9. <https://doi.org/10.31532/gendwomensstud.3.1.004>

Shoma, Chowdhury Dilruba. “Women’s Rights and Voice in the Ready-Made Garments Sector of Bangladesh: Evidence from Theory and Practice.” *Journal of International Women’s Studies* 18, no. 2 (January 2017): 118–33. <https://vc.bridgew.edu/jiws/vol18/iss2/8>.

Sidanius, Jim, Sarah Cotterill, Jennifer Sheehy-Skeffington, Nour Kteily, and Héctor Carvacho. “Social Dominance Theory: Explorations in the Psychology of Oppression.” In *Cambridge University Press EBooks*, 149–87, 2016. <https://doi.org/10.1017/9781316161579.008>.

## LEGAL SOURCES

Bangladesh Labour Act, 2006 (XLII of 2006).

*Constitution of the People's Republic of Bangladesh* (Bangladesh), 4 November 1972, available at: <https://www.refworld.org/docid/3ae6b5684.html> (accessed 1 May 2023)

Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities*, UN Doc E/C.12/GC/24 (23 June 2017).

European Commission Directive 2022/0051. Proposal for a Regulation of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (23 February 2022)

International Labour Organization (ILO), Discrimination (Employment and Occupation) Convention, C111, 25 June 1958, C11.

International Labour Organization (ILO), Violence and Harassment Convention, C190, 25 June 2019, C190.

OEIGWG Chairmanship Third Revised Draft (17 August 2021)

Organisation for Economic Cooperation and Development, "OECD Due Diligence Guidance for Responsible Business Conduct." 2018.

UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant)*, 11 August 2005, E/C.12/2005/4.

UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html>

UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>

Working Group on the issue of human rights and transnational corporations and other business enterprises (WGBHR). "Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises." United Nations, A/HRC/17/31 (21 March 2011).

## CASE LAW:

Bangl. Nat'l Women Lawyers Ass'n. v. Government of Bangl. & Ors., WP 5916 of 2008 (2008) (Bangl.).

*British American Tobacco Bangladesh (BATB) Company Ltd v. Begum Shamsun Nahar* (66 DLR (AD) 80).

Milieudefensie v. Royal Dutch Shell, District Court of the Hague (DC), 26 May 2021, ECLI:NL: RBDHA:2021:5337.

Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)

Supreme Court of Bangladesh, *BNWLA v. Government of Bangladesh*, no.5916 of 2008

Urgenda v. The Netherlands, Supreme Court of the Netherlands (SC), 20 Dec. 2019, ECLI:NL: HR:2019:2007

Vedanta Resources Plc & Anor v Lungowe & Ors [2019] UKSC 20, on appeal from [2017] EWCA Civ 1528

## THESIS:

Sultana, Nazin. "Gender (In) Equality and Discrimination in the Readymade Garments Sector of Bangladesh: Is the experience of the (female) office workers overshadowed by the experience of the factory workers?". MA thesis, University of Bergen, 2021.

## WEBSITES.

Fashion Industry Statistics," 2022. <https://fashionunited.com/global-fashion-industry-statistics>.

Gender-Responsive Due Diligence Platform: <https://www.genderduediligence.org/>.

Haque, Sadika. "Maternity Leave: Crying Need for RMG Workers." *The Business Standard*, April 13, 2021. <https://www.tbsnews.net/feature/panorama/maternity-leave-crying-need-rmg-workers-230992>.

IBIS World – Industry Market Research, Reports and Statistics, "Global Biggest Industries by Employment in 2023," 2023. <https://www.ibisworld.com/global/industry-trends/biggest-industries-by-employment/> "Global

Johanna Howarth, "Identifying and Prioritising Adverse Impacts in a Global Apparel Supply Chain - Gender-Responsive Due Diligence," Gender-Responsive Due Diligence -(blog), June 29, 2022.

Munni, Monira. “Women in RMG Sector Get Lower Wages than Men.” *The Financial Express*, June 28, 2022. <https://thefinancialexpress.com.bd/trade/women-in-rmg-sector-get-lower-wages-than-men-1656383541>.

Office of the High Commissioner for Human Rights. “Gender Stereotyping as a Human Rights Violation.” October 2013, 17. <https://www.ohchr.org/en/women/gender-stereotyping>

OHCHR. “Gender Stereotyping,” n.d. <https://www.ohchr.org/en/women/gender-stereotyping>.

ONU Mujeres. “Fotorreportaje: Mujeres rurales, derechos humanos,” n.d. <https://www.unwomen.org/es/digital-library/multimedia/2018/2/photo-rural-women-human-rights>.

Plan International and Partnering for Social Impact, “Decisive Leadership as a Way to Embed Women’s Economic Resilience into Policies - Gender-Responsive Due Diligence,” *Gender-Responsive Due Diligence - (blog)*, February 7, 2022.

UN Women – Asia-Pacific. “Facts & Figures,” n.d. <https://asiapacific.unwomen.org/en/countries/india/leadership-and-participation/fact-and-figures>

UN Women Asia and the Pacific. “UN Women Bangladesh.” Accessed May 12, 2023. <https://asiapacific.unwomen.org/en/countries/bangladesh>.

WEPs GAT Tool in <https://weps-gapanalysis.org/about-the-tool/>.

World Bank Group. “How Much Do Our Wardrobes Cost to the Environment?” *World Bank*, March 28, 2022. <https://www.worldbank.org/en/news/feature/2019/09/23/costo-moda-medio-ambiente>

Wilde-Ramsing, Joseph. “Amidst the Trend towards Mandatory Due Diligence, the Bangladesh Accord Model Should Not Be Abandoned.” *Business & Human Rights Resource Centre*, April 16, 2021. <https://www.business-humanrights.org/en/blog/the-bangladesh-accord-a-blueprint-for-the-expansion-of-mandatory-due-diligence/>.

World Bank. “World Bank SME Finance: Development News, Research, Data | World Bank,” n.d. <https://www.worldbank.org/en/topic/smefinance>.

