



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

A CRITICAL ANALYSIS ON THE EFFECTIVENESS OF HUMAN RIGHTS OBLIGATIONS IMPOSED ON THE TECH COMPANIES

AUTHORED BY - BHAGAVATH HARINI V J1

ABSTRACT

The United Nations Guiding Principles on Business and Human Rights acts as an authoritative text for prevention and redressal of human rights violations by technology companies. It casts a duty upon the state to protect human rights by undertaking proper and adequate measures to ensure that the businesses do not engage in human rights violations. “Protect, Respect and Remedy” is the first pillar of the UNGP which plays a pivotal role in preventing abuse of human rights by technology companies both through their activities as well as through their products and services. The technology companies possess the obligation to respect the internationally recognized human rights stipulated under the International Bill of Human Rights and the International Labour Organization’s declaration on fundamental principles and rights at work. The obligations imposed on the tech companies can also be inferred from the soft law instruments including the guidelines for multinational enterprises of the OECD. The tech companies which fail to respect the human rights are subjected to reputational damages apart from legal and financial consequences. The failure to respect human rights can in turn affect the long-term interests of the company as well. This article throws light on the implications of the human rights obligations imposed on the tech companies internationally, its effectiveness and adequacy while also analysing the national frameworks in place to mitigate the human rights risks involving tech companies. The principles such as due diligence, surveillance, and transparency are also looked into. The article also seeks to analyse the obligations of tech companies to protect the child rights in the digital space as per the convention on the rights of the child. Furthermore, the article emphasizes on how the users might be involved in human right issues and the responsibility of the tech companies to protect and uphold the privacy, data, and freedom of expression.

Keywords: Business Human Rights, UNGP, Technology companies, Data protection, Privacy, Freedom of expression.

¹ LL.M., School of Excellence in Law, TNDALU.

CHAPTER I

1.1 INTRODUCTION

Technology companies can be understood as the sector involved in research, development and distribution of technology-based goods and services. The tech companies are involved in the process of producing electronics, software, apart from the products and services related to information technology.² All forms of business regardless of the place or manner of their operation, has the potentiality of impacting human rights. The companies can impact human rights either positively or negatively. Such impact can be through their products or services or the internal policies and processes of the companies. The tech companies' impact on human rights can be seen to be largely increasing with various high-profile examples. These impacts caused are often felt across countries and not limited to the country in which the company is located or based. The tech companies and their actions can have a considerably large effect on a variety of human rights such as the right to privacy, freedom of expression, data breach, trading of personal data without consent, censorship of content by platforms or content moderation, and surveillance issues. Under the international human rights law, the businesses generally are not conferred with legal obligations like states.³ Since there is a lack of a comprehensive global regulation, the responsibility lies upon the tech companies to take measures for fulfilling their human rights responsibilities.⁴ However, it must be understood that striking a right balance between the functionality of the tech product and its human rights impact is quite a task. The tech companies are expected to strike a balance between disinformation on one hand and freedom of speech on the other, machine-made decisions and algorithmic decisions on one hand and remedies for the potential human right violations on the other which may be achieved only through a well framed human rights policy of the company.⁵ The products of tech companies like social media platforms also have positive implications such as exercise of right to freedom of expression and sharing one's own opinion.⁶ The

² Technology Companies, Investopedia, *available at*: <https://www.investopedia.com/technology-companies-6828963> (last visited on March 2, 2024).

³ Business and Human Rights in the Digital Environment, *available at*: https://www.gp-digital.org/wp-content/uploads/2020/02/BHR-in-the-Digital-Environment_.pdf (last visited on March 2, 2024).

⁴ Business Human Rights in the Tech Sector, *available at*: <https://www.lexology.com/library/detail.aspx?g=b97afa3d-e0f2-4386-a486-0e0e4acc4122#:~:text=Business%20and%20human%20rights%20in,connecting%20people%20around%20the%20world> (last visited on March 2, 2024).

⁵ Encoding human rights in governing tech companies, *available at*: <https://www.ikigailaw.com/article/148/encoding-human-rights-in-governing-tech-companies> (last visited on March 2, 2024).

⁶ The Tech Sector and National Action Plans on Business and Human Rights - A thematic supplement to the "National Action Plans on Business and Human Rights Toolkit 2017 Edition", *available at*: <https://www.humanrights.dk/sites/humanrights.dk/files/media/document/The%20Tech%20Sector%20and%20N>

businesses in general are guided by the United Nations Guiding Principles on Business and Human Rights which acts as an authoritative text for prevention and redressal of human rights violations by technology companies. The technology companies possess the obligation to respect the internationally recognized human rights stipulated under the International Bill of Human Rights and the International Labour Organization's declaration on fundamental principles and rights at work which contains four core principles relating to freedom of association, and collective bargaining, forced, compulsory, and child labour and discrimination in terms of employment. The obligations imposed on the tech companies can also be inferred from the soft law instruments including the guidelines for multinational enterprises of the OECD. This paper analyses the international instruments in place to mitigate human right risks and its effectiveness. The principles such as due diligence, surveillance, and transparency are also looked into. The paper also seeks to analyse the obligations of the tech companies to protect the child rights in the digital space as per the convention on the rights of the child. Furthermore, the paper emphasizes on the responsibility of the tech companies to protect and uphold the privacy, data, and freedom of expression. The article also throws light on the UN special rapporteurs' communication with regard to the new IT rules framed in India.

1.2 RESEARCH OBJECTIVES

- ❖ To determine the adequacy of the international frameworks on mitigation of human rights violations.
- ❖ To determine the effectiveness of human rights obligations of tech companies in preventing human rights violations.
- ❖ To analyse the provisions under the Companies Act, 2013 and National frameworks providing for protection of human rights.
- ❖ To analyse the responsibility of the tech companies in terms of protection of data, privacy and freedom of expression.

1.3 RESEARCH QUESTIONS

- ❖ Whether the existing international frameworks are adequate for mitigating the human rights violations caused by technology companies?
- ❖ Whether the human rights obligations of tech companies are effective in preventing the human rights violations caused by such companies?

- ❖ Whether the provisions under the Companies Act and National frameworks are adequate for the protection of human rights?
- ❖ Whether the tech companies have a responsibility in protecting the data, privacy and freedom of expression of its users?

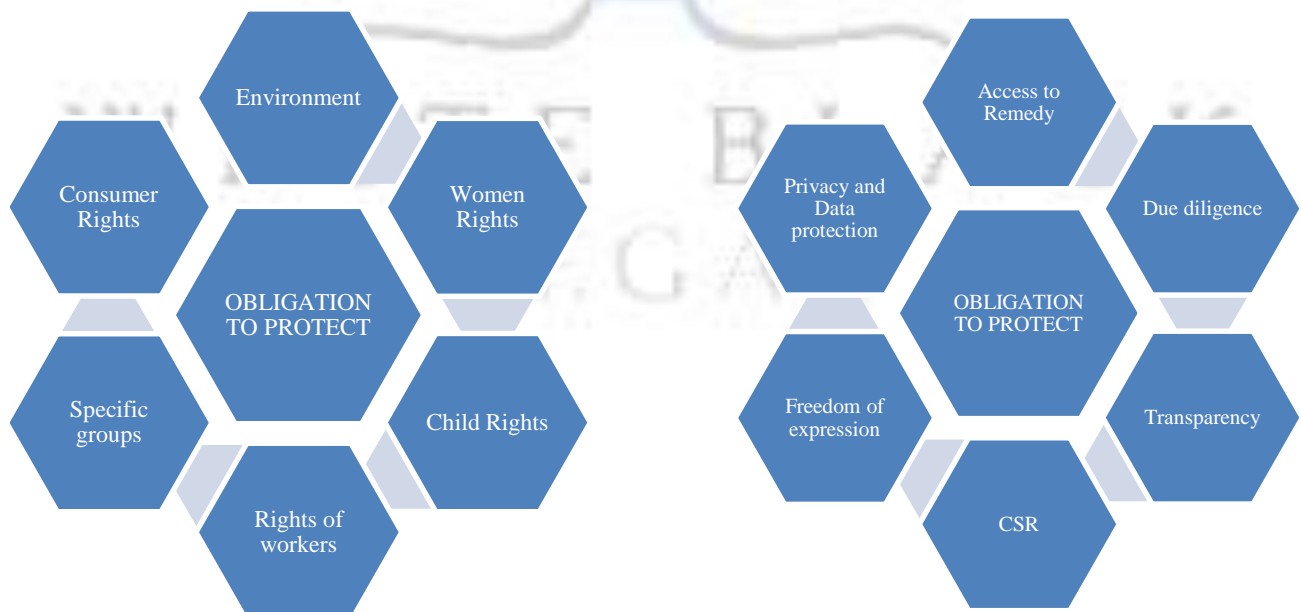
1.4 RESEARCH METHODOLOGY

The researcher has undertaken a doctrinal study. The researcher has relied upon primary sources such as international instruments, legislations, National Action Plan and case laws as well as secondary sources such as scholarly articles, web sources, and news articles.

CHAPTER II

2.1 HUMAN RIGHTS OBLIGATIONS OF TECH COMPANIES

The technology companies are bound to exercise certain human right responsibilities subject to the national legislations, policies as well as international commitments and instruments. The human right obligations of tech companies include the obligations to protect the environment, rights of women, rights of children, rights of consumers, rights of specific groups, rights of workers, corporate social responsibility, exercise due diligence in its operations, uphold the privacy and data of its users, ensure transparency and freedom of expression while also providing access to appropriate remedy in case of any human right violations which include establishment of grievance mechanism.



Human Rights obligations of tech companies

1. Protection of Environment

Principles 2 and 6 of the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business imposes the obligation upon the businesses including tech companies to protect the environment and carryout businesses in such a way that the environment is not harmed. Right to clean environment also forms part of the fundamental right to life as recognised by the Supreme Court of India in the case of M.C Mehta v. Union of India. Therefore, the companies cannot infringe upon the fundamental right of the citizens. Any such violation can lead to filing of writ by the aggrieved party before the Supreme court under Article 32 or the High court under Article 226 of the Constitution. The tech companies also need to abide by the laws in India providing for protection of the environment such as the Environment Protection Act, 1986, Water Act, 1974, Air Act, 1981, and the Forest Conservation Act, 1980. If any provisions of the above listed legislations are violated, actions can be brought under that specific legislation.

2. Protection of rights of the workers

All businesses including tech companies have the primary obligation to protect the rights of the workers. This obligation encompasses a wide range of rights to be ensured by the tech companies including the right to equal opportunity, equal pay for equal work, protecting the health of the workers, providing a hygienic and safe working environment. In India, labour legislations primarily govern and regulate these activities which shows that any kind of infringement can be remedied through the provisions of these labour legislations or Constitution of India. Internationally the obligation of tech companies to protect the rights of the workers can be inferred from Article 23 and Article 24 of the Universal Declaration of Human Rights, 1948 and Article 6 and Article 7 of the ICESCR, 1966.

3. Protection for Specific Groups

Principle 8 of the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business imposes an obligation upon the tech companies to accord special protection for specific groups that are prone to human right risks. The reasons for such human right violations caused to a specific group consistently include

social and historical factors.⁷ The legislations in a particular country providing for the protection of such specific or special groups must be meticulously adhered to by the tech companies.

4. Protection of rights of the women

Principle 3 of the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business strongly imposes an obligation upon the tech companies to take appropriate measures in order to protect the rights of the women. The Sexual Harassment of Women at Workplace Act, 2013 (POSH Act) provides for the protection of women at workplace. This act imposes responsibility on the employer to ensure that the workplace is harassment free and safe. It also provides for the establishment of Internal Complaints Committee within the organization which must be strictly followed by the tech companies. The Ministry of Corporate Affairs in order to ensure the compliance of companies to the 2013 Act and ICC establishment has made it mandatory to give a statement regarding the same in the director's report which must be submitted as per the Companies Act, 2013. This has been brought in by way of amending the Companies (Accounts) Rules, 2014.⁸ The Companies Act 2013 and SEBI also ensures gender equality by mandating the appointment of at least one woman director to the board.⁹ As per Article 5 of the ILO Decent Work for Domestic Workers Convention, 2011 every woman has a right to enjoy effective protection against every form of abuse, violence and harassment. Every woman has a guaranteed right to enjoy just and favourable conditions at work as per Article 3 of the Declaration on elimination of violence against women, 1993.¹⁰

5. Protection of rights of the children

Principle 3 of the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business mandates the tech companies to protect the rights of the children. There are various enactments in India providing for the protection

⁷ National Action Plan on Business and Human Rights Zero draft, *available at*: https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf (last visited on March 2, 2024).

⁸ Disclosure of compliance under the Sexual Harassment of Women at Workplace Act in the Annual Reports of Private companies now made Mandatory: Ministry of Corporate Affairs amends the Companies (Accounts) Rules, 2014, *available at*: <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1542886> (last visited on March 2, 2024).

⁹ National Action Plan on Business and Human Rights Zero draft, *available at*: https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf (last visited on March 2, 2024).

¹⁰ Jatindra Kumar Das, *Human Rights Law and Practice* 300-301 (PHI Learning Private Ltd, Delhi, 2016).

of children such as the Child Labour (Prohibition and Regulation) Act, 1986, Right of Children to Free and Compulsory Education Act 2009, Protection of Children from Sexual Offences Act, 2012 which particularly must be adhered to by the tech companies. The tech companies must ensure that throughout their supply chain and value chain nothing happens which adversely affects the rights of the children.

The products and services offered by the tech companies must be designed in such a way that the rights of the children are protected adequately. The main concern raised is regarding the parental consent or age indicator which are found to be not sufficient. Critics argue that the tech companies employ such mechanisms just to mitigate their responsibility in this regard. Internationally, the Convention on the Rights of the Child must be adhered to by the tech companies. Article 3.1 of the Convention clearly establishes that the tech companies' actions must be in line with the children's best interests. The companies must protect the privacy of the child users. The tech companies are obliged to conduct due diligence in its actions. Article 5 of the Convention mandates that the companies during its development of any product or service must take into account the child's evolving capacities and design the product or service accordingly. Article 19.1 and 32.1 protects children from all kinds of economic exploitation which the companies must strictly refrain from.¹¹

6. Consumer Protection

The tech companies like any other business model have the obligation and responsibility to ensure consumer protection. Principle 9 of the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business deals with the same. The Consumer Protection Act in India creates an obligation upon the companies to act in accordance with its provisions in order to ensure the protection of customers interests. The act establishes redressal commissions through which the consumers can seek remedy in case of any violations. The Consumer Protection Act, 2019 specifically included online purchasers within the definition of consumer.¹²

¹¹ The children's rights-by-design standard for data use by tech companies, *available at*: <https://www.unicef.org/globalinsight/media/1286/file/%20UNICEF-Global-Insight-DataGov-data-use-brief-2020.pdf> (last visited on March 2, 2024).

¹² National Action Plan on Business and Human Rights Zero draft, *available at*: https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf (last visited on March 2, 2024).

7. Corporate Social Responsibility

Section 135 of the Companies Act, 2013 expressly imposes obligation upon the companies to give back to the society. The tech companies falling within the prescribed conditions of Section 135 must contribute to CSR activities failure of which may attract penalty as stipulated under Section 135 (7).¹³ The tech companies are known for their CSR activities because it helps in building the company's goodwill and reputation. The CSR activity carried out by Google includes reduction of their carbon emissions. Apple through its project called renewable energy exercises CSR. Microsoft on the other hand, as part of their CSR activity provide education and works for community development.¹⁴

8. Right to privacy

The tech companies are obliged to uphold and ensure the right to privacy of its users as per Article 12 of the UDHR and Article 17 of the ICCPR. The tech companies generally follow a business model in which user personal data are collected and processed as part of their day-to-day operation. This data may pertain to the online as well as offline behaviour of the users. The collected user personal data are used by the companies for micro-targeted advertisements. It is also used for the purpose of surveillance of the users by both the companies as well as the state actors such as the law enforcement authorities or agencies which poses serious threat to the right to privacy of the users. The UN special rapporteur emphasized that the Big Data has the ability to violate the right to privacy of the users by making available even the minute details about the user also known as informational self to the persons who are involved in the process of collection and analysis of these data sets. According to the UNGP, all tech companies are vested with the responsibility to take appropriate measures for prevention and redressal of adverse impacts which also includes adverse human right impact to the user's right to privacy. In several cases the companies have refrained from informing about such breaches to the user victims which clearly violates the responsibility as imposed by the UNGP. The tech companies are not transparent in their process of collection and use of such data. Furthermore, the users are left with absolutely no control over the

¹³ Corporate Social Responsibility under Section 135 of Companies Act 2013, *available at*: <https://cleartax.in/s/corporate-social-responsibility> (last visited on March 2, 2024).

¹⁴ Tech Companies' Role in Social Responsibility, *available at*: https://medium.com/@bergerguy_57590/tech-companies-role-in-social-responsibility-19248151360e (last visited on March 2, 2024).

information collected and they are not even aware of the purposes for which such data is used and its passage to third party.

The experts from the United Nations Organization have recently pointed out that the India's new IT rules¹⁵ are not in conformity with human rights principles. A communication was sent by three UN special rapporteurs to the Indian government. This communication emphasized on the serious issues relating to the due diligence obligation imposed on the intermediary companies. They stated that this obligation imposed on the intermediaries can violate the human rights. They also pointed out that certain terms employed in the rules lacked clarity and this might result in arbitrary implementation. The experts raised concerns about the system of constantly monitoring content posted by the users and removing the same may infringe the right to freedom of speech and expression of the users. They feared that this obligation might result in over censoring of content by the tech companies which might also involve automatic tools for the same.¹⁶

9. Data protection

Data protection must be ensured by all the companies involved in the process of collection and processing of user information. Protection of collected data becomes important not only to ensure the right to privacy of the user but also to minimize the amount of data being lost in case of any data breaches. When a company follows clear and transparent data collection practice, it adds up to the users' trust and builds confidence upon the company as well as its products and services. The risk of data breach can be minimized by closing the inactive accounts.¹⁷

10. Right to freedom of expression

The states are prohibited from disrupting access to information online as well as its dissemination as it would infringe the international human rights law. Such intentional prevention or disruption of information by states have been strongly condemned by the UN Human Rights Council. The tech companies are also involved in the process of

¹⁵ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.

¹⁶ India's IT rules do not conform with international human rights: UN Special, *available at*: <https://www.livemint.com/news/india/indias-it-rules-do-not-conform-with-international-human-rights-un-special-rapporteurs-11624033126565.html> (last visited on March 2, 2024).

¹⁷ Business and Human Rights in the Digital Environment, *available at*: https://www.gp-digital.org/wp-content/uploads/2020/02/BHR-in-the-Digital-Environment_.pdf (last visited on March 2, 2024).

preventing access or disruption of access to information online.¹⁸ Recently, countries have started to enact regulations and laws relating to online content moderation thereby imposing intermediary liability on the companies. The tech companies operating within a particular territory are bound by such countries' domestic laws and regulations. These regulations and laws are enacted with the object of curbing hate speech, online abuse and disinformation. However, per contra, they also have the capability of violating the users' freedom of expression. This in turn vests the companies with enormous corporate judgment power in deciding which content must be removed or allowed to stay thereby affecting the human rights of the users.¹⁹ The companies must strike a balance between preventing the use of their online platform for terrorist purpose and removing content for legitimate reasons on one hand and non-interference with the users' human rights on the other which is quite a task. The tech companies as instructed by the UNGP have to pay extra attention to human rights in conflict and post conflict affected areas.²⁰

11. Due diligence

Principles 17 to 21 of the UNGP imposes obligation upon the tech companies to exercise due diligence in order to prevent, address and mitigate the adverse human right impacts. The process of due diligence can be understood as a prior assessment of potential human right risks that may be caused by the conduct of business. It must be continuously assessed as the human right risks may be dynamic and might change from time to time. The process of impact assessment is carried out by constantly reviewing international instruments such as UDHR, UNGP, domestic laws and its applicability to the companies' operations, risks caused by the operation of the companies or its products and services, and the relevant stakeholders must be consulted in this process.²¹

The tech companies must adhere to the due diligence measures as mentioned in the UNGP by identifying, preventing and mitigating the adverse impacts. Reasonable

¹⁸ The Tech Sector and National Action Plans on Business and Human Rights - A thematic supplement to the "National Action Plans on Business and Human Rights Toolkit 2017 Edition", *available at*: https://www.humanrights.dk/sites/humanrights.dk/files/media/document/The%20Tech%20Sector%20and%20National%20Action%20Plans%20on%20Business%20and%20Human%20Rights_2020_accessible.pdf (last visited on March 2, 2024).

¹⁹ Business and Human Rights in the Digital Environment, *available at*: <https://www.gp-digital.org/wp-content/uploads/2020/02/BHR-in-the-Digital-Environment.pdf> (last visited on March 2, 2024).

²⁰ Tech giants: Human rights risks and frameworks, *available at*: https://www.researchgate.net/publication/348819041_Tech_giants_human_rights_risks_and_frameworks (last visited on March 2, 2024).

²¹ Business and Human Rights in the Digital Environment, *available at*: <https://www.gp-digital.org/wp-content/uploads/2020/02/BHR-in-the-Digital-Environment.pdf> (last visited on March 2, 2024).

efforts should be taken by the companies in this regard and even if after taking the necessary or appropriate due diligence measures the adverse impact is caused then the company will not be regarded as contributing to such harm under the UNGP. If no efforts have been taken by the company to exercise due diligence, then they would be regarded as contributing to or causing such harm under UNGP. However, this will have no effect on the domestic actions that can be taken against the company subject to the local laws of the land for causing such adverse human right impacts.²² In the cases of online hate speech, deep fakes and bots, the end users might be the perpetrator of such crimes who might not have any commercial transaction with the said company. In order to regulate such end users causing adverse human right impacts, the companies are expected to set norms of behaviour and involve in efforts of public policy and regulations thereby mitigating the harm caused.²³

12. Ensure Transparency

The tech companies must ensure transparency in their operations as well as in the products and services offered by them. It was found that there is a lack of transparency in terms of the companies' clients, the contracts entered into by them and licenses authorised by them which can have adverse impacts on the user human rights. However, it must be noted that such information might fall within the purview of confidentiality.²⁴

13. Provide appropriate remedies

Principles 22 to 24 of the National Action Plan on Business and Human Rights deals with the obligation of businesses to provide for appropriate remedies to the victims of human right violations caused by the action or conduct of the businesses. It is the responsibility of the businesses including tech companies to cooperate in the process of remediation. The tech companies must be prompt in taking necessary steps to prevent and mitigate adverse human right impacts. Failure to take prompt and immediate

²² Key Characteristics of Business Respect for Human Rights A B-Tech Foundational Paper, *available at:* <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/B-Tech/key-characteristics-business-respect.pdf> (last visited on March 2, 2024).

²³ UN Human Rights Business and Human Rights in Technology Project (B-Tech) Applying the UN Guiding Principles on Business and Human Rights to digital technologies, *available at:* https://www.ohchr.org/sites/default/files/Documents/Issues/Business/B-Tech/B_Tech_Project_revised_scoping_final.pdf (last visited on March 2, 2024).

²⁴ **Human Rights Responsibilities of Tech Companies Operating in MENA**, *available at:* <https://masaar.net/en/human-rights-responsibilities-of-tech-companies-operating-in-mena/> (last visited on March 2, 2024).

actions to redress or remedy the adverse human right impacts would make it impossible to provide the appropriate remedy.²⁵

13.1 State Based Mechanisms



In the above-mentioned state-based mechanisms, the tech companies are obliged to provide complete cooperation and facilitate the advancement of the right to remedy of the victims of human right violations. Remedies can also take different forms such as apology, compensation either financial or non-financial, restitution, rehabilitation, penalties²⁶ or any other form of remedy as agreed by parties that are authorized by law.²⁷

13.2 Establish Operational level grievance mechanism

The tech companies may establish an operational level grievance mechanism in the process of providing effective access to remedy as per principle 29 of the National Action Plan on Business and Human Rights. It is an internal system established within

²⁵ The corporate responsibility to respect human rights an interpretive guide, *available at*: https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf (last visited on March 2, 2024).

²⁶ Non-Judicial grievance mechanisms, *available at*: <https://globalnaps.org/issue/non-judicial-grievance-mechanisms/> (last visited on March 2, 2024).

²⁷ OHCHR Response to Request from BankTrack for Advice Regarding the Application of the UN Guiding Principles on Business and Human Rights in the Context of the Banking Sector, *available at*: <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf> (last visited on March 2, 2024).

the organization for effective administration or smooth governance which essentially deals with not only the impacts of human right violations and grievances but also actively works in identifying the grievances thereby addressing such actively identified grievances at the earliest. It is not a passive process whereby the actions are taken only after a problem has escalated and immediate attention becomes the need of the hour. Instead, the grievance mechanism acts proactively to prevent such violations. In this process, the tech companies must ensure that the stakeholders are well-aware of such a mechanism being put in place and build the stakeholder's trust upon such mechanisms. It is open for anyone inside or outside the company to raise their concerns and grievances. This mechanism helps in avoiding public protest, litigation or any other form of opposition.²⁸

CHAPTER III

3.1 INTERNATIONAL INSTRUMENTS

The International Bill of Rights, United Nations Guiding Principles, Global Compact, the OECD Guidelines for Multinational Enterprises and ILO declaration provides the human right obligations of businesses including tech companies. However, there is a lack of a comprehensive framework exclusively providing for the human right obligations of tech companies despite the rapid development and increasing number of tech companies.

3.1.1 United Nations Guiding Principles on Business and Human Rights, 2011

The key international framework dealing with business human right responsibilities is the UNGP, 2011. It emphasizes the responsibility of businesses to respect human rights. The UNGP principles are drafted by keeping in view that the conduct or actions of companies can have significant effects upon human rights. It lays down operational and foundational principles to be followed by both the state as well as the businesses. The UNGP is well known for its three main pillars called the "Protect, Respect and Remedy" principle. The first pillar "Protect" talks about the duty of the state to protect against adverse human right impacts with the help of policies, regulations as well as adjudication of disputes. The second pillar "Respect" deals with the corporate business responsibility to respect the human rights by preventing, mitigating and addressing the adverse human right impacts caused by its operation. The third

²⁸ The corporate responsibility to respect human rights an interpretive guide, *available at*: https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf (last visited on March 2, 2024).

pillar “Remedy” deals with providing appropriate remedies to the victims of human right violations which can be in the form of judicial remedies or non-judicial remedies.²⁹ Therefore, the responsibility imposed on the tech companies can be inferred from the UNGP to include policy framing, exercising due diligence, and providing effective remedy for human right violations by these companies. However, it must be noted that UNGP is a soft law instrument which essentially means that it is non-binding and voluntary in nature.³⁰ The B-tech project was launched in the year 2019 by the United Nations OHCHR in order to facilitate the effective implementation of the principles enshrined in the UNGP particularly in the tech ecosystem.³¹

3.1.2 UN Global Compact

The UN global compact is an international framework which contains ten principles that are non-binding in nature. It acts as a guiding light for the businesses in order to develop practices that are socially as well as environmentally sustainable in nature. Principles 1 and 2 of the global compact imposes obligation on the tech companies to respect and adhere to the wide range of human rights recognised under the international human rights laws and the companies cannot be complicit in the human rights abuse or violations.³² As per Principle 2 of the global compact, the tech companies must be careful and exercise vigilance over the user data collected and used by other partners in the course of its operations.³³ The global compact was however, criticised for its voluntary nature.³⁴ The global compact also mandates the companies to frame policies and exercise due diligence continuously and consistently.³⁵

3.1.3 OECD Guidelines for Multinational Enterprises

The OECD guidelines for multinational enterprises is yet another key instrument which lays down certain standards to be met with by the businesses. It ensures responsible conduct of businesses. It was updated in the year 2011 to bring in a human rights chapter in line with the

²⁹ Business and Human Rights in the Digital Environment, *available at*: <https://www.gp-digital.org/wp-content/uploads/2020/02/BHR-in-the-Digital-Environment.pdf> (last visited on March 2, 2024).

³⁰ *Id.* at 4.

³¹ India: Why Should Tech Companies Care About Human Rights?, *available at*: <https://www.mondaq.com/india/human-rights/1097428/why-should-tech-companies-care-about-human-rights> (last visited on March 2, 2024).

³² Business and Human Rights in the Digital Environment, *available at*: <https://www.gp-digital.org/wp-content/uploads/2020/02/BHR-in-the-Digital-Environment.pdf> (last visited on March 2, 2024).

³³ *Id.* at 4.

³⁴ India: Why Should Tech Companies Care About Human Rights?, *available at*: <https://www.mondaq.com/india/human-rights/1097428/why-should-tech-companies-care-about-human-rights> (last visited on March 2, 2024).

³⁵ *Id.* at 4.

UNGP.³⁶ The OECD guidelines are highly impactful due to its international scope and extra territorial scope apart from imposing responsibility upon the companies to exercise due diligence across its value chain. It includes a wide range of issues, various sectors as well as a wide range of business model. However, these guidelines are voluntary which means non-binding on the companies.³⁷

3.1.4 ILO declaration on fundamental principles and rights at work

The International Labour Organization's declaration on fundamental principles and rights at work contains four core principles relating to freedom of association, and collective bargaining, forced labour, compulsory labour, and child labour, prohibition of discrimination in terms of employment and providing a safe working environment. For India, the ILO conventions serve as a standard of reference to be followed while enacting labour laws.³⁸ The ILO declaration states that regardless of ratification, the states are bound to abide by the declarations and conventions subject to the membership of the states in the international labour organization.³⁹

CHAPTER IV

CONCLUSION

It becomes pertinent to note that under the international human rights law, the businesses generally are not conferred with legal obligations like states. Since there is a lack of a comprehensive global regulation, the responsibility lies upon the tech companies to take appropriate measures for fulfilling their human rights responsibilities. However, it must be understood that striking a right balance between the functionality of the tech product and its human rights impact is difficult. There is a need for a binding legislative framework in this regard to serve as a guidance for the companies to adhere to. The human right obligations of tech companies include the obligations to protect the environment, rights of women, children, consumers, specific groups, and workers. It also includes the companies' corporate social responsibility, and due diligence measures, apart from upholding the privacy and data of its

³⁶ Tech giants: Human rights risks and frameworks, *available at*: https://www.researchgate.net/publication/348819041_Tech_giants_human_rights_risks_and_frameworks (last visited on March 2, 2024).

³⁷ The OECD Guidelines, *available at*: <https://www.oecdwatch.org/oecd-ncps/the-oecd-guidelines-for-mnes/> (last visited on March 2, 2024).

³⁸ India & ILO, *available at*: <https://labour.gov.in/lcandilasdivision/india-ilo> (last visited on March 2, 2024).

³⁹ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, *available at*: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf (last visited on March 2, 2024).

users and freedom of expression. The tech companies must also ensure transparency in its operations as well as enable access to appropriate remedy. The International Bill of Rights, United Nations Guiding Principles, Global Compact, the OECD Guidelines for Multinational Enterprises and ILO declaration provides the human right obligations of businesses including tech companies. However, there is a lack of a comprehensive framework exclusively providing for the human right obligations of tech companies despite the rapid development and increasing number of tech companies.

REFERENCES

BIBLIOGRAPHY:

- ❖ Jatindra Kumar Das. (2016). Human Rights Law and Practice. PHI Learning Private Limited.

WEBLIOGRAPHY:

- ❖ Acharya, M. (2023, September 22). Corporate Social Responsibility Under Section 135 of Companies Act 2013. Clear Tax. <https://cleartax.in/s/corporate-social-responsibility>
- ❖ Banerjee, P. (2021, June 18). India's IT rules do not conform with international human rights: UN Special Rapporteurs. LiveMint. <https://www.livemint.com/news/india/indias-it-rules-do-not-conform-with-international-human-rights-un-special-rapporteurs-11624033126565.html>
- ❖ Benesch, S. (2020). But Facebook's Not a Country: How to Interpret Human Rights Law for Social Media Companies. Yale Journal on Regulation Bulletin, 38, 86-111. <https://ssrn.com/abstract=3692701>
- ❖ Bergerguy. (2024, January 27). Tech Companies' Role in Social Responsibility. Medium. https://medium.com/@bergerguy_57590/tech-companies-role-in-social-responsibility-19248151360e
- ❖ Brien, M., Jorgensen, F., & Hogan, F. (2020). Tech giants: Human rights risks and frameworks. ResearchGate. https://www.researchgate.net/publication/348819041_Tech_giants_human_rights_risks_and_frameworks
- ❖ Brown, D. (2020, September 8). Big Tech's Heavy Hand Around the Globe. Human Rights Watch. <https://www.hrw.org/news/2020/09/08/big-techs-heavy-hand-around-globe>

- ❖ Business and Human Rights in the Digital Environment. (2020). https://www.gp-digital.org/wp-content/uploads/2020/02/BHR-in-the-Digital-Environment_.pdf
- ❖ [Crockett, A.](#), & Elgie, O. (2021, August 17). Business Human Rights in the Tech Sector. Lexology. <https://www.lexology.com/library/detail.aspx?g=b97afa3d-e0f2-4386-a4860e0e4acc4122#:~:text=Business%20and%20human%20rights%20in,connecting%20people%20around%20the%20world>
- ❖ Dimri, A. (2022, January 18). Child Labor and the Human Rights Violations Embedded in Producing Technology. Columbia Undergraduate Law Review. <https://www.culawreview.org/journal/child-labor-and-the-human-rights-violations-embedded-in-producing-technology>
- ❖ Disclosure of compliance under the Sexual Harassment of Women at Workplace Act in the Annual Reports of Private companies now made Mandatory: Ministry of Corporate Affairs amends the Companies (Accounts) Rules, 2014. (2018, August 13). Press Information Bureau. <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1542886>
- ❖ Encoding human rights in governing tech companies. (2021, August 5). Ikigailaw. <https://www.ikigailaw.com/article/148/encoding-human-rights-in-governing-tech-companies>
- ❖ Hartung, P. (2020). The children's rights-by-design standard for data use by tech companies. UNICEF. <https://www.unicef.org/globalinsight/media/1286/file/%20UNICEF-Global-Insight-DataGov-data-use-brief-2020.pdf>
- ❖ Human Rights Responsibilities of Tech Companies operating in MENA. (2023, February 13). Masaar. <https://masaar.net/en/human-rights-responsibilities-of-tech-companies-operating-in-mena/>
- ❖ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up. (2022). International Labour Organization. https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf
- ❖ India & ILO. (n.d.). Ministry of Labour & Employment. <https://labour.gov.in/lcandilasdivision/india-ilo>
- ❖ Katheria, M., Pol, R., & Chaudhari, N. (2021, July 30). India: Why Should Tech Companies Care About Human Rights?. Ikigai Law. <https://www.mondaq.com/india/human-rights/1097428/why-should-tech-companies-care-about-human-rights>

- ❖ Key Characteristics of Business Respect for Human Rights A B-Tech Foundational Paper. (2020). OHCHR.
<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/B-Tech/key-characteristics-business-respect.pdf>
- ❖ Multinational companies are liable for human rights abuses within their supply chains. (n.d.). International Rights Advocates. Retrieved March 2, 2024, from <https://www.internationalrightsadvocates.org/cases/cobalt>
- ❖ National Action Plan on Business and Human Rights Zero draft. (2018, December 10). Ministry of Corporate Affairs, Government of India.
https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf
- ❖ Non-judicial grievance mechanisms. (n.d.). Danish Institute for Human Rights.
<https://globalnaps.org/issue/non-judicial-grievance-mechanisms/>
- ❖ OHCHR Response to Request from BankTrack for Advice Regarding the Application of the UN Guiding Principles on Business and Human Rights in the Context of the Banking Sector. (2017, June 12). OHCHR.
<https://www.ohchr.org/sites/default/files/Documents/Issues/Business/InterpretationGuidingPrinciples.pdf>
- ❖ Skelton, K. (2022, July 1). US court rules no conflict of interest in tech firms' mining deaths case. ComputerWeekly.com.
<https://www.computerweekly.com/news/252522216/US-court-rules-no-conflict-of-interest-in-tech-firms-mining-deaths-case>
- ❖ Technology Companies. (n.d.). Investopedia. Retrieved March 2, 2024, from <https://www.investopedia.com/technology-companies-6828963>
- ❖ The Corporate Responsibility to respect human rights an interpretive guide. (2012). OHCHR.
https://www.ohchr.org/sites/default/files/Documents/publications/hr.puB.12.2_en.pdf
- ❖ The OECD Guidelines. (n.d.). OECD Watch. <https://www.oecdwatch.org/oecd-ncps/the-oecd-guidelines-for-mnes/>
- ❖ UN Human Rights Business and Human Rights in Technology Project (B-Tech) Applying the UN Guiding Principles on Business and Human Rights to digital technologies. (2019). OHCHR.
https://www.ohchr.org/sites/default/files/Documents/Issues/Business/B-Tech/B_Tech_Project_revised_scoping_final.pdf

- ❖ Wingfield, R., Tuta, I., & Bansal, T. (2020). The tech sector and national action plans on business and human rights - A thematic supplement to the “National Action Plans on Business and Human Rights Toolkit 2017 edition”. The Danish Institute for Human Rights and Global Partners Digital. https://www.humanrights.dk/sites/humanrights.dk/files/media/document/The%20Tech%20Sector%20and%20National%20Action%20Plans%20on%20Business%20and%20Human%20Rights%202020_accessible.pdf

INTERNATIONAL INSTRUMENTS AND STATUTES:

- ❖ Universal Declaration of Human Rights, 1948
- ❖ International Covenant on Civil and Political Rights, 1966
- ❖ International Covenant on Economic, Social and Cultural Rights, 1966
- ❖ United Nations Guiding Principles on Business and Human Rights, 2011
- ❖ UN Global Compact
- ❖ OECD Guidelines for Multinational Enterprises
- ❖ Convention on the Rights of the Child
- ❖ International Labour Organization’s Declaration on Fundamental Principles and Rights at Work
- ❖ National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business
- ❖ Constitution of India
- ❖ Companies Act 2013
- ❖ Water (Prevention and Control of Pollution) Act, 1974
- ❖ Forest Conservation Act, 1980
- ❖ Air (Prevention and Control of Pollution) Act, 1981
- ❖ Environment Protection Act, 1986
- ❖ Child Labour (Prohibition and Regulation) Act, 1986
- ❖ Right of Children to Free and Compulsory Education Act 2009
- ❖ Protection of Children from Sexual Offences Act, 2012
- ❖ Sexual Harassment of Women at Workplace Act, 2013
- ❖ Consumer Protection Act, 2019
- ❖ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021