

ESG, IMPACT LAWYERS & INNOVATION IN THE PAKISTANI LEGAL SYSTEM

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At the Annual Summit of the Global Alliance of Impact Lawyers (GAIL)I recently held at the London School of Economics & Political Science (LSE) in London, more than 250 global lawyers from leading law firms gathered to discuss how they could play a more meaningful role for impact through law.² I was invited to speak as the Chair of the GAIL Asia Pacific Board where we discussed a potential Regulatory Mapping exercise that we could conduct across Asia Pacific. All the while, my mind was racing with what we can do as Pakistani legal practitioners to put Pakistan on the map as a serious contender for commercial giants to invest in, post adoption of the EU's Corporate Sustainability Due Diligence Directive (CSDDD), even though we are in the Global South.

It was once considered that the first and foremost agenda in Pakistan is the need for a robust and business friendly regulatory environment. That now is not enough if we want to be able to do business, at scale, with the Global North. The world is developing at an exponential scale thanks to AI and technology, innovative investment tools and sustainable governance structures and our systems need to keep up with the pace.

One aspect of commercial law reforms that need to be reviewed and updated is that the need to integrate Environment, Social & Governance (ESG) metrics in governance documents of the Securities & Exchange Commission of Pakistan (SECP) regulated listed companies, still needs to pick up momentum. SECP launched the ESG Regulatory Roadmap in 2022 and has only very recently issued draft guidelines on ESG disclosures for consultation as part of its ESG Regulatory Roadmap of 2022.³

What can the bar, bench and policy makers, do to build that momentum and what is the urgency of the matter?

Many mainstream lawyers in Pakistan are not fully aware of the connection between the impact that can be generated through the integration of ESG in corporate governance. There is a clear business case for higher profits associated with ESG metrics and assessments. The effect will not only be seen in terms of investor confidence and higher regulatory compliance but will also help incorporate the triple bottom line (TBL) of People, Planet and Profit into the equation of business, thereby making it an 'impact business'.

Impact businesses can be 'social enterprises', 'for profit' or 'not for profit' entities that are focused on being sustainable and support the objectives of the UN Sustainable Development Goals. Examples include sustainable food chains, circular economy, race to net zero initiatives through business, and so on.

Gone are the days, when 'social enterprises' would be equated only with 'SMEs' and small business owners. Today, global investors are not just interested in the return on investment (ROI) on large capital investment deals but are also keen to see how far their dollar will push to make the world greener, more sustainable and just.

¹GAIL (2024), About Gail, Web: <https://gailnet.org/about/>. Accessed on 6th May, 2024.

²Uba E., (2024), Pioneer Post, 'Make the distinction between law and justice to avoid environmental destruction'. Web: <https://www.pioneers-post.com/news-views/20240425/make-the-distinction-between-law-and-justice-avoid-environmental-destruction>. Accessed on 6th May, 2024.

³SECP (2023), 'SECP Initiates Consultation on Voluntary ESG Disclosures Guidelines', Web:<https://www.secp.gov.pk/media-center/press-releases/secp-initiates-consultation-on-voluntary-esg-disclosure-guidelines/>, Web accessed: 6th May, 2024.

The European Parliament has taken the front seat in advocating for ESG metrics integration in corporate governance by launching the Corporate Sustainability Reporting Directive (CSRD) adopted in 2022, which came into effect in 2023.

And the most recent, EU's Corporate Sustainability Due Diligence Directive (CSDDD - also known as the CS3D), was passed in April 2024. The CSDDD is broadly aligned with the United Nations' Guiding Principles on Business and Human Rights (UNGPs) passed in 2011 and the Organization for Economic Co-operation and Development's Guidelines for Multinational Enterprises (updated OECD guidelines 2023).

The EU's CSDDD is one of the most in depth and ambitious sustainability laws in the world. Over the next 2-3 years after it comes into effect⁴, thousands of EU and non-EU companies will be required to identify, assess, and mitigate environmental and human rights violations based on the new sustainability law and will introduce comprehensive mandatory human rights and environmental due diligence obligations, with significant financial penalties and civil liability for companies that do not fully comply. It also will create a new obligation for companies to adopt and put into effect a climate transition plan aligned to 1.5°C in line with the Paris Agreement of 2016⁵ agreed upon at COP21, as well as a requirement for companies to report on their due diligence processes.

Each EU country will create supervisory authorities to investigate and impose penalties on non-complying firms. Member states will be given two years to transpose it into national law.

At the Global Alliance of Impact Lawyers (GAIL) conference at LSE, where impact lawyers from North America, Latin America, UK & Europe, Asia Pacific and Africa had convened, it was clear that the implications of this new EU sustainability law would have a far-reaching effect not only on EU and non-EU companies operating in the EU; but the CSDDD could also serve as a beacon of new sustainability standards that could potentially be adapted and replicated in some form in other regional jurisdictions as well. This continued development of sustainability checks by regulators can potentially create an effective action plan to bring some of the global pledges of COP28 and successive COPs to some fruition through sustainable businesses.

In the Asia Pacific region, China, Singapore, Japan, South Korea, Hong Kong and Thailand already have ESG regulatory guidelines or regulatory frameworks in place. Pakistan now needs to come up to speed with these global developments to be able to attract FDI and build its market in Europe and the Asia Pacific in the wake of the new EU ESG regulations such as the CSRD and the CSDDD that may negatively impact Global South businesses unless they also integrate the same metrics into their governance models.

In Pakistan, the regulators, the bar and the bench all need to speed up the advocacy for ESG frameworks development and implementation. Within the judiciary, the Honorable Justice Mansoor Ali Shah is pro legal innovation and is receptive to new ideas. He can push the bar and bench to closely study the emerging and growing field of 'impact law' that covers issues such as sustainability, ESG, blended finance, corporate due diligence and business & human rights.

Pakistan needs more impact focused lawyers for larger acceptance of ESG regulatory compliance to meet foreign investors' expectations, confidence and regulatory requirements. Sustainability experts, lawyers and judges together, can play a vital role in supporting the SECP campaign for greater understanding, visibility and acceptability of their ESG Roadmap.

At LSE, I represented the Seplaa Group and AFMalik Law from Pakistan. Expanding on the role of these two, the Seplaa Group's consultancy services for Pakistani companies in Impact Business, ESG (Environmental, Social, and Governance), and Sustainability is where purpose meets profit and responsible business. With Seplaa's 20 years of experience at both grassroots and policy level to build the momentum first for social enterprises in the region and then for 'Impact Law', they are at the forefront of guiding organisations towards a future where positive societal and environmental impact coexists with financial prosperity.

In an era where businesses are increasingly recognising the importance of aligning their strategies with global sustainability goals, it is important to work with experts who bring a wealth of knowledge to help businesses navigate this evolving landscape.

ESG considerations have become integral to investment decisions, and the Seplaa consultants assist companies in understanding, reporting, and improving their presently 'voluntary' ESG reporting, navigating through the maze of sustainability metrics, helping companies build a robust ESG framework that aligns with industry best practices and meets the expectations of stakeholders, investors, and consumers alike.

Furthermore, AFMalik Law has been guiding young law students and fresh graduates on the scope and meaning of impact law in Pakistan since 2020 thereby hoping to create a nursery of young lawyers who will understand what Impact Law means.

⁴Cooley (2024), EU Adopts Mandatory Rules on Corporate Sustainability Due Diligence That Will Apply to Many US Companies, Cooley Alert, April 2024, Web: <https://www.cooley.com/news/insight/2024/2024-04-24-eu-adopts-mandatory-rules-on-corporate-sustainability-due-diligence-that-will-apply-to-many-us-companies#:~:text=On%2024%20April%2024%2C%20the%20European%20Parliament%20voted,shift%20in%20corporate%20attitudes%20to%20responsible%20business%20conduct>. Accessed on: 6th May, 2024.

⁵UNFCCC (2016), The Paris Agreement, Web: <https://unfccc.int/process-and-meetings/the-paris-agreement>. Accessed on: 6th May, 2024.

Recently a law student from the LUMS Law School interviewed the author of this piece for her research and during the discussion disclosed that students are shying away from 'corporate law' because they consider it too commercial and would rather pursue 'human rights'. Since many lawyers and judges still do not know about the innovative concept of 'impact law' similarly, many students are not aware of this dimension of law as well. Impact law is by all purposes, an extension of corporate and commercial law albeit with a humane and more responsible approach and methodology of implementation. Impact law focuses on purpose and not just on profit.

Legal reforms or advocacy alone are also not enough to support an impact business. In the ever-evolving landscape of business, sustainability, purpose and profit, the focus should be on a systems approach that extends beyond compliance, encouraging innovation and resilience. 'Seplaapreneruship⁶ - the Seplaa 5 Cog Wheels of Sustainable Business Strategy' incorporates the 5 Ps of People, Planet, Profit, Policy and Purpose and focuses specifically on this systems and network approach to build sustainable businesses in emerging and frontier economies.

This approach empowers organisations to identify and capitalise on sustainable business opportunities, creating a roadmap for long-term success in a world where environmental and social responsibility are paramount. Through the Seplaa 5 Cog Wheels' systems collaborative approach, stakeholder engagement, and in-depth analysis, businesses can integrate sustainable practices into business models, unlocking both short-term gains and long-term value.

The time has never been riper to embark on a journey towards a future where business thrives in harmony with the planet and society to not only navigate the complexities of a changing world but also to lead the way in creating a positive and lasting impact. The question is, how soon the legal community in Pakistan can come up to speed and embrace the impact law domain.

The author is the Founder of Seplaa since 2004 and presently is CEO of the Seplaa Group & AFMalik Law. In 2018, she became the first 'Impact Lawyer' from Pakistan and was the first to Chair the Asia Pacific Board of the Global Alliance of Impact Lawyers (GAIL) in 2013.

⁶Seplaa Group (2024), 'Sustainability, Oxford & Seplaa', Web: <https://seplaagroup.com/sustainability-oxford-seplaa/>, Accessed on 6th May, 2024.