

The Right to a Fair Competition and Due Process of Law: An Uncommon Perspective

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Abstract

The effects of the ownership of businesses by Militaries has seldomly been investigated through a Human Rights lens. This article intends to identify one aspect of the human rights implications of the military owned businesses. A case of military owned business and its impact upon protected constitutional right of fair competition in Pakistan is selected. The case of Pakistan is relevant because the military's control of power politics makes it more influential and powerful than any other state organ. In addition, it owns assets related to its business activities worth more than a 100 billion dollars. The article adopts descriptive and analytical approach towards the human rights challenges posed by these military businesses for other relevant stakeholders. The major questions addressed are whether the military ownership of business entities poses a threat to equal opportunity? Does the right guaranteed in article 18 of the 1973 constitution protect the right to a fair competition? If yes, what is the effect of the overwhelming ownership of business by the military on the notion of unfair advantage? And what is a possible mechanism of dealing with this issue and its future implications?

Keywords:

Business and Human Rights; Milbus and Human Rights; Freedom of Trade and Business; Fair Competition; Military owned Business Entities

1. Introduction

In a Bollywood movie named ‘Gangs of Wasseypur’ a notorious family criminal gang in a moment decide to stay off from criminal activities and start afresh with a legal family business. Living in a coastal city they decide to invest in the fishing business. The next day they call all the fisherman in their city and warn them to leave their business and find a job other than the fishing business. The notorious gang starts a legal fishing business by keeping all the others away manipulating the market. Their wealth making becomes legal but the way they engaged in profit making makes hundreds of other fisherman jobless. In real life the Pakistan ‘Rangers’ - which is a paramilitary force working under the influence of Pakistan’s powerful military - in early 1990s *inter alia* started fishing business in Karachi (biggest coastal city in

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Pakistan) controlling all the buying and selling prices. They would buy 40kg of fish at the price of Rupees 800/- and sell it off in the official market at Rupees 5000/- earning millions of profits defying all competition laws and practises.¹ In 2005, the local fisherman asked for help from the federal government after the provincial government turned deaf and blind over the matter for many years. Later, the parliament turned in favour of the paramilitary forces, even the political opposition were barred of discussing the matter in parliament.² The parliament cannot do much because the country has been controlled and its politics influenced by the military since its inception. The military has become a giant enterprise controlling state's political and economic affairs making ways for its profit-making ventures. According to Gayer 'Violent enterprises take part in state formation so that they create the local political context they are so closely dependent on'.³ In this surge of more power the military becomes an enterprise, but an enterprise of a kind which only benefits its own people and dismantle the balance of an economic system required for the strengthening of a political system.

The major way how military controlled enterprises function is through forming institutionally controlled business entities.⁴ The regulatory power remains with the institution; the enterprise is thus operated by officers for the financial interests of other officers. This dual role of military is sometimes dangerous for the state organs and the people dwelling in it. As a contemporary in 1827 noted with respect to the British East India Company that 'a company which carries a sword in one hand and a ledger in the other, which maintains armies and retails tea, is a contradiction'.⁵ This contradiction of interest is not new to Pakistan as it is a state coming out of a legacy that the British East

¹ Laurent Gayer, 'The Pakistan Rangers: From Border Defense to Internal —Protection—', in *Organized Crime and States: The Hidden Face of Politics*, ed. Jean-Louis Briquet and Gilles Favarel-Garrigues, The Sciences Po Series in International Relations and Political Economy (New York: Palgrave Macmillan US, 2010), 15-39, https://doi.org/10.1057/9780230110038_2. at 34.

² 'Resolution on Fishermen Issue Disallowed', DAWN.COM, 26 November 2004, <http://beta.dawn.com/news/375254/resolution-on-fishermen-issue-disallowed>.

³ Gayer, 'The Pakistan Rangers'. at 34.

⁴ David Prina, 'TAKING CARE OF THEIR OWN: THE CAUSES AND CONSEQUENCES OF SOLDIERS IN BUSINESS', 2017, <https://doi.org/10.13016/M2FK42>.

⁵ Leo J. Blanken, *Rational Empires: Institutional Incentives and Imperial Expansion* (Chicago ; London: University of Chicago Press, 2012).

India Company left. After the demise of the British colonial system it is the –elites|| which have changed rather than the system which prefers power in the hands of the few.⁶ The system is well enforced through the laws dating back to the British era.

Pakistan's military is involved in operating a number of enterprises that are involved in food production, equipment repair, transport, petroleum, mining, construction, real estate and other items related with daily consumption. Exactly how much money does the military make from its businesses is not declared. In 2016, the Senate (upper house in parliament) was briefed that the military runs over 50 economic projects, units and housing colonies. This may well be a distorted picture of a more giant business empire owned by the Pakistan military; as according to *Siddiq* the investment of military foundations is in around 718 companies.⁷ This number would have increased rather than decreased keeping in mind the role of the military in politics and economy since 2007 and its keen interest in China Pakistan Economic Corridor (CPEC). Some of the declared military business is operated through four different military subsidiaries – the Fauji Foundation (FF), Shaheen Foundation (SF), Bahria Foundation (BF) and Army Welfare Trust (AWT) – and the rest is undeclared through different means. All of these declared businesses work visibly under the Ministry of Defense (MoD), however the MoD does not control anything related with these businesses. The MoD is superficially operated by a civilian head (minister) but controlled by a civil-military hybrid, working under the control of the military. The actual command of military businesses lies with the three main military services i.e. Army, Navy and Air Force. Each of the services plans and runs its business activities independently, outside civilian influence and oversight.

There is a profound need of research towards the impact of these military businesses and their effect on the relevant stakeholders. The problem often is that a statistics-based research is very difficult in the circumstances where a non-military person is barred from getting any information with regards to the military business. Even the parliament is not empowered to ask

⁶ See for example Hashmatulah Khan et. al. 'Role of Elites in Pakistan', https://www.researchgate.net/publication/326985062_Role_of_Elites_in_Pakistan. accessed 15 July 2020.

⁷ Ayesha Siddiq, *Military, Inc.: Inside Pakistan's Military Economy*, 2nd Edn. (Place of publication not identified: Pluto Press, 2016). , at 237. Quoting an unidentified officer at the Securities and Exchange Commission of Pakistan.

about dubious business deals made by the military. For instance, in 2005 a sugar mill was sold by the Fauji Foundation to an entity owned by a retired military person who was not even a part of the bidding process. The issue was raised in parliament but the defence ministry failed to provide the details.⁸ The study then must be conducted through descriptive and analytical methods identifying the issues. Secondly, the study of powerful military dealings is always with a risk specifically when it points out towards their financial kingdom. Thereby, this issue has not been discussed widely in academic circles. In cases where it is studied gives us a perspective on social, political and economic impacts of such businesses. It has seldomly been discussed through a legal lens, the author in this article tends to do so. This article is an effort to identify the human rights impacts of military owned businesses in Pakistan. The first part deals with the question of how the military operates as a business enterprise. The second part raise the question of equal opportunity and fair competition in Pakistan where a powerful military controls business and politics. The third part deals with the analysis of how this issue may have more human rights impacts unless resolved. The solution does not reside in completely banishing the military business in Pakistan - as it will be too much to ask for - but to regulate the businesses accordingly and making all the business entities more accountable.

2. How does Military Operate as a Business Enterprise

Military have a privileged position within a society mostly carved through the 'national security' apparatus and the dramatization of the fear from the adverse forces. This unfettered privilege breeds power which in some cases becomes unchecked and unquestioned. The physical hold over key national infrastructure comes sometimes with an advantage of unchecked business activities.⁹ This unfettered and unaccountable business through enterprises is prone to unhindered corrupt practises and

⁸ Elliot Wilson, "The Military Millionaires Who Control Pakistan Inc | The Spectator," accessed 29 June 2020, <https://www.spectator.co.uk/article/the-military-millionaires-who-control-pakistan-inc>.

⁹ Kevin Goh, Julia Muravska, and Saad Mustafa, *Military-Owned Businesses: Corruption & Risk Reform: An Initial Review, with Emphasis on Exploitation of Natural Resource Assets*, 2012. available http://ti-defence.org/wp-content/uploads/2016/03/2012-01_MilitaryOwnedBusinesses.pdf. at 5.

cartelization. The impact is different in different political systems depending on how powerful the military has become.

The Historical Perspectives of Self-Sufficiency

Historically, the arrangement of the socio-political and economic model of the states forced most militaries to supply and fund themselves using various means and methods to achieve self-sufficiency. The ancient militaries were often responsible for feeding themselves rather than the state feeding them. In some cases only the economically sound people were accepted in military in the pre-modern societies; individual soldiers were often responsible for supplying their own armour and weapons.¹⁰ This was the accepted social norm but the scarce resources made the pre-modern military rely on pillaging and looting of the surrounding battlefield, militaries lived off the land—either their own or that of their enemies—requisitioning or stealing supplies as their needs dictated.¹¹ For instance, the Byzantine —theme armies|| in separate military districts were responsible for defending their district as well as generating the required supplies and equipment.¹² In more recent cases the militaries instead of looting and pillaging tend to adopt more advance techniques for self-sufficiency.

The process of profit making (self-sufficiency) in modern context is not abrupt but with a gradual political and social change. Initially, the purpose of self-sufficiency is for supporting the military from outside sources and decreasing economic burden on the government. The military in Russia, for example, under Czars Alexander I and Nicholas I also showed patterns of self-sufficiency. The military was initially provided with land for this purpose and these settlements would then be used for meeting basic requirements of the military. The purpose of such projects was merely _to save money by making the troops more self-sufficient in regard to food supply and to improve their

¹⁰ Richard Arthur Preston, Alex Roland, and S. F. Wise, *Men in Arms: A History of Warfare and Its Interrelationships With Western Society*, (Fort Worth: Holt Rinehart & Winston, 1991). at 16.

¹¹ Martin Van Creveld, *Supplying War: Logistics From Wallenstein To Patton*, (Cambridge ; New York: Cambridge University Press, 2004). at 9-31.

¹² James C. Mulvenon, *Soldiers of Fortune: The Rise and Fall of the Chinese Military-Business Complex, 1978-1998: The Rise and Fall of the Chinese Military-Business Complex, 1978-1998*, (Armonk, N.Y: Routledge, 2000). at 13.

condition'.¹³ These settlements later underwent reforms and more land was added resulting in the increase of goods adding a surplus value for the military, further in addition to agricultural purpose the land was utilised for other enterprises such as stud farms etc.¹⁴ This model later was diminished in favour of the state providing basic necessities as the military moved away from economic self-sufficiency toward reliance on the civilian market in meeting requirements for grain and other commodities.¹⁵ The economic empowerment of the military through this self-sufficiency model was marred with corrupt practises and thus diminished.¹⁶ As the Russian experience most of these military economic adventures are prone to corrupt practises because there is no civilian jurisdiction over audit within the military administration. Every dispute or investigations over corrupt practises are often dealt with internally by military tribunals having strictest military secrecy.¹⁷

The start-up of military business in other states may also be linked with the self-sufficiency agenda in many cases as in modern militaries. For example, a similar pattern was seen in modern day Indonesia where the political and military leadership allowed military business because the government could not provide sufficient funds for sustenance of military personnel and buying weapons.¹⁸ China and Vietnam also showed similar patterns of military business as a requirement for self-sufficiency.¹⁹ In China the end was rather similar to the Russian model, the military was found complacent in corrupt practises which forced the government to reduce the spread of military business in 1990s.²⁰ In Pakistan, the first military enterprise the

¹³ *Soldiers of the Tsar: Army and Society in Russia, 1462-1874* (Oxford, New York: Oxford University Press, 1985). at 283.

¹⁴ *Ibid.*, p.303.

¹⁵ *Ibid.*, p. 306.

¹⁶ Mulvenon, *Soldiers of Fortune*. at 16.

¹⁷ *Ibid.*

¹⁸ Lesley McCulloch, "Trifungsi: The Role of the Indonesian Military in Business," in *The Military as an Economic Actor: Soldiers in Business*, ed. Jörn Brömmelhörster and Wolf-Christian Paes, International Political Economy Series (London: Palgrave Macmillan UK, 2003), 94–123, https://doi.org/10.1057/9781403944009_6.

¹⁹ Jörn Brömmelhörster and Wolf-Christian Paes, 'Soldiers in Business: An Introduction', in *The Military as an Economic Actor: Soldiers in Business*, ed. Jörn Brömmelhörster and Wolf-Christian Paes, International Political Economy Series (London: Palgrave Macmillan UK, 2003), 1–17, https://doi.org/10.1057/9781403944009_1. at 6.

²⁰ Brömmelhörster and Paes.

—Fauji Foundation|| was formed to settle the issues related with pension funds of the military personnel.²¹ The *modus operandi* of these military enterprises are often different and settled according to the socio-political and economic system of the country.

The Modern Milbus

With many different states emerging in modern times the socio-political differences among the states also prevail to a large extent. The extent of the military corporatism also depends upon the state's own political system. Most states however tend to provide complete financial support for the military, in order to support modern concept of apolitical civil-military relations.²² In cases of economically developed states, the goal of complete financing has been largely accomplished; although there might be evidences of the military engaged in partnership with civilian corporate sector and sometimes the government.²³ In many other cases, militaries are funded by a combination of central fiscal contributions and internal military production and commerce.²⁴ In the aforementioned cases the military do not have a dominant role in political and economic affairs of a state but part of the system like other business entities. In contrast to these practises the military in some states work very closely with the governments and run their profit-making enterprises whereas in other cases like Pakistan the military become the power centres themselves and control the government directly or indirectly to enhance its profit-making. In this kind of process, the military involvement in profit-making through enterprises have its own socio-political and economic effects. It largely effects other businesses and people trying to survive in already challenging situation. In cases where the military controls the governments, political institutions and economic decisions the repercussions for civilians are adverse. The system only tends to favour businesses which are owned and controlled by the military, a way of economic gains for the individuals related with military. This use of power by military for personal gains of the military personnel and of people

²¹ Siddiqi, *Military, Inc.*

²² The relationship between civilian allocation of defence budget funds and civilian control of the military is discussed in Samuel P. Huntington, *The Soldier and the State: The Theory and Politics of Civil-Military Relations*, (Cambridge, Mass: Belknap Press: An Imprint of Harvard University Press, 1981).

²³ Siddiqi, *Military, Inc.* at 1.

²⁴ Mulvenon, *Soldiers of Fortune*. at 9.

affiliated with it through business enterprises is called as Milbus by Ayesha Siddiq.²⁵

The Milbus creates a situation where the Human Rights of the non-military people are strongly challenged within a society. The economic and social benefits are for the few selected people and neglects the majority of the population. The competition with civilian business entities becomes implacable when public resources are used for corporate gains. The prominent social and political status of the military allows it a special access to state resources which other civilian entities would not be entitled to.²⁶ The state policies favours the military enterprises by giving subsidies to specific businesses. Similarly, the raw material acquired for production purposes by the military enterprises comes tax-free or with subsidised rates, the produces are then sold at market prices.²⁷ It thus closes down investment opportunities for other business entities and monopolise the markets. Adding to these practises as discussed above it is historically proven that the major drawback of powerful military involvement in business is the prevalence of corrupt practises hence destabilizing the whole economic markets in a society. In addition to this where businesses related with minerals and natural resources are grappled by strong and unaccountable entities its revenue goes to the institution rather than the state. The disadvantages and autocratic nature of Milbus in this way has been investigated economically and socially by pointing out these drawbacks within the system but seldomly through the lens of Human Rights. The operative way of Milbus is different and according to the socio-political situation thereby its effect on the rights of the people will also be different accordingly. Hence the study of the effects of the Milbus on Human Rights will be more target based and relative. One common trait of the Milbus is that it always has an adverse effect on the rights of the stakeholders involved either territorially or extra-territorially. Sometimes the violations can be as grievous as involvement in international crimes.

Recently the involvement of Myanmar military also known as Tatmadaw in economic activities has been linked with some grievous violations of human rights including Genocide.²⁸

²⁵ Siddiq, *Military, Inc.* at 1.

²⁶ 'Transparency International UK', Transparency International UK, 8 May 2012, <https://www.transparency.org.uk/military-owned-businesses-corruption-risk/>. at 5.

²⁷ Mulvenon, *Soldiers of Fortune*.

²⁸ 'OHCHR | MyanmarFFM Economic Interests of the Myanmar Military (16 Sept 2019)', accessed 12 July 2020,

The crimes were linked with the direct involvement of Tatmadaw in business activities. An earlier fact-finding mission of the Human Rights Council recommended financial isolation of the Tatmadaw to restrict their involvement in international crimes.²⁹ This involvement of the Tatmadaw in crimes like Genocide is directly related with the economic gains of the organisation through which it dominated the government for decades. This also raises a case for the study of military businesses which might support different kinds of violations of Human Rights if their economic operations goes unchecked. The way the Milbus operates might endanger several civil rights and one of them in contention is the right to an equal opportunity (fair competition) and due process.

3. Equal Opportunity and Fair Competition as a Basic Right

The Constitutional Approach

The right to a fair competition and equal opportunity as far as business and profession is concerned is protected by most democratic states and stands as a major democratic norm. It is also protected and elaborated under the laws regulating the European Union and its economic practises. It is also practised and accepted by different states, enforced through antitrust laws within local jurisdictions. The right puts an obligation upon states to refrain from giving undue advantage to certain subjects and industries.³⁰ The right has been protected in Pakistan through article 18 of the Constitution of the Islamic Republic of Pakistan which states that:

'Freedom of trade; business or profession: Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this Article shall prevent-

(a) the regulation of any trade or profession by a licensing system; or

(b) the regulation of trade, commerce or industry in the interest of free competition therein; or

<https://www.ohchr.org/EN/HRBodies/HRC/MyanmarFFM/Pages/EconomicInterestsMyanmarMilitary.aspx>.

²⁹ _OHCHR | MyanmarFFM Report of Independent International Fact-Finding Mission on Myanmar (27 August 2018)', accessed 12 July 2020, <https://www.ohchr.org/en/hrbodies/hrc/myanmarFFM/Pages/ReporttotheMyanmarFFM.aspx>.

³⁰ Ksenya Smyrnova, 'Competition Law & Human Rights Protection: Controversial New Dimensions', *Contemporary Legal Institutions* 5, no. 1 (2013): 51–55. at 53.

(c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.'

There are two basic points in the above quoted article which need to be highlighted with regards to the current discussion. Firstly; the government (federal or provincial) is not barred from owning a business etc. [article 18(c)]. This may point out towards the direct ownership of a business by the governments' i.e. state-owned enterprises, for example, the Pakistan International Airlines (PIA); it also points towards the business not owned by the government directly but owned by a government organ, for example, the Fauji Foundation owned by Pakistan Military. Secondly, this right mentioned in 18(c) is not absolute but the article protects the right towards a —free competition|| in trade or business as well [article 18(b)]. This has been elaborated by the Supreme Court in *Arshad Mehmood v Govt. of Punjab*. It stated that; a perusal of proviso (b) of Article 18 of the Constitution indicates that regulation of the trade, commerce or industry is permissible in the interest of free competition therein. Meaning thereby that without free competition amongst traders, no trade commerce or industry can be regulated.³¹ Both the rights protected shall be read collectively and realised in consonance with each other. This should also be additionally read with article 4 of the constitution which protects due process of law. The Supreme Court of Pakistan in *Attaullah Khan Malik v. the State* have clarified this in a case regarding the selling of Public land without due process by stating that;

such closed and opaque process adopted for the sale or disposal of public property limits public access to new business prospects and restricts economic activity in the hands of a select few. This goes against the grain of fair competition and fundamental right guaranteed under Article 18 of the Constitution. Right of a person (public) to enter a lawful business is impaired if he is deprived of the opportunity to participate.³²

So, a business neglecting the principles of due process through any means and obstructing fair competition can be held liable for unlawful business practises. Thereby, a combined view of 18(b) and 18(c) clarifies that the legality of military enterprises is completely valid but the question how these enterprises make profits is contentious. Among other things related with the profit-making process we must look into the status of 18(b) i.e. fair

³¹ *Arshad Mehmood v. Govt. of Punjab* (PLD 2005 SC 193) para 29.

³² *Attaullah Khan Malik v Federal of Govt of Pakistan* PLD 542.

competition in the operations of military enterprises. Hence the question is not why the military earns profits through business but how does it earn such profits.

The Practise of Fair Competition

As far as the prevalence of the right to fair competition [article 18(b)] along with due process in Pakistan is concerned the reality is very shady. Thereby the question of how the military corporations earn its profits becomes a matter to be focused. Pakistan is ranked 135 freest out of 180 countries and 32nd among 42 countries in the Asia Pacific region according to the Index of Economic Freedom by the Heritage Foundation.³³ According to the report the shady record is owed to the high-level involvement of state and governmental agencies in the decision-making of private businesses. The recent implementation of China Pakistan Economic Corridor (CPEC) projects and its lack of transparency seems to indicate the cloudy situation. The future implications for the non-military business owners and workers can be very bleak in the wake of these CPEC projects. A large chunk of the business opportunities will be taken by the military businesses and then distributed within the non-military businesses whenever required, for example the military owned Frontier Works Organisation (FWO) is already involved in large section of road construction and the management of the Sost Dry Port near Pakistan-China border is already under the National Logistics Cell [NLC (Military Owned)].³⁴ Moreover, the chairman of the CPEC authority established in October 2019 is a retired General (General Retd. Asim Saleem Bajwa) of the Pakistan Army, who is now also appointed as a special assistant to the prime minister on Information and Broadcasting. The authority has been made neglecting a democratic process and the opposition parties have constantly opposed the authority. Recently, it is argued that a special bill to be passed by the parliament will give all the regulatory powers to the CPEC authority chairman even removing the role of a Prime Minister.³⁵ The powerful role of the

³³ ‘Pakistan Economy: Population, GDP, Inflation, Business, Trade, FDI, Corruption’, accessed 10 July 2020, <http://www.heritage.org/index/country/pakistan>.

³⁴ ‘Removing CPEC Bottlenecks: Tunnels May Smoothen Trade in Winter | The Express Tribune’, accessed 10 July 2020, <https://tribune.com.pk/story/1254649/removing-cpec-bottlenecks-tunnels-may-smoothen-trade-winter>.

³⁵ News Desk, ‘CPEC Authority Bill 2020: More Powers Transfer from Parliamentarians to Un-Elected Officials?’, *Global Village Space* (blog), 14 July 2020, <https://www.globalvillagespace.com/cpec->

military can be gauged by the fact that a new article regarding the CPEC bill published in the newspaper —The Express Tribune|| was removed a day after its online publication.³⁶ The influence of military cannot be negated in this kind of political economy. These kind of constraints on the economic liberties within Pakistan will not be without grievous consequences for human development which is necessary for human rights protection and promotion.³⁷ This is a very important issue as economic freedom is understood here as a fundamental right of every human being; recognised by the constitution of Pakistan. Unfortunately, the way how the military in Pakistan have conducted its businesses has been instrumental in dismaying this record of economic freedom.

Modus Operandi

ACTING AS A LAND MAFIA.—The involvement of military in business challenges the right to a fair competition in many possible ways protected in 18(b) of the constitution. It induces cartelization in the corporate sector. This includes disproportionate opportunities for its business and individual members.³⁸ For example, the role of the military has also been like that of a feudal landlord. According to an estimate by *Siddiq* the military controls about 12 percent of the total land in Pakistan.³⁹ The land is either distributed among officer cadres within the military or used for private purposes. Out of a total of 69 million acres under military control only 70,000 acres is used for operational purposes. The housing authorities linked with the military have been accused of land grabbing and forcefully evacuating acres of land.⁴⁰ In 2001 the armed men from military cracked down on unarmed landless peasants killing eight and several wounded. The reason was that they (peasants) had complained about change in status of the land on which they depended for their subsistence (forcing them to pay rent in cash,

authority-bill-2020-more-powers-transfer-from-parliamentarians-to-un-elected-officials/.

³⁶ The link consistently shows an error, <https://tribune.com.pk/story/2254795/govt-proposes-more-powers-to-cpec-authority> (last visited on 20 June 2021).

³⁷ ‘Pakistan Economy’.

³⁸ *Siddiq*, *Military, Inc.* at 237.

³⁹ *Siddiq*. at 174

⁴⁰ See for example ‘PAKISTAN: A Battalion of Army Grabs 3500 Acres of Land and Seals the Centuries-Old Grave Yard - Pakistan’, ReliefWeb, accessed 11 July 2020, <https://reliefweb.int/report/pakistan/pakistan-battalion-army-grabs-3500-acres-land-and-seals-centuries-old-grave-yard>.

rather than working the land on a sharecropping basis).⁴¹ There are numerous land grabbing issues that can be connected with the military businesses. For instance the military grabbed 3500 acres of land including a centuries old graveyard from local fisherman in the coastal areas of Karachi.⁴² In case of certain private housing societies directly controlled by the military – Defence Housing Authority (DHA), Bahria Town etc. – the instances of undue advantage in profit making for officers, corruption and land grabbing is prominent.⁴³ Other civilian officers (including judges and journalists) are made accomplice in these practises by offering them land in these housing societies.⁴⁴ This makes the transparency in these projects questionable as the law and facts are tilted towards one specific group of businessmen (Milbus). This vandalises the right of a common man to own a house monopolising the markets, increasing the prices and to get involved in this business jeopardising article 18(b) of the constitution. In a very recent case in the Islamabad High Court, in a complaint by a citizen against the Pakistan Navy it was alleged that land has been acquired illegally in a public area and environmentally sensitive area of Islamabad (the Capitol City) and an Elite club has been built upon the land for commercial purposes without any interventions by government authorities. The court in an interim order directed to seal the premises and remarked that;

‘No one is above the law and every citizen has to be treated equally. It has been consistently observed that it has become a norm for the Capital Development Authority and other agencies to promptly take action against those who are common citizens and who do not have the means to influence, while the privileged and elites are being treated differently. This is unacceptable for a democratic polity governed under a Constitution which guarantees fundamental rights’.⁴⁵

The interim order hints towards the difference in status of a common business entity and that of an entity owned by the powerful military. There are numerous cases not reported in the courts and the authorities acting deaf and blind. Even the final

Lesley McCulloch, *Aceh: Then and Now*, Minority Rights Group International Report, 2004,[4] (London: Minority Rights Group, 2005).

⁴¹ Wilson, ‘The Military Millionaires Who Control Pakistan Inc | The Spectator’.

⁴² ‘PAKISTAN’.

⁴³ See Siddiqua, *Military, Inc.* at 194-198.

⁴⁴ Siddiqua.

⁴⁵ Malik Asad, ‘IHC Orders Sealing of Navy Sailing Club’, DAWN.COM, 24 July 2020, <https://www.dawn.com/news/1570824>.

order of this specific case will be interesting to examine whether the courts change their behaviour in protecting the powerful or protecting the Fundamental Rights it referred to in the interim order.

POLITICAL INFLUENCER.—Major influence as an economic actor propel the contentious role of military in politics. The greater influence of the military in politics because of controlling the major economy also results in violations of civilian's rights to equal opportunity in business and other professions. It is highly likely that promising officers will take their knowledge and the connections they have developed in the Military and leave the military in order to make more money. They end up mostly in government owned businesses and organs after retirement and even in some cases head government organs during service as well. So, despite of getting lavish retirement perks and privileges they are employed in these public sector organisations or military owned businesses. A good example will be Lieutenant General Muhammad Afzal who is currently the chairman of National Disaster Management Authority (NDMA) which is a public sector organisation.⁴⁶ He also remained the Commander of FWO (military owned enterprise) for five years before joining the NDMA. Only one out of the last eight chairmen NDMA was a civilian and the rest serving or retired military Generals. This practise also shows an imbalance in business opportunities. The public entities which are headed by military personnel favours the military owned businesses while giving out contracts. The National Highway Authority (NHA) is mostly headed by a military (mostly retired) person allegedly favouring the FWO and NLC (both military owned corporate entities).⁴⁷ The current chairmen of Pakistan Water and Power Development Authority (WAPDA) is a retired army General (Lt. General Muzammil Hussain). WAPDA is responsible for allocating the share of already scarce electricity (which is always a big issue for industries). Imagine the state of competitiveness in business when some industries get more share in electricity and others have to use more costly power generators to survive. The matter is not limited to favourable contract but the military owned businesses operate more smoothly because of their influence. For instance, the NLC is at a greater advantage as compared to other public or private companies in securing contracts from the government. The basic requirements for running the business is provided by the

⁴⁶ _NDMA National Disaster Management Authority Pakistan', accessed 21 July 2020, <http://web.ndma.gov.pk/ChairmanNDMA.php>.

⁴⁷ Siddiq, *Military, Inc.* at 171.

state as compared to the other companies in the same business. Secondly, while operating the vehicles of the NLC always operate hinderance free whereas other private competitors have to bear the load of the corrupt individuals in the security agencies like police.⁴⁸

The ever-increasing influence of military in politics also comes with political favours for such entities. The access to information is very limited when military business is involved as transparency succumbs to wordings like —national interest|. Some public information can be generalised though, as in 2004 and 2005, the Pakistan government subsidised the Fauji Foundation, worth over Rs. 10 billion, by \$20 million and \$25 million.⁴⁹ According to this information one can imagine how the government subsidy system works. The military owned businesses get more government support than any other private business. In some cases the civilian governments even allowed the military companies to replace public sector departments.⁵⁰ In other cases the government machinery and property is used for commercial purposes without any justification. For instance, the AWT's Askari Aviation used the resources of Pakistan Army for commercial purposes and the income was diverted to private accounts.⁵¹ The private Universities, Hospitals and Schools owned by the subsidiaries of Pakistan Army, Air Force and Navy are mostly built upon land given to these organisations for public purposes. These organisations are fully controlled by the military forces as most of the administrative staff are serving or retired military personnel and the profits from these organisations goes to the subsequent military branch. The civilians working in these organs are not given the retirement privileges available to the people coming from military background. Moreover, the general public (civilians) do not get any special incentives in these public organs but the military staff get their privileges accordingly (perks of getting a post retirement job and free education and health facilities). It is interesting to note the support courts have provided to military in such businesses. Despite the general public not getting any incentives from these private military businesses, the courts have accepted the usage of land by military in such cases as a —public purpose|, to legalise such misappropriation of public property.⁵²

⁴⁸ Siddiqi. at 144.

⁴⁹ 'The Military in Business | Pakistan Today', accessed 10 July 2020, <https://www.pakistantoday.com.pk/2012/03/08/the-military-in-business-2/>.

⁵⁰ Siddiqi, *Military, Inc.* At 154

⁵¹ Siddiqi. at 162.

⁵² *Basharat Hussain v CDA*, 2004 YLR 629.

In contrast the competitors without using public property and government resources have to go through a more stringent process requiring more capital to survive in the market. As a result of such market monopolisation the civilian business owners or non-military corporate actors work mostly as a patron-client relationship with the military owned businesses. In addition to this most of these anomalies will go public through one medium that is the 'free media'; currently a retired General is appointed as the chairman of Pakistan Telecommunication Authority (PTA) which regulates the media.⁵³ With already 145th position of Pakistan in the 2020 world press freedom index,⁵⁴ we can imagine the realisation of the right to information after giving regulation to the military with information minister and regulatory authority both under the Military control.

GRABBING THE NATURAL RESOURCES.—The empowerment of the Military in political affairs by grabbing the economy makes it a lone option worthy of business partnership for foreign businesses in some sectors. Currently, the Fauji Foundation have a joint venture named Pakistan Maroc Phosphore with a Moroccan company. In some cases these partnership for commercial gain ends up in human rights violations in a race for the resources. The commoners become vulnerable against the prowess of armed military in partnership with foreign business giants.⁵⁵ The involvement of Fauji Foundation in oil business through the Pak Stanvac Petroleum Project ended up in scuffles with the local people where protestors were fired upon and one woman lost her life.⁵⁶ The protestors wanted a fair share in jobs for the local people. The project was later taken over completely by the Fauji Foundation and operated through Mari Petroleum Company Limited.⁵⁷ The surge for extracting minerals and natural resources still is one of the primary objectives of the Fauji Foundation. In a more recent case the military allegedly played an important role in cancelling a contract of a multinational company. It managed to cancel a copper and gold mining contract in Riko Diq area of Baluchistan province with Tethyan Copper Company (TCC). The mining contract was cancelled at a time when the copper and gold

⁵³ Chairman PTA, Lt. General Amir Azim Bajwa, 'Authority | PTA', accessed 28 July 2020, <https://www.pta.gov.pk/en/authority>.

⁵⁴ 'Pakistan: Under the Military Establishment's Thumb | Reporters without Borders', RSF, accessed 28 July 2020, <https://rsf.org/en/pakistan>.

⁵⁵ McCulloch, *Aceh*.

⁵⁶ Cited in Siddiqi, *Military, Inc.* at 146-147.

⁵⁷ 'Mari Petroleum Company Limited', accessed 23 July 2020, <https://mpcl.com.pk/operations/>.

reserves were identified. This adventure cost 5.8 billion US Dollars to Pakistan government as it lost a legal battle at the World Banks Centre of Settlement of Investment Disputes (ICSID) from TCC.⁵⁸ The ICSID *inter alia* quoted in its decision that the license of TCC was cancelled because the State had a motive of pursuing its own project at the site.⁵⁹ Since the cancellation of the license of TCC the military have taken complete control of the project. It was tried with the help of Pakistani scientists and a Chinese company Mettallurgical Corporation of China (MCC) to mine for gold and copper but all the efforts went fruitless because of the lack of expertise.⁶⁰ More recently the military owned FWO is a major stakeholder (with no experience in mining), any company which is to be given the mining contract will work jointly with military as it will provide —security|| to the company.⁶¹ The project will remain controversial with a huge impact on already vulnerable Human Rights record of Baluchistan province. In addition to all other Human Rights impacts the constitutional right to a —fair competition|| is already sabotaged.

Protecting Human Rights comes with a Cost for other Business Entities

Amidst the economy of Pakistan already in a challenging situation, the state cannot afford to compromise the basic rights which can improve its economy. A better human rights record can lead towards a better economy.⁶² Protecting those rights which directly relate to the economic rights of the citizens will definitely

⁵⁸ *Jus Mundi*, 'Tethyan Copper v. Pakistan, Award, 12 July 2019', accessed 23 July 2020, [/en/document/decision/en-tethyan-copper-company-pty-limited-v-islamic-republic-of-pakistan-award-friday-12th-july-2019](#).

⁵⁹ _Long Read: The Reko Diq —Fiasco|| in Perspective: Pakistan's Experience of International Investment Arbitration', *South Asia @ LSE* (blog), 14 August 2019, <https://blogs.lse.ac.uk/southasia/2019/08/14/long-read-the-reko-diq-fiasco-in-perspective-pakistans-experience-of-international-investment-arbitration/>.

⁶⁰ Husain Haqqani, _Fool's Gold – Pakistan Could Have Made Big Money from Gold Mines, Now It's Paying Penalties', *ThePrint* (blog), 16 July 2019, <https://theprint.in/opinion/fools-gold-pakistan-could-have-made-big-money-from-gold-mines-now-its-paying-penalties/263312/>.

⁶¹ Haqqani.

⁶² _Human Rights Can Help Fix the Economy. Here's How', World Economic Forum, accessed 25 July 2020, <https://www.weforum.org/agenda/2018/12/its-time-to-make-human-rights-part-of-the-global-financial-system/>.

have a positive effect. Removing the cartelization of the few in economic activities will improve the human rights record of the country. The powerful entities are involved in defying human rights and sometimes with the assistance of the courts. In *Army Welfare Sugar Mills v. Army Welfare Sugar Mills Workers Union* the Sindh High Court ordered to —cancel|| the registration of the workers union in a military owned sugar mill because the workers unions were not allowed in installations owned by the military forces under Industrial Relations Ordinance 2002.⁶³ The court neglected the basic law of the state i.e. the constitution and applied a statutory law against the protection of fundamental rights. This kind of impunity to curb the voices of the people seeking their rights is linked directly with making a few entities economically stronger. Among other rights infringed the basic right of —Fair Competition|| is imperilled because taking care of the rights of the stakeholders come with a financial burden; if the powerful are free of this obligation the fair competition will cease to exist.

4. Excluding Military from Business

Milbus is part of a game of power sharing for the civilian governments and power grabbing for the military administration in Pakistan. The ones who suffer in this game are the masses (mostly poor). It is the opportunity of work and business to be provided to these masses which is being compromised. The civilian governments in trying to appease the strong military establishment to save their governments provide support to the military owned enterprises.⁶⁴ In fact it is the civilian governments in whose political tenures the power of these entities have grown rather than diminished.⁶⁵ This may well be linked with the fact that the survival of these civilian governments relied upon the appeasement of the military. As the Benazir Bhutto Government in 1990 was dismissed through destabilizing the government by the Inter-Services Intelligence (ISI) because of her interference in its internal structure.⁶⁶ Irrespective of the fact whether a civilian government is in power or a military dictator the form of

⁶³ *Army Welfare Sugar Mills v. Army Welfare Sugar Mills Workers Union* 2006 PLC 59 Karachi.

⁶⁴ Prina, 'TAKING CARE OF THEIR OWN'. at 10.

⁶⁵ Gayer, 'The Pakistan Rangers'. at 34. See also Siddiqua, *Military, Inc.* at chapter 4 and 5.

⁶⁶ John Bray, 'Pakistan at 50: A State in Decline?', *International Affairs (Royal Institute of International Affairs 1944-)* 73, no. 2 (1997): 50, <https://doi.org/10.2307/2623831>. at 324.

government remains an authoritarian one in Pakistan. In the authoritarian governments the military and paramilitary forces are used as tools for political suppression, securing continuity and controlling the resources.⁶⁷ This political imbalance has mitigated a legal and political structure which favours the strong military enterprises. The laws in some cases favour the military,⁶⁸ in other cases the courts show complacency by ignoring the fundamental rights protected in the constitution.

The political and social system prevailing in Pakistan will not allow severing the military role from its enterprises. A non-unified civilian structure cannot cope with a more organised 650,000 military personnel (and many more retired) which are now used to perks and privileges of luxuries unknown to the majority civilians in Pakistan. These privileges mostly come from the businesses owned by military. The dismantling of the military-business complex will not be easy, nor will it automatically end corruption in the ranks. In addition, the economy of Pakistan is strongly based on these economic entities. The success of the effort to reduce the role of military in business will depend on a number of factors, the most important of which will be the capacity of the civilian leadership to replace the lost commercial revenue with increased central budget allocations. Further, owning of business entities by any organ of the government is not unlawful. Thereby, the government cannot stop any organ from owning such entities, specifically in Pakistan where the military is considered more powerful than the government itself. In China, the civilian government managed to reduce the role of the military as an economic entity but the task was not easy. Any civilian government wishing to sever the Peoples Liberation Army (PLA) from its enterprises or reduce corruption in the ranks faced enormous political opposition from the powerful PLA.⁶⁹ The role of military in business was diminished to an extent till the year 2000 but it still remained in few sectors. Even if the PLA were removed from business altogether, however, officers and enlisted personnel could still exploit the PLA's infrastructural advantages for corrupt gain.⁷⁰ The Chinese president Xi recently ordered the military to put an end to the paid service activities and focus on

⁶⁷ Amos Perlmutter, *Modern Authoritarianism: A Comparative Institutional Analysis*, 1st edition (New Haven: Yale Univ Pr, 1981). at 10-16.

⁶⁸ For instance, the Industrial Relations Ordinance.

⁶⁹ Ellis Joffe, 'Party-Army Relations in China: Retrospect and Prospect', *The China Quarterly*, no. 146 (1996): 299-314. at 311-312.

⁷⁰ Mulvenon, *Soldiers of Fortune*. At 152

military trainings.⁷¹ The ownership and control of some corporations including big multinational corporations are still speculatively with the PLA.⁷² In China, the role of the military was working side by side and under an authoritarian government. The government still struggled to reduce the military's role in business. Pakistan, on the other hand is politically different and the military have a more inclusive role in politics. The accountability of military in politics or other ventures is next to impossible. In this case severing the link of military with its ever-increasing business is not a realistic solution. Keeping its political history in mind and applying *collier's* theory if the military gets discontent with its earning the chances of coup increases.⁷³ The government is financially not in position to provide the military with the benefits which they are used to through these business entities. The complex situation requires a socio-political discussion on how the role of military can be defused in economic activities.

The political and social situation and to an extent the legal scenario presented above do not call for the abolition of military owned enterprises. Although, the problem of the protection of the fundamental rights of the people will exist, there are other legal measures to be taken for the enhancement of the protection. The solution lies in a legal approach towards the issue. Although it is impossible in states like Pakistan to side-line the role of military in business; the government must comply with human rights principles of providing equal opportunity and fair competition with due process of law. In order to provide equal opportunity to the private business the business environment need to be more transparent. All the measures which endanger the fundamental rights must be identified and then dealt with through appropriate actions. This article identified the threat to the right to a fair competition because of certain business practises. The practises which endanger fair competition can be reduced if article 18(b) is supported with secondary legislation. Additionally, all the business entities including charities and welfare trusts need to be

⁷¹ Ryan Pickrell, 'China's Commander-in-Chief Orders His Military to Stop Running Kindergartens and Figure out How to Fight', *Business Insider*, accessed 26 June 2020, <https://www.businessinsider.com/xi-tells-chinas-military-to-stop-running-kindergartens-and-learn-to-fight-2018-8>.

⁷² 'Huawei on List of 20 Chinese Companies That Pentagon Says Are Controlled by People's Liberation Army', *Time*, accessed 26 June 2020, <https://time.com/5859119/huawei-chinese-military-company-list/>.

⁷³ Paul Collier and Anke Hoeffler, 'Military Spending and the Risks of Coups d'Etats', n.d., 32.

more scrutinised through the regulatory authorities. Most importantly all the businesses complacent in irregular activities must come under the same law. The legal issues that must be looked into include the conflict of interest laws, interference and control of public service entities by any means, using the public property for private gains and explaining the meaning of public property, how to maintain transparency in big financial projects like CPEC, financial deals related with exploration of natural resources and international business partnerships by military enterprises.

5. Conclusion

The article is an attempt to bring the debate of military business and its relationship with Human Rights to a legal context. It is an inhospitable topic thereby not a lot has been written about it, the present literature is only about the political, economic or social effects of the military business but not its legal perspective. Thereby, it undoubtedly raises more questions, manages to identify major issues and answer a few convincingly. The effort may trigger a debate about this perspective of Business and Human Rights in order to move towards a free society.

A free society is not possible without economic freedom. Economic freedom comes with due process of law in economic affairs which leads to a fair competition in a financial system. Former U.S. Assistant Attorney General *Mr. James Rill* similarly stated that;

_[n]ot only is the wide acceptance of basic procedural fairness an elemental foundation of a free economic society, it also enhances respect for the enforcement agency and confidence that its decisions constitute an impartial appraisal of the facts and legal standards with a full understanding of both.⁷⁴

This has been realised by a few developed states through consistently revising their Competition and Antitrust laws. In addition, a single government authority or organisation is not allowed to monopolise a specific business market. The situation can be different in other parts of the world where the political power and socio-economic structure is influenced by one specific entity. In cases where the specific entity is an armed military force

⁷⁴ James F. Rill, A Comparison of Business and Agency Views on Certain Procedural Fairness Issues, Before the ABA Section of Antitrust Law Spring Meeting 2 (Mar. 28-30, 2012), available generally at www.americanbar.org/groups/antitrust_law.html.

can lead to many Socio-Economic and Political Complications. The author have specifically tried to deal with a small part of the problem i.e. the military business interests and its effect on fair competition as a fundamental right in Pakistan. This study has attempted to produce an initial, tentative account of the relationship of military business with violations of one basic right. However, during the study it was realised that the impact may well be beyond the right to fair competition. It may well be attached with the violations of both civil and political as well as economic social and cultural rights. The author have not mentioned the facts which may lead us to the involvement of the military business in smuggling, corruption, enforced disappearances and even ethnic cleansing for grabbing natural resources in Pakistan. This requires more intense research and secondly a safe working place and environment.

The empire of military business can vary from lootings in conflicts to complicity in international crimes. It can have social, political, cultural and economic impacts upon a large quantity of individuals. It can defy a fair process for competitors by creating a Kafkaesque situation for private business entities and exploit the situation in its own favour by monopolising the market. It can rely on using public property for private business without any legal ramifications. It can use force for achieving private business goals. It can protect and favour a few individuals because of their affiliations, disrespecting the equality principles. In Pakistan's context, the issue of Milbus will have more Human Rights implications with the CPEC projects launched with minimum transparency and huge military control. The probable implications can be studied through a separate research plan. One thing which the author can identify is that the military business relies upon tactics of oppression; and the disadvantage of suppressing basic rights of the people will always be greater than economic gains of an entity. This is further acquainted by military grandeur, whereby the military considers itself as the only patriotic organ within the society and is capable enough to understand economy, society, politics and business. The military grandeur creates a legal vacuum whereby military and non-military stuff (either tangible, non-tangible, persons or objects) is treated differently from each other. The military then rephrases the political realities according to its own specific understandings and want the civilian society to believe in their narrative. As the first Pakistani Military dictator General Ayub Khan once stated the „we are a very difficult country structurally. [...] We don't know the value of freedom. Our people feel exposed and unhappy in freedom. [...]

Thank God we have an Army.⁷⁵ It is evident that it is the lack of freedom of the majority which strengthens the Military Business.

⁷⁵ Altaf Gauhar, *Ayub Khan: Pakistan's First Military Ruler* (Oxford ; New York: Oxford University Press, 1996). At 339.

