



Climate Change, Business Enterprises and Human Rights Due Diligence

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Abstract

In a world that runs on money, climate change is indeed, a business issue. There is an ongoing critical discourse on the detrimental effects of businesses and their activities on human rights and climate change. In such a context, this paper attempts to understand the inter-relationship between business, human rights and climate change. In international human rights law, there is a gradual shift from the mere operationalization of a soft law framework that assigns a public law-based duty to states, to comparatively stronger private laws that create transnational, and social norm-based responsibility of enterprises to respect human rights. This paper attempts to examine this shift. Further, it explores international frameworks that assign corporate responsibilities towards environment and human health and how the adverse effects of climate change on the company can act as an incentive towards climate change action, in line with human rights standards. It integrates the principles of morality with rule of law, as a way to internalise the advancement of good corporate governance vis-à-vis human environment. The paper concludes by looking at Article 6 of the Paris Agreement, as the answer to nudge private business entities to mitigate environmental harms in line with set human rights standards.

Keywords: Business, Climate Change, Environment, Human Rights, Paris Agreement 2015

1. Introduction

Environmental Law cases often pit business interests against other social values, such as public health and welfare, species conservation, and resource conservation.¹ Environmental laws and policies have substantial implications on business entities. Even where business groups are not involved, environmental law decisions tend to have implications for the way business is conducted, and environmental law decisions can have substantial economic impact on corporations, resource-dependent communities and private landowners.² The environmental issues are also transboundary in nature, which makes the management of environment even more complex. Adding to these complexities, are the often-divergent views of a dozen different UN agencies, the secretariats to various environmental treaties and conventions, the World Bank, regional political groups, and 180 countries of the world acting individually.³ It has been decades, since citizens across the globe have become very skeptical of corporate entities and several political measures that turned out to be detrimental to the environment.⁴ There is a continuous attempt from the environmental community to stop ecological degradation and further arrest the rise in pollution levels and associated health-related risks. This is because environmental activists strongly believe that certain caps and restrictions are necessary to bind nations with weak or inadequate environmental standards or practices.⁵ At the same time, several environmentalists also fear that standards harmonized in a trade context will be set at the lowest common denominator and hence, they demand that trade rules should not inhibit countries from setting their own environmental

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¹ Johnathan H. Alder, *Business, the Environment, and the Roberts Court: A Preliminary Assessment*, 49 Santa CLARA L. REV. 944 (2009).

² Id.

³ Daniel C. Esty, *GATting the Greens*, FOR. AFF. 32(1993).

⁴ Jay D. Hair, *Business and Environment: The Expanding Dialogue*, 15 ENVTL. L. 748 (1985).

⁵ Daniel C. Esty, *Unpacking the Trade and Environment Conflict*, 25 LAW & POL'y INT'l Bus. 1250 (1994).

standards above the international norm, and they want trade restrictions used to protect high standards to be shielded from GATT scrutiny and countermand.⁶ With every economic meltdown, there comes a subsequent recovery phase, where the aspirations to raise the benchmark of welfare takes a direct or indirect toll on the natural resources. The aftershock of 2008 global meltdown has been pointed out as the age of unquestioned rapid deregulation and a blinding halt of economic growth through the poignant wake-up call provided by the said economic crisis.⁷ In regulating and managing financial institutions, it has become clear once again that governments must return to a hands-on, rather than hands-off approach.⁸

With global energy consumption estimated to increase 150 to 230% by 2050, the demand for solutions to Climate Change will intensify.⁹ The business entities realize this and hence, certain business entities aim for an energy-efficient project while some are mandated to comply with the emissions limits, imposed by laws and regulations. These environmental norms and standards also affect the markets in which business usually operates, so companies that are not directly regulated may see changes in their competitive positioning and market opportunities.¹⁰ Understanding tangible returns and intangible benefits that businesses seek when taking action can help

⁶ Eliza Patterson, *GATT and the Environment- Rule Changes to Minimize Adverse Trade and Environmental Effects*, 26 J. WORLD TRADE 99 (1992).

⁷ Orr Karassin, *Mind the Gap: Knowledge and Need in Regulating Adapation to Climate Change*, 22 GEO. INT'L ENVTL. L. REV. 383 (2010).

⁸ James Crotty, *Structural Causes of the Global Financial Crisis: A Critical Assessment of the 'New Financial Architecture'*, 33 CAMBRIDGE. J. ECON. 577(2009).

⁹ WORLD RESOURCES INSTITUTE, WORLD BUSINESS COUNCIL FOR SUSTAINABLE DEVELOPMENT, AND UNITED NATIONS ENVIRONMENT PROGRAMME, *TOMMOROW'S MARKETS: GLOBAL TRENDS AND THEIR IMPLICATIONS FOR BUSINESS* (2002).

¹⁰ Sara Standish, *Business and Climate Change: Examining Drivers for Action*, 5 Sustainable DEV. L. POL'y 9 (2005).

create policies that raise the level of corporate engagement.¹¹ In the midst of all climate-oriented debates and negotiations, corporations are taking actions. Corporations that invest into developing and manufacturing low emissions technologies are positioned to expand market share and improve their long-term competitiveness and new markets that are partially driven by regulatory signals, are creating an opportunity for clean energy products and services to thrive.¹²

2. Disaffection for Guiding Principles on Business and Human Rights

In 2011, the United Nations Human Rights Council adopted Resolution 17/4. The said resolution acknowledged the mandates of Special Representative of the Secretary General on Human Rights and Transnational Corporations and Other Business Enterprises. The Human Rights Council also endorsed the UN Guiding Principles on Business and Human Rights, which had been drafted by John Ruggie, thereby affirming an important commitment to address the human rights impacts of business.¹³ John G. Ruggie was the Berthold Beitz Professor in Human Rights and International Affairs at the Harvard Kennedy School(2009-2021), affiliated Professor in International Legal Studies at Harvard Law School, and Faculty Chair of the Corporate Responsibility Initiative, whose responsibilities included establishing and overseeing the UN Global Compact, now the world's largest corporate citizenship initiative.

The guiding principles proposed by Ruggie aimed to achieve a framework of human rights which bestows the responsibilities to protect and respect human rights. Moreover, in case of infringements, remedies for such violations are also provided. This duty provides an opportunity for States to set out their expectations to all business enterprises domiciled within their jurisdiction, and to respect human rights in their operations.¹⁴ The business enterprises

¹¹ Id.

¹² Id.

¹³ HRC Res 17/4, also See Michael K Addo, *The Reality of the United Nations Guiding Principles on Business and Human Rights*, 14 HUM. Rts. L. REV. 133 (2014).

¹⁴ Principle 2 United Nations Guiding Principles on Business and Human Rights.

are expected to know as well as show their due diligence and utmost respect towards Human Rights. The corporate responsibility to respect human rights covers both direct and indirect impacts. That is to say that impacts that are linked to the enterprise's operations, products, services or through their business relationships 'even if they have not contributed to those impacts'.¹⁵ The said Principles also emphasize on the necessity for an integrated application of different redressal mechanisms, including formal judicial, administrative and non-judicial processes. From a pragmatic angle, Human Rights are sufficiently pervasive to be recognized and applied to all walks of society, including in the conduct of business.¹⁶

However, the recent attempts at internationalizing the legal regulation of corporate social, economic and cultural responsibility, started in July 2014, with the creation of an United Nations Human Rights Council's Intergovernmental Working Group (IGWG) on transnational corporations and other business enterprises with respect to human rights. This was done to further enhance the working of an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.¹⁷ This resolution of UN Human Rights Council was the reflection of an alienation from the Guiding Principles of business and human rights. The gradual shift from the operationalization of a soft law framework for coordinating the public law-based duty of states, to a comparatively strong move to protect human rights with the private law, transnational, and social norm-based responsibility of enterprises, was made so as to respect human rights.¹⁸

Since 2012, the critics of the United Nations Guiding Principles on Business and Human Rights (UNGPR) have pushed for a further

¹⁵ Principle 13 United Nations Guiding Principles on Business and Human Rights.

¹⁶ Report of the Special Representative of the Secretary General on the issue of Human Rights and transnational corporations

¹⁷ Human Rights Council Res. 26/9, U.N. Doc. A.HRC/26/L.22/R ¶ 1 (June 26, 2014).

¹⁸ Larry Cata Backer, *Shaping a Global Law for Business Enterprises: Framing Principles and the Promise of a Comprehensive Treaty on Business and Human Rights*, 42 N.C.J.INT'L 418(2017).

comprehensive treaty business and human rights. The civil society organizations, too, have mooted together for a global movement on a comprehensive, binding treaty framework to address the violations of human rights by business entities and corporate houses. The action to establish the working group with its treaty elaboration mandate itself divided the Human Rights Council, with the developed states and their allies firmly opposing an action that had been brought by a group of developing and mostly non-Western States.¹⁹ This move to draft a new comprehensive global treaty was favored by twenty countries (mostly developing nations, including India), while 14 countries (mostly developed states) opposed this move. Business enterprises, on the other hand, continue their respective commitments and obligations without any comprehensive treaty. The house of the Human Rights Council was divided on the issue of treaty elaboration mandate. However, it still continues to adhere to the UNGP and even adopted a resolution for operationalization of UNGP by drawing consensus (forwarded by Norway) along with forty-four other co-sponsors.²⁰ This resolution proposed the establishment of a UN Working Group to prepare a report as regards the pros and cons of a legally binding international treaty on the issue of business and human rights.

Irrespective of all these turbulences, the Human Rights Council appears to be maintaining a two-pathway approach because:

On the one hand, it supports the UNGP initiatives and its further operationalization spreading across the widening breadth to cover public as well as private law, well, within the three pillars of the said Principles. On the other, it has also entertained the transition of the international legal frame from the existing UNGP project, towards comprehensive international treaty making.

3. The Moral Perspective of Business, Human Rights & Environmental Ethics

According to Aldo Leopold, “a thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community.

¹⁹ *Supra* note 29 at p. 423.

²⁰ Human Rights Council Res. 26/22, U.N.Doc. A/HRC/26/L.1 (June 23, 2014).

It is wrong when it tends otherwise".²¹ With a domination of realism and subjectivism over biocentrism, there is a lack of concrete ethical sequencing between human and biosphere which is the core reason behind this deviation from the core intrinsic value of biocentrism, as noted by Aldo Leopold. In the absence of specific rights or wrongs, humans have placed themselves at the top of the ecological chart. Our articulated norms, principles and judicial insights have given preference to human rights over non-human rights.

To foster the 'internal morality' that is specific to the business discourse that would enable a solid business and human rights discourse to be internalized, it is necessary not only to integrate the same with the doctrine of the rule of law, but also to implement its complementarity with other normative spheres, such as the one defining the individual person's agency and responsibility.²²

There is a rising concern for human rights with respect to business practices. With correct amount of motivation and legal awareness, the gaps in information can be bridged for a sustainable future. We cannot expect a paradigm shift merely on the basis of morality and human conscience, with an unethical system engulfed in corruption and abuse of power. The thirst for power has paved way for strategic institutional change, which needs a total rejigging. This rejigging will demand a balanced approach between humans and environment. And even amongst the humans, we have to further balance human rights and business interest, without exploiting the have-not's and their natural habitat. However, with a mutually exclusive and agreed option available, one can expect a sustainable future for all. Otherwise, the balancing of rights and interests will be nothing but utopia. Human efficiency has substantially increased in the last century with the boon of scientific and technological advancements. However, with rise in population, nature has been

²¹ Van Rensselaer Potter, *Real Bioethics: Biocentric or Anthropocentric* 1(2) *Eth. & Env.*, 178 (1996).

²² Aurora Voiculescu, *Business Responsibility for Human Rights Violations from a Theoretical Perspective: Towards a Moral Division of Labour*, in *Perspectives On Philosophy Of Management And Business Ethics Including A Special Section On Business And Human Rights* 249 (Jacob Dahl Rendtorff ed., 2017).

subjected to substantial pressure. And when nature has reverted with its wrath, it has badly and terribly sabotaged the vulnerable sections of the society. However, our relationship with the nature is still based on the surmise of Odysseus' slave girls where regard natural resources as our property, comparable to the treatment of slave girls in Homer's *Odyssey*. The relationship of business entities and land is still economic in nature, which entails privileges but no obligations at all. Even though the despoliation of natural resources is inexpedient (at least on the basis of moral beliefs), the same has not been affirmed by the human society and especially the business entities. In this regard, yet again Aldo Leopold's *Land Ethic* is still relevant, where he propounds that, humans are only a member of this entire biotic team and the nature/characteristics of land is relative to the characteristics of the humans who live on that land.

Nonetheless, with globalization and open market, this relative causal relationship might not be fully accurate because transboundary movement of hazardous wastes has raised a new form of ecological colonialism in the last few decades. Even though, to address these transboundary issues, several transnational models of business and state responsibilities have been recognized, and have not displayed expected end results. There has been range of such instances where business activities have caused environmental contamination of land and climate of indigenous communities, degraded the health of local communities and even allowed poor and inhuman labour to perpetuate²³. Throughout human history, we have witnessed multiple attempts at standardisation of processes that institutionalize several forms of human rights. The foundation of International Labour Organization (ILO) is one such endeavour to recognize, protect and preserve labour rights. The Declaration on Fundamental Principles and Rights at Work of 1998 further enumerates those crucial aspects of labour rights. Even, Article 23 & Article 24 of the Universal Declaration of Human Rights enshrines the right to work, ensuring favourable working conditions, fair and equal remunerations, limited working hours, interests of trade

²³ Intergovernmental Panel on Climate Change (IPCC) Special Report on Climate Change and Land, *Risk Management and Decision-making in Relation to Sustainable Development*, available at <<https://www.ipcc.ch/srcccl/>> last accessed on 17th January 2023

unions etc. UN Framework on business and human rights depends on the political will of the governments but it doesn't direct or provide a final resolution for any non-responding government.²⁴ Unless, the institutional capacity is well built, expecting a decent working condition, respect for human health and even respect for Mother Nature, will never see the light of the day. The indefinite concepts of business and its impact on human rights and environment are misinterpreted for meeting the ends of the corporate entities. Unless and until UN Framework doesn't provide a final resolution for non-performing (responding) governments, the barriers of legal mechanism will remain to hinder the ultimate goal of protecting human rights and environment.

The UN framework seeks to ensure good corporate governance, but it only addresses the corporation's obligation to not harm and sustainable economic activities should go beyond this rule towards actually doing well and improving its surrounding environment.²⁵ If only the state can instill the will of respecting human rights, amongst the business entities by incentivizing them for taking positive measures to respect, protect and preserve the human rights and the environment surrounding them, can positive results be expected in the advancement of good corporate governance vis-à-vis human environment.

In addition to this, the United Nations Global Compact focuses on legal remedies. In the practical sense, the cost of any such lawsuit against established business entities brings with it huge costs on aggrieved members of poor and vulnerable communities. International legal instruments may be applied in such cases where the national redressal mechanism has failed to address the issue of such human rights violations which imposes the responsibility on States to protect the human rights of its nationals and the environment where they dwell, against any infringement by a business enterprise. Unfortunately, however, the reality is far from the set-standard under international framework on human rights and environmental protection. In order to harmonize the pillars of

²⁴ *Id* at 275.

²⁵ *Id* at 276.

Global Compact, national mechanisms will continue to play significant role of creating a sustainable business environment.

4. Climate action and call for responsible business

During the COP 25 in 2019, the representatives of Organization of Economic Cooperation and Development (OECD) and United Nations Framework Convention on Climate Change (UNFCCC) officials called out for responsible business to drive the climate action.²⁶ Despite such call for actions, there is a lack of guiding international legal instruments that regulate business entities and address the issues of climate change. However, some of the initiatives of OECD is quite striking: In the preface of the OECD Guidelines for Multinational Enterprises, the OECD posits certain concepts and principles for responsible business conduct in a global context by including the concerns of environment, human rights, corruption, consumer interests, science-technology, competition, taxation, employment & industrial relations.

With specific reference to environment, the said guidelines require the enterprises to:

1. Establish and maintain an appropriate environmental management system by collecting and evaluating adequate and timely information as regards the health, safety and environmental impacts of their respective activities.²⁷
2. Set quantifiable targets and benchmark for enhanced environmental performance and sustainable utilization of resources;
3. Regularly monitor and verify the progress towards such environmental management measures.

Furthermore, the concerns of business confidentiality, cost and intellectual property rights are also to be taken into account by the

²⁶ UN and OECD Call for Responsible Business to Drive Climate Action, available at <https://unfccc.int/news/un-and-oecd-call-for-responsible-business-to-drive-climate-action#:~:text=UN%20Climate%20Change,-With%20197%20Parties&text=The%20ultimate%20objective%20of%20all,naturally%20and%20enables%20sustainable%20development.>, last accessed on April 21, 2022.

²⁷ Chapter IV, Environment, OECD Guidelines for Multinational Enterprises.

enterprises which shall provide quantifiable, adequate and even verifiable information relating to environmental impact, on timely basis. To this account, timely consultation and communication with stakeholders, communities shall be actively engaged. Assessment of environmental impacts is not merely a formality, because the spirit of such assessment lies in the wholesome approach to not leave any stone unturned. The foreseeability of any environmental, health and safety-related impacts is required while key decisions related with the goods, services and processes are taken in their entire life cycle of management. To understand these impacts, the enterprise should be consistent with the scientific and technical understanding of associated risks. These guidelines also encourage the entities to maintain contingency plans for prevention, mitigation and control of any environmental and health related damage caused out of any of their operations.

Continuous improvement of corporate environmental performance has been sought by the said guidelines with certain specific activities to attain the same, which includes²⁸:

Utilization of appropriate operating procedures and technologies in all segments of the enterprise that deals with environmental performance;

1. Energy efficiency and sustainable natural resources management by promoting circular economy;
2. Generation of wide awareness on environmental protection and sustainability by rendering accurate information on the products generated, which also involves the data on emissions and resource efficiency;
3. Emphasize on improvement of environmental performance of the enterprise for a long term by developing effective strategies to reduce emission, protecting biodiversity, utilizing efficient resources and reducing the use of hazardous substances

²⁸ Aija Medne, Inga Lapina, Sustainability and Continuous Improvement of Organization: Review of Process-Oriented Performance Indicators, *Journal of Open Innovation: Technology, Market, and Complexity* (2019)

4. Render necessary capacity building programs for the education and training of employees engaged in their enterprises; &
5. Promote such partnership initiatives that contributes immensely to the development of an environmentally sound and meaningful public policy.

Even though the guidelines in a way re-emphasize the existing moorings of corporate responsibilities towards environment and human health, it doesn't intend to reinterpret any pre-existing legal instruments or even create any new commitments on the part of the decision-making bodies of a government. It merely aims to promote a precautionary approach that should be duly regarded by the business enterprises. There is no binding element attested to these guidelines but, they do attempt to persuade the enterprises to roll up their sleeves and step forward for the application of environmental standards while doing business. Hence, the guidelines encourage the business enterprises to raise the benchmark of environmental performance in and across all their operations across the globe.

5. Cement Industries and Responsible Businesses

Real estate has emerged out to be one of the core contributors of anthropogenic gases²⁹. Even though green buildings have been the buzz word in this sector, the same isn't free from technological and economic challenges. Builders have been using cement like materials for centuries, with the builders in Syria and Jordan using cement-like binders to build buildings and underground cisterns more than 8,000 years ago.³⁰ Cement is a major source of anthropogenic emissions but its remarkable properties, affordability, durability and reliability makes it popular. Production of cement has increased almost thirty times since the 1950s and almost four times since the 1990s.³¹ According to policy think tank, Chatham House, cement

²⁹ International Monetary Fund, *Finance and Development: The Economics of Climate* (2019)

³⁰ UNFCCC, *Building Blocks*, available at <https://unfccc.int/blog/building-blocks> last accessed on April 28, 2022

³¹ *ibid.*

caused about eight per cent of global carbon dioxide emissions.³² To reduce emissions from cement industry, there has been an endeavor to improve upon the energy efficiency of cement manufacturing plants. In this context, the Global Cement and Concrete Association (GCCA), which represents the interests of cement producers across the globe announced a global climate ambition to bring down the carbon footprints arising out of cement industry. This ambition proposed several measures to reduce greenhouse gas emissions from cement industry which include:

1. Promotion of investment in state of art technology for retrofit and new cement and concrete plants;
2. Promote increased use of by products and waste as alternative raw materials;
3. Enable both industries and governments to implement the strategies for circular economy in cement and concrete manufacturing sector;
4. Scale up efficient low carbon technologies by supporting research and development with specific focus on Carbon Capture, Usage and Storage (CCUS) and other forms of binders;
5. Promote the demand for green building among customers and construction contractors;
6. Support such methodologies, databases and tools to support life cycle sustainability assessment methods and enable a whole life-based approach to procurement;
7. Incorporate calculation methods for computing the energy performance of the buildings by taking the thermal mass, into account;

³² Chatham House Report, *Making Concrete Change: Innovation in Low-carbon Cement and Concrete*, available at <
<https://www.chathamhouse.org/2018/06/making-concrete-change-innovation-low-carbon-cement-and-concrete>>, last accessed on April 28, 2022.

8. Facilitate innovations by the revision of the existing building codes and regulations; and
9. Take all necessary means to recognize the impact of resilience-built environment in socio-economic lifestyle of people.

Affirming the common goal for a circular economy, the Association sets out to achieve a decarbonized economy by 2050. Furthermore, this action also stresses upon carbon neutral concrete because its ability to absorb and thereafter release thermal energy, which can also pave way to reduce emissions. Similar to cement and concrete, several other industries can involve new and innovative technologies (such as Carbon Capture, Utilisation and Storage (CCUS) technology) to reduce fossil fuel usage at their early stage of manufacturing.

The Department of Science and Technology, India aims to nurture CCUS technology by laying emphasis on research and development and capacity building of both human resource as well as infrastructure, to evolve technologies and methodologies that address issues related to high capital costs, safety, logistics and high auxiliary power consumption.³³ To achieve this objective, several collaborative measures have been employed, such as:

Joint collaboration of Department of Science & Technology and Department of Biotechnology to identify resilient and breakthrough technologies in the field of CCUS; India has also joined several Western Nations to accelerate CCUS technologies by facilitating research and development through targeted financing. Several Mission Innovation projects are presently funded by Department of Science and Technology.³⁴

³³ See Department of Science & Technology, Carbon Capture, Utilization and Storage, available at <<https://dst.gov.in/carbon-capture-utilisation-and-storage-ccus>> last accessed on April 30, 2022.

³⁴ See the List of projects supported under Mission Innovation IC3- Carbon Capture, Utilization and Storage during Financial Year 2019-20, available at <https://dst.gov.in/sites/default/files/List%20of%20CCUS%20projects%20supported%20under%20Mission%20Innovation%20IC3%20F.Y.%202019-20%20_1.pdf>, last accessed on April 30, 2022.

Therefore, the issue of climate change should not only be addressed within the parameters of environmental standards but also through the wider lens of economic standards as well. This wider analysis is warranted because this existential crisis requires adaptive and mitigating business strategies, coupled with a broader whole of government initiatives to attain a sustainable and resilient future.

6. Integrating Business and Human Rights with Climate Change

Climate Change is no-doubt, a business issue now. When business operations are interrupted temporarily or disrupted permanently, losses will inevitably result.³⁵ Destruction of Shell's Mars Oil Platform due to Hurricane Katrina is one such glaring example. Many cities in USA like New York, New Orleans, Miami etc. have made necessary modifications to their properties, plants and equipment. Even some have been relocated to different facilities. The adverse impact of climate change, not only targets the property and establishments but also business operations' whose employees prefer working in companies that are inclined towards addressing environmental issues. It also reflects a company's goodwill.

Exposure to climate risks may also jeopardize a company's access to capital. In fact, 'institutional investors, rating agencies, and lenders are increasingly interested in the financial consequences of these risks.'³⁶

The reality of climate change has hit rock-bottom with forward-thinking states acting as incubators of resilient initiatives and business entities based out of these states taking proactive measures. The automotive industry's emerging mandatory and voluntary standards in Japan, China, Canada, Australia and the European Union are forcing carmakers to build higher fuel economy fleets.³⁷ The aspect of human rights alongside climate change has also

³⁵ David John Frenkil, *Climate Risks and Opportunities: Business Implications of Climate Change*, 2 GEO. WASH. J. ENERGY & ENVTL. L. 72 (2011).

³⁶ See Julie Desjardins & Alan Willis, CLIMATE CHANGE BRIEFING: QUESTIONS FOR DIRECTORS TO ASK 3(2009), available at <<http://rmgb.ca/abstracts-directors-series/item28951.pdf>> last accessed on April 29, 2022.

³⁷ *Supra* note 11 at 10.

emerged very firmly. Profound moral issues demand a profound response from law, and as we enter the 21st century, human rights are (at least at a rhetorical level) the law's best response to profound, unthinkable, far-reaching moral transgression.³⁸ However, the biggest challenge in context of the interface between climate change, business & human rights requires the participation of three major countries: USA, China and India. If they don't participate, it doesn't work.³⁹ These three leading economies are top three emitters of anthropogenic gases and are also projected to incur economic loss vis-à-vis global social cost of carbon.⁴⁰

Climate Change has an impact on several sectors and nations. It is not a purely environmental issue, as it is closely linked to concerns about energy security due to dependence on fossil fuels and oil in particular. It, further, links to the energy efficiency in relation to economic activities in general. In turn, economic and financial conditions, such as the recession and credit crisis, have implications for business and Climate Change as well.⁴¹

In addition to this, one cannot rule other tradeoffs as regards Climate Change, which involves development, competitiveness, technological innovation and above all, equity. Furthermore, tagging the element of corporate responsibility with Climate Change in the context of Human Rights affirms the assertions of Climate Justice. Such claims take advantage of the institutional power intrinsic to the human rights regime, which has already made it clear that Climate Change is a Human Rights concern.⁴² Human Rights are also moral rights and Climate Change is a serious and salient

³⁸ Amy Sinden, *Climate Change and Human Rights*, 27 J. LAND RESOURCES & ENVTL. L. 257 (2007).

³⁹ Paul Polman, *The Business of Climate Change*, 39 FLETCHER F. WORLD AFF. 15 (2015).

⁴⁰ Down to Earth, US, China and India: Top carbon emitters to face the biggest economic losses, available at <https://www.downtoearth.org.in/news/climate-change/us-china-and-india-top-carbon-emitters-to-face-the-biggest-economic-losses-61747> last accessed on October 8, 2022.

⁴¹ Ans Kolk & Jonathan Pinkse, *Business and Climate Change: Key Strategic and Policy Challenges*, 2 Amsterdam L.F. 41 (2010).

⁴² UN Resolutions 7/23 of 2008; 10/4 of 2009; 18/22 of 2011; 26/27 of 2014; 29/15 of 2015; 38/4 of 2018.

issue that impacts Human Rights and it seems obvious that some level of Human Rights responsibility should also be carried by corporations.⁴³ This, however, is easier said than done. It requires some key questions regarding the relevance of Human Rights in the context of Climate Change and the affirmation of the business and human rights nexus are needed to be addressed.

The Office of the High Commissioner for Human Rights (OHCHR) and the Human Rights Council (HRC) have collectively worked to address the nexus between climate change and human rights. Therefore, they have called for a rights-based approach to guide global climate change policies and action.⁴⁴ The Human Rights Council has also addressed the nexus and relevance of human rights during the negotiations under the aegis of United Nations Framework Convention on Climate Change (UNFCCC). During COP 16 at Cancun, the resolution 10/4⁴⁵ of Human Rights Council on Human Rights and Climate Change was referred which recognizes that the adverse impacts of climate change on the effective enjoyment of human rights and further stressed upon that the effects of climate change will be felt most acutely by those segments of the population that are already vulnerable owing to several factors such as geography, gender, age, indigenous or minority status, or disability.⁴⁶ The said resolution also affirms to the objectives and principles of UNFCCC and Bali Action Plan⁴⁷. Furthermore, climate change has adverse effects on several human rights, which includes the right to adequate food and housing; the right to self-determination; the right to have access to safe drinking

⁴³ Toft & Kristian Hoyer, *Climate Change as a Business and Human Rights Issue: A Proposal for a Moral Typology* 5 BHRJ 1 (2020).

⁴⁴ See Integrating Human Rights at the UNFCCC, available at <<https://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/UNFCCC.aspx>> last accessed on April 14, 2022.

⁴⁵ Human Rights Council, *Resolution 10/4: Human Rights and Climate Change* (2009)

⁴⁶ Para 7 of The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, available at <<https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>>.

⁴⁷ UNFCCC, Bali Action Plan (2007) available here <<https://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf> >

water; the right to highest attainable standard of health and well-being; the right to sanitation; & the right to life.

Emissions from business have always been a matter of immense concern and debate under the entire discourse of Climate Change negotiations. The anthropogenic emissions arising out of intense industrial activities have furthered the degradation of our natural environment, which in continuance; have degraded the standards of human rights in several nations (mostly poor & vulnerable ones). The adverse effects of climate change have been felt acutely by the vulnerable sections of the planet, owing to your socio-economic, geographical, age, gender, disability, minority or even indigenous status⁴⁸. The Human Rights Council in its 10.4 resolution affirms that Human Rights commitments and obligations have the potential to strengthen the national as well as international policymaking to garner sustainable outcomes. The resolution also welcomes the decision of the UN Special Rapporteur on adequate housing as one of the core components of right to life which has been affected due to climate change. The right to shelter (an integral component of right to life) has been unsympathetically shattered by displacement due to developmental projects. No remediation, reconciliation, resettlement and restoration for the displaced unravel the inconvenient truth of development.

With Paris Agreement, 2015 in existence, the Office of the High Commission of Human Rights (OHCHR) has emphasized on integrating Human Rights in the implementation mechanisms of the said Agreement. In 2017, OHCHR submitted the following outlined priority areas (where Climate Change and Human Rights interjects) to the UNFCCC:

1. Nationally determined contributions of the respective states should integrate human rights in their climate actions by highlighting priorities, support and implementation needs;
2. In consonance with Article 12 of Paris Agreement, private sector participation should also be included along with public participation;

⁴⁸ UN Women Watch, Fact Sheet on Women, Gender Equality and Climate Change available at <
https://www.un.org/womenwatch/feature/climate_change/downloads/Women_and_Climate_Change_Factsheet.pdf \>

3. Every endeavour should be adopted to further ensure that the mechanisms for reviewing the Nationally Determined Contributions of the developing nations should guarantee the right to participation of all humans; be it children, youth, minorities, women, indigenous communities, persons with disabilities, elderly persons, local communities, and such other people present in vulnerable situations, and that such people are protected from all forms of threats, intimidation, reprisals, or persecution for such engagement⁴⁹;
4. In the absence of sound climate finance, it is difficult for the vulnerable developing and least developed countries, to take adaptive measures. In this front, the OHCHR recommended for the inclusion of several core components in the adaptation actions of the states, which includes:
5. Addressing the Human Rights considerations vis-à-vis equity, climate justice, just transition, good health, transparency, accountability, gender parity etc.; &
6. An inclusive, gender responsive and participatory approach towards climate actions.
7. Furthermore, the transparency framework of climate actions should include the analysis of national human rights commitments;
8. The monitoring, reporting and verification mechanism should include human rights situations of the respective state because such integration will foster synergies and coherence across all three dimensions of climate, business (development) and human rights;
9. Active participation of civil societies in facilitation of information exchange and capacity building;

As regards, the unique element of global stocktake under Article 14 of Paris Agreement, OHCHR insisted upon including disaggregated data on analysis of climate impacts on human rights. It reiterates

⁴⁹ OHCHR Response to the request of Ad-Hoc Working Group on the Paris Agreement (APA) to provide information, views and proposals on any work of the APA before each of its sessions. FCCC/APA/2-16/2, available at <https://www.ohchr.org/Documents/Issues/ClimateChange/OHCHR_APA%20submission_May2017.pdf> last accessed on April 24, 2022.

that, *'the global stocktake should consider how climate actions have respected and promoted human rights, and identify good practices in this regard and its associated safeguards'*⁵⁰;

The OHCHR also expresses its concern that the ambition on reduction of global temperature falls short of what is required;⁵¹

In addition to all these aforesaid components, the High Commission also calls for a human rights-oriented approach towards loss and damage (Article 8 of Paris Agreement), climate finance (Article 9 of Paris Agreement), technology transfer (Article 10 of the Paris Agreement).

Thereafter, the OHCHR has proposed for a Programme of Work on Human Rights & Climate Change. But in context of business and human rights, Article 6 of the Paris Agreement is absolutely pertinent because the said provision calls upon the state parties to facilitate and incentivize private business entities in the mitigation of the emission of anthropogenic greenhouse gas without jeopardizing the Human Rights norms and standards. The private entities should be held accountable for any climate related impacts due to their business activities because they are duty bearers and they should act and participate responsibly in climate related mitigation and adaptation measures.

7. Conclusion

Business, human rights and climate change are three vertexes of a scalene triangle which should align to form an equilateral triangle without overlooking any vertex over another. Our understanding of land ethics is primordial and the complexity of existing human-nature relationship necessitates a sustainable approach where there is an equal place for business, climate and Human Rights. Our complexity of cooperative mechanisms has escalated with the escalation of scientific knowhow and population density. We are still proceeding at a snail's pace and such slow progression will take a heavy toll on environment and the human rights associated with that environment. Effective implementation is the only key, nudged by a stringent political will, which will emphasize more on obligations, rather than just privileges. Humans have a sense of our obligations,

⁵⁰ *Id* at 4.

⁵¹ *Id* at 5.

yet we choose to bypass the same due to our lack of conscience. We cannot expect any major change in our climate system and human rights set-up without accepting an internal variation in our intellectual convictions, affections and devotions. Multifaceted interpretations, defence of principle of common but differentiated responsibilities and respective capabilities have complicated the desired climate related obligations. We further continue to contempt principles of intra/inter-generational equities because we are shrouded by our preference for economic gains over human rights obligations and ecological conservation. Our hopelessly lopsided economic self-interest will fail us and we will be reprimanded by nature for denigrating the rights of our fellow brothers, sisters and the environment where all of them, including us, inhabit. Paris Agreement is our hope, our aspiration. It is up to us now to socially and legally approbate the right climate and human rights actions because our current challenges need effective implementation.