

BUSINESS AND HUMAN RIGHTS

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Abstract

Businesses have an end motive of earning profits which can indirectly harm the various stakeholders. Stakeholders in terms of business could be defined as consumers, environment, people at large, shareholders, competitors, etc. The businesses owe responsibility towards the various stakeholders. Businesses are supposed to be very careful of the impact it has on its surrounding because public spirited person all across the world could be seen filing cases against the business harming the environment or basic human of individual.

The author intends to highlight few negative effects of business on the environment and the other stakeholders of a business. How litigation has brought the same before the eyes of the system. The courts have remedied the victims and trying to balance out development along with human rights protection. A clean environment is the basic human right of every citizen and the same has been bestowed in the international laws. When the international laws are ratified by State, it has to incorporate the same in its national legislation for it to be effective in the State. The State can regulate the businesses via the national laws. The businesses can be held accountable for their actions and impact on environment.

The author also provides for steps for the businesses to look into the impact it has against the human rights. The international law has played a vital role in spreading awareness among nations about the impact businesses have. Now we see how businesses while growing resort to unfair trade practices resulting in infringing the right of livelihood of individuals. Hence, the focus of today's generation has shifted to sustainable development and organic growth of companies. Striking a balance between the rights of a business and the people, environment and communities.

1. THE BEGINNING

In the modern era, capitalism is the survival instincts of every human. They look for corporate jobs. Laws are found to be pro-capitalist and hence when the entire world is tilted towards money and favour the companies, there calls laws to protect the interest of citizens or people against the misuse of their rights in the hands of top companies. Businesses have played an important key-role in development of society, they provide jobs, services, provide means of acquired standard of living. Nevertheless it is important that the same power should be kept in check, because they tend to harm the environment, communities and people at different level. There are human rights which are protected under various international laws which creates a legal obligation on States to take measures to make sure that human rights are not violated. Human rights treaties, such as:

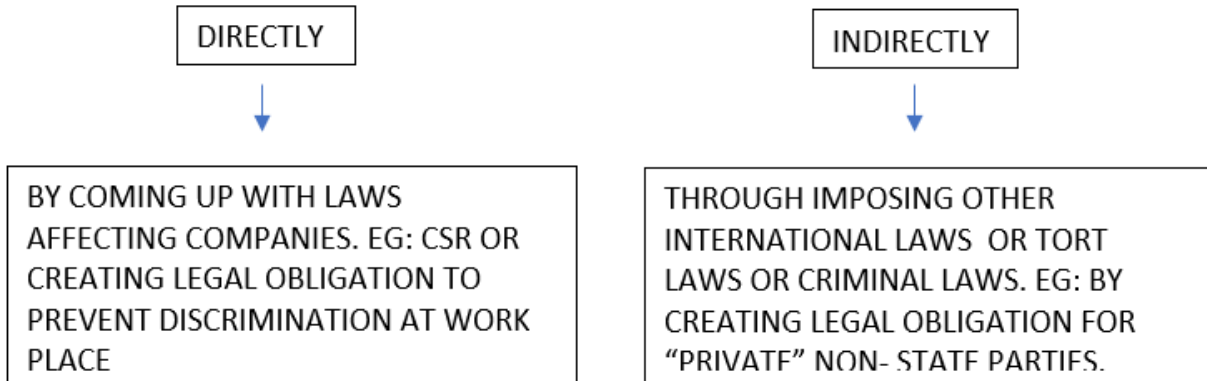
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic Social and Cultural Rights (ICESCR)

The treaties are enforceable only when a country ratifies them. It shall have a binding effect when a State signs and ratifies the treaty. This is how an obligation on State is created to follow the international laws. To make it enforceable in their State respectively, they incorporate the international laws in the municipal laws by way of amendments. When it comes to businesses in their State, the Government imposes some duties on the companies to make sure that they abide by it, as even corporates are entitled to artificial personality.

Generally, businesses do not have a legal obligation to care for the interest of citizens, or environment, or people under international law. Hence to create the obligation, it is important that the same is incorporated in their municipal laws, thereby creating legal obligation and holding them accountable for same.

Since States have the primary obligation to protect human rights, they need to make sure that businesses or other people do not hamper the environment,

communities, or people. They either protect the right directly or indirectly



When we look at businesses, their common motive is profit. They fail to acknowledge the negative impacts of their money minting business. The first aspect is climate change.

2. CLIMATE CHANGE – INTRODUCTION

Climate is an important aspect of environment that is constantly changing due to the invent of the various activities that harm the environment. Ensuring sustainable development for all requires effectively addressing climate change through an internationally coordinated response based on common human rights. The responsibility for climate change is bestowed upon all organs of society, including businesses. With the introduction of the polluter pay principle the polluters can be now held accountable for the harm caused to the environment. Various environmental activists have used law as a way to make the polluters pay for their contribution to climate change and its devastating impacts.

This article aims to highlight the very aspect of emerging climate change litigation by looking into the international framework. It aims to highlight the aspect of climate due diligence, how business entities shall include this into their policy framework and obligation towards the society.

3. IMPACT OF BUSINESS ON ENVIRONMENT TILL DATE

Business entities have a history of exploiting the environment. From the Bhopal Gas Tragedy¹ to the Vizag Gas leak², all have contributed to the climate change. The implementation of the Paris Agreement and the 2030 Agenda for Sustainable Development, combined with the increasing engagement of the Human Rights Council, its special procedures mechanisms and the treaty-bodies dealing with environmental issues present a unique opportunity for developing and implementing ambitious public policies and business practices that integrate both human rights and environmental considerations at the national and international level.

All business enterprises have a responsibility to prevent and address negative impacts of their actions on the environment. It is widely accepted that the business responsibility to respect human rights and environmental rights includes the responsibility to identify, prevent, mitigate, and account for impacts related to climate change, in line with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Similarly, States should ensure that their own business activities, including activities conducted in partnership with the

¹ *Union Carbide Co. v. Union of India*, 1990 AIR 273. Also see *M.C. Mehta v. Union of India*, 1987 AIR 1086; *M.C. Mehta v. Union of India*, AIR 1997 SC 734.

² 2020 SCC OnLine NGT 129.

private sector, contribute to mitigating climate change while respecting human rights, and ensuring effective remedies for climate and human rights harms.

The last decade has witnessed a consolidating consensus in the international community about the need to treat climate change and its consequences as a human rights issue.³ Preventing and redressing the human rights harm deriving from manmade climate change arguably also falls under both the 'state duty to protect' (Pillar I) and the 'business responsibility to respect' (Pillar II) articulated by the United Nations Guiding Principles on Business and Human Rights (UNGPs). Current policy and judicial developments show that a 'climate due diligence' is increasingly taking shape as a dimension of the human rights due diligence (HRDD) obligations of both states and corporations. The number of climate change-related lawsuits, while still relatively low and uncertain as to the outcomes, is growing, and is taking new and creative legal avenues. At the same time, in addition to HRDD legislation already adopted by some countries, the European Union (EU) is considering the adoption of legislation establishing human rights and environmental due diligence obligations for corporations. These developments provide unprecedented opportunities to clarify the specific obligations of public and private actors in relation to anthropogenic climate change and its human rights impacts.

4. THE NEW ERA OF LITIGATION: CLIMATE CHANGE LITIGATION

At present only a limited number of lawsuits directly targeting the climate change impacts of corporations, and an even narrower sample with an explicit human rights dimension, exist. In April 2019, Milieudefensie and

other NGOs submitted a court summons against Royal Dutch Shell alleging the corporation's violation of its duty of care anchored in Dutch law, human rights law and the Paris Agreement.⁴ This approach proposes an integrated interpretation of corporate HRDD based on both human rights law and climate law standards. The plaintiffs clearly aim at riding the long wave of the *Urgenda* judgment and extending its conclusions, *mutatis mutandis*, to private actors.⁵ The allegations against Shell include its insufficient action to reduce GHG emissions and the active attempt to mislead the public about the sustainability of its operations.

The summons reference the main business and human rights instruments, including the UNGPs (publicly endorsed by Shell), to argue that climate change impacts must be accounted for in the HRDD processes of corporations, which also have a responsibility not 'to undermine the ability of States to fulfil their own human rights obligations'. The summons refer to the Dutch law social standard of care successfully invoked in *Urgenda* to argue that 'Articles 2 and 8 of the ECHR also colour the duty of care we should be able to expect from Shell', given 'the extent of the control Shell – like the State – has over [the fate of] individuals on account of its substantial share in global emissions and the solutions to climate change.' The plaintiffs maintain that Shell has a duty to adjust its policies and practices to the Paris Agreement targets with due regard to the precautionary principle.

The climate change responsibilities of 47 'Carbon Majors' – including some European corporations such as BP, Shell, Total, RWE, Repsol, LaFarge, Heidelberg Cement and Eni – were notoriously raised in a petition filed with the Philippines Commission on Human Rights by Greenpeace Southeast Asia⁶ and a number of

³ Burger, Michael and Wentz, Jessica, *Climate Change and Human Rights* (Nairobi: UNEP, 2015) 11 [Google Scholar](#); 'Paris Agreement: Preamble', online available at: https://unfccc.int/sites/default/files/english_paris_agreement.pdf (Accessed on 14 May 2021).

⁴ *Milieudefensie et al v. Royal Dutch Shell plc*, File no. 90046903, Summons (5 April 2019), <http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case->

[documents/2019/20190405_8918_summons.pdf](#) (Accessed on 14 May 2021).

⁵ *Supra* Note 4.

⁶ Greenpeace Southeast Asia et al, 'Petition – Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change', Annex C (2015), Online available at: <https://storage.googleapis.com/planet4-philippines-stateless/2019/05/4879ea58-4879ea58->

organizations and individuals. The petitioners asked the Commission to investigate the human rights impacts of climate change in the Philippines and the responsibility of 'investor-owned Carbon Majors for human rights threats and/or violations in the Philippines, resulting from climate change and ocean acidification'. The petition builds on studies that trace anthropogenic GHG emissions to specific corporations, and largely relies on the UNGPs. Referring to HRDD, it argues that, by taking investment decisions incompatible with the 2°C goal, the corporations are 'failing to prevent human rights impacts that are directly linked to their operations, products, or services' by their business relationships.

A joint summary of *amicus curiae* briefs also stresses that corporations, under the UNGPs, are responsible for assessing and addressing the climate change impacts of their operations, which translates into a responsibility to reduce their GHG emissions, at a minimum, in line with the temperature goals of the Paris Agreement. It also stresses how the carbon producers have long known of the adverse impacts of their operations but failed to act upon such knowledge, and even actively misrepresented the connection between fossil fuels and climate change. In December 2019, at COP 25, the Commission on Human Rights announced its findings, stating that the carbon majors can be held liable for their contribution to climate change and that access to justice must be ensured for victims of the related human rights impacts.⁷ The statement also specified that criminal liability might arise 'where they have been clearly proved to have engaged in acts of obstruction and wilful obfuscation'.³⁴ Although the Commission does not have strong coercive and enforcement powers, its final findings might shed a light on the link between climate due diligence and HRDD, and could be taken into

account in the elaboration of new regulatory instruments, as well as in future litigation.⁸

None of the cases noted above has reached its final stage yet. However, the legal reasoning adopted by their proponents highlight some possible features of an emerging concept of 'climate due diligence'. These tend to revolve around two main themes, namely, 'risk mitigation' on the one hand, and 'integration' on the other. While the former is concerned with the reduction of GHG emissions in corporations' activities and projects, the latter requires corporations to integrate climate-related objectives in their policies and processes.

Big emitters are also the target of a lawsuit filed in San Francisco by a large US-based fishing association against oil and gas producers, including Europe-domiciled Shell, Eni, Total and BP.⁹ The activities of these corporations are put in a causal relationship with the global warming-induced algae blooms that are forcing the closure of crab-fishing waters in the Pacific, damaging the industry. The defendants are not only accused of negligence and nuisance, but also of having concealed the dangers for decades, working 'to undermine public support for greenhouse gas regulation'.¹⁰ Once again, albeit not framed in human rights terms, the lawsuit insists on the nexus between the contribution of big emitters to global warming and the resulting adverse impacts, as well as on their failure to honestly communicate to the public the climate-related risks of their activities.

Although existing case law on the climate-related responsibilities of public authorities is at a relatively early stage and still underdeveloped, it allows us to draw some initial conclusions regarding the emerging concept of climate due diligence. The transition towards a more sustainable society could then imply stricter

[annex c list of respondents with addresses.pdf](#) (Accessed on 14 May 2021).

⁷ Greenpeace Philippines, 'The Climate Change and Human Rights Petition' (9 December 2019), <https://www.greenpeace.org/philippines/press/1237/the-climate-change-and-human-rights-petition/> (Accessed on 14 May 2021).

⁸ Annalisa Savaresi and Jacques Hartmann, 'Using Human Rights Law to Address the Impacts of Climate Change: Early Reflections on the Carbon Majors Inquiry' (2 November

2018) 16, <https://ssrn.com/abstract=3277568> (Accessed on 14 May 2021).

⁹ *Pacific Coast Federation of Fishermen's Associations, Inc v. Chevron Corp* (ND Cal) 3:18-cv-07477, Complaint (2018), http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20181114_docket-CGC-18-571285_complaint.pdf (Accessed on 14 May 2021).

¹⁰ *Supra* Note 9.

regulation of corporate emissions and of projects that would raise their level. Some of the cases referenced also insist on adequate impact assessments taking climate into account.

Thus, existing examples of litigation, both against corporations and public authorities, confirm the importance for corporations to integrate the climate change dimension into their processes and policies, as well as to work towards a mitigation of their climate impacts. While it is not possible to predict how the case law will evolve, with many relevant cases still pending and new ones being filed, it is becoming clear how corporations failing to take action in the two key areas of integration and risk mitigation are increasingly at risk of incurring complex litigation and reputational loss. In addition, given the changing regulatory and financial landscape, further pressure is likely to come from a corporation's own shareholders.

5. BUSINESS RESPONSIBILITIES TOWARDS THE PEOPLE

Coming to the second aspect, the UNGPs have outlines main business responsibilities which every businesses should have which have been enlisted below:

1. Corporate responsibility to Respect human rights (Principle 11)

Even though businesses do not have legal obligation to follow these but they are supposed to respect it. They should avoid causing or contributing to negative human rights impacts through the business' own activities and address such impacts when they occur. They can prevent human rights impacts that are directly linked to the businesses' operations, products or services by its business relationships, even if the business has not directly contributed to those impacts.

Example : a mining company that doesn't conduct an environmental impact assessment and its operations later pollute the rivers of a local community or when PepsiCo was charged for using the most amount of water, it respected it and decided to give back more water than it consumes.

2. Human Rights Due Diligence (Principle 17)

The businesses should develop a corporate human rights policy to carry out "due diligence" assessment, to make sure it has a policy in place to make sure that in the method of printing of money, they are not sacrificing humanity. Human rights due diligence assessments are monitoring processes undertaken by a company to identify risks to and address negative impacts on human rights that are linked to the company's operations and supply chains.

This means businesses have to think how their activities will impact human rights before they act. After which they create a plan to mitigate these risks to ensure that it doesn't lead to human rights abuses.

How can businesses mitigate these risks, The International Finance Corporation's Guide to HRs Impact Assessment and Management stipulates the steps any business should take to assess the human rights impact due to its projects. They are as follows¹¹:

1. Businesses must engage with people that could be affected by their activities.
2. The assessment must identify key human rights risks to people in the country of operation.
3. The assessment must identify human rights risks of key business relationships, including companies they work with and those in the value chain.
4. The assessment must identify human rights risks and impacts relating to the business activity itself. This must include cumulative, long-term and unintended consequences of the activity.
5. The assessment must identify the people that could be affected by the business activity.
6. The assessment must identify the nature and level of the risks and impacts, at different key stages of the project's life cycle (e.g. design, construction, operation, decommissioning and closure etc).
7. The assessment must identify the root causes/perpetrators of the risks and impacts (e.g. the business activity itself, a possible contractor, supplier and/or government involvement etc).
8. The assessment must involve all human rights.

¹¹ The business impact on human rights, https://action4justice.org/legal_areas/business-and-human-

[rights/do-businesses-have-human-rights-responsibilities/](#)(Accessed on 15 May 2021)

These are proved to be very helpful in assessing the impact of business on the human rights.

3. Access to remedy (Principle 22)

If a business negatively impacts or infringes the human rights of a community or person then it should remedy out. In economics term, bring them to a position where they were before the infringement took place, which could be via monetary compensation or other means.

Example : If an industry pollutes the river, it should clean the river or if their pollution is ruining a cloth store nearby, they should install filter chimney and monetarily compensate the store person for the loss.

4. The size of business and Human rights obligation (Principle 14)

Businesses are supposed to respect human rights irrespective of the size or location of the business. But few businesses depending on their turnover would make commitments to develop the rural part of the nation.

The human rights are basic rights which are to be enjoyed by each individual and yet there has to be strict implication to make sure that businesses do not infringe the rights. Not only that, the businesses should pay at least minimum wages or give their employees paid leaves when necessary, basic facilities at work place. Businesses have a responsibility not only to their stakeholders but also their competitors. We find Big companies infringing the right to privacy of individual and right to fair trade practices to their competitors. Now we would study as to how monopoly by few companies infringes the rights of the consumers and the competitors.

6. BUSINESS IMPACT ON ITS COMPETITORS

With the coming years, innovation is the key to acquiring market share and now entities come up with products of the year, start acquiring market share and eventually, it diversifies with all the money, or buys all the small firms in the same product line and starts abusing its dominant position. That has become the story of present MNC's in India or worldwide. Hence, we need to ensure fair competition for the existing players and optimum choices for the consumers. The question of fair trade practice needs to be ensured by the players. The big four US tech giants, namely Amazon, Apple, Facebook and Google have been viewed as scrappy startups. Consumers loved their products, regulators

largely looked away, and competitors either got acquired or fell by the wayside. That run of good fortune has been under threat for a while, but now they are under the surveillance of various antitrust authorities in various countries.

The internet, once the promised land of free and open interactions for all, is now controlled by a few gigantic technology companies - often referred to as Big Tech. These companies include Facebook, Apple, Amazon, Netflix, Google, Microsoft, Paypal, and some others. Recent events in the United States (US), when these same companies shut down a sitting US president, without due process, have alerted us to their unchecked power. They have indirect control and they can dictate the terms, while the Parliament would be helpless in that regard. Law is the supreme and not a company. Law makes it clear that there shouldn't be abuse of dominant position by any party. We are going to focus on the well know four horsemen - Google, Facebook, Apple and Amazon.

Each of today's "digital monopolies" operates in a slightly different market.

- Amazon is dominant in e-commerce,
- Google in search and advertising,
- Facebook in social networking, and
- Apple in both mobile content and apps.

Nevertheless, they all had engaged in very similar anti-competitive practices, which included buying up potential competitors:

- Facebook's acquisitions of WhatsApp and Instagram,
- Google's acquisition of Android.

Or using their platform to limit competition, control access, and favour their own products

- Apple's control of the App Store,
- Amazon's ability to undercut third-party retailers using its platform.

The other problem is Big Tech firms have acquired extraordinary amounts of data on individuals. How we browse, what goods we covet, where we shop, what shows we watch, what music we listen to, where we travel, who our friends are, who we follow — all this information is now sitting in vast server farms around the world. At a click, Big Tech barons can summon up this information and sell it to whoever they want.

Moreover, this transaction happens outside the country beyond the reach of our tax authorities. So Big Tech takes full advantage of a country's prosperity yet makes limited tax contributions. As Big Tech has become pervasive, its conduct has to be evaluated across multiple dimensions. Now countries are coming up with laws to make them accountable and liable to pay higher tax.

Now, the governments are looking at different possible solution to stop the company from getting a life of its own, which means the businesses shouldn't get so big that they start controlling and dictating terms to the government. Also, businesses should not get so big that they start buying all their competitors and kill the competition. This affects the rights of consumers to have a choice and the competitors to a fair trade practice. These companies need to stay within their limit and should be well regulated by the laws to make sure that the laws are governed by them and not where the laws are made to the convenience of the businesses.

7.THE BEGINNING OF THE END

It has become paramount that the rights of people, communities and environment is protected to keep the world going. Sustainable development has to be the essence of today's world where we are utilizing more of our natural resources than giving back to nature. It is in the hands of humans to create a balance between environment, people and companies. The same can be executed by way of laws and effective implementation of laws. It is a mandate that we care more about the living and less of monetary. Because a company committed to protect its people, environment goes long way than a selfish business who destroys the environment and people around it. Hence, to survive this world with limited resources, it has become vital that the resources are valued and used efficiently. We spread more awareness and take steps to prevent further harm not only against the environment but also towards other stakeholders. It is time that businesses shouldn't be accorded with all right and liberties and are well-regulated to prevent it from having a life of its own.