

LAW INTERVIEW

CLIMATE NEGOTIATIONS should be grounded in decolonisation and global justice



If we want to really solve climate crisis, the polluting elites should be held accountable—they need to make carbon cuts, devote resources to protect the climate and people, and share the burdens of climate crisis not as charity but as compensation for the wrongs done. In addition, the knowledge systems of indigenous communities and the Global South, who are the most affected by climate crisis, should be mainstreamed into these discussions and policies.

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Law Desk (LD): What discussions do you look forward to in this year COP28?

Mohammad Golam Sarwar (MGS): In my opinion, in the 28th edition of United Nations Climate Change Conference, loss and damage fund will be an important area to deliberate on for financing the developing countries in dealing with climate crisis. Indeed, it is outcome of almost three decades of continuous negotiation between relevant stakeholders and hopefully, modus operandi of the fund will be set in motion through this year's COP. Another important area of discussion is going to be transition from fossil fuel to renewable energy in order to achieve net zero carbon emission. In the context of developing countries such as Bangladesh, these issues have great significance and are worth looking forward to.

LD: How do you view the proposed arrangement of assigning World Bank to administer the loss and damage fund? Do you think that developing countries will be able to avail adequate funding to tackle climate catastrophe?

MGS: The Transitional Committee (TC), after several heated debates, proposed to entrust the World Bank, to operationalise the fund as a World Bank (WB)-hosted Financial Intermediary Fund (FIIF) for an interim period of 4 years. The Committee sets out some conditions for World Bank to govern the fund. The conditions include measures to prioritise the autonomy of the Fund's Board over World Bank and an option to dismantle the World Bank arrangement and turn the fund into an independent standalone institution if the Bank fails to comply with the guiding instrument. Interestingly, the Committee urges the developed country Parties, to continue to provide support, and encourage other Parties to provide, or continue to provide support on a voluntary basis for activities to address loss and damage. This clearly indicates—developed countries have no obligation to financially contribute to this fund—they are merely 'invited' to provide finance for the fund. In my opinion, the recommendations are weak and apparently ineffective in relation to climate justice as there is no clear roadmap for generating financial commitments necessary to operationalise the fund. It is estimated by some researchers that a minimum allocation of 400 billion USD is needed each year for this fund, with the ultimate goal of raising trillions.

Another problem with the World Bank is that it serves the purpose of the western donors led by the US. It is very astonishing that financial institution like World Bank, which has added climate change in their mission very recently, will manage the fund. In different parts of the globe the World Bank financed projects have severely caused ecological damage and accelerated climate induced

disasters. Examples are right in front of us—the so-called plantation projects in Bangladesh or forestry program in the Chittagong Hill Tracts (CHT) and other areas, by which the natural forest landscape of the country is changing. Therefore, the loss and damage fund at the hands of World Bank will only become another example of global hegemony and power politics that will facilitate to sustain the dominance of Global North. It remains doubtful whether the fund would meet the financial needs of the vulnerable peoples and communities of the developing countries in the Global South.

LD: As an environmental lawyer from the Global South, do you perceive any influence of climate coloniality in climate negotiations at the COP?

MGS: Carbon inequality should, in fact, be the premise of our deliberations at COP. An Oxfam report of 20 November 2023 says that the richest 1% of the world are responsible for more carbon emissions than the poorest 66%. Moreover, the Global North (in other words, the G8 countries) alone contribute to 92% of excess global carbon emissions. These statistics show how the polluting elites, as the Oxfam report calls them, are single-handedly destroying the mother earth.

On the other hand, when it comes to the impacts, the biggest sufferers are the Global South e.g., Bangladesh. It clearly indicates that deep carbon inequality, which we can also call climate inequality, is getting exceedingly prominent in today's world. Again, this inequality



is actually a product of coloniality driven by hyper-consumption, excessive carbon emission, and massive pollution. For the first time in more than three decades since its inception, the Intergovernmental Panel on Climate Change (IPCC) acknowledges colonialism as historical and ongoing driver of the climate crisis.

Moreover, the discussions and suggested policies regarding climate change are also influenced by Western hegemony, and alternate views are not properly incorporated into it. As a result, such discussions fail to get to the core of the problem. These discussions and policies should be based on equity, decolonisation, and justice. Otherwise, this problem of climate change will continue to be COP-washed.

LD: Looking ahead, what should be the core agenda to deal with the impacts of climate change at the COP and beyond?

MGS: Currently, one of the biggest problems relating to climate change is the collective denial of the developed countries. For decades, these countries have persistently denied the gravity of the problem and the solutions thereof. In fact, scholars argue, over the years, International Environmental Law (IEL) has rationalised and legitimised environmental destruction. It has constantly promoted the principle of sustainable development, which some scholars are now terming an 'eco-political project', which is neither developmental nor sustainable.

Scholars like Dipesh Chakrabarty have called climate change a 'wicked' problem, solution to which requires a radical transformation of our economy and political views. We also need to adopt alternative epistemologies and indigenous views in order to tackle this problem, which are much more protective of nature and hold a decolonised perspective against colonial domination.

Moreover, what is needed is a radical transformation of our economy to a model that is less resource-intensive and incorporates renewable and clean energy. During the transition period, the polluting elites must come out of their cocoons of persistent denial and pay compensation and reparation for the disproportionate harms they have caused to the earth over the years.

Without adequate assistance from the developed world, achieving an equitable and fast transition will be difficult.

If we want to really solve climate crisis, the polluting elites should be held accountable—they need to make carbon cuts, devote resources to protect the climate and people, and share the burdens of climate crisis not as charity but as compensation for the wrongs done. In addition, the knowledge systems of indigenous communities and the Global South, who are the most affected by climate crisis, should be mainstreamed into these discussions and policies.

LD: How can Bangladesh tackle the impacts of climate change while meeting its developmental needs?

MGS: The impacts of climate change on Bangladesh are quite well-known. To illustrate, Bangladesh has suffered economic losses worth 3.72 billion dollars and witnessed at least 185 extreme weather events from 2000 to 2019. In fact, by the end of the century, Bangladesh is estimated to lose 2.9% of its annual GDP every year. In terms of land, according to the IPCC, Bangladesh will lose 17% of its land by 2050.

Here, I would say Bangladesh is carrying the double burden of tackling the huge impacts of climate change and meeting its huge population's developmental needs. Bangladesh should continue to undertake climate negotiations at the global forums, where the country is already doing a good job. We should continue to do this and develop innovative and strategic methods to present our case better.

Besides, contrary to popular belief, advocating for more funds at the global platforms alone is not sufficient. Bangladesh should strengthen its own local institutions that manage these funds. If our local institutions are filled with corruption and bad governance, any advocacy at the global platforms is bound to fail. We need to develop robust data-driven local loss and damage mechanism to know the exact amount of our loss and damage. With proper data, our case will stand stronger at the global forum. I believe Bangladesh can also assist the world by sharing its own experiences, lessons, and best practices as one of the most climate vulnerable countries.

Lastly, Bangladesh needs to integrate the dimension of climate change into its policymaking. As Bangladesh is heading to graduate from LDC to a middle-income country, we should mainstream climate change dimensions into the development trajectories.

LD: Thank you for your valuable time.

MGS: Thank you for the questions!

RIGHTS ADVOCACY

Nuances of maternity benefits under Bangladesh labour laws

SADIKA NOUSHEEN

When talking about women's right to work, it is not sufficient to only discuss the participation of women in the labour market. It is also equally important to ensure that no woman, irrespective of reproductive choices, gets discriminated against. One of the significant initiatives to ensure this is ensuring access to sufficient maternity benefits at workplace.

The term "maternity benefits" is commonly used to describe the monetary compensation or support afforded to women during their maternity leave. The purpose is to give women the time and assistance they need to heal from childbirth and care for newborns. These benefits may take the shape of paid time-off, income replacement benefits, or other types of assistance. Under the Bangladesh Labour Act 2006 (BLA), "maternity benefit" essentially means the sum of money payable to a woman employee with leave.

Section 46 of the BLA mandates that all employers provide female employees with maternity leave and benefits for eight weeks leading up to the expected date of delivery and eight weeks afterward. Section 45 further provides that employers cannot put any woman to work doing strenuous labor, standing for long periods of time, or

work that is likely to harm her health, if the employer has been informed, or has reason to believe that the woman is going to give birth within ten weeks or has given birth within the last ten weeks.

However, it is important to mention that section

It is time to recognise the specific disadvantages women face in the labour market while making policies and laws. Only then can we truly go beyond the stale promises of formal equality and eradicate substantive gender gaps persisting in workplaces.

46 imposes two prerequisites for receiving maternity benefits: first, the expectant woman must have worked for the employer for at least six months prior to the day of delivery. Second, if she has more than one child at the time of delivery, she will not be entitled to the maternity benefit but the leave to which she would otherwise be entitled. Therefore, newly employed workers and mothers who already have more than one child, are deprived of these benefits.

Moreover, some offices are expressly excluded from the application of the BLA according to section 1(4) and they remain free to make their own

maternity policies. Furthermore, section 2(65) excludes people employed mainly in a managerial or administrative capacity from the definition of workers, thus making the benefits of BLA inapplicable to them as well. Lastly, since the BLA applies to the formal sector, practices within the informal sector remain unregulated. Consequently, the fate of women's (e.g., domestic aides) employment hangs in the balance in these cases.

In a nutshell, it can be argued that the current legal mechanism does not go far enough. Fortunately, the Bangladesh Labour (Amendment) Act 2023, which would increase the length of maternity leave to 120 days from 112 days, received preliminary approval from the cabinet recently. It is a nascent step in the right direction. However, the policy-legal framework needs an overhaul to materialise truly transformative changes in this area.

It is time to recognise the specific disadvantages women face in the labour market while making policies and laws. Only then can we truly go beyond the stale promises of formal equality and eradicate substantive gender gaps persisting in workplaces.

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