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# Hindu Kush Himalayan Ecosystem as a Common Concern of Humankind: Imperative for Better Regional Jurisprudence

*Debasis Poddar\**

## Abstract

*Hindu Kush Himalayan region (hereafter the HKH) - with 3500 odd kilometres stretched in eight countries- is default resource generation hub for about one-fifth population of the world. The ecosystem-growing delicate these days- seems to play a critical role for the survival of flora and fauna along with the maintenance of all its life-sustaining mountain glaciers. Ten major rivers to carry forward hitherto sustainable development of these peoples fall into question now. Further, in the wake of global climate change today, the delicate HKH ecosystem becomes increasingly fragile to unfold manifold consequences and thereby take its toll on the population. And the same might turn apocalyptic in its magnanimity of irreversible damage. Like time-bomb, thus, climate ticks to get blown off. As it is getting already too delayed for timely resort to safeguards, if still not taken care of in time, lawmakers ought to find the aftermath too late to lament for. Besides being conscious for climate discipline across the world, collective efforts on the part of all regional states together are imperative to minimize the damage. Therefore, each one has put hands together to be saved from the doomsday that appears to stand ahead to accelerate a catastrophic end, in the given speed of global climate change. As the largest Himalayan state and its central positioning at the top of the HKH, Nepal has had potential to play a critical role to engage regional climate change regime and thereby spearhead climate diplomacy worldwide to play regional capital of the HKH ecosystem. As regional superpower, India has had potential to usurp leadership avatar to this end. With reasoning of his own, the author pleads for better jurisprudence to attain regional environmental integrity inter se- rather than regional environmental integration alone- to defend the vulnerable HKH ecosystem since the same constitutes common concern of humankind and much more so for themselves. Hence, to quote from Shakespeare, "To be or not to be, that is the question" is reasonable here. While states are engaged in the spree to cause mutually agreed destruction, global climate change- with deadly aftermath- poses the last and final unifier for them to turn United Nations in rhetoric sense of the term.*

## Introduction

This should not sound an extravaganza to introduce an axiomatic fact that the HKH ecosystem was one among the core constituents for South Asia to emerge as a region with the idiosyncrasy of its own. On one side, this natural construct creates shield for the region to get fortified against external invasion i.e. something like the wall China was forced to create and thereby get fortified- with human fallibility of

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its own. On the other, and there lies better side of the shield, the HKH ecosystem did bring in the monsoon to bless the region with thundershower and thereby sustain the vegetation with widest possible biodiversity. Besides, major rivers along with tributaries emerged out of several mountain glaciers across the HKH ecosystem to sustain the land fertility in both sides of the system alike. About one-fifth of the global population, along with flora and fauna of the region, thereby get fed by the HKH ecosystem in a way or other. What appears more fundamental, the HKH ecosystem has had substantial contribution to sustainable climate of the Earth but today the same falls prey to erroneous model of development thus turns the life-world vulnerable in the wake of global climate change. A default pillar of climate balance for the planet and the region alike, the HKH ecosystem attracts attention of the international community. Since the HKH ecosystem is situated within state jurisdiction, fiction of common heritage of mankind cannot get extended to the same since territorial sovereignty of concerned states claims sacrosanctity and cannot get waived anyway. More so for socio-legal reasoning that the HKH ecosystem and concerned regional states suffer the climate setback out of climate sin committed by not only by themselves but also by plenty other states situated elsewhere. At the same time, larger international public interest should delve on prevention of further deterioration to take place in time ahead and there remains the rationale to explore juridical means and methods of precautionary jurisprudence sans arbitrary compromise within sovereign jurisdiction of regional states concerned.

Country-specific status report taken into account and regional states in general along with Bhutan and Nepal as Himalayan states in particular have hardly had technical knowhow to maintain the HKH ecosystem in the way the same deserves. Global climate change and consequent aftermath on the HKH has put add-on to the bulk of hitherto predicament. Indeed, all industrialized states of the world are jointly and severally liable to this end. Therefore, this effort is meant to explore pragmatic policymaking to offer safeguards for the fragile ecosystem with optimal balance of interest between South Asian states- of Bhutan and Nepal in particular with no substantial contribution to climate sin- and others to serve the cause of global public interest towards survival.

### **Characterizing the HKH Ecosystem**

Though not often quoted term in disciplinary studies, the HKH ecosystem has had the potential to get elevated to lifeline for the subcontinent of South Asia and even beyond. Since time immemorial, there is practice in the Oriental tradition to put spiritual input- and at times deification- of natural construct. Thus, this ecosystem finds place of reverence in the pages of mythology across the region. After living the material life, protagonists in *the Mahabharata* preferred these mountain ranges for the purpose of *Mahaprasthan* (final departure). Also, material contribution of this ecosystem appears of no less value for the region. While his brother fell down out of nearly fatal injury, as suggested by medical practitioners, *Lord Rama* sent his close confidante to bring in life-saving drugs from this ecosystem. Thus, the adjacent regional life world seems to stand otiose in the absence of this ecosystem. Indeed, these mountain ranges resist external invasion, the same did not stand guard on the way of Buddhism- a South Asian faith- to get spread over with its propagation

across the Far East Asia. Thus, while *Atish Dipankar* crossing the bar with the message of *Lord Buddha*, the Tibetan plateau welcomed him with the warmth of its hospitality and got obliged by his spiritual treasure trove. The HKH bar thereby operates like filter to prevent warmongers and to promote those, who opt to spread peace. The administrative headquarters of Tibetan Government in Exile and the office of His Highness as spiritual leadership for the Tibetan diasporas across the world established its seat in the soil of South Asia as default place in the land of *Lord Buddha*, a millennium after the spread of Buddhism from the South Asian soil, to reverse side of the HKH bar.

Even a quick mapping of the HKH region underscores potential of this research focus in theme-specific context vis-à-vis aridity, biodiversity, climate change, desertification, ecosystem, flood management, and the like. There are eight countries as stakeholders of this region, e.g. Afghanistan, Bangladesh, Bhutan, China, India, Myanmar, Nepal and Pakistan<sup>1</sup> with plenty of mountain ranges, peaks, and ten large river systems, e.g. Amu Darya, Indus, Ganges, Brahmaputra (*Yarlungtsanpo*), Irrawaddy (*Ayeyarwady*), Salween (Nu), Mekong (*Lancang*), Yangtse (*Jinsha*), Yellow River (*Huanghe*) and Tarim (*Dayan*).<sup>2</sup> All these river systems are fed by respective giant mountain glaciers. Therefore, no major jeopardy in the HKH ecosystem is likely to leave these rivers and, consequently, their riparian countries and their peoples unaffected by its aftermath, and to offer a catastrophic end for these ancient civilizations as derivative of global climate change since these civilizations got developed in the banks of large river systems worldwide. Besides, there are arrays of apprehension to loom larger in horizon of the HKH region. One among them is changing character of the life-sustaining monsoon to offer harvest and thereby feed the land and its population since time immemorial. Even within India, nowadays, climate change appears in the offing with *Jaisalmer*- one among driest spots within India- receiving heavy thundershower year-after-year to get washed away while *Cherrapunjee*- one among wettest spots- receiving ever decreasing rainfall to get dry and thereby suffer from scarcity of drinking water. Scarcity of water in river systems often than not generates disputes between and among riparian states on share of water and, if not settled through peaceful recourse, the same may and does get aggravated to conflict to gross detriment of their subjects. Indeed, a regional lifeline by default, without safeguards from the wrath of global climate change, the HKH disaster appears to be the beginning of the catastrophic end for regional population.

After minute mapping of the HKH ecosystem, holistic assessment of regional biosphere vis-à-vis widespread variety in the flora- herb, moss, orchid, plantation, shrub, timber, etc. taken together-leaves no space for cynicism. The same constitutes a so-called reserve of 'green gold' on heaven on the Earth in literal sense of the term and global climate change syndrome ought to leave its wrath on the regional treasure trove while the same appears as livelihood resource for rural and tribal folk. Besides, widespread variety in the fauna arrayed in diverse altitude of the region resembles *in-situ* museum of the planet including those in protection net

<sup>1</sup> International Centre for Integrated Mountain Development (ICIMOD) available at <http://www.icimod.org/?q=1137>, accessed on 25 February 2017.

<sup>2</sup> Ibid.

under the endangered species regime.<sup>3</sup> Thus, from deep ecology perspective, the HKH ecosystem attracts immediate attention to serve global public interest as well.

### Common Concern as Universal Voice

An emerging discourse of international environmental jurisprudence- a naïve version of common concern of humankind- constitutes a cluster of issues and challenges to rock the international community for diverse reasoning. One among them, if subject matter situated within the state jurisdiction and thereby falls into its sovereign domain, is precisely the case of the HKH ecosystem being situated within sovereign jurisdiction of any of these eight regional states.

Despite emergence of common concern in the UN literature way back since 1980s<sup>4</sup>, and subsequently adopted by the treaty regime *vis-à-vis* climate change (read UNFCCC) way back since 1990s<sup>5</sup>, the same took time to get theorized with underlying principles of its own and the process is in progress till date. However, few fundamental postulations are clear to offer the jurisprudence accordingly. At bottom, what gets clarified is a set of reasonable checks to balance the competing, if not conflicting, interests of states through common but differentiated responsibilities and respective capabilities (CBDR) while there is clarion call for the cause of global public interest<sup>6</sup>. The call, therefore, ought to go in operation very sparingly if not the same may get dwindled by overuse as is the case of so called UN humanitarian intervention in recent decades. The HKH ecosystem, however, appears a case where the clarion call just cannot appear out of context in the given state of affairs in affairs of these states.

A quest may hereby get raised about the litmus test for a particular concern to emerge as common concern. Answer lies in connectivity of the same with global public good. Thus, despite being well within the state jurisdiction, something may attract attention of the global public since the same has had clear and unambiguous nexus with global public interest. A common concern ought to have common interest of the global public attached therewith and the same ought not to appear circuitous or remote in its nexus with the global public interest. Host state- where

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<sup>3</sup> Appendices to Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973 available at <https://cites.org/sites/default/files/notif/E-Notif-2016-068-A.pdf>, accessed on 26 February 2017.

<sup>4</sup> United Nations General Assembly (UNGA) Resolution No A/Res/43/53, adopted on 6<sup>th</sup> December 1988, para.1 available at <http://www.un.org/documents/ga/res/43/a43r053.htm>, accessed on 26 February 2017.

<sup>5</sup> UN Framework Convention on Climate Change, A/RES/48/189, adopted on 20 January 1994, preamble.

<sup>6</sup> Admittedly, the common concern approach imposes significant restrictions on the sovereign rights of states. However, it is evident that treaty regimes for the protection of the global commons will not entail any success unless almost all states and regions of the world participate and accept their common but differentiated obligations. Following the common concern declaration by the United Nations General Assembly, aimed at the protection of an essential condition which sustains life on earth, particular interest based on sovereignty should be of only secondary importance. See for details, Biermann Frank, 'Common Concern of Humankind: The Emergence of a New Concept of International Environmental Law', 34 Bd. No. 4, *Archiv des Völkerrechts*, p. 481 available at <https://www.jstor.org/stable/pdf/40798942.pdf>, accessed on 26 February 2017.

lies the seat of common concern- is driven by conviction that it ought to act as ambassador of the international community to address the common concern of mankind; and characteristics of international agency ought to prevail over its national sovereignty. This is, but, one side of the coin while another side requires international cooperation to get extended in favour of host state to play *pro-bono* international agent, sometimes against its own national self-interest as well. There lies subtle balance of interest to minimize the drudgery, if not the vagary, of self-incrimination- followed by sacrifice- of national sovereignty for global public interest. The CBDR jurisprudence is meant to serve the universal cause while striking harmonious balance with individual national interest.

In case of the HKH ecosystem, however, a problem lies in manifold national interests. Among these eight stakeholders, all are not at all similarly situated. China and India, for instance, are ahead of other six states in their development index and about to cross the threshold of higher development while six others are left behind with their legacy of lower development syndrome. Even within these six states, there are further divides. With their respective development index, Pakistan, Myanmar and Bangladesh together constitute a cluster to rush ahead. With their land-locked status, Afghanistan, Bhutan and Nepal are left outs among the left outs, lagging behind with least development to their credit. In such circumstance, onus on common concern of mankind cannot get cast upon all of them alike since the same offends the essence of CBDR jurisprudence meant for balance between universal and national interests and also, in the given case, balance between and among rival national interests as well. Apart from the polar status in their development index, for instance, Bhutan and China cannot get equated anyway in terms of their respective capabilities to safeguard the HKH ecosystem irrespective of their consensus on the same as a common concern. The former state driven by Gross National Happiness (GNH) and the latter by Gross Domestic Product (GDP) cannot get together to share similar responsibility since their respective carbon footprints appear dissimilar to one another.<sup>7</sup> Likewise, Afghanistan and India cannot get equated since they share little similarity *vis-à-vis* development index, governmental practice, population, productivity, emission, access to coastline, and the like.<sup>8</sup> Such a common concern that is spread over eight states, therefore, requires equity to get optimized among host states as well besides the same between host states and outsiders.

Before we part this part of this effort, another critical pointer ought to get underscored. Over the anxiety toward common concern, care and caution appears imperative. Vested national interest of dominant superpower- either regional or global- ought not to drive agenda of its own. In other words, common concern ought to voice universal concern rather than that of the dominant in disguise. Whether or how far the common concern may create corollary advantage as coincidence is a point apart and irrelevant to this end. Whose concern is it thereby poses a critical pointer to characterize any sundry concern before the same elevated to common concern in technical sense of the term. The HKH ecosystem- being a

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<sup>7</sup> 'Database on Bhutan and China in 'Carbon Footprints of Nations' available at [http://carbonfootprintofnations.com/content/carbon\\_footprint\\_worldwide\\_1990\\_2010\\_/](http://carbonfootprintofnations.com/content/carbon_footprint_worldwide_1990_2010_/), accessed on 4 March 2017.

<sup>8</sup> Ibid.

lifeline for one fifth of the global population, besides being critical (along with other regional pillars elsewhere as its counterparts worldwide) to influence the hitherto sustainable climate on the Earth either way- deserves elevation to emerge as a common concern of mankind. At the same time, however, the so called universal concern cannot get developed to gross detriment of bonafide national interest for the host state concerned sans bail out for its recovery.

### Regional Integration with Integrity

While the global climate clock ticks on to blow off the hitherto sustainable biosphere, statesmen cannot afford to take time to accept the axiomatic that the HKH ecosystem cannot get divided by territorial borderline *vis-à-vis* state jurisdiction- either from rest of the world or among regional states *inter se*- whatever the case may be. The nature is one- a piece of bliss for the flora and the fauna of the planet- and the same cannot get divided by the juridical fiction of state jurisdiction that got crafted for convenience of statesmen for management of respective sovereign domains within territorial states. No wonder that the emerging jurisprudence calls for prevention of trans-boundary harm from hazardous activities.<sup>9</sup> Though there is emphasis on the allocation of loss in the case of trans-boundary harm, arising out of hazardous activities appears in the offing.<sup>10</sup> Thus, with the advent of technical knowhow in time ahead, climate sinners may get booked and brought to justice accordingly- either for restitution of damage to *status quo ante*, if not irreversible; or for reparation to the best extent possible, if it happens otherwise. In the given pace of technocracy, climate justice investigation hardly appears prognostic to look forward far ahead. Loss of the HKH ecosystem, however, appears irreversible and thereby calls for the precautionary principle to get operative.

So far there is provision for environmental impact assessment (EIA) in cases of projects with potential to cause trans-boundary harm elsewhere, the same appears in practice. There were cases where the International Court of Justice (ICJ) relied upon the practice and thereby delivered its judgments accordingly.<sup>11-12</sup>. But these are crude cases of harm out of visible projects in proximity of state affected by state of origin. While there is difference on alleged trans-boundary harm between neighbours, difference upon remote trans-boundary harm in sophisticated cases of climate change ought to get even bitter since the same appears more problematic to prove beyond doubt. An Advisory Opinion, if any, of the ICJ would have facilitated

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<sup>9</sup> International Law Commission, 'Draft Article on Prevention of Transboundary Harm from Hazardous Activities', 2001 available at [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_7\\_2001.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_7_2001.pdf), accessed on 4 March 2017.

<sup>10</sup> International Law Commission, 'Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities', 2006, available at [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_10\\_2006.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_10_2006.pdf), accessed on 4 March 2017.

<sup>11</sup> *Case Concerning Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, ICJ, 20 April 2010, para 204 available at <http://www.icj-cij.org/docket/files/135/15877.pdf>, accessed on 5 March 2017.

<sup>12</sup> *Cases concerning Certain Activities Carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, ICJ, 16 December 2015, para 217 available at <http://www.icj-cij.org/docket/files/152/18848.pdf>, accessed on 5 March 2017.

to clear the confusion.<sup>13</sup> In its absence, even if there is treaty to require EIA to precede projects with potential to harm, at its best, adverse EIA may get neutralized by errant state with piecemeal adjustment in project to reduce- but not to prevent-trans-boundary harm.<sup>14</sup> Besides, no fewer problems lie in dicey questions vis-à-vis zeroing in state of origin, allocation of loss for harm, mode of remedy, etc. in the given development of technocracy. After all, climate justice apart carrying capacity of the planet but appears worsening superfast.

Before the HKH states get justice from the world outside, they are required to discipline themselves through pro-climate governmental mindset and thereby serve both their national and regional interests to the best extent possible. Climate discipline around the HKH ecosystem ought to minimize the present extravaganza of damage and, at the same time, maximize the locus of regional states to claim similar restraint from that elsewhere. For instance, India initiated the process a decade back<sup>15</sup> and continued to carry forward the same with sector specific emphasis to get extended on the Himalayan ecosystem,<sup>16</sup> along with attempt to address important issues concerning: first, Himalayan glaciers and the associated hydrological consequences; second, biodiversity conservation and protection; third, wildlife conservation and protection; fourth, traditional knowledge societies and their livelihood; fifth, planning for sustaining of the Himalayan ecosystem, and the

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<sup>13</sup> UNGA might pass a resolution requesting an advisory opinion about states' obligations to prevent damage from climate change under international law. If it did, the ICJ would accept jurisdiction over the question, and it would look to customary international law, treaties, general principles of law, past cases, and scholarly writings to determine states' duties.

The ICJ opinion should find a customary international law duty to prevent transboundary harm, and should apply it to GHG emissions. If the ICJ announces this customary norm, and states do not follow it, they would do so knowing that they are violating the customary law. The Court may risk some legitimacy if its Advisory Opinion is openly not followed. However, I believe it risks more of its legitimacy if it says states can knowingly destroy other states without violating international law. At least, an opinion that states do have duties to prevent transboundary harm in the climate change context might create political and grassroots pressures to mitigate GHG emissions. Glickenhau, Jesse Cameron, 'Potential ICJ Advisory Opinion: Duties to Prevent Transboundary Harm from GHG Emissions', vol. 22, *New York University Environmental Law Journal*, 2015, pp. 153-154 available at: [http://www.nyu.edu/wp-content/uploads/2015/02/Glickenhau\\_READY-FOR-WEBSITE.pdf](http://www.nyu.edu/wp-content/uploads/2015/02/Glickenhau_READY-FOR-WEBSITE.pdf), accessed on 5 March 2017.

<sup>14</sup> At the end of the process, the EIA (Environmental Impact Assessment) agreements still leave the decision on whether to cause transboundary harm to the discretion of the state of origin. And, like domestic EIA, transboundary EIA seems unlikely to end all transboundary harm or even stop many harmful projects. The agreements will increase the number of factors to be considered in the EIA process, but the process will remain political rather than legal, with the likely result that projects will go forward with modifications that reduce, but do not prevent, their transboundary effect. Knox H. John, 'The Myth and Reality of Transboundary Environmental Impact Assessment', vol. 96, no. 2, *The American Journal of International Law*, April 2002), p. 319 available at: <https://www.jstor.org/stable/pdf/2693925.pdf>, accessed on 5 March 2017.

<sup>15</sup> National Action Plan on Climate Change, 2008, India available at <http://www.cseindia.org/userfiles/National%20Action%20Plan%20on%20Climate%20Change.pdf>, accessed on 11 March 2017.

<sup>16</sup> National Mission for Sustaining the Himalayan Ecosystem under the National Action Plan on Climate Change, 2010, India. Mission 5 got initiated under the aegis of NAPCC, 2008, available at: [http://dst.gov.in/sites/default/files/NMSHE\\_June\\_2010.pdf](http://dst.gov.in/sites/default/files/NMSHE_June_2010.pdf), accessed on 11 March 2017.



like.<sup>17</sup> Due to legal compulsion, all these initiatives get limited to their own soil and more so since India is yet to share friendly relations with all regional stakeholders. As a default unit of the nature, the HKH ecosystem deserves holistic treatment but in spite of its potential, fragmented efforts, e.g. National Action Plan on Climate Change (NAPCC), Mission 5, i.e. National Mission for Sustaining the Himalayan Ecosystem (NMSHY) under the Plan, six Broad Thematic Groups (BTGs), under the Mission<sup>18</sup>, etc., resembles lip service and thereby falls severely short of bringing in the regime to fruition through the slowdown of pace for climate change. No wonder that approval of final draft of NMSHY on 28 February 2014 followed the fateful flash flood to leave State of Uttarakhand- one of its Himalayan provinces- and the habitation washed away on June 16 2013.<sup>19</sup> Whether and how far approval of NMSHY got played out as part of a larger project to produce its progress report in the floor of UNFCCC on December 2014 raises a moot point to this end.<sup>20</sup> Limitations apart, India has initiated area-specific action plan on climate change unlike its counterparts in this vulnerable region, who appear either unable, or unwilling, or both, on this count with two Himalayan states- Bhutan and Nepal- as little exceptional to this end. A need of the hour is a regional integration with integrity; something like a daydream till date. With strong political will, Himalayan states suffer from weak technical knowhow. India, on the contrary, suffers with reverse syndrome, strong technical knowhow with weak political will and thereby similarly situated with them. Likewise, the HKH ecosystem appears to have lesser priority for China out of subtle geopolitical reasoning of its own. Rest of the regional states, ridden with critical internal affairs, are poor in their ability and willingness toward the regional climate governance.

A silver line lies in integration of these three states with the integrity not to poke nose in internal affairs of one another. Also, another challenge lies in taking all other states to the net of regional climate governance and getting an increasingly inclusive regime to safeguard joint and several interests as per common but differentiated responsibilities and respective capabilities. Taken all together, the author moots a proposition for regional climate regime to get issues of their

<sup>17</sup> Ibid, p.2

<sup>18</sup> Broad Thematic Group 1: Sustainable management of land and water resources  
 Broad Thematic Group 2: Environmental assessment and management  
 Broad Thematic Group 3: Conservation and sustainable use of biodiversity  
 Broad Thematic Group 4: Sustainable infrastructure and energy security  
 Broad Thematic Group 5: Supplementary livelihood options  
 Broad Thematic Group 6: Awareness and capacity building  
 National Mission on Himalayan Studies (NMHS) available at <http://nmhs.org.in/>, accessed on 12 March 2017.

<sup>19</sup> See Government of India, 'Press Release of the Ministry of Science and Technology', 28 February 2014 available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=104353>, accessed on 12 March 2017.

<sup>20</sup> Implementation status; key achievements till date:

- Established 6 new centres relevant to climate change in existing institutions in Himalayan states.
- Created an observational network to monitor the health of the Himalayan ecosystem
- Several capacity building and training programmes underway

See 'India's Progress in Combating Climate Change: Briefing Paper', December 2014, p.9 available at: [http://envfor.nic.in/sites/default/files/pressreleases/Indian\\_Country\\_Paper\\_Low\\_Res.pdf](http://envfor.nic.in/sites/default/files/pressreleases/Indian_Country_Paper_Low_Res.pdf), accessed on 12 March 2017.

common concerns shared, worked out and fortified by themselves *inter-se* toward better socio-regional solidarity. Modelling such regional climate regime may get left to nonpartisan technical hands- to play the Caesar's wife- rather than partisan politicians and thereby ascertain a level playing field for fair play toward 'our common future', to quote from the Brundtland Report, 1987.

The universal common concern appears too generalist in its approach; but it is not without reason that the UNFCCC assumed its nomenclature as framework regime. The regional reality may not necessarily get worked out by its generalist principles and here lies rationale for regional counterparts of the UNFCCC across the world to address local (read area-specific) issues to supplement the built-in essence of universality in common concern jurisprudence. The HKH ecosystem, for instance, deserves the diagnosis of its disease- followed by treatment- by those with traditional knowledge in the local ecosystem. Barefoot practitioners, with their experience, may and do leave veteran counterparts spell bound by *sui generis* performance to resolve the regional common concern better. As these practitioners are getting scattered around nooks and corners, the workable integration among regional states is imperative to identify and appoint them to serve the purpose of regional climate regime. Those with formal expertise are required to attain synergy of traditional knowledge with its contemporary counterpart. While sustainable climate is threatened to put the world-life to peril, after the cardinal legal maxim<sup>21</sup>, knowledge apartheid ought to get set aside for larger cause of global public interest.

Last but not the least, contrary to the top-down model of the UNFCCC, bottom-up model is likely to work better for regional climate governance since the same appears intended to reach grassroots of the HKH ecosystem as is the case here. Thus, the regional regime may get left to local executive with institutional expertise as watchdog. The Hindu Kush, compared to the Himalaya, appears lesser explored since the same falls beyond India. The same *prima facie* appears a boon since the regional ecosystem is yet to get exposed to the so-called development syndrome. At bottom, however, vulnerability is no less since global climate change syndrome may and does damage even far away from only in the state of origin and there lies out a threat of such misguided missile in disguise.

In the recent Paris Agreement, a newer principle emerged for states parties to declare their respective 'nationally determined contributions' to global Secretariat of the UN climate forum- United Nations Framework Convention on Climate Change (UNFCCC)- as voluntary support toward mitigation.<sup>22</sup> Similar genre may get followed to safeguard the proposed regional regime to put hard-earned lessons to regional fray and keep pace with time that is increasingly getting decreased in the wake of climate change syndrome. It is an activated time bomb in disguise to get blown off if not defused with care and caution meanwhile. For the problem-solving

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<sup>21</sup> *Salus populi suprema lex* i.e. the welfare of the people is the paramount law. See for details, Emanuel Lazar, *Latin for Lawyers: The Language of the Law*, Emanuel Publishing Corporation, New York, 1999, p. 363 available at <http://www.politicalavenue.com/10862/The%20Ultimate%20Latin%20Language%20Learning%20Pack/26%20Latin%20for%20Lawyers.pdf> accessed on 13 March 2017.

<sup>22</sup> Paris Agreement 2015, adopted in the UNFCCC report of the Conference of Parties on its Twenty-first Session, arts 3,4,6,7 and 13, available at [http://unfccc.int/files/home/application/pdf/paris\\_agreement.pdf](http://unfccc.int/files/home/application/pdf/paris_agreement.pdf), accessed on 14 March 2017.

approach for climate getting left to technocracy, the regional population deserves integrated public policy with integrity for the region to transcend their national divides and thereby serve the regional climate cause together. Irrespective of otherwise problematic differences *inter se*, climate appears great unifier for regional stakeholders. After all, to grapple with differences, they need to survive within sustainable climate. Climate change appears the ultimate leveller for all therefore stakeholders and their different alike should work to reduce the regional population to naught. No gallantry, no grenade, no gunshot, the regional orchard is likely to turn grave.

## Conclusion

Besides universal common concern in technical sense of the term, the HKH ecosystem calls for newer jurisprudence for regional climate regime to initiate parallel safeguards of the same in time ahead and the same cannot afford to replicate the UNFCCC regime with its entire system lacuna. A need of an hour lies in recognizing common concern by regional commoners through their statesmen. After all, all these natural and thereby cultural traits of the HKH common region belong to the commoners and, therefore, concern from the below ought to prevail over concern from the above to bring democratic global governance in to fruition. In course of characterizing one as common concern, there is need to decipher the voice and the interest behind- whether public or private- the same may get construed as common concern of mankind. Nowadays there is widespread concern within the international civil society movement over the pseudo concern that appears on its rise to put the otherwise bonafide cause of these global commons to jeopardy. The underlying jurisprudence of common concern is meant to serve broad-based public interest while private element often than serves vested interest under the disguise of common concern.

Sovereignty constitutes a conundrum of the common concern since the subject matter is situated well within state jurisdiction while international jurisprudence is extended to the same. In defence of the discourse, arguments may reasonably get advanced that the concern corresponds to cooperation rather than high handedness of superpowers- global or regional- as the case may be. Two Himalayan states, creating the centre stage for the HKH ecosystem, lead to no *locus* to regional climate sinners with arbitrary dictates to comply with their respective whim and fancy. Instead, the former thereby deserves due support and cooperation from the latter to comply with dictates of environmental reasoning to emerge out of independent regional experts and to be duly endorsed by independent global experts. In the absence of expertise in South Asia, the matter may get outsourced to the UN forum concerned vis-à-vis climate change, i.e. Intergovernmental Panel on Climate Change (IPCC) to report the proposed secretariat meant for the proposed regional ecosystem governance. Thus, two otherwise innocent Himalayan states thereby attain their sovereignty immune from responsibility of others vis-à-vis apocalyptic end ahead for themselves and other regional stakeholders alike. Common concern, if crafted with care and caution, is meant to carry forward the cause of shared sovereignty to get fortified from natural hostility of unnatural reasoning; and the global climate change and consequent jeopardy of the regional population appears a

classic case to showcase common concern for whatever belongs to the global public.

Last but not the least, the proposed regime needs to follow regional version of common but differentiated responsibilities and respective capabilities for states concerned to get negotiated and worked out in larger regional interest. Environment knows no territorial border drawn by states and jeopardy in the regional environment ought to spare none under the Sun but it affects the regional states first and worst. Also, delay to deal with regional vulnerability invites the doomsday quite near and the same appears too late for them to lament for and to curse themselves. Self-help often offers best help during emergency in the international community life as well thought negotiation with rest of the world- more so with major climate sinners worldwide- appears imperative on several counts: to mitigate climate sin in time ahead and to prove regional cause of action against climate sin and thereby get compensated by those for contributory negligence; whether unwittingly or otherwise is a point apart.