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Climate Change Laws in India – Need for Change in Legal Climate?

Law

KEYWORDS :

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ABSTRACT

"The Only Thing That Is Constant Is Change " This quote applies aptly in context of the Climate Change, and if that change has now taken place, we cannot merely stop by finding the causes of that change. It is evident that human activities on the earth for centuries have contributed to this geographical phenomenon, and the effects of it are devastating. Hence it is in wake of the safety and survival of earth that the laws and legal systems have awaken to this life-threatening change and have started discussions and deliberations on how to mitigate or adapt to the climate change.

India's efforts in dealing with climate change are commendable; however, the efforts are not sufficient. The paper gives an account of the Domestic legislations and International norms that India is following to tackle with climate change. Indian Legislature has been active in enacting and adopting plethora of legislations and policies like- National Action Plan on Climate Change (NAPCC) in 2008; The Electricity Act 2003; Energy Conservation Building Code; National Solar Mission; Ethanol Production Incentives; National Tariff Policy etc.

The paper critically evaluates these legislations and policies to conclude if India needs a comprehensive code dealing with Climate Change.

Introduction

"The Only Thing That Is Constant Is Change[3]" This quote applies aptly in context of the Climate Change, and if that change has now taken place, we cannot merely stop by finding the causes of that change. It is evident that human activities on the earth for centuries have contributed to this geographical phenomenon, and the effects of it are devastating. Hence it is in wake of the safety and survival of earth that the laws and legal systems have awaken to this life-threatening change and have started discussions and deliberations on how to mitigate or adapt to the climate change.

India's efforts in dealing with climate change are commendable; however, the efforts are not sufficient. The paper gives an account of the Domestic legislations and International norms that India is following to tackle with climate change. The paper is broadly divided in two parts, first part builds a foundation by explaining the evolution of climate change law in India, and the jurisprudential rationale behind it, with the help of existing national and international norms pertaining to Climate change followed by India. The second part is a critical conclusion as to what is it that India needs to change in the existing norms to tackle this grievous problem of climate change.

Domestic Legislations in India pertaining to Climate Change –

The study of the domestic legislation pertaining to climate change in India could be broadly classified in two categories first category is the traditional approach of India till mid 2000s which is signified through variety of enactments and the principles laid down by the judiciary. India's concern for earth and environment can be traced back to ancient and vedic period.[4] Carrying the legacy of the ancestors the Indian Parliament and Judiciary have enriched the environmental law with the ancient wisdom and experience. To begin with the Constitution of India has casted a duty upon the state as well as the citizens to protect the environment.[5] Though India has been proactive in creating this constitutional provision, still in creation of environmental legislation it has been quite slow and reactive as it did not enact a complete code to tackle the nuances of environmental problem at a time. It has created piecemeal legislations as and how the environmental problems cropped up. For example various legislations like Water Act, Air Act, Forest Conservation Act and the inclusion of provisions relating to the environment[6] in the Constitution were drafted after The United Nations conference on human environment held at Stockholm in 1972. Thereafter the Bhopal Gas Tragedy of 1984 was a big lesson for India, which pointed out the gray areas in the environment protection norms in India. The major positive outcome of this tragedy was the enactment of Environment (Protection) Act, 1988 and other environment related legislations. This was further followed by enactment of The Biological Diversity Act, 2002 as an impact of The Rio Conference in 1992. Apart from these enactments the jurisprudence of environments protection has been glorified by the Indian judiciary by evolving various foundational principles.[7]

This traditional approach could be well expressed in words of Patodia Rastogi[8] –

"*Thus until mid 2000s India's domestic approach to climate change largely mirrored its multilateral stance. Domestic policies per se did not exist and climate change was addressed only in a piecemeal manner, mainly through energy or forestry policies in which climate was never the central focus. The main thrust of these policies was social and economic development. Climate change was mentioned, if at all, only as a co-benefit of another policy.*"

These energy or forestry policies are –

Energy Conservation Act (2001)- The concept of energy conservation evolved in India in early 70s as a reaction to "Gulf oil shock", followed by an awareness programme initiated by Petroleum Conservation Research Association (PCRA). Later Energy Management Centre (EMC), National Productivity Council (NPC), National Council for Cement & Building Materials (NCB), The Energy Research Institute (TERI) and Confederation of Indian Industry (CII) had also joined the campaign for promoting energy efficiency but did not result in efficiency. Therefore, a need was felt for a legal framework and the Energy Conservation Act - 2001 was enacted for encouraging energy efficiency and discouraging wasteful use of energy. It established Bureau of Energy Efficiency (BEE) aimed at reducing energy intensity. It conferred powers upon the government of India to set energy consumption standards for equipments and appliances, specify energy conservation building codes for commercial buildings and set energy consumption norms and standards for consumers. It also established a compliance mechanism through energy audits to be conducted by accredited auditors.

The Electricity Act (2003) – This Act was enacted with the objectives of encouraging autonomous regulation with the separation of policy regulation and operational aspects ; Rationalizing tariff and lowering the cross-subsidization levels ; Creating competition in the industry; Ensuring supply of electricity to all areas ; and Protecting consumer interests.[9]

National Electricity Policy (2005) - In compliance with section 3 of the Electricity Act 2003 , has been evolved in consultation with and taking into account views of the State Governments, Central Electricity Authority (CEA), Central Electricity Regulatory Commission (CERC) and other stakeholders. This Policy was laid down aiming at laying guidelines for accelerated de-

velopment of the power sector, providing supply of electricity to all areas and protecting interests of consumers and other stakeholders keeping in view availability of energy resources, technology available to exploit these resources, economics of generation using different resources, and energy security issues.[10]

Integrated Energy Policy (2006)[11] – The need for Integrated Energy Policy was felt due to the responsibility for different energy sources being distributed over a number of different Ministries, e.g. Petroleum, Coal, Power, Water Resources (in the case of hydroelectricity), Atomic Energy and New & Renewable Energy. Several other Ministries are also involved in determining policies which affect energy demand (Transport, Urban Development, Industry, Steel, etc.) and the Finance Ministry determines tax rates for different fuels. Hence the Planning Commission came up with an integrated energy policy. To have common and consistent policies for different energy sources and to be consistent with each other and the overall framework for energy to be consistent with achieving the objective of inclusive growth the policy was a must. In many areas policies relevant for energy are in the hands of State government e.g. urban transport, city planning, building codes, etc. and these policies also need to be made consistent with the overall energy policy. It was laid down in 2006 for the first time and subsequently it was revamped in 2013. In context of Climate change concern it recommends to include power structure reforms, ramping up mass transit, increasing nuclear power and renewable and highlighting energy efficiency in all sectors.

The second category would consist of the India's role in global climate change scenario as one of the global powers carrying more responsibility to be proactive in climate change concerns. Though this role was assumed by India due to international pressure, it has taken it up as a challenge. This approach could be explained with the help of policy and legislations laid down after 2000s as mentioned below.

National Action Plan on Climate Change (NAPCC) – NAPCC was a turning point in the climate change regime of India which was released under the leadership of Prime Minister Manmohan Singh in 2008. This consisted of total eight missions to be achieved till 2017, which identified various steps to promote the developmental activities without affecting the climate. It lays down various steps for climate change adaptation, mitigation and research and development.[12] The eight missions were namely National Solar Mission, National Mission on Sustainable Habitat, National Mission for Sustaining the Himalayan Ecosystem, National Water Mission, the National Mission on Enhanced Energy Efficiency, National Mission for a Green India, National Mission for Sustainable Agriculture and National Mission on Strategic Knowledge for Climate Change. These missions planned and promoted either on existing legislation or policies, like the National Mission on Sustainable Habitat or the Green India Mission, or conceptualized and created afresh like Solar Mission, which identified a completely new and unique method to be adopted by the government to access a previously untapped energy source.

National Mission on Enhanced Energy Efficiency – The National Mission on Enhanced Energy Efficiency was created under NAPCC, it was made mandatory for it to implement four new initiatives; to Perform, Achieve and Trade Scheme (PAT); Market Transformation for Energy Efficiency; Energy Efficiency Financing Platform and Framework for Energy Efficient Economic Development. Out of these latter three are still in early stages of implementation, whereas the Perform and Achieve and Trade Scheme was recently launched by the Government of India. The PAT Scheme has created an innovative market mechanism for trading energy efficiency certificates in energy- intensive sectors which ranked India as a pioneering nation amongst the developing nations to implement a market based scheme. The scheme is based in the legal framework of The Energy Conservation Act 2001. The said Act was amended by the Parliament in 2010 to accommodate the establishment of the scheme. Finally it was launched in April 2012 after many delays caused due to reasons like reluctance from industrial sector and legal hurdles etc.

This scheme is expanded to be implemented through three phases the first phase covers 478 facilities from eight energy intensive sectors, namely aluminium, cement, chlor- alkali, fertilizers, iron and steel, pulp and paper, textiles and thermal power plants. The government expects the scheme to deliver reductions of about 100 million tons of CO_2 annually by the end of its first phase. The PAT scheme is a baseline credit scheme that allows facilities to trade certificates to meet their compliance requirements and simultaneously reduce costs. Each facility has a specific energy consumption target (a reduction in energy consumption from the facility's baseline) with less energy efficient facilities having a greater reduction target compared to more efficient ones. A facility's baseline is based on its historic specific energy consumption over period 2007-2010. Facilities that make greater reductions than their target will be receive "Energy Savings Certificate" (Es Certs) which can be traded with other facilities that have difficulty meeting their target or bank them for use in a subsequent phase. Those facilities that are unable to meet their targets must buy Es Certs or pay a penalty. One Energy Saving Certificate is equivalent to 1 ton of oil equivalent, an energy consumption measure rather than a carbon reduction measure.[13]

The first phase extended over 3 years period (2012-2015) and covered facilities are expected to meet their target by the end of the first phase. Monitoring and verification will be conducted by auditors at the end of the first phase and Energy Saving Certificates will be issued ex-post.[14]

The details of the third stage are yet to be figured out, however the early signs have hinted at the possibility of broadening the scheme to include other energy intensive sectors like petroleum refineries, petrochemicals, chemicals etc. and further tightening the targets.[15]

Solar Mission – The Jawaharlal Nehru National Solar Mission was launched on the 11th January, 2010 by the Prime Minister. The Mission has set the ambitious target of deploying 20,000 MW of grid connected solar power by 2022 is aimed at reducing the cost of solar power generation in the country through (i) long term policy; (ii) large scale deployment goals; (iii) aggressive R&D; and (iv) domestic production of critical raw materials, components and products, as a result to achieve grid tariff parity by 2022. Mission will create an enabling policy framework to achieve this objective and make India a global leader in solar energy.[16]

The Solar Mission also aims at permitting the decentralized distribution of energy, thereby empowering people at the grassroot level". India being a tropical country, sunshine is available for longer hours per day and with great intensity. The daily average solar energy incident over India varies from 4 to 7 kWh/m2 with about 1500–2000 sunshine hours per year, depending upon location resulting in an aggregate incident radiation of about 5000 trillion Kwh/yr. This substantially exceeds the current total energy consumption. For example[17], even assuming 10% conversion efficiency for PV modules, it will still be thousand times greater than the likely electricity demand in India by the year 2015. Solar energy, therefore, has great potential as future energy source. Based on this vision a National Solar Mission is being launched under the brand name "Solar India". The Mission is spanned in three phases first phase consists of remaining period of the 11th Plan and first year of the 12th Plan (up to 2012-13); second

phase constitutes of the remaining 4 years of the 12th Plan (2013-17) ; and the third phase is 13th Plan (2017-22) The immediate aim of the Mission is to focus on setting up an enabling environment for solar technology penetration in the country both at a centralized and decentralized level. Also the Mission anticipates achieving grid parity by 2022 and parity with coal-based thermal power by 2030[18]

International Instruments and Norms in context of climate change adopted by India – The domestic legislations pertaining to climate change in India are at times backed by the International norms or instruments. Following are foundational ones.

United Nations Framework Convention on Climate Change (UNFCCC) - UNFCCC was opened for signature at Rio Summit in 1992 where 155 governments signed the Convention and since then over 160 governments have ratified or otherwise committed themselves to this Convention. [19] India signed the UNFCCC on 10 June 1992 and ratified it on 1 November 1993. Under the UNFCCC, developing countries such as India do not have binding GHG mitigation commitments in recognition of their small contribution to the greenhouse problem as well as low financial and technical capacities. The Ministry of Environment and Forests is the nodal agency for climate change issues in India. It has constituted Working Groups on the UNFCCC and Kyoto Protocol. The Kyoto Protocol to the UNFCCC was adopted in 1997 and requires developed countries and economies in transition listed in Annex B of the Protocol, to reduce their GHG emissions by an average of 5.2% below 1990 levels. Article 12 of the Kyoto Protocol provides for the Clean Development Mechanism (CDM). India acceded to the Kyoto Protocol on 26 August 2002. Various initiatives and policies drafted by India are in light of complying with the requirements of the UNFCCC for e.g.[20] - Preparation of the country's initial National Communication to the UNFCCC by the Government of India. All Parties are required to communicate a national inventory of GHGs, and a general description of steps taken for the implementation of the Convention. The GHG inventory for the country is being prepared for the base year 1994, and will cover five sectors: energy, industrial processes, agriculture, forestry, and waste. Support of the Asian Least-cost Greenhouse Gas Abatement Strategy (ALGAS) study, by the Government of India. The study developed a national inventory of GHG sources and sinks, and identified potential mitigation options. An extensive methane measurement campaign was coordinated by the National Physical Laboratory in 1991. Measurements were undertaken in major paddy growing regions of the country under different rice environs for the whole cropping period.The Technology Information, Forecasting and Assessment Council was established under the Department of Science and Technology, which facilitates the transfer of environmentally sound technology. Extensive efforts are taken for conservation of forests and biodiversity. Coastal zone management plans by all coastal states and Union Territories as per the Coastal Zone Regulation Notification of 1991by all coastal states and Union Territories. Generation of much-needed information about the vulnerability to climate change under the ongoing Indo-UK Climate Change Impacts Programme supported by the Ministry of Environment and Forests, Government of India. A number of governmental and independent agencies are involved in climate change research in India. The India Meteorological Department (IMD) observes climatic parameters at surface and upper air observatories throughout the country. The existing cyclone detection radars are replaced with state-of-art Doppler Weather Radars in a phased manner. Using satellite data received from INSAT to provide cloud imageries in the visible and infrared channels, which in turn, are used to derive cloud motion vectors, sea surface temperatures, and outgoing longwave radiation. Key role is played by Indian scientists in national and international climate research efforts such as the IIOE (International Indian Ocean Expedition), MONEX (Monsoon Experiment), INDOEX (Indian Ocean Experiment), World Climate Research Programme, Global Observing System, and International Geosphere-Biosphere Programme.

Conclusion and Suggestions – The grasping of Climate Change Law in India in light of the broad legal framework as stated above is insufficient to explain the ambit of legal provisions. This is evident to show how scattered and piecemeal is the Climate Change Law regime in India. No doubt the extent and nature of the Climate Change is inherently quite extensive and omnipresent. However, the nature of the phenomenon is not the reason why the legislation pertaining to Climate Change in India is scattered. India until now has been reactive or responsive to the climate change concerns. But it is high time that all these concerns have to be dealt with not merely by comprehensive norms and plans. It has to be dealt with under the aegis of a legislative enactment to make it more effective and result oriented. An unsuccessful attempt was made by a private member to propose an enactment for laying down Climate Change Legislation in India in 2012.[21] This attempt though unsuccessful, is a torch bearer towards the efficient solution for the climate change problems in India. Though the bill was not comprehensive enough, still it carves out a need to establish proper institutional framework for implementation and monitoring of the various existing missions and to take up new challenges posed by climate change.[22]

In words of Christina Figures – "*Humans everywhere put their trust in certainty, consistency, a sense of justice and fairness. Once they trust, they gain greater confidence to act in every walk of like, broader faster action at all levels of government, business and society is required to respond to the long term challenge of climate change... As an instrument for policy implementation, law provides a normative and institutional framework for managing and responding to climate change. It translates policy precepts into binding norms. A legal regime may provide for the establishment of legally binding targets to limit and reduce green house gas emissions and sanction non-compliance. It can thereby channel human behavior along pathways consistent with a low emission economy..*[23]"

Apart from scientific research and development in the area of climate change, change in the political and economic set-up (which are not the subject of the present paper) Following are few suggestions in light of above conclusion for change in the legal regime of Climate Change in India.

Firstly, India needs to adopt a complete code in itself which would exhaustively deal with all aspects related to climate change. Merely laying down policies, schemes, plans and frameworks will not be sufficient to grapple the grave problem affecting human life. The policies and plans can be adopted through a common legislation. In terms of Bentham's[24] analysis of "Concept of Law", the expression of law is one of the most important elements of the law. Merely conceptualizing a good law is incomplete without its expression which has to be complete in design and expression. The existing policies have an effect of being voluntary and non-binding, hence there is a requirement of legislative sanction which could create a binding effect.

Secondly, a legal mechanism[25] is needed to oversee the implementation of the enactment and to compensate the victims of the harms caused due to non-compliance of the climate change norms.[26] Especially the corporations and businesses should be held responsible while causing harm.

Thirdly, the corporations should be imposed with more responsibility towards the society at large as the majority of carbon emissions leading to climate change are due to the industrial activities. Hence the Corporate Social Responsibility Norms of the companies should be made mandatory in context of environmental harm.

Fourthly, India's norms of sustainable development have to be implemented as a core foundation of each and every industrial or developmental activity. Sustainable development should not be merely interpreted as one of the principles of justice, but it should be a yardstick for determining the rights and duties of the government, corporations and stakeholders in light of climate change concerns. [27]

Lastly, the government should implement more programs sensitizing and creating resilience about climate change laws amongst the citizens.

Thus, climate change is one of the gravest problems that not only Indians but the whole human kind is facing today. There are various other aspects which would help in mitigating and adapting to climate change ranging from scientific, technological, medical, social and political. However, law is one of the centrifugal instruments which would combine all the sciences and studies to produce the expected outcome.

REFERENCE

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