



NEW CLIMATE CHANGE LAW

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COP28 was the twenty-eight meeting of the Paris Agreement, with the main goal to keep the global temperature limit of 1.5°C within reach. The key highlight this year was the decision on the world's first 'global stocktake'. The Global Stocktake is designed to raise ambition by helping parties to see what they have achieved so far in implementing their NDCs (Nationally Determined Contributions), NDCs which reports the actions that each individual nation is taking to reduce these greenhouse emissions.

India is a “dualist” state, which means that international agreements (such as the Paris Agreement and the UNFCCC) must be translated into domestic law to become enforceable within the country. As such, there is no time-bound requirement for India to enact domestic legislation to give effect to the provisions of international agreements on climate change either. This implies until India enacts a framework for climate change legislation, India’s NDC is not a legally binding obligation owed by the government to the citizens.

Article 253 of the Indian Constitution vests in the Parliament the power to make laws to implement international treaties. Further, Article 73 extends the executive power of the Union of India to matters on which the Parliament has the power to make laws.

Climate Change is a very wide subject and hence requires further understanding and discussion based on this paper. An attempt has been made to connect the dots below to create meaning which is calling for change.

Having said that, India does have a National Action Plan on climate change, but based on our analysis these are not law, and hence they are not enforceable by courts. Courts use their general authority under environmental laws to direct compliance with policies.

The research created under Phuro Innovations before proposing the "citizenry movement" to the founder of Universal Jurists Association was essentially an issue of regulating climate pollutants, for example 'Climate-exacerbated disaster risk management' and 'protecting natural resources' in respect of The Hindu Kush & Pamir Himalayas, Mangroves and Western Ghats as critical fragile national resources.

Strengthening national security which supports the idea that 'securitization' of issues like climate change is an important approach, e.g. Indus Water treaty is one such approach due to which we have survived for so long even though we have had political hostility in the region.

'Ease of doing business' must also be a current political priority because the energy transition can't happen without favourable policy, legislation which we call treaties for certain business sectors or technologies, particularly renewable energy & green hydrogen.

The outcome of discussion, post exchanging ideas and trading minds is that finally we need for a framework of climate legislation. Some might say that it is “better to learn from mistakes in implementing existing laws and amend them” rather than developing a new framework.

The contrary view is that “existing laws do not give protection against climate change; it is a phenomenon that needs some kind of coordinated action which is difficult to achieve purely through amendment.

The citizen’s interest is not centered in climate action right now. This needs to be changed through legislation. When researched the following further one will arrive at that “a separate climate law is a way to use the courts more meaningfully”.

What is the current framework?

Missions without legislation are:

- National Solar Mission
- National Mission for Enhanced Energy Efficiency
- National Mission for a Green India
- National Mission for Sustaining the Himalayan Ecosystem to help protect India’s water supply.
- ERP's
- Green Hydrogen Policy Mission

We have chosen to release this white paper, start this campaign at Indian Law Institute because this was founded with the objective of promoting and conducting legal research. To cultivate the science of law, to promote advanced studies and research in law to meet the social, economic, and other needs of the Indian people, to promote systematization of law, etc. As an autonomous body The Indian Law Institute has the requisite independence and academic freedom to carry out its objectives.

ILI should start an independent movement on New Climate Change Law and offering students short and effective courses to ensure India’s needs are met in the coming future.

DATA & FACTS

India is now the third-largest emitter of greenhouse gases in the world after China and the United States. India's annual emissions of carbon oxide are projected to further increase almost 2.5 times between 2008 to 2035.

As per the United Nations Development Programme, India generates about 3.4 million tonnes of plastic waste annually. To address the issue of plastic waste, the Ministry of Environment, Forests and Climate Change (MoEFCC) enacted the Plastic Waste Management (Amendment) Rules 2022. This was an amendment.

Further, the Rules bring certain designated entities within the ambit of mandatory Extended Producer Responsibility (EPR). If EPR objectives are not met, environmental compensation is to be levied on the erring entity.

Thirdly, new registration rules mandate that all regulated individuals must register on the Central Pollution Control Board's (CPCB) online platform. The government has an objective of having better plastic waste management in 100 cities by 2024.

The balance requires further development, regulatory enforcement, and fostering environmental responsibility in every citizen.

FOREST CONSERVATION (AMENDMENT) BILL, 2023

The Forest Conservation (Amendment) Bill, 2023 (the "Bill") was recently introduced before parliament to amend the Forest (Conservation) Act, 1980 (the "Act"). The Act had been enacted to prevent large-scale deforestation and required central government approval for diversion of "forest land" for non-forest uses.

It must be borne in mind that simultaneous to the Amendment Bill, the central government has also introduced its Carbon Credit Trading Scheme, 2023. The grooming of private forests therefore may not lead to creation of permanent carbon pools as such "forests" are likely to be used for carbon credits. It lacks a central statute or a specific regulatory framework.

SEBI REGULATIONS

In India, the top 1,000 public listed companies by market capitalization are required to make their ESG disclosures under the Business Responsibility and Sustainability Reporting (BRSR) framework, prescribed under the SEBI Regulations, 2015. The framework has multiple essential and leadership (voluntary) reporting parameters. SEBI has recently July 2023 introduced the BRSR Core, which is an assurance framework and covers ESG disclosures for value chain. ESG disclosures for the value chain shall be applicable to the top 250 listed entities, on a comply-or-explain basis from FY 2024–25, for which the limited assurance shall be applicable on a comply-or-explain basis from FY 2025–26.

Due to the existing qualitative and non-standard ESG disclosure regime, SEBI has also decided to implement an “assurance mechanism” in a phased manner. The listed entities can consider appointing an ERP and has brought ERPs under its regulatory oversight as well.

GREEN HYDROGEN POLICY MISSION

India has set ambitious targets of energy independence by 2047 and net-zero emissions by 2070 and the government has announced various initiatives for the transition to clean energy.

In 2022, the Ministry of Power announced the Green Hydrogen Policy 2022, for ease of production of green hydrogen which provides additional incentives such as the waiver of inter-state electricity transmission charges, priority electrical connectivity, land allocation in renewable energy parks, and the establishment of dedicated manufacturing zones for green hydrogen. It allows renewable energy consumed in green hydrogen production to count towards the renewable purchase obligations of obligated entities.

This flagship programme aims to build capacity for producing at least 5-10 million metric tonnes of green Hydrogen by 2030, Key highlights of the mission include formulating schemes for financial incentives by the Ministry of New and Renewable Energy, ensuring renewable power delivery by the Ministry of Power, facilitating green hydrogen consumption in refineries and city gas distribution by the Ministry of Petroleum and Natural Gas, and developing an online portal for hydrogen-related legislations and standards.

The National Green Hydrogen Mission outlines the vision for fossil-based industries to transition to net-zero emissions in hard to abate sectors like steel, transport, shipping, and through the development of green hydrogen hubs.

This is possibly the best way, we have summarised the information via this white paper.

RECOMMENDATIONS

The general recommendation is to have a national committee on Climate Change. The National Committee shall be prepared in such a form and at such time as may be prescribed an annual report giving a true and full account of its activities during the previous year and forward it to the Central Government on the following framework.

- a) the Environment (Protection) Act, 1986
- b) the Air (Prevention and Control of Pollution) Act, 1981; (c) the Motor Vehicles Act, 1988
- c) the Indian Forests Act, 1927
- d) the Forest (Conservation) Act, 1980