

Climate Change Laws of India

Dr Sandhya Varshney

Associate Prof, Dyal Singh College (University of Delhi)

Abstract: The earth's climate is dynamic and changes have picked up momentum due to manmade and natural factors. This poses a wide range of threats and challenges to the law makers

Keywords: climate energy environment policy laws pollution

I. INTRODUCTION

Climate change is essentially known as the variation in global and regional climates over an inter-temporal phase. The earth's climate is dynamic and the changes have picked momentum, due to both manmade and natural factors. This poses a wide range of threats and challenges for the law makers. Development has come at a price-deterioration in environment, air and water pollution, depletion of forest caves, depletion of ground water to name a few.

India has been under lots of pressure to develop a robust climate and environment policy that to address its climate change concerns arising out of development. As the country experiences economic growth and development and benefits trickle down to the poorer sections, there are rising environment concerns. Growth will add to global emissions which are already rising as a result of improved energy services and lifestyle changes. Also climate change can adversely impact our agriculture sector and intensity, frequency of rainfall adversely. Many other changes would lead to a number of effects that could include depletion of forest cover, erosion of coastlines, damaging impact on health & livelihoods.

Therefore, with this in the foreground, a national guiding national strategy that addresses India's development profile with emphasis on adaptation of environment policies is important. All this has led to the framework of "National Action Plan on Climate Change" in 2008 [NAPCC]. This policy was hard to shift our development paradigm towards 'sustainable growth' which also addresses climate change. Keeping this in mind eight missions were established. They are :

National Solar Mission
National Mission for Enhanced Energy Efficiency
National Mission for Sustainable Habitat
National Water Mission
National Mission for Sustainable Himalayan Ecosystem
National Mission for green India
National Mission for Sustainable Agriculture
National Mission for Strategic knowledge for climate change

India is faced with the challenge of sustaining its rapid economic growth path while dealing with the problem of greenhouse gas emissions; therefore, it needs a national strategy to adopt to climate change and also to escalate the sustainability of its development path in the long run. In designing such, India has a broad spectrum of choices as we are on threshold of development. The broad idea is to create a society that is self-sufficient and can also safe guard the interests of present and future generations.

India's climate change and environment laws should reflect the multilateral negotiations of the UN framework Convention on Climate Change (UNFCCC) and must also reflect its role as a responsible and enlightened member of the world.

II. BACKGROUND OF CLIMATE CHANGE LAWS AT AN INTERNATIONAL LEVEL

India's Intended Nationally Determined Contributions (INDC) was based on the following background.

- 1997- Kyoto Protocol- Annex I parties commit to take binding reduction targets.
- 2007- Bali COP- Introduction of NAMA to engage developing countries in voluntary mitigation effort.



- 2009-2010- Copenhagen and Cancun COP- Comprehensive international system for collective action and major developing countries (including India) announced voluntary mitigation pledges.
- 2011- Durban COP- ADP launched for evolving a new agreement for post-2020 period.
- 2013- Warsaw COP- All countries required to prepare INDC's.
- 2014-Lima COP- Further clarity on the form of INDC as per country priorities
- 2015- Paris Agreement- It is a legally international treaty on climate change. It was adopted by 196 parties at COP21. Its goal is to limit global warming through reduction green house emissions.
- 2021- Glasgow COP- A committee was set to enhance reduction in carbon emissions.

The process of adopting and developing INDC was via Niti Ayog, industry associations and think tanks. The idea was to work with the framework of National and State Action Plans for Climate Change. The main emphasis was on:

- Sustainable Development
- Climate Justice
- Life style changes

It was a comprehensive and balanced approach including adaptation, mitigation and covered requirement for Finance and Technology transfer.

III. INDIA'S ENVIRONMENT AND CLIMATE CHANGE LAWS

The regulatory and institutional decision making framework for environmental protection is embodied in nine major acts of the Indian Parliament as well as in articles of our constitution.

- Article 21 of our constitution implies the right of its citizens for a healthy environment.
- Article 48A empowers the nation and states to protect and improve the environment.
- Article 51A underlines the duty of every citizen towards the natural environment as a fundamental right.

Several Acts have been formulated and the framework that was laid out was the 'NAPCC' in 2008 and it has eight subsidiary missions.

Besides these, there are several other plans and incentives by governments for energy conservations and to mitigate impact of climate change. The Indian Constitution is one of the few in the world that contains specific provisions in the environment. Indian environment law has seen considerable development in the last three decades.

The regulatory and institutional decision making framework for environment protection is embodied in nine major acts of the Indian Parliament. They are as follows:

1. Water Act (Prevention and Control of Pollution), 1974; Water Cess Act, 1974
2. Air Act (Prevention and Control of Pollution), 1977
3. Forest Conservation Act, 1980 (amended in 1988)
4. Environment Act, 1986
5. Motor Vehicle Act of 1938 (amended in 1988)
6. Public Liability Insurance Act, 1991
7. Notification on the Coastal Regulation Zone, 1991
8. Environmental Impact Assessment of Development Projects (1994)
9. National Environment Appellate Authority Act (1997)

In 2015, the "Climate Change Bill" was introduced. The target of 'Net Carbon Account' for the year 2050 in accordance with international obligations was prescribed.

The Climate change policy can be described as:

Geopolitical:

- i) Many countries have come together for climate change issues
- ii) Regional organisations pursuing clean environment goals for shared prosperity
- iii) India's role in the early warning system is important

Economic:

- i) Technology transfers
- ii) Increased trade in renewable energy
- iii) Climate change financing, carbon trading
- iv) De carbonisation of global supply change

Issues

- Economic obstacles: Tackling global climate change imposes costs on individual states in terms of investment in expensive mitigation and adaptation strategies as well as accepting lower levels of economic growth. Therefore, states are either unwilling to agree to binding targets or to set the target well below the required to deal effectively with the problem.
- Ideological obstacles: Tensions between developed and developing countries in the form of North-South divide. Southern perspective is that, north is responsible (IR) whereas, north perspective is they are not responsible.
- There has been serious disagreement among nations about both the seriousness and nature of environmental problems and about how they can be tackled.
- Conflict between the principles of collective goods and national interests. Any effective international action to tackle environmental concerns has been challenged by the conflict between the principles of collective goods and national interests. Policy Analysis: The Need for an Integrated Agenda
- The best way to diminish the threat posed by these climate-fragility risks is to mitigate climate change.
- Climate change adaptation: programs help countries anticipate the adverse effects of climate change and take action to prevent, minimise, and respond to their potential impacts.
- Development and humanitarian aid programs help states and populations build their economic, governance, and social capacities and improve their resilience to shocks.
- Peace-building and conflict prevention programs address the causes and effects of fragility and conflict by reducing tensions and creating an environment for sustainable peace.
- To break down the sectoral barriers that hamper efforts to address climate-fragility risks, we need to address key policy and institutional gaps in three areas.

IV. CRITICAL ANALYSIS OF THE ENVIRONMENT LAWS OF INDIA

The problem is the actual effectiveness of the laws – a disconnect between “defacto” and “dejure”. Environment Law is a combination of three things. The first is a statute that is passed by the government. The second is the list of regulations imposed by the Environment Protection Agency in relation to that particular statute and the third is the legal interpretation of these regulations by our courts.

In India, the problems arise due to lack of political will and enforcement which erodes their effectiveness. Many instances of the lack of enforcement arise as the government is reluctant to implement air and water pollution laws as it feels it might stop or slow development projects. Another related reason is the implementation cost is high so the government feels it might put domestic firms at a ‘cost disadvantage’. So as a result enforcement is patchy and even inconsistent.

Small businesses in India in many cases have old and outdated processes and curtailing emissions is costlier in comparison with more sophisticated and latest technologies employed by international firms so stringent enforcement can lead to losses. In India effective cost benefit analysis of environment impacts is not done properly.

Even the legal remedies are not devoid of problems. There is no independent regulatory body for environment governance. It is looked after by the Ministry of Environment, Forest and Climate Change and has excessive interference by government. In order to effectively enforce the environment laws stringently we need to cover the lacuna of lack of interdependence between central and state boards and lack of authority of these boards. The courts should be encouraged to disregard technical flaws and miss description. Environment statutes have been more observed in the breach than in practice. They have a high level of specialisation and have different jurisdictions so difficult to impose due to lack of adequacy of skill, infrastructure, coordination and effective implementation.



Our courts have played a significant and laudable role in giving directions to administration authorities. But there is need to have a more comprehensive and integrated law on environment protection and sustainable development. We need to have to separate environmental courts.

V. CONCLUSION

An independent regulatory body needed. We need both political will and public awareness. Cooperation of public, NGO's, judiciary and government is needed. We need to have a strong civil liability mechanism based on 'Polluter pay principle'.

REFERENCES

- [1]. National Action Plan on Climate Change (Government of India)
- [2]. INDC- Towards Climate Justice (Government of India)
- [3]. A Sawhney (2018) Compliance dilemmas in Indian Environmental Policy East Asia Forum
- [4]. S Anthwal and Bahuguna (January 2017) A study on Environment Protection Act and its implementation across the country, Research Gate
- [5]. P Kumar and A Naik (2019) "India's domestic policy is fragmented and lacks clarity" EPW VOL 54 ISSUE NO.7
- [6]. K Singh and Dr. V Agarwal (2018) "Effectiveness of Environment Laws in India: An analytical Study" IJARD VOL 3 ISSUE 2