

# THE RIGHT TIME FOR INDIA TO HAVE ITS OWN CLIMATE LAW

Relevant for: Environment | Topic: Environmental Conservation, Sustainable Development, and EIA

As the world watches the United Nations Climate Change Conference (COP26, from October 31 to November 12, 2021), the most important climate summit in years at Glasgow, Scotland, India has said it wants to be a part of the climate solution.

Prime Minister Narendra Modi announced, on November 1 at Glasgow, a 'Panchamrit solution' which aims at reducing fossil fuel dependence and carbon intensity (reduce one billion tonnes of total projected carbon emissions by 2030), and ramping up its renewable energy share to 50% by 2030. Glasgow is important as it will call for practical implementation of the 2015 Paris Accord, setting the rules for the Accord. And as the world recovers from the biological and environmental stresses of the COVID-19 pandemic and natural disasters, climate change has also become personal.

Union Minister of Environment, Forest and Climate Change Bhupender Yadav has reasserted the call for the promised \$100 billion a year as support (from the developed world to the developing world) but as we consider new energy pathways, we must also consider the question of climate hazard, nature-based solutions and national accountability.

This is the right time for India to mull setting up a climate law while staying true to its goals of climate justice, carbon space and environmental protection. There are a few reasons for this.

Which law covers climate? First, our existing laws are not adequate to deal with climate change. We have for example the Environment (Protection) Act (EPA), 1986, the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974. Yet, climate is not exactly water or air. Which law would cover the impacts of a cyclone, for instance or work to reduce future climate impacts? And neither are we ready to tackle environmental/climate violations. The Environment (Protection) Act is grossly inadequate to deal with violations on climate. Clause 24 of the Act, "Effect of Other Laws", states that if an offence is committed under the EPA or any other law, the person will be punished under the other law (for example, Code of Criminal Procedure). This makes the EPA subordinate to every other law.

Second, there is a need to integrate climate action — adaptation and mitigation — and monitor progress. Comprehensive climate action is not just technological (such as changing energy sources or carbon intensity), but also nature-based (such as emphasising restoration of ecosystems, reducing natural hazard and increasing carbon sinks.)

Finally, India's situation is unique. Climate action cannot come by furthering sharpening divides or exacerbating poverty, and this includes our stated renewable energy goals. The 500 Gigawatt by 2030 goal for renewable, solar or wind power for example (of installed power capacity from non-fossil sources), can put critically endangered grassland and desert birds such as the Great Indian Bustard at risk, as they die on collision with wires in the desert.

A climate law could consider two aspects. One, creating an institution that monitors action plans for climate change. A 'Commission on Climate Change' could be set up, with the power and the authority to issue directions, and oversee implementation of plans and programmes on climate.

The Commission could have quasi-judicial powers with powers of a civil court to ensure that its

directions are followed in letter and spirit. It should be assisted by a technical committee which can advise the commission in the discharge of its functions as well as guide various private and public agencies in meeting their climate-related obligations. As an example, the commission could look at agencies or institutions that have a disproportionate impact on climate or environment, and suggest lower energy pathways that are adhered to.

What, for example, is the carbon footprint of a single activity from start to finish? We have the Bureau of Energy Efficiency, but we also need overall carbon efficiency that looks beyond electronics. How could intelligent interventions be made for reduction of footprints, along with common sense, and practical public health interventions which are unaccounted for so far? In a recent case in the National Green Tribunal it was revealed that the National Thermal Power Corporation did not even cover coal wagons with tarpaulin on railways, decades after environmental clearances were granted in 1999, in Chhattisgarh. In 2020, the Supreme Court passed an order directing for the wagons to be covered within a month's time. There will be eventual emissions by coal use. But there is also the issue of respirable coal dust that is spewed into the air through irresponsible transportation.

As of now, many environmental mediations remain glaringly haphazard. The ban on plastic bags in Delhi is a failure because plastic bag substitutes were never really pushed at scale by the understaffed environment department. A plastic bag ban to succeed in one State requires a similar commitment from neighbouring States. A nation-wide intervention here, led by a Climate Commission, considering substitutes at scale for plastic-based products (which are derived from petroleum) and looking at both innovation and implementation, would be useful.

Second, we need a system of liability and accountability at short-, medium- and long-term levels as we face hazards. This also means having a legally enforceable National Climate Change Plan that goes beyond just policy guidelines. Are climate vagaries acts of god, or do certain actions exacerbate them? In an order of the National Green Tribunal in 2016, the court examined the damage caused when floods occurred in 2013 in Pauri, Uttarakhand. When Srinagar dam (Uttarakhand) opened its sluice gates, muck created 8-foot tall deposits, destroying property and fields.

While muck is not hazardous, the handling of the dam — especially in a mountainous area in the face of climate events — created serious damage. The court held the damage was not an 'Act of God' and invoked the Principle of No Fault liability. The Alaknanda Hydro Power Company was asked by the Tribunal to pay more than 9 crore in damages. But all this was after the disaster. A Climate Commission could ideally prevent such gross negligence in fragile areas and fix accountability if it arises.

We have an urgent moral imperative to tackle climate change and reduce its worst impacts. But we also should Indianise the process by bringing in a just and effective law — with guts, a spine, a heart, and, most importantly, teeth.

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