

NEED FOR SEPARATE CLIMATE CHANGE LAW IN INDIA: A COMPARATIVE ANALYSIS OF INDIAN CLIMATE CHANGE GOVERNANCE WITH FRANCE

Konark Pratap Gupta^{1*}, Mohit Soni²

¹B.A.LL.B.(Hons.) Specialization in Energy Laws, LL.M. Specialization in Constitutional and Criminal Law, National Law University Delhi, UGC NET.

²Advocate, Punjab and Haryana High Court, B.A.LL.B.(Hons.), Amity University, Noida.

*Corresponding Author: Konark Pratap Gupta

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Abstract

India, with a population of 1.2 billion people, is one of the world's fastest growing economies. India has committed itself to the rapid growth that is essential for economic and social development and poverty alleviation. While India's energy consumption and carbon emissions are only a small fraction of the world's total energy consumption and carbon emissions (less than 5 %), both are likely to grow rapidly due to structural changes in the Indian economy. India has revealed that electricity, cement and waste emissions have more than doubled since 1994, making India the fifth largest emitter in the world after 1994.¹

INTRODUCTION

Carbon mitigation in India is complicated because India has large coal reserves but limited gas and oil reserves, and most of India's carbon emissions result from the use of coal in the electricity and industrial sectors.² A growing population and rapid industrialization and urbanization, coupled with climate change, will create additional pressure on India's overall ecological and socio-economic system. India's per capita emissions, however, are about one ton per year, which contrasts sharply with the global average of four tons per year. India is more dependent on coal as it has large reserves of coals than gas and oil.

India's national circumstances, such as its large and growing population and dependence on natural resources, have led to increased vulnerability to climate change impacts, such as changes in forest and water resources, and rising sea levels.³ Climate change will lead to declines in agricultural productivity, exacerbating hunger problems.⁴ Rising sea levels could cause flooding of low-lying coastal areas, putting 2.5 million people at risk in the western Goa and Maharashtra states.⁵ Due to its large population, mitigation and adaptation to climate change in India will be very difficult. Climate change will exacerbate existing issues like poverty and social tensions.

India, like other developing countries, aims to protect its environment and public health while continuing to foster economic growth and development. India has enacted a significant number of environmental laws, regulations and policies to pursue these goals, but India is facing many domestic barriers in implementing greener climate change policies.⁶ India's problems require multi-layered solutions, including local, state, federal and international cooperation to reduce poverty, population, hunger, corruption and improve infrastructure, resulting in the greatest need for separate legislation on climate change mitigation. As a result of which there is utmost need for the creation of separate Legislation for Climate Change Mitigation because as a result of above-mentioned reason and also by considering the socio-economic and political setup of India it is not possible to implement international set standards and measures effectively without making National Legislation of its own. Like Arb act is based on UNCITRAL model. It is an international model and that is why India has enacted a specific legislation to keep it abreast the need of time.

The potential impacts of climate change are often diverse and there is widespread recognition of the immediate need to address these adverse effects.” Similarly, different regions have differential climate change vulnerabilities, so different context and region-specific approaches need to be applied. While climate change experts have traditionally focused on mitigation measures, adaptation measures have also late been recognized as an effective and equitable means of addressing the impacts of climate change. Most mitigation measures are technologically and capital-intensively high. Thus, while advanced economies choose to mitigate climate change through heavy investment, developing economies choose to adapt. It is, however, a complex task to assign mitigation responsibilities and involves international negotiations. So, we cannot deny the fact that Situation of India and other countries are different and Internationally taken Standards and measures are not that much effective so there is need of regional measure based on the study and analysis of the all parts of India and this can only be done through proper domestic legislation not only relying on International Conventions and measures. Indian economy is different from world economy and therefore international models, which are suitable for similar world economies can't be applied as it is in India. But India can take reference from these models and adapt them as per its conditions and suitability.

Therefore, the aim of this paper is to provide the in-depth analysis of the existing laws in India relating to the issue of Climate Change along with critical analysis of Climate Change framework in France and how the French Legal framework can provide a guiding light for Indian Climate Change framework.

Research Questions:

1. Whether there exist lacunas in the existing legal framework of India dealing with Climate Change issues.
2. Whether there is a need for separate climate change legislation in India?
3. Whether the Climate change framework of France is comprehensive and fair enough to tackle their climate change issues?
4. Whether existing Climate Change Framework of France can be applied to Indian Legal system?

Hypothesis:

1. There exist lacunas in the existing legal framework of India dealing with Climate Change issues.
2. There is a need for separate climate change legislation in India.
3. The Climate change framework of France is comprehensive and fair enough to tackle their climate change issues.
4. Existing Climate Change Framework of France can be applied to Indian Legal system.

Research Methodology:

We have adopted doctrinal research methodology wherein we have relied on primary and secondary sources. The primary and secondary source comprises of statutes, legal rules, enactments, judicial interpretation of case laws, Parliamentary reports, commentaries, Law Commission Report and books. With the help of methodology, “the approach undertaken is descriptive in nature wherein we have provided a description to the concept of climate change. The approach of the study is also analytical in nature where analysis of the existing legal concepts, doctrines, propositions, judicial decisions, and international trends of climate change has been analyzed.”

After analysis, we have provided a reasoned opinion, argument on this topic and at last based our conclusion after critically evaluating all these aspects. The data collection method and source of information itself reveals that our approach is descriptive, analytical and it reflects comparative research. The paper would also comparatively study the laws relating to climate change as followed in France for examining the rationale behind its relevance. The research paper will further propose the needful changes and recommendation to improve the current framework of climate change law in the country.

The study collects the data from these sources and critically analyze, compare and contrast the propositions, case analysis and legislations to base our assumptions or come to a conclusion.

Literature Review

1) **Climate change matters; Author(s): Cheryl Cox Macpherson**

Source: Journal of Medical Ethic, pp. 288-290

Published by: BMJ Stable URL: <https://www.jstor.org/stable/43282982>

This paper deals with general idea that why climate change is a contemporary issue. The author has highlighted the problem of climate change worldwide and has specifically insisted to ponder over this problem as, in the view of the author, this is a problem which has tendency to affect the future generations to come. According to the author, one manifestation of the climate change is the increasingly severe extreme weather that causes injury, illness and death through heat stress, air pollution, infectious disease and other means. The author has highlighted that the individuals and nations with scarce resources or minimal standards of education are less able than others to access the benefits of emission producing activities, and less able to prepare for and recover from the burdens. Overall, the author has been successful in establishing that the climate change is seriously a global issue.

2) **An Evaluation of Pollution Control Legislation in India. Authors- C.M. Abraham and Armin Rosencranz.**

Source- COLUMBIA JOURNAL OF ENVIRONMENTAL LAW [Vol. 11:101] pp 102-118

This paper has attempted to assess the effectiveness of India's pollution control system by examining the defects in the relevant laws and by indicating that even those portions of the laws that are not defective on their face lose their intended impact because they are not implemented. According to the authors, the main reason for this laxity is that the political will is lacking. Also, there are only a few of the directions that could be pursued by aggressive "public interest" lawyers and environmental groups to supplement the currently ineffective pollution control regime in India. This paper has critically analysed the reason and causes for the lacunas in the existing legal framework of India dealing with Climate change.

3) **“National Action Plan on Climate Change (NAPCC).”**

Press Information Bureau (Research Unit), Ministry of Information and Broadcasting, Government of India.

This work has critically compiled some frequently asked questions regarding NAPCC. This work has proved to be very useful in understanding more about NACPP. The critical analysis of this work has also pointed out some of the major defects in NAPCC which are discussed in the main text of the study infra.

4) Water Pollution And The Laws In India: A Critical Analysis

Author- Gautam Gupta

Source- Manupatra Articles- <https://articles.manupatra.com/article-details/Water-Pollution-And-The-Laws-In-India-A-Critical-Analysis>

In this article, the author has critically examined the laws in India which deals with control on Water Pollution. The author has described that the water laws in India are numerous yet they are constantly failing to contain water pollution and they are nowhere addressing the larger issue i.e., climate change. The work of the author has been very useful to properly understand the laws in India which deals with the water pollution.

5) Climate Change - Indian Law And Judiciary.”

Authors- Vijay K. Sondhi, Faisal Sherwani and Achal Gupta.

Source- <https://www.mondaq.com/india/clean-air-pollution/945304/climate-change--indian-law-and-judiciary>

This work is very pertinent to note down the Judicial trend in India, as far as environmental Jurisprudence is concerned. The article has critically highlighted and analyzed the Judicial decisions which have a say in regulating the environmental pollution and allied issues. This work has proved to be very helpful as it has clearly depicted the Judicial Activism in the field of Environmental jurisprudence. The authors have concluded that, somehow, the Indian Judiciary is influenced by the decisions of the courts and trends in other countries. For the purpose of the present study, the judgements of the common law countries and civil law countries are dealt with in this article.

6) “CLIMATE CHANGE SCIENCE: The Facts. In *Communicating Climate Change: A Guide for Educators* (pp. 7–20).”

Cornell University Press.

Author- Armstrong, A. K., Krasny, M. E., & Schuldt, J. P.

<http://www.jstor.org/stable/10.7591/j.ctv941wjn.5>

In this article, the author has very accurately discussed that how climate change works and how the climate is changing. The article has provided a summary of weather and climate as well as an overview of the causes, impacts and evidences of the climate change. The article is very useful to understand the basic difference between the weather and the larger issue, i.e., climate. The short-term atmospheric changes refers to the weather whereas climate refers to the longer term variations.

The article has also discussed about the major issue of the climate change, i.e., greenhouse gases. The article has highlighted that why there is a strong need for controlling the emission of the greenhouse gases and has suggested that this can be done by the way of effective laws.

1. THE INDIAN SYSTEM

The issue of Climate change is one of the most serious challenges mankind faces today. Climate changes poses a wide range of threats and narrower range of opportunity at political, social and economic level.” The United Nations Human Right Council had also observed that “*Climate change poses immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights*”⁷.

Climate change is a global issue and countries are under the pressure to address the issue through legislative measures.

India is one of the most vulnerable countries due to climate change as about twelve percent of India is flood prone while sixteen percent drought prone.⁸ Half of India’s population is dependent upon agriculture.⁹ After China and

the United States, India is the third largest emitter of greenhouse gas in the world.¹⁰ India lags behind countries like Sri Lanka, Bhutan and Maldives in terms of coping with extreme disasters, preparedness to deal with extreme events and adaptive capacities.

The international treaties and agreements on climate change like the Paris Agreement and Kyoto Protocol are there to address the issue of climate change, but the Paris agreement is legally binding but not the same as the Kyoto Protocol. The Kyoto protocol has defined a carbon emission reduction target whereas the Paris Agreement binds all the countries to set targets for themselves. There is no enforcement mechanism, emission regulators and international court's jurisdiction is limited. Very little could be done to ensure adherence to reduction of carbon emission targets.

While the Paris Agreement has no enforcement mechanism, national enforcement mechanisms can be devised. This will require linking international commitments to national law, which can happen through litigation or legislation. India has several climate-relevant legislations, including on environmental protection, forest management, electricity, and mining. The issue of climate change has become the focal point of local, state and national attention around the world. Therefore, there is a need to identify critical areas for legislative intervention in this area. In India at national level, the targets are part of policies such as Green India Mission, National Solar Mission etc. missions under the National Action Plan on Climate Change (NAPCC). However, these policies have fundamental limitations because the government is not legally bound to meet the specific target and successive governments are even less bound. The legal binding can be achieved only through acts of parliament and state legislatures.

1.2. Climate Laws in India

In various judicial decisions, parties have raised climate change issues, however, the court and tribunal referred to climate change and international climate change agreement as more than incidental.

The Courts noted the climate impacts of government decisions and inability to regulate certain activities in various cases. In *Society for Protection of Environment & Biodiversity v. Union of India*¹¹, the court struck down the relevant portions of government notification on the ground that it is in derogation of India's commitment under principle of Rio Declaration read along Paris Agreement, 2015. In *Rohtang Pass v. State of Himachal Pradesh*,¹² the NGT ordered the State Government to take measures to remedy the glacier melt in Himalayas. The tribunal based its decision through constitutional provision under Article 48A, 51A, and 21. In the *Karnataka Industrial Area Development Board v. Sri C. Kenchappa*¹³, Court noted the adverse impact of climate change by citing reports by the Intergovernmental Panel on Climate Change (IPCC) and the World Watch Institute.

In some cases, the court was seeking proper implementation of the law or government policy. In *Gaurav Bansal v. Union of India*¹⁴, tribunal directed to draft State action plans as per the NAPCC and get it approved expeditiously by the Ministry of Environment, Forest and Climate Change (MoEF &CC). In other instances, tribunal on ground that projects will have adverse environmental impacts directed to include wind energy protect to establish their environmental credentials.¹⁵

The NGT also directed the MoEF&CC¹⁶ to develop a monitoring and compliance protocol to ensure enforcement of a notification requiring coal-based thermal power plants to use coal with ash content not exceeding 34 percent¹⁷.

Kerala Government was directed to formulate policy on the use of agricultural land for mining keeping in mind the Kyoto Protocol principles.¹⁸

The litigants raised the climate change issue in court and demanded to develop new policies to accommodate the climate change concerns. In *Indian Council for Enviro-legal Action v. MoEF&CC*¹⁹, the tribunal directed the MoEF&CC and concerned ministries/authorities to carry out data-based study of the units manufacturing HFC-23 and to provide guidelines and frame a regulatory regime concerning storage, emission and incineration of HFC-23.” In *Ridhima Pandey v. Union of India*²⁰, the petitioner asked the government to order the Central government to undertake different measures addressing not only climate change issues but also considered “environmental impact assessments, preparation of a national GHG emissions inventory, and preparation of a national carbon budget against which particular projects emissions impacts can be assessed.” The NGT dismissed the case by stating that “*climate change is already covered in the process of impact assessments under the EP Act (1986), and therefore, that “there is no reason to presume that Paris Agreement and other international protocols are not reflected in the policies of the Government of India or are not taken into consideration in granting environment clearances”.*

The courts are using climate concerns to favour or against the environmental agenda. The climate litigation is still peripheral and incidental as there is no advanced climate change framework. The court claims that climate impacts are already included within the scope of EIA clearly indicating otherwise. The courts do not regularly review executive decisions on economic policy and infrastructure. The judicial decisions are unpredictable because of various legal and non-legal reasons influencing them.

1.3. Legislations addressing the climate issue in India

The Central government will be entrusted with building capacity, technical studies, setting national targets and standards whereas State governments are entrusted with planning, coordination of resources on ground, execution and enforcement.

There has been vibrant debate concerning India’s policy and legal response to climate change. There is no integrated climate change legislation in India. The law and policy with respect to the climate change issue is scrappy with an overabundance of laws consistently touching upon varied issues associated with climate change. In 2015, a private members bill was legislated on climate change to tackle the issue of climate change effectively²¹, but this bill has not resulted in full-fledged legislation. India have a federal structure which means that international agreement need to be translated into domestic law to make it enforceable. Article 253 of Indian Constitution vests power in the parliament to make laws applicable within the country in order to implement international agreements. International treaties reflecting normative aims do not specify the modalities of implementation and enforcement within the domestic law. “There is no time bound requirement to enact domestic legislation to give effect to international agreements. This way the Central government gets away with framing of comprehensive domestic legislation and clear regulatory frameworks focused on threats of climate change.”

The domestic legislations and regulatory frameworks would clearly specify the national goals, processes, authorities and responsibility. In 2008, National Action Plan on Climate Change (NAPCC) released by MoEF&CC was a positive step taken by the Central government towards Climate Change to address the urgent and critical concerns, however, it has not been effective in its implementation due to non-alignment of its sectoral mission with other schemes to tackle climate change. NAPCC policy is ineffective in enactment of climate change responses. It is ill-suited institutionally to effectively seek a cooperation between development concerns and climate in India. There are institutional, systemic and process barriers including financial constraints, lack of technical expertise, project clearance delays, inter-ministerial coordination etc. are the major challenges in

efficient implementation of missions. There is tremendous variation between the different State Action Plans on Climate Change (SAPCCs), due to differences in ascribing priority to climate change, resource availability, developmental circumstances, and institutional heterogeneity. The SAPCCs are inadequate particularly in terms of capacity and institutional mechanisms at the stage of implementation and monitoring. Budgetary division for the implementation of climate policy by the Centre and States does not recognize that certain states may be more vulnerable to climate change than others.

India's environment policy framework is an aggregation of a variety of uncoordinated sources relating to discrete environmental topics such as water, energy, pollution, transport, waste management, agriculture, forests, mining, environmental clearance, finances etc. There are individual legislations such as the Water (Prevention and Control of Pollution) Act, 1974, Wildlife Protection Act, 1972, the Air (Prevention and Control of Pollution) Act, 1981, the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986 etc. However, many of these laws were passed several decades before when there was no awareness and recognition of the concept of climate change and was not an important concern of the current national and international climate change discourse. Therefore, there are no guidelines embodying a vision for climate change adaptation and mitigation across various environment legislation.

The existing environment laws demarcate responsibility between central and state governments as these laws depends upon numerous government departments and other specialized regulatory institutions like the Centre and State-level environmental ministries, Centre and state-level pollution control boards, and specialised Centre and State-level regulators. The domestic climate policy has become further complicated due to federal structure wherein the legislative domains of central and state governments are different. Treaty making, atomic energy, regulation of interstate waters are the domain of the central government whereas state legislature can make laws relating to inland waterways, water storage, regulation of mines, industries etc. There are many major overlaps which exist under Concurrent list in relation to subjects like forest, protection of wildlife, electricity etc. Climate change more broadly environmental concerns are covered in a wide range of legislation, however, there is no authority and clear responsibility being identified at central and state level.

The domestic policies urgently need a comprehensible vision for tackling climate change. This can be clearly reflected in the framing of legislation and policies which will address multiple sectors aligned at federal levels. The appropriate institutional frameworks can be designed to achieve climate policy objectives of mitigation and adaptation in a holistic and non-fragmented way. Climate action needs to be integrated for adaptation, mitigation and monitoring progress. There is need to carefully re-examine the existing policy framework through the lens of climate change and accordingly revise the framework.

2. THE CLIMATE CHANGE LAW IN FRANCE

Climate change is being addressed by governments around the world, both domestically and via the negotiation of international agreements. Efforts to design and execute climate change law on a national and worldwide level necessarily take place in the midst of a conflict “between law as an institution and justice as a normative” goal of society. This polarity and ambiguity, as well as “the complexity involved in negotiating the two sides of what is actually a continuum, is felt by all lawmakers, prosecutors, and attorneys trying to prevent, hold accountable, and compensate for harm caused in society, and is often referred to as the tension between the letter and the spirit of the law. Many times, the legal fraternity experiences that a transgression is not acknowledged or appropriately punished, or that the recognition, compensation or restitution of a victim fail because of inadequacies in the formulation or application of existing law²². Because defects in the letter of the law can lead to miscarriages of justice, people frequently seek support outside of the law by appealing to the ethical standards that should inform and underpin the law. The ethical nature of the general problem addressed by the law is made explicit in this perspective, as are the ethical principles at stake in that problem area, and possible solutions to the problem are proposed in the form of policy guidelines, statements, or soft legal instruments such as declarations, conventions,

or treaties. Such efforts to overcome the problems created by inadequacies in the letter of the law can however only be successful if a relatively clear, stable and widely accepted consensus exists, or can be established, about the ethical issues related to the problem area, and how these ethical issues should be resolved. However, a lack of consensus in this area is usually counterproductive, because differing perspectives on the ethical nature of a problem, the principles at stake, and the guidelines that should be followed to resolve the problem can seriously impede the administration of existing law as a societal institution. Similarly, in situations where that legislation is still being established, a lack of consensus produces issues of a different nature: the process itself, as well as its conclusions, is constantly contested from various directions.²³ The big question is whether there is a realistic worldwide consensus on the ethical dimensions of climate change, and if not, whether such consensus can be expected to arise in the near future. A simple answer to this question is that such consensus does exist in the arena of theoretical ethical deliberation, even if there are certain challenges in defining this theoretical consensus, and even if climate change itself contributes to these difficulties.²⁴

For the purpose of this study, we have undertaken the analysis of one civil law country i.e., France on the touchstone of existing legal frameworks in this country which relates to climate change. A comparative analysis will be helpful to understand that how countries (India and France) with two different legal traditions viz., common law and civil law system addresses the shared problem of climate change. At first, we have discussed about India in brief, and now we shall discuss about France.

2.1. FRANCE

The National Assembly and the Senate share legislative authority in France's bicameral parliamentary system. The most recent election for the National Assembly took place in 2017, with the next one set for 2022. Members of Parliament and local representatives elect the Senate indirectly. Members of Parliament or the Council of Ministers can propose statute legislation; the government currently proposes the majority of bills.²⁵

There is a strict separation between laws and regulations. Laws determine general principles and rules in domains explicitly set out in the constitution, such as civil rights, nationality and crime. They must be voted on by the Parliament and can be blocked by the Constitutional Court if it finds that the law goes against the Constitution. In this case, the law must be modified and voted on again, or abandoned. Regulations can establish rules outside of the law's domain or specify more precisely how to implement laws. Regulations do not need to be voted on by the Parliament.

The country has a long legislative history, when it comes to the steps taken to legislate laws addressing climate change. The first seed in this regard was sown in year 2005. We have, hereinafter, tried to highlight some major legislative steps undertaken by France in a timeline manner in order to elucidate the same more lucidly and coherently.

1) “Energy Policy Framework (POPE, No. 2005-781)”

This law was passed in the year 2005. It defines the objectives and orientations of France's energy policy (energy security, competitive energy market, fight climate change, manage demand, diversify sources of supply, develop new technology). The bill states that tackling climate change is a priority of France's energy policy.

It contains objectives to increase the share of renewable electricity in the national energy mix, to diversify energy sources and increase energy efficiency.” The targets include”:

- “Reduce energy intensity by 2% annually between 2005 and 2015, and by 2.5% between 2015 and 2030.”

- “Decrease GHG emissions by 3% per year and total emissions by 75% by 2050.”
- “Increase the share of renewable electricity in national energy production to 10% of French energy demand by 2010.”

The Law creates a High Council on Energy to manage all aspects of the energy sector (including a White Certificate scheme to encourage energy efficiency). It also includes new incentive mechanisms such as tax exemptions, energy label for building and a White Certificate Programme to encourage energy efficiency among firms in the energy sector as envisaged in the 2004 Climate Plan.

2) Grenelle I

This law was passed in the year 2007. In 2007, the government of France “established six working groups” comprising of “state and non-state actors to” find out “ways to redefine France's environment policy.” The proposals were put to public consultation, leading to a set of recommendations presented to the French parliament in early 2008. One working group specifically addressed climate change.”The Grenelle I Law lays out the fundamentals of the Grenelle procedure. The Grenelle II Law establishes a more thorough structure for implementation. The Grenelle process did not result in the adoption of all of the proposals that were negotiated.

The Grenelle I sets among others the following objectives and targets related to climate change and energy:

- “Buildings: make the building sector the Number 1 sector supporting the fight against climate change.
- Apply the 'Low consumption building' norm to all new buildings starting end 2012 (less than 50kWh/m²/year of primary energy consumption).
- Reduce energy consumption in old buildings by 38% by 2020. To launch a social housing programme for energy efficiency renovation for 800,000 households.
- Urban planning: Harmonise policy and planning documents, in particular relevant to agglomeration level.
- Transport: Reduce GHG emissions by 20% by 2020 and reduce the sector dependency on fossil fuels.
- Put in place an eco-tax for heavy vehicles starting 2011 o Increase the share of non-road and non-aviation transport from 14% in 2009 to 25% by 2022 of Increase the share of non-road and non-aviation freight by 25% by 2012.
- Energy: contribute to the goal of drastic GHG emissions reduction of Minimum 23% of energy mix by 2020 sourced from renewable energy sources.”

3) Grenelle II

This law specifies the Grenelle I objectives in order to facilitate their implementation. This came into effect in the year 2010.

Energy - supply-side policies:

- “Better linkage of renewable energy to the main energy network.
- Support and administrative facilitation for wind power.
- Incentives for solar power.
- Regulation of experimental carbon storage installations.”

Energy - demand-side policies:

- “Carbon tax (abandoned and later re-introduced by the Fiscal Law 2014).
- Publication of regional programmes for climate and energy within a year of the law entering into force.
- Improvement of energy saving certification schemes.
- Improvement of energy consumers' information on their level of consumption and means of reduction.

- Improvement of buildings efficiency (e.g. State sector - reduce energy consumption by at least 40% by 2020 and their GHG emissions by 50%).”

4) Energy Transition for Green Growth (Energy Transition Law).

This law, which was passed in 2015, establishes a framework for minimising risk. “The framework Energy Transition Law and its accompanying action plans are intended to provide France with the tools it needs to diversify its energy mix and improve its climate-change-fighting efforts.” It includes enforceable energy targets for transportation, housing, and renewable energy, and it encompasses a wide range of economic activities. “In its 215 articles, the law sets the following ambitious national targets”:

- Cut GHG emissions by 40% between 1990 and 2030 and by 75% by 2050.;
- Cut the national energy usage by at least 50% by 2050.;
- Reduce the share of fossil fuels in energy production by 30% compared to 2012.”

The measure also nearly quadruples the carbon price on fossil fuels, from 14.5 euros per tonne in 2015 to “56 euros in 2020 and 100 euros in 2030, pending ratification in the annual budget.” The bill also includes a package of measures to combat air pollution through a clean transportation initiative that encourages individuals to purchase low-emission automobiles by establishing about 7 million charging stations and designated parking spaces.” In addition, the law mandates that the state prioritise the procurement of electric and low-carbon vehicles (at least 50 percent of new procurement). Taxi and rental firms will also be required to have at least 10% low-carbon vehicles in their fleet.

The law also promotes waste reduction and resources savings, in particular a gradual decoupling between France's growth and consumption of raw materials. The laws include the following provisions:

- “Increase by 30% over 2010-2030, the ratio of the GDP to domestic material consumption.”; green vehicles
- “Decrease the domestic material consumption per capita (consumer products, food waste, electronic waste) and increase recycling rates (art 70-V, art 84, art 87, art 99 and 103)”;
- “The production, distribution, sale, provision and use of packaging or bags made wholly or partly from oxo-fragmentable plastic (biodegradable but not compostable) are prohibited”; eliminate use of plastic poly bags

5) ELAN law on housing and decree

This law was passed in the year 2018. The ELAN law on the evolution of housing, development and digital world is an extensive document that aims to build more housing, simplify standards, protect the most fragile and put energetic and digital transitions in the service of the inhabitants. The document notably aims at enhancing the energetic performance of buildings in the country. “Article 181 amends the Code of Construction and Housing so that it states that the energy, environmental and sanitary performance of buildings and parts of new buildings are part of a requirement to fight against climate change. Article 44 simplifies the urbanism code to ease the administrative framework on the construction of facilities dedicated at producing renewable energy. “On July 23, 2019, Decree number 2019-771 was published to specify the obligations of actions of reduction of the final energy consumption in buildings for tertiary use.”

6) Law no. 2019-1147 on Energy and the climate.

This law is France's framework document on climate and energy matters. The law notably enshrines into law the objective of carbon neutrality for 2050 and sets a number of quantified objectives for the energy sector. It is an extensive document amending the Energy Code, the Environment Code, the General code of local and regional authorities and other codes and laws. The law notably makes the High Council for the climate a permanent body (art. 11 and 12), enacts the closure of the last four French coal power plants (art. 12), streamlines the administrative framework of electricity supply companies with the aim of boosting renewables (art 14), takes measures to improve energy efficiency in building, discusses measures to regulate air and maritime international transport. It

amends “several pieces of legislation to increase the emphasis on adaptation to climate change and resilience, alongside mitigation efforts. Article 1 further aims to promote a research and innovation policy that favours the adaptation of business sectors to the energy transition.”

Air pollution at airport and ports.

7) “Law relating to the fight against waste and the circular economy.”

This bill was signed into law in the year 2020. This law was enacted in order to combat waste in all industries and promote a circular economy. It also incorporates certain provisions from the EU Circular Economy Package and the EU Plastic Pollution Directive 2019/904.

Article 13 of this law amends article 6 of Law No. 2004-575 of June 21, 2004 for Confidence in the Digital Economy, internet providers must inform subscribers of the amount of data consumed in the context of providing access to the network and indicates the equivalent of the corresponding greenhouse gas emissions. The article stipulates that “the greenhouse gas emission equivalents corresponding to data consumption are established according to a methodology made available by the Environment and Energy Management Agency.

8) “Law on the fight against climate change and the reinforcement of resilience in the face of its effects.”

This is the most recent law, which was passed in the year 2021. A number of conclusions from the Citizen Climate Convention” are incorporated into the Climate and Resilience law. It is a 305-article document that focuses mostly “on consumption (articles 2 to 29), work and production (30-102),” transportation (103-147), housing (148-251), food security (252-278), environmental legal protection (279-297), and climatic “and environmental monitoring (298-305).

In Article 1 of the law, the State reiterates its commitment to respect the objectives of reducing greenhouse gas emissions in accordance with EU 2018/842 regulation and the Paris Agreement.

Articles 7 to 22 on supervision and regulation of advertising restrict the exposure of products and services with an excessive impact on the climate, notably fossil fuels (2022) and high-polluting cars (2028). Car manufacturers will be required to publish the CO₂ emission class of their vehicles in advertisements from March 1, 2022. The bill modifies article 101-2 of the Code of Urbanism to establish a long-term goal of no more soil artificialization. Article 252 requires school food service managers, both public and private, to provide a vegetarian menu at least once a week. Further, the Article 280 provides for punitive measures for “ecocide” crimes when violations result in grave and long-lasting harm “to health, flora, fauna or the quality of the air, soil or water.

JUDICIAL DECISIONS

Not only the French legislature is active in addressing climate change, but the French Judiciary is also pragmatic and concerned for climate change. There is a need to highlight some of the crucial decisions and case laws that originated in France, that has an impact on the issue of climate change. Some of them are as follows-

“Notre Affaire à Tous and Others v. France”²⁶

This case was in the jurisdiction of the administrative court of Paris. The case was filed in June 2020 and was decided on October 2021. The brief summary of the case is that “On December 17, 2018, four” non-profits sent a “lettre préalable indemnitaire” (letter of formal notice) “to Prime Minister Edouard Philippe and 12 members of the French government, initiating the first stage in a legal proceeding against the French government for inadequate action on climate change.”

This type of letter is part of a legal proceeding known as “recours en carence fautive” (action for failure to act). “The plaintiffs allege that the French government’s failure to implement proper measures to effectively address climate change violated a statutory duty to act. The four plaintiff groups are Fondation pour la Nature et l’Homme (FNH), Greenpeace France, Notre Affaire à Tous and Oxfam France. In their press release, “they describe the lawsuit as challenging the state's inaction on climate change and failure to meet its own goals for reducing greenhouse gas emissions, increasing renewable energy, and limiting energy consumption.”

The plaintiffs' motion was denied by the French government on February 15, 2019. The plaintiffs filed a "summary request" with the Administrative Court of Paris on March 14, 2019, to start the litigation. The plaintiffs are requesting that the French government be enjoined from taking insufficient action on climate change. They specifically ask the court to force France to:

1. “Take proper measures to reduce greenhouse gas emissions in the atmosphere - in due proportion considering global emissions, and taking into account the particular responsibility accepted by developed countries - at a level compatible with the objective to contain the rise of the average temperature of the planet below the threshold of 1.5 °C compared to pre-industrial levels.;
2. Take, at least, all necessary measures to achieve France's targets for reducing greenhouse gas emissions, developing renewable energies and increasing energy efficiency.;
3. Take the necessary measures to adapt the national territory to the effects of climate change.;
4. Take the necessary measures to protect citizens’ lives and health from the risks of climate change.”

The administrative court of Paris issued an order on October 14, 2021, requiring the state to take immediate and tangible steps to meet its pledges to reduce carbon emissions and to rectify the damages caused by its inaction by December 31, 2022. The court found that France increased its emissions by 62 million tonnes between 2015 and 2018, though it reduced the figure to 15 million tonnes after accounting for the decline in emissions in 2020. “As a result, the court ordered France to deduct emissions created in excess of its statutory commitments and add them to the carbon reductions anticipated for 2021 and 2022”. France has pledged to cut greenhouse gas emissions by 40% by 2030 compared to 1990 levels and to achieve carbon neutrality by 2050. Any future emissions that exceed the legislative targets must also be reimbursed.” The court turned down a plea for France to pay 78 million euros per semester if misses its emissions targets, saying it is up to the Prime Minister and the government to come up with solutions.”

Commune de Grande-Synthe v. France²⁷

The principal question to determine by the court, in this case, was that “Whether the French government's failure to take further action to reduce greenhouse gas emissions violates domestic and international law?”

This case was filed in January 2019 and was decided in July 2021. The brief summary of the case is that “On January 23, 2019, the municipality of Grande-Synthe sued the French government for insufficient action on climate change. The suit was filed in the Conseil d'Etat, the highest administrative court in France.” According to an English summary of the case provided by the plaintiffs, the suit alleges that the French government's failure to further reduce greenhouse gas emissions violates domestic and international law, including the European Convention on Human Rights, the Paris Agreement, the French Environmental Code, and the French Environmental Charter. Plaintiffs stress that particular vulnerability of Grande-Synthe to the impacts of climate change as a low-lying coastal municipality exposed to sea level rise and flooding. According to the plaintiffs' case summary, Grande-Synthe asks the Conseil d'Etat to direct the government to take legislative and regulatory measures to prioritize action on climate change and to prohibit actions that would increase greenhouse gas emissions.” This case is one of two filed in France during early 2019 against the French government for climate inaction and that follows logic set by the 2018 Urgenda decision in the Netherlands. The other case, Notre Affaire à Tous and Others v. France, was filed by non-profit organisations.

On November 19, 2020, the Conseil d'Etat ruled that the case was admissible and instructed the government to justify, within three months, that it was taking adequate actions towards meeting its own 2030 climate goals. According to press release by the Court, the coastal communities' claims are admissible in part because the city is "particularly exposed to the effects of climate change."

The Court also accepted interventions by NGOs and other interested cities. The Court then noted that France committed itself to a 40% reduction in GHG emissions by 2030, compared to 1990 levels, and instructed the government to justify its ability to meet this goal without stricter measures. Although the Court signalled the decision would be driven by French and European law and not the Paris Agreement, the Court reasoned that the Paris Agreement must be considered in the interpretation of national law.

The Council d'Etat issued a decision on July 1, 2021 ordering the government to "take all the measures necessary" by the end of March 2022 to bend the curve of greenhouse gas emissions to meet climate goals, including a 40% reduction by 2030. The Court reversed the government's implied reluctance to take necessary steps, stating that emissions reductions in 2019 and 2020 were insufficient to fulfil the needed climate targets, and that present climate legislation were insufficient to meet the aim. The government must take the necessary steps by March 31, 2022, according to the Council.

IPC Petroleum France SA v. France²⁸

This case was under the jurisdiction of the Administrative Supreme Court. The principle question to determine in the case was that "Whether placing an eventual expiration date on a fossil fuel mining permit in service of national mitigation goals violates the permit holder's right to peaceful enjoyment of property. This case was decided within a year, i.e., it was filed in January 2019 and was decided in December 2019."

In a nutshell, the French Administrative Supreme Court affirmed a decision to insert an expiration date in a fossil fuel mining permission on December 18, 2019.

IPC Petroleum France SA sought for an extension of its current fossil fuel production permit in early 2018. The request for an extension was granted, but only for a year, until January 1, 2019. In view of France's Paris Agreement commitments, law n° 2017-1839 of December 30, 2017 prohibits new research and exploitation of fossil fuels, and existing hydrocarbon mining permits cannot be extended beyond January 1, 2019.

The Company filed this lawsuit against the government, claiming that putting an expiration date on its mining permit violated the company's right to peaceful enjoyment of property, as guaranteed by article 1 of the European Union's Charter of Fundamental Rights, and that the French Mining Code allows a permit to be renewed for economic reasons beyond 2040.

The Court denied IPC Petroleum France's motion, noting that while the Mining Code does allow for a further extension, it does so only in specific circumstances and necessitates balancing the extension against the wider public interest. The Court decided that the deadline of January 1, 2040, which was set more than 20 years after the December 30, 2017 law was passed, was a fair compromise between the Company's right to enjoy its land and France's commitment to minimise climate change.

3. ANALYSIS AND CONCLUSION

From the analysis of the above case laws, one thing is very clear that the judicial structure in France is very robust. This is apparent from the fact that cases are decided within 1-2 years of filing. This is because of the clear division of the work between two main segments of the judiciary i.e., the one on the Administrative side and the other on the Judicial side. Also, since France is the civil law country, the main objective of the courts there is to investigate and find out the law applicable on the facts of the particular case and the doctrine of precedent is not followed.

The more efforts of the courts there are confined to access the law applicable to the case and not the facts of the case. Facts of the case plays only a minimal role in the adjudication process, that is to say, they are only relevant to ascertain only the laws which are applicable.

Further, there is no dearth of specific legislation in France which deals with the issue of climate change categorically. This is the reason why the courts in France do not suffer with any confusion from different facts of the case that which law is applicable. In addressing the issue of climate change, the courts, somehow and at the end of the day, comes to the conclusion that this or that particular law is applicable on the issue of climate change. The availability of specific laws in France is so vast that facts of each and every other case comes into the trapping of any one or more of the specific legislations.

This is converse of the pigeon hole approach which is prevalent in the common law countries like U.S.A. and U.K. As far as India is concerned²⁹, though there are many laws which addresses the issue of Environmental pollution in pieces and fragments, there is no specific legislation which addresses the issue of climate change.

India can adopt the civil law approach as followed in France as far as they deal with the issue of Climate change. The following measures can be adopted to address this Humankind threat-

In France, by virtue of Energy Transition Law which was passed in the year 2015, specific provisions were made to increase Carbon Tax on fossil fuels. This ensures to deprecate the use of fossil fuels and thus reduction in GHG. But, in India, there is no law which provides for Carbon Tax. There is no explicit carbon tax. Such kind of a tax may be imposed to contain the use of fossil fuels and to switch to cleaner sources of energy.

1) In France, there is a body called, “The High Council on Climate” (HCC), which is an independent body tasked with issuing advice and recommendations to the French government on the delivery of public measures and policies aimed at reducing France's greenhouse gas emissions. Its purpose is to provide independent insight on government climate policy. It was constituted in the year 2018. In India, The Ministry of Environment, Forest and Climate Change (MoEFCC) is responsible for the planning, promotion, co-ordination and overseeing the implementation of India's environmental and forestry policies and programmes. This is the part of the Government itself and is not an independent body like HCC. This results into poor functioning and non-serious implementation of the environmental protection laws. India cans also create an independent body like HCC in France for better addressal of the climate change issue. And so that political ill will does not come in its way.

2) In France, in order to address the issue of climate change in a better way, and for better participation of the public, the Citizens Convention for Climate was held in 2019 and 2020. It came up with the target to reduce France's carbon emission by 40% from its 1990 level, in a spirit of social justice. This convention was possible under the auspices of Law No. 2019-1147 on Energy and the Climate. But, in India, such types of conventions are rare. Even if they happen, they happen more in the academic domain like in universities etc. but not at such levels from where it can have impact by changing the law to address the issue of climate change.

3) France has increased the punishment for the ecocide crimes, in the year 2021. Damaging the environment is illegal in France, which is punishable by fines of up to €4.5 million (Rs. 37,75,77,000.00 approx.) and up to 10 years in prison. This will surely create a deterrence over the people who are so careless and damages the environment every day. This has become possible due to “Law on fight against climate change” which was passed in the year 2021. Whereas in India, besides specific legislations like The Water (Prevention and Control of Pollution) Act, 1974 etc. some sections of the Indian Penal Code 1860 deals with ecocide offences like section 277, which makes fouling of water of public spring etc. as a punishable offence. This is punishable only for imprisonment upto 3 months or fine upto Rs. 1000. So, as compared to France, there is no stringent provision in law which could create adequate deterrence, as far as ecocides are concerned.

4) In France, before framing any policy related to environment, there precedes an extensive public consultation. Like, Grenelle 1 was passed in 2007 after extensive public consultation. In India, we hardly witness any such

public consultation prior to framing of the laws. This could be one of the reasons that why the existing Indian laws on environment protection are not so effective, as they are in France.

5) As far as climate change is concerned,” the French people are very proactive. In 2007 Grenelle 1 have the provision which provides to reduce dependency on the fossil fuels in the field of transport to reduce emission of GHG by 20% by the year 2020. But, in India, such ideas have developed only recently from the year 2018 onwards. The Delhi Government has now, announced that it will promote electronic vehicles by providing subsidies etc. in order to reduce dependency on fossil fuels in the field of transport. So, the common law system of India is not Proactive as that of civil law system of France, in the domain of climate change.

6) The laws in France are very clear. They set out specific goals and targets which are to be achieved in the fixed timeframe. For example, “the Energy Policy Framework (Pope No. 2005-781)” has a fixed target “to reduce energy intensity by 2% annually between 2005” to 2015 and by 2.5% between 2015-2030. In India, we do not have any such law which provides for any such fix targets to be achieved in the time bound manner.

7) In India, specific and strict laws should be enacted by the legislature “to address the issue of climate change.”

8) The executive should ensure that there is strict and full compliance of the norms and standards in those specific climate change legislations.

9) The legislature needs to introspect and amend existing environmental laws to make them more effective. The major lacuna in the existing law was highlighted by the Supreme Court of India recently, which shows the extent of laxity in the present Indian system.

10) “The Fundamental duty of every citizen of India” in Part IV-A of “the constitution of India provides” that every citizen of India should “protect and improve the natural environment including forests, lakes, rivers,” wildlife and to have compassion for living creatures. It is not only state’s concern to protect the environment but also of every individual. The people should be responsible and should abide by this and every other fundamental duty in order to mitigate the damages arising due to climate change. After all, this is common problem of humankind.

11) NGT³⁰ should have specific substantive and procedural power to deal with such issues so that there won’t be burden on supreme court and high courts, as we have administrative tribunals. And it is Possible only if we have dedicated legislation which will give power to NGT and right to victims to reach NGT. As we have already seen those cases in France, there a party can directly approach to the court, to enforce his/her rights against the ill effects of climate change in their specific administrative court named council d’etat. But the same is not possible in India because of following reasons-

- There is no specific statute which in a clear word give specific right to the victim of climate change. Only article 21, in a broad sense covers this aspect and the High Courts and the Supreme Court are generally reluctant in admitting writs enforcing such rights as they are already over flooded with the cases.

They have separate court, council d detat. But India has only high courts and supreme court can ensure the enforceability of right to clean environment. Only recently in 2021, the supreme court in India has laid down that NGT has power to take *suo moto* cognizance of environmental issues.

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