

Constitution of India and Environmental Governance:

Administrative and Adjudicatory Process

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Lecture No. 26

India Case Study: National Rendezvous for Climate Justice

After taking a ringside view of the developments at the global level on climate negotiations and the farcical outcome of that, of not taking us anywhere near climate justice we now turn our attention to India. India, a case study, the national and international straits in relation to climate negotiations at the global level, climate law and its application at the national level.

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- *QUITE AN INTERESTING CASE STUDY.*
- *AN UNIQUE EXAMPLE OF A SYSTEM THAT REMAINED A SUSTENANCE ECONOMY FOR WELL OVER 45 YEARS SINCE INDEPENDENCE - THAT WENT THROUGH DIFFICULTIES OF TRANSITION, FOR ABOUT A DECADE, BEFORE BECOMING PART OF THE NEW INTERNATIONAL ECONOMIC ORDER(NIEO)- THAT SHOWED PHENOMENAL GROWTH TO LEAD THE DEVELOPING COUNTRIES AND RIVAL THE ECONOMIC SUPER POWERS, IN RECENT TIMES!- NONE THE LESS, INTERNATIONALLY, ON THE ENVIRONMENT FRONT, VIEWED VERY UNFAVOURABLY - AND, PERHAPS, UNJUSTLY, AS BEING AMONG THE LAGGARDS !!*
- *EVEN ON THE CLIMATE NEGOTIATIONS ARENA, TILL AROUND THE PARIS AGREEMENT, 2015, ITS STATURE, HARDLY INSPIRED CONFIDENCE!*
- *THE FOLLOWING IS A BRIEF ACCOUNT OF INDIA'S RENDEZVOUS ON CLIMATE FRONT- BOTH, INTERNATIONALLY AND INTERNALLY.*



India makes a very interesting case study for the simple reason that quite unlike any other legal systems that we know of India is a very unique system, which, for nearly half a century, after India became independent, they made a sustenance economy. And when it

tried to break into the big lead, transitioning into the new international economic order, it had its birth pangs of over a decade, going through several trials and tribulations in the process, but later emerging as a new economic powerhouse at the global level, showing phenomenal growth, to lead the rest of the developing world and even rival the major economies of the world.

In recent times, why, this is the story about the economic strides that India made. What has been its performance on the environmental front? At the international level, the view is fairly dim, that India does not appear to find favour as far as its performance on an environmental front in any significant way. In fact, in the last 15 odd years, when every second year, a kind of a report card of the nations, the community of nations is prepared, which goes by description of environment performance index of nations, India comes among the laggards not among the leaders.

And that to India is among the last half a dozen countries, which bring the rear up in the entire environmental performance index. But that is a particular kind of an assessment and an evaluation done. Perhaps, it is a very unjust assessment for all the same. A fact of the matter is that India is not among the leaders in terms of either leading from the front or coming up with such initiatives, as many others have demonstrated to be the leader on the environmental front.

How does it panned out on the climate negotiations front is a question Is it the same as the same all that you find on the environmental one or does that present a different picture? That is the subject and the focus of our discussion now. As you could make out till around the Paris summit of 2015, the last 3 discussions that we had so far as they reveal, India's position and performance hardly in spite conference but what happened thereafter, is something worth noting and that is what we are getting into a brief account of India's rendezvous on the climate front, both internationally and internally.

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- BETWEEN 1992-2012 :
- PARTY TO UNFCCC & KYOTO PROTOCOL - MAJOR BENEFICIARY OF INTERNATIONAL ASSISTANCE (- CDM PROJECTS: FINANCE AND TECHNICAL SUPPORT) : MAJOR CDM HOST COUNTRY-HIGHEST NO.OF PROJECTS(-AROUND 400) APPROVED – MORE THAN HALF OF THEM PUT INTO STEAM -ENERGY EFFICIENCY AND RENEWABLE ENERGY SECTORS CONSTITUTING MORE THAN HALF OF THESE PROJECTS ; ACTIVITIES REDUCING INDUSTRIAL GAS EMISSIONS ACCOUNTING FOR APPROXIMATELY ANOTHER QUARTER (- Boost to the Industrial sector in the fields like, Biomass, Wind Power, Waste Gas/Heat Utilization; Hydro-Power;Energy Efficiency, etc.)
- CRITIQUE: SUCH PROJECTS , NEITHER PROPERLY MONITORED NOR EXECUTED WITH THE OBSERVANCE OF THE REQUIREMENTS OF CDM PROJECTS,AND SO, DOUBTFUL OF THEIR CONTRIBUTION TO CARBON REDUCTION.



We can divide it into two phases. The first phase is 1992 to 2012. And 1992 was the watershed year when the landmark United Nations Framework Convention on Climate Change was made available to the entire globe wedded to climate justice. India is a party to that framework convention, also a party to the Kyoto Protocol. And in fact, it is the major beneficiary of international assistance another Kyoto Protocol. The CDM projects, as we discussed earlier, it actually provides for financial and technical support for all clean development, technologies and activities, developmental activities that a nation may get into.

India got the major share of the projects that were approved, funded, and technical assistance, highest number of projects, around 350 to 400, they were approved. And even among those which are put into operation, India has the maximum number of projects, which were actually put into steam. half of them actually deal with energy efficiency and renewable energy. And a quarter of them deal with activities for reduction of industrial gas emissions accounting. And these are major clean development mechanism-based projects and initiatives.

It gave a lot of boost to the industrial sector, in the field of biomass, wind power, waste,

gas, heat utilization, hydro power, energy efficiency, for which we did not have much resources or the technical know-how, and there was this fund flow and technology flow that was made available, India, grasped them with both the hands and put that into application. But there is a critique and the critique is such projects were neither properly monitored, nor properly executed, by observing the basic tenets of the requirements of the CDM projects.

And so, in terms of the cumulative positive impact of those development projects of promoting clean development, and clearing the carbon mist in the atmosphere, considered doubtful, and not reliable.

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- VIEWED AS A CLASSIC CASE OF, "RUN WITH THE HARE AND HUNT WITH THE HOUNDS"
- IN MORE REALISTIC TERMS, THE SHORT-COMINGS, AND UNFAVOURABLE ATTRIBUTIONS TO INDIA, CAN BE RELATED TO THE TEETHING TROUBLES OF OPERATIONALISING THE CDM FORMULA AND TO THE DEFT MANOUVRING THAT ENSURED A VERY SHORT SHELF LIFE FOR THE ARRANGEMENT (- AS, THE PROTOCOL WAS NOT GIVEN A FAIR CHANCE OF A LONGER LIFE-LINE, TO REALLY MAKE A DIFFERENCE) - TIME BEING IN SHORT SUPPLY, PERHAPS, LITTLE SCOPE OR SPACE EXISTED FOR A REVIEW AND CORRECTION IN THE PROCEDURES ADOPTED AND DECISIONS MADE UNDER CDM.
- NONE THE LESS, TWO FACTORS STAND OUT:
 - (a) INDIA'S LESS THAN ADEQUATE DIPLOMATIC SKILLS IN SECURING INTERNATIONAL SUPPORT, INCLUDING THAT OF THE OTHER FELLOW



In fact, the critics of India's position even went to the extent of dubbing this as a classic case of a run with a hare and hunt with the hounds. A classic case where you are supporting or attempting to replicate both sides in a conflict and in this particular instance, helping the industrialized world to wriggle out of the climate, carbon footprint and shouldering a bit of responsibility and helping them and at the same time giving an impression to the rest of the world that India has gotten into the bandwagon of clean development and thereby contributing to clearing the carbon concentration of atmosphere.

How right, how just and how exact is this kind of a critic? Let us give it a bit of a realistic term. The shortcomings of course, there were there in the entire process. But should India be attributed with the cause or the source of these shortcomings? Definitely no, because these can be related to the teething troubles of operationalizing the CDM formula, you know when a new idea comes to put it operation, you need sufficient breathing time to look into the problems of implementation making midterm corrections and things like that.

Remember, that the Kyoto Protocol was inaugurated in 1997. But it took more than 10 years for it to become functional. And the CDM projects had only a shelf life of no more than five years to shorter period of time for coming up with an assessment and an evaluate the positions posturing and activities of any entity, which is actually put in that application. There will be problems, but problems are not addressed. Instead, the entire thing was shelved. But all the same two things stand out. Number 1, India's less than adequate diplomatic skills, that was very clear in securing international support.

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DEVELOPING COUNTRIES, FOR GETTING THE NECESSARY EXTENSIONS AND ITS OWN LESS THAN SATISFACTORY PERFORMANCE AND,
(b) A CLEAR ABDICATION OF THE RESPONSIBILITY IN CLEARING THEIR "ECOLOGICAL DEBT" BY THE INDUSTRIALISED COUNTRIES,
- REMAIN AT THE ROOT OF THE DEMISE OF THE KYOTO PROTOCOL AND THE FAILURE OF CLIMATE NEGOTIATIONS IN SECURING CLIMATE JUSTICE.

- EVEN DURING THIS PERIOD, INDIA'S INTERNATIONAL RECORD WAS NOT TOTALLY INADEQUATE - PARTNERED CHINA, U.S AND OTHER COUNTRIES, TO STITCH AN ALLIANCE OF PACIFIC RIM COUNTRIES FOR CLIMATE ACTION - IN A WAY, THIS ALSO HELPED THE RETURN OF U.S, TO GLOBAL CLIMATE NEGOTIATIONS, FROM WHICH IT HAD UNCEREMONIOUSLY EXITED EARLIER !
- ON THE DOMESTIC FRONT: EMERGENCE OF A NUMBER OF INITIATIVES- LEGISLATIVE, ADMINISTRATIVE, PLANS AND PROGRAMMES OF ACTION :



Including those of the other fellow developing countries to make the entire globe come around to get the necessary extensions for the Kyoto Protocol, and even back home, its own less than satisfactory performance, whatever other factors which were responsible for that. And secondly, and this is more important, a clear abdication of responsibility as we witnessed in clearing the ecological debt by the industrialized countries and make them appear that entire historic emissions for which they were responsible should be treated as no more than a bad debt and we should move on. And these remain at the very root of the demise of the Kyoto Protocol, and the failure of the climate negotiations in securing climate justice.

But even during this period of 1990 to 2012, let us see what has been the track record of India. India's international record was not totally inadequate. It even actually was responsible for partnering and initiating a parallel exercise around global environmental climate change negotiations. It partnered China and United States and other countries to stitch an alliance of Pacific Rim countries climate action. As history would tell us, in a way, there is also help the return of the United States in a very big way to the global climate negotiations.

And remember that, it was this United States, which had unceremoniously walkaround other climate negotiations, and it was looking for an opening to come back. And this provided a wonderful opportunity. Look at the domestic performance of India. Plenty of initiatives on the legislative, administrative front in developing plans and programmes of action concerning climate change.

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- ENERGY CONSERVATION ACT, 2001 (-estd. National Bureau of Energy Efficiency, to improve energy efficiency in various sectors); ENERGY CONSERVATION BUILDING CODE, 2007 (-that requires, initially, on a voluntary basis, to establish energy performance requirements for commercial buildings with loads of 500KWs and above); NATIONAL AUTO-FUEL POLICY, 2003, (- mandated that all new four wheeled vehicles, in 11 major cities should meet Bharath III Emission standards and comply with Euro IV Stds. By 2010 - Largest fleet of CNG Vehicles introduced in New Delhi and Mumbai-); NATIONAL URBAN TRANSPORT POLICY, 2006 AND NATIONAL URBAN RENEWAL MISSION (- funded development of Mass Transit Strategies for cities); ELECTRICITY ACT, 2003 AND RELATED POLICIES(- encouraged development of renewable energy and stipulated the Regulatory Commissions to purchase a min. percentage of power generated from renewable sources) ETC.



And let us take a brief note on that. There was this Energy Conservation Act in the year 2001. Remember that we had not even started putting into application the Kyoto Protocol at the international level, we came up with this conservation law. And this established the National Bureau of Energy Efficiency to improve energy efficiency in a host of sectors. Alongside that, there was this Energy Conservation Building Code made in the 2007, which, on a voluntary basis, initially required those commercial buildings with loads of 500 kilowatts and above to establish energy performance requirements in place.

There was this Auto Fuel Policy in the year 2003, which mandated all new four wheeled vehicles in 11 major cities should meet Bharat 3 emission standards and comply with Euro 4 norms by the year 2010. Remember, as we were discussing, at the pollution control regime, the role that was played by the higher judiciary in triggering this kind of reform. And that finds expression and application here of coming up with a scientific assessment, evaluation and standard setting to see that the four wheeled vehicles would have this standard confirm.

And as a matter of fact, India has the largest fleet of CNG vehicles introduced in New Delhi and Mumbai National Urban Transport Policy 2006 and the National Urban Renewal Mission NURM which was working till around 2015 or 16, it actually funded development of mass transit strategies for cities to reduce congestion in the cities in

traffic congestion. And also, at the same time, reduce the pollution on account of automobiles, the Electricity Act of 2003 and the related policies especially on tariff.

It encouraged development of renewable energy and stipulated the Regulatory Commission to purchase a minimum percentage of power generated from renewable resources.

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- NATIONAL ACTION PLAN ON CLIMATE CHANGE, 2009 - a model template for other legal systems to emulate- incorporated the four strategies of Climate Management for Climate Justice namely, Mitigation, Resilience, Adaptation and Clean Development Mechanism in a number of sectors of human activity and natural resources management; gave significant emphasis to adaptation, resilience, Capacity-Building and Capacity-Enhancement, under all the said strategies and sectors)
- DEVELOPMENTS SINCE 2012 AND THE POST-PARIS AGREEMENT
SCENARIO: - SIGNIFIES AN INITIAL SETBACK AND A SUBSEQUENT TRAIL-BLAZING LEADERSHIP ROLE FOR INDIA ON THE GLOBAL CLIMATE FRONT:
- ENTIRE DEVELOPMENT UPTO AND INCLUDING PARIS AGREEMENT, 2015, WAS A TRAVESTY AND , IN A WAY, ISOLATION OF INDIA, IN ITS QUEST FOR CLIMATE JUSTICE – REJECTION OF THE DEMAND FOR A NEW LEASE OF LIFE FOR THE KYOTO PROTOCOL; INSISTENCE ON EVERY COUNTRY TO



These are some of the illustrative examples as to the strides that India made in this particular area, that crowning on that is to be found in the National Action Plan on Climate Change NAPCC 2009. This was announced on the floor of the Parliament in the year 2009, by the Prime Minister. And if you look into the details of it, it is really a model blueprint or an action plan for any legal system to emulate, of bringing in the synergies of different sectors of developmental activities, the state to come together to look into the climate ethic. What did it incorporate?

It had all the 4 strategies of climate management for climate justice, namely, mitigation, resilience, adaptation, and clean development mechanism in a number of sectors of human activity, and natural resource management. It gave very significant emphasis on adaptation, resilience, capacity building, and capacity enhancement in all these sectors, and all the set strategies so as to bring down the temperature in the Indian context.

It is another story that the states which ought to have followed suit, and come up with their own climate action plans took a long time. And they are still in the process of implementing this national action plan at the state level, but that is a different story altogether. But this blueprint has already been there to be put into application in India.

But developments subsequent to 2012. And the post Paris Agreement at the global level eventually had a setback for India.

The entire development up to and including the Paris Agreement, as we know, that travesty of justice, and in a way led to an isolation of India, in its quest for climate justice. Remember, the rejection of the demand for a new lease of life for the Kyoto Protocol and a developed world.

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DECLARE INDCs AND NO ASSURANCE OF INTERNATIONAL ASSISTANCE FOR THE DEVELOPING COUNTRIES TO MEET THE COSTS OF ACHIEVING INDCs.
BIRTH OF THE INTERNATIONAL SOLAR ALLIANCE, INITIATED BY INDIA, IN THE PARIS CoPs, 2015, A PATH-BREAKER— AFTER THE U.N, THE LARGEST GROUPING OF NATIONS WORLD-WIDE – HEADQUARTERED IN INDIA- 121 MEMBERS BODY – INDIA'S LEADERSHIP - SENDS A STRONG SIGNAL TO THE GLOBAL COMMUNITY OF NATIONS ABOUT THE SINCERITY OF THE DEVELOPING NATIONS TOWARDS THEIR CONCERN ABOUT CLIMATE CHANGE AND TO SWITCH TO A LOW CARBON GROWTH PATH.
❖ KINDLES HOPE THAT CLIMATE, THE "COMMONS", THAT CEASED TO BE SO TILL NOW, TO GET RESTORED TO ITS STATUS QUO ANTE POSITION WITH THIS GLOBAL ALLIANCE, UNDER INDIA'S LEADERSHIP!



And they had the temerity insisted on every country to declare that INDCs giving absolutely no assurance whatsoever, of providing international assistance for the developing countries to operationalize them, to meet the cost of achieving INDCs. It is really a case of treating whatever that one hold as to be considered as a bad debt. And we need to move on. And all of us should share that responsibility. Climate injustice was perpetuated not because of India, but in spite of India.

But much more than that, realizing that nothing much would be gained out of these international negotiations when there is so much talk of doing great things. But in the

end, in the international arena, they are willing to take back home for the developing countries, India came up with an alternative, an alternative, unheard of an unprecedented of global scale that India came up with an International Solar Alliance in the Paris Conference of Parties in 2015.

A path breaker after the United Nations is the largest grouping of nations worldwide, headquartered in India, with 120 odd members as part of this particular exercise with India's leadership. What does it indicate? It sends a very strong signal to the global community of nations, about the sensitivity of the developing nations towards that concern about climate change had to switch to low carbon growth path.

It kindles hope, that climate, the commons that cease to be so till now, thanks to the machinations of the developed world to get reclaimed and restored the status quo ante position with this kind of a Global Alliance under India's leadership. This brings us close to our deliberations over the climate change, international and domestic law, policy and practice.