NEED FOR GREEN TAXATION FRAMEWORK IN INDIA

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ABSTRACT

This paper examines the urgent need for a structured Green Taxation Framework in India to balance its rapid economic growth with environmental sustainability. Despite India's commitment to the Sustainable Development Goals and its adoption of several environmental policies such as the NAPCC, SAPCC and the Compensatory Afforestation Fund Act, its fiscal approach to environmental protection remains fragmented. Pre-existing levies such as the Clean Energy Cess were repealed to make way for the sweeping GST framework and the currently operation levies such as the Motor Vehicle Green Tax are limited in scope and lack a cohesive national framework. The integration of green taxes into the GST regime has diluted their environmental purpose by diverting funds away from sustainable initiatives. Through a comparative analysis of jurisdictions such as the United States, the European Union and China, this paper identifies best practices that India could adopt. It proposes a harmonized green taxation system that internalizes the environmental cost of pollution while ensuring equitable economic growth. The study concludes that a self-sustaining, transparent green tax regime is essential for India to achieve its International environmental commitments and foster long-term economical and environmental sustainability.

Introduction

The 21st century has witnessed a global paradigm shift in development, marked by a stronger commitment to the principles of sustainable development; particularly following the adoption of the Sustainable Development Goals at the United Nations conference—and India is no exception to this trend. India's policy has been formulated with a focus on environmental sustainability with goals such as Climate Action, Clean Water and Sanitation, Affordable and Clean Energy, and Responsible Consumption and Production taking centre stage.[1] The Sustainable Developmental Goals (SDGs) highlight the need to disassociate economic growth from environmental degradation by promoting efficiency and adopting eco-friendly practices. India faces a uniquely difficult challenge as the premier developing economy, having to sustain its robust growth rates while mitigating the adverse environmental impacts of industrialization, urbanization, infrastructure expansion and adhering to its obligations under the Sustainable Development Goals Framework.

In response to these circumstances unique to India, the government has taken a numerous steps to integrate environmental concerns at the forefront of developmental decision making. While the Environment Protection Act, 1986,[2] remains the umbrella legislation, the government has introduced of variety of policies in the 21st century to create a more robust framework for environmental protection such as the National Action Plan on Climate Change (NAPCC)[3] which comprises of eight missions with the aim of promoting sustainable development, hinging on the development and use of new technologies.[4] The NAPCC has been coupled with the majority of state governments developing their own State Action Plan on Climate Change (SAPCC) to combat environmental degradation by formulating a more focused plan to address the region specific vulnerabilities.

The National Green Tribunal, established in 2010, has become an integral cog in the judicial machine, acting as a forum for fast tracked environmental litigation, in-line with the SDGs.[5] Additionally, the Indian legal system has been increasingly embracing the principles of

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[1] United Nations, Transforming Our World: The 2030 Agenda For Sustainable Development, Resolution Adopted By The General Assembly On 25 September 2015, 42809, 1-13.
[2] The Environment (Protection) Act, No. 29 Of 1986,(1986).
[3] Government Of India. (2008). National Action Plan On Climate Change (Napcc).
[4] Pandve Ht. India's National Action Plan On Climate Change. Indian J Occup Environ Med. 2009 Apr;13(1):17-9.
[5] Badri Chatterjee, The Importance Of The National Green Tribunal In Times Of Climate Crisis, Hindustan Times, 22nd Sept, 2023.

environmental justice and equity. The judiciary, the Supreme Court and the NGT in particular have played a critical role in interpreting Constitutional provisions such as Article 48A[6] while expanding the scope of Article 21[7] to incorporate environmental rights as Fundamental rights under Part III of the Constitution, essentially guaranteeing more stringent protective frameworks.[8] The judiciary's proactive approach has been highlighted by landmark decisions such as the expansion of the right to a clean and healthy environment under Article 21, and the enforcement of the 'Polluter Pays' and 'Precautionary' principles.

Beyond the traditional legislations such as the Air Act or the Water Act, which simply aim to prevent harm to the environment, the government has additionally introduced positive obligations on individuals and corporations, with the aim of transitioning into a green economy and institutionalizing sustainable practices. For instance, the Compensatory Afforestation Fund Act9 mandates financial reparation for deforestation by channelling funds toward afforestation and eco-restoration projects. Similarly, the Energy Conservation Act10 and the Perform, Achieve and Trade (PAT) scheme under the Bureau of Energy Efficiency (BEE) promote energy efficiency in large industrial sectors. These legal instruments contribute directly to SDG 7 (Affordable and Clean Energy)11 and SDG 9 (Industry, Innovation, and Infrastructure)12 by encouraging sustainable production and consumption practices. Additionally, The Ministry of Environment, Forest and Climate Change (MoEFCC) has introduced policy instruments such as the National Electric Mobility Mission, the FAME scheme (Faster Adoption and Manufacturing of Electric Vehicles), and various renewable energy mandates that collectively drive the transition toward a low-carbon economy, moving away from fossil fuel consumption and more environmentally friendly energy. This highlights the recognition by the government of the need for sustainable development to not just be mandated through legal frameworks but also in industrial and infrastructural policies.[13]

[6] Constitution Of India, Art. 48a
[7] Constitution Of India, Art. 21
[8] M.C. Mehta Vs. Union Of India, Air 1987 Sc 1086
[9] The Compensatory Afforestation Fund Act, 2016 (Act No. 38 Of 2016)
[10] Energy Conservation Act, 2001, Act No. 52, 2001
[11] Sustainable Development Goal 7, United Nations, Transforming Our World: The 2030 Agenda For Sustainable Development, Resolution Adopted By The General Assembly On 25 September 2015, 42809, 1-13.
[12] Sustainable Development Goal 9, United Nations, Transforming Our World: The 2030 Agenda For Sustainable Development, Resolution Adopted By The General Assembly On 25 September 2015, 42809, 1-13.
[13] Chaitanya Kalia, How India's Sustainable Development Goals Are Powering Its Growth While Striving For Net Zero, Ernst & Young, 29th Nov 2024

Jurisdictions around the world are now implementing “Green Taxes” as a new method to control the environmental degradation. Green tax is a fiscal policy instrument designed to internalize the environmental costs of pollution by imposing a levy on activities or products that harm the environment.[14] It is rooted in the “polluter pays” principle and green taxes serve to disincentivize environmentally damaging behaviour by making polluting activities more expensive and thereby encouraging cleaner alternatives.[15] By place a monetary value on the pollution caused in the production of the products or services, green taxes internalise the externalities associated with the production of these goods or services, thereby giving creating a direct financial impetus for individuals and industries to adopt sustainable technologies and practices, as opposed to other schemes which tend to provide indirect incentives to prevent environmental degradation.[16] When implemented effectively and coupled with transparent revenue recycling, green taxation can serve as a powerful tool for environmental protection and sustainable development.

In order to meet its international obligations, India must rely on direct policy tools such as Green taxation to achieve its optimal targets. This paper will aim to analyse the current green taxation framework in India while comparing the same with other jurisdictions to highlight International best practices and suggest improvements that can be made to create a holistic framework to reduce environmental degradation.

Current Framework in India

Clean Energy Cess

The Clean Energy Cess, also known as the Clean Environment Cess was a tax levied on coal produced or imported in India. Historically, The proceeds of the cess were used to fund the National Clean Energy and Environment Fund (NCEEF), which promoted clean technology projects and green initiatives. This Cess was initially introduced through the 2010 finance act[17] however, with the introduction of the Goods and Service Tax (GST) regime, the cess now

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[14] Green Energy: An A-To-Z Guide 72 (Dustin Mulvaney & Paul Robbins Eds., 2011).
[15] Ambec, Stefan, And Lars Ehlers. “Regulation Via The Polluter-Pays Principle.” The Economic Journal 126, No. 593 (2016)
[16] Jeremy Freeman, Efficacy Of Carbon Taxes And Recommendations For Cutting Carbon Emissions, 15 Hous. Bus. & Tax L.J. 268 (2015).
[17] Finance Act, 2010 (Act No. 14 Of 2010).

merely constitutes part of the GST compensation fund which is dedicated to compensating states for revenue shortfalls due to GST implementation.

Motor Vehicles Green Tax

The Motor Vehicle Green Tax, while not explicitly defined under a section is a cess levied and collected under the provisions of the state level motor vehicle acts. It applies specifically to older, more polluting vehicles, typically those that have exceeded a defined period of roadworthiness. As per guidelines issued by the Ministry of Road Transport and Highways (MoRTH), the green tax is levied during the renewal of a vehicle's registration after 15 years for private vehicles and 8 years for transport vehicles. The tax amount varies based on the type of vehicle and the degree of pollution it potentially emits—for instance, diesel vehicles and those operating in highly polluted urban areas are taxed at higher rates.[18]

Cess on Industrial Units

The Water (Prevention and Control of Pollution) Cess Act[19] was enacted with the objective of levying a cess on water consumed by industrial units and local authorities, primarily to generate financial resources for the Central and State Pollution Control Boards (CPCB and SPCBs). These boards, established under the Water (Prevention and Control of Pollution) Act[20] were tasked with monitoring and regulating water pollution, and required sustained funding to carry out inspections, laboratory analyses, enforcement actions, and public awareness campaigns. The cess was imposed on industries that used water in significant quantities or discharged effluents into water bodies, and the revenue collected was meant to support pollution control activities, including the establishment and enhancement of effluent treatment facilities, environmental monitoring, and compliance mechanisms. The Cess however was repealed as part of the streamlining process under the new GST regime which aimed to eliminate overlapping levies.

Critique of the Indian Framework

While there exist certain state level levies, it is clear that the central framework surrounding green taxation requires a revolution. Pre-existing cess, under the finance act or the water act

[18] Government Of India, Ministry Of Road Transport & Highways Transport Section, No. Rt-2301 3/01 12019
[19] Water (Prevention And Control Of Pollution) Cess Act, 1977, Act No. 36 Of 1977.
[20] Water (Prevention And Control Of Pollution) Act, 1974, Act No. 6 Of 1974.

for example were repealed to make way for GST,[21] an all-encompassing indirect tax however GST have seemingly overlooked environmental concerns. Even the Motor Vehicle Green Tax is provided for under state legislatures. Furthermore, even when implemented, the tax levies are nominal and often lack the deterrence factor associated by internalising the cost of environmental degradation as evidence by the fact that the Clean Energy Cess was introduced at a mere Rs. 50 per tonne of coal under the 2010 Finance Act,[22] which had to be reworked to Rs. 400 per tonne of coal by 2017 before it was repealed.[23] One of the major drawbacks of implementing the sweeping GST regime and doing away with previous levies is the circular flow of revenues for environmental purposes. Previously, the revenue raised through the levy of green taxes was earmarked for environmental protection activities such as promoting clean technology projects and green initiatives however, now these levies form part of Goods and Services Tax Compensation Fund which is dedicated to compensating the states for the revenue they have lost due to the implementation of the GST, with the promotion of environmental sustainability becoming a distant afterthought.

India currently lacks a coordinated central legal framework for fiscal environmental reforms. While the GST was implemented to irradicate several overlapping levies, it is essential for the health of the environment that there is a push for a central, harmonised system for green taxation with the aim of internalising the costs of environmental degradation. Separating this system from the GST regime would allow the revenue collected from the tax to be earmarked to support environmentally sustainable projects. In order to create a successful green taxation system, we must look at other established jurisdictions and find inspiration in their best practices to help India form a robust and effective framework of Green Taxation.

Other Jurisdictions

United States

While the US faces similar issues to India, with the inability to create a comprehensive federal carbon tax, it has still implemented a variety of green taxation policies at both the centre and state levels. Due to the bi-partisan nature of American politics, it has become increasingly difficult to implement a federal green tax and hence green taxes are more commonly

[21] Swathi M. V., An Analysis Of Green Tax In India, 4 Indian J.L. & Legal Rsch. 1 (2022).
[22] Finance Act, 2010 (Act No. 14 Of 2010).
[23] Finance Act, 2017, No. 7 Of 2017

implemented by individual states.[24] Federally however, the US relies on a system of tax credits as a means to promote sustainability.[25] Tax credit is an incentive wherein there is a direct reduction in the tax owed to the government.[26] In the US, the government has been offering tax credit for clean energy and emission reduction. Investment in renewable energy infrastructure is encouraged through the Investment tax credit. Furthermore, the federal government also provide production tax credit for the generation of energy from renewable resources.[27] Additionally, Clean vehicle tax credits are also provided on the purchase of electric or hybrid vehicles. Furthermore, there are additional taxes levied upon industries that create hazardous wastes and chemicals such as the petroleum and chemical industries where a special "Superfund Tax" is levied to fund the cleanup of hazardous waste sites[28] under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).[29]

EU

The European Union is widely regarded as one of the pioneers of Green taxation. Rooted in the EU's foundational commitment to sustainable development, the green tax framework is structured around both market-based instruments and harmonized directives, such as the Energy Taxation Directive and the Emissions Trading System.[30] The EU is unlike any other jurisdiction in the world and hence we must recognise that the EU might not necessarily have the most stringent rules or criteria and often has broad standards, keeping the socio-economic landscape of the numerous countries that form part of the union. The cornerstone of EU's green tax directive is the Energy Taxation directive that lays down minimum tax rates for energy products and electricity used as motor or heating fuels.[31] While it establishes standards, it gives its member states discretion to tax fuels based depending on their efficiency and pollution,

[24] Metcalf, Gilbert E. "Using The Tax System To Address Competition Issues With A Carbon Tax." National Tax Journal 67, No. 4 (2014): 779–805.
[25] Olawuyi, Damilola S. "Legal And Sustainable Development Impacts Of Major Oil Spills." Consilience, No. 9 (2013): 1–15.
[26] Carbaugh, Bob, And Koushik Ghosh. "Reforming The U.S. Tax System." Challenge 54, No. 2 (2011): 61–79.
[27] Parry, Ian W.H., John Norregaard, And Dirk Heine. "Environmental Tax Reform: Principles From Theory And Practice." Annual Review Of Resource Economics 4 (2012): 101-C3.
[28] Howard, Peter H., And Minhong Xu. "Enacting The 'Polluter Pays' Principle: New York's Climate Change Superfund Act And Its Impact On Gasoline Prices." Institute For Policy Integrity, 2022.
[29] Comprehensive Environmental Response, Compensation, And Liability Act (Cercla), 42 U.S.C. § 9601 Et Seq.
[30] Cnossen, Sijbren. "Tax Policy In The European Union: A Review Of Issues And Options." Finanzarchiv / Public Finance Analysis 58, No. 4 (2001): 466–558.
[31] Edwards, Vanessa. "Significant Eu Environmental Cases: 2010." Journal Of Environmental Law 23, No. 1 (2011): 143–54.

thereby creating an incentive for energy efficiency as well investment in green technologies.

Among other schemes, the EU also has largest Emissions Trading System, which is a market based system to control greenhouse gas emissions. Under this system, a cap is set on the total amount of certain greenhouse gases that can be emitted by installations. Within this cap, companies purchase emission allowances.[32] Companies that reduce their emissions below their allowance can sell their surplus permits on the carbon market, while those exceeding their limits must buy additional allowances or face substantial penalties.[33] This creates a financial incentive for industries to invest in cleaner technologies and reduce emissions cost-effectively. Over time, the cap is gradually reduced, helping the EU meet its climate targets.[34] While not a tax in the truest sense, the ETS functions like a green tax in that the fee is directly dependant on the carbon emissions, however unlike a green tax, the fee is to be paid before the emissions are generated.

In certain populous cities such as London, congestion and pollution charges are charged to reduce traffic congestion and local air pollution. Additionally, in 2021, the EU adopted a Carbon Border Adjustment Mechanism which Aims to tax imported goods based on their carbon intensity, thereby disincentivising carbon negative practices in other jurisdictions to achieve favourable trading terms with the EU.[35]

China

While India can draw influence from the west, it is essential that we also base our policies upon competing developing economies who face similar economic market realities. In 2018, China introduced the Environmental Protection Tax Law,[36] which was the country's first dedicated environmental tax law and institutionalizes the "polluter pays" principle. Under this act, tax rates vary depending upon pollutants and local conditions and the local governments are empowered to set their individual tax rates.[37] Furthermore, they also introduced Consumption

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[32] Grubb, Michael. "Eu Ets Objectives And Evolution." Strengthening The Eu Ets: Creating A Stable Platform For Eu Energy Sector Investment. Climate Strategies, 2012.
[33] Shi-Ling Hsu, The Case For A Carbon Tax 1 (Island Press, 1st Ed.
2011).
[34] Jones, Christopher W. "A Report On The European Union Emissions Trading System (Eu-Ets)." Institute For Global Environmental Strategies, 2013.
[35] Helm, Dieter, Cameron Hepburn, And Giovanni Ruta. "Trade, Climate Change, And The Political Game Theory Of Border Carbon Adjustments." Oxford Review Of Economic Policy 28, No. 2 (2012): 368–94.
[36] Environmental Protection Tax Law Of The People's Republic Of China, Jan. 1, 2017
[37] Zeng, Ka, And Joshua Eastin. "Environmental Pollution And Regulation In China." In Greening China: The Benefits Of Trade And Foreign Direct Investment, 37–62. University Of Michigan Press, 2011.

Tax on Polluting and Luxury Goods which combats the idea that indirect taxes such as green taxes are inherently regressive by placing higher taxes on luxury goods that cause higher pollution.[38]

Sustainable Framework for India

India can adopt best practices from these jurisdictions to create a robust framework to effectively disincentivise pollution with an aim to achieve its international obligations. One of the major challenges faced in India is unequal distribution of wealth. Keeping the broader goal of redistribution of wealth in mind, in addition to the preservation of the environment, the government should aim to emulate a Tax on Luxury Polluting goods as a means to disincentivise spending on extravagant products with harmful ecological consequences. Furthermore, India could adopted some of the principles envisaged in the Chinese Environmental Protection Tax law by determining tax rates depending on local conditions. Industries could be penalised heavily for polluting in specific residential zones where the tax rates could be considerably lower in special industrial areas. India is a richly diverse country and these area specific taxes could also aid economic and environmental goals of different states around the nation. Industries could be taxed heavily in states wherein their economy depends on tourism such as the North Eastern states or Jammu and Kashmir for example while keeping them comparatively lower in states like Maharashtra to promote development.

While the EU is the pioneer of green taxation, it becomes difficult to emulate their regulations due to the unique nature of the union. Furthermore, in a jurisdiction like India which is mired by administrative inefficiencies, a system such as the Emissions Trading System would be difficult to manage and administer. A simpler system, such as employed in the US wherein individual receive tax credit for specific purchases and industries get tax credit for sustainable process would be a welcome addition to the Indian framework as it directly incentives not only the supply side but also the demand side to switch to more ecologically friendly products and methods.

These jurisdictions have highlighted that for a green taxation framework, there need not necessarily be a Central green tax but rather the implementation of standards that take into

[38] Haifeng Deng & Anna Wang, Constructing The Legal Safeguard For China's Carbon Taxation, 4 J. Sustainable Dev. L. & Pol'y 4 (2014).

consideration the various realities of the diverse landscape they govern. Creating a standard that individual state governments are required to adhere to depending upon their own unique set of circumstances is a much more efficient means to achieving a successful green taxation framework however, the most fundamental cog of the machinery that is currently missing in India is the circular flow of money in the green economy. The revenue raised from these measures should not go into the GST fund or the GST compensation fund but rather a special fund wherein spending is earmarked for environmentally sustainable projects and technologies, thereby creating a self-sufficient green economy in the nation.

Conclusion

It is imperative to clarify at the outset this paper is not advocating for India to become a state like Bhutan wherein environmental preservation is the primary goal of policy making, this paper advocates for a more self-sufficient framework that does not hamper the economy but rather boosts its, while advocating for sustainable methods to achieve India's economic aspirations. The current environmental protection framework seems to overlook green taxation as a viable means to achieve its environmental and economic targets however, by internalising the cost of environmental degradation by way of taxes, and creating a circular flow of money in the environmentally sustainable economy, India could reap long term benefits, while achieving its international obligations under the Sustainable development goals and the Paris Convention.