KERALA ECONOMY
2024, VOL. 5, NO.3. pp 46-57

ISSN : 2583-4436

A legal outline on initiatives towards green tax: With special reference to India

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Abstract

Setting right to pollution free environment as a fundamental right is not enough for the proper mitigation of carbon emission and associated air pollution. More efforts especially in the way of a fund created by the state is a necessity for adequately controlling the carbon emission and restoring environment quality. Green tax is a newly emerged concept which mandate the need for paying the pollution caused by the polluter itself. For converting the economy into green economy, recent trends shows that many countries adopt the different forms green tax policies. In this paper, it is analysing the international efforts in introducing and developing this concept. And also, this gives an understanding about what all methods are currently adopted by India specifically in introducing green tax as a beginner in this.
Keywords: *Carbon emission, renewable enery, Green tax, Energy Consrvation Act.*

1. Introduction

Environmental pollution is a serious threat that the world is now witnessing. This enhances the chance for high accumulation of deadly gases including the carbon dioxide and synthetic gases. This will lead to trap the sun heat in the earth's atmosphere which is called as the greenhouse gas effect. One naturally occurring greenhouse gas (GHG) is carbon dioxide (CO2). The carbon cycle allows the Earth to maintain a CO2 balance within the atmosphere. But other than the natural processes, there are lot of human activities that leads to greenhouse gas produces such as the fossil fuel burnings. Even though there are variations in the amount

of carbon emission by various fuel usage, but it is well established that fossil fuels contribute a larger amount of such emissions. In this category, the coal combustion also produces a large volume of Carbon Dioxide (Spiru Paraschiv and Lizica Simona Paraschiv). Due to industrial revolution, this carbon emission in the atmosphere is alarmingly high and affecting the earth's atmosphere in an adverse manner. The Earth has already experienced an increase in temperature of around 1 degree Celsius (ºC) since the industrial revolution. This is caused directly by carbon emissions' higher-than-natural concentrations, which the Earth would take a long time to rebalance. All the possible ways to reduce the practices which make more carbon emission point towards new tax structures which aims to provide incentives for the using of green energy and to impose tax upon the use of conventional fossil fuels.

Alarmingly high carbon emission and global warming

It has been recognized that global warming poses a threat to the overall equilibrium of our planet's climate. Reducing the atmospheric level of the greenhouse gasses the only strategy to slow down the present global warming threat. This also causes threat to human and other animal health and environmental injustice to all irrespective of the country of origin and the gravity of the pollution that is caused by a specific country.

As per the Climate Change 2022 Mitigation of Climate Change[1], the energy supply sector accounted for over 34% (20 GtCO2-eq) of the total net anthropogenic GHG emissions in 2019, followed by industry at 24% (14 GtCO2-eq), agricultural, forestry, and other land use (AFOLU) at 22% (13 GtCO2-eq), transportation at 15% (8.7 GtCO2-eq), and buildings at 6% (3.3 GtCO2-eq).90% of these indirect emissions are ascribed to the building and industry sectors, raising their respective relative GHG emissions shares from 6% to 16% and from 24% to 34% if emissions from the generation of heat and electricity are attributed to the sectors that use the final energy. 12% of the world's net anthropogenic greenhouse gas emissions come from the energy supply sector after reallocating emissions from the generation of heat and electricity.

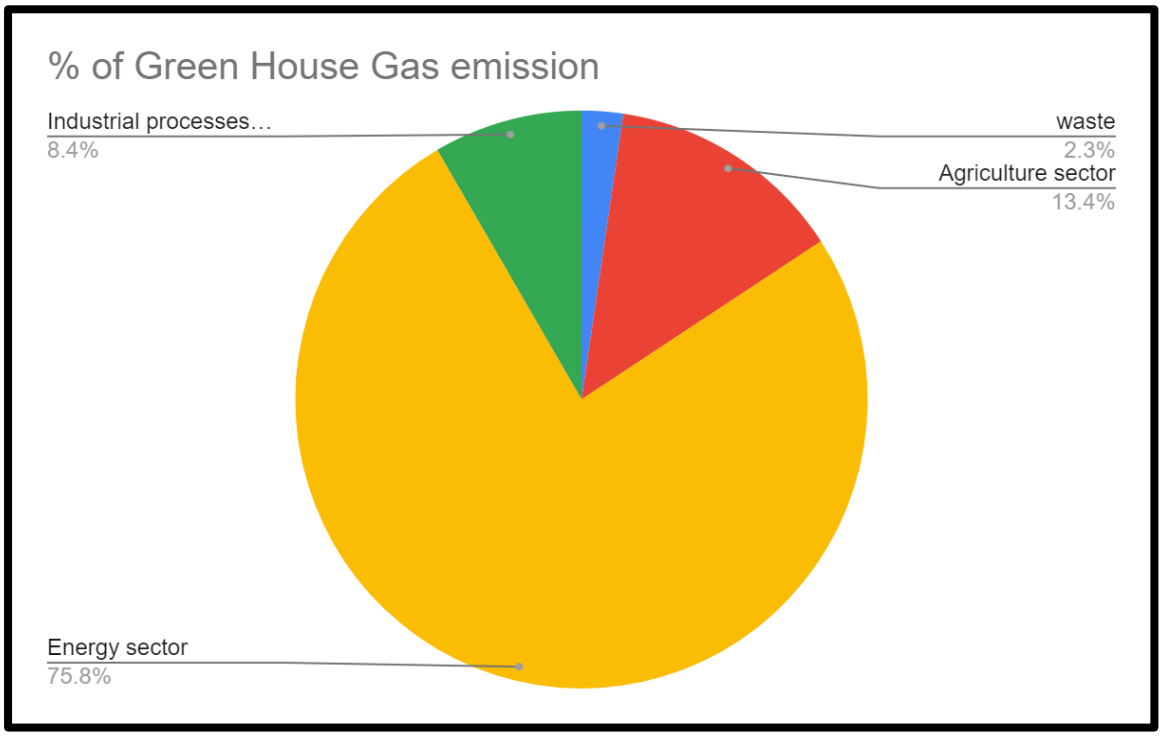
Currently the global energy sector is dominated by the fossil fuels. The only way to reduce the carbon emission is to reduce the usage of fossil fuels which is currently a greater source for energy production and powering all the industries and transportation. At the same time adequate efforts should be there for the proper allocation of exploiting the remain fossil fuel

[1] Working Group III, Report on Climate Change 2022 Mitigation of Climate Change https://www.ipcc.ch/report/ar6/wg3/downloads/report/IPCC_AR6_WGIII_SummaryForPolicymakers.pdf

resources since many countries especially the developing countries rely mostly on the fossil fuels. This needs changes in laws, policies, and institutional arrangements at both national and subnational levels. One of the possible solution emerging is to cut the subsidies given to the industries and other economic activities with conventional fossil fuels along with introducing green tax and give incentives to institutions which swich on to renewable energy resources.

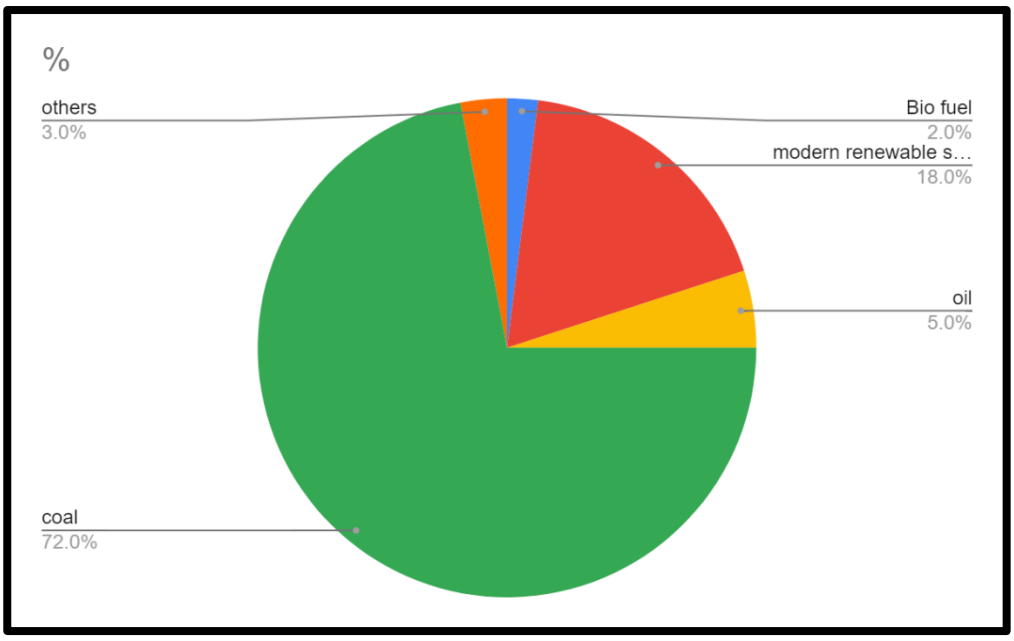
India and other emerging economies must balance maintaining rapid economic growth with reducing the pollution and carbon emissions brought on by industrialization. India has to commit to sustainable solutions that both encourage economic growth and minimize pollution; it cannot forgo economic growth by eliminating all potential sources of pollution. India is currently the world’s third-largest carbon emitter. It is clear that India developed numerous legal initiatives to address pollution, starting with the Stockholm Declaration. The Government's constitutional duty to preserve the environment and forests further emphasizes the need of doing so. However, despite several years of these efforts, India's pollution level remains quite high. Therefore, in order to reduce it, drastic affirmative action and policy are required; else, the consequences would cost us dearly down the road. The green gas emission in India is 37 percent of total GHG emissions in which the major contribution of 75.8% from energy sector (Figure 1).

Figure 1: Percentage of green gas emission in India



Source: Extracted from NITI Aayog's India Climate and Energy Dashboard: Economy- wide emissions (2019) available at https://iced.niti.gov.in/climate-and-environment/ghg-emissions/ economy-wide

Figure 2: Electricity generation by fuel type in India (2020)



Source: IMF WP 23/218 A Framework for Climate Change Mitigation in India available at www.imf.org.

Green Tax: Meaning and definition

Green tax is a newly emerging field in which it is considered as a solution for reducing the air pollution including carbon emission and a mechanism to promote environmentally healthy lifestyles. Everyone is now knowing the impact of pollution and there is substantial encouragement for the concept of sustainable development both at the international and national level. So, there should be balancing approach for both the development and environmental protection. Then only a nation can meet the needs of the present generation and also to preserve the resources for the life of the future generations. Through the sustainability principles, the effort to provide alternative solutions to reduce the pollution especially by the economic and developmental activities and also to give incentives to the companies and industries who adhere to the principles of sustainability (Kazi Mohammed Kamal Uddin et. al.). So, by one way it discourages the activities that harm the environment and on other way it promotes the activities that reduces the green gas effect.

One of the new policy innovations for the sustainable development is the green tax. Its main aim is to convert the economy to the green economy. The green tax concept was firstly originated from one American economist Pigou who advocated for implementing a tax as a punishment for doing wrong or damage to the environment or the society (Haitham Nobanee & Saif Ullah). It supports the activities that reduce the pollution. So, the economic activities that results the carbon emission or serious environment pollution will be affected by green tax.

The United Nations defines it as a compulsory, unrequited payment to the general government, levied on carbon emissions or its proxy that can confer a reduction in corresponding carbon-based (equivalent) emissions in the atmosphere and is thus characterized as having both environmental purpose and effect[2]. IMF defines green tax as indirect taxes on production inputs or consumer goods whose use can damage the environment (for example, excise taxes on gasoline). As per the words of the European Union, this is a tax on a physical unit which is proved having some adverse impact on the environment[3].

[2] United nations, united nations handbook on carbon taxation for developing countries (department of economic and social affairs pub., 2021).
[3] Regulation (EU) No 691/2011 https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32011R069.

Therefore, implementing the green tax have significant positive results for the environment protection relying on the principle that the polluter has to pay for it. This provides encouragement to adopt the technologies which help for reducing the environment damages. A shift from non-renewable energy sources to renewable energy is possible by the financial incentives to support the use of environment friendly resources. Thus, green taxes are valuable policy implementation for encouraging the sustainable development and adequately addressing the environment challenges.

International efforts for reducing carbon emission and the importance of green tax

The importance of environment protection and the concept of sustainable development is now well established in the global scenario. From 1980s onwards the concept of sustainable development reached the mindsets of international community and the e United Nations World Commission on Environment and Development (the Brundtland Report, Our Common Future, 1987) which significantly raised the need to take the environment into account in formulating policies and developing specific measures in response to the challenges of climate change, pollution and resource management became a common concern, in particular in the wake of the Rio Earth Summit of 1992.

The United Nations Framework Convention on Climate Change 1992 (Rio Summit) is the first document which directly focused on preventing the dangerous anthropogenic (human induced) interference with the climate system. This urges the need to prevent such interference in a sustainable way which doesn't seriously affect the economic developments. Recalling the importance of the Stockholm Declaration, 1972, it acknowledges that steps required to understand and address climate change will be environmentally, socially and economically most effective if they are based on relevant scientific, technical and economic considerations and continually re-evaluated in the light of new findings in these areas. Making the protection of climate system as a responsibility towards the present and future generations, it set out principles for the state parties to observe and implement in their own respective jurisdictions. Accepting the difference in both responsibility and the ways to curb the pollution and take precautionary principles, this fixes different types of responsibility upon the developed and developing countries. Policy strategies for mitigating the climate change and also making the developed countries more responsible in its commitment are the key features of this 1992 Convention.

The operationalisation of the 1992 Convention especially mitigating the climate change was the main agenda for The Kyoto Protocol, 1997. This relied on 'common but differentiated responsibility and respective capabilities' principle and make the developed nations accountable for the current high level of emission of the greenhouse gases in to the atmosphere because of their greater responsibility in such emissions. This Convention sets an Annexture 1 which consisting of industrialised countries having greater responsibility to reduce the emission within 7-year period and it further propagate two mechanisms such as Joint implementation (JI) and Clean Development Mechanism (CDM). Both addressed the mechanisms to reduce the carbon emission and to promote environment friendly policies for reducing the green gas effect and global warming.

Both these Conventions along with Doha Amendment, 2013 and the Paris Agreement, 2016 stand as the basis for implementing the sustainable development principle which deeply rooted in the polluter pay principle and the precautionary principle which urges the need to compensate for the environmental damage caused by the harmful act. Moreover, Goal 13 of the United Nations' Sustainable Development Goals creates legal obligation to mainstream climate change considerations into their policies, laws, and institutions. For implementing Goal 13, the need to reduce the usage of fossil fuels and fairly allocating the right to use the remaining fossil fuels are the concerns before the international community to implement without creating price hype in the developing countries which is largely depending on the fossil fuel energy.

The Organization for Economic Cooperation and Development (OECD), which is dedicated to establishing global standards for a better life, has made a thorough level recommendation for the appropriate implementation of a green tax. The OECD (2010) clearly indicated that environmental taxes have been effectively utilized to address a variety of concerns, such as waste disposal, water pollution, and air pollutants, along with many other taxing goals. As a result, the majority of OECD members have implemented green taxes in their national systems. Internationally, the standard procedure is to apply a supplemental taxation after including all petroleum goods in the GST base. The amount levied as a green tax in these nations varies based on the carbon and sulphur contents included in fuels.

UN Climate Change Conference (COP21) in Paris, 2015 aimed to achieve the goal of an "increase in the global average temperature to well below 2°C above pre-industrial levels" and "to limit the temperature increase to 1.5°C above pre-industrial levels." This Conference

initiated for formulating long- term ow greenhouse gas emission development strategies (LT-LEDS) in a way which further providing adequate technical and financial support to the countries who need it. For the capacity building for reducing the carbon emission under Article 6 and to take steps for taking action against global warming, the Conference identified the importance of climate fiancé which is necessary for the financial resources to mitigate climate change and financial assistance to the developing countries. The fulfilment of obligations under 2015 Conference are periodically reviewed by the subsequent Conferences.

As per the World Trade Organisation (WTO), almost 57 members take effort to initiate internal taxes for environmental purposes. This can be mostly seen in energy sector, manufacturing sector and chemical industry. The 28th United Nations Climate Change Conference, or Conference of the Parties (COP28) analysed the state party's obligation and its fulfilment towards reducing carbon emission through the regulations such as internal taxes and carbon pricing instruments with their wider climate action plans. As agreed, upon in the Paris Climate Change Accords, COP28 represented the first 'global stocktake' to evaluate the international response to the climate problem. This assessment came to the conclusion that too little has been done to combat climate change in any of the following areas: reducing greenhouse gas emissions, enhancing resilience to its effects, and providing funding and assistance to developing countries so they can confront the issue. Countries decided how to speed up activity in all areas by 2030 in response to these findings including internal tax for non-renewable energy resources usage.

Green tax in India

India is always in forefront for making policies to preserve the environment. According to Article 48A and Article 21 of the Constitution of India, our nation has the responsibility to protect the environment and right to pollution free environment is a basic fundamental right of the people. Through land mark decisions like M. C. Mehta v. Kamal Nath, (1997) 1 SCC 388; M.C Mehta v. Union of India, 1988 SC 1037; Indian Council for Enviro-Legal Action v. Union of India 1996 (5) SCC 293 etc., the Indian Judiciary also well established the principle that resources like air, water, soil etc. are the gift from nature which should be utilized in a sustainable way. For any harmful emissions, the responsible person should take all the precautions and are liable for paying the pollution caused in case of any hazardous emissions. But even though there are a number of legislations for the environment protection, many pros and cons are there at the implementation level. Green tax is a much effective way for

reducing such issues. Currently the green tax policies are implemented in the 2 main regimes such as the energy sector and transportation.

The first initiative for green tax was taken by the Tax Reforms Committee of 1992. In order to encourage economy in the use of certain resources in production and consumption and to preserve and safeguard the environment, they suggested for higher tax rates on specific raw materials that could be imposed. But no later legislation was able to give significant consideration to this suggestion. Further it was highly recommended in the Thirteenth Finance Commission's proposal to impose a non-negotiable excise on all commodities that cause environmental pollution. But a definitive decision regarding the imposition of a Green Tax on natural gases was not made because of the need for heavy research for evaluating all the aspects relating to it. In addition, the Commission proposed three specific grants for environmental protection and promotion that would increase the amount of forest cover, improve water resource management, and encourage the integration of renewable energy sources into the country's energy infrastructure. It does provide a comforting image of the future and shows that India is prepared to become one of the "environmentally sound" countries.

Green taxing system was firstly introduced in India in year 2010 in which the Union Finance Act imposed a clean energy cess on certain products like goal, Lignite and Peat. But this cess was subsumed under the GST Compensation Cess by the implementation of Goods and Services Tax in 2017 as the GST Compensation collection which was ended recently. Even before this cess implementation, the Energy Conservation Act, 2001 which was enacted for was enacted for reducing energy consumption and adopting more energy efficiency measures, has provision to fund for more energy efficiency in our country. Its Section 56 gives power to the Central Government to make rules for the formation of new schemes and its implementation aiming for energy conservation.

The Energy Conservation Amendment Act, which came into effect in 2022, focuses on potential ways to transition India's energy usage from petroleum and coal and implement a carbon credit trading scheme. Eight national tasks are enshrined in the National Action Plan on Climate Change (NAPCC), which was initiated in 2008 and aims to effectively reduce carbon emissions, hence mitigating climate change. These eight goals, which include the Green India Mission and the National Mission for Enhanced Energy Efficiency, offer the framework for implementing integrated, multifaceted approaches to mitigate climate change.

The Energy Conservation (Amendment) Act, 2022 introduced the Corbon Credit Trading System which provide certificates of carbon credits for registered enterprises adhering to the carbon credit trading program by the Central Government or any other authorised agency. Under this the green subsidy and imposition of carbon tax which aim for reducing carbon emission and increasing the use of renewable energy sources. But the Government can only implement this by assessing the GDP cost and to analyse whether it is fiscally less expensive.

The Indian government does not now impose a green tax on automobiles in the full amount. However, due to increased carbon emissions, certain states—including AP, Telangana, Karnataka, Maharashtra, Dadar & Nagar Haveli, Uttar Pradesh, Jharkhand, etc.—are taxing older cars at higher rates. The initiatives, such as the odd-even formula and the ban on diesel cars, would aid in the reduction of air pollution. Each of these states implemented it by adding an additional levy to their Motor vehicles Tax Act for vehicles more than fifteen years old. However, the amount and the tax provision could differ from one state to another and how many states consider this amount as a fund for pollution control is also a question. A Proposed Guidelines for Imposition of Green Tax on older vehicles by State/UT Governments in 2021 was an initiative by the central Government for regularising the use of vehicles and other energy consumption activities which causes environment pollution. One of the point that is concerned by this draft guidelines was that the revenue collected as green tax by the states from old vehicles should be used for reducing the pollution and its hazards.

As per the Report of the Working Group on Road and Road Transport of the 13th Five Year PLan of the Kerala State Planning Board, The transport sector is highly dependent on fossil fuels and is also the major source of air pollution, especially the greenhouse gas emissions. In order to reduce the ill effects of transportation such as air and noise pollution, policy level interventions like imposition of green tax on vehicles above 10 years of manufacturing, incentives for green technologies, use of vehicle technology and promoting switching from fossil fuels to LPG/ CNG/ Hybrid etc. are required. From 2017 onwards, Kerala introduced the green tax in case of using older vehicles on road. In Kerala, the commercial vehicles which are more than eight years old have to pay green tax for getting the fitness certificate from the Motor Vehicles Department. Normally it is 10%, but if the vehicle is more than 15 years old, then the tax will be increased to 50% by the 2022-23 Budget. Considering this as a small step towards a sustainable development policy, we have to look forward to more similar steps to be taken in future.

Way forward

India is committed for reducing carbon emission and moreover the country tries to attain the target of net zero by 2070. So, more policies and actions in the area of carbon reduction by imposing green tax and also giving incentives for using renewable energy source should be encouraged in such a way that more consideration must be given for sustainable development. This needs a clear understanding and analysis of the possible areas and ways to increase fund for protecting and recovering the environment and its impact on the GDP development and the total progress of our nation. As the Supreme Court rightly pointed out in State of Gujarat v. Reliance Industries Ltd, Civil Appeal No. 513557 of 2013 Dated on 26-07-2021(SC); there is no unconstitutionality in levying a tax on the generation of electricity other than from renewable sources. Because the traditional ways of creating energy ultimately causes high pollution rates which seriously affect the public health and environment, the producer of such harmful substances has the responsibility to contribute to the state for promoting and adopting the use of renewable energy resources and to restore the healthy environment.

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