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Green Credits and the Dilutions of the Environment Act: A Recipe for Greenwashing

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ABSTRACT

The Dichotomy of the ambitious Carbon Credit and green credit policies of India and the dilution of the environment act are presented in the following paper.

In 2023, India saw the passage of 3 legislations namely the Green Credit Policy, Compliance Carbon Trading Scheme (CCTS) and the changes to the Environment and Biodiversity Act.

India witnessed significant dilutions in its environmental laws, particularly in the penal provisions of key regulations. The Ministry of Environment, Forest and Climate Change (MoEFCC) proposed amendments to laws such as the Environment (Protection) Act, 1986, the Air (Prevention and Control of Pollution) Act, 1981, and the Water (Prevention and Control of Pollution) Act, 1974, aiming to dilute the penal provisions, which include imprisonment of offenders.

These dilutions have raised concerns about the potential impact on environmental protection and the fundamental rights of communities. The proposed dilutions have been criticized by experts and environmental organizations, highlighting the need to maintain the integrity of environmental laws and regulations to ensure sustainable development and environmental justice. The dilutions in environmental laws have been viewed as contradictory to India's commitment to depart from a "business as usual" approach and have sparked discussions about the need for stronger regulatory mechanisms to safeguard

The passage of the carbon credit laws, particularly the Carbon Credit Policy, may impact the existing regulatory framework related to environmental compliance and corporate social responsibility. The introduction of a compliance carbon market and the issuance of Carbon Credit Certificates (CCCs) may lead to a shift in the focus of companies towards carbon mitigation activities, potentially affecting their prioritization of CSR initiatives and environmental compliance. The absence of a concrete definition of 'carbon credits' and the open-endedness of the carbon trading scheme have raised concerns about regulatory ambiguity and the need for robust oversight to prevent greenwashing and ensure the integrity of the market

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Additionally, the establishment of a cross-sectoral regulatory mechanism and the empowerment of the central government to specify the carbon credit trading scheme under the Energy Conservation (Amendment) Act, 2022, indicate a significant regulatory overhaul to accommodate the carbon credit market.

An overhaul that could eventually lead to a mess in terms of industries compliance on paper. The industries will be free not to undertake any compensatory activities on the site of the industry and thus becoming free of any commitments the affected area's population. This will be facilitated by the celebrated green credit and carbon credit policy of India which once implemented has the potential to wreak havoc on the current environment.

Keywords: *Environment, Dilution, Greenwashing.*

I. INTRODUCTION

The Indian Constitution contains several provisions for environmental protection, emphasizing the importance of preserving natural resources and promoting sustainable development. Key provisions include Article 48A, which directs the state to protect and improve the environment and safeguard forests and wildlife; Article 51A(g), which imposes a duty on citizens to protect and improve the natural environment; and Article 21, which guarantees the right to life, including the right to a healthy environment.

These provisions, along with the Directive Principles of State Policy, form the foundation for environmental laws and policies in India, aiming to ensure environmental sustainability and the well-being of citizens

The passage of the carbon credit laws, particularly the Carbon Credit Policy, may impact the existing regulatory framework related to environmental compliance and corporate social responsibility. The introduction of a compliance carbon market and the issuance of Carbon Credit Certificates (CCCs) may lead to a shift in the focus of companies towards carbon mitigation activities, potentially affecting their prioritization of CSR initiatives and environmental compliance. The absence of a concrete definition of 'carbon credits' and the open-endedness of the carbon trading scheme have raised concerns about regulatory ambiguity and the need for robust oversight to prevent greenwashing and ensure the integrity of the market.

Carbon credits are permits that allow the owner to emit a certain amount of carbon dioxide or other greenhouse gases. Carbon credits create a monetary incentive for companies to reduce their carbon emissions, and they can be sold to other companies that need them. Carbon credits are part of the compliance carbon market, which is a regulatory system that sets a cap on emissions and allows companies to buy and sell permits to emit greenhouse gases. The

voluntary carbon market, on the other hand, is a market where companies and individuals can purchase carbon credits voluntarily to offset their carbon footprint. Green credits, also known as green finance, refer to financial instruments and support aimed at promoting environmentally friendly and sustainable projects, such as initiatives to reduce carbon emissions and invest in renewable energy. Carbon credits are traded in the carbon market.

Green credits encourage financial institutions to consider environmental factors when making lending decisions, thereby contributing to environmental protection and sustainable development. There is less clarity on how the green credit market will operate or is operating.

Compliance carbon markets are regulatory systems that set a cap on emissions and allow companies to buy and sell permits to emit greenhouse gases. Compliance carbon markets are established by governments as a means of achieving their carbon reduction targets, and they operate on a mandatory basis, meaning that participating organizations are required by law to participate in the market and to meet certain carbon reduction targets. Compliance carbon markets are also known as Emissions Trading Systems (ETS), and they function at both the primary and secondary market levels. The most active compliance carbon offset program is the United Nations Clean Development Mechanism, which is the source of offsets for Kyoto Protocol Signatory Countries and buyers in the European Union.

The voluntary carbon market is a market where companies and individuals can purchase carbon credits voluntarily to offset their carbon footprint. The voluntary carbon market operates on a project-based system in which there is no finite supply of allowances. Within the voluntary carbon market, more carbon credits can be created through the development of environmental projects. Companies can buy these credits to offset unavoidable emissions and reach their targets. The voluntary carbon market is not regulated by governments and is not mandatory, unlike the compliance carbon market. The voluntary carbon market is significantly more fluid and unrestrained by boundaries set by nation-states or political unions.

The voluntary carbon market has the potential to be accessed by every sector of the economy instead of a limited number of sectors. The Taskforce on Scaling Voluntary Carbon Markets estimates that the market for carbon credits could be worth upward of \$50 billion as soon as 2030.

(A) Literature review

1. India's law and policy-scape

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provisions include Article 48A, which directs the state to protect and improve the environment and safeguard forests and wildlife; Article 51A(g), which imposes a duty on citizens to protect and improve the natural environment; and Article 21, which guarantees the right to life, including the right to a healthy environment.

These provisions, along with the Directive Principles of State Policy, form the foundation for environmental laws and policies in India, aiming to ensure environmental sustainability and the well-being of citizens.

India has several environmental laws that are implemented and enforced by the Ministry of Environment, Forest, and Climate Change, along with the Central Pollution Control Board at the national level. The main environmental laws in India are the Environmental (Protection) Act 1986, the Water (Prevention and Control of Pollution) Act 1974, and the Air (Prevention and Control of Pollution) Act 1981. These laws set parameters for businesses to follow and aim to address India's pollution problems. India's complex environmental regulations hinge on five major pieces of legislation, including the Environment (Protection) Act, 1986 amended 1991, the Forest (Conservation) Act, 1980 amended 1988, the Wildlife (Protection) Act, 1972, the Water (Prevention and Control of Pollution) Act, 1974 amended 1988, and the Air (Prevention and Control of Pollution) Act, 1981 amended 1987. New laws making an impact on the regulatory landscape are the E-Waste Management Rules, 2016, and the Plastic Waste Management Amendment Rules, 2021. The National Green Tribunal was established in 2010 to better uphold environmental laws. The environmental laws in India are guided by environmental legal principles and focus on the management of specific natural resources, such as forests, minerals, or fisheries.

India's Carbon Credit Policy of 2023 aims to reduce greenhouse gas (GHG) emissions and promote sustainable development. The policy assigns a carbon credit to each tonne of carbon dioxide equivalent (tCO₂e) reduced or avoided, which can be bought, sold, and traded. The policy covers approximately 72% of India's total CO₂ emissions and has far-reaching implications for India's journey to net-zero carbon emissions by 2070. The policy prohibits the export of carbon credits and is expected to have a significant impact on India's compliance with the Paris Agreement and the Kyoto Protocol. The policy operates primarily under the Clean Development Mechanism (CDM) of the Kyoto Protocol, where projects designed to curtail emissions yield tradeable credits. The policy has raised concerns about regulatory ambiguity and the need for robust oversight to prevent greenwashing and ensure the integrity of the market. The policy proposes the establishment of a cross-sectoral regulatory mechanism, under which the Indian Carbon Market (ICM) Governing Board is to be set up, for governing the Indian

carbon market. The market shall be administered by the Bureau of Energy Efficiency, also serving as the Secretariat of the board.

The Indian Green Credit Policy of 2023, as outlined in the Green Credit Rules, represents a significant commitment by India towards sustainable practices and climate change mitigation. The policy aims to incentivize voluntary environmental actions by individuals, organizations, and industries through the issuance of green credits for specific environment-friendly activities, which can be traded.

The rules define 'green credit' as a single unit of incentive provided for a specific activity that delivers a positive impact on the environment[2]. The program is supported by an inter-ministerial Steering Committee and a dedicated digital platform for registration, verification, and issuance of credits[3]. However, experts have raised concerns about the need for strong regulation to prevent greenwashing and ensure the integrity of the credits[3]. The policy is part of India's commitment to reduce carbon emissions and achieve net-zero by 2070[4].

2. Green credits outside India

A pertinent example of green credit generation and monetising environment sector projects to unlock climate change mitigation and adaptation finance is available from African countries such as Kenya and Ethiopia.

A Dutch funded project in Ethiopia namely Nedamco Africa is actively involved in generating environmental credits and certificates as part of its commitment to sustainable climate technologies. The company's initiatives focus on creating positive environmental and societal impacts by delivering innovative climate technology solutions, including water management and renewable energy. By leveraging advanced technologies such as digital twins, artificial intelligence, and machine learning, Nedamco Africa aims to improve resource efficiency and reduce the negative impact of industrial activities, thereby generating valuable environmental credits that can be sold to companies outside of Africa.

This not only supports global climate efforts but also creates a new source of foreign currency for African nations. The company's involvement in the digitalization of the environmental credit market, using services like Microsoft's Environmental Credit Services for efficient and transparent trading of environmental credits and certificates.

This can benefit African countries looking to participate in the environmental market

The recent Kenyan Carbon Credit Policy, as outlined in the Climate Change Act, has several vague aspects that require further clarification. Some of these vague aspects include:

- Profit-sharing agreements: The law requires carbon projects to sign profit-sharing agreements with local communities, ensuring that at least 40% of the profits are shared with the communities for projects on their land. However, it is unclear how these agreements will be implemented and enforced, as well as how the profits will be distributed among the community members
- Community development agreements: The concept of a "community development agreement" is introduced in the new law, mandating profit sharing for land-based and non-land-based projects. The details of these agreements, their implementation, and enforcement are not yet clear, which could lead to potential disputes and misunderstandings.
- National Carbon Register: The law creates a National Carbon Register to track carbon credits issued or transferred by Kenya. The details of how this register will be maintained, updated, and accessed by relevant stakeholders are not yet clear, which could affect the transparency and efficiency of the carbon credit trading system
- Regulation of carbon markets: The Climate Change Act establishes a framework for the regulation of carbon markets and empowers the Cabinet Secretary to enter into agreements with other states and private entities. However, it is unclear how these markets will be regulated, and what kind of mechanisms will be put in place to ensure compliance with the law.

These vague aspects of the law, if not addressed, could hinder the effective implementation of the Kenyan Carbon Credit Policy. This will negatively impact the country's efforts to combat climate change and promote sustainable development.

II. CLIMATE FINANCE AND ANTI-ENVIRONMENT LAWS

Climate finance refers to funding processes for investments related to climate change mitigation and adaptation. It aims to reduce emissions, enhance sinks of greenhouse gases, and increase the resilience of human and ecological systems to negative climate change impacts.

Climate finance encompasses various financial flows, including public, private, and alternative sources of financing, and it supports mitigation and adaptation actions that address climate change.

Key areas where climate finance is needed include:

- Transforming the energy system
- Building adaptation and resilience

- Coping with loss and damage
- Restoring and protecting natural capital
- Methane abatement

Climate finance can be sourced from various sectors, with the most significant investments in 2019-2020 going to renewable energy (US\$336 billion) and agriculture, forestry, and other land use (US\$16.5 billion)

Packages of funding targeting climate adaptation have been announced, including over \$1 billion for climate and health initiatives from philanthropies, donors, and multilateral development banks; \$2.6 billion in nature conservation finance from public and private sources; and an additional \$2.6 billion for climate-resilient food and agriculture projects

The financial sector plays a crucial role in combating climate change by supporting reductions in climate risk and mitigating its impact

Financial instruments such as hedging instruments (e.g., catastrophe bonds, indexed insurance), green stock indices, green bonds, and voluntary de-carbonization initiatives can help re-allocate investment to "green" sectors and support climate change adaptation and mitigation efforts

Central banks and financial regulators are also starting to factor in climate change when making financial decisions.

Green credits and carbon credits are both part of climate finance. Green credits, also known as green finance, are financial instruments and support aimed at promoting environmentally friendly and sustainable projects, such as initiatives to reduce carbon emissions and invest in renewable energy. Green credits encourage financial institutions to consider environmental factors when making lending decisions, thereby contributing to environmental protection and sustainable development

Carbon credits, on the other hand, are permits that allow the owner to emit a certain amount of carbon dioxide or other greenhouse gases. Carbon credits create a monetary incentive for companies to reduce their carbon emissions, and they can be sold to other companies that need them. Carbon credits are based on the cap-and-trade model that was used to reduce sulfur pollution.

Both green credits and carbon credits are part of the broader range of financial mechanisms and resources aimed at addressing climate change, including funding for climate adaptation, mitigation, and resilience efforts.

III. POTENTIAL ISSUES DUE TO CONFLICTING LAWS AND PRIORITIES

In simple terms the so-called business friendliness has been interpreted as dilution of environment protection laws.

(A) Potential for greenwashing

Greenwashing is the deceptive practice of making misleading or false claims about the environmental benefits of a product, service, or company.

In India, several companies have been accused of greenwashing, including Hindustan Unilever Limited (HUL), which has faced criticism for allegedly making misleading claims about the environmental and social impacts of its products such as Dove, Lifebuoy, Surf Excel, and Rin. HUL has been scrutinized over its use of palm oil linked to deforestation and human rights abuses in Southeast Asia

Other examples of companies caught for greenwashing globally include Volkswagen, Innocent, and IKEA Greenwashing is a prevalent issue in India due to a lack of strict regulations on environmental claims and eco-labeling, allowing companies to engage in greenwashing with little to no consequences.

This practice can mislead consumers who are increasingly demanding eco-friendly and sustainable products. It is essential for consumers to be aware of greenwashing tactics and to thoroughly research the environmental claims made by companies

With the dilutions in the Environment (Protection) Act, 1986 which is a key legislation in India aimed at protecting and improving the environment, the companies are no longer liable for prosecution as per the penal code.

It had empowered the central government to set new standards for emissions, regulate the location of industries, devise procedures for handling hazardous substances, safeguard against accidents causing environmental pollution, and collect and disseminate information.

The Act also focuses on the prevention, control, and abatement of environmental pollution, laying down standards for the quality of the environment, as well as for the emission or discharge of environmental pollutants from various sources. It restricts areas in which any industries, operations, or processes shall not be carried out or shall be carried out subject to certain safeguards

Furthermore, the Act includes provisions for the protection and improvement of the environment, safeguarding forests and wildlife, and the duty of every citizen to protect and improve the natural environment, including forests, lakes, rivers, and wildlife[3].

The Act has been complemented by other legislations such as the Water (Prevention and Control of Pollution) Act 1974, the Air (Prevention and Control of Pollution) Act 1981, and the Biological Diversity Act 2002, all aimed at safeguarding the environment[4]. The Act is a crucial component of India's environmental legal framework, providing the government with the necessary authority to protect and improve the environment and regulate various aspects of environmental pollution

IV. REGULATION AND OVER REGULATION

The ambitious plan to generate carbon credits and carbon finance is fraught with issues .The carbon credit policy is set to replace current provisions like Renewable Energy certificates and Perform achieve Trade scheme.

Perform, Achieve, and Trade (PAT) scheme is a regulatory instrument in India aimed at reducing specific energy consumption in energy-intensive industries. It is associated with a market-based mechanism to enhance cost-effectiveness through the certification of energy-saving targets. The scheme assigns specific energy-saving targets to Designated Consumers (DCs) based on their current levels of energy efficiency. Energy-intensive industries are identified as Designated Consumers (DCs) and are required to appoint an energy manager, file energy consumption returns every year, and conduct mandatory energy audits regularly. The PAT scheme operates on a rolling cycle basis, with new sectors/designated consumers being notified every year.

Renewable Energy Certificates (RECs) are a market-based instrument that certifies the bearer owns one megawatt-hour (MWh) of electricity generated from a renewable energy resource. RECs are used to track and trade renewable energy generation and use, and they play a crucial role in accounting for the amount of renewable energy that flows through the power grid. RECs can be sold for profit to those looking to offset their carbon emissions, and they are issued when one megawatt-hour (MWh) of electricity is generated and delivered to the electricity grid from a renewable energy resource. In India, the Renewable Energy Certificate (REC) mechanism is a market-based instrument to promote renewable energy and address the mismatch between the availability of renewable energy resources in states and the requirement of the obligated entities to meet their Renewable Purchase Obligations (RPOs). The REC mechanism is regulated by the Central Electricity Regulatory Commission (CERC) and is aimed at incentivizing renewable energy generation and promoting the growth of the renewable energy sector in India.

With no plan or mechanism to interchange Credits earned by industries through voluntary carbon market and compliance carbon market, it will be a disincentive for companies already

involved in the carbon credit generation and investment.

Further green credits and carbon credits are not interchangeable.

The over regulation here is visible in terms of the plan to merge a scheme which is actually working namely the renewable energy certificates and PAT scheme with an uncertain carbon credit scheme. Further the need for regulation is visible when looking at the environment protection act and the various dilutions.

V. CONCLUSION AND RECOMMENDATIONS

The issues arising from the haphazard green credit and carbon credit policy implementation along with the dilution of the environment act pose new challenges.

The simple yet concrete solution would be to include the feature of additionality in the carbon credits and penalize non compliance.

In addition to this ,all industrial projects must be having a proportion of their carbon credit generation within the prescribed area of operation.

Unless the local population sees any benefit from industrial projects,it is difficult to imagine a supportive environment for business or industries to set up.The race to increase the ease of business ranking must not come at the cost of the environment.

Hence it is clear that the carbon credit policy which was designed to generate climate finance can be weaponized by industries to escape their local commitments on tree plantation and pollution reduction through buying carbon credits at another location.

Also the quality or veracity of the carbon credits themselves tend to be suspect.Hence the large potential for green washing.

The issues arising out of this analysis are yet avoidable and solvable due to the rolling timeline for implementation of the CCTS Policy .

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