

ISSN :2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 5 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmanagarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

ANALYSIS



Dr. Namita Jain

Head & Associate Professor



14th, 2019

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

FOR LEGAL RESEARCH & ANALYSIS



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment."

He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 is an Online Journal is Quarterly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench.

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

Shaping a Sustainable Future by making Environmental Policy more Effective

Authored By- Samarth Narayanan

Introduction

The genesis of this research paper topic rests in an episode of a podcast titled, *How to Save A Planet*¹. The episode talks about the draft of a jobs plan proposed by the Biden administration. What was interesting to the researcher had more to do with the *concept* explored in the episode, rather than the jobs plan itself, which involved various policy measures implemented by the state that did not openly come off as climate sensitive, or climate oriented, but nevertheless would make the global environment better off. This idea was reminiscent of notable Nobel laureate Richard Thaler's work², which explored the economic merits of nudging populations towards making choices they consciously would not have otherwise made. Similar ideas were explored in a chapter in Abhijit Banerjee and Esther Duflo's book, *Good Economics for Hard Times*, titled *In Hot Water*³. Acknowledging the imminent need for climate action, as illustrated in existing resources, this paper shall study climate policy purely from an implementation point of view. In this direction it shall establish a theoretical framework to indicate how every member state in the international legal system belongs to a specific economic and cultural demographic, and hence the implementation of a policy mechanism would starkly vary from one country to another. Theoretical framework exhausted, the paper shall rely on case laws and various case studies which show the implementation of the same. The author attempts to show that framing a policy is only the first step, to ensure its implementation involves a very specific and dedicated effort by each member state attempting to cope with a global environmental crisis.

Economic & Environmental Paternalism

In order to establish a theoretical understanding, it is first important to illustrate what the thesis of this paper is. The essential understanding is that a policy exists in isolation, and needs to be implemented. In order to facilitate implementation of the same, an understanding of the various stakeholders, the institutions which govern them, as well as the biases that make their choices subjectively true would help in effective strategies to implement policies. This is largely based on the work of renowned economist Richard H. Thaler⁴, more specifically the book titled *Nudge: Improving Decisions About Health, Wealth and Happiness*, written by Richard H. Thaler and Cass R. Sunstein. Nudge economics, is a component of behavioral economics which is based on the theory of libertarian paternalism⁵, which explores how it is possible to subtly influence members of an economic system to take certain decisions without giving up their free choice, at the same time, moving towards what a policy's desired outcome would be. Referring to an example discussed in the book: in the toilets of an airport in Amsterdam, an image of a fly was emblazoned onto the urinals of the men's room. The positioning of the fly was done to notice whether people were likely to control the direction of their urine. Interestingly, the experiment resulted in an 80% reduction in urine spillage, which meant that there was simply an external element introduced, that compartmentalised the choices people who used the toilets took, without directly changing the number of choices they had. In the context of the current paper, the book also explores how policies could be applied to nudge choices in broader economic decisions as well.

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

Forms of Legislative Action

If one were to apply this literature to the current research paper, it becomes plausible to incentivise parties in the economic system to make certain choices which would result in environmentally sustainable outcomes. Considering the recent report published by the Intergovernmental Panel on Climate Change⁶, it is of paramount importance that nations do everything they can to reduce carbon emissions. In such a scenario, the prevailing idea is to pass environment conscious legislation, which could result in backlash for cutting down on jobs, or as empirical studies indicate, the populace even rejecting the idea that climate change is a real problem. The nudge idea presents a counter narrative that it is possible to both create new jobs, as well as change existing systems to be more sustainable. It is in this context that the theory is relevant to this paper. This theory of economic paternalism puts the author in a position to presuppose that decisions that indirectly cause more sustainable outcomes could genuinely work, and in various instances, even be preferred to legislation that directly tries to

change the status quo.

Contextually speaking, there are, in the current paradigm, two forms of redressal of climate issues. The first are those laws which fundamentally alter the status quo by directly proposing to be climate sensitive. One such law would be the Supreme Court of India's directions in the Delhi Vehicular Pollution Case⁷ which is later discussed in detail in the paper, but it involves a judicial pronouncement which, when implemented, attempted to reduce the overall carbon footprint. The second type of law refers to those laws where the state recognises a problem, and is able to therefore implement a solution that indirectly influences people's choices. Take this simple example: If a government were to tax a product like diesel high at its production origin, it would cause a domino effect that would inevitably incentivise people to choose an alternative that leaves a slighter carbon footprint, i.e. the rise in petrol vehicles as well as petrol usage, which leaves a less harsher impact on the environment; or even consequently, such policies could incentivise usage of public transport which could herald pro-environment impacts. Such a policy could also result in the addition of hydrogen-fuelled vehicles to Indian markets, for which the infrastructure currently is lacking⁸.

For the first type of law, the primary institutional barrier the state would foresee would be that of an inherent disbelief, in majority sections of the population, most of which would represent economically marginalised sections of society who stand to lose the most because of global warming. Unfortunately, trade restrictions, or laws which are climate sensitive also affect them, and there is a genuine prevalent belief that climate change is not real, or a hoax. To quote:

From Paris to West Virginia and Delhi, fighting climate change is often presented as a luxury for the elites, funded by taxes on the less privileged.⁹

Having this understanding is important because without it, legislative attempts have either not worked, or have simply been done wrong. In most cases it is simply because it becomes logistically or practically implausible to implement such legislation as it affects daily functioning. In the later section on the Delhi Vehicular Pollution Case, the author shall attempt to evolve an incentive structure based analysis to understand how the law could have been implemented more successfully.

Draft American Jobs Plan

As mentioned in the abstract, one of the primary legal literature taken for consideration in this paper is the draft of the American Jobs Plan¹⁰, released by the government of the United States

on March 31, 2021. The Jobs plan admits to its primary beneficiary being the working class that has been hit quite hard by the pandemic. It promises to make jobs more easily accessible to people who belong to different classes in society. But in addition to that, what the law does, is to subtly promote solutions which would result in lower carbon emissions. US President Joe Biden, upon assuming office, committed to reducing carbon emissions to half of what they were in 2005, by 2030, and his jobs plan, one of the first drafts to be put out, finds itself being climate oriented. The plan suggests proposals for clean energy investments by the state, it targets this clean infrastructure to the benefit of disadvantaged communities primarily. Many of these solutions do not announce themselves to be pro-climate, but decidedly are so, when one notices proposals in the plan concerning vehicle and building electrification, clean power, conservation of nature-based infrastructure, etc.

When read with the the feasibility of paternalistic laws explored in the section on Economic and Environmental Paternalism - laws which do not overtly banner themselves as supporting or promoting a certain cause, but instead, incentivise parties in the sample size to take these decisions themselves, as they are presented as being economically viable - the Plan becomes a legitimate source of reference as laws which incentivise greener alternatives are considered, causing people to shift to more sustainable solutions, and the Jobs plan is a primary example of such a law. In addition to this, the law is relevant as the brunt of financial capital is generated by the government, supporting the disadvantaged, incentivising them to make the shift, which is something climate policy has largely ignored. For example, the incentive structures for Grid Connected SPV rooftop systems in India, announced by the Ministry of Renewable Energy¹¹, while posing to be an impressive incentive structure, are not accessible to the middle and lower classes of society, who continue to utilise carbon centric methods of energy utilisation.

¹ Alex Blumberg, Ayana Elizabeth Johnson, HOW TO SAVE A PLANET, *Is Biden's Jobs Plan a 'SkinnyGreen New Deal'?*, May 13, 2021.

² Richard H. Thaler & Cass R. Sunstein, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH AND HAPPINESS, 2008.

³ Abhijit Banerjee, Esther Duflo, IN HOT WATER, Good Economics for Hard Times, 12 November 2019.

⁴ *Supra* at 2.

⁵ *Id.*

⁶ 55th Session of Intergovernmental Panel on Climate Change, Working Group II, CLIMATE CHANGE 2022:IMPACTS, A

⁷ [1991 SCR (1) 866], M. C. Mehta VS Union of India & Ors. 1991.

⁸ Will Hall, Thomas Spencer, G Renjith, Shruti Dayal, THE POTENTIAL ROLE OF HYDROGEN IN INDIA, The Energy and Resources Institute, 2020.

⁹ *Supra* at 3.

¹⁰ FACT SHEET: The American Jobs Plan, March 31, 2021, The White House.

¹¹ Government of India, Ministry of New and Renewable Energy, GRID CONNECTED SOLAR ROOFTOP SYSTEMS, last accessed on 3rd February, 2022.

European Union

The European Union nations are a classic example of commendable environmental action. The nature of international law being a soft law makes it especially challenging to implement legal obligations. But the European Union proves to be an exception to the rule as countries are able to mobilise forces effectively and also, to a large extent, enforce them. The Climate Agreement¹² by the government of Netherlands is an extensive and important source for this paper, as it boasts of various radical solutions which have since been implemented and have caused a major reduction in the emission of greenhouse gases. Take for instance the large budget for bicycling infrastructure. This has, in essence, promoted the building of ecosystems of cycling throughout the urban infrastructure of the country, and has boosted the setting up of green corridors. This is another example for an incentive system which promotes healthy living, which in return creates a positive net result on the environment, even if the direct cause of this change was not a law that tried to directly reduce emissions. It is a law that simply tried to make it easier to bicycle.

Furthermore, take for instance the European Union's Emissions Trading System¹³, as well as the PES Schemes promoted in the EU 2020 Biodiversity Strategy¹⁴, which incentivises corporations to limit the emissions they produce, in return for incentives. Speaking specifically of the PES Schemes¹⁵ - this is an abbreviation of "Payments for Ecosystem Service," and refer to a certain scheme made available to farmers and other agri-businesses in EU countries where for certain conditions, farmers would be able to opt-in for fixed payments for sets of lands where those conditions would apply. These schemes are a part of a larger package of agri-environmental schemes. A major problem that was seen in the implementation of the scheme was adverse selection. This ideally meant that the transaction costs of participating in the scheme was higher than the money earned in return. A solution was implemented in the form of a "conservation auction¹⁶," where policymakers were able to identify the stakeholders, and see that what they valued was status, and thereby set up bids for the opt-in for the schemes, which created demand and inflated the costs, thereby ensuring there was competition for non-marketed goods - which led to the policy being successfully implemented.

¹² Government of Netherlands, CLIMATE AGREEMENT, The Hague, 28 June, 2019.

¹³ EU Emissions Trading System, European Union, 2005.

¹⁴ The EU Biodiversity Strategy, 2020

¹⁵ Frans P. de Vries, Nick Hanley, INCENTIVE-BASED POLICY DESIGN FOR POLLUTION CONTROL AND BIODIVERSITY CONSERVATION: A REVIEW, *Environmental and Resource Economics*, vol. 63, 687-702, 2016.

¹⁶ *Id.*

The final source in this component is a compendium of case studies published by the European Union¹⁷. These sources are once again a relevant source as they put together unique policy solutions implemented in the European Union, which boost jobs and also are sustainable. Right from the promotion of tourism in order to facilitate conservation in the Tarka Project, to waste management solutions in the Trialp Project that specifically intended to benefit people who are unemployed, this source is a unique set of solutions for creation and retention of green jobs.

Delhi Vehicular Pollution Case

The Delhi Vehicular Pollution Case¹⁸ was a public interest litigation filed in the Supreme Court of India that intended to improve the public and private transport system in the region. The case passed an order forcing autorickshaws running LPG systems to shift to CNG (Compressed Natural Gas). This sounds like a very sound policy, at face value, but it did not take a few things into account. Shifting from LPG to CNG was costly. Rickshaw drivers were not ably positioned to afford such a shift. The time period was not sufficient either. As one would expect, the shift was not seamless. A lot of rickshaw drivers lost their livelihoods, being forced to sell their vehicles, which put fewer rickshaws on the streets¹⁹.

To make matters worse, in 1997, the court passed an order to restrict fresh permits for rickshaws, which they would issue only upon the purchase of newer vehicles, which again made it costly for most. Supply fell short of demand. People who used rickshaws to commute were forced to shift to private alternatives, and soon, there was an increase in the overall emissions to the atmosphere. According to a 2010 report on auto rickshaws in Delhi²⁰,

The permit cap created a gap between the supply of autos and the growing demand from Delhi's increasing population. A black market for auto permits soon emerged and the price of an auto permit rose dramatically. Just a year later owner-drivers were ordered to replace their autos or convert them to CNG by fitting expensive conversion kits. Unable to afford the Rs. 25–30,000 CNG kits, thousands of owner drivers had no option but to sell their autos and permits to

¹⁷ European Union, Case Studies of Links Between Environmental Policy and Employment, last accessed on 3rd February 2022.

¹⁸ *Supra at 7.*

¹⁹ Anuj Bhuvania, Open Edition Journals, THE CASE THAT FELLEDED A CITY: EXAMINING THE POLITICS OF INDIAN PUBLIC INTEREST LITIGATION THROUGH ONE CASE, 2018.

²⁰ *Id.*

financiers at bargain prices, further focusing power in the hands of the consolidating finance “mafia”.

Keeping this case in mind, one could develop a format which would proceed to account for all of the factors involved. The format would answer a few questions, and would proceed as follows:

The first step would be to identify the parties involved:

- a) The people who own and drive autorickshaws
- b) The people using autorickshaws for commute
- c) The market for autorickshaws
- d) The environment

It is highly unlikely that a policy that radically alters the status quo would not negatively affect at least one of the parties involved. So the second step would be to conduct a cost-benefit analysis. Logically enough, if the benefits outweigh the costs, it would be a sound policy.

So (a), the owners of the rickshaws are being asked to invest in a costly shift. They are not gaining from the policy. In the worst case, they are likely to sell their autorickshaws and move to other jobs. As a solution to this problem, the policy must consider balancing benefits to rickshaw drivers if they do invest in a shift, such as tax concessions, subsidised CNG systems, etc. as well as a phased out removal of LPG systems as opposed to an outright ban.

Similarly, (b), in the worst case, would have lesser autorickshaws on the street, and this would cause them to choose private alternatives. Alternative public transport systems need to be improved, and made appealing to commuters, hence incentivising them to choose riding a bus or a metro to work over an Uber. Similarly, bicycling and electric scooter based commuter businesses must be given the freedom to establish themselves without incurring high transaction costs.

In the case of (c) the autorickshaw market would accumulate second-hand autorickshaws at throwaway prices, which they would then replace with CNG cylinders and resell at higher prices, so this party is being benefited, but at the cost of (a).

If the negative pitfalls of (a) and (b) could be minimised, only then would there be a more seamless transition to the intended system, and only in this scenario would it positively benefit the final party, (d).

This format must also account for the fact that if all the parties are being negatively affected, if the net cost is negligible in contrast to the benefits to the intended problem, then it is still a sound policy, i.e. even if everyone is negatively affected, if the environment is better off in the end, it is still a sound policy. In this case, people shifting to private vehicles only resulted in higher emission rates than from before the fact, and in the end, the environment was only worse off, making this an unsound policy.

Conclusion

Recent reports by the Intergovernmental Panel on Climate Change²¹ as well as the report of the Special Rapporteur on extreme poverty and human rights²² illustrated how alarming the situation is, calling for a radical restructuring of existing economic systems. In this paradigm, governments are forced to take drastic action, but they rarely account for who is affected, and where. This results in policies which sound powerful at face value being pushed through government systems that have larger implications on existing markets and can negatively affect the same cause they are trying to support; implications governments don't account for. So the broad problem that needs addressing would be resolved if there were a one-size-fits-all format to account for optics changes. This paper is a broad attempt at summarising sources which indicate incentive structures and existing mechanisms to ensure laws can be implemented with more forethought into who is seeking to benefit from its enactment. The paper began with an illustration of a theoretical framework. After this it took a look at various draft legislations which perform these functions effectively. And finally, it attempted to apply these mechanisms to evolve a functional format to both identify stakeholders and then implement a policy by taking them into account. In this manner, the paper was able to successfully prove the point that laws are more likely to succeed if incentive systems could be used to effectively act as an additional layer to an existing policy, thereby making a law, for all other purposes, an actual law.

²¹ *Supra at 6.*

²² Philip Alston, Report of the Special Rapporteur on extreme poverty and human rights, CLIMATE CHANGE AND POVERTY, A/HRC/41/39, 17 July 2019.

The European Union nations are a classic example of commendable environmental action. The nature of international law being a soft law makes it especially challenging to implement legal obligations. But the European Union proves to be an exception to the rule as countries are able to mobilise forces effectively and also, to a large extent, enforce them. The Climate Agreement¹² by the government of Netherlands is an extensive and important source for this paper, as it boasts of various radical solutions which have since been implemented and have caused a major reduction in the emission of greenhouse gases. Take for instance the large budget for bicycling infrastructure. This has, in essence, promoted the building of ecosystems of cycling throughout the urban infrastructure of the country, and has boosted the setting up of green corridors. This is another example for an incentive system which promotes healthy living, which in return creates a positive net result on the environment, even if the direct cause of this change was not a law that tried to directly reduce emissions. It is a law that simply tried to make it easier to bicycle.

Furthermore, take for instance the European Union's Emissions Trading System¹³, as well as the PES Schemes promoted in the EU 2020 Biodiversity Strategy¹⁴, which incentivises corporations to limit the emissions they produce, in return for incentives. Speaking specifically of the PES Schemes¹⁵ - this is an abbreviation of "Payments for Ecosystem Service," and refer to a certain scheme made available to farmers and other agri-businesses in EU countries where for certain conditions, farmers would be able to opt-in for fixed payments for sets of lands where those conditions would apply. These schemes are a part of a larger package of agri-environmental schemes. A major problem that was seen in the implementation of the scheme was adverse selection. This ideally meant that the transaction costs of participating in the scheme was higher than the money earned in return. A solution was implemented in the form of a "conservation auction¹⁶," where policymakers were able to identify the stakeholders, and see that what they valued was status, and thereby set up bids for the opt-in for the schemes, which created demand and inflated the costs, thereby ensuring there was competition for non-marketed goods - which led to the policy being successfully implemented.

¹² Government of Netherlands, CLIMATE AGREEMENT, The Hague, 28 June, 2019.

¹³ EU Emissions Trading System, European Union, 2005.

¹⁴ The EU Biodiversity Strategy, 2020

¹⁵ Frans P. de Vries, Nick Hanley, INCENTIVE-BASED POLICY DESIGN FOR POLLUTION CONTROL AND BIODIVERSITY CONSERVATION: A REVIEW, *Environmental and Resource Economics*, vol. 63, 687-702, 2016.

¹⁶ *Id.*

The final source in this component is a compendium of case studies published by the European Union¹⁷. These sources are once again a relevant source as they put together unique policy solutions implemented in the European Union, which boost jobs and also are sustainable. Right from the promotion of tourism in order to facilitate conservation in the Tarka Project, to waste management solutions in the Trialp Project that specifically intended to benefit people who are unemployed, this source is a unique set of solutions for creation and retention of green jobs.

Delhi Vehicular Pollution Case

The Delhi Vehicular Pollution Case¹⁸ was a public interest litigation filed in the Supreme Court of India that intended to improve the public and private transport system in the region. The case passed an order forcing autorickshaws running LPG systems to shift to CNG (Compressed Natural Gas). This sounds like a very sound policy, at face value, but it did not take a few things into account. Shifting from LPG to CNG was costly. Rickshaw drivers were not ably positioned to afford such a shift. The time period was not sufficient either. As one would expect, the shift was not seamless. A lot of rickshaw drivers lost their livelihoods, being forced to sell their vehicles, which put fewer rickshaws on the streets¹⁹.

To make matters worse, in 1997, the court passed an order to restrict fresh permits for rickshaws, which they would issue only upon the purchase of newer vehicles, which again made it costly for most. Supply fell short of demand. People who used rickshaws to commute were forced to shift to private alternatives, and soon, there was an increase in the overall emissions to the atmosphere. According to a 2010 report on auto rickshaws in Delhi²⁰,

The permit cap created a gap between the supply of autos and the growing demand from Delhi's increasing population. A black market for auto permits soon emerged and the price of an auto permit rose dramatically. Just a year later owner-drivers were ordered to replace their autos or convert them to CNG by fitting expensive conversion kits. Unable to afford the Rs. 25–30,000 CNG kits, thousands of owner drivers had no option but to sell their autos and permits to

¹⁷ European Union, Case Studies of Links Between Environmental Policy and Employment, last accessed on 3rd February 2022.

¹⁸ *Supra* at 7.

¹⁹ Anuj Bhuwania, Open Edition Journals, THE CASE THAT FELLED A CITY: EXAMINING THE POLITICS OF INDIAN PUBLIC INTEREST LITIGATION THROUGH ONE CASE, 2018.

²⁰ *Id.*

financiers at bargain prices, further focusing power in the hands of the consolidating finance “mafia”.

Keeping this case in mind, one could develop a format which would proceed to account for all of the factors involved. The format would answer a few questions, and would proceed as follows:

The first step would be to identify the parties involved:

- a) The people who own and drive autorickshaws
- b) The people using autorickshaws for commute
- c) The market for autorickshaws
- d) The environment

It is highly unlikely that a policy that radically alters the status quo would not negatively affect at least one of the parties involved. So the second step would be to conduct a cost-benefit analysis. Logically enough, if the benefits outweigh the costs, it would be a sound policy.

So (a), the owners of the rickshaws are being asked to invest in a costly shift. They are not gaining from the policy. In the worst case, they are likely to sell their autorickshaws and move to other jobs. As a solution to this problem, the policy must consider balancing benefits to rickshaw drivers if they do invest in a shift, such as tax concessions, subsidised CNG systems, etc. as well as a phased out removal of LPG systems as opposed to an outright ban.

Similarly, (b), in the worst case, would have lesser autorickshaws on the street, and this would cause them to choose private alternatives. Alternative public transport systems need to be improved, and made appealing to commuters, hence incentivising them to choose riding a bus or a metro to work over an Uber. Similarly, bicycling and electric scooter based commuter businesses must be given the freedom to establish themselves without incurring high transaction costs.

In the case of (c) the autorickshaw market would accumulate second-hand autorickshaws at throwaway prices, which they would then replace with CNG cylinders and resell at higher prices, so this party is being benefited, but at the cost of (a).

If the negative pitfalls of (a) and (b) could be minimised, only then would there be a more seamless transition to the intended system, and only in this scenario would it positively benefit the final party, (d).

This format must also account for the fact that if all the parties are being negatively affected, if the net cost is negligible in contrast to the benefits to the intended problem, then it is still a sound policy, i.e. even if everyone is negatively affected, if the environment is better off in the end, it is still a sound policy. In this case, people shifting to private vehicles only resulted in higher emission rates than from before the fact, and in the end, the environment was only worse off, making this an unsound policy.

Conclusion

Recent reports by the Intergovernmental Panel on Climate Change²¹ as well as the report of the Special Rapporteur on extreme poverty and human rights²² illustrated how alarming the situation is, calling for a radical restructuring of existing economic systems. In this paradigm, governments are forced to take drastic action, but they rarely account for who is affected, and where. This results in policies which sound powerful at face value being pushed through government systems that have larger implications on existing markets and can negatively affect the same cause they are trying to support; implications governments don't account for. So the broad problem that needs addressing would be resolved if there were a one-size-fits-all format to account for optics changes. This paper is a broad attempt at summarising sources which indicate incentive structures and existing mechanisms to ensure laws can be implemented with more forethought into who is seeking to benefit from its enactment. The paper began with an illustration of a theoretical framework. After this it took a look at various draft legislations which perform these functions effectively. And finally, it attempted to apply these mechanisms to evolve a functional format to both identify stakeholders and then implement a policy by taking them into account. In this manner, the paper was able to successfully prove the point that laws are more likely to succeed if incentive systems could be used to effectively act as an additional layer to an existing policy, thereby making a law, for all other purposes, an actual law.

²¹ *Supra at 6.*

²² Philip Alston, Report of the Special Rapporteur on extreme poverty and human rights, CLIMATE CHANGE AND POVERTY, A/HRC/41/39, 17 July 2019.