

# Features of Climate Law

A CONCEPT NOTE

**Anirudh Sridhar**

Visiting Researcher, Centre for Policy Research

# Introduction

The conversation about a climate change law in India is fast growing. Just in the past few months, a series of documents such as reports and op-eds proposing an Indian climate law, and a private member's bill (listed for introduction to parliament) and a draft law on climate change have begun to make the rounds.<sup>1</sup> This rush for a climate law has in many instances led to a direct jump to solutions and even, as mentioned above, the drafting stage of the legislative process. However, given climate change laws are novel phenomena, it is worth first examining broad conceptual questions about the approach that would work best for the Indian context and then learning from a diverse international experience before locking into solutions, models, and texts. The first essay in this series contended with the first question, namely the principles and larger objectives of a climate change law.<sup>2</sup> This second essay will study the features of various climate change laws of the world to assess what structures and mechanisms should be considered best practices and might be apt for the Indian context.

The following breakdown of features is based on a comparative study of 12 climate change laws around the world, namely, those of Canada, Denmark, Germany, Ireland, Kenya, Mexico, New Zealand, Peru, Philippines, South Africa, South Korea, and the UK. The set has been selected to be representative of developed and developing countries; mature and young legal systems;<sup>3</sup> rich and poor countries; high, middle, and low per-capita income economies; and highly and moderately threatened geographical entities. These factors of course shape the eventual construct of the law and participate in no small measure in determining the distribution of climate-law features as tabled below. The particular categorisation of features in this paper has been crafted as it has been for two main reasons: (a) the categories allow for the isolation of mechanisms that most significantly influence the attainment of climate goals; (b) they enable the comparison and grouping of choices based on national, political, and economic contexts.

An immediate distinction, for instance, emerges between carbon-capping and capacity-building laws: it appears as though hard emissions targets emerge mostly in nations secure in the rule of law and the requisite obedience of a vast network of actors that must cooperate in its achievement. Most developing countries, on the other hand, take more bottom-up approaches by using the climate law mainly to prepare sectors for climate-readiness. Conversely, developing countries seem to adopt a more top-down approach with respect to the relation between the centre and states in the arena of climate action, while most European laws devolve power and responsibility more evenly.

But the purpose of this analysis is not merely to appoint as most suitable to the Indian context the legislative format of India's closest sociological analogue; the laws assessed are some of the most comprehensive and well-rounded in their strategic action plans on climate change – an enemy, after all, shared among rich and poor countries alike. Thus, the structures and mechanisms instituted by the following laws, and the language wherein they are articulated, can be regarded as a solid starting point for deliberation on the interplay between law and climate change around the world. And a potential Indian law stands to learn much from all the countries and features explored, which are as follows.

**Framework/ Cross-sectorality:** A framework climate law can be defined as 'an overarching law that create[s] a unifying basis for climate policy'.<sup>4</sup> For the purposes of this section, we will limit the definition to the ways in which climate laws involve the various sectors of the economy and their corresponding ministries. Do they, for instance,

---

<sup>1</sup> See Bhushan and Gopalakrishnan, 'Environmental Laws'; Sridhar, 'Designing a Climate Law' (2021a) & 'India's Climate Law' (2021b); Sinha, 'Climate Change (Net Zero Carbon) Bill'; and Centre for Environmental Law, Education, Research and Advocacy, 'Climate (Protection) Bill'.

<sup>2</sup> See Sridhar, 'The Principles of Climate Legislation' (2021c). <https://cprindia.org/research/papers/principles-climate-legislation>

<sup>3</sup> This is a dichotomy distinct from the former: South Korea, for instance, is a developed country but its institutions and rule of law are not time-served: a circumstance material to the nature of its climate law

<sup>4</sup> Nachmany et. al., 'Global Trends', (n 11) 22.

allot carbon budgets to each sector? Or demand mitigation plans and progress reports from each sector to mainstream climate concerns therein?

**Outcome Duties:** An outcome duty is a new kind of duty that emerged in the development of climate law. Colin Reid defines it as ‘a duty not just to do something but to ensure the achievement of a specified outcome which depends on the cumulative conduct of a wide range of parties’.<sup>5</sup> For instance, the UK Climate Act has ‘now established a legally binding target of at least an 100% cut in GHG emissions by 2050, to be achieved through action in the UK and abroad’.<sup>6</sup> Some laws, however, to avoid the legal complications of outcome duties, direct authorities to create a separate instrument like a policy or framework that would then set the emissions target. Others, of course, avoid numerical targets altogether. The issues to be considered in this regard are the effectiveness and efficiency of adopting outcome duties as opposed to incentivising and promoting low-carbon development.

**Procedural Duties:** For the purposes of this paper, we will regard any duties of a climate law that do not involve the achievement of a numerical outcome procedural duties. These duties will usually be designed to integrate climate concerns into the routine workings of government and industry, and enable a competent mitigation and adaptation response thereby. The binary between limiting and enabling climate laws can be nuanced by exploring the virtues of the following types of non-outcome duties and others.

- “Operational” duties require authorities to carry out specific tasks. Eg: submit progress report on mitigation and adaptation plans/policies.
- “Relationship” duties establish the relationship between different authorities by requiring consultation or establishing a hierarchy in terms of reporting, guidance or directions; Eg: X reports to Y.
- “Have regard” duties require authorities to have regard to certain things in the exercise of their functions (but not to go beyond that to give them overriding weight); Eg: consider climate risks in all infrastructure projects.
- “Purposive” duties set out the general objective to be pursued in carrying out a task or by an authority as a whole; Eg: to mainstream or build-consensus.
- “Endeavour” duties go beyond setting out a broad purpose by requiring authorities to do certain things, but what is required is very broadly defined and often subject to significant qualifications.<sup>7</sup>

It remains to be analysed the kinds of procedural duties that lead to the most robust climate institutions and long-lasting patterns of improvement.

**Federalism:** By the federal arrangement of the law is meant the distribution of power and responsibility with respect to the larger climate goals of the act between the centre, states, and local governments. Federalism will for the purpose of this section be understood as a spectrum ranging from top-down dominance – wherein lower governments are bidden to align policies with central plans – to more even vertical distribution of power – wherein state and local governments are permitted make laws and policies independent of the national plan.

**Rights:** This category refers to the right to climate or environment, the protection of which is at times announced as the chief purpose of the climate law in question. The phrase refers more specifically to the right to a *stable* climate.<sup>8</sup> To avoid the vagueness of such a promise, and the severe outcome duties that a strict reading of the right would necessarily demand, some laws ask that more fundamental rights be *considered* when setting mitigation and adaptation measures. Other laws avoid the language of rights altogether. The question to consider here will be whether promising a right to climate confers any advantage to the fruition of mitigation or adaptation goals or merely creates confusion.<sup>9</sup>

---

<sup>5</sup> Reid, ‘A New Sort of Duty’, 1.

<sup>6</sup> Grantham Institute, ‘Climate Change Laws of the World: UK Profile’.

<sup>7</sup> Reid, ‘A New Sort of Duty’, 1-3.

<sup>8</sup> See Peel and Osofsky, ‘Rights Turn in Climate Change’, 44-46.

<sup>9</sup> We have discussed in some detail whether the right to climate can in principle be said to exist in the first working paper – we are here only concerned with efficacy.

**Climate Body:** Almost every climate law, whether carbon-capping or capacity-building, institutes a new nodal climate body. These bodies are usually tasked with coordinating various actors involved in the act, advising decision-making bodies, giving direction for short- and long-term plans, and mainstreaming the larger goals of the act. The questions to explore here are the ideal composition and functions of the climate body, and the virtues of attaching the body to an executive versus granting it legal independence.

**Adaptation vs Mitigation:** Climate laws often vary in their ultimate goals and purposes. Some climate laws focus mainly on mitigation, either in furtherance of the Paris agreement or to enable low-carbon development, and other laws are geared towards adaptation: to prepare the state for climate resilience. The focus of the law will usually be determined by a range of factors such as geographical vulnerability, historical and present contributions to climate change, states of development, and international obligations. There are some laws that balance mitigation and adaptation goals almost evenly: these usually have distinct mitigation and adaptation policies/plans with separate sets of duties for each. Given India's unusual situation as a major present and historically minor emitter of GHGs, and its extreme vulnerability to climate change, the issues to explore are the optimum ways to balance and design the adaptation and mitigation functions of the law.

**MRV:** MRV refers to the measurement, reporting, and verification of the targets and goals set in the law. Broadly speaking, climate laws either require sectors and states to monitor their own emissions trajectories and report them to a central authority or establish a centralised emissions inventory or carbon registry tasked with conducting measurements across the country. MRV protocols are essential when assessing the progress of goals set out in the law and for setting revised agendas. The questions to be considered in this regard are what measurement and reporting protocols and distribution of authority with respect to verification would be most effective and productive for meeting mitigation goals.

There are of course categories we have not listed in this study. For instance, we might have explored the kinds of financial penalties imposed for failure to carry out outcome and procedural duties, and the relationship of climate laws with pre-existing environmental laws. While these and other features are indeed important aspects of climate laws, they do not, it seems, render themselves to conceptually rich discussions as they depend almost entirely on context. The main purpose of this exercise has been and will be to learn from international acts the modes, mediums, methods, and means of bringing to fruition the larger climate goals of a nation.

This compilation aims to achieve that by analysing the features listed below and assessing the virtues of each, keeping in mind the Indian context. There are of course many ways in which the unique species of law known as climate law could have been sliced and diced; but this particular set of features will, it is hoped, lend itself most propitiously to the task of designing a climate law, both from the ground up and from the overarching principles discussed in the first discussion paper.

The table below summarises the main features of climate laws from twelve countries around the world.

Features: Countries: <sup>10</sup>	Framework <sup>11</sup> / Cross-sectorality	Outcome Duties	Procedural Duties <sup>12</sup>	Federalism	Rights	Climate Body's Status & Main Function/s <sup>13</sup>	Adaptation vs Mitigation	MRV
Canada (2021)	Sectoral strategies + emission projection included in Emission Reduction Plan.	Net Zero by 2050 (from 2005 levels). <sup>14</sup>	Minister <sup>15</sup> submits progress and assessment reports wrt each target before Parliament.	Suggests cooperative measures or agreements with provinces.	Takes into account rights of indigenous peoples when considering mitigation plans.	Independent; advice on emissions target	Mitigation	Inventory included in progress report
Denmark (2020)	GHGs projected by sector; experts gathered on energy, buildings, transport, agriculture, environment, nature, economics.	Net Zero by 2050 (from 1990 levels) as "purpose" (not outcome). Separate climate plan mandated with 10-year targets.	Minister presents climate program (status report + next plan) to Parliament.	-	No.	Independent; advice on mitigation measures	Mitigation	-
Germany (2019, 2021)	Carbon budget divided among sectors: energy, industry, transport, buildings, agriculture, waste and others.	Net Zero by 2045 (from 1990 levels).	Fed gov. to submit Climate Action and Projections report to the Bundestag.	States can follow their own Climate Acts without prejudice to the federal act.	'Subjective rights and actionable legal positions are not established by or on the basis of this Act'.	Independent; advice on emissions target	Mitigation	Federal Environment Agency conducts yearly emissions inventory
Ireland (2015)	Concerned minister will submit their sector's mitigation and adaptation measures to the gov. ( <i>having regard</i> to national framework).	No. <sup>16</sup>	Periodic review report submitted by body to Minister & Minister to government for approval of plans.	National CC <sup>17</sup> Framework will specify measures for local authorities; latter has the <i>option</i> to adopt.	No.	Independent; advice on national mitigation and adaptation plans	Both	Inventory prepared by Body and included in transition statement
Kenya (2016)	Climate change responses are mainstreamed into sectoral functions.	No.	Body <sup>18</sup> submits progress report to President & Parliament.	State depts. to integrate CC Action Plan into plans and projects.	'Right to Environment' (which establishes non-impacted standing).	Chaired by President; coordination and mainstreaming	Adaptation	National Environmental Management Authority given authority to monitor, investigate, and report
Mexico (2012, 2018)	Strengthens mitigation and adaptation capacities among sectors: forests, water, energy, food, transportation, urban	No. (New type of duty: 'indicative objective' or 'aspirational goal' of reducing its GHG emissions by	Body creates an annual report on the state of climate action and publishes on a website.	Separate, analogous series of duties enumerated for Fed, States, and Municipalities. Fed sets framework and controls funding.	Guarantees 'right to a healthy environment'.	Chaired by Fed., composed of ministers (secretariats); advice on national climate policy	Both (leaning towards adaptation)	Minister creates registry of emissions

<sup>10</sup> The specific climate laws have not been cited here to avoid clutter. They can be accessed online, particularly in the LSE database: <https://climate-laws.org/>; The dates of climate laws listed record their original passing into law; some in this list have since been amended. Where the law has been amended, the italicized date indicates the year of latest amendment; the information in the table reflects the latest version of the laws, unless otherwise specified.

<sup>11</sup> Where sectors are not identified by name, the mechanism for cross-sectoral reach will be specified.

<sup>12</sup> Only the principal reporting duty has been included; many other procedural duties will be included in the act besides.

<sup>13</sup> Some laws institute multiple climate bodies. The descriptions in this column are in reference to the following bodies listed chronologically: Net Zero Advisory Body, The Danish Council on Climate Change, Council of Experts on Climate Change, Climate Change Advisory Council, Climate Change Council, National Institute of Ecology and Climate Change, Inventory Agency, National Commission on Climate Change, The Climate Change Commission, Ministerial Committee on Climate Change, Committee on Green Growth, and Committee on Climate Change.

<sup>14</sup> Even though a strict definition of 'net zero' doesn't depend on baseline years, the interim targets towards net zero – say, 55% by 2030 – will need a reference year.

<sup>15</sup> "Minister" means Minister of Environment or national equivalent.

<sup>16</sup> An amendment to this Act in July, 2021 establishes a 2030 target of 51% reduction in GHG's (wrt 2018) along with mandates for setting carbon budgets and sector-based ceilings. These are not reflected in the table because the new outcome duties cannot be understood without the unique limitation of liability: 'For the avoidance of doubt no remedy or relief by way of damages or compensation is available with respect to or arising out of any failure, of whatever kind, to comply with any provision of this Act or any obligation or duty created thereunder.'

<sup>17</sup> "CC" stands for Climate Change.

<sup>18</sup> "Body" refers to the nodal climate authority established or enabled by the Act.

	development, agriculture, and waste.	50% by 2050 (from 2000 levels).						
New Zealand (2002, 2020)	Divides carbon budget among agriculture, forestry, stationary energy, liquid fossil fuels, households.	Net Zero by 2050 (below business-as-usual levels).	Body prepares emissions inventory and submits to Secretariat (at Minister's behest).	-	No.	Same as chief executive; conducting inventory of emissions	Mitigation	Participants in trading scheme self-conduct MRV; minister may appoint an inspector
Peru (2020)	Sectoral authorities incorporate climate into strategic sector plans & budgets.	No.	Plan and progress reports submitted by Minister before Congress.	Federal, state, and local government to prepare their own strategies given overarching goals.	All climate measures must consider impacts on fundamental 'human rights'.	Chaired by Minister; proposing adaptation and mitigation measures	Both	Ministry of Environment conducts MRV
Philippines (2009, 2010)	Crafts investments in climate sensitive sectors (adaptation-based): water resources, agriculture, forestry, coastal and marine resources, health, and infrastructure.	No.	Body prepares Strategic Framework on Climate Change.	Local governments have independent authority of formulation, planning, funding and implementation of local climate change action plans.	To protect and advance the 'right of the people to a healthful ecology'.	Independent; mainstreaming, coordinating and advising	Adaptation	Body in charge of MRV
South Africa (2018) <sup>19</sup>	Minister will set Sectoral Emissions Targets for GHG emitting sectors.	No. (Minister must later determine GHG threshold and allocate carbon budgets)	Include climate report within budget bill.	Every organ of state must coordinate and harmonise the plans of the national, provincial and local spheres of government.	On the basis of 'Right to Environment'.	Peopled by various ministers; coordinating line ministries	Both	Those allocated carbon budget obliged to self-monitor in accordance with official methodology
South Korea (2010, 2016)	Infrastructure, transportation, roads, ports, waterworks and sewerage.	No. (Separate decree: 37% reduction in GHGs by 2030 (below business-as-usual projection for 2030)) <sup>20</sup>	Every controlled entity submits yearly progress report on climate action to Gov. which submits compiled report to National Assembly.	Local government shall fully cooperate in the State's measures.	No.	Under PMO; promotion and mainstreaming	Both	Each controlled entity prepares a statement of its GHG inventory (verified by independent body)
UK (2008, 2019)	Body advises how carbon budget should be divided amongst sectors (e.g.: buildings, transportation, waste).	100% reduction (from 1990 levels)	Body submits annual progress reports to Parliament on state of targets.	Local authorities are not formally obliged to do anything on climate change by law. <sup>21</sup>	No.	Independent; advise on carbon budgets and emissions targets	Both (predominant focus on mitigation)	Self-measurement and reporting based on guidelines in the act

<sup>19</sup> This refers to the South African Climate Change Bill (2018) which is yet to become law.

<sup>20</sup> The Low Carbon Green Growth Act (2010), which this row is based upon, has now been superseded by the 'Carbon Neutrality and Green Growth Act', which was passed by the National Assembly on August 31st, 2021. The law has an outcome duty of 35% emissions reduction from 2018 levels by 2030 with a 'vision' of carbon neutrality by 2050. The text of this Act is not publicly accessible at the time of compiling this research and the table therefore does not reflect the 2021 climate law. See a breakdown of the Act in the Korean Ministry of Environment's press release: <http://eng.me.go.kr/eng/web/board/read.do?menuId=461&boardMasterId=522&boardId=1473610>

<sup>21</sup> Laura Mei, 'Climate action in England'.

# Bibliography

- Anirudh Sridhar (2021a), 'Designing a Climate Law for India', *Hindustan Times*.  
<https://www.hindustantimes.com/opinion/designing-a-climate-law-for-india-101629800791590.html>
- Anirudh Sridhar (2021b), 'In India's Climate Law, Focus More on Process, Less on Outcomes', *Hindustan Times*.  
<https://www.hindustantimes.com/opinion/in-india-s-climate-law-focus-more-on-process-less-on-outcomes-101629893051858.html>
- Anirudh Sridhar (2021c), 'The Principles of Climate Legislation: Working Paper', *Centre for Policy Research*.
- Centre for Environmental Law, Education, Research and Advocacy (2021), 'Climate (Protection) Bill', National Law School of India University. [CEERA-NLSIU-Climate-Protection-Bill-2021.pdf](#)
- Chandra Bhushan and Tarun Gopalakrishnan, 'Environmental Laws and Climate Action: A Case for Enacting a Framework Climate Legislation in India' [Policy Brief], *iForest*.
- Colin Reid (2012), 'A New Sort of Duty? The Significance of "Outcome" Duties in the Climate Change and Child Poverty Acts', *Public Law*, 4: 749-67.
- Jacqueline Peel and Hari M. Osofsky (2018), 'A Rights Turn in Climate Change Litigation?', *Transnational Environmental Law*, 7.1: 37-67.
- Jayanth Sinha, 'The Climate Change (Net Zero Carbon) Bill', 2021 (listed in Lok Sabha as no. 41 of 2021).  
<file:///C:/Users/sridh/OneDrive/Desktop/CPR/Webinar%202/India%20net%20zero%20private%20member's%20bill.pdf>
- Laura Mei (2021), 'Climate action in England: the case for legal reform and empowerment of local government', *LSE British Politics and Policy*. [Climate action in England: the case for legal reform and empowerment of local government | British Politics and Policy at LSE](#)
- Michal Nachmany, Sam Fankhauser, Joana Setzer, and Alina Averchenkova, 'Global trends in climate change legislation and litigation', *Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy*, London School of Economics and Political Science.