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Have you switched off the lights?

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Long gone are the days when this statement could meet the world's agenda of power conservation. With changes in lifestyles and scientific developments, the energy consumption of individuals and industries has gone a massive change and has given rise to a huge energy market. Well-developed manufacturing and service sectors, easy transport facilities for work and easily available leisure gadgets have high energy demands.

The dynamics of energy consumption amongst the developing and developed countries is also a hotly debated topic.
It is widely accepted that the energy consumption in the developed countries is much higher due to heavy industrialization as well as usage of excessive vehicles and appliances at domestic level. In Canada and the USA consumption per head is double that of Europe and more than 800 times that of developing countries.[2]

Nevertheless, the developing countries too need to do their part and enforce strict rules and policies for energy conservation. As per the reports from various news agencies, power consumption in India rose by 13.31% annually. The total power consumption in India is 127.39 billion units as of September 2022[3], largely due to our growing population.

On the legal perspective, Energy Conservation Act ("Act") was passed in India 2001 that laid down a framework for efficient use of energy and its conservation. The Energy Conservation Act established a statutory body in the form of Bureau of Energy Efficiency (BEE) and a regulatory mechanism to embark upon a rising energy efficiency drive through identifying designated consumers, standard and labelling of appliances, energy conservation building codes and establishment of energy conservation fund.

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[1] The article reflects the general work of the author on the date of publication and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] Global variations in energy use - Reasons for increase in demand for energy - Higher Geography Revision - BBC Bitesize

[3] Energy consumption in India: The future of energy consumption in India (indiaenergyportal.org)

The Act also recommends penalties for users who defy the energy norms. This legal framework around energy consumption was amended in 2010 when BEE was empowered to issue energy saving certificates to designated consumers basis their usage.
For the second time, the framework has now undergone a change with the passing of the Energy Conservation Amendment Bill ("Amendment") by the Rajya Sabha on 12th December 2022.[4] This bill had already been passed by the Lok Sabha in August 2022.

Certain key features of the 2022 Amendment.
a)Extending the applicability of the provisions to residential buildings and vehicles. The Amendment has altered the definition of Buildings under section 2 of the Act thereby ensuring that the Energy Conservation Code applies to residential buildings or buildings to be used for office purposes provided such Buildings are (i) erected after the notification of the Code, and (ii) having a minimum connected load of 100 kilowatt (kW) or contract load of 120 kilo volt ampere (kVA).
Similarly, Section 14 of the Act which empowers the central government to specify the norms for processes and energy consumption standards for any equipment, appliance which consumes, generates, transmits or supplies energy has been amended to include vehicle, vessel, industrial unit, building or establishment.

More teeth are added by including a specific restriction under section 14(c) to prohibit manufacture or import of any equipment or appliance or vehicle or vessel specified under clause (b), unless it conforms to energy consumption standards specified in India.

b)**Mandating use of non-fossil sources, including Green Hydrogen, Green Ammonia, Biomass and Ethanol for energy and feedstock:** The Amendment has empowered BEE under section 13(2) of the Act by introducing sub section (tf) to recommend minimum share of consumption of non-fossil sources by designated consumers as energy or feedstock.
This requirement is no surprise considering the climate crisis that we are experiencing. Reducing the consumption of fossil fuels is bound to add more strength to India's decarbonization commitment and has thus been added as a recommendatory power for the Bureau. Failure to meet the obligation for use of energy from non-fossil sources will be punishable with a penalty of up to Rs 10 lakh. It will also attract an additional penalty of up to twice the price of oil equivalent of energy consumed above the prescribed norm. However, this mandate should be clubbed with certain price control mechanisms for clean fuel also. According to a survey conducted by Delhi-based non-profit Centre for Science and Environment (CSE), the price of biomass has almost doubled since power plants and industries in the National Capital Region (NCR) were mandated to use it as a cleaner fuel[5].

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[5] Energy Conservation Amendment Bill 2022: It all boils down to targets for industries (downtoearth.org.in)

c)Establishing Carbon Markets:
This is the most interesting feature of the Amendment. Simply put, a carbon credit represents ownership of the equivalent of one metric ton of carbon dioxide that can be traded, sold or retired.

Under the Amendment, it is provided that the central government or any authorised agency may issue carbon credit certificates to entities registered under and compliant with the scheme under newly introduced section 14 AA.

The entities will be entitled to purchase or sell the certificate. Any other person may also purchase a carbon credit certificate on a voluntary basis under section 14 A. To ensure that carbon market runs to reduce carbon emissions and not simply on monetary exchange, it is important that the carbon price is raised high. This high price will work as a disincentive against the pollutant behaviour.

However, the specifics of the regulator entity which shall govern the carbon trading is not clear.

Another aspect which needs clarity is related to interchangeability of carbon credit certificate and the renewable energy certificate. Currently, the legal framework already provides for: (i) Renewable Energy Certificate under the Electricity Act, 2003 for promoting renewable energy, and (ii) Energy Savings Certificate under the Energy Conservation Act, 2001 for promoting energy efficiency[6]. In certain cases, if a company has already earned a renewable energy certificate due to its usage of renewable energy, would it still be entitled to a carbon credit and can it again trade separately?

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[6]The Energy Conservation (Amendment) Bill, 2022 (prsindia.org)

d) Enhancing penalty provisions under section 26 of the Act:

Act or omission	Penalty
Non-compliance of Section 14 (h) (j) (k) (l) OR Section 15 (c) (h) These provisions relate to obligations of consumers with respect to adherence of designated energy norms.	not exceed ten lakh rupees and in the case of continuing failures, an additional penalty which may extend to ten thousand rupees for every day during which such failures continue may be levied
Non-compliance of Section 14 (c) and (d) where such non-compliance relates to any industrial unit or vessel	in addition to the penalty of ten lakh rupees, an additional penalty which shall not exceed five thousand rupees per appliance or equipment in relation to which the non-compliance has occurred, but shall not be lower than two thousand rupees. an additional penalty which shall not exceed twice the price of every metric ton of oil equivalent consumed in excess of the prescribed norms:
if the manufacturer of a vehicle fails to comply with the fuel consumption norms,	an additional penalty per unit of vehicles sold in the corresponding year:— (i) twenty-five thousand rupees per vehicle for non-compliance of norms up to 0.2 litres per 100 kms; (ii) fifty thousand rupees per vehicle for non-compliance of norms above 0.2 litres per 100 kms.
If any person fails to comply with the directions issued under clauses (n) and (x) of section 14. Section 14(x) contains the mandate regarding minimum share of consumption of non-fossil sources by designated consumers as energy and section 14(n) pertains to the general compliance of energy norms.	a penalty which shall not exceed ten lakh rupees for each such failure: Provided that he shall also be liable to an additional penalty which shall not exceed twice the price of every metric ton of oil equivalent prescribed under this Act, which is in excess of the prescribed norms
If a person fails to comply with the provisions of section 13A (1) or fails to provide any information under section 52. Section 52 is the power of BEE to request information from any designated consumer and section 13A contains a prohibition any person to use a name deceptive to that of BEE.	a penalty which may extend to fifty thousand rupees on first such non-compliance or failure: Provided that for every subsequent non-compliance or failure, he shall be liable to pay an additional penalty which shall not exceed ten thousand rupees per day of such non-compliance or failure.

The penalties clearly indicate the strong intention on the part of legislature to enforce the energy norms and it is also provided that if any amount that is payable is not paid, then it may be recovered as if it were an arrear of land revenue.

While the government is trying its best to implement penalties and credit schemes, each entity and individual has a specific role to reduce his/ her energy consumption and adopt green means and unless this collective action is taken by one and all, it is going to be difficult for us to ride on this wave of climate change.

About Aarti

Aarti is experienced in corporate legal matters having specialization in drafting, vetting and negotiation of agreements. By qualification she is an advocate and a solicitor