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A SHORT NOTE ON THE LEGAL IMPLICATIONS OF CARBON TRADING ON THE ENVIRONMENT

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Abstract

The impact of carbon dioxide on the environment has been on the rise ever since the industrial revolution. The highest amount of carbon dioxide emitted on a daily basis is considered a threat to the human beings as well as the plants and animal. The ecosystem could accumulate that minimum amount of carbon dioxide, any excess of it would be considered as a global threat to the surroundings. The aim of the global environmental conventions is to limit the amount of the hazardous greenhouse gases, from being released to an undesirable extent. The Carbon Credit are issued to the countries to reduce the trading of carbon dioxide at a higher rate, which would eventually lead to the destruction of ecology and the natural resources remaining.

Kyoto protocol under the confluence of UNFCCC (United Nations Framework Convention on Climate Change) was regarded the first environmental treaty which binds the developed nations to reduce their overall emission of carbon-dioxide. Two commitment periods were made at the Kyoto Conference which stipulated-

- 1st commitment period from 2008-12 : lower the level of emission to 5 % compared to 1990[1] levels of the six greenhouse gases including carbon dioxide, methane, nitrous oxide, sulfur hexafluoride and hydrofluorocarbons.
- 2nd commitment period from 2013-20 : 20% reduction target compared to 1990 levels jointly by European Union and other developed countries.

[1] Rathin Bandyopadhyay, Gangotri Chakrabarty et.al - *Environment, governance and Development*, Volume 1 Department of Law, University of North Bengal, West Bengal, India, 1 Feb, 2014.

Article 17 of the Kyoto protocol allows countries that have emission units to spare emissions permitted but not used to sell this excess capacity to countries that are over their targets. Producing greenhouse gases like carbon dioxide is a crucial component in the fight against the environmental conservation. One of the possible measures that government try to reduce their carbon emissions is through carbon trading. Carbon trading is a market based system that aims to provide the economic incentive, for countries and business to reduce their environmental footprint.

Almost every activity from travel to farming leads to emission of carbon dioxide that contributes to the greenhouse effect responsible for climate change. Unlike fallen tree offsets where consumers can choose to pay company to balance out their carbon footprint such as funding for reforestation projects, which absorbs Co2; carbon trading is a legally binding scheme that caps total emissions and allows organisation to trade their allocation. It is also known by the name "Cap & Trade[2]". All Cap & trade system have a missions limit calculated by government and policy makers which are compatible to target limiting environmental damage. Carbon allowances or units totalling up to a maximum are then allocated to companies and can be traded in the market. Each year, organisations with a large carbon footprint are allocated an allowance proportionate to the historical missions which can then be bought and sold on a secondary market. If for instance a company knows that they have gone over their allowances, then they will need to buy more carbon units than their carbon market.

But in alternative scenario if they implement measures to reduce their carbon footprint, they can sell any excess unit of their market traded which can start from 1$ or run as high as 125$ allows for the emissions pollutant equivalent to 1 tonne of carbon dioxide. The price of carbon is determined by supply and demand. Supply of unit us kept to the level deemed acceptable and they cause more rise and fall depending on whether firms find alternative to polluting by signing a price to damaging activity. The system provides a financial incentive for firms to reduce their emissions for slowing the overall cost of reductions as the cheapest improvements made first.

Although carbon trading is a great initiative theory but it has not been seen as an easy theory in practice. The first international carbon market was set up under the UN 1997 Kyoto Protocol on

[2] Kyoto Protocol carbon trading available at https://www.investopedia.com/terms/k/kyoto.asp (last modified on 13th january 2022)

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Climate Change. However, following widespread reports of corruption system, the market collapsed. A report in 2015, found that an estimated 80% sustainable project under the trading were seen questionable enabling emissions to increase by 600 million metric tonnes. Since then there has not been any consensus on the best way to implement the cap and trade scheme. There are however, number of mission trading schemes and markets around the world at national and regional levels.

The oldest active carbon market is the European Union Trading system which launched in 2005, the schemes are operating in Canada, Japan and New Zealand, South Korea, Switzerland and the United States. At the start of 2021, China launched the world's largest carbon market and thermal power industry. The sectors accounts for 40% of China's emissions equivalent to double the emissions of the EU's carbon market. The total value of global carbon market is accounted to be 34% in 2019 reaching a 194 billion euros, for the third consecutive year of record growth. Values and emissions in 2019 were five times more of what it has been in 2017.

The no of cap & trade market is likely to increase as many countries and conmpanies worldwide try to make an ambitious pledge of "Net Zero" carbon emissions by 2050. The target was set by the United Nations. Cap & Trade system have been successful in tackling environmental problems in the past including one covering sulphur dioxide emissions which helped reduce acid rain in the US. Compared to direct regulation or taxes, carbon trading does not requires much governmental mention in the economy. As long as the cost of greenhouse gas emission is high enough to encourage these alternatives, many environmentalist tried an efficient method of de-carbonisation.

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However, an oversupply of carbon allowances during the 2008 financial crisis, so the price of polluting in the EU trading system reducing the incentives for business to change their behaviour. The response to EU created the Market Stability Reserve[3], a decade later which gave the European commission to tighten or loosen the supply of carbon units, as a result of which their prices tripled from 8 euros per tonne Co_2 to around 35 euros per tonne of Co_2 over a year. In 2019, emissions fell by 8.7%. the EU carbon market is also called the eye of pledge funds and traders. The Opaque[4] controls the third accolade of oil supply. The EU regulator pledge carbon

[3] CNBC International on Carbon Trading available at https://cnb.cx/2NGytpz (last modified on 21st january 2022)
[4] How do carbon markets work available at https://youtu.be/m5ych9oDtk0 (last modifoied on 15th December, 2022)

allowances emission trading system and with its long term gradual increase in the price of carbon units, this are seen as a pre-requisite to a popular long term investing.

While the Covid-19 pandemic has led to massive amount of carbon allowances and activity across the economic fassade. There are concerns that heavy emitters may find loopholes in carbon trading system, unlike in earlier Kyoto Protocol agreement under the 2015 Paris Climate Change accord amidst all signatories, not just the developed but also the developing economies pressed carbon emission targets. International community has suggested and hoped that it could cut global amount of carbon emissions by 60-80% by the year 2035.

Critics have pointed out that countries facing economic difficulty might be tempted to cheat either by making their global emissions gap too generous or counting tricks. A nation might produce a windfarm to reduce the events of coal fire, which could free up a portion with carbon allowance.

There are a total of 45 carbon markets in three principal regimes. Recent predictions have emerged that India as well has the ability to emerge as one of the largest beneficiaries of carbon credit trading. The administrative avenue to manage and control pollution through stipulation of economic incentives by reducing toxic pollutants from damaging the earth's natural resources.

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It is well known that U.S.A has not yet ratified the terms of the Kyoto Protocol, but it is the highest emitter of harmful carbon dioxide gas that cause global warming threat. The legal implications on carbon trading can be visible through the emission cut-off rates of the developed economies. India is considered to the largest developing carbon creditor around the world with over as 900[5] carbon credit projects.

It is highly suggested that limiting the use of carbon dioxide agents will help to rebalance the damages caused by it and restore the ecology of the natural resources.

[5] Dr. Lily Srivastava- *A legal study of carbon credit system of India towards a greener environment*, Environment, Governance and Development Volume 1, Department of Law, University of North Bengal, 2014