

# A Tax proposal to change the face of India: A Critical study to highlight the need for a Clean Energy Cess

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## **Abstract:**

Degradation of the environment has been caused by the recklessness of mankind. The Paris Agreement and pledge made by the signatories hoped to curb the destruction of the environment. What is a Cess? Clean Energy Tax credit; what it was and its imposition? The Swachh Bharat cess that was imposed by the government of India for the purpose of cleaning the country. Proposal of 2% clean energy cess. How much will be collected and in how long. Repayment plan and proposal for selling units of the power infrastructure SPVs. Authorities to be constituted. Dispute resolution plan. Penalties. Review mechanism. Conclusion.

This work is the culmination of a classroom discussion held on 16th September 2022, on the topic of what we should do to preserve the world in the event of an apocalyptic situation in 2032.

The most logical and sensible of the suggestions is presented here in this work.

“A point has been reached in history when we must shape our actions, throughout the world with a more prudent care for their environmental consequences.” “To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level all sharing equitably in common efforts” Stockholm declaration 1972

## **Degradation of the environment**

Mass production and the advent of the steam engine triggered the Industrial Revolution in the 1760 which was the beginning of our environmental problems.

Ever since the First World War and the chase for monopolising natural resources by means of colonialism, the rampant and unsustainable exploitation of natural resources has now been taken to an all new level with the use of modern technologies. The first effects of industrialization and the dent to life was seen during the first world war with the use of automatic weapons and bio chemical warfare which caused irreparable loss of life and destruction of the environment.

This was furthered by the second world war and topped off by the nuclear explosions in Hiroshima and Nagasaki, the environmental brunt of which is still being born. After the world wars industrial catastrophe struck with disasters like the Bhopal Gas Leak and Chernobill. All this because industrialists were left

unchecked in the aftermath of the World wars in order to help speedily recover the economy and increase employment without a care for the environment.

### **Paris Agreement**

Pursuant to the degradation of the environment, in 2016 the leaders of the world came together to form a binding agreement to limit global warming and reduce reliance on fossil fuels.

“Its goal is to limit global warming to well below 2, preferably to 1.5 degrees Celsius, compared to pre-industrial levels. To achieve this long-term temperature goal, countries aim to reach a global peak of greenhouse gas emissions as soon as possible to achieve a climate neutral world by mid-century.”<sup>1</sup>

The Paris agreement provides a framework for finance, technology and capacity building to better facilitate the long-term low greenhouse gas emission development strategies (LT-LEDS) of the nations which may eventually fructify into NDCs which are binding.

Each country has to submit an NDC<sup>2</sup> and as such in the latest report sent by the government of India to the UNFCCC an outline of eight measures that will reduce CO<sub>2</sub> emissions of its GDP by 45% by 2030 have been laid out.<sup>3</sup>

### **Clean energy Tax credit**

In order to promote the adoption of clean energy, governments around the world have announced different systems of tax credits for industries and has been promoted as part of the green climate fund at the International level.

### **Swachh bharat Cess success**

In 2014 when Prime Minister Narendra Modi was campaigning one of the points in his manifesto was to make India a clean country, up to the global standards. Subsequently after being elected to office he implemented a cess on every citizen by way of an extra charge of 0.5% on every taxable service consumed. It was introduced in 2015 with the finance act and was rolled back in July 2017; during its existence from 2015 to 2018 a total of Rs 20,632.91 crore was collected and was used for setting up the infrastructure needed to maintain a clean surrounding.<sup>4</sup>

This was a resounding success as not only did it create a consciousness among countrymen as they were all subject to the tax in one way or another, but also because the implementation of it was without flaws.

In order to become a *net zero country* by 2070 India needs to create a capacity of 450 GW of renewable energy. India already has 111 GW of installed capacity and has added 15.5 GW at the cost of 14.5 billion dollars<sup>5</sup>. This would imply that India needs only install an additional 325 GW.

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<sup>1</sup> (“The Paris Agreement”)

<sup>2</sup> Nationally Determined contribution

<sup>3</sup> (Republic of India)

<sup>4</sup> (“Govt Collected Over Rs 2,000 Crore in Swachh Bharat Cess Even After Abolishing It”)

<sup>5</sup> (Kumar)

### What is a cess?

A cess is a tax on tax. It is charged indiscriminately on everything including tax itself. In the general principles of tax we learn that if one tax is charged then the assessee cannot take double benefit, like in the case of Income tax and GST; if the assessee claims an input tax credit under the GST regime then while declaring expenses for the purposes of income tax the assessee must claim bills exclusive of the GST i.e. if the item purchased is 100+ 18 (GST) then the assessee if claiming the input tax credit of 18 rupees cannot claim that again in the income tax and will charge on 100 rupees to his expense account, but if he does choose to claim the input tax credit under the GST regime he may charge the full 118 rupees as an expense for the purposes of income tax. This process is known as avoidance of double tax relief.

Whereas under the Cess regime a further charge would be made on the total of 118 rupees meaning that here a tax would be charged even upon the 18 rupees which is itself a tax.

Cess is defined as “A cess is a form of tax levied by the government on tax with specific purposes till the time the government gets enough money for that purpose. Different from the usual taxes and duties like excise and personal income tax, a cess is imposed as an additional tax besides the existing tax (tax on tax).”<sup>6</sup>

### Proposal of 2 % Clean energy Cess

Between 2010 and 2017 India had imposed a clean energy cess on the use of coal and had set up the national clean energy fund to fund research and development of clean energy projects and technologies<sup>7</sup>, vide the Clean Energy Cess in Finance Bill 2010, unfortunately in 2017 this was abolished with the introduction of GST in July 2017.

The concept of the Clean energy fund is actually something that would actually make a difference to the environment and it is a true travesty that such a noble and environmentally conscious act was put to an end.

The object of this cess is to create a fund for the development, innovation and upgradation of clean energy technologies and infrastructure. The only way to get sufficient resources for such an ambitious project would be if all the citizens were to contribute equally irrespective of their income or wealth.

The current GDP of the country is 3.173 trillion dollars<sup>8</sup> and energy consumption is 7% of GDP, in India and India's per capita energy consumption is only 566 KWh which is one fifth of the global average of 2,782 KWh per capita. Hence this figure is only going to rise and India needs to produce more energy which if not done correctly will lead to consumption of natural resources and fossil fuels.<sup>9</sup>

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<sup>6</sup> (“What is Cess, Cess News, Cess Definition”)

<sup>7</sup> Clean Energy Cess on Coal under Sec 83(2) of Finance Act, 2010 w.e.f 1 July 2010 – Applies of both Domestic Production and Imports

<sup>8</sup> (“GDP (current US\$) - India | Data”)

<sup>9</sup> (Ghani et al.)

As already mentioned earlier as per the commitments made by the Government of India an additional 325 GW of renewable power needs to be installed and considering the amounts spent so far and without considering improvements in technology and reduction of costs the government needs to spend an estimated 320 billion dollars to achieve this goal. This translates to around 19,20,000 crore. To put things in perspective the budget of the State of Maharashtra which is a very industrialised state is 493,000 crore. Hence the vastness of the amount cannot be overstated.

As per the Ministry of Power India is already producing 40% of its energy from renewable sources.<sup>10</sup> A cess charged, would create a sense of awareness in the minds of the common man and create a sense of pride in the minds of people. When each and every person realises that they have actively contributed to the development and betterment of the country the nation will benefit as a whole when people stand up with pride and stop the use of fossil fuels. For about just two years all of India contributed to the cleaning India initiative and today the youth and other members of society are very conscientious about the disposal of waste and public defecation. A movement like this when implemented as a tax has a very positive effect especially in rural India where the penetration of the direct taxes is very low. A flat tax or an indirect tax in the form of a general cess makes up for this lacuna.

The next question that would be raised would be the quantum and the applicability of such a tax; as far as the first part is concerned it has to be more than the cess imposed for cleaning the nation as this is a more pressing concern and if this problem is not resolved, there may not be a tomorrow, climate change may not only endanger the lives of our future generations but also the lives of our generation. That being said, if the cess is too high then we may fall into the 'tax trap' and no one will wish to pay it. A detailed report may be made simply on how much should be levied.

When businesses in India withdraw cash from the bank account to defray expenses, the government charges a 2% tax deduction at source when these funds are withdrawn, thereby imposing sanctions on businesses using cash to conduct their business. This pushed the use of digital payments. This was a novel idea used by the government, while ensuring the economy wouldn't be affected. And the rationale has proved effective in cleaning up the economy, while not reducing the spending.

As such my proposal is to impose merely a 2% cess and possibly roll this scheme out as a part of the GST. 2% is not an amount that would hurt the end consumer and nor the businesses as reflected by the 2% tax deduction at source. There is also a lesser chance of avoidance and evasion when this is included in the existing GST regime. Most importantly this burden must be shifted to the end user so that awareness is spread about environmental concerns.

### **How much will be collected and in how long:**

When calculating this figure certain assumptions have had to be made such as the data of the cess amounts collected in the past and the indirect and direct tax data. An estimate can be made in this regard, during the peak year of the Swachh Bharat Cess 12,306 Cr was collected<sup>11</sup> at a rate of half percent, under the proposed clean energy cess 4 times the amount is proposed to be collected from a similar block of items. It was to be further taken into consideration that the above number is from more than 5 years ago so the

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<sup>10</sup> ("Power Sector at a Glance ALL INDIA | Government of India")

<sup>11</sup> ("Swachh Bharat Cess- Tax Rates & Collection")

projected accrual should be around 60,000 Cr which is about 7.5 billion dollars; further if the government were to raise debt as if it were a private corporation then 3 times this amount could be raised in the form of debt capital from domestic banks and investors. This will take the total capital deployed in this area in a year to 30 billion dollars, this will be sufficient to set up power generation for 30GW. And this is what the government can do internally without seeking help from international bodies and other states.

### **Repayment plan**

The lowest electricity tariff charged in India is 4 rupees per unit, without government subsidies. One GW consists of 1 billion units of electricity, 30 billion units of electricity if sold at the lowest rate of 4 rupees per unit will yield 12,000 Cr per annum and if a higher rate is achieved or the power is sold to an industrial undertaking the payback period will be even lesser. At these rates the payback of capital is 5 years; furthermore in our example the government doesn't even need to make contracts with third parties and purchase the units from them but simply needs to deal with its own arm. This scheme should make it much easier for the working and after they start operations the infrastructure can be hived off into Invits and sold to investors thereby freeing the capital and furthering the process of more deployment of capital.

If these calculations are carried out correctly and considering no improvement in technology the country can reach its clean energy target in a matter of 8 years. What's more is that if we were to efficiently apply the above methodology the country might just go into an energy surplus within a matter of 5 years with the support of the public at large and the industrialists of our country.

From a layman's point of view and considering how Invits are valued in the present market conditions a 10-12% yield on an infrastructure investment trust fund(Invit) is more and sufficient to make it a roaring success. Banks and NBFCs may also be incentivized to sell these to their customers as they provide a steady source of income and beat the prevailing fixed deposit rate by double, with even more safety as they would be government backed.

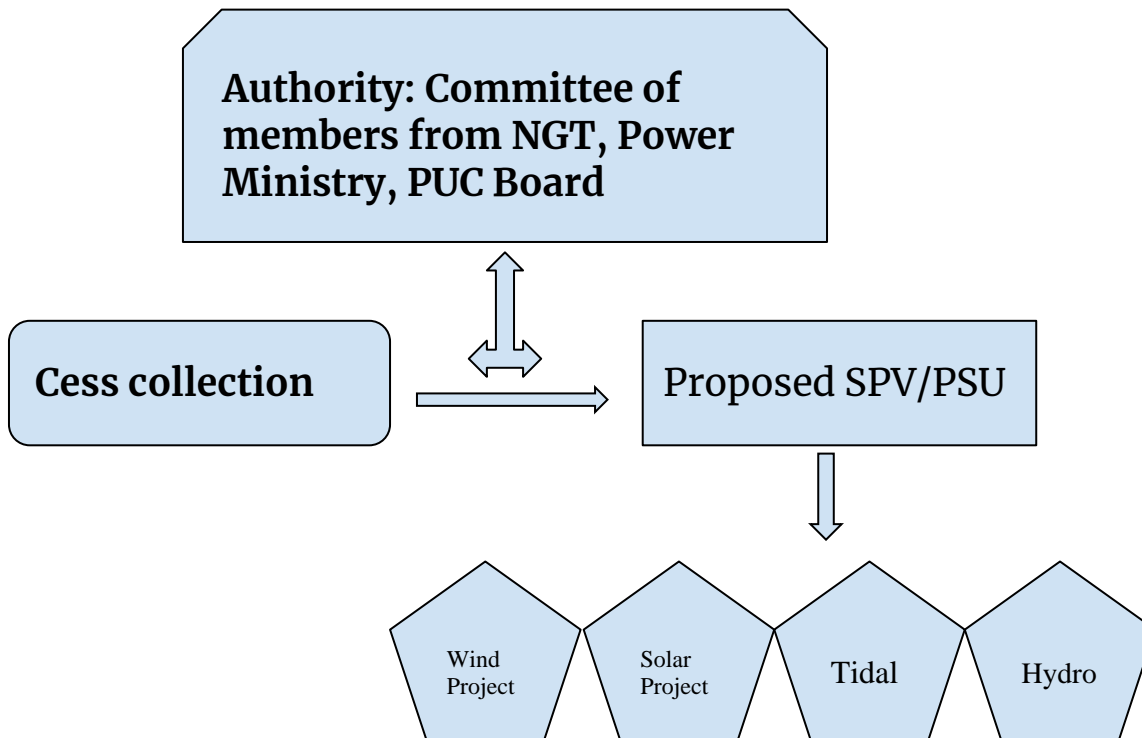
If the above maths is correct not only will the promoter i.e. here the government be able to create 30 GW of electricity supply but also make a 60% profit with 2 years of deploying the funds. This would happen as the capital deployed would be 12,000 Cr but once the entire scheme is strung together for retail and Institutional Investors the project would be worth close to 19,200 Cr and a prudent promoter would easily be able to release the initial investment of 12,000 Cr whilst still remaining the promoter and not adversely affecting the Invit price.

### **Authorities** POU board-Power ministry- Environmental Ministry- NGT

In order for a statute to be effective and be adhered to, a clear mechanism of enforcement and regulation needs to be established. While I have proposed that the collection of the cess should be through the existing GST system, the enforcement agency needs to have wider powers. The GST body doesn't have the required powers and locus-standi for the effective implementation of this Cess.

Since the cess is a matter of the administrative, it's only fitting that such a quasi-judicial agency be constituted. The GST will serve as a collection agency but I propose that a board consisting of members of the NGT(National green tribunal), Power ministry, central PUC board will be the highest authority with mainly supervisory powers. Under this body boards will be constituted at the state level with a similar composition and a judicial member from the High court. A district body is not required as this cess will be collected at the state level.

The judiciary and especially the supreme court has been very proactive in the implementation of environmental checks so it is only fitting that the authority constituted for this cess have appropriate judicial members.



### Penal Clause

In order to prevent pilferage, like any statute a penalties clause that would instil a sense of fear needs to be put in place.

Like many other legislations a severe fine seems to be the best remedy. Like the Income tax act or the GST which charge 50% of the under reported amount<sup>12</sup>. This cess should follow in the steps and charge an additional 1% cess as the penalty.

Further if a repeat offender is found, a jail term like contemplated under the Corporate social responsibility cess imposed under the income tax act needs to be in place. Business owners may often spend on lengthy litigation and avoid payment of dues but when criminal law is imposed the gravity of seriousness is understood.

In fact if a repeat offender is found under this act and bail is sought even the amount of bail should be transferred to the clean energy fund for the application by the SPV.

### Dispute Resolution

A dispute relating to the payment, applicability and collection of the cess should be directed to the NGT<sup>13</sup>, as they should be most concerned with the collection of this cess. It can be argued that the NGT should act as an appellate authority or that it doesn't have jurisdiction as a tax tribunal, powers to this effect should

<sup>12</sup> Section 270A, of the Income tax Act. The rate of penalty shall be fifty per cent of the tax payable on under-reported income up to 200% ("PENALTIES UNDER THE INCOME-TAX ACT")

<sup>13</sup> National Green Tribunal

be bestowed. If this tribunal is authorised to penalise environmental spoilers<sup>14</sup>, why shouldn't they have the power to hear disputes relating to protection of the environment and the cess collected for this furtherance?

### Review

While the powers to adjudicate disputes and frame policies for the proposal lie to the government, the implementation of the infrastructure projects and a review of the entire system should have industry experts and stalwarts for environmental protection groups. As such the review of the scheme should be conducted by a board consisting of one member appointed by the central government, one eminent environmentalist with at least 10 years of experience and affiliations with such groups, one member Judicial member from the NGT, and one member representing Indian industry as nominated by a chamber of commerce at the national level.

This group will have the overall responsibility to oversee the implementation of various projects and to submit reports relating to the collection and disputes that may arise.

This group will also eventually have to submit a report stating that the collection of the cess needs to be stopped once the net zero target has been reached.

### Conclusion

Finally, while the government can raise this amount through various means such as Invits and private investment in government undertakings or Public private partnerships, the role of taxes in solving this cannot be ignored, as these represent the owned capital of the government. It has already been seen how the nation positively reacted to the 'Swachh Bharat Cess' and how much money and public sentiment was drummed up for the noble initiative of cleaning India. While the money collected from such a cess may be used as seed capital to promote Invits, and purchase capital equipment for public funds and investment from private institutions should be raised only after the government and people show a clear intention to follow through with these kinds of socio- economic driven projects.

This development is not a mere matter of infrastructural advancement anymore but now a very pressing concern which will be detrimental to life, and hence it has to be taken up more seriously and separately from the rest of the government expenditure.

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<sup>14</sup> The NGT is authorised to fine wrongdoers as per s.15 of the NGT act and has recently fined the Maharashtra government 12,000 cr on account of improper implementation of its solid waste management system (Wankhade)

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