Carbon border tax

- The European Union has proposed a policy called the Carbon Border Adjustment Mechanism to tax products such as cement and steel, which are extremely carbon intensive, with effect from 2026.
- BASIC, a group comprising Brazil, India, South Africa and China, large economies that are significantly dependent on coal, has for several years voiced common concerns and reiterated their right to use fossil fuels during their transition to clean energy.

THE HINDU

Article 254 and Centre vs state

- In the first case, Gambhirdan K. Gadhvi vs The State Of Gujarat (March 3, 2022), from Sardar Patel University, Gujarat, the Court (Justices M.R. Shah and B.V. Nagarathna) quashed the appointment of the incumbent Vice-Chancellor on the ground that the search committee did not form a panel for the appointment of VC, and, therefore, was not in accordance with the UGC Regulations of 2018.
- It was held that since the State law was repugnant to the UGC regulations, the latter would prevail and the appointment under the State law had become void ab initio.
- In the second case, from Kerala, i.e., Professor (Dr) Sreejith P.S vs Dr. Rajasree M.S. (October 21, 2022), – The Court quashed the appointment of the VC on the ground that the provision relating to the search committee in the University Act is repugnant to the UGC Regulations, and was therefore void.
- A VC is appointed by the Chancellor under the relevant University Act, but the Supreme Court has brought in Article 254 of the Constitution to rule that if provisions of the State law are repugnant to the provisions of the Union law, the State law will become void.
- In the cases mentioned above, the top court found that the search committee recommended only one name for the appointment of VC which violates the UGC Regulations which require three to five names, and, therefore, the provision of the State law is void.

Analysis of Article 254

- First, a careful reading of Article 254 would show that the repugnancy under this Article relates to State law and a substantive law made by Parliament.

- It impliedly excludes rules, regulations, etc. Rules and regulations are made by subordinate authorities in this case, the UGC whereas the substantive law is made by the superior authority, namely Parliament. Article 254(2) says "... the law so made by the Legislature of such State shall if it has been reserved for the consideration of the President...."
- Here the term 'law' denotes the Bill passed by the legislature and reserved for the consideration of the President which does not contain rules, regulations, etc.
- Identical words such as "any provisions of a law made by Parliament" are used in this Article in the context of Parliament.
- So, it can only mean the substantive law and not the subordinate law.
- Thus, it becomes clear that the repugnancy can arise only between the provisions of the University Acts and the UGC Act, and not the regulations of the UGC.
- Second, the rules and regulations made by the subordinate authority, though laid in Parliament, do not go through the same process as a law. Normally these do not require the approval of Parliament.
- The rules and regulations have an inferior status as compared to an Act.
- The Constitution cannot be assumed to equate the Act with the rules.
- Third, the Constitution does not, in general terms, define the term law.
- The inclusive definition of law given in Article 13(2) is applicable only to that Article.
- It has no application to other Articles, which means the term law does not include the rules, regulations, etc. for the purpose of Article 254.
- Fourth, the regulations made by a subordinate authority of the Union overriding a law made by a State legislature will amount to a violation of federal principles and a negation of the concurrent legislative power granted to the State by the Constitution.
- Finally, the UGC Regulations on the appointment of VCs are outside the scope of the main provisions of the UGC Act as none of its provisions refers to the appointment of VCs.
- Supreme Court held in S. Satyapal Reddy vs Govt. Of A.P. (1994) that "the court has to make every attempt to reconcile the provisions of the apparently conflicting laws and the court would endeavour to give harmonious construction... The

proper test would be whether the effect can be given to the provisions of both the laws and whether both the laws can stand together".

THE HINDU

FTA negotiation – executive vs parliament

- To achieve the export target of $2 trillion by 2030, India is going the whole hog on free trade agreements (FTAs). India is negotiating FTAs with countries such as the European Union, Canada, the U.K., and Israel.
- These FTAs cover a wide array of topics such as tariff reduction impacting the entire manufacturing and the agricultural sector; rules on services trade; digital issues such as data localization; intellectual property rights that may have an impact on the accessibility of drugs; and investment promotion, facilitation, and protection. Consequently, an FTA has a far -reaching impact on the economy and society.
- In India, there is no mechanism for such parliamentary scrutiny of the executive's actions during the FTA negotiations.
- India's parliamentary system allows for department -related parliamentary committees that discuss various topics of importance and offer recommendations.
- However, the Scrutinizes Standing Committee on Commerce (PSCC) rarely scrutinizes the Indian government's objectives behind negotiating and signing an FTA.
- In India, there is no mechanism for any role of Parliament in the ratification of treaties including FTAs.
- Entering into treaties and matters incidental to it such as negotiations, signing, and ratification is within the constitutional competence of Parliament.
- But, Parliament in the last seven-plus decades has not exercised its power on this issue, thus giving the executive unfettered freedom in negotiating, signing, and ratifying treaties including FTAs.
- India should take a leaf out of the U.K. book and develop a law on entering treaties including FTAs. This law should have the following parts.
- First, the executive should make a clear economic case outlining its strategic objectives publicly for entering into negotiations for a treaty such as an FTA.
- Second, the executive should be under an obligation to consult all stakeholders, respond to their

concerns and make this information publicly available.

- Third, the Indian Parliament should constitute a committee on the lines of the U.K.'s IAC that will scrutinize the strategic objectives behind entering into an FTA.
- Fourth, the executive should place the FTA on the floor of Parliament for a certain duration, allowing Parliament to debate it, before ratifying it.

Who will pay for climate damage?

- At the G-20 summit in Bali, rich nations including the U.S., Japan, and Canada have pledged $20 billion to wean Indonesia off coal.
- The U.S. and Japan have led the International Partners Group to mobilize funds from the public and private sectors to support Indonesia's efforts to reach carbon neutrality by 2050.

Why is compensation critical?

- Between 1900 and now, developed countries have benefitted from industrial development, which also led to greenhouse gas (GHG) emissions.
- Developing countries were relatively late in starting economic development
- Between 1751 and 2017, 47% of the CO2 emissions came from the U.S. and the EU-28. In total, just 29 countries.

How badly do their emissions hurt?

- A paper published by Springer Link under the Climate Change umbrella earlier this year shows that emissions attributable to the U.S. over 1990- 2014 caused losses that are concentrated around 1–2% of per capita GDP across nations in South America, Africa, and South and Southeast Asia, where temperature changes have likely impacted labor productivity and agricultural yields.
- But emissions may have also helped a few countries, such as those in Northern Europe and Canada. Moody's Analytics estimates that by the middle of the century, Canada would see a rise in GDP of 0.3% (about $9 billion a year) as warmer climates spur agriculture and labor productivity.
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climates spur agriculture and labour productivity.

Where about India's emissions?

- The report says that India is among the top seven emitters (others being China, the EU-27, Indonesia, Brazil, the Russian Federation, and the U.S.).
- These seven, plus international transport, accounted for 55% of global GHG emissions in 2020.
- Collectively, G-20 members are responsible for 75% of global GHG emissions.
- If we seek economic development, some GHG emissions are unavoidable.
- But, put in the context of India's population, its emissions are far lesser per head, than for others.
- World average per capita GHG emissions were 6.3 tonnes of CO2 equivalent (tCO2e) in 2020.
- The U.S. is way above this level at 14, followed by 13 in the Russian Federation and 9.7 in China. India remains far below the world average at 2.4.
- In addition to last year's pledge of net zero emissions by 2070, India has also committed to generating 500 GW of renewable energy capacity by 2030, bringing down the emission intensity of GDP, as also raising forest cover.
- Last year, India was responsible for the wording of the agreement on coal.
- It was changed from "phase-out" to "phase-down" of coal which reflects the country's ground realities of large energy requirements, met predominantly by thermal power, to spur economic development.

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