

ENERGY LAW AS AN AREA OF LAW IN INDIA

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1. INTRODUCTION

Energy law as an area of law has emerged in the last three decades.⁸⁹ Law firms have been specialising in energy law practice.⁹⁰ Universities world over have been conducting undergraduate and postgraduate degrees with specialisation in energy law.⁹¹ Given the importance of energy and the focus on energy security in India, it is important to examine the state of energy law as a distinct area of law in India.

The criticality of energy is highlighted by recent developments in Europe in terms of the Russia-Ukraine war. The issue has acquired international legal dimensions with the apprehension in Europe over access to the Russian gas. There has been a dramatic shift in focus of Europe, in particular, and the international community, in general, from prioritising environment/climate

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⁹⁰ See, for instance, US News, Best Law Firms, 'Energy Law' <<https://law.usnews.com/law-firms/practice-area/energy>> accessed 26 November, 2022; First Hand, '2023 Best Law Firms for Energy, Oil, & Gas Law' accessed 26 November, 2022.<<https://firsthand.co/best-companies-to-work-for/law/best-law-firms-in-each-practice-area/energy-oil-and-gas>> accessed 26 November, 2022.

⁹¹ See, section 3 of the paper.

changeover energy to ensuring energy security.⁹² It is in this background that this paper aims to explore the development of energy law as an independent legal discipline in India.

Towards this end, this paper proceeds as follows: The second section of this paper discusses what it means to be an area of law. It draws upon the recent work of Tarunabh Khaitan and Sandy Steel regarding areas of law⁹³ and provides context to the next Section. Section 3 briefly discusses the overview of energy law in the international community. Section 4 analyses a recent development in international Energy law in the context of the Russia Ukraine War. It highlights how the increasing focus on renewables in Europe has led to the failure to secure energy security. This has resulted in a crisis-like situation for Europe, especially Germany. Sections 5 analyses energy law in the domestic context. It argues that energy law as a distinct field of study is at a nascent stage in India considering that the Indian legal industry is yet to possess a shared acceptance of the same. Section 6 concludes by noting the importance and the benefits of recognition in India of energy law as a separate academic discipline.

⁹² See, section 6 of the paper.

⁹³ Tarunabh Khaitan and Sandy Steel, 'Areas of Law: Three Questions in Special Jurisprudence' (2022) Oxford Journal of Legal Studies (forthcoming), <<https://ssrn.com/abstract=4192900>> accessed 29 October, 2022 (hereafter "*Areas of Law*").

2. AREAS OF LAW

The recent work of Tarunabh Khaitan and Sandy Steel⁹⁴ addresses three broad questions regarding what is commonly regarded as ‘areas of law’:

- What is an area of law?
- What are the consequences of designating laws into distinct areas of law?
- What are the foundations of an area of law?

Khaitan and Steel argue that the search for the normative foundations of an area of law are nothing but a search for their functions or aims.⁹⁵ Areas of law may be delineated or designated as such owing to numerous factors such as requirements of law practice, “analytical elegance”⁹⁶, ease of teaching and learning the law, etc.⁹⁷ There are examples of areas of law having emerged from academia as opposed to legal practice: the law of unjust enrichment is a typical example.⁹⁸

But the mere existence with these factors is not determinative of the recognition of a subject as a distinct area of law: recognition as such by the legal industry, that

⁹⁴*Areas of Law*, p. 2.

⁹⁵*Areas of Law*, p. 3.

⁹⁶Analytical elegance generally refers to the coherence and clarity of a doctrine or a set of doctrines being in sync with each other without contradictions.

⁹⁷*Areas of Law*, p. 5.

⁹⁸*ibid.*

is, advocates, judges, academicians, policy-makers, law publishers, journal editors, legal associations, etc. is important.⁹⁹ Although individual actors – be it a jurist or an institution – can quicken the process but “shared acceptance” by the legal industry is necessary for the distinct subject to evolve into an area of law.¹⁰⁰

Such recognition or shared acceptance may be owing to the one or a combination of more than one of the following factors¹⁰¹:

- Object of the area of law;
- Purpose of the area of law; and
- Procedure encompassing the area of law

However, there is no requirement for a consensus from among the actors of the legal industry regarding the basis for such recognition.¹⁰² At the same time there is convergence on the contents of the area of law being recognised.¹⁰³

There are implications on classifying a subject as an area of law¹⁰⁴:

⁹⁹Khaitan and Steel call them the “legal complex” but they have been known for a long time as the legal industry, which is the terminology used in this paper.

¹⁰⁰*Areas of Law*, p. 7.

¹⁰¹*ibid*, 8.

¹⁰²*ibid*, 9.

¹⁰³*ibid*.

¹⁰⁴ See, for instance, Paul H. Rubin, ‘Courts and the Tort-Contract Boundary in Product Liability’ (1999), <<https://ssrn.com/abstract=157359>> accessed 30 October, 2022.

- Sometimes, the classification results in legal outcomes¹⁰⁵ and at times the area of law that a cause of action is allocated has implications on the applicable legal regime and the outcome thereof.¹⁰⁶ For instance, classifying an assistant consultant in the information technology industry into the rubric of industrial disputes law instead of contract law has considerable implications on the termination of such an employee.¹⁰⁷ Another significant implication of classifying a subject as an area of law is that the legal industry begins to bring internal coherence¹⁰⁸ into that area of law.¹⁰⁹
- Not only does the legal industry move towards internal coherence of that area of law, there is also an attempt to identify the “foundational coherence”, that is, the normative foundation or

¹⁰⁵*Areas of Law*, p. 13.

¹⁰⁶*ibid*, 14.

¹⁰⁷ See, for instance, Thirumalai Selvan Shanmugam vs. Tata Consultancy Service Limited, MANU/OT/0064/2022, I.D. No. 34/2016 & CNR No. TNCH0E0000492016 dt. 08.06.2022 decided by the Principal Labour Court, Chennai.

¹⁰⁸Internal coherence refers to normative coherence in law where the principles, policies, and objectives that justify the law to form a coherent set such that they refer to common value(s) and that conflicts within the law are “resolved in a principled, reasonable and non-arbitrary fashion.” See J.M. Balkin, ‘Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence’ (1993) 103 Yale Law Journal 105, 116; Julie Dickson, ‘Interpretation and Coherence in Legal Reasoning’ (2016), *The Stanford Encyclopedia of Philosophy* (Winter 2016 Edition), Edward N. Zalta (ed.) <<https://plato.stanford.edu/archives/win2016/entries/legal-reas-interpret/>> accessed 14 January, 2023.

¹⁰⁹*Areas of Law*, p. 14.

aims of such area of law.¹¹⁰ Foundational coherence helps in moving towards internal coherence of that area of law.¹¹¹

- Once the legal industry agrees with the aims of that area of law, such foundational aims interact with the ideological underpinnings of the legal system.¹¹² There need not be a perfect agreement on the foundational aims of the particular area of law and a critical mass in the legal industry projecting that view is sufficient.
- As the area of law matures in the sense that the doctrinal contours become settled and are in broad consonance with the aims of that area of law, hard cases are settled through analytical reasoning without reference to policy.¹¹³ On the other hand, in areas of law that have recently been carved out or those with unsettled doctrinal contours, judges would have to make frequent reference to the foundational aims to

¹¹⁰Ibid, 15.

¹¹¹ibid.

¹¹²*Areas of Law*, p. 15.

¹¹³ibid.

settle hard cases.¹¹⁴ “Ideological stability” gives the area of law legitimacy.¹¹⁵

- Areas of law in a particular jurisdiction may have distinct features such as convergence with prevailing standards at an international level, level of enforcement by the enforcing authorities, compliance level, and so on.¹¹⁶

3. ENERGY LAW AS AN AREA OF LAW

Energy law has been defined by Adrian Bradbrook to mean the law dealing with "*the allocation of rights and duties concerning the exploitation of all energy resources between individuals, between individuals and the government, between governments and between states*".¹¹⁷ Energy resources have been stated to include petroleum (crude oil, natural gas, etc.), coal, uranium (and related nuclear elements), solar energy, wind energy, geothermal energy, tidal and wave energy, hydroelectricity, biomass, hydrogen, generation, transmission and consumption of electricity.

Coal, uranium, solar energy, wind energy, petroleum, etc. are regarded as primary sources of energy, which are

¹¹⁴Ibid, 16.

¹¹⁵ibid.

¹¹⁶Ibid, 17.

¹¹⁷Bradbrook, p. 194.

available naturally. Energy subjected to human-made transformation is regarded as secondary energy.¹¹⁸ Energy law not only covers primary sources of energy but also secondary sources.¹¹⁹ This definition is not comprehensive in that it ignores the triumvirate in any form of energy: production, transmission and consumption.¹²⁰ Hence, energy law as such would cover energy generated through primary and secondary sources as well as the entire chain from production up to consumption.

An important area in energy law is energy conservation which is as important as energy generation.¹²¹ Energy generation, transformation, storage, distribution and consumption create considerable costs, both direct and indirect, and also leads to wastage. Energy resources by itself, are scarce. Therefore, energy conservation plays a significant role.

Energy law has important international law dimensions.¹²² The production, transportation and consumption of energy has underpinning of several international

¹¹⁸Sara Øvergaard, 'Issue paper: Definition of Primary and Secondary Energy' (September 2008), available at <https://unstats.un.org/unsd/envaccouting/londongroup/meeting13/lg13_12a.pdf> accessed 24 November, 2022.

¹¹⁹Bradbrook, p. 194-195.

¹²⁰Bradbrook however considers production (including exploration) of energy resources in several other context in the paper. See, for instance, Bradbrook, p. 198-199.

¹²¹Bradbrook, p. 195.

¹²²Raphael J. Heffron, *Energy Law: An Introduction* (2nd ed. 2021) 16ff.

obligations. Conventional energy sources such as oil, gas, coal, etc. are often imported across countries and even continents. With energy resources becoming scarce, there is a move to explore and produce from sea beds in the territorial waters, exclusive economic zones and even from high seas. Hence, international energy law is also an important dimension of energy law.

The production of energy sources and generation, transportation and consumption of energy create considerable impact on the environment and surroundings. For instance, energy generated by coal-based power plants have effects on the economy across several activities including the mining of coal, transportation of coal, burning of coal, ash and other waste produced from coal-based plants, air pollutants such as sulphur-based compounds released in the process of burning coal, etc. Hence, these laws have a significant role to address the environmental concerns emanating owing to the energy industry. Similarly, the concerns of climate change law are also addressed in the context of energy resources which are one of the major factors responsible for climate change. Hence, climate change law and environmental law have continued to play an important part in the evolution of energy law.

In the first two decades of this century, there has been a considerable shift in the international community towards

prioritising the environment and climate change over conventional energy sources such as oil, gas and coal.¹²³ In this context, it is important to note that the oil and gas sector alone contributes to 42% of the global emissions (as of 2015).¹²⁴

Energy law has gained political prominence because of the environmental impact and economic consequences.¹²⁵ This shift is apparent in the United Nations Resolution on 2030 Agenda for Sustainable Development: while recognising universal access to affordable energy, the Agenda states:

“7.a By 2030, enhance international cooperation to facilitate access to **clean energy research and technology**, including **renewable energy**, energy efficiency and advanced and **cleaner**

¹²³Sec, for instance, David M. Ong, ‘From Stakeholders to Actors? The Progressive Integration of Environmental, Social and Cultural Considerations Within International Energy Law’, in Tina Soliman Hunter *et al.*, *Routledge Handbook of Energy Law* (2020) 8-9, 14-41; Rosemary Lyster, ‘Renewable Energy in the Context of Climate Change and Global Energy Resources’, in *Law As Change: Engaging With The Life & Scholarship Of Adrian Bradbrook* (2014) 83 <<https://library.oapen.org/bitstream/handle/20.500.12657/33168/560243.pdf?sequence=1&isAllowed=y>> accessed 23 November, 2022; Adrian J. Bradbrook and Richard L. Ottinge (Ed.), ‘Energy Law and Sustainable Development’ (2003), p. vii-viii <<https://lib.icimod.org/record/11388/files/5342.pdf>> accessed 25 November, 2022.

¹²⁴Chantal Beck *et al.*, ‘The Future is Now: How Oil and Gas Companies can Decarbonize’ (McKinsey, 07 January 2020), <<https://www.mckinsey.com/industries/oil-and-gas/our-insights/the-future-is-now-how-oil-and-gas-companies-can-decarbonize>> accessed 26 November, 2022.

¹²⁵ Raphael J. Heffron, Anita Ronne, Joseph P. Tomain, Adrian Bradbrook & Kim Talus, ‘A Treatise for Energy Law’ (2018) 11 *Journal of World Energy Law and Business* 34-48, 34.

fossil-fuel technology, and promote investment in energy infrastructure and ***clean energy technology***

7.b By 2030, expand infrastructure and upgrade technology for supplying modern and sustainable energy services for all in developing countries, in particular least developed countries, small island developing States and landlocked developing countries, in accordance with their respective programmes of support¹²⁶

Since the definition provided by Bradbrook discussed earlier in this section, energy law has become more multidimensional, especially within the international sphere in the context of international investment law.¹²⁷ Energy law in the West has acquired distinct priorities at various points of time in history. Prior to the 1990s, the West was keen in establishing an international economic order with protection of foreign investments and enforcement of rights of foreign investors emanating out of the its investments in oil rich third world countries.¹²⁸ After successfully establishing an international economic order for protection of foreign investments in the energy sector and thereby securing continuous access to energy,

¹²⁶ United Nations General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development', A/RES/70/1 (2015), <<https://sustainabledevelopment.un.org/content/documents/21252030Agenda%20for%20Sustainable%20Development%20web.pdf> > accessed 26 November, 2022

¹²⁷ Bradbrook, p. 205.

¹²⁸ Kate Miles, *The Origins Of International Investment Law* (2013) 79-119; Antony Anghie, *Imperialism, Sovereignty & The Making Of International Law* (2004) 223ff.

the developed countries shifted to focussing on protection of environment and lessening the impact of energy industries on the environment.¹²⁹ The problems that the developed countries sought to address in terms of reducing the impact of energy industries on the environment are different from the problems of the third world, which has been grappling with problems of energy security and access to energy.¹³⁰

As the search for energy resources has increased, it has pushed countries not only to their territorial waters but also to areas beyond their territorial waters and into the high seas. This has led to attempts to regulate exploration and production of energy sources through international law. These developments have contributed to increasing

¹²⁹ See, for instance, David M. Ong, 'From Stakeholders to Actors? The Progressive Integration of Environmental, Social and Cultural Considerations Within International Energy Law' in Tina Soliman Hunter *et al.*, *Routledge Handbook of Energy Law* (2020) 8-9, 14-41; Rosemary Lyster, 'Renewable Energy in the Context of Climate Change and Global Energy Resources' in *Law As Change: Engaging With The Life & Scholarship Of Adrian Bradbrook* (2014) 83 <<https://library.oapen.org/bitstream/handle/20.500.12657/33168/560243.pdf?sequence=1&isAllowed=y>> accessed at 23 November, 2022; Adrian J. Bradbrook and Richard L. Ottinge (Ed.), *Energy Law and Sustainable Development*(2003),p.vii-viii <<https://lib.icimod.org/record/11388/files/5342.pdf>> accessed 25 November, 2022.

¹³⁰Hojjat Salimi Turkamani, 'International Energy Law and the Development Dilemma of Developing Countries' (2022) 19 *Manchester Journal of International Economic Law* 211-227, 212; D R Pendse, 'The energy crisis and Third World options' (1979) 1 *Third World Quarterly* 69-88.

efforts at codifying various facets of international energy law.¹³¹

As internal and international norms have increased, so has a shared acceptance from the industry as to energy law becoming a separate discipline. Energy law has acquired the status of an academic discipline.¹³² Although there have been suggestions in the past which described energy law as a nascent or an emergent field,¹³³ energy

¹³¹See, for instance, the United Nations Convention on the Laws of the Sea, 1982, <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf> accessed 26 November, 2022; United Nations General Assembly, Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond Limits of National Jurisdiction (1970) <<https://digitallibrary.un.org/record/201718?ln=en>> accessed 26 November, 2022.

¹³² See, for instance, Kaisa Huhta, 'The Contribution of Energy Law to the Energy Transition and Energy Research' (2022) 73 *Global Environmental Change* 102454 <<https://doi.org/10.1016/j.gloenvcha.2021.102454>> accessed 22 November, 2022 (hereafter "*Energy Law & Energy Transition*"); Kaisa Huhta, 'The Coming of Age of Energy Jurisprudence' (2021) 39 *Journal of Energy & Natural Resources Law* 199-212; Raphael J Heffron *et al*, 'A Treatise for Energy Law' (2018) 11 *Journal of World Energy Law and Business* 34; Raphael J Heffron and Kim Talus, 'The Development of Energy Law in the 21st Century: A Paradigm Shift?' (2016) 9 *Journal of World Energy Law and Business* 189; Alexandra Wawryk, 'International Energy Law: An Emerging Academic Discipline', in Paul Babie & Paul Leadbeter (Eds.), *Law As Change: Engaging With The Life & Scholarship Of Adrian Bradbrook* (2014) 223-255 <<https://library.oapen.org/bitstream/handle/20.500.12657/33168/560243.pdf?sequence=1&isAllowed=y>> accessed 23 November, 2022; Raphael J Heffron and Kim Talus, 'The Evolution of Energy Law and Energy Jurisprudence: Insights for Energy Analysts and Researchers' (2016) 19 *Energy Research & Social Science* 1; Adrian Bradbrook, 'Energy Law as an Academic Discipline' (1996) 14 *Journal of Energy & Natural Resources Law* 193.

¹³³ See, for instance, Raphael J Heffron *et al*, 'A Treatise for Energy Law' (2018) 11 *Journal of World Energy Law and Business* 34; Raphael J Heffron and Kim Talus, 'The Development of Energy Law in the 21st

law has come to be recognised as a distinct practice and academic sphere in the West.¹³⁴ Universities world over have energy law papers and some universities even offer masters degrees with specialisation in energy laws.¹³⁵

As noted in this paper, recognition of energy law as an academic discipline has led to attempts at convergence at regional and international level.

4. PRIORITISATION OF ENERGY SECURITY

The foundational aims of energy law in a jurisdiction will and should depend on the jurisdiction's priorities vis-à-vis

Century: A Paradigm Shift?' (2016) 9 Journal of World Energy Law and Business 189;

¹³⁴ See, for instance, *Energy Law & Energy Transition*; Kaisa Huhta, 'The Coming of Age of Energy Jurisprudence' (2021) 39 Journal of Energy & Natural Resources Law 199-212; Raphael J. Heffron, *Energy Law: An Introduction* (2nd ed. 2021).

¹³⁵ See, for instance, Queen Mary University of London (LLM in Energy & Climate Change Law) <<https://www.qmul.ac.uk/postgraduate/taught/coursefinder/courses/energy-and-climate-change-law-llm/>> accessed 26 November, 2022; University of Birmingham (LLM in Energy & Environmental Law) <<https://www.birmingham.ac.uk/postgraduate/courses/distance/law/llm-energy-environmental-law.aspx>> accessed 26 November, 2022; New York University (LLM in Environmental & Energy Law) <<https://www.law.nyu.edu/llmisd/environmental>> accessed 26 November, 2022; University of Dundee (LLB with Energy Law Specialisation), <<https://www.dundee.ac.uk/undergraduate/law-english-northern-irish-energy-law>> accessed 26 November, 2022; University of Aberdeen (LLM in energy law & LLM with energy law Professional Skills) <<https://www.abdn.ac.uk/law/courses/master-degree-87.php>> accessed 26 November, 2022; University of Houston (LL.M. in Energy, Environment and Natural Resources Law) <<https://www.law.uh.edu/llm/ecnr.asp#:~:text=The%20UH%20Law%20Center's%20LL.natural%20resources%20exploitation%20and%20conservation>> accessed 26 November, 2022.

energy and resources. A blind convergence with other jurisdictions may prove disastrous. A typical example of this trend is the focus of energy law on energy transition, that is, the transition from fossil fuels to renewables.¹³⁶ The Western world is focussed on energy transition to renewables in the immediate context. In an ideal scenario, the third world, typically characterised by a huge population with hardly any discernible access to scarce resources, should also be as focussed as the West in energy transition. However, given the human rights issues associated with the lack of access to energy resources, the problems of the third world are considerably different: they relate more to energy security, access to energy resources and the environment. Untrammelled efforts of convergence with dominant jurisdictions are likely to therefore result in serious problems.

Given the continuous access in the developed countries to energy sources, energy law in such countries prioritised environment and climate change law in the past decade or

¹³⁶ See, for instance, Ankita Dutta, 'Europe's Energy Security in the Aftermath of Ukrainian Crisis' (Indian Council of World Affairs, 13 June 2022) <https://www.icwa.in/show_content.php?lang=1&level=3&ls_id=7471&lid=5009> accessed 23 November, 2022; Sebastian Lutz-Bachmann, 'The Security-Oriented Turn in Energy Law' (*Verfassungs*, 12 April 2022) <<https://verfassungsblog.de/the-security-oriented-turn-in-energy-law/>> accessed 23 November, 2022; Raphael J. Heffron, *Energy Law: An Introduction* (2nd ed. 2021) 37ff; Penelope Crossley and Gloria M. Alvarez, 'Concluding Thoughts on the global energy Transition', in Tina Soliman Hunter *et al.*, *Routledge Handbook of Energy Law* (2020) 598;

so.¹³⁷ There has been an increasing focus on climate change so much that investment into the traditional primary sources of energy have lessened with increasing investments in the renewable energy sector.¹³⁸ The International Energy Agency in fact called for a stoppage in investment in oil and gas exploration in order for reaching the target of net zero emissions by 2050: “*The trajectory of oil demand in the NZE means that no exploration for new resources is required and, other than fields already approved for development, no new oil fields are necessary.*”¹³⁹ Insofar as gas is concerned, the 2050 Roadmap

¹³⁷ See, for instance, Ankita Dutta, ‘Europe’s Energy Security in the Aftermath of Ukrainian Crisis’ (Indian Council of World Affairs, 13 June 2022)

<https://www.icwa.in/show_content.php?lang=1&level=3&ls_id=7471&lid=5009> accessed 23 November, 2022; Sebastian Lutz-Bachmann, ‘The Security-Oriented Turn in Energy Law’ (*Verfassungs*, 12 April 2022), <<https://verfassungsblog.de/the-security-oriented-turn-in-energy-law/>> accessed 23 November, 2022.

¹³⁸ See, for instance, Bob Ward, ‘An End to UK Oil and Gas Exploration’ (*LSE*, 19 May 2021), <<https://www.lse.ac.uk/granthaminstitute/news/an-end-to-uk-oil-and-gas-exploration/>> accessed 26 November, 2022.

¹³⁹ International Energy Agency, ‘Net Zero by 2050: A Roadmap for the Global Energy Sector’ (2021) 101 <https://iea.blob.core.windows.net/assets/decbef5d-0c34-4539-9d0c-10b13d840027/NetZeroBy2050-ARoadmapfortheGlobalEnergySector_CORR.pdf> accessed 26 November, 2022 (hereafter “2050 Roadmap”); Nina Chestney, ‘End New Oil, Gas and Coal Funding to Reach Net Zero, says IEA’ (*Reuters*, 18 May 2021) <<https://www.reuters.com/business/environment/radical-change-needed-reach-net-zero-emissions-iea-2021-05-18/>> accessed 27 November, 2022; Catherine Clifford, ‘These are the World’s Largest Banks that are Increasing and Decreasing their Fossil Fuel Financing’ (*CNBC*, 22 April 2021), <<https://www.cnbc.com/2021/04/22/which-banks-are-increasing-decreasing-fossil-fuel-financing.html>> accessed 27 November, 2022; United Nations Environment Programme, ‘World’s Governments must Wind Down Fossil Fuel Production by 6% per Year to Limit Catastrophic Warming’ (2 December 2020)

stated: “No new oil and natural gas fields are needed in our pathway, and oil and natural gas supplies become increasingly concentrated in a small number of low-cost producers.”¹⁴⁰ As regards the use of fossil fuels, the *2050 Roadmap* suggests that for net zero to be achieved there would be a huge decline in the use of fossil fuels to about one fifth of the total energy supply by 2050 and that even the one fifth energy supply through fossil fuels would be in goods where carbon is used in the form of plastics.¹⁴¹

However, this trend changed after the Russia Ukraine War leading to considerable changes in geopolitics. The Ukrainian side has been supported by the West leading to fears that Russia would cut gas fuel supply to Western Europe. Gas is one of the main fuels used for heating and other purposes in Europe, especially during winters. With the Russia Ukraine War, there has been considerable issues raised regarding energy security, leading the West to turn back their clock as regards energy priorities. A recent news article argued:

“Say what you will about Vladimir Putin, but his war on Ukraine did open European eyes to some long-underrated truths... Another

<<https://www.unep.org/news-and-stories/press-release/worlds-governments-must-wind-down-fossil-fuel-production-6-year>> accessed 27 November, 2022; France24, ‘World Bank to stop funding oil, gas projects from 2019’ (12 December 2007) <<https://www.france24.com/en/20171212-world-bank-stop-funding-oil-gas-projects-2019-climate>> accessed 27 November, 2022.

¹⁴⁰ibid, 23.

¹⁴¹ibid, 18.

is that the “green dream” of modern economies powered exclusively by renewable energies remains out of reach – and reliable access to cheap energy supplies remains essential.”¹⁴²

The price of oil also increased from around US\$ 70 per barrel in 2021-2022 to about US\$ 140 per barrel in 2022 during the war. The prices have once again dipped to around US\$ 70 in March 2023 owing to bank crises.¹⁴³

In order to tackle energy scarcity scenario post-Russia-Ukraine war, strategies now suggested include enhanced investment in greenfield oil and gas projects and increase in production from brownfield petroleum fields.¹⁴⁴ These are in addition to suggestions to invest more in clean energy.¹⁴⁵

Now, energy security has once again become the dominant theme in the West.¹⁴⁶ The trend is visible in

¹⁴²Hans-Werner Sinn, ‘Will Germany’s Energy Policy Lead to Economic Failure?’ (*The Guardian*, 25 November 2022) <<https://www.theguardian.com/business/2022/nov/25/germany-energy-policy-economic-failure-green-russian-gas>> accessed 26 November, 2022

¹⁴³ Sanjeev Choudhary, ‘Crude oil tanks to \$70, but cut in pump prices unlikely soon’ (*The Economic Times*, 21 March 2023) <<https://economictimes.indiatimes.com/markets/commodities/news/crude-oil-tanks-to-70-but-cut-in-pump-prices-unlikely-soon/printarticle/98845419.cms>> accessed 16 May, 2023.

¹⁴⁴ Muqsuit Ashraf *et al.*, ‘The war in Ukraine: A moment of reckoning for the oil and gas industry’ (*Accenture*, 10 May 2022), <https://www.accenture.com/us-en/insights/energy/ukraine-oil-gas>> accessed 16 May, 2023.

¹⁴⁵ *ibid.*

¹⁴⁶ See, for instance, Ankita Dutta, ‘Europe’s Energy Security in the Aftermath of Ukrainian Crisis’ (*Indian Council of World Affairs*, 13 June 2022)

the case of Germany, which decided to phase out coal and nuclear power based plants and shifted its focus to gas, particularly, Russian gas.¹⁴⁷ Some European countries such as Austria, Finland, Poland, Slovakia and Hungary are dependent on Russian gas to the extent of 50% to 100%.¹⁴⁸ This dependence on Russian gas has now proved to be having strategic security implications.¹⁴⁹ The immediate reaction to the Russia-Ukraine war and the security concerns regarding fuel in Germany has been to bring about legislations to accelerate renewable energy projects but the view there seems to be that such sources may be inadequate to meet the energy demands.¹⁵⁰

The call, therefore, more than before, is to integrate the security policy concerns with energy law. Suggested measures under energy law include expansion of energy grids, regulation of energy storage facilities, etc., while

<https://www.icwa.in/show_content.php?lang=1&level=3&ls_id=7471&lid=5009> accessed 23 November, 2022; Sebastian Lutz-Bachmann, 'The Security-Oriented Turn in Energy Law' (*Verfassungs*, 12 April 2022) <<https://verfassungsblog.de/the-security-oriented-turn-in-energy-law/>> accessed 23 November, 2022.

¹⁴⁷ Sebastian Lutz-Bachmann, 'The Security-Oriented Turn in Energy Law' (*Verfassungs*, 12 April 2022) <<https://verfassungsblog.de/the-security-oriented-turn-in-energy-law/>> accessed 23 November, 2022.

¹⁴⁸ Muqsuit Ashraf *et al.*, 'The war in Ukraine: A moment of reckoning for the oil and gas industry' (*Accenture*, 10 May 2022), <<https://www.accenture.com/us-en/insights/energy/ukraine-oil-gas>> accessed 16 May, 2023.

¹⁴⁹ *ibid.*

¹⁵⁰ *ibid.*

keeping in mind the security concerns without losing sight of competition and market-based freedom.¹⁵¹

It appears that unlike Western Europe, Eastern European countries having been at the receiving end of increased Russian gas prices after their accession to the European Union in 2004, have cautioned the European Union regarding the security implications of energy. This led, it is argued, to the European Union designating security policy dimension as the core component of energy policy of the European Union.¹⁵²

Another notable example of the shift in energy is Japan's reversal in prioritising nuclear energy. Earlier, after the earthquake in 2011 and the resultant Fukushima disaster, Japan decided to phase out nuclear energy by 2030.¹⁵³ But in a drastic reversal, Japan brought out a new Policy in December 2022 whereby it decided to adopt a policy to extend the lifespan of old nuclear reactors, replace old reactors and also build new nuclear reactors.¹⁵⁴ It has been

¹⁵¹ibid.

¹⁵² European Parliament, 'Energy Policy: General Principles' available at <<https://www.europarl.europa.eu/factsheets/en/sheet/68/energy-policy-general-principles>> accessed 24 November, 2022; European Council for an Energy Efficient Economy, 'Energy Union' <<https://www.eceee.org/policy-areas/energy-union/>> accessed 24 November, 2022.

¹⁵³The Associated Press, 'After the Fukushima Disaster, Japan Swore to Phase out Nuclear Power. But not Anymore' (NPR, 22 November 2022) <<https://www.npr.org/2022/12/22/1144990722/japan-nuclear-power-change-fukushima>> accessed 14 January, 2023.

¹⁵⁴ World Nuclear News, 'Japan Adopts Plan to Maximise Use of Nuclear Energy' (23 December 2022), <<https://www.world-nuclear->

stated that the policy shift in Japan is owing to the increase in energy prices in the midst of the Russia-Ukraine war and power shortages.¹⁵⁵ It also appears that similar moves have been made by European and Asian countries, such as UK, Philippines, and South Korea.¹⁵⁶ In fact, about two-thirds of the nuclear reactors under construction are in Asia, which are led by China and India.¹⁵⁷ Another reason that has been attribute to the policy shift is the pressure to reduce carbon emissions.¹⁵⁸

The energy outcomes of the Russia-Ukraine war are a matter beyond the scope of the present paper. The short point is that only after the Russia-Ukraine war, when energy shortage has become an issue for Europe and

[news.org/articles/japan-adopts-plan-to-maximise-use-of-nuclear-energy/](https://www.reuters.com/news/articles/japan-adopts-plan-to-maximise-use-of-nuclear-energy/) accessed 14 January, 2023.

¹⁵⁵Reuters, Japan Turns Back to Nuclear Power to Tackle Energy Crisis (16 December 2022) <<https://www.reuters.com/world/asia-pacific/japan-turns-back-nuclear-power-tackle-energy-crisis-2022-12-16/>> accessed 14 January, 2023.

¹⁵⁶Enrico Dela Cruz, Florence Tan, and Timothy Gardner, 'Analysis: Global Energy Crisis Drives Rethink of Nuclear Power Projects' (Reuters,05August,2022)

<<https://www.reuters.com/business/energy/global-energy-crisis-drives-rethink-nuclear-power-projects-2022-08-04/>> accessed 14 January, 2023; Reuters, 'Energy Crisis Revives Nuclear Power Plans Globally'(05August,2022)

<<https://www.reuters.com/business/energy/energy-crisis-revives-nuclear-power-plans-globally-2022-08-04/>> accessed 14 January, 2023.

¹⁵⁷ World Nuclear Association, Asia's Nuclear Energy Growth (April 2023),

<<https://world-nuclear.org/information-library/country-profiles/others/asia-nuclear-energy-growth.aspx>> accessed 16 May, 2023.

¹⁵⁸Mari Yamaguchi, 'Japan Adopts Plan to Maximize Nuclear Energy, in Major Shift' (*The Associated Press*, 22 December 2022) <<https://apnews.com/article/russia-ukraine-business-japan-climate-and-environment-02d0b9dfec88cde197d217b3029c5898>> accessed 14 January, 2023.

developed countries like Japan, is the issue of energy security raised and there is a policy reversal. On the other hand, concerns of energy scarcity and security to third world countries such as India are continuous problems which such economies have sought to address. Therefore, the priorities accorded to the core principles of energy law vary on spatial and temporal considerations.

5. ENERGY LAW IN INDIA

As has been seen in section 2 of this paper, recognition of areas of law by the legal industry enables debates on foundational aims and internal coherence. Another important aspect of a shared acceptance of a distinct area of law is the interaction in that jurisdiction with prevailing international standards to examine if the jurisdiction's laws in that area of law are required to be converged, in the first place.¹⁵⁹ This section looks at whether energy law in India is recognised as a legal discipline.

Energy law in Indian legal education

A word search of the terms “energy law” and “energy laws” in the websites of the National Law Schools and other prominent law schools through Google’s Advanced Search (https://www.google.co.in/advanced_search)

¹⁵⁹*Areas of Law*, p. 17.

revealed nearly zero search results in most law schools. Details thereof are listed as Appendix A to this paper.

In addition to National Law Universities, there are universities offering professional courses from the energy law perspective. For instance, the school of law of the UPES University offers an undergraduate programme in law with specialisation in energy law.¹⁶⁰ TERI University offers an LLM programme in Environmental and Natural Resources law, with a specific paper on energy law.¹⁶¹ The Tamil Nadu National Law University offers an LLM programme on Natural Resources Law, with a specific paper titled “Energy Law and Regulation”.¹⁶² Several Universities and organisations offer post graduate diploma and certificate programmes on energy laws.¹⁶³

¹⁶⁰“Postgraduate Course” National Law University Nagpur, <https://www.nlnunagpur.ac.in/academics_postgraduate_course.php/> accessed 17 November, 2022.

¹⁶¹“LLM Programme with Specialisation in Environment and Natural Resources Law and Infrastructure and Business Law” TERI School of Advanced Studies, <<https://www.terisas.ac.in/llm-programme-with-specialisation-in-environment-and-natural-resources-law-and-infrastructure-and-business-law.php>> accessed 17 November, 2022.

¹⁶²“Post Graduate” Tamil Nadu National Law University, <https://tnnlu.ac.in/Post_Graduate.php> accessed 17 November, 2022.

¹⁶³ See, for instance, “Online Certificate Course on Energy Law and Policy in India” CUTS Institute for Regulation and Competition (CUTS), < <https://circ.in/online-courses.php> > accessed 16 November, 2022; “Certificate Course in Energy Laws” ILS Law College, <> accessed 16 May 2023; “Certificate Course in Energy Law” Parul University, <<https://cep.paruluniversity.ac.in/course/cel>> accessed 16 May, 2023. <https://ilslaw.edu/wp-content/uploads/2017/02/Certificate-Course-Energy-Laws-in-India.pdf>> accessed 16 May 2023; “Certificate Course in Energy Law”

At the undergraduate level, prominent law schools do not seem to have dedicated papers on energy laws, although they seem to have papers on components of energy laws such as downstream oil and gas¹⁶⁴, nuclear energy¹⁶⁵, etc.

Some law schools offer electives or specific papers on energy laws. For instance, the Hidayatullah National Law University offers “energy law” as an optional paper in its five year BA, LLB course.¹⁶⁶ The Gujarat National Law University, Gandhinagar has a chair on energy law (by Gujarat Urja Vikas Nigam Limited) and offers a paper in the 9th semester on energy laws.¹⁶⁷ The Rajiv Gandhi National Law University, Patiala has a dedicated Centre for Advanced Studies In Energy Laws (CASEL)¹⁶⁸ and offers an optional paper on “Real Estate and Energy

Parul University, <<https://cep.paruluniversity.ac.in/course/ce1>> accessed 16 May, 2023.

¹⁶⁴“Downstream Oil and Gas Elective Course 2021-22” National Law School of India University, <<https://www.nls.ac.in/course/downstream-oil-and-gas-elective-course-2021-22/>> accessed 16 November, 2022.; “Certificate Course: Energy Laws in India” ILS Law College, Pune, <<https://ilslaw.edu/wp-content/uploads/2017/02/Certificate-Course-Energy-Laws-in-India.pdf>> accessed 26 November, 2022.

¹⁶⁵“8th Certificate Course on Nuclear Energy and Law (Online)” Hidayatullah National Law University, <<https://hnlu.ac.in/invites/8th-certificate-course-on-nuclear-energy-and-law-online/>> accessed 16 November, 2022.

¹⁶⁶“B.A. LL.B (Hons)” Hidayatullah National Law University, <<https://hnlu.ac.in/hnlu/programs/b-a-ll-b-hons/>> accessed 21 November, 2022.

¹⁶⁷“Undergraduate Programme” Gujarat National Law University, <<https://www.gnlu.ac.in/GNLU/Under-Graduate-Programme>> accessed 21 November, 2022.

¹⁶⁸“Certificate Course in Advanced Studies in Energy Laws (CASEL)” Rajiv Gandhi National University of Law, <<https://www.rgnul.ac.in/118/CASEL>> accessed 14 January, 2023.

Law” in the 8th semester of the BA LLB course.¹⁶⁹ The National University of Advanced Legal Studies, Kochi conducts an add on course on energy law.¹⁷⁰ The Damodaram Sanjivayya National Law University, Vishakhapatnam offers an elective paper in the 7th semester of the BA LLB course on International Trade Law / Natural Resources and Energy Laws.¹⁷¹ The Himachal Pradesh National Law University, Shimla offers a paper on Energy law in the 10th semester for its business law specialisation.¹⁷² Symbiosis Law School, Pune offers an elective paper on energy law in the 7th semester.¹⁷³ Except for the above, information on energy law programmes in law schools remain scarce.

It is seen from the aforesaid survey that law schools need to focus better on energy law courses, at all levels. The undergraduate programmes could include seminar/ credit courses on critical areas such as electricity laws,

¹⁶⁹"B.A. LL.B (Hons)" Rajiv Gandhi National University of Law, <<https://www.rgnul.ac.in/64/ballb-hons-course-description>> accessed 14 January, 2023.

¹⁷⁰"5 Year Integrated B.A. LL.B (Hons)" National University of Advanced Legal Studies, <<https://www.nuals.ac.in/5-year-SCHEME-OF-COURSES.aspx>> accessed 14 January, 2023.; "Common Law Admission Test Brochure 2014" National Academy of Legal Studies and Research, <https://www.nalsar.ac.in/sites/default/files/final-clat-brochure_1.pdf> accessed 16 November, 2022.

¹⁷¹"Damodaram Sanjivayya National Law University" <<https://dsnlu.ac.in/>> accessed 15 November, 2022.

¹⁷²"Himachal Pradesh National Law University" <<http://www.hpnlul.ac.in/>> accessed 15 November, 2022.

¹⁷³"Symbiosis Law School" <<https://www.symlaw.ac.in/>> accessed 15 November, 2022.

petroleum laws, nuclear energy laws, etc. These areas are ripe for legal analysis and critique, both from public law and private law perspectives. In addition, these areas also constitute lucrative practice areas in the transactional as well as the dispute resolution spaces.

These areas are practice-oriented and given the traditional focus of Indian legal academics on public law, research in energy laws has not attained a critical mass. Focus seems to be on specific facets of energy law such as the interface between energy law and environmental law, etc. Research in energy law needs to move from the traditional topics and focus on the problems. While there are writings on energy law in India¹⁷⁴, the key is to address problematic areas in energy law and policy through research.

It is also surprising that barring a few law schools listed below, many prominent universities do not offer specialised post graduate (LLM) programmes in energy laws.

S. No.	University/ Law School	Description
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¹⁷⁴ See, for instance, Mohammad Naseem and Saman Naseem, *Energy Law In India* (4th. ed. 2021); Manish Yadav, *Energy Laws* (2021); Usha Tandon (Ed.), *Energy Law and Policy* (2018); Sanjay Kumar Kar and Piyush Kumar Sinha, 'Ensuring Sustainable Energy Security: Challenges and Opportunities (2014) 4 India, Oil, Gas & Energy Law.

1.	TERI University	One Year LLM in Environment & National Resources Law ¹⁷⁵
2.	Tamil Nadu National Law University	One Year LLM in National Resources Laws ¹⁷⁶
3.	UPES, Dehradun	One Year LLM with specialisation in Energy Law ¹⁷⁷
4.	Jindal Global Law School, Sonipat	One Year LLM in Environmental Law, Energy & Climate Change ¹⁷⁸
5.	Maharashtra National Law University,	One Year LLM with specialisation in Energy Law &

¹⁷⁵Teri University, New Delhi. "LLM Programme with Specialisation in Environment and Natural Resources Law and Infrastructure and Business Law" <<https://www.terisas.ac.in/llm-programme-with-specialisation-in-environment-and-natural-resources-law-and-infrastructure-and-business-law.php>> accessed November 17, 2022.

¹⁷⁶Tamil Nadu National Law University. "Post Graduate" <<https://tnnl.u.ac.in/Post-Graduate.php>> accessed November 17, 2022.

¹⁷⁷University of Petroleum and Energy Studies. "LLM with Specialization in Energy Law/ Business Law/ International Economic Law/ Law & Technology" <<https://www.upes.ac.in/school-of-law/llm/environmental-and-energy-law>> accessed November 17, 2022.

¹⁷⁸"JindalGlobalUniversity"(JGU)<<https://jgu.edu.in/cpgls/courses/llm-in-environmental-law-energy-climate-change/>> accessed November 17, 2022.

	Nagpur	Telecommunications Law. ¹⁷⁹
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It would be apparent from the aforesaid table that LLM programmes on energy laws are offered in combination with other areas of law. For instance, the Maharashtra National Law University, Nagpur offers the LLM in telecommunications law, in addition to energy law. Similarly, the focus of the LLM offered by the Jindal Global Law School is on environmental law and climate change, in addition to energy law. The TERI University and the Tamil Nadu National Law University focus on natural resources law, which is a facet of energy law. However, it is rare to offer a comprehensive energy law specialisation programme in India.

It would do well to offer a specialisation on energy laws, considerable the importance of energy laws as an academic discipline as well as a practice area, for reasons of significance as well as for lucrateness. A possible structure for an LLM programme with specialisation on energy laws to this paper as Appendix B.

Energy law in India in practice

¹⁷⁹"National Law University Nagpur, Postgraduate Course" (NLU Nagpur) <https://www.nlunagpur.ac.in/academics_postgraduate_courses.php> accessed November 17, 2022.

One of the reasons for energy laws not being taken up as a separate area of law is the absence of an umbrella regulator on energy. While there are regulators for various facets of the energy industry such as the Central and State Electricity Regulatory Commissions, Petroleum and Natural Gas Regulatory Board, Atomic Energy Regulatory Board, etc., there is no umbrella regulator on the energy sector. Such a regulator for the energy industry would enable a macro view on energy needs of India and linking demand with supply. There is a shifting trend towards electricity as the source of energy¹⁸⁰ may provide fillip to having such an overarching regulator in future.

In 2017, the Government tasked NITI Aayog to frame a national energy policy in order to reflect the priorities of the Government vis-à-vis energy and for addressing the future of energy in India, replacing the Integrated Energy Policy, 2006.¹⁸¹ This policy was aimed at developing a roadmap for the future of energy development in India, which was to provide clarity to stakeholders regarding the

¹⁸⁰ See, for instance, Andy Extance and Abigail Pinchbeck, 'Energy Boost' (*Education in Chemistry*, 6 June 2022) <<https://edu.rsc.org/feature/moving-from-fossil-fuels-to-renewable-energy/4015752.article>> accessed 21 November, 2022; Lawrence M. Fisher, 'Bridging the Gap Between Oil and Electricity' (*Milken Institute Review*, 22 December 2021) <<https://www.milkenreview.org/articles/bridging-the-gap-from-oil-to-electricity>> accessed 21 November, 2022; Tomas Käberger, 'Progress of Renewable Electricity Replacing Fossil Fuels' (2018) 1 *Global Energy Interconnection* 48-52.

¹⁸¹ See, Draft Energy Policy (2017) <https://smartnet.niua.org/sites/default/files/resources/NEP-ID_27.06.2017.pdf> accessed 16 May, 2023.

long term strategy of the Government.¹⁸² One of the aims of the draft policy was that an omnibus policy would further the goal of energy security through better coordination between various Ministries handling different energy sectors.¹⁸³ Important aspects in the draft National Energy Policy regarding law are summarised below¹⁸⁴:

- There is a need to develop a comprehensive energy efficiency policy covering all sectors, whether energy producing or energy consuming.
- There is a need to empower the Bureau of Energy Efficiency (BEE) to better implement the salutary objectives of the Energy (Conservation) Act, 2001, and across all energy sectors.
- There is a need to prioritise energy efficient measures through the drawing up of effective instruments and to provide fiscal incentives therefor.

However, the draft Energy Policy, 2017 has not been made final.

From an individual's perspective, access to energy has been recognised as an important right. Recently, in *Ashish*

¹⁸² *ibid.* para 1.3.

¹⁸³ *ibid.* para 1.2.

¹⁸⁴ *ibid.* para 3.8.

*Gupta vs. Tata Power Delhi Distribution Limited*¹⁸⁵, the Delhi High Court recognised the settled law in India that the right to electricity access is a facet of the right to life protected under Article 21 of the Constitution of India.

Indian law practice in energy sector is characterised by specialisation. Even where the legal industry purports to deal with the energy sector, it ends up focussing on certain energy sectors.¹⁸⁶

From India's perspective, energy security and access to energy form the core concerns that energy law should address. This view is echoed by lawyers from similarly placed jurisdictions.¹⁸⁷ Again, this is not a development versus environment debate. It is rather complicated. Environment friendly policies could lead to better compliance with human rights.¹⁸⁸

¹⁸⁵W.P.(C) 890/2022 (Judgment dt. 14.01.2022), <https://www.livelaw.in/pdf_upload/sas14012022cw8902022121650-409895.pdf> accessed 26 November, 2022. See also, KN Raveendranadhan v. Kerala State Electricity Board, Judgment dt. 15.03.2021, in WP(C).No.34061 Of 2014(G) (Kerala High Court). See also, Sanjit Kumar Chakraborty, 'The 'Fundamental' Right to Access Energy: Issues, Opportunities and Challenges in India' in Sairam Bhat (Ed.), *Energy Law And Policy In India* (2016) 3-22.

¹⁸⁶ See, for instance, Economic Laws Practice, 'Legal Issues in India's Energy Sector' (2018) <<https://elplaw.in/wp-content/uploads/2019/05/ELPs-Energy-Sector-Book.pdf>> accessed 26 November, 2022 (but focussing on the power sector).

¹⁸⁷ Hojjat Salimi Turkamani, 'International Energy Law and the Development Dilemma of Developing Countries' (2022) 19 Manchester Journal of International Economic Law 211-227, 216-217.

¹⁸⁸ Thierry Ngosso, 'The Right to Development of Developing Countries: An Argument Against Environmental Protection?' (2013) 5 Public Reason 3-20, 19.

The recent shift in energy policies of the West post the Russia- Ukraine war are important lessons for India. India's foreign policy during the said war is an important marker, which is a prelude to the recognition of prioritisation of energy security. Despite tremendous pressure from the Western nations, India has been purchasing petroleum from Russia. This is evidenced by the Government's Press Statement in May 2022, wherein the Government's Press Release noted the "false narrative" being created as regards energy purchases by India from Russia ("Press Release").¹⁸⁹ The Government's purchases are to be seen in light of the increase in crude oil prices due to the Russia-Ukraine war¹⁹⁰, leading to weakening of the Indian rupee against the US dollar.¹⁹¹

The Press Release notes the demand for energy in India, where the daily consumption of oil is around 5 million barrels. The Press Release takes note of the increasing prices of oil, fuel inflation and India's energy needs and

¹⁸⁹ Ministry of Petroleum & Natural Gas, Press Statement (04 May 2022) <<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1822665>> accessed 16 May, 2023.

¹⁹⁰ Tiya Singh, 'The Russia-Ukraine War and the Unfolding Global Disorder, Economic and Political Weekly' (Engage) <https://www.epw.in/sites/default/files/engage_pdf/2022/10/31/161187.pdf> accessed 16 May, 2023.

¹⁹¹ Ministry of Finance, 'Russia-Ukraine conflict, soaring crude oil prices and tightening of global financial conditions are major reasons for weakening of Indian Rupee against the US Dollar' (26 July 2022), <<https://www.pib.gov.in/PressReleaseDetail.aspx?PRID=1845054>> accessed 16 May, 2023.

condemns attempts at sensationalisation of crude oil purchases from Russia, which had been going on for several years. The Press Release also brings to attention major purchases of petroleum by other countries¹⁹² including the West.

The concern for energy security is at the macro-level and access to energy is at the individual level. Foundational coherence in energy law would be not achieved without considering these core aspects. As Khaitan and Steel argue, foundational coherence leads to internal coherence within an area of law. So is the case with energy law: internal contradictions and hard cases in energy law can be resolved through reference to its foundational aims.

In the landmark case of *Reliance Natural Resources Ltd. v. Reliance Industries Ltd.*¹⁹³, Justice Sudharshan Reddy analysed the energy sector broadly and listed out six issues that each jurisdiction faced¹⁹⁴:

- Addressing supply constraints to meet the overall energy and industrial demands;
- equitable access to all sectors where demand for energy exists as such access has implications on the quality of life;

¹⁹² Ministry of Petroleum & Natural Gas, 'Press Statement' (04 May.2022) <<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1822665>> accessed 16 May, 2023.

¹⁹³ [2010] 5 S.C.R. 704; MANU/SC/0341/2010.

¹⁹⁴ [2010] 5 S.C.R. 704, 876-877.

- Equitable energy pricing;
- Nation's energy security;
- Links between energy security and the nation's defence;
- Inter-generational equity.

This constituted one of the comprehensive attempts are laying down the normative framework of energy law in the Indian legal discourse.

The decision of Justice Sudharshan Reddy is also notable for the *obiter* that the Government should consider framing a comprehensive law/ policy on energy security of India.¹⁹⁵ But such attempts have been rare and have not been taken forward to the next level by the legal industry.

Interestingly, this observation by Justice Reddy formed the subject-matter of the petition filed by the Independent Gas based Power Producers' Association in the High Court at Hyderabad.¹⁹⁶ The Single Judge hearing the matter held that the aforesaid observations of Justice Reddy could not be taken to be a direction to the Central

¹⁹⁵ [2010] 5 S.C.R. 704, 923.

¹⁹⁶ Independent Gas based Power Producers' Association v Union of India and Ors. (28.01.2015 - HYHC): MANU/AP/0022/2015.

Government to enact a law or frame a policy¹⁹⁷ in view of the settled law.¹⁹⁸

To summarise India's position, energy law as a separate discipline is still in its nascent stages. Legal education and law practice have to do more if India seeks to reap the benefits that the international community did recognising energy law as a distinct area of law. Such Recognising energy law as a separate discipline in India would lead to coherence in its foundational aims.

6. CONCLUSION

This paper analysed what it meant to be a distinct area of law. It drew upon the work of Khaitan and Steel to state that classifying energy law as a distinct area of law could act as a catalyst in the legal industry acting towards bringing internal coherence into that area of law.¹⁹⁹ This would result in debates on aims of energy law and regulation and thereby lead to foundational coherence. The paper analysed the state of energy law as a distinct discipline internationally. It highlighted that in the West energy law has been recognised as a distinct area of law.

¹⁹⁷ *ibid*, para 66.

¹⁹⁸ Some of the decisions cited by the Single Judge in support of this proposition include *AK Roy v. Union of India*, MANU/SC/0051/1981 and *V.K. Naswa v. Union of India*, MANU/SC/0050/2012.

¹⁹⁹ *Areas of Law*, p. 14.

The paper then went on to discuss the shift in the foundational aims of the energy law and the lack of prioritisation of energy security. This led to a crisis-like situation for Europe, especially Germany. The paper also discussed the impact of the Russia-Ukraine crisis on countries like Japan which led to a reversal in policy as regards nuclear energy.²⁰⁰ The Western and the Japanese experience as regards the shift in foundational norms from environment, safety and climate change to energy security is an important lesson for India. It is important to have clarity as to the foundational aims of energy law based on the needs of India as a country. While foundational norms keep getting re-looked at, there should be a shared acceptance in the industry on such norms. Clarity on these foundational norms would enable resolution of conflicting claims and hard cases in a coherent manner.

Another important concern for India is that energy has yet to have a shared acceptance, as noted by Khaitan & Steel, as a distinct area of law. Such recognition would enable settlement of the doctrinal contours of energy law and provides ideological stability, and consequently, legitimacy, to energy law.²⁰¹

²⁰⁰ See, Section 4 of this paper.

²⁰¹ *ibid*, 16.

But for this to happen, several steps are required to be taken: Law schools should recognise that offering energy law papers in the undergraduate course could prepare students not only to prepare for a practice in energy law, be it transactional lawyering or advocacy, but also enable them understand different facets of interplay between energy and law. Law schools should also consider offering specialisation in energy law at the post-graduate level, which could act as a fillip for research in energy law.²⁰² Law schools can augment research in energy law through establishing centres or departments on energy law.

At a macro-level, energy security is important for the survival of India and its economy. India's economic growth would have to be fuelled by energy and the way energy (being a scarce commodity) is produced, distributed and consumed is through energy law and regulation. Likewise, at a micro-level, individual's access to energy and addressing competing claims over energy is also through the vehicle of energy law. Hence, the shared acceptance on the importance of recognition of energy law as a distinct area of law is important.

²⁰² See, Appendix B, which provides a possible course structure for an LLM programme on energy law.

Appendix A

Results on “energy law” & “energy laws” in Websites of
Prominent Indian law schools²⁰³

S. No.	Law School ²⁰⁴	Search Result
1.	National Law School of India University, Bengaluru ²⁰⁵	0 results
2.	National Law Institute University, Bhopal ²⁰⁶	0 results
3.	NALSAR University of Law, Hyderabad ²⁰⁷	1 result
4.	The West Bengal National University of Juridical Sciences, Kolkata ²⁰⁸	0 results
5.	National Law University, Jodhpur, ²⁰⁹	0 results

²⁰³ Website search conducted through Google’s Advanced Search <site search: https://www.google.co.in/advanced_search>. Search results are as on 21.11.2022.

²⁰⁴ The list of universities/ law schools is more or less based on the rankings of the National Institutional Ranking Framework <<https://www.nirfindia.org/2022/LawRanking.html>> and other rankings available in the public domain. The arrangement of the law schools here is not reflective of their rankings.

²⁰⁵“National Law School of India University” (NLSIU) <<https://www.nls.ac.in/>> accessed December 17, 2022.

²⁰⁶“National Law Institute University” (NLIU) <<https://nliu.ac.in/>> accessed December 17, 2022.

²⁰⁷“National Academy of Legal Studies and Research” (NALSAR) <<https://www.nalsar.ac.in/>> accessed December 17, 2022.

²⁰⁸“West Bengal National University of Juridical Sciences” (WBNUJS) <<https://www.nujs.edu/>> accessed December 17, 2022.

6.	Hidayatullah National Law University, Raipur ²¹⁰	0 results
7.	Gujarat National Law University, Gandhinagar ²¹¹	0 results
8.	Dr. Ram Manohar Lohia National Law University, Lucknow ²¹²	0 results
9.	Rajiv Gandhi National University of Law, Patiala ²¹³	7 results
10.	Chanakya National Law University, Patna ²¹⁴	0 results
11.	National University of Advanced Legal Studies, Kochi ²¹⁵	0 results
12.	National Law University Odisha, Cuttack ²¹⁶	1 result
13.	National University of Study and	0 results

²⁰⁹“National Law University, Jodhpur” (NLUJ) <<http://www.nlujodhpur.ac.in/index-main.php>> accessed December 17, 2022.

²¹⁰“Hidayatullah National Law University” (HNLU) <<https://hnlulaw.ac.in/>> accessed December 17, 2022.

²¹¹“Gujarat National Law University” (GNLU) <<https://www.gnlulaw.ac.in/>> accessed December 17, 2022.

²¹²“Dr. Ram Manohar Lohiya National Law University” (RMLNLU) <<http://www.rmlnlulaw.ac.in/>> accessed December 17, 2022.

²¹³“Rajiv Gandhi National University of Law” (RGNUL) <<https://www.rgnulaw.ac.in/>> accessed December 17, 2022.

²¹⁴“Chanakya National Law University” (CNLU) <<https://cnlulaw.ac.in/>> accessed December 17, 2022.

²¹⁵“National University of Advanced Legal Studies” (NUALS) <<https://www.nuals.ac.in/>> accessed December 17, 2022.

²¹⁶“National Law University Odisha” (NLUO) <<https://www.nluo.ac.in/>> accessed December 17, 2022.

	Research in Law, Ranchi ²¹⁷	
14	National Law University and Judicial Academy, Assam, Guwahati ²¹⁸	0 results
15	Damodaram Sanjivayya National Law University, Vishakhapatnam ²¹⁹	1 result
16	Tamil Nadu National Law University, Trichy ²²⁰	0 results
17	Maharashtra National Law University, Mumbai ²²¹	0 results
18	Maharashtra National Law University, Nagpur ²²²	2 results
19	Maharashtra National Law University, Aurangabad ²²³	0 results
20	Himachal Pradesh National Law University, Shimla ²²⁴	1 result

²¹⁷“National University of Study and Research in Law” (NUSRL) <<http://www.nusrlranchi.ac.in/>> accessed December 17, 2022.

²¹⁸“National Law University and Judicial Academy” (NLUJAA) <<http://www.nluassam.ac.in/>> accessed December 17, 2022.

²¹⁹“Damodaram Sanjivayya National Law University” (DSNLU) <<https://dsnlu.ac.in/>> accessed December 17, 2022.

²²⁰“Tamil Nadu National Law University” (TNNLU) <<https://tnnlu.ac.in/>> accessed December 17, 2022.

²²¹“Maharashtra National Law University, Mumbai” (MNLU) <<https://mnlumumbai.edu.in/>> accessed December 17, 2022.

²²²“National Law University and Judicial Academy, Nagpur” (NLUJAA Nagpur) <<https://www.nlunagpur.ac.in/>> accessed December 17, 2022

²²³“Maharashtra National Law University, Aurangabad” (MNLU Aurangabad) <<https://mnlua.ac.in/>> accessed December 17, 2022.

²²⁴“Himachal Pradesh National Law University” (HPNLU) <<http://www.hpnlua.ac.in/>> accessed December 17, 2022.

21	Dharmashastra National Law University, Jabalpur ²²⁵	0 results
22	Dr. B.R. Ambedkar National Law University, Sonapat ²²⁶	0 results
23	National law university, Sikkim	–
24	National Law University, Tripura ²²⁷	0 results
25	National law University, Meghalaya	–
26	Symbiosis Law School, Pune ²²⁸	1 result
27	IIT Kharagpur School of Law ²²⁹	0 results
28	Jamia Millia Islamia, New Delhi ²³⁰	0 results
29	ILS Law School, Pune ²³¹	5 results
30	Siksha 'O' Anusandhan, Bhubaneswar ²³²	0 results

²²⁵Madhya Pradesh National Law University” (MPDNLU) <<https://www.mpdnlu.ac.in/>> accessed December 17, 2022.

²²⁶Dr. B.R. Ambedkar National Law University” (DBRANLU) <<https://old.dbranlu.ac.in/>> accessed December 17, 2022.

²²⁷National Law University, Tripura” (NLU Tripura) <<https://nlutripura.ac.in/>> accessed December 17, 2022.

²²⁸Symbiosis Law School, Pune” (SLS) <<https://www.symlaw.ac.in/>> accessed December 17, 2022.

²²⁹Indian Institute of Technology, Kharagpur” (IITKGP) <<http://www.iitkgp.ac.in/>> accessed

²³⁰Jamia Milia Islamia” (JMI) ,<<https://www.jmi.ac.in/>> accessed December 17, 2022.

²³¹ILS Law College, Pune” (ILS) <<https://ilslaw.edu/>> accessed December 17, 2022.

Appendix B

One Year LLM Programme

(Specialisation in energy laws)

(Semester Pattern)

Semester I

1. Mandatory Paper: Law and Justice in Globalizing world
2. Mandatory Paper: Research Methods and Legal Writing
3. Specialisation Paper 1
4. Specialisation Paper 2
5. Specialisation Paper 3

Semester II

1. Mandatory Paper: Comparative Public Law and Systems of Governance
2. Specialisation Paper 4
3. Specialisation Paper 5
4. Specialisation Paper 6
5. Specialisation Paper 7/ Dissertation

²³²“Siksha'o'Anusandhan”(SOA)<<https://www.soa.ac.in/>> accessed December 17, 2022.

Specialisation Papers²³³:

1. International Energy Law
2. Energy Regulation
3. Oil & Gas Law
4. Nuclear Energy Law
5. Electricity Law (excluding renewable energy)
6. Renewable Energy, Alternative Energy & Energy Conservation Law
7. Energy & Constitutional Law (including Access to Energy)
8. Energy & Competition Law
9. Energy & Environment
10. Energy & Climate Change
11. Energy & International Trade Law
12. Energy & International Investment Law
13. Energy & Taxation
14. Energy, Human Rights & Indigenous Peoples
15. Energy & Dispute Resolution
16. Investment Treaty Arbitration
17. International Commercial Arbitration

²³³The courses are based on Alexandra Wawryk, 'International Energy Law: An Emerging Academic Discipline' in Paul Babe and Paul Leadbeter (Eds.), *Law As Change: Engaging With The Life & Scholarship Of Adrian Bradbrook* (2014) 223-255
<<https://library.oapen.org/bitstream/handle/20.500.12657/33168/560243.pdf?sequence=1&isAllowed=y>> accessed 23 November 2022.