

Environmental Federalism and Practice in India: An Overview

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ABSTRACT: Environmental Federalism refers to the decentralization of policy decisions on environmental issues to local regions with greater autonomy in theory and practice. It is the proper devolution of roles to the various levels of government aiming at both fiscal decentralization and environmental management at the local levels. Thus environmental federalism means environmental decentralization at all levels of government for an overall environmental management in a country. National and local governments participate in environmental management on a mutually agreed common agenda in protection and preservation of environment for sustainable development at national and local levels. Thus a distributed responsibility on environmental governance spanning across multiple levels of government, vertically and horizontally under a federal government structure can be called as environmental federalism in its true sense of the term. Laws and policies on environment in various countries including India stem from a centralized overtone and never decentralized to the extent it benefits the grassroots. Hence it becomes necessary to study the extent of environmental federalism in countries such as India where there is a growing concern on environmental issues.

KEYWORDS: Environmental Federalism, Decentralization, Co-operative Federalism, Sustainable Development, Governance.

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I. INTRODUCTION

There has been a growing contention on allocation of authority in matters of environment across levels of governments. The issue is also gaining relevance in the Indian context as environmental activists and NGO's are fighting for greater autonomy and decentralization on environmental issues to the States and Panchayat Raj Institutions. In India, historically environmental decision making with regard to framing of laws, policies and governance have been a prerogative of the Union government. In the Indian Constitution, States have been given lesser role in environmental policy making and governance and the tilt is always towards the centre and its laws. This has given rise to contention between the prevailing environmental laws and the rights of the traditional, indigenous people whose survival is at the cost of maintaining a symbiotic relationship between man, nature and environment. The environmental laws formulated and implemented from and by the Central government in India through vertically oriented bureaucratic machinery often neglect this symbiotic relationship and the central role of traditional communities and groups in protecting the environment at the grassroots level. Added to this, along with the onslaught of capitalist market model of development and intervention in the local areas in the name of privatization and industrialization often target the local indigenous communities without any regard for their natural rights over the environment and the lands they inhabit. This has often resulted in contestation and conflicts at the local levels between the State and the indigenous communities in the name of environmental protection. Thus there is a misunderstood sense of centralized institutional mechanisms and policy frameworks as far as environmental issues in India are concerned.

II. OBJECTIVES

The main objective of this study is to provide an overview of the practice of environmental federalism in the Indian context and explore the need for decentralization of policy decisions on environmental issues. The study would provide comprehensive overview of the relevant laws and policies on environment and its practice from the point of view of the federal constitutional set up in India. By doing so, the objective is to further encourage the debate on decentralization of environmental laws and policies, catering towards a new conception of environmental federalism in the Indian context.

III. ENVIRONMENTAL FEDERALISM: MEANING

Environmental Federalism is "the study of the normative and positive consequences of the shared role of national and sub-national units of government in controlling environmental problems". (Shobe and Burtraw: 2012)

IV. BRITISH RULE AND FOREST LAWS IN INDIA: A HISTORICAL OVERVIEW

Protection of environment was never a serious concern during the British rule in India. The British cleared forest lands in hilly areas for cultivation of tea, coffee and other commercial crops to suit their trading interests. Also various forest produce including timber and pepper were exported from India for commercial purpose. Infact, British Rule in India resulted in the drainage of forest wealth in India with total neglect of environment. The first codification in relation to the administration of forests was the Indian Forest Act, 1865. It was later replaced by the Indian Forest Act, 1927 and was amended from time to time to suit the colonial interests.

The Indian Forest Act, 1927

The Indian Forest Act, 1927 contained 86 sections. It mainly classified forests into four categories:

1. Reserve Forests
2. Village Forests
3. Protected Forests
4. Non-Government Forests.

The Act was comprehensive as far as categorization of forests in India was concerned and gave powers to state governments on jurisdiction of forests to a certain extent. But being under a colonial regime, it contained provisions best suited to the commercially exploitative interests of the rulers dealing with revenue generation policy in forest produce and levying taxes on timber and its trade.

V. CENTRALIZATION OF ENVIRONMENTAL LAWS IN INDIA

As per the Indian Constitution under Chapter XI, the Centre (Parliament) and States (Legislative Assembly) can make laws in their respective spheres on items in the Union list and State list annexed in the Seventh schedule. The Centre has the residuary power to legislate upon matters in the State list under certain circumstances. There is also a list of items in the Concurrent list of Schedule VII which gives power to the Indian Parliament to make laws on areas related to environment on such subjects like forests, protection of wild life, mines and minerals' development, and minor ports and factories. Further, Article 253 provides for: "253. Legislation for giving effect to international agreements". The Colonial Act on forest, the Indian Forest Act, 1927 continued even after Independence with no provision on environmental protection or preservation of forests in India. A change in this regard occurred only after the enactment of the Forest (Conservation) Act, 1980.¹

VI. THE INDIAN CONSTITUTION AND ENVIRONMENT PROTECTION

Environment was not a matter of serious concern as is now when the Constitution of India was drafted and hence it is not worthwhile to delve into the inadequacies of the original Constitution as far as environment is concerned. Even then the Constitution provided certain safeguards for the protection of environment directly and indirectly and later by the 42nd Constitutional (Amendment) 1976 under Articles 48-A, 51-A(g); and Article 21 which the courts have used in extending the right to life and interpreting it to have a healthy and pollution free environment.

In Francis Coralie v. Union Territory of Delhi (AIR 1981 SC, 746) Justice Bhagwati remarked: "We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the basic necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and mingling with fellow human beings". The development pattern that India followed after Independence also resulted in destruction of the environment than its preservation due to this lacuna. Under the Constitution, environment is a residuary subject in which the Union government has a predominant role. In 1972, Mrs. Indira Gandhi, the then Prime Minister of India, participated in the Stockholm Conference and took personal care in addressing the concerns of newly independent countries with 'poverty is the big polluter' speech.

Further, centralising tendencies continued with greater tasks entrusted as India became a signatory to the Stockholm Declaration, 1972.² Also, and the domestic situation in India was not benevolent to any devolution of power to States or environmental federalism as India was going through its darkest periods of autocratic rule under national emergency. Subsequently, various laws on environment were enacted by the Union government based on the provisions of the Stockholm Conference. They are:

1. The Water (Prevention and Control of Pollution) Act, 1974.
2. The Water (Prevention and Control of Pollution) Cess Act, 1977.
3. The Air (Prevention and Control of Pollution) Act, 1981.
4. The Environment (Protection) Act, 1986.

This has resulted in greater centralization of environmental policies instead of a new conception of environmental federalism in the Indian context.

VII. ENVIRONMENTAL ISSUES: DECENTRALIZED DECISION-MAKING IN INDIA

The question arises whether decentralized decision making in environmental matters will adversely affect environmental issues or not given the political and societal pressure on the policies formulated and implemented. While there is some merit in the contention in the Indian context with greater elements of plurality and multiculturalism, the voices of people at the grassroots are ignored or often not heard at all in policy decisions on environment. This has helped not in the protection of the environment but on the contrary its own very destruction at the cost of the livelihood of traditional people and the environment. The centralized environmental laws and policies in India lack coordination with multiple levels of authority, often vertically through bureaucratic machinery. Thus greater attention needs to be paid in the Indian context to the local public good with a decentralized level of governance giving much autonomy to the States and Panchayat Raj Institutions.

The central government through its unitary nature plays the role of a supervising authority in matters of governance. Hence, federalism in the true sense of the term as practised in the US or other federation is a misnomer in the Indian context. As far as India is concerned there is the practice of cooperative and competitive federalism with a predominant role of the Union government as envisaged by the constitution makers. Thus even in environmental matters, there is a need for cooperative and competitive federalism to be practised for the protection and preservation of environment and at the same time upholding the natural rights of the traditional communities and indigenous people vis-à-vis environment protection. The task of cooperation and competition is based on the principle of trust and distrust in matters of interest and contention between States and across people and communities. But in the Indian case, political considerations and its primary role plays an interventionist strategy to cater to greater demands for environmental protection. The practice of environmental federalism in the Indian context points out to the following functions.

1. The authority that stems from the Constitution of India.
2. The environmental politics at the State, and local level and its effects for greater environmental decentralization.

The practice of environmental federalism in the Indian context has always been challenged by a centralising tendency where the Union government, its laws and jurisdiction have an upper hand. This is also due to the peculiar nature of the Indian federalism, as the Union government holds its central authority in matters of finance and administration as far as environment is concerned.

VIII. ENVIRONMENTAL FEDERALISM IN INDIA AND ITS THEORETICAL BASE: AN OVERVIEW

The following are the theoretical principles from which States and groups derived their strength towards environmental federalism in the Indian context. The courts in India have used these principles as a base for some historic judgements. They are:-

1. Public Trust Principle³
2. Precautionary principle⁴
3. Polluter pays Principle⁵
4. Absolute Liability Principle⁶
5. Sustainable Development and Sustainable Livelihood principles⁷

IX. ENVIRONMENT RELATED CENTRAL LAWS IN INDIA

The following are the various environment related laws passed by the Parliament from which States derive their authority in its implementation.

1. The Prevention of Cruelty to Animals Act, 1960
2. The Water (Prevention and Control of Pollution) Act, 1974
3. Forest (Conservation) Act, 1980, amended 1988
4. The Air (Prevention and Control of Pollution) Act, 1981, amended 1987
5. The Environment (Protection) Act, 1986, amended 1991
6. The Forest Policy, 1988
7. The Public Liability Insurance Act, 1991, amended 1992
8. Constitution (73rd Amendment) Act, 1992
9. National Environment Tribunal Act, 1995
10. Panchayat (Extension to Scheduled areas) Act, 1996
11. National Environment Appellate Authority Act, 1997
12. The Wildlife (protection) Amendment Act, 2002
13. The Biological Diversity Act, 2002

14. Scheduled Tribes (Recognition of Forest Rights) Bill, 2005

National Policies and Programs

The following are the various policies on environment brought out by the Government of India.

1. National Conservation Strategy and Policy Statement on Environment and Development, 1992
2. EIA Notification, 2006
3. Coastal Regulation Zone Notification, 1991 and 2011
4. Environmental Clearance Regulation, 2006
5. Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989
6. Biomedical Waste (Management and Handling) Rules, 1998

Environmental Federalism and Practice in India: Evidences

Basing on the national environment laws passed by the Parliament, States in India have also passed various types of laws for the protection and preservation of environment as enshrined under State list. It was with the 73rd and 74th constitutional amendment that a clear devolution of power was given to panchayats and the concept of environmental federalism took its shape in addressing the concerns on environment. The 11th Schedule of the constitution gives powers to the panchayats in social and farm forestry, minor forest produce, water management, soil erosion, fuel and fodder. The 12th Schedule of the constitution gives powers to the municipalities in protection of environment, sanitation, public health etc.

Environmental Jurisprudence and Environmental Federalism in India

The various judicial pronouncements of the courts in India proactively helped in the betterment of environmental protection and paved the way for devolution of power to various levels of government for proper implementation of environmental rules and regulation. This judicial activism on environment resulted in new era of environmental federalism in India and created awareness for the protection of environment. Several intervention due to the efforts by NGOs, community groups and public spirited persons through Public Interest Litigation (PIL) has brought about a new environmental awakening in India. Some of the important cases are:-

1. M.C. Mehta v. Union of India, AIR 1987 SC 1086
2. M.C Mehta v. Union of India, 1997, 2 SCC 353
3. NarmadaBandhVirodhiSangarshSamiti Vs. State of U.P.,1992 SUP (1) SCC (44)
4. Union Carbide Corp. v. Union of India, AIR 1992, SC 248
5. M.C. Mehta v. Union of India, AIR 1987 SC 965
6. Union of India v.Kamal Nath, 1997, 1 SCC 388
7. Indian Council for Enviro-Legal Action v. Union of India, 1996, 3 SCC 212
8. Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715
9. M.C. Mehta v. Union of India, AIR 1998 SC 1037
10. Narmada Bachao Andolan v. Union of India, AIR 1999 SC, 1636
11. T. N. Godavarman Thirumulpad v. Union of India, 2000 SC, 514,516
12. Rural Litigation and Entitlement Kendra, Dehradun v. State of U.P., 1985 SC, 652
13. Samatha v. State of Andhra Pradesh, 1997
14. WWF v. Union of India, WP No 337/95
15. Tarun Bharat Sangh, Alwar v. Union of India, 1992 SC, 514, 516
16. Indian Council for Enviro-Legal Action v. Union of India, 1996 (3) SCALE: 579
17. Prof. Sergio Carvalho v. The State of Gao and others, 1989 (1) GLT 276
18. Goa Foundation and Ors. v. North Goa Planning and Development Authority and Ors. 1995 (1) GLT 181
19. GodavarmanThirumulpad v. Union of India, IA No. 502 of 1999 in WP (Civil) No.202 of 1995

Advantages of Decentralized policy making on Environmental Issues India

A new type of environmental activism resulted in new environmental laws and policies being initiated by respective State governments in India. There also arose a new sort of environmental politics led by non governmental organizations and environmental activists. This has resulted in the devolution of environmental laws and rules to a wider area of activity. Thus environmental federalism in the true sense of the term was being felt across various sections of the country not through any devolution of powers to States but through a common understanding and concern cutting across various sections of the population through new forms of non partisan, non governmental political process initiated by various environmental and human rights groups in the country.

Multiculturalism in India and Its Effects and Implications on Environmental Federalism

Thus, when we speak of environmental federalism in India, it should not mean devolution of environmental laws and rules through the hitherto existing governmental machinery and structures to the various levels of governments at the regional level. But in the Indian case, environmental federalism would

mean sensitisation and concern of environmental issues that has been devolved down to the grassroots level through the working of various non governmental organizations and their activism and also the guidance and proactive judgements of environmental judicial activism.

The Need for Decentralized Policies with Local Preferences

This is not because of the lack of awareness on environment but due to the already existing rigid structure of government machinery and its processes in the Indian context. Thus, environmental federalism is a fallacy in the Indian context in its true sense, but environmental concerns of non governmental organizations and groups spanning across India with political and environmental action is reality in grassroots level in India. But a proper implementation of environmental laws and policies need a clear devolution of power to various levels of government vertically and horizontally. The powers of the non governmental organizations are little compared to the power of governmental machinery in the protection and preservation of environment.

X. CONCLUSION

Environmental federalism in the Indian sense is a true devolution of power to various groups in society from the top to grassroots through environmental activism and protests cutting across diverse segments of the population. The devolution of power through governmental agencies to various levels of administration is a fact that is yet to occur in the Indian case, leaving aside certain minor devolutionary powers given to Panchayat Raj Institutions in environmental governance. Thus environmental federalism has not become a serious concern for the governmental structures in India and devolution of power with regard to environmental policy making and its implementation is still hierarchically dominated by the Union government and its institutional mechanisms. Thus, Environmental Federalism in the Indian context works vis-à-vis through its simultaneous indulgence with strong environmental activism spanning across various strata of the population irrespective of devolution of environmental responsibility at various levels of government.

NOTES

1. It was this Act for the first time gave a new dimension to the preservation of forests in India by imposing restrictions on the use of forest land for non-government purposes.
2. The Constitution (42 Amendment) Act, 1976 incorporated these two articles on environment into the Indian Constitution as per the Stockholm principles. Also 'forest' was transferred from the State list to Concurrent list through this amendment.
3. M. C. Mehta v. Kamal Nath (1996) 1 SCC 38.
4. Vellore Citizens Welfare Forum v. Union of India. AIR (1986), SC 2718.
5. Ibid.
6. M. C. Mehta v. Union of India. AIR (1987), SC 1086.
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