
CENTER- STATE RELATION AND ENVIRONMENT PROTECTION IN INDIA

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ABSTRACT

Continuous environmental degradation is a critical issue around the globe. The method through which the State shall protect the environment is a matter of debate for the past so many decades. Due to the persistently growing population, reckless development, and ineffective governance policies around the globe the concept of 'environmental federalism' evolved with time. During the 1970s era, the globe's attention shifted towards the state administration policy for environment protection due to various scientific testimonies that made the world realize regarding the climate change. The Environment Federalism is "the concept which underlines on positive consequences of the shared role of national and sub-national units of government in controlling environmental problems"¹. For developing countries like India, the issues around environmental governance were particularly relevant. In India through constitutional amendment the concept of environmental federalism was introduced, this concept aims to assist the State to protect the environment at all levels within its territory. However, there are multiple studies and literature that are pointing out the present issues and challenges around the working of the concept of 'environmental federalism' in India. In this paper, the authors will discuss the Center state's relation to the protection of the environment in India and major challenges in the implementation of the concept of environmental federalism, and emphasize the fact how the environmental federalism can be implemented in the environment protection in India.

Key Words- Environment Degradation; Center- State Relation; Environment; Federalism.

¹ Shobe, William and Burtraw, Dallas, Rethinking Environmental Federalism in a Warming World (January 27, 2012). Resources for the Future Discussion Paper No. 12-04. Available at SSRN:

INTRODUCTION

The Constitution makers while making the Constitution embraced different features from various sources of the Constitution like the USA, British and Canadian Constitution, and so on. The feature of a federal State had been embraced by the Government of India Act, 1935, and the Canadian Constitution that accentuated the federal scheme and federation with a strong center respectively. Before the independence, India was not a sovereign country, i.e. why there was no duty on the State. Before independence, the British used to make a legitimate system related to any subject matter like trade, property, etc. which includes even the environment. During the 19th century, the Britishers made the law on the environment also like Indian Forest Indian Act 1865, Forest Act 1927, and so on. But when these pieces of legislation were made with the purpose of asserting a state monopoly right, the Acts ensured that the state could demarcate 'valuable' tracts of forest needed, especially for railway purposes, and retain enough flexibility over the remaining extent of forest- land. These legislation were slanted towards the monetary parts of the natural resources and they had guaranteed the over misuse of natural resources by the British government just, no place in the Act there was attention to the protection of the environment.

After India got its independence in 1947, India through Constitution distributed the power between the center and state which also incorporated the obligation to protect the environment. Whereas, the word environment has not been using explicitly used in the Constitution. As per Article 249ⁱ the power is divided through three lists in the seventh schedule i.e. Union, state, and Concurrent. The union had the exclusive power to make laws with respect to the matters in List I seventh Schedule (in this Constitution referred to as the Union List). The state had the power to make laws related to the subject mentioned under list II i.e. State list and Parliament and the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the (Concurrent List). But none of the lists in the seventh schedule records the word Environment, in the Constitutional draft as well as in the present Constitution. In the Constitution, various terms are used like Agriculture, Water, Forest, Wild Animals, and so forth which are likewise part of the word environment. But then these words have very limited scope in comparison to the word environment which means “surrounding”ⁱⁱⁱ. Therefore, the law-making powers of the states are very restricted under List II & III in the Seventh Schedule. They had the power to make laws and policies with respect to water, agriculture, fisheries, forests etc. only, and

afterward additionally the dispute emerges between the union and state if it's the subject matter of List III of the Seventh Schedule and such problems arise, either because the Union or a State may illegally encroach upon the province of the other (parallel) legislature, or they may arise because (though there is no encroachment, as such, on each other's sphere), the two laws clash with each otherⁱⁱⁱ.

DEVELOPMENT OF THE CONCEPT OF ENVIRONMENT FEDERALISM IN INDIA

During 1970, the world started realizing the effect of the ceaseless development of industries on the environment. There was a persistent degradation of the environment and an alert at a worldwide level to address the issues around the environment and to guarantee the protection of the environment at the global level. Therefore, different movements start occurring around the world.

India likewise does not stay immaculate with this worldwide concern. The concept of Environment Federalism starts developing in the Indian Constitution. These were the three significant explanations for the introduction of Environment Federalism in India-

1. **Global Environment Movement:** The movements developed during the 1970s. The concern was over human use and abuse of environment proliferated^{iv}. After, this continuous movement in different part of world likes Europe, North America and many more. The United Nations conference in 1972 on Human Environment in Stockholm takes place, principle 2 of which impose a duty on State, that the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate^v. The Report by the independent commission in 1980s i.e. world commission on environment shaped the global agenda on environment. Further the Rio earth submits in 1992 gave concrete shape to agenda by declaration on environment and development as well as Agenda 21.

2. **Reckless use of the Natural Resources:** Over-exploitation of natural resources by a growing population has resulted in various severe problems, such as land degradation, denudation, soil erosion, landslides, floods, drought, and unbalanced ecosystems.

3. **Political leadership of India:** During the 1970s, the political leaders of India were profoundly committed to the cause of the environment. Former Prime minister Indira Gandhi

1972 gave her famous speech on 'Poverty is the Biggest Polluter' and the Former Prime minister Rajiv Gandhi wrote the forward of Brundtland Commission report titled Our Common Future.

These were the significant reasons behind the evolution of the concept of Environment Federalism in India. After, the certain amendments made in the Constitution, and duties imposed at different levels. The Present federal structure of the 1970s failed to address the issues around the environment and there was a need for decentralization of powers among the different levels of Government.

4. *Complementary Process Made For Changing The Present Structure Of Constitution*

The 42nd Amendment by amendment the forest and protection of wild animals and birds included in the concurrent list and Article -48A likewise included where the obligation put on the state for protection and improvement of the environment. The duty was also imposed on the citizens for the protection of the Environment under Article 51A.

The 73rd and 74th Constitutional Amendments of 1972 could be said as achievements in introducing the concept of decentralizing power related to environmental matters. It added a new dimension to Federal Character. It gives Constitutional recognition to the rural and urban self-governing institutions of the country^{vi}.

The Indian Legal System has additionally contributed to the protection of the environment through various precedents and judgments. In the case of RL & E Kendra v. the State of UP^{vii} it was held that the

Constitution of India guarantees the Right to a wholesome environment as a fundamental right under Article 21. In another very milestone judgment of the case Olga Tellis v. Bombay Municipal Corporation^{viii} it was held that right to protection of life and personal liberty to include conservation of natural resources which provide livelihood to the people. These milestone judgments have longdrawn-out the scope of the protection of environment under the Constitution of India and also imposed duties on State in order to protect the environment.

Public Interest Litigation (PIL) has demonstrated an effective tool for the cause of the protection of the environment^{ix} and in promoting the environment de-centralization in India. Through the various litigations, the courts have been approached to ensure the implementation

of the statutory Acts and the Constitutional provisions that aim to protect the environment. Beginning with the Dehradun limestone quarrying case in 1983^x, followed by the Ganga water pollution case^{xi}, the Delhi vehicular pollution case^{xii} and the T N Godavarman case^{xiii} and so on.

The following are the *theoretical principles* from which States and groups derived their strength toward environmental federalism in the Indian context are¹. Public Trust Principle^{xiv}

2. Precautionary principle^{xv}

3. Polluter pays Principle^{xvi} 4. Absolute Liability Principle^{xvii}

5. Sustainable Development^{xviii}.

These were some complementary processes made for changing the structure of the Constitution and could be considered milestones in introducing the concept of environmental federalism in India. But then even after so many amendments, precedents, and judgment, the concept has not been adopted in its conventional sense. And there are some major challenges that need to be addressed to ensure a healthy environment within territories.

MAJOR CHALLENGES IN IMPLEMENTATION OF ENVIRONMENT FEDERALISM IN INDIA

There are some of the major challenges, that present structure facing in implementation of environment federalism in India, and they need to address as soon as possible so that environment protection can be ensure at different nation and sub nation units that includes Center, State and local authorities.

I. Reliance of the Center and State

In the present Constitutional structure, the Union and state are highly dependent on each other and there is no presence of a federal structure in the customary sense. The goal of environmental federalism is difficult to introduce at ground level. The dependence of states on the Center for funds and the dependence of the Center on states for implementation of policies are one of the major issues around environmental protection.

In the complementary afforestation management and planning authority (CAMPA) fund case^{xix} the fund was not released by the Center for so many years because there was a continuous struggle for greater control of the fund between the center and states due to which the state government was not able to comply with the environmental restoration, this incident correctly pointed out the high interdependence of Center and states on each other in ensuring the environment protection.

II. Allocation of Funds

The allocation of funds for environmental protection is not suitably done due to which a permanent struggle can be seen between the center and states. The fund collected through the activity of mines and minerals is one of the classic examples of inappropriate allocation of the fund. Mines and Minerals are covered under the State List of Schedule Seven^{xx} according to which the states have the right to make law regarding this subject matter but then as per entry 54 of Union List of Schedule Seven^{xxi} the regulation and control of mines and minerals lie in the domain of the Union Government which incorporates the capacity to collect the royalty, pricing for a license, and dead rent. Through the activity of Mines and Minerals, the actual loss is suffered by the state but then the amount is collected by the Union which results in a lack of funds for the state to restore the damages that are due to such activities and the state fails to perform the duty of environment protection.

III. Utilization of Funds

According to the 11th Five Year Plan (2007-12) the utilization of the Centrally Sponsored Schemes fund for the forest, wildlife, and environment was done without providing the flexibility that was needed for adaptation according to the different development needs at the local level^{xxii}. Due to this, the states implemented them without any Environment management and the purpose of allocation of this fund failed.

CONCLUSION AND SUGGESTIONS

Environment federalism is a concept that will assist any State with improving its environmental condition at all levels. The power of the Center and states in India are overlapping because of which there is a continuous tussle between the state and the Center. But the environment is that subject matter that must not be treated as any other subject because

environment protection needs to be done at all levels and it has to be treated beyond the matter of control and power.

These are some of the suggestions that can help to ensure the purpose of environmental federalism:

1. Natural Environment policy needs to have a persistent focus on capacity building in regard to enforcement of environmental law and regulation.
2. There is a need for a capacity-building program to guarantee the improvement of knowledge of science and technology.
3. Need for adequate funds and environment management in the state for which under the 13th Finance commission report ad hoc also recommended for management of the environment.

ENDNOTES:

ⁱPower of Parliament to legislate with respect to a matter in the State List in the national interest:-

(1) Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two thirds of the members present and voting that it is necessary or expedient in national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter while the resolution remains in force

(2) A resolution passed under clause (1) shall remain in force for such period not exceeding one year as may be specified therein: Provided that, if and so often as a resolution approving the continuance in force of any such resolution is passed in the manner provided in clause (1), such resolution shall continue in force for a further period of one year from the date on which under this clause it would otherwise have ceased to be in force

(3) A law made by Parliament which Parliament would not but for the passing of a resolution under clause (1) have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the resolution has ceased to be in force, except as respects things done or omitted to be done before the expiration of the said period.

ii J Mullai Mani Mozhi, C Ravichandra, URBANIZATION AND ITS IMPACT ON ENVIRONMENT IN PUDUKKOTTAI, TAMILNADU, INDIA-2013-140139.186.1082010. available at https://shodhganga.inflibnet.ac.in/bitstream/10603/5081/8/08_chapter%201.pdf last accessed on 10.10.19

iii CONCURRENT POWERS OF LEGISLATION UNDER LIST III OF THE Constitution, Shri P.M.Bakshi.

iv UNDERSTANDING ENVIRONMENTAL MOVEMENTS https://shodhganga.inflibnet.ac.in/bitstream/10603/137014/7/07_chapter_02.pdf

^vThe United Nations Conference on the Human Environment, having met at Stockholm from 5 to 16 June 1972.

vi 11th and 12th schedule given power to Panchayat and Municipal Party respectively with respect to minor forest produce, water management and Public Health.

vii 1985 AIR 652, 1985 SCR (3) 169

viii 1986 AIR 180, 1985 SCR Supl. (2) 51

ix Role of PIL in Environmental Protection In India, Written by: Prof. Vijay Oak - Vidya Pratishthans Vasantrya Pawar Law College, Baramati

x 1985 AIR 652, 1985 SCR (3) 169

xi 1988 AIR 1115, 1988 SCR (2) 530

xii 1991 SCR (1) 866, 1991 SCC (2) 353

xiii WRIT PETITION (CIVIL) NO. 202 OF 1995

xiv The Stockholm Declaration of United Nations on Human Environment clearly indicates this determining proposition: “The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural system, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate “

xv Internationally, one of the most important expressions of the Precautionary principle is the Rio Declaration from the United Nations Conference on Environment and Development. Principle 15 of the Rio Declaration reads: “In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific

certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

^{xvi} PRINCIPLE 16 of THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT (1992) state that National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

^{xvii} Offences in which it is not open to a person to avoid liability on the ground that she or he acted under a reasonable mistake of fact which, if the facts had been as the accused believed them to be, would have made his act innocent.

^{xviii} In 1987, the United Nations Brundtland Commission defined sustainability as “meeting the needs of the present without compromising the ability of future generations to meet their own needs.” Today, there are almost 140 developing countries in the world seeking ways of meeting their development needs, but with the increasing threat of climate change, concrete efforts must be made to ensure development today does not negatively affect future generations.

^{xix} T.N. Godavarman Thirumulpad vs. Union of India & Ors, WRIT PETITION (CIVIL) NO. 202 OF 1995.
^{xx} Entry 23 List II Seventh Schedule: Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

^{xxi} Entry 54 List I Seventh Schedule: Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

^{xxii} Eleventh Five Year Plan (2007–2012) Inclusive Growth Volume I by Planning Commission Government of India. Available at http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v1/11th_vol1.pdf