



GREEN FEDERALISM IN INDIA

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ABSTRACT

In this article, we discuss the basic political system, Federalism and its influence on Indian environmental protection laws and rules. Here comes the importance of the term Green Federalism. India is not lacking legislation addressing the environment; how effectively it is being enforced is the key point that should be in everyone's mind. So, starting from the root to the tip always makes some sense and gives clarity for where we have to make changes. We analyse the concept "Green Federalism" from the very beginning, that the major conventions and declarations made worldwide influence in framing of environmental laws. Then we refer to the Constitution of India, the amendments it has undergone and the provisions regarding the environment. Then comes the legislation and its jurisdictions. At the same time, the role of the judiciary in framing laws and regulations is discussed with the support of landmark judgments. Basic principles and ideologies behind each law and the launching of a series of schemes are also discussed.

Keywords: Green Federalism, Environment Federalism, Environment Laws, Environment Pollution.

INTRODUCTION

Federalism is a political system in which power is divided between the central authority and political units like states or provinces. While constitutional democracy plays a major role in federalism. India, being the largest democratic country in the world, has a central government–state government relationship that forms its basis. Still, India is described as the “Union of States”. However, India has provided separate governments – Union and State, with separate governmental organs –Legislature, Executive and Judiciary. The Constitution of India defined the powers, jurisdiction and functions for both. These all show a true constitutional federalism

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in which an equilibrium between the Union and the states can be witnessed. Accordingly, Article 50 of the Constitution of India elucidates the separation of powers among different organs of government that are the Legislature, Executive and the Judiciary. The Union government has powers and responsibilities over all, and it maintains the integrity and unity of the nation.

India is a country full of diversity. It has a large population and biodiversity. So, of course, Centre-state relations play a major role in the governance of India's population and geographic features. This argued for a general law which covers all the sectors of environment in India, which led to the enactment of The Environment (Protection) Act, 1986 as an umbrella for all the rules, regulations, notifications and orders, delegated powers of the Central Government to various other branches of the Centre and State Governments. As per the said Act, it defines "environment" as it includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property.¹

CONCEPT OF GREEN FEDERALISM

Federalism, being a paramount feature of democracy, ensures the collective functioning of both the Central and state governments of the country, aiming for the welfare of its citizens. Meanwhile, environmental protection is the primary concern these days, as the growing population, urbanisation, industrialisation, deforestation, research and development are disrupting the ecological balance. Environmental protection bears the objectives as follows:

- Restricting the exploitation of natural resources.
- Preservation, conservation and protection of natural resources.
- Environmental education.
- Sustainable development.
- Punishment of the polluter.
- Balancing the ecosystem
- Restoration of damaged ecology
- Prevention and abatement of pollution

¹ Section 2 (a), The Environment (Protection) Act, 1986

- Standardisation of surface development in the maintenance of environmental quality.²

To achieve these goals, there should be a uniform and collective effort from the side of both central and state (regional) governments. This raises the importance of federalism in maintaining a pollutant-free environment for human beings.

GREEN FEDERALISM

It is evident that most of the constitutional countries are not addressing environmental issues; they do not have environmental jurisdictions. Constitutional structure is the major key determining the legislation, and this points out how it acts in the framing of environmental laws and their applications. Looking into the constitution of different countries, having Federal systems, four main trends are their environmental concern.

1. Using residuary powers.
2. Interpreting environment and conservation as an offshoot of ownership over resources
3. Via amendments
4. Clear lists in the new constitutions³

Using Residuary Powers: In several countries, their constitution remains silent on environmental issues. They do not have specific provisions on the same. Thus, they give competence to their governments as residuary powers. The Constitution of Australia is the best example of this. It's an open door for the states if they have residual power to legislate on environmental matters.

Interpreting environment and conservation as an offshoot of ownership over resources:

The discussions on environmental issues have to start from the question regarding the ownership. How those who own the natural resources think will affect the environment and its protection strategies. It influences in different ways, maybe through exploitation or intense care. Ownership gives responsibilities to one and builds a Steward mindset, which leads the owners to conserve nature by seeing its long-term value. Thus, coming to the concept of Green Federalism, it gives responsibilities to the State as it is treated as the owner of its natural

² Dr.N. Maheswara Swamy, Text book on Environmental Law (2nd edition, first published in 2004)

³ P G Dhar Chakrabarti, "Green Federalism Experiences and Practices", 2015, TERI

resources. It makes the state enforce environmental laws, including involving the local stakeholders in making decisions regarding the local resources, if it is used successfully.

Via amendments: In several constitutions, amendments pave the way for environmental protection, where the environment, its pollution and protection were found left silent. In Switzerland, their constitution was revised in 1999. But still, before this, they had well addressed the Environment in their constitution years back. Still, when it was revised, they tried to add more provisions regarding the same. It addresses the protection from harmful acts, like air- noise pollution, etc. In India, the Indian Constitution added Directive Principles of State Policy (DPSP) in 1977 through the 43rd Amendment Act. Here, it provides duties to all its citizens towards the environment. This amendment also made changes in the Centre-State jurisdiction in important matters regarding environmental protection. But the amendment in the Pakistan Constitution in 2010 made a negative impact by removing several provisions related to the same. The Argentine Constitution, which was amended in 1994, empowered the federal government to set minimum protection standards, and the power to reinforce them was vested with provinces.

Having a good legal framework, which originates from the Constitution of each country and distributes powers from the central government to state governments, and then from State Governments to local self-governments, such as panchayats and municipalities, can have a huge positive impact on the conservation of ecosystems. These amendments always play an important role.

Clear lists in new constitutions: New constitutions embrace various aspects of the environment, such as water resources, air, soil, etc. The constitution of Ecuador in 2008 recognised nature as an individual and provided more rights for nature itself. The constitution of Brazil introduced several provisions against environmental pollution and for the preservation of forests, flora and fauna. It shares the responsibilities of the environment between the Federal and State governments.

GREEN FEDERALISM IN INDIA

Looking back at the Government of India Act, 1935,⁴ the uniformly divided power between the Federal and Provincial governments paves the way for Federalism in India. Section 100 of

⁴ Prof. Sudhanshu Ranjan Mohapatra, "The Notion of Green Federalism and Environmental Justice in India: An Analytical Study", 2022, Vol III (ISSUE 02)

the said Act gives the power of the legislature to each government based on the Lists. 'Federal Legislative List' empowers the Federal Legislatures to legislate on the subjects given in the list. "Provincial Legislative List" enumerates the subjects in which Provincial legislatures can legislate. At the same time, the "Concurrent Legislative List" empowers both governments to legislate on the subjects given in this list.

Coming to the Indian Constitution, 1950, it is the largest federal written constitution in the world. It has no definition of the word Environment. It has no general or specific provisions regarding the word environment. No directions or rules are mentioned in the same. In the same way, the constitution uses the term "Union of States" instead of the word "Federalism". Still, it has separate governments and has separate legislative, executive and judicial powers. The functions, powers and jurisdiction are defined between the Central government and the State government. This plays a major role in envisaging new strategies for socio-economic development.

It provided a Union List for the Central Government, a State List for the State Governments, and a Concurrent List for both to legislate. Gratefully, it included land, water, forests and mineral resources in the State list and thus limited the power of the Union government to regulate mines and mineral development, and regulation and development of interstate rivers and river valleys only by adopting a federal form of governance. At the same time, Air and the general term Environment are residuary subjects, and the Union government is only having the power to legislate. Thus, the key constitutional provisions regarding the protection of the environment are as follows:

Article 21:⁵ Right to life and personal liberty. It is interpreted as the right to a pollution-free environment.

Article 32:⁶ It provides the right of writ remedies. It covers the fundamental rights conferred by Part III of the Constitution. This Article provides the right to move the Supreme Court for the enforcement of Fundamental Rights. The Supreme Court held in *M.C. Mehta v. Union of India*, which was a writ petition filed under this Article, that "the harm can be prevented on a reasonable suspicion".

⁵ The Constitution Of India, Article 21

⁶ The Constitution Of India, Article 32

Article 226:⁷ The same power of the High Courts to have writ proceedings.

Article 48A:⁸ The State shall endeavour to protect and to safeguard the forests and wildlife of the country.

Article 51A(g):⁹ To protect and improve the natural environment, including forests, lakes, rivers and wildlife, and to have compassion for living creatures;

Article 245(1):¹⁰ Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

Article 246:¹¹ Distribution of legislative powers. Seventh Schedule lists: Union List, State List, Concurrent List.

Article 253:¹² Legislation for giving effect to international agreements.

Environment protection acts in India:

- The Water (Prevention and Control of Pollution) Act, 1974
- The Air (Prevention and Control of Pollution) Act, 1981
- The Environment Protection Act, 1986
- The National Green Tribunal Act, 2010
- Wildlife Protection Act, 1972
- The Forest Conservation Act, 1980
- Public Liability Insurance Act, 1991
- The Biological Diversity Act, 2002

DRIVING FORCES OF GREEN FEDERALISM IN INDIA

There were four main influencing factors, the first of which was the global environmental movement started in the 1960s. It ended up with the United Nations Conference on the Human Environment in Stockholm in 1972, which is also known as the Stockholm Convention. It was

⁷ The Constitution Of India, Article 226

⁸ The Constitution Of India, Article 48A

⁹ The Constitution Of India, Article 51 A (g)

¹⁰ The Constitution Of India, Article 245 (1)

¹¹ The Constitution Of India, Article 246

¹² The Constitution Of India, Article 253

the first major international conference focused on global environmental issues. 113 countries participated in it under the theme “Only One Earth”. 26 principles in connection with the environment were formulated, and the United Nations Environment Programme (UNEP), the first global environmental authority, was established. Then the Brandt, the Palme, and the Brundtland commission reports made a huge impact globally. The Rio Earth Summit, also known as the United Nations Conference on Environment and Development (UNCED), conducted in Rio de Janeiro, Brazil, in which 178 countries and thousands of NGOs took part, was a landmark summit which gave shape to all the agendas.

Secondly, these movements influenced different nations widely. The National Environmental Policy Act, 1970, The Clean Water Act, The Clean Air Act, The Endangered Species Act and the National Environmental Policy Act were enforced by former President Nixon. Thus, many other countries adopted legislation addressing environmental issues.

The third factor influenced is the then political leadership in India. Former Prime Minister Indira Gandhi, in her famous speech, “Poverty is the biggest polluter”, made a connection with the environment and poverty after she participated in the Stockholm Summit.

Fourthly, it was the direct experiences of people and studies and opinions of environmentalists and scientists on the reckless use of the environment that made the authorities change their minds towards the environment, and it triggered the implementation of more environmental laws. For example, Union Carbide Corporation (UCC) v. Union of India¹³ also known as the Bhopal gas tragedy, 1984, led to the enactment of the Environment Protection Act, 1986.

LANDMARK DECISIONS BY THE SUPREME COURT AND PRINCIPLES AND DOCTRINES EMERGED

In a Federal system, the Judiciary plays a major role as the guardian of the Constitution. Of course, the Judiciary creates revolution in the concept of Green Federalism. Landmark judgments and newly formulated principles and doctrines are future assets for the federalist movements in the field of the Environment. Let’s discuss some of the important case laws here.

¹³ Union Carbide Corporation (UCC) v. Union of India (1984)1990 AIR 273

M C Mehta v. Union of India, 1986 (Commonly known as Oleum Gas Leak Case):¹⁴ It introduced the absolute liability principle for hazardous industries, which is a key principle making the industries beware of the impact of their reckless actions.

M C Mehta v. Union of India (1987) (known as Ganga Pollution Case):¹⁵ It gave the basis for the “Polluter Pays” principle. The Supreme Court directed the industries to set measures to control the pollution of rivers.

Sterlite Copper Plant Case (2018):¹⁶ It reiterated the importance of public health along with environmental safety. The Honourable Supreme Court and High Courts accepted a lot of Public Interest Litigations (PILs) from different environmentalists and NGOs.

Anyhow, the bulk of these judgments addressing the current environmental pollution and its effects on public health formulated several Doctrines and Principles, which all gave a base for legal frameworks and their execution. Some of the important principles among them are,

Public Trust Principle: This principle empowers NGOs and citizens to challenge governmental actions if it is found to be harmful to nature and its resources. The principle was deeply discussed in M.C. Mehta v. Kamal Nath by the Supreme Court of India. It reiterates that the government is the trustee of the environment, and it is the duty of the government to preserve natural resources.

Precautionary Principle: It was developed from the Rio Declaration (1992) and it prefers “prevention over cure”. If any action of someone bears any threat to public health or the environment, then it must be prevented without waiting for a delay, even with scientific proof of harm.

Polluter Pays Principle: It was enforced as part of Article 21. It simply means, if someone causes any damage, then he is responsible for fixing it. It includes three basic ideas of prevention, control, and compensation.

Absolute Liability Principle: It shows full liability without exceptions. If someone, especially industries engaged in hazardous activities, they are liable for any harm caused.

¹⁴ M C Mehta v. Union of India (1986), 1987 AIR 965

¹⁵ M C Mehta v. Union of India (1987), 1987 AIR 1086

¹⁶ Sterlite Copper Plant Case (2018) 2024 INSC 175

Sustainable Development Principle: It was first introduced in the Brundtland Convention (1987) in the report titled “Our Common Future”. It ensures both economic growth and environmental protection. It promotes economic growth but makes sure that it won’t harm the environment.

NEW ENVIRONMENTAL SCHEMES IN INDIA BY CENTRAL GOVERNMENT

The Government of India has launched a series of schemes aiming at the ultimate goal of achieving Net Zero emissions by 2070. Some of them are as follows:

P M Surya Ghar: It is a rooftop solar power installation project aiming for 300 units of free electricity for households. It reduces the electricity bills and provides subsidies for installation. Helps to earn credits by surplus power.

FAME (Faster Adoption and Manufacturing of Hybrid and Electric Vehicles): It promotes electric mobility in India. Financial support for setting up charging stations. It reduces the use of fossil fuels.

National Solar Mission: It is a part of the National Action Plan on Climate Change (NAPCC). It targets 100 GW of solar energy production by 2026.

National Green Hydrogen Mission (NGHM): It started in 2023, supporting green hydrogen production and exports.

Perform, Achieve and Trade: It was implemented by the Bureau of Energy Efficiency (BEE). It focuses on large industries. It provides certificates for energy saving- ESCerts

National Clean Air Programme: It targets urban areas and gives responsibilities to State pollution control boards and urban local bodies to reduce air pollution.

Namami Gange Programme: It aims to protect the Ganga River and its tributaries from direct sewage exposure.

Ek Ped Maa Ke Naam Campaign: It promotes afforestation by planting trees as a sign of love and respect to Mother Earth. By March 2025 itself the campaign had reached its milestone by planting 102 crores of trees.

RECENT INCIDENTS IN INDIA

- According to the studies published in Lancet Planetary Health, air pollution in India increased to 105 million deaths per year.
- According to the new Nationwide survey conducted by Yale Programme on Climate Change Communication (YPCCC), 71 % Indians have faced severe heatwaves in the last year, 2024.
- DTE-CSE analysis shows that deaths due to extreme weather events increased by 18% in India.
- The Chooralmala, Wayanad landslide incident in Kerala shows how hectic the condition is.
- Over 2600 climate tech start-ups were registered within ten years in India.
- India achieved 20% particulate matter reduction in 55 cities and 40% in 23 cities.
- India's ranking in the climate performance index improved from 31st to 7th by 2024.

SUGGESTIONS

Environmental pollution and climate change are the major issues that we are discussing now. Nature and its resources need to be protected as individual property for a healthy future. At the same time, realising the fact that it is not a thing to be exploited, but to be cared for at all costs. Having new legislation is not enough to attain a pollution-free environment, but how they are implemented is important. Considering the concerns of local people and taking action on that basis makes it meaningful. The government may approve the construction of resorts, apartments, factories, etc. on the river banks, but people residing there have the actual insight into the natural resources and how these constructions have adverse effects on the lives of local people. So, the utmost need is public awareness and public participation in the government projects.

CONCLUSION

India is still a developing country which always tries to make more efforts in its development. The Judiciary is bringing guidelines and regulations. At the same time, the government sets new goals to achieve economic development without degrading the environment. Along with constitutional provisions including Fundamental rights, Fundamental duties, and DPSP, India is growing through the enactment of new statutes and rules. India, as a country which follows

the Federal system, the corporation between the centre- state governments reflect in each and every action. But still, we need more distribution of powers among local self-government so as to get a clear image of the geographical features while making decisions.