



ENVIRONMENTAL GOVERNANCE IN INDIA: *Where are we headed?*

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Scope of Today's discussion

- What is environmental governance?
- Role of courts in environmental governance
- Environmental Governance: What are present day challenges
- The Road Ahead

What is Environmental Governance?

- Environmental governance represents a combination of efforts in which concepts like sustainable development, environmental management and environmental sustainability coordinated together in varying degrees (*May, et al. 1996*)
- Intermingling of formal and informal arrangements
- Formal arrangements in form of environmental law-Complex body of law made up of global, international, national, state and local
 - ❑ Conventions
 - ❑ Treaties
 - ❑ Statutes
 - ❑ Policies
 - ❑ Regulations
 - ❑ Rules



For protection of environment and natural resources affected and impacted by human/anthropogenic activities

Genesis of Environmental Law: Its Evolution



1972 Stockholm Declaration- *The United Nations Conference on the Human Environment*

- ✓ The natural resources of the earth must be safeguarded for the benefit of present and future generations through careful planning or management -**Sustainable Development**
- ✓ Government called upon to make concerted efforts through measures including **legal** to combat emerging damaging environmental problems
- ✓ The capacity of the earth to produce vital renewable resources must be maintained, restored or improved



1992-Rio Declaration on Environment and Development - Evolution of Principles on environmental governance

- ✓ **Sustainable development** is core to human existence (principle 1)
- ✓ Countries have **sovereign right** to exploit their own resources pursuant to their own environmental and developmental policies (Principle 2)
- ✓ Achieving sustainable development through integrating environmental protection as an integral part of the development process (principle 4)
- ✓ **Public Participation** in Environmental decision making (Principle 10)
- ✓ Formulating country specific **environmental legislation** prescribing environmental standards (Principle 11)
- ✓ Developing **national law regarding liability and compensation** for the victims of pollution and other environmental damage (Principle 13)
- ✓ Developing **precautionary approach** for effective measures to prevent environmental degradation (Principle 15)



Constitutional Mandate

Directive Principles of State policy

42nd Constitutional Amendment, 1976-introduced mandate for environment

Art 48A - State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country

Art. 51A- duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

Art 21-'Right to Life'-Fundamental Right to Live in a Healthy Environment- evolution by Judiciary to include it as a fundamental right earlier it was recognised as a legal right recognised and enforced by the courts under different laws



Emergence of Environment Laws

- Environment (Protection) Act, 1986
- Forest (Conservation) Act, 1980
- Wild Life (Protection) Act, 1972
- Biological Diversity Act, 2002
- Water (Prevention & Control of Pollution) Act, 1974
- Water (Prevention & Control of Pollution) Cess Act, 1977
- Public Liability Insurance Act, 1991
- Air (Prevention & Control of Pollution) Act, 1981
- Forest Rights Act, 2006

Role of courts in environmental governance

Supreme Court –enforcement of principles of environment law

- **Precautionary Principle (PP)**-taking protective action before there is complete scientific proof of risk and information-relatable to concepts of risk assessment and **Environment Impact Assessment**- application of the principle by Supreme Court e.g. *Taj Trapezium, Badkhal and Surajkhund lakes cases*
- **Polluters Pays Principle (PPP)**- polluting party pays for the damage done to the natural environment-extension of principle of absolute - Application by Supreme Court in *Enviro Legal action case(1996)*
- **Principle of Inter-Generational Equity**-preservation of environment for present and future generations –Supreme Court affirmed it in *Shrimp farming case (aquaculture) (S. Jagannath versus Union of India)*

LANDMARK JUDGEMENTS OF NGT

- Goa Foundation –” substantial question of law”, “aggrieved person”, limitation
- Vardaman Kaushik vs UOI-Delhi Air Pollution Case
- MC Mehta- Ganga Pollution matter
- Save Mon Region Federation vs UOI (Tawang Valley case)(Black necked crane)(re-appraisal)
- Alaknanda Hydro –Polluter Pays principle
- Al Almitra H. Patel & Others Vs Ministry of Health and Family Welfare & Others (22/12/2016) regarding steps to improve the practices presently adopted for collection, storage, transportation, disposal, treatment and recycling of Municipal Solid Waste popularly known as “garbage” generated in various cities across Indi

Environmental Governance: *What are present day challenges?*

- Amendments to Environmental legislation-EPA, EIA, CRZ-2019-process and manner-dilution of basic principles-notifications dated 29.04.2015-'public interest'(R.5)(4)-exception or the rule?
- Increased delegation of power to grant clearances to State Level authorities- *CRZ, 2019-MoEF&CC for CRZ-I and CRZ-IV areas and Coastal Zone Management Authority for CRZ-II and CRZ-III areas*
- Non-implementation of clearance conditions-vague, undefined, no action for violation

Contd....

- Shortcomings of regulatory bodies-SPCC, CPCB- capacity building, scientific assessment, shortage of manpower, funds, enforcement and compliance etc.-relationship between CPCB and SPCB linked to output performance without having inbuilt functional relationship-Is it time for an independent body for environment monitoring and compliance?
- Data, documentation, scientific assessment –an important ingredients to judicial challenge
- Non-functional regional benches of NGT-long road to environmental justice...constitution of committee- abdication or adjudication?

Road Ahead....

- Evolving a robust mechanism for monitoring and compliance-clearance violations-community based evaluation as a valid input-operational framework on District level Committees (CRZ monitoring)
- Review of environment laws to make them result oriented-incorporating the positive impacts –incorporate the interest of the community-towards sustainable development
- Institutional Strengthening- removal of dichotomy between SPCB and CPCB- SPCB entrusted with important and critical functions of enforcement and compliance, while CPCB as advisory and coordination role-appointment and retention of technically qualified staff
- Increase in technological capacity to assess the best solutions given the ground reality- Hazardous waste generation- waste categorization- 6208 MT hazardous annually wastes- 48.90% is recyclable, 44.44% is land fill able and 6.66% is incinerable.-emphasis upon CHWI



THANK YOU