

Environmental Governance & Policy in Federal Framework of India

Lateef Ah Salmani

Senior Assistant Professor, Persian at Government Degree College
Tral, Jammu & Kashmir

M. Shafi Bhat

Assistant Professor, Public Administration at Government Degree College,
Tral, Jammu & Kashmir

Abstract:

Over the last six decades, Centre- relations in India have manifested in different forms for different issues, including internal security, agriculture, revenue, land and natural resources. This has been a reflection of the concerns and developments of the nation as a whole as well as states from time to time. Some of the environmental issues, such as those relating to forests, wildlife and water have been a cause of contention between the centre and state, sometimes influenced or aggravated by factors such as coalition politics, asymmetric federalism, a green judiciary, globalization and the aspirations of states.

India's National Environment Policy, 2006, sets forth the Principle of Decentralization in order to empower public authorities having jurisdiction at the spatial level at which particular environmental issues are salient, to address these issues. Need for a decentralized approach has been recognized and developed since the time the Indian Constitution came into being. This was given a further thrust with the 73rd and 74th amendments. In this paper, an attempt is made to highlight the centralization and decentralization as a dynamic feature of Indian federal set up. It is described as to in which manner and way this has been dealt with by the Indian constitution and federalism. A broad and holistic approach towards environmental federalism, which includes matters related to forests, biodiversity, rivers, other water bodies, pollution control and abatement, climate change etc.

Keywords: Federalism, Indian Constitution, Decentralization, Centralization, Environmental Federalism, Centre- state relations

Introduction:

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 & Burtraw: 2012). Most scholars, like Wallace Oates, approach the issue of environmental federalism from within the purview of fiscal federalism. Fiscal federalism refers to the general normative framework for assignment of functions to the different levels of government and appropriate fiscal instruments for carrying out these functions (Oates: 2001). It is concerned with understanding which functions and instruments are best centralized and which are best placed in the sphere of decentralized levels of government. In other words, it is the study of how competencies and fiscal instruments including transfer payments or grants are allocated across different (vertical) layers of the administration. Environmental federalism relates to the proper assignment of various roles to the different tiers of government (Oates: 1997). However, such a proposition is not free from challenges and criticism. The race to the bottom thesis is an oft cited criticism of environmental decentralization or principle of subsidiarity. However, there is very little empirical evidence to prove race to the bottom as a fall out of environmental federalism. Moreover, differences in state policies may not necessarily lead to race to the bottom or exacerbate rivalry. It may even result in positive spillover effects such as drawing lessons from each other. (Jorgensen: 2011).

The principle of subsidiarity is seen as one of the bases for federalism and sharing of powers amongst Centre and states (Esty, 1996)). The principle lays down those decisions should be taken at the level closest to the ordinary citizen and that action taken by the upper echelons of the body politic should be limited (European Commission, 1992). This principle per se does not distribute powers amongst different levels of government, but simply aims at governing the use of such powers and „justify their use in a particular case (Lenaerts, 1993). However, it lays the basis for distribution of powers and functions. It justifies environmental decentralization as the sub-national and local levels are directly impacted by environmental actions and externalities.

However, several issues concerning the environment cannot remain local because the effects of environmental mismanagement cross state and national boundaries. Environmental degradation originating at one place goes on to affect a much bigger geographical area and involves not just the local governments but requires intervention from state and central governments too. Thus, the concept of environmental federalism requires an examination of the appropriate jurisdiction for the management and provision of environmental goods and services. Here it will be crucial for the central government to play a role with regard to the environmental regulation that requires assuming responsibility for those activities that have important environmental ‘spillover effects’ across jurisdictional boundaries. State and local governments can engage in regulation of environmental quality and services (subject to the minimum levels set by the central government), and should design and implement programmes. Therefore, there is a need for a

distributed governance of the environment across multiple levels of the government, and federal systems are uniquely placed for this challenge.

Understanding Indian Federalism

While there are certain inherent common features of federalism, different countries show variations in adapting the federal idea (Blindenbacher & Koller, 2003). India opted for a federal polity with a strong Centre, with the Constitution of India stipulating a “union of States” in 1950. One of the distinct features was that the constitutional drafting committee made it clear that the Indian model was not a result of an agreement of states to join in a federation and therefore, no state had a right to secede from it (Constituent Assembly Debates, 1948). It was deliberately kept flexible and envisaged that “the Constitution can be both unitary as well as federal according to the requirements of time and circumstances” (Constituent Assembly Debates, 1948). Therefore, it is also referred as quasi-federal, (K.C.Wheare, 1963) accused of being a federation but not committed to federalism (Verney, 1995).

Article 1 of the Indian constitution describes India as Union of States. As a consequence, constitution lays down the foundation of a Union Model of Federalism, popularly described as Federal Union Model. It combines the features of i) dual federalism, wherein sovereignty of jurisdictions of each order of government is constitutionally provided and legally protected by an independent judiciary, ii) Division of sovereignty cannot be altered by any of the three organs of government. Secondly cooperative collaborative federalism striving towards a consensus and coalition mode of governance wherein cooperation among federal units are structurally processed and also informally produced in and through the unfolding federal political processes of the country, iii) interdependent organic federalism seeking to promote reciprocal dependence without subordination and subjudication between the federal government and regional governments. The fundamental features of all the three models of federalism have been adapted contextually and critically in order to evolve uniquely as Indian model of federalism, which has largely been successful in holding together the multicultural and regionally plural society of India. Underlying emphasis of this model is the growth of a federal nation and a compact federal union (Ajay K. Singh, 2009).

Sharing of Responsibilities and Powers

The Indian federal system divides matters into Union, State and concurrent lists. Learning from Canada’s experience with very short lists, India made a more detailed list adding specifically to the concurrent lists to make sure that the competence of states emanates from a written Constitution subject to a final interpretation by the federal judiciary (Singh, 2001). However, both the wording and interpretation of these constitutional provisions have weakened the legislative and fiscal competence of states. Besides the Union list, the Central government enjoys supremacy on matters in concurrent list as well. Parliament as well as a State Legislature can make laws on concurrent subjects but in case of a conflict and no scope for harmonious reading

Received: 25 Dec. 2022

Revised: 14 Jan 2023

Final Accepted for publication: 27 Jan 2023

Copyright © authors 2023

of the provisions, law made by the parliament prevails. Only the parliament has the residuary power to make laws on matters, which are not included in any of the three lists and environment is one such matter. States ownership of public land and natural resources coupled with legislative powers conferred by Article 246, read with List I and II of Schedule VII of the Constitution defines the sharing of powers and responsibilities between centre and states with respect to environmental and natural resources.

Powers of states are derived from the Constitution and interpreted by judiciary. However, separation of powers is not as simple as it appears in the text of the Constitutions. This is because overlapping jurisdictions is an inherent problem of federalism and it is impossible to define and divide matters in water-tight compartments. A clear allocation of powers in some countries has done little to remove the problem (Hollander: 2010). Some scholars suggest two means of addressing this problem – through sub national constitutions or through detailing the form of government for sub national units in a federal constitution in such a manner that there is little sub national constitutional space (Williams & Tarr: 2004) India falls under the latter category.

Overlaps or duplication or conflicts in a federal sharing of powers and responsibilities is not problematic per se (Hollander: 2010) but depends on the context. In the Indian scenario, where vast asymmetries exist in the conditions, challenges and capacities of states and institutions, the need for a diverse and flexible approach is even greater. This is further aggravated by the differences in nature, scale and impact of environmental issues.

Federalism is not a static concept, but a process that undergoes a perpetual process of evolution and adaptation (Brouillet, 2011). The Indian model is no different and is described as a work in progress even after sixty years (Arora, 2007). The model has been a witness to and responded to various factors such as increasing conflicts over jurisdiction, strengthening of regional parties with the rise of coalition politics, and emergence of newer smaller, often natural resource rich, states.

Environment and its domains in Indian Federal Structure

Environment does not feature in the Indian Constitution as a separate entry under the schedule demarcating legislative rights. However, environment protection is clearly provided for in the Indian Constitution as a directive principle of state policy and judicial interpretation over the years has further strengthened this mandate. In 1977, the National State was enjoined with the duty to protect and improve environment and safeguard the forests and wildlife of the country as a part of the directive principle of the state policy and citizens enjoined with the duty to protect and improve the natural environment. Thus, Constitutional sanction was given to environmental concerns through the 42nd Amendment, which incorporated them into the Directive Principles of State Policy and Fundamental Rights and Duties. The same amendment also changed the centre-state jurisdiction on a few environmental subjects.

Since environment is not a distinct item for legislative and administrative purposes, legal protection of the environment has taken three main routes – first, through judicial decisions adopting a broad approach in interpreting the fundamental right to life as guaranteed in Article 21 by including within its ambit the right to a wholesome environment; second, legislation in response to international developments and third laws on subjects that form a component of the environment or are bound to have direct or indirect implications for the natural environment, such as forest, wildlife, water, fisheries and land. It must be noted here that since residuary power vests with the centre, any environmental subject not listed in schedule VII, is centre’s prerogative. Therefore, land and water are state subjects, forests and wildlife are concurrent and environment in general is a residuary subject.

Union/Centre	State	Concurrent
<ul style="list-style-type: none"> • Residuary powers (those not mentioned in either of the lists) Atomic energy, mineral resources necessary for its production • Inter-State rivers and river valleys • Ports • Regulation & development of oilfields, mineral oil resources; petroleum, petroleum products; other inflammable liquids • Regulation of mines and mineral development 	<ul style="list-style-type: none"> • Public health and sanitation; hospitals; dispensaries • Communication (roads, bridges etc incl. inland waterways) • Land • Water • Agriculture • Fisheries • Tax on sale and consumption of electricity 	<ul style="list-style-type: none"> • Vagrancy; nomadic and migratory tribes • Prevention of cruelty to animals • Forests • Protection of wild animals and bird • Electricity

Table: Distribution of powers on some environment related domains

Forests

The role of forests in a sustainable development framework is crucial not only for the role it plays in maintaining the ecological balance but also the fact that it is a rich reservoir of resources that can sustain communities and generate revenue for the state. Forests have always been at the centre of debates but the literature has often focused on private vs public control, and not so much on inter-governmental aspect of natural resource policy (Koontz, 2002). In India, forests are governed by laws of both states as well as centre since forest is a concurrent subject. While

Received: 25 Dec. 2022

Revised: 14 Jan 2023

Final Accepted for publication: 27 Jan 2023

Copyright © authors 2023

the 1927 Indian Forest Act and some state government laws were more with respect to commercial exploitation of forests, the Forest Conservation Act of 1980 had a clear focus on conservation in the form of restrictions on non-forest activities in forest areas. In the process of laying restrictions on non-forest activities, this Act, and its interpretation, has resulted in restrictions on some powers of the states as well.

Land

Land is a State subject and rights in and over land and land tenures, land improvement are within the State's jurisdiction and for acquisition and requisitioning of property, both the parliament and legislature of states have the power to legislate. Since alienation of agricultural land and land improvement are state subjects, land use and state level laws and rules govern conversion of agricultural land to other uses. The eleventh schedule of the constitution provides for devolution of powers with respect to land improvement, implementation of land reforms and land consolidation and soil conservation to the Panchayats at appropriate level.

Water

Water under the Indian Constitution features both in the State as well as Union lists. Entry 17 of List II puts water at the disposal of the states. However, the legislative competence of the states is not general and is specifically with respect to water supplies, irrigation and canals, drainage and embankments, water storage and waterpower. It is also subject to the powers of the Centre where Interstate River and river valleys are involved, pursuant to List I. Other than the direct entry on water, there are other key subjects relating to water, such as fisheries, which is a state subject and waterways etc., which are concurrent. Power and responsibility to implement schemes with respect to water supply can be devolved to local bodies, and for fisheries, minor irrigation, water management and devolution can be devolved to the Panchayats at appropriate level. A subgroup was set up under the Working Group on Water Governance for the Twelfth Five Year Plan, which came up with a draft National Water Framework Law, in the nature of an umbrella statement of general principles governing the exercise of legislative and/or executive (or devolved) powers by the Centre, the States and the local governance institutions (Planning Commission, 2012). This has been taken note of and a draft of the Act to be legislated by the government is under way (The Hindu, 2012) Prevention and control of pollution.

Prevention and control of water pollution and the maintaining or restoring of the wholesomeness of water is provided for in the Water (Prevention and Control of Pollution) Act, 1974. It vests the authority in Central and State Pollution Control Boards to establish and enforce effluent standards in mines and processing plants. Similar to the Water Act, the Air Act, 1981 provides for the prevention, control and abatement of air pollution. The Central Board created under these Acts has been assigned functions that are mostly supervisory as well as for co-ordination of activities of State Boards. The Central Board may also provide technical assistance and guidance to state boards, conduct training for persons engaged in programs for prevention, control and

abatement of water pollution.¹¹ The State boards are assigned functions of conducting comprehensive programs of pollution control in the state. The State boards not only lay down effluent discharge standards but are also responsible for complete monitoring of compliance of such standards. There may also evolve economical and reliable methods of treatment of sewage and trade effluents. The State boards are subject to directions from the Central or the State government. On the other hand, in conducting programs on prevention and abatement of pollution the State governments have flexibility in design and implementation of the programs.

Biodiversity

India is a signatory to the Convention on Biological Diversity. In 2002, a Biological Diversity Act was enacted to further the objectives of the convention and in recognition of the sovereign rights of the country. The Act creates a three tier system comprising a National Biodiversity Authority, State Biodiversity Boards and Biodiversity Management Committees for protection of biological diversity and the intellectual property associated therewith. The National Biodiversity Authority grants approval to use genetic resources and the associated knowledge for commercial utilization by foreign nationals and entities. The State Biodiversity boards grant similar approvals to domestic entities. Applications for IPRS are received and approved by the NBA only. The Act does not mandate a role for the states in granting the approval for applying a patent, or even imposing a benefit sharing fee or royalty for commercial utilization.

Climate Change

Climate change is one of the most cross cutting issues of the above mentioned domains of environment. Before we look at the climate specific instruments, it must be noted that there are regulatory instruments and policies that support or promote actions for mitigation of climate change in India through the institutional framework for energy efficiency, and promoting renewable, both grid connected and off grid. These include the Energy Conservation Act, the Energy Conservation Building code and the Integrated Energy Policy.

The National Action Plan on Climate Change was finalized in 2008 to identify measures that promote India's development objectives, "while also yielding co-benefits for addressing climate change effectively". The National Action plan has to be implemented at a sub national and local level. Therefore, besides references to implementation to state responsibilities, it was also announced that states should prepare action plans for mitigation and adaptation strategies for their respective jurisdictions. To this effect a set of guidelines in the form of a framework were issued under the aegis of MoEF. Started by Delhi and Orissa, about 16 states have prepared their state level climate action plans till date.

Environmental Federalism in India: Some Key Issues

Effective devolution of any governance effort involves mutual dependency between the central government and the State or local governments (Honadle, 2001). At one level, the federal

Received: 25 Dec. 2022

Revised: 14 Jan 2023

Final Accepted for publication: 27 Jan 2023

Copyright © authors 2023

government depends on the state or local government to take up the responsibility of carrying out required activities whereas the state government depends on the federal government for institutional and often financial support to perform the activities. At another level, the responsibilities, including decision making, are nested across different levels of government. These shared responsibilities across different government levels are based on the understanding that some levels are better positioned to respond to the governance challenges. This assumes greater importance in the context of environment and natural resources, owing to different conditions, capacities and priorities as well as localized impacts of many environmental challenges and challenges posed by climate change, which cuts across boundaries. Federalism can provide a valuable dimension in policy innovation by offering the opportunity for experimentation with differing approaches to environmental management (Oates, 2009).

Decision Making

For a long time, most of the discourse on federalism focused on the need and role for transfers and grants in aid for an enhanced sharing of powers and functions between the centre and states. However, there is more to federalism than transfer and devolution from higher levels of government. In a federal system, states are not agents of some national government hierarchy but have a role of their own in the government system (Agranoff, 2001). It is a network of larger and smaller arenas as against higher and lower (Elazar, 1998). In the Indian context, owing to its peculiar model of federalism, it may not be so simple to locate these multiple non-hierarchical arenas. While the Indian model may be called quasi federal (Wheare, 1963), or a work in progress (Arora, 2007), or a centralized polity creating an indestructible union (Constituent Assembly Debates, 1948), the fact remains that much of the powers that the Indian states possess are not passed on by the centre but derived from the Constitution itself (Majeed, 2004). Therefore, there is more to Indian federalism than state level implementation of rules, policies and schemes designed at the level of the Centre. Decision making powers are an important feature of the federalism discussion. In environmental decision making, the two dominant models of federalism are that of collaboration and competition. While cooperative decision making may avoid duplication and conflict, it may lead to race to the bottom. However, conflicts per se are not bad as it may foster competition (MacKay, 2004) and enhance efficiency (Farber, 1997). Besides, cooperative federalism may itself not be sufficient to secure a voice for states in the decision making. As Arora points out, the political process dominated by federal coalitions and state-based parties has been more successful in making the national policy-making more participatory than cooperative federalism.

Many of the decision making powers relating to environment are inclined towards Centre. Besides the exclusively mentioned domains for the Centre, residuary powers and acting upon international commitments, there are instances which show that environmental decision making in India is skewed towards the Centre and the experience with sharing of powers has been more contentious than cooperative. Following the actions taken by the Central government in response

to international commitments in the 1970s and 80s, the role of state governments has been more in terms of implementing policies designed at the Central level, suggesting a tendency of over-centralization within the federal structure. Forests and wildlife have been one of the most contentious domains in environmental federalism in India. Management of forests is distributed between the centre, state and to some extent local bodies depending upon the nature of forests and subject area. The combined effect of the forest laws is that state governments are empowered to notify reserve forests and protected areas. However, states have to take prior permission from the centre before diversion of forest land.

Most of the major and contentious uses of water in terms of centre-state and state-state relations, such as irrigation, water storage and waterpower are all state subjects. However, states must exercise their powers without prejudicing the rights of other states in which the river flows. Considering that most of the major rivers in the country flow through more than one state, the Centre has an equally extensive jurisdiction vis-à-vis regulation of water. Besides, emotional attachment to water adds another level of complexity to the interstate water disputes by making it a political issue. A holistic and ecologically sound approach is missing from the management of interstate river water management because a common feature of agreements amongst states is segmentation of integrated systems (Iyer, 2012). The role of decision making at state levels or with ample involvement of states is vital in areas where the direct and immediate impact looms greater in some states. Coastal management is one such issue. The vulnerability of coasts on account of climate change is not unknown. However, the National Action Plan on Climate Change approaches the issue of coastal adaptation at a very preliminary level, mostly from the perspective of disaster management. Unlike issues like energy, habitat, agriculture and Himalayan ecosystem missions, coastal issues gets no special focus in the National Plan. In such a scenario, the importance of state level plans and development of better infrastructure, including early warning systems and management of coastal activities needs greater attention (Noronha, 2007). The constitutional allocation power shows that space available for states does exist. Whether these decision making powers are adequate or not can be debated at length. However, the issue with respect to exercise of these powers is as central as existence of powers to the discourse on federalism. Inadequate and inefficient use of powers can be seen in the actions taken by states on issues such as notification of protected areas, settlement of rights, Panchayat Extension of Schedules Areas Act (PESA) etc.

Fiscal Matters and use of Economic Principles

Fiscal matters, including tax and transfers, are an important element of any discussion or debate on federalism, including environment and natural resources. With respect to tax revenue, states show discontent with the level of their involvement in the decisions taken by the Centre. Further, the ability of the states to generate enough revenue on their own to meet their expenditure needs is under attack mainly as a result of expansionary use and interpretation of the Concurrent List and political dynamics. There are large amounts of central funds that are disbursed to the state

governments as Non-Plan expenditures by the Planning Commission, more often to run the centrally-sponsored schemes. Central sector schemes and centrally sponsored schemes are important features of decentralization in India. Under central sector scheme, there is 100 percent assistance from the central government while in the centrally sponsored schemes the expenditure is shared by the centre as well as the state and implementation monitored by the state government. Such grants are not only often motivated by political reasons determining Centre-state relations but even their disbursements are politicized. Furthermore, in the name of a plethora of centrally sponsored schemes, the Centre has systematically eroded fiscal autonomy of states. Consequently, many states are forced by the centre to undertake a large number of new expenditures as their contributions to so-called centrally-sponsored schemes and some of them may create significant tradeoffs.

In order to fulfill its responsibilities, financial capacity needs to exist or be supported through transfer of funds or power to use fiscal instruments to raise revenue and meet environmental goals. At present, under the Ministry of Environment and Forests plan, there are thirteen central sector schemes and six centrally sponsored schemes. Matching grants in the case of centrally sponsored schemes often results in an additional financial burden for states, rather than giving them an incentive to take actions for better environmental management. In India, the Finance Commission forms an important part of the fiscal/financial relations in the federal structure of India. The main considerations before the finance commission are: (i) how is the proportion of central tax revenue to be shared be determined; (ii) specify criteria for deciding shares of individual states; and (iii) determining the weights attached to different allocation criteria (Government of India, 2004, Hazra, et al., 2008). Three sets of considerations define the tax devolution criterion. These are- (i) population, tax efforts and fiscal discipline to correct vertical imbalance; (ii) income distance method to correct horizontal imbalance; and (iii) area to account for cost disabilities (Rangarajan & Srivastava, 2008).

Use of Economic Principles

Given the preponderance of resource-related subsidies as well as the lack of effective disincentives for polluters, the issues of rational pricing of natural resources and pollution charges need immediate attention. Wrong pricing signals and inadequate use of economic principles in environmental decision-making are also responsible for poor environmental outcomes. Application of economic principles to complex problems around environmental management can be useful in considering the suitable model of federalism (Ben-David, 2009). In the absence of a well enforced or effective command and control regime, economic instruments can play a useful role in environmental management. Based on the cost, effectiveness, efficiency etc. a balance of command and control with market instruments should be struck. Introducing new instruments that take into account environmental challenges are necessary, but what is equally essential is a mechanism to evaluate the performance of such policies and gather evidence that the policies and instruments have actually worked and been effective. It is not

possible to have clear evidence of efficacy in case of environmental policy and measures. However, some cases demonstrate a growing interaction between researchers and regulators to acquire credible evidence to test regulations (Pande, 2012).

Rewarding environmental performance is seen as a useful way to incentivize improved outcomes. One example of this is the Planning Commission Environmental Performance Index to be operationalized during the Twelfth Five year plan, which takes into account the efforts made towards environmental management, especially pollution abatement, conservation of natural resources, GHG emissions reductions and rank the states to incentivize environmental performance. However, such environmental performance indices have certain inherent limitations, such as difficulties in assigning weights and lack of complete and reliable data.

Capacity and Accountability

Two integral aspects of devolution of environmental governance to state and local governments are the capacity of 'these governments within the government' to perform and the accountability in the system to achieve the intended goal. While capacity is a critical factor for operationalisation of decentralized governance, accountability brings in greater efficiency in the system.

Several socio-economic and institutional factors influence (supplement or hinder) the capacity of governments at state and local levels. Even though several environmentally sensitive and resource rich areas have decentralized forms of governance in principle, the institutional mechanism for strengthening this decentralization is missing. Lack of willingness to strengthen decentralization in practice can also be attributed to absence of a perceived direct or long term political benefits for the political institutions and parties. (The Energy and Resources Institute, 2012) Perception plays an important role in building capacity at local levels as there is often a fear that too much power, and associated capacity, at lower levels of government may restrict attainment of national goals, whether with respect to development or environmental conservation. There is a perceived lack of faith in the ability of state or local governments and agencies to deliver results with respect to environmental governance.

Accountability of the governance systems to its stakeholders is considered as the hallmark of good governance. However, accountability is defined or perceived differently across the disciplines (Adeyemi, et al., 2012). In common parlance, accountability means greater responsibility to the system objectives, greater responsiveness to the citizen's preferences and greater commitment to the values and higher standards of morality. Accountability also can be in the form of social, financial, political, administrative, ethical and legal (Adeyemi, et al., 2012). In a more practical context, accountability of any governance system is reflected in outcomes in terms of its convergence with the desired objectives and preferences or expectations of the citizens. The decentralized governments are expected to be more accountable for their proximity to the citizens and for better understanding of the local challenges. Corruption at the level of

Received: 25 Dec. 2022

Revised: 14 Jan 2023

Final Accepted for publication: 27 Jan 2023

Copyright © authors 2023

local governments is more visible and resented and hence, in principle, should be less than at other levels of government. However, there is an increase in the perverse incentives that exist for corruption at local levels. Therefore, there is a need for effective design of accountability mechanism within the governance structures. The issue concerning accountability varies across the environmental resources characteristics and ecosystem regions. It must be ensured that any mechanism to strengthen capacity and accountability is applicable to both mainstream and parallel institutions. Several parallel structures have come up in the realm of environmental management, and these are not immune from challenges such as inadequate capacity and corruption.

The federal governance structure has resulted in multiple institutions in the environmental governance arenas. These institutions are initiated by different agencies of the government with divergent interests. Cooperation among the agencies often poses as challenges even among the institutions with similar interests. Consider the case of forest resources. There are three distinct formal community level institutions i.e., Joint Forest Management committees, Biodiversity Management Committees, and Empowered village committees under FRA. The recent move to integrate JFM with local communities and the PRI institutions (Gram Sabha) will also have consequences on the capacity and accountability concerns. This underlines the importance of institutional coordination in a federal context. There are multiple stakeholders whose capacity needs to be built to respond to the various environmental challenges. This also entails a multi-tier approach that targets different agencies, levels and facets through different instruments. There is a need to study further the reasons behind some governments performing better in addressing these challenges than other governments, irrespective of similar capacity level. The critical variables within the government structure that explains this difference need to be appreciated. This may also involve a complex process of identifying a set of capacity indicators and measuring them. It is equally important to recognize the challenges state and local governments and agencies face in managing the environment and the factors that hinders their existing capacities based on the general understanding of the notion of „capacity“. It is also important to explore all these issues in the context of future challenges given the dynamic nature of environmental challenges. Dynamism in the concept of capacity must also be recognized in light of pre-existing capacity and a broader understanding of capacity, which is not restricted to technical or managerial capacity (Chhatre, 2008). The other complexities involved in discussing these questions are diversified nature of the capacity endowment and capacity need of the state and local governments across the country given the differential socio-economic and ecosystem characteristics (Honadle, 2001, Tannenwald, 1998).

Observations & Concluding Remarks:

The division of responsibility between different tiers of government, including environmental matters is governed by the Indian constitution. The sharing of environmental policy formulation between the central, state and local governments reflects the manner in which the constitution

was originally framed and the way in which it has subsequently been interpreted and amended. In this context, it should be kept in mind that the division of power vis-a-vis the environment between the centre and the states in India is simply a by-product of the overall devolution of power. The Indian constitution provides for a federal structure within the overall framework of a parliamentary form of government. While states have some degree of autonomy, ultimate authority rests with the central government. For instance, the centre can create new states; alter the boundaries of existing states (Article 3) and under special circumstances, even take over their governance (Article 356). Part XI of the Constitution (relations between the Union and the States) governs the division of legislative and administrative authority between the centre and states. Article 246 divides the subject areas for legislation into three lists: Union List, State List, and Concurrent List. The Union List comprises 97 subjects over which parliament has exclusive powers to make laws. Apart from defence and foreign affairs, the list also includes environmentally relevant subjects such as interstate rivers and river valleys, mines and minerals, oil fields, atomic energy, air traffic, and so on. The State List gives state government's exclusive jurisdiction over areas such as public health and sanitation, agriculture, land improvement and water management. Under the Concurrent List, both central and state legislatures can enact laws on subjects ranging from forests and wildlife to factories and electricity.

In addition, the centre has the residual power to legislate on any subject not covered in the three lists (Article 248). The balance is tilted further in its favor by three additional constitutional provisions: (i) a central law on any subject in the Concurrent List generally prevails over a state law on the same subject (Articles 251 and 254); (ii) it can legislate in the "national interest" on any subject in the State List (Article 249), and (iii) it can also pass laws on state subjects if two or more state legislatures consent to such legislation (Article 252).

The centre has used another constitutional provision to take the lead in enacting environmental laws, namely, Article 253. This article empowers the national assembly to enact laws arising from not only treaties to which India is a signatory, but also decisions made at any international conference. Particularly striking about this article is that it allows the central government to enact laws merely on the basis of decisions of an international conference or association, even though such decisions may not be legally binding upon India. This article in conjunction with other similar constitutional provisions such as Article 51(c), enables the centre to legislate on virtually any entry in the State List. What this means in effect is that anything on the State List is fair game as far as the centre is concerned. In fact, two major environmental statutes in India, namely, the Air (Prevention and Control of Pollution) Act of 1981 and the Environment (Protection) Act of 1986 have been enacted under this very provision by citing the United Nations Conference on the Human Environment at Stockholm (1972). Similarly, the Biological Diversity Act 2002 and the National Green Tribunal Act 2002 were enacted in the wake of the UN Convention on Biological Diversity signed in Rio de Janeiro in 1992. In February 2012, the state of West Bengal was directed to draft a policy for wetlands by the Kolkata High Court after India became a signatory of the Ramsar Convention for protection of wetlands.

Received: 25 Dec. 2022

Revised: 14 Jan 2023

Final Accepted for publication: 27 Jan 2023

Copyright © authors 2023

References:

- Agarwal, Anil, Sunita Narain and Srabani Sen, State of India's Environment - The Citizens' Fifth Report, New Delhi: Centre for Science and Environment, 1999.
- Anant, T.C.A., K.L. Krishna and Uma Roy Chaudhary, Measuring Interstate Differentials in Infrastructure, A study undertaken for the Tenth Finance Commission, New Delhi, 1994.
- Austin, Granville. The Indian Constitution: Cornerstone of a Nation. 2nd edition, New Delhi: OUP India, 1999
- Bhagwati, Jagdish, On Thinking Clearly About the Linkage between Trade and the Environment, Environment and Development Economics 5, No.4 (2000): 483-529
- Copeland, Brian and M. Scott Taylor, Trade, Growth, and the Environment, Journal of Economic Literature (American Economic Association) 42, No.1 (2004): 7-71.
- Dasgupta, Susmita and others, Confronting the Environmental Kuznets Curve. Journal of Economic Perspectives 16, No.1 (2002): 147-168.
- Hadden, Susan G, Statutes and Standards for Pollution Control in India, Economic and Political Weekly 22, No.16 (1987): 709-720.
- Jasanoff, Sheila, Managing India's Environment: New Opportunities, New Perspectives, Environment: Science and Policy for Sustainable Development 28, No.8 (1986): 12-38.
- Kunce, Mitch and Jason F. Shogren, On Inter jurisdictional Competition and Environmental Federalism, Journal of Environmental Economics and Management 50, No.1 (2005): 212-224.
- Ramakrishna, Kilaparti, "The Emergence of Environmental Law in the Developing Countries: A Case Study of India." Ecology Law Quarterly, 12 (1984): 907-935.
- Rao, M. Govinda and Nirvikar Singh, The Political Economy of India's Fiscal Federal System and its Reform, The Journal of Federalism 37, No.1 (2007): 26-44.
- Rao, Shiva, The Framing of India's Constitution: A Study. New Delhi: The Indian Institute of Public Administration, 1968.
- Rosencranz, Armin, Shyam Divan and Martha L. Noble, Environmental Law and Policy in India: Cases, Materials, and Statutes. Mumbai: Tripathi Private Limited, 1991.

- Rudolph, Lloyd I. and Susanne Hoerber Rudolph, Iconisation of Chandrababu: Sharing Sovereignty in India's Federal Market Economy, *Economic and Political Weekly* 36, No.18 (2001): 1541-1552.
- Seervai, Hormasji M. *Constitutional Law of India: A Critical Commentary*. 4th ed. Mumbai: N.M. Tripathi, 1996.
- Singh, Nirvikar and T. Srinivasan, *Federalism and Economic Development in India: An Assessment*, Munich: Personal RePEc Archive, 2008.
- Wheeler, David, Racing to the Bottom? Foreign Investment and Air Pollution in Developing Countries, *The Journal of Environment Development* 10, No.3 (2001): 225-245.