

Green Federalism in India

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Constitutional Provisions:

- “Environment” does not figure in the Seventh Schedule, which lists subject mandates of the Centre and the States. It falls in the category of “residual subject”, meaning that it is the responsibility of the Centre.
- However, several specific environmental resources, are assigned to the different levels of Government: E.g. Centre: Geological, Botanical, and Zoological surveys; fishing beyond territorial waters; State: Land, Water, Livestock, Fisheries; Concurrent: Forests, Wildlife, Inter-state waterways and river valleys, mines and minerals (strictly a stat subject, but the Centre having powers to legislate in the public interest,), etc.
- In addition, the Centre has powers to legislate in furtherance of international treaties and commitments, including in subjects in the State list.

Definition of “Environment” in National Environment Policy, 2006

The “Environment” comprises all entities, natural or manmade, external to oneself, and their interrelationships, which provide value, now or perhaps in the future, to humankind. Environmental concerns relate to their degradation through actions of humans.

This definition is comprehensive, and potentially covers the entire range of natural resources, as well as manmade assets.

The Environment Protection Act, 1986, indeed can potentially address adverse anthropogenic impacts across all such entities.

Provision regarding “decentralization” in National Environment Policy, 2006:

Decentralization involves ceding or transfer of power from a Central Authority to State and Local Authorities, in order to empower public authorities having jurisdiction at the spatial level at which particular environmental issues are salient, to address these issues.

In respect of many environmental entities: Water, air, pollution, forests, wildlife, fisheries, etc., there exist separate laws, in addition to the Environment Protection Act, 1986.

These separate laws provide for various schema of devolution: Central, State, but further delegation from State to Local is slight.

Provisions of some specific Acts

- **The Forest Conservation Act 1980:** State Govts may divert forest land to non-forest use only with the prior approval of the Centre. (This follows from transfer of “forests” from the state list to the concurrent list by the 42nd Constitutional Amendment in 1976)
- **The Wildlife Protection Act 1972:** This predates the 42nd Amendment, and was based on legislative resolutions of 11 states under Art 252 of the Constitution that provides for Parliament to pass a common law for two or more states upon the respective state legislatures requesting it to do so. Following the 42nd Amendment, the centre enacted the Wildlife Protection Amendment Act 1991, making it applicable to the entire country (except J&K).

Provisions...

- **Water (Prevention and Control of Pollution) Act 1974 (a central Act):** Once again the Act is based on legislative resolutions of 12 states, “water”, being a state subject. However “pollution” would be a residual subject, and thus the central govt. could have independently assumed the power to enact th legislation.
- **Air (Prevention and Control of Pollution) Act 1981 (a central Act):** The Centre referred to the country’s obligations under the Stockholm Conference of 1972, even though no treaty emerged from the Conference, and at best there were exhortations (“decisions”) to countries to take certain steps towards environmental protection.

Provisions...

- **The Environment (Protection) Act 1986 (a central Act):**
This Act too cites the decisions of the Stockholm Conference of 1972. Its direct application relates to the central govt., and the states only by way of delegation through statutory regulations.
- The environmental appraisal system created by a statutory notification under the Act, creates regulatory authorities at the central and state levels, with those under the state being appointed (or dismissed) only with prior concurrence of the central Govt., a measure intended to insulate state level authorities from local political pressures.

Provisions...

- The environmental appraisal system related to two categories of activities (40 sectors in all) requiring prior environmental appraisal:
- Category A (central regulator): a list of activities that were identified on the basis that their potential adverse environmental impacts may extend beyond state or international borders, or wildlife protected areas, or environmentally sensitive zones, or impact metro cities > 1 million population.
- Category B (state regulator): other listed activities.

Conclusion

- While constitutional provisions and statutes provide for a measure of delegation of environmental responsibilities to state levels, it can be argued that on balance, the central govt. dominates environmental activities and regulation.
- Part of the reason is that historically capacities of states for regulation and enforcement were weak as compared to the central govt.
- Apparently retrograde actions, such as transferring forests, wildlife from the state to the concurrent list were due to a history of excessively permissive actions at the state level (especially diversion of lakhs of hectares of forest land annually to non-forest use).

thank you