

| RESEARCH ARTICLE

Article DOI:10.21474/JNHST01/109

DOI URL:<http://dx.doi.org/10.21474/JNHST01/109>

NAVIGATING GREEN FEDERALISM: A STUDY OF CONSTITUTIONAL PROVISIONS AND JUDICIAL INTERVENTIONS IN POST-INDEPENDENCE INDIA

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| ABSTRACT

India's environmental governance has undergone considerable evolution owed to a constant tussle between the centre and the states, reflecting the country's quasi-federal structure and the heterogeneous priorities of its regions.

| KEYWORDS

Environmental governance, liberalization, Quasi-federal structure, Judicial interventions.

| ARTICLE INFORMATION

RECEIVED: 20 November 2025

ACCEPTED: 24 December 2025

PUBLISHED: January 2026

Abstract

India's environmental governance has undergone considerable evolution owed to a constant tussle between the centre and the states, reflecting the country's quasi-federal structure and the heterogeneous priorities of its regions. After independence was achieved, government policy has experienced a pendulum movement of policy-making that has ranged between extreme forms of central control and state-led action. This paper examines the development of Environmental Federalism through an analysis of constitutional provisions— such as Article 246, 48A, 51A(g) — along with a selection of key legislative acts enacted by the Government of India including the Water (Prevention and Control of Pollution), Act 1986, The Forest Conservation Act, 1980 and the Air (Prevention and Control of Pollution) Act, 1981. In so far as the radical right reshapes the class composition of capital, the caste composition of society and sets the rate of profit based on the Reserve Army of Labor, Supreme Court decisions have restored balance to power relationships through reaffirmation of the authority to act emanating from central power (see e.g., *MC Mehta v. Union of India*; *Godavarman Thirumulpad v. Union of India*). In addition, economic liberalization and the rise of environmental awareness and commitments to federalism, in the wake of catalytic international global climate initiatives. Despite these developments, areas of concern still exist in the form of overlapping jurisdictions, resource constraints, and instances of political meddling.

Introduction:-

Since gaining independence in 1947, India has moved rapidly to establish an industrialized economy. This process of developing its economy has taken place through a combination of rapid industrialization and modernization. However, this push for economic growth has usually come at the expense of the environment, resulting in large-scale damage to ecosystems, destruction of forests, pollution of the atmosphere and water bodies, and loss of biodiversity. In response to these impacts on the natural world, the Government of India has developed over time a highly complex legal and administrative system for managing the environment. The central element in this system is India's unique federal structure of government that divides

power and responsibility between the central government (the Centre) and the governments of individual states (Swenden & Saxena, 2019)

Environmental Governance in India is inherently tied to the Federal Structure. Central Government typically makes the laws & regulations and the policies regarding the Environment. While State Governments are responsible for implementing these policies as well as enforcing them (as well as ensuring compliance). This can create an ongoing battle between state Autonomy and the authority of the Center; which will always have some degree of Collaboration, Disagreement or Negotiation influencing where policy goes. Over time, this system has evolved via both bottom-up interventions, such as local biodiversity management and state-level initiatives like Delhi's odd-even scheme, green Tamilnadu mission, and top-down interventions, including centrally enacted legislations like the Environment (Protection) Act, 1986. (Gupta, 2014; Lele et al., 2010)

This study explores the effect of India's federal system on environmental governance and effectiveness. It specifically looks at how the constitution, various laws, court judgments and institutional frameworks including both central and state level entities, including pollution control boards, permit authorities, forest departments, wildlife sanctuaries and wildlife national parks, and environmental impact assessment institutions, shape out environmental rights under Article 21. The study examines federalism's benefits with respect to coordination, collaboration, and decentralization and how these translate to environmental benefits. (Dubash, 2012)

The growing environmental challenges stemming from climate change, urbanisation and the limitations of natural resources make it critical to explore ways in which governance systems in large and diverse federations such as India can become more responsive, inclusive and sustainable. This article explores some of the institutional conflicts, gaps in policy and innovation in environmental governance within India's federal system, to contribute to the evolving discourse on environmental federalism and sustainable development. (Lele & Sahu, 2017)

Objectives:-

Understanding federal dynamics of India's environmental governance allows us to appreciate how the centre and states interact and resolve differing priorities through a combination of constitutional provisions, laws and judicial monitoring. This study attempts to highlight upon the dynamics of cooperative federalism that can help uniform national standards in the field of environment, being flexible and providing region specific action by meeting varying socio-economic conditions of the regions as well international commitments in the area of environmental protection. Ultimately, it highlights the importance of sustainable development through integrated, multi-level governance and strong environmental protection throughout India's diverse landscape.

Methodology:-

This study follows a qualitative research approach, using literature and document reviews. It mainly relies on secondary sources including constitutional provisions, key environmental laws, and major court judgments, as well as scholarly articles, books, and government reports. Using content analysis, the study examines how centrally framed environmental policies are interpreted and implemented at the state level along with the specific measures taken by the various state governments. By comparing and cross-checking information from multiple sources, the research provides a better understanding of India's evolving federal approach to environmental governance.

Historical Evolution of Environmental Governance in India:-

In ancient India, the tradition of environment conservation also became a part of its culture and religion. In addition to the sacred animal tradition, there existed also another tradition of conservation of nature – sacred groves. These were tracts of forest dedicated to different gods and goddesses. The ancient texts such as Arthashastra (300 BCE) dealt with conservation of forests and wild life. (Rangarajan, 2012)

During colonial period, forests and people of India underwent a significant transformation. The first legislation relating to forests in India, The Indian Forest Act of 1865, was enacted to enable the systematic extraction of forest resources for commerce. This legislation was superseded by The Forest Act of 1927 that consolidated the State's grip on forests by creating reserved forests and regulating other forest uses. Local people were thus alienated from their customary use of forests and their knowledge systems on forest management were neglected. (Rangarajan, 2012; Ghosh, 2019) In 1947, when India became independent, it was all set to be the economic super power of the world in near future, especially in terms of energy requirements. Scientists and engineers were working furiously to invent solutions to meet these future needs. At the same time India's ancient philosophies, its cultures and traditions have always motivated people to live in harmony with nature, seeking a holistic growth, which includes spirit as well as materiality. (Meena & Maikhuri, 2023)

Industrialization is always the primary goal of post-independence India and environment has always taken a secondary seat. However, a number of factors changed the focus in the 70s. The Stockholm Conference on environment and development held in 1972 was a wakeup call for India's environment. This conference resulted in the 42nd Constitutional Amendment in 1976, which made protecting the environment a fundamental duty of a citizen. The Directive Principles of State Policy were also amended to include the protection of environment. (Meena & Maikhuri, 2023; Divan & Rosencranz, 2022)

As India grew, there was a corresponding rise in the number of important environmental legislation enacted in the 1970s and 1980s. The Water (Prevention and Control of Pollution) Act 1974 and the Air (Prevention and Control of Pollution) Act 1981 laid down the mechanism for pollution control. The Environment (Protection) Act 1986 was enacted to give effect to the resolution of Stockholm Conference and to provide for control and improvement of environment and safeguarding of forests and preventing release of materials and substances hazardous to environment and human life. The Forest (Conservation) Act 1980 was enacted to control deforestation. Most of these laws have been framed at the level of Central Government and had to be enforced through the State Governments and local bodies in the Federal set up of the country, which gave rise to initial conflicts. (Divan & Rosencranz, 2022; Ghosh, 2019)

The Federal Structure and Its Impact on Environmental Governance:-

Environment is not specifically enumerated in the Constitution. Therefore, all issues relating to environment are listed under the Union, State and Concurrent Lists. As a result, while the central government can promulgate national-level environment policies and legislation, these are to be implemented by the states. However, effective management of the environment demands cooperative federalism and not the present rivalries, delays and fragmentation resulting from Centre's policies and State's implementation. (Gupta, 2014; Mandal & Rao, 2005) Decentralisation is a much-needed paradigm shift in Indian environmental governance. The top-heavy central agencies empowered under Environment (Protection) Act 1986 have set ambitious agenda and guidelines for environmental governance, but administration and conservation of environmental resources and effective enforcement of environmental laws need to be done at state and local levels. While states have grappled with capacities and fiscal transfer related constraints in addressing local environmental issues and implementing environmental policies designed by central agencies, this volume documents environment governance experiences from selected states in India. (Nallathiga, 2011; Lele & Sahu, 2017) In contrast, some efforts have sought to decentralise decision making. Legislation such as the PESA (Panchayats (Extension to Scheduled Areas) Act) has been designed to empower local institutions and Gram Sabhas to claim authority over natural resources in their name. Drawing on local ecological knowledge and customary practices, local people might, in this scenario, govern natural resources sustainably, in line with broader environmental goals. Yet such efforts have been partial and failed to insulate governance of natural resources from central controls and larger political configurations. (Kashwan&Kodhiveri, 2021)

State-Level Innovations in Environmental Governance:-

Some states have introduced innovative environmental governance models:

Sikkim's Organic Farming Initiative: Sikkim became the first fully organic state in India by banning chemical fertilizers and pesticides, epitomizing a successful decentralized environmental policy. Maharashtra's Jalyukt Shivar Abhiyan: A state-led water conservation program that entails local community participation in watershed management has proved to be a successful decentralized water governance mechanism. Karnataka's Decentralized Biodiversity Management: Under the Biological Diversity Act, 2002, the establishment of Biodiversity Management Committees has enabled local institutions to successfully document and manage biodiversity resources. Delhi – Odd-Even Scheme: Implemented to curb vehicular pollution, this scheme allows vehicles on roads based on odd or even number plates on alternate days during periods of high air pollution. Tamil Nadu – Green Tamil Nadu Mission: Aimed at enhancing green cover, this mission targets the plantation of 265 million trees over ten years to combat climate change and support biodiversity.

Challenges in the Federal Environmental Governance Framework:

Overlapping Jurisdictions and Coordination Issues:-

Environmental governance in India is complicated further by the intricate sharing of central and state jurisdiction over environmental issues. Many important environmental issues such as water, air, and forests are naturally inter-jurisdictional. The lack of effective mechanisms of cooperation and coordination results in fragmentation of environment policy at the level of government, causing inefficiencies and inordinate delays in their effective implementation. Furthermore, there is always the possibility of a 'race to the bottom' whereby state governments with weaker pollution regulations undermine the potential of even the strongest pollution policies at the central level. (Mandal & Rao, 2005; Gupta, 2014)

Although there are many laws and regulations regarding environment in India, there exist certain loopholes in their implementation due to inconsistent implementation. Dilution of Environmental Impact Assessment (EIA) process allows States to grant environmental clearance to projects. An amendment in Environment Impact Assessment (EIA) notification in 2020 granted more powers to States in granting approval for certain aspects but further diluted environment safeguards at the same time. Environment agencies at the State level and State Pollution Control Boards (SPCBs) are finding it very difficult to

monitor and implement environment norms mainly due to paucity of funds and lack of staff. Similarly, the apex Central Pollution Control Board (CPCB) is facing problem of inadequate funds and manpower to regulate and enforce environment norms. (Mukherjee & Chakraborty, 2015; Er & Sidhu, 2015)

Environmental issues are another cause of inter-state disputes. Disputes over use of river waters, air and forest pollution are increasingly generating tensions between the states. The Yamuna River pollution dispute between Delhi and Haryana/UP is another case in point. The industrial effluents, car exhausts and domestic waste pouring into the Yamuna River in Delhi are polluting the river. In addition, the burning of crop residue in Punjab and Haryana is causing very poor air quality in Delhi. Although there are stringent laws and regulations and penal provisions for environmental pollution, these are pointless because there is no enforcement of these regulations. There is no monitoring mechanism to ensure compliance of environmental norms. State governments are not enforcing these norms against the industries violating environmental norms. Centre and states have to work in tandem to battle against the effects of climate change but there is no coordination in disaster management currently. Some stakeholder groups are demanding more flexibility within the current data protection regime. However, most governments lack the funding and expertise to bring about greater changes.

Judicial Interventions:-

The role of the Indian judiciary has been critical in framing environmental governance. Over a series of judgments, and most significantly so by the Supreme Court in matters such as the M.C. Mehta litigation, the courts interpreted Article 21 (the right to life) to also mean the right to a healthy environment. The National Green Tribunal Act (2010) which established a dedicated forum for environmental matters in the form of a National Green Tribunal (NGT) is yet another testament on the part of the judiciary towards addressing environmental issues by way of setting up a specialized forum for expeditious disposal of environmental dispute. Several land mark cases are mentioned below:

MC Mehta v. Union of India:-

The Supreme Court of India in a series of rulings, starting in the 1980s, took on the dire consequences of industrial pollution. Judgments in MC Mehta v. Union of India required polluting industries to implement state-of-the-art pollution control technologies and comply with environmental laws. These decisions came as a response to several industrial accidents — for example, the Oleum gas leak case — and reiterated that the pursuit of economic development should not come at the expense of health and environmental degradation. This body of case law has led to the establishment of robust guidelines for environmental clearance and has catalyzed stricter enforcement measures across industries. (Sharma, 2008)

GodavarmanThirumulpad v. Union of India:-

It was a landmark case that dealt with the conservation and sustainable management of forest resources. In GodavarmanThirumulpad vs Union of India, the Supreme Court reinforced the fundamental duties of the state by holding that conservation of forests is a constitutional duty. It ordered the government to adopt sustainable forest management practices, stop illegal logging, halt deforestation and protect biodiversity. How the ruling set the stage for comprehensive forests conservation policies by reaffirming that the right to life encompasses protection of natural resources, the ruling set the foundation for holistic forest conservation policies. (Ghosh, 2019)

Vellore Citizens' Welfare Forum v. Union of India:-

This landmark case played a pivotal role in establishing the “polluter pays” principle in Indian environmental law. In its ruling, the Supreme Court held that industries responsible for environmental degradation must bear the financial costs of remedial measures. The judgment expanded the interpretation of the constitutional right to life by including the right to a healthy environment. As a result, it has significantly influenced how environmental liabilities are assessed and has imposed greater accountability on industrial polluters. (Divan & Rosencranz, 2022)

MC Mehta v. Kamal Nath (Taj Trapezium Case):-

Aimed primarily at preserving the Taj Mahal, this case addressed the negative impact of industrial pollution on one of India’s most celebrated heritage sites. In a judicial intervention, the Supreme Court had stepped in to halt the polluting industrial activities being conducted in the vicinity of the Taj Mahal, ordering the shifting of polluting industries, and enforcing measures to ensure stringent air quality controls across a large area surrounding the monument. This victory protected a national monument but precedent for protection of cultural heritage sites from environmental destruction. Collectively, these cases highlight the transformative impact judicial scrutiny can have on environmental governance. They have compelled both governmental agencies and privates to practice the motto of environmental sustainability with their outputs ensuring development even without daducement of the nearby natural habitat. The ramifications of this series of decisions continue to inform policy debates and regulatory reforms in contemporary India.

Way Forward:

Improved Centre–State Cooperation:-

India's federal architecture has long grappled with overlapping jurisdictions and capacity asymmetries. But increasingly, the need for concerted action between the centre and the states are being realised. New reforms—including large national level programs like the National Action Plan on Climate Change (NAPCC) and the increasingly active engagement of the National Green Tribunal (NGT) to expedite justice—showcase steps that can help overcome historical fragmentation. These initiatives, along with the ongoing evolution of fiscal transfers and conditional grants aimed at environmental objectives, could pave the way for a more integrated and efficient governance system. (Kandpal, 2024; Lele & Sahu, 2017)

• New Technologies Adoption:-

Technology has advanced rapidly, as have field monitoring tools like remote sensing, data analytics, and digital monitoring that can help improve enforcement and compliance at scale across multiple geographies. With some states already using technology to monitor environmental impacts or track pollution levels, these innovations can then be scaled up through centralized support and standardized regulatory practices, leading to an improved governance landscape. (Nallathiga, 2011) Integrating policies with the regulatory reforms There is a rising tide of momentum to change environmental laws and policies to bring them in line with international climate goals (such as India's net zero by 2070 pledge). Integrating environmental objectives with economic and developmental policies, especially in sectors like renewable energy and waste management, can be a way to better create synergies between growth and sustainability.

Vertical Innovations and Role of Civil Society:-

• Experimentation at the State Level:

Despite overall challenges, several states have initiated innovative programs of their own to address local environmental challenges—from air pollution control in Delhi and Punjab to water and forest conservation projects in other regions. This kind of experimentation at the state level, if sufficiently supported by functional federal mechanisms, can produce and test scalable models of environmental governance better able to respond to local conditions.

• Civil Society and Public Participation:

Increased public awareness and the active participation of non-governmental organizations are driving demands for greater accountability and transparency. This bottom-up pressure can complement top-down reforms, ensuring that governance mechanisms are not only robust on paper but also effective in practice.

International Obligations and Economic Potential:-

• Consistency with Global Climate Objectives:

India's international obligations — especially its pledges under the Paris Agreement and its larger net zero commitments (2070) — are gradually remaking domestic environmental policy. These commitments offer both a framework and an incentive for modernizing and streamlining federal environmental governance structures.

• Green and Circular Economy Initiatives:

The potential to develop a circular economy emerges with increasing investments in renewable energy and waste management technologies that not only prevent environmental degradation but also generates economic growth and employment. For instance, initiatives repurposing used EV batteries and promoting solar panel recycling show how green technologies can be integrated with sustainable development objectives.

Conclusion:-

Evolution of Environmental Governance in post-colonial India is a complex story of interaction between economic and social forces and the federal structure of the country, grappling to reconcile the two and deal with environment issues in a multiverse. Each era has had its own legislation and judicial activism beginning from the colonial days when natural resources were extracted and in the 21st century the focus has been on control of industrial pollution, deforestation and water scarcity. There has been legislation in each era that has drawn the judiciary into the fray. Starting from the colonial days through the Water Act, 1974 and Air Act, 1981 to Environment (Protection) Act, 1986 and the National Green Tribunal Act, 2010, the legislation has endeavoured to address environmental issues. However, the distribution of environmental responsibilities among Government of India and the States and local bodies has, on many occasions, proved counterproductive. At the Central Level there are multiple agencies and various Ministries are responsible for the implementation of various environmental legislations. There are often (Meena & Maikhuri, 2023; Divan & Rosencranz, 2022) overlapping jurisdictions and a lot of confusion and inconsistencies in application of laws. States have varying capacities to implement the same laws. Often they fail to implement provisions of environment laws at the local level due to institutional, systemic and social challenges.

However, the promise of these policies has largely remained unfulfilled as a result of rampant political clearance and a 'growth at all costs' attitude. Yet, courts have increasingly stepped up to interpret environmental laws and impose consequences for

non-compliance, highlighting the notion of the “environmental rule of law.” By strengthening Gram Sabhas and local communities, efforts to decentralize and implement cooperative federalism are beginning to bear fruit. Future environmental reforms will need to be more inclusive, participative and equitable, ensuring fair fiscal transfers while enhancing the capacity of states and local governments to deliver on environmental objectives, through effective intergovernmental coordination. The goal will be to preserve and utilize India’s vast natural capital endowment for future generations. (Dubash, 2012; Kashwan&Kodhiveri, 2021)

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