

SHORT COMMENTS ON ENVIRONMENTAL GOVERNANCE

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Abstract

Environmental governance has become an important dimension at the global level for the conservation of bio-resources in the present era. However, it is also a complex and challenging issue for humanity and its governing institutions that are affected by human activities in both rural and urban areas. The above issue is presented not only by debate and academic research on the separation between sustainable use, conservation and economic development of the environment. Rather, in this context, a decisive attempt by the global community to address environmental governance is also known from the Stockholm Conference of United Nations Conference on the Human Environment (UNCHE) held in 1972. Therefore, it is fair to say that since this international initiative, environmental governance has become increasingly internalized on the global agenda at all levels. At the same time, great importance is also being given to the role of democratic institutions in environmental governance. Therefore, there is an urgent need to address all the policy processes and institutions related to it at every level of administration i.e., from global to national and local or sub-national level.

Keywords: *Environmental Governance, Biodiversity, United Nations Conference on the Human Environment (UNCHE), National Environment Policy, Right to Life.*

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INTRODUCTION

The environmental governance is basically comprehended in terms of a list of legal codes, statutes, case law, regulations and principles which denotes the relationship between humans and nature. In Indian context, these interventions address the protection, management and distribution of natural resources which make the competing realms. Such competition has been seen between the economic and the sociocultural, between ecological needs and livelihood requirements, between the human and non-human and between present and future uses.

In this regard, the Indian government adopted both points of competition and conflict in its environmental governance. It is important to note that many times the protective, managerial and distributive aspects of environmental legislation are considered to be a technical issue due to costs and benefits being assessed. However, the law fails to calculate many times that in fact nature provides a material basis for the existence and well-being of all.¹

INDIAN PERSPECTIVE OF ENVIRONMENTAL GOVERNANCE

India has always been considered as a very rich biodiversity country in the world. In our country, there are 12 mega centers of biodiversity. According to the data obtained from the Ministry of Environment and Forests, it includes 45,000 plant species and 81,000 animal species which represent 7%

¹ Kanchi Kohli & Manju Menon, *Development of Environmental Laws in India* (Cambridge University Press, United Kingdom, 2021).

of the world's flora and 6.5 % of its fauna.² It is an irony that due to the excessive burden of the growing population and industrial activities in the country, the Indian natural resources are being exploited day by day which creates threats to biodiversity in large.

In addition, like any other policies, Indian environmental policy is also the result of dynamic processes such as several environmental protests and movements (The Silent Valley and the Chipko Movement). This process of environmental policymaking in the country mainly reflects the broad perspective of constitutional values along with the underlying political theory and vision of the then government. In this context it will not be an exaggeration to say that often in view of these considerations every 'policy document' is influenced by both national and international issues in order to take into account the economy. Which the government should try to accommodate on the basis of votes in a democracy, the views of the general public and the key stakeholders concerned with the said policy. Therefore, various acts and rules have been included in the environmental policy-making process with the help of economic and legal interventions e.g., taxes, subsidies and judicial processes.³

Nature and natural resources have always been given sacred status in Indian tradition, which is the reason that the attitude of conservation towards the natural environment is strong in most of the local communities. The Constitution of India, affirming the protection of the environment, considers it as a "constitutional obligation of the state and fundamental

² Ministry of Environment, Forests and Climate Change, *available at: <https://moef.gov.in/en/>* (last visited on: 30.06.2023)

³ Kanchan Chopra, *Development and Environmental Policy in India -The Last Few Decades* (Springer Nature, Singapore, 2017).

duties of citizens” as part of the Indian ethos under the constitutional initiatives. Therefore, it is a constitutional goal of the nation, under which tireless efforts are made to prevent climate change and conserve biodiversity while ensuring the protection of the environment and forests. Along with this, in the direction of environmental protection, the citizens of the country have also been appealed to follow the duty of co-existence in order to maintain biodiversity. This effort constitutes a sustainable practice oriented towards the conservation of biodiversity.

In other words, all these constitutional provisions reflect the concern of the state and the aspiration of the citizens. In addition, the seriousness of these provisions helps all states and citizens to fulfill their responsibilities towards the conservation of biodiversity. One such policy call has been publicized in the country in the form of “National Environment Policy, 2006”. The objective of the NEP is to determine a healthy and productive life for the sustainable development of human societies by striking a balance and harmony between biodiversity conservation and development.⁴ Apart from this, the Indian judiciary has also been interpreting these provisions related to environmental protection and conservation of forests in the country from time to time with various environmental litigation. In fact, all these efforts emphasize the importance of biodiversity while highlighting the state’s planning and individual’s attitude towards the environment.

Moreover, in our country more attention has been given to environmental conservation since the ancient period itself. At that period laws related to environment upliftment were simple and quite effective and people were also conscious about nature conservation. But nowadays legislations in

⁴ National Environment Policy, 2006.

terms of environmental governance are addressing the issue of urbanization and industrialization and are brought for those aspects only. It is an interesting fact that in India there are approx 500 central and state laws which to some extent talk about the issue of environmental protection directly or indirectly. Importantly, there are also the common law and constitutional provisions related to environmental governance in our country which present the role of the state truly⁵.

Additionally, India is one of the countries globally which denotes a strong commitment towards environmental protection and improvement through its constitution. Some legal provisions in the Indian constitution related to the quality of life are found from its inception in 1950. But in 1976 the introduction of the 42nd Amendment Act brought a wider picture of environmental conservation in the country which was undoubtedly influenced by the United Nations Conference on the Human Environment (UNCHE) held in Stockholm in 1972. Indeed, this conference gave a new dimension to governmental awareness regarding the need for a legal and organizational framework in environmental protection worldwide. This conference also introduced a new paradigm to public responsibility by making it obligatory for the central and state government along with every citizen to conserve and uplift the biodiversity at large.

The Indian constitution is amongst the few in the world which contains specific provisions on environmental protection. There were no provisions before 1976. The 42nd amendment to the Constitution was brought about in the year 1976 and two new Articles were inserted e.g., Article 48-A and Article 51-A (g). Indeed, the provisions mentioned in Article 48A of Part

⁵ Prakash Chand Kandpal, *Environmental Governance in India: Issues and Challenges* (SAGE Publications Pvt. Ltd, New Delhi, 2018).

IV⁶ and Article 51 A (g) in Part IV A⁷ of the Indian Constitution also suggested a policy paradigm to govern the environment.

In this context, the 42nd Amendment Act (1976) added two-way provisions in the constitution of India. Actually, on one hand this amendment directed an obligation to state through Article 48 for the protection of the environment. That's why in many cases related to environment protection, the Indian judiciary also has been guided by the language of this Article and interprets it as imposing provision on the government including courts. Similarly on the other hand, the above-mentioned amendment refers specifically to the fundamental duty of every Indian citizen to help in safeguarding the natural resources in Article 51A. Apart from this it is noticeable that the 42nd Constitutional Amendment also brought some changes in Seventh Schedule⁸ of the Indian constitution which is related to allocation of powers. Actually, it had transferred the power connected with Forest and Wildlife from the State list to Concurrent list which only reflected the strong commitment of the Indian legislature in terms of how they prioritize environmental protection as a national agenda. Here an interesting fact reveals that although Directive Principles of State Policy (DPSP) are non-enforceable⁹ by courts but despite that these are being cited

⁶ Article 48A of Indian Constitution: *Protection and improvement of environment and safeguarding of forests and wildlife. — The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.*

⁷ Article 51 A (g) of Indian Constitution: *to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.*

⁸ The Constitution of India, VII Schedule: The seventh schedule under Article 246 of the constitution deals with the division of powers between the union and the states. It contains three lists- Union List, State List and Concurrent List.

⁹ Article 37 of Indian Constitution: *Application of the principles contained in this Part. —The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.*

by the judiciary as complementary to the fundamental rights day by day.

In addition, Article 21¹⁰ the Indian Constitution at some extent also gives a permission to exercise the fundamental right in order to conserve the environment but keep in mind that it is not a direct constitutional provision. But nowadays the Judiciary has recognized the right to a sustainable environment as part of the Right to Life guaranteed in Article 21. In this sense, the judicial grammar of interpretation became a pivotal tool in guaranteeing the safeguard of fundamental rights. As it has broadened the scope and ambit of Article 21. Article 21 resolved many cases related to the right to life. That's the reason now Right to life includes the right to livelihood and right to clean environment (*M.C. Mehta v. Union of India*¹¹) which all addressed the issues related to biodiversity. The Right to Life described in Article 21 assimilates the conservation of natural resources in true sense because without this human life cannot be enjoyed. In this regard, Article 21 undoubtedly has been exercised as a mandate for safeguarding environmental governance.

Apart from all these, some other legislative and administrative measures have been also introduced by the Indian government for the conservation of the natural or biological resources in the country. Those are as follow as-

- ***The Wildlife (Protection) Act, 1972:*** The title of this legislation itself presents the main objectives related to protection of all wild animals, birds specially the rare species and extinct animals like lions. This act imposes a complete ban on wildlife hunting so that poaching,

¹⁰ Article 21 of Indian Constitution: *Protection of life and personal liberty.* - No person shall be deprived of his life or personal liberty except according to procedure established by law.

¹¹ AIR 1987 SC 1086

smuggling and illegal trade of all types of wild animals and species can be controlled in a comprehensive way. Also, this act gives authority to the central and state governments in deciding wildlife sanctuary, national park or closed area and facilitating the protection of wildlife in the country.

- ***The Forest (Conservation) Act, 1980:*** This act was mainly passed by the Indian Parliament on 25th October 1980 in order to preserve the forests. There are three main objectives in this act such as to check deforestation, to check diversion of forest land for 'non forest' purposes and afforestation of the waste lands.
- ***The Air (Prevention and Control of Pollution) Act 1981:*** Another important legislation which was enacted on 29th March, 1981 which tackles the environmental problems related to pollution. In this sense, this act has clear directions related to prevention, control and abatement of air pollution in the country and it follows a strong commitment in maintaining quality of the air.
- ***The Environment (Protection) Act 1986:*** This act is one of the most important legislations for the protection and improvement of the environment. It is based on the Stockholm Conference on United Nations Conference on the Human Environment (UNCHE) held in 1972. This act provides power to central and state governments to take all such necessary actions in order to conserve and betterment of the environment.
- ***The Scheduled Tribe and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006:*** It is also known as Forest

Rights Act or the Tribal Rights Act which was passed on 18 December, 2006. It addresses specifically the rights of forest dwellers, local communities, and indigenous people and protects their land and other resources.

INTERNATIONAL PERSPECTIVE OF ENVIRONMENTAL GOVERNANCE

The international discourse on environmental governance is an outcome of the participatory approach between several institutional actors (For example- states, institutions, market, civil society organizations and the individuals etc.) from global to local and public to private. However, the discourse of international governance got numerous recognitions in the past half of a century but still there are some obstacles to international cooperation which demean the role of effective international environmental action. These obstacles can be marked on the basis of Conflict between the collective good and national interests, Tensions between developed and developing states, Economic obstacles and Ideological obstacles.¹²

This section describes those international environmental conventions which addressed major challenges of environmental governance globally. Actually, these conventions presented a better understanding on the legal approaches to deal with environmental issues like climate changes. This type of discussion of forums also addressed the issues of traditional knowledge and resources while strengthening accountable and transparent environmental institutions at global level. No doubt, all these conventions have been organized by the effort of the United Nations which always took major steps to tackle the common global challenges and manage shared

¹² Andrew Heywood, *Global Politics* (Palgrave Macmillan, China, 2011).

responsibilities.

As all these conventions bind to follow some agreements and protocols which direct specific actions. Some important conventions based on environmental governance are “the Kyoto Protocol of the United Nations Framework Convention on Climate Change (UNFCCC¹³), the Nagoya Protocol of the Convention on Biological Diversity (CBD), 1992” etc. Moreover, all conventions are governed by a secretariat which coordinates between subsidiary bodies and working groups. The secretariat also plays a role of negotiator for the commitments and collective action, before presenting in a conference of parties which is convened every two years in general.¹⁴

It is needed to discuss some of the international conventions and agreements with their chronological development so that a clear understanding can be established of climate change and biodiversity. There are a number of conventions such as:

- ***The Antarctic Treaty, 1959:*** The author Mehdi elaborates that “the Antarctic Treaty” is one of the oldest initiatives taken at global level to ensure the safety of the environment especially in the Antarctic region. The polar region is also getting majorly affected by climate change that brings physical, ecological, sociological and economic impact there. This treaty was signed by 12 countries¹⁵ on 1st December 1959 and got

¹³ The United Nations Framework Convention on Climate Change came into force on 21 March 1994 for the objective of preventing “dangerous” human interference with the climate system. The two significant treaties of the UNFCCC are the Kyoto Protocol (1997) and the Paris Agreement (2015).

¹⁴ Supra note 1

¹⁵ Those 12 countries are Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, the United Kingdom, the United States, and the Soviet Union.

enforcement in 1961. However, the treaty did not have a primary aim for preventing the damages related to climate change but it directed absolute protectional behavior to secure the environment in the Antarctica region.

It is an interesting fact that many countries have their eyes on the Antarctica continent for scientific purposes as it does not have a local population. This treaty plays a significant role in stopping the ecological exploitation on the basis of a variety of problems in this region. It is noticeable that the Antarctic Treaty also provides a complete framework for international relations related to this area which regulates an entire continent. Right now, approx 54 countries are parties of this treaty. They are all concerned for the wide access to ever-evolving technology for this region which is also a challenge for climate change.

However, some other countries also claim substantial stakes in the region but the Antarctic Treaty System (ATS) which strictly regulates international relations concerning Antarctica and tries hard to achieve the objectives of this treaty. In this sense, the treaty declared this region as a haven of scientific research with complete scientific autonomy and no military intervention. In addition, all human activities are also regulated by this treaty within Antarctica in terms of ensuring safe and environmentally friendly visits by travelers. In some recent years, a critical situation occurred regarding the possibility of mining activities which are now completely banned in this region. However, some predictions say that countries will try to lift this ban as there is a vital resource of oil.

Moreover, the Antarctic Treaty also covers the areas south of 60 degrees south latitude, including land and ice shelves. In this context, this treaty was a paradigm shift especially for the international relations concerning Antarctica which is a continent with no human population. This treaty gives assurance that Antarctica will always remain free of its territorial claim or sovereignty to minimize conflicts or disputes between nations. Similarly, the treaty is empowered with some legal provisions related to demilitarization and joint research and potential use within the continent. Apart from that this treaty also mentioned about the banning of nuclear testing and dumping of radioactive wastes which is undoubtedly a great precedent for environmentally friendly practices. In that way, through this treaty nations are encouraged to show values based on prudence and cooperation to prevent conflict from escalating which are inevitable steps for International environmental governance in this era.

Another interesting fact is that India became a party to this treaty in 1983 and showed its interest in the ecological, geographical, geological, and biodiversity of the region. In this regard, India's first scientific research base station named Dakshin Gangotri is the best example which was established in this region for various research facilities to investigate these fields. In the Indian context, this region is important for scientific research purposes which specifically pertain to global warming. Similarly, India's continuous support can be seen in the form of scientific advancement such as drilling holes into the cold ice sheets of Antarctica on a regular basis in this region. In other words, the Antarctic Treaty of 1961 always claims to ensure that the region remains free of any international sovereignty or dispute and it should

be used strictly for the benefit of mankind only¹⁶.

- ***The Ramsar Convention, 1971:*** This environmental convention is also recognized as one of the significant international agreements related to the environment which was organized at Ramsar, Iran, in 1971 and came into force in 1975. The Ramsar Convention took proactive steps in conserving the loss and degradation of wetlands. An interesting fact related to this Convention is that in India it got ratification on 11th February 1982 and the Wetland (Conservation and Management) Rules, 2017 of India also inspired extensively by this convention.

Importantly, the wetlands support in maintaining rich biodiversity as it provides a comprehensive list related to ecosystem services like water storage, water purification, flood management or mitigation, erosion control, aquifer recharge etc to humankind. Wetlands are also productive biological resources to habitats for birds and other species and it represents enormous economic, cultural and recreational value around the world. In this sense, the loss of wetlands is a major issue for policymakers because it brings various biological threats related to human safety and water security.

Moreover, if the Ramsar Convention is studied, it protects the ecological status quo in the form of specific sites. According to Article 3 of the Convention, it aims not only to prevent the loss of wetlands but also to promote its use wisely towards the conservation of wetlands. It is also worth considering that this convention does not impose any specific restrictions on the ill-effects of climate change nor

¹⁶ Ali Mehdi, "Climate Change and Biodiversity: India's Perspective and Legal Framework" 52 *JILI* 351 (1998)

does it compel the member states to adopt any safeguards to negligible these climate hazards. Undoubtedly, this convention has proved to be effective in adapting to those protected systems of biodiversity which are badly affected by the climate crisis.

Therefore, a proof of the seriousness of this environmental protection initiative is that a separate working group has been set up in the Ramsar conference, which is the effort of its Scientific and Technical Review Panel on Climate Change. The importance of this convention is also gauged from its Articles 1¹⁷ and 2, which give an important ground to the Parties through their definitions of “wetlands” and “dangerous” limits, respectively (Ramsar Convention Secretariat, 2006). In addition to all this, the Intergovernmental Panel on Climate Change (IPCC), Third Assessment Report (TAR) has also given its view that some wetlands are considered natural systems that are particularly sensitive to climate change due to their limited adaptive capacity, so it is extremely important to protect them.

- ***The UNESCO Convention, 1972 - Convention Concerning the Protection of the World Cultural and Natural Heritage:*** This Convention was organized at Paris in 1972 which focused on the two separate objectives like the preservation of cultural sites and the conservation of natural sites. The aim of the convention was to promote cooperation among countries to protect heritage all over the world which is a universal value as it plays an exceptional role in nature conservation keeping in mind for current and future generations. A

¹⁷ According to Article 1 of the Ramsar Convention, *wetlands are both coastal lands, with many marine living organisms, depending on them for their reproduction and nutrition, and inland areas with connection to ground and other freshwater systems.*

single document of this convention asserts an interactional relationship between nature and human beings.

According to Article 2 of this Convention Natural heritage refers to outstanding physical, biological, and geological formations, habitats of threatened species of animals and plants and areas with scientific, conservation, conservation, or aesthetic value.¹⁸

- ***Washington Convention on International Trade in Endangered Species of Wild Flora and Fauna, 1973 (CITES)***: The CITES was signed in Washington which has 183 parties. India is also a party to this agreement which ratified it on 20th July 1976. It covers 5,800 species of animals and 30,000 species of plants within its legal purview. Since its inception, this convention has always aimed for the protection of endangered species of wild animals and plants.

There are three categories given for the endangered species in this convention. According to the CITES, the first category explains species threatened with extinction, the second category is about species likely to be extinct if protection measures are not taken and the last category explains about the species that are subject to national legislation for the purpose of restricting exploitation.

This convention empowered through a regulatory framework to all signatory countries in reducing biological threats and maintaining the survival of extinct species. It also imposes trade prohibitions (international trade of wildlife), regulations and sanctions on those who

¹⁸ Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972, Art. 2

over exploits the endangered species or biological resources. This convention plays a critical role globally because it not only protects the most threatened species in ecological order but also provides detailed guidelines in identifying all those dangerous interference with the climate change system¹⁹.

- ***Bonn Convention on Conservation of Migratory Species of Wild Animals, 1979:*** Bonn Convention on Conservation of Migratory Species of Wild Animals, 1979 is an important international treaty under the supervision of the United Nations Environment Programme which asserts the conservation of migratory species of wild animals (terrestrial, marine and avian). It is also known as the Bonn Convention or CMS which came into force on 1st November 1983. This convention is recognized as an important part for international environment conventions and protocols which aims to protect the migratory species of wild animals and their habitats.

There are two types of Memorandums of Understandings (MoUs) within the CMS such as legally binding agreements and non-legally binding which are framed on the basis of conservation needs. The Bonn Convention addresses two appendices such as “Endangered Species” those with a high risk of extinction in the wild in near future and those migratory species that need conservation through international agreements. In this sense, the CMS tries to include all those migratory species which cyclically and predictably traverse

¹⁹ Supra note 1

through the national boundaries²⁰.

- **Convention on Biodiversity, 1992:** The CBD explains about the rights and responsibilities of States at the national level related to the biological resources. If seen, these international obligations related to environmental policies are subject to the principle of common but differentiated responsibility. For instance, Article 3 of this Convention mainly deals with the principles that give states sovereign rights in matters relating to their environmental policies. To ensure that activities within the states do not cause any harm to the environment of other states or areas beyond the limits of the jurisdiction or control of other states or national jurisdictions. Under Article 7 states have been asked to identify the categories of processes and activities that affect the conservation or sustainable use of biological diversity. Whereas, Article 8 of this empowers the Contracting Parties to take national action to prevent the destruction of species, habitats and ecosystems²¹.

In addition, this convention also led to the development of other international protocols which are the Nagoya Protocol²² and the Cartagena Protocol²³. An interesting fact is that Indian Biological

²⁰ Supra note 16

²¹ Convention on Biological Diversity, 1992, Arts.7, 8

²² The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) is a supplementary agreement to the UN Convention on Biological Diversity (CBD). This protocol is a legal framework for the implementation of one of the objectives of the Convention on Biological Diversity, which is the fair & equitable sharing of benefits arising out of the utilization of genetic resources.

²³ The Cartagena Protocol on Biosafety to the Convention on Biological Diversity is an international agreement on biosafety as a supplement to the Convention on Biological Diversity (CBD) effective since 2003. The Biosafety Protocol seeks to protect biological

Diversity Act 2002 inspired by this convention only shows India's commitment towards it.

WAY FORWARD

Undoubtedly, environmental governance and sustainable use of all the natural or biological resources is nowadays a prevalent discussion in terms of survival of the present and future generations. In this regard, it is the need of this hour that policymakers should pay more attention to incorporating the various initiatives at all levels of governance for both developed and developing countries to maintain biodiversity.²⁴



diversity from the potential risks posed by genetically modified organisms resulting from modern biotechnology.

²⁴ K. V. Raju, A. Ravindra, *et.al.*, *Urban Environmental Governance in India-Browsing Bengaluru* (Springer Nature, Switzerland, 2018).