

Env Legislation in India II

28.2.2020

Few central problems around env. environmental law.

- one of them: Centre vs State ~~~~~> India is Federalised so there is (decentralised) power sharing (distributed across various levels).

Taking this back to the Environmental Question

Why? ^{kinda on aside} → due to diversity, any attempt at centralised power (even with representation) will not work
→ so, relative power given to local (state) control

- the Supreme Court has been praised / criticised for its Judicial Activism, w.r.t this issue

Judicial activism ↔ Judicial overreach

Katju: Judicial overreach is not acceptable

- no experience
- no resources
- point raised: Who judges the judges' decisions?
- can review
- cannot specify implementation on its own.
- Concept of Judicial Restraint.

▷ - State List "Holding Together Model"
- Central List
- Concurrent List

▷ Model of Federalism still has a very strong Centre
- for economic decisions
- for military decisions
- economic redistribution to deal with unequal regional development

▷ Eg: A Central legislation dealing with land will not be implemented as - is by the State - level as land is a State problem. States re-implement it with tweaks.

- Stakeholders

- multiple stakeholders exist ⇒ there is conflict.

eg: Water Pollution Act

- 5 years to pass (details in states)
- Federal model based opposition
- Solution: - Central Board
- State Board

eg 2: Air Pollution Act

- 8 years
- "Pollution is a good thing"
 - indicator of development
 - a certain amount (of pollution) should be allowed for development

WILDLIFE PROTECTION ACT (1972)

- A lot of the same problems with Centre-State, and very prominent actually

— Federal Issues

— Stakeholders

- Local Communities vs Wildlife Conservation
- Industrial Forestry vs " "
- Contractors Logging vs " "
- Dams vs " "
- Scientific study of wildlife vs " "

• Bureaucratic problems:

- how to measure
- how to collect fines
- cannot cover small plants.
 - Sponge iron industry
 - partially polluting.

LOTS OF LOBBYING / COUNTER-"

FOREST CONSERVATION ACT (1980)

((slides have details))

- 1927
• original one: - sees tribals without land as trespassers
- was a problem

- Eminent Domain → also started in 1927

- State can take away Private Property with some consent without consent.
- based on "the state works for the greater good"

Phases

(Indira Era)

- 1947 - 1970: • unbridled commercial exploitation for development
- 1970 - 1986: • Conservation, Almost the other End.
 - Top-heavy model. Gov doing all, forest dwellers etc not.
- 1986 →: • Slow break down of Eminent Domain
 - "Forests are a local resource"
 - Mandatory involvement of locals.

proper breakdown of ED: • '96, PESA

— designed as Adivasi Protection
(effective as forestry protection)

See details in
slides

- Forest Rights Act (FRA)
 - first official recognition of adivasis as OG dwellers
 - Right to land occupation
 - " " grazing
 - " " ownership + access to produce
 - responsible for protection
- Issues
- Who Forest Dwellers
(see comparisons to NRG)
Again, slides.

3.3.2020

((Skipping FRA as done for assignment))

Init Q: why are there no green parties in India?

→ DG: "Sierra Club" Constituency is v. small.

Looking at European Green Parties

- Logos all indicate focus on Solar Energy (over nuclear)
- all across Europe

Why do they exist: tracing history.

• Famous: German Greens.

• First, 1972: "Values Party"

Why didn't it work? → need to look at political systems → It didn't get representation due to FPP system

s: (why not in India)

A: Much harder decision making, where people must decide along party lines and a 50-45% majority network.

• India is FPP Parliamentary

• Proportional Representation

• 1979, first rep in national parliament, SWZ

• 1982, 2 Belgian parties " "

Why do we not have them in India?

META → when looking at issues, consider how these problems will be represented as electoral problems

Chipko

- appeared as outside commercial interests vs local
- followed by many others
- over time became movements for political autonomy
 - the Jharkhand Mukti Morcha (JMM)

↓
initial movements

- > "maaro daroga ..."
- > "jaisa jaisa ..."

} not very "environmental" evident
• highlighting resource alienation from adivasis to non adivasis.

Point: Env protests appear in the electoral arena only when they are transformed into movements for political autonomy.

↓
hypothesis.

to test, looking at Forest Acts in detail.

- 1980s: movements against monocultures.
 - > "pluck and plant" movements
 - > "teak vs sal": teak (usable by non locals), sal: (locals beneficial to them)
 - > participants: people from diverse livelihoods that depended in some way on non-mono culture forests.

consider the
> tender leaf: about livelihood of large section of people in a state.

ASIDE

narratives that work: not "environment" based but "industry, and anti-peasant" based.
issue with many env. issues: top-down

now, DAMS

- Guha. "Mulshi Satyagraha"
 - ↓
 - "first documented instance of a protest against dams in South Asia"
 - Tata setting up hydroelectric plant in India

- Looking at points both for and against:

| Against | For |
|---|--|
| <ul style="list-style-type: none"> • no consent • suspicion against gov. and latas • did not want to leave the land - "good (productive) land", traditional places | <ul style="list-style-type: none"> • 1.5L HP generated. • saving costs, money. • Mill industry benefit, transport costs. Highlighted • 300,000 labourers get work, and enabling dev. of housing schemes in "clearer air, healthier circumstances" |

Game:

- Similarities b/w "Mudali case / Narmada Bachao"

- industry vs agriculture
- city vs village.

"politics of pitting"

pitting 2 marginalised groups and their interests against one another
 workers in Bombay vs farmers in Pune

- Other Uses of Water

- small vs large fishermen

• Look At: Ganga Muktis Andolan

why? Consider how this will play out in the elections

- talking about social (gender) tensions.

- environmental issue is now a social issue

- Mines

- same debates, again

• NIMBY protests

- tourist lobby joined the "Save Muessoone" (bauxite mines)

Q: what are the dynamics involved?
 why banned here, not elsewhere?

• Projecting an 'Environmental' Issue

- National Interests affect other cases

eg: • Coal is a national asset.

- Consider Essar and Priya Pillai (proxy, greenpeace)

Gov argument:

- "working against national interests"

- "greenpeace is conspiring to stop development"

→ when taking flight to London

→ Was deplaned by Gov of India

→ (she wants case)

tells us about political restrictions on env. movements in India

- Forms of political Action by Environmentalists? same as rest + restoration.

Ram Guha, Madhav Gadgil

claim "3 strands of environmentalists"

all 3 strands participate
in most movements

Consider the problems they will face
in electoral stage.

• "Ecological Marxists"

(sides)

- class as the contradiction
- "unrelenting hostility" to tradition

• "Crusading Gandhians"

((sides))

- some romanticisation of ancient/adivasi.
- building on "Agrarian Utopia"

• "Appropriate Technologists"

((sides))

- need to develop technologies to
suit the country

Maps showing correlation of

- movements
- mineral / forest density
- poor areas
- naxal movements.

"Rich lands, poor people" → the resource curse.

Q: So. Why will an env. party struggle in India?

A: Obvious. Crusading Gandhians alienate many, esp. youth and rising classes

App. Tech weakness of demands

Ecological Marxists

Closest has been JMM

What they
did

- about adivasi way of life.
- ...
- participation in decision making
- Jobs for locals

Combination of 3 bases.