

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 " "

