

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?
→ 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
(create comparisons to NRG)
Again, slides.