

# ENVIRONMENTAL GOVERNANCE IN INDIA: A CRITICAL ANALYTICAL

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**Abstract:** Global profile of environmental issues has risen significantly during the past few decades. The incidents of Bhopal Gas Tragedy (1984) and the Exxon Valdez Oil Spill (1989) have drawn much attention around the world long back. Today, population growth followed by intensifying tendency of urbanisation has brought about new challenges. In India, at this moment in time, development is having an increasing impact on the environment. For India, challenges of arresting the pace of degradation of environment are redoubtable due to the imperatives of maintaining, inter alia, high economic growth. The problem of environmental sabotage in an increasingly small world concerns all countries. Realising that planetary environment is indivisible, Environmental Governance has assumed significance. In this backdrop, the present study made an attempt to explore the origin of modern Environmental Governance in India and also highlighting the gradual evolution thereof. The study is conducted mainly based on existing secondary sources of data. The study, in brief, finds that Environmental Governance is a wide and rapidly evolving dynamic area. However, the 1972 UN Conference on the Human Environment marked a watershed in the evolution of humanity's relationship with the earth and global concern about the environment. The conference's motto of "One Planet" became iconic for the modern environmental movement. In India, although the Constitution and country's structure of polity provide possibility for a multi-tiered Environmental Governance system, yet this possibility has not been sufficiently explored. In India, indeed, Environmental Governance had emerged in the seventies and has assumed public appeal in the subsequent years.

**Index Terms - Environment, Environmental Sabotage and Environmental Governance.**

## I. INTRODUCTION

Global profile of environmental issues has risen considerably during past few decades. The incidents of Bhopal Gas Leak (1984) and the Exxon Valdez Oil Spill (1989) have strained the world community long back. Today, unprecedented urbanisation and rapid industrialisation have altogether brought about new challenges. NASA JPL researchers very recently in January this year discovered a huge hole of 1000 feet deep in the West Antarctica Glacier. As estimated by the NASA JPL researchers approximately 14 billion tons of ice has turned to liquid under the Glacier over the last three years. This signifies how fast the earth's surface temperature is rising.

Pollution has become one of the greatest threats to the environment. As environment cannot be divided between territories, pollution thereof caused by a State would affect routinely the environment of entire planet. The problem of environmental pollution concerns all countries. Realising that planetary environment is indivisible; Environmental Governance has assumed public appeal in recent years. States that are considered as trustees of environment for future generations are increasingly adopting the path of sustainable development and introducing laws and regulations to protect the environment.

India, for the most part, lies within Indomalaya ecozone, is one of the richest countries in the world in terms of bio-diversity. It hosts 4 bio-diversity hotspots: the Himalayas, the Western Ghats, the Indo-Burma region and the Sundaland (includes Nicobar Group of Islands) out of 35 bio-diversity hotspots in the world [1]. Moreover, India is one of the 17 mega-biodiverse countries in the world. With only 2.4 percent of the earth's land area, it accounts for 7-8 percent of the world's recorded species. It is home to 96000 species of animals, 47000 species of plants and nearly half the world's aquatic plants [2]. This natural variation in life is also reflected in the demography of the land, although the causes behind bio-diversity and demographic-diversity are different. India's management of its natural resources is crucial in protecting the global bio-diversity [3].

However, the human population of the land has depended on bio-diversity in many ways for a long time and most significantly the excessive human population in our country led to a survival pressure on the bio-diversity. Moreover, industrial boom that hit India a few decades ago, created problems due to frightening management of industrial wastes and chemicals. Wetlands and lakes are being hit hard. India's coastlines have also come under attack from this environmental sabotage. Hundreds of miles of coral and other sea life are slowly being destroyed due to offshore drilling. A significant share of India's gross agricultural production is lost every year due to soil degradation, poor land management and counterproductive irrigation. Tourist centres suffer due to badly managed development and excessive tourism.

In India, however, at this moment in time, development is having an increasing impact on the environment. For India, challenges of arresting the pace of degradation of environment are redoubtable due to the imperatives of maintaining high economic growth, increasing trend of urbanisation, population growth, industrialisation, unmet basic needs, life style changes and biotic pressures. While these challenges are formidable, there are also positive factors such as our strong base in science and technology, our institutional infrastructure that can drive the new paradigms and a holistic approach demanded by the Environmental Governance today. The environmental issues are increasing on the agenda of government, corporations, non-governmental agencies and citizens. In this backdrop, the present study seeks to explore the true origin of Environmental Governance in India and gradual evolution thereof.

## II. OBJECTIVES OF THE STUDY

Hence, the present study is undertaken with the following aims and objectives.

- To explore the genesis of modern Environmental Governance in India.
- To analyse gradual evolution thereof.

## III. RESEARCH QUESTIONS

The present study looks at modern environmental governance and Indian experience. The key research questions include: What actually the concept of environmental governance may mean? When and how the journey of modern environmental diplomacy began? What was the event that laid foundation for modern environmental governance at International level? When the concept of environmental governance did *factually* emerge in India? How has the concept evolved over time?

## IV. RESEARCH METHODOLOGY

The methodology adopted for the purpose of this study is a *doctrinal method*. However, the present work is an analytical construct. Data for the present study have been collected from diversified sources which include existing *secondary* sources such as, research papers, reports and publications of relevant national and international organisations and other published web based resources.

Data collected from various sources have been summarised before processing. However, the study, *inter alia*, was conducted based on the review of data so collected. The present study, indeed, provides answers to the research questions so framed.

## V. ENVIRONMENTAL GOVERNANCE: A CONCEPTUAL OUTLINE

The expression “Environmental Governance”, in ordinary parlance, refers to the processes of decision-making involved in the management and control of the environment and natural resources. Environmental Governance is the means by which society determines and acts on goals and priorities related to the management of environment and natural resources.

Environmental Governance is a concept that advocates sustainability as supreme consideration for managing all human activities - political, social and economic. It views environment and natural resources as the global public goods, belonging to the category of goods that are not diminished when shared, *e.g.*, everyone benefits from a breathable atmosphere, stable climate and stable biodiversity.

International Union for Conservation of Nature defines “Environmental Governance” as:

*“The multi-level interactions (i.e., local, national, international/global) among, but not limited to, three main actors, i.e., State, market, and civil society, which interact with one another, whether in formal and informal ways; in formulating and implementing policies in response to environment-related demands and inputs from the society; bound by the rules, procedures, processes, and widely accepted behavior; possessing characteristics of the ‘good governance’; for the purpose of attaining environmentally-sustainable development”*[4].

Thus, Environmental Governance is a broad, dynamic as well as a complex concept that seeks to improve the state of the environment while supporting sustainable development. It covers a wide range of stakeholder and informal arrangements, such as voluntary codes of conduct for private businesses and partnerships between governments and major groups and stakeholders, including non-governmental organizations (NGOs).

Further, United Nations Environment Programme defines “Environmental Governance”, as follows:

*“Environmental Governance comprises the rules, practices, policies and institutions that shape how humans interact with the environment”*[5].

Good Environmental Governance takes into account the role of all actors that impact the environment. It is through good Environmental Governance that sustainable development can be achieved in a fair and effective manner. Good governance includes [6]:

### **Participation**

Good governance needs to be participatory. Participation can happen directly or through legitimate intermediate institutions or representatives.

### **Rule of Law**

Good governance requires fair legal frameworks that are enforced impartially.

### **Transparency**

Transparency means that decision-making processes as well as enforcement of decisions follow rules and regulations. Information thereon needs to be freely available.

### **Responsiveness**

Good governance requires that the institutions and processes try to respond to all stakeholders within a reasonable time frame.

### **Consensus Oriented**

Good governance requires that different interests within the society be taken into account and that decisions follow the objective of reaching a broad consensus on what is in the best interest of the whole community.

**Equity and Inclusiveness**

Good governance does not only serve the interests of mainstream of society, but includes also its most vulnerable and minority groups.

**Effectiveness and efficiency**

Good governance means that processes and institutions produce results that meet the needs of society while making the best use of resources at their disposal. The concept of efficiency in the context of good governance also covers the sustainable use of natural resources and the protection of the environment.

**Accountability**

Accountability is a key requirement of good governance.

Moreover, environmental issues may be regulated by the regional or global agreements. Some issues such as, air and watercourse pollution or protection of migratory species, may affect several States, and would require regional actions. Other issues may concern all States, such as climate change or the depletion of the ozone layer, raising the need for global cooperation. Even issues that may be perceived as domestic concern might be regulated by an international agreement because of their qualification as a common concern of the humankind. Thus, appropriate legal frameworks on the global, regional, national and local level as well, are a prerequisite for good Environmental Governance [7].

**VI. THE BEGINNING OF MODERN ENVIRONMENTAL DIPLOMACY AND INDIA**

The United Nations (UN) is the most important institution for global cooperation and as such, it has played a major role in the development of international environmental law and policy. The UN provides the principal universal forum for international cooperation in all kinds of thematic fields, including environmental issues, through its organs and specialised agencies.

As the principal policy-making organ of the UN, General Assembly has played a major part in the development of International Environmental Governance. The UN General Assembly has identified environmental concerns as issues of peace and security, therefore, allowing them to fall within the UN mandate. The major UN environmental conferences convened to date include [8]: 1972 UN Conference on the Human Environment (UNCHE, Stockholm) • 1992 UN Conference on Environment and Development (UNCED, Rio-de-Janeiro) • 2002 World Summit on Sustainable Development (WSSD, Johannesburg) • 2012 UN Conference on Sustainable Development (“Rio+20”, Rio-de-Janeiro).

The 1972 UN Conference on the Human Environment (commonly, *Stockholm Conference*) was the first UN’s major conference on international environmental issues, and marked a turning point in the development of International Environmental Governance and eventually led the States to respond to emerging environmental challenges in a concerted manner. The conference, *inter alia*, evolved the principles and action plan for controlling and regulating environmental degradation.

In India, although the Constitution and the country’s structure of polity provide possibility for a multi-tiered Environmental Governance system, yet this possibility has not been sufficiently explored on account of decades of centralised governance of natural resources in the country, which in turn was largely prompted by the indifference of “development starved” provincial governments towards environmental concerns.

In India, indeed, Environmental Governance had emerged in the seventies and has assumed public appeal in the subsequent years. India being a participant and signatory to the Stockholm Conference has established authorities and employed a range of regulatory instruments for protection and improvement of environment and also for safeguarding forests and wildlife of the country.

**VII. GRADUAL EVOLUTION- A SNAPSHOT**

Firmly speaking, Environmental Governance in India, the institutional and regulatory framework, evolved and shaped largely by certain major events, a series of judicial pronouncements and by the necessity of fulfilling commitments to Multilateral Environmental Agreements.

The Stockholm Conference as noted above was a watershed event in the modern environmental movement worldwide. Immediately following the conclusion of conference proceedings and as part of commitments thereto, Government of India formed the 1972 National Committee on Environmental Planning and Co-ordination in the Department of Science and

Technology, as apex advisory body for all matters concerning environmental protection and improvement. Further, the Central Pollution Control Board was set up in 1974 followed by State Boards.

However, the National Committee on Environmental Planning and Co-ordination which was formed in 1972 as noted above was soon found inadequate and as a result, a High Powered Committee - “*Tiwari Committee*”- was set up to take a fresh look at the administrative and legislative aspects of environmental protection. On the recommendations of the Empowered Committee, a separate Department of Environment (DOE) under the Ministry of Science and Technology was established on November 01, 1980 followed by State Departments.

After a month of Bhopal Gas Leak disaster on December 03, 1984, DOE which was working under the Ministry of Science and Technology was expanded into a full-blown Ministry of Environment and Forest (currently, *Ministry of Environment, Forest and Climate Change*) for developing a more comprehensive and effective institutional framework to respond to the growing scale of environmental challenges.

The Ministry is the nodal agency in the administrative structure of the Central Government for the planning, promotion, co-ordination and also overseeing the implementation of India's environmental and forestry policies and programmes. The Ministry also serves as the nodal agency in the country for the United Nations Environment Programme (UNEP), South Asia Co-operative Environment Programme (SACEP) etc. The broad objectives of the Ministry include: conservation and survey of flora, fauna, forests and wildlife; prevention and control of pollution; afforestation and regeneration of degraded areas; protection of the environment; and ensuring the welfare of animals [9]. These objectives are supported by a range of legislative and regulatory measures.

Since 1972 an extensive network of environmental legislation has grown in India including 1976 landmark Constitutional (Forty-second Amendment) whereby "protection and improvement of environment and safeguarding of forests and wildlife" was included in the Directive Principles of State policy [10] and further to "protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures" was made a fundamental duty of every citizen of India [11]. Prior to 1972, various existing enactments such as the Indian Penal Code, Code of Criminal Procedure, Factories Act, Indian Forest Act etc., however, contained some provisions for regulation and legal action concerning environmental pollution. Nonetheless, these were scattered, inadequate and not effectively applicable for checking environmental sabotage.

Besides the legislative measures, 1992 National Conservation Strategy and Policy Statement on Environment and Development; 1988 National Forest Policy; 1992 Policy Statement on Abatement of Pollution; and 2006 National Environment Policy also guide the Ministry's work.

Further, certain principles of law concerning the protection and improvement of environment were also laid down by the judiciary as and when the cases relating thereto have brought before it. The judiciary stepped into the domain mainly through orders passed by the Hon'ble Supreme Court in Public Interest Litigations, barring some cases where *suo moto* notice was taken. The present study, therefore, identifies some of such instances as listed herein under.

In 1986, in the *Oleum Gas Leak* case [12], the Hon'ble Supreme Court laid down the principle of absolute liability for hazardous units.

In 1991, the Hon'ble Supreme Court in *Bhopal Gas Leak* case [13] expanded the scope for judicial action in environmental matters by interpreting the right to life under Article 21 to include healthy and pollution free environment as a fundamental right. In 1996, in the *Forest* case [14], the Hon'ble Supreme Court reinterpreted the Forest Conservation Act, 1980 to extend its application to forests as per dictionary meaning. Hon'ble Court in this case evolved the concept of continuing mandamus to pass a series of orders for forest conservation. Court also set up monitoring mechanisms such as Central Empowered Committee under its own supervision and created the Compensatory Afforestation Fund Management and Planning Authority with the mandate to decide the utilisation of funds for compensatory afforestation collected by the States over the years, which had been lying unutilised.

In 1996, in the *Indian Council for Enviro-legal Action vs. Union of India* [15] case, the Hon'ble Supreme Court upheld the "polluter pays" principle and directed that the person carrying out a hazardous activity is liable to make good the loss caused by this activity irrespective of whether he had taken reasonable care. The Court made the polluting industry "absolutely liable for compensation".

In 1996, in the *Vellore Citizens Welfare Forum vs. Union of India* [16] case, the Hon'ble Supreme Court made the concept of sustainable development, including the principle of inter-generational equity as described in the Brundtland Report an integral part of the law of the land. It based its orders on the "precautionary principle" and the "polluter pays principle" of the Rio declaration of the UN Conference on Environment and Development, 1992.

In 1999, order of the Hon'ble Supreme Court in the *Motor Vehicle Pollution* case [17], prescribed stricter emission standards based on international norms (Euro-I and Euro-II) and led to the introduction of a number of measures such as catalytic convertors, CNG, and lead free and low sulphur diesel.

In 1999, Hon'ble Supreme Court pronounced in the *Andhra Pradesh Pollution Control Board vs. M.V. Nayudu* [18] case that there is a need for separate environment courts and asked the Law Commission to undertake a study on the issue.

In 2000, in the *Narmada Bachao Andolan vs. UOI* [19] case, the Hon'ble Supreme Court observed: "water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Article 21 of the Constitution of India ..."

Recently in *Felling of Trees in Aarey Colony* case, the Bombay High Court on a petition filed before it, had on October 4 refused to declare Aarey Colony as forest and declined to quash the Mumbai municipal corporation's decision to allow felling of over 2600 trees to set up a metro car shed in the zone for a metro project. The Supreme Court, however, has taken *suo moto* cognizance of the matter on a letter addressed to CJI and held an urgent hearing of the case. The Court on October 7 passed an order that no more trees be cut and *status quo* to be maintained until further order.

Moreover, Ministry is supported by a number of institutions with varying degrees of autonomy, which include [20]:

- Pollution Control Boards;
- Botanical Survey of India;
- Zoological Survey of India;
- Indira Gandhi National Forest Academy, Dehradun;
- Forest Survey of India;

- Indian Council for Forestry Research and Education;
- Indian Institute of Forest Management;
- Wildlife Institute of India;
- National Biodiversity Authority;
- National Tiger Conservation Authority;
- National Ganga River Basin Authority, etc.

Six regional offices of the Ministry are entrusted with the responsibility of monitoring and evaluation of the on-going forestry development projects and follow up of implementation of the conditions and safeguards laid down while granting environmental clearance of projects [3]. For the attainment of its objectives, the Ministry also provides aid to various autonomous institutions, statutory bodies, centres of excellence, registered societies etc.

Yet, it is to be noted that Ministry along with the Central and State Pollution Control Boards as well, form the regulatory and administrative core. Boards are main instruments for setting of standards, research and development, compliances and enforcements.

At last, National Green Tribunal (*Green Court*) constituted under 2010 National Green Tribunal Act is a specialised body equipped with the necessary expertise to handle environmental disputes involving multi-disciplinary issues. Tribunal provides for expeditious disposal of cases brought before it relating to environmental protection and conservation of forests and other natural resources, including enforcement of any legal right concerning environment, and giving relief and compensation for injury to persons and property, and for matters connected therewith or incidental thereto [21].

### VIII. CONCLUDING REMARKS

Thus, the UN Conference on the Human Environment marked a watershed in the evolution of humanity's relationship with the earth and global concern about the environment. While most of the conference's accomplishments were mainly metaphoric, its ultimate success was that environmental policy became a universal concern within international diplomacy, and the conference's motto of "*One Planet*" became iconic for the modern environmental movement.

Environmental Governance is a wide, expanding and rapidly evolving dynamic area. In India, at present, development is having an increasing impact on the environment. However, the environmental issues are increasing on the agenda of the government, corporations, non-governmental agencies and citizens as well. Since the beginning of the journey in India, in 1970's, the scope of Environmental Governance has been expanding gradually.

There has been a frontward looking action in areas such as, climate change and bio-diversity. While engaging constructively with international community on the issue, India has pursued a strong domestic agenda for addressing climate change issues. A comprehensive National Action Plan on Climate Change (NAPCC) has been initiated as part of the New Initiatives. The said action plan encompasses a range of measures. Eight National Missions in the areas of Solar Energy, Enhanced Energy Efficiency, Sustainable Agriculture, Sustainable Habitat, Water, Himalayan Eco-System, Increasing the Forest Cover and Strategic Knowledge for Climate Change form the core of NAPCC. On the other, under 2002 National Biodiversity Act, a three-tier structure has been established namely, National Bio-diversity Authority, State Bio-diversity Boards and Bio-diversity Management Committees to conserve the bio-diversity and promote its sustainable use.

The scope of Environmental Impact Assessment which once started with impact assessment of river valley projects in the year 1978-79, has now been enhanced to cover other designated projects or activities. PARIVESH is a web based, role based workflow application which has been developed for online submission and monitoring of the proposals submitted by the proponents for seeking Environment, Forest and Wildlife Clearances from Central, State and District level authorities. It provides a single window system for appraisal and granting of such clearances.

Ministry's broad vision with sustainable development among the core underlying theme is observed in policy documents brought out from time to time. These policy statements nothing but witness the conceptual and ideological underpinnings for the regulatory and institutional framework for protection and improvement of natural environment.

Hence, the major and foremost actors which have significantly contributed in shaping the Environmental Governance framework in India include the Central Government, the Supreme Court and the Civil Society. However, State Governments and Local bodies such as, Municipal Corporations, Nagar Panchayats etc., have general responsibilities to ensure compliances and enforcements of national laws and policies. Responsibility is, thus, shared between the centre and the states.

### REFERENCES

- [1] Global Biodiversity Hotspots with Special Emphasis on Indian Hotspots, Envis Centre on Floral Diversity, [http://bsienvi.nic.in/Database/Biodiversity-Hotspots-in-India\\_20500.aspx](http://bsienvi.nic.in/Database/Biodiversity-Hotspots-in-India_20500.aspx).
- [2] India Biodiversity Awards 2018, United Nations Development Programme India (Mar. 9, 2019, 11:00 PM), <http://www.in.undp.org/content/india/en/home/climate-and-disaster-resilience/successstories/IBA2018/>.
- [3] Ibid.
- [4] Legal Frameworks for Ecosystem-Based Governance, International Union for Conservation Of Nature (Mar. 8, 2019, 10:00 AM), [https://www.iucn.org/sites/dev/files/content/documents/juan\\_carlos\\_sanchez-iucn.pdf](https://www.iucn.org/sites/dev/files/content/documents/juan_carlos_sanchez-iucn.pdf).

- [5] Environmental Governance, United Nations Environment Programme <https://wedocs.unep.org/bitstream/handle/20.500.11822/9972/EnvironmentalGovernance.pdf?sequence=1&isAllowed=y>.
- [6] Introduction to Environmental Governance, United Nations Environment Programme <https://globalpact.informea.org/sites/default/files/documents/International%20Environmental%20Governance.pdf>.
- [7] Governance and MEAs, International Union For Conservation of Nature (Mar. 13, 2019, 9:00 PM), [www.iucn.org/theme/environmental-law/our-work/governance-and-meas](http://www.iucn.org/theme/environmental-law/our-work/governance-and-meas).
- [8] Introduction to Environmental Governance, supra note 6.
- [9] About the Ministry, Ministry Of Environment, Forest And Climate Change (Mar. 10, 2019, 9:00 PM), [www.moef.nic.in/about-ministry/about-ministry](http://www.moef.nic.in/about-ministry/about-ministry).
- [10] India Const. art. 48A .
- [11] India Const. art. 51A , cl. g.
- [12] M.C. Mehta vs. UOI, (1987) 1 SCR 819.
- [13] Charan Lal Sahu vs. UOI, AIR 1990 SC 1480.
- [14] T.N. Godavarman Thirumulpad vs. UOI, (1997) 2 SCC 267.
- [15] AIR 1996 SC 1446.
- [16] AIR 1996 SC 2715.
- [17] M. C. Mehta vs. Union of India, (1999) 6 SCC 12.
- [18] (1999) 2 SCC 718.
- [19] (2000)10 SCC 664.
- [20] Strategic Plan, Ministry of Environment, Forest and Climate Change, [http://www.moef.nic.in/downloads/public-information/Strategic\\_Plan\\_MoEF.pdf](http://www.moef.nic.in/downloads/public-information/Strategic_Plan_MoEF.pdf).
- [21] National Green Tribunal, Ministry of Environment, Forest and Climate Change, <http://envfor.nic.in/rules-regulations/national-green-tribunal-ngt>.

