



Evolution of Environment in Governance in India- Lessons for others

Sanjay Upadhyay
Advocate, Supreme Court and Managing Partner,
Enviro Legal Defence Firm
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Evolution of Environment in Governance

- 3rd Century BC- Ashokan edicts talked about which species of birds to be protected
- Elephant Killing in the 1870s could result in death penalty!
- Concept of “aranya” or “abhyaranya” is old
- Deo bani, kankar bani (Rajasthan) , sacred groves (south India) , lyndoh forests (meghalaya), sarna (Jharkhand)enough examples of traditional environmental governance
- Mythology and environmental governance is another common factor in south asia
 - Kurma awatar; relationship of knowledge and tree....

Evolution of Environment in Governance

- Indian Forest Act 1865, 1878, 1927- Use
- Elephant Preservation Act, 1878- Preservation
- Wild Birds and Animals Act, 1912- protection
- Government of India Act, 1935- conservation
- Wildlife Protection Act, 1972- protection
- Water Act, 1974- regulating pollution
- Water Cess Act, 1977- fiscal measures
- Forest Conservation Act, 1980- conservation
- Air Act, 1981- prevention of pollution
- Environment Protection Act, 1986- protection
 - CRZ, 1991, EIA, 1994; (regulations and restrictions)
- Public Liability Insurance Act, 1991 (liability)
- Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 (decentralised governance)
- Biodiversity Act, 2002 (conservation and sustainable use and benefit sharing)
- Forest Rights Act, 2006- securing rights, undoing historical injustice

Evolution of Environment in Governance- Judicial intervention

- Environment as a subject- 1984- MC mehta cases
- Bhopal- EPA
- Public Liability
- Polluters Pay Principle
- Godavarman
- Concept of Net Present Value
- CAMPA
- CEL-WWF India
- NGT Fines



- **“Evolution of Environment in Governance to Environmental Governance”**

What is Environmental Governance in today's context?

- ▶ Is it conservation only?
- ▶ Is it about rights?
- ▶ Is it about Protection?
- ▶ Is it about regulation?
- ▶ Is it a specialised branch of law?
- ▶ Is it a NGO type of work?
- ▶ Is it just social do?
- ▶ Is it a profession against the corporate?
- ▶ Is it always against the Government?

Nature of Laws

- ▶ 55 % Laws in India relate to use of environment
- ▶ 33% Laws relate to acquisition of environmental resources
- ▶ 11% laws relate to conservation of resource
- ▶ 1% relate to regeneration/enhancement of resource
- ▶ Skewed balance of laws and therefore needs urgent correction



Administrative and Judicial Structure to protect environment

Types of Institutions Protecting Environment

- Statutory
 - Regulatory
 - Recommendatory
 - Advisory
- Court initiated
- Tribunal– NGT
- Participatory
- Customary
- International Institutions induced

Statutory Authorities; Boards, Committees

- ▶ CPCB- EPA- Regulatory
- ▶ SPCBs- Water Act- Regulatory
- ▶ PCCs- Regulatory
- ▶ Appellate Authority under Air Act
- ▶ Appellate Authority under Water Act
- ▶ Committee of Infrastructure-EIA Notification-EPA-
Decision making-Scientific Body
- ▶ SEIAA-EIA-EPA- Regulatory /Decision Making
- ▶ SEAC-EIA-EPA-Scientific Body- Assessing and
recommending Body



Statutory (Cont'd)

- NBWL–WLPA– Highest Decision making/
Recommending
 - STANDING COMMITTEE– Decision making–
regulatory/Recommending
- SBWL–WLPA– Recommending
- ADVISORY COMMITTEE–WLPA – Advisory
- NBA–BD Act– Regulatory/Decision Making
- SBB– BD Act– Regulatory
- Central Ground Water Authority– Act–
Regulatory

Statutory (Cont'd)

- NCZMA– Regulatory–EPA backed
- SCZMA– Regulatory–EPA backed
- WCCB– WLPA
- NTCA– WLPA
- CZA– WLPA
- EPA induced Authorities for ESA
 - Tamil Nadu
 - Dahanu
 - Bhure Lal



Environmental Arena covered

- Environment generally
- Air pollution
- Water pollution
- Wildlife, wildlife habitat; Wildlife crime
- Tiger and its habitat
- Ecologically sensitive areas
- Biodiversity
- Infrastructure development
- Coastal and part marine environment
- Groundwater

NGT

- Successor of NEAA/NET
- Original and Appellate Jurisdiction
 - Substantial question of environment
 - Appeals against orders under scheduled environmental statutes
- Regional Benches
- Combination of Judicial and Expert Members
- Issues ranging from clearances processes, dumping wastes, UK disaster, sand mining, river pollution, air pollution, public hearing....

Administrative

- ▶ WII
 - ▶ ICFRE
 - ▶ ZSI
 - ▶ BSI
 - ▶ IIFM
 - ▶ FRI
 - ▶ Elephant Task Force
 - ▶ Committee for Scheduling species
 - ▶ Regional Offices- FC and EC monitoring
 - ▶ Consultative Groups/Expert Groups/Expert Committees/Commission of Enquiries
- (Kolleru, WPA drafting, FRA drafting; Sikkim, Nagaland, Andamans, Tree Felling; HPFSR)

International Instruments induced

- CITES
 - Regional Authorities
 - Scientific Authorities
- ITTO focal point
- Climate Change Cells including National Council
- Focal Points for International Instruments such as CBD, UNFF, CMS...

Court Initiated

- ▶ CEC
- ▶ Inquisitional Committees/Fact Finding
- ▶ Advisory Committees
- ▶ Commissioners
- ▶ HPC
- ▶ SIT
- ▶ Monitoring
 - Dehradun Quarrying; Bhure Lal
- ▶ Several Court initiated Institutions that has now assumed statutory colour- Assam Forest Protection Force; Arunachal Forest Protection Authorities
- ▶ CAMPA

Participative (Statutory or otherwise)

- BMCs– u/BD Act
- JFMCs– Resolutions /Statutes
- EDCs– Administrative
- PRIs– Constitutional
- Con RMC under WLPA
- Com RMC under WLPA
- Committee under FRA
- Watershed Committees
- PIM
- WUAs

Environment Governance

Challenges- A reactive State

- India has been reactive state as far as environmental governance challenges are concerned.
 - Bhopal for Environment Protection Act and PLIA
 - Stockholm for WLPA; Water Act and Air Act
 - Rio for a BD Act
 - Social Movement for a FRA and PESA

So What are the other Challenges?

- Lack of knowledge of the plethora of institutions
- Institutions have become reactive
- Need for pro active institutions
- Statutorily Recognised versus Expert agencies (CFSL–WII in w crimes)
- Lack of quality human resource to manage the plethora of institutions
- Cheaper to evade than comply
- Innovations in the institutions themselves
 - The lack of organised abandonment clause!!
- The stereo type of lack of financial resources..
- The overlaps and controls
- The turf.....issues
- Stating the problem..where is the solution?



Two Framework for Env

Governance: Rural Urban Divide

- First, environmental governance framework very dependent and framed on the western model of conservation with the notion of wilderness, environment impact assessments; urban environment issues of pollution, ppp etc.
- Second, largely applicable for the rural India where communities are least aware of the Env Gov Framework that they are supposed to benefit from.

The Community Challenge

- The modern regulatory instruments such as EPA, Biodiversity, Wildlife Act, CRZ, EIA regulations are quite alien to the rural communities at the grass roots.
- On the other hand the right based governance framework which actually does make an attempt to include communities in decision making are largely not used because of the absence of the knowledge both on the substantive part as well as the procedural part. (PESA, FRA included)

Role of Judiciary: Is it helping overcome Environment Governance Challenges?

- ▶ Perhaps not!
- ▶ A super active judiciary while on one hand seems very welcome.
- ▶ However, it has its own flip sides in granting environmental rights because in that over enthusiasm of judicial activism what
 - we have eroded is the spaces within the executive framework,
 - spaces which could have been much cheaper,
 - more accessible,
 - simpler and which could have been created in a place which is more accessible has not found its place.
- ▶ Can the judiciary really monitor all its orders on environmental governance?



The modern Lessons on Env Gov Challenges

- What became clear by the early 1990s is that
 - the exclusionary model of conservation and the hands off approach is not working.
- Thus token community based models started trickling in early 90' s in the form of
 - participatory forest management or
 - public hearings in EIA, Public Consultation in PESA
 - PIM..etc..
- However, they are still not robust enough to actually be qualified to be effective participative governance in environment.
- Why?..Because of issues of legality–JFM
- Lack if clarity in process for Public Hearing
- What is Public Consultation?
- Participation in PIM only based on land holdings ..What about landless?

Frequent Changes without adequate public involvement-confusing signals

- ▶ Complicated procedures that we have adopted environment legislations
- ▶ The fickleness with which instruments are tweaked
 - Examples :The Environment Impact Assessment Notification has been amended atleast twenty times since 1994.
 - The Coastal Regulation Zone Notification issued in 1991 has been amended at least thirty three times.
 - It is obvious that any instrument which is liable to be changed so often so frequently without the adequate knowledge of an effort of providing extension services to knowledge dissemination.
 - We are bound the get a confused framework
 - Very few of us understand these rapid changes!!!! Lawyers judges included!!
 - It surely is affecting environmental governance and to say the least community rights.

Rush for placating Bilateral /Multilateral Donors- Ignoring past systems

- While looking social and environmental safeguards.....
- We have forgotten our own past systems, traditional management systems, traditional forms of recognition of socio economic rights and we have jumped to a new models.
- Thus, for example, our record of right system,
- the earlier Nistar Patrahs of Madhya Pradesh, Chhattisgarh, Central India, the Wazib ul arz, (Maharashtra)
- the Khatian part 2 in Jharkhand,
- the categorizations of the forests,
- the earlier jurisprudence of wildlife conservation,
- traditional knowledge.
- We had not paid adequate attention to those while literally reinventing the wheel in the modern environmental governance framework.

Some More Thoughts on Env and Governance

- Dealing with the arrogance of the field and the courts
- Converting languages from to another
- Bridging the gap between the field and the courts



Time to revisit our Env Law Framework

- It needs to be contextual,
- state specific,
- perhaps make it district and area specific because one size fits all framework has not worked, is not working and will never work.
- Respect for community rights,
- respect for community knowledge and the need for modern knowledge to be integrated with that is the way forward.
- We have been told about the middle path (the path of moderation) many many centuries ago.
- We have been told about sustainability many many centuries ago.
- We just have to dig a little into the past.
- Its time to revisit our modern instruments in light of those and believe you me, India would be the best example of good environmental governance for the world.
- **After all.... “Tradition is the past of the present for the future”**



THANK YOU SO MUCH FOR THE PATIENCE!

sanjay@eldfindia.com ; su@vsnl.com

+91-9810298530