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## ENVIRONMENTAL FEDERALISM IN INDIA: TENSIONS BETWEEN CENTRAL AND STATE AUTONOMY

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### ABSTRACT:

At the time of making of the Indian Constitution, one of the primary debates that came up before the Constituent Assembly was the distribution of powers between the centre and the states. While defining ‘federalism’ in context of India, one can easily ascertain that it has not been strictly adopted in our constitution. In fact, India follows ‘*quasi federalism*’ where there is division of powers but the centre has been given an upper hand in issues of national importance. This is the reason why the term ‘federal’ has not been explicitly mentioned anywhere in the Constitution and India has been referred to as a ‘Union of States’<sup>1</sup> As remarked by Dr. B.R. Ambedkar, Chairman of the Drafting Committee of the Constitution, “the political system adopted in the Constitution could be both unitary as well as federal according to the requirement of time and circumstances.”<sup>2</sup> Federalist approach embodies a decentralised structure. This can be found in the Seventh Schedule of the Constitution which provides subject wise division of powers between the Centre and the States<sup>3</sup>.

At the time of India’s independence and forming of the Constitution, environmental issues were nowhere into the picture hence no provisions related to environment could be found therein. It was during the 1970s after the United Nations Conference on Human Environment took place in Stockholm that the concern for environment increased globally all around the world. India was also a party to this convention and affected by its mandate. The following research paper seeks to analyse how environmental concerns are dealt in India ‘s federal structure of governance and the challenges posed by the same.

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<sup>1</sup> Article 1, Constitution of India

<sup>2</sup> Proceedings of Constituent Assembly of India

<sup>3</sup> The Seventh Schedule of the Constitution consists of three lists- the Union List, the State List and the Concurrent List.

## INTRODUCTION

A Federal State is a State which has a “division of powers between general and regional authorities, each of which in its own sphere is coordinated with the others and independent of them.”<sup>4</sup> The history of decentralisation in India can be traced back to the Gupta empire. In ancient times when the powers of the kings were unlimited, Gupta rulers came up with this unique policy where they entered into feudal relations with smaller kingdoms. This means that the rulers of small kingdoms were given powers to exercise autonomy in exchange for paying tribute to the empire. In many respects, the Gupta administration constitutes the watershed between India’s past and future traditions of polity and government.<sup>5</sup>

During the British colonial rule, India did not follow a true federal system and Government was unitary in nature, directly being governed by the British Crown. The passing of Government of India Act, 1935 constituted the first significant step towards federal development during British rule. After Independence, India officially became a federal polity addressing issues of any nature through established federal mechanisms prescribed by the Constitution of India.<sup>6</sup>

Such mechanisms have so far proved beneficial for smooth functioning of a nation like India, given its geographical diversity that requires tailored governance structures to address the specific needs of each region. It becomes a preferred objective especially in the domain of environment issues. It makes environmental governance a shared responsibility between centre and state governments but at the same time, provides autonomy to state and local governments who are in a better position to address environmental regulations at ground level.

However, the success of decentralised governance depends more upon political dynamics and administrative competency of centre and state government bodies. The interaction between central oversight and local autonomy poses a significant problem especially in achieving equitable and sustainable management of natural resources.<sup>7</sup> There are chances of jurisdictional overlap and lack of coordination. Difference in laws and regional disparities among states and

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<sup>4</sup> K.C. Wheare, ‘Federal government’ (1971), *Oxford University Press*,

<sup>5</sup> K Chakrabarti, ‘The Gupta Kingdom’ in *History of Civilizations of Central Asia, Volume II: The Development of Sedentary and Nomadic Civilizations: 700 B.C. to A.D. 250* (UNESCO Publishing, Paris 1994)8

<sup>6</sup> Nisikant Nayak, ‘Climate Change Policy, Federalism and Developmental Process in India’ (2017) 3(2) *International Journal of Advance Research and Innovative Ideas in Education (IJARIIE)* 2395-4396

<sup>7</sup> George Joseph, ‘Environmental Federalism in India: Exploring the Impact of Decentralised Governance and its Challenges’ (2021) 4(1) *Journal for ReAttach Theory and Developmental Diversities* 2589-7799

at national levels may cause friction. This two-tier approach thus also carries the potential to affect the efficiency environmental governance in India.

The present research paper seeks to examine whether the present environmental framework in India undermines the principle of 'cooperative federalism' by concentrating most powers at the Union level. The scope of this study is confined to Indian federal structure and environmental governance. It adopts a doctrinal and qualitative approach relying solely on analysis of constitutional provisions, environmental statutes and landmark judicial decisions.

### **Concept of Environmental Federalism**

In broad terms, environmental federalism refers to "the study of the normative and positive consequences of the shared role of national and sub-national units of government in controlling environmental problems."<sup>8</sup> It seeks review the pros and cons of decentralised decision making and offer solutions to tackle national and global concerns. It advocates for a system where various levels of government are under coordination and share responsibilities in protecting the environment. This method of environmental governance highlights how environmental challenges can be dealt through localised solutions.

The emphasis on allocation of responsibilities across different levels of government makes a strong case for environmental regulation on state and lower levels because of their greater proximity to local concerns resulting in increased efficiency. However, it has been established that several issues concerning the environment cannot remain local because environmental problems and the effects of environmental mismanagement cross state and national boundaries, most prominently in the case of impacts of climate change.<sup>9</sup> The concept of environmental federalism envisages examining of relevant jurisdiction for dealing with different kinds of environment issues. Both regional and national government therefore play important in this regard.

### **Emergence and need of environmental federalism in India**

The Constitution of India is the largest written constitution in the world which comprised of 22

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<sup>8</sup> Shobe W and Burtraw D. 'Rethinking Environmental Federalism in a Warming World'(2012) *Resources for Future*, Washington

<sup>9</sup> Nidhi Srivastava and Divya Datt, 'An Introduction to Environmental Federalism: Experiences and Issues in Select Countries' in Green Federalism: Experiences and Practices(2015), *The Energy and Resources Institute (TERI)*, TERI Press, New Delhi

parts, 395 Articles and 12 Schedules when originally adopted.<sup>10</sup> Yet this ‘Grund norm’ of the country had no mention of the term ‘environment’ anywhere in its original text. Accordingly, there were no provisions for dealing with environmental issues. The reasoning behind this can be based on the observation that initially, environmental protection was seen by many developing countries including India as a goal conflicting with developmental priorities. In 1950’s and 1960’s ‘development’ encompassed only economic aspects of growth.<sup>11</sup> This narrative underwent a major shift in the 1970s where the Constitution was not only amended to provide significant space to environment issues, measures were also taken for their implementation via enactment of various legislations.

The major driving forces behind these steps was the United Nations Conference on Human Environment held in Stockholm in 1972 where the world leaders were brought together for the first time to discuss global issues on environment. This was followed by reports of three independent global commissions- the Brandt Commission Report titled ‘Our Global Neighbourhood’ (1980), the Palme Commission Report titled ‘Common Security: Blue Print for Survival’ (1982) and finally the Brundtland Commission Report titled ‘Our Common Future’ (1987). These reports played a very important role in shaping global policy and agenda for environment protection. The Rio Earth Summit held in 1992 gave more concrete shape to this agenda.

These factors gave rise to enlarged concepts of development in which environmental aspects were seen not as a separate sector but as an inherent aspect of development. The developing countries no longer pose the problem of “environment vs development.” Now environmental integrity is seen as a precondition to development.<sup>12</sup> As a result the governments now aim to accommodate both environmental protection and economic development in its policies. This dual approach needs contribution of both, the government at national level as well as the local level. Currently, environmental pollution is seen as a major concern in India affecting the quality of life of people. This is owed to a century of industrialization and a phenomenal population growth which have overburdened authorities and control measures thus causing harm the country’s natural environment. Therefore, concepts like ‘environmental federalism’ are deemed necessary to increase the efficiency at various levels in the federal framework of

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<sup>10</sup> Presently the Constitution has 25 parts, 448 articles and 12 Schedules

<sup>11</sup> Kilaparti Ramakrishna, ‘The Emergence of Environment Law in the Developing Countries: A Case Study of India’ (1985) 12(4) *Ecology Law Quarterly*

<sup>12</sup> Ibid

the country and thereby improve overall environmental governance.

### **Constitutional Framework:**

The Constitution of India provides for a comprehensive framework for environment regulation under Schedule VII by division powers among the Union, State, and Concurrent Lists. This allocation exemplifies the notion of cooperative federalism, in which many levels of the government work together to attain shared objectives.<sup>13</sup> The Union List (List I) bestows upon the Parliament, exclusive jurisdiction to make laws on 97 topics including defence, foreign affairs, the regulation and development of oilfields, atomic energy and mineral resources and interstate rivers. Entry 97 also gives the residuary powers to make laws on any subject which is not enumerated in state list and concurrent list. Under the State List (List II), the state governments have exclusive powers to make laws on areas such as land reform and improvement, fisheries, public health and sanitation, water supplies and irrigation, comprising of a total 66 subjects. The List III that is Concurrent List empowers both Centre and State Government with concurrent jurisdiction to make laws on around 47 subjects which includes forests, protection of wild animals and birds, population control. A union law on a concurrent subject prevails over a state law on the same subject thus ensuring administrative uniformity throughout the country.

Entry 17A and Entry 17B of the Concurrent List of Seventh Schedule of the Constitution, consisting of subjects 'Forests' and 'Protection of wild animals and birds' were originally part of the State List. The 42<sup>nd</sup> Amendment Act, 1976 shifted these entries from state list to concurrent list. It also inserted new entry 20A in the Concurrent List which state population control and family. The 42<sup>nd</sup> Amendment Act is very significant to the development of environmental law in India as for the first time environment protection was explicitly incorporated into the Indian Constitution. The insertion of Article 48A in Part IV of the Constitution<sup>14</sup> imposed a responsibility on the State to protect and improve the environment. Further Article 51A, a new part titled 'Fundamental duties' imposed a similar duty on citizens of India to "to protect and improve the natural environment including forests, lakes, rivers, and wild life, and to have compassion for all living creatures." The objective was to encourage public participation and contribution in meeting environment goals since environment

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<sup>13</sup> Supra note 7

<sup>14</sup> Directive Principles of State Policy

preservation cannot be the sole responsibility of the State.

Further Article 253 of the Constitution, which comes Part XI empowers the Parliament to make laws for whole or any part of the country, for the purpose of implementing “any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.” This affirms the authority of central government over international affairs even to the extent of legislating on subjects in the State List.

### **Legislative Framework:**

Prior to independence the Indian Forest Act, 1927 was the only legislation in India that dealt with a green aspect although, the main objective behind its enactment was to generate revenue and regulate state ownership of forests in the British regime. The categorization of forests laid by this Act is however, still significant and followed. The first comprehensive legislation after independence that specifically dealt with an environmental issue was the Water (Prevention and Control of Pollution) Act of 1974. Although some provisions of the Indian Penal Code, 1860 minutely dealt with and penalized the corrupting of public springs and reservoirs<sup>15</sup> and penalized it but there was no framework to combat the problem of pollution in the country.

Water is essentially a state subject in India with the state governments having jurisdiction over water supplies, irrigation, canals, drainage and storage.<sup>16</sup> Therefore the Parliament has no power to make laws for the states with respect to water pollution control, except as provided in Article 249 and 250 of the Constitution as also indicated in the preamble of the Water Act. It came into force in pursuance of Article 252(1) of the Constitution where enabling resolutions were passed by 12 states and approved by remaining states soon thereafter. The Water Act is thus a milestone in the growing Indian consensus that water pollution is a problem of national scope.<sup>17</sup> In addition, the Water Cess Act, 1977 was passed by the Central Government to help meet the expenditure of central and state pollution control boards. This empowered the Central and State Pollution Control Boards to levy and collect a cess(tax) from industries and local authorities based on their water consumption.

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<sup>15</sup> Section 277, Chapter XIV, Indian Penal Code, 1860

<sup>16</sup> Entry 17, List II, Schedule VII of the Constitution of India

<sup>17</sup> Supra note 11

The Water Act was followed by the Air (Prevention and Control of Pollution) Act, 1981. Both these statutes follow a very similar framework with their establishment of Central and State pollution control boards. In fact the two have been integrated with pollution control boards constituted under Water Act also performing the functions of central and state boards formed under Air Act. The Wildlife Protection Act, 1972 came into existence by following a similar process adopted in case of Water Act, since wildlife was state subject at that time. Eleven states passed resolutions in pursuance of Article 252(1) leading to Parliament passing the enactment. After the Stockholm conference held in 1972 and the aftermath of major industrial accidents such as *Bhopal gas tragedy* and *Oleum Gas Leak Case* that killed many people in India, the Parliament passed various legislations to safeguard the citizens and protect the environment. This included the Environment (Protection) Act, 1986, the Public Liability Insurance Act, 1991, the Forest (Conservation) Act, 1980 and the National Green Tribunal Act, 2010. These laws make up the environmental law regime in India.

#### **Autonomy issues between and challenges:**

From a general reading of these mentioned legislations, it can be observed that there is a certain level of overlapping of powers and jurisdiction between the centre and state. Moreover, some constitutional provisions also play a role in enabling this conflict. Starting with Article 253 of the Constitution that enables the invasion of the State List by the Union since treaties and conventions cover a wide of subjects which inevitably come within the ambit of State List. The Air (Prevention and Control of Pollution) Act, 1981 was the first statute in India that came into force by invoking Article 253 to implement the principles and decisions of United Nations Conference on Human Environment.

‘Air’ and ‘air pollution’ is not a subject mentioned in any of the lists of Schedule VII of the constitution which entitles parliament with residuary powers to make law upon it.<sup>18</sup> Therefore Air Act became a purely central legislation in contrast to Water Act where the consent and approval of States was acquired. The problem arises with integration of Central Pollution Control boards and State Pollution Control boards that are constituted under both these legislations, where Central boards constituted under Water Act also performs the functions Central board constituted under Air Act, the same goes for State boards. This consolidation however, was not easily implemented since the Air Act is nationwide and compels all states to

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<sup>18</sup> Entry 97, List I, Schedule VII of Constitution of India

set up state air boards<sup>19</sup>. In contrast, the Water Act was enacted in pursuant to Article 252 where the states exercised a certain level of discretion, the Act was gradually approved by various states and many of them did not set up their state water boards till late. Presently, all states have established their State Pollution Control Boards.

The main focus of Central Pollution Control Board as provided by the Act is to prescribe standards for pollution control, whereas the State Pollution Control Boards focus upon the implementation of such standards. The overlap comes where the central boards are bound only by the directions of Central Government but the state boards are bound by both, the directions of central and state government. Where a direction by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.<sup>20</sup>This again gives an upper hand to the Central Government and restricts the autonomy of the State Governments.

Over the years, several studies have revealed that the State Pollution Control Boards lack sufficient resources to function effectively. This is attributed to many factors particularly insufficient funds and inadequate personnel strength. The legislation itself does not provide any effective remedy on the matter of funding of these boards, where 37 simply provides for the State Government to make contributions to the Board. Even the addition of Section 37A via amendment of 1988, which allowed the State Boards to borrow funds also did not have any significant effect on the condition of State Boards.

A major final blow to the funding of State boards was the repeal of The Water (Prevention and Control of Pollution) Cess Act, 1977 after the introduction of Goods and Services Tax (GST) in 2017. The cess came under scrutiny as it conflicted with the “one nation, one tax” principle of GST which integrated different kinds of indirect taxes. This resulted in the repeal of the Act through Taxation Laws (Amendment) Act, on grounds of double taxation. This move was opposed by several states since water cess was a direct source of revenue for SPCBs and funded pollution control efforts locally. When Centre allocation of funds through GST was delayed, the states resisted losing another autonomous source of income. It prompted some states such as Himachal Pradesh, Uttarakhand and Madhya Pradesh to reintroduce state level water cess. Industrial bodies objected to this and supported the repeal since they were already paying GST

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<sup>19</sup> Supra note 11

<sup>20</sup> Section 18, Chapter IV, The Water (Prevention and Control of Pollution) Act, 1974

on water related services.

The issue was also addressed in the case of *NHPC Ltd. Vs State of Himachal Pradesh & Ors (2024)* where the Himachal Pradesh Water Cess on Hydropower Electricity Generation Act, 2023 was held unconstitutional and beyond the State's legislative competence under Article 246 and 265 of Constitution. Further the Central Government objected to the same with the Ministry of Power writing to Chief Secretaries of all state governments, directing them to withdraw water cess citing it to be "illegal and unconstitutional."<sup>21</sup> This conflict shows the centre- state tension, where while centre sought tax rationalisation but states lost a key revenue stream and became financially dependent on central grants for environmental regulation.

The governance of forests in India also illustrates the tensions between Centre and States. The transfer of "forests" from State list to Concurrent List via 42<sup>nd</sup> Amendment ensured uniformity but significantly reduced state autonomy in forest administration. The Forest (Conservation) Act, 1980 also became an instrument through which the Union Government restricted the power of States to de-reserve or divert forest land for non-forest purposes without prior approval of Central Government.<sup>22</sup> Fiscal control has also been a flashpoint where under the Compensatory Afforestation Fund Act, 2016 (CAMPA), the funds collected through projects related forest diversion are centrally pooled and disbursed to states through a directly utilise the funds for their ecological needs.<sup>23</sup>

Judicial decisions have further favoured central dominance. In *T.N. Godavarman v. Union of India*<sup>24</sup>, the Supreme Court expanded the scope of the term "forest" to meet any area that comes within its dictionary meaning, thereby subjecting even unclassified forest lands within the ambit of Forest (Conservation) Act, 1980 which again gives more power to the Centre. Subsequent decisions such as *Lafarge Umiam Mining Pvt. Ltd. v. Union of India*, also upheld central clearance powers.<sup>25</sup>

## Conclusion

India has made significant advancement over the years in the realm of environment protection.

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<sup>21</sup> Centre asks States to Withdraw Water Cess, Terms it Illegal and Unconstitutional, The Tribune, 15<sup>th</sup> May 2023

<sup>22</sup> The Forest (Conservation) Act, 1980

<sup>23</sup> Compensatory Afforestation Fund Act, 2016; Centre for Policy Research, *CAMPA and Federalism in Forest Governance* (Policy Brief, 2018)

<sup>24</sup> T.N. Godavarman Thirumulpad v Union of India (1996) 9 SCR 982

<sup>25</sup> Lafarge Umiam Mining Pvt. Ltd. v Union of India, (2011) 7 SCC 338

This can be seen in its evolving policies to tackle environmental concerns along with legislative and institutional developments. Its approach has always been progressive and positive but the implementation has not been up to the mark. It can only be improved when all organs of the government perform their functions efficiently within their sphere. Indian federalism has moved back and forth between periods of central dominance to coordinate divergent interests and state autonomy to satisfy local demands<sup>26</sup>

Environmental federalism in India represents the effort to reconcile the conflicts and jurisdictional overlapping between the Centre and State with the aim of making environmental governance a shared responsibility rather than dominance of one over the other. The path forward lies in strengthening mechanisms for inter-governmental coordination and fiscal decentralisation such that Centre's ecological mandates do not override state discretion, ensuring a balance between federalism and environment protection.

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<sup>26</sup> Aditya Valiathan and Navroz K. Dubash, 'Climate Governance and Federalism in India', *Cambridge University Press*

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