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Modern Environmental Governance and India: An Analytical Construct

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Abstract: *Global lineament 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 greater significance. In this backdrop, present study made an attempt to explore the origin of modern environmental governance in India and also highlighting gradual evolution thereof. The study is conducted mainly based on the 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 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 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 subsequent years.*

Keywords: *Environment, Environmental Sabotage and Environmental Governance*

I. INTRODUCTION

Global lineament 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. Pollution has now become one of the greatest threats to the environment. Since, environment cannot be divided between the territories pollution thereof caused by a State would affect automatically the environment of entire planet. NASA JPL researchers very recently in January this year discovered a huge hole of 1000 feet deep in the West Antarctica Glacier [1]. As estimated by 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. Realising the fact that planetary environment is indivisible, environmental governance has assumed public appeal in recent years. States that consider themselves as trustees of the environment for future generations are increasingly adopting the path of sustainable development and introducing laws to protect environment. For an emerging market economy like India, challenges of striking the pace of degradation of environment are redoubtable due to the imperatives of maintaining high economic growth. That apart, increasing population followed by intensifying tendency of urbanisation, unmet basic needs of people, life style changes etc., have brought about challenges for the country to arrest the pace of degradation of environment. 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.

II. OBJECTIVES OF THE STUDY

The present study, thus, seeks to explore the genesis of modern environmental governance in India and to analyse subsequent evolution thereof.

III. RESEARCH METHODOLOGY

The methodology adopted for the purpose of this study is a *doctrinal method*. However, the present study is analytical one. Study has referred to the Constitution, legislations, case laws, and existing *secondary sources* such as, books, papers and various other published web based resources.

IV. GENESIS OF MODERN ENVIRONMENTAL GOVERNANCE IN INDIA

United Nations (UN) is the most important institution at international level that provides a platform/forum for achieving global cooperation in all fields including environmental issues. As the principal policy-making organ of the UN, General Assembly has played a major role in the development of international environmental governance. The major UN environmental conferences convened to date include [2]: The 1972 UN Conference on Human Environment (Commonly known as Stockholm Conference, held at Stockholm) • The 1992 UN Conference on Environment and Development (Commonly known as Rio Conference, held at Rio-de-Janeiro) • The 2002 World Summit on Sustainable Development (Commonly known as Earth Summit 2002, held at Johannesburg) • the 2012 UN Conference on Sustainable Development (Commonly known as Rio+20, held at Rio-de-Janeiro). The Conference of 1972 (commonly Stockholm Conference) as noted above was the first UN's major conference on environmental issues which, indeed, marked the beginning of modern environmental diplomacy worldwide 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, factually environmental governance had emerged in the seventies and has assumed public appeal in the subsequent years. India being a signatory to the Stockholm Conference has established authorities and enacted laws for protection of environment.

V. GRADUAL EVOLUTION SINCE 1972

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. Since 1972 an extensive network of environmental legislations has grown in the country including the 1976 landmark Constitutional (42nd) Amendment whereby "protection and improvement of environment and safeguarding of forests and wildlife" was included in Directive Principles of State policy [3] and further to "protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for the living creatures" was made a fundamental duty of every citizen of India [4]. India was perhaps the first country in the world, which, by an amendment in the Constitution inserted two such articles. They reflect State's concern and duty of citizens towards environment. Prior to 1972, various existing enactments such as, the Indian Penal Code, Code of Criminal Procedure, Factories Act, Indian Forest Act etc., however, contained provisions for regulation and legal action concerning environmental pollution. Nonetheless, these were scattered, inadequate and not effective.

The country witnessed tragic incident like, 1984 Bhopal Gas Tragedy. Soon after that, in 1985, country witnessed another tragic incident caused by the leakage of Oleum Gas from one of the units of Shriram Food & Fertilizer at Delhi, a subsidiary of Delhi Cloth Mills Ltd. Extensive destruction caused by the Bhopal Gas Leak led to the creation of a full-scale Ministry of Environment and Forest on December 3, 1984 from the earlier Department of Environment, which until then, was working under the Ministry of Science and Technology. In the wake of Bhopal Tragedy, the Parliament also enacted much awaited Environmental (Protection) Act in 1986.

However, the historic judgment in *M.C. Mehta v. UOI* [5] which came up before the Court following oleum gas leak widened the scope of environmental laws in country. The Hon'ble Supreme Court evolved a new principle of absolute liability in this case. The court observed:

"Where an enterprise is engaged in hazardous or inherently dangerous activity and harm results to any one on account of an accident in the operation of such hazardous or inherently dangerous activity resulting for example, in the escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the principle of strict liability..." Thus, certain principles of law concerning the environmental issues were also laid down by the judiciary as and when the cases relating thereto have been brought before it. Judiciary walked into the domain mainly through the orders passed by the Supreme Court in PIL petitions, barring some cases where suo moto notice was taken.

The 1991 judgment of the Supreme Court in *Charan Lal Sahu v. UOI* [6] (popularly known as Bhopal Gas Leak case) extended the scope for judicial action in matters relevant to the environment by widening the scope and extent of right to life under Article 21 of Constitution to include healthy and pollution free environment as a fundamental right.

In Bichri case [7] five factories were engaged in the manufacturing of highly toxic Hyaluronic Acid (H-Acid) in Bichri village in the Udaipur district of Rajasthan. The Supreme Court found handling of these factories was hazardous for the human health and environment and therefore, ordered their immediate closure and applying the “polluter pays principle”, ordered the polluting factories to pay costs and restore the ecology of the Bichri village.

The Supreme Court further in Vellore Citizens’ Welfare Forum v. UOI [8], made the concept of sustainable development, including the principle of inter-generational equity as an integral part of the law of the land. The Court based its orders on the “precautionary principle” and “polluter pays principle” of the 1992 Rio Declaration.

The Supreme Court in its 1999 landmark judgment in Motor Vehicle Pollution [9] case prescribed stricter emission standards based on the international norms (Euro-I and Euro-II) and led to introduction of a number of measures such as catalytic convertors, CNG, and lead free and low sulphur diesel.

The Supreme Court again in its 1999 judgment in Andhra Pradesh Pollution Control Board v. M.V. Nayudu [10] observed that there is a need for separate environment courts and asked the Law Commission to undertake a study on the issue.

In 2000, in Narmada Bachao Andolan v. UOI [11], the 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.

VI. CONCLUSIONS

Thus, Stockholm Conference 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. Environmental governance is a wide, expanding and rapidly evolving dynamic area. In India, at present, development is having an increasing impact on environment. However, environmental issues are increasing on the agenda of government, corporations, non-governmental agencies and citizens as well. Since the beginning of journey in 1970’s, the scope of environmental governance has been expanding gradually. There has been a frontward looking action in the areas such as, climate change and bio-diversity. 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. Hence, the major and foremost actors which have significantly contributed in shaping the environmental governance framework in India include Central Government, Supreme Court and 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.

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