

A Note on Green Federalism Sharing Best Practices



Institute of Social Sciences



BCD
Burma Centre Delhi

 **HEINRICH BÖLL STIFTUNG**
INDIA

Institute of Social Sciences

The Institute of Social Sciences, founded in 1985 in New Delhi, is dedicated to a systematic study of social issues that confront India and seeks to contribute to scientific knowledge and scholarly research in sociological, economic, political and related disciplines. It has undertaken considerable research and training in public policy and decentralized governance with extensive work in areas such as democracy, decentralization, urban studies, health studies, women's empowerment, human rights and federalism. It acts as a resource centre, providing expert advice to government and other agencies, building alliances and partnerships with academic centres, research institutions and national and international civil society organizations. It engages in advocacy through conferences, lectures, seminars and workshops.

Burma Centre Delhi

Burma Centre Delhi (BCD) is a non-profit organization founded in 2008 to work for restoration of peace, justice, democracy and human rights in Burma with a mission to strengthen relationships between the people of India and Burma for mutual understanding and solidarity.

The Mission of the Burma Centre Delhi is to:

- provide updated information on Burma's socio-political and economic issues to the Indian political class and to civil society, with an aim to raise the level of consciousness and support for the democratic movement in Burma.
- strengthen relationships and networks between the people of India and Burma for mutual understanding and solidarity.
- serve as a resource centre providing a platform for Burmese and Indian people to share knowledge and experiences about development issues in their respective countries.
- observe Indo-Burma relations and to campaign and lobby the Indian Government to support the restoration of democracy and human rights in Burma.

Heinrich Böll Stiftung/ Heinrich Boell Foundation

The Heinrich Böll Stiftung/ Heinrich Boell Foundation is a German foundation and part of the Green political movement that has developed worldwide as a response to the traditional politics of socialism, liberalism, and conservatism. We are a green think-tank and an international policy network, our main tenets are ecology and sustainability, democracy and human rights, self-determination and justice. We place particular emphasis on gender democracy, meaning social emancipation and equal rights for women and men. We are also committed to equal rights for cultural and ethnic minorities. Finally, we promote non-violence and proactive peace policies. To achieve our goals, we seek strategic partnerships with others who share our values.

Our namesake, Heinrich Böll, personifies the values we stand for: protection of freedom, civic courage, tolerance, open debate, and the valuation of art and culture as independent spheres of thought and action.

Our India Liaison Office was established in 2002 in New Delhi. Working with governmental and non-governmental local project partners we support India's democratic governance through informed national and international dialogue processes with a view to enhance the diversity of green thinking.

For more information please contact us:

Heinrich Böll Foundation, India Office, C-20, 1st floor, Qutub Institutional Area, New Delhi 110016, India. phone +91-11-2685 4405, +91-11-2651 6695; fax +91-11-2696 2840;
mail: info@in.boell.org; web: www.in.boell.org

**A Note on
Green Federalism
Sharing Best Practices**

Edited by
Ash Narain Roy
Alana Golmei

Disclaimer: The conference was organized in collaboration with Heinrich Böll Stiftung India office, Institute of Social Sciences and Burma Centre Delhi. The views and analysis contained in the publication are those of the author and do not necessarily represent the views of organizers.

All rights reserved. No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the copyright owner and the publisher.

© Heinrich Böll Stiftung India Office, Institute of Social Sciences and Burma Centre Delhi December 2018

Contents

Preface	1
Concept Note	3
Green Federalism: North East has a Unique System of Federalism <i>M. P. Bezbaruah</i>	6
Federalism and Environmental Governance in India <i>Ajay Kumar Singh</i>	12
Green Federalism in a Multilevel Governance Setting <i>Balveer Arora and Nidhi Srivastava</i>	22
Federalism goes beyond Centre-State Dynamics <i>Arunabh Saikia</i>	25
Reflection on Natural Resources Management in Manipur <i>Jiten Yumnam</i>	29
Article 371 (A) of the Indian Constitution in Nagaland <i>Dolly Kikon</i>	35
Green Federalism and Best Practices <i>Uttam Kumar Sinha</i>	38
Key Points on Sustainable Development	40
Contributors	42

Preface

Sometimes, a spark turns into a forest fire in the blink of an eye. Sometimes it takes a generation. The fire is now raging and it will not be put out anytime soon. The world is on the brink of environmental catastrophes. Ecological stress is at the core of the world's current woes. Climate and politics are nearing a tipping point. Alarm bells are ringing. Countries are gradually pushing the green issues up the political agenda. The zero-carbon economy may not as yet be on the horizon. But the apocalyptic visions may open our minds. History tells us that when environment deteriorates, societies turn to so-called strongman and religious zealots. It is happening in Europe, Asia and Latin America.

Federalism is enjoying a renaissance of sorts. More and more countries today have begun to look at issues of governance from the federal lens. Federalism has become a market for ideas. It comes in various forms and shapes. On the other hand, there is a lot of apprehensions and misconceptions about what federalism is and what it isn't and what federalism does and what it doesn't. One may create a federation. But one doesn't become federal unless it is practised. Federation has to be nurtured, worked upon. Federalism needs not just federal institutions, but also institutional gardening.

Federalism is an international flavour. Nepal is the newest federal state. Myanmar is seriously considering federalism as a recipe to resolve its ethnic problem. Iraq, Yemen, Kenya, South Sudan and Philippines have and are looking at federalism positively. Call it green federalism, environmental federalism or ecological federalism, it is an idea whose time has come.

The proper division of responsibilities for promoting green federalism or environmental protection between federal and sub-national units has long been the subject of fierce debate. During the 1970s, the US Congress shifted the major environmental responsibilities from State governments to the federal government apparently to prevent a 'race to the bottom'.

There are two sets of arguments here. On the one hand, it is argued that environmental laws should be an essentially federal domain and federal government should set the standards for environmental quality and natural resource protection. On the other hand, it is the states where natural resources are located. They must have a main say. In fact, states often demand the end of what they call 'federal tyranny'.

Management of resources – oil, natural gas, minerals etc is a complex job. Governments—both national and sub-national — need to draft and implement laws and regulations to maximize their contribution to sustainable development. The questions that are relevant here are — which responsibilities fall within the ambit of which governments, which should be jointly managed and which models are more effective? Demands for greater sub-national control over natural resources are becoming strident. Federal states have already decentralized certain aspects of natural resource governance. Revenue sharing is another complex issue.

Cooperative federalism is often the way to smoothen relations between the federal and sub-national units. The Modi government has been pedalling cooperative federalism. However, given the over centralization of powers in the PMO, critics have described the Modi government as “uncooperative federalism” and “coercive federalism”.

The need for the necessary mechanisms and policy instruments for promoting green federalism and promoting smoother relations between the national and sub-national governments can't be over-emphasised. The Inter-State Council and other coordinating bodies have become “caged parrots”. It is not about what they do or not do, but about what they are asked to do by the federal government. States' capacity also need to be enhanced. People don't live in national governments, they live in sub-national governments: villages, communities, cities. It is time to reclaim green federalism. We are, of course, too far away from celebrating it.

Why green federalism? Because sustainable solutions can only come from the ground up. Nowadays, we are too busy with technology to fix what we have broken. We forget that we always have to come back to the roots. The national and sub-national governments are fighting yesterday's battles. The ecological crisis and challenges of sustainable development demand that they fight the current battle. Green federalism is the current battle.

This publication is the product of a dialogue on green federalism in Kolkata on November 13-14, 2018 involving academics, practitioners, journalists and other experts. The dialogue was organised by the Institute of Social Sciences and Burma Centre Delhi with support from the Heinrich Böll Stiftung. The contributors are formidable scholars and practitioners in their respective fields with national and international renown. Besides bringing clarity to key concepts, this publication makes valuable contributions to academic and real global discourse on green federalism. We hope it will stimulate scholars, policy makers and young researchers to explore new areas in greater depth.

Ash Narain Roy
Director, Institute of Social Sciences, New Delhi

Concept Note

In 2016, the world slipped into 'ecological debt', having consumed more resources and produced more waste than nature can absorb and replace in the year. Fifteen of the 16 warmest years have occurred in the 21st century. The ecological crisis is real as it manifests itself in deforestation, soil erosion, depletion of water resources and accumulation of greenhouse gases. High production and consumption are the major sources of our environmental ills. Excessive extraction and consumption of natural resources, especially of fossil fuels poses grave threats to survival of life on our planet. A forceful articulation of these ideas has emerged under various names, such as sustainable development, de-growth, anti-developmentalism or post-development.

It is in this context; green federalism has gradually gained currency in federal discourse. Now that all countries have committed themselves to stepping up to the challenge of achieving the Sustainable Development Goals (SDGs), there is a chance of achieving sustainable development and with it the better prospects for people and the planet. With that have emerged green orientation to federalism and a federal perspective to green concerns.

Environment does not figure in most federal constitutions. However, since federations divide power between various orders of government, devolution of powers involves mutual dependency between the central government and state or local governments. Green federalism marks a giant step towards sustainable development.

The GDP-led growth model uses vast resources and generates enormous waste besides compromising environment standards and norms. The development model that countries, rich and poor, have followed may have resulted in rapid economic growth but it has serious ecological implications. The goal of sustainable development requires that nations collectively and cooperatively address and mitigate the damage done to environment. The restructuring of the present development model into green federalism would steer the economic growth towards sustainability.

Green economy and the Millennium Development Goals (MSGs) are inextricably linked. Green federalism is in effect an opportunity rather than a burden. And, pursuit towards green economy will involve a paradigm shift, wherein the generation of wealth will not increase social disparities, environmental risks and ecological scarcities, thereby unfolding into the desired human development and inclusive growth.

Ownership of natural resources is very vital in federations. To whom do natural resources belong? Some countries treat these resources as part of national wealth. Others say these belong to the states. Revenues that arise from resources consist of income from both sales and state and federal taxes on the income and sales. Not all states or regions are equally endowed with resources. Equalisation formula is a measure which is a federal transfer payment programme designed to reduce the differences in revenue-generating capacity of different states. Equalization ensures that people residing in any part of the country will have access to government services at reasonable levels of taxation.

All developing countries face serious challenges in constructing development paths that generate growth while being socially inclusive, ecologically sustainable – and politically feasible. Another challenge is to manage the tension between private property rights and the state's power to acquire property for the purposes of economic development and social redistribution.

The key challenges facing a modern state in respect of implementing green agenda are quite similar. However, federalism provides better framework for implementing the same given the divisions of powers and assignments of responsibilities among the various tiers of government. There is an understanding of which functions and instruments are placed under the respective domains. The global developments have led to the setting up environment departments in various countries. India has brought about constitutional amendments to empower the local governments who are required to perform several environment-related functions. In some cases, the court rulings and the commitment of national governments to implement the multilateral environmental agreements have led to resource allocations for improvement of environment and dealing with the challenges of climate change.

India has amended the constitution to provide space for environmental issues in governance and public policy. The 73rd and 74th constitutional amendments added a new dimension to the federal character of the Indian polity. The local governments have been given jurisdiction over land improvement and soil conservation, water management and watershed development, social and farm forestry, minor forest produce, drinking water etc. The good part of the Indian experience is that environment has received constitutional recognition. However, there is a dichotomy. While natural resources are the State's domain, the regulation and control are with the federal government.

The success of green federalism depends on what institutional mechanisms are created to deal with tensions and conflicts between the various tiers of government. Cooperative federalism is the right approach to ensure the success of green federalism. The federal government depends on the state/local governments to take up the responsibility of carrying

out required activities whereas the state governments depend on the federal government for institutional and financial support to perform the activities.

It is against this background, the Institute of Social Sciences, in cooperation with the Heinrich Böll Foundation and Burma Centre Delhi organized a two-day conference in Kolkata on the theme “Dialogue on Green Federalism: Sharing Best Practices.” The two-day conference was structured around sub-themes like federalism and sustainable development, federal and sub-national domains, management of natural resources and cooperative federalism. The overriding emphasis was given on sharing the best practices.

In Myanmar, demands for greater sub-national control over natural resources are growing, especially among the ethnic groups. The National League for Democracy (NLD) too has committed itself to introducing some variant of federalism. At a time when Myanmar is consolidating its democratic gains, management of natural resources remains a critical issue. The federal constitution that Nepal adopted in 2015 has incorporated comprehensive environmental provisions. Article 30 explicitly confers legal right to a clean environment on citizens. It goes on to state that the victim shall have the right to obtain compensation in accordance with law for every injury caused from environmental pollution or degradation. The Nepalese experience could be highly instructive for Myanmar.

The objective of the proposed conference was to gain insights from the various stakeholders on the best practices in green federalism and on institutional mechanisms needed for greening federal polity and development discourse. Green growth is necessary as well as desirable. The conference deliberated on clearly identifying the roles and responsibilities of various tiers of government. It also identified institutional gaps, overlap and ambiguities that hamper sustainable development as well as smooth functioning of federalism. Learning from the best practices on sustainable development and management of natural resources will go a long way in addressing not only the historical grievances of ethnic groups both in India’s North-East and Myanmar’s Sagaing region but also green governance challenges faced by all the countries in South Asia.



Green Federalism: North East has a Unique System of Federalism

M.P. Bezbaruah

Green federalism and green growth is often talked about as a way of life and as part of the future solution. However, I see it as a means to a much wider end—sustainable development. In this context, I see federalism not in terms of political science theory but as a deeper, unavoidable sense of shared responsibility and common concern. Coordinated cooperative action has to follow from such common concerns about the future.

I often think of two favourite quotations which bring out the essence of sustainable development. One is from the Vedas:

“Whatever I dig of you, O Earth!

May you of that have quick replenishment.

O purifying one, may my thrust never

Reach right unto your vital parts.”

The other— when in 1855, the American President asked the chief of the Dwanish tribe of Red Indians to hand over their land which is now the state of Washington, the chief’s reply was one of the most poignant expressions of sustainability. He said, “how can you buy or sell the sky, or the warmth of the land? The idea is strange to us.... We don’t own the freshness of the air or the sparkle of the water. How can you buy them? The air is precious to the red man, for all things share the same breath — the beast, the tree, the man. The white man does not seem to notice the air he breathes. Like a man dying for many days, he is numb to the stench”

For the Chief the ‘white’ man was perhaps the symbol of civilisation. Are we that ‘white’ man today numb to the stench we create?

These quotations bring out the need for sensitivity and the importance of renewable sources and raise the fundamental question. Who owns the environment? The issue of sustainability relates closely to three pillars — economic (efficiency in production, sustainable use of resources, green technology, removal of poverty), environmental (ecological harmony and inter-generational equity) and social (equity, empowerment, local level action and sustainable lifestyle).

It is significant that the monumental Brundtland Report on Sustainable Development is called “Our Common Future.” Each of the three words brings out the fundamental — it is a federal responsibility when the globe has today become a village.

Central to the issue of Sustainable development is the question of poverty —and therefore the importance of economics. The economic relevance has to be seen from the perspectives of the individual and of the nation. When one-third of the world still struggles for daily survival, Lord Keynes’ saying “in the long run we are all dead” becomes pertinent and talk of sacrifice for future generation becomes theoretical.

In the international Conference on Environment in Stockholm in 1972, Mrs Indira Gandhi had made the statement, “poverty is the greatest pollution.” It was intended to bring to focus the problem of poverty and its relation to sustainable development. Almost all studies, every initiative in the past 50 years has established without ambiguity that sustainable development will be a distant dream unless the problem of poverty is addressed and tackled. The Brundtland Report says, “a world in which poverty is endemic will always be prone to ecological and other catastrophes”. “Hunger and poverty” wrote Mr Maurice Strong, the Secretary General of the landmark UN Conference on Environment and Development in Rio “are both a cause and an effect of environmental degradation.”

Let us take an Indian example. A few years ago, a study had put the firewood trade in India to have a turnover of \$1.7 billion. It was the main source of livelihood of 11 million people, 27 per cent of Indian population directly or indirectly depend on forests for their subsistence. Forests meet 40 per cent of the energy needs of the country as a whole and 80 per cent in rural areas.

Here we draw the first lesson for sustainable action that doesn’t adversely affect the poor — the importance of finding economic alternatives for the poor, if they are to be weaned away from unsustainable practices.

As this conference is about sharing best practices, it is important to bring out hundreds of such good examples at social and community level. In the Gulf of St. Lawrence, Baby seals were killed to make fashion garments. Public-private initiatives preserved the seals and now give much more income, as a tourist attraction. In Rwanda, the habitat of the gorillas was affected by unsustainable cattle grazing. Successful eco-tourism measures turned the area into preservation of the gorillas providing the community much more income.

At the national level, we have a complex problem. During the 50 years prior to 2007 it was said that the global economy grew six-fold, industrial production nine times, volume of trade 14 times. All these resulted in approximately 60% of the eco-system services that support life on Earth was being degraded or used unsustainably.

According to the Millennium Eco System Assessment of 2005, the Earth had exceeded its carrying capacity by 20%. The Secretary General of UN said

in the Davos Conference in 2011, “we missed our way to growth. We burnt our way to prosperity. We believed in consumption without consequences... It is a global suicide pact.”

So the poor nations thriving to grow rapidly to improve the lot of the poor find the road blocked partially by the problem of sustainability. People like Mahathir of Malaysia openly challenged it as discriminatory. That question of climatic equity has not yet died down. A study in 2010 showed “countries with most to lose from climate change tend to contribute least to the problem and countries that contribute most to the problem like China and USA tend to be less vulnerable. Ten countries contribute more than 60 per cent of all emissions –China contributing 20 per cent. Is that not a good case for international green federalism for action?

An essential requirement for poverty removal is of course strong economic growth.

Here again the solution is not straightforward. In India, it was estimated that a pace of growth of 8% or above would require 20% more primary resources than are produced sustainably. Sadly, growth is not a sufficient condition for alleviating poverty. Economist Joseph Stiglitz says, during the last decade of the 20th century total world income increased by 2.5% annually. During this time the number of people living in poverty increased by 100 million.

It is clear that global coordinated action and global determination were needed. MDG which had put reduction of poverty at the top of the agenda had kindled great hope of much global action. After a decade, the hopes were sadly belied. *An official review put forward startling facts—*

- failure to achieve poverty targets meant that by 2015 there were additional 380m living on less than \$1 a day.
- number of undernourished increased to 1 billion in 2009.
- that more than 41m children faced death from a curable disease — poverty.

And more worrying, the world missed the decadel target on bio-diversity loss with potentially grave consequences. The window of opportunity was rapidly narrowing and “political will remains largely absent”. One is reminded of a famous statement of Benjamin Franklin in a different context” we must indeed all hang together, or most assuredly, we shall all hang separately”.

In this context is introduced the Sustainable Development Goals. With 17 goals, 169m targets and 304 indicators the world again set a target for 2030—of common action. Poverty again is no one of the agenda but it is now not ‘reduction’ — ending poverty is the goal. And for the first time climate change described as ‘defining challenge’ for humanity is also a goal for action. It is essential because life on the planet is fundamentally threatened.

Scientific studies of climate change go back to at least two centuries but the content and concerns of the studies have changed completely — from preoccupation with glacial change to overwhelming impact of human action on climate, from lurking fear of return to the ice age to the disastrous effects of global warming, in a sense from the realm of science fiction to a dreadful reality staring at humanity.

In this present crisis there is a ray of hope — as it is a result of human action, the solutions can be found in human action too.

As a short term view people may not realise the gravity of the impact — that it can change the course of human civilisation. Recent research have shown that if we take a long term view there are instances of past civilisations possibly moulded by a shifting climate.

Now some of the island nations face the dreadful prospect of extinction. Few years back Maldives ran a tourism campaign” come see us before we disappear”. At 2–2.5 degree warming, it is said, 20-30% of plant and animal species face extinction. The cascading effects of the Bavarian alps or the Himalayan glaciers melting is too frightening to imagine.

Way forward

The Paris agreement set the agenda for a mix of voluntary national carbon reduction targets, diminishing dependence on fossil fuel, a new era of renewable energy resources, bio diversity conservation and smart lifestyle. All of these require increasingly complex but coherent actions and international, regional, national and local levels. Each community will have its own agenda based on socio-economic characteristics.

Much more will be needed beyond the government level. These include:

- Greater awareness going down to local level and local action;
- research and investment in sustainable technologies and
- win-win business solutions for green economy.

One of the least understood and unimplemented outcomes of the Rio Summit was the concept of ‘stakeholders’ democracy’ and ‘Local Agenda 21’.

The tremendous force of small local action of individuals and collective society are shown by numerous good practices. One Jadav paying in Assam started a revolution of planting million trees.

There is a delightful UN Report of Kerala fishermen using the plastic that they drag out of the sea to build roads, creating local infrastructure and income.

But the world needs much more such good examples. Earlier, the discussions on the important topic of value of natural capital used to be theoretical. Now economists have developed methods of computing

the price of natural capital. If natural capital can be shown to have great economic value, policy makers may see the value and may be more inclined to protect them.

Similarly studies have shown that between 2015 and 2025 in bio-gas sector in India alone 900,000 jobs could be created and 1,00,000 jobs are possible in solar photo-voltic sector. Mackinsey had come out with a report that investing in and adopting innovative practices can cut energy demand in the world by 64m barrels – which is 1.5 times the present energy consumption in USA. Numerous such opportunities have been identified for taking sustainable action.

A country like India needs strong green federalism. For green federalism, few questions are pertinent to assess its effectiveness:

- Who are responsible?
- What are the roles?
- What are the specific functions?
- What are the sources of finance?

For a country of India's size and diversity the impact of climate change will be different in different regions. The impact, however, will be inter-dependent. Anything happening in the Himalayas will affect most states in India. If some states fail to implement, others will bear the brunt.

Most states complain of resource crunch because they have to give up unsustainable but profitable exploitation of nature. Therefore, government for the first time mandated the 13th Finance Commission to look at devolution of fund for environmental and climate change purposes. In fact, the 12th Plan which was later scrapped stipulated states to make State Action Plan for environment.

The National Environmental Policy of 2006 emphasises decentralisation of action. Environment is a residual subject in the Constitution of India. Therefore, it is Centre's responsibility. However, important components of environment like land, water, livestock, fisheries are in the concurrent list. Confusion and overlapping is inherent in such a system. However, the Government of India has a plethora of legislations on subjects like pollution, water, forests etc to make federalism work smoothly.

There are many problems, primarily of delegation of responsibility without transfer of sufficient financial resources. There is also problem of disparities in action and awareness which get compounded when the Centre and the state happen to be of different political parties. India's green federalism can be a very interesting case study. It has many unique features. It addresses many complex realities and many contradictions. Does it deliver?

The North East, similarly, is a fit case for case study. It has forests covering 66.8% of the geographical area and 25% of the country's total forest cover. It has two bio-diversity hot spots. It has perhaps the largest concentration of wild life parks in the country.

In the North East the lifestyle and culture are built around nature. So the impact can't be measured in numbers alone. Yet, it is alarming when Indian Network for Climate Change Assessment on the basis of a study says that the North East faces warming of 1.8 to 2.1 degree by 2030.

A TERI study showed that urbanization, grazing, commercial exploitation, fuel wood use, natural hazards like floods, landslides put 30% of the forests under pressure. Between 2009 and 2013 Assam reportedly lost 17 sq.km of dense forests, 154 km of moderately dense forests and open forests by 152 sq.km —though the state had launched the Green Earth programme.

North East also has a unique system of political federalism that acknowledges the aspirations of large number of ethnic groups and decentralised power through the institutions like Autonomous Council. It would be the ideal agency to implement Local Agenda 21. But they are at the end of the finance sharing arrangements. A political entity with powers but without political strength is unable to make hard policy choices for green economy. They are often likely to fall to easy temptation of using natural resources for revenue.

This becomes a double-edged blow. Meghalaya's economy, for example, relies heavily on limestone, coal and boulders.

North Eastern Council's (NEC) another novel concept is regional planning and cooperation. It could be part of green federalism by providing umbrella support for research and technical innovation.

Climate change is an existential issue. It is a common concern of each one of us individually. One weakness of federal thinking is that when it is a common concern it becomes nobody's concern.

We shall do well to remember the advice of existentialist philosopher Albert camus—

“I shall tell you a big secret, my friend. Do not wait for the day of judgment. It takes place every Day”. (The fall)



Federalism and Environmental Governance in India

Ajay Kumar Singh

Introductory Premises

Founding fathers innovated and adopted altogether a new form (unlike conventional categorization of constitutionalism such as parliamentary, presidential, unitary or federal etc.) of constitution, known as Union Constitution. (Singh 2009; Singh 2015). It creates a Union Model of Federalism, seeking to establish systemic balance between sovereignty, independence and unity. The unfolding federalism is a complex process of contextualized balancing of its **six core characteristics** – **1. Autonomy** (mostly of regions, and select tribes and ethnic groups). **2. Integration** (a process of coalescing people, polity and region into a larger federal nation, which neither celebrates diversity nor downsizes them). **3. Centralization** (contextual and circumstantial transfer of authority from lower units to federal/central government either by way of expressed consents of federating units, or under parliamentary authorization. Centralisation is generally effected on the pretext of serving larger national interests, public welfare, national security, national unity, restoration of constitutional governance, and to execute international obligations). **4. Decentralization** (demos enabling paradigm of promoting self-governance including ethno-community governance. It is also a measure of promoting institutional autonomy). **5. Nationalization** (of natural resources and economy with stated objective of promoting equity and justice among people and regions). **6. Regionalization** (principally a measure of creating polities (state formation), promoting decentralized self-governance, and accommodating multiculturalism). (Singh 2015; Singh 2018)

India follows a list system of distribution of competence of a subject. Methodologically, it amounts to functionally divided jurisdictions, a system of multiple governance. Residuary power is vested in union government, therefore, any post- constitutional subject is exclusively governed by the federal government. Federal government has exclusive jurisdictions over 97 subjects, state on 66 items, and shared governance by union and state governments over 47 items. However, in case of conflict, union laws and policies prevail over states' laws and policies.

Constitution and Environment

Constitution generates two distinctive perspectives on environment:

1. *Environment as Right*
2. *Environment as sustainable development.*

Environment as right is integral to inviolable constitutional principles of Right to Life (Art 21), Article 48A (inserted by the Constitution Forty Second Amendment Act, 1976) casts specific duty on the states “to protect and improve the environment and to safeguard the forests and wild life of the country.” Article 51 (g) seeks specific disposition of people towards environment. It reads: “to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

In the scheduled and specifically notified areas (broadly the tribal belts of the country), constitution allows for community ownership and governance of natural resources. In other words, constitution partly recognizes “**anthropocentric**” approach to conservation and promotion of environment. This has been significantly acknowledged the Supreme Court of India in *Orissa Mining Corporation Ltd. Ministry of Environment & Forest & Ors., 2013* wherein it has acknowledged governance right of the tribes of Niayamgiri Hills over their resources. It practically means state undertaking any mining and other development activities in tribal areas have to seek approval from local panchayats/gram sabhas.(Singh 2012).

Environment as sustainable development seeks to establish a balance between equity, ecology and economy through sustainable use of natural resources, and agriculture.

Environmental Governance

Environment in India is centrally regulated and governed. Subordinate tiers have minimal legislative competence and executive autonomy. They have to act within the overall direction and control of federal government. “The subject “environment” exclusively belongs to federal jurisdiction, not by way of any original distribution of competence between union and state governments, but through various other provisions of the constitution such as Article 48 A.” (India Code book 2018); Article 253 (authorizing federal parliament to make laws on any subject, including areas reserved for states, in order to give effect to international agreements); and from several entries of union list such as 7 (industry), 53 (petro resources), 54 (mines and minerals), 56 (inter-state waters), 57 (fishing and fisheries beyond territorial waters), 97 (jurisdiction over any matter not enumerated in either lists of the seventh schedules); and entries of concurrent list such as 17A (forests), 17B (wild animals and birds) and 20 (economic and social planning).

States draw their respective competences mainly from select entries of state list such as 6 (public health and sanitation), 14 (agriculture), 17

(water), 18 (land), 21 (fisheries), 23 (those mines and minerals which are not centrally regulated), 24 (those industries which do not fall within the central jurisdiction), besides having concurring jurisdiction over entries of concurrent list, As a matter of fact, states have only limited autonomy so far as governance of environment is concerned.

Enactments and Regulations

Water

The first act on the subject of environment was the Water (Prevention and Control of Pollution) Act, 1974, amended subsequently in 1988, “to provide for the prevention and control of water pollution, and for the maintaining or restoring of wholesomeness of water in the country.” (Water Pollution. Central Ministry of Environment, Forest and Climate Change, <http://envfor.nic.in/print/4128>, accessed on 05 Nov. 2018). The Water (Prevention and Control of Pollution) Cess Act, 1977, amended in 2003, provides for the levy and cess on water used during industrial production. In order to carry out the mandate of this act, the President of India, in exercise of the powers conferred by clause (1) of the article 258 of the constitution, entrusted with the consent of the concerned state governments of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Kerala, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh and West Bengal the functions of the central government on fixing of meter, recovery of amount, and imposition of penalty as provided under the Water (prevention and Control of Pollution) Cess Act, 1977. (G S R 190).

Water is centrally governed by two ministries- Ministry of Environment, Forest and Climate Change, and the Ministry of Water Resources, River Development & Ganga Rejuvenation. The latter is responsible for integrated water management and its regulation across the country. Water is governed by many specific river boards and statutory bodies such as Narmada Control Authority, Brahmaputra Board etc., and other Autonomous Bodies like National Water Development Agency, National Mission for Clean Ganga and others. Though “optimal sustainable development” is the declared goal of government policies, basic focus has been on “stock and share”. (Ghosh 2018, 69). Ghosh further writes, “Contrary to an integrated and holistic thinking, water governance in India relies on a few stand-alone numerical resources of physical state of the resource- a paradigm that Jayanta Bandyopadhyay described as “arithmetic hydrology”. Interlinking of Indian rivers is based on the premise of transferring water from “surplus” to “deficit” river basins. This is a vital example of “arithmetic hydrology”. (Ghosh 2018, 70). Mihir Shahb (2018, 77-80) sums up the official approach of water governance as the following:

1. Centralized bureaucratic “Command- and- Control,” having least concern towards ecology.
2. “Engineering and hydrogeological” approach to water control and extraction. Big dams are significant examples of this approach. In this approach, neither soil ecology nor biodiversity is appropriately taken care of.
3. “Silos” or division or universe of water as groundwater, surface water etc. Shah remarkably argues that “there is little dialogue across silos, leading to “hydro- schizophrenia”. (Ibid. 77).
4. Missing sustainability endangering both “groundwater and river flows.” (Ibid. 78).
5. “Lack of equity in access to water” across caste, class and regions.
6. Over emphasis on supply of water and managing the demand of water.

Environment

As a follow up to United Nations Conference on the Human Environment held at Stockholm in June 1972, the federal government enacted the Environment (Protection) Act, 1986 (amended in 1991). It is probably one of the comprehensive law on environment. Under the act, central government have all necessary powers “to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.” Act also envisages constitution of environment protection authorities at every appropriate level of government, besides issuing of necessary directions to state governments for carrying out provisions of this act.

The National Environment Appellate Authority was established under Act no. 22 of 1997 “to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto.” Interestingly, under section 12 of the act, the appellate authority is not bound by the Code of Civil Procedure, 1908, but is guided by the principles of natural justice.

The Forest (Conservation) Act, 1980 “was enacted to help conserve the country’s forests.” It strictly restricts de-reservation of forests. It ordains state governments to seek prior approval of the central government before de-reserving reserved forests or use of forest land for non-forest purpose, or assigning by way of lease or otherwise forest land to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by government, or clearing of the naturally grown trees in the forest land for the purpose of re-afforestation. (section 2 of the act). However, of much importance is the Scheduled Tribes and Other

Traditional Forests Dwellers (Recognition of Forest Rights) Act, 2006 which extraordinarily recognises “(i) inseparability of tribes and forest; (ii) inalienable natural rights; (iii) critical balance between dwelling rights, conservation of biodiversity and ecological balance, and livelihood and food security of local people; and (iv) interdependent and intricate relationship between ‘right to life’ and ‘right to forest.’ (Singh 2012, 95).

The Wild Life (Protection) Act 1972 was enacted for protecting wild life. The Wild Life (Protection) Amendment Act, 2006 was enacted to the establishment of National Tiger Conservation Authority to “(a) approve the tiger conservation plan prepared by the state...(b) evaluate and assess various aspects of sustainable ecology and disallow any ecologically unsustainable land use such as mining, industry and other projects within tiger reserve and ensure their due compliance, (c) lay down normative standards of tourism in the buffer and core area of tiger reserves and ensure their due compliance, etc.” (Section 38 O (1) of the act).

Other important act on the subject includes (i) the Wild Life (Protection) Amendment Act, 2006; (ii) The Air (Prevention and Control of Pollution) Act, 1981; (iii) The National Environment Tribunal Act, 1995; (iv) Biological Diversity Act, 2002 .The National Green Tribunal Act, 2010 led to the establishment of the National Green Tribunal “for effective and expeditious disposal of relating to environmental protection and conservation of forest and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.” (<http://envfor.nic.in>).

For executing above acts, several regulatory bodies have been established. This includes Central Pollution Control Board; National Coastal Zone Management Authority; Central Ground Water Board (2000), Central Zoo Authority etc.

Agriculture

Originally a state subject, agriculture, over the years, has witnessed highest form of centralisation. Union government over different contexts of international obligations, trade and treaty, and environment protection have significantly encroached upon state field. Centre’s competence now includes, “liaising with international agro organisations, locust control and plant quarantine, agro industries declared to be of national importance, agricultural census, assistance to farmers in the event of crop damage due to natural calamities, technology mission on oilseeds and pulses, besides having concurrent jurisdiction over adulteration of agricultural product excluding food stuffs, economic planning ‘price control of agricultural commodities except food grains, sugar, Vanaspati, oil seeds, vegetable oils, cakes and fats, jute cotton and tea’, agricultural exports, crop insurance etc.” (India Code

Book 2018). Essential Commodities Act 1955 further authorised central government to take control of the production, supply and distribution of several agricultural commodities such as sugarcane, foodstuffs, edible oil, raw cotton and raw jute.

Central legislations, rules and orders such as Insecticide Rules 1971 and Fertilizer Movement Control Order 1973 etc., have further facilitated centralisation. The 42nd constitution amendment act, 1976 effected changes in the Concurrent list (List III of 7th schedule) to include forest, wild animals and birds etc., allowing centre to make inroads into states' competence over agriculture.

Over the years, centralisation in agriculture has also occurred through creation of central regulatory bodies, a quasi-legislative, quasi-judicial and administrative authorities with autonomous power of rulemaking, passing binding orders and seeking their execution by constituent units. In 1986, under parliamentary enactment, the government of India constituted the Agricultural and Processed Food Products Export Development Authority (APEDA), responsible for the: “ (1) development of industries relating to the scheduled products for export by way of providing financial assistance or otherwise for undertaking surveys and feasibility studies, participation in equity capital through joint ventures and other reliefs and subsidy scheme; (2) fixing of standards and specifications for the scheduled products for the purpose of exports; and (3) promotion of export oriented production and development of scheduled products,” besides others (APEDA, 2016). Scheduled products include a large number of herbal and medicinal products, dairy and poultry products, nuts, cereals sugar products, alcoholic and non-alcoholic beverages.

In 2001, the Union parliament passed legislation for the protection of plant varieties in order to fulfil “its commitments to the agreement of Trade Related Aspects of Intellectual Property Rights (TRIPS) of the World Trade Organisation (WTO). The Act provides for the establishment of an effective *sui generis* system for the protection of plant varieties by balancing the rights of farmers and plant breeders. On 11 November 2005, the central government established the “Protection of Plant Varieties and Farmers' Rights Authority to implement the provisions of the Act.” (Government of India 2015-16, 70).

In 2006, the parliament of India by consolidating various state and central acts enacted Food Safety and Standards Act, establishing “a single reference point for all matters relating to food safety and standards, by moving from multilevel, multi-departmental control to a single line of command. To this effect, the act establishes an independent statutory Authority- the Food Safety and Standard Authority of India (FSSAI) and the State Food Safety Authorities shall enforce various provisions of the Act” (FSSAI, Introduction, About FSSAI: 2016).

Under the provision of the Warehousing (Development and Regulation) Act, 2007, the Warehousing Development and Regulatory (WDRA) was created in 2010 with stated objective “of developing and regulating warehousing, including registration and accreditation of warehousing intending to issue negotiable warehouse receipts (NWRs) in the country. The authority has so far notified 123 agricultural commodities for the purpose of negotiable warehouse receipts (NWRs) including cereals, pulses, oil seeds, spices, rubber, tobacco and coffee.” (*State of Indian Agriculture 2015-16, 151-52*). WTO agreement has worst impact on minimum support price and on the subsidies given on agricultural inputs. (India & the WTO, 1999:11).

Overall emphasis of agro-federalism has been prevention of pollution and development of sustainable agriculture. However, in actual practice, all efforts have been directed towards increasing per capita yield. What is missing is absence of “agro-ecology” in both the state and central planning.

Natural Resources (Mines, Minerals, Oil etc.)

This is yet another area which has witnessed highest form of nationalisation (of resources and centralisation of governance. MMRD Act, 1957 allows central regulation and development mines and minerals in a state when declaration to this effect is made by the parliament in public interest. “Subject to the overall supervision of the central government, the state government has a sphere of its own power and can take legally specified action under the central act and rules made there under.” States have lease and mineral right, but it does not have power to levy a fee in respect of mining lease. Amended MMRD Act 2015 further empowers central government “to prescribe the terms and conditions for the conduct of auction both in respect of notified and non-notified minerals, besides issuing directions to state governments for the conservation of mineral resources, ecological balance, sustainable development, framing of rules for auction etc.”

Under entry 53 of the union list, centre can regulate, including leases, oilfields and mineral oil resources, petroleum and petroleum products and other natural liquids and gases. According to Government of India (Allocation of Business) Rules, 1961, competence of the union government includes as the following:

- (a) exploration for, and exploitation of petroleum resources including natural gas and coal bed methane;
- (b) production, supply, distribution, marketing and pricing of petroleum products including natural gas, and also additives for petroleum and petroleum products;
- (c) planning and development and regulation of oilfield services;
- (d) administration of acts, viz, The Oilfields (Regulation and Development) Act, 1948, the Oil and Natural Gas Commission (Transfer of Undertaking and Repeal) Act, 1993, the Petroleum

Pipelines [(Acquisition of Right of Users in Land) Act, 1962, the Esso (Acquisition of Undertakings in India) Act, 1974, the Oil Industry (Development) Act, 1974, The Burmah –Shell (Acquisition of Undertakings in India) Act, 1976, the Petroleum Act, 1934, the Balmer Lawrie Investments Limited and Balmer Lawrie and Company Limited, and the Rules made therein;

- (e) oil refineries, including lube plants,
- (f) blending and blending prescription for bio-fuels including laying down the standards for such blending; and
- (g) marketing, distribution and retailing of bio- fuels and its blended products. [*Outcome Budget for 2014-15, the Ministry of Petroleum and Natural Gas, Government of India, pp. 5-6*]

In 2006, Government of India enacted the Petroleum and Natural Gas Regulatory Board Act, 2006 “ to provide for the establishment of Petroleum and Natural Gas Regulatory Board to regulate the refining, processing, storage, transportation, distribution, production of crude oil and natural gas so as to protect the interests of consumers and entities engaged in specified activities relating to petroleum, petroleum products and natural gas and to ensure uninterrupted and adequate supply of petroleum, petroleum products and natural gas in all parts of the country and to promote competitive markets and for matters connected therewith or incidental thereto.”

Conclusion

What appears from above is that India has adopted a highly centralised model of environmental governance. States and local governments have bare minimum competence. Model of governance establishes a hierarchical relation among different tiers of governments. Centralisation has not served the fundamental goal of **ecological federalism and sustainable development**. Appropriate fit between people, polity and ecology is missing. Study by Kattumuri and Lovo (2018) have clearly shown the advantages of decentralised environmental governance.

References and Readings

- APEDA. 2016. *Web-folio*. http://apeda.gov.in/apedawebsite/about_apeda (Accessed 26-10-2016).
- Food and Agriculture Organization of the United Nations. 1995. www.fao.org/docrep/v6800Eod.htm (accessed on 03-11-2016).
- Food Safety and Standards Authority of India. 2016. *Introduction*. www.fssai.gov.in/AboutFssai/Introduction.aspx? (accessed on 26-10-2016).
- Ghosh, Nilanjan. July 2018. From Reductionist to Holistic Paradigm: Combining Ecology, Economics, Engineering, and Social Sciences in a Transdisciplinary

- Framework for Water. *Ecology, Economy and Society-the INSEE Journal*, 1(2):69-72.
- Jain, M.P. 2014. *Indian Constitutional Law*, 7thedn.Gurgaon: LexisNexis.
- Kattumuri, Ruth and Stefania Lovo. 2018. Decentralisation of Environmental Regulation. *Economic and Political Weekly*, October 27, 2018, volLIII no 43, pp 33-37.
- Ministry of Commerce.1999. WTO Agreement on Agriculture and its Implications. India & the WTO: A Monthly Newsletter of the Ministry of Commerce. Vol1. No.5.
- Ministry of Agriculture and Farmers' Welfare. 2015. *State of Indian Agriculture 2015-16*.
- Ministry of Environment, Forest and Climate Change 2016. <http://envfor.nic.in> (accessed on 12-02-2016).
- Ministry of Water Resources. Annual Report 2001-02, Government of India, <http://mowr.gov.in/writereaddata/Publications/anu41036322978.pdf>
- Planning Commission of India.2006. Report of the High Level Committee National Mineral Policy.
- Salve, Harish. 2016 "Inter-State River Water Disputes," in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta, *The Oxford Handbook of the Indian Constitution*, New Delhi: Oxford University Press.
- Seervai, H M. 2002. Constitutional Law of India : A Critical Commentary. Vol. 3. Delhi: Universal Book Traders
- Shah, Mihir. 2018. Reforming Governance to solve India's Water Crisis. *Ecology, Economy and Society-the INSEE Journal*, 1(2):77-80.
- Sharma, Sanjay and Ajay Kumar Singh. 2018. Environmental Regulatory Authorities in India: An Analysis. *Indian Journal of Public Administration* Volume 64 Issue 4, December 2018 and can be viewed at doi.org/10.1177/0019556118788482 (published by Sage)
- Singh, Ajay Kumar. 2009. *Union Model of Indian Federalism*, New Delhi: CFS &Manak Publications.
- Singh, Ajay Kumar. 2012. Vedanta, Bauxite and DongariaKondh: A Case of Tribal Self-Determination. In *Indian Journal of Federal Studies*, vol. XIII, no.1, pp.93-111.
- Singh, Ajay Kumar. "Constitutional Semantics and Autonomy within Indian Federalism." 2015. In Francesco Palermo and Elisabeth Alber. eds. *Federalism as Decision Making: Changes in Structures, Procedures and Policies*, Leiden &Boston: Brill Nijhoff, pp. 120-147.
- Singh, Ajay Kumar. May 2018. Union Model of Indian Federalism. Published by the Canterbury Christ Church University under its project 50 Shades of Federalism. <http://50shadesoffederalism.com/>

Singh, Ajay Kumar. July 2018. Dynamic De/centralisation in India, 1950-2010. Special Issue of *Publius: The Journal of Federalism*, p. 22, <https://doi.org/10.1093/publius/pjy022>, published online on 24 July 2018 (published by OUP).

Singh, Ajay Kumar. 2018. Codebook on Indian Federalism: 1950-2010. Special Issue of *Publius: The Journal of Federalism*, p. 22, <https://doi.org/10.1093/publius/pjy022>, published online on 24 July 2018 (published by OUP).

Thakker, C K, Subramani, S S, Doabia, T S & Banerjee B P. 2012. Eds, *D DBasu, Commentary on the Constitution of India*, 8th Edition Reprint 2012, Art. 233 to 307, Gurgaon: Lexis Nexis Butterworths Wadhwa Nagpur.

Thakker, C K, Subramani, S S, Doabia, T S & Banerjee B P. 2012. Eds, *D DBasu, Commentary on the Constitution of India*, 8th Edition 2012, Art. 361 to 395, Schedules 1 to 12, Gurgaon: Lexis Nexis Butterworths Wadhwa Nagpur



Green Federalism in a Multilevel Governance Setting

Balveer Arora and Nidhi Srivastava

The Indian Experience in Forests

The paper discusses the scholarship and experience of Green Federalism in select countries, especially developing countries. While discussing the discourse on green federalism and experiences from other jurisdictions, it presents a case study of forests in India in a multilevel setting. Forest governance in India is discussed in the context of federalism, with some aspects delved into in greater detail.

Green Federalism

Green federalism or environmental federalism can be defined as sharing of roles and responsibilities of national and sub-national units of government in addressing environmental concerns. Assignment of environment related roles to different tiers of government is desirable as environmental impacts are not contained in water tight administrative boundaries. Most environmental issues are simultaneously, global, national, regional, provincial and local; and cannot be addressed through a centralized top down approach. Principle of subsidiarity justifies environmental decentralization since sub-national and local levels have to deal with environmental externalities. However, the nature of environmental problems and actions needed to resolve them call for interventions from national as well as sub-national governments. Federal forms of government have opportunities as well as challenges in addressing environmental issues in an efficient manner.

Recognition of environmental concerns as a policy issue was not present at the time of emergence of most federal systems of government. Clearly, environment did not feature in most Constitutions and no demarcation of jurisdiction over environmental matters was done. The paper will examine how national and sub-national governments overcame this challenge, and the relative advantage that the newer federations or the countries reframing their Constitutions have.

The case of Forests and Federalism in India

Forests cover around one third of the total land area globally. In India, forests comprise 21.54% of the total geographic area of the country. Forests, besides being rich reservoirs of flora and fauna, support millions of people directly and indirectly for sustenance and livelihood. Besides being of an ecological value, forests have also been an intrinsic part of the milieu of most cultures, including in South Asia. More recently, forests are being recognized and valued for their carbon sequestration potential in mitigating climate change. Thus, forests have wide ranging and far reaching impacts from local to global. This makes forests an interesting natural resource to study from a federal perspective.

State governments own forests in India, hence any revenue generated from government forests accrues to State Governments. However, 'forests' as a subject is concurrent and regulated by both Centre and States. Powers and responsibilities over forests are distributed between Centre and States, with State governments being responsible for management of forests in accordance with the Central laws and State level forest Acts and Rules. In practice, however, this distribution is heavily skewed towards the Centre. Clearances for non-forest activities in forests, Working Plans for harvesting as well as regeneration of forests, utilisation of monies collected by States for Compensatory Afforestation have become subject to approval from Centre.

First part of the case study discusses in detail the interplay between federalism and forest governance in India, especially in a multilevel context, with respect to (i) potential of forests managed by sub-national governments in addressing climate change concerns globally, and (ii) local institutions and social forestry in a formal federal structure.

Second part of the case study deliberates upon the fiscal federalism discourse with respect to forests. The ecological, economic and social contribution of forests and the fact that sub-national governments, whether States or local, must be compensated is widely accepted. The debated issue is what should sub-national domains be compensated for, and how. The case study will draw from literature on fiscal federalism and experience of inter-governmental fiscal devolution with respect to forests and environment in the global South.

Third part of the case study deals with forests jurisprudence in India. Judiciary has played a vital role in mainstreaming environmental considerations into governance in India. While the impact of judicial activism on environmental federalism has been mixed, the general approach of judiciary has favoured centralisation of forest governance over decentralisation. There is, therefore, a need to study the interventions made by the judiciary and their impact, with examples from the forestry sector in India.

The paper concludes with main issues emerging from the study of forests and federalism in India. Since environmental concerns, including those pertaining to forest conservation, are local, provincial, national as well as global, there is a strong case for cooperative multilevel federalism in managing forests and environment. In giving effect to green federalism, the risk of organized federal and subnational governments diluting the autonomy of local institutions, especially for forest management, must be reduced and mitigated. Judicial interventions have intervened in matters of environment and forests to fill the void left by other machineries of the government. These interventions have not necessarily been helpful in strengthening cooperative federalism. Intergovernmental transfer of funds has been an important tool for fostering fiscal federalism in different domains, including environment. However, such transfers need to go beyond fiscal equalization and provide incentives for improved environmental performance. Capacity and accountability are integral in successful implementation of environmental decisions and policies at all levels. However, capacity, or lack thereof, must not become an excuse for lack of devolution. Efforts must be made to strengthen absorptive capacity of subnational and local governments for an optimal sharing of roles and responsibilities over environmental domains.



Federalism goes beyond Centre-State Dynamics

Arunabh Saikia

Management of natural resources is at the heart of green federalism. In the “mainland” Indian context, the idea of federalism with respect to natural resources usually involves the Centre and the state, and to a lesser extent, the Panchayat. In the North East, though, federalism vis-à-vis control of management and control of natural resources is invariably a messier proposition, involving more entities because of the Sixth Schedule and other similar Constitutional provisions, which allow for decentralized self-governance in many parts of the region.

Local populations in the North East often lament that their Constitutional rights of self-governance – and the spirit of federalism they stand for – often get violated in matters pertaining to control over natural resources. The courts, they further allege, have also failed to upkeep that spirit of self-governance they were promised.

One can witness this sentiment widely in Meghalaya. While the National Green Tribunal ban on coal mining in the state has been widely discussed, a similar stalemate has been playing out in the state in the case of limestone mining. In fact, the limestone story, rather than coal the extraction rules of which are fairly well-defined, illustrates the complex nature of federalism with respect to natural resources in the North East.

It begins with a man called Tangkham Sangma, a resident of Tura in the West Garo Hills district. Authorised by the Garo Hills Autonomous District Council – which operates under the Sixth Schedule of the Indian Constitution – Sangma operated a “forest check gate” in East Garo Hills district, where he collected a “compensatory fee” from limestone-carrying trucks that passed through the area. In 2008, the council had set up eight such gates across the Garo Hills apparently to raise funds to reclaim the damage done to the area’s forests by mining activities. One must note here that limestone mining in Meghalaya at that time was a very simple affair: all it took was an easily-obtainable clearance from the local forest office. While the arrangement continued smoothly for over five years, in March 2014, the Garo Hills’ district administration ordered for all such gates to be closed.

Sangma approached the Meghalaya High Court. He cited the Sixth Schedule to argue that unclassified forests were under the jurisdiction of the district council and the district administration had no business interfering. In short, it was yet another clash between two bodies whose functions and powers often overlap in many parts of the North East when it comes to

controlling natural resources – the district administration that reports to the state government and the autonomous district council created under the Sixth Schedule of the Constitution.

The court reminded Sangma that the Sixth Schedule made it amply clear that the state legislature would prevail in case of a conflict between the district administration and the local council. The bench also took a more drastic step: it ordered all mining activities in the state be immediately stopped, except in cases where the state had granted mining licenses taking into account provisions under the Forest (Conservation) Act. It added that before granting any new license the state ought to consult with the Central Empowered Committee, constituted by the Supreme Court in 2002 to provide assistance to states on such matters. The implications of the court's order were severe and utterly unexpected. Barring a dozen-odd big companies, almost all of Meghalaya's miners had to stop extracting minerals with immediate effect.

Not surprisingly, this led to great resentment that bigger corporations – who could get their paperwork done – had not been affected by the new rules and it was only the smaller tribal miner – the “real land-owner” – whose interests has been hurt.

When these tribal miners sought legal recourse, they cited an older Supreme Court judgment which had stated that “the indigenous people are conscious of their rights and obligations towards clean environment and economic development”. “These natives and indigenous people know how to keep the balance between economic and environment sustainability,” said the court order which ironically gave a green signal to the French multinational Lafarge's limestone mining operations in Meghalaya.

This contention – that local populations care about the environment – can be heard rather often in conversations with local miners and other locals. One would assume there's at least an iota of truth to it – and there's a case to be made for hyper-local governance entities particularly in the North East to have at least some kind of say in mineral extraction exercises.

In close-knit tribal societies, local governance agencies wield considerable influence over the local population who seem to have an inherent respect for the environment – something even the courts seem to believe in. Therefore, it is only fair that these entities, given they come with a degree of accountability to the local population as corruption here is fairly easily visible, have a significant say on things under the green federalism regime.

Besides, a centralized system of granting licenses from state capitals often inspires little confidence. For instance, limestone miners now in view of the court ruling have to go through an elaborate paper work-heavy process to get a mining license from the state government. Many small-time miners claim that the process, with all its paper-work, is invariably skewed against them – and more than the environment, it perhaps helps bigger

corporations. Of course, there needs to be more discussions to strengthen the accountability mechanisms of these local bodies.

But a belligerent judicial system and Centre is counter-productive as we have seen time and again. The mess in Nagaland – which is very likely to happen in Manipur again –in relation to oil exploration is testament. Nagaland, as we know, has a special constitutional provision in form of Article 371 A. Among other things, the provision says that no act of Parliament which deals with the transfer and ownership of land and its resources will apply to Nagaland unless ratified by the state assembly.

Federalism in the North East with regard to natural resources often goes beyond Centre-state dynamics. In 2012, when oil exploration in Nagaland did begin under the Nagaland Petroleum and Natural Gas Rules, 2012 framed by the state government, local tribal bodies objected to the revenue sharing system laid out by the state. They insisted that royalty be given not to the district administration but to the apex tribal body as according to Naga customary laws, land and, by extension, the minerals underneath are shared community resources.

These are peculiar situations. But solutions to these conundrums may not be all that complex after all. Often local populations want nothing more than just to be part of the decision-making process, that local tribal bodies be kept in the loop. In other words, they wish for the spirit of federalism they were promised under the Constitution be kept. But unfortunately, even state politicians often tend to be rather dismissive. For instance, last year when the Niti Aayog proposed a humongous unheard of 10,000-megawatt project on the Siang river in Arunachal Pradesh, much to the shock of local stakeholders, the state's chief minister said opposition to the dam is “fueled by narrow vested political interests and people being gullible fall prey to misinformation”. Interestingly, several technocrats stationed in Arunachal Pradesh's other hydel projects admit that a 10,000 -megawatt dam on the Siang, is by all measure, a terrible idea.

This high-handedness doesn't help anyone. Projects without taking into local sentiments invariably end in disaster. In Nagaland, for instance, during the first phase of oil exploration in Nagaland, ONGC had to flee in May 1994, without decommissioning its wells following snowballing local protests. No company would arrive to explore for oil for another 20 years.

In Arunachal Pradesh, too, despite several environmental concerns articulated by the local population, the state did not pull back from the barrage of hydel projects it had taken on. In just the last 10 years or so, the state government has signed more than 150 memorandums of understanding to develop up to 50,000 megawatts of hydroelectric power. As things currently stand now, almost all of them have fallen through with the private companies involved backing out of the projects in the face of hostility from the local population which has led to long delays and consequently cost escalations.

In the face of it, this was a state government taking control of its resources under the federal structure. But what actually seemed to be happening was pliant state politicians furthering the agenda of so-called clean hydel energy set by the Centre, in the process completely undermining the point of federal governance.

In conclusion, for a truly federal regime of natural resources management in North East, local bodies of self-governance ought to have more of a say in the decision-making process. In this regard, the judiciary may also want to look at how it can facilitate that in terms of interpreting Constitutional provisions.



Reflection on Natural Resources Management in Manipur

Jiten Yumnam

Context of Development Aggression in Manipur

With the aggressive pursuance of India's Act East Policy, Manipur and other states across India's North East has been subjected to massive infrastructures, extractive industries, hydropower projects and other plans targeting the land and natural resources in the region. Series of policies, viz, the Manipur Hydropower Vision, 2012, the North East India Hydrocarbon Vision 2030 and action plans to realize Sustainable Development Goals and to mitigate climate change etc are also formulated to facilitate such processes, also to realize Sustainable Development Goals, to mitigate climate change and to meet other priorities.

At least Thirty Nine (39) Memorandum of Understandings (MoUs) were signed with various companies and States of South East Asian¹ at the North East Business Summit from 21st till 22nd November 2017 in Imphal. The MOUs includes an oil pipeline from Numaligarh to Imphal, chromium and limestone mining etc². The Government of Manipur signed MoU with the North Eastern Electric Power Corporation on 28 August 2014 to initiate four power projects, viz, 60 MW Irang HEP, 51 MW Tuivai HEP, the 67 MW Khongnem Chakha and 190 MW Pabram HEP projects over the Barak River, Irang River, Tuivai River in Manipur. More dams are planned under the Manipur Hydroelectric Power Policy, 2012. Massive oil exploration plans are pursued under the North East Hydrocarbon Vision 2030, formed in January 2016. Jubilant Energy, Oil India Limited, Asian Oilfields, Alpha Geo etc are selected companies involved in oil exploration related survey works in Manipur. The Government of India conferred oil contacts to Jubilant Energy in 2010.

The push for India's Act East Policy is also associated with tacit involvement of international financial institutions (IFIs), subsequently

¹ 39 MOUs inked at North East Summit: Manpur CM, the Indian Express, 22 November 2017 <http://www.newindianexpress.com/pti-news/2017/nov/22/39-mous-inked-at-north-east-summit-manipur-cm-1708472.html>

² Business projects worth Rs 5,000 crore announced at North East Development Summit, Rumu Banerjee, The Times of India, 24 November 2017. <https://timesofindia.indiatimes.com/india/business-projects-worth-rs-5000-crore-announced-at-north-east-development-summit/articleshow/61785441.cms>

leading to an aggressive targeting of the land and resources³. The World Bank is financing 400 KV high voltage transmission and distribution lines in Manipur. The Asian Development Bank is focused on financing road projects in Manipur and across the region. Japan International Cooperation Agency (JICA) is preparing to fund the 66 MW Loktak Downstream Hydroelectric Project in Manipur and the Water supply from Mapithel dam for Imphal Town.

Reflection on Resource Management in Manipur

With the aggressive pursuance of India's Act East Policy, the push for large infrastructure and cross connectivity projects and massive extractive industries there's a pertinent question as to how and who managed Manipur's natural resources. Are the people of Manipur assuming central role in the ownership and management of its land and resources? A review of the persisting constitutional provisions and policies, both persisting and newly formulated or amended is crucial to understand the nature of resource management. Article 371 (C) of the Constitution of India provides a special provision for the legislation and the administration of the hill areas of Manipur, leading to formation of the Hill Area Committee (HAC). The HAC considers scheduled matters including the allotment, occupation, or use, or the setting apart of land (other than any land which is reserved forest) for the purposes of agriculture or grazing or for residential or other non-agricultural purposes towards promoting interest of hill tribes. However, the functioning and effectiveness of HAC remains a longstanding concern in Manipur due to its lack of actual power and politicization. The powers of the Hills Areas committee is curtailed with another provision that outlined, "Provided that nothing in this item shall apply to lands acquired for any public purpose or the acquisition of land, whether occupied or unoccupied, for any public purpose in accordance with any law for the time being in force authorizing such acquisition". This explains why the HAC is often downplayed or sidelined in many of the massive land and forest acquisition processes. Likewise, the powers of the Autonomous District Council, formed under the Manipur (Hill Areas) District Council Act, 1972 remains severely curtailed in devolution of powers and management of land and resources⁴.

³ Insidious Intrusion of International Financial Institutions in India's North East, published by Intercultural Resources and Forum for Indigenous Perspectives and Action, 2005

⁴ "ADC-Ukhrul for Decentralization of Power", The Imphal Free Press, 19 April 2018 <http://www.ifp.co.in/page/items/48383/adc-ukhrul-for-decentralisation-of-power>

Development Aggression and Implications on Resource Management

The mega development plans, policies and projects introduced in Manipur are fraught with non-recognition of community rights over land and resources, absence of consultation and failure to take the free, prior and informed consent of communities affected by such plans. The license to Dutch based Jubilant Oil and Gas Private Limited by the Government of India, through its Ministry of Petroleum and Natural Gas, for exploration and drilling works in oil blocks in Manipur in 2010 was carried out without respecting peoples' ownership of resources. The Oil India Limited carried out Seismic surveys at Khaidem, Moidangpok, Sangaithel villages in Imphal West district since May 2017 much to objection of villagers.

The State Government has also signed an undertaking with Orissa based private company Orient for mining chromite in Manipur without the consent of the communities, where mining is envisaged. The Forest clearance by the Forest Department of Government of Manipur and by the Ministry of Environment of Forest, Government of India for the 111 km long Jiribam-Tupul-Imphal railway is without community consultation and recognition of their rights. The proposed 1500 MW Tipaimukh Multipurpose Hydroelectric Project will submerge more than 27,000 hectares of forest land and the Government failed to take peoples consent for such massive diversion of forest land for the dam. Indigenous communities simply don't have any role and rights in decision making affecting their land.

Undermining of Traditional Land Governance, Management and Land Use System

The special provision under the Indian Constitution Article No. 371 (C), to protect the rights of the tribal for hills district has been sidelined and undermined by the ongoing railway works, Mapithel dam, oil exploration, dam building processes etc, for instance in the diversion of forest and agriculture land etc.

A total of 19,135 hectares of Reserved Forest area and another 985 Unclassed Forest areas has been diverted for the Railway works, as outlined by NFR in Form A for Forest Clearance,

Proposed 1500 MW Tipaimukh Dam and Impacts



Photo credit - Jiten Yumnam

without referring to the HAC. The community forest land is simply classified as “Unclassed forest”, in a clear non recognition of community rights over forest. The traditional decision making process is undermined in the pursuance of development projects affecting peoples land and natural resources. The public hearings under the Environment Notification Act 1994 for mega development projects is only to hear the environmental matters and is flawed for failing to rightfully accommodate the voice of affected communities. The environment clearance for the proposed Tipaimukh dam construction was cleared by the Ministry of Environment and Forest of the government of India in October 2008⁶, despite objections of the affected villages in all the five public hearings held for the proposed dam.

State’s Overt Dominance and Control of Resources

Major minerals and Oil and Gas are included in Union List of the Constitution of India. The State assured itself of an overt dominance over control of primary natural resources. All the laws of India, concerning exploration, drilling and handling of oil, such as Oil Fields (Regulation and Development) Act, 1948, the Oil Industry (Development) Act, 1974; Petroleum and Minerals Pipelines (Acquisition of Right of User in Land), Act, 1962; Oil Fields Act, 1948 confers rights to the Central Government and thus failed to recognize indigenous community’s traditional rights over land and resources.

The Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 promulgated on 12 January 2015 has no provision to recognize communities’ rights over their land. The 1957 Act (24 A (2)) describes indigenous peoples as “occupiers of the surface of the land”. Further, amended Mining and Minerals (Development and Regulation) Amendment Bill 2015 accorded emphasis on the rights of Central Government on major minerals and has no such provision for consultation with communities.⁵

The concurrent list, water and Forest etc is almost akin to Union List, with the Central Government having the final say and managed as per its interests. That also explains the nature of relationship between the State and the Central, the overt dependence of the former to the latter for financial and other reasons of powers. As per the overt push for Hydropower projects, Oil and gas, extractive industries and other ‘National Projects’ like Trans Asian railway works in Manipur, the State Government of Manipur conferred forest clearance almost for all mega projects without the consent of those depending on forest for livelihood and survival. The Manipur Forest Department already conceded 311 Sq. Km of Forest land for submergence

⁵ Betrayal of Adivasi India, Peoples Democracy, Vol. XXXIX No. 47, November 29, 2015, Brinda Karat http://peoplesdemocracy.in/2015/0412_pd/betrayal-ativasi-india

for 1500 MW Tipaimukh Dam reservoir. The State forest department is also on process to concede forest clearance for oil exploration and drilling sites. The matter of forest clearances, classed or unclassed in Manipur is pursued without any community role.

There are questions if the persisting and newly formed policies on land, forest, water, mineral resources management promoted community rights or environment integrity. Unfortunately, the North East Hydrocarbon Vision 2030 and the Hydro Power Policy 2012 negated community rights while consolidating more rights for Central and State Government and powers of the corporate bodies.

The implementation of the constitutional provisions on resource management has also led to much contestation and conflict in Manipur. The law enforcing agencies and the also military operating under the Armed Forces Special Powers Act, 1958 are also involved in promoting oil exploration related surveys and in facilitating the Environmental Public Hearings. The implementation of the Loktak Lake Protection Act, 2006 to ensure the functioning of the NHPC's 105 MW Loktak Project led to violent displacement of fishing communities in Loktak wetlands in November 2011.

There's ongoing process to frame new laws and to dilute the forest and land laws. The Manipur Hydroelectric Power Policy, 2012, the Manipur Industrial Policy, 2013, the Manipur Loktak Lake Protection Act, 2006 are all introduced sans peoples' involvement. There's process to introduce the New Land Use Policy (NLUP), 2014 to commercialize communities' land and resources. There are concerns that the Draft Forest Policy 2018 will further extinguish community rights over forest.

Conclusion

The ultimate issue is who should own and manage the land and natural resources, the Corporations, the Government or the people? An obvious reality is as the local governance mechanism lay in shambles, there's further reinforcement of the powers of the States over community's land and resources. The oil exploration, mining and dam building processes in Manipur constitute an outright rejection of community voices and their rights to manage their resources. The reliance on the State law enforcing agencies and the military set up operating in the conflict afflicted state of Manipur also indicates how the Central Government usurps and negate community rights, an indication of the real nature of polity prevailing in Manipur and across North East India.

The Government of India and all development stakeholders, corporate bodies, financial institutions etc should recognize that all resources belong to the indigenous peoples of Manipur and that they have exclusive rights to define and decide how to use, control and manage their resources. For instance, the resounding call of indigenous peoples of Manipur to the Oil India Limited, Asian Oilfields, Alphageo, Jubilant Energy etc to stop all Oil

Exploration & Drilling in Manipur need be fully respected. All undemocratic and manipulative efforts of oil companies and the Government to forcefully pursue oil exploration, mining, hydropower projects and large infrastructures in Manipur, including reliance on the emergency legislations, like Armed Forces Special Powers Act, 1958 and subsequent militarization processes will contravene best development and governance models. Several United Nations human rights bodies, while deliberating on the Mapithel dam and the proposed Tipaimukh dam in Manipur, have urged upon the government of India to respect indigenous peoples' rights over their land in all development processes. India's laws with fundamental flaws, at community, State and National level need to be reviewed, repealed or amended for compliance to best human rights, indigenous and development standards. Centrality on the role and rights of community's rightful involvement of development decision making on resource management is critical for fostering sustainable development. A true federal model works on respect, trust and according rightful space for communities and in recognition of their self-determined rights over their land and resources.



Article 371 (A) of the Indian Constitution in Nagaland

Dolly Kikon

I will be sharing my reflections on the ongoing coal mining activities in Nagaland and highlight the aspirations for a carbon future among powerful tribal actors. Keeping the framework of the two-day meeting *Dialogue on Green Federalism: Sharing Best Practices*, in this presentation this paper dwells on the gaps that exist between green federalism and experiences of governance. In the context of the hill states like Northeast India, we have to connect the history of militarization, violence, armed conflict, and the increasing operations of extraction. In Nagaland, questions about sustainability and environmental rights have emerged in the last two decades. The state is promoted as a cultural state and the Department of Tourism has declared Nagaland as the “Land of Festivals”. However, there is a deeper and darker story of extraction in the state. Along the districts that share a border with the foothills of Assam, Naga community land are increasingly becoming privatized as rich tribal families turn agricultural lands or forest lands into coal mines.



Fig 1: Mining site in Nagaland*

The justification for the ongoing coal mining activities rests on Article 371 (A) of the Indian constitution. This provision guarantees special rights and protection for Nagas living in Nagaland. All Naga people in the state have the right over natural resources and ownership over land. In addition, all matters pertaining to customary law, religion, and social



Fig 2: Mining site in Nagaland*

practices. At the centre of this constitutional provision is the confusion and the overlapping power systems between the state authority and the tribal councils across the state.



Fig 3: Mining site in Nagaland*

associations and the state legislative assembly)—for the right to represent the Naga past and their future is most intensely articulated in the scramble to control resources in the coalmining villages, where plans to explore for oil and natural gas are being mapped out.

My ongoing research and engagement in Northeast India dwells on the political economy of extraction. Therefore, the questions I have posed above comes from my long drawn engagement with multiple political actors on the ground in the extractive landscape across the region. Focusing on coal mining villages, hydrocarbon politics in Assam, and paying attention to the ongoing mining debates in Meghalaya, Tripura, and Arunachal Pradesh including Manipur, the context of Nagaland needs to be understood in relation to its neighbouring states. Particularly, an important form of politics around imposing and resisting the mining activities in Nagaland can be witnessed across Meghalaya and Manipur as well.



Fig 4: Mining site in Nagaland*

* Photos Courtesy: Dolly Kikon (2018)

For instance, during my fieldwork travels in East Jhantia Hills, local residents who depend on coal mining operation for livelihood said the most hated people in the areas were environmentalists who came to the villages to ban mining activities. These conversations illustrated the polarization of the community on issues of mining, environmental issues, and labour conditions. These debates on mining and other extractive regimes between the mining communities, state, and the environmental rights groups forces us to engage with mining and extraction as issues where local actors – communities, tribal elites, insurgents, and politicians – are deeply entangled. In Nagaland, extraction is tied to Chapter 371 (A) of the Indian Constitution and the invocation of customary law and the recognition of the Naga people as the rightful owners of land and natural resources. However, the invocation of this constitution right should also invoke the ethical and political duty to be accountable to one another and what happens on the land in Nagaland. As a powerful actors extract everything from the land on the basis of claiming rights as enshrined in Chapter 371 (A), social relations and economic conditions on the ground is rapidly undergoing transformation.

This means we have to look at the new questions and puzzles emerging from the ground. Who benefits from the profit from the coal trade and the new plantation economy in the state? Who has access to land and resources in the scramble for new mines and land for plantation? Who can afford to amass large tracts of land for prospective hydrocarbon exploration in Nagaland? What is the future of the poor and the subsistence cultivator in this new economy? Chapter 371 (A) of the Indian Constitution might not be able to answer these questions. The answer to these questions lies with the people of Nagaland and its representatives if they are able to reflect on an inclusive future and a customary reformation founded on justice, gender equality, and the right to determine indigenous and tribal lands. This also means the task lies with the Indian state to devolve more power to its states in Northeast India in the true spirit of federalism and address ways to bring an end to the structures and systems of militarization in the region.



Green Federalism and Best Practices

Uttam Kumar Sinha

There is nothing called a good or bad federalism. Federalism simply has to be effective and efficient, whereby differences are dealt in a time efficient and cost effective and with little hindrance to governance.

Federalism in its true sense is maintaining the political balance between the state and centre. Most of the time the balance is fragile, at times coercive and often uncooperative. As federalism evolves to being one of cooperative, collaborative and consultative, the environment/ecology or green issues will act as a positive catalyst.

The issues of environment as a critical driver to the new age federalism in a sense counters the embedded utilitarian discourse that has allowed state to turn nature into natural resources, plants to crops, animals to game and livestock. State has always appropriated nature for human use; a fiscal lens for revenue needs.

With the complexity of the green issues, federalism should be seen as a framework of dialogue between the national and sub-national where the conversation and exchange takes place between political leaders and between the bureaucratic system and structures. This is important because fundamentally, federalism is a compromise between a government (centre) which has abundant power and the state that does not do enough. Federalism is also at a functional level about dividing powers and thus understanding the power struggle between the different tiers.

All these salient features are important in understanding green federalism in India.

The idea of green federalism in India is quite alive and kicking. Environment is a residual subject, i.e, the responsibility of the state but then the state has specific environmental resources: land, water, livestock, fisheries; while wildlife, forests and inland waterways are in the concurrent list. Importantly, the laws provide for various scheme of devolution: central to state and further from state to local, for example the National Environmental Policy of 2006. However, the decentralization to the third tier is slight. The third tier is probably the most important part of green federalism. The 13th Financial Commission takes note of it and has stated to manage environment with sustainable development and to incentivize states towards environment performances, for instance transfer of financial resources in the form of grants. The Punchhi Commission reinforces it. However, the question of whether

power should be concentrated or distributed and how much remains debatable on environmental matters.

Learning from the federalism of other countries.

1. Australia: There is a debate in Australia about both cooperative and competitive federalism, especially on the issue of water resources. Water issues were the biggest challenge to drafting the Australian constitution. In fact, India's constitution borrows from Australia's residual power.
2. In South Africa, federalism is not used in its Constitution of 1996 but has a three tier system: the national, the provisional and the local. These are distinct but interrelated and interdependent. The Department of Water Affairs and Forest (DWAFF) is a national department without a direct provincial counterpart and deals directly with the third tier, the local authority.

Both these experiences (Australia and South Africa) have some reflection in India as there is a debate to push water issues from the state list to the concurrent list. There is also a thinking that water issues given its enormous significance should be declared a National Natural Resource.

Best Practices

The current water resource management of the Koshi River Basin undertaken by International Centre for Integrated Mountain Development (ICIMOD) in Kathmandu is a good example of how resource issues can be effectively managed within the framework of federalism and interstate relations. Koshi river is a transboundary river that involves China, Nepal and India and each has varied interest but each meet their interest through collective partnership and benefit sharing. Moreover, the people are greatly involved in the management of the river.

Another good practice lesson can be the Rhine river in Germany, which took more than 100 years to fight the extreme pollution. There again the involvement of the people was crucial.

Green federalism as to be more inclusive and dialogue oriented vertically between the power structures of the three tiers (Centre and State and Local) as well as horizontally between the departments of the three-tier system.

The residual powers or the concurrent list in which many resource issues are placed (forest, wildlife, inland waterways) will be much debated in the future. How much power in which tier, the distribution of power etc will continue to dig federalism?



Key Points on Sustainable Development

- ◆ While sustainable development is a desired goal, there are differing, often conflicting, perceptions about what sustainability is all about and how to achieve sustainable growth.
- ◆ Devolution of power is critically important for meeting sustainable developmental challenges.
- ◆ While devolution of power is important, there is need to create mechanisms to ensure greater accountability at all levels. The state needs to promote capacity building at the local level. Greater transfer of revenue is also needed at the local levels of governance.
- ◆ Sometimes at the local levels, short-term gains (like cash incomes) get precedence over long-term gains. That can be disastrous for the community.
- ◆ Some states are better endowed with resources than others. Similarly, some states have better capacity to pay more taxes than others. That being the case, South Asian countries will do well to devise an equalization formula like what the Canadian federalism has evolved. It is a formula-based programme of unconditional grants paid annually by the federal government to all states with less than average tax capacity.
- ◆ In order to achieve the goals of sustainable development, there is a need to promote inter-state and inter-region interactions and to learn from the best practices.
- ◆ There is also need to adopt the developmental models which create more sustainable development and protect environment and biodiversity.
- ◆ It is equally important to have a fresh look at the GDP-centric growth which promotes extractive growth. Growth is also equity and inclusion.

- ◆ To avoid the mistake of overgeneralization the policymakers should adopt the dialogue approach where the community has a sense of participation.

Cooperative Federalism

- ◆ Cooperative Federalism is the need of the hour.
- ◆ Federal countries like India, Nepal and Myanmar should create regional framework that can deal with ecological challenges.
- ◆ Federalism in North East States of India and Six Schedule areas, the customary laws and practices need to be revisited. Attention should be paid to citizenship rights, justice, inclusion, equality and land ownership. Perspectives of indigenous people about resource control and management need to be given importance.
- ◆ There is need for clear demarcation of responsibilities among various tiers of government.



Contributors

1. **Ash Narain Roy**, Director, Institute of Social Sciences, Delhi
2. **Alana Golmei**, Director, Burma Centre Delhi
3. **M.P. Bezbaruah**, Former Union Tourism Secretary and former member, North Eastern Council
4. **Ajay Kumar Singh**, Centre for Federal Studies, Jamia Hamdard, New Delhi
5. **Balveer Arora**, Chairman, Centre for Multilevel Federalism, Institute of Social Sciences and former Rector, Jawaharlal Nehru University, Delhi
6. **Nidhi Srivastava**, Honorary Fellow, Centre for Multilevel Federalism, Institute of Social Sciences and independent Law and Policy Consultant, New Delhi
7. **Arunabh Saikia**, Journalist, Guwahati
8. **Jiten Yumnam**, Secretary, Centre for Research and Advocacy, Manipur
9. **Dolly Kikon**, Associate Professor, School of Social and Political Sciences, University of Melbourne, Australia
10. **Uttam Kumar Sinha**, Senior Fellow, Nehru Memorial Museum and Library, New Delhi



