

Environmental Governance in India Issues and Challenges

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Outline

1. Background
2. Government and Environmental Laws
3. Judiciary
4. Role of public pressure and people's movements
5. Key Challenges and Issues

1.0 Pre-British History

- Pro-environment culture (in theory)
 - Emphasis on unity between man and nature
 - Protection of natural resources (harmonious relationship)
 - Nature worship, nature ~ god
 - Not often reflected in behavior or in practice
- Main concerns related to natural disasters/changes
- Well-developed control of watersheds for irrigation
 - Water harvesting structures to capture rainfall
- Mostly community-based decision-making
 - Forest resource management
 - System of voluntary work for communal benefit
 - Decisions for water use and management

1.1 Environment during British Rule

- British focused on *using* India's natural resources
 - Forests (timber for navy/railways), agriculture (cotton, opium, indigo)
- Commodification of natural resources
 - Loss of traditional/food crops to cash crops
 - Common property → private ownership
- Lack of understanding of traditional knowledge systems
 - Modern irrigation methods overemphasized
- Laws enacted to preserve/protect natural resources for commercial use (rather than for sake of env't)
 - Forests were protected *from* people, who lost their traditional access rights
- Government claimed ownership of all unoccupied/waste lands
- Bureaucracy became the primary actor in enforcing laws (and in exploitation of resources)

1.2 Post-Independence (1950-60s)

- Industrialization and limited capitalism was chosen as the path towards development
- “Socialist pattern of society”, but, no particular concern for environment
 - Similar to the rest of the world at this time
 - Little/no concern in industries for pollution prevention
 - Power and irrigation given high priorities (“Temples of Modern India”)
- State control of key industries (energy, defense, etc.)
 - Land/Forests given to industries at low rates
- New Acts dealt mainly with safety and health issues
 - Mines and Minerals Act, Factories Act, Industries Act
- States took some action on preventing pollution (water bodies)
 - Largely ineffective

2.0 Enter the Environment (1970s)

- Environmental Protection first mentioned in the 4th National Plan (1969-1974)
 - Need for appraisal of environmental issues
 - Advice on environmental issues in project/plan design to prevent subsequent adverse impact
- U.N. Conference on Human Environment, Stockholm (1972)
 - Indira Gandhi broadened ‘environment’ to include poverty, hunger and sanitation
 - “Are not poverty and need the greatest polluters?”
 - National Committee on Environmental Planning and Coordination (NCEPC) – advisory body
- New pollution control laws passed after the conference
 - Water Act (1974), Air Act (1981), Environment Act (1986)
 - One of the first Third World countries to take environment seriously
- Bureaucracy framed the environmental movement
 - Piece-meal approach to environmental protection

2.1 Water Act (1)

- Broad definition of pollution
 - Pollution = alteration of chemical, biological properties” of water that is injurious to public/animal health, plants, & agricultural/industrial use
- Creation of Central and State Pollution Control Boards
- No parliamentary debates/forums
 - No political perspective
 - Lack of public awareness or specific public mandate
 - Contrast to U.S. environmental movement (people/political movement)
- Pressure from international forces
 - UN conference hastened the policy process (Gandhi)
 - ‘Fashionable’ thing to do; “borrowed” issue
- 1988 Amendment gave boards right to close down defaulting industries
 - More stringent penalties
 - Industries needed to get licenses for operation

2.2 Water Act (2)

- Excellent legislation in theory, unworkable in practice
- Process led by the Government / bureaucracy
 - Institutional agenda: government defined and solved the problem
 - No significant support from political parties, mass organizations, etc.
 - Implementation entirely in hands of bureaucracy
 - Indira Gandhi's personal commitment to environment protection
- Problems:
 - Complex relationship between Central and State boards
 - Control of local economy by industries
 - Low penalties – cheaper to pay and pollute
 - Limited funds for Boards (partially alleviated by Water Cess Act 1977)
 - Corruption and corrupt practices by boards
 - Some of this can now be alleviated by Right to Information Act

2.3 Air Act 1981

- Passed under Article 253 of Indian Constitution
 - Center makes laws to implement international treaties/obligations
 - 1972 UN conference obligations used for passing Air Act
 - No role for States (Center usurped initiative)
- Air pollution
 - Concentration of substances that may be injurious to human beings, other living creatures, plants or property
- Existing pollution control boards given additional duties to prevent air pollution
- All States required to create pollution control boards
- Industries had to get licenses from Boards
- Boards defined ambient air quality and emission standards

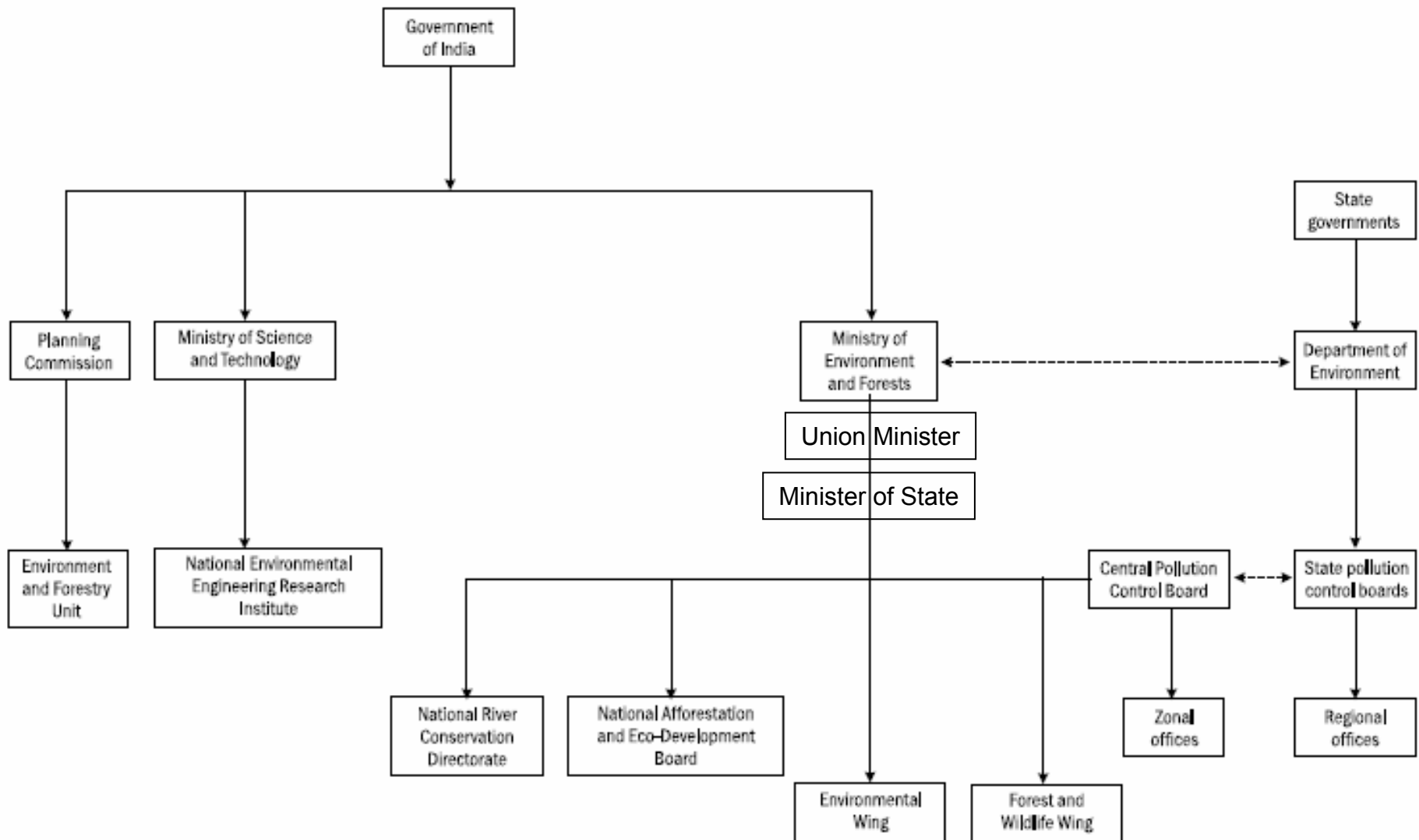
2.4 Environment Act (1986)

- Key Driver: Gas leak by Union Carbide in Bhopal 1984
- Environment = *Water, air and land, and inter-relationships among these and humans, other living creatures, plants, micro-organisms and property*
- Pollutant = *substances in concentration that is injurious to environment*
- Eliminate Loopholes in Air and Water Act
 - Particularly hazardous/toxic wastes
- No new bureaucracy – relies on existing frameworks
 - Some critics: “same old wine in same old bottle, but new label”
- Enabling Act – allows for new rules and regulations
- Increased penalties (5 year jail-time, Rs. 1 lakh (\$2K) fine)
- Allowed for national quality standards in all spheres
- **Allowed for citizens initiatives**
 - **Can take industries/gov't to court**
- Demanded information dissemination regarding pollution

2.5 Public Participation

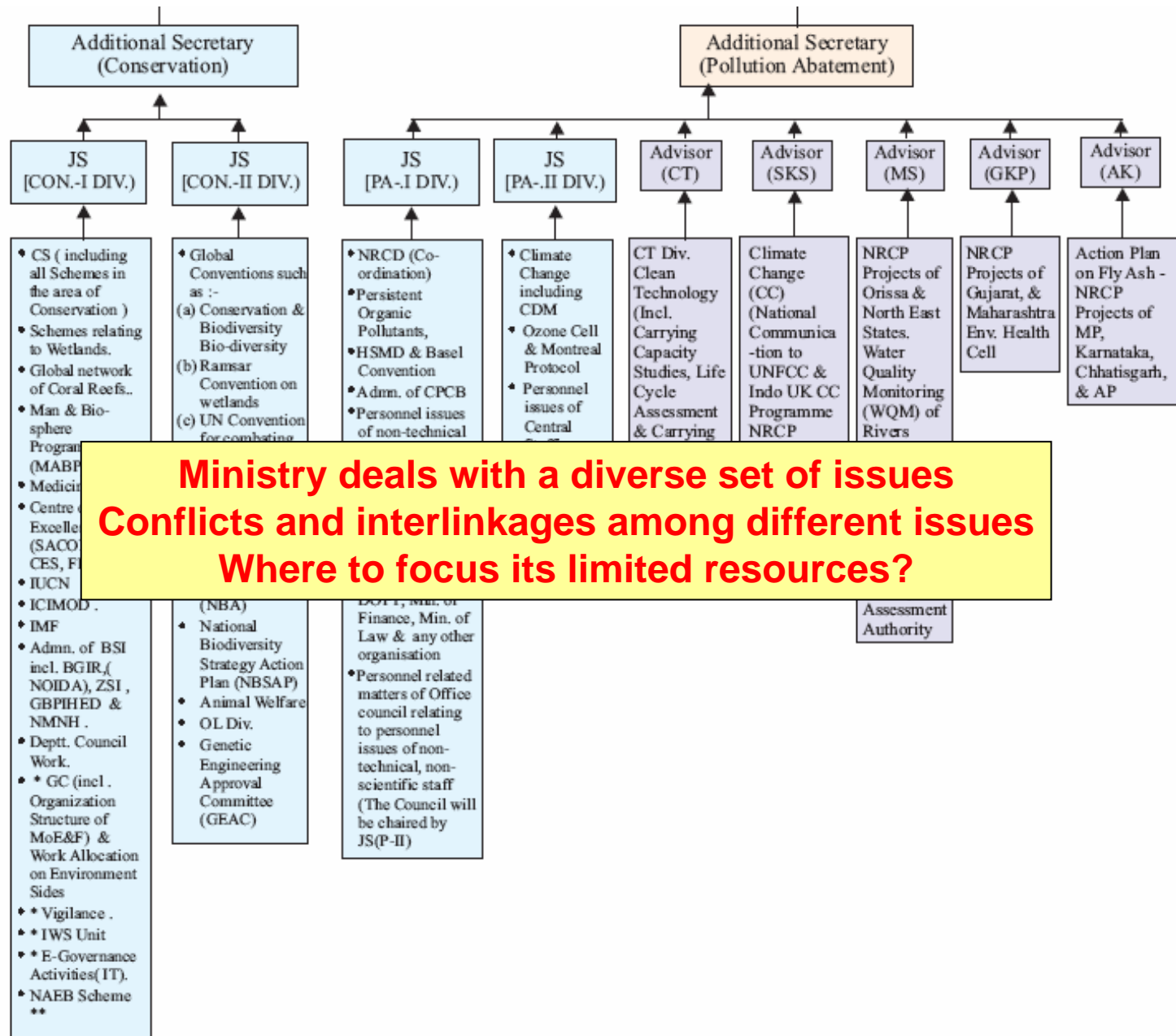
- Required by International institutions and policies
- 1994 – Environment Impact Assessment Notification
 - Requires project developer to submit an EIA
 - Public participation in environmental decision-making
 - Mandates public hearing
 - Need for active involvement of people
 - Requires environmental management plans
- Good in theory, but poor execution
 - Top-down approach
 - Industry pays for and influences EIA
 - Lack of proper data collection and analysis; definition of harm
 - Lack of “meaningful” participation
 - Lack of information at the local level
 - Often considered as just a checkmark – hindrance to projects
 - Further dilution in new policies

2.6 Institutional Setup



Source: TEDDY TERI 2003

2.7 MoEF Environmental Wing



3.0 Importance of Judiciary

- Indian Constitution amended to oblige the State to “*protect and improve the environment and to safeguard the forests and wild life of the country*”
 - Citizen’s Fundamental Duties included “*to protect and improve natural environment ...and to have compassion for living creatures...*”
- Public interest litigation
 - Anyone can file on behalf of concerned/affected people
 - Even a letter can become a PIL
- Key Guiding Principles
 - Right to wholesome environment guaranteed under Article 21 of the Indian Constitution
 - Enforcement agencies obliged to strictly enforce environmental laws
 - Agencies cannot plead non-availability of funds or inadequacy of staff
 - Use of “precautionary principle” to anticipate and prevent the causes of environmental pollution
 - Burden of proof is on the developer to show that activities are environmentally benign
 - Use of “*Polluters Pays*” principle: polluter bear cleanup costs and liable to compensate the victims of pollution

3.1 Key Cases

- Dehradun mining case – illegal mining stopped
- Shriram Gas Leak – factory closed, workers compensated, “Absolute Liability”
- Ganga Pollution Case – required closure of plants if effluent treatment plants not installed; compensation for restoring environment (polluter pays)
- Bicchri Pollution Case – prevention of toxic waste dumping
- Industrial pollution in cities – closing down of industries in cities
- Taj Trapezium case – prevention of air pollution near the Taj Mahal
- Narmada case – rehabilitation policies need to be followed (although the court did allow for the dam to be built)
- CNG case – Court ordered Delhi city to enforce the use of CNG instead of diesel to prevent air pollution

Judiciary has been an important force in environmental protection

3.2 Mixed results...

- Judiciary is not always on the side of environment
- Sethusamudrum: Development first, environment later
- Narmada: Dam allowed to be finished, as much of it was already built
- Godhavarman case: redefined forests; requires gov't approval for non-forest activities
 - Good for conservation (in theory)
 - Bad for tribals and other forest dependent communities

4.0 Public pressure & movements

- Public participation is a decisive factor in success of policies
- U.S., U.K., Sweden, Canada – public pressure brought environmental issues to the policy arena
 - In contrast to India, where policy came before people
- Usually manifested through NGOs, political parties, election campaigns, media coverage, and mass protests
- Historically, India has high public participation and awareness
 - Even in environmental issues
 - Protests, demonstrations, and mediated activities

4.1 Types of Peoples' Initiatives

- **People's movements/campaign**

- Chipko, Save Narmada Campaign, National Fishworkers Forum, Right to Information Campaign, Bhopal campaign
- Driven by local people; less hierarchical and structured
- Agitation against specific grievances (starts out as local problems)
- Strength in numbers and political influence

- **Urban NGOs**

- Environment Support Group, Kalpavriksh, Bombay Environment Action group
- Started small groups or individuals; driven by volunteers and small staff
- Local issues (tree felling, roads, garbage collection)
- Generally work in project mode
- Support for (rural) local groups and campaigns
 - Research, policy, advocacy, media, government lobbying

4.2 Types of Peoples' Initiatives

- **Issue-based groups**

- Prayas (electricity regulation), Toxics Link, Parivarthan (right to information), Equations (eco-tourism), Samatha (indigenous people), Human Rights Law Network
- Generally urban groups focused on a particular issue
- Policy research and advocacy – strong government interactions
- Interacts with urban NGOs and people's movements as needed

- **Large advocacy and research organizations**

- Center for Science and Environment, TERI, Development Alternatives, Greenpeace
- Large non-profits focused on a variety of national and international issues; agenda not defined by specific local needs
- Work with and against government
- Highly structured, large staff, well-funded by donor agencies
- Longer term and sustained activities in several areas

4.3 Chipko (tree-hugging) movement

- People's movement (no particular group, planned strategy, no formal membership)
- 1973 – Chamoli district, Himalayan region, people (women) starting hugging trees and lie down on roads to prevent them from being cut
- Started in one village, but spread throughout the district
- Not necessarily environmental, but against economic exploitation of villages
- Spread to several parts of the country and success inspired many activists to engage in environmental issues

4.4 Save Narmada Campaign

- Series of dams planned across the Narmada River Basin (30 major, 130 medium, 3000 minor dams)
- World Bank initially involved in some of the dams (Sardar Sarovar Project)
- Local protests against submergence of villages, agricultural lands
 - Agitations about resettlement and rehabilitation
- World Bank initiated inquiry into large dams
 - World Commission on Dams (involved leaders of the Narmada Campaign) → changed WB policy on funding large dams (now changed back)
 - WB pulled out of the project, but project continued by Indian gov't
- Key impacts:
 - Helped foster international support group/network for campaigns
 - International Rivers Network, Friends of NBA, Bank Information Center
 - Resettlement and rehabilitation policy
 - Awakened the environmental consciousness in the country
 - Initiated many current leaders of NGOs into the environmental arena

5.0 Key Challenges

- Understanding what Environment *and* Development means/implies
 - Converting this understanding into implementable policies
 - Especially important as privatization of mining, power, etc. increases in coming decades
- Land-use rights is *the* critical issue in many cases
 - Farmers, tribals, etc.
- Increasing need for public participation in environmental protection
 - Broader public needs to seriously engage in env't-development debate
 - Must involve a wide cross-section of society, particularly need to sensitize the urban middle-class
 - Crucial for building political will for required changes
 - Need for environmental education

5.1 Some approaches to meet challenges

- Bureaucracy and government need to consider environmental issues in practice, not just in theory or law
 - Environment ministry must be given higher importance
- Decision-making must include local people (tribals, forest-dependent communities, villagers)
 - Must receive equitable share of benefits from industrial activities (employment, revenue sharing, etc.)
- Industries need to take a long-term approach rather than pushing for quick-fix solutions
 - Eliminate corruption for quick gains
 - Take EIA's seriously!
 - Be conducive to “no-build” decisions
- Stricter enforcement of standards and *polluter pays* principle

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