

# Environmental Regulation and Governance

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Environmental governance has become a popular concept in the past few decades. Since the Bhopal Gas Tragedy in 1984, the term environmental governance has been applied by institutions, states, policymakers, researchers, and practitioners to India's diverse areas of development and well-being. Broadly speaking, environmental governance "is the term we use to describe how we as humans exercise our authority over natural resources and natural systems." It is about questions concerning "how we make environmental decisions, who makes them, and how they are held accountable." It encompasses all sectors, including biodiversity conservation, sustainable and equitable use of forest, land or water and other biotic resources, pollution and hazardous waste regulation, decision-making on massive irreversible transformations of ecosystems for developmental purposes, and now the question of climate change. The term also encompasses more actors. While "regulation" refers primarily to the actions of state agencies, "governance" includes all actors: regulatory agencies, regulated entities, legislature, judiciary, media, and the public. The role of other actors, especially the judiciary, has become quite visible in the Indian context in recent times.

In response to the growing awareness about environmental issues nationally and globally, India incorporated several direct provisions for the protection of the environment in the Constitution starting 1976. It has also enacted a wide range of regulatory instruments for preserving and protecting its natural resources and entered into several international agreements to advance sustainable development programmes. At present, there are over 200 central and state statutes related either directly or indirectly to environmental protection (Divan and Rosencraz 2001). Even in the limited context of environmental "pollution" and its regulation,<sup>1</sup> which is the focus of this review issue, the number of statutes, agencies, and the jurisprudence that have been generated is enormous. Corresponding to this plethora of laws, institutions, and practices, there is an expanding literature on the nature and process of environmental monitoring and compliance in India, the effectiveness of the multiple environmental regulatory authorities at various levels, and the implications of their functioning (or malfunctioning) for India's environment and the human rights of the affected people. While much of the early literature focused on laws and their interpretation, researchers are now beginning to examine the functioning of the bureaucracy, the judiciary, the political arm, and social movements as well as the role of scientific and local knowledge on the one hand and values and world views on the other.

In the past decade or so, the "conventional" local issues such as water pollution have been aggravated by rapid economic growth and urbanisation, and some issues such as air pollution

have re-emerged at a regional scale. At the same time, climate change has emerged as the mother of all environmental problems, and international negotiations are beginning to influence domestic actions. Thus, we see multiple avenues that are worthy of exploration: How are regulators and adjudicators grappling with cross-scale problems (air pollution) or multi-polluter–multi-user problems such as with water pollution? How democratic are our regulatory processes, whether for pollution or for irreversible infrastructure projects? Has the creation of specialised adjudicators addressed the regulatory "gap?" And what will be the implications of India's international climate change commitment for sustainable and equitable development within the country and eventually for our environmental governance? This special issue makes a modest attempt at providing some insights into this complex terrain.

Santosh Harish's (p 38) paper focuses on the need for an interdisciplinary, multi-stakeholder, and multi-scalar approach for addressing the burgeoning air pollution problem in India. He takes the case of Delhi's air pollution as his point of departure, arguing that the current regulatory approach to air pollution is inadequate to diagnose the extent and causes of India's air pollution crisis. Harish suggests an urgent need to involve expertise beyond the conventional environmental engineering and atmospheric sciences to disciplines such as public health, social sciences, environmental law, and in adjacent areas of urban governance, energy access, and food systems in developing regulatory policies and mechanisms.

Sharachchandra Lele, Priyanka Jamwal, and Mahesh Menon (p 46) combine their policy, science, and legal expertise to look at the question of how water pollution is regulated by state agencies (the Pollution Control Boards) and adjudicated upon by the National Green Tribunal (NGT). They identify major gaps at multiple stages: in standard setting, monitoring, and enforcement. They then link these gaps to structural deficiencies in the regulatory agencies that limit their accountability and responsiveness to the affected public. Adjudication is also hampered by the poor use of science, conflict of interest in the fact-finding process, and the inability of the adjudicator to plug the gaping holes in the regulatory process itself, notwithstanding its attempts to become a super-regulator.

Kanchi Kohli and Manju Menon (p 53) then examine how decisions regarding socio-environmentally damaging and irreversible infrastructure projects are taken. They highlight the dominant problem—the clearance of infrastructure and

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development projects without following the due process of environmental laws. Kohli and Menon argue that India's environmental regulatory regime, which was meant to control the social and ecological impacts of resource-intensive and potentially harmful infrastructure projects, has been diluted to suit corporate and powerful interests and has had a significant negative impact on the environmental quality and human rights of communities at the site or in the vicinity of these projects.

All of these papers mention the role played by the judiciary in their focal sector. The paper by Geetanjoy Sahu and Ritwick Dutta (p 60) takes up the cross-cutting questions of the functioning of the judiciary in the form of the NGT. They explain how the constitution of the NGT as a specialised multidisciplinary institution has raised the hope and expectation of environmental groups in the country. A review of the NGT judgments since its creation shows that the first few years of the NGT witnessed a series of landmark judgments that introduced significant environmental policy and regulatory reforms in India. However, Sahu and Dutta argue that the NGT's functioning and decision-making in the last four years has been rather disappointing. They conclude by suggesting improvements in both the choice of tribunal members and better resources for the NGT so that it can better serve the purpose for which it was constituted.

Finally, Tejal Kanitkar's (p 68) paper deals with the issue of India's climate mitigation commitments in the global climate negotiations; commitments that will have major implications for India's developmental and environmental trajectory in the years to come. She highlights the weakening attention to climate equity and justice. Analysing India's recently declared net-zero emissions pledge against a range of illustrative emissions pathways, she argues that developing countries like India will have to bear a triple burden—the burden of mitigation, which is in fact created by the inaction of developed countries, the burden of adaptation to increasing weather variability and extreme weather events, and the burden of loss and damage that extreme climatic events will cause. While the conversation around a “just transition” away from coal has begun, a hasty foreclosure of fossil fuel options in a still impoverished economy would be highly inadvisable.

The authors approach environmental regulation and governance from different initial disciplinary backgrounds: Kanchi Kohli and Manju Menon began in social work but have been working on the interface of socio-economic and political factors in environmental policies and their implementation; Tejal Kanitkar is a specialist in energy science and engineering and has been writing in the areas of energy, development, and climate policy; Santosh Harish's early work focused on the engineering and economic dimensions of electricity distribution but now broadly encompasses the areas of energy and environment policy, and specifically the regulation of air pollution. Sharachchandra Lele brings to bear a strong interdisciplinary training and research in ecological, economic, and institutional aspects of forests, water, and pollution onto the questions of environmental policy and governance.

Priyanka Jamwal is an environmental engineer working on water pollution monitoring and abatement technologies and associated regulatory issues. Mahesh Menon began as a practising lawyer before turning to research and teaching on child rights, human rights, and access to justice. Ritwick Dutta is a practising environmental lawyer in the NGT, and Geetanjoy Sahu is a political scientist and has been working on the impact of environmental laws and judgments at the grassroots level. Taken together, we hope the authors' contribution to this special issue will add value to the current environmental discourse and policy analysis in the country.

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#### NOTE

- 1 That is, excluding the “natural resource management” context of forests, water, land, minerals, or biodiversity.

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