

**Constitution of India and Environmental Governance:  
Administrative and Adjudicatory Process  
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Lecture 1**

**Introduction to Environmental Governance: Basis, Sources and Foundational  
Norms: Salient and Standout Features of the Discourse**

I take immense pleasure in welcoming you to the learning of this exciting area of law - Environment, Natural Resources law, administration and adjudication. As we get into this exciting journey of learning the law on the subject, we begin with three important aspects as the basic material to get to know as an equipment to learn this particular subject. At first, we would acquaint ourselves with the salient features of this law. The second, the basis, the sources from which this body of law draws inspiration from and finally the fundamental norms and principles which have steered the evolution and the working of this body of law.

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**I. FORM, FEATURES AND SUBSTANCE**



- *NOT A LAW PACKAGED IN A SINGLE LEGISLATION I-INTEGRAL ASPECT OF EVERY CONCEIVABLE LAW ON EARTH!*
- *NOT PURE LAW- ACCOMMODATES VARIOUS OTHER DISCIPLINES IN ITS CONTENT*
- *NOT JUST MULTI-DISCIPLINARY IN APPROACH BUT, TRANS-DISCIPLINARY- TRANSCENDS DISCIPLINES- AS A MATTER OF FACT, ITS CONTENT AND INTENT ARE TO DISCIPLINE THE DISCIPLINES !*
- *NOT JUST ABOUT HUMAN RIGHTS- IT IS ABOUT HUMAN DUTIES AS WELL - SEEKS TO DO EQUITY TO HUMANS AND TO ENVIRONMENT, AS WELL*
- *HAS A TEMPORAL DIMENSION - TRANSCENDS GENERATIONS OF HUMANS- " INTERGENERATIONAL EQUITY"- HAS INTERGENERATIONAL REACH,FEEL, IMPACT AND IMPLICATIONS*
- *NOT JUST ABOUT HUMAN CONCERNS AND INTERESTS ALONE- IT TOUCHES EVERY FORM OF LIFE IN EVERY CONCEIVABLE WAY*



Let us look at the features of the discourse that we have here, this is a one of a kind course, quite unlike most of the laws, that one would go through. This is not a law packaged in a single piece of legislation, which is another way of saying that there is nothing like the Environmental Law encapsulated in one single body of legislation. In fact, it contains a plethora of legislations numbering over 200 but there are about a dozen of them which actually form the very basis of it.

Second, apart from those environmentally related directly focused pieces of legislations of the subject, we also have environment and environmental concerns, natural resources management aspects as an integral aspect of every conceivable law on earth and so. If you just look at the standout features of this body of law, introduction to this law, would in a way introduce you to perhaps everything that is there in every law on earth, think of it, that when you get into a discourse on the subject we are not going to discuss pure law here, for the simple reason that various disciplines have made an imprint and impact contributed to a very content of this body of law and its working.

And so this is not pure legal discourse, pick any piece of environment related legislation, be it pollution control, waste management, biodiversity or anything like that, what you see is a lot of non-law language being used and so it should make it comfortable for people who are non-law people also to find something of interest for them even when reading any piece of legislation concerning environmental law. It is a multidisciplinary law.

A law which transcends disciplines, in terms of its approach, in terms of its working, in terms of its very conception itself. It has internalized the basic principles and the rules and the grammar of quite a large number of disciplines within its fold, it may have environmental economics, it may have human rights concerns, anthropological reflections, it may definitely have a lot to do with technology, biotechnology is one such area, it will have at times something to do with biochemistry, it will have quite a bit of an inquiry into so many other disciplines which are either in social sciences or in natural Sciences or even in physical sciences.

So in a way, it is a study on life relationships amongst different life forms and the human interventions, in relation to different life and life forms. It is a discourse which is not just about the rights and entitlements of the people in relation to environment, it is not just a discourse on human rights, it is about human duties as well in relation to environment and it is not just confined to human duties also, it also seeks to do equity to humans and to the environment as well.

Just think about it, this is one body of law which is not confined to the learning and understanding about the interrelationship among the people within the present generation, this discourse has a temporal dimension to it. It transcends generations of people, for the simple reason that there is a kind of realization that environment and environmental resources are not something that are owned exclusively for the benefit of the present generation and it is something that should be left behind after satisfying the needs of the present generation for the generations to come in future.

And so, this is a body of law which tries to regulate human activities to seek and secure equity to humans and to the environment in an intergenerational sense, we use expression intergenerational equity here. As we get into a reflection on this particular body of law, we would know, that it is not just about humans alone, human concerns or human interests or human rights, but it touches upon every form of life in every conceivable way.

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- *DEALS WITH INTERCONNECTED LIVES AND LIFE-FORMS AND A CONGLOMERATE OF LIVES AND ECO-SYSTEMS*
- *GOES BEYOND HUMAN, ANIMAL AND PLANT LIFE- DEALS WITH NON-LIVING THINGS, AS WELL !*
- *NOT JUST ABOUT LIFE ALONE - COVERS EVERY THING ABOUT LIFE AND BEYOND- "CRADLE TO GRAVE" AND THERE AFTER!*
- *UNIQUENESS OF INDIAN ENVIRONMENTAL LAW : OLDEST AND EVERGREEN ENVIRONMENTALLY BENIGN TRADITIONS – REFERENCES FROM KAUTILYA'S ARTHASASTRA ; ASOKAN EDICTS ; ONLY JUDICIARY IN THE WORLD FOR MAKING SUBSTANTIAL CONTRIBUTION TO ENVIRONMENTAL JURISPRUDENCE*
- *PECULIAR FEATURE OF THE LAW -LEGAL ENQUIRIES NOT CONFINED TO*



Such is the remarkable feature of this body of law that it deals with the interconnectedness of lives and life-forms and a conglomerate of lives and ecosystems which house them. So as we have seen so far, that discourse is something which goes

beyond human, animal and plant life, it deals with nonliving things as well, everything on earth and beyond.

It is not just about life alone, it covers everything about the entire life-cycle, a cradle to grave as they say. Right from birth and even before birth and after death as well. It is a very interesting body of law, a unique law, a law which is one of a kind which covers so much which no other discipline of knowledge can offer, coming home getting into the Indian environmental legal discourse, Indian legal discourse concerning environment is supposed to post of the oldest and evergreen environmentally benign traditions.

If you just look at our culture, the Indian composite culture since time immemorial, you would say about that the people owned everything to nature and worshiped the five elements of nature, all these five elements constitute environment as the resources and by worshipping, both in their practices customs and traditions and even in with the religion, they sanctified every conceivable aspect of life and life forms with the divinity.

There is a very interesting thing about that, when once you clothe something with the divinity, it is a kind of a taboo, that it shall not be defiled, that it shall not be polluted and so there was an inherent safeguard contemplated strategically by assigning and ascribing, divinity to everything concerning nature and that permeates into every aspect of human activity in India.

In terms of law, perhaps the earliest of references to environmental law comes in the Kautilyan jurisprudence. Kautilya's Arthashastra has quite huge reference to protection of environment and there are passages in the Arthashastra which actually makes it a punishable offense for harming, injuring, killing certain animals and plant varieties because plants and animals are considered to be very valuable even during those periods of time when the civilization was very early.

In terms of the laws that are made by the rulers and kings, we can even trace it to some of the edicts, the stone pillars on which laws were engraved in the Ashokan edicts of certain

do's and don'ts with regard to the natural resources imposed upon every citizen in that country. The other thing about the Indian law, I must add here, is that India has a blazing trail left behind by the higher judiciary in India to have through its interpretative techniques and processes enriched the substance and the working of every conceivable environmental law.

The contribution to environmental jurisprudence by the Indian higher judiciary is unparalleled. Nowhere else in the world do you find the courts of law which are exactly required to perform the task of dispute resolution, hearing of disputes and resolving disputes goes beyond that as to lay down the law of the land through their interpretation of an application of different laws in any given situation and that is what we are going to examine here in the course of our discourse here.

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**INDIA ALONE- GOES BEYOND CARTOGRAPHIC BARRIERS OF NATION-STATE SYSTEM - "ENVIRONMENTAL COMMONS"**

- FAIRLY RECENT IN POINT OF TIME- DYNAMIC AND CONSTANTLY EVOLVING
- DISCOURSE, DIVIDED INTO 12 MODULES. EACH MODULE WITH 5 SECTIONS- THE FIFTH ONE IN EACH, WOULD HAVE ASSIGNMENTS AND EXERCISES FOR THE STUDENTS. THE LEARNING BEGINS WITH A BRIEF ENQUIRY INTO SOURCES, BASIS AND PRINCIPLES OF THE LEGAL REGIME, FOLLOWED BY SPECIFIC ASPECTS OF LAW AND GOVERNANCE LIKE, POLLUTION CONTROL, WASTE MANAGEMENT, IMPACT ASSESSMENT ETC. TWO MODULES ARE DEVOTED TO FOCUS ON ACCESSING AND SECURING JUSTICE. CASE STUDIES AND CASE-LAW EMBELLISH THE LEARNING.



The peculiar feature of this body of law as you would be observing as we go along, that this is not a law which is confined to India alone. That is very interesting, because when we speak of law and legal systems we do know that a law made in a particular country is operable only in that country and only the governments there have jurisdiction within their territories alone.

But what I am referring to here is the body of law that has been created in India and worked in India has either drawn heavily from international inspirations or some of the laws and some of the practices that we have here, have in turn contributed to the very law and the working elsewhere in the world including globally.

And so, an introduction to this body of law, as we see here, it goes beyond the cartographic barriers of the nation state system and the catchy phrase that has been used to explain and describe a good environment is that environment is a common, a global common. Something which is commonly shared, enjoyed and from reference, derived from by all without any exception irrespective of whichever country, caste, community or a region one belongs to.

So the very feel and texture of this body of law that we discussed goes beyond the local, national barriers and it has a transnational feel about it. Think of it, the whole discourse that we are going to have, by and large, is something very fresh, something very new, quite unlike most of the laws that you may become familiar with, whether it is administrative law, criminal law, constitutional law or corporate law all these have a long history behind them of thousands of years.

But this is one body of law which has been developed in the last five decades in a very rapid way all over the world including in India and so, it is safe and proper to mention that this is one law which is very young, dynamic, constantly evolving, effervescent, ebullient and full of spirit and enthusiasm in exploring new avenues of regulating human activities in relation to environment to conserve, to protect and to make it environmentally benign developmental activity. Coming to the specific aspect of the learning of this particular course.

The entire course is divided into twelve modules. Each module will have five sections, of this the fifth one, in each of these modules; these are assignments and exercises for the students. The learning begins with a brief enquiry into the sources and the basis and the principles of the legal regime and that is followed by specific aspects of law and

governance like pollution control, waste management, impact assessment etcetera. Two modules are devoted entirely to focus on accessing and securing justice through formal and non-formal justice delivery system. Case studies and case laws embellish the learning of the law here.

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## **II. UNDERSTANDING ENVIRONMENTAL LAW**



### **APPROACHES TO THE UNDERSTANDING AND APPLICATION OF THE LAW:**

- ASPECT OF ADMINISTRATIVE PROCESS
  - MANAGEMENT DISCIPLINE
  - TOOL FOR APPLICATION OF ECONOMIC PRINCIPLES
  - TOOL FOR APPLICATION OF SCIENTIFIC KNOWLEDGE
  - DEVICE FOR THE REALISATION OF "RIGHTS"
  - PERCEPTIONS OF THE DEVELOPED WORLD
  - PERCEPTIONS OF THE DEVELOPING COUNTRIES
- **DEPENDS ON THE NATURE OF COMPULSIONS, UNDERSTANDING, AND APPLICATION, IN ANY GIVEN LEGAL SYSTEM AND AT A PARTICULAR POINT OF TIME**



How do we understand environmental law? How do you approach it? Is it just like studying any other law? It was mentioned earlier that it is a unique law, it has a grammar of its own. It is something which is one of a kind, interestingly this is one body of law which is perceived and understood and followed in a wide variety of ways like for example, it may be viewed as an integral aspect of an administrative process.

Something whereby you have certain kinds of demands with regard to the resources, allocation of resources and their utilization, monitoring, supervising and working of that between people and avoiding frictions more as an administrative process. There is another view that it is nothing more than management of balancing things, balancing interest and ensuring that the balance is maintained with regard to the demand and supply and the management of the entire issue.

So environmental law is also being viewed as a kind of a management discipline. And if you ask an economist he would tell us that "no, no, no environmental law is nothing more

than a tool for the application of economic principles like for example, demand and resources and the availability of resources, demand and supply so the entire thing can be viewed from the demand and supply angle.”

And if you ask a scientist of any description, natural scientist or a physical scientist or a scientist in ecological sciences or anything like that, he would rather say that it is all about working out the scientific principles and the scientific knowledge here, that each resources is meant to perform certain functions and using it up to a particular level and not beyond.

You see a combination of both economics and science here, where you talk about carry capacity, every resource can take only so much of a load and not beyond and so use those resources up to that a little mid-level and not beyond. And if you ask an activist, he would say it is all about realization of rights.

But in terms of distribution of resources and their utilization and when once you agree that environmental resources are common property of everyone then there should be the scope for accessing and managing these resources for all in an equitas way. And so, the entire legal regime need have to be fashioned around the rights and allocation according to the needs and demands of each one, a rights to discourse.

Environment law is understood in such a wide variety of ways. If you ask the developed countries, their perception about the environment and environmental governments is altogether different from the perception of the developing world people. The industrialized and developed world would visualize, there would be good environmental governance if there is less population and so less stress on resources and if there is no poverty and poverty is a worst pollutant as they would say.

So in terms of the developing, the idea about the understanding of environment law, it depends on where you come from, if you are from the developed world, the thinking is poverty, population are closely related to pollution and so remove these or reduce these and their impact then there would be a better, cleaner environment.



Come to the developing world, the perceptions are entirely different, it is not just about population, it is not about how many people are there and it is not just about the finiteness of resources and more number of people wanting to have their share in the resources and the benefits derivable from the resources. The perception of the developing world is about how much I consume.

You may have a large population but if that a large population would do well with less resources, know how to reuse and recycle the resources, to make maximum optimum utilization of the resources with minimum wants and so the entire governance with regard to environment is dependent not on population but on consumptive patterns, patterns of consumption. That you may have less population and they have actually put forth such arguments that there are countries in the world like United States for example, which hardly has about six to eight percent of the global population, making a demand for more than forty percent of the resources of the globe in fact and if that be the case it is a very good argument on the part of the developing world to say that population alone, poverty alone cannot be the cause for environmental degradation.

And for environmental wellbeing, the instrumentality of the law that was needed to be designed should be such that it takes care of the patterns of consumption, the extent of demands that are made and how to minimize those demands to derive the maximum benefits, well perceptions vary. Then how do you understand and approach environmental law in the present context as we get into a learning of this?

It is safe to assert here that perceptions and understanding of the law depends to a large extent on the nature of compressions. And the compelling circumstances under which the laws are made, the objects with which the laws are drafted with a kind of understanding of the law maker, the law enforcer and law interpreted interpreter in applying this law in any given legal system that determines the approach to an understanding and its application of any body of law.

And Environmental Law can be an economic discourse, can be a management discourse, can be something which is an aspect of administration and many more and so, it depends upon how this entire law is crafted and worked on. The basis of which you can decide that look, this particular law and understanding of that law has this trajectory of understanding an application and so it is very necessary not to look at the text of the law alone, but to look at the context in which the law has been made and has been brought into application.

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- **WHAT HAS BEEN THE POSITION IN INDIA? – THE COURSE SEEKS TO UNRAVEL, CRITIQUE AND EVALUATE !**
- **WELCOME TO THE EXCITING AREA OF LEARNING ABOUT ENVIRONMENT AND NATURAL RESOURCES LAW IN INDIA!**



Okay, in that event, what is the position in India? How do we understand this body of law? How do we learn environmental law? How do we learn natural resources law? Is there any formula for that? Well, the intention of this particular course is to see, to unravel, critique and evaluate the entire legal regime in relation to it. Welcome to the exciting area of learning about Environment and Natural Resources Law in India.