

**Constitution of India and Environmental Governance:
Administrative and Adjudicatory Process
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Lecture 2
Theoretical Moorings, Sources and Evolution – Part 01**

It is true that the language of the law is not simple. It is a bit complicated in the sense that it is techno legal and much more than that and so, many a time, those who are uninitiated into the legal discourse would find it difficult to understand the law. But law by definition, is something which is enriched by the contributions from so many other disciplines and since it has to cover a whole range of human activities put down in the form of one single legal prescription, it cannot but be complicated.

However, since the object of this particular course is to reach as many as possible and to make it as intelligent, intelligible as possible for a large number of people, a common man, enough care is taken here to have this entire discourse in as simple and as plain a language as is possible. In this first lecture, we have already set the groundwork to have a feel of the course, having acquainted ourselves with the unique features of this law, we move onto the second lecture in this module - Theories Sources and Evolution of Environmental Law.

Any given law, if you just look at the characteristic feature of any given law, what you do expect in that law are three attributes. The first one is what are its theoretical underpinnings and philosophical leanings, which go to the very heart and soul of the particular law; the second, that when you look at a law, you start tracing the roots of it through the sources from which it springs up and third, the entire journey of the body of law as you see today, as to how it evolved over a period of time in historical backdrop.

Why is this required? This is very necessary, especially to understand the context of the text of the law, to understand the text of the law, we need to understand the context in which this law is formulated and for what purpose it has been made. Theories, sources and the course of evolution would be a great aid in understanding the law and its application

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I. THEORIES AND PHILOSOPHICAL MOORINGS



MANY SPEND OURED THINKING ABOUT ENVIRONMENT , LEADING TO THEORIES, PHILOSOPHIES AND SOCIAL MOVEMENTS THAT HAVE SHAPED ENVIRONMENTAL LAWS IN DIFFERENT LEGAL SYSTEMS- A FEW OF THEM, AS BELOW:

- *"ANTHROPOCENTRIC";*
- *"BIOCENTRIC";*
- *"ECOCENTRIC";*
- *"DEEP ECOLOGY";*
- *"ECO-FEMINISM"*
- *"ENVIRONMENTAL JUSTICE MOVEMENT":-*
 - "standard view"; "ecological modernisation"; "wise use";*
 - " environmental justice and defence of the poor"-*
- *David Harvey: "ENVIRONMENT OF JUSTICE"*



Here we begin, first with the theoretical expositions and the philosophical reflections on this body of law. Environment is something which has been the subject of every conceivable kind of a philosopher, every kind of a thinker in every conceivable discipline that we know of. And more specific terms there has been a wide range of theories of environmentalism that has been there for centuries.

Like we Indians, we worship nature and we attribute divinity to every form of nature and similarly the world over, there has been different kinds of focused attention to different aspects of the environment and that is how the theoretical expositions or environment and environmentalism turns out. What I attempt to do is, to give a very brief account, both the constraint of the course and the time that is available at my disposal would not permit us to elaborate on each one of them and those who are interested may refer to many of the references that we are going to give you at the end of the course.

I just give you a few snapshots of these approaches. The first, the most predominant and something which is current even now and which has actually permeated into every legal system is the Anthropocentric approach. A human centric approach. An approach, a thinking that all resources and everything around humans are meant for their use, benefit and development. And so, you have a right as a human being, the very fact that you are born a human, you get right over on these resources.

That is the Anthropocentric thinking. The anthropocentric thinking is that everything need have to come to the human being. Even from the time of Aristotle, this has been the thinking. Remember what Aristotle said 'Man is the measure of everything', that while there are so many life and life forms around the world, all over the world within nature, human beings occupy the pinnacle of it and everything should sub-serve his needs, demands and claims - anthropocentric approach. That which is useful to human being need have to be nurtured, need have to be taken care of, need have to be put to use, need have to be exploited. And around which you need have to fashion your laws and work them. Development mantra is essentially based on the anthropocentric approach.

Quite in contrast to this is the biocentric approach. Bio centric -centered around life and life forms. That human being is part of the rest of the host of life and life forms and exist and subsist on earth and so there is nothing like a specialized place for the human being over and above other life and life forms and so as one speck, one small segment of life the human being exists and so any decision, any action, any thinking need have to be focused around maintaining this ecological balance by taking care of all life forms, biocentric.

Ecocentric approach. 'Ecocentrism' or a particular area, a very distinctive feature of mother earth - which is the home for quite a good number of life and life forms living and nonliving things, having a very distinctive identity and different from the other areas is what is referred to as an ecosystem. Ecosystem is that which would support life and life forms with whatever it has in a very specialized way.

So, if you have mountain ecosystems, you have a forest ecosystem, you have the desert ecosystem. So, like that, you have different kinds of ecosystems and it is not just about plant and animals that need have to be protected but the entire ecosystem needed to be protected because it is the life support. Ecosystem supports the life and so unless and until you support, you nurture, you take care of, you secure, you protect the ecosystem, a question of those that which would live there, survive there and flourish there will not have any future.

And so the approach should be the proponents of this particular argument say, should be ecocentric and not be myopic as to one plant life or one animal life. The totality of all life and life forms within the particular ecosystem and the support that particular system provides for, need have to be taken care of.

Then, there is this philosophy, a philosophical thinking which refers to deep ecology, as against shallow ecology. In a simple term it is this philosophy which regards human life as just one of the many equal components of a global ecosystem, human being as just one of the many equal constituents of a global ecosystem. That means what? Human being is in no way superior to, it is on par with all other life and life forms. An ant is as important as an elephant. It is simple as that. There is a bit of spirituality involved in this particular kind of thinking.

It gives a clarion call, that the humans must radically change their existing kind of relationship with nature, from one that values nature solely as that which would only help him, assist him, support him, meet his needs and demands and being useful to him, the anthropocentric approach, as you know, to something to the one that recognizes nature has an inherent value of its own, nature for nature's sake. It considers the human being as an integral aspect of nature. He is part of nature and not apart from nature.

Eco-Feminism, it is a movement that sees the critical connections between the dominance of nature or domination of nature and the exploitation of them. A connection is drawn. The exploitation of nature is seen as akin to or very similar to the exploitation of women in society. So, women and nature are put on par and there is no right to exploit nature that way, as you do not have a right to demean, to affect, to exploit another human being in the form of a woman. In fact, this is fairly a modern philosophy - the eco-feministic philosophy - drawn from the feministic thinking about non life society, nature, economics, everything.

But if you go back in history and the roots of a culture, you do see a very deep influence of this feministic perspective in our cultural upbringing and thinking, that remember that most of the life and life forms which are given the status of a god are very rarely being named in the name of a man. The male gender hardly makes a presence. Every river, there are a few exceptions

but by and large all major holy rivers have only feminine names. And ecofeminism draws a lot of inspiration from this, that something which is natural and woman is part of that nature, much more closely related to nature than a man and whatever that you do to women, whatever you do to nature, one reflects on the other, one impacts the other. And so, respect for women, respect for nature is something, it should be a part and parcel of our thinking and way of life.

It is more like a radical philosophical thinking. But it is more of a kind of a reaction to the way in which we visualize nature and we put nature to different kinds of uses, is essentially that environmental resources, each one of them, each component of it has a role and a responsibility to perform and they need have to be conserved, protected and preserved and they need have to be kept as such intact integrity and affected, intrinsic value, untarnished and they should be allow to run through their cycle of life. Life for life sake, nature for nature's sake.

Ecofeminism is the approach which actually distinguishes from all other kinds of approaches as to find a parallel between the human exploitation of nature to the exploitation of women. Any kind of exploitation which is inhuman is unacceptable. And so, ecofeminism demands taking care of nurturing nature and respecting nature as in the same way you need to respect women. So, there is a gender element to this particular dimension or understanding of environment.

Then there is this Environmental Justice Movement. It starts with a premise that the general thinking about environment by everyone, the policy maker and the one who would actually work the system of governance in any system, the dominant view is a standard view. And what is the standard view? That resources are there to exploit for economic development and so maximizing returns from any investment that has been made should be the be-all and end-all of all kinds of developmental decisions.

Should there be any injury, any harm to the environment, 'okay we will repair it, we will correct it, we will act where the damage occurs, we clear whatever inconvenience or hurdle that is there' but development at any cost should be the bottom. The problem with this is that

every environmental injury can be repaired. That is the kind of thinking. Every environmental harm can be compensated.

But many a time it so happens, in our enthusiasm of working environment and environmental systems in every possible way, we may err and we may err in such a way that we over exploit many of these resources so as to exhaust them and as a result of which many a time, some of these resources will become extinct and there is no way of retrieving or regaining or recovering or restoring them. In such an event, something that is lost would be lost forever. No question of compensation, no question of recovery. the standard view according to the proponents of this environmental justice movement would fail.

There is also another approach. If you just combine many of those eco-centric, biocentric and deep ecological approaches, this is very evident and the proponents of this particular movement would refer to it as 'Ecological Modernization'. That every human activity should be some kind of a zero-sum game of not causing any harm to the environment. While you survive you shall not harm, you shall not affect, you shall not in any way cause any injury to the environment.

According to the ecological modernization argument, the environment exists for its own sake and these environmentalists think that human existence is one among the many. At any cost the environment should not be harmed or in any way injured. That there has to be every conscious and considerable effort that is being made in every legal order to ensure that the value of any environmental resource is not diminished by any kind of human activity.

Ecological preservation is the mantra of this particular argument. Ecological preservation, even if there is going to be some kind of an inconvenience to human beings, is not something that they are going to discount in any way. It is something which runs very deeply in this particular movement. One of the arguments against this ecological modernization is that while you think about the environment as something valuable and something which is to be preserved and conserved for all generations of people to come is welcome. But if these environmental resources are selectively being put into use for the benefit of some and for the

denial of others, these resources are not being made available because they are not environmentally responsible or anything like that. This has been the argument that has been put forth by many of the scholars and thinkers of the present time who would like to distinguish between their new found environmentalism and a part of the western world as against the developing world.

The western world, having through industrialization over a long period of time, exploited the reaches of the resources that are available on earth, now suddenly they find that they are in an environmental crisis and so they want to cry a halt to destructive economic development. And so come in the way of a developmental activity on the part of similar developmental activity on the part of the developing world to deny them an opportunity to develop in the same way as the west has developed.

And now having come up with new devices of more cleaner technology or things like that, they are going to impose this on us so that they will continue to run the business and continue to develop further to the disadvantage of the developing world. Ecological modernization has a kind of this very interesting combination of a partnership between the scientific community who come up with their scientific theories of the limits to which a particular resource could be put to use and not to be exploited any further alongside the argument of those who would say that these needed to be preserved at any cost. And these two combine together to come up with such a kind of an argument that so much is the truth and no more the growth and no more shall be any kind of a developmental activity.

The third stream of argument that goes, which is a dominant discourse that is prevalent all over the world, is the argument of a 'wise use' theory, a theory of protection of private property. That you need not have to bother about legislating upon the environment at the national level or at the international level. Leave it to the private owner, leave it to the owner of a piece of land, leave it to individuals. They know how to manage their own resources because they are very intimately associated with whatever they are going to live. And so they know best, they know what is best for that environment, how to survive, how to make use of the resource and how to conserve them.

And so, all that you need is a native knowledge and nothing more. Trust that native wisdom and leave it to them alone. The local community knows best, the private individual, a private owner knows best and you do not have to legislate upon something which is purely private. Do not talk about global commons or anything like that. It is all about private property. The best way of good environmental management according to this particular argument, is to allow it to the wisdom of individual owners.

It is actually a kind of an argument for privatization of any resource including public resource, when once you give it to somebody to maintain and manage and derive benefits there from there is a sense of ownership in him and so he will know how best to take care of it because he will be dependent on it, he will be managing it and he will be taking care of it. So, no need to legislate. Leave the environment free, leave the owners free and they know how to manage the resources very well. They know the wise use of a source, wise use of the environment. Wise management of the environment lies in this particular argument of leaving it to locals, leaving it to the private owners and privatizing all public resources. A very powerful argument.

But there is an inherent weakness in this particular argument. And the argument is, which is a counter to this is that if one were to know what is best, he would only be thinking about what is best for him and him alone. And he will not bother about the adverse impact that his actions on his piece of land would have on the neighboring lands, neighboring property. He does not care, because he is only bothered about his property, taking care of it or exploiting it. If in the process some injury or harm is caused to the neighbor so be it, he is not bothered. And so, if each and every individual owner would think about his own property and nothing else, there will be chaos and there will be a free-for-all.

And this free-for-all would lead to might is right, and his might is right is something which is inimical to an organized way of living, law and order. Then law should step in to really deal with that kind of situation. Let there not be any kind of thinking that only the local owner knows the best and it is common human knowledge that if many minds come together to think in a broader objective way, there is bound to be better solutions to even micro problems.

The working of it at the local level may be different, may be left to the local people but to think of a policy and a law needed to come from a larger body, for a larger group of people at a higher level, so that the element of objectivity is maintained, the selfish and subjective element is taken away.

Then how exactly does the environment need have to be visualized? And how exactly does the environment have to be managed? And how exactly the policy makers and the policy interpreters need have to think about environment and work the environment? Well, this is possible only when, when one thinks quite differently from all this kind of a thinking and would essentially refer to and managed environment and the environmental resources keeping in mind that any decision, any action that is taken for whose benefit it is being done, who is going to gain and who is going to lose ,will it lead to some people gaining advantage and some people losing it, even access to that particular resource. If that were to be there and many a time you would see that most of the working of even well intentioned laws would be done in such a way that the weakest of the weak, the poorest to the poor, the vulnerable ones in the society would take the brunt of the burden of the law and its adverse impacts and the others who just escape.

And so the working of environment and environmental law, the thinking about it fashioning any law and working it out in any given system should be to promote this environmental justice, of ensuring that nobody is put into a disadvantage. That everyone is included in the whole scheme of governance, in the management of resources and the poorest to the poor, the weakest to the weak would also be able to derive benefit out of the bounty of nature. And that is what is being referred to as 'environmental justice'. I would very strongly recommend the students to read this wonderful article which is made part of the reading material, written by David Harvey 'The Environment of Justice' which encapsulates this idea. With this particular idea we begin our discourse on environmental law henceforth.