

Constitution of India and Environmental Governance: Administrative and Adjudicatory Process

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Lecture No. 27

Biodiversity: Significance and Concerns

From the browner aspects of Environmental Law, which dealt with Pollution Control and Climate Change issues in the sixth and the seventh module we turn to the greener aspects of Environmental Governance. The sixth one is devoted to a discourse on Biodiversity Law, the seventh one on Forest and Wildlife Laws. We begin with the biodiversity related laws.

In the sixth module, we have 4 clear sections. In the first section we deal with the International Framework Law, the Convention on Biological Diversity. In the second section we deal with the 2 protocols which are appended to and are supplementary to the Convention on Biological Diversity, so the 2 enquiries in the first 2 sections are essentially at the international level and from that we get into the Domestic Law. The third and the fourth section deal with the Indian law and it's working. We start with the significance and concerns of biological diversity.

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I. BIODIVERSITY :SIGNIFICANCE & CONCERNS



- **BIODIVERSITY : VARIETIES OF LIFE - FROM ANT TO ELEPHANT, FROM MICROBES TO MYRIADS OF ENTITIES WITH LIFE AND LIFE-FORMS**
- **SIGNIFICANCE & VALUE :**
- **IN TERMS OF ACCESS, USE AND MANAGEMENT- GLOBALLY, NATIONALLY AND LOCALLY, AS "COMMONS"**
- **IN MEETING FOOD SECURITY NEEDS; LIVELIHOOD REQUIREMENTS; HEALTH DEMANDS**
- **IN ECOLOGICAL SENSE : TO MAINTAIN ECOLOGICAL BALANCE; AS NATURAL CARBON SINK; AS INDICATOR OF POLLUTION AND ENSURING A CLEAN AMBIENCE ; AS GENERATOR OF OXYGEN; AS LIFE-SUPPORT,ETC.**
- **IN ECONOMIC TERMS :-"GREEN GOLD"- AS MERCHANDISE AND ARTICLE OF COMMERCE , ETC.**
- **AS A VALUE SYSTEM- IN CONTRIBUTING TO , SOCIAL, CULTURAL AND EMOTIONAL EXISTENCE AND WELL-BEING**
- **AS A MEDIUM, MUSE , MUSIC AND SPIRITUAL EXPERIENCE AND GREAT AESTHETIC VALUE !!!**



What is this biodiversity that we are talking about? The expression biodiversity is a combination of 2 words biological diversity. Something with life in all its manifestations or varieties of life in simple terms from the Ant to the Elephant to a microbe to the myriads of entities with life and life forms is what the subject is about.

So, it is about life and in terms of significance and value of life and life forms as we probe deeper into it we realize that globally and nationally and locally those with life and life forms appearing in a wide variety of forms all over are considered as commons or the common property belongs to the entire humanity as a whole.

At the global level and at the national level as a Sovereign Nation a State would have a complete right over these resources including the biological resources and the local level, the communities of people who are closest to it have a greater stake and a claim over them. That way in terms of access use and management of bio-resources and the knowledge's associated with them they are referred as commons.

Bio-resources or biodiversity is significant in another context of meeting the food security needs, the livelihood requirements of the people and even to meet health demands. In an ecological sense, biodiversity is very valuable to maintain the ecological balance, as a natural carbon sink because it absorbs carbon dioxide and releases oxygen.

And so the carbon that we produce through the human agencies and human interventions gets nullified or neutralized with the presence of the wide variety of life and life forms and they act as a natural carbon sink, they sink carbon and also they act as the indicator of pollution and ensure a clean ambience.

So, when you think of greenery it means a cleaner environment. So, as the generator of oxygen as a life support it is of very great value. In pure economic terms, you just look around, every product which has something to do with life and life forms is a huge economic goods. It is called as Green Gold. As a merchandise and an article of commerce it is a very great value.

As a value system if you just look at the conservation and management of bio-resources the world over, of communities of people maintaining and managing them of attaching so much of importance to certain life and life forms, as in Indian traditions you have those practices of worshipping, different elements of nature including every life form.

Plants and Animals or the riverine systems all being given some kind of divine status and so as a value system the biodiversity that we are referring to is a contributor to the social, cultural and emotional existence and well-being of people and so it is all of a sudden when you think of biodiversity, it is a medium, it is something to experience and is of very great aesthetic value. (Refer Slide Time: 5:42)

• **THREATS & CONCERNS:**

- **LOSS : OF RESOURCE, OF TRADITIONS, KNOWLEDGES AND PRACTICE OF NURTURING AND CONSERVING VARIETIES OF LIFE AND LIFE FORMS AND THEIR USES - A CONSEQUENCE OF UN-PLANNED, UNSCIENTIFIC, UN-SUSTAINABLE AND IRRESPONSIBLE USE OF RESOURCES**

- **LOSS : AS A RESULT OF USE OF UN-TESTED, UN-VERIFIED AND UNCERTAIN SCIENCE AND TECHNOLOGIES, WITH OUT PROPER SAFEGUARDS, BY WHICH THE VERY EXISTENCE AND SURVIVAL OF PARTICULAR LIFE FORMS, ARE RENDERED UNSAFE AND INSECURE- AT ITS EXTREME, HAVING THE POTENTIAL OF CHANGING THE VERY IDENTITY, COMPOSITION, COMPLEXION, FORM, SUBSTANCE, FUNCTIONS AND USE OF LIFE AND LIFE-FORMS FOR EVER, IN AN IRREVERSIBLE WAY AND EVEN THEIR EXTINCTION**

- **LATEST TRAUMATIC EXPERIENCE IS THE RELEASE OF A VIRUS - COVID 19- THAT HAS TURNED THE ENTIRE GLOBE TOPSY-TURVY!**



Then, what it has got to do with law? If it is of very great value and we are all using it and we are entitled to put that to different kinds of applications, then where does the law kick in? It precisely comes because of the problems associated with it. It is essentially with regard to the threats and concerns associated with bio-resources. The first and the primary concern is about the loss.

The loss of the resources and through human interventions knowingly or unknowingly over a period of time it has been discovered several species of plants and animal varieties are lost forever. It is not just on account of natural processes of evolution but, destructive developmental activities on the part of humans. Unplanned, unthinking, unscientific ways of dealing with resources have led to the loss of resources forever.

And it is happening at an accelerated pace, when once we know that life and life forms are connected to each other in an intertwined way, that separation of one with the other would reduce the quality of life of the other would actually lead us to this kind of a situation where the loss of anyone would actually reduce the quality of life of the other and this loss is not just confined to results.

It is also inclusive of the traditions and knowledges and practices of communities of people, who have nurtured and conserved varieties of life and life forms and have found periods of

uses of these and these are on the vain. These knowledge and knowledge systems when not properly nurtured, when not properly taken care of and when unplanned and unscientific measures are put into place and these traditions are forgotten, are left unattended to leading to unsustainable and irresponsible use of resources we have loss of resources. It is an irreversible process.


Once a species of life or a plant or an animal variety is lost, it is lost for forever. The other kind of a threat or the other kind of a fear and apprehension that we have is about the loss as a result of use of untested, unverified and uncertain signs and technologies without proper safeguards by which the very existence and survival of particular life forms are rendered unsafe and insecure.

And its extreme having the potential of changing the very identity, composition, complexion, form, substance, functions and use of life and life forms once for all in a way where there is no looking back and leading to the extinction. And this is something that has been experienced through certain biotechnological processes which are human inventions. And this is something which would ring a very familiar bell to every one of us because of we going through right now the traumatic experience of the release of a particular virus.


A microbe, Covid-19, Corona virus disease 19, that has turned the entire globe topsy-turvy. Our lives are changed forever precisely because of certain kinds of indiscrete application, of technology leading to the spread of this virus. So, look at the harm that may be caused there are life and life forms which are threatened.

And humans are now experiencing the heat of it and so conservation of those good resources which are beneficial to us and putting an end to or limiting the application of those technologies and providing legal safeguards against their harmful effects is something that is felt as an imperative need. Not just today this has been experienced for quite some time and at the global level there have been a lot of efforts in this latter part and that is what we are precisely getting into.

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- **PIRACY – NOT ORDINARY THEFT- VIOLATION OF SOVEREIGN RIGHT; RESPONSE OF RECOVERY, COMPENSATION AND PUNISHMENT, INADEQUATE OR ALMOST NON-EXISTENT**
- **INEQUITY – LACK OF TRANSPARENCY IN DEALINGS; NON-RECOGNITION OF CONTRIBUTION (- INCLUDING INTELLECTUAL DISHONESTY-), ESPECIALLY OF LOCAL COMMUNITIES, MAKING NO PROVISION OF ENSURING A SHARE, IN THE BENEFITS DERIVED FROM THE COMMERCIAL EXPLOITATION OF THE RESOURCE AND KNOWLEDGES ASSOCIATED WITH BIODIVERSITY**
- **THREATS AND ACTUAL APPROPRIATION OF BIODIVERSITY COMMONS FOR PRIVATE BENEFITS**
- **"SHARED CONCERN " AMONG THE COMMUNITY OF NATIONS , OVER THE PATHETIC PLIGHT OF BIODIVERSITY AS GLOBAL AND LOCAL "COMMONS"- IMPERATIVE THE NEED FOR LAYING A ROBUST MECHANISM TO ARREST THE ALARMING TREND & SET THINGS RIGHT THROUGH LAW**



But in addition to these kinds of threats you have other kinds of threats like that of piracy. Well, we know of piracy is something to do with very valuable things of property, of jewels, of money being through dacoitic activities, people being deprived of what they are entitled to. But what about piracy about life and life form? Is that happening? It is not an orderly theft. It has been elevated to the status of piracy of international dimensions where, the Sovereign right of a Nation is violated.

Sovereign right over its own resources that many a time we have not experienced of this happening to us all the while although, we are going through it all the while. That there have been several such apparently those adventures of somebody coming here to collaborate on a research work or somebody coming here taking a fancy of a particular variety of a plant of an animal and taking it back to the respective countries and then later subjecting it to different kinds of processes and putting them into commercial use.

This is happening all the while and not many do really know about the ways and means of checking it and this is something which is rampant that is occurring. Especially, on behalf of those countries which have advanced technology. In those countries which are bio-rich that means having richness of biodiversity and getting into such kinds of arrangements which apparently are harmless.

But when you go deeper into it there is not an effect of an arrangement, you do find that the nation, the people, that the community is losing out on resources forever and later that particular resource get transformed into a product comes back to your market and in the market you needed to purchase by paying a price for it of which that was available at your backyard earlier.

And this has been appropriated through various legal processes of intellectual property rights kind of a thing. And so people realized over a period of time that this kind of a piratical activity, recovery from that and deriving compensation and punishing those who are responsible for that in terms of law was found to be inadequate or almost non-existent and that is another concern. Lack of law.

Yet another concern is about the inequity in the entire dealing. Inequity, the resources that you have somebody comes and accesses it and without you knowing it as to why he is accessing it, he knows its value and you do not know in terms of commerce and he takes it away from you and later puts it to commercial application leading to you being impoverished to the resource and he gaining an unfair advantage over you.

So, there is an element of non-recognition of contribution, of you nurturing a particular resource, of you developing a particular knowledge system, about a particular resource of the different kind of uses that it had and somebody tapping it, appropriating it for himself both at the local market, at the international market and then coming back to you with no returns. That somebody who is the source of that is deprived of the benefits that could be derived out of its commercial application.

There is an element of intellectual dishonesty and there is unjust enrichment of those who do not have a right to enrich themselves. And this actually happens to those communities of people and those traditions of those people, the native traditions as we call the Ayurveda and others which are lost to us forever and even in accessing it and deriving benefits from that

you need to pay a price of which somebody is not entitled for but making a huge profit after that.

So, somebody is commercially gaining at your expense. Somebody is commercially gaining at the expense of your sovereign national right over a particular resource and the knowledges associated with it. A very serious problem, an element of inequity, there is no sharing of benefits and this is another matter of great concern.

Then there has been efforts that when something is in the common property resource area everyone considers as that as a free for all. To be put into application every whichever one likes with the result that the particular resources mentioned for a particular purpose is being put into different kinds of application and that particular resource loses its value and also a public resource, a common property is a public resource.

A public resource, is put to private use and for a private benefit and that is another threat, there is another threat of one of deprivation of a public access and second one deprivation to the public of the beneficial use of the particular resource and knowledge for the gain of a few private hands. This is not something which is experienced locally. This is not something that is experienced only nationally but this is a shared concern globally.

The community of nations realized after the various environmental summits took place over a period of time right from 1972 that this a very serious issue and this has been tackled at the global national and the local level and for that this shared concern about the community of nations over the pathetic plight of biodiversity commons. It was felt necessary of coming up with a robust legal mechanism to arrest this alarming trend and set things right through law and its instrumentalities. And that was how international inquiries, international strategies got started getting evolved over a period of time.

