

**Constitution of India and Environmental Governance:
Administrative and Adjudicatory Process
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Lecture No 04
Theoretical Moorings, Sources and Evolution - Part 03**

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- COMMISSION ON SUSTAINABLE DEVELOPMENT (CSD), SET UP
- 1992-2002: -GLOBAL ENVIRONMENTAL FACILITY (GEF), SET UP; CONVENTION TO COMBAT DESERTIFICATION, 1994; RIO+5,1997; KYOTO PROTOCOL, 1997; CARTEGENA PROTOCOL, 2000 - UN MILLENNIUM GOALS FOR DEVELOPMENT, 2000
- 3. SUSTAINABLE DEVELOPMENT SUMMIT, JOHANNESBURG, 2002 :- COMMITMENT TO WORK TOWARDS THE GOALS SET UNDER THE RIO-SUMMIT- THRUST ON " GREEN GROWTH"
- SUBSEQUENT DEVELOPMENTS: RIO +TWENTY- 2012; SUSTAINABLE DEVELOPMENT GOALS (-SDGs-)2015; END OF THE LIFE CYCLE OF KYOTO PROTOCOL AND NO SIGN OF A SUCCESSOR TO IT - PARIS AGREEMENT ON CLIMATE CHANGE, 2015; 2018-19-20: NEGOTIATIONS ON INTEGRATING INTERNATIONAL BIODIVERSITY RELATED LAWS AND THE LAW OF OCEANS, UNDERWAY, AT PRESENT.



It was cautious optimism on account of the necessity to engage with the industry. That actor who was kept out of all international deliberations was continuing with its mischief of causing environmental damage. And so, to bring that also into the whole scheme of global deliberations as applied, used for the first time in the Johannesburg summit.

But look at the background. Around 2002, there was a sense of desperation and frustration about the inability of the international community from translating all those great ideas and promises that emerged out of the first two Earth Summits, both in Stockholm and in Rio de Janeiro. Promises were plenty, results were scanty. None of the targets that were set and let alone getting achieved.

The actions had not even started taking off, but climate change action, for example, where so much of progress was made had not even begun, it is a classical example. Many of the leading lights who were the drivers of the first two up-summits had already gone to the background. And the two major international actors who have been influential in the convening conduct and the

outcome of the deliberations of both the up-summits, the two powerful blocks. Of these two, one of them, United States of America. The European Union being the other. The United States had already shown its disinclination in cooperating with others in any other future deliberations concerning the environment, for its own domestic compulsions of continuing with its earlier march towards greater economic development and the continued dominance of the United States as the economic superpower. This was indeed a big blow.

And the environmental negotiations could not take off unless and until the big powers cooperated and U.S. was less than cooperative. The industry under the circumstances continued and continue to remain keen on the business as usual to be restored even in global negotiations, so that it will continue with its environmentally unfriendly developmental activities. Less developed countries began losing faith in these international arrangements, as the promised benefits from each and every one of those environmental deliberations remained elusive for them.

Against this background, we see the Johannesburg Summit getting convened. Gone were the sense of purpose of the Stockholm Conference, the Rio's cautious optimism got replaced by a sense of frustration and futility of going through yet another international global summit.

With the result, there was hardly an outcome that one could imagine ever coming out of the Sustainable Development Summit of Johannesburg. So what did they decide? Well, they decided that much of whatever that said for their agenda of action in the previous two summits remained unaccomplished. And so, they made a renewed commitment to work towards the goals set under the Rio Summit.

And they made a clear commitment that while we continue with our economic growth, the growth should be underlined by the basic need for promoting green growth, whatever it meant. Well, that was the outcome of the Sustainable Development Summit of Johannesburg, which was not very much as we could see now, but all was not lost.

There were pulls and pressures operating on the other side as well to make these environmental arrangements work. And if you can quickly look at the subsequent developments that took place

from 2002 to 2020 as of now, at the global level, we had this Rio + 20 organized in the year 2012, look at the catchy title, Rio Plus 20. They have run out of the titles from human environment to environment and development to sustainable development, they said, let us do ever with these catchy phrases. Let us become very practical minded and let us just see 20 years after Rio where we are. That was the summit that took place once again in Rio de Janeiro in 2012, more to take stock and then renew their commitment to realize whatever they had promised earlier to each other.

Three years later, that's in 2015, The United Nations came up with a host of goals to realize the idea of sustainable development. They were called as 'Sustainable Development Goals' to be achieved over a period of 15 years time, from 2015 to 2030. They are called as SDGs. And around this time by 2012, the Kyoto Protocol which took its birth in the year 1997, its life-cycle was over. And there was absolutely no sign of a successor to it to make this climate change arrangement work. But there were a number of conferences of parties taking place all the while. Not everything was lost, because in the conference of parties in the year 2015, in Paris, there was some kind of a consensus, which was a kind of an agreement.

They did not call it as a treaty. They did not call it as any kind of a binding obligation, but more kind of a consensus to work with a particular frame of action to give effect to something with regard to climate change by the year 2020. And so, the Paris Agreement was more of a framework, on which a lot of work need have to be done over a period of next five years, by which time in 2020 they would be in a position to really make the climate change actions work.

As a matter of fact, as we are now in 2020, not much has been achieved in operationalizing it, but a lot of activity has taken place at the domestic level, especially in countries like India and India has taken a lot of leadership on climate issues. And these we will be considering in a separate bonding for a detailed discussion.

Negotiations also began in pooling together or integrating all international biodiversity related laws and the laws of ocean all to come under one rubric of oceans and biodiversity, because there are a lot of things that are in common between the host of arrangements.

And if we can put them together, integrate them and make it a little bit more stronger in terms of effective implementation, then, we would have contributed to a better governance concerning biological diversity and with regard to the oceans by within a short period of time. So this was actually the idea. And at present, the negotiations are still underway.

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- **B. INTERNATIONAL FINANCIAL INSTITUTIONS – LIKE WORLD BANK - “ ENVIRONMENTAL CONDITIONS” TO CONFORM TO BE ELIGIBLE TO GET INTERNATIONAL FINANCIAL ASSISTANCE TO FUND DEVELOPMENTAL ACTIVITIES; WTO : DEALS WITH A NUMBER OF ENVIRONMENTAL ISSUES BOTH IN ITS ADJUDICATORY PROCESSES AND IN THE WORKING OF COMMITTEE ON TRADE AND ENVIRONMENT -MANY OF THE PROVISIONS IN THE UNDER IT HAVE ENVIRONMENTAL IMPLICATIONS (LIKE, TRIPS, AGREEMENT ON AGRICULTURE, ETC.)- MORE ABOUT THESE, IN A SUBSEQUENT MODULE**
- **C. REGIONAL DEVELOPMENTS :- EUROPEAN UNION- FRAMEWORK LAWS EVOLVED IN RELATION TO NATURAL RESOURCES (- LIKE, WATER) AND ENVIRONMENTAL ISSUES (- LIKE, ENVIRONMENTAL INFORMATION, ORGANIC POLLUTANTS ETC.)- CATALYSTS FOR INTERNATIONAL LEGAL DEVELOPMENTS AND REFORMING NATIONAL LAWS, IN MANY COUNTRIES , INCLUDING INDIA**



It was not just about sense of desperation or anything like that or nothing much getting achieved through international arrangements or anything like that. But it was a kind of a wakeup call that we may promise so many things. But unless we begin action at the domestic level, we will not be able to achieve much. That was the end result of all these host of discussions, deliberations and conclaves that we had at the global level.

But alongside that, there were other developments, which made the international law with regard to the environment far more effective, because there were certain institutions at the global level and certain arrangements at the regional level, which were putting into application, many of these environmental conditionalities at work in certain sectors. And one such is the effort of international financial institutions like the World Bank.

The World Bank, when it funds developmental projects, it comes up with its own operational directives or policy documents that, well, ‘this is the amount that we give you, these are kind of

assistance that we extend to you, subject to you fulfilling certain of these conditions concerning environmental conservation and protection'. 'You confirm, you become eligible to get this international financial assistance for funding your developmental activities'. This is one development.

The other development is those institutions which were not exactly directly related to environment but were dealing with something else, did find it very useful to mesh some of their activities in relation to environment, not only to add a little bit more substance and depth to their kind of activity, perhaps even legitimacy to their actions. They invariably in some form or the other incorporated some of those environmental concerns in their working itself.

For instance, the World Trade Organization, WTO, for short. It deals with a number of environmental issues, both in its adjudicatory processes under the working of the Committee on Trade and Environment constituted within it.

A lot of effort that is going on to bring in the harmony between trade agreements with environmental agreements, of ironing out the differences and to make sure that one would not clash with other and there will be harmony in the working of these two sets of arguments.

In fact, many of the provisions under the World Trade Organization, the General Agreement on Trade and Tariff. They have provisions having a bearing on conservation and protection of the environment. That trade arrangements should need have to fulfill the basic requirement of certain environmental imperatives subject to it only these trade arrangements can come into effect.

And similarly, there were quite a good number of arrangements under the areas of the World Trade Organization like TRIPS, Trade Related Intellectual Property Rights arrangement, or the Agreement on Agriculture they have a number of things in relation to the environment. Well, we will be discussing quite a bit of all this in another subsequent module. And so, till then, this could be taken as a kind of forming the basis for our discussion later.

The last aspect that we need to look into that has contributed to the evolution of international environmental law in a far more impactful way than any other is the regional arrangements within the European Union.

If you just look at history, the activities that took place in Europe around 14th and 15th century, it gave way to the very idea of nation-state system. And later, internationalism emerged out of that crucible of the European journey. And much of what we refer to as international law is essentially the contribution coming out of what happens in Europe. And it is no exaggeration to say that what the Europeans think at the regional level today, the globe thinks about it tomorrow. Same is the case with regard to the environment.

In the European Union, right from the 1970s, there has been a lot of work that is being done. With regard to bringing in arrangements concerning pollution control, cleaning up the atmosphere, doing a number of things whereby the industry will remain far more responsible than what they are now. In fact, the extended producer's responsibility comes from Europe, that principle.

And another thing that I can mention, especially with regard to natural resources is the framework laws evolved in relation to water, as happened in the present century, very early in present century and the last 15 odd years, you would see all over the world, you have the national legal systems working under the template of this particular European framework law and internalizing it in the domestic legal sphere.

Many environmental issues like environmental information, right in relation to that or with regard to dealing with organic pollutants that took place within the European Union have contributed to the content of the global environmental law and environmental law in national legal systems worldwide. European Union remains to be a major catalyst even today for all international legal developments, and even reforming national laws in many countries, including India.

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CONCLUDING OBSERVATIONS:

- ***INSPIRATION AND TRIGGER FOR THE EVOLUTION OF A SUBSTANTIAL ASPECT OF NATIONAL LAWS***
- ***QUITE A BIT OF INTERNATIONAL LEGAL ARRANGEMENTS ARE DRAWN FROM LOCAL AND NATIONAL EXPERIENCES, CUSTOMS, TRADITIONS AND PRACTICES – PRIMARILY, THE INFLUENCE OF EUROPEAN AND AMERICAN EXPERIENCES, SIGNIFICANT***
- ***INTERNATIONAL FRAME HAVING FUNCTIONS OF COORDINATION, COOPERATION, MONITORING COMPLIANCE AND ENFORCEMENT***
- ***UNDER INTERNATIONAL ENVIRONMENTAL ARRANGEMENTS, DISPUTES AND CONFLICTS ARE TO BE RESOLVED THROUGH DIALOGUES, MEDIATION, NEGOTIATION ETC., AMONG THE PARTIES.***
- ***DOMESTIC PREPARATIONS FOR INTERNATIONAL NEGOTIATIONS, ESPECIALLY AMONG DEVELOPING COUNTRIES, STILL AT A NASCENT STAGE OF EVOLUTION***



So how do we wrap the discussion? That we have had so far with regard to the basis, the sources and evolution of environmental law. One thing is very clear that these developments are indeed an inspiration and a trigger for the evolution of a substantial aspect of national law.

As we would be seeing, when we course through the Indian Environmental Law. Quite a bit of international legal arrangements, you may find it very interesting to find, are actually drawn from certain local and national experiences.

So, it is not something that comes from above, but something that is actually shared, something that is actually borrowed, something that is what has been considered to be useful and is a good practice, either in terms of national experiences, our customs and traditions and practices followed in different legal systems. But primarily, environmental law, as we understand today, is indeed the influence of European and American experiences in a major significant way.

If you just look at the international environmental law frame, it presents a picture of only a frame. And what is its function? The function is essentially to coordinate, to cooperate, to monitor, to comply, to ensure compliance and to enable the nation-state systems which are parties to these international arrangements to enforce them internally and internationally.

So, if we just look at these international environmental arrangements, quite unlike what you see in the domestic law, there is nothing like a formal dispute or conflict resolution mechanism. If

there are conflicts, they are primarily resolved through dialogues, mediations and negotiations among the parties. You cannot take it to a court of law. There is no such thing as an international environmental court.

And so, the states are encouraged with certain guidelines, as I have gone through these international arrangements to sort out the differences and settle themselves through a non-litigative means, what we refer to as an alternate dispute resolution mechanism.

When you look at these international negotiations, one another thing that strikes, one's mind is that apart from Europe and United States of America, which have significantly contributed for the crafting of this law and its working is mainly because of the fact that they go with a lot of preparation.

Before they get into an international negotiation, they have their briefs ready. They have their arguments ready. They have their template of a law for consideration of the community of nations ready. Quite unlike, most of the other countries, including India, the domestic preparations for international negotiations in developing countries especially, are still at a very nascent stage of evolution.

That is precisely the reason why one would find that in international environmental legal arrangements like in most other international negotiations, the contributions in the developing countries are very few and far between.

Well, this is the basis upon which we get into the next set of discussions on environmental law and that is to get into a very detailed deliberation over the foundational norms and principles of environmental governance. That will be in the next part of our discussion.