

Constitution of India and Environmental Governance:

Administrative and Adjudicatory Process

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Lecture 56

Environmental Legal Order: Law and Policy

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**12. ENVIRONMENTAL LEGAL ORDER AND
LEARNINGS FROM THE DISCOURSE**

**A&B. POLICY, LAW AND INSTITUTIONAL
ARRANGEMENTS**

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After 11 modules of the discourse, we come to the final module, a module to reflect upon and examine the entire legal order in a nutshell to do a bit of a review and then draw lessons from that. And hence the title for this module is environmental legal order and learnings from the discourse. We start with policy, law and institutional arrangements then move on to the adjudicative process and finally examine the whole legal order and what are the takeaways from this exercise.

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LAW, GOVERNANCE AND LEARNINGS



- **THE DISCOURSE ON, Constitution of India and Environmental Governance: Administrative and Adjudicatory Process, IS ESSENTIALLY TO INTRODUCE THE STUDENT TO THIS FASCINATING ASPECT OF LAW AND TO ACQUAINT HIM WITH ITS CONTENT AND CONTOURS – A LITTLE MORE THAN A BIRD'S EYE VIEW, INTO AN EVER WIDENING ARENA OF ACTIVITY CONCERNING ENVIRONMENT**
- **HERE, IT IS INTENDED TO RE-VIEW THE ENTIRE ENVIRONMENTAL LEGAL ORDER IN ONE SNAP SHOT, TO ASSESS ITS APPROXIMATION TO AND CONFORMITY WITH THE CONSTITUTIONAL LETTER AND SPIRIT OF RESOURCE MANAGEMENT AND ITS RELATIVE STATUS, IN THIS BRAVE NEW WORLD OF THE NEW ECONOMIC ORDER OF "DEVELOPMENT"**
- **THIS MODULE, IS A VIRTUAL RE-CAP AND AN EVALUATION OF THE DIFFERENT ASPECTS OF ENVIRONMENTAL LAW AND GOVERNANCE, AS A TAKE AWAY OF THE LEARNING. IT IS ALSO AN ATTEMPT TO TAKE A PEEP INTO FUTURE- OF SHAPE OF THINGS TO COME AND, HOPEFULLY, SOME REFORM!**



The discourse, Constitution of India and Environmental Governance: Administrative and Adjudicatory Processes is a very humble attempt to introduce the aspirant to a fascinating aspect of law to acquaint him and her with its content and contours. It is more than a bird's eye view, into an ever-widening arena of activity concerning environment.

The idea is to review in this module the entire environmental legal order in one snapshot, to assess the approximation and conformity with the constitutional letter and spirit of resource management and its relative status in this brave new world of the new economic order of development. This is a virtual recap and also an evaluation of different aspects of environmental law and governance, as a takeaway of this learning.

Also, an attempt to have a gentle peep into the future, future shape of things to come and hopefully a few suggestions for reform.

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I. POLICY & LAW



A. PRINCIPAL FEATURES :

- POLICIES, LAWS AND THE INSTITUTIONS OF MANAGEMENT CREATED UNDER THEM, IN INDIA HAVE, NEVER ALWAYS BEEN THE OUTCOME OF A NATURAL PROGRESSION- FROM FELT NEED, TO CRYSTALLISATION AND ARTICULATION OF POLITICAL AND LEGISLATIVE WILL (- THROUGH POLICY AND LAW), CONTAINING INSTITUTIONS FOR MANAGEMENT ENDOWED WITH PROCEDURES, PLANS, PROGRAMMES AND STRATEGIES FOR ACTION- AS A SEAMLESS CONTINUOUS AND LOGICAL PROCESS, TO ADDRESS THE PROBLEMS AND CHALLENGES AND TO FIND SOLUTIONS
- THERE IS NOTHING LIKE A LOGICAL SEQUENCING: POLICY FOLLOWING LAW (- FORESTRY SECTOR); POLICIES NOT ALWAYS LEAD TO LAW (- WATER SECTOR); LAWS NOT NECESSARILY HAVING A POLICY BACKUP (- POLLUTION CONTROL) - POLICIES MAY FOLLOW, A LAW (- ENVY. POLICY);



Let us begin with the policy and law. As prevalent in India and if I can just put it in about 8-10 points as to what are its principal features. If you look at the policies and laws, and the institution of management created under them in India, they have never ever been at all times an outcome of a natural progression.

They felt a need, crystallization and articulation of political and legislative will as reflected through a policy or a law, having within its institutions for management which is embellished with procedures, plans and programs of action, as a seamless continuous and logical process, to address the problem and find solutions.

But none of these as you have witnessed so far has been the feature of Indian policy and law concerning environment. There is nothing like a logical sequencing of this kind of policy following the law. Yes, we have an example in the forestry sector, now came earlier in 1879, policy followed it in 1894. And policies do not always lead to law. Look at the water sector in 1988 we came with a draft policy, 2002 another policy, 2012 another policy. Where is the law?

Laws are not necessarily having a policy backup also, so there can be a law without a policy backup, yeah, nothing exaggerated here as you have seen for yourselves, the Water (Prevention

and Control of Pollution) Act and Air (Prevention and Control of Pollution) Act, did not have a policy backup, they just came. Or it is quite possible that policies may follow laws also.

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- CONSTITUTIONAL DIRECTIVES ON RESOURCE MANAGEMENT(-A.39(b&c), A.48) OR THE FUNDAMENTAL DUTY (A.51A(g)), DO NOT NECESSARILY INFORM OR INFLUENCE POLICY OR LAW MAKING ON ENVIRONMENT AND NATURAL RESOURCES
- POOR CONSTRUCTION AND LOOSENESS IN USE OF LANGUAGE(-BDA, 2002), CONTRIBUTORIES TO LESS THAN SATISFACTORY ENVIRONMENTAL MANAGEMENT
- JUDICIAL INTERPRETATION OF POLICY, LAW, STRUCTURE AND SCHEME OF GOVERNANCE- HELPFUL ,IN RE-ANCHORING ENVIRONMENTAL GOVERNANCE TO CONSTITUTIONAL COMMANDS(- PUBLIC TRUST DOCTRINE); LEGISLATIVE AND ADMINISTRATIVE REFORMS(- WASTE MANAGEMENT, PUBLIC HEARING IN EIA etc.,)
- INDUCTION OF INDIANNESS AND THE CONSTITUTIONAL ETHIC OF, "ENVIRONMENTAL STEWARDSHIP", IN THE POLICY AND LAW, A RECENT PHENOMENON- LAST COUPLE OF DECADES, ALBEIT, BRIEFLY- LARGELY ON ACCOUNT OF JUDICIAL NUDGE AND EFFORTS OF ENVIRONMENTALLY ACTIVIST GROUPS AND INSTITUTIONS (-FOREST RIGHTS ACT- "RIGHTING THE HISTORIC INJUSTICE")



The next feature of the Indian policy and law is supposed to be anchor to a constitutional directive, the directive on resource management, as you have seen in the directive principles of state policy with regard to excess use and management of resources, an obligation imposed on the state as the public trustee to take care, to protect and to improve its quality. And similarly, the fundamental duty of every citizen as an environmental steward, none of this necessarily informed or influenced policy or law making on environment and natural resources.

The other feature that you notice in the Indian environmental law, in terms of the language used and the stuff it is made of, just to give an example the Biodiversity Act, look at the language used which is quite loose and the construction of the statute is not that very tight and because of which the large extent a wonderful law in terms of ideas but in terms of its construction for the flaws that it has less than satisfactory environmental governance is the end result.

If you turn to the judicial interpretation of policies and laws, you see a silver lining here, at least in the initial stages, very helpful in order to cover for many of the flaws, faults and weakness in the construction or making of it or even working and they helped in re-anchoring environmental governance to constitutional commands, remember the public trust doctrine and you will bring in legislative and administrative reforms on waste management, public hearing in environmental impact assessment as we have seen in the earlier modules.

If you closely examine the law as we go deeper, the induction of Indianness and the constitutional ethic of environmental stewardship in the policy and law is more of a fairly recent phenomenon and that too of a last couple of decades. And that is also on account of, to a large extent, on judicial nudge that I and you as the stewards of the environment is something that the court had to convey, time and again.

And also of course the activists efforts and institutions which actually made people closer to environment and environmental governance and also derived their rights from the kind of laws that environmental laws were made of. The Forest Rights Act as we have seen, made in the year 2006, declared that this is allowed to correct the historic injustice of non-recognition and dwell of rights of the forest dwelling tribal and other communities.

So that way you do have a judicial trigger to lead to the people's engagement, people's involvement in communitarian ownership, communitarian entitlement and partnership in managing environment. Let us just turn a little specific, in terms of policies; take the example of environmental policy document of 2006. As you know that there was already a lot of law concerning environment, the framework law of environment protection act was made two decades earlier, as early as 1986, no policy backup. And now policy comes, makes a very grand entry, although it is a little too late in its formulation and articulation.

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B. POLICIES IN SPECIFIC TERMS :

- **ENVIRONMENT POLICY, 2006 : A LITTLE TOO LATE IN FORMULATION AND ARTICULATION; BULKY, CRAMMING EVERY POSSIBLE CONCERN AND STRATEGIES FOR ACTION; NO CONSCIOUS AND EVIDENT EFFORT IN INCORPORATION OF SECTORAL POLICIES OR IN INSPIRING AND INFLUENCING THE FORMULATIONS OF THE LATTER; A LITTLE VAGUE AND BIT CONFUSED ABOUT CONCEPTS, PRINCIPLES AND STRATEGIES**
- **NATIONAL CONSERVATION STRATEGY & POLICY STATEMENT ON ENVIRONMENT AND DEVELOPMENT, 1992 AND POLICY STATEMENT ON ABATEMENT OF POLLUTION, 1992: - QUITE GENERAL IN STOCKTAKING AND UNFOLDING OF VISION AND DIRECTION; BOTH, APPEARED TO HAVE BEEN PREPARED IN A HURRY TO HAVE A DATE WITH THE EARTH SUMMIT, 1992!- LACKS NOVELTY, EITHER IN GIVING ANY NEW AND MORE EFFECTIVE TOOL FOR GOVERNANCE OR PLANS FOR ACTION, IN FUTURE**



A bulky document of about 60 pages cramming every possible concern and strategies for action. But it is more of a peroration and if you closely examine the document, there does not seem to exist a very clear concerted, conscious and evident effort in consolidation and incorporation of various sectoral policies or even in inspiring and influencing the formulation of the sectoral policies in different sectors of environmental governance.

Even with regard to concepts, principles and strategies, you find the document a bit vague and confused. The other document, an important policy document if you want to call it, although the title is a little interesting if not vague, National Conservation Strategy and Policy Statement on Environment and Development made in 1992, and the policy statement on abatement of pollution, oh you have such a huge document, looks like title wise.

But if you just look to the content part of it, actually it is of a few pages and it is quite general in terms of taking stock and even a little sketchy in unfolding of a vision and a direction. And one would not be wrong in drawing a conclusion, that this appear to have been prepared in hurry to meet the date. Which is the date?

The date of the Earth Summit if you recall, the 1992, global environmental summit on environment and development. And so we were to go there, participate in it and we had to show to the rest of the world that we are doing something at the policy front, and hastily we prepared

the document and lo and behold you have this conservation strategy and Policy on Environment and Development and statement on abatement of pollution, title grand eloquent, but content very deficient, there is no novelty, either in giving a new thrust or coming up with a novel and effective tool for the governance, put together in this document.

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EMPHASIS ON PREVENTIVE ACTION AND PROMOTION OF CLEANER TECHNOLOGY, WITHOUT DETAILS ; PUBLIC PARTNERSHIP VISUALISED THROUGH AWARENESS CAMPAIGNS AND GIVING A PAT TO PUBLIC INTEREST LITIGATIONS (-COULD HAVE DONE BETTER, PERHAPS, WITHOUT SUCH A MENTION I)

- *URBAN POLICY FRAMEWORK 2018 , BESIDES LAYING EMPHASIS ON URBAN POVERTY REDUCTION AND PROMOTION OF THE ROLE OF CITIES IN SD, HAS VERY LITTLE TO DO WITH ENVIRONMENT- IN CONTRAST, THE URBAN POLICY OF OECD (-ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT) COUNTRIES, WHICH IS MORE THAN 2 DECADES OLD, PAYS DETAILED AND FOCUSED ATTENTION TO ISSUES CONCERNING , CLIMATE CHANGE WATER GOVERNANCE AND DEVELOPING RESILIENCE*
- *NATIONAL FOREST POLICY 1988, ARGUABLY, THE ONLY MAJOR POLICY DOCUMENT ON NATURAL RESOURCES, IN INDEPENDENT INDIA, TO HAVE*



What you do see is there is more of emphasis on preventive action and promotion of clean technology without giving any details there. And there is also a talk about public partnership there in these documents, but it is visualized more as an awareness campaign, I do not know how you forge partnership through awareness campaigns, and funnily it is there in this document of giving a pat to public interest litigations.

How could that be a public partnership? In fact, public reaction to miss-governance and poor governance or inaction and knocking at the door of courts of law for environmental justice. Public partnership for what? In fact, one is not wrong in feeling that this document that if at all it were to have been minutely scrutinize in global summit, they could have better avoided such a kind of a mention, at least this part of it.

Then we move to the next policy document which is fairly, fairly recent and that is with regard to urban policy. It is a framework document of 2018, 2018 yes; did we have a policy frame earlier? Yes, in patches and bits, but not a comprehensive one and that is what we get to know in 2018. What does it do? It lays emphasis on urban poverty reduction and promotion of the role of cities in sustainable development. And these are the only things that have something to do with environment.

Let us do a bit of a contrast, how such policies are written, articulated and how they are put into application. In the organization for economic cooperation and development, the European group of nations, they have a policy document which is made two decades back and it pays a detailed and focused attention to issues concerning climate change, water governance and developing resilience.

That is what you look for because urban agglomerate that we have is the real source of huge, huge pollution, waste and all that which is environmentally degrading. And so, you should have, had a sizable section of it of the policy document getting devoted to environmental conservation and protection, restoration and recovery; hardly there in this document. Then we get into something which is a kind of a showpiece, a National Forest Policy of 1988. In my reckoning, it is perhaps the only major policy document on natural resources in India at that point of time.

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EMPHASISED ONE OF THE DISTINCTIVE FEATURES OF INDIAN ETHOS AND VALUES OF CONSERVATION, BY RECOGNISING THE SYMBIOTIC RELATIONSHIP BETWEEN THE FOREST AND THE COMMUNITIES OF PEOPLE LIVING CLOSE TO IT- MAIN THRUST ASPECTS: MAINTENANCE OF ENVIRONMENTAL STABILITY THROUGH PRESERVATION AND RESTORATION OF ECOLOGICAL BALANCE AND RECOGNITION OF THE ROLE OF THE LOCAL COMMUNITIES IN THAT REGARD, BESIDES, MEETING THE REQUIREMENTS OF FUEL, FODDER, MINOR FOREST PRODUCE AND TIMBER NEEDS OF RURAL AND TRIBAL POPULATION; DRAFT NATIONAL FOREST POLICY 2018, RE-EMPHASISING THE IDEA AS ABOVE, VISUALISES FORESTRY AS THE STRATEGY FOR COMBATING CLIMATE CHANGE- INTRODUCES, SOME NEW CONCEPTS LIKE, ECONOMIC VALUATION OF ECOSYSTEM SERVICES, FOREST CERTIFICATION, NATIONAL FOREST ECOSYSTEM MANAGEMENT INFORMATION SYSTEM-PROPOSES PPP MODEL FOR AFFORESTATION AND REFORESTATION ACTIVITIES - HOWEVER, ITS OBJECT OF RELAXATION OF REGULATIONS TO MEET THE DEMANDS OF INDUSTRY (- FOREST-BASED) AND DEVELOPMENT, REMAINS DEBATABLE



And this is one of those very few policy documents that lays a lot of stress on the distinctive features of the Indian ethos and values of conservation. By doing what? By recognizing the symbiotic relationship between the forest and the communities of people living close to it. Maintenance of environmental stability through preservation and restoration of ecological balance and recognition of the role of local communities in that regard.

In addition to enabling and facilitating the meeting of requirements of fuel, fodder, minor forest produce and timber needs of rural and tribal population, embellish this document. The policy document by re-emphasizing these aspects which are very basic, which actually bring the connect between the people and the forest, visualizes forestry as a strategy for combatting climate change, this comes in the year 1988.

And remember the Climate Change Convention, the Framework Convention comes only in the year 1992, 4 years hence. It introduces some new concepts as it happened in 2018, the new document which is 30 years advance to what was done in 1988 which introduces novelty of strategy for combatting climate change, it introduces quite a few new concepts; economic valuation of ecosystem services, forest certification, national forest ecosystem management information system, all these appear to be a fairly advanced approach to forest conservation and management.

And it looks like a very professionally evolved document of 2018. It proposes a public private partnership model for afforestation and re-afforestation activity. There is a summer note here, its object of relaxation of regulations to meet the demands of development and especially those industries which are forest based is a bit debatable. It is a bit debatable for the simple reason that you have a different vision of the forest. And we had discussed in great detail what are forest for.

While the first part of all that, that we have discussed so far as has been reflected in the 2018 document appear pretty good, the latter part gives room for a little doubt as to why for this policy has been made, is it to promote certain kinds of development which will actually have an adverse impact on the forest coverage, the quality and intrinsic value and worth of the forest resources? That requires a little bit more debate, luckily it has not become a policy document, it is more of a draft.

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- EXCEPT FOR ACTION PLANS, NO POLICY PRONOUNCEMENT MADE FOR WILDLIFE AND BIODIVERSITY CONSERVATION AND MANAGEMENT-NEED REMAINS FOR A EVOLVING A COMPREHENSIVE POLICY FOR ALL THESE GREENER ASPECTS OF THE ENVIRONMENT
 - NATIONAL WATER POLICY,2012, CONTAINS SALUTORY ENVIRONMENT CONSERVATION AND MANAGEMENT PRINCIPLES AND PROGRAMMES OF ACTION; ALSO ENDOWED WITH A COMPREHENSIVE CONCEPTUALISATION OF WATER –SINCE THIS BEING A STATE SUBJECT, THE CENTRAL POLICY LAYS MORE EMPHASIS ON INTER-STATE RIVER LINKING, BASIN TRANSFER AND MANAGEMENT ASPECTS- POLICY UNDER REVIEW , TO INCORPORATE SOME OF THE CURRENT CHALLENGES LIKE, CLIMATE CHANGE AND TO EXPLORE THE SCOPE FOR MORE EFFICIENT ALTERNATIVES TO STATE MANAGMENT MODEL etc.
- C. SECTOR-SPECIFIC LAWS:**
- WHILE, THE SECTORAL POLICIES, BY AND LARGE, APPEAR TO ECHO ENVIRONMENTALLY BENIGN SENTIMENTS, LEGISLATIONS REMAIN QUITE UNCONNECTED TO THE SENTIMENTS , AS HAVING EVOLVED SEPARATELY AT A DIFFERENT POINT OF TIME



Other than that, there are more action plans available there is no policy pronouncement made for wildlife and biodiversity conservation and their management, although they have laws on that. And the need remains for evolving a comprehensive policy that would cover all these greener aspects of environment, still the agenda is not accommodated.

Then you turn to other natural resource of water, with all those tentative attempts of 1988, and then some kind of a formulation with the centre making itself brave to foray into the state subject and come up with a model, policy document in 2002, gives a revised in the year 2012, and definitely contains very impressive components of environmental conservation and management principles and even programs of action.

In fact, it is also endowed with a very comprehensive conceptualization of water, how to visualize water and not to really think in segments or compartments but as one single continuous whole of an ecosystem. And although this is a state subject, the central policy is supposed to be a frame, a guidance document for the states to follow, but to bring in that central element, this policy emphasizes more on interstate river linking, basin transfers and management aspects.

This Policy of 2012, right now in this year 2020 is under review, the idea is to incorporate some of the new, current emerging challenges like climate change and to explore scope for more

efficient alternatives to state management model, etcetera. So, water policy is still a house under construction. If that is the overview of the policy documents that we have, a quick look at the sectors specific laws. At least we have to give it to the policy documents by and large echo that sentiment of activities and actions and visions for more environmentally benign set of activities, but unconnected to these sentiments we have laws made for the simple reasons that laws are made at different points of time.

So, in terms of accommodation or absorption, a policy sentiment is not something that you always look for when you look at a law, as I have explained earlier, in fairly great detail in there, specific modules on these, that there is a clear disconnect between policies and laws. And many a times you start wondering as to the need for that kind of a formulation. Is it just to fulfil the formality or is it something to really do, very concrete as being really serious about and have a focused attention in having better environmental governance?

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- **OVER ARCHING LAW:-EPA: NEITHER PROVIDES THE REQUIRED OVERRIDES NOR ENCOMPASSES EVERY ASPECT OF ENVIRONMENT; ABSENCE OF HARMONISING ELEMENT IN GOVERNANCE ,IN DIFFERENT SECTORS- DOES NOT PROVIDE AN INSTITUTION OF OVERSIGHT OR MECHANISMS FOR COORDINATION ; COVERAGE AND SWEEP QUITE WIDE (- FROM, LAND USE PLANNING; CRZ LAW; ESSENTIAL FUNCTIONS OF LOCAL BODIES-SOLID WASTE MANAGEMENT; SCIENCE, TECHNOLOGY; STANDARD SETTING IN THE POLLUTION CONTROL REGIME; WATER REOURCES: GW MMT, WETLANDS etc.,)**
- **VAST IMPROVEMENT IN THE RULE-MAKING PROCESS- CLARITY IN DELINEATION OF FUNCTIONS AND OBLIGATIONS OF EACH PLAYER, PROCEDURES SIMPLIFIED (- SOLID WASTE MANAGEMENT RULES)**
- **WHILE, A LOT MORE FUNCTIONS ASSIGNED TO PCBs, WITH EACH NOTN- NOT MUCH THOUGHT GIVEN TO EQUIP THEM, TO BE READY FOR TAKING UP THE NEW ASSIGNMENTS.**



Look at the over-arching law, the Environment Protection Act. What are you looking for? What are your expectations? Something which is all encompassing, but we know that as we have examined it in detail, it provides neither the required overrides, not encompasses every aspect of environment. I do not think I need have to give details, please look to those aspects of the module which elaborates on this.

And there is a clear absence of harmonizing, any harmonizing element in governance in different sectors of meeting them together, meshing their functions, complimenting each other's activities into one homogeneous whole. It does not provide an institution of oversight or mechanism for coordination, while a coverage and sweep of this body of law especially the rules, regulations and notifications made under it are pretty impressive and very wide.

Look at that, from land use planning under the CRZ law, or essential functions of local body like solid waste management of incorporating the science and technology aspects which is actually the primary realm of the science and technology ministry like setting of standards in pollution control regime, or even making a foray into water resource management by coming up with rules and regulations with regard to ground water management and guidelines and rules with regard to wetlands conservation, protection and management, a sweep is very wide, huge and ever expanding.

But one thing that you can really deserve from those early days of law making from 1986 to may be till around 2010 or so, there is a clear leap frogging, a vast improvement in the rule making process, at least you can see a greater degree of clarity in identification of the actors, their role, responsibilities, functions and a clear delineation of each one of these, besides simplification of procedures.

One wonderful example that you have is the rules with regard to solid waste management, we have discussed that in the earlier module, please refer to that. What you do see is something unplanned perhaps, unheard definitely, and something even unprepared for, as far as the pollution control boards are concerned a lot more functions are assigned to the pollution control boards with each and every notification.

But not much thought is given. How do you equip them? How do you facilitate their functioning? How do you build their capacity, when they take up these new and ever-growing portfolios of assignments? A disturbing feature of the new set of legislative reforms also we have witnessed, there is a clear dilution, reduction in rigor and effectiveness in governance, look at the

notifications with regard to environment impact assessment. And the latest one is something mind blowing, the EIA draft notification of 2020, you know what it does. It introduces a good faith clause, over whom? Good faith over the violator of the procedure and validating a violation by accepting a fine.

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- * A DISTURBING FEATURE OF THE NEW SET OF LEGISLATIVE REFORMS: - DILUTION, REDUCTION IN RIGOUR AND EFFECTIVENESS IN GOVERNANCE (- EIA DRAFT NOTN., 2020- INTRODUCTION OF " GOOD FAITH", OVER THE VIOLATOR OF THE PROCEDURE AND VALIDATING A VIOLATION BY ACCEPTING A FINE !)
- * LEGAL REGIME OF FORESTS: WITH A HOST OF LAWS, MADE AT DIFFERENT POINTS OF TIME (- THAT REFLECT THE MOOD AND SENTIMENTS OF THE POLITY OF THE TIME-)PRESENTS A CONTRAST OF PERCEPTIONS, OBJECTIVES AND APPROACHES, AMONG THEM - FOREST ACT, FOR INSTANCE, MANIFESTS AS AN EXPRESSION AND EXTENSION OF THE "EMINENT DOMAIN" NOTION OF THE LAND LAW MOULD, WITH A LITTLE SPRINKLING OF ETHICS OF CONSERVATION AND PROTECTION; FOREST CONSERVATION ACT, CONCENTRATES ON CENTRAL OVERSIGHT AND CONTROL OVER STATE ACTIONS IN DIVERSION OF FOREST LAND FOR NON-FOREST PURPOSE; FOREST RIGHTS ACT, CARVES OUT A HUMAN EXCEPTION TO IT AND THE CAMPA ENTIRELY FOCUSSES ON THE WAYS AND MEANS OF PLOUGHING BACK THE ECONOMIC GAINS FOR FOREST MANAGEMENT PURPOSES



And many a times you start wondering, whether such a kind of thing would really do justice to the very idea of environment impact assessment, the rationale behind making such a kind of a law. These are a few worry some features as are emerging now. Turn to the legal regime of forests, you have a clutch of laws. And each of them are made at different points of time, and this is very educative, the laws made at different point of time, they reflect the mood and sentiments of the polity of the time.

Right from the time of the British to immediately after independence, a quarter century later and then fairly recently in this particular decade, they really reflect the thrust, the emphasis and the approach of the policy maker, the law maker, the decision maker of that time. Obviously, as a result it presents a contrast of perceptions, in terms of objectives and approaches about it. Forest Act, for instance manifests an expression and extension of the eminent domain notion, state owns everything.

The notion which it derives from the land law scheme, with a little sprinkling of ethics of conservation and protection. Turn to forest conservation act, its focus is on central oversight and control over state actions with regard to diversion of forest land for non-forest purpose. The forest rights act has a different focus on together, it carves out a human exception to the forest

conservation law and the 2015 Campa law entirely focus on the ways and means of bringing back and ploughing back the economic gains that you derived from the different kinds of application of forest resources for the purpose of forest management and improving the quality of governance.

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- CONTINUATION OF THE NEED, FEASIBILITY AND UTILITY OF A NUMBER OF STATUTES, REQUIRES A REVIEW, TO ACCOMMODATE AND BALANCE DIFFERENT AND APPARENTLY, CONTRASTING PURPOSES, INTERESTS AND APPROACHES
- * WILDLIFE LAW, BORROWS HEAVILY FROM THE ENDANGERED SPECIES ACT AND THE CONCEPTION OF NATIONAL PARKS AND PROTECTED AREAS OF U.S- LACKS THE INDIAN ETHOS AND TRADITIONS OF THE COMMUNITARIAN COMMENSALITY AND SYMBIOSIS WITH THE FOREST AND WILDLIFE AROUND THEM- IRONICALLY, HAPPENS TO BE THE FIRST MAJOR LEGISLATIVE VENTURE ON LIFE AND LIFE-FORMS, IN INDEPENDENT INDIA, BUT AT ITS CORE RETAINING THE COLONIAL AND ALIEN SOUL !
- * BIODIVERSITY LAW, PRESENTS AN ALTOGETHER DIFFERENT PICTURE- HAS ITS HEART IN ITS RIGHT PLACE - WITH A ROBUST SET OF OBJECTIVES AND PRINCIPLES TO STEER THE SYSTEM IN PROTECTING SOVEREIGN AND COMMUNITARIAN INTERESTS IN CONSERVATION, PROTECTION AND ENSURING EQUITY IN SHARING OF BENEFITS IN THE SUSTAINABLE APPLICATION OF THE RESOURCES, KNOWLEDGES AND PRACTICES



So different perceptions, different approaches actually populate the entire forest law regime. Continuation of the need, feasibility and utility of a number of statutes of this kind definitely would require a review, the idea is to accommodate and balance different and apparently even contrasting purposes and interests and approaches. Wildlife law does not do anything better. The wildlife law as we know it, it is a clear copy or a borrow of the ideas of the Endangered Species Act.

And the conception of national parks and protected areas of United States of America, it lacks the Indian ethos and traditions of the communitarian commensality and symbiosis with the forest and wildlife around them. Ironically the Wildlife Law of 1972 and its refurbished law in 2002, it happens with a first major legislative venture of life and life-forms in independent India, but its core it retains a colonial and alien soul. We have already discussed that in that particular module.

We now turn to biodiversity law. It is a refreshing departure, it presents an altogether different picture as we have seen it. It has its heart in its right place, with a robust set of objectives and

principles to steer the system in protecting the sovereign and communitarian interests. With regard to what? Conservation, protection and ensuring equity in the sharing of benefits with regard to the application of resources, and the knowledge, practices, customs and traditions associated with it. No single law does this kind of a thing, as the biodiversity law has been able to put across

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CONCERNING LIFE AND LIFE-FORMS- SUFFERS FROM, IMPRECISION IN STATUTORY FORMULATION , INADEQUACY OF EFFORTS IN STRENGTHENING THE ASPECT OF COMMUNITARIAN ENGAGEMENT AND POOR OBSERVANCE OF THE SPIRIT OF THE LAW IN ITS WORKING- TAKEN ADVANTAGE OF BY BOTH THE COMMERCIAL INTERESTS AND THE RESEARCH COMMUNITY , TO THE DETRIMENT OF THE ACHIEVEMENT OF THE GOALS OF THE LAW

D. HOW DOES THE POLICY AND LAW PRESENT ITSELF?:

GOOD IN PARTS- INTENT, OBJECTS, PRINCIPLES AND PURPOSES QUITE ROBUST; ARTICULATION AND EXPRESSION IN LEGISLATIVE FORM, REQUIRE CLARITY AND A MORE PROFESSIONAL TOUCH TO OVERCOME , "MANUFACTURING DEFECTS" AND TO STRENGTHEN INSTITUTIONAL ARRANGEMENTS . TO ENSURE THAT IT IS NOT FULLY IN SYNC WITH THE CONSTITUTIONAL COMMANDS OF " PUBLIC TRUSTEESHIP" AND "ENVIRONMENTAL STEWARDSHIP", SO AS TO INFORM , GUIDE AND STEER THE LEGAL SYSTEM TOWARDS ENVIRONMENTALLY SUSTAINABLE FUTURE



Besides this it actually gives a great experiment and deepening democracy much more than what you find in the constitutional scheme itself. But it is very unfortunate that this is which is a very great idea, it suffers from imprecision in statutory formulation and inadequacy in terms of efforts in strengthening the aspect of communitarian engagement and a poor observance on the spirit of the law in its working by on concern and you know the end result.

This inadequacy has been taken advantage of by unscrupulous commercial interests and even some other irresponsible research communities as well to the detriment of the achievement of the goals of this law. So overall how do these policies and laws wrapped together present themselves in the Indian for moment. Yes, they are good in parts, in terms of objectives as far as intends are concerned, in evolving principles and purposes they are quite robust, there is no second opinion of that.

But their articulation and expression and legislative form, they require a lot of clarity and there is a need for a more professional touch to overcome the so-called manufacturing defects in them. And even to strengthen the institutional arrangements to make them effective. Much more than that this is something which is imperative, these reforms are required to ensure that it should become fully in sync with the constitutional commands of public trusteeship and environmental stewardship. So as to make the legal system towards a more environmentally benign sustaining, developing activity and a system of governance which we should feel proud about.