

Constitution of India and Environmental Governance:

Administrative and Adjudicatory Process

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Lecture 57

Environmental Legal Order: Structures and Schemes of Governance

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II. STRUCTURES AND SCHEMES OF GOVERNANCE



- *FOLLOWS THE PATTERN SET BY THE STATUTORY FORMULATIONS: TWO SETS OF ADMINISTRATION - THE FOREST, WILDLIFE AND BIODIVERSITY, "GREEN BRIGADE" AND THE POLLUTION CONTROL, WASTE MANAGEMENT AND IMPACT ASSESSMENT, "BROWN SAHIBS" - EACH, WITH A DIFFERENT KIND OF A MIND-SET AND APPROACH: THE FORMER REMIND US OF THE "COLONIAL BROWN SAHIBS", WITH A TYPICAL BUREAUCRATIC APPROACH OF REVENUE ADMINISTRATION IN TOTAL CHARGE AND CONTROL OF ALL THAT THEY SURVEY; THE LATTER, BEING FAIRLY RECENT TO THE TASK, INDEED, ARE "GREENHORNS" - STRUGGLING TO PERFECT THE ART, CRAFT AND SKILLS OF A VERY DEMANDING PROFESSION!*

LET'S BEGIN WITH THE ENVIRONMENTAL ADMINISTRATION OF THE "BROWN" KIND:

- *HAVING PRIMARY ROOTS, IN SCIENCE AND TECHNOLOGY MINISTRY, COME A LONG WAY UNDER MoEFCC - REALLY REELING UNDER A HEAVY WORKLOAD WITH EVER EXPANDING TASKS - NOT CONFINED TO WATER AND AIR ACTS ALONE!*



This takes us to the second part of our overview and wrap up and that is about governance. How do the structures and schemes of governance on different sectors of environmental management present themselves and operate? Obviously, they follow the pattern set by the statutory formulations. We have two sets of administration, The Forest, Wildlife and Biodiversity; The Green Brigade and The Pollution Control, Waste Management and Impact Assessment; The Brown Sahibs.

Each with a different kind of a mindset and approach. The former reminds us of the colonial brown sahibs with a typical bureaucratic approach of revenue administration in total charge and control of all that they survey. What about the latter? They being fairly recent to the task or indeed greenhorns, struggling to perfect the art, craft and skills of a very demanding profession.

Let us begin with the environmental administration of the brown kind; the pollution control, waste management, etcetera.

You remember that they had their roots in science and technology ministry and from that they have come a long way under the ministry of environment, forest and climate change. With the Environment Protection Act, opening the doors wide to impose with a heavy, heavy workload they really reel under them with their ever-expanding tasks which is not confined to as was originally visualized to only Water and Air Act alone. But let us take a relook at it. These were envisioned, designed and brought it to existence for one singular purpose, the idea was to move away from the routine common law and criminal law regime of nuisance's law of general import to a more specialized autonomous legal regime of pollution control, PCBs.

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- *VISION AND DESIGN: TO MOVE AWAY FROM THE ROUTINE, "COMMON LAW AND CRIMINAL LAW" REGIME OF "NUISANCE LAW", OF GENERAL ADMINISTRATION - TO A MORE SPECIALISED AUTONOMOUS LEGAL REGIME OF POLLUTION CONTROL - PCBs*
- *WITH TECHNICALLY COMPETENT AND PROFESSIONALISED PERSONNEL - UNDER EPA, EXPANSION OF TASKS—FUNCTIONARIES DESIGNATED AS ENVIRONMENT OFFICERS - PRIMARY NODAL BODY, TO DEAL WITH A WIDE VARIETY OF "ENVIRONMENTALLY DEGRADING ACTIVITIES", STARTING WITH NOISE POLLUTION CONTROL TO A WHOLE RANGE OF ACTIVITIES THAT INCLUDE, EIA, CHEMICAL ACCIDENTS, WASTE OF VARIOUS DESCRIPTIONS AND VARIETIES, LIKE, BIO-MEDICAL, LED-ACID BATTERIES, HAZARDOUS, ELECTRONIC, CONSTRUCTION, PLASTICS, SOLID, etc.-A HOST OF ROLES AND RESPONSIBILITIES: - UNIQUE, MIND BLOWING AND UN-PARALLED: FACT-FINDER, INSPECTOR, INVESTIGATOR, SAMPLER, ANALYST, EVALUATOR,*



CONTROLLER,REGULATOR, APPROVING AUTHORITY[- CONSENT PROVISION, CZMP etc.], COORDINATOR [- AS NODAL AGENCY], EDUCATOR, TRAINER [- BOTH THE INDUSTRY AND OTHER AGENCIES OF STATE], DOER [- " DO THYSELF AND COLLECT THE ADMINISTRATIVE COSTS AND EXPENSES"!), DIRECTOR [- OVER OTHER AUTHORITIES, LOCAL BODIES etc.,] AND ADJUDICATOR]- PERHAPS, THE ONLY THE ROLE OF CREATOR, LEFT WITH LORD BRAHMA!- NOT QUITE I, THANK THE LORD!, SOME FUNCTIONS, LIKE THOSE UNDER HAZARDOUS MICRO-ORGANISMS,ECO-SENSITIVE AREAS .. Etc., KEPT OUT OF ITS PURVIEW !

OUTSTANDING PROBLEMS AND DILEMMA: COMPOSITION – HIGHLY POLITICIZED WORKING - BUREAUCRATISED- NOT TREATED WITH THE KIND OF RESPECT AS A "PROFESSIONAL EXPERT" DESERVES; RELATIONSHIP: BETWEEN CPCB AND SPCB- VERY FRAGILE AND TENUOUS; WITH OTHER AGENCIES OF STATE –HARDLY EXISTENT;WITH COURTS OF LAW- "FAVOURITE WHIPPING BOY"; REGIONAL OFFICES OF MoEFCC AND CPCB- THEIR UTILITY AND VALUE, UNCLEAR



Endowed with technically competent and professionalized personnel and under EPA, Environment Protection Act, they had expanded tasks and these functionaries now are designated as environment officers and they have become the primal nodal bodies to operationalize many of the rules, regulations and notifications under Environment Protection Act, to deal with a wide variety of environmentally degrading activities to provide shields, safeguards, to protect, conserve, maintain and manage different aspects of environment.

Remember it started with noise pollution, broadening the ambit of our understanding of air pollution to include noise pollution also way back in 1987 as we have seen, and that has extended to a whole range of activities, that include EIA, chemical accidents, waste of various descriptions and varieties like biomedical, lead-acid batteries, hazardous, electronic, construction, plastic, solid waste and what have you.

And that imposes a host of roles and responsibilities of different kind on there, I must say of all the functionaries of the state that we have in India, not just in environmental administration, even the forest and wildlife authorities are row match. This body is quite unique, a Pollution Control Boards, their status, their role, their functions are mind blowing, unprecedented and unparalleled.

What kinds of role they play? Just to recount; fact finder, inspector, investigator, sampler, analyst, evaluator, let me draw some breath, it is not over, controller, regulator, approving authority, if you look at the concerned provision or approving coastal zone management plans; coordinator as nodal agency for various rules and regulations; educator of me, you and everyone, awareness campaigns but that is not over, they are also trainers, they train the industry and other agencies of state.

Are their functions over? No, no, no, no. There always a function of doer. What do you mean? They also have an assignment of do thyself and collect the administrative costs and expenses. You remember in the pollution control regime, if certain conditions are laid down for concern, if the occupier of the premises confesses and with folded hands, comes before the authorities and then say, look whatever instruction you have given, they are not able to comply, kindly help us comply with whatever instructions you have given us.

And Pollution Control Board is supposed to carry out those exercises for the industry and of course collect administrative and other costs. So, you should not just be a preacher, you should also be a performer, you should not only talk but you should walk the talk, and that is the level of proficiency, that is expected of the Pollution Control Boards in performing their functions. Is their job over? No, we have only scratched the surface, they are also directors, they oversee the working of other authorities and local bodies and give instructions to them.

Although they are created under different laws, when it comes to the issues which these people are addressing under this law which is an over-arching law, they sit in judgement over others actions, commissions or omissions, instruct them, guide them, if they did not follow then certain penal sanctions will follow. That is the command, that is the authority of the Pollution Control Boards.

They are also, added to that, it is an icing to the cake, they are also adjudicators. Every decision, every order, every instruction made by them is like an order or a decree of a court of law, quasi-judicial authorities they are, it may not be surprising after having very quickly gone through it, if you exclaim the only role of a creator is left, not being given to them and it is with Lord Brahma.

Actually not, I think the law maker has been a little merciful. After having given these many functions to perform, it has given a few concessions of assigning some of the functions like those under those rules that you have on hazardous microorganisms, science and technology ministry people will take care of that, or an eco sensitive zones, well is being assigned to various other authorities especially the forest and the wildlife people.

Thanks for this small mercy, but really it is back breaking. But having assigned with that at least you should give it to the law maker that there is so much trust in this authority. But should it not equip them well? Both under law, in its content and in its working, there are so many problems and dilemma. Look into their composition starting from the chairman and membership, it is highly politicized and bureaucratized.

The boards are not treated with the kind of respect as a professional, expert deserves. Look into its relationship, the relationship between the Central Pollution Control Board and State Pollution Control Board. Very fragile and tenuous, we have seen that and it can create havoc, emergency situations. And what about the Pollution Control Boards relationship with other agencies of state, does it exist?

Or with courts of law? You must have seen and we have had ample number of examples. Pollution Control Boards have become the favourite whipping boy of the courts of law. Given the state of affairs, and to add to this insult to injury, you have several bodies to aid, guide, advise and instruct them. Of them you have regional offices of the Ministry of Environment, Forest and Climate Change and regional officers of Central Pollution Control Board.

As a matter of fact, these bodies' utility and value are still not very clear. Many a time we start wondering "Are they duplicating the functions of CPCB?" But they are there. (Refer Slide Time: 11:27)

EQUIPMENT OF THE PCBs – QUESTION OF PREPARATION AND EQUIPMENT IN TAKING ON THE CHALLENGES ON HAND- IN TERMS OF EDUCATION, EXPERIENCE AND EXPERTISE REQUIRED, IN HANDLING THE TASKS ASSIGNED AND MEETING THE EVER EXPANDING EXPECTATIONS – INADEQUATELY ADDRESSED

MIND-SET AND SET-MINDS : NOT IN TUNE WITH THE CONSTITUTIONAL DIRECTIVE – “PUBLIC TRUSTEE”- MORE OF REACTION THAN PRO-ACTION- OVERWHELMING APPROACH OF RENT-SEEKING, CONTROLS AND REGULATION OF CONDUCT THAN THAT OF A PARENT, EDUCATOR, ENABLER AND FACILITATOR

- MOST OF THESE ARE CAPABLE OF GETTING ADDRESSED IN THE EXISTING SYSTEM OF GOVERNANCE, THROUGH RIGOROUS CAPACITY-BUILDING EXERCISES
- A FEW AMENDMENTS IN THE EXISTING LAW IS REQUIRED, TO BRING MORE CLARITY IN THE SUBSTANCE OF THE LAW (- TO ENSURE, INSTITUTIONAL AUTONOMY, TO NARROW THE SCOPE FOR POLITICAL INTERFERENCE, COOPERATION OF OTHER AGENCIES OF STATE etc.)
- REFORMS IN THE LAW, SHOULD BE NEXT STEP, BY WAY OF CONSOLIDATION OF WATER AND AIR ACTS AND THEIR INCORPORATION IN THE ENVIRONMENT PROTECTION ACT. THIS SHOULD FURTHER CONSOLIDATE THE HOST OF RULES, REGULATIONS AND NOTIFICATIONS, TO STRENGTHEN THE



Turning inwards to the Pollution Control Boards, what about their preparation and equipment? Are they at least geared up to take on the challenges before them? In terms of their education, academic qualification, experience and expertise as is required in handling the task assigned and meeting the ever-expanding demands and expectations, we have already seen that none of these are adequately addressed, internally also.

If you look at the mind set and statements of these functionaries themselves within these boards even that is not in tune with the constitutional directive of a public trustee, their actions if you just look at, the results of their actions it is more of a reaction than a pro-action which is one of their mandates. If you just look at their variety of functions, some functions stand out, some function draw their attention much more than most of the other functions like the consent provision.

The standard setting and enforcement of that, it looks like an approach is more towards rent seeking, controls and regulations of conduct than that of a parent, educator, enabler and facilitator which we saw are many of the functions assign to them, which is very much in line with the constitutional directive of the public trustee.

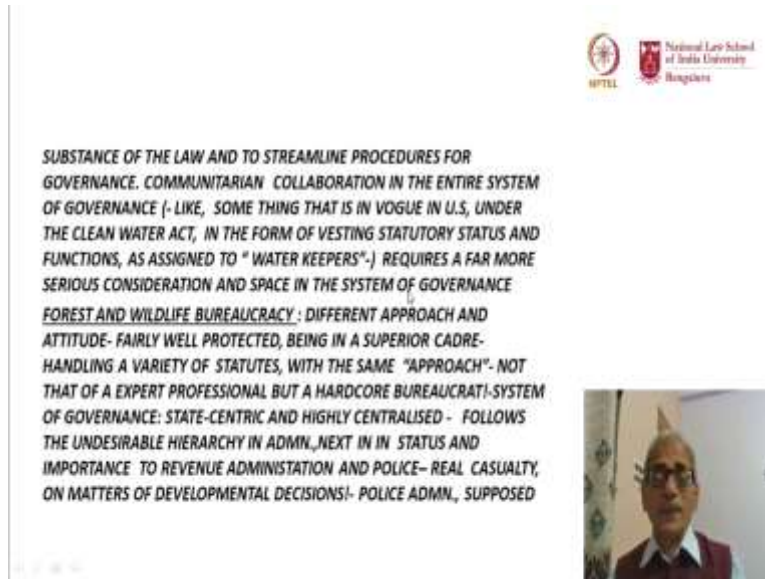
But as a matter of fact, we are closer, deeper, clearer examination of these rules, regulations and notifications, the processes and procedures under these laws, most of these believe me are

capable of getting addressed in the existing system itself. Only thing is, there has to be a rigorous capacity building exercises for all the concerned. And of course, a few amendments in the existing law is required to bring in a little bit more clarity in the substance of the law.

Primarily to ensure institutional autonomy and to narrow the scope of political interference, and also to gain, ensure and command cooperation of other agencies of state. It is on these some reforms are required. Then the next stage would be overall reform, by way of consolidation of all these all laws. Why do you have a separate law on water and air pollution and why you duplicate many of these aspects in Environment Protection Act?

I think you need have to wrap them all around into absorption and incorporation in the Environment Protection Act itself. And there should be a further consolidation of those hosts of rules and regulations and notifications to strengthen the system. Especially the substance of the law and streamline the procedure for governance. Something that is solely missing and very highly inadequately addressed require attention and that is communitarian collaboration. In the entire system of governance, just to give an example there is something that is in application in United States, there is something called as a Clean Water Act, very much related to our Water Act.

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The slide features two logos at the top right: the NITEL logo and the National Law School of India University Bangalore logo. The main text is a block of text in all caps, discussing governance and bureaucracy. To the right of the text is a small video inset showing a man in a maroon sweater and glasses speaking.

SUBSTANCE OF THE LAW AND TO STREAMLINE PROCEDURES FOR GOVERNANCE. COMMUNITARIAN COLLABORATION IN THE ENTIRE SYSTEM OF GOVERNANCE (- LIKE, SOME THING THAT IS IN VOGUE IN U.S, UNDER THE CLEAN WATER ACT, IN THE FORM OF VESTING STATUTORY STATUS AND FUNCTIONS, AS ASSIGNED TO " WATER KEEPERS"-) REQUIRES A FAR MORE SERIOUS CONSIDERATION AND SPACE IN THE SYSTEM OF GOVERNANCE

FOREST AND WILDLIFE BUREAUCRACY : DIFFERENT APPROACH AND ATTITUDE- FAIRLY WELL PROTECTED, BEING IN A SUPERIOR CADRE- HANDLING A VARIETY OF STATUTES, WITH THE SAME "APPROACH"- NOT THAT OF A EXPERT PROFESSIONAL BUT A HARDCORE BUREAUCRAT- SYSTEM OF GOVERNANCE: STATE-CENTRIC AND HIGHLY CENTRALISED - FOLLOWS THE UNDESIRABLE HIERARCHY IN ADMN.,NEXT IN IN STATUS AND IMPORTANCE TO REVENUE ADMINISTATION AND POLICE- REAL CASUALTY, ON MATTERS OF DEVELOPMENTAL DECISIONS!- POLICE ADMN., SUPPOSED

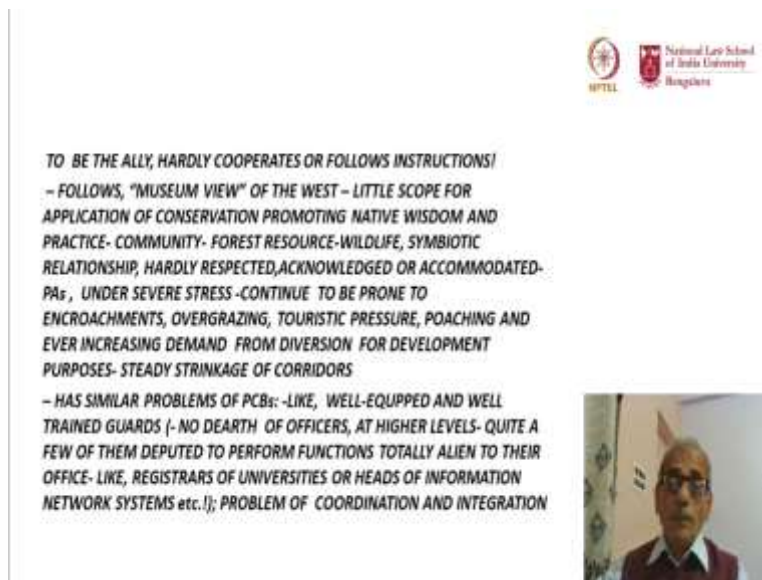
There statutory status and functions are conferred upon some of the local communities who have been very closely associated with the resource and they appear to be part of that resource itself, they are called as water keepers. You know the kind of functions they have? These are not government bodies, these are not state functionaries, these are not public servants, but these are the people who are drawn from the community itself.

They have that skill, they have that ability, they have that observation, they have been living there all the while, they are given powers of imposing penal sanctions and enforcing them on those violators of all that has been prescribed in the law, of ensuring good quality of water in terms of riverine system, water bodies and things like that. Such things require a far more serious consideration and space in the system of brown aspects of governance.

Let us move to forest and wildlife bureaucracy, my god, it is altogether a different approach and attitude. This is a fairly well protected superior creator of bureaucracy. And what do they do? They handle a wide variety of statutes but approach is the same not that of an expert professional, but that of a hardcore bureaucrat of the revenue kind, I have already explained that, please recall that by referring to a forest and wildlife law and their management.


The system of governance as you have noticed, it is state centric and highly centralized. Unfortunately, it follows the undesirable hierarchy of administration, being next in status and importance to revenue administration and police. Actually, such a kind of a hierarchical structure and recognition of status actually makes forest and wildlife governance a real casualty, especially when it comes to developmental decisions, the forest and wildlife authority's conservation concern even when articulated in higher circles of administration, do not get the kind of respect as would that of those who are in the higher enclaves of the ladder of administration.

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TO BE THE ALLY, HARDLY COOPERATES OR FOLLOWS INSTRUCTIONS!
– FOLLOWS, "MUSEUM VIEW" OF THE WEST – LITTLE SCOPE FOR APPLICATION OF CONSERVATION PROMOTING NATIVE WISDOM AND PRACTICE- COMMUNITY- FOREST RESOURCE-WILDLIFE, SYMBIOTIC RELATIONSHIP, HARDLY RESPECTED,ACKNOWLEDGED OR ACCOMMODATED- PA#, UNDER SEVERE STRESS -CONTINUE TO BE PRONE TO ENCROACHMENTS, OVERGRAZING, TOURISTIC PRESSURE, POACHING AND EVER INCREASING DEMAND FROM DIVERSION FOR DEVELOPMENT PURPOSES- STEADY STRINKAGE OF CORRIDORS
– HAS SIMILAR PROBLEMS OF PCBs: -LIKE, WELL-EQUIPPED AND WELL TRAINED GUARDS (- NO DEARTH OF OFFICERS, AT HIGHER LEVELS- QUITE A FEW OF THEM DEPUTED TO PERFORM FUNCTIONS TOTALLY ALIEN TO THEIR OFFICE- LIKE, REGISTRARS OF UNIVERSITIES OR HEADS OF INFORMATION NETWORK SYSTEMS etc.); PROBLEM OF COORDINATION AND INTEGRATION



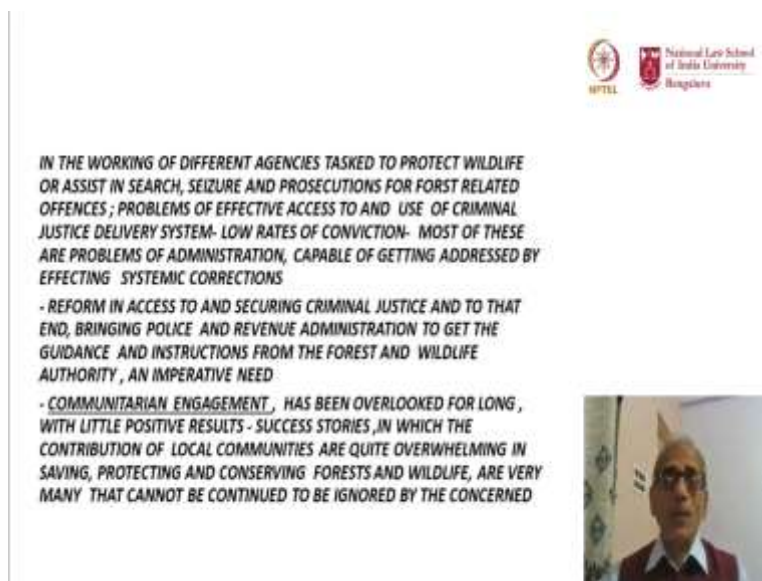
Police administration is supposed to be a strong ally, especially with regard to seizures, searchers and bringing the wrong doer to book through prosecutions, they hardly cooperate or even follow instructions of the forest administration. When you look at the forest and wildlife law, the striking feature is the museum view of the west, there is a little scope for application of conservation and promoting native wisdom and practice.

The kind of relationship that exist between the local community, the forest resources, the wildlife, the very symbiotic relationship that exist between them is hardly respected, acknowledged or accommodated. Protected areas as they exist, they are under severe stress, they continue to be prone to encroachments, overgrazing, tourists' pressure, poaching and ever-increasing demand from diversion for developmental purposes.

Steady shrinkage of corridors is regular feature. I think the forest wildlife administration have very similar problems of Pollution Control Boards. They do not have well equipped and well-trained guards, problem of personnel, there is dearth of officers in the forest and wildlife departments, because they occupy higher positions, and quite a few of them are even deputed to perform functions which are totally alien to their office, they become registrars of universities or heads of information network systems.

And this is something which is despicable to say the least. If you want to strengthen the administration in the forest level, if you have too many, release it of bulk and those that are there completely zero them onto the task on hand, that is the professional approach, that is what is required sadly missing. Then next problem is about the problem of coordination and integration of different agencies, task to protect like for example wildlife, because in terms of protection of wildlife there are so many things that are required, so many other agencies of state are required to assist, in such seizure and prosecutions.

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IN THE WORKING OF DIFFERENT AGENCIES TASKED TO PROTECT WILDLIFE OR ASSIST IN SEARCH, SEIZURE AND PROSECUTIONS FOR FORST RELATED OFFENCES ; PROBLEMS OF EFFECTIVE ACCESS TO AND USE OF CRIMINAL JUSTICE DELIVERY SYSTEM- LOW RATES OF CONVICTION- MOST OF THESE ARE PROBLEMS OF ADMINISTRATION, CAPABLE OF GETTING ADDRESSED BY EFFECTING SYSTEMIC CORRECTIONS

- REFORM IN ACCESS TO AND SECURING CRIMINAL JUSTICE AND TO THAT END, BRINGING POLICE AND REVENUE ADMINISTRATION TO GET THE GUIDANCE AND INSTRUCTIONS FROM THE FOREST AND WILDLIFE AUTHORITY , AN IMPERATIVE NEED

- COMMUNITARIAN ENGAGEMENT , HAS BEEN OVERLOOKED FOR LONG , WITH LITTLE POSITIVE RESULTS - SUCCESS STORIES ,IN WHICH THE CONTRIBUTION OF LOCAL COMMUNITIES ARE QUITE OVERWHELMING IN SAVING, PROTECTING AND CONSERVING FORESTS AND WILDLIFE, ARE VERY MANY THAT CANNOT BE CONTINUED TO BE IGNORED BY THE CONCERNED

For forest and wildlife related offences, there is a problem of effective access to and use of criminal justice delivery system and you know the consequence, the conviction rates are very low, although this law is considered to be far stricter, stringent than the penal laws that we have, but in terms of conviction very low rate, you know the reason. Of course, these are really the problems of administration.

And it is my considered opinion that these which are in existence are something that has to be handled on a priority and capable of getting addressed by effecting systemic corrections, you do not need legal reforms, you correct the system itself to re-anchor them, to achieve the goals that are set under this law.

Most of the problems as I have said so far would be resolved, reform in access to and securing criminal justice and to that end there is definitely a need for bringing police and revenue administration to get trained and also to get guidance and instructions from forest and wildlife authorities is a very immediate and imperative need.

The final one is something that requires repeated emphasis and action in that regard and that is communitarian engagement. This has been completely overlooked and you know the results are not encouraging. We already know, we have success stories, the whole world has taken note of success stories in which the contribution of local communities are quite overwhelming in saving, protecting and conserving forest and wildlife without state assistance. And they are plentiful, if you just look around, they cannot be continued to be ignored anymore by the concern authorities.

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The slide features two logos at the top right: the MPTEL logo and the National Law School of India University Bangalore logo. The main text is centered and reads:
– SINCE, EXISTING PROVISIONS HAVE SOME SPACE FOR IT LIKE, "VILLAGE FORESTS", "COMMUNITY RESERVES", etc., NEED REMAINS FOR GIVING EFFECT TO THEM- MALDHARIS HELP IN CONSERVATION OF GIR LIONS; NAGA TRIBALS CONTRIBUTION IN MAKING NAGALAND THE AMUR FALCON CAPITAL OF THE WORLD AND THE YEOMANS' SERVICE OF THE PASTORAL COMMUNITY OF THE THAR DESERT IN CONSERVING THE GREAT INDIAN BUSTARD, SHOULD GET RECOGNISED AND ILLUMINATED
* - CERTAIN OTHER PROBLEMS AND DIFFICULTIES ARE MORE FUNDAMENTAL, LIKE, DEALING WITH CLIMATE CHANGE IN RELATION TO PROTECTION OF WILDLIFE, IN PARTICULAR OR IN DEALING WITH ZOOONOTIC DISEASES LIKE, COVID- OVER 70% OF WHICH ARE SUPPOSED TO ORIGINATE IN WILDLIFE)- LAW, PROCEDURES AND INSTITUTIONAL ARRANGEMENTS, CLUELESS IN DEALING WITH THEM



A small video feed in the bottom right corner shows a man with glasses and a mustache, wearing a maroon sweater over a white shirt and tie, speaking into a microphone.

Look at the existing provisions. They have enough space for this kind of a thing like village forest or community results under forest and wildlife laws, there is definitely a need, clear administrative well for giving effect to them. Or to go a little bit more in detail, you have known about the Maldharis, their kind of help in conserving one rare species and variety of a mammal, the Gir Lions in Gujarat.

Or the contribution of Naga Tribals in making Nagaland, the Amur Falcon capital of the world and look at the Yeoman service render by the Pastoral community of the Thar desert in conserving the great Indian Bustard, these require recognition, their contribution greater illumination, not illumination to the outside world, it is already known. Not illumination for the common man, it is already in common domain.

Illumination within inside the forest and wildlife administration, to give recognition that they deserve and internalize them in the working of this law. Certain other problems and difficulties of course they are very-very fundamental and these are like climate change in relation to protection of wildlife, or something which is what we are experiencing now in dealing with zoonotic diseases, you do not have to look for an example, we are actually going through that, the COVID it is actually a zoonotic disease.

And you know as a matter of fact, over 60 percent of these, 70 percent of these are supposed to originate in wildlife, you turn the pages over of all the laws and procedures and institutional arrangements that you have on forest and wildlife, they are totally clueless in dealing with any of them. And so, there is a need for relook into these laws the administration to rigid them, to rework them, to recast them and put them on professional life to achieve the goals for which they are created.

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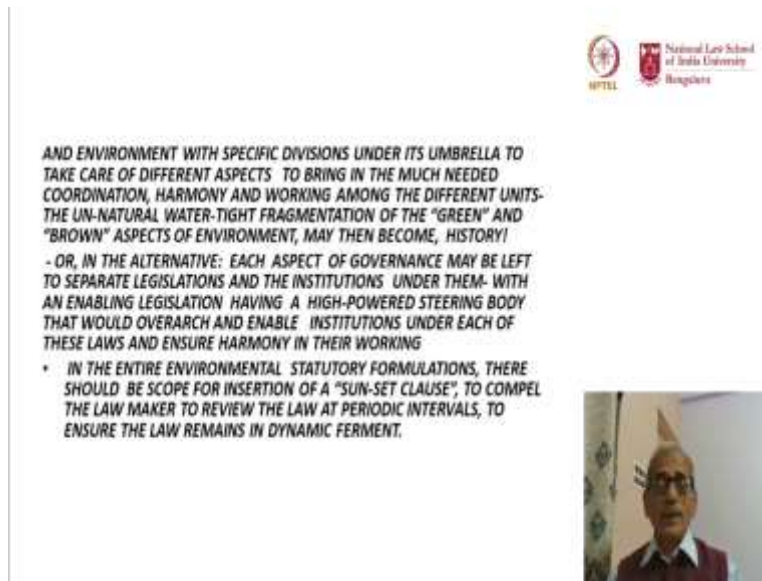
- BIODIVERSITY LAW, THAT HAS SALUTORY ELEMENTS OF DECENTRALISATION AND A HUGE COMMUNITARIAN ENGAGEMENT, NOT JUST AS PARTICIPANTS, BUT AS STAKEHOLDERS, PARTNERS AND STATUTORY FUNCTIONARIES, IN A FAR MORE MEANINGFUL AND DEEPER SENSE, THAN, PERHAPS, UNDER THE CONSTITUTIONAL SCHEME, REQUIRES TO TAKE ITS PRIDE OF PLACE IN THE SYSTEM OF GREEN GOVERNANCE
- NEED REMAINS TO LOOK BEYOND THE "TUNNEL VISION OF FOREST AND WILDLIFE LAW" - INTEGRATION OF FOREST, WILDLIFE AND BIODIVERSITY UNDER ONE SINGLE OVERARCHING LAW AND ADMINISTRATION, CAN BE PART OF LEGAL REFORMS
- THERE CAN BE SERIOUS THOUGHT GIVEN TO CRAFTING A SINGLE COMPREHENSIVE, OVERARCHING LEGISLATION ON CONSERVATION, PROTECTION, MAINTENANCE, MANAGEMENT, NON-DEGRADATION, RESTORATION, RECOVERY AND RECLAMATION OF NATURAL RESOURCES

A small video inset in the bottom right corner shows a man with glasses and a maroon vest speaking.

Biodiversity law that has salutary elements of decentralization and a huge chunk of it would involve communitarian engagement. And communitarian engagement how? It is not just as participants, but stakeholders, partners, statutory functionaries, right holders in a far more meaningful and deeper sense than, perhaps even under the constitutional scheme, this requires to take its pride of place in a system of green governance.

There is also a need to look beyond the tunnel vision of the forest and wildlife law, integration of forest, wildlife and biodiversity under one single over-arching law and administration is the need of the day, and that should be the primary part of law reforms. There can be a serious thought given to crafting a single comprehensive over-arching legislative frame is a thought on conservation, protection maintenance, management, non-degradation, restoration, recovery and reclamation of natural resources.

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The slide features two logos at the top right: the NPTL logo and the National Law School of India University Bangalore logo. The main text is centered and reads: "AND ENVIRONMENT WITH SPECIFIC DIVISIONS UNDER ITS UMBRELLA TO TAKE CARE OF DIFFERENT ASPECTS TO BRING IN THE MUCH NEEDED COORDINATION, HARMONY AND WORKING AMONG THE DIFFERENT UNITS- THE UN-NATURAL WATER-TIGHT FRAGMENTATION OF THE "GREEN" AND "BROWN" ASPECTS OF ENVIRONMENT, MAY THEN BECOME, HISTORY! - OR, IN THE ALTERNATIVE: EACH ASPECT OF GOVERNANCE MAY BE LEFT TO SEPARATE LEGISLATIONS AND THE INSTITUTIONS UNDER THEM- WITH AN ENABLING LEGISLATION HAVING A HIGH-POWERED STEERING BODY THAT WOULD OVERARCH AND ENABLE INSTITUTIONS UNDER EACH OF THESE LAWS AND ENSURE HARMONY IN THEIR WORKING". Below this, a bullet point states: "• IN THE ENTIRE ENVIRONMENTAL STATUTORY FORMULATIONS, THERE SHOULD BE SCOPE FOR INSERTION OF A "SUN-SET CLAUSE", TO COMPEL THE LAW MAKER TO REVIEW THE LAW AT PERIODIC INTERVALS, TO ENSURE THE LAW REMAINS IN DYNAMIC FERMENT." A small video inset of a man in a maroon sweater and glasses is visible in the bottom right corner of the slide.

And of course environment with specific divisions under the Umbrella Law to take care of different aspects to bring them in the much needed coordination, harmony and working among the different units. The un-natural water tight fragmentation of the green and brown aspects of environment should become a matter of history. This is one model of reform, not an ideal but can be given a thought and to the extent possible operationalized.

But if you think that it is too idealistic, too broad, too very difficult, here is another alternative, each aspect of governance may be left to separate legislations. And the institutions under them as you have right now, but you need an enabling legislation having a high-power steering body, headed by none other than chief secretary of the state that would overarch, oversee, monitor and enable all these institutions under each of these laws and to bring in the much-needed harmony in the working.

Then only administration will become a symphony of a well harmonized, well-lit organizational entity rather than the cacophony of chaotic administrative arrangement as we have right now. In the entire environmental statutory formulations, there has been one gap and that is there should be an insertion of what is called as sunset clause. What is this? Sunset clause is a provision which actually makes it mandatory for the law maker to have a relook at the law that he has made.

See a law has been made and brought into application and more often than not, the law maker having made the law forgets about how it is being implemented, how it is effective and how to take a performance audit to bring in corrections. But supposing you have a provision which has a clause, this is very much prevalent in the western states. In the western countries where they will have a provision for periodic review of the law made and then take a call whether you need an amendment, recasting to meet the demands with the time.

This can only ensure the law can remain in dynamic ferment and not ferment and rot like an unwanted, unused rotten food of yesterday, so as to become useless. So dynamic ferment which is supposed to be the hallmark of a living law, if at all it were to happen, then you make the law maker compel to have a relook at what he had done earlier as part of his law-making process. This perhaps can bring in the much-needed reform in the whole system of governance and in the legal order in the days to come.

The next aspect that we need have to examine is to look into what has been done about justice dispensation. And whether there is anything that need have to be done to reform that or are we happy with whatever we have right now, and that is the third part of our inquiry; adjudicatory processes, mechanisms and the results well.