
INTERNATIONAL ENVIRONMENT AND ISSUES- COMPLIANCE AND CHALLENGES

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ABSTRACT

The term “Environment” owes its genesis to a French word ‘environ’, which means ‘encircle’. It encompasses within its ambit land, water, flora, fauna, living creatures, forests and everything above the earth. Therefore, for the purpose of our discussion, “environment” can be understood to refer to all components surrounding man, which consists of two important major parts, i.e., physical and natural.

While the physical environment on the earth is essential for the existence of life in various forms, the natural environment provides food and other materials for the sustenance of man on the earth. Man cannot survive on the earth without plant and animal life. Thus, environment is the natural system on which we depend, i.e., the air we breathe, the earth which feeds us, the rivers and seas which give us water, the atmosphere around our planet which makes life possible and all the living things which share with us.

It is most unfortunate that man by his failure to live in harmony with nature has brought humanity to the brink of this global environmental catastrophe. It is, in a way, ironical that while the life of man, which is claimed and recognized as fundamental human right by all concerned, is created, sustained, nurtured, and nourished by natural environment, the same is contaminated, polluted and degraded by man on an unprecedented scale- all in the name of the so called development.

It is common knowledge that at present there is a major environmental crisis of a global proportion affecting the physical¹, natural² and human environment³ due to pollution of all kinds.

It is imperative that the international community should be shaken from its slumber to be prepared to combat this environmental crisis by taking appropriate measures, which should be not only for controlling pollution but also for protecting and promoting environment. The members of the international community should be more conscious of the environmental responsibilities.

Keywords: *Ecosystem, Ecological Degradation, Bio-diversity, Deforestation, Conservation.*

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1. Physical environment refers to land water and atmosphere.
 2. Natural environment refers to living organism including human beings, and flora and fauna.
 3. Human environment refers to health, social and other man made conditions affecting human beings.

Man has a fundamental right to freedom, equality and adequate condition of life, in an environment of a quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

INTRODUCTION

The term “Environment” owes its genesis to a French word ‘environ’, which means ‘encircle’. It encompasses within its ambit land, water, flora, fauna, living creatures, forests and everything above the earth. Therefore, for the purpose of our discussion, “environment” can be understood to refer to all components surrounding man, which consists of two important major parts, i.e., physical and natural. Physical environment constitutes lithosphere i.e., land. (the surface layer of the ground), hydrosphere i.e., water and atmosphere i.e., air. The natural environment constitutes living organisms including human beings, flora and fauna, etc. While the physical environment on the earth is essential for the existence of life in various forms, the natural environment provides food and other materials for the sustenance of man on the earth. Man cannot survive on the earth without plant and animal life. Thus, environment is the natural system on which we depend, i.e., the air we breathe, the earth which feeds us, the rivers and seas which give us water, the atmosphere around our planet which makes life possible and all the living things which share with us. According to the Encyclopedia Britannica, the entire range of external influence acting on an organism, both physical and biological forces of nature surrounding an individual is called environment.”⁴

It may be noted that while lithosphere, hydrosphere and atmosphere are all important for the sustenance and development of life, it is the area of contact and interaction between them that is really the most important. It may be appreciated that this narrow belt of contact between the three that constitutes the biosphere. It is here that the entire life is confined. There is an exchange of matter between these elements e.g., plants on the earth draw their nourishment from the nutrients and moisture from the soil of the lithosphere. Plants use carbon dioxide from the atmosphere and also sun light for their growth. Dead plants and animals are decomposed by bacteria and in the process add nutrients to the soil. Some of this may be dissolved by running water and add to the hydrosphere. The evaporation of water from the atmosphere, the concentration of water vapours in the atmosphere and its precipitation on the earth provides water supply for the organisms in the biosphere.

4. Encyclopedia Britannica, p. 758 (1974).

It may be noted that all this is perceived in the definition of environment provided by the Environmental (Protection) Act, 1986, which states:

*Environment includes water, air and land and the interrelationships which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property.*⁵

The term environment, therefore, should be understood in its comprehensive sense along with the interaction between its' various component parts mentioned above.

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CONCEPT OF INTERNATIONAL ENVIRONMENT

International Environmental Law is first and foremost international law: Its fundamental unit is the state, not the ecosystem, its fundamental principle is national sovereignty, not the conservation of nature. The inability of states to achieve consensus on anything but a lowest-common-denominator basis, the insistence of most states on retaining unrestricted sovereignty, and the absence of sanctions for non-compliance are familiar problems in all realms of international law including international agreements that ostensibly respond to ecological degradation issues. When sovereignty conflicts with environmental protection requirements, sovereignty prevails. There is a striking discontinuity between this legal enterprise, which operates primarily at the international and national levels, and the myriad decentralized activities that threaten diverse natural systems and species in disparate places. It is common knowledge that at present there is a major environmental crisis of a global proportion affecting the physical⁶, natural⁷ and human environment⁸ due to pollution of all kinds.

It is imperative that the international community should be shaken from its slumber to be prepared to combat this environmental crisis by taking appropriate measures, which should be not only for controlling pollution but also for protecting and promoting environment. The

5. The Environment Protection Act, 1986, Sec. 2 (a)

6. Physical environment refers to land water and atmosphere.

7. Natural environment refers to living organism including human beings, and flora and fauna.

8. Human environment refers to health, social and other man made conditions affecting human beings.

members of the international community should be more conscious of the environmental responsibilities which are implicit in their solemn undertaking, to observe the 5 June of every year as an International Environmental Day, given at the UN Summit on Environment and Development at Stockholm, in 1972. It is heartening to note that the nation-states have not only become aware of the dangers of the impending consequences of the worldwide environmental pollution such as contamination of the oceans, climate change, ozone depletion, loss of bio-diversity, desertification, acid rain and depletion of natural resources but also shown their concern and eagerness to take remedial measures which is evident from their efforts to convene several international conferences leading to the conclusion, adoption and enforcement of flood of international conventions and declarations on environment.

It is necessary and appropriate to understand and appreciate, in brief, the contours of the concept of environment and the main causes of its degradation.

ROLE OF ENVIRONMENTAL LAWS

Environmental laws are the standards that governments establish to manage natural resources and environmental quality. The broad categories of “natural resources” and “environmental quality” include such areas as air and water pollution, forests and wildlife, hazardous waste, agricultural practices, wetlands, and land se planning. **Environmental law** is a complex and interlocking body of treaties, conventions, statutes, regulations, and common law that operates to regulate the interaction of humanity and the natural, towards the purpose of reducing the impacts of human activity. The topic may be divided into two major subjects: (1) pollution control and remediation, (2) resource conservation and management. laws dealing with pollution are often media-limited - i.e., pertain only to a single environmental medium, such as air, water (whether surface water, groundwater or oceans), soil, etc. - and control both emissions of pollutants into the medium, as well as liability for exceeding permitted emissions and responsibility for cleanup. Laws regarding resource conservation and management generally focus on a single resource - e.g., natural such as forests, mineral deposits or animal species, or more intangible resources such as especially scenic areas or sites of high archaeological value - and provide guidelines for and limitations on the conservation, disturbance and use of those resources. These areas are not mutually exclusive - for example, laws governing water pollution in lakes and rivers may also conserve the recreational value of such water bodies. Furthermore, many laws that are not exclusively "environmental" nonetheless include significant environmental components and integrate

environmental policy decisions. Municipal, State and National laws regarding development, land use and infrastructure are examples.

Environmental law draws from and is influenced by principles of environmentalism, including ecology, conservation, stewardship, responsibility and sustainability. Pollution control laws generally are intended (often with varying degrees of emphasis) to protect and preserve both the natural environment and human health. Resource conservation and management laws generally balance (again, often with varying degrees of emphasis) the benefits of preservation and economic exploitation of resources. From an economic perspective environmental laws may be understood as concerned with the prevention of present and future externalities, and preservation of common resources from individual exhaustion. The limitations and expenses that such laws may impose on commerce, and the often unquantifiable (non-monetized) benefit of environmental protection, have generated and continue to generate significant controversy.

DISTINGUISHING NATIONAL LAW FROM INTERNATIONAL LAW :

To understand the nature of international environmental law, one must first understand the difference between national and international law. National law is law that is adopted by the government of an individual country. In the United States, the most common examples of national law are federal and state legislation and judicial decisions. Agency regulations and executive orders would also fall within this category. Although these national laws are adopted by an individual country, they may have international impacts. A foreign manufacturer whose defective product injures a person living in the United States may be held liable for resulting damages under U.S. law. The U.S. Corrupt Practices Act prevents a U.S. corporate executive from bribing a foreign government official. While these laws affect international activities and non-national parties, they are generally not considered international law. Rather, they are considered *extraterritorial* applications of national law. International law, on the other hand, concerns agreements among different nations, or between citizens or corporations of different nations. Agreements or treaties among different nations are generally referred to as public international law.

Contracts between private parties (corporations or citizens) residing in different nations are generally referred to as private international law. Because the field of international environmental law focuses on the relations and agreements among nations, it is part of public international law.

CHALLENGES BEFORE THE IMPLEMENTATION OF ENVIRONMENTAL LAWS:

During the three decades since the emergence of ecological degradation as an issue of great global concern, environmental law has been the primary mechanism used to promote natural resources conservation, pollution control, and other forms of environmental protection. The realm of International Environmental Law has grown to encompass hundreds of international and regional treaties, thousands of national laws, and countless administrative regulations promulgated by more than 180 states and multilateral organizations such as the U.N. agencies and international development banks. Every new environmental treaty is preceded by a multitude of conferences, backdoor negotiations, position papers drafted by government officials and affected interest groups, intensive lobbying by many governments, multilateral organizations, environmental NGOs, scientists, trade groups and industry representatives, and anyone else who has a stake in the outcome. By any measure of diplomatic and legal activity, the field of International Environmental Law has experienced remarkable growth and high salience since the 1972 Stockholm Declaration on the Human Environment.

Despite differences in international and national lawmaking processes, no clear boundary demarcates where International Environmental Law leaves off and national law begins. In many instances, national environmental laws have been enacted for the sole purpose of meeting obligations imposed by international agreements.

Unfortunately, environmental laws are only hortatory words unless they are implemented effectively; yet, non-implementation, non-enforcement, and non-compliance are so common that they must be viewed as the norm rather than exception in the great majority of nations. The illusion of international and national environmental law in poor nations is reinforced by a peculiar mixture of idealism, myopia, and cynicism that induces states to ratify treaties and enact domestic laws without any expectation of implementation or compliance. At a high level of generality, there are three clusters of reasons why conservation laws have seldom been successful in developing states:

INADEQUATE ADMINISTRATIVE CAPACITIES:

Even the most enthusiastic and naive proponent of IEL should realize that environmental protection is a complicated and costly undertaking that must be maintained, revised, and renewed on a continuing basis. The developing nations lack the requisite scientific knowledge, managerial expertise, trained personnel, financial resources, institutional frameworks, political commitments, and popular support necessary to implement effective

environmental protection programs on a wide scale. Legal pronouncements, no matter how sweeping and unambiguous, cannot serve as substitutes for these indispensable administrative requirements. Despite various "capacity building" programs initiated by the governments of developed nations and a variety of U.N. agencies and multilateral organizations, few if any poor states have acquired the technical, managerial, and financial capabilities to implement conservation measures on a broad front. Absent these capacities, ecological conservation cannot succeed no matter how sincerely the government and people of a nation may want to preserve their natural heritage.

INADEQUATE POLITICAL COMMITMENTS AND POPULAR SUPPORT:

The overwhelming priority of governments and entrepreneurs in virtually every poor nation is to increase economic growth and development opportunities. And the great majority of "common" citizens are so caught up in day-to-day subsistence activities that their priorities are also overwhelmingly economic. Given these priorities, it is a very rare occurrence indeed when any development project is stopped or hindered by conflicts with international and national environmental laws. In many countries, most people damaging natural systems or features are not aware of any applicable conservation laws and would not consider them personally relevant if they did know the laws. Few if any governments in developing countries have a systematic plan for monitoring compliance with their environmental laws or for enforcing the laws in the likely event of non-compliance. Even where widespread practices are known to be environmentally destructive and socially disadvantageous for most citizens, as in the contexts of cyanide and dynamite fishing, slash-and-burn deforestation, or toxic water pollution, governments in developing states very seldom interfere with flagrant violations of their environmental laws.

Governments in poor nations have many reasons for ratifying environmental treaties and enacting domestic conservation laws despite their lack of interest in enforcing these laws:

- *Most governments want to be regarded as responsible members of the "community of nations" and their ability to influence the choices of other states may turn on achieving this perception. Participation in environmental lawmaking efforts could be deemed of significant importance by governments even if the results of participation, whatever agreements and laws are negotiated, are not considered especially relevant.*

- *For many developing countries, participation in international environmental proceedings on a relatively equal footing with more powerful states offers an opportunity to reinforce their sense of national identity and importance. This participation may also enable them, often acting in concert with other developing nations, to pursue specific national interests as they perceive them.*
- *Foreign aid from developed nations and economic or technical assistance from multilateral institutions may often depend on developing states maintaining the appearance of adequate environmental protection laws. The World Bank, for example, requires applicants to demonstrate through a document-submission process that the governments possess an appropriate legal framework to mandate environmental impact assessments and mitigate ecological damage from development projects.*
- *Environmental lawmaking may help deflect internal political criticisms as well as external pressures from the international community. Lawmaking without major investments in implementation and compliance may, from a government's perspective, defuse media scrutiny and public aspirations for environmental protection in a way that does not jeopardize economic development. In this sense, the creation of illusory conservation obligations may function as a high-pressure steam relief valve on a boiler, mollifying environmentalists without the need to impose severe regulatory burdens on entrepreneurial activities.*

In short, governments may achieve "the best of both worlds" from a political perspective by enacting strict conservation laws to placate environmentalists but then not implementing or enforcing those laws to reduce administrative costs and to accommodate pressures from business interests. The point to keep in mind is that governments in developing states may derive a range of benefits from adoption of conservation laws that have little connection with the ecological and social benefits from genuine environmental protection. And most other governments almost never make serious attempts to hold these states to their self-assumed legal obligations.

Environmental laws are not self-executing and they cannot function in the absence of effective implementation, which in turn requires extensive and expensive administrative capacities, detailed regulatory mandates responsive to particular national circumstances, strong government commitments in the face of competing economic and social interests, and influential public constituencies supporting environmental protection. Because these attributes are very seldom present in developing nations, it should not be surprising that

international and national conservation laws are failing pervasively relative to the pace and magnitude of global ecological destruction. Neither environmental law nor environmental education has been able to counter the overwhelming priority placed on economic development in virtually all poor countries. Neither environmental law nor environmental education can succeed when people lack viable economic alternatives---poor people will not let their families starve to save trees or tigers, no matter how much they appreciate nature-- and most people in developing nations want more than minimum subsistence. Environmental law and education rely mainly on the impact of words, words that are often no more than idealized exhortations, but conservation-oriented words have seldom been compelling enough to produce meaningful conservation actions in the developing countries.

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