

**Constitution of India and Environmental Governance Administrative and Adjudicatory
Process**

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Lecture No 5

Theoretical Moorings, Sources and Evolution – Part 04

This part of the discourse is devoted to a discussion on the foundational norms, which are actually the Principles of Environmental Law and Governance. Principles do constitute a very important complement of interpretation by the courts of law. Interpretation is a tool employed by the judges in the courts of law in their decision making process, is a tool that is employed by the practitioners of the law through their argumentation to rationalize certain propositions of law and relating them to a particular factual situation or anything like that.

And so, interpretation of laws by making use of the principles would constitute the important armory of a judge and an advocate in a court of law. Understanding of the law is essentially a fine art, which is made easy when once, one is acquainted with the very principles which form the very foundational basis for any law in operation.

The more interesting feature of a principle is that in the absence of a statutory provision, or when there is a vacuum in the law, the courts would look for an anchor of support for the reasoning, and this anchor for support comes in the form of principles. Principles which actually dictate and guide them as to how to understand a particular problem situation and then adjudicate upon it by giving cogent reasons for the same.

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I. WHAT ARE THEY?



- *PREScriptions OF CONDUCT, TO ACHIEVE A GOAL*
- *DERIVED FROM CUSTOMARY PRACTICES, GENERAL PRINCIPLES OF LAW, ECOLOGICAL SCIENCES, RULES OF ECONOMICS, EQUITY, ETHICS, JUDICIAL PRONOUNCEMENTS, etc.*
- *EMBODY STANDARDS/NORMS FOR OBSERVANCE*
- *STEER & GUIDE LEGAL PRESCRIPTIONS*
- *BY THEMSELVES DONOT SPECIFY PARTICULAR ACTIONS- SERVE AS THEORETICAL BASES- POSITIVE RULES OF LAW MAY, AT A LATER POINT OF TIME, EMERGE AS FORMULATIONS OF THE PRINCIPLES FOR APPLICATION IN DIFFERENT SITUATIONS – SIGN POSTS TO LEAD TO A DESTINATION*
- *NOT ALL PRINCIPLES CAN BE APPLIED TOGETHER- DIFFERENT TOOLS FOR DIFFERENT EXIGENCIES AND CIRCUMSTANCES*



Then what are these principles? Principles in very, very simple terms are no more than prescriptions of conduct; prescriptions of conduct to move in a particular direction and to achieve a particular goal. So there is already a goal, like environmental conservation. There is already a goal of environmental protection, there is already a goal for a pollution-free environment. Now, how do you really go about the task?

What shall be the guiding star with the help of which one would be able to reach that goal and that comes through the application of various principles of environmental governance. As a general rule, principles are derived from the very practice of the people, customary practices or certain general principles of law and governance, and when it comes to environment and natural resources, certain of those basic ideas that emanate from ecological sciences, certain home truths, as they call, they may also come from some of those basic rules of economics, equity, ethics, and many a time, the courts of law innovate upon these and then come up with their own clause to the understanding of law by enunciating a new principle of law.

So, there are varied sources from which principles are derived. What do they actually do?

They embody standards or norms for observance and they steer and guide legal prescriptions, giving them the content, the substance and the quality for applying it in any given situation. Principles, as you can make out from what I have just conveyed so far, are not something that can be specifically enforced. They cannot specify a particular course of action or they cannot be

just used as a tool for application, but they form and constitute theoretical ways upon which a positive law springs up, and this positive law as a distilled wisdom that has come from the principle for application in different problem situations. So, in brief, a principle is a signpost; a signpost to lead one to a destination.

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II. A FEW GENERAL PRINCIPLES



1. **SIC UTERE TUO, ET ALIENUM NON LAEDAS:** - So use your property as not to cause harm to others
2. **SOVEREIGN RIGHT OVER OWN NATURAL RESOURCES:** - Prin.21 of Stockholm Declaration-Prin.2 of Rio- Declaration
3. **PRINCIPLE OF PREVENTIVE ACTION:** -Obligation to prevent damage to environment with in its jurisdiction and the obligation to take appropriate regulatory ,administrative and other measures- requirement of taking action at an early stage/if possible, even before occurrence of actual damage
4. **GOOD NEIGHBOURLINESS & INTERNATIONAL CO-OPERATION:**
(Prin.24 of Stockholm and Prin.27 of Rio- Declns. etc.)
- Information Sharing; Technical and Financial Cooperation; Joint Implementation



First let us acquaint ourselves with a set of general principles of environmental governance on the basis of what has been evolved at the international level, as general principles of international law in the relation amongst nations a set of code of conduct has been evolved over a period of time in international law and they are referred to as the ‘Principles of International Law’.

And these principles come in very handy, as the very basic principles from which we can develop environmental principles. So, what are these basic or general principles of international law that can be adopted and applied in environmental law? The first one is something that comes from the domestic legal system. It reads as a maxim in Latin.

First, I will state it in Latin, and then explain it in English. Sic utere tuo ut alienum non laedas.

Sic utere tuo ut alienum non laedas. What does it mean? It is just a very commonsensical principle. It simply means that if you own a piece of land, you are an occupier of a particular premises you have a right to use it and as a owner, you have a right to use it every which way you like. You can occupy it, you can take possession of it, you can move around it very freely,

you can do whatever you want with that particular property, but there is a limit. There is a limit to that and that is your use of your property should be such that if anything that gets out of that your property. Getting out of it may be a waste, it may be some kind of polluting substance or it may be ear deafening noise that you cannot, because you have a right of use of your property for your benefit and enjoyment, but you will benefit and enjoyment of use of your property should not be at the cost of others.

Like you have a right over your property, so is the case with those who are your neighbors that they also have similar right as you have, and my right should not spill into the rights of the other, should not invade upon the rights of another. And so the whole truth is, use your property as not to cause harm to others.

A wonderful principle, very effectively applied initially through private disputes when people started complaining, when the neighbors' activities on his premises did really cause annoyance, injury or any kind of a discomfort to his neighbor, the neighbor would complain. 'Look, he is using his property to my detriment, to my enjoyment of my property and so there has to be some kind of a relief.' And courts have invariably used this principle in all domestic legal systems all over the world, including in India, that one has to use one's own property without harming others.

So your right of enjoyment of your property is limited to whatever that happens within that particular property as not to go out of or escape from his property, and even if it escapes from your custody with all the care and caution that you had taken, you become liable because you have caused an inconvenience to somebody, which you do not have a right of.

Sic utere tuo ut alienum non laedas - a general principle, very profitably, very gainfully applied in a host of environmental litigations that if your neighbor sends noxious fumes from his property to your piece of land, you have a right of action. He has no right to disturb you, he has no right to disturb the quality of air and other natural resources that you enjoy in your property. And so, he shall be restrained, he should be cautioned, he may even be penalized. First principle.

The second general principle and this is a principle that is brought into application always in international relations. When you say that there is a nation; a sovereign nation, what does sovereignty mean? Sovereignty means the right of a particular country or a nation or a state as used in international law, the right to manage and administer all its affairs within its territory, exclusively without any intervention from anyone, this is the internal dimension of sovereignty.

If India is a sovereign nation, India as a sovereign nation has every power and authority and exclusive power of dealing with all its resources for the benefit of its own people without anybody else's intervention, no state can interfere in the internal affairs of another country. Sovereign right, in that sense, in the internal sense, means that right not to be interfered in the enjoyment of one's own natural resources within one's territory.

The other dimension, the other dimension of sovereign right or sovereign authority of a state is in international relations, all nations are free and equal; all nations are free and equal, irrespective of their size, irrespective of the population that they have, irrespective of the wealth of riches and resources that they have, irrespective of the level of economic development they have, all states have an equal status, that is the external dimension.

For our consideration here, our focus is more on environment and natural resources and this particular principle comes in handy that every country can make their own laws, have their own administrative setup, have their own adjudication mechanisms of settling disputes and things like that in relation to all the resources that they have within their territory. No other country can make a law for them, no other country can administer their resources, no other country can adjudicate and so you have an exclusive sovereign right over your own natural resources.

The same has been recognized and has been put into the whole corpus of law at the international level in a 1952 General Assembly Resolution in the United Nations, and later crystallized it into a binding rule of international law in the year 1974. And the same has been borrowed into environmental jurisprudence as well.

But you remember that we discussed about the Stockholm Conference of 1972. In the Stockholm declaration Principle 21 mentions this right and later in 1992 in the Rio Conference, in the Rio Declaration Principle 2 reiterates this principle of sovereign right of nations over their own natural resources.

Third principle, Principle of Preventive Action. This is a right of every nation that whenever a particular sovereign nation is taking care of its resources, whenever it is operating within its jurisdiction within its territory, it shall ensure that as a sovereign nation, when it has this internal sovereignty of having been an authority over everything concerning its resources, in its management or whatever activities that take place with regard to its resources it shall take care that anything that happens within its territory shall not in any way go beyond its jurisdiction as to harm others, as to affect them and for that, it has to take appropriate regulatory and administrative measures of prevention, prevention of harm being caused by any of its activities that occurs within its territory to spilling out to the neighbor's property.

In a way, this is an extension of the first principle - you shall not disturb your neighbor, you can use your property and so you shall not harm others. But this is a step higher than that, you shall not only not harm others, you also have a duty to prevent harm before that harm occurs, or when there is a potential that this harm is about to occur, or is at a very early stage of occurring you should take all adequate safeguard measures, even before its occurrence or even before it causes any actual damage to others.

What if damage occurs? What if harm results? Well, you have to compensate them because you do not have a right to damage, you do not have a right to allow something that happens on your territory to damage others, and so you have to take preventive action - Principle of Preventive Action.

The fourth principle, the Principle of Good Neighborliness and International Cooperation. Please look at the common thread that runs through among all these principles. And one can dovetail into the other principle this also looks like an extension of the first three principles, first two principle;, the principle of sic utere, the principle of Sovereign Right, and the third principle the

Principle of Preventive Action, leading to the principle of good neighborliness and international cooperation, which is the other way of saying that you as a sovereign nation you have a right to maintain good neighborly relations, be a good neighbor. An ethical principle, and ethical principle is already there in a law, definitely in international law.

Definitely in all civil law systems that we have in the world, civilized systems of law that we have in the world that when you have your neighborhood, your conduct, your actions should be such that it is going to be something which shall be looked forward to by your neighbor that you are a good neighbor, should not be a quarrelsome neighbor.

And if possible, whenever there is a need you should be able to cooperate and collaborate with your neighbor so that the quality of life of both of you would be at a higher level. Same is applicable at the international level, amongst the nations, and the same is the principle that has been adopted in the Stockholm Conference, Principle 24 refers to that and also the Rio Declaration, the Principle 27 makes a mention of this.

How does it manifest? How does it apply? How does it apply in law? Well, this is being done through a number of cooperative ventures amongst nations, information's sharing, Like for example, you have a very robust system of weather reporting in your country and your neighbor does not have that kind of a scientific progress as you have, the technological advancement that you have made with the satellite images and various other technical gadgets, you should be able to forecast the weather conditions in the days to come. Well, that will serve your people. But while it serves your people, it would be a good idea that you share that information with your neighbor because the atmospheric fluctuations that occur may affect your neighbor also.

And so, sharing of an information of something that has been impending, something that is going to happen would actually help the neighbor to prepare well in advance to avert any undesirable consequence, to minimize whatever kind of damage that may occur to him or even eliminate that, that kind of a cooperation is what is required and it has been read into quite a good number of international legal arrangements that information sharing is a must when it is going to help your neighbor.

In addition to that, in international arrangements we have something called as 'technical and financial cooperation'. This normally happens when developed and developing nations come together in an international conclave, there is a lot of give and take. When a developed country comes up with a particular kind of an agenda of action at the global level with a corporation of the developing country, the developing country also expects that 'I will cooperate with you, but what is there in it for me?' Well, it is a developed country which may offer to the developing country rather than even there is a barter, as an exchange, as a goodwill measure 'I shall be able to share whatever state-of-the-art technology that we have in this particular area.'

So you do not have to really rely upon outdated technology, they will make it available for you, you can use it. Or in certain circumstances there can be an extension of financial assistance. One can cooperate with other, like you would do, as a needy neighbor may approach you for a loan, the loan has to be repaid, but over a period of time on certain terms, which are acceptable to both of you. Same is the case in international relations as well that in case of need financial and technical cooperation is what is expected of each other because in international law, the cooperation and collaboration amongst the nations is the very foundation upon which international law developed.

So, there may be situations where you may have the gadget, you may have an industry, but unfortunately in running that industry you may need certain kinds of technical assistance, which is in short supply within your country. Then we have to borrow from that country which has that ability, which has the competence and so there can be instances when nations can come together in a giant collaborative effort whereby they would implement a particular mission, they would carry out a particular course of action, like space launch, launch of space vehicles.

One nation would provide the base and another nation would actually provide the finances, the third nation may provide the very rocket that has been launched, and there is a collaboration amongst nations where one may not have a launching pad, the other one may not have the technology to develop that particular spacecraft. And so, through this collaboration, through this joint venture all the countries which are participants in this particular collaborative venture will

get benefited. Same is the case with the environment. And these are reflected in those principles that I just mentioned, but there has to be good neighborliness and international cooperation amongst nations on the environmental front as well.

The underlying idea behind this is that the global environment is a common property, is a common concern of nations, and so they needed to really collaborate, to see that the global environment is kept healthy.