

Ecological Globalization v. Environmental Needs of Future Generations: Need for Constitutionalization of the Doctrine of Inter Generational Equity & Other Fundamental Principles of International Environmental Law

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‘Ecological Globalization’ refers to the collective impact that the diverse processes of Globalization have on the health of the planet’s natural systems.² Due to globalization, goods, money, people, ideas, along with pollution, are traveling around the world at unprecedented speed and scale. The global commons including the atmosphere and the oceans is under severe environmental assault. Globalization of commerce has further internationalized environmental issues, with trade in natural resources like fish and timber soaring.

The large-scale consumerism has brought the mankind at a stage where our needs have gone beyond the means to fulfill them. In our desire to reach the maximum production limit, we have started borrowing from the resources meant for future, which we know very well that we cannot repay. We are using all those resources, which are in fact the future generation’s property. Natural resources are meant not only for the utilization of the present generation but also by the future generation.

Environmental problems are climbing ever higher on the international political agenda, at times preoccupying diplomats almost as much as arms control negotiations did during the cold war. Environmental issues have also become acrimonious in North South relations, with rich and poor countries divided over how to apportion responsibility for reversing the planet’s ecological decline.

Under these circumstances, ‘Distributive Justice’ shall be the guiding principle for protection and equitable sharing of the environment and natural resources of the present and future generations, since everyone is entitled to equal access to clean and healthy environment necessary for living in a humane way.

To address these issues, from Stockholm Declaration 1972 till date, lots of discussions have taken place on the need and strategies for the protection of environment at the Global level.

The Stockholm Conference proclaimed that defending and improving the human environment for present and future generations has become an imperative goal for mankind... The Conference called upon governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity.

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² Hilary French, “Coping with Ecological Globalization” in Lester R. Brown et. al. State of the World 2000, The World Watch Institute, W.W. Norton & Company, New York, p.185

The Stockholm Conference triggered legislative and executive actions in many countries. Though conservation of nature is inherent in the culture and customary practices of the common man, legislative activism became vigorous after 1972. This process gained momentum through judicial activism. With responsive judiciary, legislature and executive, the environment is sought to be protected from the evil hands of polluters and destroyers of nature.

Immediately after the Stockholm Declaration there was a growing trend in National Legal Systems to impose constitutional obligations on State and its instrumentalities and on its citizens - to protect and improve the natural environment. For example:

- Article 24 of the Greek Constitution 1975 provides that “the protection of the natural and cultural environment constitutes a duty of the State”.
- Article 24 of the Swiss Constitution adopted on June 6, 1976 provides that “the Federal Legislature shall enact laws concerning the protection of man and his natural environment against burdensome influences...”
- The 1976 Constitution of Portugal (as revised in 1982) contains both a fundamental right and a statement of public policy relating to the environment.
- The Indian Constitution was amended in the year 1976 to include *inter alia*, Articles 48A and 51A. Article 48A provides that “the state shall endeavour to protect and improve the environment to safeguard the forest and wildlife of the country.” Article 51A (g) provides that it is the fundamental duty of every citizen of India “to protect and improve the natural environment including forest, lakes, rivers and wild life and to have compassion for living creatures.
- The Netherlands amended its Constitution in 1983 to include Article 21, which provides that “it shall be the concern of the authorities to keep the country habitable and to protect and improve the environment.”
- Article 45 of the Spanish Constitution (1987) provides that “everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it.”
- Article 225 of the Constitution of the Federal Republic of Brazil (1988) declares that “everyone is entitled to an ecologically balanced environment.”

The UN Conferences from Stockholm to Johannesburg proclaimed certain fundamental principles of international environmental law like, Polluter Pays Principle; Precautionary Principle; Sustainable Development; Intergenerational Equity and responsibility; Common but differentiated responsibilities; Rights of individuals, equality of access to procedures and non-

discrimination in environmental matters, etc. These principles have been proclaimed after a serious intellectual exercise and thorough deliberation by experts and hence there ought not to be any doubt on the utility of these principles.

The doctrine of 'sustainable development' as defined in "Our Common Future" is closely associated with the goal of Intergenerational Equity and Distributive Justice. Sustainable development recognizes each generation's responsibility to be fair to the next generation, by leaving an inheritance of wealth no less than they themselves had inherited. At a minimum, meeting this goal will require emphasizing the sustainable use of natural resources for subsequent generations and avoiding any irreversible environmental damage.

The concept in intergeneration responsibility has been important since the 1972 Stockholm Conference on the human environment. Principle 1 of the Stockholm Declaration proclaims that "man... bears a solemn responsibility to protect and improve the environment for present and future generations." After being repeated in many different contexts intergeneration responsibility was reaffirmed at the 'UN Conference on Environment and Development' held at Rio as a central component of the shift to sustainable development and Principle 3 of the Rio Declaration states that "the right to development must be fulfilled so as to equitably meet development and environmental needs of present and future generations.

Unfortunately, since these principles are treated to be a part of 'soft law' they lack binding force. The State practices regarding application of International Law to resolve domestic disputes are not uniform. The National Courts do not normally confer primacy on international law, while resolving disputes. The positive commitment of States parties in an international treaty merely ignites legislative action at home but does not automatically make the treaty an enforceable part of the *corpus juris* of the State. In most of the States, International Law is used primarily to inform judicial institutions and inspire legislative action, but apart from such deep reverence, remedial action based on principles of International Law is beyond the jurisdiction of judicial authority.

Application of international environmental law principles might bring desired solutions for environmental disputes, but it becomes practically impossible due to the State Practice and approach of National Courts towards International Law.

Though Nation States showed their inclination to green their Constitutions, in reality, only a half-hearted exercise has been done, merely by amending their Constitutions to include few vague provisions. Instead, each Nation should amend its Constitution to include a chapter on environmental protection, prevention of pollution and conservation of natural resources. Through this chapter, the Constitution should adopt all the principles of International Environmental Law expressly and also declare that "all persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment,

threaten life, health, livelihood, well being or sustainable development within, across or outside national boundaries.”³

There should be a “shift from environmental law to the right to a healthy and a decent environment” so that it is capable of immediate implementation by the Human Rights Bodies. The Constitutions should expressly declare that “all persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights including civil, cultural, economic, political and social rights are universal, interdependent and indivisible.”⁴

The specific adoption of the fundamental principles of International Environmental Law and an express declaration of the fundamental right to live in a clean and healthy environment in the Constitution of the Country will make these ‘principles’ and the ‘right’ a part of the *corpus juris* of the Country and capable of immediate implementation.

Since the Constitution enjoys the status of ‘Supreme Law’ of the land, greening of the Constitution by incorporation of the right of persons to live in a clean and healthy environment and the fundamental principles of international environmental law like the doctrine of sustainable development, doctrine of inter generational equity, etc. will be the panacea for all environmental problems and will ensure distributive justice.

³ Based on Draft Principle 5 of the Report on “Human Rights and the Environment” (1994) by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities

⁴ Based on Draft Principle 2, *ibid.*