CHAPTER 1

Introduction

Topography of juridical science has had unity in diversity of its own. One of them is distinction between (public) international law and (national) internal law of state. Such a distinction may prima facie camouflage a novice over their respective areas of jurisdiction. A minute understanding of international law is required to understand that, except few areas, e.g. deep sea, airspace above the same, two Polar Regions and Outer Space which are beyond national jurisdiction and where only international law is applicable, both of them- international and internal law- are applicable well within territorial jurisdiction of a(ny) state. So there lies a conundrum in internal regime of state while international law and internal law of the land are posited at loggerheads. There is a cardinal rule of interpretation of statute that, unless and until the conflict is irreconcilable, internal law ought to be construed in tandem with international law.¹ A counterpart of this rule but provides endorsement on those provisions of internal law

¹ Under the same general presumption that the legislature does not intend to exceed its jurisdiction, every statute is to be so interpreted and applied, s far as its language admits, as not to be inconsistent with the comity of nations, or with the established rules of international law. Roy Wilson and Brian Galpin (ed.), Maxwell on the Interpretation of Statutes, 11th ed., Sweet & Maxwell Ltd., London, 1962, p. 142.
which are clear and unambiguous in conflicting with international law.² The invalidity
of this archaic rule will be established later on in terms of conflict with international
environmental law in general and climate law in particular. Indeed, traditional
positivist argument may put forth the inbuilt nitty-gritty of transformation through
which international law may be applicable within internal legal regime of state.
These constitute part of procedure and cannot prevent substance of international
wisdom from implementation. In a nutshell, no state is beyond international law and
the same is operative through concerned state apparatus itself irrespective of wide
divergence in terms of systems of governance around the world.

Another positivist argument, which may cite process of ratification or accession as
an expression of sovereign will of state, may be addressed through counter argument
which neutralizes its potential through citation of customary international law and
general principles of international law which are applicable to one and all irrespective
of consent on the part of states concerned.

The contention is already established by earlier research work in case of international
human rights obligations of India and USA with reference to the liberty discourse.³
While carrying forward an almost identical theoretical construct to deal with
emerging international environmental obligations with reference to climate change,

² If, therefore, it designs to effectuate any such object, it must express its intention with
irresistible clearness to induce a court to believe that it entertained it, for if any other
construction is possible, it would be adopted to avoid imputing such an intention to the
legislature. All general terms must be narrowed in construction to avoid it. But if the statute is
unambiguous, its provisions must be followed, even if they are contrary to international law.
Ibid.

³ Vide Debasis Poddar, International Human Rights Obligations: A Study of Internal Legal
Position in India and Comparative Study with the United States, unpublished thesis submitted
to and awarded M.Phil. degree by NLSIU, Bangalore, 2009.
basic structure of the work seems hyperlinked to earlier research output accomplished
on allied subject matter to apply the same toward a newer juridical regime vis-à-vis
international environmental law with special reference to climate change. Also Indo-
US comparative study is a value addition to this end.

1.1. (International) law and order

To initiate rudimentary mapping of this area of research, research problem may be
explored at its length and depth. The objective of any legal system is to resist chaos
and set order. Of course there is space for departure from such established notion,
e.g., perception over instrument like law and order under anarchism, Marxism,
postmodernism and so on. By and large, however, law and order seem to be
complementary and supplementary to one another since time immemorial. While
centered over delinquent fugitive soldiers vis-à-vis breach of rights with impunity,
Shakespeare put forth following wisdom in his play:

"... if these men defeated the law and outrun native punishment, though
they can outstrip men, they have no wings to fly from God." 4

4 William Shakespeare, Henry V, Act IV, Scene I (1600), from Stanley Wells and Gary Taylor
Contemporary world, however, seems to be a Godless world in the sense that such belief system seems no longer applicable within or across the community (except indigenous world), though the world is yet to be a lawless one. By and large, close coordination of civilized peoples all over the world may slow down climate change through a set of normative order generally known as international environmental law. With the passage of time, modern (public) international law underwent a paradigm shift to change its teleological trajectory altogether, from the (pre-war) 'law of nations' worldview of Brierly⁵ to the (post-war) 'law of peoples' worldview of Rawls⁶ - not without reason that the focus of this research is more associated with the latter than the former. Such a metamorphosis in nomenclature triggers total transformation from structural to individual centric fulcrum of this area of study. Even so called collective human rights or people's rights seemingly stems from a larger dimension of the same as people is embodiment of a set of innumerable individual persons. Here, for the sake of convenience, Rawls' concept of international legal order⁷ is adhered to for study of discourse of internal legal position in India vis-à-vis international environmental law.

Though traditional jurisprudence, as a conservative discipline of knowledge, was not at all comfortable with emergence of international legal regime so much so that this


⁷ By the "Law of Peoples" I mean a particular political conception of right and justice that applies to the principles and norms of international law and practice. I shall use the term "Society of Peoples" to mean all those peoples who follow the ideals and principles of the law of peoples in their mutual relations. These peoples have their own internal governments, which may be constitutional liberal democratic or non-liberal but decent governments.

new branch of law was considered to be a “vanishing point of jurisprudence”, with the passage of time, however, international law has not only had a place in the study of law, but also formulated a *sui generis* jurisprudence offering a class of its own and that also diversified in various segments of international legal order- ranging from labour to trade; and environment is one such stakeholder. Such a trend of growing fragmentation within the corpus of international legal regime is spectacular in terms of its diversity along with divergence. To illustrate few major areas of study:

1. Wetlands of International Importance
2. International Trade in Endangered Species of Wild Fauna and Flora
3. Trans-boundary movements of Hazardous Wastes and their Disposal
4. Biological Diversity

---

5. Climate Change

6. Desertification in Countries Experiencing Severe Draughts

7. International Tropical Timber (Trade)

The matter is, however, not restrained to the question of mutual diversity vis-à-vis international law due to a hard reality that sometimes such divergence among diverse disciplines is problematic to an extent that different regimes of the same international environmental law are mutually exclusive to one another. Even this is no *de novo* innovation in a sense that the ILC was engaged in addressing such issues since 2002 and thereby submitted its report to the U.N. General Assembly in 2006. Also there are few research initiatives over such an area of concern. Such a conflict of norms at same plane (of international law) are thereby labelled to be a horizontal one while there is vertical conflict of norms while international law and internal law of states, belonging to apparently different sets of legal order are at loggerheads. Nowadays also there is regional legal order being the third dimension of law and order. Output

---


of this research, however, will also help resolve tension between regional law and internal law of states though the same does not constitute an agendum of this work.

In a nutshell, what the forthcoming dissertation strives to offer is juridical solution-a theoretical construct for jurisprudent compliance of international environmental law-of problems of interface between international law and internal law of the land, but subject to irreconcilable problems of development diplomacy.

1.2. Classification of normative conflicts

There may be another set of conflicts within the internal law of a particular state which is to be taken care of by institutions of governance as per the position of law for the time being in force. In case of constitutional law of India, conflict between any legislation and the Constitution of India will be dealt with as per Article 13 of the Constitution of India. Also subordinate legislation is subordinate to its original legislation as the same is apparent from its nomenclature. There is, however, no such easy way out in India to get rid of any conflict between two legislations- both being operative for the time being in force.

From hitherto academic exercise, a reasonable assumption may be gathered that there is a set of gross normative conflicts (not 'conflict of laws' as the same refers to private international law- another area of study between divergent internal laws) in and around public international law operative at both international and national level, and the conflicts may be horizontal or vertical in their nature. Also there is conflict within public internal law of state. Not solution of all these conflict constitutes focus of this research. For convenience of mapping concerned areas of normative conflict, an inventory may be provided as follow:
1. Conflict of norms (read statutes) with the corpus of internal law of a state.
2. Conflict of norms between supreme legislation and subordinate legislation within the corpus of internal law of a state.
3. Conflict of norms between international law and internal law of a state and
4. Conflict of norms (read instruments) within the corpus of international law.

Here the term ‘internal law’ is hypothecated from reference of domestic or municipal law in the text of VCLT. Through this work, the term is used to refer to for domestic or municipal law as this is the term officially recognized by international instruments since application of the term in VCLT.

Forthcoming effort is concerned with third area of study abovementioned where, since time immemorial, there is polarization of worldviews in terms of theoretical position of dualism and monism- the former stemmed from a positivistic notion of traditional jurisprudence while the latter evolved from a transcendental approach of jurisprudence towards discipline of law and order in its entirety. As per dualism, international law and internal law of states are essentially different since there is no symmetry between two sets of legal order. Some hardliners of this approach proceeded further to nullify international law as “vanishing point of jurisprudence” though, with the passage of time, such archaic resistance is no longer prevalent in dualist approach. Monism, on the other side, holds international law to be integral part of the legal system spread all over the world being complementary and supplementary to internal law of all civilized states. Till mid-twentieth century, traditional dualistic approach reigned the world of jurisprudence. Thereafter, due to multiple factors operative in changing society, mainstream jurisprudence underwent

---

22 Vide Article 2.2, read with 27 and 46, VCLT.
23 For details, refer supra, n. 8.
a u-turn in its approach and becomes increasingly adhered toward radical approach to address emerging issues - conflict of norms being one of them. While such a trend is apparent in terms of international human rights obligation of states, international environmental obligation seems on its way to create a space of its own to this end. In particular, climate change regime by and large commands reasonable obedience on the part of states all over the world irrespective of a counterclaim on the part of sceptic pro-development community to the contrary. In spite of conflict of interests, however, there is universal consensus to slow down climate change as policy matter. There is but hostility within apparent camouflage of docility as parties to the regime still continue to pursue development agenda of their own.

In fact, subject matters of global public concern under international law have become diluted out of contemporary developments in world order and led to virtual departure from traditional jurisprudence to its modern version - not without reason that there is an English proverb, to quote from the same - "fact may be stranger than fiction". Likewise, earlier only the nation states used to be subject of international law (and

---

24 So long as political organization of society and political ideas remained much that they had been, the law of nations worked out by Grotius and developed by his successors served its purpose well. But with changed political ideas throughout the world it has become increasingly inadequate to its tasks. Its fundamental idea is out of line with the democratic organization of societies of today. It has, therefore, conspicuously failed in the present (twentieth) century. If a regime of legal adjustment of relations and ordering of conduct of self-governing peoples is to achieve its task competently in the world of today it must proceed on a different theoretical basis.

therefore the area of study was considered to be a "law of the nations"\textsuperscript{26} while nowadays, not only the international (read intergovernmental) organizations, even a marginalized individual human being is also treated to be subject of international law. Last but not least- there are more wonders ahead in the form of non-state actors, civil society and so on.

So also happens in the case of areas of operation. Unlike earlier, international law intrudes well within internal legal regime of the states either covertly in the name of theory of incorporation or even overtly in the name of theory of transformation under the camouflage of compliance with the result that at times international law seems to be controlling the steering wheel of internal legal order of the states and internal law of state is virtually pushed to the backseat. Jurisprudential position over such circumstances is yet to be settled down beyond confusion. So often than not, judiciary within the state accommodates such coexistence of international law and internal law of state while sometimes it ignores international law, in particular, while international law and internal law of the state are set at loggerheads. A few, too few instances are there while judiciary of a state ignored archaic internal law of the state to uphold more relevant international law.

This effort explores such unique but rare circumstances. In the interest of better research output, however, the focus of this effort is strictly limited to a particular area of international obligation, i.e., international environmental obligation of state and compliance to international legal obligations within its internal regime. Other similar areas of study are set aside for the sake of minute focus of this Dissertation which is required to be specific.

\textsuperscript{26} For details, refer supra, n. 5.
1.3. Cutting edge of international obligations

To be objective at the threshold of this effort, readership ought to be aware of a fact that in a way this is no virgin area of research. Rather, to the contrary, this area of study in terms of jurisprudence attracted all giants in the realm of contemporary international law. So far as comparative study dealing with modern international order on one hand and internal legal position on the other is concerned, no thorough research initiative is available so far. Some authors dealt with judgments of apex court from time to time, but those constitute reinterpretation of prior interpretation of constitutional provisions by Supreme Court. By and large, the authors thereby cleared internal legal position of state along with their respective comments over relevant constitutional provisions and not beyond.

There is hardly any initiative available toward an assertion beyond \textit{de lege lata} and to attain a(ny) transcendental jurisprudential position over \textit{de lege ferenda}. Relevant predecessors ranging from \textit{Alexander}\textsuperscript{27} to \textit{Axelrod}\textsuperscript{28} with respect to academic agility on their part, concentrated over apparent meaning of letters of the law. Both of them


\textsuperscript{28} Mark Axelrod, “Implementing Customary International Law in Domestic Courts”, preliminary draft prepared for the 2006 Annual Meeting of the International Studies Association Panel on “Domestic Courts as International Actors”, on March 22, 2006, San Diego, California. Available at: \url{http://www.allacademic.com//meta/p_mla_apa_research_citation/1/0/0/5/2/pages100525/p100525-1.php} accessed on December 25, 2007. As per instruction from the author, this is “not to cite or quote without author’s permission”. Accordingly there is no citation or quotation of this work in the forthcoming chapters of this dissertation.
were engaged to identify the position of internal law and therefore did not concentrate in between black letters of law to decipher the underlying jurisprudential interface, if any. Thus objective of this effort is to initiate research from this particular point where they set their research and thereby carry forward juridical inquiry way ahead so far as possible. The objective of Indo-US comparative study is to testify the same and its efficacy on different systems of democratic governance.

Such literal construction has had a prolonged legacy since time immemorial and consequent consciousness to transcend beyond given world order is no new vista—e.g. "The philosophers have only interpreted the world, in various ways; the point is to change it".29 This research endeavour is under no illusion to move jurisprudence ahead by its contribution. Rather this effort is concerned to strike a mark of difference from prior research in a sense that there will be jurisprudent propositions to address theoretical uncertainty over pragmatic permutation and combination of apparently divergent sets of juridical order and thereby strike optimum balance between them toward a desired destination where these two sets of juridical order may walk hand in hand with harmony and thereby serve transcendent objects and purpose of law— to uphold order and arrest chaos in a(ny) given society through use of law as coherent instrument of transformation toward progress.

To this end, thematic chapterization of this dissertation is prepared to provide issue-based dissection of documents and materials belonging to primary and secondary sources in search of legal propositions to address research questions involved herein

---

followed by an epilogue for final stocktaking of research output along with findings and suggestions and a roadmap for further research efforts in proximity of the areas of study in this dissertation.

In a nutshell, a core purpose of this research endeavour is to address legal polemics while international and internal legal regime(s) are at loggerheads. In its essence, this research endeavour is engaged in formulation of a jurisprudent restatement over such confluence of apparently divergent sets of legal order with hitherto legal fiction set by the institutions of “the State” under Article 12 of the Constitution of India. While being confused in the absence of appropriate legal stand, habitable environment of the people of India and the United States under international and internal regimes of their own is a casualty with impunity so much so that there is no recourse left with the people even after respective internal legal remedies against internationally condemned practices are exhausted since India opted not to concede and United States opted not to accede to international legal obligations vis-à-vis climate change. Thus there is no effective protection for internationally acclaimed environmental rights vis-à-vis sustainable climate as UNFCCC regime is yet to transcend nebulous state.30

Lawlessness still prevails over international environmental regime.

In ICESCR, one of its key provisions upholds right to habitable environment through imposition of a duty on its state parties to improve environment for highest attainable standard of physical and mental health.31 Unfortunately, in the absence of effective


31 1. The State parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
monitoring mechanism, the same is reduced to juridical grandeur and thereby limited to theoretical discourse. It is only since December 10, 2008 that the Committee on Economic, Social and Cultural Rights is empowered with supervision capacity through unanimous adoption of the Optional Protocol to ICESCR. But efficacy of the same is subject to ten instruments of ratification while only three is submitted so far. Neither India nor USA is a party, not even a signatory to this optional instrument and thereby remain beyond international supervision in technical sense of the term. Consequently, due to want of national endorsement, the same is yet to be introduced in terms of their respective systems of governance with the result that hitherto climate injustice continues to perpetrate with impunity in these two countries and around the world. While USA is the largest sinner in terms of its emission, India seems not far behind. No wonder that climate change reaches its threshold state.

1.4. Sovereignty as embargo on international obligations

Indeed there is conventional practice in vogue to impose self proclaimed embargo over international environmental obligations under the (dis)guise of sovereignty- a conception volatile meaning of which is controversial and was never agreed upon.32

2. The steps to be taken by the State Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

... ... ...

(b) The improvement of all aspects of environmental and industrial hygiene.


32 The term sovereignty permeates the language of law and politics. It likewise critically influences the language of practical diplomacy in international law as well as international relations. It is a term widely used and not always similarly understood by scholars, journalists, practical politicians, international civil servants, jurists, and others from widely
so much so that at present the concept seems no longer beyond question. In turn, international wisdom vis-à-vis environmental hygiene is undermined for sovereignty the meaning of which may never be antithetical to survival of its people. In the age of overwhelming liberal democracy almost all over the world, no state may preach its government to govern toward complete detriment of its own people. Even where government is not of the people or by the people per se, their official agenda ought to be for the people. In India as well as in USA, political democracy with all its vices
divergent cultural traditions, professions, and intellectual disciplines; indeed, in would take a major intellectual effort to decipher the subtle gradations of the nuances typically ascribed to the term sovereignty in each of these divergent disciplines. In short, sovereignty may mean different things to different people living in different cultures, throughout different periods (historically and contemporaneously), who practice (and practiced) different specialized or professional competences. It may hold different nuanced meanings for jurisprudence, political science, history, philosophy, and other related fields. Indeed, there are at least different overlapping meanings of the term sovereignty.
Sovereignty may refer to:

- Sovereignty as a personalized monarch (real or ritualized);
- Sovereignty as a symbol for absolute, unlimited control or power;
- Sovereignty as a symbol of political legitimacy;
- Sovereignty as a symbol of political authority;
- Sovereignty as a symbol of self-determined, national independence;
- Sovereignty as a symbol of governance and constitutional order;
- Sovereignty as a criterion of jurisprudential validation of all law (the grundnorm, rule of recognition, sovereign);
- Sovereignty as a symbol of the juridical personality of Sovereign Equality;
- Sovereignty as a symbol of recognition.;
- Sovereignty as a formal unit of legal system;
- Sovereignty as a symbol of powers, immunities, or privileges;
- Sovereignty as a symbol of jurisdictional competence to make and/or apply law; and
- Sovereignty as a symbol of basic governance competencies (constitutive process).


prevails over environmental democracy - not without reason that while right to environmental hygiene is an internationally acclaimed right, and the same is implicit in their letters and spirit of legal system, both of them withholds this right from the people through its action while acceding to legal obligations under ICESCR. For historical reason, USA remains a signatory and not a party to the regime while India has put delayed acceded to the same. Whatever the case may be, there are umpteen principles of international law to condemn such position.\textsuperscript{34-35-36-37-38} Also the practice

\textsuperscript{34} To refer some of them:

"Every State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty". Article 13, the Draft Declaration on Rights and Duties of States, 1949; adopted by the International Law Commission and submitted to the General Assembly. Available at: http://untreaty.un.org/ilc/texts/instruments/english/draft\%20articles/2_1_1949.pdf accessed on December 29, 2007.

\textsuperscript{35} "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

"No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision". Paragraph 1 and 2, Article 4, ICCPR, 1966. Available at: http://www2.ohchr.org/english/law/ccpr.htm accessed on December 29, 2007.


\textsuperscript{37} "No state party shall, even in time of emergency threatening the life of the nation, derogate from the Covenant’s guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, and from medical or scientific experimentation without free consent; freedom from slavery or involuntary servitude; the right not to be imprisoned for contractual debt; the right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation; the right to recognition as a person before the law; and freedom of thought, conscience and religion. These rights are not derogable under any
India and USA indulge not to submit instrument of ratification to its Optional Protocol put international environmental wisdom at real stake. Reservations over human rights regime are no less worse though unilateral declaration to rights treaties underwent strong criticism and the same seems applicable to environmental treaties.\(^{39}\) No wonder that there is anti-reservation clause in all instruments of climate regime-perhaps a lesson learnt from human rights regime.

In particular, a cardinal rule of statutory interpretation insists upon harmonious construction of statute so that the same can be in consonance with international law. Indeed the concerned rule seems to be a qualified one,\(^{40}\) and not applicable to cases where conflict is clear and unambiguous.\(^{41}\) There is, however, a dissident opinion\(^{42}\)
which explores to bypass existing conflict and chaos\textsuperscript{43} and thereby attains harmony between these two apparently divergent sets of legal order. From recent developments, it seems clear that availing the dissident opinion is likely to be more (juris)prudent in terms of state of affairs in the affairs of state.

So far as the ICESCR is concerned, unlike the ICCPR, the instrument suffered from lack of effective implementation mechanism since its beginning. There was campaign for introduction of a monitoring mechanism through the proposed Optional Protocol to ICESCR prepared by \textit{Philip Alston}.\textsuperscript{44} The HRC approved the same on June 18, 2008 and General Assembly of the United Nations followed HRC on December 10, 2008 arguably to celebrate sixtieth anniversary of the UDHR.\textsuperscript{45} As per Article 18 of this Optional Protocol to ICESCR,\textsuperscript{46} the instrument will enter into force subject to deposition of ten instruments of ratification. Competence of the Committee to receive

\begin{itemize}
  \item They could not, therefore, properly put a construction upon a statute different from that which they would otherwise give it to merely because its language would otherwise fail to give to a foreigner the full advantage of the provisions of a treaty”.
  \item “One of the weaknesses of this presumption is that a state can and does reject opinions of other states as to international law”.
  \item “… where the words of the statute are ambiguous or obscure the presumption comes into operation”.
  \item For details, refer webpage of International NGO Coalition for an Optional Protocol to the ICESCR. Available at: http://www.opicescr-coalition.org/ accessed on December 30, 2007.
  \item Bare text of the Optional Protocol to the ICESCR. Available at: http://www.opicescr-coalition.org/OptionalProtocol.pdf.pdf accessed on December 24, 2008.
\end{itemize}
and consider communication may remain legal grandeur as the same seems unlikely to find ten states to submit to the same. A minute study of gross difference between number of state parties in terms of ICCPR and its first optional protocol establishes a sceptic speculation abovementioned. While this is the case in case of civil and political rights which imposes negative duty, i.e., omission of exercise of power, then a set of rights which requires positive duty on the part of the state in terms of exercise of power toward ensuring availability of concerned rights of the people will hardly encourage statesmen to put themselves in the midst of strong whirlpool of protracted worldwide recession and even thereafter.

So also are the cases in cases of the CEDAW, the CRC and the CRPD and their respective optional protocols. For instance, among all these optional protocols (most of which are related to implementation mechanism through treaty bodies i.e., committees), India has so far acceded to those to CRC none of which being related to such implementation matter. From available status report (related to instruments of signature, ratification or accession by the states) from OHCHR, this seems apparent on the face of record that India continues to maintain apathy to such legal implementation mechanism of international human rights law as its policy matter since the beginning of its constitutional governance irrespective of political topsy-turvy from one political party to another. In terms of climate change, despite India is under a constitutional obligation for protection and improvement of environment, the country is adhered to breakneck speed of its unsustainable mode of development

47 Available at: http://www2.ohchr.org/english/bodies/ratification/1.htm accessed on December 30, 2007.
48 The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.
Article 48A, the Constitution of India, 1950.
even after the continuous initiative against the same on the part of UNFCCC regime to the contrary. Despite their strategic difference in terms of KP, India and USA are posited at same pedestal as difference is out of their respective points of advantage. The underlying tension lies in Annex I of the instrument.

1.5. Adaption of international environmental obligations

Focal point of this research, however, is not the range of international instruments abovementioned but an interface between international and internal juridical position in India and USA including a comparative study vis-à-vis their adaption mechanism in general and implementation and compliance in particular- the former being oldest liberal democracy of modern world while the latter being largest one. A hyperlink between democracy as a system of (good) governance and environment as a system of sustenance is hereby established toward rationalization of this comparative study which constitutes fulcrum of this dissertation.

In a way, contradiction between USA and India is intense because of two reasons. First, USA is yet to accede to KP being only legally binding instrument to this end. Earlier the Supreme Court of USA preferred a hostile legal position over application of international law within the country taking virtual departure from a cardinal rule of interpretation (of statute) that internal legal system of civilized state must

\[49\] In an extraordinary ruling that epitomizes the lawlessness and arrogance of Washington’s conduct on the world stage, the US Supreme Court rejected an appeal on behalf of 51 Mexican nationals, most of them condemned to death, finding that American state courts are not bound by international law.

conform to international law unless and until the conflict is clear and unambiguous. This is more so in case of international environmental law as it constitutes concern for people of this planet whom international civil(ized) society and its legal system is meant for.

And here lies the difference between USA and India. Despite apparent apathy on the part of Union executive toward international legal obligations, Union legislature and Union judiciary in India are unlike their US counterpart. While Union legislature is increasingly concerned to its international obligation vis-à-vis environmental law, Union judiciary is yet to recognize its international obligation toward environment. In USA, however, diplomacy prevails over governmental process with the result that all three pillars- legislature, executive and judiciary- share similar understanding with virtual dilution of separation of powers.

Apart from the brighter side, there are darker sides as well. Despite piecemeal efforts, the same institutions of “the State” as political entity in India continue to suffer from their original prejudice related to strategic interface between international law and internal law- the core issue which constitutes a research problem of this dissertation. Despite a jurisprudent position under the Constitution of USA, however, subsequent construction of the same departed from its original constitutional position. Above all, there is divergence between official law of the land and law of the street in practice- an altogether different praxis driven by governmentality and not simply the tension between de lege lata and de lege ferenda generally operative in any sundry system. The forthcoming effort is set to explore concerned juridical issues at length and depth. Besides there are other issues as well which contribute to this problematic interface, e.g. diplomacy, internal politics, global public opinion, international civil society
movement etc. which do not constitute focus of this dissertation though tangential reference of the same may help substantiate juridical reasoning offered by this effort. For practical convenience to deal with this complicated area of study, a legal study (and not interdisciplinary) is hereby offered to this end.