

Indian Approach to Environmental Conservation

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ABSTRACT: *This paper primarily focuses on the concept of Indian Approach to Environmental Conservation with regards to Environmental Law. It discusses how the environment around the globe is incessantly changing in a rapid speed and how the activities of the human beings will serve as the lethal drug to their destructive end. This paper begins with the Introduction to the concept of environment as in what is environment and what all it includes. It also talks about the treaties and conventions that are being made in and for the world. As it approaches further in its approach, it talks about the Environmental legal frame in India as an introduction and then discusses in detail about some important International treaties and conventions like the Rio Summit and the Agenda 21 principles. It then talks about the Constitution of India and how there are certain provisions that are kept for the Protection of Environment. Furthermore, it discusses about the legislations that support the entire scheme of the environmental protection and how they derive rules from the conventions and the treaties, to which numerous countries are signatories to. Then it talks about some important principles such as the Polluter pays principle and the Precautionary principle and how they are being followed in India with certain case laws. The paper tries to bring about a change in the mindsets of the people and bring awareness regarding the work that is done by the Indian judiciary on the matter of environmental conservation and how the need of the hour is to work for the benefit of the environment and not consider our humanly motives and so called development too be the first most priority ignoring the environment. Last, but not the least paper ends with certain sets of recommendations and suggestions and concludes with a positive note.*

RESEARCH METHODOLOGY

SCOPE AND OBJECTIVE OF THE STUDY

The object of the study is to analyze the application of the principles of the environmental law in India or with regard to the Indian judiciary to be really specific and precise in its approach. It aims at bringing out certain important elements as far as the law is concerned and as far as its practice in India is concerned. An important objective behind this study is to make it visible in the eyes of the readers that it is not the government that is not doing what it is supposed to do, or it is not the judiciary that is responsible for the depleting environmental condition in the country, rather it is the individual and the individual units taken together, that are more responsible for the overall loss that is being caused to the environment. Another objective behind the study is to aware the readers of this article about the legal frame in India regarding the environmental laws and to bring to their attention the important International treaties that have led to the formation of so many important principles and how the application of these principles really make a big mark in the environmental state of the country. Another important aspect that this paper focuses on is the provisions in the Constitution of India that make us realise that we need to save environment and that provide for the protection of environment along with certain legislations that have served as a great help for framing the environmental laws of the country. Another aspect that is dealt by this paper is the important principles of the International law and their application in the country through various case laws.

RESEARCH METHODOLOGY

The methodology adopted is largely analytical and descriptive. Reliance has been placed largely on secondary sources like books and articles. The lectures and classroom discussion have been rich with valuable pointers and gave direction to the research. The secondary sources such as the journals be it national or international, the environmental law books and the online articles have helped us largely in the research. Conformity have been shown towards the secondary sources of research and nothing apart from the secondary sources have been used to derive the conclusion of the research paper.

CHAPTERIZATION

This project has been divided in chapters. It consists of following chapters, Introduction (Chapter I), Important International Treaties (Chapter II), Constitution of India and the Protection of Environment (Chapter III), Principles of Environmental Law (Chapter IV), and Conclusion (Chapter V)

RESEARCH QUESTIONS

1. What is the meaning of the term environment and what is the environmental legal frame in India?
2. What are some of the most important International Treaties and what has made them so important ?

3. What are the provisions provided in the Indian Constitution for the protection of Environment ?
4. What is the conclusion drawn from the research done ?

HYPOTHESIS

While attending to the concept of Environment as a whole, some major issues that came into my mind is that whether a India has an environmental legal frame , and if yes what is the relevance of its existence ? And how is the environmental legal frame visible to the general public if at all it exists ? Another issue that arose was whether there have been some important international treaties that led to the demarcating of the environmental legal frame in India and if at all such treaties exists what are they? How has the Supreme Court of India as the apex symbol of Judiciary in the country, been able to prove the importance and the vitality of environmental conservation ? and How does the Supreme Court deal with the cases related to the environment and what are the provisions of the Indian Constitution that provide for the protection of environment ? Another important issue that arose was that what are some of the principles in the environmental law that mark the foundation of any judgement when it comes to the polluter of the environment or any pre cautionary principle ? This all will be dealt by us in the following paper and this paper will strictly adhere to the secondary sources of information, i.e. the books, articles, online information and the general knowledge of the author.

MODE OF CITATION

A uniform system of citation is followed throughout in the contents.

I. CH-1 INTRODUCTION

We usually see people talking about environment all and about the main topic, environmental conservation and the protection of environment. Some we have seen talking about the concept of sustainable development but the foremost thing which is important to notice is that the concept of environment and what all it includes within its ambit. Environment is the milieu in which one lives or in other words it is the atmosphere of an individual. Everything we are surrounded by is what we call as environment. Now the question that arises is that, whether non living things or the living things are our environment. Looking at this question, environment is something which comprises of both the man made and the natural things, therefore it comprises of both the living and the non-living things. Be it anything, a chair, a table, a pen or any minute non living thing or even the animals, creatures, plants, trees and the air, water, soil and any other human being which comes under the category of the living beings. According to the Black's Law Dictionary , "Environment is the milieu in which the organism lives. It includes the sum of all of its surroundings. This includes Natural forces and other living things. It defines the conditions of danger and damage to existence, as well as the development and growth"¹. Everything we are adjacent to, all the non living as well as the living things together constitute the word "Environment". The materialistic things we have surrounded with and the natural things we have been naturally been surrounded with is something we call as environment we habitat ourselves in. When we utter the word environment, we usually tend to encompass every single and every little thing in this world, which is included within the spheres of the word itself. The essence of the word 'environment' lies in the very meaning itself. It is not something materialistic, it is eternal, something that gives peace and makes us happy. Whenever we want to take a holiday we do go to places with abundant nature, like the mountains and near the seas. We often go to places where we experience some kind of natural phenomenon, over which we have no rein off. these are the natural forces which only the creator has control over. All these natural forces is the fabrication of the creator, the Water, the Sun, the Air and similarly the effects of these forces like the heat that accrue from the Sun, the waves that ensue from the water and the thunderstorms and other forms of ravaging calamities emerging as a result of embezzle of these natural forces are just a diabolical demonstration of the atrocity that they can cause to us. The nature gives us the clues or in other words it gives us apprehension about the upcoming dangers and the danger to our existence as well as the future deeds. With so much advancement in technology, that the people have become so much tech friendly that so much so that even if the people are sitting together, they are mostly engaged in their world of technology and this is how the technology has separated an individual from the connect of the nature. As so the advancement has taken place in the lives of the people, the Scientists with the help of the technology can forecast the weather but despite so much advancement in the technology, there has been nothing that can overpower the natural forces. It is simply because the humans have no contemplation over the natural forces. "Environmental history deals with the various dialogues over time between people and the rest of nature, focussing on reciprocal impacts"². To understand what the nature can do to us, we must try to abridge the gap that we have built between the nature, culture and history. There have been evidences of nature

¹ Black's Law Dictionary on the definition of "Environment"

² Beinard, William & Coates, Peter, *Environment and History: the Taming of Nature in the USA and South Africa* (London, 1995), p. 1

conservation in India from time immemorial and so the concept Nature conservation has not been new to India. The concept of protecting the nature and wildlife has been an avid article of belief, faith and are evident in the practices of the people. The fact that they revered the nature cannot be hidden and concealed. Their reverence towards the nature was of such a nature that they named the natural forces as their Devi or Devta of their cult. For example, they devote tree as their God and attach divinity to the elements of nature. The relationship between nature and man is two folded. They both are dependent on each other and in such a manner that without any one of them the other one would cease to exist. It is a two way relationship between them and if we give respect to them, the nature will automatically respect us. If we give respect, value someone automatically the two way relationship comes into being, we earn respect too and we are valued. Same way the reciprocal relationship comes into being and we feel good i.e. there is a feel good factor about the same. There is an incessant relationship between the nature and the human beings, if we give respect to them, they too give respect to us. Now a days in the wake of blindfolded advancement, that we humans have driven ourselves to, we are not able to respect nature and that is the reason for the occurrence of the natural calamities such as the floods, earthquakes, landslides etc. It is because we humans have broken the limit line beyond which the things were not supposed to happen and the consequence of which is purely evident in the nature. Over the period of time as the humans have devastated them in the wake of advancement and materialistic accomplishments, perceiving it broadly as their achievement, the humans have failed to realise the consequences of their so called development. They have also developed in the social scenario of the country after Independence, talking about India particularly. When the people have gone haywire with their so called development and have realised that they have spoiled and destruct the environment so much that there is a dire need to save it, they themselves have come up with the concept of sustainable development, which is susceptible as far as the application of the same is concerned. Let us introduce ourselves with the concept of sustainable development first.

We usually observe people talking about the concept of sustainable development, but do they even know what is sustainable development. The word "sustainable" in the general sense means something that can be preserved or protected in a limited range or quantity, whereas on the other hand, the word 'development' means to prosper or grow, not only economically but as a whole and this development needs to be in accordance with the terms of the environment. If the environment is at risk, the human race is automatically at risk. The development needs to be at a universal level, considering the real good of all, rather considering any single unit or country of the world. So, when we talk about development or consider development as the main goal, it should be on the universal level, i.e. everyone even the nature should prosper with it. When it comes to progressing the world together should prosper and not only an individual country or unit. So, when we combine the meanings of both the words, i.e. Sustainable Development in the general sense it means that we use the natural resources in such a manner that we use it for ourselves and at the same time we are able to use it in the future and the upcoming generations are also able to make use of the resources we are availing right now in the present times. We use the resources in such a manner that we preserve it for the future generations and use it at the same time. So, the concept makes sense. but the problem we are facing is that, the representatives of the individual unit or the countries do not largely look at the concept instead look it as an individual unit concept and that is the reason why so many problems are being faced by the larger unit. Thinking about the global level is the essence of this concept and cannot be looked at separately or ignored when it comes to environment and sustainable development as a whole.

When it comes to the legal definition of the term of Sustainable development, it means "Economic development featuring low rate of growth, little population and a largely diminished impact on the environment"³. So, considering this definition, it looks after the materialistic concerns of the human beings while considering the essence of the sustainable development. What it really means is that, we focus more on the economic development and we grow in monetary as well as the economic terms but by having little population so that there is less impact of the economic development on the environment. It clearly states that environment is something that should never be forgotten, no matter what kind of development you focus on, because it is the need be for the existence of the mankind. Environment whatsoever, should never be harmed. The environment should not be at risk, for the sake of our economic development needs and greed. It is a basic human nature, that if one is prospering incessantly, it slowly becomes a need and then in the wake of accomplishing that need, it gradually becomes a greed. Sustainable development as most commonly defined is the "development that meet the needs of the present, without compromising the ability of the future generation to meet their needs"⁴. In other words, we should always focus on the development that is more focussed on the balanced use of natural resources and the environment should be taken into consideration before making any decision that gives an invincible rise in the economic concerns of the country.

³ Black's Law Dictionary on the meaning of the term Sustainable development.

⁴ World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987).

When it comes to considering and understanding the concept of sustainable development, everyone talks about it and creates a hullabaloo about preserving the resources but no one gradually ends up knowing the real essence and the nerve of the concept. In the early 1970's, at the time of Cocoyoc Declaration on Environment and Development⁵ that this term actually came into being and gained everyone's attention. It is only since then that the concept of Sustainable development has gained and has been accepted as a method of development worldwide. At the global level, the government of each individual unit or the country, is including this concept in their policies and agendas and before the elections in the democratic countries this principle paves way in the political agendas of the parties. It has become the trademark of international organisations dedicated to achieving environmentally benign or beneficial development.⁶ It means an integration of the development, be it economic, social or political along with the environmental imperatives is a contagious issue and must be looked upon. It aims at achieving both the economic and the ecological stability that the concept of sustainable development has come into being. It includes both the economical as well as the ecological process of the same. It does not function independently, i.e. the concept of sustainable development cannot survive without ecological development alone or even the economical development alone. For the concept to be logically followed the existence of both the development is need be. This simply means that if the development is based on achieving only economic and monetary goals, then the development cannot be sustainable because in the wake of accomplishing the materialistic desires the man will go on exploiting the natural resources and the nature will not be taken into consideration, and if the country is focussing only on the natural aspects, it will lose out on the economic part, therefore for the existence of the concept of Sustainable development both the economic and the ecological advancement is necessary.

So, given the above explanation as to why sustainable development needs to have both the economic and ecological factors into consideration, we come to know how sustainable development is more of a wider concept than a narrower concept of just using the resources and preserving them for later use. This clearly indicates that Environment and Development are for people, not people for environment and development.⁷ It is essentially a policy and a strategy for the continued economic and social development without detriment to the natural resources and the environment around. This means that by no means their quality should be effected and put into such detrimental conditions that their future use becomes dangerous. Therefore, while thinking of the developmental measures one needs to keep in mind the need and not the greed of the present and that what would be the future possibilities of the existence of such a resource and in what quantity will the future generations be needing them. It is not that we are forced to think of the future generations but it is just that it is our moral duty towards them, otherwise imagine a grandfather taking his granddaughter to zoo and showing her only the image of the lion that once used to exist and her wondering if such animals even existed, like for us it is the dinosaur that we have failed to see. We must learn from our experiences and rectify our mistakes, so that we can all together make a better future. It cannot be lost sight of that while today is yesterday's tomorrow, it is tomorrow's yesterday.⁸ In fact the idea that we use the current resources in an appropriate way and save it for future use has found widespread international approval since the Maltese Proposal at the UN General Assembly of 1967, which just contended that the Environment is a heritage of the mankind and not just a property of the individual country or a continent. It also contended that the protection of the environment should be legally enforced and that too on a global level. It was said that the whole concept of the Sustainable Development was based on the idea that natural resources such as sea bed are not the fruits of the labour of the present generation and thus these resources can only be exploited with adequate consideration of the "rights" of future generations.⁹ We should not be so central focussed in approach that we consider only ourselves in the picture, we should take into consideration the approach that fits the needs of the future generations and at the same time we are able to preserve the environment and use it for our present needs because if this does not happen anytime in rear future, we will be able to witness the dawn of many environmental related species and the animals species. In simple words, if we continuously strike down the forests and the natural resources, the animals will have no place to live in and therefore, the animals will just be a comic character in the story books and the cartoons and there will be no animals in the real life to see and be happy about. The life cycle will get destructed. This is quite evident in the extinction of many species such as the dinosaur, the white pandas, and the Indian pride "the Indian Tiger" which is almost at the verge of extinction. If species like them extinct will we able to survive ? is the first question and if at all we survive how will the other generations know the value of these animals ?. It is high time

⁵ Dr. P.S. Jaswal and Dr. Nishtha Jaswal, Environmental Law, Sustainable Development, p.93

⁶ Michael Redclift, sustainable Development - Exploring the contradictions, 1987, p.32

⁷ Michael Redclift, sustainable Development- Exploring the contradictions, 1987, p.35

⁸ See T.N. Godavarman Thirumalapat V. Union of India, (2002) 10 SCC 606, p.630

⁹ Meinhard Schroder, "Sustainable Development - a principle for action and an instrument to secure the conditions of survival for the future generations", Law and State, vol. 51, 1995, p.101

we understand the dire need to protect and conserve the environment through the process of the sustainable development.

II. CH- 2 IMPORTANT INTERNATIONAL TREATIES AND CONVENTIONS

In this chapter we will be talking about the most important international treaties and conventions like the Stockholm declaration, Rio Summit, Agenda 21 and so on. There discussion will be followed by the vitality of their existence and how are they followed in India.

2.1 Stockholm Declaration

In the United Nations Conference on Human Environment, 1972 a Stockholm declaration was made on the Human Environment from which the concept of Sustainable development gained even more impetus on the global platform. The U.N Conference was marked as a watershed in the history of international relations as it discussed about the protection and conservation of biosphere which was of the utmost importance worldwide. The initial stages of the conference saw two conflicting approaches. The first approach focussed on the control to human actions which would include control on pollution and conservation of the natural environment¹⁰. It clearly indicates that this approach was based on what humans could possibly do at their individual best. Controlling pollution may involve the basic individual efforts such as maintained disposable habits or involve anything that could be too basic and involve any action on an individual effort to improve the environment and maybe that could possibly take a massive time as compared to the exploitation of the resources happening at an alarming rate. While the second approach, focussed on the social and economic development as a whole instead focussing on the environmental issue individually. So we can infer from the second approach that it clearly focuses on the economic and social welfare as its main agenda and not the environment¹¹. It means that the countries together or on their individual best would try to develop in such a way that the exploitation of resources becomes a little diminished as compared to the existing alarming rate. It is in complete contrast with the first approach as the first approach clearly focuses on the betterment of the environment as its main agenda, be it at individual level or the nation as a whole or globally, whereas the second approach is more self centred and is more realistic, however it is a harsh approach and does not focus on change or transformation. It is based on how they can reduce the exploitation and not finishing it off, while the first one talks about not only diminishing the exploitation but completely getting it extinct and working together globally to improve the environmental condition we all are living in. The first approach, however difficult can be achieved with collective efforts. It is time consuming but at the same time focuses on a better tomorrow, whereas the second approach only focuses on the current selfish approach of the nations to develop both economically and socially and not focussing on the environmental issues and just promising to exploit less, the provisions of which will not be enforceable. So, this serves as a drawback to the second approach.

The conference marked a history in the international relations as 114 countries participated in it and agreed to the principles and the action plan which was signed in by these countries at the Stockholm Declaration¹². After this declaration and the conference, one thing was very clear that no matter how many nations, continents, states or communities we divide ourselves into, we have only one environment and one earth. so, either it's going to be there or it's not going to be there, there is no middle way which can come up. All we as humans can do is, improve and enhance on the mistakes that we have already committed and unite in order to bring about a real change. There are certain stances when an individual if improves on a individual level, small change will occur and slowly these small will form a big change that will eventually benefit all of us at the global level, because as stated above, we have one environment. It will eventually help in improving the quality of life of every individual and we will develop when we live in a healthy environment.

To defend and to improve the environment for the present and future generations has become an imperative goal for the mankind - a goal to pursued together with and in harmony with, the established and fundamental goals of worldwide social and economic development, thus covering both the approached discussed above. The Stockholm Declaration submits certain principles based on which the various countries need to work on. These principles serve as an epitome to this declaration. These principles are as follows :-

Principle I- of the declaration provides that the man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for the present and the future generations¹³. This means that every individual has the right to good life which includes environment as well,

¹⁰ See Dr. P. Jaswal, Environmental Law, Sustainable Development, p.94

¹¹ Ibid 8 at p.94

¹² M.Fitzmaurice, Queens Mary College, University of London, The Principle Of Sustainable Development In International Developmental Law, Stockholm declaration, p.5, (UNESCO Sample Research Paper)

¹³ Dinah Shelton, Oxford Public International Law, on Stockholm Declaration and Rio Declaration

and when the human beings are granted with the rights, duties also accompany and that is what the other part of the principle says i.e. it is the duty of the individual to maintain the environment so that not only he can benefit out of it, but the coming generations can also benefit and experience the richness of the natural gifts and the environment we are blessed with.

The principle 2 talks about , the natural resources of the earth, including the air, water, land, flora and fauna and especially representatives of the ecosystems, must be safeguarded for the benefit of the present and the future generations through careful planning or management. It is submitted that both these principles recognise the concept of inter generational rights¹⁴. This means that everything that is natural must be protected, not only for satisfying our needs but even for the future needs. So, basically both of these principles i.e. principle 1 and 2 both focus on making things easier for the upcoming generations and allowing them to grab the benefits of the environment that we are enjoying. So, this means that it focuses on more of inter-generation dependence that one generation is linked to the other and so on.

Principles 2-7 focus more on inter generational rights. However, discussing them in brief, Principle 3 of the declaration provides that the capacity of the earth to produce vital renewable resources must be maintained and, wherever practicable restored¹⁵. This means that whatever resources we are receiving from the Mother Earth, its vitality must be maintained and must not be taken for granted and exploited because they are to be preserved even for the future generation.

Principle 4 further provides that man has a special responsibility to safeguard and wisely manage the heritage of wild life and its habitat. Nature conservation including wildlife, must therefore, receive importance in planning for the economic development¹⁶. This principle basically focuses on preserving the sanctity of the heritage we have been blessed with or in more simple words it focuses on the nature preservation which according to this principle must be included in the economic development because it is only then our selfish motives will enhance and ultimately we will be resulting in working towards protecting the environment.

According to Principle 5 the non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion and to ensure that all mankind shares benefit from such employments¹⁷. This principle basically focuses on the preservation of the natural resources in such a way that in future they do not get exhausted and that the mankind as a whole can benefit from that preservation or conservation. Principle 6 provides that the discharge of toxic substances or of the other substances and that the release of heat, in such quantities or concentrations as to exceed the capacity of the environment to render them harmless, must be halted in order to ensure that serious or irreversible damage is not inflicted upon ecosystems. It is submitted that this principle is based on the precautionary principle, which is indeed an integral part of the Sustainable Development.¹⁸ It simply means that all the toxic things that the factories or other sources of pollution, exclude from their working should not be done in such a manner that it causes irreversible harm to the nature. Production is an important factor for the development of the country but it should not be done at the cost of Environment.

Principle 7 of the Stockholm Declaration is the only principle in this group that includes the language of obligation, providing that the States shall take all possible steps to prevent marine pollution, and may reflect the negotiations then concluding to adopt the Convention on the Prevention of the Marine Pollution by dumping of Wastes and other matters.¹⁹ this means that Principle 7 is the only principle in this group that binds or creates an obligation of the state to protect the marine life by not polluting it by various ways.

Principle 8-14 are of special importance in which the Principle 8 sets the general background for development and states that economic and social development is essential for ensuring a favourable living and the working environment for the man and for creating the conditions on the earth that are necessary for the improvement of the quality life.²⁰ This means that social and economic development is necessary for a man but working for the betterment of the environment eventually gives the man a better quality life. Principle 9 states that the environmental deficiency created by the conditions of underdevelopment and natural disasters pose great problems and can be best remedied by the accelerated development through financial and technical support

<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1608>

¹⁴ See, Dr. P.S. Jaswal and Dr. Nishtha Jaswal, *Environmental Law, Sustainable Development*, p.95

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Ibid

¹⁹ Dinah Shelton, *Oxford Public International Law, on Stockholm Declaration and Rio Declaration*

<http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1608>

²⁰ M.Fitzmaurice, *Queens Mary College, University of London, The Principle Of Sustainable Development In International Developmental Law, Stockholm declaration*, p.5, (UNESCO Sample Research Paper)

as a supplement to the domestic effort of developing them²¹. This means that the deficiency that is created in the environment because of the underdevelopment and the natural disasters have posed a grave difficulties in the past and to reduce them one needs to get developed enough so as to cope up with the nature.

According to Principle 11, the Environmental policies of all the states should enhance and not adversely affect the present or future development of potential developing countries, nor should they hamper the attainment of better living conditions for all.²² It clearly means that the environmental policies of the countries should be such that they should enhance the present environment and should not pose any adverse effect on the development of the developing countries. A development should be such that it covers all the aspects i.e. the social, economic and ecological development.

Principle 13 further provides that in order to achieve more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve human environment for the benefit of their population²³. It clearly means that the development should be well coordinated with the needs of the population and should simultaneously benefit the environment as a whole.

Principle 14 underlines the concept that rational planning constitutes an essential tool for reconciling any conflict between the need of development and the need to protect and improve the environment. Thus it recognises the need and importance of both the development as well as the environment.²⁴ It means that when the planning is done rationally and according to what is practically possible achieving both the targets of development and the environmental conservation can be achieved.

Principle 15 says that the planning must be applied to human settlements and urbanisation with a view to avoiding adverse effects on the environment.²⁵ It says that the planning should be applied to human settlements i.e. places where it is need to bring about a change and not the places where considerably the environment is at a better stage.

Principle 18 incorporates the "Precautionary Principle". It provides that science and technology as a part of their contribution too economic development must be applied to the identification, advance and control of environmental risks and the solution of environmental problems and for the common good of mankind. We cannot think about environment without spreading its awareness²⁶. This principle is discussed in detail at a later stage in this paper. According to Principle 20, the scientific research and development in the context of the environmental problems, both national and multinational, must be promoted in all the countries, especially in the developing countries.²⁷ Principle 21 opens the door for further developments in the area of legal control of acid rain, green house effect and ozone depletion.²⁸ Principle 22 further provides that state should co-operate and develop further the international law regarding liability and compensation for the victim of pollution and other environmental damage caused by the activities within the jurisdiction or control of such states to areas beyond their jurisdiction.²⁹

Other important treaties were also signed after this Stockholm Declaration such as the Rio Declaration and the Agenda 21. Both of which will be dealt incessantly of this research paper.

2.2 The Rio Declaration

Another important Declaration in the history of Environmental Law is The Rio Declaration on Environment and Development. This declaration consists of 27 principles which guide the behaviour of the country towards an environmentally sustainable pattern of development. This declaration was another one by the United Nations Conference on Environment and Development held at the Rio de Janeiro from 3 June to 14 June 1992. It was held with the motive of Reaffirming the declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16th June 1972, and seeking to build upon it. It was done with the goal of establishing a new and equitable global partnership through the creation of new levels of the co-operation among the states, key sectors of the societies and the people of the nations. They focussed more on working towards the international agreements which respects the interest of all and protect the integrity of the global environmental and developmental system, along with recognising the integral and independent nature of

²¹ Ibid

²² See, Dr. P.S. Jaswal and Dr. Nishtha Jaswal, Environmental Law, Sustainable Development, p.95

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid

²⁸ Ibid.

²⁹ Ibid.

the Earth, our home.³⁰ According to Principle 1 of the declaration, it is the human beings who are the centre of concern for sustainable development which means that it is only with the help of humans bind together that the environment can enhance and elevate in its quality. They are entitled to a better quality of life and have a productive life with the harmony with nature.

Principle 2 of the declaration puts the duty on the state to protect and conserve the nature. In fact it does put the sole obligation on the state but it allows the state to enforce such laws which help in conservation of the environment.. It defines the obligation of the state to protect the environment. Principle 3 says that the right to development must be fulfilled equitably and the environment needs of the present must be fulfilled keeping in mind the needs for the future generation. It says that the developmental needs be it environmental or developmental must be equitably fulfilled. Principle 4 says that in order to achieve sustainable development, there must be eradication of poverty. It also says that in order to achieve sustainable development, environmental conservation is an essential part of it and cannot be considered in isolation.

Principle 5 says that it is the duty of all the states to co operate with each other and the process of achieving sustainable development cannot be achieved individually and it is a global process as it thinks of the benefit of the mankind as a whole. The states need to work together in this process and thus the aim can be achieved. Unity is an essential part of this process.

The Rio declaration has taken cognisance of the fact that eradication of poverty is indispensable in sustainable development and will eventually help to preserve and elevate the quality of environment we are surrounded by. The Principle 8 of the declaration states that in order to achieve the target of the sustainable world using the sustainable means of development, the states should ensure that they do not use the unsustainable means that led to the deprivation in the overall quality of life and the environment we live in.

Principle 9 calls for an international transfer of scientific knowledge needed for sustainable development. Principle 10 recognises the fact that the environmental issues are best handled with the participation of all the concerned citizens and it is only with the help of every individual that the environment can improve. It is a well established fact that the law is a regulator of human conduct, therefore Principle 11 focuses on the States to enact effective environmental legislation. Principle 13 says that the States shall develop national law regarding the liability and compensation for the victims of pollution and other environmental damage. Principle 12 requires the State to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all the countries, to better address the problems of environmental degradation. The Precautionary principle has been stated in the Principle 15 according to which where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation.

The Polluter Pays Principle is laid down in the Principle 16 of the Declaration which states that the polluter is supposed to pay. It provides that the national authorities should endeavour to promote the internationalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle bear the cost of pollution, in the public interest and without distorting the International trade and policy customs. This means that if an industry is set up somewhere and the environment is getting effected in a way that the people of the nearby area are effected, then the polluter is liable to pay them and make the certain amount of changes that help the people around to solve their problems.

Principle 17 lays down the need for having the Environmental Impact assessment (EIA) for the activities that may have an adverse effect on the environment. Principle 24 provides that if two countries that war with each other, no one is at the winning side and that the environmental destruction apart from the loss of human lives is at a large scale. So the countries should cooperate in the international interest and take action accordingly. Principle 25 states that Peace, Development and Environment are interdependent and indivisible.

Principle 27 states that the States shall co operate with each other and abide by the principles laid down in the Declaration³¹. Whether you look at the Stockholm declaration or you look at the Rio Declaration, both of them focus on almost the same principles that in order to live in a healthy environment we need to practice Sustainable Development and that the States or the Countries, should bind itself in a way, that they actually implement the principles laid down in these declarations and help the world become a better place to live in. It is only with the help of each individual effort that the dream of a better world can be achieved and no individual or state can on its own do benefit for the mankind as whole. If the human is entitled to a better environment, he is also obliged to perform his duties towards a healthy and a better environment. Where there are rights, there are duties and so every individual be it the Prime Minister or a sweeper, everyone must work at their individual best so that those small changes become a large one when unified.

³⁰ Preamble of the Rio Declaration on the Human Environment.

³¹ See also *Karnataka Industrial Areas Development Board v. C. Kenchappa*, (2006) 6 SCC 371, p.382

2.3 Agenda 21

Apart from all the declarations and the treaties mentioned above, Agenda 21 is an important programme discussed in the United Nations Conference for Environmental Development. Agenda 21 is one of the most important closing documents of the UNCED conference of the 1992. This conference aimed at drawing up a state of affairs concerning the environmental and development problem at global level and to formulate policy lines so that these two important global problems could be tackled. One of the conference's closing document is Agenda 21, an impressive policy programme for sustainable development at global level in 4 sections and 40 chapters³².

Agenda 21 is a dynamic programme. It is voluntary action plan. It is called as Agenda 21 because it is a comprehensive blue-print for local, national, regional, and global actions to affect the transition to sustainable development in the 21st Century. According to Maurice Strong, Secretary General of UNCED, "Agenda 21 constitutes the most comprehensive and far reaching programme of action ever approved by the world community". The preamble of the Agenda 21 which outlines its purpose, scope and intent, inter alia, provides :

"Humanity stands at a defining moment in history. We are confronted with perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill-health and illiteracy and the continuing deterioration of the eco systems on which we depend for our well being. However, integration of environment and development concerns and greater attention to them will lead to the fulfilment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future. No nation can achieve this on its own; but together we can in a global partnership for sustainable development..."³³

Thus the agenda lays emphasis on the International co-operation for achieving the goal of sustainable development. It prepares the world for the upcoming challenges that the next generation might be facing. It addresses the problems of today. It reflects a global consensus and political commitment at the highest level on development and environment co-operation.

After Agenda 21 there were a set of forest principles which served as vital measures for the environmental conservation. They were a set of principles enshrined to save the environment or in other words meant for environmental conservation. They were non legal binding principles so as to achieve the aim of environmental conservation. Section II of Agenda 21 contains specific recommendations for combating deforestation. There is an exigency in conserving the environment and sustaining the forest and its resources, so that not only the wild can live in peace but also we can survive in a healthy environment. These principles were not legally binding, and that is the reason why many of the scholars showed disappointment in terms of non applicability of these principles. They wanted it to be enforceable because they felt that otherwise these principles would be left out only on paper and will not be followed practically. So, in order to make sure that there exists some practicality in the implementation of the policies, they wished for it to be enforceable enough.

III. CH-3 CONSTITUTION OF INDIA AND THE PROTECTION OF ENVIRONMENT

The Constitution of India has made sure that it does not lack behind in the protection of environment because it is the basic that every country desires and needs for a healthy and peaceful living in the society. The following provisions have been explained and how they have relevance in the context of this paper have also been discussed.

3.1 The Preamble of the Indian Constitution

Indian constitution is one of the best written Constitution worldwide. The preamble of the Indian Constitution states the following :-

"WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a [SOVERIEGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC] and to secure to all its citizens :

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the [unity and integrity of the Nation];

IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November,1949, do HEREBY ADOPT,ENACT AND GIVE TO OURSELVES THIS CONSTITUTION"³⁴.

³² Erik Paredis Piet De Baere Bernard Mazijn Centre for Sustainable Development (Ghent University), Towards an analysis framework for LA 21

(Paper for the VLIR Policy Preparation Research Project 'Sustainable Urban Development: Local Agenda 21 in Development Perspectives')

³³ The Preamble of the Agenda 21

³⁴ P.M.Bakshi, The Constitution Of India, Preamble, p.1

At the very outset, the Preamble of the Constitution provides that our country is based on "Socialistic"³⁵ pattern of society where the state pays more attention to the welfare of the society as a whole as its first priority and the welfare of the individual as the second. The basic aim of the socialism is to see the welfare of the society and to provide "decent standard of living to all", which includes a pollution free environment. We need to understand what is meant by the term "decent standard of living", it does not include all the luxuries, that we humans are striving hard for, it includes the basic things, such as water, air, shelter, education and by air and water we mean clean water and pollution free air, which is very essential for living. If we inhale, the polluted air, we might be infected with several harmful diseases and if we intake bad quality of water or in other words contaminated water, we may be infected with some very harmful diseases which will eventually effect the quality of life we live in. It means pollution free environment as a whole. Pollution is one of the social problems and the "State" is required under the Supreme Law to pay more attention to this social problem and march towards the avowed aim of just social order.³⁶ This objective of the preamble is reflected clearly and in specific terms in part IV of the Constitution, dealing with directive principles of the State.

The Preamble also declares India to be a "Democratic Republic". In a democracy people have the right to chose their representatives and have the right to participate in all the decisions that the government takes. In this type of government they have the freedom to express their opinions and oppose if they wished to. People have the right to access the information of any kind, related to government policies and thus they have a right to question the environment they are living in. They can ask what the government is doing with regard to a cleaner environment and discuss, oppose, support and show affirmative action in response to the policies they make. It is very important for the success of environmental policies.

3.2 Federal System of the Government

The problem of environment is generally dealt by various statutes. Therefore, from an environmental point of view, the allocation of legislative authority is the very important. India has adopted a quasi federal system in which the governmental powers are shared between the Central Government, the State Government and the local level governments, but the main power rests with the Central and the State Government. Part XI of the Constitution (Article 245 to 263) regulates the legislative and administrative relations between the Union and the State. The subjects are divided among three lists, which are the Union List, State List and the Concurrent List. The Union List is the one, the subject matters of which are decided by the Central Government such as defence and airways, whereas the State lists is the one , the subject matters of which are decided by the State Government such as the forest department and the drainage etc. The Concurrent list on the other hand is the one list, the subject matters of which are common to both the Union and the State List.

The Union List contains 97 subjects over which the Parliament alone has the power of legislation. Parliament also has the residual power of legislation on any matter which is not covered by any of the three lists.³⁷ The subject matter included in the Union List, inter alia, include atomic energy and mineral resources, defence, UNO, participation and implementing the decisions in the International conferences, treaties and agreements with foreign countries, inter-state transportation, shipping, major ports, regulation of air traffic, industries, the control of which by the Union is in public interest, regulation and development of oilfields and mineral oil resources, regulation and development of inter State rivers and fishing.³⁸

The State List contains 66 subject matters over which the State legislature of different states have the exclusive power of legislation subject to their territorial limitation. The subjects mentioned in the State list, inter alia , include public health, sanitation, hospitals and dispensaries, agriculture, ponds, water supply, irrigation and drainage.³⁹ thus the subject matters of the State, the environmental impact of which has local , are left to be tackled at the local level.

The Concurrent List contains 52 subjects over which both the Parliament and State legislature, of different states have the jurisdiction to make laws. The subjects mentioned in the concurrent list, inter alia, include forests, protection of Wild animals and birds, population control and family planning, minor ports, factories and boilers.⁴⁰ Thus, the subject matters, the environmental impact has a local as well as national bearing, are left to be tackled by the Centre as well as the State. Article 254 removes the inconsistency which may arise between the laws made by the Parliament and the laws made by the legislatures of different States. It

³⁵ The word "Socialist" was added to the preamble by the Constitution(Forty Second Amendment Act) 1976.

³⁶ Article 38 of the Constitution of India mandates the State to secure a social order for the promotion of the welfare of the people.

³⁷ See Entry 97 in the Union List.

³⁸ See Entries No. 6,7,9,12,13,14,22 to 30 and 52 to 57 of the Union List.

³⁹ See Entries No. 55,6,14,16,17 and 24 of the State List.

⁴⁰ See Entries No. 17-A,17-B,20-A,31,36 and 37 of the Concurrent List.

provides when a Central law conflict with the State, the Centre shall prevail. However, the State law passed subsequent to the Central law will prevail if it has received the assent of the President under Article 254.⁴¹ Thus from the above scheme of the distribution, it is clear that decisions relating to the environment at both the local and national level are looked at by these lists, but the problem that arises is that the Indian Government though seem to follow this pattern yet follows only matters regarding the finances with regard to the three lists and nothing beyond that, which ultimately serves as a loophole in the implementation of the provisions.

3.3 Fundamental Duties

The Constitution (Forty Second Amendment) Act, 1976, added a new part IV-A dealing with the Fundamental Duties in the Constitution of India.⁴² Article 51-A of this part enlists the ten Fundamental Duties. Article 51-A(g) specifically deals with the fundamental duty towards the environment. It provides : It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

Article 51-A(j) further provides :

It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievements.

The fundamental duties are intended to promote peoples' participation in restructuring and building a welfare society. The protection of environment is matter of constitutional priority. The problem is a concern of every citizen. Neglect of it is an invitation of disaster.⁴³ Under Article 51-A(g) the citizen is under the duty to protect and improve the natural environment. But in the present days the pollution is caused not only by exploiting the natural environment but the man made environment also. It is the duty of every citizen of the country to protect the natural environment, in the sense that it is supposed to protect everything that is gifted to us by the nature and is available since the time we are born and we have seen that dilapidating in its condition due to human activities. Thus, it is pointed that the man has to preserve the nature the way it was given to us by the almighty and not what presently the situation is.

Under article 51-A, only the citizens are under the obligation of fundamental duties. The parliament has used the word "citizen" instead of the word 'subject' to create the feeling of citizenship amongst the masses and also to see that the persons living in the country do not feel that they are subjects. We used to be subjects prior to the independence but after so much of hardship of the freedom fighters we gained independence and then the constitution was framed and we became citizens again, the way we were before getting colonised. The requirement of the time is that we should be the real citizens of the country striving towards excellence in all spheres of individual and collective activity including the protection of environment.⁴⁴

In *Nature Lovers Movement v. State of Kerala*,⁴⁵ there was diversion of forest land against which public interest litigation was filed. The government orders laid down conditions to regulate exploitation of the environment and natural resources but it did not impose total prohibition in the matter of enjoyment of environment. There was adjustment and reconciliation between the preservation of environment and development of the economy. The court held that all the steps taken by the central government as per the said orders did not stand against the concept of sustainable development and environment protection. Consequently it was held that the orders of the Government of India and consequent steps for the issue of title deeds to occupants were not opposed to Article 48-A or 51-A of the Constitution.

In *Goa Foundation v. State of Goa*,⁴⁶ The Bombay high Court examined the question of locus standi from the premises of the fundamental duties under the Constitution of India. In this case the petitioner was a society registered under the law relating to registration of societies and their members were citizens of India having Fundamental Duty under article 51-A(g) to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures. The question before the court was whether such a society also has the same duties. The court answered this question in an affirmative way and held that such a society also has the same duties. On the basis of this, the petitioner society was held to have a locus standi to move to the court to prevent ecological degradation, to formulate and implement programmes for rehabilitation of environment and to restore ecological balance. If protection and improvement of the environment is a constitutional duty of every citizen, there is hardly a need to impose restrictions or limitations on public interest litigation in the area of environmental litigation.

⁴¹ See, Dr. P.S.Jaswal and Dr. Nishtha Jaswal, *Environmental Law*, p.44

⁴² See Section 11 of the Constitution (Forty Second Amendment) Act, 1976 (w.e.f. 3-1-1977)

⁴³ See *V. Lakshmi pathy v. state*, A.I.R. 1992 Kant. 57 at 66

⁴⁴ See *L.K. Koolwal v. State*, AIR 1988 Raj. 2

⁴⁵ A.I.R. 2000 Ker. 131

⁴⁶ A.I.R. 2001 Bom. 318 at 319

In *Mirzapur Moti Kureshi Kassab Jamat*⁴⁷, it was observed that while Article 48-A speaks of the environment, Article 51-A(g) employs the expression 'the natural environment' and then includes therein 'lakes, forests, rivers and wildlife'. While Article 48 provides for cows and calves and other milch and draught cattle, Article 51-A(g) enjoins it as a fundamental duty of every citizen "to have compassion for living creatures", which in wider fold embraces the category of cattle spoken of specifically in Article 48.

3.4 Directive Principles of State Policy

Part IV of the Indian Constitution deals with directive principles of State policy. They represent the socio-economic goals which the nation is expected to achieve. The directive principles form the fundamental feature and the social conscience of the constitution and the constitution enjoins upon the State to implement these directive principles.⁴⁸ These principles are designed to guide the destiny of the nation by obligating three wings of the State, i.e., legislature, judiciary and executive to implement these principles. Article 47 of the Constitution is one of the Directive Principles of the State policy and it provides that the State shall regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties. The improvement of public health also includes the protection and improvement of the environment without which public health cannot be assured.

The Constitution (Forty Second Amendment) Act, 1976, added a new directive principle in Article 48-A dealing specifically with protection and improvement of environment. It provides: The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.⁴⁹ Thus, Indian Constitution became one of the rare constitutions of the world where specific provisions were incorporated in the Supreme Law putting obligations on the State as well as the Citizens to protect and improve the environment. This certainly is a positive development in the Indian law. Just that it should be read in the light of Fundamental Rights.

The State cannot treat the obligations of protecting and improving the environment as mere pious obligation. The directive principles are not mere show pieces in the window dressing. They are fundamental in the governance of the country and they being part of the Supreme Law of the land, have to be implemented.

The Directive principles serve the courts as a code of interpretation. The Fundamental rights should be interpreted in the light of the directive principles and the latter should, whenever and wherever possible, be read into the former.⁵⁰ In other words, Part III dealing with Fundamental Rights and Part IV dealing with the directive principles are complementary and supplementary to each other.⁵¹ In *T. Damodhar Rao v. S.O. Municipal Corporation, Hyderabad*⁵², the Court pointed out that in view of Articles 48-A and 51-A(g), it is clear that the protection of environment is not only the duty of every citizen but it is also the obligation of the State and all other State organs including Courts.⁵³

In *M.C. Mehta v. Union of India*⁵⁴ (popularly known as CNG case) the court observed that Articles 39(e), 47, and 48-A by themselves and collectively cast a duty on the State to secure the health of the people, improve public health and environment.

3.5 Fundamental Rights

Principle 1 of the Stockholm declaration finds reflection in Articles 14, 19 and 21 of the Constitution of India dealing with the right to equality, freedom of expression and right to life and personal liberty respectively.⁵⁵ In order to treat a right as Fundamental right, it should not necessarily be stated in the Fundamental rights or the Part III of the Indian Constitution. The provisions of the Part III and Part IV, dealing with the fundamental rights and directive principles respectively, are supplementary and complementary to each other. Fundamental Rights are means to achieve the goals indicated in part IV of the Indian Constitution and thus must be construed in the light of the Directive Principles i.e. the Part IV.⁵⁶

⁴⁷ (2005) 8 SCC 534 at 567

⁴⁸ See *State of Kerala v. N.M. Thomas*, (1976) 2 SCC 310 at 379

⁴⁹ Inserted by the Constitution (Forty Second Amendment) Act, 1976, section 10

⁵⁰ *A.B.S.K. Sangh v. Union of India*, AIR 1981 SC 298

⁵¹ *Unni Krishna v. State of A.P.*, (1993) 1 SCC 645.

⁵² AIR 1987 A.P. 171

⁵³ *Ibid.* at 181

⁵⁴ (2002) 4 SCC 356.

⁵⁵ Principle 1 of the Stockholm declaration says that man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of 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.

⁵⁶ See *Unni Krishnan v. State of A.P.*, (1993) 1 SCC 645 at 730

3.5.1 Right to Life and Right to Healthy Environment

Article 21 of the Constitution states that every individual has the right to life and personal liberty except according to the procedure established by law. So, it guarantees all people "Right to life and Personal Liberty".⁵⁷ This Article though involves negative implications but also include more of positive implications such as right to healthy environment. It includes other aspects too which are just and reasonable and if something unreasonable or unjustified is included in it, will be considered as void. Any law which goes against the Fundamental Rights will be considered as void ab initio.

Article 21 is the heart and soul of fundamental rights and has received expanded meaning from time to time and from case to case. As the time rolled on, it has expanded its wings and given and brought into light the various aspects which could be considered within its ambit. For healthy existence and preservation of the essential ingredients of life , stable ecological balance is required. Article 21 guarantees a fundamental right to life - a life of dignity , to be lived in a proper environment, free of danger of disease or infection. It is an established fact that there exists a close link between the life and the environment. The talk of fundamental rights and in, particular , right to life and personal liberty would become meaningless if there is no healthy environment.⁵⁸

In *M.C. Mehta v. Union of India*,⁵⁹ The Supreme Court held that right to have a living atmosphere congenial to human existence is a part of the right to life. The state has a duty in that behalf and to shed its extravagant unbridled sovereign power and to forge its policy to maintain ecological balance and hygienic environment. the hazard to health and environment of not only the persons residing in the illegal colonisation area but of the entire town has to be taken into consideration.

In *N.D. Juyal v. Union of India*⁶⁰, The Supreme Court has once again reiterated that right to clean environment and right to development are integral parts of the Human Right covered under Article 21 of the Constitution. Therefore, the concept of "Sustainable development" is to be treated as an integral part of life under Article 21. the weighty concepts like intergenerational equity, public trust doctrine and the precautionary principle, which have been declared as inseparable ingredients of our environmental jurisprudence, could only be nurtured by ensuring sustainable development.

3.5.2 Right to Livelihood

The judicial grammar of interpretation has further broadened the scope and ambit of Article 21 and now "Right to Life" includes the "right to livelihood". This broad interpretation of the right to life is very helpful in checking the governmental action which has an environmental impact that threatens the poor people of their livelihood by dislocating them from their place of living or otherwise depriving them of their livelihood.

In *M.C. Mehta v. Union of India*⁶¹, The Supreme Court followed the path of sustainable development and directed the industries operating in the Taj Trapezium zone, using coke/coal as industrial fuel must stop functioning and they could relocate to another location but not near the Taj Mahal. In this case, the SC also specified the rights and benefits to which the workmen of such industries were entitled and thus, protected their right to livelihood⁶² and followed the guiding principles of sustainable development.

In *N.D. Jayal v. Union of India*⁶³, the SC while considering various issues of Tehri Dam Project observed that the oustees and displaced persons from the Tehri Dam area have a right under Article 21 of the constitution to lead a decent life and earn livelihood in rehabilitated locations. Rehabilitation is not only about providing just food, clothes or shelter. It is also about extending the support to rebuild livelihood ensuring necessary amenities of life. Accordingly it was directed that rehabilitation of oustees, which is natural corollary of Article 21, should take place within six months before submergence of the area.

Thus from the various decisions of the Supreme Court it is evident that development is not antithetical to the environment. However, thoughtless development can cause avoidable harm to the environment as well as it can deprive the people of their right to livelihood.

⁵⁷ Article 21 provides in : "no person shall be deprived of his life or personal liberty except according to the procedure established by law"

⁵⁸ See P.S. Jaswal, *Development in Environment Law : the case of India*, proceedings of the workshop on Development and Planning, Vol. II, SOAS, The Centre for Asia and Africa, University of London, London (January 6th to 18th,1992)

⁵⁹ (2004) 6 SCC 588

⁶⁰ (2004) 9 SCC 362 (Tehri Dam Case)

⁶¹ (1997) 2 SCC 353 (The Taj Mahal Case)

⁶² Id. at 384-385. See Also *Jagannath v. Union of India*, (1997) 2 SCC 87 at 150.

⁶³ (2004) 9 SCC 362.

3.5.3 Fundamental Freedom of Speech and Expression.

Article 19(1)(a) guarantees every citizen a fundamental freedom of speech and expression.⁶⁴ In India most of the environmental cases are dealt and filed with the help of Public Interest Litigations so that people have a right to express their concerns about the environment and exercise their right to freedom of speech and expression, sometimes even by writing letters to the Court or otherwise filing petitions before it, highlighting the violation of rights of the people to live in healthy environment in one way or the other.

In *A.P. Gunnies Merchants Association, Hyderabad v. Government of A.P.*⁶⁵, the Andhra Pradesh High Court held that right to carry on business in old and used gunny bags is not absolute. The trade carried on involving activity of dusting and cleaning of gunny bags creates air and environmental pollution. Hence, the direction given by the State Government to shift the business from the thickly populated area to environmentally safer place are valid and not violative of the Article 19(1)(g) of the Constitution. In *Waseem Ahmed v. Union of India*⁶⁶, the SC, in order to protect monuments and religious shrines, directed the shifting of shops to a distance of 750 metres away from religious shrines.

Thus the perusal of the above cases it is evident that the judiciary has treated the condition of protection and preservation of environment and wildlife as a reasonable restriction in the public interest on the fundamental freedom under Article 19(1)(g) of the Constitution.

3.5.4 Right to Equality

Article 14 of the Constitution provides:

The state shall not deny to any person equality before the law or equal protection of the laws within the territory of India. The right to equality enshrined in the Article 14, inter alia, strikes at "arbitrariness" of any governmental action "because an action that is arbitrary must necessarily involve a negation of equality."⁶⁷ In fact, the equality and arbitrariness are sworn enemies. The principle of non arbitrariness pervades article 14 like a brooding omnipresence. Whenever there is arbitrariness in State Action, whether of the legislative or of the executive or of an authority under article 12, article 14 immediately springs into action and strikes down such action. In *Ivory traders & Mfg. Assn. v. Union of India*⁶⁸, The Delhi High Court justified the ban on business in animal species on the verge of extinction. The Court held that the ban on trade in imported ivory and articles made therefrom is not violative of Article 14 of the Constitution of India and does not suffer from any of the mala fides, namely unreasonableness, unfairness and arbitrariness.

In *Moulana Mufti Syed Md. Noorur Rehman Barkati v. State of West Bengal*⁶⁹, The court held that where it had imposed restrictions on the use of microphone, the Central Pollution Control Board and the State pollution Control Board had to carry them out. Simply because no such former restriction had been imposed in other parts of India and the Fundamental rights under Article 19(1)(a) was enforced strictly in the State of West Bengal and it was not enforced in other parts of India that does not amount to any case of discrimination under Article 14 of the Indian Constitution. Article 14 can also be invoked to challenge the government action where the permission for mining and other activities with high environmental impact is granted arbitrarily.⁷⁰

IV. CH-4 PRINCIPLES OF ENVIRONMENTAL LAW

This chapter talks in detail about two principles whose vitality is unquestionable in the eyes of law and the society. Its importance cannot be compared and its vitality cannot be questioned because of their very nature and essence.

4.1 The Precautionary Principle

The main purpose of the precautionary principle is to ensure that if a substance or an activity is posing a great threat to the environment, will be prevented from adversely affecting the environment, even if there is no conclusive proof that a particular substance is affecting the environment. The words "substance" and "activity" imply substances and activities introduced as a result of human intervention. In the context of the municipal law, the "Precautionary Principle" means :-

(i) Environmental measures by the State government and the local authorities must anticipate, prevent and attack the causes of environmental degradation.

⁶⁴ However, this freedom is not absolute. It is subject to "Reasonable restrictions" which can be imposed under Article 19(2) of the Constitution.

⁶⁵ AIR 2001 A.P. 453.

⁶⁶ (2002) 9 SCC 472.

⁶⁷ *Ajay Hasia v. Khalid Mujib*, AIR 1981 SC 487 at 499

⁶⁸ AIR 1997 Del. 267

⁶⁹ AIR 1999 Cal. 15 at 29

⁷⁰ See For example *Kinki Devi v. State of H.P.*, AIR 1988 H.P. 4 at 9.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent the environmental degradation.

(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.⁷¹

In *Vellore citizen's V. Union of India*⁷², the court expressed the view that the precautionary principle and the polluter pays principle are essential features of sustainable development and that they have been accepted as part of the law of land. In the same case the court also observed that the new concept of "burden of Proof" in environmental matters. The learned Judges also observed that the new concept, which places the burden of proof on the developer or industrialist who is proposing to alter the status quo, has also become the part of our environmental law.

The activity which goes on and is allowed to go on, even after knowing that the environment is in danger, the environment can be irrevocably harmed and so eventually the concept of precautionary principle becomes a fail. The principle does not come into play when the concept does not help in sustainable development. The special burden of proof in environmental cases - It is to be noted that while the inadequacies of science have led to the "precautionary principle", the said principle in its turn, has led to the special burden of proof in environmental cases where the burden as to the absence of injurious effects of the actions proposed, is placed on those who want to change the status quo. This is often termed as a reversal of burden of proof, because otherwise in environmental cases, those opposing the change would be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the part attempting to preserve the status quo while maintaining a less polluted state should not carry the burden of proof and the party who wants to alter it, must bear this burden.⁷³

In *Research Foundation for Science (18) V. Union of India*,⁷⁴ The Supreme Court has explained that the "precautionary principle" generally describes an approach to the protection of the environment or human health based on precaution even where there is no clear evidence of harm or risk of harm from an activity or substance. It is a part of the principle of sustainable development. It provides for taking protection against specific environmental hazards by avoiding or reducing environmental risks before specific harms are experienced.

4.2 The Polluter Pays Principle

As interpreted by the Supreme Court of India, means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. It clearly means that the liability of the one that causes harm to the other and the environment is not only to compensate for the harm caused to the individual but also to the environment. Restoring the environment, the one that is caused due to the action of the individual, is the absolute liability of the individual. Remediation of the damaged environment is part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.⁷⁵ Under this principle it is not the role of the government to meet the costs involved, but it is the duty of the individual causing harm to pay all the costs.

This principle has well acceptance in the International conventions and in the municipal legal systems. Two aspects are highlighted in this principle - on one side, it is used as a compensatory mechanism and on the other side it is used as the preventive mechanism. Both of its aspects play an important role when it comes to the environmental jurisprudence of any country especially when we talk about India. Compensatory because the polluter should pay for the harm inflicted by him on the environment and preventive, in the sense that heavy penalty may be imposed on the one who pollutes the environment.

This principle covers four different aspects or perspectives:

- (a) First, criminal responsibility may be imposed upon the polluters.
- (b) The polluter maybe held responsible to make good, the harm inflicted by him.
- (c) Eco-tax or carbon tax may be imposed upon him.
- (d) The law of the land may compel the polluter to participate in the preservation of the environment.

⁷¹ See *Vellore Citizen's Welfare Forum v. Union of India*, (1995) 5 SCC 647, p.658

⁷² *Ibid.*

⁷³ See, James M. Olson, "Shifting the burden of proof", 20 *Environmental Law*, 1990, p.898

⁷⁴ (2005) 13 SCC

⁷⁵ See *Vellore Citizen's Welfare Forum V. Union of India*, (1996) 5 SCC 647, p.659

It must also be mentioned that the US adopted this principle through the Comprehensive Environmental Response Compensation and Liability Act, 1980. The Council of the European Communities adopted this principle as the potential instrument for the preservation of the Environment.⁷⁶

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- (i) Preventive action is to be preferred to remedial measures
- (ii) environmental damage should be rectified at source;
- (iii) the polluter should pay for the costs of the measures taken to protect the environment; and
- (iv) environmental policies should form a component of the European Community's other policies.⁷⁸

Therefore, according to the polluter pays principle, the responsibility to repair the environmental damage is that of the polluter.

V. CH-5 CONCLUSION

In this paper we have discussed the maximum about the Indian approach towards the environmental law. We have discussed about the various aspects of the environmental law including some of the important treaties and conventions. There are some important principles too such as the pre cautionary principle and the polluter pays principle in the existence about which we have discussed alot. From the centuries of industrialization, these rules and principles have found an important place on the paper work and documentation, but its implementation is a contagious issue one must look at. Whether or not these laws and principles are followed is another story altogether but the changes are not visible. The past losses have such a strong impact on the environment that small measures taken by an individual may not reflect but definitely if all individuals combine and give effect to these treaties and principles, the day is not far when we will start recovering from the Global warming and things will become better. When the World together works for the betterment of the Mother Earth, then why not we as individuals work at individual levels and prove that all these treaties and principles really have an effect at the root level. We are heirlooms of a civilized ancestors who left us with this glory of nature, now it becomes our sheer responsibility to save and conserve the environment, so that even our great grandchildren can smell the taste of nature, and breathe fresh air. We should work for our recognition by our upcoming heirs that we left for them, what was not even ours. Let us leave a mark by simply not playing the blame game and working at our own best to preserve and conserve the environment, only then these laws, principles and treaties are of use, otherwise the deplorable state of Environment may become an incessant process. The motto of this research paper is to bring in light the vitality of conserving the environment of which the steps at the Global level has already been taken. The need of the hour is to work at an individual level and bind all the efforts together to save our Mother Earth. Thus from this whole paper, it is submitted that the challenges of the environment protection and sustainable development are daunting. The concept of sustainable development has grown from Stockholm declaration to Rio Declaration. However, in its growth it is always stated that if the humans are entitled to the rights of privilege to environment then they are always obliged to maintain the same environment and maintain in such a way that the future generations are also able to use and enjoy the benefit of the environment which is a natural gift to the mankind. Thus, it is the duty of the individual to perform his best and do whatever possible on the individual level to maintain and sustain environment, so that even the mankind can survive and enjoy the benefit those privileges which we are

⁷⁶ 'The council stresses that in the interest of more efficient environmental protection in the context of efficiently integrating the environment and economic policy and meeting the fundamental objective of the sustainable development, in particular which comply with the 'polluter pays principle', it is necessary to backup current, direct environmental regulations, based on the command and control approach, with economic and fiscal instruments aimed at influencing the reason and behaviour of the producers and the consumers, to discharge wasteful products and polluting process and product and to promote technologies and productive processes which are consistent with the resource conservation'

⁷⁷ See *Vellore Citizen's Welfare Forum V. Union of India*, (1996) 5 SCC 647, p.659

⁷⁸ *Ibid*

enjoying. It is important to give up on those needs and luxuries which are contrary to the wellness of the environment and adopt sustainable and environment friendly practices that not only improves our way of life and the quality of life, but also helps the future generations to experience the fresh air.