

# Constitutional Validity of Environmental Doctrines and their Application in India

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**Abstract-** The study focuses on environment as the polycentric issue which is getting affected by the human agency. As it is an established notion that man is nature's best promise and worst enemy, so it is the man who can maintain a balance between the urge to fulfill his needs and the protection of environment. It is believed that if development is required, loss to the environment is inevitable. Hence in this developing world, it is highly required to protect the environment. The study explores the religious aspects of environment protection in India as to how Indians since time immemorial were well aware of the environment concerns. Main theme of this study is the constitutional recognition of environment and related issues. Herein various provisions of the constitution have been explored to examine the actual position as far as environmental law regime in India is concerned. This research is all about recognition of environment protection laws, principles, doctrines by Indian constitution which in a way grants legal recognition to all these. The study makes a travelogue of all the international conferences and related events which led to the development of environmental jurisprudence. The study aims at deriving out the lacunas that exist as far as implementation of environmental laws are concerned. It highlights the progress made by judiciary in making people aware of all the concerns. Study further checks the achievements made by Indian Judiciary in developing new principles as to how each doctrine developed over time and how it is gaining importance in the present developing world. Study aims at deriving conclusions which can be used to further make the people aware of the growing need to keep check on the problem of environmental pollution.

**Key Words:** Environment, Constitutional provisions, Doctrines, Conventions, Vedas, National Green Tribunal.

## INTRODUCTION

Einstein had once observed, "the environment is everything that is not me".

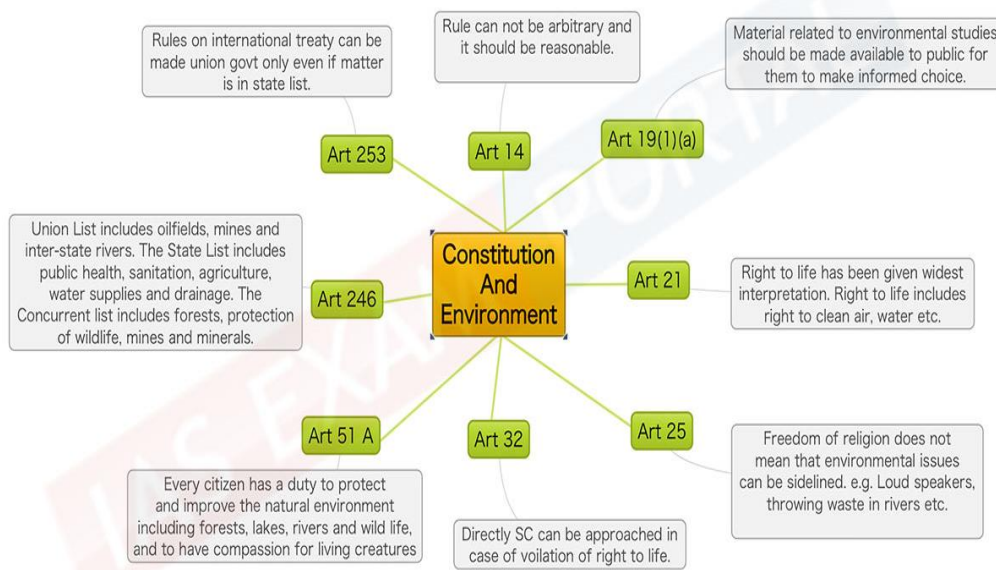
Environment is a polycentric problem getting affected by human conduct- the statement holds great importance in today's industrialising world as the humans are aggressively heading on the path of development without paying concern to the damage being caused at their hands to the environment. It is man's narcissistic behaviour which does not allow him to look at the environmental concerns and continue with his anti environment activities. It is rightly pointed out that man is nature's best promise and worst enemy as he keeps on giving fatal blows to the environment. In the current scenario, there is urge among the nations to attain the highest level of development and stand at the beginning of the queue enumerating the developed nations. However, no one is concerned about paying the debt back which they have raised from the environment. People in the industrialising world have accepted that loss to the environment at the cost of development is inevitable. It was with the sincere efforts of international regime, ancient texts, public spirited environmentalist, the issue of environment degradation came into the light. That too only when the nature has started showing its cruel behaviour which man had forced her to do.

Hence, with the changing time need was felt to give due regard to environmental concerns, throughout the world. No doubt, issue of environmental concern was explicitly raised afterwards, but it can not be said that the concept is of new or recent origin as it has been in the ancient texts from the very beginning. The hinduism, islam, shikhism, jainism, buddhism all have this notion of protecting and preserving the nature in their scriptures. For instance, the reference of eight tatvas has been made: the earth, the water, the fire, the sky, the time, the directions, the mind, the soil.

Thus the concept of environment and its preservation is not of recent origin. While the concept of environmental science has existed for centuries, it was initiated as an active explicit field in the 1960s & 1970s, which was motivated by raising complex environmental issues, and the birth of environmental laws, growing awareness among the people. The concern of environment has no longer remained the outdated discipline but it has emerged as an efficient discipline recognised by not only the national as well as the international law by means of various conventions and summits ranging from stockholm to COPs. There are even innumerable remedies initiated today for protection of environment and prohibition of environment degradation ranging from tortious to criminal liability. There have been birth of various doctrines ranging from doctrine of public trust (*MC Mehta v. Kamal Nath*) to the doctrine of precautionary principle (*Vellore Citizens Welfare Forum v. Union Of India*). These doctrines recognised by the judiciary have opened new door in the direction of environmental protection, by making people responsible for their acts of omissions and commissions. The Indian judiciary has went an extra mile to make people aware and cautious from very beginning by recognising the doctrine of precautionary principle. There are several aspects which are getting unfolded even today by means of various conferences, judicial pronouncements and this needs to be continued as it will definitely focus on other dimensions of environment. The research will discuss the provisions at length and will try to provide appropriate solutions for the shortcomings which still exist. The basic idea is to make the implementation of the environmental doctrines in India to their full extent which will have double impact-

First of punishing the accused for his acts of omissions and commissions.

Second of creating a deterrent effect for others in the society.



Source-<https://iasexamportal.com/mind-map/constitution-and-envt>.

Research aims at studying a man's relationship with the other things in this surrounding which are intertwined with his physical and mental health. It makes sincere efforts at creating solutions so that complete harmony is established between environment and humans. The work specifically deals with the environmental doctrines which are like an arrow hitting directly at the point. For instance, the doctrine of polluter pay first declares the polluter responsible and then ask him to pay for his acts of omission and commission.

### GENESIS OF THE PROBLEM

Environmental problems are the consequences of human activities which affect the biophysical environment. These are of different types ranging from different kinds of pollutions to desertification of forests and melting of glaciers. These issues are not of recent origin, they were in existence since time immemorial. The problem started from the urge of becoming developed in all aspects. It is an established notion that economic development takes place at the cost of environmental deterioration. Commenting on the same, the Royal Commission Of UK on environmental pollution has observed- that there are two main reasons as to the growing conflict: First one is that, it is impossible to add to the material resources without generating the waste material. Second is that the urge for more and more economic development. There is actually the lack of accountability among people for their acts of commission and omission. Since it is human agency which is responsible for all disasters, its important for him to be aware of the problems created by them. It can be said that today we are in the phase of planetary emergency, with a sword of disasters hanging over our heads. So, immediate steps are required to be taken for betterment of our planet.

### POLLUTION-

There are wide range of issues which affect the environment, the very first being that of different types of pollution which makes undesirable change in biological and physical features of water, air, soil. This is caused by increased amount of pollutants, either natural or anthropogenic in the environment. The issue of air, water, soil pollution is the issue of concern among environmentalists and researchers of the developing countries. Even during winters the north pole resembles a cool town, when the mass of pollution sits atop the earth, looking like a cap of dirt worn by the globe.

### OZONE DEPLETION-

Another issue of concern is that of ozone depletion, it was in the year 1983 when ozone holes were first discovered by british antarctica survey, it was observed that levels of ozone were dropping which can cause severe issues. The presence of chlorofluro carbons, halons, carbon tetrachloride, methyl chloroform destroyed the stratosphere ozone, leading to damage of human health.

### DEVELOPMENT AT THE COST OF ENVIRONMENT-

The other issue of concern emanating from the same is that those who are making initiatives to reduce the harm are not even getting any benefit out of that. So the process of development and damage goes hand in hand. It is an established fact that the development can not be stopped but the damage resulting from that development can be abated to a great extent. The urge for development has led to the establishment of industries in human localities which poses risk of danger to the community.

**CONFLICT BETWEEN HUMAN RIGHTS AND ENVIRONMENT PROTECTION-** This has lead to another issue which is of great concern in today's developing world that is overlapping of human rights and environmental protection. There is grave violation of the rights of indigenious people in the name of development as there are many environmentally destructive development practices which severely impact the traditional lands and lifestyles of indigenious communities.

**DEFORESTATION-**

The clearance of forest for setting up industries has led to extinction of rare species and has created conditions for breeding of mosquitos and other insects inturn leading to widespread infections namely dengue. Infact these are all the results of anthropogenic activites which keep human needs at the highest pedestial hence doing irreperable loss to the nature.

**SPREAD OF ZONOTIC DISEASES-**

The human-nature interactions can be called into question as encroachment by man has engraved the existing problems leading to spread of zoonotic diseases around the world. Corona being one of the best example of zoonotic disease, is like an alarm being raised for the human community to reduce its interference in the natural processes.

**ACID RAIN-**

It is a form of precipitation that contains high levels of hydrogen ions, so this rain has PH less than 5. Human activities are considered to be the main cause of this rain, this can lead to damage of trees, decay of buildings, acidification of water reservoirs. Taj mahal in India, paul’s cathedral in London, the statute of liberty in Newyork are the major monuments affected by acid rain.

**SOLID WASTES MANAGEMENT-**

This issue has been in news for the threat it holds to the environment. This untreated waste leads to illness and death from faecal born diseases. Nuclear waste and its mismanagement can be extremely damaging to biological beings , it can give rise to various diseases primarily cancer.

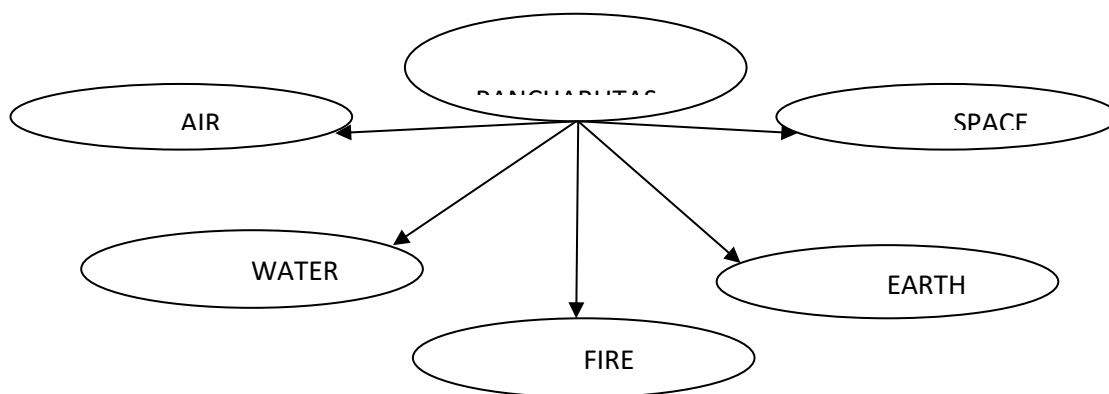
**DESERTIFICATION-**

It is a disastrous process in which the drylands gets disappeared with the passage of time, it threatens to turn the current non deserts into deserts. The major causes of desertification are deforestation by humans, overuse of natural acuífers. According to a report by the UN, around 24billion tonnes of soil gets vanished away per year due to this issue of desertification. The poor agricultural practices being followed in the urge to increase the output further engraves the issue.

Thus, there have been innumerable environmental issues which are causing serious and grave threat to not humans but to all other species living on this planet. No doubt, there are large number of legislations related to environment both at national and international level, they however lack strong implementation. They are present like the toothless tigers, So lot more needs to be done in this direction by means of recognising and applying the environmental doctrines.

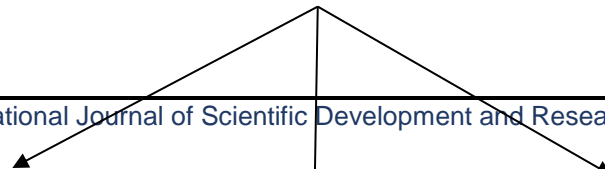
**HISTORICAL BACKGROUND**

India being a land of various religions, cultures, customs, practices has always been vigilant about the environmental concerns as its sacred scriptures compare elements of nature to the Gods and Goddesses. It not only has a long history of worshipping but also of protecting the environment at the behest of various religious practices. Indians highly support the notion that human life is totally dependent on the nature and he is nothing without it as all the activities of humans from morning to evening are according to movements of the sun and the moon. The flow of wind is also taken into account while planning the structure if any building. . Since ancient times we have recognised the existence of divine being in the panchbhutas. It has even been claimed in Atharva Veda that trees are the adobes of the Gods and Goddesses and cutting of live trees was made an offence punishable with fine of 20 to 80 panas.



The Vedas, puranas, Upanishads gave great value to all the elements of nature and also highlight the importance of rivers, forests, wildlife. Even the forests have been classified under ancient Indian literature based on the form of forest and the purpose it served. Broadly forests are classified into three categories namely: Mahavan, Tapovan, and Srivan. Even in Srimad Bhagavatam, it is stated that one who has great respect for the sky, water, earth, heavenly bodies, living beings, trees, rivers, seas attains the Gods grace.

**TYPES OF FORESTS IN ANCIENT INDIA**



#### ENVIRONMENT UNDER HINDU MYTHOLOGY-

Ever since its existence, Hinduism has always supported the notion of harmony among the social life of a human being and the nature. As highlighted above also, Hindus have a benevolent attitude towards the elements of nature and they consider themselves duty bound to protect these elements of nature. They consider natural environment a creation of the divine nature itself. Atharva Veda demarcates high respect to the mother earth whereas Rigveda calls trees the divine adobe of god. For instance they have different gods in all the elements of environment namely: surya devta, vayu devta, varun devta, Agni devta, vanya devta. Trees and plant had even been considered as inalienable part of human life, are even associated with the gods and goddesses. Charak samhita even considered the destruction of forests as the most dangerous act for the welfare and wellbeing of humanity. It attached great importance to the other elements like it gave rules for maintaining the purity of water.

Ancient Hindu scriptures strictly punished those who killed animals and birds. Even Yajnavalkya smriti it is said that “the wicked persons who kill animals has to live in ghor nark for the days equal to the number of hair on the body of the animal killed.

Arthashastra, being one of the most important books gave a detailed body of rules for proper administration of forests with the appointment of superintendent of forests and it also imposed the obligation on the state to effectively maintain the forests and regulate its produce. Arthashastra even prescribed punishment for the acts of commission and omissions, extending from 12 panas for cutting small branches to 24 panas for cutting stout panas. It even went to the extent of granting protection to the wildlife by imposing hefty fines on those found guilty of killing innocent animals, birds other species. King Ashoka, imposed severe punishments for killing animals, even the ants, squirrels etc. so it is clear from the above journey of different time frames that ancient Hindu culture considered it irreligious to exploit nature for mans personal gains. There is a distinct sect of Hindus called the Bishnoie sect, which attaches great importance to nature and stated in this regard that there should always be a feeling of oneness between nature and humans. Their history has contributed greatly to the environment and its protection. In the year 1730, 365 Bishnoie’s in Jodhpur gave up their lives to protect the khejri trees. The community attaches great importance to these trees by calling them as their brothers and sisters.

#### BUDDHISM AND ENVIRONMENTAL PROTECTION IN INDIA-

Buddhism emerged at the end of Vedic civilisation as a new ideology having specific fundamentals. The protection and preservation of environment is one of the fundamental tenets of Buddhism, it emphasised highly on the promotion of love for nature and its rational use. It focuses on less consumption, more satisfaction hence opening a new dimension for optimum utilization and harmonious existence of humans. They emphasised on this cardinal principle of less consumption and more satisfaction which leads to the preservation of natural resources. It provides human satisfaction allowing them to live a satisfactory life without any burden or stress. As discussed above Buddhism has attached special importance to all the elements of nature particularly trees are at the centre of focus and they require every noble person to plant a tree and look after the same. Since Buddhism strongly favoured the ideals of non violence, peace, it strongly opposed the practice of killing animals in the name of holy sacrifices. It even went to the extent of motivating people to care for the animals and look after them. It stood firmly against the evil practice of destructing animal’s life as Buddhism inculcates compassion and sympathy for animals.

#### ENVIRONMENT PROTECTION DURING JAINISM PERIOD-

As a religion which starts its day with prayer for wellbeing of all living entities, Jainism has always been the forerunner of the ideology promoting preservation and protection of nature. Ahimsa , the main ideological thought underlying the entire fabric of Jainism, lays down stress on the preservation of life of not only living but also of non living resources. Jainism considers profligate use of nature and its elements as a form of violence and as the offence of theft. Mahavira, back then stated that the one who causes damage to living and non living entities is the perpetrator. He says that there is a interdependence among the living and the non living entities, which should not be disturbed because it can lead to ruination. It was even stated that the plants are the living entities, hence they feel pain when harmed and pleasure when being treated with care. The main philosophy of Jainism states that if one wants to attain eternal happiness then he should have compassion against all living and non living beings and for this purpose they have extended patience to their personal behaviour as well. Jainism focuses on give and take principle as far as relation of human being with nature is concerned. They like other religious ethics consider it a grave offence to cause harm to the environment and its other elements.

#### CONCEPT OF ENVIRONMENT IN SIKHISM-

As per ideologies of Sikhism, there is a great coordination among all the elements of environment that is the air, water, sun, fire etc and the one who respects this will always be honoured. Man should always try to live in unity with the nature, so as to ensure that

he is respected back by the nature. According to Guru Nanak Dev, God is omnipresent and omnipotent in every aspect of nature, its only God which ensures the existence of all these elements. So the human should not interfere in the working of these natural processes. The moment man interferes with these natural processes; he becomes a perpetrator and will surely be punished for the same. In the sacred Gurubani, the concept of “Jaga” and “Jagat” has been given which emphasis on the beautiful creation of this world by God and obliges humans to take due care of it. It states that there is great unity among different elements of environment namely: air, water, fire and man is required to respect the same. According to Guru Nanak Dev, man is strongly dependent on nature which is an exclusive creation of almighty, so he dare not interfere with the nature and the natural processes taking place.

#### ENVIRONMENT PROTECTION IN MEDIEVAL INDIA-

Beginning with the Mughal era, it started establishment of glorious green parks, gardens, orchards around the places of their residence which they used as the places of pleasure at the weekends. These people were much inclined towards environment since they belonged to Islam. The meaning of the word Islam is to enter into peace and to make peace with the God by completely submitting to his will, by doing good to him. Hence he is required to be in peace with the nature as it is the creation of almighty Allah. The holy Quran prescribes rules and regulations to maintain peace and harmony with the nature, and obliges man not to disturb the balance between the elements of environment. According to Quran, there is no doubt as to the creation of this earth for the survival of human beings, but the humans should be extremely cautious while using these resources. These mountains, hills, trees, forests, rivers, lakes wherein millions of animals dwell, have been implanted by God himself. No doubt humans have an access to all this, they can use these for their personal work, but they should always remember that there are other species whose existence is wholly dependent on these natural resources. It is believed that doctrine of public trust has its origin in holy Quran as it states that this earth, natural resources are all owned by God and whoever is in possession or control is only a trustee. So the concept of trusteeship traces its origin to Islam. This doctrine holds great relevance in today's legal scenario. This establishes a notion that Islam asked man to do his best to preserve the nature and all makes him responsible for all the damage being caused to her. The concept of environment in Islam has a great relevance as it established that man is the servant of nature, as he is appointed for the care and protection of same. Mughal emperor Aurangzeb appointed officials called ‘Muhtasibs’ who were given the duty to keep a check on pollution and to take measures for its prevention. They were even given the duty to prevent any obstruction being caused on the public way and to impose fine for the same. This period marked a great era wherein forests were granted importance as they were the store houses of fresh air. Not only forests, other resources were also given great care by the persons appointed for the same. Those belonging to ancient times, have respect and love for the nature and all its elements, as they use to consider the trees, animals, plants as the members of their family.

#### CONTRIBUTIONS OF BRITISH REGIME TO ENVIRONMENT AND ITS PROTECTION-

British rule in India started in the form of a company specifically for the purpose of trade and commerce. However with time the main object of exploiting wealth of India was unveiled, it exploited our nature resources to the great extend. Their urge for growth made them blind and they restlessly went on giving fatal blows to the environment. They exploited forests of Ireland, Northeast United States, South Africa, India to fulfil their emerging needs of maintaining military, promoting construction of railways, promotion of trade.

They tried to establish control over the Indian forests by appointing a conservator of forests in the year 1806 to check availability of resources in the forests of Travancore and Malabar. However in the name of conservation, they plundered the wealth of these forests, instead of preserving the same. Consequently when Indians became aware of this, they made demand of abolishing this post and hence the same was abolished in the year 1823. Second half of nineteenth century marked the beginning of environmental law regime in India with the appointment of Dietrich Brandies as the first inspector general of forest in 1864. He was given the duty of exploring the resources, protection of forests from fire, maintenance of reserves. So the main aim of administration changed from obtaining of resources to protecting and preserving the resources.

They introduced the first act called the Forest Act, 1865, to check the monopoly right of state over the resources and the same act was used to check the exploitation in the other British territories by its revision in 1878. It granted the entire administration of forest in the hand of government and hence access to people was closed. The act also imposed penalty on those who transgressed the provisions of the act.

Policy of October 1884 was introduced on 19th of October, which promoted the general wellbeing of people by fulfilling their needs and it was also aimed at the preservation of climatic conditions in the region. This policy was implemented by introduction of Forest Act of 1927. This act empowered British to acquire all forestland, property resources. It continued till 1935. There were other legislations namely- Shore Nuisance(Bombay, Kolaba) Act of 1853, Oriental Gas Company act,1857, the Indian Penal Code,1860, Indian Easement Act of 1862, Indian Fisheries Act of 1897, Merchant Shipping Act of 1858, Bengal Smoke Nuisance Act 1905, Bombay Smoke Nuisance Act of 1912, Wild Birds and Animals Protection Act of 1912, were some of the acts which gave great importance to bio-diversity and focussed specifically on preservation of the same.

#### CONSTITUTIONAL PROVISIONS RELATING TO ENVIRONMENT PROTECTION IN INDIA-

Article 39(b) has its roots in the doctrine of public trust as it obliges the state to stand as the trustee of the natural resources and to hold them for the beneficiaries in such a way that the common good of the community is served.

Article 47 aims at ensuring good health to all the citizens by providing them nutritious food and it also focuses on maintaining a standard of living by reducing poverty.

Article 48 directs that the state shall make attempt to organize agricultural production using scientific techniques and measures. It further aims at organizing animal husbandry by promoting breeding of all the milch animals.

Article 49 keeps a check on the feeling of patriotism among the Indian population and requires the citizens to be vigilant enough while dealing with the monuments of national importance.

Two new articles born out of forty- second constitutional amendment

Article 48(A) directs the state to be very cautious about the nature and all its elements namely animals, trees, forests.

Article 51(g) imposes an obligation on all the human agencies highlighting on the precautionary principle, need to protect and preserve their natural resources for the common good of all. It requires the human agency to be much cautious about their fellow beings as well.

Above discussed provisions denied the misnomer that the Indian system is turning blind eye towards environment protection regime in India. Just because the use of word environment was not made explicitly, one cannot claim it as a matter of fact that Indian jurisprudence was not at all aware of the environment and the concerned issues.

It was in the year 1973 when the most important project named “project tiger” came into being to preserve the future generations of tiger in India with the support of the Government of India in the form of funds granted under the sixth and seventh five year plans.

In the year 1974, an act named the water (prevention and control of pollution) act was introduced for regaining the wholesomeness of the water resources in India. In the Subsequent years many acts were introduced, the act of 1977, the water (prevention and control of pollution ) cess act, being one them. This act was introduced to charge industries making excessive use of water resources based on polluter pays principle.

In early eighties, a high level committee called Tiwari committee was formed which suggested number of changes in the environmental policies in India, which further led to establishment of a new department for the purpose of environment preservation.

In January 1985, a new ministry named Ministry of Environment and Forests was introduced and department of environment was made part of this ministry which consisted of two departments, viz, department of environment and the department of forests & wildlife. The ministry’s main activities are preservation, protection of environment, prohibition of afforestation, and promotion of research in the field of environment and its protection. In 1986, act was enacted to bring serious provisions for containing the menace of pollution in India.

In 1987, “National Water Policy” with the objective of preserving the water resource was introduced. This act highlighted the plight of water scarcity in India and focussed on the immediate need to manage water resources in their purest form. In 1989, the Hazardous Wastes (Management and Handling) rules, were framed under the aegis of environment protection act 1986. In the years 1998, 1999, 2000, authorities fulfilling their obligations under the environment protection act, 1986 ,made following rules for preservation and protection of environment and its elements, namely;

Bio-medical wastes (management and handling) rules

Recycled plastics (manufacture and usage) rules

The noise pollution (regulation and control) rules

Ozone depleting substances (regulation and control) rules

The municipal solid wastes (management and handling) rules

Batteries (management and handling) rules

There was the introduction of an act for preservation of bio-diversity under India’s international obligation as per the convention on bio-diversity. The act was called as the biological diversity act of 2002, as it specifically focussed on the preservation of the same in India. The act was one of the most important legislations in the field of bio-diversity preservation, as it opened a new dimension as it prohibited the transfer of Indian genetic material out of India. This was the entire regime of environmental law in India since ancient times.

#### JOURNEY FROM MILLENIUM DEVELOPMENT GOALS TO SUSTAINABLE DEVELOPMENT GOALS-

The eight millennium development goals which have different aims at eradication of poverty, halting the spread of HIV/AIDS, providing universal primary education are of great importance for the entire globalising world. These hold relevance in the industrialising world as these are basically focusing on eliminating various problems of the society .These goals have galvanised developmental initiatives of different countries. In achieving goal number one that is eradication of poverty, India has worked hard and poverty has declined significantly over the last two decades. As per official data in 1990, nearly half of the population in the developing world lived on less than \$1.25 a day; that proportion dropped to 14 per cent in 2015. As far as universal primary education in goal number two, the education gap between men and women declined to a great extent. In the last two decades, the literacy rate increased from 85% to 91%, which is a great achievement. The condition of natural resources have improved a lot in the last three decades for instance 91% of global population is using fresh water at present as compared to 78% in 1990. As per global reports, around 147 countries have met the drinking water target, 95 countries have met the sanitation target and 77 countries have met both.



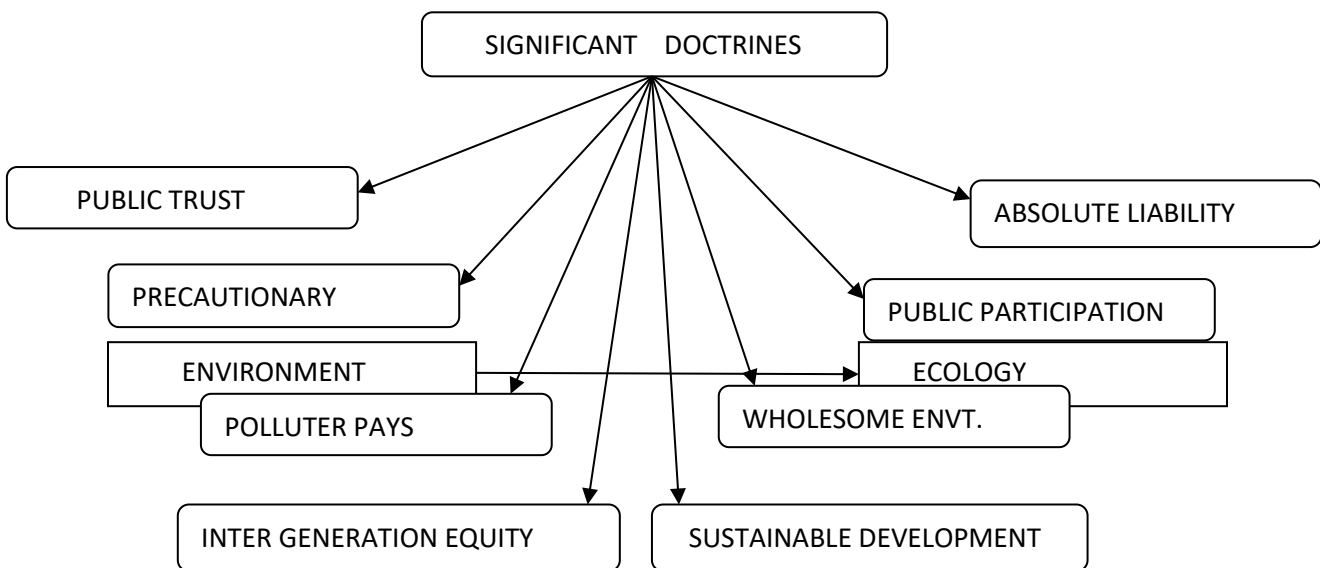
Source-<https://www.humanium.org/en/the-millennium-development-goals/>

**SUSTAINABLE DEVELOPMENT GOALS**

The outcome of Rio+20 is millennium development goals and outcome document of general assembly on these goals requested secretary-general to make a plan for post-2015. There are 17 goals and 169 targets specific targets to be achieved by 2030. The Salient features of these sustainable goals are inter-generational equity, environment protection, eradication of poverty, obligation to assist, ensuring financial assistance to the developing countries. Protection of environment is essential aspect of sustainable development, which requires high attention both at the national and international level. It requires coordination among different countries of the world so that they can contribute equally towards preservation of the environment. These goals are benchmarks set to be attained at the earliest. As far as progress in India is concerned, it has attained great heights. The economic survey of 2021-22 has highlighted the improvement in performance on each of these goals. This progress in the sustainable development goals can be seen from its improvement in score of NITI Ayog Sustainable development goal index, which improved from 60 in 2019 to 66 in 2021.

**ENVIRONMENTAL DOCTRINES AND THEIR APPLICATION IN INDIA (RECENT JUDICIAL PRONOUNCEMENTS)**

There were laws existent in India as far as environment and its protection is concerned which were not enough to deal with the menace of environmental deterioration. This was felt for the very first time when India in the capacity of parens patriae filed a case claiming compensation from union carbide corporation on behalf of the victims of Bhopal gas leak tragedy. The claim was made before U.S district court of southern district of New York on basis of the claim that Indian courts are not prepared enough to deal with the same as tort law in India is in its infancy. Rebutting the claim made by India, justice Keenan of U.S District court stated that Indian judiciary has always been independent, fair, hence resort should be made to it as claim from some other countries judiciary will again subject India to subjugation. This notion has motivated Indian system to work hard in preparing a complete regime on environment and its protection. Thus India started its journey of developing environment law regime which was favoured by justice Bhagwati in a case wherein it was stated that there is requirement of fresh norms, fresh doctrines to deal with new kinds of problems emerging in India. It was further reiterated that there is no need to follow English law as far as environmental issues in India are concerned as we have entirely different conditions in our society.



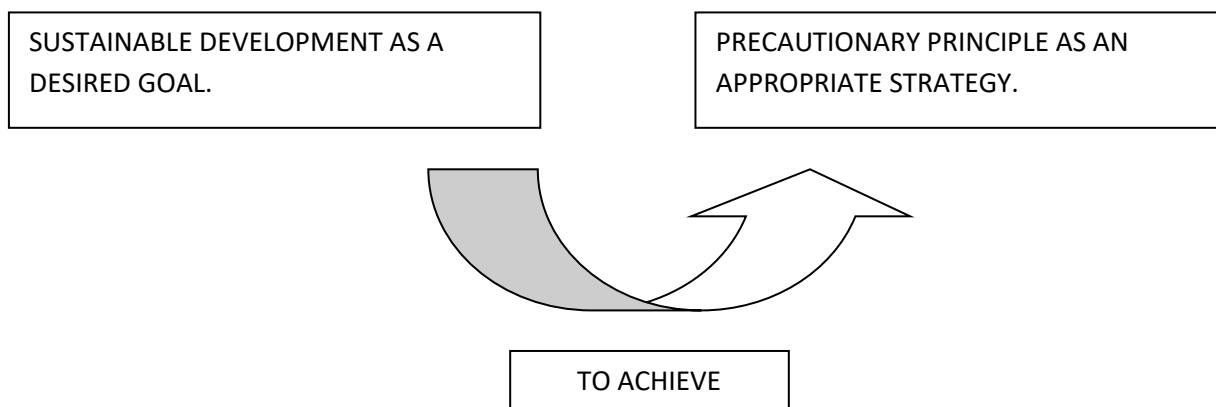
It simply states that there should not be any enmity between the environment and the development both can go hand in hand if one does not undermine the other. This doctrine has a main highlighting point- “approach of being safe than being sorry”.

Historical background- there was a notion prior to 1972 that environment encompasses a wider horizon, so it has a assimilative capacity and this assimilative capacity of environment makes it absorb all the shocks of damage to itself. These shocks can be in the form of pollution, depletion of ozone, soil erosion, deforestation, ice melting. However these shocks can be absorbed only upto a certain limit as beyond that environment may lead to disaster. Thus it is established that environment also requires efforts to repair itself and this can be done by entry of law in to the field of environmental jurisprudence.

However, we cannot expect environment to wait for an action to be delayed beyond a limit for investigation of its quality. This led to the origin of concept of precautionary principle. They two conferences namely the Stockholm declaration and the Rio declaration on environment and development are the actual sources of this doctrine. The doctrine states that environment should be given precedence over economy hence requires anticipatory action to be taken to prevent harm which can be done away merely on the basis of reasonable suspicion. This doctrine was accepted by the court as part of legal system in Indian Council for enviro-legal action case, wherein the Supreme Court directly applied the doctrine to facts of the case.

Supreme Court in *Vellore Citizens Welfare Forum v. Union of India*, made this principle a part of environmental law regime in the nation and has adopted it as the part and parcel of law of the land which earlier existed merely as part of international law regime. This doctrine is linked to other two doctrines namely the doctrine of ‘assimilative capacity’ and the doctrine of ‘polluter pay’. It is a successor of assimilative capacity principle which has been specified in principle 6 of the Stockholm Declaration, which simple means that with the help of scientific technologies the expected harm can be prevented and technical expertise can be provided accordingly. It states that lack of confidence in decision making gives way to use of caution and prevent activities that may cause harm and hence it can act as a check which could restrict the activity from causing the harm. However, once it is injected, the informed decision can be taken at later stage to provide precision and here comes the role of judiciary and the legislature.

Meinhard Schroder established a relationship between sustainable development and this precautionary principle.



It further led to another principle of onus probandi in which the burden of proof is placed on person or entity proposing the activities. Supreme court relying on a report of international law commission observed that this principle suggests where there is a great risk of irreversible nature for example the widespread toxic pollution, extinction of species, major threats to essential ecological processes, the burden of proof is to be placed on the person or the entity initiating the activity harmful to environment. It was even adopted based on customary international law as a part of our domestic law based on principle of ‘pacta sunt servanda’ which states that the treatise are legally binding. This proposition was followed by the court of law by justice H.R.Khanna in *ADM Jabalpur v. Shivkant Shukla*, *Jolly Varghese v. Bank of Cochin*, *Gramophone Company of India Ltd v. Birendra Bahadur Pandey*. Court accepted polluter pay and precautionary principle as a part of law of the land and quoted article 21, 47, 48A, 51(A)(g) of the constitution of India with regard to the right to life, personal liberty, right to livelihood. In *Vellore Citizens Welfare Forum v Union of India*, Supreme Court said that it is high time for the central government to become responsible and take charge of protecting the degrading environment in the country. It was directed that a ‘green bank’ be constituted to deal with this case and other issues concerning environment. Justice Kuldeep Singh on the concept of burden of proof stated that the burden of proving the legality of an act or omission is on the developer.

In *Andhra Pradesh pollution control board v. MV Naidu*, court added new dimensions to this doctrine by saying that this doctrine is the result of changing needs of industrialising world. It further highlighted the change that took place during the period between the Stockholm conference of 1972 and the Rio declaration. It further held that environment protection should not only aim at protecting health, property, economic interest but also protecting environment for its own sake.

#### PUBLIC TRUST DOCTRINE-

This doctrine is of great importance in today’s capitalising world as it puts an embargo on the ownership of nature by the private persons. It simply imposes restrictions and obligations on the government on behalf of the public at large. It asks the government to protect the natural resources for the enjoyment of public at large rather than restricting its use to private ownership. It is an accepted notion that the resources namely air, water, trees, sea, are the gifts of nature, hence they must be made available to all. It



simply claims that resources, no matter renewable or non-renewable in which public has special interest, are not to be restricted in their use to private persons.

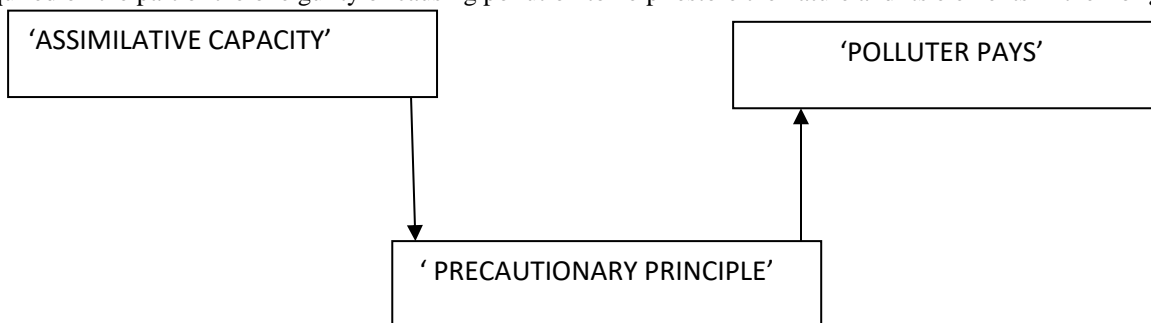
Historical background- though it is a common notion that the doctrine has its origin in ancient roman empire, but its real origin can be traced back to Islam and the holy Quran, wherein it was stated the one who plough and cultivates the barren land is the owner of that land but that ownership is in the form of trusteeship. Further the doctrine was established in ancient Roman empire in the form of legal theory which stated that environment and its elements are common properties that are held by the government in trusteeship for use of general public at large. As per this Roman doctrine these resources are either (Res Nullious) resources which are either owned by no one or (Res Communious) by everyone in common. However there is an exception that sovereign could own these resources but the ownership is limited in nature as he cannot grant these to private owners if this grant is to interfere with public interests. This is based on the Latin maxim “ Riparium uses publicus est jure gentium sicut ipsius fluminis” meaning that use of river banks is like that of the flow of the river itself. This doctrine is a tool for exercising public’s exclusive right over these resources. Supreme court of India applied doctrine of public trust in number of cases and one such is *MI Builders Ltd v. Radhey Shyam Sahu*, court made municipal corporation a trustee. This corporation entered into an agreement with a builder for building an underground shopping complex at the place of historical monument. The historical monument being a place of public interest cannot be handed over to any private builder, thus the corporation was held liable. This doctrine has got much importance today even the Supreme Court recently in *Re: TN Godavarman v. Union of India*, said that public trust doctrine is a part of law of the land and state stands as a trustee of the natural resources. The bench said that each protected forest must have an economic sensitive zone of atleast one kilometre. It said that the state cannot absolve itself of all the liabilities by becoming a facilitator of the economic activities for the profit of the state, rather it should act as a trustee of the natural resources so that sustainable development is ensured. Court therefore held the state responsible as it overlooked its role as a trustee and performed outside its ambit.

**POLLUTER PAYS PRINCIPLE-**

It is a measure used to contain the menace of pollution in the world. This has great relevance in the industrialising world, as it is an essential economic efficiency measure which is used to deal with the environment related issues at large. The world commission on environment and development emphasised on the need to make the polluter pay the cost of the damage being caused to the environment. It suggests that environment cost of the development shall be met by the one who is doing such development at the cost of environment. Recently the Supreme Court of India in *T.N.Godavaram Thirumulpad v. Union of India* said that protection of environment will always have precedence over the economic interest. Hence the polluter has to pay the cost for the harm he has caused to the environment and its elements. It is entirely based on the notion of ‘preventio It was in *Research Foundation for Science (18) v. Union of India*, supreme court highlighted the importance of this principle by saying that producer of goods should be called to pay the cost for dealing with the pollution caused as a result of this process of production. The principle was applied in number of cases namely Indian Council for *Enviro-Legal Action v. Union of India*, *Sterile Industries (India)Ltd v. Union of India*, wherein the supreme applied this principle and consequently asked the appellatant company to pay compensation of Rs 100crores to make good the loss it has caused to the environment. It holds great relevance even today as it has been applied in recent cases and that too with great precision in *Chief Executive Officer, Municipal Corporation, Bandipora, Kashmir v. Jammu & Kashmir Pollution Control Board*, wherein matter was related to the dumping of solid waste in catchment of Wular lake in Kashmir, and the supreme court looking at the gravity of the issue dismissed an appeal that challenged national green tribunal’s refusal to interfere with J&K pollution control committees order imposing fine of Rs 64.21laks on the municipal committee, Bandipora.

Even in *Raja Muzaffar Bhat v. Union of India & others*, this doctrine was made applicable and National Green Tribunal slapped Rs 35crores as penalty on Jammu & Kashmir administration for doodhganga pollution.

Even in *M.C.Mehta v. Union of India (1987)*, this doctrine of polluter pays was made applicable. The court in this case while emphasising on the importance this principle holds stated that all the factories and industries which are involved in the hazardous business must ensure the health of its workers and also of those who are residing in the locality where such industry has been established. Moreover this doctrine requires the polluter to pay the amount for compensating the loss caused to the nature at large. The Supreme Court in *M.C.Mehta v. Union of India*, again held that the creation of pollution at the hands of human beings is not merely a civil wrong but also constitutes a criminal offence against the whole of the society. It was further reiterated that it is highly required on the part of the one guilty of causing pollution to help restore the nature and its elements in their original position.



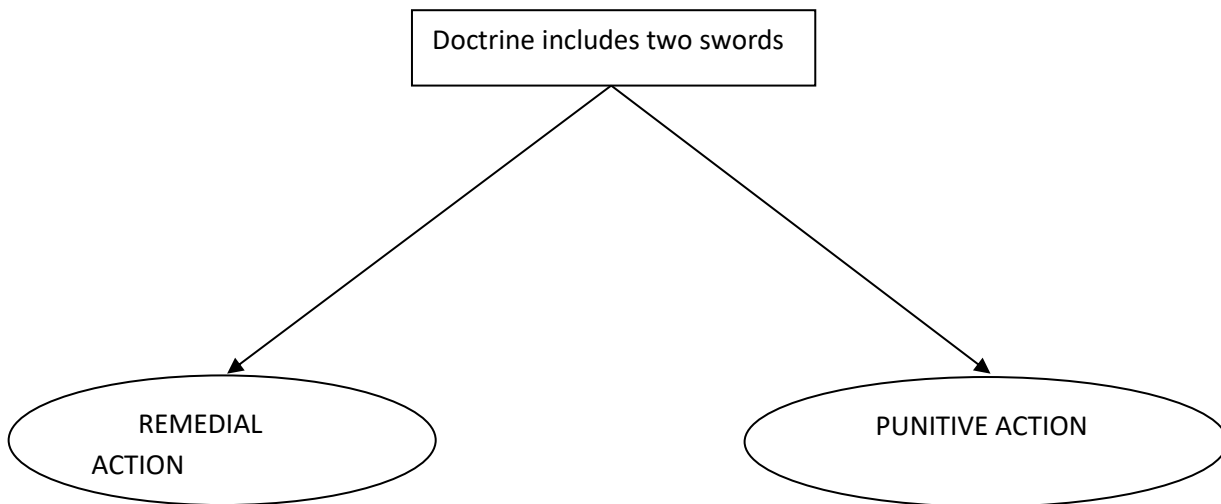
**4 PRINCIPLE OF ABSOLUTE LIABILITY-**

Earlier there was a rule of strict liability established in 1868 in England in *Ryland’s v. Fletcher* case, which later was changed to the rule of absolute liability in *M.C.Mehta v. Union of India*

In the case of *Ryland's v. Fletcher*, the rule recognised was that of 'No Fault Liability' which stated that even if a defendant was not at fault, even if he is not negligent or took utmost caution, he could still be made responsible. The basis of this rule was something propounded by justice Blackburn, who propounded that a person is liable for the acts of his own however there are some exceptions of which he can take a plea, for instance the act of god, inevitable act, contributory negligence, act of third party. These were claimed as exceptions in *Nichols v. Marsland*, *M.P Electricity Board v. Shail Kumar*. This rule was made applicable in India to the same extent as it was applicable in England. However, in India a new rule emerged in *M.C Mehta v. Union of India*, wherein principle of absolute liability came into picture. It is a newly formed concept on which the exceptions to rule of strict liability does not apply. This rule emerged in *M.C Mehta v. Union of India*, which is also known as oleum gas leak case. The Supreme Court explained that exceptions to strict liability are not applicable to cases in India.

The Supreme Court reapplied this doctrine in *Enviro-legal action v. Union of India*, also called as 'sludges case' and was held that the industries are absolutely liable for their acts of commission and omissions and they are to provide remedy for the damage caused to the human life and the environment. It was held that the person establishing the hazardous substances business will be liable for meeting the remedial cost no matter what. It was further held that it is absolutely immaterial whether the person establishing and running the business took extremely cautious approach while dealing with all substances.

. This rule has a twin swords approach as not only makes the hazardous substances establishments responsible merely for the remedial action but at the same time also for the loss of lives.



In *U.P state electricity board v. district magistrate, Dehradun*, it was alleged by the UP state electricity board that the claim petition was not maintainable under Public Liability Insurance Act, 1991. The court however made it responsible and said that owner cannot escape the liability saying that he had not taken insurance policy for the same.

**DOCTRINE OF SUSTAINABLE DEVELOPMENT-**

This doctrine is the mountain head in which all other doctrines have their source, as all the other doctrines are the characteristics underlining the concept of sustainable development. It is based on the idea of using the resources for the betterment of present and preserving them for the use of future generations as well. It simple states that all development activities must take place for the benefit of mankind while keeping in mind the environment concerns. This rule is like a sine que non as far as the balance between environment and economy is concerned. Need for recognising any such principle has been raised at different forums both at the national and the international level including at the Rio declaration, in the Brutland report.



It is often claimed that it is a kind of development that aims to meet demands of the present generation without making these resources scarce for the generations to come.

It has been included as the most important principle in all the international documents. For instance, principle 1&2 of Stockholm Declaration specifically deals with the concept of inter-generational equity. Principle 3 of Rio Declaration of 1992 also emphasise on the need to have sustainable development as its basic principle. It simply states that the non renewable resources must be used but in such a way that they are not exhausted. It emphasises on having a balanced approach, so that neither economy nor ecology is at loss. Rural Litigation and Entitlement Kendra V. State of U.P, was first case in which a concern was raised as to misbalance between the environment and development is concerned. It was in this case only that it was said development should never be at the cost of environment, as it is not antithetical to environment. The court further observed that tapping of natural assets have to be done cautiously, so that these are not used by one generation only.

In *M.C.Mehta v. Union of India (Vehicular Pollution Case)*, the Supreme Court while emphasizing on the importance of principle of sustainable development held that it is the principle which is the epicentre of the entire environmental law regime.

In *K.M.Chinnappa v. Union of India*, the Supreme Court emphasised on maintaining a balance between the environment and needs of the people. It further reiterated it is not always the environment which is to be given primacy, rather convenience of the larger section of society has to be considered and given due importance over other things.

#### DOCTRINE OF INTER-GENERATIONAL EQUITY-

It is one of the basic features of the principle of sustainable development or in other words it is the essence of this principle highlighting the need to use the resources in such a way that they are used by the present generation and also saved for fulfilling the needs of future generations as well. This doctrine is not of recent origin however these were explicitly mentioned in principle 1 and principle 2 of the Stockholm Declaration of 1972.

Principle 1 asks about maintaining a balance between mans right and his sole responsibility towards the environment. It states that the man while enjoying his right to freedom, adequate conditions of life, in a healthy environment is also required to fulfil his responsibility of preserving the resources for the generations to come.

Principle 2 focuses on preserving the natural resources for the beneficial use of both the present as well as the future generations, so that equity is to be maintained among these generations. It also focuses on national integrity and prosperity as it states that all the natural resources are nation's wealth and hence should be preserved in its treasury. These belong to all human beings and should not be used by one generation in such a way that they stand exhausted. This doctrine imposes a restriction on the humans to preserve and conserve the environment and its elements in the totality. This doctrine depends on the notion of saving the earth and its resources for the use of the future generations. It was made applicable in *State Of Tamil Nadu v. Hind Stone* by the Supreme Court of India, wherein it was stated that since humans are the beneficiaries of these natural resources, they should have access to all these but in such a way that every generation which is making use of these should leave them unpolluted and in their actual state. Thus the doctrine aims at establishing a balanced relationship among the humans of different generations by preserving the resources for the use by generations to come. This doctrine has held a special position in the enviro-legal field as it chocks out the possibility of exploitation of the limited resources at the hands of one generation. Thus the doctrine applies exclusively in all the spheres of environment and environmental protection.

#### INDIAN JUDICIARY MAINTAINING A BALANCE BETWEEN RIGHT TO DEVELOPMENT AND RIGHT TO ENVIRONMENT

The Supreme Court, the high court's and the national green tribunal in India has been trying to maintain a balance between the environment and the economy. This is clear from the plethora of judgments being made by these institutions. The situation seems

bit dicey as sometimes the judiciary favors the environmental protection without paying any recognition to developmental concerns while at the other; it gives primacy to human needs. Let us consider few cases which will make the status clear on this point.

Beginning with a case titled *Association for protection of democratic rights v. State of West Bengal 2023*, it was in this case the Supreme Court said that human life is equally important as the protection of environment. It said that contest between ecology and economy is not of recent origin and is ever ongoing one and environment is an important thing which is required to be protected for the generations to come, however development projects cannot be altogether ignored as they are important aspect of human's peaceful existence. While giving permission for construction of railway bridge in the state of West Bengal, it observed that human life has the same value as the environment. So it emphasized on value that human life holds, hence bending in favor of development over environment. In another case titled *T.N.Godavaram Thirumulpad v. Union of India 2022*, Supreme Court held that protection of environment will always have upper hand over the economic interest of the human beings. It revoked the approval granted for doubling the line from Karnataka to Goa. The court while giving primacy to the doctrine of sustainable development said that environment and its protection needs a lot of attention. In this case, court called state a trustee of natural resources of natural resources while applying the doctrine of public trust to this case. Court observed that this doctrine is very much the part and parcel of our law of the land. Court asked the state not to get absolved of all its liabilities by calling itself a facilitator of economic activities for the benefit of the society. Court also imported the doctrine of sustainable development in this case and said that state should also act as a trustee so that development achieved must be sustainable one.

The international regime is also recognizing the concept of ecocide and calling it the fourth largest crime after other crimes. By recognizing this new type of crime related to environmental issues, a new dimension has been added to the environment. Now the approach is changing from 'Anthropocentrism' to 'Ecocentrism', which focuses on the need of putting environment and ecology at the forefront rather than the human and their unlimited wants.

There has even been recognition of the personhood of the nature by the international as well as the national regime. The earth jurisprudence grants personhood to the nature, recognizing her legal rights. The coining of term 'Earth Jurisprudence' by Thomas Berry highlights the value earth and its elements hold. It grants three rights to members of the earth community namely: the right to be, the right to perform its role and the right to habitat.

He in his concept of earth community recognizes different roles that are performed by different species and states that rights are granted on the basis of role performed by each species. This shows how there has been a shift from anthropocentric approach to ecocentric one.

The other earth scholars namely Cormac Cullinan, raised his voice against the laws which are in the form of toothless tigers and claimed for wild laws so that a connection can be made between nature and governance. This notion highlights that the humans are very much part of the nature and are inseparable entities. Thus they should not consider themselves separate from the nature. Following this international law regime, we in India have also started recognizing the legal personhood of these entities. For instance, verdict of the High Court of Uttarakhand in *Muhammad Salim v. State of Uttarakhand*, recognized river as an individual and also vowed for maintenance of her rights.

The court has also recognized the existence of other elements of nature as legal persons in *Lalit Miglani v. State of Uttarakhand*. This progressive approach of giving due respect to the nature is evident from recent judgment of Madurai bench of the Madras high court, wherein it was stated that all the glaciers including Yamnотri, Gangotri, rivers, lakes, dales, forests, wetlands, waterfalls are legal persons, with all the rights, liabilities similar to that of a natural person. This has been done so as to preserve the nature in its best form and protect it from being deteriorated at the hands of humans.

## CONCLUSION AND SUGGESTIONS

Vasudeva Kutumbakam connotes the welfare of everyone by developing a connection between the mother earth and the ecology. Through its various norms, Dharma has attempted to recognize the significance of the environment by directly relating environmental conditions to human well-being and assuming responsibility for protecting the earth's resources. Ancient Indian practices firmly adhered to the obligation to safeguard the environment and society. As part of the Indian religious system, everyone has the right to survive in the environment and no life in this inferior environment is superior to another as we have discussed above. The study concludes that the urge for economic and social growth has become a race for all the nations which led to the exploitation of natural resources giving rise to other problems like poverty, social inequality, discrimination, unemployment, malnutrition among others.

As Gandhi ji said "world has enough for everyone's needs, but not everyone's greed", this statement seems true today as come across the problems relating to the environment on day to day basis. No doubt, nature has given us ample amount of resources but human intervention and technological advancement has caused great harm to these resources and consequently they are becoming scarce. The issue of environment deterioration is of great importance at both national and international level. The study has a specific chapter which presents detailed analyses of all the international events, documents which have contributed a lot to the development of environment law legislations and doctrines. The study highlights the need to have more stringent provisions in the area of environmental protection. The International Criminal Police Organization (INTERPOL) in its report highlighted that the transnational environmental crimes are growing swiftly at the rate of 5-7% per year. It makes us aware as to how the existing environment law regime failed miserably in ensuring protection of the natural resources. However, if we go by all the judgments of Indian Supreme court and have a look at the principles which are developed by Indian judiciary in the course of decision making we can find out that we are on the forefront position to save the environment. Even the contemporary international law regime is doing great in its journey of saving the environment and its elements. For instance, the recent declaration on the Rights of Mother Earth of 2010 recognizes the already existing rights of the environment and puts it in the position of a legal person. The study concludes that recognizing legal rights of environment can serve a great purpose for protecting it from several harms no matter whether intended or unintended. Study derives a relationship between the good governance and rights of natural entities because if

these entities too have legal rights then it will create a deterrent effect on the people who don't fear causing injury to the nature. Suggestions include adopting sustainable practices even at personal level so that the issue can be solved even at the preliminary level. Then the study derives that there is not lack of laws as far as environment is concerned however there is only lack of implementation. These environment related laws need to be implemented with strict punishment for those who violate these provisions.

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