CHAPTER-II

ENVIRONMENT AND SUSTAINABLE DEVELOPMENT: AN ANALYSIS
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2.1 Introduction

'It is our alarming misfortune', wrote Rachel Carson in 1962, describing the indiscriminate use of chemical pesticides, "that so primitive a science has armed itself with the most modern and terrible weapons, and that in turning them against the insects it has also turned them against the earth". Because of the chemical poisoning, argued Carson, it was a very real possibility and indeed it was already true in some areas that a time could come when spring arrives "unheralded by the return of the birds, and the early mornings are strangely silent where once they were filled with the beauty of bird song".¹

In 1967, Lynn White Jr. wrote an article in Science on the historical roots of the ecological crisis facing the West and the World. According to White what individual and communities do to their environment depends on how they see themselves in relation to nature.²

Human beings are the ecologically dominant species in the whole ecosystem. Although they have the same need for heat, light, water and food that other species have, they alone possess those attributes that give them dominance

over other living species. Thus, human beings compete far more successfully than
all other living creatures.

Furthermore, human beings have been able to manipulate natural forces in
the eco-system\(^3\) with an intensity unsurpassed by any other living being. This
manipulation has given rise to the breakdown of the natural self-protective and
self-perpetuating mechanisms built into nature- a situation made even worse by a
belief that human beings have the right to use the natural environment solely for
their own design and ends, without consideration for the consequences of their
actions on the system.\(^4\) With the gearing up of industrial revolution, this human
tendency towards nature became much more stronger. The use of technology and
machines to subjugate nature became the credo of the modern world that benefited
from the many scientific discoveries and tremendous technological advances. By
the 1960s, man's journey to the moon became a reality, and his hegemony, over
nature and universe was complete. Many Westerners then believed that there was
nothing that science and technology could not solve or achieve. Pollution was
seen as a necessary side effect of progress that could be prevented and controlled,
just as dreaded diseases like small pox and plague had been. It was only in the
1970s that the effects of human activities on the biosphere became obvious and
questions were raised. Did human beings have the right to continuously exploit

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\(^3\) Living Organisms and non-living ones in environment are inseparably interrelated and interact upon each other. Within this system is an ecological system or ecosystem. It includes all the ways that individual organisms interact with one another and with their non-living environment.

nature in the name of economic development and material progress? Was the belief of man's superiority in over abundantly abundant natural resources the cause of many environmental problems and even some natural disasters? The increasing awareness of all these has eventually given birth to environmentalism. Environmental movements have emerged throughout the world and are creating environmental awareness. Environmentalism has added an important dimension to the ongoing development discourse. It has compelled the intellectuals concerned to think about what is being done to the eco-system of this planet in the name of development. The worsening environmental situation at the local, national and global level has led to the re-examination and re-consideration of the policies, strategies and programmes for development, in the context of emerging environmental problems. As a result, the environment-development debate was engendered and was intensified in course of time. In the early debates on environment and development, there was a sharp division between those who supported "development" over "environment" and those who argued for "environment" over "development". There has, however, been an increased awareness about the fact that human beings need both "development" and "environment". There is a growing recognition that the overall goals of environment and development are not in conflict but are indeed the same, namely,

the improvement of human quality of life. In view of this, 'development' versus 'environment' is a false dichotomy, many feel, in fact, this realisation has led to the reconciliation between 'development' and 'environment'. The concept of 'sustainable development' represents such an attempt to reconcile the goals of 'development' and 'environmental protection'.

Development is a perpetual process enabling man to expand or realise his potentialities to a greater or better state. In the recent past following the first United Nations Conference on Human Environment, 1972, importance was laid down on development not merely as betterment in the quality of life but with an added dimension of sustainability of such betterment. As it was first defined in the World Commission on Environment and Development that, "sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs". Economy and Ecology must reconcile and effectively operationalise to achieve sustainable development. Development should ensure continuous improvements in quality of life with minimal resource utilisation so that the future generations

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9 *See, World Commission on Environment and Development, Our Common Future (1987) (Also known as Brundtland Report).*
have access to the same quantity of resources, if not improved but certainly not diminished.\textsuperscript{10}

Sustainable development, it is argued, and rightly so, consists of three basic community policies (i) human rights, democracy and social justice; (ii) rights of future generations relating to human kinds' natural and cultural heritage; and (iii) protection of the environment. It also includes a catalogue of guiding principles, such as principle of solidarity, of common but differentiated responsibility, of intergenerational equity,\textsuperscript{11} prevention and precaution,\textsuperscript{12} and of the polluter-pay principle.\textsuperscript{13}

\textbf{2.2 Religion and Sustainable Development}

The present social ethic, which originated in the culture and thought of the west, demands that nature and environment serve humanity and contribute to the progress of human beings. No doubt this ethic has added greatly to material advancement and quality of life, but it has also encouraged acquisitive materialism. As a result of this attitude, nature's overall importance has been ignored based upon the notion that nature is here only for human beings to exploit. However world religions provide a framework for changing this attitude towards nature. All religions teach that the land, rivers, mountains, minerals, oceans, and


\textsuperscript{11} \textit{See infra} note 137.

\textsuperscript{12} \textit{See infra} note 127.

\textsuperscript{13} \textit{See infra} note121, also see, E.Primosch, \textit{The Spirit of Sustainable Development within Authoritative Decision-Making Process}, Austrian J Publ Int'l L 476, 1994, p.82.
other species should be held in trust for God, but can be used for the general welfare of humanity. These religions state that human beings are only trustees of the universe. As trustees, they are authorised by God to use natural resources, but have no divine power of control over nature and elements. Moreover, from the perspective of many religions, the abuse and exploitation of the nature for immediate gain is unjust, immoral and unethical. Even in the most secular countries, where religious toleration is practised, it has been demonstrated that religion plays a powerful role in defusing explosive issues and enhancing positive attitude towards others. Religion and culture can evoke an awareness of that dimension of the human personality, which is not affected by the scientific or technological reasoning. In creating an appropriate awareness, religion can help humanity to realise that there are limits to man's dominance and control over the animate and inanimate world and that arrogant manipulation of nature can backfire.

World religions and cultures, each in their own way, offer a unique set of moral values and norms to guide human beings in their relationship with nature. Religions also provide sanctions and other stiffer penalties, such as the threat of external damnation, for those who do not treat God's creation with respect. Although one can say that traditional religions have been unable to protect the environment from humanity's greed and exploitation, nevertheless, religions of the world, in their own right can help in fighting for environmental protection. Any other framework for environmental conservation and sustainable development that
ignores the role of morality and ethics in shaping man’s attitudes towards nature will remain imbalanced unless it includes cultural values and religious imperatives.\textsuperscript{14}

People are the great rationalisers of any situation; consequently, exploitation of nature will continue unless their greed is controlled. This greed and exploitation can be arrested if the moral exhortations contained in various religions and cultural traditions are used, in the form of an environmental ethic or an environmental code of conduct.\textsuperscript{15} In this context what the major religions of the world offer for conservation and protection of environment and sustainable use of natural resources needs an analysis. For this purpose, eight religions followed by majority of people in the world are taken into consideration. These are (a) Zoroastrianism (b) Hinduism (c) Judaism (d) Christianity (e) Islam (f) Buddhism (g) Jainism and (h) Sikhism.

\subsection*{2.2.1 Zoroastrianism}

Zoroastrianism, one of the oldest religions on earth, was founded by Zarathushtra who lived some where around 1400 – 1200 B.C.E. For Zarathushtra, the creation of the world was an act of sublime goodness by a sublimely good and omniscient God, Mazda Ahura, and the means by which He would ultimately defeat the Evil one at the end of the world when the living would be raised from the dead. Humanity was created and placed on earth to assist in this defeat if

\textsuperscript{14} O.P.Dwivedi, \textit{supra} note 4, pp 35-37.
\textsuperscript{15} \textit{Ibid}, p.38.
human beings choose to do so. Man's role in the battle is to live fruitfully upon the earth preserving life, the creation of God, against death and destruction, which was introduced by the Evil one.

So for Zoroastrians, bearing children, cultivating the earth, planting trees and breeding animals are the greatest acts of spiritual upliftment. Virtue lies in an active life of good thought, words and deeds and the material fruits of these are the gifts of God to be enjoyed.\textsuperscript{16}

In Zoroastrianism, the Supreme God is Mazda Ahura, the Lord of Wisdom. It is through wisdom and good mind that knowledge emerges about the physical world and the environment one lives in. Clearly, technology and the understanding of the working of the physical world are central to an understanding of Zoroastrianism. A spiritual Zoroastrian then, is one who leads a full life in the physical world, but always in accordance with one's environment.\textsuperscript{17} (What is today referred to as development by sustaining the resources).

In Zoroastrians purity and pollution are paired concepts, which play extremely important roles in the religious activities, with purity usually being linked to sanctity, and pollution to impurity, irreligion and danger. Purity is to be practised not only in thoughts, words and deeds but also in the physical, psychological and spiritual worlds. When the purity laws are infringed by any one of these worlds, impurity in the form of imbalance, disease, decay and death sets

\textsuperscript{16} Quoted in the New Road, Bulletin Number 18, March-April 1991, p.1.
\textsuperscript{17} Ibid.
in. These imbalances afflict the pure creations of Mazda Ahura in the form of pollution, which in turn results in an ecological imbalance in our world. It is through this imbalance, pollution is bought by evil and that one becomes ritually impure. Ritual purity is very important to the faith. One of the important duties of a Zoroastrian is to look after the seven creations, viz... skies, waters, earth, plants, cattle, man and fire. Caring for creations of God is the basic ecology for Zoroastrians, and hence nothing impure should contaminate the seven creations.¹⁸

Clearly, for over 3000 years, Zoroastrians have been nature conscious in their thoughts, words and deeds.

2.2.2 Hinduism

Of all the living religious traditions of the world, Hinduism is the oldest. The principle of sanctity of life is clearly ingrained in the Hindu religion. Only God has absolute sovereignty over all creatures including man, thus, man has no dominion over his own life or non human life. Consequently, man cannot act as a viceroy of God over the planet, nor assign degrees of relative worth to other species. The Hindu religion provides no sense of absolute superiority of man over nature. Therefore all lives human and non-human are of equal value and have the same right to existence.¹⁹

¹⁸ O.P. Dwivedi, supra note 4, p.41.
Since Vedic times the main motto of social life was 'to live in harmony with nature'. Vedic seers and ancient Maharishis have luminously revealed that "God sleeps in minerals, wakes in animal, thinks in man". Further the literature of Vedic times preaches that every species and plant bears an element of God and they be treated accordingly. It follows therefrom that damage to any part of the environment is injury to God. The entire environment was thus held in the highest esteem as if it represented the Almighty.

The ancient scriptures described the earth as "Goddess Mother" and held each component of nature in the esteem of demi-God, which has been the highest status, civilisation has ever known. Obviously nature maintains life and livelihood of human race and all creatures. The environment therefore is also a guardian of the human race. In the highest tribute, earth has been held to be both mother and father of all creatures. Atharva Veda (ancient scripture) maintains, "The earth is heaven. She is at times mother and father and product of Antariksha. Whatever has been, is being, and will be created, is all due to the originator earth". All the creations for all the time have been due to Mother Earth. Earth has been held to be a heavenly home for all creatures. Earth showers love and affection on all creatures. Many verses in the Rigveda and Atharva Veda have been devoted to the praise of Lord Surya (Sun), Vayu Devta (Lord Air), Agni Devta (God of Fire),

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Varuna Devta (God of Water), and Vanya Devi (Goddess of Forest), etc. Therefore cutting of trees, polluting air, water, land was regarded as a sin. Protection of their purity was considered to be the duty of everyone. Rigveda, Manusmriti, Charka Samhita have emphasised on the purity of water and healing and medicinal value of water. Similarly, trees and plants have been regarded as indispensable in the life of human beings. They have been considered as revered, bestowers of good and the protectors from evil with a concept of God living in them. Trees are worshipped as Vriksa Devta (Tree Deity). Matsya Purana has regarded that one tree is equal to ten sons. According to Vaha Purana, “one who plants one people, one neem, one ber, ten flowering plants or creepers, two pomegranates, two oranges and five mango trees will not go to hell”. Manusmriti- known as the first systematic treaty on Hindu law, has prescribed various punishments for destroying plants and trees. Charak Samhita has considered the destruction of forest as the most dangerous act for humanity and its welfare. The following verse illustrates:

“The destruction of forests is most dangerous for the nation and for human beings. Vanaspati (Vegetation) has direct relationship with the well being of the society. Due to the pollution of natural environment and the destruction of vanaspati, may diseases crop up to ruin the nation. Only then vanaspati with medicinal qualities may enhance the nature and cure the diseases of human beings”.22

22 S.C.Shastri, supra note 20, p.4.
In addition, Hindus were advised by the seers to treat all other species with loving care. The following verse illustrates:

“One should look upon deer, camels, monkeys, donkeys, rats, reptiles, birds and flies as though they are their own children”. (Srimad Bhagavatam 7.14.9).

Killing of animals for food was prohibited in Rigveda. Further in Yajurveda it is stated that, “No person should kill animals helpful to all. By serving them one should obtain heaven”. And in the view of Manu, “He who injures innoxious beings with a desire to give himself pleasure never finds happiness, neither living nor dead”.23

How to protect and conserve the biological diversity is exemplified by the family and the habitat of the Lord Siva, his consort Parvati, and his two sons Kartikeya and Ganesh. His habitat is mount Kailasa, with snowy peaks representing the cosmic heavens. The nascent moon on his forehead denotes tranquillity; the constant stream of Ganga’s water from the inter plaited lock of hair on his head indicates the purity and pre-eminence of water; Nandi, the bull as his mount, represents livestock; serpents signify the presence of toxicity in nature, the lion used by his consort Parvati represents wildlife; the peacock, the mount of Karthikeya, one of the most colourful birds, represents the avian species; and the mouse, the mount of Ganesha, represents pests. Thus, various forms of animate and inanimate life are represented in the household and habitat of Lord Siva.

However, another important significance of the family of Lord Siva is the

23 George A. James, supra note 19, pp 173-174.
harmonious relationship between natural enemies. In Lord Siva's household, various natural enemies live in harmony with each other. The carnivorous lions food is the vegetarian bull, the peacock is the enemy of the serpent, and the mouse is serpent's food; nevertheless, all live together. Thus, when a devotee worships the family of lord Siva, he or she observes this co-existence and is influenced by what in contemporary times might be seen as analogues to the concept of ecological harmony and respect for biological diversity.24

Srimad Bhagavatgita preaches that, man is the part of nature and any damage to nature damages him. Gita advises to get rid of ego out of any achievement or position or status. It revolves around a theory that although the man thinks that he works, it is only a misnomer. Actually he is only a tool and the work is actually done by the nature or "Prakriti" through the man. The nature is so powerful that even if the man does not want to work, he cannot avoid since he is fully under the control of nature and has to work as desired by nature. However, normally though the man cannot have superiority over nature, under ordinary circumstances, he can do so with perfect work, perfect devotion and perfect knowledge, and once he does so, he can control the nature to achieve perfect salvation. To achieve salvation one has to surrender to himself to know that he is part of nature in spiritual parlance.25

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What is “Prakriti” or nature in spiritual dimension is the environment in our dimension. Therefore, any damage to environment damages mankind since they are a part of the environment that works continuously using men as its tool.

Further, all the Hindu scriptures attest to the belief that the creation, maintenance, and annihilation of the cosmos is completely up to the Supreme will. In the Gita, Lord Krishna says to Arjuna,

“Of all that is material and all that is spiritual in this world, know for certain that I am both its origin and dissolution. And is under me. By my will it is manifested again and again and by my will, it is annihilated at the end” (Gita 9:8).

Thus, for Hindus, both God and Prakriti (nature) are one and the same. Human beings have no special privilege or authority over other creatures. On the contrary, they have more obligations and duties.\(^{26}\)

Hindu religion, thus, emphasizes that, man has no control over nature and natural resources should be used sustainably without causing any damage to them.

2.2.3 Buddhism

The very core of Buddhist religion revolves around compassion, respect and tolerance for every human being and other creatures who share this planet. This is exemplified in a Metta-Suttam prayer.

“As the mother protects her child at the risk of her own life, so there should be mutual protection and goodwill, which is limitless among all

\(^{26}\) O.P. Dwivedi, *supra* note 4, p.56.
beings. Let limitless goodwill prevail in the whole world—above, below, all around, untarnished with any feeling of disharmony and discord.”

In Buddhist religion, monks are forbidden to cut down trees. Once a monk cut a tree’s main branch. The spirit of that tree complained to Buddha that by cutting down the branch, the monk has cut off his child’s arms. Then the monk was appropriately punished. Further, animals are not be harmed by Buddhists. While humans are higher beings, they are still parts of nature; human beings disregard or abuse of the laws of nature could result in disasters.

Buddhists regard survival of all species as an undeniable right because as co-inhabitants of this planet, other species have the same right for survival that human beings enjoy. Whatever an individual does, their Karma will follow them; because there is always a co-relationship between cause and effect. Consequently, any human endeavour, which is undertaken through ignorance or capriciousness, brings suffering and misery. On the other hand, a positive attitude causes happiness and peace. Buddhism is a religion of love, understanding, and compassion and is committed to the ideal of non-violence. As such, the religion attaches great importance to the conservation and protection of the environment. For example, the great Buddhist follower, Emperor Ashoka, preached and practised environmental care. The Emperor believed in the Buddhist concept that rivers, forest, grass, mountains, the sun, moon, and other planets ought to be

highly respected. Even insects were given the due care and punishment was given to those who did not follow his instructions.

Buddhism sprang from under the shadow of a tree, and as a result, trees have been given a venerated place in Buddhism. Siddharath, after a long day of penance, attained Enlightenment under a Peepal tree, which henceforth was called Bodhi tree. Buddha, after being enlightened, gave his first discourse under the Bodhi tree. Thus, tree is one of the mystic tokens of Buddhists Messiahship. This is because trees are regarded as bliss-bestower to mediators.

The great Buddha has laid down religious sanctions against the indiscriminate use of trees and plants. "Even the branch of the tree must never be cut where beneath the shade I have ever sheltered; taken rest or slept Malicious concept for companion is crime."28

Ashoka, on conversion to Buddhism, propagated the Buddha’s doctrine of non-violence and humanity as well as adopting it as state policy. That is why Ashokas pillars bear several inscriptions regarding non-violence and the planting of trees and other vegetation beneficial both to humanity and animals.

This message that all life is interconnected and caring-lays the foundation for the Buddhist ethics of nature. The Dalai Lama expressed this clearly in the following way.

“Have you ever wondered what a beautiful place this world would be if everyone would treat all animals and life in the same manner? And realise

28 O.P. Dwivedi, supra note 4, pp 58-59.
the fact that, whether it is more complex groups like human beings, or simpler groups such as animals, the feeling of pain and appreciation is common. All want to live and do not wish to die. As a Buddhist, I believe in the interdependence of all things, the inter relationship among the whole spectrum of plant and animal life, including the elements of nature which express themselves as mountains, valleys, rivers, sky and sunshine.\textsuperscript{29}

Thus, the entire Buddhist concept aims at non-violence with a social environment of love and affection where justice predominates. The term non-violence does not mean we should not fell a tree or kill an animal at all, but such act shall be committed only if it is absolutely necessary. In other sense exploitation for greed should be avoided while acting, since it is greed, alone which creates the violence. Similarly a society of self-sufficiency must be created with each member being self-reliant. Therefore, preservation of environment is automatically taken care of, if such parameters are considered, while modern development according to social need continues.

\textbf{2.2.4 Jainism}

Jainism places emphasis upon the indisputable cultural principle that one should refrain from the easily available acts, which are harmful to self-or/to, the others.\textsuperscript{30}

Jainism teaches that violence grows out of passion. Therefore, one, who has passion, causes self-injury. Whether injury is then caused to other living beings or

\begin{footnotesize}
\textsuperscript{29} G.K.Ghosh, \textit{supra} note 25, p.31.

\end{footnotesize}
not is immaterial. Thus, desisting from injury is accomplished by control of speech, control of thought, regulation of movement, care in taking and placing things, and examining food and drink. This is a vow which in taken by all Jains.

This vow is transgressed by beating, mutilating limbs, overburdening, and withholding food and drink, in the case of both human and animal beings. In addition to this main vow, there are others such as (i) truthfulness; (ii) chastity; (iii) limited possession; (iv) contemplation and benevolence towards all living beings; (v) charity (vi) austerity; (vii) feeding an ascetics and (viii) passionless death.31

It is worth mentioning that the Jains are recorded in the Indian and South-East Asian history of commerce and industry for their unexcelled adventures, and their preceptors have always made them aware of any type of professional violence and disharmony. As enunciated by Amrit Chandra Acharaya in Purusharthartha Siddhi Upaya,

“One should never think of hunting, victory, defeat, battle, adultery, etc., because they only lead to sin. Sinful advice should never be given to persons living upon art, trade, writing, agriculture, arts and crafts, service and industry. One should not without reason dig ground, uproot trees, trample lawns, etc., nor

31 O.P. Dwivedi, supra note 4, p.61.
pluck leaves, fruit and flower. One should not use without lawful excuse instruments of himsa, such as knife, poison, fire, plough, sword, bowl, etc".32

In Jain religion, trees and forests are closely and variously associated with the life of each of the twenty-four Tirthankaras (prophets). At the moment of conception the mother of the last Tirthankara Mahavira, dreams several things, which include a couple of flowery garlands and a pond covered with lotuses. Soon after his birth, he is taken by Indra, the head of the gods, for a lustral bath at Panduka-vana which is the uppermost circular forest at the mountain Meru; the lower three forests being downwards Saumansasa -Vana, Nandana-vana, and Bhadra-sala vana. Renouncing the household life he would at once proceed towards a dikshavana, where under a tree he would announce his asceticism. Embraced by omni-science he would symbolically be attended by eight things, which include a tree, called Ashoka, as well as a heavenly shower of flowers.

For the Jains, environmental harmony through spirituality ought to be followed by all. This can be done by adhering to three precepts. The right belief, the right knowledge, the right conduct. It also means believing in ahimsa, which is the basic foundation of the Jain way of life. Ahmisa relates to the deepest and noblest aspect of human nature. It is a part of that universal law which states that order comes from order in the same way as harm generates destruction, and peace flows only through peace. It also means that in the end, all things (living and

32 Amrit Chandra Acharya, Parushartha Siddhi Upaya, verses 141-146, quoted by Acharya Gopilal Amar in World Religions and Environment, see supra note 30, p.213.
non-living) are destined to the same end; so one should not feel superior to others. Hence all should be benevolent towards all living beings (including all living organisms), compassionate for the weak, tolerant of the insolvent, and joyful at the sight of the virtuous. This is the Jain way of bringing environmental harmony.33

2.2.5 Sikhism

Guru Nanak, founder of the Sikh religion, assigned divine attributes to nature. According to Sikhism, people should have respect for God's creation, and know the eternal truth regarding their place in the universe.34 God has not granted any special, absolute power to humans to control and dominate nature; on the other hand, the human race is an integral part of nature, linked to the rest of creation by indissoluble bonds.

God himself is the source of the birth, sustenance and eventual destruction of all living organism. It is he who created the universe through his divine will and with his word. But, it should be noted that God is submerged in creation, as is stated in the Adi Guru Granth Sahib.

"From primal truth emanated air, from air emanated water, from water emanated three worlds, and himself he merged with the creation"

The principal tenets in the Guru Granth Sahib, and within Sikhism, proclaims the glory of God in nature and the environment. Sikhs believe that, the universe, was created by an almighty God. He himself is the creator and the

33 O.P. Dwivedi, supra note 4, p.64.
34 The Sikh Statement on Nature, quoted in the New Road, Issue No.11, October – December 1989, p.3.
master of all forms in the universe, and he is responsible for all modes of nature and all elements in the world.

As their creator, the natural beauty found in all living things whether animals, birds, fish, belong to him and he alone is their master and without his hukum (order) nothing exists, changes or develops. A balance between all elements in nature is necessary for the continuation of the nature. Any disruption of the balance brings distress and disaster. Water as the primary element has great symbolic meaning for Sikhs. Thus for Sikhs, divinity in nature is foreordained. Further, Sikhism teaches that the natural environment and the survival of all life forms are closely linked into the rhythm of nature. The history of the Gurus contains many stories of their love and special relationship with the natural environment with animals, birds, vegetation, earth, rivers, mountains and the sky.35

2.2.6 Islam

In Islam, the Holy Quran and the divinely inspired word of prophet Muhammad establish the foundation and the rules for the conservation of nature.36 Al-Quran declared that Allah (Almighty) created the heaven and the earth. From the cloud, He released water on the earth. He made rivers and raised mountain. Then He erected embankments around the seas, and He planned beautiful gardens. Allah thus made the earth a resting place for human beings. Being merciful He

35 Ibid.
36 M.Rafiq and Muhammad Ajmal, Islam and the Present Ecological Crisis, in World Religions and Environment supra note 30, p.119.
created the cool breeze for human beings. Initiation and repetition of creation have been made by him. The destruction of nature is destruction of Ayaat of Allah.

The concept of creation of earth and nature by the Almighty is similar to Hindu mythology. Again it gives the message that Allah have been the lighthouse during the time of darkness. Islam ultimately warns that to cause damage to nature is defiance of the command of Allah.37

The Quranic message is one of unity, harmony, balance and order. The Quran stresses that nature’s laws must be observed, and that limits should not be exceeded. Man was created in the universe so that he should become a manifestation of divine attributes and should serve as mirror to reflect the beautiful image of God. Humanity has only the guardianship of God’s heaven and earth, and not outright ownership; and this guardianship has obligations. For example, water has been considered as purifying agent in Islam. As the Holy Quran states; “he set down from above rain water, pure and purifying”. Further, according to the Islamic view of the ideal environment, alteration to God’s creation is not permissible. The Quran in a suggestive and a meaningful verse says:

A picture of the garden, which is promised to those who are safeguarded (against evil). There in are rivers of water unpolluted and rivers of milk, whose

flavour changeth not, and river of clear run honey. Therein for them are all kinds of fruits with protection from their Evolver, nourisher and sustainer.

Punishment for disrupting the delicate balance of nature is found in the Quran and in the sayings of the prophet. The basic essence of punishment is accountability before God after death.

The Islamic ethic holds that humanity does have a choice in their interaction with nature. They have been given the intellect and the ability to reason between what is just and unjust, what is right and what is wrong. Accordingly, to do good and act justly is to mirror God's desire on earth, while to do wrong and to be unjust is to mirror Satan's desire on earth. People should realise that their stay on earth is only temporary. They all shall have to face the Day of Judgment. If they choose to pollute the environment and do harm to living creature for earthly comforts, the believers in the Holy Quran will face an obvious truth; a hell from which there will be no escape, as well as the denial of a place in heaven in the life thereafter.

Finally, in the light of Islam, the riches of the earth are a common heritage. Everyone may benefit from them, make them productive and use them for their well-being and improvement. Therefore, man's quest for progress and development must not be detrimental to the environment; instead it should ensure conservation. Any disorder leading to pollution, deterioration or harmful alteration
to the environment is considered in Islam as fasad; it is the duty of all Muslims to respect the God who created environment.\textsuperscript{38}

Regarding the conservation of the environment, in Islam, it is believed that all the individual components of the environment were created by God and that all living things were created with different functions that were carefully measured and meticulously balanced by the almighty creator. Secondly, the component parts of nature continuously praise their creator. Humans may not be able to understand the form or nature of this praise, but the fact is that the Quran describes it is an additional reason for environmental preservation.

Thirdly, all the laws of nature are the laws made by the creator and based on the concept of absolute continuity of existence. Although God may sometimes wish otherwise, events occur according to the natural law of God, and the human beings must accept this as the will of the creator. Attempts to break the law of God must be prevented.

Fourthly, the Quran acknowledges that human kind is not the only community to live in this world — 'There is not an animal in the earth, nor a flying creature flying on two wings, but there are peoples like unto you'. This means that while human may currently have the upper hand over the other 'peoples', these other creatures are beings, and like us, are worthy of respect and protection.

Fifthly, the environment is not in the service of the present generation alone. Rather, it is the gift of God to all ages past, present and future.

\textsuperscript{38} O.P. Dwivedi, \textit{supra note 4}, pp 52-53.
Finally, no other creature is able to perform the task of protecting the environment, since God has entrusted this duty on human beings.

Thus Islam permits the use of the natural environment, but this utilisation should not involve unnecessary destruction. Humans are not the owners, but the maintainers of the due balance and measure which God provided for them and for the animals that live with them.39

2.2.7 Christianity

In Christianity, in both the New Testament and the Old Testament, the concept of nature and the rules governing man’s responsibility to nature are almost same. Although certain verses from Genesis have been interpreted as giving the human beings dominion and absolute control over nature, there are places where man’s responsibility has been clearly defined. For example, Genesis (2:15) says, ‘And the Lord looks the man and put him into the Garden of Eden to dress it and kept it’. The word “dress” has been interpreted as a duty of man to manage the environment and the word “keep” has been interpreted as the second duty to protect it from harm. Further, the scripture also clearly establishes God as the sole owner, while humanity is actively responsible for the law of the world.

The New Testament provides instructions on stewardship and the consequences of not carrying out the stewardship role in accordance with scriptural teachings. The key instruction is that man must be faithful to use and put to work, which God has entrusted to him. Human beings are accountable for

39 Ibid.
the stewardship role in Christianity. Thus, the Christian religion tradition has established a working and harmonious relationship between humanity and the environment, which encourages respect for nature.

One of the first assumptions of the Bible is that God is the creator of the whole universe; and that the entire world is God's creation. Its continuity and presentation are completely dependent upon God's mercy. Similarly, human beings who are a part of God's creation are also dependent upon him for their lives and survival. In this respect, the Bible does not make a distinction between the two categories; "the world of nature", and "humanity". Creation unites both humanity and the world of nature; further, it brings in the Divine as an integral part of this system. Divine life is actively manifested in and through the created world and any failure to maintain harmony with nature may alienate man from his creator and also from nature. So all human effort in the world must lead to a mutual enrichment of man and creatures. Christianity does not teach man to be conservative enough not to develop himself. It teaches him to have development with a clear objective of goodness to all. Man must not forget that he is only trustee to God's property, since he cannot be owner of any material in this kingdom, God being the real creator. Thus, the true spirit of Christianity lies in environmental balance with objective of goodness to all.

41 G.K.Ghosh, supra note 25, p.46.
The above discussion gives an understanding about how different religious traditions treat the environment. All the religions, which have been cited above, preach about man's harmony with nature. Protection of environment was not an affair limited to an individual or individuals, but the society as a whole accepted its duty to protect the environment. The Dharma of environment was to sustain and ensure progress and welfare of all. The inner urge of the individuals to follow the set norms of society, motivated them to allow the natural objects remain in the natural state. Apart from motivation, there was the fear of punishment. There were efforts not just to punish the culprit but to balance the ecosystem. The knowledge, the motivation and sanction were the basic postulates, which regulated the eco-system. Thus the religions controlled the activities of individual and all these religions in one or the other way have suggested that maintenance of environment is basically a material management bringing entire situation to a balanced state while meeting the demand as required. Since things have changed considerably, so also the situation. Human beings have to have material management according to today's need to bring a balanced state. That means human beings need modern factories but they should also insist for efficient control to bring a balanced state.

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2.3 Evolution and the Development of the Concept of ‘Sustainable Development’

As civilisation advanced, there have been great deal of change and increase in human activities. Man developed in him a sense that he was a supremo of the planet. Gratitude towards environment, which was taught by the religions gradually withered and proved to be inefficient and inadequate to deal with the growing activity. Science and technology crept into civilisation and they became the guiding forces of activities of mankind.44

With the march of imperialism, the notion of self-possession or acquisition became more organised. The spreading of colonialism created new patterns of ruling. Man cherished a lust to rule territories other than his motherland on alien land. Rulers had no inclination to maintain bondage with environment. Being intruders, to rule on the land, they never had any sense of gratitude towards environment. Colonial rulers cultivated ruthless intelligence to exploit environment to the maximum extent possible for their material gain. Further, as a legacy of imperialism and colonialism, while conceiving a sense of ownership over environment, man held environment as a property conveniently available at his disposal for consumption. With that sense, he began his material development. Community regulated its conduct with a notion that the environment had to serve

44 Christopher key Chappel and Mary Evelyn Tucker, supra note 24, p.20.
the needs and wishes of mankind. Thus began an era of consumer environmentalism.45

Economic development was based on modern technology, the factory system of production and industrialisation - path of development initially followed by the western countries, which ultimately resulted in an economic boom, leading to an enriched material life in the west. It was a model of development that was prescribed by the western countries for the less developed ones. The predominant underlying belief was that the underdeveloped countries would eventually catch up with the industrialised countries, provided they emulate the economic and social systems of the west.

The assumptions were, however, proved wrong. Economic growth occurred, but it was accompanied by a widened gulf between the countries in the North and the south, and it also promoted economic disparities between the rich and the poor sections within societies.46

Moreover, the reckless pursuit of industrialisation and the use of resource exploitative modern technology for 'development' have resulted in environmental deterioration to such an extent that the very existence of all the living species is endangered. There is a general agreement that the economic expansion, especially during the post-war period, has had alarming consequences for the global

45 Justice Ashok B. Desai, supra note 21, p.7.
environment.Industrialisation required a continuous supply of energy and materials from nature. It led to the constant generation of wastes that resulted from industrial production and consumption. Loss of forests, extinction of animal and plant species, depletion of the ozone layer, air, water and soil pollution, loss of marine life and bio-diversity etc have occurred at an alarming rate and have posed threat to the very survival of life on this planet. This awareness has ultimately led to the universal feeling that something must be done to halt the environmental crisis in order to sustain 'life' on the earth and to pass on the planet to future generations in atleast as good an ecological state man has found it. Only recently it is realised more and more that environment and development are only two sides of the same coin and development efforts cannot be sustained without a deep concern for conservation of natural resources. It is also increasingly acknowledged that humans constitute only a part of the great web of life and the well being of the human beings and well being of non-human being life is closely interlinked. By and large enlightened opinion converges today on the fact that

an environment unsuitable for birds and animals would also be unsuitable for humans.\textsuperscript{51}

This view gathered strength after the first International Conference on Environment held in Stockholm, Sweden, in the year 1972. This Conference evolved the principles and plan for controlling and regulating environment degradation. Institutional and financial arrangements were also envisaged for achieving that purpose. The United Nations General Assembly passed a Resolution on December 15, 1972 emphasising the need of active co-operation among the states in the field of human environment. The resolution has designated June 5 as the World Environment day and has urged governments and organisations in the United Nations system to undertake on that date every year worldwide activities re-affirming their concern for the preservation and enhancement of the environment. On the same day another Resolution was passed which provided for institutional and financial arrangements for international environmental co-operation. Among others, provisions were made for establishing Governing Council of Environmental Programme (UNEP) having global jurisdiction with Nairobi (Kenya) as its headquarters, an Environmental Secretariat and establishing Environmental Fund. Some of the recommendations of the First Conference were regarding long-term and short-term plans at the regional, sub-

regional and sectoral levels particularly in the field of environment relating to the advancement of developing countries.\textsuperscript{52}

The Stockholm Conference eventually opted for a non-binding declaration of principles, reflecting commitments of a political and moral, rather than legal nature, a document 'embodying the aspirations of the world's people for a better environment', rather than imposing specific obligations on governments in order to fulfil those aspirations. Yet, notwithstanding its non-binding character, the Stockholm Declaration is generally regarded as the foundation of modern international environmental law. Despite its ambiguities, the Stockholm Declaration eventually acquired not only moral and political value but some of the principles laid down in it are now considered as part and parcel of the general international law and as binding on governments independent of their specific consent.\textsuperscript{53} In particular, principal 21\textsuperscript{54} have evolved into hard law.\textsuperscript{55}


\textsuperscript{53} Environmental Law, Distance Education Department, Bangalore: National Law School of India University, p.163.

\textsuperscript{54} Principle 21 maintains that 'States have, in accordance with the Charter of the United Nations and the Principles of International Law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction'.

\textsuperscript{55} In international law, a distinction is often made between hard law and soft law. Hard international law generally refers agreements or principles that are directly enforceable by a national or international body. Soft international law refers to agreements or principles that are meant to influence individual nations to respect certain norms or incorporate them into national law. Although these agreements sometimes oblige countries to adopt implementing legislation, they are not usually enforceable on their own in a Court.
Moreover the Stockholm Declaration has served as a basis for the subsequent development of international environmental law in the form of numerous bilateral and multilateral conventions and other legally binding instruments.56

After the Stockholm session there have been the U.N. habitate Conference on Human settlements in Vancouver's, British Columbia in 1976 and the World Water Conference in Mardel Plata, Argentina in 1977. Both these Conferences called upon the U.N. to establish a decade long programme with a goal of providing clean drinking water and sanitation for all. Consequently, the Decade was launched at one-day session of assembly on November 10, 1980. UNESCO in collaboration with the U.N. Environment programme (UNEP) organised in October 1977 in Soviet Georgia a major inter-governmental Conference on environmental education. This Conference was attended by nearly 400 delegates from 74 countries. UNEP Executive Director warned that, “Environmental Education is now a matter of life and death”. He cautioned that the problem of the environment were ‘jeopardising the development of mankind”.57 A realisation grew that infinite growth was impossible with finite resources.58


56 Supra note 53, p.163.
57 G.S.Bajwa, M.S.Bains, supra note 52, p.30.
58 S.A. Salunkhe, supra note 4, p.70.
for Conservation of Nature and Natural Resources (IUCN), the World Wildlife fund (WWF) and UNEP. According to the strategy's definition, "for development to be sustainable it must take account of social and ecological factors as well as economic ones; of the living and non-living resources base; and of the long term as well as the short term advantages and disadvantages of alternative actions".59

In 1983, the U.N. set up the World Commission on Environment and Development (WCED) headed by GroHarlem Bruntland, then Prime Minister of Norway, as an independent body. Its objective was to re examine the critical environment and development problems on the planet and to formulate realistic proposals to solve them, and to ensure that human progress will be sustained through development without bankrupting the resources of the further generations. The WCED published its Report titled, 'Our Common Future' in the year 1987. This Report presented the first official definition of the concept of 'sustainable development', which still continues to dominate the discourse on environment and development at the national and international levels. Therefore, the definition, it's meaning and the requirements for the 'sustainable development' as mentioned in the report have been dealt with below.60

The concept of sustainable development in 'Our Common Future' is defined as 'sustainable development is development that meets the needs of the

60 The Text relating to the Commission's definitions, meanings and requirements of sustainable development inserted within quotes in this part of the paper is adapted from the Commission's report reproduced under the title 'towards sustainable development' in Science Age, August 1987, pp 30-38.
present without compromising the ability of future generations to meet their own needs'. It contains within it two key concepts:

a) the concept of 'needs' in particular, the essential needs of world's poor, to which overriding priority should be given; and

b) the idea of limitations imposed by the state of technology and social origination on the environment's ability to meet present and future needs.

In the words of the Report, development involves a progressive transformation of the economy and society. A development that is sustainable in a physical sense could theoretically be pursued even in a rigid social and political setting. But physical sustainability cannot be secured unless development policies pay attention to such considerations as, changes in access to resources and in the distribution of costs and benefits. Even the narrow notion of physical sustainability implies a concern for social equity between generations, a concern that must logically be extended to equity within each generation.61

It is further highlighted in the Report that sustainable development requires meeting the basic needs of all and extending to all the opportunity to satisfy their aspirations for better life... the promotion of values that encourage consumption standards that are within the bounds of the ecologically possible and to which all can reasonably aspire ... that societies meet human needs both by increasing productive potential and by ensuring equitable opportunities for all....

demographic developments are in harmony with the changing productive potential

of the ecosystem... at a minimum... development must not endanger the natural systems that support life on earth; the atmosphere, the waters, the soils, and the living beings... the world must ensure equitable access to the constrained resource and reorient technological efforts to relieve the pressure... that the rate of depletion of non-renewable resources should foreclose as few future options as possible... the conservation of plant and animal species... that the adverse impacts on type and quality of air, water and other natural elements are minimised so as to sustain the ecosystem's overall integrity. It also added that, in essence, sustainable development is a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are all in harmony and enhance both current and future potential to meet human needs and aspirations.62

The Report also recommends that to move on to the path of sustainable development, all nations are required, to bring about certain policy changes. The ‘critical objectives for environment and development policies that follow from the concept of sustainable development include’:

(i) reviving growth;
(ii) changing the quality of growth;
(iii) meeting essential needs for jobs, food, energy, water, and sanitation;
(iv) ensuring sustainable level of population;
(v) conserving and enhancing the resource base; and

(vi) merging environment and economics in decision making.63

The Report notes that in its broadest sense, the strategy for sustainable development aims to promote harmony among human beings and between humanity and nature. In the specific context of the development and environment..., the pursuit of sustainable development requires:

(i) a political system that secures effective citizen participation in the decision making;

(ii) an economic system that is able to generate surpluses and technical knowledge on a self-reliant and sustained basis;

(iii) a social system that provides for solutions of the tensions arising from the disharmonious development;

(iv) a production system that respects the obligation to preserve the ecological base for development;

(v) a technological system that can search continuously for new sections;

(vi) an international system that fosters sustainable patterns of trade and finance; and

(vii) an administrative system that is flexible and has the capacity for self-correcting.

These requirements are more in the nature of goal that should underlie national and international action on development.64

63 Ibid., p.32.
64 Id, p.38.
Thus 'Our Common Future' for the first time,

(i) offers official definition of sustainable development;

(ii) suggests methods at national and international levels to curb environmental crisis and;

(iii) brings a change in conventional thinking regarding the notion of development.

In 1992, representatives of over 150 countries met in Rio de Janeiro, Brazil, for the United Nations Conference on Environment and Development (UNCED), popularly known as the 'Earth Summit'. Not only was it the biggest ever UN Conference at Summit level, it also tackled the fundamental issues critical to mankind's survival on this planet. The Summit brought together more than 100 heads of states and ministers and officials from 172 governments as well as several thousand members of NGOs and more than 800 media representatives. Earth Summit made a history since never before world leaders so forcefully declared that environmental protection and sustainable development are two sides of the same coin, requiring interconnected solutions. The Summit's most important achievement was the recognition that environmental protection and economic development require global solutions cutting across national barriers of economic, or social systems and even ideologies. Yet another achievement was the agreement that such problems can be handled only through effective networking and involving people in implementation. The Summit not only made sustainable development a household concept around the world but also accepted
that it is fair and equitable for all countries to share the business of environmental protection. It was realised that the costs of inaction far outweigh the costs of ensuring sustainable development, and the entire world community is pledged to reinforce harmony between nature and human activity.65

The Summit produced the “The Earth Charter”, a Code of Conduct or plan of action for the 21st century i.e Agenda 21, and local Agenda 21 (LA21); and interpretation for local issues, the Climate Convention, a convention to control climate change due to atmospheric pollution and the Bio-diversity convention; and a Convention to promote the conservation of bio-diversity. The Rio Declaration also sets out the framework of principles of conservation and use of forests and established important steps that needed to ensure an environmentally stable and sustainable planet.66

At the international level, nation-states are trying to go ahead with the notion of sustainable development. They are striving to find economic and political solutions. Attempts to take note of progress made by the nations in the directions of sustainable development are also underway. For instance, in 1997, Rio+5 was held in New York to assess progress. As a further step, the World Summit on Sustainable Development (WSSD) was held at Johannesburg (26th August - 4th September 2002). It was recognised as Rio+10. The agenda for this international meet was much larger than only to review the progress made in the

65 Col VRK Prasad, supra note 10, p.62.
66 S.A. Salunkhe, supra note 4, p.74.
direction of sustainable development in the 10 years since Rio. It included every possible issue related to environment and development; energy, water and sanitation, health, forests, consumption patterns, poverty, trade, globalisation etc.

However the immediate ‘reactions to the Johannesburg agreements have been of deep disappointment’. The Johannesburg Summit (WSSD) as a whole is perceived as a failure. The Summit ended with a political declaration and a plan of action, but it has been noted that, the plan of action contains rather weak commitments. Voluntary accords (such as establishment of new solidarity fund aid poverty reduction) and promises without timetables (such as promotion of renewable energy), and nothing radically new.67

From the above discussion, it is seen that, the years following the 1972 Stockholm Conference on Human Environment have witnessed steady rise in the number of international environmental agreements. These agreements take the form of conventions and protection at the global level which include protection of forests, wildlife, endangered species, ozone layer, biodiversity or for the protection against acid rain, marine pollution, hazardous wastes, global warming and so on. However, the application of the concept of sustainable development is getting limited to paper only, rarely translated to actions. It is high time that global community start taking action to practically move towards and apply sustainable development so that this earth becomes a clean world, to the benefit of future generations.

2.4 Constitutional Imperatives for Sustainable Development and Control of Environmental Pollution

The Constitution of India 1950 did not have any specific provision to deal with environmental pollution. Indirectly one could locate it in Art.47, which reads:

"The state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties..."\(^{68}\)

After the Stockholm Declaration, to comply with its provisions and principles the Government of India, the Constitution 42\(^{nd}\) Amendment Act, 1976 made the express provision for the protection and promotion of environment, by the introduction of Article 48-A and 51-A (g) which form the part of Directive Principles of State Policy and Fundamental Duties respectively.

Article 48-A runs as under:

"The State shall endeavour to protect and improve environment and safeguard the forest and wildlife of the country".

Article 51-A (g) states that:

"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".

Thus the constitution makes two-fold provisions. On the one hand, it gives directive to the State for the protection and improvement of environment and on

\(^{68}\) Art.47 of Indian Constitution
the other, it casts a duty on every citizen to help in the preservation of natural environment.

As a result of the 42\textsuperscript{nd} Amendment to the Constitution, the directive principles categorically asserted the need for a healthy environment and thus indicated the do’s and don’ts needed for a healthy environment. The necessary implication was that the courts have a duty to relentlessly enforce this law. This was an open invitation to constitutionalise the problems of management of the environment. This opened the doors of higher courts to intervene in enforcement of environmental legislation. A separate forum to force the state to take required measures for environmental protection was opened. There has been a spate of judicial opinions from higher courts that have formally put the environmental problems on a constitutional pedestal.\textsuperscript{69}

In Municipal Council, Ratlam v. Vardichand,\textsuperscript{70} the Municipal Council of Ratlam failed to take steps to maintain roads in a particular locality in safe and sanitary conditions. The sole excuse of the Municipal Board was that it had no money to maintain the road. Krishna Iyer, J. stated that, “there was an urgent need to focus on the ordinary man”. His Lordship specifically read into the situation a constitutional directive for the Court and observed ‘where directive principles have found statutory expression in Do’s and Don’ts the court will not sit idle and allow Municipal government to become a statutory mockery. The law will


\textsuperscript{70} (1980) 4 SCC 162.
relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice”.

The opinion expressed in Ratlam reveals a paradigm change in the role of the courts. Ordinarily and particularly before Ratlam the role of the courts was considered reactive. They were specifically to dispense justice where rights have been denied. Iyer J., added a protective dimension by stating that where the directive principles of the Constitution have spelled out the desired acts or omissions, the courts are under a duty to ‘relentlessly’ enforce the law. This formulation has emboldened the efforts at environmental protection. It reinforced the idea that judicial power can command obedience from reluctant bureaucracies.71

In Calcutta Taj hotel72 case, a group of citizens challenged the location of the hotel on the ground that the construction would interfere with the flight path of migratory birds. Upholding the argument of the petitioners, the Court referred to Article 48-A which enshrined the directive principle to protect and improve the environment. The court also referred to Article 51-A (g) which proclaims it to be fundamental duty of every citizen of India to protect and improve natural environment.

71 Javaid Talib, supra note 69, p.523.
72 Sachidananda Pandey v. State of West Bengal, AIR 1987 SC (1109).
Indeed, the Supreme Court has held:

"whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Art.48A of the Constitution... and Art.51-A (g)... when the Court is called upon to give effect to the Directive Principle and the Fundamental Duty, the Court is not to shrug its shoulder and say that priorities are a matter of policy and so it is a matter of policy-making authority. The least the Court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much will depend on the circumstances of the case. The Court may always give necessary directions". 73

Similarly, the Andhra Pradesh High Court has interpreted Art.48-A as imposing 'an obligation' on the government, including Courts, to protect the environment.74

India's rich cultural heritage is at times endangered by large development projects and shortsighted locational decisions. For example, emissions by industry which were permitted to come up in and around Agra threatened Taj Mahal, a precious monument protected under the Ancient Monuments and Archaeological Sites and Remains Act of 1958 and a World Heritage Site recognised by the 1972 UNESCO convention for the protection of the World Cultural and Natural

73 Ibid.
74 T. Damodar Rao v. The Special officer, Mupicipal Corporation of Hyderabad, AIR 1987 AP 171, 181. In this case the Court had to settle the question whether part of area embarked under a development plan for recreational purposes could be acquired and used by two state agencies for construction of residential houses. The Court held that the attempt to build houses in such an open space meant for recreational park was contrary to the law.
Heritage.\textsuperscript{75} In such situation the Court may be guided by the Directive Principle in Article 49, which casts a duty on the State 'to protect every monument or place or object of artistic or historic interest declared by or under law by Parliament to be of national importance, from spoilation, disfigurement, destruction, removal, disposal or export as the case may be'.

2.4.1 Fundamental Right to Wholesome Environment

Part III of the Constitution, which deals with Fundamental Rights, does not expressly guarantee right to a wholesome environment. However, this right has been \textit{sub-silentio} recognised by the Supreme Court in a catena of cases.

Recognition by the Court of fundamental right to wholesome environment is a product of the process of widening the scope of Article 21 of the Constitution, which began with Maneka Gandhi:\textsuperscript{76}

In \textit{Maneka Gandhi}, a liberal view of the scope of Article 21 was taken, so that Article 21 became the repository of all rights, which are necessary for the enjoyment of life. The liberal reading of Article 21 opened the way for incorporation of the right to a wholesome environment within the protection of the Constitution.\textsuperscript{77} Bhagwati J. delivering the majority judgement in \textit{Maneka Gandhi} observed:

"It is indeed difficult to see on what principle we can refuse to give its plain natural meaning to the expression 'personal liberty' as used in

\textsuperscript{75} M.C.Mehta \textit{v. Union of India (Taj Trapezium case)}, 1998 (2) Scale 7 (SP). [268].
\textsuperscript{76} Maneka Gandhi \textit{v. UOI}, AIR 1978 SC 597 at 621.
\textsuperscript{77} Javaid Talib, \textit{supra} note 69, p.524.
Article 21 and read it in a narrow and restricted sense so as to exclude those attributes of personal liberty which are specifically dealt with in Article 19. We do not think that this would be a correct way of interpreting the provisions of the Constitution conferring fundamental rights. The attempt of the Court should be to expand the reach and ambit of fundamental rights rather than attenuate their meaning and content by a process of judicial construction”.78

The right to wholesome environment was extended in Rural Litigation Entitlement Kendra, Dehradun v. State of U.P.79 In this case, the issue was in respect of the closure of certain limestone quarries in and around the town of Mussorie. The Court itself noted that the case was the first of its kind in the country involving issues relating to environment and ecological balance and the questions arising for consideration were of grave moment and significance. The Court also noted that the situation involved conflict between development and conservation. It emphasised the need for reconciling the two in the larger interest of the country. It was further held that, ‘there is need for safeguarding the right of the people to live in healthy environment with minimal disturbance of ecological balance and without hazard to them or their cattle, homes and agricultural land and undue alteration of air water and environment. Accordingly the Court ordered for closing down of mining operations. This decision emphasises the principle of sustainable development.

78 Supra note 76.
79 AIR 1988 SC 2187.
In *Subhas Kumar v. State of Bihar*,\(^{80}\) the Court held that the right to life includes the right to enjoy unpolluted air and water. If anything endangers or impairs the quality of life in derogation of law, a citizen has a right to move the Supreme Court under Article 32 of the Constitution.

Expanding upon this theme in a town planning case, *Virender Gaur v. State of Haryana*,\(^{81}\) the Court observed:

"Article 21 protects right to life as a fundamental right. Enjoyment of life... including (the right to live) with human dignity encompasses within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental, ecological, air, water pollution etc., should be regarded as amounting to violation of Art.21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a human and healthy environment.... There is a constitutional imperative on the State Government and Municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both man made and the natural environment".\(^{82}\)

In *T.Damodar Rao v. The Special Officer, Municipal Corporation of Hyderabad*,\(^{83}\) while considering a writ petition on whether part of area earmarked under a development plan for recreational purposes could be acquired by two state

\(^{80}\) AIR 1991 SC 420.

\(^{81}\) 1995 (2) SCC 577.

\(^{82}\) Ibid, at 580-1.

\(^{83}\) AIR 1987 AP 171.
agencies for construction of residential house, the Andhra Pradesh High Court held that it would be reasonable to hold that the enjoyment of life and its attainment and fulfilment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature's gifts without which life could not be enjoyed. There could be no reason why practice of violent extinguishments of life should alone be regarded as violative of Article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoliation should also be regarded as amounting to violation of Article 21 of the Constitution...

It, therefore, became legitimate duty of courts as the enforcing organs of constitutional objectives to forbid all action of the state and citizen from upsetting environmental balance. It must, therefore, be held that the attempt of the Life Insurance Corporation of India and Income Tax Department to build houses in that area was contrary to law and also contrary to Article 21 of the Constitution.84

In L.K. Koolwal v. State of Rajasthan,85 the citizens of Jaipur moved the Rajasthan High Court in the matter of sanitation of Jaipur city. It was contended that sanitation problem is acute in Jaipur, which is hazardous to the life of the citizens of the Jaipur, and the municipality of Rajasthan had failed to solve the problems of sanitation. The Court observed that, "right and duty co-exist. There can not be any right without any duty and there can not be any duty without any

84 Ibid, at 181.
right”. From this premise, the court proceeded to argue that since citizens have a fundamental duty under Article 58-A, Article 21 must be read to include the right to wholesome environment.

This judicial trend is further supported in *Attakoya Thangal v. Union of India.* The case relates to a plant for pumping up ground water for the purpose of supplying potable water in a group of islands in the Arabian Sea.

The Kerala High Court directed the Union of India, under whose administration the island territories come, to have a deeper scientific study into the question, before the scheme was given a go by. Justice Shankaran Nair, held that the right to life in Article 21 contains the right to have clean water. He observed, the right to sweet water and the right to free air, are attributes of the right to life, for these are the basic elements which sustain the life.

In *M.C.Mehta v. Union of India,* the Supreme Court found an opportunity to examine the potentiality of the fundamental right to live so as to include the right to live in a clean environment. The *M.C. Mehta,* is a case specifically dealing with an activity threatening the life of workers and of public in general. The Court pointed out that the case raised, ‘some seminal questions concerning the true scope and ambit of Articles 21 and 32 of the Constitution’.

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86 1990 KLT 580.
87 1990 KLT 590.
88 AIR 1987 SC 965.
The Court carved out the right to live in healthy environment through reading Article 21. The emergence of this right required the State to secure this right. In this wavelength the Court authorised the State to place restriction on carrying on of hazardous industrial activities. The Supreme Court, further, emphasised the need to locate hazardous industries to safer place and insisted on minimisation of risk to the community by maximisation of safety requirement.90

In *M.C.Mehta v. Kamal Nath*,91 Sagir Ahmed, J., observed as follows:

"In order to protect 'life', in order to protect 'environment', and in order to protect 'air, water and soil' from pollution, this Court, through its various judgments has given effect to the rights available, to the citizens and person alike, under Article 21 of the Constitution".

It was clarified by the Supreme Court that any disturbance of the basic environmental elements, namely, air, water and soil, which are necessary for "life", would be hazardous to "life" within the meaning of Article 21 of the Constitution.

In *M.C.Mehta v. Union of India*,92 Justice Singh, declared in unequivocal terms that the closure of tanneries may bring unemployment and loss of revenue to the State, ‘but life, health and ecology have greater importance for the people’.

90 Id, p.965, 981.
91 1997 (1) SCC 388.
92 1992 Supp (2) SCC 637.
The above decisions make it amply clear that, the courts have recognised, through Article 21, that, 'every person enjoys right to whole some environment'. The Supreme Court has rightly observed that,

"The expression “life” assured in Article 21 of the Constitution does not connote mere animal existence of the continued drudgery through life. It has much wider meaning, which includes right to livelihood, better standards of life, hygienic conditions in workplace and leisure".93

Thus through various pronouncements the High Courts and Supreme Court have nourished the tender plant of the right to a clean environment and thus it gets firm grip in the Indian soil.94

2.4.2 Right to Sustainable Development

The most remarkable contribution of the Supreme Court has been the adoption of the right to sustainable development as a hard-core principle of environment law in India. In a series of cases which may not be large in number but which have much economic significance, the Supreme Court had to consider the application of the principle of sustainable development. All these cases involved industries generating sizeable revenues and significantly contributing to the industrial development of the country. However these cases also show that the industries hardly cared for the environment and they were not only significant polluters but were also persistent. Repeatedly the environmental agencies

93 Consumer Education & Research Centre v. UOI, AIR 1995 SC 922.
implored upon them to rectify their pollutant emission and effluents but the industries hardly cared. Even the directions issued by the High Courts and Supreme Court were ignored. In a sense, the behavioural pattern of the industry was irresponsible. The situation seemed to be destined to boom, for the industry hardly cared and the environmental agencies could not really bring their weight to bear upon the industries. The industries classically represent the case of too powerful defendants who continue to flex their muscles totally ignoring the degradation caused by the industries. Such muscle flexing is common in soft states where the majesty of law is often compromised by considerations of status and wealth.95

The first case involving claims to sustainable development was the *Bichhri Village case.*96 In this case, five industries were producing chemicals and ‘H’ acid, a highly toxic chemical in Bichhari village in Udaipur district. ‘H’ acid was meant exclusively for exports. The acid was highly toxic and effluents from it posed grave danger to land in the surrounding areas. The effluents poisoned the earth, the water and everything else. The industries produced 25 hundred metric tonnes of highly toxic sludge. The wastewaters were allowed to flow out in the open and the toxic sludge was thrown in the open, in and around the complex. The toxic substances percolated deep into the earth polluting the subterranean supply of water. The water in the well and the streams became unsuitable for

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95 Javaid Talib, *supra* note 69, p.532.
human consumption as well as irrigation. Finally in the year 1989, the District Magistrate ordered for closing of the industries. Yet nothing was done to remove the sludge. Finally, the matter came up before the Supreme Court. The Supreme Court from time to time issued various directions for the supply of drinking water to the affected villages and appropriate steps to be taken for transportation, treatment and safe storage of the sludge. The court also constituted committee of experts to assess how much the sludge has been removed and suggest remedies for transportation and safe storage.

Apart from issuing these directions, the Supreme Court also ordered for recovery of amount (Rs.4 crores) for remedial measures and reversing the ecology of the area. The court declared that, looking to widespread ramifications and gravity of the problem remediation of the damaged environment is a part of the process of 'sustainable development'.

In *M.C.Mehta v. Union of India*, there was a major leakage of oleum gas from a plant, which was producing caustic soda and chlorine. The plant in question was a subsidiary of Shriram food and fertiliser industry, which was a subsidiary of Delhi Cloth Mills Ltd, in Delhi. The leakage affected large number of people both amongst workmen and the public. The leakage occurred due to the bursting of a tank containing oleum gas as a result of the collapse of the structure on which it was mounted. Chief Justice Bhagwati held that:

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"an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which is undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to say that it had taken all reasonable care and that harm occurred without negligence on its part." 98

Further, it was explained that such industry must be held strictly and absolutely liable for causing harm as a part of social cost for carrying on hazardous or inherently dangerous activity.99

The Court observed that:

"The measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident for carrying on of the hazardous or inherently dangerous activity by the enterprise".100

The Court directed the Shriram industry to deposit Rs.20 lakhs and to furnish a bank guarantee for Rs.15 lakhs for payment of compensation claim of

98 Ibid, 1086.
99 For the first time, in this case, the theory of strict liability, which was propounded in Rylands v. Fletcher, was rejected and the principle of absolute liability was evolved.
100 Supra note 97, p.1099.
victims of oleum gas if there was any escape of chlorine gas within three years from the date of order resulting in death or injury to any workman or any person living in the vicinity.\textsuperscript{101}

The above observations about the basis of liability of the Supreme Court were quoted with approval by Justice Ranganath Mishra in the case of \textit{Union Carbide Corporation v. Union of India},\textsuperscript{102} (Bhopal Gas Leakage Disaster case). In this case, there was leakage of Methyl Isocyanate gas from Union Carbide Corporation at Bhopal, due to which thousands of people died and many affected. In this case also the Court upheld the principle of absolute liability. The Court held that once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact that he took reasonable care while carrying on his activity.

In both the above cases, the Court did not refer in terms to the ideals of sustainable development. Nevertheless the situation in these particular cases classically represents the conflict between the claims of development and the claims of sustainable environment. Infact Jeevan Reddi, J. portrayed the conflict in the opening words of his opinion, which are worth reproducing.\textsuperscript{103}

"It highlights the disregards, nay, contempt for law and lawful authorities on the part of some among the emerging breed of entrepreneurs, taking advantage, 

\begin{itemize}
\item\textsuperscript{101} \textit{Ibid.}
\item\textsuperscript{102} AIR 1992 SC 248.
\item\textsuperscript{103} Javaid Talib, supra note 69, p.533.
\end{itemize}
as they do of the country’s need for industrialisation and export earnings. Pursuit of profit has absolutely drained them of any feeling for fellow human beings for that matter, for anything else. And the law seems to have been helpless. It is such instances, which have led many people in this country to believe that disregard of law pays and the consequences of such disregard will never be visited upon them particularly if they are men with means”.

In *Vellore citizens Welfare Forum v. Union of India*, where the tanneries situated in Tamil Nadu were reluctant to provide for treatment of effluents, the Court felt that, though the industry was earning foreign exchange and providing employment, contributing to development, it had no right to destroy the ecology, degrade the environment and pose a health hazard.

The Court held that ‘sustainable development’ is the answer to the problem of conflict between development and ecology. Sustainable development was a balancing concept and had been accepted as a part of the customary international law; and thus the concept was accepted as a part of the law of the land in India.

In *A.P. Pollution Control Board II v. Prof. M.V.Nayudu*, the Supreme Court considered the concept of sustainable development in depth. The fact involved the question of permission for establishment of industry within 10 k.m. of the two big water reservoirs, the Himayat Sagar and Osman Sagar, serving the

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104 *Supra* note 96, p.217.
105 AIR 1996 SC 2715.
106 *Ibid*.
twin cities of Hyderabad and Secunderabad. Jagannadha Rao J., Speaking for the Court, adopted the principle of sustainable development. It was asserted that in today’s emerging jurisprudence, environmental rights were described as third generation rights. The United Nations General Assembly had declared the right to sustainable development as an inalienable human right. Rio Conference was also referred, which adopted principle 1, the principle that every human being was entitled to a healthy and productive life in harmony with nature. The Judge went on to refer to the Earth Summit meeting of 1997, which reflected this principle. He also referred to a decision of the European Court of Justice in Portugal v. F.C. Council,108 which emphasised the need to promote sustainable development while taking account of the environment. The Judge further referred to the recent decisions, one from Brazil, the other from Philippines, and one from Union of South Africa. In Yanomani Indians v. Brazil,109 the Inter-American Commission on Human Rights held that the Government of Brazil violated the right to life of Yanomanis by not taking measures to prevent environmental damage. In Minors Opasa v. Deptt of environment and natural Resources,110 the Philippines Supreme Court refused to continue deforestation licenses because it violated the right to a balanced and healthful ecology for future generations. In Wildlife Society of Southern Africa v. Minister of Environmental Affairs and Tourism of the Republic

108 3 (MLR 331 1997).
of South Africa, the right to healthy environment and to sustainable development was further recognised.

The reference to international sources clearly indicate the willingness of the Supreme Court to adopt the principle of sustainable development from the international domain as a basic principle of environmental law in India. Rao.J., categorically stated: 'There is building up, in various countries, a concept that a right to healthy environment and to sustainable development are fundamental human rights implicit in the right to "life".'

The facts of the Nayadu case, clearly bring out the tension generated by the principle of sustainable development. The affected industries had spent huge sums in setting up the plants and their claim was that they should be allowed to function, otherwise all the investment would go waste. The state government had recommended their application. Even though the Central Government refused the permission, the industry went on with the construction of its plants. The Court was not swayed by these claims. Instead it took into account expert reports from three different sources and after considering these reports felt that the Court could not rely upon bare assurance that, care would be taken in the handling of hazardous material. The Court preferred to proceed on the precautionary

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111 (1996) 9 BCLR1221 (TK).
112 Javaid Talib, supra note 69, p.535.
113 Supra note, 107.
principle\textsuperscript{114} rather than a mere promise of the industries, holding that a chance of accident in such a close proximity of reservoir could not be ruled out. The Supreme Court weighed the claims of development against the claims of sustainability of the supply of pure water for drinking purposes. It gave precedence to the human need for drinking water over and above the possible economic advantage, which could be generated by the industry for the state.\textsuperscript{115}

In \textit{Goa Foundation v. Diksha Holdings Pvt Ltd.},\textsuperscript{116} Diksha Holdings sought permission to build a hotel in Goa. It claimed that it would contribute to the business of tourism, which was the main resource earner for the State of Goa. The Goa Foundation contended that the hotel was located in an area, which fell in the coastal regulation Zone-1 (CRZ-1) where no building was allowed. It also contended that the construction of the hotel would destroy the ecology of coastal areas. The Supreme Court restated the principle that there should be a proper balance between the protection of environment and development process. The society shall have to prosper but not at the cost of environment, and environment shall have to be protected but not at the cost of the development of the society.

The adoption of sustainable development as the basic principle of environmental law in India received its maximum acceptability in \textit{M.C.Mehta v.}

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\textsuperscript{114} See \textit{Infra} note 128hj. \\
\textsuperscript{115} Javaid Talib \textit{supra} note 69, pp 535-536. \\
\textsuperscript{116} (2001) 2 SCC 97, at 108. 
\end{flushleft}
In this case, a three-Judge Bench of Supreme Court was considering the question of issuing directions to substitute diesel vehicles on the roads of city of Delhi with vehicles driven by Compressed Natural Gas (CNG). The matter had been in the Court for as long as 16 years. As early as 23 September 1986, the Court had directed the Delhi Administration to file an affidavit specifying the steps to be taken for controlling pollution caused by emission of smoke etc from vehicles plying in Delhi. A Committee called Bhure Lal Committee was established under Section 3 of Environment Protection Act 1986, and its Report was accepted by the Court on 28th July 1998. A time limit was fixed for switching over to diesel vehicles to CNG Vehicles. The Government had been dragging its feet and sought to dilute the directions of Bhure Lal Committee by constituting another committee called Mashelkar Committee which recommended that emission norms must be laid down but the choice of fuels must be left with the user.

The Supreme Court categorically rejected the suggestion of the Mashelkar Committee on the ground that nothing concrete had resulted from adopting the process of fixing emission norms and directed that a time bound programme of replacing diesel buses with CNG buses be implemented.


118 Under section 3 (1) of the EP Act, Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. Under clause (3) of section 3, central Government may if it considers necessary, can constitute authority or authorities for performing such powers and functions, which are conferred to it under section.
The opinion of the Court is particularly noticeable for pronouncing the fundamental nature of sustainable development as an underlying principle. The Court observed:

“One of the principles underlying environmental law is that of sustainable development. This principle requires such development to take place which is ecologically sustainable”.

The practical result of the hard attitude adopted by the Court is that the environment of Delhi city is much more clean and free of smoke now in comparison to what it was a few years earlier.

The above discussion makes it amply clear that, the Supreme Court has not only recognised right to ‘wholesome environment’ but also the right to ‘sustainable development’.

2.5 Fundamental norms recognised by the Supreme Court in the application of the principle of Sustainable Development

As discussed earlier, the Indian Constitution is amongst the few in the world that contains specific provisions on environmental protection. The directive principles of state policy and the fundamental duties chapters’ explicitly enunciate the national commitment to protect and improve the environment. Judicial interpretation has strengthened this constitutional mandate.

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120 Ibid.
The Supreme Court through pronouncement in various cases has derived, adopted and has recognised a range of principles and norms for the application of sustainable development. Notable amongst the fundamental norms recognised by the Court are:

(i) The 'Polluter pays' principle.

(ii) The 'Precautionary' principle.

(iii) The 'Inter generational equity' principle.

(iv) The Doctrine of public trust.

2.5.1 The 'Polluter pays' principle:

'Polluter pays' principle is one of the essential features of sustainable development. It is a part of the basic environmental law of the land, which requires that, a polluter bear the remedial or clean up costs as well as the amounts payable to compensate the victims of pollution.122

The 'polluter pays principle' was for the first time applied and defined in the case of Indian Council for Enviro-Legal Action v. Union of India.123 It was declared by the Court that redemption of the damaged environment was a part of the process of sustainable development and as such polluter was liable to pay the cost of the individual sufferers as well as the cost of reversing the damaged ecology.124

122 Ibid, p.42.
123 (1996) 3 SCC 212, for Facts see supra note 95.
Thus, the 'polluter pays' principle means that, absolute liability for harm to
environment extends not only to compensate the victims of pollution but also the
cost of restoring the environmental degradation. Remedying of the damaged
environment is part of the process of sustainable development.\(^{125}\)

In *M.C.Mehta v. Union of India*,\(^ {126}\) (The Taj Trapezium case), the Supreme
Court emphasised the need to apply the 'polluter pays principle'. It was the case
of yellowing and decaying of the Taj Mahal. Many hazardous industries and
Mathura refinery were the major sources of damage to the Taj Mahal, a priceless
national monument. The Court ordered the industries to shift away from the Taj
Trapezium or switch over to gas as fuel. The industries, which did not switch over
to gas, were ordered to be closed down unconditionally by December 31, 1997.

Justice Kuldeep Singh gave a new dimension to the polluter pays principle
by holding that if the industry is closed or shifted, the workers shall not be thrown
out of the industry without any economic job security. The workers of the industry
were also the victims of polluting industries and they should not suffer on account
of an action against the polluting industries.\(^ {127}\) The declaration of gratuity,

\(^{125}\) *Id*, quoted with approval in *Vellore Citizens Welfare Forum v. UOI*, AIR 19967 SC 2715, 2721, for facts see *supra* note 104. In this case the court ordered for imposing a fine of Rs.10,000/- on each tannery of the area. The court proposed the fine plus the compensation amount so recovered from polluters to be deposited under the head "Environment Protection Fund". Thus fund could be utilised for compensating the affected persons identified by the 'authority' and also for restoring the damaged environment (AIR 1996, SC 2715, 2726).

\(^{126}\) AIR 1997 SC 734.

\(^{127}\) *Id*, 763.
compensation, additional compensation or shifting allowance by the Supreme Court has given a new dimension to the ‘polluter pays’ principle.

2.5.2 The ‘Precautionary’ principle

The ‘precautionary principle’ requires the government authorities to anticipate, prevent and attack the causes of environmental pollution. This principle also imposes the onus of proof on the developer or industrialist to show that his or her action is environmentally benign. 128

In M.C.Mehta v. Union of India, (Badkhal & Surajkund Lakes) 129 the question was whether to preserve environment and control pollution, mining operations should be stopped within the radius of 5 kms. from the tourist resorts of Bhadkal Lake and Surajkund in the state of Haryana. Directing that ‘no construction of any type shall be permitted within 5 kms radius from the Bhadkal and Surajkund, the Court referred to precautionary principle and held that it is mandatory for the government to anticipate, prevent and attack the causes of environmental degradation’.

In Palani Hills Conservation Council v. Union of India, 130 the Madras High Court considered a challenge to a holiday resort, which threatened Kodaikanal Lake and its environments. The Court upheld the precautionary principle by directing the state government to constitute an expert committee.

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128 Shyam Divan, Armin Rosencranz, supra note 120, p.25.
129 (1997) 3 SCC 715.
The precautionary principle has also been upheld in Vellore citizens Welfare Forum v. Union of India,\textsuperscript{131} and the Taj Trapezium case.\textsuperscript{132}

\subsection*{2.5.3 The Doctrine of Public Trust}

The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Joseph L. Sax, the proponent of ‘Modern Public Trust Doctrine’, the Doctrine imposes the following restrictions on the governmental authority. First, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.\textsuperscript{133}

The public trust doctrine was for the first time applied in \textit{Span Motels case}.\textsuperscript{134} In 1995, Span Motels built a resort on the bank of Beas River between Kullu and Manali in Himachal Pradesh. Kamal Nath, former Union Minister of

\textsuperscript{131} See \textit{supra} note 105.

\textsuperscript{132} See \textit{supra} note 75.

\textsuperscript{133} Shyam Diwan, Armin Rosencranz, \textit{supra} note 120, p.169.

\textsuperscript{134} \textit{M.C.Mehta v.Kamal Nath}, 1997 (1) SCC 388.
Environment and Forests, had links to the hotelier who had encroached swathe of forestland. The encroachment was validated in 1993-94, during Nath’s tenure as Minister. During the 1995 monsoons, the river engulfed part of the land and threatened the resort. In an effort to protect its property both before and after the 1995 floods, Span Motels carried out substantial work of dredging, construction of concrete barriers, wire crates, etc to deflect the flow of the river. The Court quashing the lease granted to the Motel held that,

"The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership."

The Court also ordered the Motel to pay compensation by way of cost for the restitution of the environment and ecology of the area and held that ‘the management shall show cause why pollution fine in addition be not imposed on the Motel’.  

In *M.I.Builders v. Radhey Shyam Shau*, the Supreme Court held that, allowing an underground shopping complex to come up below a public park violated the public trust doctrine. The Court directed the demolition of structures and restoration of the park.

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135 *Ibid.* The polluter pays are precautionary principle were also upheld in this case.
136 *AIR 1999 SC 2468.*
It is rightly observed that, “the risk of ecological disaster is one of the most pronounced risks of today’s society, and it is this ‘disaster’, which is sought be counteracted and neutralised by developing the notion of ‘public trust’.

2.5.4 The ‘Intergenerational Equity’ principle

The principle of Intergenerational Equity casts a duty on the present generation to be a ‘trustee’ for the environment of future generations and its obligation to pass on the earth in a sound condition to its unborn generations.

In *State of Himachal Pradesh v. Ganesh Wood Products*, where the state of Himachal Pradesh had allowed the forest based industry to manufacture “Khata” chairs from the scare Khair trees, the Supreme Court recognised the significance of inter-generational equity and held that government departments approval to establish forest-based industry to be invalid because it is contrary to public interest involved in preserving forest wealth, maintenance of environment and ecology and considerations of sustainable growth and intergenerational equity. After all, the present generation has no right to deplete all the existing forest and leave nothing for the next and future generations’.

Thus, one of the essential features of sustainable development, the principle of inter-generational equity, requires that, the future generations, like the present one, have the right to inherit from their predecessors, an ecologically sound and

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137 Dr. Virendra Kumar, *Breach of the Doctrine of Public Trust: Lessons to be Learnt in Environmental Protection*, Chartered Secretary, Sept 2002, p.1292.


139 AIR 1996 SC 149.
healthy environment. Tenets and spirit of sustainable development oblige states to avoid, if not possible, at least to minimise, callous use of the natural resources and unsustainable patterns of development.\textsuperscript{140}

\subsection*{2.6 Conclusion}

The above discussion reveals that, the concept of 'sustainable development' aims at resolving the conflicts between development and environment. Economy should progress but not at the cost of 'environment'. Various religions have also asserted that, 'man should not cause any harm to the environment for his own benefit'. However, with the march of industrialisation, man's attitude towards nature changed. Development took place, but, at the cost of environment. It was only during 1970's, that it was realised that, human beings can develop only in a healthy environment. They need both a healthy environment and development. The Stockholm Declaration thus, enabled the governments of various countries to evolve principles for the protection of environment and incorporate as a part of their environmental jurisprudence.

After Stockholm Declaration, many International Conferences have been held asserting the need of 'sustainable development'. Indian Constitution has recognised 'the right to wholesome environment' and 'the right to sustainable development' as fundamental rights under Article 21. For this purpose, many fundamental doctrines like 'polluter pays principle', 'precautionary principle', 'the doctrine of public trust' have been recognised by the Indian judiciary.

\textsuperscript{140} K. I. Vibhute, \textit{supra} note 138, p.285.