CHAPTER – II
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1 INTRODUCTION

The seeds for better environment were sown at the United Nations Charter of the year 1948, especially the Declaration of Human Rights. The Declaration in clear terms recognizes human values. The Indian Constitution, besides recognizing civil and political rights, also guarantees right to life with dignity. The Indian Constitution provides for environmental preservation and protection in its directive Principles under Article 48-A. These Articles are inspired by the noble sentiments embodied in the United Nations Charter. The United Nations, in Article-1 of the Charter, was concerned with permitting and encouraging respect for human rights. It also considered guaranteeing fundamental freedom for all without any discrimination of race, sex, language or religion. It is because of this Article – 1 the United Nations Charter has been considered to be the fountainhead of liberty. The United Nations Charter of 1948 had three main organs, which were meant for promotion of human rights. In Article 68 there was mention of the establishment, by the Economic Social Council of a Commission for promotion of human rights.

In the last century human values have suffered immensely owing to selfish motives of humans. ‘Modern Man’s lust for prosperity and comfort caused unprecedented environmental degradation. These are the observations made by Justice Kuldipsingh in his foreward to the Book Environmental Jurisprudence by Justice Ashok Desai. This view of his Lordship comes from his experience as the Judge of the Supreme Court of India.
During 1960s different Governments wanting to modulate laws and ponder over the question of saving the world from environmental degradation. People started to think for betterment of ecology. "To be or not to be that is the question" - Human survival is endangered by another equally homicidal missile euphemistically described as water pollution. An imbued debate stimulating a quest for protecting environmental degradation began suggesting some concrete legislative measures to be taken by the global community. These comments of Justice V.R. Krishna Iyer would show that pollution of all kinds had to be curbed with help of legislations, to be enacted by the countries in confirming with the international declarations.

The battle royal at the international level started becoming more realistic only after 1968.

The primary aim of these covenants is to see that the life giving natural resources are not depleted and living beings use these resources for their betterment. Short-term gains, unfortunately, remain central motivating impulse for men. The earth is subjected to cruel excavation, unusual littering with garbage, which invites a vicious circle causing various health hazards. After the devastating World War II, economic recovery depended on industrial development. General Agreement on Tariffs and Trade (GATT) 1948 was the result. The Agreement was meant to raise the standard of living ensuring full employment, developing the resources of world and also expanding production and exchange of goods. After the first conference held at Havana, the world started progressing. These developments and the implementation of these agreements started having their adverse effect on the natural resources. Certain human activities resulted in depletion of natural resources and posing threats to the future of the planet earth.
"GATT has also recognized that economic growth and environmental protection are inseparable".

2 NATURE OF THE PROBLEM

Environmental concerns started emerging the world over during 1950s and early 1960s. Agreements, covering liability of nations for nuclear damages, were signed during this period. International treaties and conventions for prevention of pollution of seas and oceans were framed following negotiations. The Economic and Social Council of United Nations decided to convene international conference and on 13th July 1968 a resolution was passed to that intent. After a period of 6 months, on 3rd December 1968, the United Nations' General Assembly passed certain resolutions. This was basically an anti-thesis to the 1947 GATT resolution.

The United Nations through its General Assembly had proclaimed that there should be four decades to focus international attention/action on policies and problems for development. Number of declarations, plan of action, development strategy, so as to strengthen international co-operation for development were evolved.

The International Environmental Law covers any human activity within the territory or control of one State that gives rise or may give rise to loss or injury to persons or things within the territory or control of another State.

It has been long evident that international restraints and obligations are necessary to cope up with environmental damage that Transcend National Boundaries.
Till 1972 the environmental problem was looked with a view for protecting wild life and to a certain extent conserving the natural resources of river, which turned into seas. The basic problem regarding environmental concern now was to curb environmental hazards and pollution. The United Nations Organisation in 1968 started working on the concept of human environment and decided to cover those aspects of human activities, which affect biological, ecological system in which the human beings live. It was decided that most of the aspects, which covered environment, had to be dealt with and the ancient environment prudence was to be the central theme.

3 FORMATION OF UNITED NATIONS AND HUMAN RIGHTS DECLARATION:

UNESCO (United Nations Educational, Scientific and Cultural Organisation) was formed. The Charter of the United Nations Organisation (UNO) expressed determination to save succeeding generations from scourge of war. It was established to reaffirm fundamental human rights. To create a situation which would make nations respect the United Nations Declarations. It was meant to promote social programmes and better standards of life. The United Nations combined their efforts so as to accomplish these aims. The Charter is spread over 19 chapters and into 111 articles, however, it did not speak of anything about environment but all laws have now recognized that upholding of human rights is the genus of good living. India's representative has signed the charter at San Fransisco. Charter of UNESCO, which is accepted world over, has a convention of Human Right Declaration. The United Nations charter of Human Rights Declaration is important from this point of view to see that human dignity is protected. The moment humans exploited nature to a disturbing equilibrium
the consequences are such which humans did not think of. The Human Rights Declaration was for the betterment of the human beings.

"Over the past 50 years, these efforts have profoundly affected the lives and well-being of millions of people throughout the world. The United Nations has invariably stressed the need to ensure overall programme to meet its goals of reducing poverty and redressing inequalities between rich and poor and both between and within countries".

4 PERMANENT SOVEREIGNTY OVER NATURAL RESOURCES, STATE RESPONSIBILITY AND INTERNATIONAL ENVIRONMENTAL LAW

The 1962 United Nations Conventions and Its Effect

In the year 1958 a Commission on Permanent Sovereignty over natural resources was established. The work and the research of the said body resulted into a resolution of 14th December 1962. The said resolution was numbered as 1803. The United Nations re-called its resolution of 1952 passed on 12th January 1952 and that of 21 December 1952. The General Assembly bore in mind resolution, which established a commission on permanent sovereignty over natural resources. The 1962 resolution had even taken into consideration the 15th December 1960 resolution which recommended the sovereign right of every state to dispose its wealth and there should be respect for use of natural resources of each state. The General Assembly after considering and noting and showing its desire that there should be further consideration by the United Nations on the subject of Permanent Sovereignty Over Natural Resources in the spirit of international co-operation in the field of economic development, particularly that of the developing countries passed a resolution.
The said resolution contains 8 declarations in which declaration numbers 5 and 6 are important for our purpose. These are reproduced below:

5. "The free and beneficial exercise of the sovereignty of peoples and nations over natural resources must be furthered by the mutual respect of the states based on their sovereign equality."

6. "International co-operation for the economic development of developing countries, where in the form of public or private capable investments, exchange of goods and services, technical assistance, or exchange of scientific nation, shall be such as to further their independent national development and shall be based upon respect for their sovereignty over their natural health and resources".\(^9\)

This declaration shows that human beings had been given a free will to use their resources. Nations started using their resources in a way, which started affecting the other nations and their surroundings with all kinds of problems, which brought multi facet problems. Men's ambition for limitless enjoyment took humans towards exploiting natural resources in such a way that numerous environmental problems arose. A stage is reached where the nature's environment is depleted, quality of life and quality of nature is degraded. There was no proper environmental management. The proper environmental management requires that society and the man's demands should be so regulated that natural environment is able to sustain the need for development\(^10\). The use of natural resources by the countries was so detrimental to the environment that the nations had to start thinking for a International Declaration to safeguard environment. The 1962 Declaration was a declaration concerning rights and obligations of States.
As mentioned in the aforesaid topics in the late 1960s there was an increase in multilateral international agreements concerning environment. They mainly concerned the pollution casualties due to spillage of oil in the sea, and therefore, the year 1968 can be said to be a year when resolutions no. 1346 and 2398 laid steps for concern of environment through soft law convention which had many implications on the world at large. "The resolution of December 1968 was concerned to hold a convention in the year 1972 for showing concern about the consequent effect on the condition of man." This decision was taken after considering Economic and Social Council Resolution 1346 (XLV) of 30th July 1968 on the question of convening an international conference on the problems of human environment.

On 15th December 1969, the General Assembly decided to convene in the year 1972 a conference to deliberate and to formulate future plans to save the world from environmental degradation. However, it resolved that preparation for the conference was also to be made. Certain aspects were considered and the United Nations decided to launch even a programme for Environmental development.

The United Nations Conference termed as Conference on Human Environment which was held from 5th to 16th June, 1972 mainly contained
common conventions but recommendations were made as far as development vis-à-vis environment were concerned.

6(A) **Emergence of initial Soft Law Convention on Environment:**

"Stockholm Conference 1972"

The first major effort in the direction of ecological justice and towards solving global problem of environment pollution, on an international level, was made at the United Nations Conference on the Human Environment held at Stockholm (Sweden) from *June 5 to June 16, 1972*. Representatives of hundred and thirteen countries having considered the need for a common outlook for common principles to inspire and guide the people of the world in the preservation and conservation of the human environment came to attend the conference. The Declaration, which is known as Magna Carta of Human Environment has been divided into two parts. The first part of the declaration proclaims certain truth about man in relation to his environment. It states:-

(i) "Man is both creator and moulder of his environment, which gives him physical sustenance and affords him the opportunity of intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on unprecedented scale. Both aspects of Man's environment, the natural and the man made, are essential to his well being and to the enjoyment of basic human rights even the right to life itself."
(ii) "The protection and improvement of the human environment is a major issue which affects the well-being of people and economic development throughout the world, it is the urgent desire of the people of the whole world and the duty of all Governments."

The Second part of the Declaration contains 26 principles touching environment,

The Declaration enunciated 26 principles. The principles, which are enunciated laid broad parameters and guidelines which were meant for the governance of the humans. It declares certain fundamental rights of human beings viz. right to freedom, equality and life with an environment of quality meaning thereby, living a life with dignity. It had enjoined a duty so that human beings protect and improve the environment so as to pass it on to the future generations.

It even laid down the parameters for safeguarding heritage and saving non-renewable resources of the world, so that they may not extinguish in future. It laid down principles so that the developed countries may develop the developing countries.

Principles 17 - 19 have wide ranging effect even after three decades as environmental education, planning practices for enhancement of quality of environment by planning is implemented by many nations. The most important principle enunciated is principle - 21. The principle - 21 which enunciates that "States have, in accordance with the charter of the United Nations and the principle of the environmental law, the sovereign right to exploit their own resources pursue to their own environmental policies, and
the responsibilities to ensure that activities within their jurisdiction or control did not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. This aspect taken by Armin Rosencranz and Shyam Divan in their book Environmental Law and Policy in India shows that the international principles were based on sound legal thinking.

On analysis of the Stockholm Declaration and principles enunciated therein, the Principle of Inter-Generational Equity, Rights of the future against the present were taken care of at the conference.

The objects of this conference on human environment can be said to be encouraging and showing importance of joint action for conservation and utilization of human environment. The situation gave birth to the principle of environmental protection coupled with economic development. The first director Maurice Strong - the then Secretary General of the UNEP – initiated a series of programme that attempted to monitor the global environment and to educate people about the dangers of its degradation and pollution. The Stockholm Conference, adopted the declaration laying down “rights and obligations of citizens and Governments with regards to the preservation and improvement of the human environment is worth noting”. This is how it has been referred in the document of the United Nations in UN Doc A/CONF 48/PC/2, Para 16 (1972). The recommendation by the Secretary General was, thereafter, adopted as general principle without giving it the legal status.

The Stockholm conference eventually opted for non-binding declaration; however, it can now be seen after three decades that most of the countries are
regarding it as charter and enacted legislations on the principles enunciated of the Declaration.

Though there are certain ambiguities, it can be now seen that this Declaration is considered part and partial of general Environmental Law. Principle - 21 can be said to have now evolved in to a hard law\textsuperscript{16}.

Stockholm Declaration has served as the basis for the subsequent development of International Environment Law. Treaties and legislations have incorporated the principle articulated at the conference. What was articulated in 1972, namely, balancing economic and social needs on the one hand with environmental consideration on other are good even today. To quote from the book: Environmental Law and Policy in India; Cases, Materials by Armin Rosencranz & Shyam Divan,\textsuperscript{17} the Stockholm Declaration as Stockholm Convention giving the status of jus cogens. Principle -21 is based on Roman maxim; \textit{sic utero tuo et alienum non laedas}, which roughly means “do not behave in a way that hurts your neighbours”. However, again the question arises, what good does an international peremptory norm, like an international agreement, achieve?

It would be seen that though the concept of sustainable development gained momentum in the recent 20 years, it was first known at the Stockholm Declaration as referred in the decision of the Supreme Court in \textit{Vellore Citizens Welfare Forum vs. Union of India; AIR 1996 SC 2715}. It can also be seen that 1972 Declaration was the one, which laid stepping stone for common heritage of mankind with sustainable developmental plans for the future.

Text of the Declaration for ready reference is annexed as ‘Annexure-II-A’.
6(B)  **Emergence of "Tokyo Declaration 1987"**

Based on the Convention on Human Environment after a decade the world commission on environment and development came to be constituted in 1984 as an independent body by the United Nation's General Assembly. The Commission in 1987 called upon the nations of the world, jointly and severally- to integrate substantial development into their goals and to adopt principles to guide their policy actions, namely (a) Revival of growth. (b) Change the quality of growth. (c) Conserve and enhance the resources. (d) Ensure sustainable level of population. (e) Reorient technology and manage risks. (f) Integrate environment and economics in decision-making. (g) Reform international economic relations. (h) Strengthen international co-operation.

The Tokyo conference showed new dimensions in the management, protection, preservation and improvement of the human environment. The said contention has guided nations to formulate policies and legislations for well being of the environment. It has made a real beginning and laid down strong foundations for the development of international environmental law. 'Annexure II-B' is a copy of the Brundtland Declaration.

The main accomplishments of this declaration can be said to be two fold: (1) An official recommendation concerning general concern for international environmental issues and (2) emergence of United Nations environment programme. The United Nations Environment Programme (UNEP) came into existence with certain policies, which were pre-determined. If was moreover "born into an environment of international political contention and
socio-economic instability that would most certainly influence the scope and character of its activities"\textsuperscript{19}.

6(C) Tenth Anniversary “Nairobi Conference-1982”

In 1982 the tenth anniversary of the Stockholm Conference 1972 was celebrated at Nairobi. A special declaration known as "\textit{Nairobi Declaration}" was adopted.

At the Nairobi conference where the governing counsel of UNEP gave its report, certain States and Nations voiced concern for their development instead of environment. The important aspect of the Nairobi Declaration was the creation of special commission, which would frame long term environmental strategies. It was at this time that roots for the concept of sustainable development were sown.

The Declaration proclaimed that Stockholm principles were as valid on that day as they were in 1972, as it provided a basic code of environmental conduct for the future. The states solemnly affirmed their faith and commitment to the Stockholm Declaration and its action plan. The declaration conveyed that all Governments and people of the world should perform their responsibility collectively and individually. This was with a view to ensure that the future generations get our planet in a good shape and in a condition, which guarantees a life with human dignity for all.

By virtue of the declaration there was special commission set up which evolved environmental strategy for achieving target of sustainable developments till the advent of the millennium. The governing counsel after
5 years of Nairobi Conference in 1987 endorsed the declaration. The General Assembly of the United Nations concurred and resolved that:

(1) Aggravation of environmental threats is due to poverty and due to wasteful consumption method, which would lead to over-exploitation of environment. (2) The development decade and new international economic order were evolved so as to reverse the environmental degradation. (3) A strategy for peace and security, which would be free from threat of war would affect human environment. (4) There should be consultation for resolving environmental problems, concerning national boundaries. (5) There must be progressive development of environmental law by way of conventions and agreement between the states. (6) The developed countries must assist developing countries in their domestic affairs so as to solve the environmental issues. (7) Sound environmental techniques were to be developed and preventive actions should be taken.

7 (A) TWO DECADES FOLLOWING STOCKHOLM - 1992
EARTH SUMMIT AT RIO

The attention of the international Community almost after 20 years of Stockholm conference (known as Earth Summit) held at Rio de Janeiro, Brazil from June 3 to June 14, 1992 was drawn to the bad shape our planet was. The conference made it clear that, the nations no longer thought of environment and economic and social development to be working in isolated fields. The Declaration of Rio contains 27, fundamental principles on which
states must base their future decisions and policies, considering the environmental implications of socio-economic development.

The most important and significant aspect of this Conference was Agenda 21, a vast work programme for the 21st Century, represents the Consensus reached by several states present at Rio. This historic document runs into 700 pages and embraces practically all areas of sustainable development. "It is a blueprint for a global partnership aimed at reconciling the twin requirements of a high quality environment and a healthy economy for all people of the world". Thus the Agenda 21 and the other Rio documents form a series of stepping stones towards a more socially, economical and environmentally sustainable world.

The attendance after two decades was overwhelming representatives of over 150 countries and various international groups gathered at Rio de Janeiro, Brazil. The said summit was even termed as the Earth Summit and is well-known as such. The main aspects discussed at the Earth Summit were convention of climatic change and adoption of convention on biological diversity. The Rio Declaration contained 27 principles, which were based on environment and development. The action plan, known as Agenda 21, meant for the 21st century aimed environmental concerns consisting of degradation of water resources, energy and agriculture. The Rio Declaration contained various aspects for the future governance of nations. However, basis of all these principles were based on Stockholm Conference. Certain principles, which are important are discussed. These would show that what principles were considered important in 1972 were still important for governance of nations and certain new aspects were added.
The Rio Declaration did not come forward with massive financial aid proposal for the third world countries for protecting the environment nor did the summit pay adequate attention to technology transfer, which is essential to persuade developing countries to give up techniques responsible for a high level of pollution. This is what Justice Ahmadi has conveyed in book, Thoughts and Reflections of Justice A.M. Ahmadi, Former Chief Justice of India. The Rio Declaration, which has proclaimed 27 principles had reaffirmed the Stockholm Declaration of 1972. It can be now seen that the main objective of the conference was to establish new and equitable global partnership for creation of new level of co-operation amongst the states. It would be worthwhile to note that the various principles of the declaration emphasise sustainable development and eradication of poverty. One of the aspects thought in principle – 5 was of public participation in environmental cases. As per the principle - 10 once again emphasis was laid down on National Environment Legislation. It also emphasised on development of National Law regarding liability and compensation for the victims of pollution and other environmental damages. It even propounded that environment impact assessment report be made available for the proposed industry. The agenda - 21 is divided into four parts. The agenda has various provisions for the management of toxic chemicals, hazardous wastes and biotechnology. One of the conventions, which Earth Summit adopted was the convention of climate change.

Principle-10, which relates to participation of citizens is one of the important principles enunciated in the Rio Declaration.

The 1992 Declaration also reaffirmed the aspect about enactment of environmental legislations by the State. The principle also showed
concerned about developing national law liability and compensation for the
victims of pollution and environmental damage and in principle 25 it was
proclaimed that peace development and environment protection are
interdependent.

A copy of the Declaration is annexed as 'Annexure:II-C'.

7(B) EVALUATION OF EARTH PROGRESS SINCE 1992:
CONFERENCE OF 1997:

In the year 1997, it was decided to review the work done since 1992. This
summit was to be monitored immediately after 5 years by holding a
special session of the United Nations General Assembly in New York in
June 1997. The conference came out with alarming results regarding
Ocean, forests and the atmosphere of the earth still being under trouble
after two and half decades of the 1972 Declaration. The 1997 summit
adopted a programme to protect the environment and also to meet the needs
of the present as well as future generations. At the conference it was
revealed that within the interim 5 years, if not less, at least 12 billion tons of
Carbon-dioxide was emitted in the atmosphere and this made the world
leaders think for future.

7 (C) UNITED NATIONS SECRETARY GENERAL’S
MILLENNIUM REPORT 2000.

MILLENIUM REPORT:-

Between 1992 and year 2002, the concept of environmental sustainability
had gained lot of momentum throughout the world. The goal of sustainable
development in poor countries, which had to help each other to achieve goal of sustainable development was to be implemented.

The millennium report considered the fundamental values, which were essential for international relations in the 21st century which included freedom and dignity of human beings and equal rights of opportunities assured. Solidarity had to be maintained with basic principles of equity and social justice. Respect for nature was one of the aspects which was considered and the report suggested that:

Prudence must be shown in the management of all living species and natural resources, in accordance with the precepts of sustainable development. Only in this way can the immeasurable riches provided to us by nature be preserved and passed on to our descendants. The current unsustainable patterns of production and consumption must be changed in the interest of our future welfare and that of our descendants.

The United Nations Secretary General called upon the Millennium Summit to promote the adoption and implementation of Kyoto Protocol. Specifically, urging those states whose ratifications are needed to take the necessary action in time for entry into force by 2002 of the protocol, as a fitting celebration of progress since Stockholm Declaration in 1972 and Rio in 1992.

The report goes to show that it had found that about one third of the world’s population already lived in countries considered to be “Water Stressed”.
The report showed its dissatisfaction and conveyed that it was time to bring "Blue Revolution" in agriculture that focuses on increasing productivity. It opined conservation of agricultural biodiversity is essential for long-term food security. The Secretary General’s Report further mentioned that:

“I intend to convene a high level global public policy network to address these and related controversies concerning the risks and opportunities associated with the increased use of biotechnology and bioengineering.”

Millennium report showed that earth had not progressed towards environmental safety and a lot had to be done to safeguard the environment before the world entered the 21st Century. The report dealt with protecting our common environment and wanted that the children and grand-children should be saved from threat of living on the planet spoilt by human activities. It further went on to resolve in paragraph 23 that we should resolve to adopt a new ethic of conservation and stewardship and decided to enforce the Kyoto Protocol by 2002 to press full implementation of the Convention on Biodiversity.

Millennium Declaration wanted to press for complete implementation of the convention on Biological Diversity and the convention to combat desertification in those countries experiencing serious drought and/or desertification particularly in Africa. Millennium report goes to show that it intended to stop the unsustainable exploitation of water resources after developing Water Management Strategies, at both the municipal and the international levels. One aspect, which was required to be seen was the intention to reduce a number of effects of natural and man-made disasters in the countries.
The millennium report also confirmed commitments for eradication of poverty and also resolved to halve, by the year 2015 proportion of people were unable to reach or who could afford safe drinking water. The report even resolves to halt and begin to reverse the spread of HIV AIDS, scourge malaria and other major diseases, which afflict humanity.

One of the important resolutions of the declaration relates to significant improvement in the lives of 100 million slum dwellers. The declaration also resolved to intensify cooperation to reduce the number and effects of natural and man made disasters.

The millennium declaration even emphasized the strengthening of the United Nations so that there would be adherence to the conventions of United Nations by strengthening the Economic and Social Council of the United Nations.

A copy of the resolution adopted by the General Assembly [without reference to a Main Committee (A/55/L.2)] 55/2 United Nations Millennium Declaration is annexed herewith as 'Annexure-II-D'.

8 THREE DECADES-POST STOCKHOLM ASSESSMENT - 2002

8(A) Johannesburg Declaration:-

The Earth Summit of 2002 was marked by the absence of U.S. President and Indian Prime Minister. There were diverse views and as would be seen from 1992 to 2002 while going through United Nations work books, except global
warming nothing happened or was discussed. Unfortunately, what was agreed at 1992 summit regarding allotting amount towards development assistance by, the developed countries. These Countries miserably failed to do so and instead of agreed 0.7%, they had only spent 0.2% within those 10 years. The statistics of 2002 go to show that Air Pollution became a major killer year after year. Due to carbon emission, global warming became a serious threat. Water shortage for household purpose was alarming. During the 12 years which elapsed 90,000 Sq. Kms. of forest had been destroyed in the world. There was soil degradation and certain species of wild life became nonexistent and many water species had become extinct. The Johannesburg Declaration was to discuss sustainable development, so that we may pass on to the future what we have with us. The salient features of world summit on sustainable development were based on good governance of each country and it's international concern. (1) Peace, Security, Stability and Respect for human rights. (2) Eradication of poverty by 2015 by establishing solidatory fund. (3) Changing of patterns for consumption and production so as to manage natural resource bases for social development.

The Johannesburg Declaration is considered to be a declaration on sustainable development. The representatives of the people of the world reaffirmed their commitment to the sustainable development which they had affirmed at the 1992 Rio Summit. It was resolved to build a future for the children, so that the children may inherit the world free of indignity and when poverty would have left the world. The declaration more clearly stipulated formation of the plan for implementation was for showing our responsibility to each other, and to a greater extent to our children along with bringing about poverty eradication with human development.
At the Earth Summit 2002 Tony Blair, the Hon'ble Prime Minister of England has correctly stated that from 1972 or rather 1948 till recently even the Soft Law Conventions have given new principles which have emerged for governing the nations.

8(B) Soft Law Conventions / Declaration - 1962 to 2002 critical evaluation

Soft Law Conventions, which gave important principles for nations to have legislations, notifications or principles for governing nation for Environmental betterment are in short captioned below in box.

<table>
<thead>
<tr>
<th>Box : 2.1 Important Soft Law Conventions / Declaration</th>
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<tbody>
<tr>
<td>A 1962 Natural Resources Sovereignty of Nations</td>
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<tr>
<td>B 1972 Stockholm Declaration on Human Environment</td>
</tr>
<tr>
<td>C 1982 Nairobi Reaffirming 1972 Declaration</td>
</tr>
<tr>
<td>D 1992 Rio Declaration (Earth Summit)</td>
</tr>
<tr>
<td>E 2002 Johannesburg on Sustainable Development</td>
</tr>
</tbody>
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The aforementioned conferences conventions and the ones discussed later and in index go to show that the increased sophistication in governance and the Earth's environment brought the Governments of the world together. Even certain non-governmental organizations started invoking protection through Court of justice for protection of the Environment. As would be seen the General International Law and relevant legal category had included within them all the aforesaid principles for governing the world. The international law does not provide problems being solved except
through carefully prepared standard treaties. The existing principles of General International Law can be felt to have been evolved if one goes through the decisions in, *Trail Smelter Arbitration, Rio (3) 1905*²⁷, and *Corfu Channel Case, International Court of Justice Report 1949, Page: 4*²⁸ which would go to show that the boundary problems were in the background of these decisions.

The Runn of Kutch case is also important which goes to show that the International Court of Justice had taken the Soft Law Convention into consideration. The main reason for taking this decision here is to show desertification problems of the two countries and it relates to the affiliation of the inhabitants of the disputed property of the two countries.²⁹

### 9 EMERGENCE OF ENVIRONMENTAL JURISPRUDENCE AND PRINCIPLES FOR GOVERNANCE OF NATIONS FOR PROTECTION OF ENVIRONMENTAL DEGRADATION

All the International conventions gave some concepts. It was these declarations that the world nations could workup and better their resources and development. The natural resources can be passed on to the future generations. The concepts/principles, which emerge from the above Soft law Conventions can be analytically summarized as under:

The world conventions gave new principles for saving the habitat in which we live - The first concern in 1962 was to conserve and preserve our resources. In 1972, the concern was to control world population, unprecedented amounts of pollutants were being dumped by nations all around the globe. The paragraphs 13 and 16 of U.N. Document would show that the concern was multifaceted. It became clear during the drafting
process that many governments were willing to contemplate a declaration `embodying general principles elaborating the rights and duties of the states with regard to environment. Some states were not prepared to go as far as to accept a legally binding instrument.

The conferences on Human Environment formulated covenants. These covenants were non-binding declarations. These embodied the concept of (A) better environment for our world, (B) Precautionary Principles, (C) Concept of Sustainable Development, (D) Polluter Pays Principle. Certain procedures came to be enunciated (1) Integrated Pollution Control (2) Environmental Impact Assessment and (3) Risk Management.

The aforesaid principles / concepts came to be enunciated and have gained recognition in the nations. The appreciable increase in the awareness became a matter of international concern. Earlier the international community believed that all the nations should come together for saving our heritage, and therefore, international action about the cooperation of all became not only indispensable but also was an urgency and the demand of time. As said by Philipp Sands in Principles of International Environmental Law30 "that the primary objective of the international law would comprise substantive procedural and institutional rules." The first attempt was Soft Law. Soft Laws are nonbinding. It would be devoid of international law proper, however, they bring about great effect. Soft Law and Hard Law are complimentary to each other when they work in the sphere of international law. The Soft Law Declarations have proved to be the basis for evolution of various principles on which the nations could work.
9(A) Permanent Sovereignty Over Natural Resources, State Responsibility and International Environmental Law

(A) This principle emerged on the basis of the acceptance of right of nations to have absolute right over their natural resources. This is clear from the 1962 Declaration. All natural resources should be so used so that they may not endanger the environment of their own state or of the other state. The principle enunciated even permitted the state to carry on activities in their own country which might have certain permissible adverse effect on their own environment. This principle has been accepted by the international tribunal while deciding, Texaco Overseas Petroleum Co. case, 53 ILR 389 (1977) and in Luwait v. Aminoil, 21 ILM 976 (1982). The General Assembly resolutions of 1950s and 1960s and 1970s reflect the acceptance of this principle.

This principle has its own limitations namely that the nations should not permit action or setting up of industry within their territorial jurisdiction so as to harm the interest of other nations and if the state permits such activity, it may be held responsible as in Corfu Channel case (Supra). The International Court has time and again in various authoritative pronouncements like Trail Smelter (Supra) and the Corfu Channel (Supra) has held that no state has right to use or permit the use of its territory which may cause injury to territories, properties or persons of the other country.

The 1962 resolution came to stay even in the principle 21 of the United Nations Declaration on human environment: wherein it is stated:

"State 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”.

This principle would go to show that the states should even abate such activities which may cause risk to environment. The United Nations programme emphasises this aspect. The private parties even if they committed wrong the state would be responsible, for the wrong committed by its citizens. States are under the obligation to curb hazards as per the treaties or being signatory to the conventions. The state has the obligation to stop all its activities, which may cause harm to the neighbours.

9(B) The Obligation to Co-operate and the Good Neighbourliness Principle

Can implementation of environmental policies for stopping pollution be carried out without the co-operation of states inter se? The answer would be ‘No’. The object to co-operate is basically a principle which is enunciated so that the nations may remain under obligation towards each other to see that the environment may not be degraded further but may be protected. The principle came to be alluded to while deciding the Trail Smelter case. The Stockholm Declaration in its principle 24 reflects new dimension to environmental issues. The basis of this principle is that a country may not accept such obligation but this principle is based on rule of good faith.

The obligation principle would have to be seen in light of article 74 of the original United Nations Charter which has its basis in the maxim ‘sic
utere tuo, et alienum non laedas'. This principle has been time and again brought into effect due to the actions of states and their international treaties. This principle has been reiterated in the Stockholm and the Rio Declarations. Thus principle of good friendly neighbourhood corresponds to the obligation of the state not to damage the environment of the other state by air or water pollution. The State is under obligation to abate such pollution if caused by any of its activities. This principle has one added feature i.e. one state must inform or notify the other state or states of a possible risk or damage which may be caused to their environment by any accident. This principle emerged because of Soviet Union's failure to inform other states of the Chernobly nuclear accident in the year 1986. The Vienna convention on early notification of nuclear accidents was adopted at record speed in the same year. This principle was re-affirmed in Principle 18 of the 1992 Rio Declaration. This principle takes within its sweep the general principle of human approach so as to refrain from causing massive pollution of the atmosphere or seas. It recognizes the customary rule of riparian right. The upstream user of an international river cannot use the river in an unrestricted manner. The State has to take reasonable care so as to safeguard the interest of other users in downstream areas.

9(C) The Principle of Preventive Action / Precautionary Principle

The precautionary principle is based on the old saying that it is better to see that the event does not occur rather than find its solution after the things have become unmanageable. The precautionary principle as mentioned above has its genesis in the 1972 Stockholm Declaration. Two decades later the Rio Declaration enunciated this as a principle vide principle no. 15. However, there is a proviso that the precautionary approach has to be applied
according to the capacity which the state has. There must be cost effective measures to prevent environmental degradation. The principle has its basis on the foreseeable risk which the activities of the human is likely to cause to the other living beings and ecology. The precautionary principle is associated with areas of high public controversy and concern. "Developments up to and beyond Rio Declaration suggest a maturing of international environmental law, although numerous problems remain". On analysis of this principle enunciated in various international conventions treaties and judgments, it can be seen that there are inconsistent views which would show that the principle has been applied time and again, without seeing the scientific evidence put forth or there is no fixed norm for fixing the liability. The application of this principle is for the protection of Ozone layer and stopping of various kinds of pollution.

9(D) Concept of Sustainable Development

The concept of sustainable development can be said to be general guide-line given by the Soft Law documents. The definition given in Brundtland Report, other treaties, Soft Law Conventions and the Judgments goes to show that the concept is comprised of several legal elements, which can be said to be nucleus of this concept. The fusion of economic development vis-à-vis environmental protection and right to develop vis-à-vis developmental need of persons and their obligations for the future generations are recognized by this concept. Sustainable utilization and conservation of our natural resources with a preventive caution, the Intra Generation equity to the inequity of existing economic system are the guiding principles. All these make world develop and at the same time stop the environmental degradation. The convention of Bio-Diversity and climate
change convention of 1992 have their genesis in the Stockholm Declaration, which had laid down principle for stopping of use of natural resources, which may not be renewable. This principle is applied in India and the other countries. The United Nations set up the commission in the year 1993, under the United Nations Charter. The important functions of the commission are:

(1) ensuring fair follow-up of the Rio-conference; (2) enhancing the international co-operation and rationalizing the inter governmental decision making capacity for the integration of environment and development issues; (3) examination of the progress of the implementation of Agenda-21 along with problems faced by them.

The concept of sustainable development attempts to balance the scale between the quantity of the development and the quality of environment. The concept of ecology being opposed to development is now not acceptable. The answer to this is sustainable development. The Magna Carta of environment i.e. the Stockholm Conference is the origin of this concept. The concept came to be known for the first time at the Stockholm Declaration of 1972, thereafter, in the report of Our Common Future, a definite strategy for sustainable living was given. The concept would take within its sweep improving the well-being of people by development. This development would raise living standards by improving education and equality of opportunities, which are the basis of economic development. The industrial progress must be measured so that it causes least environmental damage. The ecological imbalance and sustainable development would take within its sweep the environment conservation also. The term sustainable development means the integrated development and simultaneous

**The Salient features of Sustainable Development:**

The salient features of sustainable development can be culled out from the international documents as well as from the Brundtland Report. The concept of sustainable development has been further developed and certain concepts which have came into existence in aid of these principles are required to be noted. These are:

(i) Best Practicable Means (BPM)
(ii) Best Practicable Environmental Option (BPEO)
(iii) Best Available Techniques Not Entailing Excessive Costs (BATNEEC)
(iv) Environmental Impact Assessment is another term which has been evolved and has relationship with the concept of sustainable development.

The salient features, which emerged from the concept of sustainable development are conservation of natural resources, environmental protection, the precautionary principle, polluter pays principle and financial assistance to the developing countries. Principle 3 and 4 of the Rio Declaration deals with the concept of sustainable development. The Brundtland Report defined 'Sustainable Development' as that Development which "meets the needs of the present without compromising the ability of future generations to meet
their own needs" Principle 3 of the Rio Declaration on Environment and Development (1992) provides that "The right to development must be fulfilled so as to equitably meet development and environmental needs of present and future generations".43

9(E) Emergence of Principle of "Polluter Pays":-

The polluter pays principle is an economic policy for allocating the costs of pollution or environmental damage borne by public authorities.44 Ric Declaration also provides for the principle of polluter pays. The principle is not made legally binding, however, it has been now used and developed as a guiding principle.

The basic concept of this principle is based on its widely accepted rationale that a person who wants development at the cost of environment must bear the cost. It is based on jurisprudence of penology.45 This principle emerges so that the person who is responsible for pollution could pay damages. The principle can be traced to Judgment in Rylands vs. Fletcher's wherein liability for damage caused knowingly or unknowingly was strict liability. This principle is now accepted as part of customary international law. The Rio-Declaration elaborately speaks about this principle.

This principle is discussed at length while discussing the impact of the conventions and the emerging principles to the national laws in India. However, it would not be out of place to refer principle-16 of the Rio-Declaration which reads as under:-
"National authorities should endeavour to promote internationalization of environmental costs and the use of economic instruments, taking into account, the approach which the polluter should, in principle, bear the costs of pollution, with due regard to the public interests and without destroying international trade and investment."

The principle of polluter pays enjoins the polluter to pay the cost so as to salvage the damage to the environment. The polluter pays principle can be implemented through the command and control approach.\footnote{46}

\textbf{9(F) The Principle of Common but Differentiated Responsibility}

The common law and the law of equity can never be separated from even the international canons, and therefore, Rio Declaration would go to show that the developed nations had to cater to the needs of the developing countries. If the developing countries had to develop then the responsibility would have to be common. This principle takes within its sphere two aspects (a) that the circumstances of each state according to its environmental problems, the way to reduce them and the method in which they can be curbed, (b) the next aspect which requires to be considered while appreciating this principle is that the states have the common responsibility to stop degradation of environment. This aspect is recognized by the Rio-Declaration.

It is an admitted position that Supreme Court of India has held that life means life with human dignity, and therefore, the concept of human right is nothing else but providing basic human necessities which culminates into rights and duties.
The major concepts/principles which have emerged due to the international conferences/conventions are briefly enumerated below in Box 2.2:

Box : 2.2

(a) Permanent Sovereignty Over Natural Resources, State Responsibility and International Environmental Law
(b) The Obligation to Co-operate and the Good Neighbourliness Principle
(c) The Principle of Preventive Action or Precautionary Principle
(d) The concept of Sustainable Development
(e) Emergence of Principle of Polluter Pays:-
(f) The Principle of Common but Differentiated Responsibility

10 IMPACT OF INTERNATIONAL CONFERENCES CONVENTIONS IN INDIAN SCENARIO-EMERGENCE AND DEVELOPMENT OF ENVIRONMENTAL JURISPRUDENCE.

The aforesaid six principles / concepts which have given rise to development of environmental rights and duties can be linked to the National scenario in India because the rule of law in India, must be read in the background of Stockholm, Rio and the other declarations and treaties made at the international level. The rule of law in India would make it obligatory to the courts in India to keep these declarations in the background and interpret the legislations so as to advance the cause of ecology and environment.

The Indian Constitution has embodied the principle of life and liberty in Article 21 (protection of life and personal liberty), Article 48 (A) (protection and improvement of environment and safeguarding of forests and wild life), Article 51 (A) (g) (fundamental duty to protect and improve the natural
environment including forests, lakes, rivers and wild life and to have compassion for living creatures).

Article 51 of the Constitution of India states about promotion of international peace and security. It enjoins the duty on the States to endeavour to legislate for giving effect to international agreements, conventions, made at any international conference. The courts in India in the wave of judicial activism have proceeded far ahead of even the British Principles. They have succeeded in using international norms and practices in a number of ways, though they have been extremely careful to yet maintain the dualist nature of the State.  

Article 51 of the Constitution of India has been relied upon to introduce and implement various international instruments, particularly the Declaration of Human Rights and the two Covenants on the Political and Civil Rights and the Economic, Social and Cultural Rights in the interpretation of fundamental rights. The courts have held that by virtue of this article international instruments, particularly those to which India is a party, become part of Indian law so long as they are not inconsistent with it. Therefore, they can be very well relied upon and enforced. Also refer

Prem Shankar Shukla vs. Delhi Admn.; Mackinnon Mackenzie and Co. Ltd. Vs. Andrey D’Costa; Sheela Barse vs. Secy., Children’s Aid Society; Vishaka vs. State of Rajasthan; People’s Union for Civil Liberties vs. Union of India; D.K. Basu vs. State of West Bengal; Apparel Export Promotion Council vs. A.K. Chopra. In the judgments referred herein the Supreme Court has observed that the rules of customary international law which are not contrary to Municipal Laws shall be deemed to be incorporated in the domestic law. The Supreme Court in Kesavananda Bharati vs. State of Kerala, has held
that the Constitutional Law being a Municipal Law must be interpreted in light of the United Nations Charter and the solemn declaration subscribed by India.

The central rules to implement the legislations based on international Conventions are also made. Central schemes and circulars have been issued. In the words of Justice Krishan Iyer in Environmental Justice through Judicial Process Ratlam to Ramkrishnan,\textsuperscript{51} published on July 16, 2002. "All these together constitute the constellation which we may call the Environmental corpus-juris of India. Numerous central notifications and regulations have also been promulgated and authorities created". The courts in India have applied the international principles which can be traced back to 1983 when the Supreme Court through Justice P.N. Bhagwati in \textit{National Textile Workers Union vs. P.R. Ramakrishnan}, (1983) 1 SCC 228\textsuperscript{52} has conveyed that the law can not stand still, it must change with changing social concepts and values.

Legislations are enacted to serve the purpose of the international Declarations, and this is reflected in the attitude of the judiciary of India\textsuperscript{53}. Article 253 of the Indian Constitution\textsuperscript{54} gives power to Parliament to make laws implementing the international obligations of the country as well as any decision taken at an international conference. Therefore, any international treaties as well as commonly recognised principles are implemented nationally with the help of this provision. Moreover, article 51 states that a directive principle of state policy directs the executive and the judiciary to give full effect to the international treaty obligation in the national law\textsuperscript{55} Recently, at least in one case, the judiciary applied the polluter pays principle referring to the Treaty of Rome Article 130-r (2), to which India is
not a party, without mentioning that the polluter pays principle is recognized as a customary international principle. The judiciary applied 1972 Stockholm and 1992 Rio Declarations, both soft law instruments directly in the judgments mentioning it as customary international law. As referred in Jona Razzaque, (2004) p-30 Public Interest Environmental Litigation in India, Pakistan and Bangladesh Kluwer Law International.

The Supreme Court has filled the gap in the legislation with the aid of international conventions as seen in the judgment referred herein above. The Indian courts have harmonized Indian laws with international declarations for fulfillment of fundamental rights. The international conventions are adopted as the modes of interpretations also and have proved to be useful guides in interpreting the constitutional mandates. The Supreme Court has justified the stands taken on the basis of international principles. The latest being Essar Oil Ltd. vs. Halar Utkarsh Samiti; 2004 (2) GLR 1027.

The realm of environmental law provides a fascinating study in this context. Here one can say that the domestic law has developed primarily due to the judicial interpretation. Refer to Vellore Citizens Welfare Forum vs. Union of India; (1996) 5 SCC 647, APPCB vs. M.V. Naidu; (1992) 2 SCC 718, T.N. Godavarman Thirumalpad vs. Union of India; (2002) 10 SCC 606, Essar Oil Ltd. vs. Halar Utkarsh Samiti; 2004 (2) GLR 1027 and Deepak Nitrite vs. State of Gujarat, 2004 (3) GLR 2389. The links between the international declarations, are therefore, specifically drawn so as to show that under the national and the domestic law, they are applied in the manner mentioned above.
It is the Indian Parliament, which has the power to make laws so as to accept International treaties or laws. One of the heads of State who represented India in the 1972 summit was the Prime Minister, Mrs. Indira Gandhi and therefore, the Parliament of India has passed laws, which are implementing international environmental treaties, covenants and protocols. The legislature of India believes that laws confirming international obligations must be enacted.

The legislations are preambled on the basis of the international treaties. The concern of Indian Judiciary in maintaining and improving the ecology is depicted in the urgency and ingenuity by which the courts have handled the issues relating to the environment.59

Though 1972 Declaration and principles enunciated there at were moral covenants, they are regarded as will of nations which came together. Year 1972 is considered as the 1st year of guiding world to a better world and the 1st rung in the worlds ladder for subsequent development of International Environmental jurisprudence.

10[A] IMPACT ON LEGISLATIONS ::-

In India the legislative history of the Water Act started way back in 1962. The Water Act was introduced with a preamble incorporating the principles enunciated in 1972 Declaration. The 42nd Constitutional amendment had its origin in Stockholm Declaration.

The watershed of 1972 can be understood by the legal developments which took place in and around the period of the 1972 conference, the
Stockholm Declaration has served as a basis for the subsequent development of national and international environmental law in India.

The Declaration of 1992 is writ large on the legislations, which are framed and after referring to the international conventions several rules and regulations are framed.

The impact of these declarations can be seen in the (a) amendment of Constitution of India (b) constitution of Environment Court / Tribunal / Commissions and enacting laws for the protection of environment.

The Constitution of India makes it obligatory for the citizen and makes it a fundamental duty under Article 48-A and Article 51- A for the protection of the Environment

Due to the several international conventions the Government of India has decided to strengthen environmental policy planning; environmental administration; decentralization of environmental management. The implementation of environmental law; monitoring and compliance in specific high priority environmental problem areas is undertaken.

Instances for solving emerging environmental problems had come up before the Indian Courts (especially High Courts and the Supreme Court) even before the Rio Declaration or the Johannesburg conference. The Supreme Court was alive to the environmental concerns and it had started applying the principles which were enunciated at Stockholm Declaration.
The Kyoto Protocol adopted on 01/12/1997 has ensured reduction of greenhouse gases. The Protocol enjoins duties on each state, which is a party to the Protocol to reduce overall emissions of gases and legislate in this behalf. In the year 2002 Kyoto Protocol was signed by India just before 15 days of the World Summit on Sustainable Development. This protocol is basically meant for giving road map for containing emissions of Green House Gases.

The Hon’ble Supreme Court and Hon’ble High Courts have indirectly or directly applied either by the legislative mandate or all these conventions. The Vienna Convention for Protection of the Ozone Layer of the year 1985 has been ratified by India. The authorities concerned also indirectly or directly implement the Endangered Species Convention and the migratory bird convention of 1979. The Public Liabilities Insurance Act was legislated. The Convention on Environment Impact Assessment has been time and again implemented. The Biological Diversity Convention of 1992 has now been implemented by way of legislation in India.

The Delhi Ministerial Declaration on climate change and sustainable development, 2002 is very important. A copy of this is annexed as ‘Annexure E’. Our High Courts and Supreme Court are now implementing the wild life conservation strategy announced in the year 2002.

The world is currently worried about pollution and deteriorating environment. Acid rain and Green house effect will have to be lessened, and therefore, all these conventions are very helpful for our governance. The 1982 United Nations Convention on law of the sea had major thrust on several duties cast on nations for marine environment. This convention is
very important for Gujarat as it has the longest coast line in the Country. There are several problems which Gujarat is facing regarding its coast line.

It was later because of the international environmentalism, several important initiatives emerged on the Asian Sub-continent including India (including Gujarat). India being signatory to International Conventions had to adopt the declarations and other international treaties. The years from 1972 to 1982 were declared a decade for solving environmental problems.61

The reports published in 1971 dealing with the aspects of environmental degradation and its control in India made way for legislations to be enacted for betterment of environment, - aspects of human settlement in India and some aspects of rational management of natural resources and in the 4th Five Years Plans. A national committee on environmental planning and coordination was established, and therefore, all these principles were embodied in preamble to all environmental laws based on Constitutional provisions.

10[B] ACCEPTANCE OF INTERNATIONAL LAW AND ITS PRINCIPLES AND THEIR APPLICATION BY INDIAN COURTS:

Hon’ble High Court of Gujarat in P.J took a pragmatic view. Patel’s case [Supra] and relying on the 1972 International Declaration, the Hon’ble High Court issued directions so as to direct polluter to pay.

The path breaking decision in this branch of law can be seen to have adopted the precautionary principle. The first of its kind can be traced to the Ratlam Municipality Case where the Supreme Court applied the said principle.
The real growth in the field of environmental law can be said to have blossomed in Gujarat as early as 1988 when the High Court of Gujarat held that there is no fundamental right to carry on business which would cause peril to others. The comfort or the earning at cost of environment and health of fellow citizens, which the polluter wanted to earn was rightly refused in the year 1988.

The study reveals that the report of the World Commission on Environmental Development (WCED), known as the Brundtland Commission cited in State of Himachal Pradesh vs. Ganesh Wood Products, 1995 (6) SCC 363 is worth quoting to understand the impact of declarations in Indian Scenario.

"There has been a growing realization in National Governments and multilateral institutions that it is impossible to separate economic development issues from environment issues many forms of development erode the environmental resources upon which they must be based, and environmental degradation can undermine economic development. Poverty is the major cause and effect of global environmental problems. It is, therefore, futile to attempt to deal with environmental problems without a broader perspective that encompasses the factors underlying world poverty and international inequality".

The above declarations/conventions their principles or concepts are made applicable in India as legislations are preambled on these declarations. Notifications are also issued to fulfil the obligation as a signatory nation. However, though being soft law it is regarded with reverence by the Courts
in India. The Hon'ble Gujarat High Court has made a special reference to the 1972 Declaration in the decision of *P.J. Patel vs. State of Gujarat*, 1995 (2) GLR 1210. Wherein His Lordship Justice B.N. Kirpal (the then Chief Justice, High Court of Gujarat) observed:

"6. Pursuant to the proclamation adopted by the United Nations Conference on the Human Environment, which had taken place in June, 1972, in Stockholm, which was attended by the Indian Delegation, led by the then Prime Minister of India and realizing the importance of the prevention and control of pollution of water, the Parliament passed The Water (Prevention and Control of Pollution) Act, 1974. This Act was also applicable to the States, which had passed a requisite Resolution under Article 252(1) of the Constitution, including the State of Gujarat. The effect of this was that the matters with regard to the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water and for establishment of Pollution Control Boards were to be regulated in the said States by the aforesaid Water Act.


The Supreme Court has applied the concept in the recent decision in the case of *Essar Oil Ltd. vs. Halar Utkarsh Samiti* reported in 2004 (1) GLR 1027.

It would be observed that as far as Gujarat High Court is concerned, all the principles can be said to have been effectively applied, in P.J. Patel's
case. The principles of precautionary measure, polluter pays and sustainable development have been incorporated in the judgment. The later judgments of the Hon'ble High Court of Gujarat which are sequel to the judgment in SCA no. 770 of 1995 [P.J.Patel's case] have also embodied these principles. The oral order made on 17-6-1997 on analysis, would make it clear that the polluter pays principle was enunciated by His Lordship Justice B.N.Kirpal, was followed by Justice B.C. Patel and Justice M.S. Shah in the subsequent proceedings. Public Notice came to be issued so that the industrial units who were earning by causing peril to environment could participate and be made to contribute for the betterment of environment. The pipeline project to be made functional by AMC and they were asked to recover Rs. 5 per litre of water used by the members of the association. Supreme Court had granted Status-Quo, and thereafter, directed the parties to approach the Hon'ble High Court of Gujarat.

The aspect which is required to be seen is the impact of the conferences and conventions and their utilisation in judicial proceedings in India. The 1972 and 1992 Declarations and principles, which emerged there from can be said to have been aptly applied by the Hon'ble High Court of Gujarat in P.J. Patel vs. State of Gujarat 1995[2] GLR 1210 wherein all the three principles (a) polluter pays (b) precautionary principle and at the same time (c) concept of sustainable development have been applied.

The judgment, which followed by way of sequel to the said judgment can be said to have embodied the principle of preventing measures and the right to healthy living. The judgment of the Hon'ble High Court of Gujarat in Jayesh N. Patel vs. State of Gujarat SCA/4473/97 wherein His Lordship Justice R.K. Abichandani has very rightly applied the principle of preventive
measures. On the basis of the reports submitted by National Environmental Engineering Research Institute (NEERI), the court directed G.I.D.C. that in the concerned area evolve a strategy, which can be used for stopping of pollution of river Narmada. The Court directed that no new industry without effluent discharge plant should commence any production. The ecology was likely to be disturbed because the characteristics of the river showed that waste water when discharged in the river would accumulate if no dilution and dispersion was available. The standards of discharge of the trade effluents were to be fixed in the G.I.D.C. area of Zhagadia. The Supreme Court for betterment of Gujarat in the Narmada case Narmada Bachavo Andolan vs. Union of India; AIR 2000 SC 3751 applied the precautionary principle where principle of precaution has been succinctly applied. In the case of A.P. Pollution Control Board vs. M.V. Naidu, AIR 1999 SC 812 the Supreme Court had referred to the principles enunciated in Vellore Citizen Forum vs. Union of India; 1996 (5) SCC 647. While analyzing these three decisions, it would be observed that applicability of the precautionary principle in India has now become the genus for application of other principles. The Supreme Court in Narmada case has applied these principles holding that these doctrines should be made applicable in all those projects or industries where the extent of damage likely to be inflicted is not known. The Supreme Court in its decision has held that the environmental safeguards were taken care of and foreseeable impact was assessed and no harm was likely to be caused to environment. It is held that if the procedural hazard was such which did not take care of environmentally safeguards then the Courts would have to apply aforesaid principles. The impact of such project itself will not make the project environmental benign. It was meant for economic and administrative development so as to control pollution. The polluter pays principle has been applied by the Supreme Court in the recent
decision concerning Tajmahal degradation reported in AIR 1997 SC 734. M.C. Mehta vs. Union of India. 68

The Hon'ble High Court of Gujarat in Taruben Sukhlal Gamit vs Central Pulp Mills Ltd. 1997 (2) GLH 10076 9 has held that the provisions under constitutional mandate under Art. 21, 48A and 51A(G) are required to be properly implemented. The polluters will have to pay for the damages caused to the society. The Court has stopped industrial production unless and until the industries made provision for efficacious treatment facilities for treatment of effluent substances as per prescribed norms. The Hon'ble High Court of Gujarat as early as 1992 had applied these principles while dealing with the powers of Gujarat Maritime Board holding that it was the duty of the board to see that all danger and nuisance should be stopped by it. The decision goes to show that Justice S.D applied precautionary principle in Halar Maritime Agencies vs. Gujarat Maritime Board; 1992 (2) GLR 819. 70

The courts under the Civil Liability regime have applied the Polluter Pays principle, the Indian Courts applied higher threshold of liability than required by international law71.

The next principle, which has been now implemented by the Hon'ble High Court of Gujarat, is the concept of public hearing before granting environmental clearance. In the case of Centre of Social Justice vs. State of Gujarat; 2000 (3) GLR 1997, 72 the analytical study of this decision would go to show that Hon'ble High Court of Gujarat has remained alive and judicial mandate has shown that the conventions and the principles which have emerged are implemental by judicial dicta.
A perusal of all these judgments would go to show that the doctrine of protection and sustainable development are applied, so that the damage to the environment can be salvaged to certain extent. The Supreme Court has time and again referred to several international covenants in environmental matters.

11 OTHER MAJOR MOVEMENTS AND CONVENTIONS HAVING GLOBAL IMPACT AND THEIR APPLICATION IN ADMINISTRATION OF JUSTICE DELIVERY SYSTEM IN INDIA AND GUJARAT.

The other major United Nations Conventions / Declarations which had a long ranging effect can be said to have emerged mainly after the Stockholm Conference. Soon after the Stockholm Conference, there were several international treaties, and several Commissions were appointed. The United Nations lodged its environment programme in pursuance to the Stockholm Conference which had made provisions for the Governing Council and Environmental Secretariat, Environmental Coordination Board and the Environmental Fund.

The United Nations established its Commission `Trans National Corporation' so as to understand the effects and activities of such Corporation. It was also meant for securing effective international arrangements. The United Nations was also concerned about issues pertaining to human settlement, and therefore, Conference on Human Settlement (Habitat) was held in the year 1976. Bonn Convention of 1979 protected even migratory birds. In the year 1979, the convention on Long-Range Transboundary Air Pollution was also promulgated.
The Box 2.3 enumerates a chronological list of conventions adopted by India. Three conventions have been listed:

<table>
<thead>
<tr>
<th>Date/ Year</th>
<th>Place</th>
<th>Convention</th>
</tr>
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<tbody>
<tr>
<td>28 September, 1986</td>
<td>Vienna</td>
<td>Early Notification of a Nuclear Accident</td>
</tr>
<tr>
<td>16 September 1987</td>
<td>Montreal</td>
<td>The Protocol on Substances that Deplete the Ozone Layer</td>
</tr>
<tr>
<td>22 March, 1989</td>
<td>Basel</td>
<td>The Control of Transboundary Movements of Hazardous Wastes and their Disposal</td>
</tr>
<tr>
<td>25 February 1991</td>
<td>Espoo, Finland</td>
<td>Environmental impact assessment in Transboundary context</td>
</tr>
<tr>
<td>17 March, 1992</td>
<td>Helsinki</td>
<td>The Protection and Use of Transboundary Watercourses and Lakes</td>
</tr>
<tr>
<td>17 March, 1992</td>
<td>Helsinki</td>
<td>The Transboundary Effect of Industrial Accidents</td>
</tr>
<tr>
<td>9 May, 1992</td>
<td>New York</td>
<td>Framework Convention on Climate Change</td>
</tr>
<tr>
<td>22 June, 1992</td>
<td>Nairobi</td>
<td>Biological Diversity</td>
</tr>
<tr>
<td>14 June 1994</td>
<td>Oslo</td>
<td>Protocol on Further Reduction of Sulphur Emissions</td>
</tr>
<tr>
<td>11 December 1997</td>
<td>Kyoto</td>
<td>Protocol to the United Nations Framework Convention on Climate Change</td>
</tr>
</tbody>
</table>

**Hypothesis Answered:**

The hypothesis, which has been posed and argued in this thesis, is that the legislative trends and the actions of Courts in India have helped in halting the environmental degradation. These two together with the aid of International Environmental Law have salvaged the grim scenario, which
emerged in India. The aforesaid aspects are answered, both by taking recourse to the International treaties, Declarations and enacting laws, which protect the environment. The International Declarations are referred and legislations are enacted so as to confirm the will of the United Nations Organisation [UNO] as India is a member. The Judiciary with the aid of International Declarations has interpreted the environmental legislations so as to stop environmental degradation. The High Court of Gujarat while deciding Writ Petitions under Article 226 of Constitution of India specifically applies the International Declarations and International Environmental Law to Municipal Laws.

12 CONCLUSIONS AND EVALUATION:

The influence of the International policies on national laws and their impacts on enactments are discussed at length. The influence of international Declarations is preambled in the laws enacted after 1972. The other feature of this chapter is the applicability of international principles by the Indian Courts while dealing with environmental problems. These aspects are taken care from 1972 till date by both the Indian Legislature and the Judiciary. It is because of the combined efforts of both these limbs it has become possible to implement the International policies without much difficulty. The Supreme Court and the High Courts have moulded environmental jurisprudence with aid of International Declarations which no other Constitutional Court anywhere in the world has ever done so. The International Declarations, have become pivotal in the judicial mandates while interpreting the Environmental Legislations. The Constitution enunciates in Article 253 that International Declaration / Principles must be applied in Indian context, if not repugnant to the National Laws.
It would be clear that legislations are enacted in India for protecting environment and stopping pollution. The Courts have taken recourse to the international principles enunciated at the international conferences legislative mandate and judicial pronouncement for allaying environmental degradation are employed in consonance with hard and soft law conventions.

The judicial pronouncements and the legislative developments show that the International Declarations though known as Soft Law Declarations. Both the legislature and judiciary for ameliorating the environmental concerns and allaying pollution look upon these Declarations or Conventions. These Internationally enunciated principles are taken recourse to by Higher Courts. These Declarations have tremendous impact on judicial pronouncements. 32 years ago when the nations of the world met at Stockholm, the ball was set rolling for stopping environmental deterioration. It was decided to protect environment along with social and economic development and that we should solve the global problems in a manner that would keep Eco System and amenities balanced by sustainable development.

The Indian Jurisprudence on environmental damage is remarkable for both its procedural and substantive aspects. Apart from a few exceptions, the Indian courts have acted more effectively to abate environmental damage rather than to prevent future damage or remediate the consequences of past damage.

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References:

15. UN Doc A/CONF 48/PC/2, Para 16 (1972).
Michel Renting, The Earth Summit Agenda for Change.
Sri Justice A.M. Ahmadi, p. 183 Thoughts and Reflections Former Chief Justice of India, A.P. State Judicial Academy,
Ian Brownlie Principles of Public International Law, Oxford University Press.
Trail Smelter Arbitration, P-284 Rio (3) 1905
Corfuchannel Case, P:4 International Court of Justice Report 1949,
Burns H. Weston and others (1990), p. 3411968 (50) ILR 2; India vs. Pakistan; International Law and World Order West Publishing House.
Philipp Sands Principles of International Environmental Law,
Texaco Overseas Petroleum Co. case, 53 ILR 389 (1977)
ILC Draft Articles on International Responsibility, 1990
Ball and Bell on environmental law 5th Edition.
P Burnie and A Boyle, p. 90, International Law and Environment, Oxford University.
ibid. P-456.
ibid P-463.
Patricia Birnie , Alan Boyle, P-92 International Law & The Environment; Second Edition Oxford University Press.


"A Contextualised Look at the Application of International Law" – The Indian Approach, Speech delivered by Hon'ble Mr. Justice S.B. Sinha, Judge, Supreme Court of India at Law College, Nagpur on 2nd January, 2004.


Kesavananda Bharati vs. State of Kerala, (1973) 4 SCC 225

Justice Krishan Iyer in Environmental Justice through Judicial Process Ratlam to Ramkrishnan Published, on July 16, 2002.

National Textile Workers Union vs. P.R. Ramakrishnan; (1983) 1 SCC 228


The provision states: ‘Notwithstanding anything in the foregoing provision of this chapter, parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.’


Indian Council for Enviro-Legal Action vs. Union of India (1996) p-247 3 SCC.


Essar Oil Ltd. vs. Halar Utkarsh Samiti; 2004 (2) GLR 1027.

Dr. Maheshwara Swami, (2003) p. 95 Law Relating to Environmental Pollution and Protection;


Narmada Bachavo Andolan vs. Union of India, AIR 2000 SC 375.

A.P. Pollution Control Board vs. M.V. Naidu, AIR 1999 SC 812.

Vellore Citizen Forum vs. Union of India; 1996 (5) SCC 647.


Taruben Sukhlal Gamit vs. Central Pulp Mills Ltd. 1997 (2) GLH 1007

Halar Maritime Agencies vs. Gujarat Maritime Board; 1992 (2) GLR 819.


Centre of Social Justice vs. State of Gujarat; 2000 (3) GLR 1997

Ian Brownlie, Principles of Public International Law, P-289, Oxford University Press