JETIR.ORG ISSN: 2349-5162 | ESTD Year : 2014 | Monthly Issue
JOURNAL OF EMERGING TECHNOLOGIES AND INNOVATIVE RESEARCH (JETIR)
An International Scholarly Open Access, Peer-reviewed, Refereed Journal

SIC UTERE TUO UT ALIENUM NON LAEDUS- THE PROPERTY USE DOMAIN OF THE MAXIM FOR ENVIRONMENTAL CASES

DR. SHABNAM M.*[1]

MANJUSHA**

* Associate Professor, Faculty of Law (LC-II), University of Delhi. Delhi
** Assistant Professor Department Of Law, Bharti Vidyapeeth University, Paschim Vihar, Delhi

The maxim of sic utere tuo ut alienum non laedus is traced to the Roman and Latin laws applicable from the past centuries, with respect to land and property uses of the same. The meaning of making use of one's own land not to be detrimental to another, holds great importance for a protectionist environmental laws and policies to be applicable in the current regime. The economic consequences to environmental matters initiated with the Trail Smelter Arbitration and integrated as mandatory part of the environmental regime is noteworthy of its uses and application by domestic laws as well as judicial recognition of the same. This paper seeks to trace its history and reflect on environmental cases based on the maxim.

Key words: Ancient Maxim, Property uses, common heritage, exploitation, environmental application

I-INTRODUCTION

Competing claims of environment and development have emphasised on the existence and implementation of environmental principles and laws to development issues.[2] The natural resources being the *Common heritage* of mankind should be preserved and protected not only [3]for the current generation to make use of but also the future generations to enjoy. The need for environmental protection is felt more than ever before, as the world witnesses the effects of natural as well as man-made disasters engulfing the Nations moving towards the next century. The emphatic stand of The United Nations Conference on Human on the human environment (The Stockholm Declaration) 1972, environmental principles is based on the maxim, "*Sic utere tu ut alienum non laedus"* This principle under the

* Associate Professor, Faculty of Law (LC-II), University of Delhi. Delhi
** Assistant Professor Department Of Law, Bharti Vidyapeeth University, Paschim Vihar, Delhi

[2] Reviewed Work: *A History of Water Rights at Common Law* by Joshua Getzler, Review by: Christian Witting, The Modern Law Review, Vol. 68, No. 3 (May, 2005), pp. 508-510 (3 pages), Published By: Wiley; https://www.jstor.org/stable/3699178. Last visited: 24/01/2022.

[3] E McQuillin, *Abatement of Smoke Nuisance in Large Cities by Legislative Declaration that Discharge of Dense Smoke is a Nuisance Per Se*, Volume.60, Central Law Journal. P.343, 1905. https://heinonline.org/HOL/LandingPage?handle=hein.journals/cntrlwj60&div=75&id=&page. Last visited: 24/01/2022.

international law prohibits States from conducting or permitting activities within their territories that harm other neighbouring States. This ancient principle which was applied to "property uses" is under environmental regime premised on the soft law and hard law of principles and action work through domestic legislations of countries aimed at preventing environmental harm in terms of pollution and degradation.[4] In a Los Angeles County case and likewise many other similar cases, courts in USA, India and most of other countries have granted indemnity based the said maxim.[5] The ancient concept of application to various property uses of the maxim has been adapted for nuisance law to environmental issues. Harm to environment maybe ascertained with the help of evolving technologies and scientific methods to the nuisance law which has evolved manifold and continues to outreach legislature and judiciary's capabilities in anticipating and combating it. The long history of not bringing harm to neighbour's property to nuisance laws evolved from its protean nature of agrarian economies to gold mining, copper smelting and then the Industrial revolution to accommodate substantial and economic and technological changes providing only injunctive relief. The shift in approach led the modern laws and courts to apply this maxim and law to environmental causes and harm leading to include indemnity along with injunctive relief. The regulatory mechanism has revived its concept to apply to environmental cases of harm including its detrimental effects to all affected by nuisance has again widened the scope of this maxim and the law. It has shown through its applicability to environmental issues to provide adequate and appropriate remedies for pollution creating activities which has transcended borders to become a global issue. There is no doctrinal reason why the social utility and scientific uncertainty issues that served defendants well in the late nineteenth and twentieth century could not turn the reasonableness balancing in favour of plaintiffs challenging atmospheric pollution.[6] Hence the maxim came to have its applicability to cases of environmental harm after the Trail Smelter Arbitration moving forward in similar cases and then appreciated with the formal start of Protectionist regime after the Stockholm Declaration in 1972.

II-HISTORY

The common Law in the 18th century in England, was a reflection of a preindustrial society in which certain principles prevailed over a period of time with respect to land uses and population.[7] The common law advocated absolute protection to interests in property, and invasion and competition were guarded strictly. The legal maxim governing the common was of, '*sic utere tuo ut alienum non laedus'*, where liability was based on trespass and other tortious liabilities.[8] Liability based on fault or negligence, and liability without fault, in other words 'Strict liability' governed all land disputes, was the distinctive feature of the times. Contract had started becoming a separate field of law other than tort cases. Therefore, Industrialization and law integrated with the law of Torts for its derivative existence during those times, thereby transforming the 1750 property-based law in England and United States.[9] The 19th century brought economic growth thereby diminishing the property interests and paved the way for competition to grow. Strict Liability had restrictive uses in economic growth. This related in a growing area of separate Contract and Tort liabilities. Employment contracts and Negligence paved the way for 'Caveat Emptor' in the respective fields. The Industrialized society was governed by entrepreneurs and supported by the legal fields of labour laws.[10] This was accomplished through judicial means restricting the role of

[4] Naik, Gayathri D, *Les-Anne Duvic-Paoli, The Prevention Principle in International Environmental Law*, Yearbook of International Environmental Law, Oxford University Press, 01/09/2020,
[5] Carpenter E. Charles, *The Doctrine of Green v. General Petroleum Corporation*, Volume 5 Southern California Law Review, p. 263 (1931-1932). https://heinonline.org. Last visited: 26/01/2022.

[6] Blumm C. Michael, *A Dozen landmark nuisance cases and their environmental significance*, Volume 62, Arizona Law Review, pp.403-449,
[7] Morton J., *From Tort to Contract: Industrialization and the Law,* Volume 86 Yale Law .Journal. pp.788-797. 1976-1977. https://heinonline.org. Last visited: 24/10/2022.
[8] Ibid.
[9] Id. n.6
[10] Ibid.

legislature which bounced by in 1820's. It was the 19th century which brought out the rule of law.[11] Another important feature which this maxim of 'use of one property not to the detriment of another,' supported was the concept of 'Nuisance' commonly used in land dispute cases. The defendant was liable for his acts even though he had not intended to injure the plaintiff's property "for the rule is sic were tuo ut alienum won laedas which governed the law.'[12] This maxim was considered as a fundamental and unquestionable rule of law which was to be accepted and applied by the courts without question.[13] The environmental law which informally began with the *Trail Smelter Arbitration* and later on formally with the Stockholm Declaration 1972 was formulated and evaluated on the basis of this maxim.[14]

III-TRAIL SMELTER ARBITRATION

Where environmental damage occurs due to any activity which can be established by clear and convincing evidence and this damage has serious consequences, it was this basic principle established in the case of *Trail Smelter Arbitration.*[15] It was also established that serious consequence in the whole incident was questioned but as of today, it is a *de minimus* requirement.[16] The principles and the incident itself were applicable to that incident, those have become more emphasized in the contextual issues of climate change, transboundary movement of hazardous waste, Depletion of ozone layer and likewise other environmental challenges. In International Law too, in The Corfu Channel case, the International Court of Justice recognised the liability of the State in transboundary harm.[17] At that time, it was based on the Law of Nuisance and Liability was acknowledge by the Canadian government in that instance.[18] The resolve came between the two nations based on principles of international law. The facts of the Trail Smelter Arbitration were that this case covered a period of thirteen years from 1928 to 1941. Environmental harm in terms of property use causing harm to the neighbour gained a legendary status between neighbouring countries being Canada and the United States. The Sic utere tuo ut alienum non laedus maxim was applied for transboundary harm caused by the neighbouring country of Canada to United States. The Smelter in Trail, British Columbia was operated by a Mining and a Smelting Company named COMINCO, which processed lead and zinc since 1896.[19] This activity caused damage to forests and crops in the surrounding areas and also across the Canada-US border in Washington. This resulted in taking up this case by the residents of United States to the government which in turn took up the harm issue with the Canadian government.[20] The dispute between the smelter owners and the farmers and other property holders resulted in both the States discussing the pollution situation and a Tribunal being set up to decide the dispute. The problem began in 1925 but was settled by the Tribunal in 1941. It was in 1925, that the smoke which drifted from the smelter created transboundary harm, allegedly causing harm to crops and forests in the neighbouring United States land. The Sulphur-di-oxide generated from the Smelter formed smoke, gas and ash which was spread due to the blowing winds causing losses to the crops and damage to the forests in the area. The talks which started led to the settlement to be obtained

[11] Ibid.
[12] Elmer E. Smead, *Sic Utere Tuo Ut Alienum Non Laedas A Basis of the State Police Power*, Volume 21 Cornell Law Review p. 276, 1936 Available at: http://scholarship.law.cornell.edu/clr/vol21/iss2/3. Last visited: 30/01/2022.
[13] Ibid
[14] Supra, n.9.
[15] Parrish, Austen L., *Trail Smelter Déjà Vu: Extraterritoriality, International Environmental Law and the Search for Solutions to Canadian-U.S. Transboundary Water Pollution Disputes*, Volume 85, Boston University Law review, pp 363-429, 2005. Articles by Maurer Faculty. 891. https://www.repository.law.indiana.edu/facpub/891 Last visited: 30/01/2022.
[16] Karen Mickelson, *Rereading Trail Smelter*, Canadian Yearbook of International Law/Annuaire canadien de droit international , Volume 31 , 1994 , pp. 219 – 234, Published online by Cambridge University Press: 09 March 2016, DOI: https://doi.org/10.1017/S0069005800005464 Last visited: 30/01/2022.
[17] Bourne, C.B., *The International Law Commission's Draft Articles on the Law of International Watercourses: Principles and Planned Measures*, Volume 65 Colombia. Journal of International Environmental Law & Policy, pp. 84–88, 1992. http://googlescholar.com. Last visited: 30/01/2022.
[18] Birnie, P.W. and Boyle, A.E., *International Law and tile Environment*, 145 (Oxford: Clarendon Press, 1992). http://googlescholar.com. Last visited: 30/01/2022.
[19] John E. Read, *The Trail Smelter Dispute*, The Canadian Yearbook of International Law, pp 213-229, 1963. http://googlescholar.com. Last visited: 30/01/2022.
[20] Ibid.

through Negotiation and Arbitration, thereby leading to the establishment of a Tribunal to settle the claims of the affected people. It was in 1935 that a Convention was signed legitimizing the Tribunal, also signing 11 Articles governing the Tribunal. The highlighting aspect being that it would decide four issues related to the dispute which were, [21]

1. Whether damage caused by the Trail Smelter in the State of Washington has occurred since the first day of January, 1932, and if so, what indemnity should be paid?
2. In the event of answer to the first part of the preceding question being is positive, to what extent should there be compensation?
3. In the light of the answer to the preceding question, what measures or regime, if any, should be adopted or maintained by the Trail Smelter?
4. What indemnity or compensation, if any should be paid because of any decision or decisions rendered by the Tribunal pursuant to the next two preceding questions?

The outcome of the Arbitration was $78,000 in damages being awarded for two burns in 1934 and 1936. The next round of damages could not be proved which ended the last damages being given out in 1938.[22] It was for the first time; environmental harm was assessed in monetary terms. The common law principles and the maxim of sic utere tuo ut alienum non laedus was emphasized and that through regulations, concrete harm could be assessed for specified interests. The coming of the new century brought changes from this old principle to a new principle of *salus populi est suprema lex* (the good of the public is the supreme law) interpreting it as that the states could bring regulations as long as it is for the promotion of public safety, welfare or morality.[23] Although changes have come over a period of time, The Principle has been revived for all environmental matters bringing the emphasis that environmental damage should be prevented and if it occurs should be through monetary terms be brought to its original form as long as it can be achieved.

IV-INTERNATIONAL ENVIRONMENTAL POLLUTION CASES

The International incidents paved the way to enact legislations within the domestic domain of countries for precautionary measures to prevent environmental harm. The legislations were framed based on Sustainable Development which embraces the maxim of not affecting or conducting activities which causes harm to your neighbour. The most talked about international cases of serious environmental harm caused due to human activities. From 1912-1965, *Japan's Four Big Pollution Diseases*, are the earliest Known pollution due to copper smelting can be traced in 1877-1890 causing pollution into Watarase river. As economy grew at a fast pace after 1905, various diseases called Minamata Disease, Niigata-Minamata Disease, Itai-Itai Disease, and Yokkaichi Asthma are called as the four major diseases occurred at various timelines by pollution in Japan.[24] In 1952, the *London Smog Disaster*, where the city of London was covered by a toxic smog for five days from 5thto 9th December, 1952, caused due to industrial pollution coupled with high pressure weather conditions. The occurrence caused deaths of several people as a lethal combination of Smoke and fog along with the weather leading to the enactment of The Clean Air Act after four years.[25]In 1953, *The Love Canal case*, where, a local company, dumped 21,000 tons of Industrial chemical waste and sold it the authorities at a very low rate. Over the coming years water levels along with the hazardous waste arose thereby affecting the environment, people and the properties

[21] Gurdip Singh, *Environmental Law-International and National perspectives*, Lawman India Pvt. Ltd, pp-231, 1995. ISBN: 81-7504-000-9.
[22] Ibid.
[23] Glenn H. Reynolds and David B. Kopel, *The Evolving Police Power: Some Observations for a New Century*, Volume 27 Hastings Constitutional Law Quarterly, p. 511, 2000. Available at: https://repository.uchastings.edu/hastings_constitutional_law_quaterly/vol27/iss3/2. Last visited: 30/01/2022
[24] Iwasaki Hirokazu, *Overcoming Pollution in Japan and the Lessons learned*, http://www.wepa-db.net/pdf/0810forum/paper36.pdf. Last visited :11/02/2022
[25] Martinez Julia, *Great Smog of London*, https://www.britannica.com/event/Great-Smog-of-London. Last visited: 11/02/2022.

in that area. By 1978, the problem was unavoidable and hundreds of families were relocated and compensated. The love canal disaster led to the foundation of "Superfund" act which helps pay for the clean-up of toxic sites.[26] In 1958.the *Niger Delta Oil Pollution* case occurred, when oil was discovered in 1956 by the British, and the Shell company was responsible for oil spill devastation where they paid a fine of £26 million thirty years later.[27] From 1964-1990, *the Ecuador's Amazon Degradation*, and from1971-1996, *Peru's Amazon Degradation* where constant degradation has taken without environmental restoration.[28] From 1972-1989, *Papua New Guinea's Panguna Mine war*, where the Panguna mine was developed in the 1960s, when PNG was still an Australian colony, and operated between 1972 and 1989. It was, at the time, one of the world's largest copper and gold mines. The Panguna mine was developed in the 1960s, when PNG was still an Australian colony, and operated between 1972 and 1989. It was, at the time, one of the world's largest copper and gold mines. It was operated by Bougainville Copper Limited, which abandoned the site without restoration when faced by a rebellion and is still suspected to be contaminated.[29] In 1976, *Italy's Seveso Dioxin Cloud* where on July 1976, a chemical plant explosion near Seveso, Italy exposed locals to the highest known levels of 2,3,7,8-tetracholorodibenzo-*p*-dioxin (TCDD or dioxin) exposure to a residential population and chemical contamination in this environmental disaster.[30] In 1979, *France's Amoco Cadiz Tanker Spill* having its detrimental effects on marine life and natural wildlife sanctuaries.[31] In 1979, *The three mile island near nuclear disaster* Unit 2 reactor, near Middletown, Pennsylvania United States., partially melted down on March 28, 1979. This was the most serious accident in U.S. commercial nuclear power plant operating history.[32] In 1984, *India's Bhopal Cyanide gas leak disaster* occurred where the leakage of oleum gas caused death, disease and disasters taking lives of millions besides causing environmental harm.[33] In 1986, the *Chernobyl Nuclear Disaster* nuclear power plant in Ukraine, Russia was the product of a flawed Soviet reactor design coupled with serious mistakes made by the plant operators.[34] In 1989 - The European BSE crisis occurred in United Kingdom a food scare occurred, whereby affecting food supply chains and international trade.[35] In 1991, the Kuwaiti Oil Fires, where the Iran-Iraq war left blazing infernos burned for months having devastating effects of air and land pollution and affecting animal and human health.[36] In 1998, *The Spanish waste water spill*, where in Donana National Park, where a Canadian mining Company spilled toxic waste in the area and into the river, thereby threatening the environment. In 2000, *The Baia Mare cyanide spill* and the *Romania's Cyanide Spill* occurred. In 2005, *the Jilin Chemical Plant explosion*, where on November 13, 2005, the city of Jilin in Jilin province of China witnessed series of explosions affecting a lot of people in that and the surrounding areas, and pollutants spilling, causing Leukemia into the river Songhua. In 2005, E-waste in Guiyu, China was reported. In 2006, the Ivory Coast's Toxic Waste Dumping in South Africa was reported. From 2019-

[26] Kleiman Jordan Dr, *Love Canal: A brief History*, https://www.geneseo.edu/history/love_canal_history. Last visited: 11/02/2022

[27] Vaughan Adam, Oil in Nigeria : A history of spill, fines and fight for rights, https://www.theguardian.com/environment/2011/aug/04/oil-nigeria-spills-fines-fights; https://www.amnesty.org/en/latest/news/2018/03/niger-delta-oil-spills-decoders. Last visited: 11/02/2022.

[28] https://www.lenntech.com/environmental-disasters.htm. Last visited: 11/02/2022.

[29] https://theconversation.com/a-brutal-war-and-rivers-poisoned-with-every-rainfall-how-one-mine-destroyed-an-island-147092. Last visited: 11/02/2022.

[30] Eskenazi Brenda et al, *The Seveso accident: A look at 40 years of health research and beyond*, Volume 121, Environmental International, pp.71-84, 2018, https://reader.elsevier.com. Last Visited: 11/02/2022.

[31] Paul Webster, *Tanker's entire load spills into the sea*, https://www.theguardian.com/century/1970-1979/Story/0,,106870,00.html. Last visited: 11/02/2022.

[32] https://www.nrc.gov/reading-rm/doc-collections/fact-sheets/3mile-isle.html. Last visited: 11/02/2022.

[33] https://www.britannica.com/event/Bhopal-disaster. Last visited: 11/02/2022.

[34] https://world-nuclear.org/information-library/safety-and-security/safety-of-plants/chernobyl-accident.aspx. Last visited: 11/02/2022.

[35] Ye Hong, *The impact of the BSE crises on the Eurpoean beef industry structure*, https://edepot.wur.nl/296153. Last visited: 11/02/2022

[36]https://www.lenntech.com/environmental-disasters.htm; https://www.cfr.org/timeline/ecological-disasters; https://www.conserve-energy-future.com/worst-environmental-disasters-caused-by-humans.php. Last visited; 11/02/2022

2020, the Amazon Wildfires were reported having the detrimental effect of rainforest cover being affected which also is said to have carbon sinks affecting life on earth.[37]

V-INTERNATIONAL ENVIRONMENTAL LAW

The International Environmental law was based on the maxim of *Sic utere tuo ut alienum non laedus* where the judgement was delivered in the transboundary harm in the Trail Smelter Arbitration. In the later 19th century, after the two World wars, Human Rights were enacted and based as fundamental rights for all living beings. It was only after 1970, and the detrimental effects on environment were felt which led to a legal, formal start of soft law and hard law of enactments with principles and action work for protection of Our Common Heritage of mankind in the form of natural resources. Environmental Law is based on *Human Rights* which are categorized into first, second, third and fourth generation of human rights. After first and second have emerged the Third-generation human rights also known as *The Solidarity Rights*,[38] which include the right to a healthy environment. The rights in this category cannot be exerted individually, but only by groups or collectivities of people. The third-generation rights require the need to create an institutional support by the State. The environmental law allows social groups to live in a healthy environment, clean, without harmful agents to health but, in the same time, involves a number of limitations of rights of first or second generation, like owning a forest or the right to work. The doctrine about the environmental right, talks about these rights as "rights of future generations".[39] This first environmental Conference took place on *5th June, 1972 at Stockholm* which is the *Magna Carta* for all environmental issues. It based the principles framed on basis of the maxim of *sic utere tuo ut alienum non laedus.* The UNEP was formed as a result of this Conference[40], which institutionalized the conceptual framework. It was based on the concept of 'Sustainable Development, whereby 26 Principles were framed for concerns on environment and development advocating dialogue between the Industrialized and underdeveloped nations and economic growth and pollution of land, air and water in the world should be curbed by following the principles. This started as the "Soft law" regime for environmental law and lasted up to the 1982 World Charter for Nature, for environmental matters. *The World Charter for Nature, 1992*[41] which was a three-fold agenda of principles. Functions and means of implementation, but to the detriment of the law made it optional and not mandatory for countries which could ignore the provisions if they choose to do the same. This was followed by the *Vienna Convention on depletion of the Ozone Layer,1985***,** framed for awareness of the potentially harmful impact on human health and the environment through the modification of the ozone layer, based itself on the principles of the Stockholm Declaration ,1972. These principles had their basis in the maxim of *sic utere tuo ut alienum non laedus.* It was followed up the Montreal Protocol, 1987 controls the production and consumption of specific chemicals, none of which occur naturally, sets specific targets for reduction and a timetable for doing so.[42] The *Brundtland Report*, also called *Our Common Future*, publication released in 1987 by the World Commission on Environment and Development (WCED) that introduced the concept of sustainable development and described how it could be achieved by exploring the causes of environmental degradation, the interconnections between social equity, economic growth, and environmental problems, and developed policy solutions that integrated all three areas. The Brundtland Report is most often cited for its definition of sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." [43] The *Basel Convention On trans-boundary Movement of Hazardous Wastes, 1989,* read with The

[37] Ibid.
[38] Ibid.
[39] Ibid.
[40]https://www.un.org/en/conferences/environment/stockholm1972; https://www.britannica.com/topic/United-Nations-Conference-on-the-Human-Environment. Last visited: 30/01/2022
[41]https://www.soas.ac.uk/cedep-demos/000_P514_IEL_K3736-Demo/treaties/media/1982%20UN%20World%20Charter%20for%20Nature%201982.pdf. Last visited: 30/01/2022
[42] https://ozone.unep.org/treaties/vienna-convention Last visited: 30/01/2022
[43]https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf, Last visited: 30/01/2022

Rotterdam convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998 and The Stockholm Convention on Persistent Organic Pollutants, 2001. The International Agencies working along with these three conventions are the UNEP, FAO and WHO.[44] *The United Nations Convention on Environment and Development, 1992* or the Rio Declaration[45] where more than 130 countries participated to promote economic development, reduce poverty and preserve and protect the earth's ecological systems. It had five major agreements on global environmental issues were signed including the *Framework Convention on Climate Change*[46] which was based on a new principle of *"Common but Differentiated Responsibility"*[47] and *The Convention on Biological Diversity*,[48] were formal treaties whose provisions are binding on the parties. Reiterated 27 principles based on 1972 Conference of Stockholm, Agenda 21[49] was a blueprint for action work, forest principles for sustainable management of forests worldwide. The UNFCCC was followed by the *Kyoto Protocol*[50] signed in 1997 and ran from 2005 to 2020, was the first implementation of measures under the UNFCCC. The Kyoto Protocol was superseded by the *Paris Agreement*,[51] which entered into force in 2016. The Convention on Biodiversity, is a comprehensive, binding agreement covering the use and conservation of biodiversity. It requires countries to develop and implement strategies for sustainable use and protection of biodiversity, and provides a forum for continuing international dialogue on biodiversity-related issues through the annual conferences of the parties (COPs) with three main goals: the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising from the use of genetic resources. The United Nations Economic Commission for Europe (UNECE) *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* was adopted on 25 June 1998 in the Danish city of Aarhus.[52] The Aarhus Convention establishes a number of rights of the public (individuals and their associations) with regard to the environment. *It is a European Convention with global overtones***.** This forms the ultimate goals of the convention of the *Access to environmental Information* and *Access to justice* with citizens objections noted and implemented for *Citizen's participation in decision making*. Together with its *Protocol on Pollutant Release and Transfer Registers*, it protects every person's right to live in an environment adequate to his or her health and well-being. This convention links environmental rights and human rights with government accountability and environmental protection. The subject of the Convention goes to the heart of the relationship between people and governments. The Convention is not only an environmental agreement, it is also a Convention about government *accountability, transparency and responsiveness*.[53] It also entails Environmental Audits and environmental Impact Assessment to be made before license is granted to start a dangerous or Hazardous activity. It establishes procedural environmental rights to be enforced for environmental disputes.[54] *The Johannesburg Summit On Sustainable Development, 2002*, was also referred to as The World Summit on Sustainable Development (WSSD) which took place in Johannesburg, South Africa 26 August- 4 September, 2002.[55] Instead of new agreements between governments, the Earth Summit was organized mostly around almost 300 "partnership initiatives" known as Type II, as opposed to Type I Partnerships which are the more classic outcome of international treaties.[56] The *United Nations*

[44] http://www.pic.int. Last visited: 30/01/2022
[45] https://www.un.org/en/conferences/environment/rio1992. Last visited: 30/01/2022.
[46] https://unfccc.int/resource/docs/convkp/conveng.pdf. Last visited: 30/01/2022
[47] https://www.britannica.com/topic/common-but-differentiated-responsibilities, Last visited: 30/01/2022.
[48] https://www.cbd.int. Last visited: 30/01/2022
[49] https://sustainabledevelopment.un.org/outcomedocuments/agenda21. Last visited: 30/01/2022.
[50]https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol/kyoto-protocol-targets-for-the-first-commitment-period. Last visited: 30/01/2022.
[51] https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement. Last visited: 30/01/2022.
[52] https://ec.europa.eu/environment/aarhus Last visited: 30/01/2022
[53]https://unece.org/environment-policy/public-participation/aarhus-convention/introduction. Last visited: 30/01/2022
[54] Ibid.
[55] https://www.un.org/en/conferences/environment/johannesburg2002. Last visited: 30/01/2022.
[56] Ibid.

Conference On Sustainble Development, 2012, was based on, '*The Future We Want*' outcome document of the United Nations Conference on Sustainable.[57] This took place 20 years after the 1992 Conference. It resulted in a focused political outcome document which contains clear and practical measures for implementing sustainable development. It renewed political commitment, talked of *strengthening Institutional framework* for Sustainable Development. In Rio, Member States decided to launch a process to develop a set of Sustainable Development Goals (SDGs), which will build upon the Millennium Development Goals and converge with the post 2015 development agenda.[58] The Conference also adopted ground-breaking guidelines on *green economy policies.*[59] Governments also adopted the 10-year framework of programmes on sustainable consumption and production patterns, to designate a Member State body to take any necessary steps to fully operationalize the framework. The Conference also took forward-looking decisions on a number of thematic areas, including energy, food security, oceans, cities, and decided to convene a Third International Conference on SIDS in 2014.[60]

VI-INDIAN CASES ON LIABILTY IN TORTS AND ENVIRONMENTAL MATTERS

Indian law is not immune to the maxim as is reflected in the judgements delivered by the Indian courts. The Relics of the maxim in the Indian History can be traced from the time of British rule where they brought in the formal law to govern the country in the 18th century. The historical and the current regime reflects that the maxim of, 'sic utere tuo ut alienum non laedus' , not causing injury to one's neighbour has been in cases of nuisance, negligence, land and property, cases of the riparian owners as in the rules of ' Strict Liability' and the Indian modification of the rule as the rule of 'Absolute Liability, and environmental cases. The Indian Law is in synthesis with the maxim and as a follow up of formal law of the British and when India gained independence has been followed by the Judiciary as is elucidated in their decisions. One of the earliest decisions found are in the case of *Pubunath Jha v Becharam Chowdhry,*[61] where Justice Norman, laid down that, the injury to the neighbour for building a bund on his land as a protectionist measure and destroyed neighbour's crops must be indemnified, based on Strict Liability and the maxim of sic utere tuo ut alienum non laedus. In the case of *Koegler v. Yule and Another*[62], while conceptually explaining Strict liability and injury to neighbour's property, where overweight activities on the upper floor which broke down and caused damage to the plaintiff's goods on the ground floor attracts liability for damages. In the case of *Gokul Prasad v. Radho*[63] if a usage or custom exists, by which he cannot so alter his old building, as to deprive his neighbour's old building, of the privacy which has been enjoyed would be unreasonable based on the maxim. In the case of *Lakshmi kanta Hazra v. Emperor,*[64] where building embankments for protection of one's land thereby causing injury to the neighbour should not obstruct the free flow of water as nuisance would attract liability. In the case of *S. Paul De Silva and another v/ Korossa (Ceylon) Rubber Company Limited*, [65] while stating reasonable precaution to be taken to prevent the fire extending to his neighbour's property based on the maxim entails damages to be given. In the case of *Advocate General of Bombay vs. Yusufalli Ebrahim*[66] British Government brings to its subjects, as a general rule, certain liberties and equality of man in the sight of the law. But the liberty granted to one subject must not be used to the detriment of another subject.

[57] https://sustainabledevelopment.un.org/content/documents/733FutureWeWant.pdf; https://www.un.org/en/conferences/environment/rio2012. Last visited: 30/01/2022.
[58] Ibid
[59] Ibid.
[60] Ibid.
[61] *Case No.: Special Appeal No. 2378 of 1868*, Date of Decision: 26-04-1869. http://legaleagleweb.com. Last visited: 02/02/2022.
[62] 1870, Id. 67.
[63] 1888 (10) ILR (Allahabad) 3581. Id.
[64] 1919 ILR (Cal) 825. Id.
[65] 1919 AIR(PC) 231. Id.
[66] 1922 (24) Bom.L.R. 1060, Id.

The principle sic utere too ut alienum non Iaedas is applicable to rights as well as property. In the case of *Madras and Southern Mahratta Railway Company, Ltd. vs. Maharaja of Pithapuram and Others*[67], the court laid down that One of the recognised exceptions to the maxim "sic utere tuo ut alienum non laedas" is that a landowner can erect works on his land or take steps to prevent a risk from a common enemy such as rain, floods or incursions from the sea. The law allows "a reasonable selfishness" in doing so even though damage might be caused to a neighbour thereafter. This is a follow up of English cases of *Nield v. London and N.W. Railway Co.*[68] He who puts up a barricade against a flood is entitled to say to his neighbour who complains of it to do the same to prevent the flooding.is is to prevent a threatened flooding. Also cited was the case of *Whalley v. Lancashire and Yorkshire Railway Co*.[69]in which it was laid down that, " If an extraordinary flood is seen coming , then fencing as a preventive measure to protect one's land is allowed without being responsible for the consequences. Even though it may indirectly injure one's neighbour. In the case of *George, Philip and Others v. Subbammal and Others,*[70] It is repeatedly said in nuisance cases that the rule is sic utere tuo ut alienum non laedas, where the Defendants resisted the suit and contended that the smoke produced at the time of roasting the cashew nuts and let out through the chimney fitted on to the roasting house in the factory, is not causing any injury to anybody residing in the neighbourhood of the factory or to the trees and other plantations in the adjoining compound. In the case of *Bodhiram Pukiram Rathor vs. Tababai Banwari* [71], it was laid down that trees which grow into neighbours sub-soil, foundation etc and through branches, is not a trespass, but a nuisance and the plaintiff is eligible for compensation. In the case of *Lokenath Samal vs. Guru Prasad Parida*[72] The court while elucidating on the rule in *Rylands v. Fletcher*[73] and the Indian case of *Madras railway co. Zemindar of carvetenagarum* made it clear that the application of the maxim sic uters tuo ut alienum non leadus expressing a principle recognised by the laws of all civilised countries. In *Ramchandra Dhondu Dalvi vs. Vithaldas Gokuldas,*[74]there appears no good reason why the principle of sic utere tuo ut alienum non laedus should not be applied to rights as well as property. In the case of *Ram Lal vs. Mustafabad Oil and Cotton Ginning Factory and others,*[75] nuisance is caused by unreasonable noises or vibrations and other causes which are responsible for personal inconvenience resulting in interference with ones quiet enjoyment. In order to be actionable, a nuisance must interfere with the comfort or convenience of ordinary persons judged by the standards of an average man. The substantial extent of the discomfort has to be determined from the point of view of any person occupying the plaintiff's premises irrespective of his position life, age or state of health.

The environmental regime in India started with the Bhopal disaster followed by the case of *Vellore Citizens welfare Forum v Union of India and Others,*[76] the Supreme Court has elaborated upon the maxim of Sic utere tuo ut alienum non laedus that nuisance cases of spillage or discharging industrial waste into natural water resources is not only detrimental to the health of the people but affects the environmental with long term detrimental consequences.It has also elucidated that our legal system is based upon the British common law system which upholds pollution free environment as a part of the basic jurisprudence of our country. In the case of, *A.P.Pollution Control Board v. M.V. Nayudu,*[77] the High court called upon the state to only allow any industrial activity within the barred area of the area supplying drinking water after carrying out an environmental impact assessment based on the

[67] 1937 (46) LW 340 : 1937 ILR(MAD) 919 : 1938 (1) MLJ 17, Id.
[68] (1874) L.R. 10, Id.
[69] (1884) 13 Q.B.D. 131, Id.
[70] 1956 Legal Eagle 190, Id.
[71] 1961 MPLJ 834, Id.
[72] 1963 AIR(Ori) 21, Id.
[73] (1868) lr 3 hl 330
[74] 1964 AIR (Bom) 251, Id.
[75] 1968 Legal Eagle 39, Id.
[76] AIR 1996 SC 2715.
[77] AIR 1999 SC 812

Precautionary principle. In the case of *M.C. Mehta v. Kamal Nath,*[78]the Supreme Court questioned the changes in the natural topography of the land to build a motel and sought compensation based on the Public Trust Doctrine. In the case of *Narmada Bachao Andolan v. Union of India,*[79]the building of a Dam by the various States to supply electricity was questioned and then based on the fact that environmental impact assessment was carried out before the clearance was given was upheld. In the case of *Association of Victims of Uphaar Tragedy vs. Union of India,*[80] , the Court while emphasizing the rule of Absolute Liability under the Indian law that a person is held liable for the consequences of negligence based on the maxim. In the case of *Goa Foundation, Goa v. Diksha Holdings Pvt. Ltd,*[81] the environmental impact assessment was again upheld for building a resort and the fact that it did not fall in the protected areas of the CRZ zone was upheld by the Supreme Court. In the case of *Lal Bahadur vs. State of Uttar Pradesh & Ors.*[82] The court under the U.P. Urban Planning and Development Act, 1973, whereby a change from Greenbelt Area to Residential Area under the Master plan was challenged against the Lucknow Development Authority. It was not only violating fundamental rights and duties but also the environmental laws in its After 2010, the Supreme Court has reflected on judgements from the National Green Tribunal (NGT). In the case of *Court on its own motion vs. Chandigarh Administration,*[83] the court have laid down that, the rule is, sic utere "tuo, ut alienum non laedas;" in cases of Nuisance, and directions were issued for maintaining the catchment area for restoring the lake to its formal glory by observing that no housing or building activity of any kind would take place in the catchment area (either within the forest area or the agricultural area). In the case of *Citizens for Green Doon & Others v. Union of India & Others,*[84]The Supreme Court under Article 32 laid down that for environmental protectionist policy based on the maxim, that Road transport facilities development at Himalayas should adopt transparent measures. The NGT in the case of *Maj. Gen. Harpreet Singh Bedi (Retd.) & Ors. v.Vijay Singh, Dwarkadheesh Haveli Builders & Ors.* Article 21 provides right to life as a fundamental right and polluting drinking water and discharge of untreated water into open land or river bodies is a violation of that right. The National Green Tribunal in the case of *P.G.Najpandey v. Chief Secretary& Ors.*[85] the legislation of Indian laws based on international principles, strongly advocates baring firecrackers during Diwali ensuring healthy environment and wherever there is violation, stringent action must be taken by way of stopping the non-compliant activities, initiating prosecution and recovering compensation. In the case of *Pragnesh Shah v. Arun Kumar Sharma & Ors.*[86]the Supreme Court injuncted the construction of property in the eco-sensitive zone, but upholding the ERZ zones. In the case of *Re: Recent Felling of Trees in Gangtok,*[87]the Sikkim High Court injuncted the felling of the trees by giving importance to the environment that trees provide clean air, stabilizes climate, binds the soil and provides other supporting forms of biodiversity giving meaning to everyday life.

VII-CONCLUSION

After the Trail Smelter Arbitration which brought this maxim to the forefront, it was the Stockholm Declaration 1972, which first took stock of global human impact on environment and the challenges felt in the later twentieth century to address challenges of preserving and enhancing human environment. While the Stockholm Declaration mirrored on policy goals, objectives and principles, the latter period

[78] AIR 1997 SC 388; AIR 2000 SC 1997; AIR 2002 SC 1515.
[79] AIR 2000 SC 3751
[80] 2000 (4) AD 342: 2000 (86) DLT 246: 2004 (1) TAC 837, Id.
[81] AIR 2001 SC 184.
[82] 2018 AIR(SC) 220: 2018 AIR(SCW) 220: 2018 (3) ALJ 33: 2018 (1) Apex Court Judgments (SC) 621: 2018 (15) SCC 407, Supra n.60.
[83] 2020 Legal Eagle 176, Id.
[84] 2021 Legal Eagle 907, Id.
[85] 2021 Legal Eagle 419, Id.
[86] 2022 Legal Eagle 70, Id.
[87] 2022 Legal Eagle 1, Id.

led to a more concrete development of law with international environmental activism transcending boundaries and global common issues. It also synthesized with economic and development considerations in decision making.[88] International law has evolved due to incidents of environmental pollution and transnational harm affecting people and places in manifold numbers which has led them to form reciprocal relations feeling the need to reflect on awareness to environmental issues. The evolving systems include conventions and protocols for action work based on differential issues to be dealt with responsibilities based on current and future damages based on polluter pays principle, equity and natural justice and the precautionary principle advocating protectionist law in environmental matters. This expression of the well-known maxim of "sic utere tuo ut alienum non laedus." providing indemnity in the form of finances and technologies to developing and underdeveloped countries based on constraints on applicability are felt and voiced from time to time, through various means and meeting of Parties peculiar and particular to each convention. Therefore, although there is a degree of accord on basic substantive principles. The procedural means for their effective application and enforcement are often subject to delicate and protracted negotiations.[89] The synthesis of politics, economics and environment forms a triumvirate system propelling Nation States with their development and environmental goals with the territorial engagements of countries. The challenges are witnessed in the form detrimental changes to the environment and its phenomena.[90] Exploration of International Environmental norms with its origin and influences portrays certain norms as basic standing of the law. These maybe identified as: sic utere tuo ut alienum non laedus (use your property so that the property of others is not damaged); subsidiary; cultural diversity; the environment is a human right; the common heritage of humankind; environmental impact assessment; intergenerational equity; state sovereignty; the polluter pays principle; active role of civil society and NGOs; notification and consultation; equal access to justice; monitoring, reporting and disclosure; sustainable development; the precautionary principle; North-South equity; constitutional right to a decent environment; common but differentiated responsibility; common concern of mankind; and domestic enforcement.[91] The traditional Courts protected plaintiffs from odours, dust, smoke and vibrations from the neighbour's land providing injunctive relief for abating the activity by invoking the doctrine of *sic utere tuo ut alienum non laedus.* [92] This presumptive interpretation of the traditional law being injunctive relief to the plaintiff and also the Strict liability principle which has evolved in the latter part of the nineteenth and twentieth century.[93] Currently the nuisance law has transpired to land use conflicts analysed in economic terms for indemnity and emphasis on efficiency to be practised in resource allocation.[94] The doctrine of territorial Sovereignty had allowed immense independence to Nation States for use of land but this historical variation in social, cultural and economic context has undergone sea changes over a period of almost fifty years.[95]Emerging environmental problems have led to a widespread acceptance of the notion of international environmental responsibility,

[88] Günther Handl , Declaration Of The United Nations Conference On The Human Environment (Stockholm Declaration), 1972 And The Rio Declaration On Environment And Development, 1992, United Nations Audiovisual Library of International Law, 2012; https://legal.un.org/avl/pdf/ha/dunche/dunche_e.pdf ; www.un.org/law/avl. Last visited: 26/01/2022.

[89] Solanes Miguel, *Legal and Institutional Aspects of River Basin Development*, Water International, Volume 17, pages 116-123, 1992-Issue 3, published online 22/01/2009. https://www.tandfonline.com/doi/abs/10.1080/02508069208686131?journalCode=rwin20

[90] Woodwell M. George, *A World to Live In: An Ecologist's Vision for a Plundered Planet*: MIT press, Cambridge, MA, 2016, 248 pages, ISBN: 9780262034074; Anshu Ogra *Science and Public Policy*, Volume 44, Issue 5, October 2017, Pages 725–726, https://doi.org/10.1093/scipol/scx023, Published: 16 May 2017 https://academic.oup.com Last visited: 24/01/2022.

[91]Armin Rosencranz, *20th Annual Symposium Lex & The Lorax : Enforcing Environmental Norms under International Law*,26 Hastings Int'l & Comp. L. Rev. [xi] (2002-2003), Table of Contents - Issue 3. https://heinonline.org Last visited: 24/01/2022

[92] Lewin L. Jeff, *Compensated Injunctions and the Evolution of Nuisance Law,* Volume 71 Iowa L. Rev. 775 (1985-1986). https://heinonline.org Last visited: 24/01/2022.

[93] Ibid.

[94] Ibid.

[95] Hassan Daud, *Territorial Sovereignty and State Responsibility*, Volume 45, Environmental Policy & Law, p.139, 2015. https://heinonline.org. Last visited: 24/10/2022

and the view that concession must apply within the doctrine of territorial sovereignty in favour of common good of mankind.[96] According to the principles of international law, there is a basic duty incumbent upon the States to act so as not to harm the interests of other States. Generalising this principle, one arrives at an international obligation upon States to control and reduce environmental pollution.[97]

[96] Ibid.
[97] Ibid.