



Development of Environmental Jurisprudence in India: An Analysis of the Initiatives of Indian Judiciary to achieve Enviro-Social justice

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Abstract

It is environmental laws that regulate the environmental protection bodies and make them effective. Concern for protection of environment is not a new phenomenon but has existed since the Vedic era. However there has been a trend of unprecedented growth in environmental pollution in the past few decades. This trend has led to a concern that we must not develop industries at the expense of the environment. The term environment means one's surrounding and includes everything that influences a living being during its life span. The word environment is derived from the French word "Environ" which means "surrounding" as "*Paryavarna*" which means "something that envelop up". With this view in mind, the research paper intends to examine the environmental jurisprudence in India in terms of evolution, pattern of delivery of enviro-social justice and place of people's attitude in the process.

Key Words: Environment, Evolution, Jurisprudence, Judiciary, Protection

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"Earth provides enough to satisfy every man's needs, but not every man's greed".

Mahatma Gandhi

1.INTRODUCTION

Man is both creature and moulders of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral, social, and spiritual growth. In the long and tortuous evolution of humans on this planet a stage has reached when through the rapid acceleration of science and technology man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both

aspect of man's environment, the natural and man-made, are essential to his wellbeing and to the enjoyment of basic human rights even the right to life itself.¹

The significance of environment and environmental protection are not new phenomenon in India. Our country (*India*) being socialist and secular one, a good environmental sense has been the fundamental feature of Indian philosophy. The civilization of India has grown up in close association with nature.² Whenever we talk about the past and compare it with its present scientific counterparts, we encounter a commonality in the following vertices and these vertices are namely, Man, nature, and universe. There are interrelations of all these vertices with each other.³ The unlimited diversity of life forms on earth is they are plants or animals, including humankind, is most remarkable. Today humankind dominates nature, shapes the environment to suit itself and became the self-centred destroyer of nature.⁴

2.DEVELOPMENT OF ENVIRONMENTAL JURISPRUDENCE IN INDIA

During this period the concept of environment was understood as "*Paryavarna*" which means "something that envelop up".⁵ The literature of olden times preached about worship of nature in following heads namely, Vedic Era and Post-Vedic Era, Medieval Era, British Era, and post-independence Era.

2.1. The Vedic Era:

The Vedic society, reveals not only human beings in different facets of life, but also plants, beasts, birds, insects etc. The life of the people has been, ever since the time of Adam and eve, closely associated with the plant kingdom and the animal kingdom. The trees and plants provided fuel, wood for of welling places and for various vessels. In Vedic sacrifices, the wood of certain specified types is indispensable. The animals provided materials for garments, meant for food and offering to deities.⁶ In the writings of Rigveda the word *Osadhi* is frequently used. Trees and plants are regarded as indispensable in the life of human beings. The Lotus appears to be the only flower mentioned in the Rigveda. Trees are mentioned in Rigveda are of two types first is known as Vanaspatis and second is known as Vrksas. The vanaspatis deals with plants that have no flowers and Vrksas deals with plants that have flowers as well as fruits.⁷

The Rigveda highlights the potentialities of nature in controlling the climate, increasing fertility and improvement of human life emphasizing for intimate kinship with nature. Trees and plants like Neem, Peepal,

¹ Vikas Vashishth, *Environmental Laws*, 1 (Bharat Law House New Delhi 1st Edn. 1999).

² Indira Priya Darsini & K. Uma Devi, "*Environmental Law and Sustainable Development*", XXIX (Regal Publication, 1st edn., 2010).

³ Jayant V. Narlikar, "*Man, Nature and the Universe*" in Baidyanath Saraswati, "*Prakrti the Integral Version*" 9 (D.K. Printworld (P) Ltd., New Delhi, 1st edn., 1995)

⁴ T.N. Khoshoo, "*Environmental Concerns and Strategies*" 3 (APH Publishing Corporation New Delhi, 2nd edn., 2008).

⁵ Available at <https://www.collinsdictionary.com> visited on 10/12/2022.

⁶ Chetan Mehta, "*Environmental Jurisprudence- Indian Scenario*", Article in AIR 2004, at 100

⁷ Chhanda Chakraborty, "*Common Life in the Rgveda and Atharvaved an Account of the Folklore in Vedic Period*" 9 (Punt Pustak Publication Calcutta, 1st edn., 1997)

Tulsi and Mango etc. were worshipped as “*Vriksha Devta*” Rig Veda devoted one entire hymn to the praise of healing property of trees.⁸

Hinduism as we know, one of the ancient religions on this planet-holds *Bramha* (The Absolute) as the creator of the universe of which our earth has been a small constituent. Brahma settled the process of creation. He has also been a jurist and legislator (*Vidhata*), who formulated rules of conduct of the entire universe.⁹ According to Atharvaveda it described earth as the “Goddess Mother”, which has been the highest status, ever since known to the civilization.¹⁰

There had been bondage of gratitude between humankind and environment.¹¹

2.2. The Post Vedic Era:

Since the advent of mankind our religious scriptures like Vedas, Puranas, Upanishads and other religious scriptures are full praise of nature and in the protection of nature and natural resources are given a place of special reference.¹² A perusal of Hindu religious scriptures called the Vedas, Upanishads, Smritis, Puranas, Ramayana, Mahabharata, Gita, Mythological Literature including stories, social and moral codes and political rules reveal that the following were the general guiding principles to be observed by all in their daily life.¹³ There are mentions of “Panchavati” in ancient Indian text including famous epic Ramayana; a “*Panch*” means “Five” and “*Vati*” means “grove” meaning thereby a grove consisting of five trees. In Sanskrit literature, the most important of the five trees is “*Vata*” means “*banyan*” tree. This tree has the great medicinal value. Second tree is “Peapal” (*Ficus religiosa*) which is mentioned in “ashoka” (*Polyalthia longifolia*), “bael” (*aegle marmelos*) and “harad” (*myrobalon terminalia chebula*). But one thing is common that these all have great medicinal value and keep people hale and hearty.¹⁴

Even in Ramayana and Mahabharata wherein we find reference of beautiful forests of Dhandakaranya, Nandavana and Khandavana and destruction of forests was a great sin.¹⁵ Kautilya envisaged a systematic management of forests. The quantum of punishment, for felling of trees was proportionate to the utility of the tree. Management of forests was conditioned by the need for promotion of forest-based industries or crafts, exploitation of forest wealth in making household articles and for defence purposes.¹⁶ Prohibition for forest destruction and animal killing were announced by other Hindu Kings. For example, the Mauryan king Ashoka, in 5th pillar edict expressed his point of view about the welfare of creatures in his state. According to him forests must not be burned to kill living things or without any good reason. An animal must not be fed with

⁸ *Id* at 95.

⁹ Ashok A. Desai, “*Environmental Jurisprudence*” 2 (Modern Law House) (J.) Allahabd, 2nd edn., 2002).

¹⁰ *Id* at 4.

¹¹ *Id* at 8.

¹² Sukanta K. Nanda, “*Environmental Law*” 19 (Central Law Publications Allahabad, 1st edn., 2007).

¹³ Satish C. Shastri, “*Environmental Law*” 2 (Eastern Book Company, Lucknow, 4th Edn., 2012)

¹⁴ *Id* at 4.

¹⁵ Kailash Thakur, “*Environmental Protection Law and Policy in India*” 102 (Deep & Deep Publications Pvt. Ltd., New Delhi, 1st edn., 1997).

¹⁶ P. Leelakrishnan, “*Environmental Law in India*” 7 (Lexis Nexis. Butterworth’s New Delhi, 1999).

another animal. He was also prohibited the catch and sale of fish on the first full moon days of the three four – monthly seasons.¹⁷ Post Vedic Era had a great philosophy of environmental management and exploitation of nature for immediate gains was considered unjust and against environmental ethics under Hindu culture.

2.3. Medieval Era:

The Al- Quran declared that Allah created the heaven and the Earth. The concept of creation of earth and nature by the Allah or Almighty is like Hindu mythology.¹⁸

Islam ultimately warns that to cause damage to nature is oppose of the command of Allah. According to Islam it is the duty of mankind to safeguard the nature to accomplish the objectives of its creator.¹⁹

2.4. British Era:

The British Arrived in India in the year 1600 A.D. with the intention of trading in goods available in India, through the British East India Company. But, after seeing the immense number of natural resources and plunders of opportunity to exploit the resources, they changed their game plan and started applying coercion to complete their aim of exploiting natural resources in India. The early days of British Rule in India were days of plunder of natural resources.²⁰ During the end of the nineteenth century, The Indian Forest Act, 1865, empowered several local governments to declare certain areas as State Forests without in any way interfering with the rights of the people. As per the Act, government forests meant land covered with trees and brushwood or jungle.²¹

2.5. Post-Independence Era:

The early post-independence laws were so connected with the prevention of water pollution like; The Factories Act of 1948, which mentions about the effective arrangements for waste disposal and empowered State Government to frame rules to implement these directives.²² The River Boards Act of 1956, provides for the regulation of inter-state rivers dispute relating to water and river valley and the Central Government was empowered to prevent water pollution under this Act.²³

Other important enactments regarding environmental protection were Prevention of Cruelty to Animals Act, 1960²⁴ deals with protection of animals. The Atomic Energy Act, 1962²⁵ was passed to regulate nuclear energy

¹⁷ Shyam Divan & Armin Rosencranz, “*Environmental Law and Policy in India*” 25 (Oxford University Press, New Delhi, 2nd edn.2002).

¹⁸ *Supra note* at 20

¹⁹ *Id* at 21.

²⁰ A.K. Poddar, Swayambhu Mukherjee & Debosmita Nandy, “*Forest Laws and Policy in India*” 8-9 (Regal Publication, New Delhi, 2011)

²¹ Neena Ambre Rao, “*Forest Ecology in India – Colonial Maharashtra 1850 – 1950*”, 65 (Cambridge University Press India Pvt. 1st edn., 2008).

²² Sec. 12 of Factories Act, 1948.

²³ Act 49 of 1956.

²⁴ Act 59 of 1960.

²⁵ Act 33 of 1962.

and radio-active elements in India. The Insecticides Act 1968²⁶ provides regulation manufacture and distribution of insecticides. The Wildlife (Protection) Act of 1972, The Water Prevention and Control of Pollution Act of 1974, The Water (Prevention and Control of Pollution) Cess Act of 1977, The Forest (Conservation Act of 1980), Air (Prevention and Control of Pollution) Act, 1981, The Environment Protection Act, 1986,²⁷ and The Public Liability Insurance Act, 1991,²⁸ The Energy Conservation Act, 2001,²⁹ Biological Diversity Act, 2002,³⁰ Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006,³¹ The National Green Tribunal Act, 2010,³² Compensatory Afforestation Fund Act, 2016³³ etc. There are some other statutes, rules and regulations that have some bearing on environmental pollution. In most of the cases the environmental concern is incidental to principal object of the law.

3.ROLE OF INDIAN JUDICIARY TO ACHIEVE ENVIRO-SOCIAL JUSTICE

Judiciary in India is the custodian of the fundamental right of the citizens and if the citizens right guaranteed under the Constitution is violated, the court can use its power to grant relief in the form of compensation. The judiciary plays an active role in giving decisions in favour of environmental preservation and now courts are also participating in environment protection by giving appropriate sentencing and deterrent sentencing in environmental crime.³⁴

3.1. Main Constitutional Provisions on Environmental Protection and Judicial Approach

Article 14 of the Constitution guarantees right to equality.³⁵ Article 14 of Indian Constitution strikes at the arbitrary actions of government authority. Many environmental loving groups resort to article 14 to quash 'arbitrary' Municipal permission for the construction that are contrary to development regulation. Supreme Court with the help of Article 14 quashed so many arbitrary decisions of Government authorities which were against the protection of environment.³⁶

Article 19 (1)(g) gives to all citizens a right to practice any profession or to carry out any occupation trade and business.³⁷ In **Ivory Trade and Manufactures Association vs. Union of India**, the Supreme held that any trade, which is pernicious can be totally banned without attracting Article 19(1)(g) of the Constitution. The petitioner challenged that the 1991 amendment to the Wildlife Act banning import of ivory and ivory articles

²⁶ Act 46 of 1968.

²⁷ Benimadhab Chatterjee, "Environmental Laws-Implementation Problems and Perspectives", 37-39, (Deep & Deep Publication Pvt. Ltd., New Delhi, 2008).

²⁸ Act 6 of 1991.

²⁹ Act 52 of 2001.

³⁰ Act 18 of 2003.

³¹ Act 2 of 2007.

³² Act 19 of 2010.

³³ Act 38 of 2016.

³⁴ S. A. K. Azad, Hunting of Wild Animals, and Its Legal Control in India, 212 (Regal Publication 2004).

³⁵ Article 14 of Constitution of India Act, 1950.

³⁶ State of Himachal Pradesh vs. Ganesh Wood Products AIR 1996 SC 149. In this case the Supreme Court held that a decision-making authority must give due weight and regard to ecological factors such as environment policy of government and the sustainable use of natural resources. Supreme Court further said that a governments decision which do not consider the value of environmental protection are invalid. In T. Damodhar Rao vs. S.O. Municipal Corporation, Hyderabad AIR 1987 AP 170. The Supreme Court observed that the protection of environment is not only the duty of the citizens, but it is also the obligation of the state to protect environment.

³⁷ Article 19 (1) (g) of Constitution of India Act, 1950.

violated the provision given in Article 19(1)(g), 14 and 300(A) of the Constitution. They prayed that they may be allowed to sell out the stocks already acquired before the amendment came into force. The Court held that a pernicious activity such as killing of elephants to procure ivory cannot be taken as business or trade in the sense in which it is used in Article 19 (1)(g) of the Constitution of India. In another case *Abhilash Textiles vs. Rajkot Municipal Corporation*, petitioner was carrying on the business of dyeing and printing work at different places in the city of Rajkot. It was alleged that petitioners were discharging dirty water from the factory on the public road and public drainage without purifying the same, thereby causing damage to the public health. The Court held that however the Constitution confers right upon every citizen to carry on any trade or business, but no one can be permitted to reap profits at the cost of public health as they had no right to carry on their business without complying with the requirement of the law.³⁸

Article 21 guarantees right to life and personal liberty does not directly confer right to clean, unpolluted and healthy environment.³⁹ But the various judicial pronouncements on various occasions have expanded the right to life and personal liberty to include this right by recognizing various unarticulated liberties as recognized implicitly by Article 21. The court declared that material resources of the community are nature's bounty, and they must be protected.⁴⁰ The court further declared that disturbance with air, water, and soil, which are necessary for soil, would be hazardous to life.⁴¹ The expression 'life' which is given in Article 21 of the Constitution is to live with human dignity.⁴²

In **Ganga Pollution Case**,⁴³ Justice Kuldeep Singh declared in unequivocal terms that the closure of industries (tanneries) may bring unemployment and loss of revenue to the State, but life, health and ecology have greater importance for the people. Above decisions make it amply clear the judiciary played vital role in interpreting Article 21 of the Constitution by including right to clean and hygienic environment in it. Chapter IV (Article 36 to Article 51) deals with the Directive Principle of State Policy. Directive principles are sometime become complementary to fundamental Rights and enforced by the court of law.

Article 47: The state shall regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties.⁴⁴ It has been declared time to time again by the court that Article 48A is a constitutional pointer. It is mandatory⁴⁵ for the State carry out its obligation provided

³⁸ AIR 1997, Del. 267.

³⁹ Article 21 of Constitution of India Act, 1950.

⁴⁰ *Hinch Lai Tiwari vs. Kamla Devi*, the Supreme Court declared that natural resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's great gift. They maintain delicate ecological balance. They need to be protected for the proper and healthy environment which enables people to ensure a quality of life which is essence of the guaranteed right under Article 21 of the Constitution. The court decided that the pond's land cannot be for residential purpose.

⁴¹ *M.C. Mehta vs. Kamal Nath* AIR 2000 SC 1997 Justice Sashir Ahmad explained that, to afford protection to 'life', to protect environment and to protect air, water and soil from pollution, court should take the help of Article. The court further said that disturbance of the basic environment elements namely air, water, and soil, which are necessary for life would be hazardous to life within the meaning of Article 21 of the Constitution.

⁴² *M.C. Mehta vs. Union of India* (1987)1 SCC395. In this case Supreme Court gave wider interpretation to the fundamental rights. The Supreme Court said that "The expression 'life' assured in Article 21 of the constitution does not mere animal existence of continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of life, hygienic conditions in workplace and leisure.

⁴³ (1987) 4 SCC 463.

⁴⁴ The Constitution of India Act 1950.

⁴⁵ *M.C. Mehta vs. Union of India* (1997) 2 SCC253.

under it. This constitutional mandate to preserve the environment and maintain ecological balance is a task of State under Article 48A and the State should give priority to such issue as they have with and serious ramifications.⁴⁶ Constitutional obligation of Article 48-A has also been referred to by Courts in many cases and they have based their judgment on it.⁴⁷

Article 51A (g): “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.”⁴⁸ In *Rural Litigation and Entitlement Kendra, Dehradun vs. State of U.P.*⁴⁹ the Supreme Court clarified that preservation of the environment and keeping the ecological balance unaffected is a task which not only Government but also every citizen must undertake. It is a social obligation and let us remind every citizen that it is his fundamental duty as enshrined in Article 51A (g) of the constitution. Supreme Court has enforced fundamental duties in so many cases.⁵⁰

3.2. Role Of Indian Judiciary Through Constitutional Remedies and PIL

The regulatory mechanism for the prevention of environmental degradation, through writs is provided for in our constitution, under accordingly, 226 of the Constitution, the Supreme Court and High Court respectively, possess a wide latitude to grant relief and prevent environmental damage by using direction, orders and writs.⁵¹ The court while granting relief to the aggrieved and checking activities injurious to environment have issued orders, directions and writs from time to time.⁵² Supreme Court has accorded judicial recognition to the right to wholesome environment as being implicit in Article 21, a litigant may, accordingly assert his or her right to whole some environment⁵³ upon the jurisdiction under Article 32 and 226 being invoked, writs of Mandamus, certiorari and prohibitions are generally issued by the courts in environmental matters.⁵⁴ In *The S.P. Gupta case*⁵⁵ the Supreme Court explained the doctrine of public interest litigation and the individual's right to action in clear terms. The Court laid down that under the traditional law, the basis of entitlement to judicial redress was personal injury to property, body, mind, or reputation arising from violation, actual or threatened of the legal rights of person seeking such redress. Pointing out the individuals inability

⁴⁶ *Rural Litigation and Entitlement Kendra, Dehradun vs. State of U.P.*, AIR 1986 SC 652, See also Justice Chinnappa Reddy explained that, “Whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A of the Constitution and Article 51-A (g) which proclaims it to be fundamental duty of every citizen of India ‘to protect and improve the natural environment including Forests, lakes, rivers and wildlife and to have compassion for living creatures. When the court is called upon to give effect to the directive principles and fundamental duties, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter of policy making authority.

⁴⁷ *Nature Lovers Movement vs. State of Kerala*, AIR 2000 Ker 131; *D.S. Rana vs. Ahmadabad Municipal Corp.*, AIR 2000 Gas 45; *A.P. Pollution Control Board vs. Prof. M.V. Nayudu*, (1992) 2 SCC 718; *M.C. Mehta vs. Union of India*, AIR 1998 SC 2340; *S. Jagannath vs. Union of India*, (1997) 2 SCC 87; *Vellore Citizens Welfare Forum vs. Union of India*, (1996) 5 SCC 647; *Consumer Education & Research Centre vs. Union of India*, (1995) 3 SCC 42.

⁴⁸ Article 51 A (g) of The Constitution of India Act 1950.

⁴⁹ *Rural Litigation and Entitlement Kendra, Dehradun vs. State of U.P.*, AIR 1986 SC 652.

⁵⁰ *S. Sachidanand Pandey vs. State of West Bengal* (1987) 2 SCC 295; *Kinkri Devi vs. State*, AIR 1988 HP 4; *General Public of Sapruon Valley vs. State of H.P.*, AIR 1993 HP 52; *Satyavani vs. A.P. Pollution Control Board*, AIR 1993 AP 257; *Banwari Seva Ashram vs. State of U.P.*, (1986) 4 SCC 753; *Narula Dyeing and Printing Works vs. Y.I.O.* AIR 1995 Guj 184.

⁵¹ *Supra note* 15 at 208.

⁵² *Supra note* 13 at 51.

⁵³ The Supreme Court has recognised a right to whole environment in its judgement in *R.L. & R.K. vs. State of U.P.* AIR 1985 SC 652, also in *M.C. Mehta vs. Union of India* AIR 1987 SC 1086.

⁵⁴ *Ibid.*

⁵⁵ *S.P. Gupta vs. Union of India*, AIR 1982 SC 149.

and emphasizing at the same time, the protection of his interests, the court observed that where a legal injury is caused to a person or determinate class of persons, and if such person or class by reason of poverty, helplessness, disability, social or economic backwardness, ignorance etc. is unable to approach the court for relief, any member of the public or a union can come forward on his behalf to file the application and the same will be maintainable and welcomed. In **Chhetria Pradhan Mukti Sangharsa Samiti Case**⁵⁶ a petition was filed through a letter written to the court by the aforesaid petitioners alleging environmental pollution because of smoke and effluents caused by running of mills and plants in the area. The letter written by the Samiti alleged that the Jhujhunwala Oil Mills and refinery plants are in green belt area, touching three villages and the Sarnath Temple of International fame. The smoke and dust emitted from the chimneys of the mills and the effluents discharged from these plants were alleged to be causing environmental pollution in a thickly populated area and were proving a great health hazard. It was further stated that the people were finding it difficult to eat and sleep due to smoke, foul smell and the highly polluted water. It was further alleged that the lands in the area had become waste, affecting crops, and the orchards damaged. Diseases like T.B., Jaundice and other ailments were stated to be spreading in an epidemic form. The growths of children were also affected. It was also alleged that the schools, nursing homes, leprosy homes and hospitals situated on the one-kilometre-long belt, touching the oil mills and the plants were adversely affected. It was further stated that the license had been issued to one Dina Nath for these industrial units thereby risking the lives of thousands of people without enforcing any safety measures either to curb effluents discharged from the plants or to check the smoke and foul smell emitted by the Chimneys. The court after considering the merits of the case held that prima facie the provisions of the Relevant Act, i.e., the Air (Prevention and Control of Pollution) Act, 1981 have been complied with and there is no conduct which is attributable to owners leading to pollution of air or ecological imbalances calling for interference by the Supreme Court and, therefore this application is legally devoid of any merits or principles of public interest and public protection. In **Subash Kumar vs. State of Bihar**⁵⁷ a petition was filed in the Supreme Court under Article 32 in which it was alleged that the surplus waste in the form of sludge/slurry is discharged as an effluent from the washeries of Tata Iron and Steel Co. in the Bokaro River. The Water thus is rendered unfit for drinking and irrigation purposes. Though the petition was filed in 'public interest' but the Apex Court found from records that the petitioner has approached the court for 'self-interest' and not for the public interest in collecting the sludge and slurry from the company's washeries. The Court, therefore, dismissed the petition with costs. The court also made important observation, that, if anything endangers or impairs the quality of life, in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water.

3.3. The Special Burden of Proof in Environmental Cases

A new concept of burden of proof referred to in the Vellore citizens case is as follows: “The onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.”⁵⁸

⁵⁶ Chhitriya Pradhan Mukti Sangharsh Smiti vs. State of U.P. and Others, AIR 1990 SC 2060.

⁵⁷ AIR 1991 SC 420.

⁵⁸ P.S Jaswal, Environmental Law, 115 (Allahabad Law Agency Publication, 2004).

3.3.1. Precautionary Principle, Polluter Pays Principle and Sustainable Development

Precautionary Principle as a tool for environmental protection got international recognition in the Rio Conference on Environment and Development 1992 (Rio Declaration). Principle 15 of the Rio Declaration states, "To protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."⁵⁹ Indian Council for Enviro-Legal Action Case,⁶⁰ the court accepted this principle along with the 'polluter pays principle' as part of the legal system. In Vellore Citizens Welfare Forum vs. Union of India,⁶¹ and Andhra Pradesh Pollution Control Board vs. M.V. Nayudu,⁶² the Supreme Court applied the precautionary principle directly to the facts of the case.

The Court observed that the precautionary principle and polluter pays principle have been accepted as part of the law of the land. It quoted Articles 21, 47, 48A and 51A(g) of the Constitution of India, and referred to Water Act, Air Act and EPA. Even otherwise once these principles are accepted, as part of the customary international law, there would be no difficulty in accepting them as part of domestic law. It is almost accepted proposition of law that the rule of customary international law which is not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be allowed by the courts of law.⁶³ The new concept of burden of proof referred to in Vellore case, ⁸¹ was further elaborated. The court observed: "The 'onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.'" It is to be noticed that while the inadequacies of science have led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions, proposed - is placed on those who want to change the status quo. This is often termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the change would be compelled to shoulder the evidently burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less polluted state should not carry the burden of proof and the party, who wants to alter it, must bear this burden.⁶⁴

3.3.2. Public Trust Doctrine

In the **Beas River Case**,⁶⁵ the Supreme Court applied the Doctrine of Public Trust. In this case a lease granted by State Government of riparian forest land for commercial purpose to a private company having a motel located at the bank of river Bias was questioned through a Public Interest Litigation. The Motel management was interfering with the natural flow of the river by blocking natural relief/spill channel of the river. The court held that the State had committed a breach of "public trust". The court expressed the view that there was no reason why the "public trust" doctrine should not be expanded to include all the ecosystems operating in our

⁵⁹ G.S. Karkara , Environmental Law,20(Central Law Publication, Allahbad, 1st edn., 1999) .

⁶⁰ AIR 1996 SC 1446.

⁶¹ AIR 1996 SC 2715

⁶² AIR 1999 SC 812

⁶³ Vellore Citizens Welfare Forum vs. Union of India, AIR 1996 SC 2715, pp. 2721-2722.

⁶⁴ *ibid*

⁶⁵ M.C. Mehta vs. Kamal Nath (1997) 1 SCC 388.

natural resources. While explaining the scope of "public trust" doctrine, the court observed that it primarily rests on the principle that certain resources like air, sea, water, and the forests have such a great importance to the people that it would be wholly unjustified to make them a subject of private ownership. The doctrine of "public trust" implies following restrictions on governmental authority. Firstly, the property subject to the trust must not only be used for public purpose, but it must be available for use by the public. Secondly, the property may not be sold, even for a fair cash equivalent. Thirdly, the property must be maintained for types of uses.

In **S. Jagathan Case**,⁶⁶ the Apex Court laid down that the seacoasts and the beaches are gifts of the nature to the mankind. The aesthetic qualities and recreational utilities of these natural creations must be maintained at all costs. Therefore, any activity in these areas must pass through strict environmental test and assessment. Such assessments must take into consideration the inter-generational equity and compensation to those who are affected and prejudiced. Therefore, in other words, the court has articulated the principle of public trust in a classical manner giving preference to public rights as against developmental activities ignoring environmental assessment. The doctrine of public trust imposes implied restrictions on the power of the government to exploit the natural creations and gifts of nature in the name of development because the government is not the owner of these creations in strict sense of the term but a trustee. Hence, being a trustee, the Government, in the first instance, is under a solemn duty to protect the rights and interests of the people who are the beneficiaries in this context otherwise, it would amount to breach of public trust.

4.SUM- UP

In India Judiciary has played a great role for protecting our environment. The judiciary through the process of judicial activism has beautifully articulated above-mentioned doctrine to save our environment. In this journey Indian judiciary has been creating several new environmental principles with the help of international and national environmental principles and contributing its wonderful part for evolution and enhancement of Indian environmental jurisprudence. This contribution of the judiciary would go long way, in helping and managing the environment and to attain the goal of having less polluted state through sustainable development. It is to be noted that judiciary has been accused of interfering the accepted principles of doctrines of separation of powers as proposed by our Constitution. Judiciary interfered with the law-making functions of legislature and enforcement functions of executive, but judiciary must do so because these two organs are not performing their duties efficiently. Judicial efforts to save environment should be appreciated because now it has become great necessity to save this earth from pollution and for that some stringent steps must be taken.

⁶⁶ S. Jagathan vs. Union of India, AIR 1998 SC 811.