

INTERNATIONAL ENVIRONMENTAL CONVENTIONS – A BLEND OF POLITICAL DEED AND SUSTAINABLE NEED

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ABSTRACT

This paper primarily focuses on the International Environmental Conventions, which represents a blend of political deeds and sustainable needs. It serves as a political deed because the leaders of the nation, try to develop the relations between the various countries and sign the conventions, whereas when it comes to signing the Environmental conventions, they sign it with the promise of getting enhanced with respect to the environmental prospects involved. This paper commences with the introduction to the environment. It then focuses on the discussion of the concept of sustainable development and how the concept came into force and how the need of practice of this aspect is the requirement of the hour. As it further moves on discussing the topic, it takes into consideration Stockholm Conference and the various countries which were involved in this conference. It also goes onto discussing the Rio Summit and the Agenda 21. It also talks about the two most important principles that were laid down, i.e. the Precautionary principle and the Polluter Pays principle. As it further, escalates, it talks about the political and the judicial approaches of India and United States of America. The paper critically analysis the approaches of the countries mentioned and tries to bring about the political motive of the countries to bind together and how they have used sustainable development to bring about really stronger ties between them. Last but not the least, the paper ends with certain set of conclusions.

RESEARCH METHODOLOGY

SCOPE AND OBJECTIVE OF THE STUDY

The object of the study is to analyze the scope of these conventions and how these conventions, summits and international treaties, help the world unify both politically and economically. A study of the various important conventions such as the Stockholm Conference, the Rio Summit and the Agenda21 have been conducted to bring about a significant result that helps in improving the analytical concept in the mind of the readers. It aims at providing deep knowledge of the subject matter. Its main objective is to provide a new source of information, knowledge and wisdom to the readers of this article. The International Approach to Environment: More of a political deed than a sustainable need is a topic, which is otherwise understood to be something which has already been established in various different papers, as we see a lot of journals getting published on the issue of the environment but this paper also analyses the political aspect of the conventions that are held in order to make the world a better place to live in. The vitality of understanding the concept of the International Environmental Conventions and the political motive behind the same, is critical when it comes to the understanding of the international relations.

RESEARCH METHODOLOGY

This research article is completely original and does not in any way or by any means intend to plagiarise any material from the internet and does not intend to violate any individuals copyright. The methodology adopted is largely analytical and descriptive. Reliance has been placed largely on secondary sources like books and articles. The lectures and classroom discussion have been rich with valuable pointers and gave direction to the research.

CHAPTERIZATION

This project has been divided in five chapters. It consists of following chapters, Introduction to Environment and Sustainable Development (Chapter I), Stockholm Conference (Chapter II), The Rio Summit (Chapter III), Agenda 21 and some Important Principles (Chapter IV), Approach of the US and India on Environment (Chapter V) and Conclusion (Chapter VI)

RESEARCH QUESTIONS

1. What is a Environment and the Concept of Sustainable Development?
2. What was the Stockholm Conference all about and how did it really made a difference ?
3. What is the Rio Summit and the Agenda 21 and the different countries involved ?
4. What are some of the most important principles of these conventions and summits?
5. What is the approach of the US and India towards the liability of the polluter of environment ?
6. What is the conclusion drawn ?

HYPOTHESIS

I was learning about the International Relations , in the class and suddenly I got really inquisitive regarding the topic. The concept of the Environment is a daily basis concept. Everyone of us thinks that we know what Environment is, but there is something that is more deep in its nature. There are various international conventions, treaties and documents which are considered to be of immense importance when it comes to the International Environmental Jurisprudence. The decisions taken at the international level help, taking decisions at the local and the regional level. This is why the countries which are parties to the treaties have to adhere to the norms off such treaties and implement in their own country. These treaties and International meets also help to understand the political nature of their essence. So, the inquisitiveness to know and learn about the major treaties helped us to chose this topic. People and countries come together for the environmental protection but how do countries develop their relations with other countries when it comes to developing relations at the International level. This is important because every country does not have sufficient resources for various concepts, so in order to implement the provisions completely there is a dire need of developing International Relations with various other countries. This paper discusses about the various aspects of the International Environmental law and the International relations that explain in detail the various political concepts and the legal aspects involved in the process of signing a treaty or conventions.

MODE OF CITATION

A uniform system of citation is followed throughout in the contents.

CH-1 INTRODUCTION

1.1 Introduction to Environment

Environment is the milieu in which one lives. Everything we are surrounded by is what we call as environment. Now the question that arises is that, whether non living things or the living things are our environment. Looking at this question, environment is something which comprises of both the man made and the natural things, therefore it comprises of both the living and the non-living things. Be it anything, a chair, a table, a pen or any minute non living thing or even the animals, creatures, plants, trees and the air, water, soil and any other human being which comes under the category of the living beings. According to the Black's Law Dictionary , "Environment is the milieu in which the organism lives. It includes the sum of all of its surroundings. This includes Natural forces and other living things. It defines the conditions of danger and damage to existence, as well as the development and growth"¹. Everything we are adjacent to, all the non living as well as the living things together constitute the word "Environment". The materialistic things we have surrounded with and the natural things we have been naturally been surrounded with is something we call as environment we habitat ourselves in. When we utter the word environment, we usually tend to encompass every single and every little thing in this world, which is included within the spheres of the word itself. The essence of the word 'environment' lies in the very meaning itself. It is not something materialistic, it is eternal, something that gives peace and makes us happy. Whenever we want to take a holiday we do go to places with abundant nature, like the mountains and near the seas. We often go to places where we experience some kind of natural phenomenon, over which we have no rein off. these are the natural forces which only the creator has control over. All these natural forces is the fabrication of the creator, the Water, the Sun, the Air and similarly the effects of these forces like the heat that accrue from the Sun, the waves that ensue from the water and the thunderstorms and other forms of ravaging calamities emerging as a result of embezzle of these natural forces are just a diabolical demonstration of the atrocity that they can cause to us. The nature gives us the clues or in other words it gives us apprehension about the upcoming dangers and the danger to our existence as well as the future deeds. With so much advancement in technology, that the people have become so much tech friendly that so much so that even if the people are sitting together, they are mostly engaged in their world of technology and this is how the technology has separated an individual from the connect of the nature. As so the advancement has taken place in the lives of the people, the Scientists with the help of the technology can forecast the

¹ Black's Law Dictionary on the definition of "Environment"

weather but despite so much advancement in the technology, there has been nothing that can overpower the natural forces. It is simply because the humans have no contemplation over the natural forces. “Environmental history deals with the various dialogues over time between people and the rest of nature, focussing on reciprocal impacts”². To understand what the nature can do to us, we must try to abridge the gap that we have built between the nature, culture and history. There have been evidences of nature conservation in India from time immemorial and so the concept Nature conservation has not been new to India. The concept of protecting the nature and wildlife has been an avid article of belief, faith and are evident in the practices of the people. The fact that they revered the nature cannot be hidden and concealed. Their reverence towards the nature was of such a nature that they named the natural forces as their Devi or Devta of their cult. For example, they devote tree as their God and attach divinity to the elements of nature. The relationship between nature and man is two folded. They both are dependent on each other and in such a manner that without any one of them the other one would cease to exist. It is a two way relationship between them and if we give respect to them, the nature will automatically respect us. If we give respect, value someone automatically the two way relationship comes into being, we earn respect too and we are valued. Same way the reciprocal relationship comes into being and we feel good i.e. there is a feel good factor about the same. There is an incessant relationship between the nature and the human beings, if we give respect to them, they too give respect to us. Now a days in the wake of blindfolded advancement, that we humans have driven ourselves to, we are not able to respect nature and that is the reason for the occurrence of the natural calamities such as the floods, earthquakes, landslides etc. It is because we humans have broken the limit line beyond which the things were not supposed to happen and the consequence of which is purely evident in the nature. Over the period of time as the humans have devastated them in the wake of advancement and materialistic accomplishments, perceiving it broadly as their achievement, the humans have failed to realise the consequences of their so called development. They have also developed in the social scenario of the country after Independence, talking about India particularly. Industrialisation and urbanisation have ruled the roost and the people are going hullabaloo over it. They cannot imagine their lives without their man-made disaster. This is what they call development, all about. Over the years that India has gained

² Beinard, William & Coates, Peter, *Environment and History: the Taming of Nature in the USA and South Africa* (London, 1995), p. 1

independence, the Industrialisation and the globalisation, privatisation and the liberalisation had been the goal for India, the repercussions of which are still being felt. Where there has been the pros of these they have accompanied with them the cons too, which eventually are even destructive and lethal than the pros itself. The sacred environment was not taken into consideration when the economy of the country was looked into ignoring the fact that this country was an agricultural based economy. They derived their income, their source of livelihood from the nature itself. The bureaucrats were so engaged in looking into the monetary effects of these policies that they eventually ignored its impact on the environment. They forgot the sacramental element attached to the nature, such is the nature of the human beings, selfish, mean and vile.

Industrialisation had a devastating effect on the environmental fronts such as deforestation and the forest fires, the water level rising up and the calamities occurring in the entire world. The world has come to a stage where there is a dire need of shifting the preferences and getting concerned about the nature again. Revering the environment and considering it sacred is one's own choice, there is no one who should comment about it, but when it comes to exploitation of the natural resources, one has the right to stand against it and protect the nature as an essential duty of an individual.

1.2 Introduction to Sustainable Development

We usually observe people talking about the concept of sustainable development, but do they even know what is sustainable development. The word "sustainable" in the general sense means something that can be preserved or protected in a limited range or quantity, whereas on the other hand, the word 'development' means to prosper or grow, not only economically but as a whole and this development needs to be in accordance with the terms of the environment. If the environment is at risk, the human race is automatically at risk. The development needs to be at a universal level, considering the real good of all, rather considering any single unit or country of the world. So, when we talk about development or consider development as the main goal, it should be on the universal level, i.e. everyone even the nature should prosper with it. When it comes to progressing the world together should prosper and not only an individual country or unit. So, when we combine the meanings of both the words, i.e. Sustainable Development in the

general sense it means that we use the natural resources in such a manner that we use it for ourselves and at the same time we are able to use it in the future and the upcoming generations are also able to make use of the resources we are availing right now in the present times. We use the resources in such a manner that we preserve it for the future generations and use it at the same time. So, the concept makes sense. but the problem we are facing is that, the representatives of the individual unit or the countries do not largely look at the concept instead look it as an individual unit concept and that is the reason why so many problems are being faced by the larger unit. Thinking about the global level is the essence of this concept and cannot be looked at separately or ignored when it comes to environment and sustainable development as a whole.

When it comes to the legal definition of the term of Sustainable development, it means "Economic development featuring low rate of growth, little population and a largely diminished impact on the environment"³. So, considering this definition, it looks after the materialistic concerns of the human beings while considering the essence of the sustainable development. What it really means is that, we focus more on the economic development and we grow in monetary as well as the economic terms but by having little population so that there is less impact of the economic development on the environment. It clearly states that environment is something that should never be forgotten, no matter what kind of development you focus on, because it is the need be for the existence of the mankind. Environment whatsoever, should never be harmed. The environment should not be at risk, for the sake of our economic development needs and greed. It is a basic human nature, that if one is prospering incessantly, it slowly becomes a need and then in the wake of accomplishing that need, it gradually becomes a greed. Sustainable development as most commonly defined is the "development that meet the needs of the present, without compromising the ability of the future generation to meet their needs"⁴. In other words, we should always focus on the development that is more focussed on the balanced use of natural resources and the environment should be taken into consideration before making any decision that gives an invincible rise in the economic concerns of the country.

³ Black's Law Dictionary on the meaning of the term Sustainable development.

⁴ World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987).

When it comes to considering and understanding the concept of sustainable development, everyone talks about it and creates a hullabaloo about preserving the resources but no one gradually ends up knowing the real essence and the nerve of the concept. In the early 1970's, at the time of Cocoyoc Declaration on Environment and Development⁵ that this term actually came into being and gained everyone's attention. It is only since then that the concept of Sustainable development has gained and has been accepted as a method of development worldwide. At the global level, the government of each individual unit or the country, is including this concept in their policies and agendas and before the elections in the democratic countries this principle paves way in the political agendas of the parties. It has become the trademark of international organisations dedicated to achieving environmentally benign or beneficial development.⁶ It means an integration of the development, be it economic, social or political along with the environmental imperatives is a contagious issue and must be looked upon. It aims at achieving both the economic and the ecological stability that the concept of sustainable development has come into being. It includes both the economical as well as the ecological process of the same. It does not function independently, i.e. the concept of sustainable development cannot survive without ecological development alone or even the economical development alone. For the concept to be logically followed the existence of both the development is need be. This simply means that if the development is based on achieving only economic and monetary goals, then the development cannot be sustainable because in the wake of accomplishing the materialistic desires the man will go on exploiting the natural resources and the nature will not be taken into consideration, and if the country is focussing only on the natural aspects, it will lose out on the economic part, therefore for the existence of the concept of Sustainable development both the economic and the ecological advancement is necessary.

So, given the above explanation as to why sustainable development needs to have both the economic and ecological factors into consideration, we come to know how sustainable development is more of a wider concept than a narrower concept of just using the resources and preserving them for later use. This clearly indicates that Environment and Development are for

⁵ Dr. P.S. Jaswal and Dr. Nishtha Jaswal, Environmental Law, Sustainable Development, p.93

⁶ Michael Redclift, sustainable Development - Exploring the contradictions, 1987, p.32

people, not people for environment and development.⁷ It is essentially a policy and a strategy for the continued economic and social development without detriment to the natural resources and the environment around. This means that by no means their quality should be effected and put into such detrimental conditions that their future use becomes dangerous. Therefore, while thinking of the developmental measures one needs to keep in mind the need and not the greed of the present and that what would be the future possibilities of the existence of such a resource and in what quantity will the future generations be needing them. It is not that we are forced to think of the future generations but it is just that it is our moral duty towards them, otherwise imagine a grandfather taking his granddaughter to zoo and showing her only the image of the lion that once used to exist and her wondering if such animals even existed, like for us it is the dinosaur that we have failed to see. We must learn from our experiences and rectify our mistakes, so that we can all together make a better future. It cannot be lost sight of that while today is yesterday's tomorrow, it is tomorrow's yesterday.⁸ In fact the idea that we use the current resources in an appropriate way and save it for future use has found widespread international approval since the Maltese Proposal at the UN General Assembly of 1967, which just contended that the Environment is a heritage of the mankind and not just a property of the individual country or a continent. It also contended that the protection of the environment should be legally enforced and that too on a global level. It was said that the whole concept of the Sustainable Development was based on the idea that natural resources such as sea bed are not the fruits of the labour of the present generation and thus these resources can only be exploited with adequate consideration of the "rights" of future generations.⁹

CH-2 THE STOCKHOLM CONFERENCE

In the United Nations Conference on Human Environment, 1972 a Stockholm declaration was made on the Human Environment from which the concept of Sustainable development gained even more impetus on the global platform and generated response from so many countries around the world. It proved that environmental issue is not an issue of the individual unit or a country but the issue of the world at large. The one question that disturbs us is that everyone

⁷ Michael Redclift, *sustainable Development- Exploring the contradictions*, 1987, p.35

⁸ See T.N. Godavarman Thirumalapad V. Union of India, (2002) 10 SCC 606, p.630

⁹ Meinhard Schroder, "Sustainable Development - a principle for action and an instrument to secure the conditions of survival for the future generations", *Law and State*, vol. 51, 1995, p.101

talked about preservation and conservation but no one noticed that we had come to such a stage that it was nearly impossible to stop the depletion of the resources. We had devastated the environment and misused it to the extent of the worse.

The depletion of the natural resources, environmental deterioration and pollution has drawn serious attention of the mankind because the mankind has realised that it cannot survive without the environment. Some positive effect to that effect were initiated at the global level, with Stockholm conference.¹⁰ The theme of the conference was as follows :-

" A point has been reached in history when we must shape our actions throughout the world with more prudent care for their environmental consequences. Through ignorance or indifference we can do massive and irreversible harm to the early environment on which our life and well being depend. Conversely through the fuller knowledge and wiser action, we can achieve for ourselves and our prosperity a better life in an environment more in keeping with the human needs and hopes. There are broad vistas for the enhancement of the environmental quality and the creation of a good life. What is needed is an enthusiastic approach towards the environment but along with the calm state of mind and intense but orderly work. For the purpose of attaining freedom in the world of nature, man must use knowledge to build, in collaboration with the nature, a better environment. To defend and to improve the human environment for present and future generations has become an imperative goal for the mankind, a goal to pursued together with the harmony and peace, the established fundamental goals for peace and of world-wide economic and social development."¹¹ This meant that the leaders of various nations had realised that it is high time being individualistic in nature and it was the time to work together for the betterment of the mankind at large and preserve and conserve the environment. The environment is getting degraded and it's time to stop, this realisation was hit upon when talking particularly about the paragraph mentioned above.

¹⁰ The United Nations Conference on the Human Environment was held at Stockholm from 5 to 16 June 1972 (United Nations Conference on the Human Environment).

¹¹ Indrajit Dubey on Sustainable Development , Ch- 3 Legislative Approach towards Environmental Pollution (a) International Treaties and Conventions, in Environmental Jurisprudence, Polluters Liability, p.48

"To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level, all sharing equitably in common efforts. Individuals in all wake of life as well as the organisations in many fields, by their values and the sum of their actions will shape the world environment of the future. Local and national governments will bear the greatest burden for large scale environmental policy and action within their jurisdictions. International co-operation is also needed in order to raise resources to support the developing countries in carrying out their responsibilities in this field. A growing class environmental problems, because they are regional or global in extent or because they effect the common international realm, will require extensive co-operation among the nations and action by international organisations in the common interest."¹² It clearly exhibits on the part of the UN that by declaring that one unit cannot work alone for the world, it is declaring the countries to be together and working for the world benefit. This declaration is a symbol of the relations that the UN is trying to build between the nations for the world peace and the environmental benefit, keeping in mind the political and the social relations between the nations, thus developing not only in the ecological manner, but also in the world political relations.

"The conference focussed on the attention of states on environmental issues more sharply than ever before. It acknowledged the immense contribution of nature in the development of man's social, spiritual and intellectual growth. Attention was drawn in the present conference, towards the need of the natural and man-made environment for the optimum satisfaction of basic human rights, including the right to life. The evolution of human race and rapid acceleration of science and technology has equipped man with the power to transform his surrounding environment in an unprecedented way. Over the use of these powers has inflicted incalculable harm on the human race. The present world bears evidence of such man-made harm. Dangerous levels of pollution in water, air, earth, and the undesirable disturbances to the ecological balance of biosphere have marred the physical, mental and social health of man. In developing countries, the root of environmental problem is underdevelopment. Millions of people continue to live without the minimum requirements of decent human life. Scarcity of food, clothing, shelter and education, health, sanitation are the major contributing factors in the environmental

¹² Ibid.

degradation"¹³. In the above stated paragraph the UN quite cleverly jotted down the reasons for the environmental degradation so that the countries together could develop their political relations and compare with each other the level of degradation in their countries and could come up with unique and unalterable measures that would really help in the massive growth of the environment. The environment was depleted to such an extent that the countries together had to meet to formalise ways of co-operation among themselves to escalate the quality of life we live in.

The U.N Conference was marked as a watershed in the history of international relations as it discussed about the protection and conservation of biosphere which was of the utmost importance worldwide. There were many stages to the conference. The initial stages of the conference saw two conflicting approaches. The first approach focussed on the control to human actions which would include control on pollution and conservation of the natural environment¹⁴. It clearly indicates that this approach was based on what humans could possibly do at their individual best. Also, that the environment cannot be saved only by creating treaties and declarations, individual level best effort is required and need be. Controlling pollution may involve the basic individual efforts such as maintained disposable habits or involve anything that could be too basic and involve any action on an individual effort to improve the environment and maybe that could possibly take a massive time as compared to the exploitation of the resources happening at an alarming rate. It could involve even putting our mobile phones off the silent or the vibration mode because it is due to these vibrations that the birds and the Indian sparrow has come to a stage of extinction.

While the second approach, focussed on the social and economic development as a whole instead focussing on the environmental issue individually. So we can infer from the second approach that it clearly focuses on the economic and social welfare as its main agenda and not the environment¹⁵. It means that the countries together or on their individual best would try to develop in such a way that the exploitation of resources becomes a little diminished as compared to the existing alarming rate. It is in complete contrast with the first approach as the first

¹³ Ibid.

¹⁴ See Dr. P. Jaswal, Environmental Law, Sustainable Development, p.94

¹⁵ Ibid 8 at p.94

approach clearly focuses on the betterment of the environment as its main agenda, be it at individual level or the nation as a whole or globally, whereas the second approach is more self centred and is more realistic, however it is a harsh approach and does not focus on change or transformation. It is based on how they can reduce the exploitation and not finishing it off, while the first one talks about not only diminishing the exploitation but completely getting it extinct and working together globally to improve the environmental condition we all are living in . The first approach, however difficult can be achieved with collective efforts. It is time consuming but at the same time focuses on a better tomorrow, whereas the second approach only focuses on the current selfish approach of the nations to develop both economically and socially and not focussing on the environmental issues and just promising to exploit less, the provisions of which will not be enforceable. So, this serves as a drawback to the second approach.

The conference marked a history in the international relations as 114 countries participated in it and agreed to the principles and the action plan which was signed in by these countries at the Stockholm Declaration¹⁶. After this declaration and the conference, one thing was very clear that no matter how many nations, continents, states or communities we divide ourselves into, we have only one environment and one earth. so, either it's going to be there or it's not going to be there, there is no middle way which can come up. The noticeable point is to see that so many countries took part in it and are a signatory to it that the international politics is taken to a whole new level of co-operation among the countries. They know about each other's policy and even suggest reforms and appreciate the good provisions.

CH-3 THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT¹⁷

Another important Declaration in the history of Environmental Law is The Rio Declaration on Environment and Development. This declaration consists of 27 principles which guide the behaviour of the country towards an environmentally sustainable pattern of development.

This declaration was another one by the United Nations Conference on Environment and Development held at the Rio de Janeiro from 3 June to 14 June 1992. It was held with the motive

¹⁶ M.Fitzmaurice, Queens Mary College, University of London, The Principle Of Sustainable Development In International Developmental Law, Stockholm declaration, p.5, (UNESCO Sample Research Paper)

¹⁷ L.Hens, Human Ecology Department, Vrije University Brussel, Belgium, on The Rio Declaration on Environment and Development. (Reading reference for all the principles)

of Reaffirming the declaration of the United Nations Conference on the Human Environment, adopted at Stockholm on 16th June 1972, and seeking to build upon it. It was done with the goal of establishing a new and equitable global partnership through the creation of new levels of the co-operation among the states, key sectors of the societies and the people of the nations. They focussed more on working towards the international agreements which respects the interest of all and protect the integrity of the global environmental and developmental system, along with recognising the integral and independent nature of the Earth, our home.¹⁸

According to Principle 1 of the declaration, it is the human beings who are the centre of concern for sustainable development which means that it is only with the help of humans bind together that the environment can enhance and elevate in its quality. They are entitled to a better quality of life and have a productive life with the harmony with nature.

Principle 2 of the declaration puts the duty on the state to protect and conserve the nature. In fact it does put the sole obligation on the state but it allows the state to enforce such laws which help in conservation of the environment.. It defines the obligation of the state to protect the environment.

Principle 3 says that the right to development must be fulfilled equitably and the environment needs of the present must be fulfilled keeping in mind the needs for the future generation. It says that the developmental needs be it environmental or developmental must be equitably fulfilled.

Principle 4 says that in order to achieve sustainable development, there must be eradication of poverty. It also says that in order to achieve sustainable development, environmental conservation is an essential part of it and cannot be considered in isolation.

Principle 5 says that it is the duty of all the states to co operate with each other and the process of achieving sustainable development cannot be achieved individually and it is a global process as it thinks of the benefit of the mankind as a whole. The states need to work together in this process and thus the aim can be achieved. Unity is an essential part of this process.

¹⁸ Preamble of the Rio Declaration on the Human Environment.

The Rio declaration has taken cognisance of the fact that eradication of poverty is indispensable in sustainable development and will eventually help to preserve and elevate the quality of environment we are surrounded by.

The Principle 8 of the declaration states that in order to achieve the target of the sustainable world using the sustainable means of development, the states should ensure that they do not use the unsustainable means that led to the deprivation in the overall quality of life and the environment we live in.

Principle 9 calls for an international transfer of scientific knowledge needed for sustainable development.

Principle 10 recognises the fact that the environmental issues are best handled with the participation of all the concerned citizens and it is only with the help of every individual that the environment can improve.

It is a well established fact that the law is a regulator of human conduct, therefore Principle 11 focuses on the States to enact effective environmental legislation.

Principle 13 says that the States shall develop national law regarding the liability and compensation for the victims of pollution and other environmental damage.

Principle 12 requires the State to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all the countries, to better address the problems of environmental degradation.

The Precautionary principle has been stated in the Principle 15 according to which 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.

The Polluter Pays Principle is laid down in the Principle 16 of the Declaration which states that the polluter is supposed to pay. It provides that the national authorities should endeavour to promote the internationalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle bear the cost of pollution, in the public interest and without distorting the International trade and policy customs. This means that if an industry is set up somewhere and the environment is getting effected in a way that the people of the nearby area are effected, then the polluter is liable to pay them and make the certain amount of changes that help the people around to solve their problems.

Principle 17 lays down the need for having the Environmental Impact assessment (EIA) for the activities that may have an adverse effect on the environment.

Principle 24 provides that if two countries that war with each other, no one is at the winning side and that the environmental destruction apart from the loss of human lives is at a large scale. So the countries should cooperate in the international interest and take action accordingly.

Principle 25 states that Peace, Development and Environment are interdependent an indivisible.

Principle 27 states that the States shall co operate with each other and abide by the principles laid down in the Declaration¹⁹.

Whether you look at the Stockholm declaration or you look at the Rio Declaration, both of them focus on almost the same principles that in order to live in a healthy environment we need to practice Sustainable Development and that the States or the Countries, should bind itself in a way, that they actually implement the principles laid down in these declarations and help the world become a better place to live in. It is only with the help of each individual effort that the dream of a better world can be achieved and no individual or state can on its own do benefit for the mankind as whole. If the human is entitled to a better environment, he is also obliged to perform his duties towards a healthy and a better environment. Where there are rights, there are duties and so every individual be it the Prime Minister or a sweeper, everyone must work at their individual best so that those small changes become a large one when unified.

¹⁹ See also Karnataka Industrial Areas Development Board v. C. Kenchappa, (2006) 6 SCC 371, p.382

CH-4 AGENDA 21 & SOME PRINCIPLES

4.1 Agenda 21

Apart from all the declarations and the treaties mentioned above, Agenda 21 is an important programme discussed in the United Nations Conference for Environmental Development. Agenda 21 is one of the most important closing documents of the UNCED conference of the 1992. This conference aimed at drawing up a state of affairs concerning the environmental and development problem at global level and to formulate policy lines so that these two important global problems could be tackled. One of the conference's closing document is Agenda 21, an impressive policy programme for sustainable development at global level in 4 sections and 40 chapters²⁰.

Agenda 21 is a dynamic programme. It is voluntary action plan. It is called as Agenda 21 because it is a comprehensive blue-print for local, national, regional, and global actions to affect the transition to sustainable development in the 21st Century. According to Maurice Strong, Secretary General of UNCED, "Agenda 21 constitutes the most comprehensive and far reaching programme of action ever approved by the world community".

The preamble of the Agenda 21 which outlines its purpose, scope and intent, inter alia, provides : "Humanity stands at a defining moment in history. We are confronted with perpetuation of disparities between and within nations, a worsening of poverty, hunger, ill-health and illiteracy and the continuing deterioration of the eco systems on which we depend for our well being. However, integration of environment and development concerns and greater attention to them will lead to the fulfilment of basic needs, improved living standards for all, better protected and managed ecosystems and a safer, more prosperous future. No nation can achieve this on its own; but together we can in a global partnership for sustainable development..."²¹

Thus the agenda lays emphasis on the International co-operation for achieving the goal of sustainable development. It prepares the world for the upcoming challenges that the next

²⁰ Erik Paredis Piet De Baere Bernard Mazijn Centre for Sustainable Development (Ghent University), Towards an analysis framework for LA 21 (Paper for the VLIR Policy Preparation Research Project 'Sustainable Urban Development: Local Agenda 21 in Development Perspectives')

²¹ The Preamble of the Agenda 21

generation might be facing. It addresses the problems of today. It reflects a global consensus and political commitment at the highest level on development and environment co-operation.

After Agenda 21 there were a set of forest principles which served as vital measures for the environmental conservation. They were a set of principles enshrined to save the environment or in other words meant for environmental conservation. They were non legal binding principles so as to achieve the aim of environmental conservation. Section II of Agenda 21 contains specific recommendations for combating deforestation. There is an exigency in conserving the environment and sustaining the forest and its resources, so that not only the wild can live in peace but also we can survive in a healthy environment. These principles were not legally binding, and that is the reason why many of the scholars showed disappointment in terms of no applicability of these principles. They wanted it to be enforceable because they felt that otherwise these principles would be left out only on paper and will not be followed practically. So, in order to make sure that there exists some practicality in the implementation of the policies, they wished for it to be enforceable enough.

4.2 Principle 1 The Precautionary Principle

The principle rests upon the preventive aspect of the environmental law. Apparently, it seems similar to the preventive principle but the basic difference lies in its scientific basis. The precautionary principle implies that, even where there is no scientific evidence available to support a particular theory, precaution should be taken.²²

The main purpose of the precautionary principle is to ensure that if a substance or an activity is posing a great threat to the environment, will be prevented from adversely effecting the environment, even if there is no conclusive proof that a particular substance is effecting the environment. The words "substance" and "activity" imply substances and activities introduced as a result of human intervention. In the context of the municipal law, the "Precautionary Principle" means :-

²² 'Report of the United Nations Conference on Environment and Development', general Assembly, 12 August 1992,A/CONF 151?26,Vol. 1

- (i) Environmental measures by the State government and the local authorities must anticipate, prevent and attack the causes of environmental degradation.
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent the environmental degradation.
- (iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.²³

The precautionary principle implies , that the discharge of pollutants, which are potentially harmful, must be controlled, even in the absence of specific data concerning it.²⁴

In Vellore citizen's V. Union of India²⁵, the court expressed the view that the precautionary principle and the polluter pays principle are essential features of sustainable development and that they have been accepted as part of the law of land. In the same case the court also observed that the new concept of "burden of Proof" in environmental matters. The learned Judges also observed that the new concept, which places the burden of proof on the developer or industrialist who is proposing to alter the status quo, has also become the part of our environmental law.

The activity which goes on and is allowed to go on , even after knowing that the environment is in danger, the environment can be irrevocably harmed and so eventually the concept of precautionary principle becomes a fail. The principle does not come into play when the concept does not help in sustainable development.

The special burden of proof in environmental cases - It is to be noted that while the inadequacies of science have led to the "precautionary principle", the said principle in its turn, has led to the special burden of proof in environmental cases where the burden as to the absence of injurious effects of the actions proposed, is placed on those who want to change the status quo. This is often termed as a reversal of burden of proof, because otherwise in environmental cases, those opposing the change would be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the part attempting to preserve the status quo while

²³ See Vellore Citizen's Welfare Forum v. Union of India, (1995) 5 SCC 647, p.658

²⁴ Michael Purdue, 'Integrated Pollution Control in the Environmental Control in the Environmental Protection Act, 1990 : A Common Age of Environmental Law?', Modern Law Review no. 54, 1991, pp 534, 535

²⁵ Ibid.

maintaining a less polluted state should not carry the burden of proof and the party who wants to alter it, must bear this burden.²⁶

To be precise the Precautionary Principle involves the apprehension of the environmental harm and the taking up of the effective measures to avoid it or choosing the less environmentally harmful activity.²⁷ The basic idea is not only to protect the health, property and economic interests of the society but also to protect the environment for its own sake. This was reaffirmed in the Rio Declaration in its Principle 15.

4.2 Principle 2 The Polluter Pays Principle

This principle has well acceptance in the International conventions and in the municipal legal systems. Two aspects are highlighted in this principle - on one side, it is used as a compensatory mechanism and on the other side it is used as the preventive mechanism. Both of its aspects play an important role when it comes to the environmental jurisprudence of any country especially when we talk about India. Compensatory because the polluter should pay for the harm inflicted by him on the environment and preventive, in the sense that heavy penalty may be imposed on the one who pollutes the environment.

This principle covers four different aspects or perspectives :

- (a) First, criminal responsibility may be imposed upon the polluters.
- (b) The polluter maybe held responsible to make good, the harm inflicted by him.
- (c) Eco-tax or carbon tax may be imposed upon him.
- (d) The law of the land may compel the polluter to participate in the preservation of the environment.

It must also be mentioned that the US adopted this principle through the Comprehensive Environmental Response Compensation and Liability Act, 1980. The Council of the European

²⁶ See, James M. Olson, "Shifting the burden of proof", 20 Environmental Law, 1990, p.898

²⁷ Andhra Pradesh Pollution Control Board v. M.V. Nayudu AIR 1999 SC 812

Communities adopted this principle as the potential instrument for the preservation of the Environment.²⁸

As interpreted by the Supreme Court of India, means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. It clearly means that the liability of the one that causes harm to the other and the environment is not only to compensate for the harm caused to the individual but also to the environment. Restoring the environment, the one that is caused due to the action of the individual, is the absolute liability of the individual.

Remediation of the damaged environment is part of the process of sustainable development and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.²⁹ Under this principle it is not the role of the government to meet the costs involved, but it is the duty of the individual causing harm to pay all the costs. Under this principle, the action programme on Environment have laid down certain basic principles of European community environmental policy. The most important are set out in Article 130R(2). They are :-

- (i) Preventive action is to be preferred to remedial measures
- (ii) environmental damage should be rectified at source;
- (iii) the polluter should pay for the costs of the measures taken to protect the environment; and
- (iv) environmental policies should form a component of the European Community's other policies.³⁰

Therefore, according to the polluter pays principle, the responsibility to repair the environmental damage is that of the polluter.

²⁸ 'The council stresses that in the interest of more efficient environmental protection in the context of efficiently integrating the environment and economic policy and meeting the fundamental objective of the sustainable development, in particular which comply with the 'polluter pays principle', it is necessary to backup current, direct environmental regulations, based on the command and control approach, with economic and fiscal instruments aimed at influencing the reason and behaviour of the producers and the consumers, to discharge wasteful products and polluting process and product and to promote technologies and productive processes which are consistent with the resource conservation'

²⁹ See *Vellore Citizen's Welfare Forum V. Union of India*, (1996) 5 SCC 647, p.659

³⁰ *Ibid*

CH-5 APPROACH OF DIFFERENT COUNTRIES TOWARDS THE ENVIRONMENT

5.1 United States of America Approach towards the Environment and Criminal Liability of the Polluter

Presuming the Polluter to be a corporate, US states certain guidelines for sentencing such criminals. The US Sentencing guidelines 2005 lays down the appended principles :-

First, the court must, whenever practicable, order the organisation to remedy any harm caused by the offense. The resources expended to remedy the harm should not be viewed as punishment, but rather as a means of making the victims whole for the harm caused.

Second, if the organisation operated primarily for a criminal purpose or primarily by criminal means, the fine should be set sufficiently high to divest the organisation of all its assets.

Third, the fine range for any other organisation should be based on the seriousness of the offense and the culpability of the organisation. The seriousness of the offense generally will be reflected by the greatest pecuniary gain, the pecuniary loss or the amount in the guideline offense level fine table. Culpability will generally will be determined by the six factors that the sentencing court must consider. The four factors that increase the ultimate punishment of an organisation are

- (i) The involvement in or tolerance of criminal activity;
- (ii) the prior history of the organisation;
- (iii) the violation of an order;
- (iv) the obstruction of justice.

The two factors that mitigate the ultimate punishment of an organisation are:

- (i) the existence of an effective compliance and ethics program; and
- (ii) self reporting, co-operation, or acceptance of responsibility.

Fourth, probation is an appropriate sentence for an organisational defendant when needed to ensure that another sanction will be fully implemented, or to ensure that steps will be taken within the organisation to reduce the likelihood of future criminal conduct.

These guidelines offer incentives to organisations to reduce and ultimately eliminate criminal conduct by providing a structural foundation from which an organisation may self-police its own conduct through an effective compliance and ethics program.

5.2 Indian Approach towards the liability of the Polluter

In the Indian context, 'liability of the corporate' has been described in the following terms :-

"In case of the torts, the general rule prevails that the corporation may be criminally made liable for the acts of an officer or agent, assumed to be done by him when exercising authorised powers, and without proof that his act was expressly authorised or approved by the corporation. In the statutes defining crimes, the prohibition is frequently directed against any "person" who commits the prohibited act and the person does not specifically include any individual it can also include any corporate, or a private organisation for that matter.

As regard to the Corporate criminal liability, there is no doubt that a corporation or a company could be prosecuted for any offence punishable under law, whether it is coming under the strict liability or under absolute liability.

CH-6 CONCLUSION

This paper thus finally comes to an end with the main conclusion that different conventions on International grounds, do somewhere or the other connect the countries politically as well as socially. Various papers and articles have been used while writing this paper and thus it has been established through the paper, that these International conventions not only help in improving the environment globally but also help the countries bind together politically and socially and then also tries to understand that how do these countries have different takes on the same matter but have a common nexus.

Thus from this whole paper, it is submitted that the challenges of the environment protection and sustainable development are daunting. The concept of sustainable development has grown from Stockholm declaration to Rio Declaration. However, in its growth it is always stated that if the humans are entitled to the rights of privilege to environment then they are always obliged to maintain the same environment and maintain in such a way that the future generations are also able to use and enjoy the benefit of the environment which is a natural gift to the mankind. Thus, it is the duty of the individual to perform his best and do whatever possible on the individual level to maintain and sustain environment, so that even the mankind can survive and enjoy the

benefit those privileges which we are enjoying. It is important to give up on those needs and luxuries which are contrary to the wellness of the environment and adopt sustainable and environment friendly practices that not only improves our way of life and the quality of life, but also helps the future generations to experience the fresh air.

From the viewpoint of society needs, it is necessary to ensure the further development of economy on the one hand, and, on the other hand, to reduce the environment contamination and to ensure the environment protection. The artistic creation is the high degree of proficiency. The complex problems of the human/nature relation are based on certain philosophical foundations in each historical era. The present period can be characterized as the era in which the humans incessantly start turning the higher merry-go-round of substances and energies in order to satisfy their needs, with reality that the bulk of these substances is growing much faster than the human needs. On one side it displays deficiencies of resources and energy (resource stocks have been stretched) and on the other side it wastes with resources and with energy. Sustainability considers the nature and human from the viewpoint of optimum development of the whole biosphere. The ecological behaviour should not be reduced to the riotous discussions around the nuclear power plants and water structures or industrial complexes. We must plan and build big structures. At the same time, we must consider the impacts of these constructions on the environment and human health.