



FORMULATION AND IMPLEMENTATION OF NATIONAL LAWS ON THE BASIS OF INTERNATIONAL LAW - CASE STUDY OF ENVIRONMENT PROTECTION LAWS

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Abstract

International Laws impact formulation and implementation of National and Local Laws. The world woke to negative impact of industrialization on environment by middle of 20th century. But it took nearly half a century for the whole world to agree to Kyoto Protocol, 1998 and promulgate legislation for environment protection at national and local level. As per the Indian Constitution environment protection is envisaged in Art 21 (Fundamental Right) and Art 48(A) (Directive Principle), and India made several Laws and Acts for environment protection but it was only by 1997 that a National Environment Authority Act was passed to enforce the laws effectively. It was in 2002 that Biological Diversity Protection Act was passed. Various courts have passed laws from time to time in line with International Laws and commitments of the country to international forums for making such laws effective. Several principles have been devised to interpret such laws and enforce it. However, some problems still continue in such cases. This paper traces the evolution of National Laws and Acts for Environment Protection in India, and impact of International Laws and Protocols in the same.

Key word: Formulation, Implementation, Environment Protection, Kyoto Protocol, Milestones in Environment Protection.

INTRODUCTION

Over the second half of 20th century, one of the most debated topics in the United Nations was environment protection. The serious deliberations, however, started with the Stockholm Declaration in 1972. The first section of the paper will look into various developments at the international level till the Kyoto Protocol was agreed upon in 1998. In the second section, various laws promulgated by Indian Parliament and other policy decisions by the government of India will be enumerated. The third section

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would look into the Kyoto Protocol in details. The fifth section will explore that how an international protocol is converted into a national policy and India's response to Kyoto Protocol. The fifth section would look into the jurisprudence of these Indian Environmental Laws. To sum up, the last section would elaborate upon the impact of International Laws and Policies in formulating the Local Laws and how the principles agreed at the international level have been incorporated in the jurisprudence at national level.

This paper is presented under the following sub-heads -

- I. International Law - Environment Protection
- II. Indian Environmental Statue-law and policy
- III. Kyoto Protocol, 1998
- IV. India's response to Kyoto Protocol and Policy framework
- V. Indian Laws Jurisprudence
- VI. Challenges in implementation of International Environmental Laws in India

I. International Law - Environment Protection

International Environmental Law (IEL) attempts to control pollution and the depletion of natural resources while up keeping the principles of sustainable development. It is a branch of public international law - a body of law created by states for states to govern problems that arise between states.¹

IEL includes water pollution, air pollution, biodiversity, climate change, ozone depletion, toxic and hazardous substances, land, sea and trans boundary pollution, conservation of marine resources, desertification, and nuclear waste.

The UN has over the years organized several conventions and protocols to impress upon its member states to implement Environment Protection Laws.

Milestones in Environment Protection

Main Event	1972	The Stockholm Declaration
	1985	The Vienna Convention
	1987	The Montreal Protocol
		- specially for ozone layer
		The Brundtland Commission"
Main Event	1992	The Rio Declaration on Environment & Development
		UN Convention on Biological Diversity
		Agenda 21
		UN Framework Convention on Climate Change

¹ Principles of International Environmental Law - Textbook by Philippe Sands - Cambridge University Press - Second Edition 2003.

1998 The Kyoto Protocol

Main Event 2014 UN Environment Assembly

The Stockholm Declaration, 1972

The **United Nations Conference on the Human Environment** was held in Stockholm, Sweden from 05th to 16th June, 1972. The United Nations Environment Program, or UNEP, was created as a result of this conference.

The salient features of the declaration were as follows² -

- It was the foundation of modern global environmental law.
- It recognized that different approaches are required to tackle problems of developed and developing countries.
- It recognized a healthy environment as an extension to the right of life.
- Introduced the concept of inter-generational equity.
- The leaders agreed that there was a need to balance the needs of the environment with those of development
- It granted the nations to have the sovereign right to exploit their own resources, subject to the responsibility not to cause damage to the environment of other states.
- During the conference it was accepted by all the members that poverty alleviation was central issue to protecting the environment.

It may be noted that this point was brought forward by Indian delegation. The then Indian Prime Minister Indira Gandhi in her seminal speech in the conference brought forward the connection between ecological management and poverty alleviation. The famous '*Bees sutri karyakram*'³ or 'Twenty point program', launched by Mrs Indira Gandhi in 1975, was also based on poverty alleviation and sustainable development.

The Vienna Convention, 1985

During the convention a framework was prepared and a treaty was signed within which member states agreed to share research and information, develop technologies, etc., for the protection of the Ozone layer.

The Montreal Protocol on Ozone Layer Depleting Substances, 1987

This protocol required parties to reduce the consumption of ozone-depleting substances to certain stipulated levels. However, in accordance with the Stockholm Declaration, developing countries were given a grace period of 10 years to comply.

² Environmental Law Guidelines and Principles: Stockholm declaration (1972) - Volume 1 of Environmental Law Guidelines and Principles, United Nations Environment Programme, UNEP 1972

³ From Mumbai to Durban: India's Greatest Tests - By S. Giridhar, V.J. Raghunath - page 105 - Publisher Juggernaut Books

The Brundtland Commission", 1987⁴

This is considered as a milestone in the development of international environmental jurisprudence and policy. It established the doctrine of "sustainable development". India's National Environment Tribunal Act, 1995 and National Environment Authority Act, 1997 were made largely as per this report.

The Rio Declaration or "The Earth Summit", 1992

The second biggest declaration after Stockholm was Rio Declaration made by the UN in 1992, twenty years after the first. The salient features of this declaration were thus -

- It built on the principles of sustainable development, inter-generational equity, and sovereign rights in the Stockholm Declaration.
- It expanded the concept of sustainable development.
- The declaration reaffirmed, the importance and centrality of:
 - The Precautionary Principle,
 - The Polluter Pays Principle, and
 - Environmental Impact Assessment

The Indian Environment Laws have accepted these principles in-toto and this has been established further in various rulings of the apex court.

The U.N. Convention on Biological Diversity (1992)⁵

Whereas, the UN was conducting conferences and meets to prevent nations from further damaging the environment, but it was felt that the member countries should make a positive effort in protecting its bio-diversity as well. Hence a convention was organized in 1992.

Three main goals of the convention were:

1. The conservation of biological diversity;
2. The sustainable use of its components; and
3. Genetic resources -The fair and equitable sharing of the benefits.

In 2000, Cartagena Protocol on Biosafety was adopted. It sought to nullify risks to biological diversity of states from modified organisms created by science or biotechnology.

In April 2002, the members agreed that, by 2010, there should be a significant reduction in the rate of biodiversity loss at the global and regional level.

India's Bio Diversity Act 2002, was promulgated based on the principles agreed upon during these conventions.

Agenda 21, 1992

⁴ Brundtland Commission: https://simple.wikipedia.org/wiki/Brundtland_Commission

⁵ Convention on Biological Diversity, 1992: The United Nations

This enumerated a comprehensive road-map of action to be taken at the global, national, and local levels, framed at the Rio Summit. Agenda 21 covers the following:

1. The social and economic dimensions
2. Conservation and management of resources for development
3. Strengthening the role of major groups
4. Means of implementation

The UN Framework Convention on Climate Change, 1992

The objective of the convention was to stabilize greenhouse gas concentrations in the atmosphere at mutually acceptable levels, so as to not interfere with the climate system of the world.

The Kyoto Protocol, 1998

It was the first agreement to mandate country wise reduction in green-house gases. It specified mechanisms and modalities in the form of -

- Clean Development Mechanism
- Joint Development and
- Carbon trading

A detailed note on this is given in section II.

The UN Environment Assembly 2014

It was the highest-level UN body ever convened on the environment - opened on 23 June 2014 at the United Nations Environment Program (UNEP) headquarters in Nairobi. UNEA has membership of all 193 UN member states and reports to General Assembly directly. With this wide reach into the legislative, financial and development arenas, the new body presents a ground-breaking platform for leadership on global environmental policy.⁶

II. Indian Environmental Statute-law & Policy

- The Indian Constitution: A healthy environment as part of the right to life – Articles 21, 48A, and 51A(g).
- The Water (Prevention & Control of Pollution) Act 1974, and the Air (Prevention & Control of Pollution) Act, 1981.
- The Environment (Protection) Act, 1986 and the Regulations framed thereunder.
 1. Discharge of Pollutants
 2. Coastal Protection
 3. Environmental Impact Assessment
 4. Hazardous Wastes
 5. Ozone Depleting Substances
- The National Environment Tribunal Act, 1995
- The National Environment Authority Act, 1997.

⁶ Nairobi, 23 June 2014: <https://www.unenvironment.org/news-and-stories/press-release/first-ever-un-environment-assembly-unea-ground-breaking-platform>

- The Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980.
- The Wildlife Protection Act, 1972.
- The Biological Diversity Act, 2002.

Indian Constitutional Provisions

The Indian constitution already had following provisions which were introduced to make efforts for environmental protection.

1. Article 21 (Fundamental Right) - which assured 'Right to Life' and was subsequently interpreted by Supreme Court that it was a fundamental right of every citizen to have right to decent living. Though Mahatma Gandhi never used the word environment conservation but he was a great proponent of the idea. It was his amazing foresight that he could foresee that the development was happening in the wrong direction. It was on his insistence that following directive principle was added.⁷
2. Article 48A (Directive Principle of State Policy) - which directs state to make policies for protection of environment.
3. Article 51A(g) (Fundamental Duties) - states that it shall be the duty of every citizen of India to protect environment.

The Water (Prevention & Control of Pollution) Act, 1981

The Act provides for the prevention and control of water pollution and maintenance or restoration of water bodies. It also provides for constitution of Pollution Control Boards (PCBs) in every state, and a Central Pollution Control Board at the Center. These PCBs are mandated to issue consents for establishment of industries and discharge of effluents.

The Air (Prevention & Control of Pollution) Act, 1981

The Act provides a regulatory framework for the prevention, control and abatement of air pollution. It has been drafted on similar lines as the Water Act.

The Environment (Protection) Act, 1986

Though India was a signatory of the Stockholm Declaration but it was not until 1986 that a comprehensive 'Environment Protection Act' was passed in 1986, only in the aftermath of the Bhopal Gas Leak tragedy.⁸

The Act enables framing of Rules and Regulations for:

- Discharge of Pollutants
- Coastal Protection

⁷ Mahatma Gandhi and Environment Protection: Dr. Anupma Kaushik: Reader in Political Science: Banasthali University, Rajasthan: <https://www.mkgandhi.org/articles/environment1.htm>

⁸ The Bhopal disaster and its aftermath: Edward Broughton: Columbia University. 2005; 4: 6. Published online 2005 May 10.

- Environmental Impact Assessment
- Hazardous Substances and Waste
- Ozone Depleting Substances

The National Environment Tribunal Act, 1995

The Tribunal has been established to adjudicate upon claims for compensation arising out of accidents due to handling of hazardous substances. It imposes a strict or no-fault penalty in such cases.

The National Environment Authority Act, 1997

The Authority hears appeals from orders passed by agencies which grant environmental clearances for projects and industrial activity.

The Indian Forest Act, 1927

This is the oldest Act in India which grants the State Governments power to designate forests as reserved or protected. It also provides for claims against the State Government for the loss of private rights and prohibits activities that damage or destroy reserved or protected forests.

The Forest (Conservation) Act, 1980

Though the Indian Forest Act granted powers to government to acquire forest lands against compensation, the position of the government changed hundred and eighty degree when the Forest (Conservation) Act, 1980 prohibited the "de-reservation" of reserved forests, the use of forest land for a "non-forest" purpose, and the clearing of trees from forest land, except with the prior approval of the Central Government.

The Wildlife Protection Act, 1972

The salient features of the Act are -

- The Act prohibits the hunting of wildlife, though there are some exceptions in rare cases
- Notifies areas with biodiversity as Sanctuaries and National Parks.
- Empowers agencies engaged in protection of wildlife.
- Bans/regulates trading in products made of wild animals, trophies and animal articles.

The Biological Diversity Act, 2002

The salient features of the Act are -

- Gives effect to India's obligations under the U. N Convention on Biological Diversity.⁹
- Establishes national and state biodiversity authorities.
- The act restricts access of non-resident Indians, foreign nationals and companies to a biological resource for research, commercial use, survey or collection etc. For gaining such access one has to seek permission of the National Authority.

⁹ Lakshmanan, Pushpa. (2015): An Inquiry into the Biological Diversity Act, 2002 in Light of the Nagoya Protocol on Access and Benefit Sharing: Journal of Law Teachers of India: 6. 35-55. 10.2139/ssrn.3048709.

- The act also contemplates establishment of national, state, and local biodiversity funds.

III. Kyoto Protocol

3.1 Background

Kyoto Protocol was the result of the UN Framework Convention on Climate Change (UNFCCC), which was agreed upon by member states during the Earth Summit, 1992. The objective of the convention was to stabilize greenhouse gas concentrations in the atmosphere at mutually acceptable levels, so as to not interfere with the climate system of the world.

Despite early agreement the member states were not found to be serious in implementing the agreements of the convention. Hence, it was felt that a new treaty was needed to put teeth into that pledge. This treaty was finalized in Kyoto, (hence the name Kyoto Protocol) and came into force in 2005.

Except the US almost all nations have now ratified the treaty. Developing countries, including China and India, were given a relaxation period of 10 years because they had not contributed to pollution much, despite having the largest population.

Under Kyoto, industrialized nations pledged to cut their yearly emissions of carbon, as measured in six greenhouse gases, by varying amounts, averaging 5.2%, by 2012 as compared to 1990. This means that nearly 29% reduction in such emissions that would have otherwise occurred. However, the protocol didn't become international law until 2002, and this defeated the very purpose of the convention. Some countries and regions, including the European Union, were on track by 2011 to meet or exceed their Kyoto goals, but other large nations were falling woefully short. And the two biggest emitters of all – the United States and China – churned out more than enough extra greenhouse gas to erase all the reductions made by other countries during the Kyoto period. Worldwide, emissions soared by nearly 40% from 1990 to 2009, according to the Netherlands Environmental Assessment Agency.¹⁰

3.2 Objective of the Kyoto Protocol

The main objective of Kyoto Protocol was to reduce Carbon Dioxide gas emissions and presence of other Green House Gases (GHG). The main principle adopted was that developed nations would have to lessen their emissions of these gases more than the developing ones. Even now, the Kyoto Protocol is active albeit in different forms and is discussed widely. Doha Amendment and Paris Climate Agreement have carried forward the legacy of Kyoto Protocol. The issues raised, discussed, agreed upon and implemented in Kyoto Protocol have increasingly become very complicated, political, economic and the consensus which seemed at the inception is now missing.

¹⁰ <https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol/kyoto-protocol-targets-for-the-first-commitment-period>

What was the Protocol and how countries implemented it needs to be looked into. We also need to see how developing countries, especially India built upon its national rules and convention in accordance with the International Law agreed upon in Kyoto Protocol.

3.3 Chronological Development: As mentioned above the Protocol was linked to the United Nations Framework Convention on Climate Change (UNFCCC). On Dec 11, 1997, it was adopted in meeting at Kyoto and it became an International Law on Feb 16, 2005.

Member countries agreed to cutting their emissions of Carbon Dioxide and GHG by a specific amount as agreed individually within a specific period of time. This had a typical name - Carbon Credit Trading. It was agreed that if a Country emitted more than the agreed limit, then a penalty would be imposed and a lower emission limit would be assigned in the next period.

It was decided that the industrialized countries would bring an overall reduction in the annual hydrocarbon emissions by 5.2% by 2012. This would be nearly 29% of all emissions in the world. However, every country was given an individual target. The table shows the country wise target.

Table 3.1 Main Green House Gases

First commitment period - 2005-2012

Target Green House Gases, emission of which was to be controlled -

1. Carbon dioxide (CO₂);
2. Nitrous oxide (N₂O);
3. Methane (CH₄);
4. Perfluorocarbons (PFCs);
5. Hydrofluorocarbons (HFCs); and
6. Sulphur hexafluoride (SF₆)

Table 3.2 Target for cutting carbon emissions by developed countries¹¹

Country	Target (1990 emission - target emission envisaged in 2012)
EU-15*, Bulgaria, Czech Republic, Estonia, Latvia, Liechtenstein, Lithuania, Monaco, Romania, Slovakia, Slovenia, Switzerland	-8%
US	-7%
Canada, Hungary, Japan, Poland	-6%
Croatia	-5%
New Zealand, Russian Federation, Ukraine	0
Norway	1%
Australia	8%
Iceland	10%

Note - Figures taken from UNFCCC.

¹¹Target for cutting carbon emissions by developed countries: <https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol/kyoto-protocol-targets-for-the-first-commitment-period>

3.4 Responsibilities of Developed versus Developing Nations:

The Kyoto Protocol agreed that industrialized countries were primarily responsible for the continuing high levels of GHG emissions due to more than 150 years of extensive industrialization. As such, the Kyoto Protocol earmarked a heavier limit on developed countries than under-developed nations. The Protocol mandated that 37 industrialized countries plus the European Union cut their emissions. On the other hand, developing nations were only asked to comply as suits them as per their need. Over 100 developing countries, including India and China, were exempted from the agreement altogether.

The Protocol divided countries in two groups: Annex I contained industrialized nations, and Non-Annex I referred to developing nations. The Protocol put emission restrictions on Annex I countries only. Non-Annex I nations however participated by doing more projects designed to lessen emissions. For these projects, Non-Annex-I countries earned something called carbon credits. They could then trade or sell these credits to developed countries. By buying carbon credits developed countries were allowed a higher level of carbon emission. In effect developing countries would prevent polluting environment which developed countries were doing. So overall emission would be lesser. This was a win win situation for both.

The United States, ratified the Kyoto Protocol in 1998 but later dropped out in 2001. It believed that the Protocol was unfair because only industrialized nations were to limit their emissions reductions and not economies like China and India. They believed it would hurt the US economy.

Kyoto Protocol ended in 2012 - without achieving much:

Though the Protocol was adopted in 1997, the emissions were still increasing in 2005 when it came into force. In fact many countries had seriously taken steps in accordance with the Protocol like EU, and it was expected that the targets would be easily achieved by 2011. But many others fell short of expectations. The US and China alone produced enough greenhouse emissions that all progress made by other nations was nullified. Finally, it was noticed that between 1990 and 2009, there was an increase of 40% in the emissions.

3.5 Post Kyoto Protocol Developments -

3.5.1 Doha Amendment, 2012

In December 2012, when the first commitment tenure of the Kyoto Protocol ended, members to the Protocol met in Qatar's capital Doha, to adopt amendment to original Protocol. This is called Doha Amendment which added new emission-cutting targets for the period, 2012–2020, for member countries. In effect Doha Amendment extended KP to 2020. But, the Amendment had a very short life. It was in 2015, that a sustainable development summit was held in Paris, in which all UNFCCC members signed another pact, which is called Paris Climate Agreement. This effectively took the place of the Kyoto Protocol.

3.5.2 Paris Climate Agreement, 2015:

The Paris Climate Agreement was landmark environmental pact. It was adopted by all member countries every in 2015 to address the problem of climate change and negative effects of the same. The agreement included commitments from developed countries asking them to cut climate-altering pollution materials and strengthen these commitments over time as well.

A major directive was reducing global GHG emissions. This was done to limit the increase of earth's temperature in 21st century within 2 degrees Celsius only above preindustrial levels. Steps were taken to limit this increase by 1.5 degrees Celsius. This was done to harness global warming. The Agreement provided a way for industrialized nations to help developing countries in their efforts as well. Thus the aim of controlling the temperature rise was made a responsibility of all member nations.¹²

3.6 The impact of Kyoto Protocol:

In 2016, the Paris Climate Agreement came into force. Unlike in Kyoto Protocol the US was the principal driver of this agreement. President Obama called it “a tribute to American leadership.” Though, Donald Trump, a President candidate at that time, criticized the agreement calling it a bad deal for the people of the US. He added that he would withdraw from the Agreement if he was elected.

As in 2019, though the dialogue is alive but the agreements have become entangled in a complex discussion surrounding politics, bad leadership and lack of consensus amongst member countries. As a result most of the points agreed to during the meetings have not been implemented yet. This has resulted in continued global warming and mass devastation of natural flora and fauna. A human made crisis is imminent to happen. Few scientists claim that Corona Virus epidemic is an attempt of the nature to reclaim what was rightfully its own.

IV. India's response to Kyoto Protocol and Policy framework

Since 1997, India has promulgated following acts and laws in accordance with the International Law as established by Kyoto Protocol. This will give us an understanding that how International Law has been translated to National Laws and Rules and Directives of the government.

India had agreed in the Paris Agreement to reduce carbon emission and plant additional forest and tree cover.

However, India did not bring a legislation to achieve this target. On the other hand the whole exercise was made incentive based, so as to make the effort more voluntary in nature, rather than penalty oriented.

As on date there is no Carbon Trading Scheme in India. Although India did ratify the UNFCCC in 1993 and was signatory to the Kyoto Protocol, but since it was in Non Annex-I country, it has not taken part

¹² Effects of Kyoto Protocol on CO₂ Emissions: A Five-Country Rolling Regression Analysis Chien-Ho Wang, Ming-Hui Ko and Wan-Jiun Chen; MDPI - Published 31.01.2019

in flexibility mechanisms adopted industrialized countries (joint implementation and emission trading). However, India has played a salutary role in being a leading host country for Clean Development Mechanism (CDM) investments. This has enabled Annex-I countries to invest in emission reducing projects in Non Annex-I countries against carbon certificates.

4.1 National Mission on Enhanced Energy Efficiency, 2008

In 2008, India launched the National Mission on Enhanced Energy Efficiency (NMEEE). It was a National Action Plan for Climate Change. The plan focused on 8 areas or 'Missions' -

1. Solar
2. sustainable habitat
3. enhanced energy efficiency
4. water
5. a 'green' India
6. sustaining Himalayan ecosystem
7. sustainable agriculture
8. strategic knowledge to impact climate change

A Perform, Achieve and Trade (PAT) mechanism was launched as a part of NMEEE. It was a first of its kind, market based tool to promote efficiency among large energy intensive industries. Such industries could trade in 'Energy Saving Certificates' (ESCerts). As per the Energy Conservation Act, 2001 eight Industrial Sectors were identified. From these sectors a list of nearly 500 'designated consumers' was made. These were allowed to trade in ESCerts. The eight sectors included thermal power stations, cement, fertilizer, iron and steel, aluminum, alkalis, pulp and paper, and textile. This helped in efficient production in these industries without hampering the output.

Thus India adopted incentive based compliance rather than a penal based. The carrot drove the rabbit more than the stick.

4.2 Intended Nationally Determined Contribution, 2015

In October 2015, Intended Nationally Determined Contribution (INDC) was submitted. This outlined the steps India intends to take beyond 2020 when the Kyoto Protocol and Doha Amendment would end. India has committed itself to achieving the following goals by 2030 -

1. Reduction in emissions by 33-35% from 2005 levels,
2. Create 2.5-3 Bn tonnes of carbon dioxide equivalent additional sink in the form of additional forest cover, and
3. Renewable energy of 450 GW to be implemented.

4.3 Recent developments

The National Greens Tribunal ordered (2019) that state governments which do not enforce the rules properly would be considered as colluding and conniving with the polluters.

In another matter while questioning EC (Environmental Clearance) granted to an industrialist, SC stated that arbitrary actions part of a government official in the matters of environment would be considered as a 'direct violation' of the Public Trust Doctrine. Based on this the clearance was quashed.

On the other hand, Central Pollution Control Board has devised a formula to evaluate Environmental Compensation. This was done to implement the environment certificates. The CPCB incorporated the number of days of violation also in calculating the damage done by the defaulting industry.

Finally, in 2019 April, a 'Zero Draft of Environment Impact Assessment Notification' was circulated amongst state governments asking for their comments to formulate Environment Clearance process in a more transparent, effective and decentralized.¹³

III. Indian Environmental Jurisprudence: Principles established by Supreme Court

As is the case in other issues as well, the Supreme Court and then the High Court have jurisdiction and control over Regulatory Bodies and Authorities, which in turn covers various fields including water pollution, air pollution, coastal protection, bio-diversity, environmental impact assessment, etc. The Acts empowering such bodies have been mentioned above.

However, it is primarily the role of the Supreme Court to assimilate key concepts of International Environmental Law into Indian jurisprudence. The main principles established by the International Law in various Declarations, Protocols and Conventions as mentioned above have guided the legislature in promulgating Laws accordingly. In addition, the following four concepts have been included in the Indian Jurisprudence by the Supreme Court as per the International Law.

1. Sustainable Development
2. The Precautionary Principle
3. The Polluter-pays Principle.
4. The Doctrine of Public Trust.

All four principles have been affirmed by the Supreme Court in various judgements subsequently, as well.

Sustainable Development

As per the Brundtland Report (1987), 'sustainable development' is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs. India's stand till 1972 was that environment protection and economic development were incongruous.

However, when India accepted the Brundtland Report in 1987 and promulgated National Environment Tribunal Act, 1995 and National Environment Authority Act, 1997, this view of economic development

¹³ India: Environment & Climate Change Law 2020 - Tavinder Sidhu and Kshitez Kaushik, MV Kini Law Firm - ICLG, 12.02.2020

was overruled. The Supreme Court stated that the traditional concept that development and ecology are opposed to each other, is no longer acceptable. 'Sustainable Development' is the answer.¹⁴

In another case Supreme Court, further qualified that coordinated efforts of all concerned would be required to solve the problem of ecological crisis and pollution. Unless we adopt an approach of sustainable use, the problem of environmental degradation cannot be solved.¹⁵

The Precautionary Principle

The precautionary approach was introduced by the Principle 15 of the 1992 Rio Declaration. It implies that in case of threat of serious or irreversible damage, cost-effective measures to prevent environmental degradation shall not be postponed just because there is lack of full scientific certainty.¹⁶

This has been interpreted by the Supreme Court in the following manner¹⁷ -

- In the matter of Environmental measures, government must anticipate, prevent and attack the causes of environmental degradation
- Lack of scientific certainty should not be used as a reason for postponing measures by the authorities, and
- Onus of proof is on the actor who has to prove that his action is benign

The “Polluter Pays” Principle

The ‘polluter pays’ principle is the commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment. For instance, a factory that produces a potentially poisonous substance as a by-product of its activities is usually held responsible for its safe disposal. The polluter pays principle is part of a set of broader principles to guide sustainable development worldwide.¹⁸

The Rio Declaration qualifies that the National Authorities should endeavor to promote the internalization of environmental costs...taking into account the approach that the polluter should, in On similar lines the Supreme Court of India has ruled that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause pollution or produce the goods which cause pollution.¹⁹

The Doctrine of Public Trust

¹⁴ Vellore Citizens Welfare Forum AIR 1996 Supreme Court 2715.

¹⁵ Supreme Court in Karnataka Industrial Development Board (2006) 6 SCC 321.

¹⁶ <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-7>

¹⁷ Vellore Citizens Welfare Forum vs Union Of India & Ors on 28 August, 1996

¹⁸ London School of Economics - <http://www.lse.ac.uk/GranthamInstitute/faqs/what-is-the-polluter-pays-principle/>

¹⁹ Indian Council For Enviro-Legal ... vs Union Of India And Ors.Etc on 13 February, 1996 - Equivalent citations: 1996 AIR 1446, 1996 SCC (3) 212

The Doctrine lays emphasis on the principle that some natural resources like air, sea, waters and the forests have such a great importance to the whole world that making them a subject of private ownership was not justified.

Indian judicial system, which is based on the English common law, includes the public trust doctrine as a part of its jurisprudence. Due to this, the state is a trustee of all natural resources and it makes all such resources available for public use and enjoyment.²⁰

V. Challenges in implementation of International Environmental Laws in India

Several international environmental law treaties, especially those developed under the auspices of the United Nations, speak of environmental law as a **human rights** issue. The Declaration of the (Stockholm) Conference, 1972 for example, stated that every human had the right to a clean and healthy environment. Only few nations, however, have a legal framework that treats environmental law as human rights issue. In general, citizens cannot sue their government when their right to a clean environment is violated. That's why such multilateral environmental treaties, have taken a more practical, regulatory approach toward environmental protection laws. However, in the context of India it was noted that there were sufficient laws and Supreme Court has included the principles of the environmental protection into the judicial system as well. Still the problem continues.

India stood at 177 out of 180 countries in the 2018 Global Environment Performance Index (EPI) rankings of the Yale University. The report mentions specifically that India was unable to improve its air quality, protect its biodiversity, and cut its greenhouse gas emissions. India slipped by 36 points in 2018 from 141 in 2016.²¹

International environmental law has also dealt with the economic inequality that exists among nations. The Declaration of the United Nations Conference on the Human Environment, 1992, was the first major international document to recognize that environmental problems originated from both developing and developed economies. Various global conventions and the United Nations conference on the environment have sought to address these seemingly contradictory sources of environmental degradation.

India has successfully bargained at such forums and kept its stand clear. Here the government has tried to maintain a balance between poverty alleviation and environment protection. This is in tune with the concept of 'sustainable development' as envisaged in Brundtland's Report, 1987.

In the Stockholm Conference, 1972, it was noted that most environmental problems in developing economies occur because of low levels of development. Poverty in developing countries lead to poor

²⁰ MC Mehta vs. Kamal Nath and Others - (1997)1 SCC 388.

²¹ <https://www.downtoearth.org.in/news/mining/this-un-report-shows-green-laws-remain-in-books-63039>

health and sanitation. Lack of sufficient measures, which cannot be put in place due to lack of resources, have led to effluence of toxic chemical products harmful to humans and animals into the environment. Governments with developing economies also often seek advancement of the economy with little regard for environmental regulation. Industrialized nations contribute to environmental problems through technological advancements and industrial overproduction.

The reason for poor implementation has been due to non-acceptance of the principles of International Environmental Laws by the developed countries themselves. India and China have successfully pleaded their case and got it included in most international environmental treaties, including Agenda 21 and the Kyoto Protocol, that industrialized nations should bear a greater financial burden of implementation costs. This increased financial burden comes through monetary and technological support to developing economies.²²

Conversely, developing economies like India have taken a stand that implementation of environment protection measures were so cost ineffective that it was not possible for them to spend such huge amounts, owing to their poverty situation. Such developing nations have advocated that their industries were not allowed to develop along the same path taken by developed nations. This had made the implementation of ethos of International Environmental Law in India a bit difficult. But Supreme Court of India and commitment of various governments have made it possible to reconcile this situation now and effectively implement the Laws and Acts in future.

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