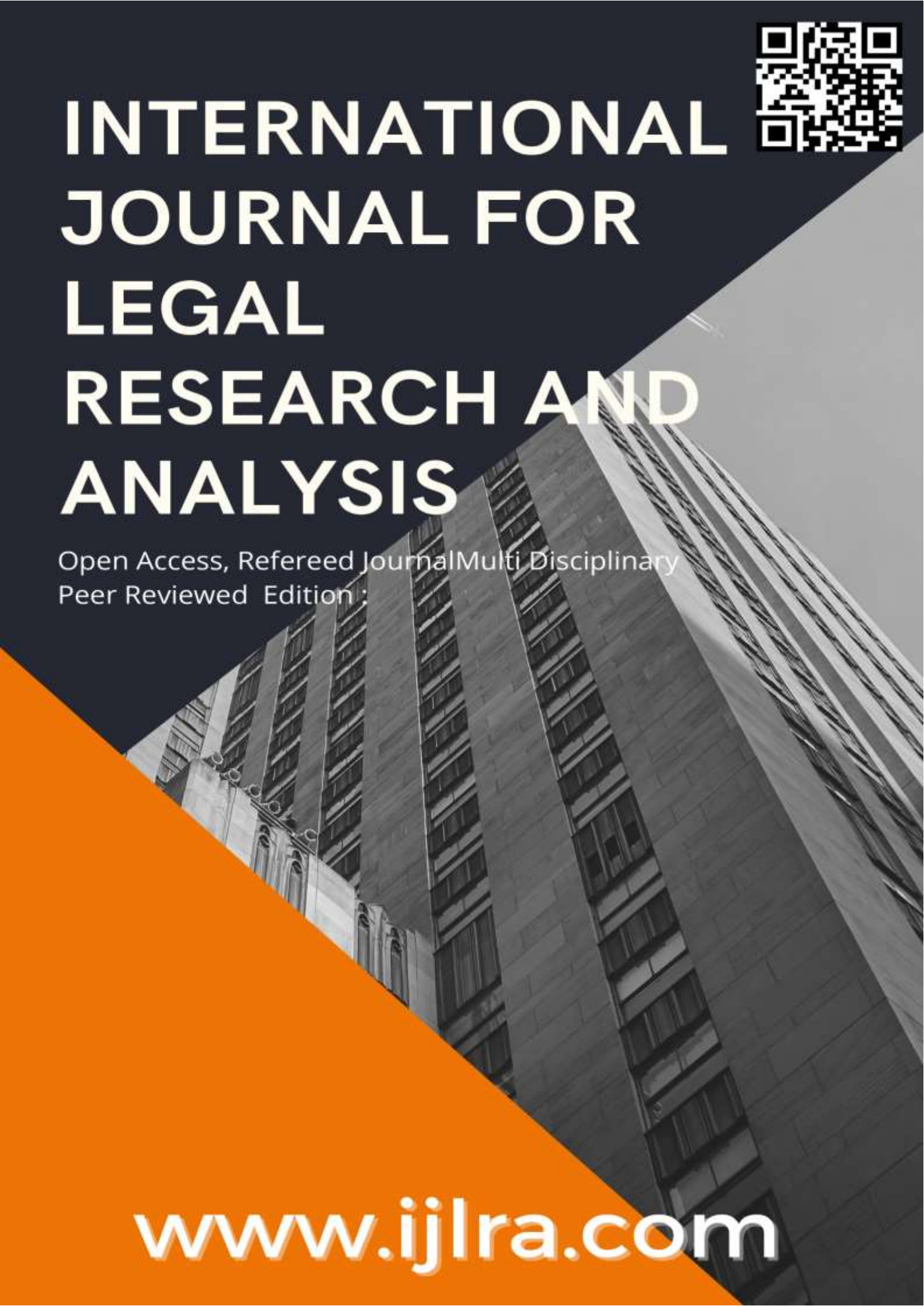
INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed JournalMulti Disciplinary
Peer Reviewed Edition :



www.ijlra.com

 ISSN: 2582-6433

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions ofthe authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Boardnor IJLRA shall be held liable or responsible in any manner whatsever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

 ISSN: 2582-6433

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board

Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India.India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020).Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

 ISSN: 2582-6433

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi.Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.

Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

 ISSN: 2582-6433

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANLAYSIS ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

 ISSN: 2582-6433

INTERFACE BETWEEN THE GLOBAL TRADE AND ENVIRONMENTAL DEGRADATION

AUTHORED BY: CHHAVI BHARDWAJ
Enroll No. (2000102719)
Faculty of Law, Integral University, Lucknow 2024

CERTIFICATE

This is to certify that the Dissertation entitled as "Interface between the global trade and environmental degradation"submitted by Chhavi Bhardwaj, Faculty of Law, Integral University, Lucknow embodies his original work according to his declaration. In my opinion the Dissertation fulfilled the requirement of the ordinance relatin the LL.M. Degree of the University.
I wish him all the success in his life,

Date:
Place: Lucknow

(Dr. Uzma)
Assistant Professor
Faculty of Law,
Integral University,
Lucknow

 ISSN: 2582-6433

CANDIDATE'S DECLARATION

I, Chhavi Bhardwaj, Department of Law certify that the work embodied in this LL.M. Dissertation is my own bonafide work carried out by me under the supervision of Dr. Uzma at Integral University, Lucknow. The matter embodied in this Dissertation has not been submitted for the award of any other degree.

I declare that I have faithfully acknowledged, given credit to the authors wherever their works have been cited in the text and the body of the Dissertation.

Date: ..... **(Signature of the candidate)**

Chhavi Bhardwaj

(Name of the candidate)

 ISSN: 2582-6433

ACKNOWLEDGMENT

All praises are due to the Almighty, who has given me the ability, strength and dedication to pursue this Dissertation despite a number of personal difficulties and bereavements. Without the guidance, no work would be possible. I am really grateful to Him.

I express my profound gratitude to my supervisor **Dr. Uzma**, Assistant Professor, Faculty of Law, Integral University, for his invaluable guidance, encouragement and persistence in dealing all matters related to my studies. Apart from the research, I have learnt so many lessons from him, during the tenure of this course. I shall always remain grateful to him for providing consistent mentoring and persuasion for this study. I salute his perseverance for perfection and diligence for quality which enabled me to carry out the work with utmost precision.

I am highly grateful to **Dr. Naseem Ahmad ,** Dean, Department of Law, Integral University for his kind co-operation in completion of my Dissertation.

I thank all the persons who directly or indirectly extended their support for my Dissertation.

Last but far from least, I thank my parents for affording me the liberty and independence to take my own decisions and for supporting every decision that I have taken in my life and my brothers and sisters who teaches me that one must not compromise on ethics and hard work no matter how dire the circumstances are.

(Chhavi Bhardwaj)

 ISSN: 2582-6433

TABLE OF CONTENTS

 ISSN: 2582-6433

 ISSN: 2582-6433

LIST OF TREATIES AND STATUTES

International Treaties:

1. United Nations Charter
2. Universal Declaration of Human Rights
3. Geneva Conventions (I-IV)
4. Kyoto Protocol
5. Paris Agreement
6. Rome Statute of the International Criminal Court
7. Vienna Convention on Diplomatic Relations
8. Convention on the Rights of the Child
9. International Covenant on Civil and Political Rights
10. Treaty on the Non-Proliferation of Nuclear Weapons (NPT)

National Statutes:

1. United States: Constitution of the United States
2. United Kingdom: Human Rights Act 1998
3. Canada: Canadian Charter of Rights and Freedoms
4. Germany: Basic Law for the Federal Republic of Germany (Grundgesetz)
5. India: Constitution of India
6. Australia: Racial Discrimination Act 1975
7. France: Civil Code (Code civil)
8. China: Criminal Law of the People's Republic of China
9. Japan: Constitution of Japan
10. Brazil: Brazilian Civil Code (Código Civil Brasileiro)

 ISSN: 2582-6433

LIST OF ABBERIVIATION

WTO	World Trade Organization
UNFCCC	United Nations Framework Convention on Climate Change
IPCC	Intergovernmental Panel on Climate Change
NAFTA	North American Free Trade Agreement
EU	European Union
GATT	General Agreement on Tariffs and Trade
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EIA	Environmental Impact Assessment
CBD	Convention on Biological Diversity
SDGs	Sustainable Development Goals
NGO	Non Governmental Organization
GDP	Gross Domestic Product
GHG	Greenhouse Gas
FDI	Foreign Direct Investment
LDCs	Least Developed Countries
OECD	Organisation for Economic Co operation and Development
ESG	Environmental, Social, and Governance
BRI	Belt and Road Initiative
IPRs	Intellectual Property Rights
CSR	Corporate Social Responsibility

 ISSN: 2582-6433

TABLE OF CASES

 ISSN: 2582-6433

ABSTRACT

This paper explores the intricate relationship between global trade and environmental degradation, shedding light on the complex dynamics and interconnectedness between economic activities and environmental sustainability. The abstract delves into key aspects such as the impact of trade liberalization on natural resources, the role of multinational corporations in driving environmental degradation, and the challenges posed by unsustainable consumption patterns. Additionally, it examines the effectiveness of existing regulatory frameworks and international agreements in addressing environmental concerns within the context of global trade. The abstract underscores the importance of adopting holistic approaches that reconcile economic growth with environmental preservation, emphasizing the need for sustainable trade practices, green technologies, and international cooperation to mitigate environmental degradation. Keywords: global trade, environmental degradation, trade liberalization, multinational corporations, sustainability, regulatory frameworks, international agreements, green technologies, sustainable trade practices.

Keywords: *global trade, environmental degradation, trade liberalization, multinational corporations and sustainability.*

IJLRA

 ISSN: 2582-6433

CHAPTER - 1

INTRODUCTION

In the modern era of globalization, the intricate relationship between global trade and environmental degradation has become increasingly apparent. As nations engage in trade activities to foster economic growth and development, the consequences on the environment have become more pronounced. This introduction seeks to provide a comprehensive overview of the interface between global trade and environmental degradation, examining the various dimensions, drivers, and impacts of this complex relationship.

1. Evolution of Global Trade: The evolution of global trade can be traced back to ancient times when civilizations engaged in trade activities to exchange goods and services. Over the centuries, advancements in transportation, communication, and technology have facilitated the expansion of trade networks, leading to the emergence of a globalized economy1. In the contemporary era, trade plays a central role in driving economic growth, enhancing competitiveness, and promoting development worldwide.
2. Drivers of Global Trade: Several factors drive global trade, including comparative advantage, specialization, technological innovation, and market liberalization2. Comparative advantage theory, proposed by David Ricardo, suggests that countries should specialize in producing goods and services in which they have a lower opportunity cost, leading to increased efficiency and trade. Technological advancements, such as the internet and containerization, have revolutionized global trade by reducing transportation costs and facilitating communication between distant markets. Market liberalization, through initiatives such as free trade agreements and the World Trade Organization (WTO), has further fueled global trade by reducing trade barriers and promoting economic integration.
3. Environmental Degradation: Concurrently, environmental degradation has emerged as a pressing global challenge, characterized by the depletion of

1 The historical evolution of global trade, highlighting advancements in transportation, communication, and technology

2 The drivers of global trade, including comparative advantage theory, technological innovation, and market liberalization.

 ISSN: 2582-6433

natural resources, pollution, deforestation, and climate change3. The industrial revolution and subsequent economic activities have accelerated environmental degradation, leading to adverse impacts on ecosystems, biodiversity, and human health. The unsustainable exploitation of natural resources, coupled with the emissions of greenhouse gases from industrial processes and transportation, has contributed to the degradation of the Earth's environment and the onset of climate change.

4. Interface Between Global Trade and Environmental Degradation: Theinterface between global trade and environmental degradation is multifaceted and complex, with trade activities exerting both positive and negative impacts on the environment. On one hand, trade can promote environmentalsustainability by facilitating the transfer of green technologies, promotingresource efficiency, and fostering international cooperation on environmental issues. On the other hand, trade can also exacerbate environmental degradation through the unsustainable exploitation of natural resources, increased carbon emissions from transportation and manufacturing, and the displacement of pollution to less regulated regions4.
5. Key Dimensions and Impacts: The interface between global trade and environmental degradation encompasses various dimensions and impacts, including:
    - Deforestation and habitat destruction due to the expansion of agricultural land and timber extraction for international trade.
    - Pollution of air, water, and soil from industrial activities, transportation, and the disposal of hazardous waste.
    - Loss of biodiversity and ecosystem services resulting from habitat destruction, overexploitation of natural resources, and climate change.
    - Climate change and global warming caused by the emission of greenhouse gases, primarily carbon dioxide, methane, and nitrous oxide, from human activities5.

3 The emergence of environmental degradation as a global challenge, emphasizing the impacts on ecosystems, biodiversity, and human health.
4 The multifaceted nature of the interface between global trade and environmental degradation, highlighting both positive and negative impacts.
5 The key dimensions and impacts of the interface between global trade and environmental degradation, covering deforestation, pollution, loss of biodiversity, and climate change.

 ISSN: 2582-6433

6. Policy Responses and Challenges: Addressing the interface between global trade and environmental degradation requires concerted efforts at the national, regional, and international levels. Policy responses may include:
    - Implementing environmental regulations and standards to mitigate the adverse impacts of trade activities on the environment.
    - Promoting sustainable trade practices, such as eco-labeling, fair trade, and sustainable sourcing, to incentivize environmentally responsible production and consumption.
    - Enhancing international cooperation and coordination on environmental issues through multilateral agreements, such as the Paris Agreement on climate change and the Convention on Biological Diversity.
    - Integrating environmental considerations into trade agreements and negotiations to ensure that trade policies are compatible with environmental sustainability goals6.
7. Conclusion: In conclusion, the interface between global trade and environmental degradation represents a complex and multifaceted challenge that requires integrated and holistic approaches to address. While trade can contribute to economic development and poverty alleviation, its environmental impacts must be carefully managed to ensure the long-term sustainability of natural resources and ecosystems. By adopting sustainable trade practices, promoting green technologies, and enhancing international cooperation, nations can mitigate the adverse effects of trade on the environment and work towards a more sustainable and equitable future.

6 Policy responses and challenges in addressing the interface between global trade and environmental degradation, emphasizing the need for integrated and holistic approaches.

 ISSN: 2582-6433

1.1 RELEVANCE OF RESEARCH

Research contributes to knowledge generation and dissemination by systematically exploring unanswered questions, testing hypotheses, and advancing theoretical frameworks. In academia, research fuels intellectual inquiry, fosters critical thinking skills, and cultivates a culture of academic excellence. Scientific research, in particular, drives innovation and technological progress, leading to breakthroughs in medicine, engineering, agriculture, and other fields.

Moreover, research plays a crucial role in addressing complex societal challenges, such as poverty, inequality, climate change, and public health crises. By providing evidence-based insights and data-driven solutions, research informs policymaking, shapes public discourse, and empowers communities to enact positive change. Interdisciplinary research approaches are especially relevant in tackling multifaceted issues that require collaboration across diverse fields and perspectives.

Furthermore, research contributes to economic development by stimulating entrepreneurship, fostering industry-academia partnerships, and driving technological innovation. It fuels the knowledge economy, creating opportunities for job creation, wealth generation, and sustainable growth. Additionally, research enhances global competitiveness by fostering a culture of innovation, attracting talent, and positioning countries at the forefront of scientific discoveryand technological advancement.

In conclusion, the relevance of research transcends disciplinary boundaries and extends to virtually every facet of human existence. Whether advancing scientific knowledge, informing policymaking, or driving economic growth, research serves asa catalyst for progress and a beacon of hope for addressing the myriad challenges facing humanity. As we navigate an increasingly complex and interconnected world, investing in research and fostering a supportive research ecosystem is essential for realizing our collective aspirations for a brighter, more equitable, and sustainable future.

 ISSN: 2582-6433

1.2 RESEARCH QUESTION

1. What are the existing mechanisms for dealing with environment-related disputes, and how do they function in practice?
2. What are the underlying reasons for the lack of enforcement by Environmental Agencies, leading to dependence on municipal and criminal laws? Furthermore, why does the burden of resolution often fall on courts?
3. Can the Indian Environmental Law alone sufficiently provide accessible justice to victims affected by environmental consequences, and what are the factors influencing its effectiveness in this regard?
4. What is the extent of the scope and ambition of the Indian Environmental Law in addressing environmental disputes and global issues comprehensively? How does it aim to tackle these challenges in a holistic manner, and what are the potential gaps or limitations in its approach?

IJLRA

 ISSN: 2582-6433

1.3 LITERATURE REVIEW

- The literature on the interface between global trade and environmental degradation within international law highlights the intricate balance required to reconcile economic growth with ecological sustainability. Scholars emphasize the tension between trade liberalization and environmental protection, examining the impacts of trade agreements on climate change, biodiversity loss, and pollution. They explore the role of legal frameworks, such as multilateral environmental agreements and dispute resolution mechanisms, in addressing these challenges. Moreover, case studies illustrate the complex dynamics and offer insights into potential pathways for achieving sustainable trade governance. Overall, the literature underscores the need for integrated approaches to promote environmental sustainability while facilitating global trade.
- The literature reveals a nuanced understanding of the relationship between global trade and environmental degradation within international law. Scholars delve into the complexities of trade liberalization versus environmental protection, dissecting the mechanisms through which trade agreements impact ecosystems and natural resources. They scrutinize the efficacy of regulatory frameworks and legal mechanisms in mitigating environmental harm, while also exploring the role of stakeholder engagement and governance structures in promoting sustainable trade practices. Case studies provide empirical evidence of the real-world implications of trade policies on environmental sustainability, offering valuable insights for policymakers and practitioners seeking to strike a balance between economic development and ecological preservation.

 ISSN: 2582-6433

1.4 RESEARCH METHODOLOGY

The research methodology followed by me is purely doctrinal and does not involve empirical approach. My research is based on the authoritative texts on The National Environmental Act, 1986, Law of Torts, Indian Penal Code 1860, Civil Procedure Code 1908, Criminal Procedure Code 1973. The Air and Water Pollution Act, Noise and Hazardous Substance Control Regulations Act. Global Issues and UN Conventions, case laws, newspaper articles, Periodicals and internet sites.

The sources for the completion of this dissertation will be both primary and secondary. Primary to the extent of that the books will be referred in great depth. Datawill be collected from reports, judgements and legislations. Secondary sources such asWorld Wide Web and articles published therein will also be made use of.

Under Doctrinal Data, I plan to collect the following:

Books by various authors on environment would be referred to.

1. Cases will be mentioned and in this regard, books, law reporters and software and online material (such as SCC Online and Manupatra) will be referred to.
2. Various Acts and Legislations dealing with Environment Law will be studied.
3. The Constitution of India shall be referred.

This dissertation shall comprise of the following chapters:

 ISSN: 2582-6433

1.5 RESEARCH OBJECTIVE

1. To study and examine the existing mechanism for dealing with environment related disputes.
2. To study and examine the existing mechanism for dealing with environment related disputes.
3. To determine why Environmental Agencies lack enforcement and depends upon various Municipal and Criminal laws and why burden is always on Courts
4. To examine if the Indian Environmental Law alone would provide easy access to justice to the victims of environmental consequences.
5. To examine the scope and ambit of the Indian Environmental Law to deal with Environmental disputes and Global Issue in a holistic manner.

IJLRA

 ISSN: 2582-6433

1.6 HYPOTHESIS

Global trade exacerbates environmental degradation through increased production and transportation activities, while also potentially serving as a catalyst for the adoption of environmentally sustainable practices and technologies on a global scale.

The interface between global trade and environmental degradation suggests that while trade intensification contributes to ecological harm through heightened resource consumption and pollution, it also offers opportunities for the dissemination of sustainable practices and technologies, potentially mitigating environmental impacts worldwide.

IJLRA

 ISSN: 2582-6433

1.7 SCOPE AND LIMITATION

The present topic is wide enough to incorporate many dependent and independent variables. The aim of my study is to find whether there is compatibility between the Indian environmental law which still looking for its status quo, highly depends upon constitution and judicial activism and International Law which is professed by global institution‟s rules and norms , which are not ardently followed up by major countries and it‟s a slow process.

Scope:

Interdisciplinary Exploration: Involves integrating insights from law, economics, environmental science, and international relations to comprehensively analyze the interface between global trade and environmental degradation.

Examination of Legal Frameworks: Investigates the role and effectiveness of international legal instruments, such as trade agreements and multilateral environmental agreements, in addressing environmental concerns within the context of global trade.

Case Studies and Empirical Analysis: Utilizes real-world examples and empirical research to illustrate the impacts of trade policies on environmental sustainability, offering practical insights for policy formulation and implementation.

IJLRA

 ISSN: 2582-6433

Limitations:

Complexity of Stakeholder Interests: Balancing the interests of various stakeholders, including governments, businesses, and civil society groups, presents challenges in formulating coherent and effective policies that promote both trade and environmental sustainability.

Enforcement and Compliance: Ensuring compliance with environmental regulations within the context of global trade requires robust enforcement mechanisms and international cooperation, which may be hindered by political and economic interests.

Evolving Nature of Globalization and Environmental Issues: The rapid pace of globalization and the emergence of new environmental challenges necessitate ongoing research and adaptation of legal frameworks, making it difficult to keep pace with evolving trends and developments.

IJLRA

 ISSN: 2582-6433

1.8 CHAPTERISATION SCHEME

CHAPTER 1: *ENVIRONMENTAL ACT AND BASIC PRINCIPLES.*

This chapter shall mention the various Primary Principles and Legislation which were generally kept in mind by the policy maker, legislatures, environmental agencies and jurists in matter relating to Indian Environment that have been enacted such as The Water Act, The Air Act, The Environment Protection Act, Noise (Regulation and Control), Regulation of Hazardous Substances. Various judgements passed by the apex court and the High Courts will be reflected in this chapter to demonstrate the Judicial trend dealing with environment related cases.

CHAPTER 2: *CONSTITUTION OF INDIA AND ENVIRONMENT.*

This chapter would provide for the options available to the common man in our Constitutional legislations for environmental justice. It would lay down the remedies available to the aggrieved person who has suffered due to pollution.

CHAPTER 3: LAW OF TORTS, CRIMES AND ENVIRONMENT.

This chapter would explain the law of Torts, Crimes with purpose of the environmental legislation in mind. It shall also mention the Indian Criminal and Civil Laws including Indian Penal Code and the salient and innovative featureshow these Codes are helpful in dealing Environment.

CHAPTER 4: *INDIAN ENVIRONMENTAL ACTS AND PROTECTION.*

This chapter will state the legislation regarding Indian Environmental Acts in details with a overview what comes after the Bhopal Gas Tragedy over various issues including accountability, biasness and restricting appeals.

 ISSN: 2582-6433

CHAPTER 5: *INTERNATIONAL ENVIRONMENTAL LAW AND GLOBAL ISSUES.*

This chapter dedicated to the global issues with regards to contemporary environmental problems in India and addressing new concepts like bio-diversity, sustainable development and regulated emission etc. all after and from the famous Stockholm Conference.

CHAPTER 6: CONCLUSION AND SUGGESITONS.

A summary of all that mentioned in the various chapters shall be given. I shall be stating my opinion on whether there is coherence in Indian Environmental Law to embrace policies of Global Convention and if not what is needed to be done to makeit work in our favour with its jurisdiction and powers.

1.9 MODE OF CITATION

The Uniform mode of citation is empolyed in this Research as followed in the Journal of India Law Institute..

IJLRA

 ISSN: 2582-6433

CHAPTER 2

ENVIRONMENTAL LAWS IN GOBAL AND ITS GLOBAL ISSUES

2.1 INTRODUCTION

To protect and improve the environment is a constitutional mandate. It is the commitment for a country wedded to the ideas of a welfare State. The Indian constitution contains specific provisions for environmental protection under the chapters of Directive Principles of the State Policy and Fundamental Duties. The absence of any specific provision in the Constitution recognising the fundamental right to (clean and wholesome) environment has been set off by judicial activism in the recent times.

CONSTITUTIONAL ARTICLES:

Article 48A and 51 (A)(g)[7]

A global adaption consciousness for the protection of the environment n the seventies prompted the Indian Government to enact the 42nd Amendment (1976) to the Constitution. The said amendment added Art. 48A to the Directive Principles of State Policy. It Declares:-

"the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country".

A similar responsibility imposed upon on every citizen in the form of Fundamental Duty – ***Art. 51(A) (g):***[8]

"to protect and improve the natural environment including forest, lakes, rivers and wildlife, and to have compassion for living creatures".

The amendments also introduced certain changes in the Seventh Schedule of the Constitution. „Forest" and „Wildlife" were transferred from the State list to the Concurrent List. This shows the concern of Indian parliamentarian to give priority to environment protection by bringing it out the national agenda. Although enforceable by a court, the Directive Principles are increasingly being cited by judges was a complementary to the fundamental rights. In several environmental cases, the courts have guided by the language of Art. 48A. and interpret it as imposing "**an obligation**" on the government, including courts, to protect the environment.[9]

In **L.K Kollwal V State of Rajasthan**[10], a simple writ petition by citizens of Jaipur compelled the municipal authorities to provide adequate sanitation. The court observes that when every citizen owes a constitutional duty to protect the environment(Art.51), the citizen must be also entitled to enlist the court"s aid in enforcing that duty against recalcitrant State agencies. The Court gave the administration six month to clean up the entire city, and dismissed the plea of lack of funds and staff.

7 The Indian Constitution, Art. 48A, cls. 1, Act No. 42 of 1976 (1976).
8 The Indian Constitution, Art. 51(A)(g), cls. 1, Act No. 42 of 1976 (1976).
9 The Indian Constitution, Seventh Schedule, List III, Act No. 42 of 1976 (1976).
10 L.K Koolwal v. State of Rajasthan, (2002) 4 SCC 77.

 ISSN: 2582-6433

In **D.V Vyas v Ghaziabad Development Authority**11, the court held that:" Failure to develop public parks embarks in development plan amounts to failure in discharging its (GDAs) responsibility under Art.51A of the Constitution ……in the crowded town the residents do not get anything but an atmosphere polluted smokers and fumes…..parks are the lungs of human beings.
It is the verdant cover provided by the public parks and green belts in towns which renders considerable relief to the public…."

It may be noted that the scope of fundamental duty is limited as it refers to only forests, lakes, rivers, and wildlife and uses the expression "natural environment"; it exclude many others in the fields of pollutions such as „noise", „light", „radioactive and hazardous", etc. Further, Art.51-A (g) imposes no obligation on "non-citizens".

Article 246

Art.246 of the Constitution divides the subject areas of legislation between the Union and the States. The Union List (List I) includes defence, foreign affairs, atomicenergy, intestate transportation, shipping, air trafficking, oilfields, mines and inter- state rivers. The State List (List II) includes public health and sanitation, agriculture, water supplies, irrigation and drainage, fisheries.
The Concurrent list (List III) (under which both State and the Union can legislate) includes forests, protection of wildlife, mines and minerals and development not covered in the Union List, population control and factories.

From an environmental standpoint, the allocation of legislative authority is an important one – some environmental problem such as sanitation and waste disposal, are best tackled at the local level; others, like water pollution and wildlife protection, are better regulated uniform national laws.

Article 253

Art.253 of the Constitution empowers Parliament to make laws implementing India"s international obligations as well as any decision made at an international conference, association or other body. Art.253 states: Notwithstanding anything in the foregoing provision provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

The Tiwari Committee in 1980 recommended that a new entry on "environmental Protection" be introduced in the concurrent list to enable the centre to legislate on environmental subjects, as there was no direst entry in the 7th seventh enables Parliament to enact comprehensive environment laws. The recommendation, however, did to consider parliament"s power under Art.253.

Article 14 and Article 19 (1) (g)

ART. 14 states: "The states shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.""

 ISSN: 2582-6433

The right to equality may also be infringed by government decisions that have an impact on the environment. An arbitrary action must necessary involve a negation of equality, thus urban environmental groups often resort to Art.14 to quash arbitrary municipal permission for construction that are contrary to development regulations.

Besides, Art 14 may also be invoke to challenge Government sanctions for mining and others activities with high environmental impact, where the permission had been granted arbitrarily without an adequate consideration of environmental impacts.12

Article 21 (Right to Wholesome Environment)

"No person shall be deprived of his life or personal liberty except according procedure established by law."

In **Maneka Gandhi v Union of India**13, the Supreme Court while elucidating on the importance of the„right to life" under Art. 21 held that the right to life is not confined to mere animal existence, but extends to the right to live with the basic human dignity (Bhagwati J.).

In **Dehredun Quarrying Case**14 the Supreme Court evolved a new right to environment without specifically mentioning it. The case was filed under Art. 32 of the Constitution and orders were given with emphasis on the need to protect the environment. According to a committee of experts appointed by the court, mining of limestone in certain was found dangerous and damaging ecological balance.

Similarly while interpreting Art.21 in **Ganga Pollution Case**15, Justice Singh justified the closure of polluting tanneries observed: "we are conscious that closure of tanneries may bring unemployment, loss of revenue, but life. Health and ecology havegreater importance to the people".

While the Apex Courts was reluctant for a shorter period of time to confer specifically a right to a clean and humane environment under Art. 21 of the Constitution,, various High Courts in the country went ahead and enthusiastically declare that that the right to environment was included in the right to life concept in Art.21. In comprehending the right to environment, the High courts were more specific and direct.

In the T.Damodar Rao, "*the enjoyment of life and its attainment and fulfilment guaranteed by Art. 21 of the Constitution embraces the protection and reservation of nature"s gift without (which life cannot be enjoyed*".

It may be noted that as there is no clear-cut provision of the „right to environment", one has to depend upon the continued „right to clean environment"; one has to dependupon the continued judicial cooperation. In this context, Professor *C.M Jariwal* has

11. T. Damodar Rao v. Special Officer, Municipal Corporation of Hyderabad, (1987) 4 SCC 453.
12..Menaka Gandhi v Union of India (AIR 1978 SC 597)
13. Dehradun Quarrying Case, Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh, AIR 1985 SC 652.
14. Ganga Pollution Case, M.C. Mehta v. Union of India, (1988) 1 SCC 471.

 ISSN: 2582-6433

proposed to amend the Constitution of India and India and include the following provision:
Art. 21A *Protection of Environment* – All persons shall have the right to clean and liveable environment throughout the territory of India subject to any law imposing reasonable restriction in the interest of general public.

2.2 RIGHT TO KNOW:

Non-disclosure id the norm of the India; openness is the exception; there is no specific enactment in India imposing the duty on the government to supply information to an individual seeking it. Instead, government actions are thickly veiled by the archaic Official Secret Act of Act of 2003. The Delhi Government recently enacted Right to Information Act, 2001.

In State of U.P v Raj Narain16, the court held that the people have a right to know every public act, everything that is done in a public way, by their public functionaries. In S.P Gupta v Union of India* the court recognised the right to know to be implicit in the right to free speech and expression i.e. Art. 19(1)(a) of Constitution.

In **Bombay Environmental Action Group v Pune Cantonment Board**17, the High Court of Bombay held that a recognised environmental group has a right to examine municipal permission granted to private builders. The judgement is of examine municipal permission granted to private builders. The judgement is of seminar importance because it transforms the right to know from judicial rhetoric into a substantive, enforceable right. More significantly , it recognise s the right to know to be a distinct, self-contained right, independent from the government‟s claim to privilege under Indian Evidence Act. Further, the court upholds the petitioner‟s right to know without any proof of Government irregularity: Indeed, the only requirements for a recognised environment group asserting this right are that group must act bona fined and for a genuine purpose. The Supreme Court (when the case came before it bya special leave petition), extended this right to all persons residing within the area as well to any social action group, interest or pressure group. Further, the Supreme Courtcarved a very limited “interests of security” exception to this right (in comparison to High Court‟s requirements of “genuine purpose”).

2.3 CONSTITUTIONAL REMEDIES: THE WRITS

A writ petition can be filed to the Supreme Court under Art.32 and the High Court under Art.226, in the case of a violation of a fundamental right. Since the right to a wholesme environment has beemn recognise as an implied fundamental rights, thewrit patitions are often restorted to in environment cases.

Generally, the writs of Mandamus, Certiorari and Prohibition are used in environmental matters. For instance, a Mandamus (a writ to command action by a public authority when an authority id vested with power and wrongfully refuses to exercise it) would lie against a municipality that fails to construct sewers and drains,

16 **In State of U.P v Raj Narain** (AIR 1975 SC 865)

 ISSN: 2582-6433

clean street and clear garbage(" **Rampal v State of Rajasthan**18), likewise, a state pollution control board may be compelled to take action against an industry discharging pollutants beyond the permissible level.

The writs of certiorari and prohibition are issued when an authority acts in excess of jurisdiction, acts in violation of the rules of natural justice, acts under a law which id unconstitutional, commits an error apparent on the face of the record, etc. For instance , a writ of certiorari will lie against a municipal authority that consider a builder‟s applications and permits construction contrary to development riles e.g. wrongfully sanctions an office building in an area reserve for a garden. Similarly, against water pollution control board that wrongly permits an industry to discharge effluents beyond prescribe levels.

The writs procedure is preferred over the conventional suit because it is a speedy, relatively inexpensive and offers direct access to the higher courts. However, there are certain limitations on the writs jurisdiction:-

(i) *Locus standi*- Only aggrieved person could petition the courts for a writ. However, recently, the Supreme Courts has recognised that where the public wrong id caused by the State, any member of the public acting in good faith cab maintain an action for redress.

(ii) *Alternative remedies* – when a fundamental right has been violated, relief through writs is fully appropriate. Where no fundamental right is involved, the High Court and Supreme Court will decline to exercise their jurisdiction if an equally effective remedy is available and has not been used. However, this rule of exhaustion of remedies can be waived by a court in suitable cases e.g. where the impugned action violates the principles of natural justice, or where a government authority has exceed its jurisdiction. The issue of an alternative remedy, however, is unlikely to arise in environmental writs, since existing environmental laws do not create alternative for a dispute resolution (except Water and AIR Acts) or the redress of public grievances.

(iii) *Laches*- A writ petition may be rejected on the grounds of inordinate delay. However, the doctrine of laches is often relaxed in environmental actions brought in the public interest (the court is being aware of the financial constraints and obstacle that environmentalists face in obtaining authentic and documentation).

2.4 PUBLIC INTEREST LITIGATION (PIL)

In a public interest case, the subject matter of litigation is typically a grievances against the violation of basic human rights of the poor and helpless or about or about the content or conduct of government policy this litigation is *not* strictly adversarial (in a adversarial procedure, each party produces his own evidence tested by cross-examination by other side) and in it a judge play a large role in organising and shaping the litigation and in supervising the implementation of relief.

 ISSN: 2582-6433

Since the 1980s public interest litigation (PIL) has altered both the litigation landscape and the role of the higher judiciary in India. Supreme Court and High Courtjudges were asked to deal with public grievances over flagrant human rights violations by the state or to vindicate the public policies embodied in statutes or constitutional provisions. This new type of judicial business is collectively called
„public interest litigation"19

Public interest litigation in India was initiated and fostered by a few judges of the Supreme Court. The method they used to redress the public grievance was, to relax the traditional rules governing standings (locus standi). Standing is required to have a Court hear one"s case. The Supreme Court has lowered the standing barriers by widening the concept of „the person aggrieved".

Traditionally, only a person whose right was in jeopardy was entitled to seek remedy. When extended to public actions, this meant that a person asserting a public right or interest had to show that he or she had suffered some special injury over and above what members of the public had generally suffered. Thus, injuries such as air pollution affecting large communities were difficult to redress. Even under the traditional doctrine, a narrow exception has been available to citizens bringing environmental actions against local authorities.

A rate tax payer20, for example, may compel municipal authorities to perform their public duties although the rate tax payer has not suffered any individualised harm. Thus, a rate tax payer"s right to challenge an illegal sanction to convert a building intoa cinema was upheld by Supreme Court in ***K. Ramdas Shenoy v The Chief Officer, Town Municipal Council, Udipi.21***

Representative Standing

In cases involving the underprivileged, the Supreme Court began to override the procedural obstacles and technicalities that had unite then obstructed redress. Rather than reject a petition for lack of standing the court chose to expand the expanding so that it could decide the substantive issues affecting the rights of under privileged.

In **Hussainnara Khatoon v Home Secretary, State of Bihar**22, the court implicitly recognised the standing of a public spirited lawyer to move petition on behalf of 18 prisoners awaiting trials for a very long periods in jails in the State of Bihar.
The petitioner led to the discovery of over 80,000 prisoners, some of whom had been languishing in prisons for periods longer than they would have served, if convicted.

17. Reforming Indian Environmental Laws" Presentation NLS Bangalore 1999.
18. Someone who pays rate, cess or assessment in the value of his or her property. Rates are paid to the municipality and are available to local public purposes.
19. K, Ramdev Shenoy v Chief Officer, Town Municipality Council, Udipi
20..Hussainnara Khatoon v Home Secretary, State of Bihar AIR 1979 SC 1360

 ISSN: 2582-6433

Citizens Standing

This second modification of the classical doctrine, here a concerned citizen (or voluntary organisation) may sue, not as an representative of other as but in his own right as a member of the citizenry to whom a public duty is owned, may be the termed „citizen standing".

In **the *Ganga Pollution (Municipalities) Case***23, the Supreme Court upheld the standing of a Delhi resident to sue the Government agencies where prolonged neglect had resulted in severe pollution of the river. Justice Venkataramiah"s opinion in this case supports the notion citizens standing.

M.C Mehta v Union Of India (Taj Trapezium Case)24

Facts- The present petition relates to the protection of Taj Mahal, at Agra, India. According to the Petitioners, the foundries, chemicals /hazardous industries and the refinery at Mathura are the major sources of damage to the Taj. The So2 emitted bythe Mathura Refinery and the industries when combined with Oxygen – with the aidof moisture –n the atmosphere forms sulphuric acid called "Acid Rain" which havethe corroding effect on the gleaming white marble. Industrial refinery emissions, brick-kiln, vehicular traffic and generator-sets are primarily responsible for polluting the ambient air Taj Trapezium (TTZ).

Observation and Decision- The Supreme Court, after taking into consideration reports of various technical authorities , found out that the emission generated by the coke /coal consuming industries are air –pollutant and have damaging effect on theTaj and the people living in the TTZ. The atmospheric pressure pollution in TTZ has to be eliminated at any cost.

The Court held that 292 industries located and operating in Agra must changeover within fixed time schedule to natural gas as industrial fuel or stop functioning with coke /coal and get relocated. The industries not applying for gas or relocated are to stop functioning with coke/coal from 30-04-97. The Shifting industries shall be given incentives in terms of the provisions of Agra Master Plan and also the incentive normally extended to the new industrial units.

Regarding the rights and benefits of the workmen employed in such industries, the court directed that an additional compensation of six years wages to be given to employees of industries which are closed.

A shifting bonus to be given to the employees who agree to shift with industry. The Supreme Court further directed that all emporia and shops functioning within the Taj premises to be closed.

20 Ganga pollution case- M.C Mehta v Union of India AIR 1988SC 1115
21.M.C Mehta v Union of India (TTZ) (AIR 1997SC 734)

 ISSN: 2582-6433

The interface between global trade and environmental degradation within the realm of international law is multifaceted and complex. It involves navigating the tensions between promoting economic growth through trade liberalization and ensuring environmental sustainability and conservation. This intersection encompasses various legal frameworks, such as international trade agreements, environmental treaties, and mechanisms for dispute resolution. Key issues include balancing trade rules with environmental protection, addressing the impact of trade on biodiversity, climate change, and natural resources, and promoting sustainable development goals. This topic requires a nuanced understanding of both trade and environmental law to effectively address the challenges and opportunities presented by globalization and environmental degradation.

The intersection of global trade and environmental degradation has emerged as a pivotal issue in the field of international law. As globalization continues to deepen economic interdependence among nations, the consequences of trade activities on the environment have become increasingly apparent. This complex interface raises fundamental questions about the compatibility of trade liberalization with environmental sustainability and the role of international law in addressing these challenges.

FLASHBACK OF INDIAN ENVIRONMENTAL POLICY AND LEGISLATION

The term "**environment**" includes air, water and land and interrelationships which exist among and between these basic elements and human beings and other living organisms. Besides the physical and biological aspect, the "environment" embraces the social, economical, cultural, religious, and several other aspects as well. The environment, thus, is an amalgamation of various factors surroundings an organism that interact not only with the organism but also among themselves. It means the aggregation of all the external conditions and influences affecting life anddevelopment of organs of human beings, animals and plants.

In India, attention has been laid right from the ancient times to the present age in the field of environment protection and improvement. Historically speaking, the laws relating to environment were simple but quite effective and the people were aware of the necessity of the environment protection. For this, one have to view the policies over the years India had observed during the rule of various empires.

Policy and Laws in Ancient India

In the ancient India, protection and cleaning up of environment was the essence of the Vedic culture. The conservation of the environment formed an ardent article of faith, reflected in the daily lives of the people and also enshrined in myth folklore, art, culture and religion. In Hindu theology forests, trees and wildlife protection held a place of special reference.

A.READINDS FROM THE ANCIENT INDIAN LAW
GUPTA; KAUTILYAN JURISPRUDENCE, 155 (1987)

LAW CONCERNING FORESTS

 ISSN: 2582-6433

State to maintain forests: The ruler shall not only protect produce- forests, elephant-forest but also set up new ones. Forests shall be grown, and foresters‟ working in the produced-forests shall be settled there.

Forest reserves for the wild animals: On the borders of the country or any other suitable locality, forest shall be established where all animals are welcomed as guests and given full protection.

Protection of wild life: The superintendent of the slaughter house shall punish, with the highest amercement, a person for entrapping, killing or injuring deer, bison, birds or fish which are declare to be under state protection. For entrapping, killing or injuring fish and birds whose killing is forbidden, he shall be impose a fine of twenty
-- six panas and three quarters, for entrapping deer and beasts, double that. One- sixth of live animals and birds shall be let off in forests under the state‟s permission.

Fee for hunting: Of those killing is permitted and who are not protected in enclosures. The superintendent of the slaughter house shall receive one sixth shares of fishes and birds, one-tenth share of deer and beasts, in addition to duty.

5th PILLAR EDICT25
This speaks the Beloved of the Gods, the king Piyadassi: When I have been consecrated for twenty-six years I forbade the killing of the following species of animals, namely; parrots, mainas, red-headed, domesticated animals, and all the quadrupled which are of non utility are not to be eaten. Capons must not be made. Chaff which contains living animal should not to be set on fire. Forests must not be burned in order to kill living things or without any good reason. An animal must notbe fed with another animal.

On the first full moon days of the three four-monthly seasons, and for three days when the full moon falls on the star Tisya, and the fourteen and fifteenth of the bright fortnight, and first of the dark, and on the regularly on fast days, fish are not to be caught or sold. And on these same days in the elephant-park and fisheries, other classes of animals likewise must not be killed. On the days of the stars Tisya and Punarvasu, on the first full moon days of the four-monthly seasoned, and on the fortnights following them, cattle and horses are not to be branded.

Under the Hindu culture moral injunctions acted as guidelines towards environmental preservation and conservation. For instances, to maintain the quality of water and to avoid the water pollution, Manu advised not to contaminate water by urine, stool or coughing, un-pious objects, blood and poison. Yagyavalkya Smriti and Charak Samhita give many instructions for the use of water for maintaining its purity.
Under the Arthashastra, various punishments were prescribed for cutting trees, damaging forests, and for killing animals. The State assumed the functions of maintenance of forests, regulation of forest produce and protection of wildlife. Arthashatra also prescribed punishment for causing pollution and un-civic sanitation.

Thus, ancient India had a philosophy of environmental management principally enshrined in old injunctions as they were contained in many scriptures and smritis.

22 THAPAR; ASOKA AND DECLINE OF THE MAURYA, 264(2nd ED.1973)

 ISSN: 2582-6433

The environment ethics of nature conservation were not only applicable to common man but the ruler and kings were bound by them.

Policy and Laws in Medieval India

During the mogul period environment conservation did not receive much attention. „To Mogul rulers, forest meant *no more than woodlands where they could hunt*. To their governors, the forests were properties which yielded some revenue. Barring „royal trees‟ which enjoyed patronage from being cut except upon a fee, there was no restriction on cutting of other trees. Thus, forests during this period shrank steadily in size".

However, the forests were managed with the help of a complex range of rules and regulations woven around the socio-cultural features as well as the economic activities of local communities. Further, the religious policy of Akbar based on the principle of complete tolerance also reflect concern for the protection of birds and beasts in so much so as endeavours were taken during his reign to stop the unnecessary killings.During medieval era, another set of legal principles were inducted, governed by the holy KORAN which declares that "***we made from water every living thing***".

Policy and Laws in British India

B.READING ON FOREST POLICY AND LEGISLATION26

BY AROUND 1860, Britain had emerged as the world leader in deforestation, devastation its own woods and the forest of Ireland, South Africa and north eastern United States to draw timber for shipbuilding, iron-smelting and farming. In the early nineteenth century, the Raj carried out a fierce onslaught on the subcontinent‟s forests. The revenue orientation of the colonial land policy also worked towards the denunciation of forests. This process greatly intensified in the early years of building of the railway network after about 1853. the sub-Himalayan forest of Garhwal and Kumaon, for example, were all `felled in even to desolation‟, and „thousand of trees were felled which were never removed, nor was their remove was possible‟.

The imperial forest department was formed in1864, with the help of experts from Germany, the country which was at the time the leading European nation in forest management. The first inspector-general of forests, Dietrich Brandish, had been a botanist and recognise awesome task of checking the deforestation, forging legal mechanism to assert and safeguard states control over the forests. it was his dual sense that the railway constituted the crucial watershed with respect to the water management in India- the need was felt to start an appropriate department, and for its effective functioning legislation was required to curtail the previously untouchedaccess enjoyed by the *rural communities*. Before its too late recognition of the strategic importance of forests, the policy of the colonial state has been to recognise forests and wasteland as the property of the village communities within those boundaries these fell.

The first attempt at asserting state monopoly was through the Indian forest act of 1867.hurriedly drafted 1867 act was passed to facilitate the acquisition of those forest

2626AN ECOLOGICAL HISTORY OF INDIA, 118 (1993).

 ISSN: 2582-6433

areas that were earmarked for railways supplies it merely sought to establish the claims of the states to the forests it immediately required, subject to the proviso that existing rights not to abridged. A preliminary draft, prepared by Brandis in 1869, was circulated among the various presidencies. A conference of forest officers, convened in 186427

* * *

Adducing no evidence, Baden –Powell [a civil servant] claimed that „the right of the state to dispose of or retain for public use the waste and forest area, is among the most ancient and undisputed of features in oriental sovereignty". „In India", an official primer on forest law likewise affirmed, „the government id by ancient law …the general owner of all unoccupied and wasteland". The „right" of oriental governments28

„The right to conquest is the strongest of all rights – it's like a right against there is no appeal.

Counter posed to this claim of an old age right was a total denial of legitimacy of any state intervention in the forest. The madras government rejected Baden-Powell„s tendentious distinction between legally proven „rights" and „privileges" exercised without written sanction. It states that all instances of the use of the forest by the people should be taken as presumptive evidence of property therein". Both; private grantees and village and tribal communities have cherished and maintain these rights [in the forest] with the same tenancy with which private property in land is maintained elsewhere".29

The 1878 act was a comprehensive piece of legislation which, by one stroke of the executive pen, attempted to obliterate centuries of customary use by rural populations all over India. It provided for three classes of forest. „Reserved forests" consisted of compact and valuable area. Well connected to town s, would lend them to sustained exploitation. In reserved forests a legal desperation of rights were aimed for, it being thought to be advisable to safeguard total control by a permanent settlement that either extinguished private rights, transferred from elsewhere, or in exceptional cases allowed their limited exercise. In the second category, the so called „protected forests" (also controlled by state), rights were recorded but not settled. Given increased commercial demand and their relatively precarious position from the government point, the protected areas were gradually converted into reserved forests where the state could exercise fuller control. The act also provide for the constitution of a third class of forests- village forests- although the option was never exercised by the government over the most part of the sub-continent.30 Finally, the new legislation greatly enlarged by the punitive sanctions available to the forest administration, closely regulating the extraction and transit of forest produce and prescribing a detail set of penalties for transgressions of the act.

The continuity between the forest policies of colonial and independent India is exemplified by the national forest policy of 1952. Upholding the „fundamental

27 Information on the Indian Forest Act of 1867 and its objectives.
28 Baden-Powell's assertion regarding the state's rights over forest areas.
29 the rejection of Baden-Powell's distinction by the Madras government.
30 information on the Indian Forest Act of 1878 and its provisions.

 ISSN: 2582-6433

concepts" of its predecessor – the forest policy of 1894- it reinforces the right if the state to exclusive control of state over forest protection, production and management. With the integration of the princely state into the Indian Union, the forest department in fast considerably enlarge its domain in the early years of independence. While inheriting the institutional framework of colonial forestry, however, the new government put it slightly different uses. The major difference uses. The one major difference in the post -1947 situation has been the rapid expansion of forest-based industry. The demands of the commercial- industrial sector have strategic imperial needs as the cornerstone of the forest policy and management.31

Policy and Laws in Independent India

The Indian Constitution, as adopted in 1950, did not deal with that the subject of environment or prevention and control of pollution as such (until 1976 Amendment).The original text of the constitution under Article 372(1) has incorporated the earlier existing laws into the present legal system and provides that notwithstanding the repeal by this constitution of enactment referred to in article 397, but subjected to the other provisions of the constitution, all laws in force immediately before the commencement of the constitution shall remained in force until altered,repealed or amended by a competent legislature or other competent authority. As a result, even after five decade of independence. The plethora of such laws is still in operation without any significant changes in them.32

The two early post- independence laws touched on water pollution .The F*actories Act* of 1948 required all factories to make effective arrangements for waste disposal and empowered state governments to frame rules implementing this directive. Under the *River Boards Acts* of 1956, rivers boards established are empowered to prevent water pollution of inter-state rivers. To prevent cruelty to animals, the *Preventions of Cruelty to Animal Act* was framed in 1960.

Some states took initiative in the fields of environment protection, viz. Orissa River Pollution Prevention Act, 1953, and, Maharashtra Prevention of Water Pollution Act, 1969. While the Orissa Act was confined only to the rivers, the Maharashtra Act extended to rivers, watercourses, whether flowing or for the time being dry, inland water both natural and artificial, and subterranean streams.33

Thus there were scattered provisions for checking pollution of air, water etc. but there was no unified effort in developing any policy concerning the pollution emanating from these areas. This position went up to the seventies.34 Meanwhile concern arose over, *inter alia* population increase, greater pollution levels; human impact on animal population increase, greater pollution levels; and natural landscapes and other aspects of resource depletion. It was the Stockholm Declaration of 1972 which turned the Indian Government to the broader prospective of environmental protection. The Government made its stand well known through five year plans as

31 National forest policy of 1952 and its alignment with the forest policy of 1894.
32 Article 372(1) of the Indian Constitution and its implications for existing laws.
33 Factories Act of 1948 and the River Boards Act of 1956 and their provisions related to water pollution.
34 Orissa River Pollution Prevention Act, 1953, and the Maharashtra Prevention of Water Pollution Act, 1969, and their scope of application in environmental protection.

 ISSN: 2582-6433

well as the legislation enacted subsequently to curb and control environmental pollution.

C.READINGS ON INDIA‟S ENVIRONMENTAL POLICY IN THE 1970s

In the summer of 1972, Stockholm staged the first UN Conference held specifically to consider global environment conditions. Official from 113 countries participated in the deliberations which culminated in the adoption of a declaration and an Action Plan, Prime Minister Indira Gandhi was amongst the leaders of the third world who addresses the conference.

GANDHI; ADDRESS OF PRIME MINISTER AT THE UNITED NATIONS ON THE HUMAN ENVIRONMENT, Stockholm, 14 June 197235

On the one hand the rich look askance at our continuing poverty – on the other hand, they warn us against their own methods. We do not wish to impoverish the environment any further and yet we cannot for a moment forget the grim poverty of large numbers of people. Is not poverty and need the greatest polluters? For instance,unless we are in the position to provide employment and purchasing power of daily necessity of the tribal people and those live around our jungles, we cannot prevent them from combing the forest for food and livelihood; from poaching and despoiling the vegetation. When they themselves feel deprived, how can we urge the preservationof animals? How can speak to those who live in village and in slums to keep the oceanclean when their own lives are contaminated at the source? The environment cannot be improved in the conditions of poverty. Nor can poverty be eradicated without the use of the science and technology.36

The year 1972 marks a watershed in the history of environment management in India. Prior to 1972 environment concern such as sewage, disposal, sanitation, and public health were dealt with by different federal ministries. A committee on the Human Environment under the chairmanship of Pitambar Pant, member of the Planning Commission, was set up to prepare India‟s report.37

With the help of these reports, it has been realise that unless a national body was established to bring about coherence in the environment policies and programmes and to integrate environment concerns in the plans for economic development, an important lacuna would remain in India‟s planning process. Consequently on 12 April1972 a National Committee on Environment Planning and Coordination (NCEPC)was established.38

The NCEPC was an apex advisory body in all matters relating to environmental protection and improvement .at its inception the Committee consists of fourteen members drawn from various discipline concerned with the environmental management. Most of the non-official members were specialist. The committee plans

35 Prime Minister Gandhi's address at the United Nations on the Human Environment.
36 The emphasis on poverty as a contributor to environmental degradation in Gandhi's address.
37 The characterization of 1972 as a watershed moment in India's environmental management history.
38 establishment of the committee on the Human Environment under Pitambar Pant's chairmanship.

 ISSN: 2582-6433

to coordinate, but the responsibility for execution remained with the various ministries and government agencies. Over the time the composition of the NCEPC changed significantly. While the membership of NCEPC increased from 14 in 1972 to24 in 1977 to 35 to 1979,the number of non-officials decision making more complex.Consequently the cooperation of other department also decreased, exacerbated by the fact that different departments had started to view the committee as intruder.

The Fifth Five Year Plan (1974-79) stressed that the NCEPC should be involved in all major industrial decisions. The plan also emphasised that a link and balance between the development planning and environment management is too maintained. In this context the Minimum Needs Programme (concerning rural and elementary education, rural health and sanitation, nutrition, drinking water, provision of housing sites and slum improvement) received a fairly high priority.

In this Sixth Year Plan (1980-85), an entire chapter on „Environment and Development „ was included that emphasised sound environment and ecologicalprinciple in land use, agriculture, forestry, marine exploitation , mineral extraction , fisheries, energy production and human settlement.

It provided environmental guidelines to be used by administrator and resource managers when formulating and implementing programmes, and lay down an institutional structure for environmental management by the central and state governments.

The basic approach taken by the Seventh Plan (1985-90) was to emphasise sustainable development in the harmony with the environment, as the federal government has recognised the negative effects that development programmes were having on the environment. The Plan called for the government and voluntary agencies to work together to create environmental awareness because improving quality of the environment required the involvement of the entire public.

The Eight Five Year Plan (1993-97), because of the uncertain political situation in India, came out in 1992 rather than 1900. It gave an important place to the environment by moving it to the fourth category of subjects examined in the text. The Plan stated:-
Systematic efforts have been made since the Sixth Plan period to integrate environmental considerations and imperatives in the planning process in all the key socio-economic sectors. As the result of sustained endeavour. Planning in all major sectors like industry, science and technology, agriculture, energy and education includes environmental consideration.

2.4 PRECAUTIONARY AND POLLUTOR PAYS PRINCIPLE

The precautionary principle is based on the theory that it is to better to err on the side of the caution and prevent environmental harm which may indeed become irreversible. It involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. Environmental protection should

 ISSN: 2582-6433

not only aim at protecting health, property and economic interest but also protest the environment for its own sake [***A.P pollution Control Board Case***]**39.**

The essential ingredients of the precautionary principle are:

(i) Environmental measures- by the state government and the statutory authorities- must anticipate, prevent and attack the causes of environment degradation.
(ii) When there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measure to prevent environmental degradation.
(iii) The "Onus of Proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.
(iv) Precautionary duties must not only be triggered by the suspicion of concrete danger but also by concern or risk potential.

In *M.C.Mehta v Union of India (CNG Vehicle Case) (AIR 2002 SC 1696)*

The supreme court observed that any „auto-policy" framed by the Government must, therefore, of necessity conform to the constitutional principles well as overriding statutory duties cast upon the government under the EPA. The auto policy must adopt a „precautionary principles" and make informed recommendation s which balance the needs of transportation with the need to protect the environment.

POLLUTER PAYS PRINCIPLE

IT MEANS THAT „Polluter should bear the cost of pollution as the polluter is responsible for pollution". The principle demands that financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause pollution. Under it, it is not so the role of government to the costs involve in either prevention of such damages, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer.

It may be noted that the polluter pays principle evolved out of the rule of „absolute liability" as laid down by the apex court in *Sriram Gas Leak Case*. In the **Bichhri Case**40 the apex court nicely weighed and balanced the conspectus of absolute liability and polluter pays principle.
The court interpreted the principle to mean that the absolute liability for harm to the environment extended to the cost of restoring the environmental degradation in addition to compensating the victims of pollution.

The court observed that **Secs. 3 and 5 of the Environment (protection) Act, 1986**, empower the Central Government to give directions and take measures for giving effect to this principle. The „power to lay down the procedures, safeguards and remedial measures „ under the omnibus power of taking all measures impliedlyincorporated the polluter pays principle.

2.5 PUBLIC TRUST DOCTRINE

39.AIR1987 SC982/ SC1086
40. Council for Enviro-Legal Action v Union of India AIR1996SC1446

 ISSN: 2582-6433

The ancient Roman Empire developed a legal theory known as the "Doctrine if the Public Trust". the doctrine primarily rest on the principle that certain resources like air, sea, waters and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them subject of private governorship. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in like.

The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their own use for private ownership or commercial purposes. The Supreme Court in India also recognises that this doctrine is the part of the Indian law. The court in the below mentioned case held that the doctrine of public trust implies following instructions on government authority:

"First, the property subject to the trust must not only be used only be used for a public purpose, but it must be held available for the use of the general public.Secondly, the property may not to be sold, even for a fair cash equivalent. Thirdly, theproperty must be maintained for particular types of uses".

M.C.Mehta v Kamal Nath (SPAN MOTEL CASE).41

A news item appeared in the Indian Express stating that a lease granted by the state government of riparian forest land for commercial purposes to a private company having a Motel located at the bank of river Beas (the family of Kamal Nath, a former Minister for Environment and Forests, had direct a link in the company). The motel management interfere with the natural flow of river by blocking natural relief/spill channel of the river, ostensibly to save the Motel from the future floods.

The Supreme Court taking note of the news item and consequent writ petition held that the State Government committed a breach of public trust by leasing the ecologically fragile land to the management. The court quashes the lease and the prior approval granted by the State Government and Ministry E&F.

The resolution of „environmental-development" conflict in any given case is for the legislature and not to the legislature and not the courts. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use.

INTERGENERATIONAL EQUITY

Intergenerational equity i.e. moral obligation of the present generation to manage the earth in a manner without jeopardizing the aesthetic and economic welfare of the future generations is advanced as an argument in favour of sustainable development"

If the present generation continues to consume and deplete resources at unsustainable rates, future generations will suffer the environmental (and economical) consequences.

41M.C Mehta v Kamal Nath (1997) 1 SCC 388

 ISSN: 2582-6433

The origins if the principle can be seen in the principles 1 and principle 2 of the Stockholm declaration, these principle lays down the solemn responsibility of the man to safeguard the natural resource of the earth for the benefit of the present and future generations through careful planning and management, the report of WCED42 emphasizing the importance of sustainable development talked not only to the equity for the present but of intergenerational equity.

And thus the wheel of human reasoning came full circle – 2000 years age the Isopanishad had stated:

"All, in this manifest world, consisting of moving or non-moving, are governed by the Lord. Use its resources with restraint. Don"t grab the property of others- distant and yet to come."

In **Dehradun Quarrying Case**43 the Supreme Court of India observed:

"We are not oblivious of the fact that natural resources have got to be tapped for the purposes of the social development but one cannot forget at the same time that tapping of resources have to be done with requisite attention and care so ecology and environment may not have to suffer in the serious way.

It has always to be remembered that these are the permanent assets of mankind and not indented to be exhausted in one generation".

In **Shrimp Culture Case**44 the apex court opined that sustainable developmentshould be the guiding principle for „shrimp agriculture" and by following natural method, though the harvest is small but sustainable over long periods and it has no adverse effect on the environment and ecology, it held that there must be an Environment Impact Assessment (EIA), before permission is granted to install commercial shrimp farms. The assessment must be taken into consideration the intergenerational equity.

2.6 SUSTAINABLE DEVELOPMENT

„Sustainable Development" means an integration of development and environment imperative; it means development in harmony with environmental considerations. To be sustainable, development must posses both economic and ecological sustainability. It is a development process where exploitation of resources, direction of investment, orientation of technology development and institutional changes are all in harmony.
Sustainable development also implies local control over the resource use, and is the only path for conserving and promoting socio-economic well being in a democratic form. However pursuit of sustainable development is not going to be easy as it depends upon several factors and requires socio-economic restructuring e.g. policy changes, institutional development, law enforcement, close interaction, among varioussector and a high level of awareness among all sections. But, we Indians have an

42 Brundtland Report, 1987.
43. AIR 1987 SC 359 supra page 17
44. SHRIMP CULTURE CASE- JAGANNATH V UOI (1997)2 SCC87

 ISSN: 2582-6433

ethos and tradition of conservation and sustainable development which have sustained us in the face of adversaries.

„eco-development" is a related concept. It is a process of ecologically sound development, of positive management of environment for human benefits. For example banning tree felling in reserve forests and permitting harvesting of minor forest products by rural poor and tribal; development of community or common lands for rural subsistence needs of industries, towns and villages. These are the components of the "new development strategies". The component of eco-development also includes alternative development strategies; biogas, substitute for natural resources, social forestry, micro irrigation and recycling of waste to prevent pollution.

The Report of WCED45 1987 produced a document defining and explaining the concept of sustainable development. "Sustainable development is development that meets the Needs of the present without compromising the ability of the future generations to meets their own needs".

Vellore Citizens Case*46* is a landmark judgement where the principle of sustainable development has been adopted by the Supreme Court as a balancing concept. While rejecting the old notion that development and environmental protection cannot go together, the apex court held the view that sustainable development has now come to be accepted as " a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystem." Thus, pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystem.

FACTS - In this case, certain tanneries in the State of Tamil Nadu were discharging untreated effluent into agricultural fields, roadsides, waterways as open lands. The untreated effluent finally discharges in the river which has the main source of water supply to the residence of Vellore. The Supreme Court issued comprehensive directions for maintaining the standards stipulated by the Pollution Control Board.

OBSERVATIONS - The Supreme Court Observe that the "precautionary principle" and the "polluter pays principle" are part of the Environment law of the country. These principles are essential features of "Sustainable Development." The "precautionary principle" in the context of the municipal law means: (i) Environmental measures by the State Government and the statutory authorities – mustanticipate , prevent and attack the cause of the environmental degradation(ii) Where there are threats of serious irreversible damages, lack of scientific certainty should notbe used as a reason for postponing measures to prevent environmental degradation . (iii) The "onus of proof "in on the actor /industrialist to show that his action id environmentally benign.

The Supreme Court observed; Sustainable Development as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalised by the International Law Jurists. Some of salient principles of "Sustainable development", as

45 Brundtland Report, 1987-Caring for the Earth: A Strategy for Sustainable Living.
46..Vellore Citizens" Welfare Forum V UOI (AIR 196 SC 26715

 ISSN: 2582-6433

called out from Brundtland Report and other international are- Intergenerational Equity, Use and Conservation of Natural Resources, Environmental Protection , the Precautionary Principle, Polluters Pays, Principle, Obligation to assist and co-operate, Eradication of Poverty , and, Financial Assistance to the developing countries.

DECISION: - The Supreme Court directed the Central government to constitute an authority under sec. 3 of the Environment Act, 1986 and confer on the said authority all the powers necessary to deal with the situation created by the powers necessary to deal with the situation created by the tanneries and other polluting industries in the State of Tamil Nadu. The authority (headed by retired judge of the High Court) shall implement the precautionary and polluter pays principles. The authority should compute the compensation under two heads, namely, for reserving the ecology and forthe payment to individuals.

2.7 LIBERALISATION AND ECONOMIC APPROACHES

Since 1991 India has adopted new economic policies to spur development. In an effort to integrate the Indian economy with the Global Trade, the Government has reduced industrial regulation, lowered international trade and investment barriers and encouraged export-oriented enterprise. Some commentators fear that liberalisation will exacerbate environment problems and increase inequalities.47On the more positive note let there is assessment of economic tools and a call to rein on pollution through a system of economic incentive.

PANDIAN AND CAMPBELL48: Despite the progress made under India‟s environmental command and control regulations. India‟s environment is degrading rapidly. A recent World Bank study estimate that environmental damage in India amounts to US $9.7 billion per year, or 4.5 percent of India‟s Gross DomesticProduct. The 1995 Economic Survey of the Government of India indicates that 90 percent of water in241 cities is polluted; moreover, 54 percent of the urban and 97 percent of the rural population have been cut by 35.5 percent over the last five years-a time when the government‟s economic liberalisation policies are likely to increase the pollution problem.

The quality of life for many citizens, particularly those residing in urban areas, is at unacceptable level. In fact, the most challenging environmental problem s facingIndia stem from the rapid growth of large, polluting industries in urban areas.
For years, industrial development came without rather planning or environmental controls.

In sum, the command and control regulatory approach towards environment protection in India has failed to do the job. Penalties are too trivial to deter polluters; bribes often subvert regulatory intent; and the government agencies rarely use their power to shut down offending industries because of the economic dislocation that would result. Market driven solutions to environmental problems, as a complement to

47 R. Sudarshan, Liberalization and the Environment, The Hindu
48. PANDIAN AND CAMPBELL; ECONOMIC APPROACH ES FOR A GREEN INDIA, 1 (1999)

 ISSN: 2582-6433

existing laws and rules, could result in a better use of scarce societal resources and better environmental protection as industry itself decides how to use its resource to abate pollution.

After 1970, comprehensive (special) environment laws were enacted by the Central Government in India:

Wildlife (Protection) Act, 1972, aimed at rational and modern wild life management.

Water (Prevention and Control of Pollution) Act, 1974, provides for the establishment of pollution control boards at Centre and States to act as watchdogs for prevention and control of pollution.

Forest (Conservation) Act, 1980 aimed to check deforestation, diversion of forest land for non-forestry purposes, and to promote social forestry.

Air (Prevention and Control of Pollution) Act, 1981, aimed at checking air pollution via pollution control boards.

Environment (Protection) Act, 1986 is a landmark legislation which provides for single focus in the country fro protection of environment and aims at plugging the loopholes in existing legislation. It provides mainly for pollution control, with stringent penalties for violations.

Public Liability Insurance Act, 1991 provides for mandatory insurance for the purpose of providing immediate relief to person affected by accidents occurring while handling any hazardous substance.

National Environment Tribunal Act, 1995, was formulated in view of the fact that civil courts litigations take a long time (as happened in Bhopal Gas Tragedy Case). The Act provides for speedy disposal of environment related cases through environment tribunals. Under the Act, four branches of the Tribunal will be set up in Delhi, Calcutta, Madras and Mumbai and 8000 of the most Hazardous industrialsunits in the country will be brought under its security.

National Environment Appellate Authority Act, 1997, provides for the establishment of a National Environment Appellate Authority (NEAA) to hear appeals with the respect to restrict in areas in which any industries, operations or process shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986.

Biological Diversity Act, 2002, is a major legislative intervention affected in the name of the communities supposed to be involved in the protection of biodiversities around them; The Act intends to facilitate access to genetic materials while protecting the traditional knowledge associated with them.

DRAFT NATIONAL ENVIRONMENT POLICY, 2004

The Union Ministry of Environment and Forests has released a draft environment policy called the „National Environment Policy 2004 (NEP).‟ Its preamble states that there is a need for a comprehensive policy statement “in order to infuse common

 ISSN: 2582-6433

approach to the various sectors, cross sectional, including fiscal approaches to environmental management".

At present country lacks a comprehensive policy enunciating environmental chllenges and solutions, there are different policies to guide different policies to guide different sectors; the National Forest Policy, 1988; The National Conservation Strategy and Policy Statement on the Environment and Development, 12992; Policy Statement on Abetment of Pollution , 1992; The National Water Policy, 2002. The NEP 2004 would serve as the basis for "reviewing objectives, instruments and strategies" embodied in other policies and laws pertaining to the environment. The preamble further states that NEP id "*intended to be a guide to action*".

The NEP states the environmental challenges as; increased poverty because of environmental degradation; increased health burden, and global environmental concern like climate change. In its assessment:

"*Activities undertaken in the process of development or poverty by themselves do not cause environmental degradation; rather, it is caused by institution failures such as lack of clarity on the rights of access and the use of environmental resources, improper policies such as subsidies (direct or indirect) for the use of certain resources market failures linked to inadequate regulation and limits ongovernment*".

Therefore, the challenge is to balance aspirations with protection and sustainable use of natural resources, by concerning anomalies in regulations, in policies and in institutions and practices.

 ISSN: 2582-6433

CHAPTER 3

WATER LAWEVOLUTION AND POLICY IN GOBAL

3.1 INTRODUCTION

The evolution of water law and policy on a global scale reflects the growing recognition of the critical importance of water resources for sustainable development, environmental conservation, and human well-being. Over time, water laws and policies have evolved in response to changing social, economic, and environmental conditions, as well as advances in scientific understanding and technological innovation.

Historically, water management practices were often fragmented and localized, with limited consideration for broader ecological impacts or the needs of marginalized communities. However, as populations grew, economies expanded, and environmental degradation became more apparent, the need for comprehensive water governance frameworks became increasingly evident.

One of the earliest examples of water law dates back to ancient civilizations such as Mesopotamia and Egypt, where rulers established systems for allocating water resources for agriculture, drinking water, and sanitation. These early legal frameworks laid the foundation for modern water management practices, emphasizing the importance of equitable access, efficiency, and sustainability.

In the modern era, the development of international water law has been driven by the need to manage transboundary water resources effectively. The 1997 United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (UN Watercourses Convention) and the 1992 United Nations Framework Convention on Climate Change (UNFCCC) are examples of key international agreements that address water management and climate change mitigation.

At the national level, countries have enacted a variety of laws and policies to regulate water use, protect water quality, and promote equitable access to water resources. These legal frameworks vary widely depending on factors such as geography, climate,water availability, and socio-economic conditions.

In recent decades, there has been a growing emphasis on integrated water resources management (IWRM) as a guiding principle for water governance. IWRM seeks to balance competing water uses and interests while promoting sustainability, resilience, and social equity. It emphasizes the importance of stakeholder participation, multi-sectoral coordination, and ecosystem-based approaches to water management.

Furthermore, the recognition of water as a fundamental human right has gained increasing traction, with the United Nations General Assembly explicitly recognizing the right to safe and clean drinking water and sanitation in 2010.

Despite these advancements, significant challenges remain in the realm of water law and policy. These include issues such as water scarcity, pollution, inadequate infrastructure, inequitable access, and the impacts of climate change. Addressingthese challenges will require continued collaboration among governments, civil society organizations, the private sector, and other stakeholders, as well as innovative approaches to governance, technology, and financing.

In conclusion, the evolution of water law and policy on a global scale reflects a growing recognition of the need for sustainable and equitable management of water resources. While progress has been made, ongoing efforts are needed to address the complex challenges facing the world's water systems and ensure the availability of clean and reliable water for future generations.

 ISSN: 2582-6433

3.2 LAW OF TORT

A common law tort action against the polluter is one of the major and among the oldest of the legal remedies to abate pollution. Most pollution cases in tort law fall under the categories of nuisance, negligence and strict liability.

A plaintiff in tort action may not sue for damaged or on an injunction, or both. While the damaged are pecuniary compensation payable for the commission of tort, an injunction is a judicial process where a person who has infringed or is about toinfringe the rights of another is restrained from pursuing such acts. Although in theorydamages are the principle relief in tort action, in practice injunction relief are more affecting in abating pollution. In case of continuing cause of action such as thepollution of a stream by factory waste or smoke emission from a chimney, proper course is to sue for an injunction. Compensation awarded is often very low, moreover adjudication of cases takes very long time.

NUISANCE

The deepest doctrinal roots of modern environmental law are found in the common law concept of nuisance. However there is much difficulty in employing tortuous action based on nuisance as an effective remedy against environmental pollution because of the exhaustive and diverse definition of term „nuisance". In Durga Prasad vState 1949, it was observed that „nuisance ordinarily means anything which annoys hurts or that which is offensive.

Nuisance includes any act, omission, injury, damages, annoyance or offence to the sense of sight, smell, hearing or which is or may be dangerous to life or injurious to health or property. It is important to note that for an interference to be an actionable nuisance the conduct of the defendant must be an actionable nuisance, the conduct of the defendant must be unreasonable. Must not be momentary, but must continue for sometime. A single, short inconvenience is not actionable.

In common law nuisance are of two types- public and private. A public nuisance can be defined as an unreasonable interference with the right common to general public. Itis both tort and crime, thus the action can be brought by a civil or by a criminal action.A private nuisance is a substantial and um reasonable interference with the use and enjoyment of land.

The procedure for the removal of a public nuisance is laid down in sec. 133 to143 of the Code of Criminal Procedure, 1973, and in sec 91 of the Code of Civil Procedure, 1908. Sec. 91 of the C.P.C reads- *public nuisance and other wrongful acts affecting the public, -*

(1) in the case of a public nuisance or other wrongful act affecting or likely to effect the public, a suit for a declaration and injunction or for any such other relief as may be appropriate in the circumstances of the case, may be instituted,-

(2) by the Advocate General, or

49Durga Prasad v State (AIR 1962 Raj. 92)

 ISSN: 2582-6433

(3) With the leave to the court, by 2 or more persons, even though no special damages has been caused to such person by reason of such public nuisance or other wrongful act.
(4)Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

NEGLIGENCE

Negligence is another specific tort on which a common law action for preventing environmental pollution can be based. It is the failure to exercise that care which the circumstances demand in any given situation. Where there is duty to care, reasonable care must be taken to avoid acts or omission which can be reasonably foreseen to be likely to cause physical injury to persons and property.

An act of negligence may also constitute a nuisance if it unlawfully interference with the enjoyment of another‟s right in land. Similarly it amounts to a breach of the rule of strict liability.

The casual connection between the negligent act and the plaints‟ injury is often the most problematic link in pollution cases. Where the pollutant is highly toxic and its effect is immediate, as with the methyl isocyanides that leaked from the UnionCarbide plant in Bhopal50, the connection is relatively straightforward.

The casual link is more tenuous when the effect of the injury remains latent over a longer period of time and can be attributed to the factors other than that the pollutant, or to polluters other then the defendant. Thus, where one brings an action for lung damage caused by fine dust particles against a local cement plant or glass factory, the case gets extremely difficult from a causation standpoint.

STRICT LIABILITY

The doctrine of strict liability – liability without fault – is worth considering in relation to cases arising from environmental pollution. The rule in *Ryland v Fletcher,* although normally dealt with as a separate tort, can be considered as an extension of the law of nuisance.

The doctrine of strict liability allows for the growth of hazardous industries, while ensuing that such enterprises will bear the burden of the damage they cause when hazardous substance escapes. The Supreme Court in **Shriram Gas Leak Case***51* has stated a new principle of liability (“absolute liability”) for enterprise engage in hazardous or inherently dangerous activities.

J.C Gasltaun v Dunia Lal Seal *52*

50 UNION CARBIDE CORPORATIOON V UNION OF INDIA (AIR 1990 SC 273)
51.Infra- page 8- Indian Council for Enviro-Legal Action v Union of India AIR 1996 SC 1446
52 J.C gasltaun v Dunia Lal Seal (1905) 9 CWN 612
53..Mukesh Textike Mills (P) LTD. v H.R Subramanya Sastry(AIR 1987 Karnt. 87)

 ISSN: 2582-6433

Facts- This appeal arose out of a suit foe a perpetual injunctions to abate a nuisance and for damages on the account for the same. The plaintiff has a garden- house and the defendant has a shellac factory situated 200-300 yards to the north-west of it.
The defendant discharges the refuse- liquid of hid manufactory into a Municipal drain that passes along the north of the plaintiff‟s garden, and the plaintiff alleges, first, that the liquid is foul smelling and noxious to the health of the neighbourhood and specially to himself, and secondly that it has damaged him in health, comfort and market value of his garden property. The defendant contented that the refuse liquid is not noxious if it stagnant, that the stagnant is really due to the faulty nature of the Municipal drain.

Observations- the defendant‟s action consists of two parts; first, he has discharged the refuse liquid into the drain. And, secondly he has done so knowingly that it cannot be efficiently carried away, but must stagnate, decompose and give off an offensive stench. The *first* part of the action constitutes a legal nuisance which the plaintiff is entitled to restrain. Carrying on an offensive trade so as to interfere with other‟s health and comfort or his occupation of property has been constantly held in England to be a legal nuisance against which the courts give relief.

The second part also constitutes nuisances. The defendant is responsible for the consequences that arise necessarily out of his action.

Decision- the High Court held that an injunction for the permanent stoppage ofnuisance is the only effectual remedy. On the question of the damages, the court observed that persistence in a proved nuisance has been held in England to be a just cause for giving exemplary damages. The defendant has certainly persists in spite of Municipal warning. This, therefore, is not a case of in which the damages awarded should be nominal. There can be no doubt that material injury has been caused to the plaintiff and the damages should be substantial.

Comments- Apart from its historical significant, the case is important because itshows how the common law regulatory system can check the polluters in a pre- industrial society. It is interesting to note the polluters defence rejected by this court at the beginning of the century, are still raised today, and the awards of Rs.1000 in damages was a very large amount at that time.

Mukesh Textike Mills (P) LTD. v H.R Subramanya Sastry

Facts- this is one of the few reported pollution cases in which a judgement was rendered for *damages*.

Appellant has a sugar factory adjacent to the cultivated land of the respondent. Appellant stores molasses, a bye- product in the manufacture of sugar, in the three tanks in the factory premises. The third mud tank is close to the respondent‟s land separated only by a water channel.
On one night, the said tank containing 8000 tones of molasses collapsed (due to borrowing activity of the rodents) and molasses emptied themselves into water channel and through it spread over respondent‟s land damaging the standing paddy and sugarcane crop. Respondent bought a present suit for damages of Rs35, 000/- . In the defence appellant contented that this was an „Act of God‟ …..He could not have seen this burrowing by rodents, so he is not liable.

 ISSN: 2582-6433

The Lower Court held that the damages suffered by the respondent s were attributable to actionable negligence on the part of the appellant. The court awarded rs.14, 700 as damages.

3.3 LAWS OF CRIMES AND ENVIRONMENT

The provisions of the Code of Criminal Procedure provide a much speedier and summary remedies against public nuisance, in comparisons to the Air, Water and Environmental Acts which provide cumbersome procedure for prosecution. The provision of Cr.P.C, remained unused for a long time for removing public nuisance, but, of late, the Supreme Court revitalised them. The public duty of the Magistrate to come to the rescue of the citizens in such cases was emphasized.

Section 133 of Cr. P.C provides an independent, speedy and summary remedyagainst public nuisance. This section empowers a magistrate to pass an order for the removal of a public nuisance within a fixed period of time. The District Magistrate or Sub-Divisional Magistrate (S.D.M) or other executive magistrate, may make such order on receiving the report of the police or other information (includes complaint made by a citizen) and on taking such evidence as he thinks fit. If he considers amongother things –

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or
(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort or the community, and that in consequences such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated;

Such Magistrate may make a conditional order to remove such nuisance or obstruction or tot desists from carrying on, or to remove or regulate, in such manner as may directed, such trade or obstruction.

The order is conditional because it is the only preliminary order. When a person fails to appear and show cause (against the order), or when the court is satisfied on the evidence adduced that the initial order was proper, the order is made final. Otherwiseit is vacated.

Sec. 133, Cr.P.C is categorical, although real *discretionary.* Judicial discretion, when the facts for its exercise ere present, has a *mandatory* import. Once a magistrate has before him evidence of a public nuisance, he must order removal of the nuisance within affixed period of time. The power of Magistrate under the code is a public dutyto the members of the public who are the victim of the nuisance, and so he shall exercise it when the jurisdictional facts are present.

If the final order is defied or ignored, Sec 188 of Indian Penal Code comes into play : Whosoever , knowing that, by an order promulgated by a public servant lawfully empowered such order, he is directed to abstain from certain act, or to take certain order either certain property in hid possession or under his management , disobeys such directions and if such disobedience causes or tends to cause a riots or affray, shall be punished with the imprisonment of either description for a term which may extend to six months or fine which may extend to one thousand rupees, or with both.

 ISSN: 2582-6433

Ratlam Municipality v Vardhichand[53]

Facts- the key question in this case is whether by affirmation action a coiut cancompel a statutory body to carry out its duty to the community construction sanitation facilities at great cost and on a time – bound basis. The court found the municipality *indifferent* to its basic obligations under Sec. 123 of the M.P Municipalities Act,1961(i.e. cleansing public streets, places and sewer, etc.) and thus directly guilt of breach of duty and public nuisance and active neglect. The municipalities pleaded that the municipal funds being insufficient it cannot carry out its duties.

Observations- the Court observed:
"*The criminal Procedure Code operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under part III of the constitution have to be respected by the State regardless of budgetary provision. Otherwise, a profligate statutory body or psychometric governmental agency may legally defies duties under the law by urging in self-defence a self-centred bankruptcy or prevented expenditure budget. Public nuisance, because of pollutant being discharge by big factories to the detriment of the poorer sections,, is a challenge to the social justice component of the rule of law. Likewise, the grievous failure of the local authority to provide the basic amenities drives the miserable slum dwellers to ease in the streets…..because under nature"s pressure, bashfulness becomes a luxury and dignity become a difficult art. Decency and dignity are non negotiable facets of human rights and are first charge on local self- governing bodies. Similarly providingdrainage system .....to meet the needs of the people cannot be evaded if the municipality is to justify its existence*."

The court further observed:

"Although these two Codes are of ancient vintage, the new social justice orientation imported to them by the Constitution of India makes it remedial weapons of versatile use. Social justice is due to the people and, therefore, the people must be able to trigger off the jurisdiction vested for their benefits in any public functionary like a Magistrate under Sec.133, Cr.P.C. in the exercise of such power, the judiciary must beinformed by the broader principle of access to justice necessitated by the conditions ofdeveloping countries and obligation by Art.38 of the Constitution. The nature is the judicial process is not purely adjudicatory. Affirmative action to make the remedy effective is the essence of the right which otherwise becomes sterile."

Decision- the court ordered that the Municipalities should take action for constructing latrines and providing drainage within a period of 6 months. The court said it is sure that the State Government will make available by the way of loans or grants sufficient financial aid to the Ratlam Municipalities to enable to fulfil its obligations under this order. The State will realise that Art. 47 of Constitution make it a paramount principle of governance that steps are taken „for the improvement of public health as amongst its primarily duties." the Municipalities also will slim its budget on low priority items and enlists projects to use the savings on the sanitation and public health.

54Ratlam Municipality v Vardhichand *(AIR 1980 SC 1623)*

 ISSN: 2582-6433

Comments- The judgement in this case, thus, explicitly recognise the impact of a deteriorating urban environment on the poor. And links the provision of basic public health facilities to both human rights and the directive principles in the Constitutional dimensions, social justice, environmental cleanliness and public health is of great significance.

Despite its vast potential, the Ratlam judgement remains under used. Citizen‟s petitions to stir indolent municipalities into action are still rare. In another respect, however, the lead provided by Ratlam has been widely followed: judicial activism now characterizes the out come of most environmental litigation.

Govind Singh v Shanti Sarup*54*

Facts- in this case, an application filed under Sec. 133 of Cr.P.C complaining that the application who had been carrying on the occupation of a baker had constructed an oven and a chimney which created a public nuisance.

The S.D.M served a conditional order on the appellant calling upon him to demolish the oven and chimney within the period of 10 days from the date of the order, and to show cause why the order should not be confirmed. After hearing the parties and considering the evidence led by them, the Magistrate however directed the appellant to cease carting on the trade of a baker at the particular site and not to lit the oven again. The High Court upheld the order of the magistrate.

Decision- The Supreme Court observed that the evidence disclosed that the smoke emitted by the chimney was injurious to the health and physical comfort of the people living in the proximity of the appellant‟s bakery and that there was no justification on the part of appellant for discharging the smoke from the chimney on the G.T Road. The Court said: we are of the opinion that in matter of this nature what is involved is not merely the right of a private individual but the health, safety and convenience of the public at large.

The Supreme Court, however, found the final order the final too broad. The court directed the appellant to demolish the oven and chimney within a month, but allowed him to practice his trade.

54Govind Singh v Shanti Sarup (AIR 1979 SC 143)

 ISSN: 2582-6433

CHAPTER 4

AIR AND WATER POLLUTION IN GOBAL AND STRATEGIES FOR CONTROL

4.1 THE WATER ACT

The Water (Prevention and Control of Pollution) Act, 1974 it is social welfare legislation, enacted for the purpose of prevention of pollution of water and for maintaining or restoring wholesome of water. Water is a subject in the State List. Thus the Water Act, central law, was enacted under section under Art.252 (1) of the Constitution which empowers the Central Government to legislate in a field reserved for the state with consent of two or more state legislature. All the States have now approved the Act.

The water Act is comprehensive in its coverage, applying to streams, inlands waters, subterranean waters, and sea or *tidal* waters" defines the terms the term „pollution" in quite elaborate manner- covering any contamination of water or alteration of properties (physical, chemical or biological) of water, discharge of sewage or trade effluent or any other substance (liquid, solid or gaseous) into water, whether directly or indirectly, as may or is likely to create nuisance or injurious to life or health of human beings, animals, plants aquatic organism or legitimate uses of water[***Sec.2 (e)].***

Constitution of Central and State Boards

Sec.3 and 4 of the Water Act provides for the constitution of Central and State Boards. The Central board or the State board, as the case may be, shall consists of the following members, namely-

(a) a full time chairman, being a person having special knowledge or practical experience in the respect of matters relating to environmental protection or a person having knowledge and experience in administrating institutions dealing with the matters aforesaid, to be nominated by the CentralGovernment or the a State Government, as the case may be.

(b) Such number of officials, not exceeding five, to be nominated by Central or State Government, as the case may be, to represent that Government.

(c) Such number of person, not exceeding five, to be nominated by the Central Government, from amongst the members of State Boards; and in the area of State Board, to be nominated by the State Government from amongst the members of the local authorities;

(d) such number of non-officials, not exceeding three, to be nominated by the Central or State Government, as the case may be, to represent the interest of agriculture, fisheries or industry or trade or any other interest which is in the opinion of the Government ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the Central Government or the State Government, as the case may be, to be nominated by the Central or State Government,

 ISSN: 2582-6433

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control;, to be appointed by the Central or State Government, as the case may be.
Sec. 5 of the water act provides that a member of a board other than s member- secretary shall not hold office for a term of three years from the date of his nomination.

Functions of the Boards

According to sec.16 of the Water Act, the main function of the Central Board shall be to promote cleanliness of the streams as wells in the different areas of the states. Other functions of the Central Board include:

(1) to advise the Central Government on the water pollution issues,
(2) coordinates the activities of the State Boards and resole disputes among them,
(3) carry out and sponsor investigation and research relating to water pollution ,
(4) to develop a comprehensive plan for the control and prevention of water pollution,
(5) to lay down , modify or annul , in consultation with the state Government concerned, the Standards for the stream or well,
(6) To perform the function of a State Board for the union territories.

Functions of the State Boards specified by the Sec. 17 of the water Act include:

(1) to plan a comprehensive programme for prevention, control and abetment of water pollution in the State,
(2) to encourage , conduct and participate in investigation and research of water pollution problems.
(3) To inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents,
(4) To development economical and reliable methods of treatment of sewage and trade effluents,
(5) To lay down standard of treatments of sewage and trade effluents to be discharged into any particular stream (Thus, standards for the discharge of effluent or the quality of receiving water are not specified in the Act itself).

Parliament revised the Act in 1988 to make closely conform to the provisions of the Environment Acct of 1986. The 1988 amendments introduced a new Sect.33A
Which empower Board to issue directions to any person, officer or authority? The amendments also increased the power of the Central Board relative to the StateBoards, by making changes in sec.18.

The 1988 amendments modified Sec.49 to allow citizens to bring actions under the water act. Now a state board must relevant reports available to complaining citizens, unless the Board determines that the discloser would harm “public interest”.

The 1988 amendments have provided for more stringent penalties under sec 41 for failing to comply with a court under order under sec. 33 or a direction from the board under sec. 33A. The penalties range seven years, and a fine from Rs.1, 000 toRs.10,000. The Act also extends the liability for violations committed by companies

to certain corporate employees and officials and to heads of government departments (sec. 47-48).
Thus, these amendments have strengthened the Water Act implementation provisions. For example, the addition of a citizens „suit provision to the Water Act may result in a more diligent enforcement of the Act.

Corporate Liability under the Water Act

Sec.47 lays down that where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was as the responsible to the company for the conduct of the business of the company, as well as the company, shall be liable to be proceeded against and punished accordingly. Provided that such liability shall not extend to a person if he proves that the offence was committed without his knowledge for that he exercises all due diligence to prevent the commission of such offence [sub-sec (1)].

Sec. 48 lays down that where an offence under this Act has been committed by any Department of Government, the head of the department shall be deemed to be guilty of the offence unless he proves that the offence was committed without his knowledge or that he exercise all due diligent to prevent the commission of such offence.

In U.P PCB v Modi Distillery55,
The State Board initiated proceedings against a company and its corporate officials under sec. 47 of the Water Act. The apex court upheld the proceedings againstcorporate officials.

Discussing the liability of a manager, the Calcutta High Court **in K.K. Nandi v Amitabha Banerjee56,** held that a person designated as manager of a company in prima facia liable under Sec.47. The court observed that whether or not such person was in fact the over all in charge of the affairs of the company and whether or not ha had any knowledge of the violation of the Act, are question s of fact to be determined at the stage of trial.

In **Mahmood Ali v State of Bihar57,** it was held that under Sec.47, only those directors, officers, etc. can be punished with those consent or connivance or onaccount of whose neglect the offence was committed.

In **Haryana State Board v Jai Bharat Woollen Finishing Works**58, the court held that in absence of proof that the concerned partner was in-charge of a responsible to the firm for the conduct of the business; the partner could not be prosecuted and acquitted the „sleeping‟ partner.

In **U.P PCB v Mohan Meakins Ltd**. 59
The apex court made it clear that the directors/managers/partners would also be held responsible if they were responsible for construction of the plant, for the treatment of

55 .U.P PCB v Modi Distillery(A.I.R 1988 SC 1128)
56K. K. Nandi v Amitabha Banerjee, 1983 CrLJ 1479.
57 Mahmood Ali v State of Bihar (AIR 1986 Pat133)
58 Haryana State Board v Jai Bharat Woollen Finishing Works, *1993* For Lt101
59 U.P PCB v Mohan Meakins Ltd (AIR 2000 SC 1456)

 ISSN: 2582-6433

highly polluting and toxic effluents and will be prosecutes and punished under the Environment Act, and , Water Act.

4.2 AIR ACT

The Air (Prevention and Control of Pollution) Act of 1981 was enacted by the parliament by invoking the Central Government‟s power under Art. 253 to make laws implementing decision taken at international conferences. The Act deals exclusively with the preservation of air quality and the control of pollution. The Air Act definesair pollution to mean the presence in the atmosphere of any air pollutants [Sec. 2(b)]. And the latter denotes "any solid, liquid or gaseous substance including noise present in the atmosphere in such concentrations as may be or tend to be injurious to human beings or other living creatures or plants or property or environment‟ [sec,2(a)]. The purpose of the Act is the presentation, control and abetment of air pollution. the Acts covers within its ambit the emission from the common and important sources of air pollution such as the industrial plants and automobiles.

The State Boards provided for in this Act are constituted under sec.4 of the Act. Sec.17 deals with functions of the State Boards, clause (g) of section 17 (1) reads: to lay done, in consultant with the Central Board, standard s for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or aircraft.

Under Sec. 19, the State Government is, after consultant with State Boards, by notification in the Official Gazette, entitled to declare any area(s) within the State as "air pollution control area(s)" for the purpose of this Act. Inclusion of noise within the definition of air pollution and control on pollution caused by motor vehicles.[sec.20].

Under Sec. 21 no person, without the previous consent of the State Board, is entitled to operate any industrial plant for the purpose industrial plant for the purpose of any industry specified in Schedule in an air pollution control area. Under sedc.22, no person, carrying on the industries specified in the schedule in any pollution control area, can discharge the emission of any air pollutant in excess of the standards laid down by the Board under sec. 17(1) (g). Any person, who does not apply for the consent under sec.21 or who infringed sec.22, is liable to be punished under sec. 38 ofthe Act.

1987 Amendment Act

The Air of 1981, as amended in 1987, contains several important features:

(i) The Acts grants government discretion to each State Government to designate particular areas as" air pollution control areas". [Sec.19]. polluters located put side such air pollution control areas cannot be prosecuted by the State Board [section 21].

(ii) Sec. 22a provides for the power of the boards to make an application to court for restraining person causing such pollution.

(iii) Penalties have been increased so that the polluter‟s cost of non-compliance is substantial .imprisonment from three month to seven years and a fine up to maximum of ten thousand rupees.

 ISSN: 2582-6433

(iv) Citizens can not only sue to enforce the Act to gain compliance by the industries, but can also require the board to provide the emission data needed to build a citizens case (sec.43).

In **Orissa SPCB v Orient Paper Mills**.60
The issue related to the manner of exercise of the powers by the State Government to declare „Air pollution control areas". There was absence of rules in this regard. It was held that non-framing of rules does not curtail the power of State Government and by the virtue of sec, 19 of the Act, 1981. It is authorise to declare any area as; air pollution control area" by means of a notification published in the official gazette.

M.C Mehta v Union of India.61
The motor vehicle case indicates the difficulty of the courts intermittent attempts to oversee a complex problem fraught with political, economical and technological considerations.

These cases related to vehicular emission and resulting air pollution in Delhi. The Supreme Court directed the government to set up a high-powered committee to come up with the solutions to the problem. On the recommendation of the committee, the court exerted pressure on the government to ensure that new vehicles were with catalytic converters and that lead-free petrol as introduced. It recommended compliance with Euro I and Euro II standards fro automobile manufacturers.

The court directed the Delhi Government to use only CNG (Compressed natural Gas) as fuel for all public transport.

NOISE POLLUTION (Regulation and Control) Rules, 2000.

The Central Government in exercise of the its powers conferred by sec.3(2)(ii), 6(1) and (2)(b), and 25 of the Environment Act, 1986 read with Rule 5 of the Environment (Protection) Rules, 1986 framed the Noise Pollution (Regulation and Control) Rules 2000. these rules relate to maintaining of ambient air quality standards in respect of noise in different areas/zones, responsibility as to the enforcement of noise pollution control measures, restrictions on the use of loudspeakers/public address system, consequences of any violation in silent zones/ areas, authorities to whom complaints may be made for violation of the rules and the power to prohibit the continuance of noise pollution.

Under the Noise Rules, 2000, separate ambient levels are fixed for industrial, commercial and residential areas and silence zones. The prescribed day time levels (6.00 AM to 10.00 PM) are typically ten decibel higher than the corresponding levels for night time. An area comprising not less than 100 metres around hospitals, educational institutions and courts may be declared as „silenced area/zone" for the

60 Orissa SPCB v Orient Paper Mills (AIR 2003 SC 1066)
61M.C Mehta v Union of India.(CNG Fuel/ Motor Vehicle Case)(1991 2 SCC 137)

 ISSN: 2582-6433

purpose of these rules [rule3(5)]. The states are required to designate an authority or officers responsible for maintaining the ambient standards [rule 4]. The designate authority could be the District Magistrate or Police Commissioner or any other official [rule2(c)].

The noise pollution can be attached either under the law of torts or under the Code of Criminal Procedure as a nuisance. In 1992, Tiz Hazari Court in Delhi ordered the municipal authorities to control noise level at public functions (However, the order remains ineffective till today). Noise pollution complaints are usually ineffective and not even recorded by the police. Nevertheless, the higher judiciary in India have evolved certain principles to check the noise pollution.

In State of Rajasthen v G. Chawla.62

The Supreme Court held that the State‟s power to legislate in relation to public health includes the power to regulate the use of the amplifier as producers of loud noise when the right of such user, by the disregard of the comfort of and obligation to others, emerges as a manifest „nuisance‟ to them.

Regulation of Hazardous Substances

Sec 2(e) of the Environment (protection) Act, 1986, defines a "hazardous substance" to mean any substance or preparation which, but reason of its chemical or physicochemical properties or handling, is liable or cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment.

Specific provision is made in the environment protection Rules for handling hazardous substances (rule 13.), before permitting the handling hazardous substances in an area, the Central Government has to take into consideration the hazardous natureof the substance and its potential to damages the environment, human being, etc.

Hazardous Wastes (Management and Handling) Rules, 1989

These Rules are framed under the enabling provisions of the Environment Act, 1986 (Sec. 6, 8 and 25). They apply to apply to designated categories of waste and exclude radioactive wastes covered under the Atomic Energy Act, 1962.

Under Rule 4, a person generation hazardous waste in quantities exceeding specified limits is required to take all practical steps to ensue that such waste are property handled and disposed of without any adverse effects. Such a person is responsible for the proper handling, storage and disposal of wastes.

Rule 5 prescribed a permit system administration by State Pollution Control Boards to the handling and disposal of hazardous wastes: no person without Boards authorisation may collect, receive, rest, transport, store or dispose of, hazardous waste s. rule 8 require State Governments to compile and public an inventory of hazardous waste disposal sites.

62 State of Rajasthen v G. Chawla(AIR 1959 SC 544)

 ISSN: 2582-6433

Under Rule 10, when the accident occurs at the facility or on a hazardous waste site or during transportation, the occupier or operator of a facility shall report immediately to the Board about the accident. Rule 11 prohibits import of hazardous wastes into India for dumping disposal. Import is, however, allowed with the permission of the Central Government, for processing or re-use as raw material.

In January 2000, the Centre introduced comprehensive amendments to the Hazardous Wastes Rules of 1089. The amendments extend the application of the Rules to hitherto unregulated processes and wastes (viz. zinc and lead wastes), strengthen the existing permit system and introduce a new set of regulations to restrict the export andimport of hazardous wastes for revelling and reuse. The union ministry of Environment and Forests is designated as the nodal agency to permit the Tran boundary movement of hazardous wastes.

Case Law

In „**Shriram Gas Leak Case', M.C.Mehta v UOI**.63

The Supreme Court introduced a new "no-fault" liability standard (absolute liability) for industries engaged in hazardous activities. Chief Justice Bhagwati said: "we have to involve new principles and lay down new norms which would adequately deal with the new phenomenon which arise in a highly industrialised economy.

In Fertilizers & chemical, Travancore Ltd. Employees' asscn. V Law Society of India64

However, the apex court held the directions to decommission and empty ammonia storage tank because of possibility of air crash, sabotage or earthquake was mot proper. The structural integrity of storage tanks and operational risks were considered and approved by the Expert Committee. A balance has to be struck between the „utilities serving public interest and the human safety".

In res. **Foundation for Science v UOI**65,

The apex court observed that every day 2000 tons of hazardous waste is generated in the country. thus , a prompt action is required to be taken not only by central govt. but all the states govt. as well as central and states PCB,s the court issued appropriate direction, which were necessary to ensure performance of duty by state govt, pollution control boards and other concerned authorities

63 Infra page 8- Shriram Gas Leak Case", M.C.Mehta v UOI.(AIR 1987 SC 965)
64.Fertilizers & Chemical, Travancore Ltd. Employees" V Law Society of India, 2004 AIR SCW 1430 652003 (8) SC258

 ISSN: 2582-6433

THE BHOPAL CASE[66]

The Bhopal disaster raised complex legal questions about the liability of parent companies for the acts of their subsidiaries, the responsibilities of multinational corporations engaged in hazardous activities, the transfer of hazardous technologies, and the applicable principles of liability.

Bhopal was inspirational factor for the judicial innovation in the area of evolving principles of corporate liability for use of hazardous technology. There ere also amendments in the existing Acts and a complete new legislation, the Environment (Protect) Act, 1986, was brought about as a realisation of inadequacy of the existing laws.

In a fast developing economy, industrial venture may at times lead to accidents causing pollution resulting in injury and even death. The Bhopal accident, worst ever industrial accident in history, is a glaring example. Till the Bhopal incident, the courtsin India have been applying the principle of common law liability for compensating the victims of the pollution. The post Bhopal era shows a significant change.

On December 3, 1984,highly toxic methyl isocyanides (MIC), which had been manufactured and stored in Union Carbide‟s chemical plant in Bhopal, escaped into the atmosphere and killed over 3,500 people and seriously injured about 2 lakh people.

The Bhopal gas leak disaster (Processing of Claims) Act, 1985 was passed by parliament to ensue that the claims arising out of the Bhopal disaster were‟ dealt with speedily, effectively, equitably and to the best advantage of the claimants‟.” The Bhopal Act conferred an exclusive right on the Indian Government to represent all claimants. In April 1985, shortly after the enactment of the Bhopal At, the Indian Government sued Carbide in the United State. The US Court, however, declined to try the Bhopal law suit, declaring that India was the more appropriate forum.

(I) US Court‟s Decision

The Indian Government‟s preferences for an American Courts stemmed from the lack of confidence in it as own judicial system, the lure of large damages that an American jury might award , and its uncertainty about whether the Union Carbide would submit to the jurisdiction of an Indian Court. Further, American Courts routinely impose strict liability for accident resulting from hazardous activities, and in such cases reject the notion that the parent corporation has a separate legal; personality from its subsidiary. In USA, the case was dismissed on the grounds of *forum non conveniens.* It was held that the absence of a rule for class actins, which is identical to the Americans rules, does not lead to the conclusion that India is not a alternative forum. The presence of India of the overwhelming majority of the witness and evidence, both documentary and real, would itself suggest India is in must convenient forum. All the private interest factors weigh heavily towards the dismissal of this case on the ground of forum noon conveniens.

66 .Union Carbide Corporation v Union of India (AIR 1990 SC 273

 ISSN: 2582-6433

(II) Bhopal District Court Judgement

The plaint filed in the District Court, Bhopal, M.P., had four crucial components, according to professor Baxi. First, India articulates a new conception of *parens patrae* role on which its capacity to sue Union Carbide Corporation (UCC) *basically rests.* Second, in order to pursue the UCC, and not the UCIL, it has to develop the thesis that the UCC was the mind and soul of the Bhopal Plant and the UCIL only its docile arm. Third, Indian needed to establish a standard, a principle, of liability appropriate to compensate victims of a toxic tort in a mass disaster situation. Fourth, India has to precisely identify the general pattern of injury to human health and environment as well as the individual units of injuries suffered by each Bhopal victim;

The *Union carbide"s multiple defences* were as follows:

First, either the UCIL is an autonomous body Indian corporate entity or the UCC‟s role was deliberately reduced by India‟s sovereign functions of regulation. In neither case, is the UCC liable.

Second, rather there exist, awaiting recognition, the principle of absolute multinational liability or there is no such principle. If it so it does not extent to the Bhopal Case. If it does not, there is no case. In neither case, is the UCC liable.

Third, either MIC, in the present state of knowledge is not „ultra hazardous‟ or if it is hazardous it is no more so than other chemicals that India stores in large quantities. In neither case, is the UCC liable.

Fourth, either the UCC is not liable at all or if it is liable, so are India and State of M.P. in neither case, is the UCC liable.

Craven by the compassion for the Bhopal victims, Judge Deo ordered carbide to pay interterm compensation of Rs.350 cr. This action had an effect of derailing the primary lawsuit against Carbide. It also raised question of fair judicial procedure and the right to the trail on the merits before the issuance of a judgement. Carbide filed a revision application against the interim payment decision.

(III) *High Court Judgement*

Justice Seth used English Rules of procedure to create an entitlement to interim compensation (i.e. it is permissible for courts to grant relief of interim payment under the substantive law of torts). Under the English rules, interim relief granted in personal injury cases if a *prima facia* case is made out. He said that “more than *prima facia* case have been made out” against the Carbide.

 ISSN: 2582-6433

He observed that the principle of absolute liability without exceptions laid down in M.C. Mehta case applied more vigorously to the Bhopal suit. He holds that Carbide is financially a viable corporation with $ 6.5 billion unencumbered asset and $ 200millions encumbered assets plus an insurance which could cover up to $250millions worth of damages. Given carbide‟s resources, it is eminently just that it meet a part of its liability by interim compensation (Rs.250cr.)

Professor Baxi applauds Justice Seth‟s "precise measure of compensation of 2lakh for death for total or permanent disability and Rs.1lakh for partial permanent disability-corresponded with objective data on actual costs of medical care, reduced life expectancy, loss of employment and loss of lifetime earning power.

(II) (Supreme Court's Judgement (The Bhopal Settlement)

Both UCC and the Indian Government applied against the High Court judgement. UCC claimed that the judgement unsustainable because it amounted to a verdict without trial. The Indian Government appealed because Justice Seth had reduced by 30% District Judge Dao‟s earlier interim award.

In Union Carbide Corporation v Union of India (AIR 1990 SC 273), the Supreme Court secured a compromise between the UCC and Government of India. Under the settlement, UCC agreed to pay US $470 million in full and final settlement of all past, present and future claims arising from the Bhopal disaster. In addition to facilitate the settlement, the Supreme Court exercised its extraordinary jurisdiction and terminated all the civil, criminal and contempt of court proceedings that had arisen out of the Bhopal disaster. It was declared by the court that if the settlement funds is exhausted, the Union of India should make good the deficiency.

The Bhopal settlement has largely been criticised. However, according to the supporters appear to achieve the mixed private and public goals of compensation, corrective justice and deterrence. Although the Supreme Court‟s orders do not ascribeliability to Carbide, the settlement implicitly establishes the multinational‟s accountability. Further, the Bhopal settlement is the first in a mass tort case where multinational had paid for the actions of its local subsidiary.

One of the most outspoken critics of the settlement was former chief justice of India, P.N Bhagwati. According to him, the court order places the value of Indian life at a ridiculously low figure. In the US $ 2.5 billion as paid by John Manville Corporation to 60,000 claimant foe asbestos related to injuries and $520 million by AH Robins Company to settle 0,450 injury claims by users of Dalkon Shield
Contraceptives. In comparison, Bhopal victims have got "peanuts". He further said it was difficult to understand how a landmark judgement disposing of the case for compensation was suddenly delivered by the Supreme Court when it was only an appeal against the interim order which was being argued and even in this appeal the arguments had not concluded. Further, he pointed the failure of the Government, as trustee for the victim, to consult with the victim‟s organisation. The court‟s eagerness to secure immediate relief to the victims, obscured its vision of constitute fair and adequate relief.

 ISSN: 2582-6433

The Supreme Court in its order of May 4, 1989, set forth the reasons for urging the settlement. The court started that in view of the enormity of human suffering occasioned by the Bhopal Gas Disaster. There was a pressing urgency to provide immediate and substantial relief to the victims.

The court considered the sum „just, reasonable and equitable", because the idea of reasonableness for the present purpose is necessary a broad and general estimate in the context of a settlement of the dispute and not on the basis of an accurate assessment by adjudication. The question is how good or reasonable it is as a settlement, which would avoid delays, uncertainties and assure immediate payment.

In the process of arriving at the amount of compensation the court into account several factors such as the number of fatal cases, instances of serious personal injury, medical expense s for treatment, loss of personal belongings and livestock, range of offers and counter offer of parties, the estimate made by the high court in fixing the interim compensation on the basic of the Mehta principle. Etc. in quantifying the compensation what the court did was that it fixed the amount far higher than the average rates of compensation in comparable cases (e.g. motor accident cases).

Justice Rangnathan Mishra said the M.C Mehta principle that in toxic mass tort actions arising out of a hazardous enterprise, the award for damages should be proportional to the economic superiority of the offender cannot be pressed to assailthe Bhopal settlement. „The criticism of the Mehta principle, perhaps, ignores the emerging postulate of tortuous liability whose principle focus is the social limits on economic adventurism."

Thus, the trend of the decision evidently rules out the possibility of adverse comment that by resorting to a compromise the Supreme Court lost an opportunity to apply the Mehta doctrine in Bhopal.

However, the Supreme Court seems to have deliberately missed an opportunity to develop new principles in relation to Multinational Corporation operating with inheriting dangerous technologies in the developing countries. As the court itself said, it would have examined various dimensions of this problem like the protection of the environment, the permissibility of ultra hazardous technology, standards of disaster liability for multinationals operating in developing countries, etc.

The court did not proceed to deal with these issues as the need for immediate relief to the victims of the tragedy could not wait till these questions are elaborately examined and decided.

Review Petition

Review petition under Art.137 and writ petitions under Art.32 of the Constitution of India were filed questioning the constitutional and under the Bhopal Act (providing for the registration and processing of claims) and the resultant categorisation of the victims was also upheld. It was laid down that "*there is no need to tie down the tort-feasor to future liability*" [UCC v UOI AIR 1992 SC 248].

 ISSN: 2582-6433

(III) The Bhopal Act Judgement

In December 1989, the Supreme Court upholds the constitutional validity of theBhopal Act, 1985. Under the Act, the Indian Government reserved for itself the exclusive right to represent all Bhopal victims in civil litigation against Carbide.

The court in this case [**Charan Lal Sahu v UOI**]67 declare that "to do great right", it is permissible sometimes "to do a little wrong". The grant right, presumably, is the settlement, which finally will put money into victim‟s hands. The little wrong is the denial of a fair opportunity (i.e. a notice and opportunity to be heard on any proposed settlement) to the victims.

The court outlined an action programme to avoid future Bhopal. The courts inter alia called upon the Central Government to enact a law entitling future mass disaster victim to interim relief and damages, and to someone who compel multinational engaged in hazardous activities to submit to the jurisdiction of Indian courts for damages claims that would reach their total global assets.

The court observed that to ensure immediate relief, tribunals are to be constituted for determining compensation, appeal against ethics may lies to this court. Further, Industrial Disaster Fund should be established. The contribution to the Fund may be made by the government and the industries. The Fund should be permanent in nature so that money is readily available for providing immediate relief to the victims.

(IV) Criminal Liability of Carbide Officials

In UCC v UOI (AIR 1992 SC 248), the supreme court reinstate criminal charges foe „homicide not amounting to murder‟ (Sec. 034,Part II, IPC) against top executives at Union Carbide(viz. nine UCIL employees and three foreign accused, including Warren Anderson, the CEO) while uploading the rest of the settlement. The CBI in December 1993 finally prepared the documents necessary to extradite Warren Anderson.

In Keshub Mahindra V state of M.P., JT 1996(8) SC 136, the charges against the nine Indian accused were reduced to one of rash and negligence act under Sec. 034A, IPC, from an offence of culpable homicide not amounting to murder. This was because the accused had no direct knowledge that the factory if allowed to operate, would result in death of so many people. The court also recognises that that the trial of the criminal case against three foreign accused had to be "*segregate and split up as they were absconding".*

However, the CBI in 2002 filed an application before the CJM, Bhopal for thedropping the charge of culpable homicide against the former chairman of the UCC, Warren Anderson. It relied on the aforesaid Judgement of the apex court. The dilutionof charges against Anderson has been vehemently opposed by the various social action groups working for the Bhopal victims.

67 Charan lal sahu v UOI AIR 1990 SC 1480

 ISSN: 2582-6433

(VIII) *"Clean-up/ slow-motion Bhopal" Case: US Court*

The present case – a "class action suit: was filed in the U.S District Court by Haseena Bi, one of the survivors of the tragedy, and several organisations in Bhopal representing survivors, seeking damages and injunctive relief for the severe pollution of their land and the drinking water. They claimed that the pollutant for the plant continued to seep into the local environment causing serious health problems for nearby residents. Thus, there would be possibility of another "*slow-motion Bhopal*". Were thousand of people over several generations may be injured or even killed by the underground contamination spreading through the water supplies of the area. The
U.S District Court, however, rejected their claims. The matter came up before the Appeal Court.

After nearly 20 years of struggle for justice and due compensation, the survivors of the 1984 Bhopal Gas Tragedy won a major legal victory against UCC, in the U.S Courts of the Appeals for the second circuit, New York. On March 17, 2004, setting a significant precedent in the history of environmental litigation , the court applaud "injunctive environmental remediation" against UCC to clean up the pollution itcaused in Bhopal.

The term "*injunctive environment remediation*" encompasses by work that has to be done to remove contamination or pollution groom a given site in order to restore it to certain applicable environmental standards.

While the U.S District Court held that any grant of such equitable relief by the U.S Courts for remediation affecting property located outside the U.S would automatically amd inevitable be inappropriate because it would be interfere with or impugn aforeign sovereign interests, the Appeal Court said:

"*There may be circumstance in which it is appropriate for a court to grant injunctive relief with respect to the remediation of an environmental problem in a foreign country*."

It may be noted that the Dow Chemical, which has inherited the UCC"s assets and liabilities in India was reluctant to own up responsibility for the clean-up. The M.P and the Indian Government has asked the company to do so, but it refused. The Indian Supreme Court too has looked at the matter and asked that the international principle of "polluters pays" should be applied to the issue.

Concluding Remarks

Investigation following the Bhopal catastrophe showed that the responsibility of both the company and the government went far beyond the mere neglect of elementary safety measures. "Bhopal", concluded a UN expert „*was a catastrophe waiting to happen*".

 ISSN: 2582-6433

Further, the case in chief was never adjudicated on the merits, nor have the criminal charges, still pending in India, have been effectively perused by the Indian Government .Warren Anderson, till date, is fugitive living in the United States, avoiding criminal prosecution in India it is hard to understand why the CBIO move an application favouring Anderson when the latter is still a fugitive in the eyes of Indian law.

The Doctrine of parens patriae i.e. role of State as sovereign and guardians of persons under legal disability has been, thus, negated by the Bhopal case.

Justice V.K Krisna Iyer called "Bhopal gas Tragedy" a "mini – Hiroshima". He criticised the Indian Judicial system as he noted:

"Judicial engineering assumes credibility only if there is jurisdictional sympathy, procedural fairness and naturalness in the rules of evidence. Unfortunately, our court system more or less negates both. Inevitably, the reform of these aspects of our legal system is imperative especially when we deal with category of victims of injustices which is overcome by insufferable tragedy and over- borne by economic, social and educational disabilities".68

IJLRA

68 Article "Union Carbide"s "bhoposhima" and Indian Justice in Somna-Coma"

 ISSN: 2582-6433

4.5 THE ENVIRONMENTAL (PROTECTION) ACT, 1986

The Environment (Protection) Act, 1986 is the first legislation dealing with the environment taking it as a whole. This Act was passed in the wake of the Bhopal Gas Tragedy, one of the world‟s worst environmental disasters, and it took an event of that magnitude for India to realize the inadequacy of the existing laws to deal with environmental issues.

The EPA serves as an „umbrella‟ legislation designed to provide a framework for Central Government for coordination of the activities of various central and state authorities established under the Water and Air Acts. The Act tries to view the issue of pollution and its impact on the environment as a whole, and as a result takes a comprehensive view of pollution by dealing simultaneously with air, water and noise pollution, and it also regulates the treatment of hazardous materials. In addition to the Water Act and Air Act, the government can also regulate these kinds of pollution under the EPA.

The Central Government is entitled to the exercise of following powers:
The central government has the power to take all kinds of measures in order to protect and improve the quality of the environment and also take measures to prevent, control and abate environmental pollution.

It has to ensure that there is proper co-ordination of actions by the State governments, officers and other authorities as far as planning and execution of a nation-wideprogram for the prevention, control and abatement of environmental pollution. This is an important power as without cooperation amongst officials from different departments, it would not be possible to protect the environment.

The Central Government may make Rules to provide for protection of differentaspects of environmental law. It has to power to lay down standards for the quality of Environment in its various aspects and also lay down standards for emission or discharge of environmental pollutants from various sources. The Central government also has the power to restrict areas in which any industries, operations or processes, or Class of industries, operations or processes cannot be carried out or it could be carried out subject to certain safeguards.

The Central government can also lay down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents.

This is a very important power conferred on the government, because if there was one lesson that was there to be learnt post-Bhopal was that India did not have any environmental disaster management system in place.

It also lays down procedures and safeguards for the handling of hazardous substances.

 ISSN: 2582-6433

Similar to the Water and Air Acts, the EPA also contains provisions to ensure compliance which includes power of entry for examination, testing of equipment and other purposes, power to take samples of air, water, soil, or any other substances from any place for analysis, power to issue direct written orders in Order to close, prohibit or regulate any industry, operation or process or to stop or regulate the supply of electricity to that industry.

The government is also given the responsibility of collecting and disseminating information in respect of matters relating to environmental pollution, and also preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution. This is a very important power as educating the masses is one of the most important methods of implementing environmental laws. The masses must be educated about the dangers to the environment in order to elicit their participation and cooperation in protecting the environment.

NATIONAL ENVIRONMENT TRIBUNAL ACT, 1995:

By virtue of Section 3 (3) of the Environment Protection Act, 1986, the Central Government has powers to order constitution of an authority or authorities by such name as may be specified in such order, for the purpose of exercising and performing such powers and functions as may be specified as necessary to protect and improve environment.

In furtherance of this and to implement resolutions of the United Nations Conference on Environment and Development held at Rio De Janerio in June, 1992, in which India also participated, the National Environment Tribunal Bill was introduced in the Parliament in 1992 to provide for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising out of any accident occurring while handling any hazardous substances, with a view to give relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto.

The preamble of the Act states, “An Act to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto”.

 ISSN: 2582-6433

NATIONAL ENVIRONMENT APPELLATE AUTHORITY ACT, 1997

The preamble of the Act states, "An Act to provide for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto".

Thus as stated in the preamble of the Act, this Act provides for the establishment of a National Environment Appellate Authority to hear appeals with respect to restriction in areas with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment Protection Act, 1986 and for the matters connected therewith or incidental thereto, regarding which the central government is empowered to make rules under section 6(2) of the Environment Protection Act, 1986.

Thus, the scope of authority constituted under the Act is very limited.

Both, the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 did fill up many gaps in the existing laws. However, they had a limited mandate to provide relief and compensation to the victims who are affected because of handling of hazardous substance. These Acts failed toresolve the multidisciplinary and complex environmental issues which needed specialised Tribunals, which the National Green Tribunal Bill, 2009, seeks to establish. Thus, by passing of the National Green Tribunal Bill, these Acts are sought to be repealed.

 ISSN: 2582-6433

CHAPTER 5

ENVIRONMENTAL REGULATIONS, AIR AND WATER POLLUTION LAW IN GOBAL

5.1 INTRODUCTION

Global environmental change is detrimental to the health of human beings, and would result in hotter summers, colder winters, rise in sea levels, change in the monsoon pattern, droughts, extinction of biodiversity and devastating floods. In the wake of intensification of the problem of global environment change, the mankind faces environmental dilemma.

Global environmental change in common concern of mankind and possesses inherent capability of transcending national boundaries (one country‟s degradation of theglobal commons degrades of the global environment for all countries). Therefore, the international regulation and control of the phenomenon of global environment change is legitimate (however, the principle instrument for preventing global pollution and degradation is domestic law and policy).

On 7 November 1989, Noordwijk Declaration of Atmospheric pollution and Climate Change proclaims that climate change is a common concern of mankind. However, the developed countries (“North”) have robbed the developing countries(“South”) by dangerously polluting the environment which is common heritage of mankind. It is, therefore, the first and foremost duty of the developed countries to provide a healing touch to the developing countries by the way of transfer of technology and adequate compensation. Thus, north-South cooperation is a pre-condition for evolving and implementing legal measures to control global environment change.

According to R.S Pathak (Former Chief Justice, India);

“*The global concern for the protection and preservation of our environment arises from recognition of the unity of the human race. And, therefore, there is no logic in maintaining a barrier between the developed and developing nations. The North- South dialogue should be viewed now in the context of a greater threat, that of grave environment damage to the entire planet, and the demand of the South for the free flow of technology and scientific knowledge from the North should be weighed not merely in the dimension of poverty removal and economic justice but in the further reality of the need of developing nations for alternative systems of energy and environment protection strategies*.”

Thus, it emerges that the environmental la is a pointer towards world order, or in other words, a harbinger to an emerging world legal order. Although the world is not environmentally uniform and the nations differ in environmental resources, but degradation of the environment affects all the nations, which require a resolve on the part of all of them to converse and protect the environment.

 ISSN: 2582-6433

The Brundtland Report69signalled changes in the way we look at the world:

"*Until recently, the planet was a large world in which human activities and their effects were nearly compartmentalised within nations, within sectors(energy, agriculture, trade) and within broad areas of concern(environmental, economic, social). These compartments have begun to dissolve. This applies in particularly tothe global „crises" that have seized public concern, particularly over the last decade. These are not separate crises: an environmental crisis, a development crisis, and energy crises. They are all one*".

Nevertheless, despite this progress, from a global perspective the environment has continued to degrade during the past decade, and significant environmental problems remain deeply embedded in the socio-economic fabric is just too slow. Internationally and nationally, the funds and political will are insufficient to halt further global environmental degradation and to address the most pressing environmental issues. Comprehensive response mechanism have not yet been fully internationalised at the national level. The development at local, national, and regional levels of effective environmental legislation and of fiscal and economic instruments has not kept pace with the increase in environmental institutions.

5.2 ENFORCEMENT OF INTERNATIONAL ENVIRONMENTAL LAW

"International environmental law" comprises those substantive procedural and institutional rules of international law which have as their primary objective the protection of the environment.

Under international law, a distinction is often made between „hard" and „soft" law. Hard international law generally refers to agreements or principle that is directly enforceable by a national or international body. Soft international law refers to agreements or principles that are meant to influence individual nations to respect certain norms or incorporate them into national law. Although these agreementssometimes oblige countries to adopt implementing legislation, they are not usually enforceable on their in a court.

Thus, the enforcement of international law is a complex and often political process. Besides the jurisdictional problem (wiz, who may bring a suit, which international forum has subject matter of jurisdiction.etc.) these are other hurdles. "**First**, the environmental harm must be large and notorious for a country to notice. **Second**, for a country to harm a stake in the outcome of the subject matter, some harm may come to cross the borders of the violating country into the country that is suing. **Finally**, even in the Tran boundary harm does exist, the issue of causation, especially in the environmental field, is often impossible to prove with any certainty."

The, International law thus, remains largely unenforceable. One may ask: what is the purpose of international environmental law- is it a mortal statement, a deterrence, or a socializing tool?

69 Our common future, report of the world commission on environment and development, 1987

 ISSN: 2582-6433

Nevertheless, International law and institutions serve as the principle framework for international co-operation and collaboration between members of the international community in their effort to protect the local, regional and global environmental law are widely accepted.

This acceptance is evidenced in a number of ways, such as international agreements, national legislation, domestic and international judicial decisions and scholarly writing. Environmentalists at "Earth Summit plus Five" (1997) gave a call to create a "World Environment Court" to solve the international environmental disputes.

INTERNATIONAL LEGAL MEASURES

Significant International Legal Measure taken for the protection of environment and regulation and control of acid rain, greenhouse effect, ozone depletion, etc.

Some of the decision of the courts and international tribunals recognised the State liability in relation to trans-boundary environmentally harms. *Trail Smelter Arbitration70.* Between Canada and the United States concerned action brought by the United States for the pollution caused by a Canadian smelter in British Columbia. It was held by the Arbitral Tribunal that no Action State had the right to use or permit the use of its territory such that emissions cause injury in or to the territory of another State or to properties or persons therein. The tribunal also emphasised the importance of the States jointly working together to eliminate trans-frontier environmental problems.
The trail Smelter decision substantially advanced principles of State responsibility in regards to Tran frontier pollution but uncertainty existed as to how far these principles could extend.
The *Corfu Channel Case*71confirms the principles of State responsibility for injurious act which occur within territory under State control. As a result of this decision, the potential now existed for the principle of Trial Smelter to be extended beyond and air pollution to a wide variety of injurious acts. The 1957 Lake Lanoux Arbitration between France and Spain further developed some of these principles by making reference to the obligations State owned to advise their neighbours of activities which could result in Tran boundary harm.

In the 1950s, the international community legislate on International oil pollution in the oceans, and the conservation of living resources of the High Seas and the Antarctica region. In the 1960s, State liability for nuclear damage and the oil pollutiondamage was recognised. By the 1970s, the regional consequences of pollution and the destruction of flora and fauna were obvious. Some very significant conventions took place during this decade such as the ***1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora***. Over 113 nations had signed the1973 Convention on International Trade in Endangered Species (CITES).CITIES doesnot seal to directly protect endangered species or the development practices that destroy their habitats. Rather, it seeks to reduce the economic incentive to kill endangered species and destroyed their habitat by closing off the international market.

70 Trails Smelter Arbitration [(1939_ AJIL, p.182 ;(1941) 35 AJIL,p484)
71 The Corfu Channel Case [U.K V Albania (1949) IC]]

 ISSN: 2582-6433

Cites regulates by means of an international permit system. For plant and animal species threaten with extinction, international import or export is strictly forbidden. For plant and animal species suffering decline but not yet facing extinction, international import/export permits must be secured. These CITES permits enable the trade to be controlled and monitored so that it does not lead species extinction or decline.

By the late 1980s, global environment threats were part of the international community‟s agenda as scientific evidence identified the potential consequences of ***ozone depletion, climate change and loss of bio-diversity***. Local issue were recognised to have Trans boundary, and then regional, and ultimately global consequences. The 1990s saw the crucial Rio Conference.

The 1985 Vienna Convention can be cited as examples of international regulations being adopted in the face of scientific uncertainty and in the absence of an international consensus on the existence of environmental harm.

5.2 STOCKHOLM CONFERENCE

THE United Nation Conference on Human Environment 1972, marked watershed in international relations and placed the issue of the protection of biosphere on the official agenda of international relations and placed the issue of the protection of biosphere on the official agenda of international policy and law. The States reveals apart the narrow issues of the sovereignty and jurisdiction to collectively resolve complex issues of environment and development.

The initial stages of the conference saw the emergence of two conflicting approaches. The first approach insisted that the primary concern of the conference was the human impact on the environment with the emphasis on control of pollution and conservation of natural resources. The second approach laid emphasis on social and economic development as the real issue. The conference was remarkable achievement as 114 participating nations agreed generally on a declaration of principles and an action plan. The principles contained in the Stockholm Declaration demonstrate that the world has just one environment.

Principle 21 of the Declaration confers responsibility on States to ensure that activities within their jurisdiction and control do not cause damage to environment of other States. Principle 22 requires the State to co-operate to develop international standards regarding liability and compensation for the victims of pollution and other ecological damage. Principle 25 of the Stockholm Declaration states:

“State shall ensure that international organisations play a coordinated, efficient and dynamic role for the protection and improvement of the environment.”

The Stockholm Conference is a major landmark in the effort of nations to collectively protect their life support base on earth. UNEP, an activator of the Stockholm Action Plan, has given the international environment movement universality, legitimacy, and acceptability in the developing countries. The United Nations Environment Programme (UNEP) born out of the common concern of mankind for the environment.

 ISSN: 2582-6433

The primary significant of UNEP lies in the fact that it provides a forum acceptable to the developing countries that emphasise on the development as a vehicle for raising the quality of the environment. UNEP has been responsible for the establishment and implementation to the Regional Seas Programme, including some thirty regional treaties, as well as important global treaties addressing ozone depletion, trade hazardous waste and biodiversity. It also established the Global Environment Monitoring System (GEMS) under its „Earth Watch" programme.

THE MONTREAL PROTOCOL (OZONE TREATY)

In 1985, Vienna Convention established a framework for the adoption of measures „to protect human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer".

The Montréal Protocol, 1987, which cane into force from January 1, 1989, initially aimed at the elimination of ozone depleting substances at a uniform rate irrespective of the development status of a country. The pact was signed by 48 nations, mostly developed countries. India and the other developing nation like Malaysia and china refuse to sign it because of pragmatic considerations and discriminatory clauses in Protocols, namely (i) Per Capita Consumption of CFCs. (ii) Patterns of consumptionof CFCs. (iii) Massive switch over costs. (iv)Transfer of technology. All were either directed against developing nations or the onus of pollution to be beard by north countries.

PROTOCOL AFTER "LONDON/ OTHER AMENDMENTS"

The amendments to the pact resulted because of a firm stand taken by the developing nations including India. The amendments provided for – a multilateral nations including India. The amendments provided fro – a multilateral fund with obligatory contributions from developed nation; equal voting rights for all the parties to the protocol;; a fund to cover all extra costs incurred by developing nations in meeting the obligations of protocol; and, to ensure transfer of technology to developing nations. India was the last major country to sign Protocol.

The amendments became operational from august, 1992: developed countries will phase-out CFCs between 1995 and 2000, while developing nations will begin their elimination programme only in 2000 and end it in 2010.

As per the Montreal Protocol, the State parties should not only help prohibit trade in „controlled-substances" (ozone depleting substances) between the parties and non-parties of Protocol. Thus, parties to the Protocol are prohibited from improving such substances or exporting CFC production technology and equipment. This comprehensive trade ban places both economic and diplomatic pressure on al nations to join the Protocol.

The Protocol was further supplemented wit the amendment in Copenhagen on 25th November 1992, wherein time table for phasing out substance was enhanced. The list of controlled substances has been further expanded with the adoption of 1995 and 1997 amendments to the Protocol.

 ISSN: 2582-6433

KUALA LUMPUR CONFERENCE

A ministerial level conference of developing nations in 1992at Kuala Lumpur, Malaysia, adopted certain far-reaching declarations. For example, setting up of an international "green fund" for greening the Earth (each country to cover at least 30% of its area with forest by 2000 A.D.) with a higher share from the developed nations. However, US rejected the proposal as existing GEF was sufficient, and a country receiving funds may divert money for other purposes.
Global Environment Facility (GEF) it‟s an U.N. mechanism (with World Bank‟s assistance) for funding the greening of the earth and promoting sustainable development; India and the other developing nations opposed it as it has a „donor bias‟ and its not democratic.

India, at this conference, also mooted the idea of "Environment Tax" on developed nations to pay for the global environment clean up. Also, India outlined a „new global partnership‟ based on the sound principles- equal weight age to all nations, with stronger U.N role; no condition in funding of trade on grounds of environment protection; no globalisation of national resources like genetic diversity, and, no enforcing of environmental standards at international level in place of national limits. Thus, India recognises the sovereign "right to development".

5.3 RIO CONFERENCE (EARTH SUBMMIT)

Rio de Janeiro, Brazil, was chosen as the venue for the earth summit to effectively highlight the consequences of man‟s recklessness and to device strategies to combat the ecological disaster. This UN Conference for Environment and Development UNCED), held in June 1992, was attended by representatives of 178 nations and 115 heads of government.

(A) Key Issues

Issues dividing the North and South were placed in the agenda for discussion at the summit. The issue were as follows-

(i)***Greenhouse gas emission***- North want a shift from the use of coal and wood for energy and to stabilise CO2 emission at 1990 levels by 2000 A.D.
South blames for excessive emission and wants them to reduce it; opposed to any cut in its own emission as it hinders development.
(ii)***Forests***- North wants a legally binding convention to restrict deforestation in tropical countries rich in bio-diversity.
South asserted that such works would impinge on national sovereignty; rich must compensate for conservation and share profits for researches on species.
(iii)***Population***- North wants population control in South, and thus to check deforestation, population, etc.
South blames the rich for over consumption i.e. 60% of world‟s energy.
(iv)***Technology transfer***- North say that technology development is commercial and thus countries wanting to utilise it must pay.
South says that" environment-friendly" technology to be transferred cheaply.
(v)***Finance*** („*who would pay for the clean up"*?)- North say that existing UN mechanism of GEF is sufficient; want finance sharing from all countries with no mandatory contribution from North.

 ISSN: 2582-6433

South favours "*polluter must pay*" principle, thus North to pay major part with firm commitments; a new institution, in place of GEF, is needs whose functioning is transparent and democratic.

(B) *Outlook-*

(i) Rio declaration – a statement of principles which set out the rights and obligations of all nations in relation to the environment, however, not legally but morally hiding only.
(ii) Climate convention- a commitment to reduce CO2 emission, signed by 150 nations including USA, however, or does not fix any deadline for reducing or any immediate change in fuel consumption.
(iii) Declaration on principles in forestry conservation- adopted, however, it is not legally binding convention.
(iv) AGENDA 21- a blue print for ecologically safe development up to year 2000 and beyond (21 century) adopted, covering issues like transfer of environment – friendly technology. Creating environmental awareness, an integral approach to land resource use, checking deforestation, peaceful use of nuclear energy, etc. However, it avoided the question of who would pay for it (European countries promised to pay only a partial amount).
(v) New UN panel on environment- to assess the environmental impact of lending by WB and IMF, and implementation of Agenda 21. Also, a Sustainable Development Commission 9SDC) to be set up to monitor the implementation of Agenda 21.
(vi) Biodiversity treaty- 1550 nations, excluding USA, signed a companion treaty to protect the endangered species on earth.

(C) *Attitude of USA-*

USA stuck to its unreasonable stand even though it got completely isolated (its allies Japan and Britain signed the bio-diversity treaty).US watered down the climate treaty by non- inclusion of any deadlines. US were concerned that it would require major changes in economy that will lead to joblessness in the country.

USA did not want to sign the bio-diversity treaty as it would harm the interest of its bio-technology companies (regarding patents); impose upon burden on its tax-payer(because of the funds for conservation),and; raise problems of „control" on funds the developing countries will get. USA instead proposed a separate international plan for the world"s forests by developing eco-technological practices, and contributing funds for it.

(D) *India's Contribution-*

India, a key player in negotiations, put much heart and energy even at the risk of getting unpopular with the US administration. India did not agree to the phraseo graphy in the text of some clauses of Agenda 21(„terms for transfer of technology"), India had strong reservations about the dilution of original commitment in climate treaty.

 ISSN: 2582-6433

India proposed a "Planet Protection Fund to help but environment „friendly technology world-wide and make them available free of cost to any countryseeking them.

(E) *Significance of summit-*

Earth summit was intended to call attention to the environment as an urgent international issue, and to agree on how to fix it. What the summit achieved id that the problem of environment has come to be recognise as central to saving this planet and inscribed as the agenda of this day and age.

However, summit failed to achieve agreement on crucial environmental issues and to extract definite commitments for financial resources from the developed countries. The summit failed to raise enough funds for GEF. Also, the question of technology transfer remained unclear. The summit, surprisingly, did not address the central question of world population. Thus, the net- outcome is hardly satisfying in any concrete measure to the developing countries.

The experience of the summit was that the developed nations were unwilling to bear the responsibility for their consumerism though they acknowledge that their model of civilisation is bringing disaster for developing nations. However, the basis of this new perception is their realisation that their own future is equally threatened. In the final analysis, North will have to be more firm in its commitments, and South must endeavour and thereby forge a consensus on the approach to save the planet.

The Earth Summit Plus Five (1997), a special session of the UN General Assembly held after five year from the historic "earth summit", was suppose to ascertain that "hoe far the committed nation had gone from Rio." The representatives of various nations reviewed the progress that they had made in achieving the goal of sustainable development and to save the planet Earth from the further deterioration.

Agenda 21

Adopted at the 1992 UNCED, Agenda 21 is another important non binding instrument and action plan for sustainable development. It provides mechanisms in the form of policies, plans, programme, and guidelines for national governments to implement the principles contained in the Rio Declaration. Agenda 21 comprises 40 chapters focusing on major issues like poverty, sustainable agriculture, desertification, land degradation, hazardous wastes, atmosphere, fresh water, toxic chemicals, biological diversity, etc.

These various chapters are categorized under four sections:

- Social and Economic Dimensions
- Conservation and Management of Resources for Development
- Strengthening the Role of Major Groups
- Means of Implementation

Under Agenda 21, provisions were adopted for decision making on natural resources management to be decentralized to the community level, giving rural populations and indigenous peoples land titles or other land rights and expanding services such as credit and agricultural extension for rural communities. The chapter on major groups calls on governments to adopt national strategies for eliminating the obstacles to women‟s full participation in sustainable development by the year 2000.

 ISSN: 2582-6433

THE BIODIVERSITY CONVENTION

At the Rio Conference, an agreement was reached on the conservation and sustainable development of the world‟s biodiversity. The Convention on Biodiversity was signed by 153 nations on 14th June, 1992; it took effect on 29 decembed, 1993, after it was ratified by the required minimum of 30 countries. The Conventions aimed to establish a global partnership for the protection of natural resources with the recognition of the sovereign rights of States over their resources.

The Convention lacks any specific standards or methods to ensure compliance. However, Art. 26 imposes an obligation on each parties to submit to the conference of the Parties, reports or measures which it has taken for the implementation of the provision of the convention and their effectiveness in meeting the objective of Convention.

The convention suffers from various fundamental defects. The countries adopt nature protection standards that are appropriate to their own economic needs and priorities. However the Convention, which id legally binding agreement, contains several provisions which would be advantageous to exploited nations. One such provision relates to the links to the biodiversity and biotechnology. The Convention includes new international rules on access to genetic resources, access to and transfer oftechnology, and handling of biotechnology and distributions of its benefits.

Themselves poor in biodiversity, the developed nations have been forcibly looting the resources of the biologically rich tropical countries, yet denying the latter the technologies and benefits arising out of these resources (by way of patent and other intellectual property rights). Countless “wonder” drugs produced by multinational companies and western countries are based on plant extract taken from the tropic, yet the people of the latter not only are denied a share of the resultant benefits, but have to buy these drugs for exorbitant prices.

Therefore, the United States (alone among industrialised countries) decided not to sign the Convention. The USA eventually changed its stands during the Bill Clinton‟s regime and signed the Convention.

The Biodiversity Convention, which is legally binding, can be construed as an important effort to protect and conserve natural resources of the world as a whole. The Convention is likely to become the principle framework within which the development and implementation of rules on biodiversity conservation will occur.

5.4 KYOTO SUMMIT ON GLOBAL WARMING, 1997

The convention on Climate change had decided that a review conference would be convened after a period of 5 years .therefore, a conference on „climate change‟ was held in Kyoto(Japan) to review the progress made in 5 years and to chalk out plans and fix strategies/objective for the future. More than 150 countries participated in it.

 ISSN: 2582-6433

The Conference achieved some success as it took certain solid decisions, which. That the emission of greenhouse gases from the 1990 level would be reduced by8%, 7% and 6% by the European Union, America and Japan, respectively.
Similarly, targets of 21 other industrial countries were fixed for reducing emissions of green house gases. The Kyoto process envisages that poor or developing nation will take on targets at later stages.

The developing countries expressed the view that their economic conditions do not permit them to accept such commitments; therefore, they (including China and India) were exempted from such commitments. On of the main reasons fro this is that per capita emission of these gasses countries is far less than in developed industrial; countries. The U.S.A argues that "the Kyoto Protocol is unfair to the United States and to other industrialised nations because it exempted s 80% of the world from compliance." The argument is misplaced, because the developing countries" contribution to the global warming via greenhouse emissions pales besides America-first on the list.

The Kyoto Protocol has been criticised on the ground that it calls for sharp reductions in emission over a relatively short period of time .there are ambitious targets but no limits on compliance costs (which could be very high).

The forth session of the Conference of the Parties to the UN Framework Convention on Climate Change (COP4) [Buenos Aires, 1998], COP6 [Hague, 2000], and, COP7 (2002) have failed because of the U.S intransigence. When Clinton signed the treatyin 1998, it was thought that U.S ratification would follow and the Kyoto Protocol would become law. But in dramatic turn of events, George Bush pulled out of treaty in 2001, seriously endangering global climate negotiations.

BIOSAFETY PROTOCOL, 2000

No other scientific controversy in recent timed would seems to have polarised opinion as much as the issue of genetically /living modified organism (GMOs). A genetically/ living modified organism (GMO) refers to an organism into which one gene from an unrelated organism has been transferred and incorporated in the genetic material, which means that its characteristics in the latter. This makes it possible to produced agricultural crops(„transgenic plants") or create domestic animals with particulars characteristics.

The main issues of contentions vis-à-vis the use of GMOs pertain to the lack of transparency and public awareness about them and environmental and ecologicalsafety. Other aspects of the controversy relates to social and economic equity, legal and regulatory considerations and moral and ethical issues.

The issue of bio safety has always posed problems due to scientific inadequacy and uncertainties on Biological Diversity adopted a supplementary agreement to the Convention Known as the „Cartagena Protocol on Bio safety" on 29 Jan. 2000.the Protocol seeks to protect the biological diversity from the potential risk posed by living modified organisms resulting from modern biotechnology.

 ISSN: 2582-6433

It establishes a procedure for ensuring that countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory.

The Protocol establishes a Bio safety Clearing-House to facilitate the exchange of information on living modified organism and to assist countries in the implementation of the Protocol.Art.8(g) of it lays down that the Parties shall establish the means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have an adverse effect upon environment that could affect the conservation and sustainable use of biological diversity,, taking into account the risks to human health.

The bio safety Protocol requires exporters of genetically modified organisms to obtain prior approval from the importing country. Such regulations are intended to aloe countries to reduce the ecological risks from introducing genetically altered plants, animals and microorganism into the environment. The main sticking point in the bio safety negotiation was whether the requirement should apply to genetically alter agricultural commodities meant for eating or processing, as opposed to plant.

The U.S and the other five big agricultural exporters (Canada, Australia, Argentina, Chile and Uruguay) argued that such a requirement would not be protected biodiversity because commodities such as corn and soybeans do not enter the environment. The U.S and its allies obviously wanted to protect the interests of their framing and biotechnology industries.

However, the developing nations and the European Union argued that commodities should be included because they have seeds that can be planted. The Bio Safety Protocol was mainly meant to help developing countries, which are now lack the expertise and legislation to regulate biotechnology.

The Bio safety Protocol came into force on Sept.11, 2002, when the requisite number of parties had rectified it. India is a signatory to the Protocol; and is bound by its provisions. USA is not a member of the Protocol.

REGULATORY MECHANISM IN INDIA

India woke up to the GMO threats in 1998 after reports about the controversial “Terminator” technology and the angry responses of farmers‟ organisations to field trials in India of Bollgard (BT) cotton seeds, manufactured by Monnsanto/Americam Home Products, appeared in the media.

The approval for the commercial release of Bt- Cotton was given by the Genetic Engineering Approval Committee (GEAC) of the Central MoEF, the statutory body set up for approving large scale (research or commercial) use of genetically engineered organisms (GEOs) following the rules enacted in 1989 in 1989 under the Environment Act, 1986.The GEAC is the apex clearing authority in the three tier regulatory system structure after bio-safety studies and small scale field trials are evaluated by review committee for Genetic Manipulation and the Monitoring Committee and Evaluation of the Department of biotechnology (DBT).

 ISSN: 2582-6433

The State-level Committees are also to be consulted in the process of approval.
Recently enacted Biological Diversity Act, 2002, also contains provision relating to the regulation of GMOs. The Central Government is required to undertake measures to regulate, manage or control the risks associated the use and release of living/ genetically modified organism resulting from biotechnology likely to have adverse impact on the conservation and sustainable use of the diversity and human heath.

5.5 SUSTAINABLE DEVELOPMENT

Development without concern for the environment for the environment can only be short-term development. In the long term,, it can only be anti-development and can go only at the cost of enormous human suffering, increased poverty and oppression. Over the past few decades increased poverty and oppression. Over the past few decades, indiscriminate, mineral exploitation, industrialisation and urbanisation have led to an unsustainable environment viz. creation of wastelands, polluted rivers and seas, global warming, acid rain, deteriorating air, etc.

Environmental protection measures have thus become mandatory in order to achieve sustainable development globally. The concept assumed immense importance against the backdrop of the growth of human population and modern man‟s indiscriminate and unbridled exploitation of environment to gratify his ever-growing hunger for prosperity.

Meaning and Concept

“Sustainable development is development that meets of the present without compromising the ability of the future generations to meet their own needs”(WCED Report, 1987). Economists define it as an economic progress in which the quantity and quality of our stocks of natural resources (like forest) and the integrity of bio-geo-chemical circles (like climate) are sustained and passed on, unimpaired, to future generations.

The eminent Indian economist Sukhamoy Chakravarty has pointed out that the success of „sustainable development‟ lays in the fact that it says nothing exercise and,therefore, means anything to anybody! For a logging company it can be mean sustained projects; for an environmental economist it can mean sustained stocks of natural forests; and for an environmentalist it can mean a clean heritage for our children. As the western jokes go now, sustainable development for multinational companies means „sustained growth‟ or „sustained profits‟.

The concept of sustainable development signifies a policy approach or goal ratherthan a substantive prescription. Its principle merits is that it modifies the previously „unqualified‟ development concept.

 ISSN: 2582-6433

UNITED NATIONS COMMISSION ON SUSTAINABLE DEVELOPMENT, 1992

In 1992, pursuant to its mandate in Agenda 21, the General Assembly and Economic and Social council of United Nations established the UN commission on Sustainable development (CSD).

It is intended to monitor, review and consider progress in the implementation of international environmental policy as found in Agenda 21 and in international conventions on the environment.

The CSD is composed of 53 nations who are elected from members of the United nations and from specialised agencies. It is intended to maintain an equitable geographic distribution around the world, there are 13 representative fron African States, 11 from Asian States, 10 from Latin American and Caribbean States, 6 from East European States and 13 from Western European and other States. The term of office of the various members are intended to be varied in order to ensure the broadest representation of countries over the period of years. In 1995, nations from the Sia Pacific region included India.

The functions of CSD broadly fell into three categories:

(i) Monitoring the implementation of Agenda 21 which means gathering information from governments, various UN agencies/bodies, international institutions and NGOs.
(ii) Reviewing the availability of financial and technical resources i.e. to determine whether and to what extent, developed countries have honoured their commitment in Agenda 21 by providing resources to developing resources to developing countries to enable them to implements Agenda 21.
(iii) Acting as a forum for discussion, consensus- building and decision- making, which will include identifying weakness in the international legal and institutional regime , proposing areas for regulation by treaty, and forging consensus on new issues.

It is submitted that the establishment of the CSD was a significant step but its success lies on many factors. The Commission will have to rely on political rather than legal authority to integrate global environmental and economic policies,. Its successesheavily depend upon on the quality of participation from various national governments. The Commission should establish effective subsidiaries bodies,disseminate information, and play a role in developing and assessing the implementation of national strategies.

DELHI SUSTAINABLE DEVELOPMENT SUMMIT, 2002

The Sustainable Development Summit 2002 held in Delhi drew world‟s attention to poverty alleviation as the means to a sustainable future.” a world in which property and inequity are endemic will always be prone to ecological and the other crises.”[WCED].

 ISSN: 2582-6433

Poverty eradication in the long run requires the poor to sustain enhanced standards of living through promotion of opportunity, empowerment and security, which is essence lays down the foundation of the "sustainable livelihood" approach. Globalisation is both an opportunity and the threat to such approach:

"*on the upside , globalisation could make economic activities an institutions more efficient, developed human capital, enhance employment opportunities, provide access to the cleaner technology, promote environmental awareness and create market self regulation of industrial activities. On the other side the exacerbation of in equities in the distribution of benefits among worlds population had been an impediment to sustainable livelihoods."*

The summit noted that while issues outlined in Agenda 21 had been reiterated as various forum they were yet to find effective expression in national strategies for development or in bilateral an d multilateral commitment. Indian P.M Vajpayee criticised the developed world for not fulfilling "lesser obligations" of just one- third of the financial resources required to implement Agenda 21 he said;

"Clearly they must give more resources directly through higher aid and of indirectly by opening their market to the poorer nations. Therefore imposing environmental or labour restrictions on free movements of goods and services in the name of selective aspect of sustainable development……will only is intensifyin the developing world."

5.6 JOHANNESBURG SUMMIT ON SUSTAINABLE DEVELOPMENT, 2002

The world summit on sustainable development [WSSD] held in Johannesburg, 2002 had no set Conventions or agenda to be signed. However, some vague commitments were made under „type 1", outcome (plan of action) and several plans announced under the „type 2" initiative.

While type 1 was a largely political rhetorical political declarations focusing five priority Ares: Water and sanitation, energy health, agriculture and bio diversity and eco system management (popularly call WEHAB), the „type 2" was a mom binding partnership arrangement between business, NGOs and Governments.

The Summit tried to bring into its fold all binding conventions and agreements signed by Governments till ne and all the issues ranging from the local to the international but it ended up echoing the two pointing agenda of the U.S; of rolling back what was agreed upon at Rio, and pushing not binding private partnership under type – 2 initiatives. These initiatives fall outside the binding commitments of the U.N and dilute the process of multilateral commitments of the U.N and dilute the process of multilateral agreement which were central to Rio conference and led to Governments abdicating their responsibilities.

It may noted with establishment of WTO in 1995, the environmental and developmental agenda became subservient to trade and business Johannesburg was the sustainable development agenda been given away to global corporation on a platter. Developing courtiers become a voice in the wilderness with even the group of 77 and China- which were local and effective in Rio- been pushed to the sidelines. India presence was also low-key.

 ISSN: 2582-6433

Barring the achievements of getting Russia, china and Canada to agrees to ratify KYOTO PROTOCOL. Johannesburg became a battle ground as countries and participants slugged it out on such crucial issues as „Target and time frames".**"common but differential responsibilities"** ,*"new and additional finance"*," good governance", „corporate responsibilities" and „**trade and globalisation**". The Summit diluted Government promises and empowered global business to protect the Earth degradation and, in the processes, undermining the problems faced but millions of poor people whom the WSSD promised to protect.

At the end of the Summit the South African president said;

"*We are fighting a global apartheid of the rich against the poor in dealing with sustain able development"*

5.7 PRE-COPENHAGEN ACCORD

India, the world's last major emitter to formally back the Copenhagen Accord, has done so. Environment Minister Jairam Ramesh said the decision reflected India's contributions in shaping the Accord. Ramesh went on to list the three conditionsunder which India will participate:

1) The Accord is a political document and not a legally binding one.

2) The Accord is not a separate negotiating track outside the UNFCCC framework. (Thing discussed as a possibility due to the perceived increasingly unwieldy nature of trying to get so many countries to agree...)

3) The purpose of the Accord is to bring consensus in the ongoing two-track UNFCCC process. (Too bad the consensus is still not enough action quickly enough...)

The Economic Times quotes Jairam Ramesh as saying:

Listing in the [preamble] of the Accord implies that we participated in the negotiations on the Copenhagen Accord and that we stand by the Accord. The Accordcould have value if the areas of convergence reflected in it are urged to help the parties reach agreed outcomes under the UN multilateral negotiations in the twotracks

COPENHAGEN SUMMIT, 2009

A US-led initiative called the Copenhagen Accord has formed the centre-piece of a deal at UN climate talks in Copenhagen, despite some countries' opposition.

Below is an explanation of the main points in the agreement.

 ISSN: 2582-6433

Legal Accord

The Accord, reached between the US, China, India, Brazil and South Africa, contains no reference to a legally binding agreement, as some developing countries and climate activists wanted.

Neither is there a deadline for transforming it into a binding deal, though UN Secretary General Ban Ki-moon said it needed to be turned into a legally binding treaty next year.

The accord was merely "recognised" by the 193 nations at the Copenhagen summit, rather than approved, which would have required unanimous support. It is not clear whether it is a formal UN deal.

Temperature Rise

The text recognises the need to limit global temperatures rising no more than 2C (3.6F) above pre-industrial levels.

The language in the text shows that 2C is not a formal target; just that the group "recognises the scientific view that" the temperature increase should be held below this figure.

However, the accord does not identify a year by which carbon emissions should peak, a position resisted by some richer developing nations.

Countries are asked to spell out by 1 February next year their pledges for curbing carbon emissions by 2020. The deal does not spell out penalties for any country that fails to meet its promise.

Financial Aid

The deal promises to deliver $30bn (£18.5bn) of aid for developing nations over the next three years. It outlines a goal of providing $100bn a year by 2020 to help poor countries cope with the impacts of climate change.

The accord says the rich countries will jointly mobilise the $100bn, drawing on a variety of sources: "public and private, bilateral and multilateral, including alternative sources of finance."

A green climate fund will also be established under the deal. It will support projects in developing countries related to mitigation, adaptation, "capacity building" and technology transfer.

Emission Transparency

The pledges of rich countries will come under "rigorous, robust and transparent" scrutiny under the UN Framework Convention on Climate Change (UNFCCC).

 ISSN: 2582-6433

In the accord, developing countries will submit national reports on their emissions pledges under a method "that will ensure that national sovereignty is respected."

Pledges on climate mitigation measures seeking international support will be recorded in a registry.

Review of Progress

The implementation of the Copenhagen Accord will be reviewed by 2015. This will take place about a year-and-a-half after the next scientific assessment of the global climate by the Intergovernmental Panel on Climate Change (IPCC).

However, if, in 2015, delegates wanted to adopt a new, lower target on global average temperature, such as 1.5C rather than 2C, it would be too late.

AGENDA FOR REFORM

Each society experiments and learns from its own mistakes. Sustainable development cannot be thrust upon anyone by an external agent-whether it is the World Bank, the UNO, or the forestry departments of the Government. Strong public institutions and environmental protection policies seem to be essential.

Policies aimed at changing behaviour should rely heavily on economic incentives. In the formulation of policies and decision-making, effective participation of the people on the spot should be ensured.

Finding and implementing solutions to environment problems requires a partnership of efforts among nations. The mankind needs a global consensus for economic growth; North and South will have to forge equal partnership.

It is the time to launch a new era of international co-operation. Issues like debt crises, trade policies, resources for the international financial institutions, harassingtechnology for global benefits, strengthening the United Nations system, and specific major threats to the environment such as global warming are inter-related.

The agenda for reform is large and comprehensive. Accepting the challenge to accelerate development in an environmentally responsible manner will involve substantial shifts in policies and priorities will be costly. Failing to accept the challenge will be costlier still. But, the value of this challenge becomes clear only when we realise that humanity is not distinct from nature but a part of it.

The **motto** should be:

"***you must give back to the earth, what you take from it***"

 ISSN: 2582-6433

CHAPTER-6

CONCLUSION AND SUGGESTIONS

6.1 CONCLUSION

The interface between global trade and environmental degradation is a multifaceted and deeply nuanced phenomenon that warrants careful consideration and analysis. Throughout this exploration, we have delved into the intricate dynamics that underpin this relationship, examining various hypotheses, empirical evidence, and policy implications. As we conclude this discussion, it becomes evident that the interplay between global trade dynamics and environmental outcomes is characterized by both challenges and opportunities, necessitating a balanced and holistic approach to address the complex issues at hand.

One of the central themes that emerged from our examination is the notion that global trade, while driving economic growth and development, also exerts significant pressures on the environment. The intensification of trade activities, characterized by increased production, consumption, and transportation of goods and services, has been associated with a range of environmental impacts, including deforestation, habitat destruction, air and water pollution, and greenhouse gas emissions. These environmental externalities underscore the need for heightened awareness and concerted action to mitigate the negative consequences of global trade on ecological systems and human well-being.

However, amidst these challenges, there are also opportunities for positive change and transformation. Economic globalization has facilitated the diffusion of knowledge, technology, and best practices across borders, providing avenues for the adoption of environmentally sustainable solutions. Indeed, as countries become more interconnected through trade, there is a growing recognition of the importance of integrating environmental considerations into trade policies and practices. This shift towards sustainable trade practices is exemplified by initiatives such as eco-labeling, carbon pricing mechanisms, and green supply chain management, which seek to minimize the environmental footprint of global trade while promoting economic efficiency and competitiveness.

 ISSN: 2582-6433

Furthermore, the role of international trade agreements in shaping environmental outcomes cannot be overstated. These agreements, whether bilateral, regional, or multilateral in nature, often include provisions related to environmental protection, biodiversity conservation, and sustainable development. However, the effectiveness of these provisions in practice remains a subject of debate, with questions surrounding enforcement mechanisms, transparency, and accountability. Moving forward, there is a need for greater coherence and synergy between trade and environmental policies at both the domestic and international levels to ensure that trade agreements contribute positively to environmental sustainability.

Moreover, addressing the interface between global trade and environmental degradation requires a concerted effort from multiple stakeholders, including governments, businesses, civil society organizations, and academia. Collaboration and partnership are essential for identifying innovative solutions, sharing best practices, and mobilizing resources to address pressing environmental challenges. Additionally, promoting greater transparency, public participation, and accountability in decision-making processes is critical for fostering trust and legitimacy in trade and environmental governance.

In conclusion, the interface between global trade and environmental degradation is a complex and dynamic phenomenon that necessitates a comprehensive and integrated approach. By harnessing the transformative potential of trade for sustainable development, we can work towards a future where economic prosperity is harmonized with environmental stewardship. It is imperative that we seize this opportunity to redefine the relationship between trade and the environment, ensuring that tradeserves as a catalyst for positive environmental outcomes in the 21st century and beyond.

FINDINGS

1. **Trade Intensification and Environmental Impact:** The intensification of global trade has led to increased resource extraction, pollution emissions, and habitat destruction, contributing to environmental degradation worldwide.
2. **Environmental Externalities of Trade Policies:** Trade liberalization policies can incentivize environmentally harmful practices and lead to the outsourcing

 ISSN: 2582-6433

of pollution-intensive industries to countries with lax regulations, resulting in negative environmental externalities.

3. **Opportunities for Sustainable Trade Practices:** Despite challenges, there are opportunities for promoting sustainable trade practices, including integrating environmental considerations into trade policies, fostering technological innovation, and advancing international cooperation.
4. **Role of International Cooperation and Governance:** Effective multilateral institutions and regional trade agreements play a crucial role in setting norms and standards for trade and environmental governance, while transparency and public participation are essential for aligning trade policies with environmental sustainability goals.

IJLRA

 ISSN: 2582-6433

6.2 SUGGESTIONS

In light of the complexities inherent in the interface between global trade and environmental degradation, it is imperative to consider a range of strategies and interventions aimed at promoting sustainability, mitigating negative impacts, and fostering greater harmony between economic growth and environmental protection. Drawing on insights from research, policy analysis, and stakeholder consultations, the following suggestions are put forth as potential pathways for addressing this critical issue:

1. **Integration of Environmental Considerations into Trade Policy:** One key suggestion is to prioritize the integration of environmental considerations into trade policy formulation and decision-making processes. This could involve the development of trade agreements that include robust environmental provisions,such as commitments to reduce greenhouse gas emissions, protect biodiversity, and promote sustainable resource management. Additionally, trade negotiations should strive for greater coherence between trade rules and environmental objectives, ensuring that trade liberalization does not come at the expense of environmental sustainability.
2. **Promotion of Sustainable Trade Practices:** Another important avenue for addressing the interface between global trade and environmental degradation is the promotion of sustainable trade practices. This could entail incentivizing businesses to adopt environmentally friendly production methods, such as renewable energy usage, waste reduction, and eco-friendly packaging. Governments can also play a role by implementing policies that reward companies for adopting sustainable practices and penalize those that engage in environmentally harmful activities.
3. **Enhancement of Environmental Standards and Regulations:** Strengthening environmental standards and regulations is essential for mitigating the negative impacts of global trade on the environment. This could involve the implementation of stricter pollution control measures, the enforcement of sustainable resource management practices, and the imposition of penalties for environmental violations. Furthermore, international cooperation is critical for setting global standards and norms that govern environmental protection in the context of trade.
4. **Investment in Green Technologies and Innovation:** Investing in green technologies and innovation is essential for transitioning towards a more sustainable global economy. Governments, businesses, and research institutions should collaborate to develop and deploy technologies that reduce carbon emissions,

 ISSN: 2582-6433

improve energy efficiency, and promote circular economy principles. This could include investments in renewable energy, sustainable agriculture, and clean transportation infrastructure.

5. **Capacity Building and Knowledge Sharing:** Capacity building and knowledge sharing are key components of efforts to address the interface between global trade and environmental degradation. This could involve providing technical assistance and training to developing countries to help them build institutional capacity for environmental management and compliance with international environmental standards. Additionally, knowledge sharing platforms and networks can facilitate the exchange of best practices and lessons learned in the areas of sustainable trade and environmental governance.
6. **Enhanced Stakeholder Engagement and Participation:** Lastly, enhancing stakeholder engagement and participation is crucial for fostering inclusive decision-making processes and building consensus around trade and environmental issues. This could involve establishing multi-stakeholder forums, public consultations, and participatory mechanisms that allow for meaningful engagement of civil society organizations, indigenous peoples, local communities, and other relevant stakeholders. By ensuring that diverse perspectives are taken into account, policymakers can develop more effective and socially equitable solutions to the challenges posed by the interface between global trade and environmental degradation.

Addressing the interface between global trade and environmental degradation requires a comprehensive and multi-faceted approach that takes into account the complexities of the issue and the diverse interests and perspectives of stakeholders involved. By integrating environmental considerations into trade policy, promoting sustainable trade practices, enhancing environmental standards and regulations, investing in green technologies and innovation, building capacity and sharing knowledge, and fostering stakeholder engagement and participation, it is possible to move towards a more sustainable andequitable global trading system that promotes both economic prosperity and environmental stewardship.

 ISSN: 2582-6433

BIBLIOGRAPHY

PRIMARY SOURCES

LEGISLATIONS

- The Water (Prevention and Control of Pollution) Act, 1974.
- The Water (Prevention and Control of Pollution) Act, 1977.
- The Air (Prevention and Control of Pollution) Act, 1981.
- The Environment Protection Act, 1986.
- The Public Liability Insurance Act, 1991.
- The National Environment Tribunal Act, 1995.
- The National Environment Appellate Authority Act, 1997.
- The Biological Diversity Act, 2002.
- The Indian Forest Act, 1927.
- The Wild Life (Protection) Act, 1972.
- The Forest Conservation Act, 1980.
- Code of Criminal Procedure, 1973.
- Code of Civil Procedure, 1908
- National Environment Tribunal Act, 1995.
- National Environment Appellate Authority Act, 1997.
- The Factories Act, 1948.
- The Bureau of Indian Standards Act, 1986.
- Mines And Minerals (Development and Regulation) Act, 1957.
- The Atomic Energy Act, 1962.
- The Energy Conservation Act, 2001.

 ISSN: 2582-6433

SECONDARY SOURCES

BOOKS

- Mohanty, S.K., *Environment and Pollution Laws*, Universals Legal Manual, (2010).

- Tiwari, H.N., *Environmental Law*, Allahabad Law Agency, (2007).
- Pandey, J.N., *Constitutional Law of India*, Central Law Agency, 44th edition,(2007).
- Rai, Kailash., *Public Lawyering,Legal Aid and Para Legal Services*, 5th edition, (2008).
- Mulla & Pollock : *Indian Contract Act and Specific Relief Act*, 10th edition.

ARTICLES

1. Rosencranz Armin, National Green Tribunal Bill, 2009: Proposals for improvement; Economic & Political Weekly, Vol. XLIV, p 48.
2. Law and Other Things; Environment Tribunals in India: From the NEAA to the National Green Tribunal, Wednesday, 13th January 2010.
3. Green Tribunal Bill has Many Flaws, One World South Asia; February 17, 2010.
4. Krishna Gopal, Not Enough Teeth in Green Tribunal, Rediff News, August 11th 2009.
5. Law Society in collaboration with The Access Initiative, National Green Tribunal Bill-2009: How Green Is It? , 13th March 2010.

IJLRA

 ISSN: 2582-6433

OTHER SOURCES

WEBSITES

1. http://www.mp.gov.in/bgtrrdmp/relief.htm
2. http://www.legalserviceindia.com/articles/jjj.htm
3. http://www.zeenews.com/news610986.html
4. http://timesofindia.indiatimes.com/news/india/Jairam-unveils-blueprint-for-new-body-to-regulate-environment-norms/articleshow/5023639.cms
5. http://www.lead-journal.org/abstracts/08050.htm
6. http://timesofindia.indiatimes.com/articleshow/4845007.cms
7. http://labour.delhigovt.nic.in/act/factories.html
8. http://www.maharashtradirectory.com/bureau_of_indian_standards.htm
9. http://www.powermin.nic.in/acts_notification/energy_conservation_act/introduction.htm
10. http://www.prsindia.org/index.php?name=Sections&action=bill_details&id=6&bill_id=740&category=42&parent_category=
11. http://southasia.oneworld.net/opinioncomment/green-tribunal-bill-has-many-flaws
12. http://www.ercindia.org/node/209
13. http://www.livemint.com/2009/07/24222534/Bill-to-set-up-national-green.html
14. http://www.lead-journal.org/abstracts/08050.htm
15. http://labour.delhigovt.nic.in/act/factories.html
16. http://southasia.oneworld.net/opinioncomment/green-tribunal-bill-has-many-flaws
17. http://news.rediff.com/column/2009/aug/11/guest-not-enough-teeth-in-green-tribunal-bill.htm