

INSIGHT INTO ENVIRONMENTAL LAW

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ABSTRACTS

The environment had never been a topic for the international level prior to 1950. However many events like nuclear attack in world war 2, nuclear accident in USSR nuclear plant, chemical fire in Basel, Switzerland made us realize that we have something to protect. Sustainable development came after the 1992 stockholm and rio de janeiro. Now we are looking at laws intentionally able to regulate activities that are attached to environment infringement. Though all our actions are connected with environment but south north divide and many such other conflicts have raised a question as to what to do for the development while lookin out for the natural resources. Here we will see various aspects of environment and laws protecting it.

INTRODUCTION

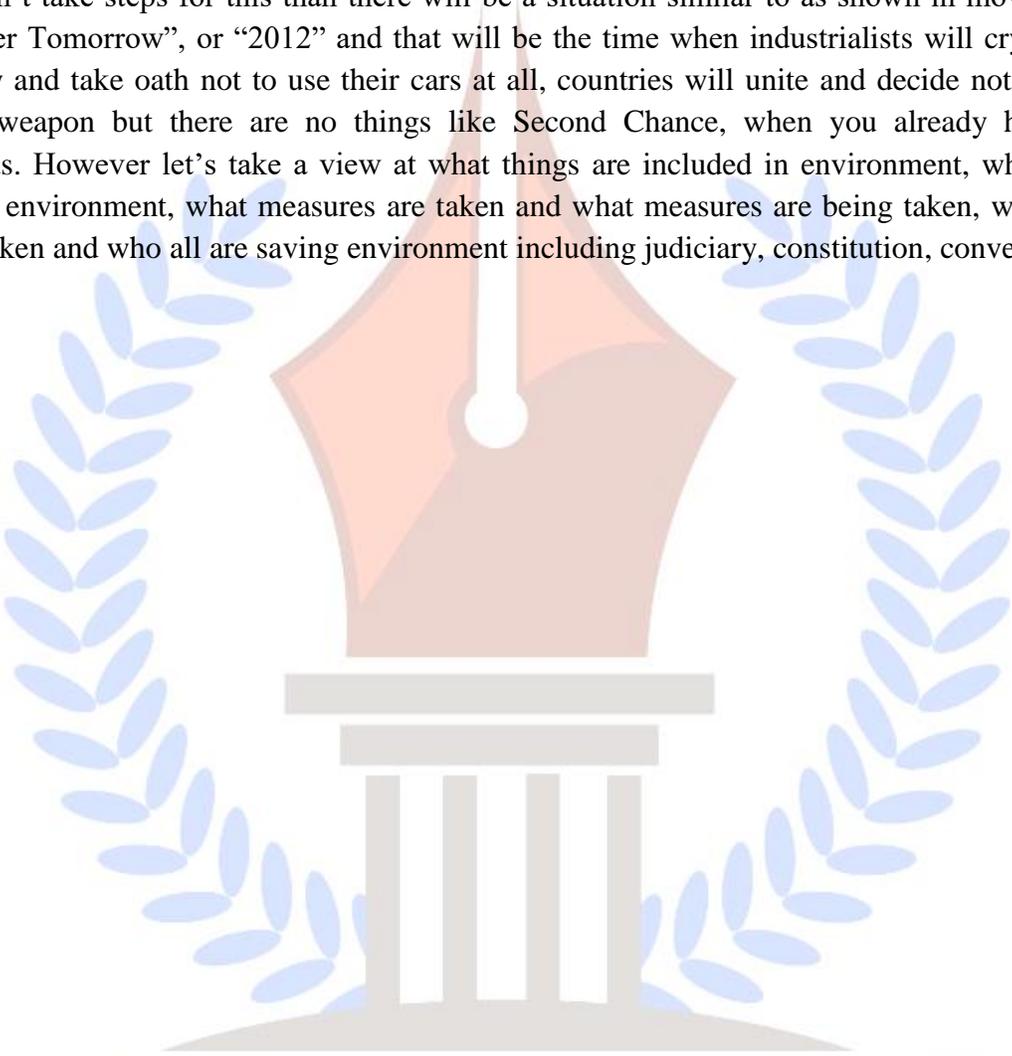
There are many objects in the environment. We also are one of them. Maybe we are the only to make immense disturbance in the environment. Our acts have grown so vicious that each consequently damages environment. Actuality is that humans care less to none about environment, what we are actually worried is about the results. What is environment, it is a surrounding, a layer and if this surrounding become poisonous then where will human live? That is what we are afraid of.

The situation is that in contributing towards environment the government says that people should contribute by avoiding more use of mechanism like cars, refrigerator, oven, etc. while the government is itself involved in coal (44%) and bio-fuels (23%) sources of power generation. Government is appealing people to watch after the wastage and dispose of properly but once disposed of to Municipal Corporation they themselves burn it in open air. Government starts initiatives like green India, save trees etc but they themselves make industries, mills etc near public residence or on the agricultural land.

The people are waiting for the government to take appropriate actions and government is waiting for people's support. It sounds funny but actually a pity for us. However in real life also there have been many times when people going against government saved the environment e.g.

Vedanta controversy. Sometimes government has also taken steps like, Swachha Bharat and Odd-Even formulas etc.

Not only in a country but in whole world now environment protection is a big question and thus all states are coming together to overcome global challenges. Recently in Canada and USA people were barred from going outside their houses as even Niagra Fall got frozen. No time far, if we don't take steps for this than there will be a situation similar to as shown in movie, "The Day After Tomorrow", or "2012" and that will be the time when industrialists will cry, people will pray and take oath not to use their cars at all, countries will unite and decide not to make nuclear weapon but there are no things like Second Chance, when you already have lost thousands. However let's take a view at what things are included in environment, what is the status of environment, what measures are taken and what measures are being taken, what steps can be taken and who all are saving environment including judiciary, constitution, conventions.



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[1.] STATIC PART

1. ANCIENT INDIA AND ENVIRONMENT

Ancient India has always favored the environment. In India the birds, animals, trees, mountains, air, water, etc. all have been attached with some or in other way to the god. We worship all the part of the environment. In our Vedas there are mantras for all part of environment and sun, moon, mother earth all have been given the name of god/goddess. Relationship between culture and ecology was the integral part of ancient Indian societies. Interactions with diverse biological entities and concern for their conservation remained important components in the structure of ancient civilizations of india. From the ancient age human developed the capacity to transform faces of earth. During the course of evolution of the human race, civilization has transformed the environment in countless ways and on an unprecedented scale. Use of fire, domestication of animals and early agricultural practices are the major steps to modify the already existing conditions. In the early periods of human history, environment strongly determined the lives and activities of the people. They were very much close to the nature and natural resources as we find in historical documents. The ancient people developed many effective measures to safeguard our ecosystem and environment which reflect sustainable development in true sense.

Thus we can understand how this change in environment started by humans and how they took effective safeguard by relating components of environment to the religion.

2. POLLUTION: AN OVERVIEW

Pollution is very general word may include any act or substance that consequently or prima facie damages, hinders quality, or/and changes the present status of environment negatively. In *Massachusetts v. EPA*, the U.S. Supreme Court held that carbon dioxide (Co₂) is a pollutant within the meaning of Air Act, which defined it as any pollution agent including physical, chemical substances emitted into the ambient air. There are majorly two types in which pollutions are divided,

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- ❖ ENVIRONMENTAL HISTORY OF ANCIENT INDIA : SAYAN BHATTACHARYA
 - ❖ .Massachusetts v. EPA, 549 U.S. 497, 529 (2007)

- i. Man-made
- ii. Natural

Natural causes may be draught, flood, cyclone, earthquake, hurricane, etc natural calamities. While man-made pollution may have causes like population growth, poverty, urbanization, industrialization etc.

Center for science and environment in its fifth report observed that:

“India is facing a total collapse of urban environment. While industrial cities like Ludhiana and Tiruppur are drowning toxic waste and industrial pollution, non-industrial towns like Aligarh and Bhagalpur are swamped with domestic waste. As water supply agencies have failed in every single town to supply clean and adequate water, people are turning more to the use of groundwater, depleting and polluting its reserve. Rivers and streams that pass through town are turning toxic...”

Supreme Court stated in the case of *L.K.Koolwal V. State Of Rajasthan*, that, it's not only about the environmental law it is the right of citizens under article 21 of the constitution, Keeping city unclean and not removing filth amounts to violation of article 21, “as it amounts to slow poisoning and reducing the life of the citizens because of the hazard created.”

In one such case *B.L. Wadhwa V. U.O.I.* honorable SC stated that Delhi is one of the most polluted state and virtually a dustbin of our country, all wastage is being dumped in the rivers and this is fault of heavy urbanization and industrialization.

For industrialization we have thousands of examples like Bhopal Gas tragedy, *M.C. Mehta vs UOI*, *Vellore citizen welfare forum vs UOI*, *Yamuna V. Central pollution control board* etc. which all contains the poor quality of air and water of Ganga and Yamuna rivers and the consequential damage to peoples.

Then comes the pollution which ones created can never be cremated i.e. we can only have safeguard measures and no disposal measures. This pollution is known as Radiation and radioactive pollution. For now we have no measures to dispose of nuclear wastage or radioactive waste. So we can work upon that and for present we can have effective preventive methods and we should avoid such foolishness of creating more of such things.

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- ❖ state of india's environment, citizen's fifth report (1999) 207 (CST)
 - ❖ *L.K.Koolwal V. State of Rajasthan*, AIR 1988 RAj.2
 - ❖ *B.L. Wadhwa v. uoi*, 1996 (2) SCC 594: AIR 1996 SC 2969

❖ Indian council for enviro-legal action Vs UOI

We now need sustainable development. In Indian council for enviro-legal action Vs UOI the court explained:

While Economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both developments must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.

3. WHY NEED ENVIRONMENT LAW

We can let our eye open till its day and as the night grows we close our eyes. When we see economical benefit then who care what environment will be after 50 years from now so keep going. Here is where we need law, aware citizens and some NGOs that can time to time go to the court for the protection of the environment. This is happening from last many years and government is very easy to get permission from that is why for the protection of environment we rely more on judiciary and people and less to none on the government. It is very easy to draw permission to build a dangerous polluting industry right in the middle of the jungle and that is not some talking it is totally truth. Let's see certain cases where it happened:

i. Silent Valley Case

In this case there was valley in kerala named "Silent Valley", contained one of the largest tropical evergreen forest and which is the only vestige of virgin forests of the Western Ghats. It has unique vegetables, plants and animals in it some of which are endangered species. Forest is very helpful to the villagers as it provides underground water, maintaining hydrological balance, averting floods and draughts, checking soil erosion and regulating climatic condition of the area.

❖ Society for protection of silent valley vs UOI

When these all facts are clear yet state of Kerala proceeded to construct a hydroelectric project which could damage the flora and fauna of the area. It was also shown clearly that the plant was neither necessary nor unavoidable.

The chairman of NCEPC stated that if the project goes on then there will be surely drastic effect on the environment of the area. At such time even the high court of Kerala stated that they cannot interfere with it, high court further declared that it is hard to substitute a judgment to see whether to save forest or to let government generate a power supply.

Court and government gave very low importance to the environment as the plant was of no need to be based on the said place only there were thousand other places but even though the law was able to protect environment but government and court were not enough.

ii. Vedanta Controversy

In Dongria village, Odisha there is Niyamgiri hills on which the two party had a tussle. One party was the London stock exchange listed mining company- Vedanta Resources. Vedanta resources gave proposal to quarry the bauxite-rich Niyamgiri hills which was challenged by 8000 people of Dongria Kondh community. As per their contention the hills were sacred and their god , Niyam Raja (hill) provide them with food, water and a way of life.

The case went to supreme court who took base of Forest Rights Act, 2006 and certain constitutional provisions holding that their religious and rights must be protected. Vedanta is involved in joint venture with Odisha state owned mining company to develop bauxite mine in Niyamgiri hills and supply material to Vedanta's alumina refinery.

Odisha has 2000m tones of bauxite two third of the total deposit of india but Vedanta is interested in it because Niyamgiri hills mining will make it one of the most economical operation in the global aluminum industry.

"India has an unsustainable density of NGOs and the movement is instigated by them. These NGOs are stalling the country's development"

The Union government approved 100% foreign direct investment in the mining sector, but investments have been negligible. "This is because of the NGOs as well as inactivity on the part of the states," says Sharma (Secretary general of FIMI)

Then came the judgment of the Supreme Court 12-0 verdict, which allowed the case of Kondh community. It is a historic judgment and it is said that the movie "Avtaar" of James Cameron is actually based on Vedanta Controversy.

iii. RLEK case

The Dehrahun lime quarries in a landmark case in the history of environment law. The Supreme Court also observed that:

“this is the first case in the country involving the issues relating to environment and ecological imbalance and the question arising for the consideration are of grave moment and significant not only to the people residing in the Mussoorie hills...”

There was a letter written by The Rural Litigation and Entitlement Kendra (RLEK) to the Supreme Court stating that there was illegal mining operations carried on in the Mussoorie Hills and nearby areas adversely affecting its ecology and resulting into environmental disturbance. This letter was accepted by the Supreme Court as a litigation and The uncontrolled quarrying of limestone stripped bare the verdant cover of the hills as the green cover was reduced from 70 to 10 percent. The careless disposal of mines debris and random blasting operations disturbed the natural water system and supply of the drinking water.

Supply of limestone from this area was 3 percent of the total supply from the country which ultimately was for the purpose of armaments used for the defense services.

On the basis of the letter the supreme court inact a committee to look into the matter and on the basis of the report of the committee all the operations held out in mussoorie hills were stopped and also a new committee was inacted to look into the other such mining operations that went for the mining in other areas.

The honble Supreme Court stated that:

We are not oblivious of the fact that for the social development the natural resources have got to be tapped but one cannot forget at the same time that tapping of the resources has to be done with requisite attentiuon and care so that the ecology and environment may not be affected in any serious way... it has always to be remembered that these are permanent assets of the mankind and are not intended to be exhausted in one generation.

❖ Rural litigation and entitlement kendra vs state of up

iv. Bhopal Gas Tragedy Case

The worst industrial disaster of the century, that took place on 2 and 3 December, 1984. Forty tons of highly toxic gas MIC (methyl isocyanate) which had been manufactured and stored in the Union Carbide Corp. (UCC), leaked from this chemical plant killing more than 3000 persons and about 200000 persons were taken ill of various kinds of ailments.

There were about 3500 cases filed in Bhopal and 100 in US as UCC had head office at US. The US supreme court dismissed the case directing it to be filed in Indian courts. Indian parliament came with Bhopal Gas Disaster (Processing of claims) Act 1985. Supreme Court of India ordered the UCC to pay \$ 470 million.

With such gross violation of human rights and damage to the environment the UCC went away paying \$ 470 million. This was when it felt that law was adequate to deal with such situation and that led to pass Environmental Protection Act 1986.

v. Oleum Gas Leak Case

There was a leak of oleum gas from the factory of shriram food and fertilizer company, New Delhi due to which one person died on the spot and several people were taken ill. Mr. M.C.Mehta filed a petition to close and relocate the shriram caustic chlorine and sulfuric acid plants. The factories were closed down immediately and relocated.

Shriram industry was ordered by the court to pay Rs 20 lakh and as a bank guarantee Rs 15 lakh to all those victims.

In this the industry contended that they took all the effective measures and thus they are under the rule of strict liability and thus enjoys all the exceptions in it one of which was due care taken.

However SC held that there was no need to stick to such rule and the new rule of absolute liability was evolved and the industry was made to make payment and to relocate its plants far away from the people or society.

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- ❖ Bhopal Disaster Case
 - ❖ M.C.Mehta vs UOI (1989) 3 scc 38
 - Thus there have been many such incidents which made people realize that industries will never act in favor of the environment as the only thing that matters to them is their profit and development. Also the government can hardly be relied upon for the environmental

safety as there are many factors like social development, politics etc that comes into picture. Even the court will act only when the issue is addressed to it and thus only society itself is left that can look after the environment.

- We should know the law and understand how to implement them in the court. Thus it is the society for whom environment is important and thus society should as stated in above cases try to save and safeguard the environment with the help of environmental law.

4. INDIAN CONSTITUTION AND ENVIRONMENTAL LAW

Indian constitution has not listed down fixed provision for the environmental protection however some provision for the implementation of the international obligations and some DPSPs are doing great work for now as we can make laws on the basis of them and all the international law for the benefit of the nation can be adopted easily by parliament or courts.

Constitution by way of Article 253 gives power to the parliament to give effect to any international obligation or decisions taken at the conferences and thus all the international conventions and conferences that are related with environmental protection can be given effect by the Indian parliament.

Thus, so important conference of the Stockholm 1972 which was an international conferences was within the competency of the parliament passed many laws :

The Water Act, 1974

The Water Cess Act 1977

The Air Act 1981

The Environmental Protection Act 1986

Thus article 253 gives power to the parliament to transform any international law into municipal law.

Originally constitution did not contain any explicit provision for environmental protection but then by way of 42nd amendment in constitution two significant article were added which were article 48-A and article 51-A

Article 48-A gives state responsibility to safeguard the environment while the article 51-A provides with fundamental duties of which clause (g) states that it is fundamental duty to protect and improve natural environment including forests, lakes, rivers and wildlife, and to have a compassion for living creatures.

Also in schedule 7th list iii the concurrent list three subjects were added:

17-A forests

17-B protection of wild animals and birds

20-A population control and family planning

Thus by way of this constitution empowered parliament to make law on various aspect or component of environmental law like forest, animals, family planning, population control etc this was necessary to make such changes to bring uniformity in law throughout the country.

5. ENVIRONMENTAL POLLUTION AND CONTROL UNDER VARIOUS LAWS

There are various other laws which deals with environmental pollution. Some of the important laws which have been used effectively to contain and control the various forms of environmental pollution are as follows:

1. Law of tort
2. IPC 1860
3. CRPC 1973
4. Factories act 1948
5. Public liability Insurance Act 1991
6. National Environmental Tribunal Act 1995
7. Environmental Protection Act 1986

1. Law of Tort

Pollution is a civil wrong by its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages for the restoration of the environment and ecology. In addition to the damages aforesaid, the person is

guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner. Says SC in case of M. C. Mehta vs Kamal Nath.

Supreme Court stated in M.C Mehta Vs UOI that matter of pollution in water if river Ganga is a widespread and indiscriminate in its effect and thus any person can go against it by the way of filing PIL.

There are various kind of torts which can be invoked for the claim against environmental pollution e.g. tort of nuisance can be invoked for any kind of nuisance which may be caused to a person in his life, tort of negligence and strict liability can also come in use.

In case of Dhannalal V. Thakur Chittaranghsingh Mehpathsingh, MP High court stated that constant noise if abnormal or unusual can be actionable if interferes with another's physical comfort.

Also the tort of trespass is used greatly in the cases of environmental law. If the industries flow or let go certain substance into the environment due to which damage is caused to people, cattle or others then such act of industry can be brought under trespass to person's enjoyment of land, life etc.

Doctrine of strict and absolute liability have been elaborated upon in various cases of environmental protection two of which we have discussed above namely, Bhopal Gas Tragedy case and M. C. Mehta V UOI.

2. IPC 1860

Various provisions of IPC has worked upon the environment protection. Chapter 14 of IPC deals with offences affecting public health, safety, and convenience. Section 268 of IPC defines Public Nuisance as any act that may curtail common injury, annoyance to public at large. Section 290 has punishment for Public Nuisance.

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- ❖ M.C.Mehta vs Kamal Nath, 200 6 scc 213
 - ❖ Dhannalal V. Thakur Chittaranghsingh Mehpathsingh,

In Kurnool Municipality V. Civic Assn. It was held that municipality can be convicted of the offence under section 290 of IPC for not maintaining the cleanliness of the town.

3. CRPC 1973

Chapter 10 part b of CRPC has provided the provision for public nuisance which can be used for environmental pollution. Section 133 of CRPC empowers district magistrate and sub-divisional magistrate to stop the nuisance on receiving the information.

The imperative tone section 133 of CRPC read with the section 188 of IPC make the prohibitory act a mandatory duty. (municipal council, ratlam v. vardhichan)

However the local bodies are yet not having clear power to prosecute the companies or industries which is suggestive to be added explicitly.

Hon'ble Supreme Court has declared in state of mp v kedia leather & liquor ltd. That section 133 of CRPC and pollution laws like waters act and air act are different and not identical in nature. While section 133 is a preventive measure the above mentioned laws contains not only preventive but curable provisions. Passing of new pollution law does not repeal section 133 as both the provision are different in their respective fields.

4. Factories Act 1948

Section 41 A to H of the act deals with problems that may happen and power of central government and other authority.

Section 87 of the act give power to the government that on finding any industry indulged in any work that may cause harm to health of a person or injury to any person then state government has authority to declare such industrial work as hazardous employment and on the fatal injury or death of worker due to such nature of work the government can prohibit the employment in the factory and can fix the number to attend the factory.

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- ❖ Kurnool Municipality V. Civic Assn 1973 cri lj 1227 AP
 - ❖ municipal council, ratlam v. vardhichan, 1980 scc cri 933
 - ❖ state of mp v kedia leather & liquor ltd, 2003 7 scc 389

Section 96-A of the act provides with punishment for those industries who does not disclose the information of the hazardous process to workers or conceal such information from them or fail to provide the medical aid to such worker then is liable for the punishment as provided in the act.

The insecticides act also empowers state and central government to put ban on sale, use and distribution of dangerous insecticides.

Thus factories act gives power to the state and central government to have an eye, a legal eye over the discretion or acts of the industries. Also it provides with the maintaining of the environment inside the factory.

5. Public Liability Insurance Act 1991

The act was enacted with intent to provide immediate relief to those affected by accidents occurring while handling any hazardous substance.

The section 3 of the act provides for “No fault liability”, the owner of the industry is liable for any death or injury caused to the person (other than the workmen) or damage to the property.

HC of MP stated that he section 3(2) speaks about strict liability without fault involving death due to hazardous substances.

6. Environment Protection Act 1986

The EPA came into force soon after the Bhopal gas tragedy and is considered an umbrella legislation as it fills many gaps in the existing laws. Thereafter the large number of laws came as the problems began arising e.g. handling and management of hazardous waste rules in 1989.

It was actually made to implement the decisions made at the U.N conference on the human environment held at Stockholm in June 1972.

The objectives of the act were to regulate the industries, co-ordinate activities of regulatory agencies, to provide for deterrent punishment to those who endanger the environment, to ensure sustainable development, to enact general law on environment.

In short the EPA 1986 aims at protecting and improving the environment and prevention of hazardous to human beings, other living creatures, plant and property.

EPA empowers the central government to take all such measures as it deems necessary for the purpose of protecting and improving the quality of environment, and co-ordinates actions by state government and other authorities under law.



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[2.] DYNAMIC PART

1. ENVIRONMENT LAW AND INDIA

India has an impressive number of environmental regulations but have they been a success?

Around the world, environmental regulation is one of the key public services that government provides to their citizens. While these regulations impose costs on businesses and households by requiring them to dispose of pollution in a responsible way in return they promise better health, a cleaner environment and other related benefits.

India is no exception. It has an impressive number of environmental regulations and act that governs all kind of environmental aspects.

The first UN conference on environmental protection was held in 1972 in Stockholm in which the then primeminister of india Smt. Indira Gandhi took part and was the first head of state to address this conference and voice of her concern about the eco-imbalance. India has always been in efforts to prevent pollution and adopt effective measures for environmental protection.

Supreme Court in the case of T.N. Godavarman V UOI stated that there are two statutory principles that governs the law of environment

- I. Sustainable development; &
- II. Precautionary principle

Sustainable development means development without damaging any natural resource. Precautionary principles means, that, government should prevent those acts which may cause damage to the environment.

In India firstly the introduction of the environment protection laws came with the Stockholm conference, then law emerged and evolved in the way of interpretation by the courts in various cases that we saw before.

We have seen that environment protection act came as a result of Bhopal gas tragedy and the further acts came from the interpretation of the EPA.

Thus we can say that credit for evolution of the environmental law goes to the courts in india as in way of interpretation they established various principles in landmark cases that we observed above.

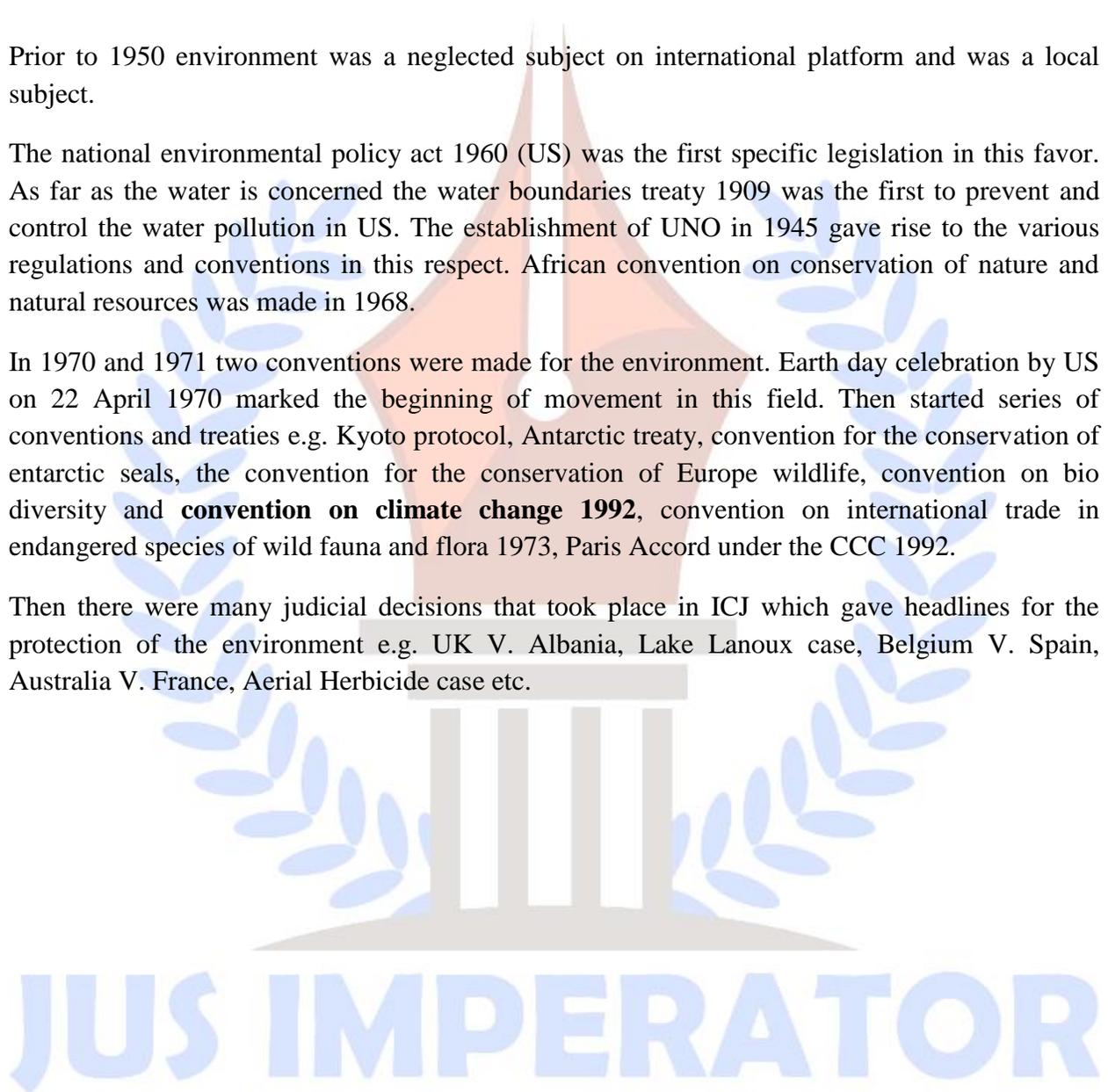
2. INTERNATIONAL ENVIRONMENTAL LAW

Prior to 1950 environment was a neglected subject on international platform and was a local subject.

The national environmental policy act 1960 (US) was the first specific legislation in this favor. As far as the water is concerned the water boundaries treaty 1909 was the first to prevent and control the water pollution in US. The establishment of UNO in 1945 gave rise to the various regulations and conventions in this respect. African convention on conservation of nature and natural resources was made in 1968.

In 1970 and 1971 two conventions were made for the environment. Earth day celebration by US on 22 April 1970 marked the beginning of movement in this field. Then started series of conventions and treaties e.g. Kyoto protocol, Antarctic treaty, convention for the conservation of antarctic seals, the convention for the conservation of Europe wildlife, convention on bio diversity and **convention on climate change 1992**, convention on international trade in endangered species of wild fauna and flora 1973, Paris Accord under the CCC 1992.

Then there were many judicial decisions that took place in ICJ which gave headlines for the protection of the environment e.g. UK V. Albania, Lake Lanoux case, Belgium V. Spain, Australia V. France, Aerial Herbicide case etc.



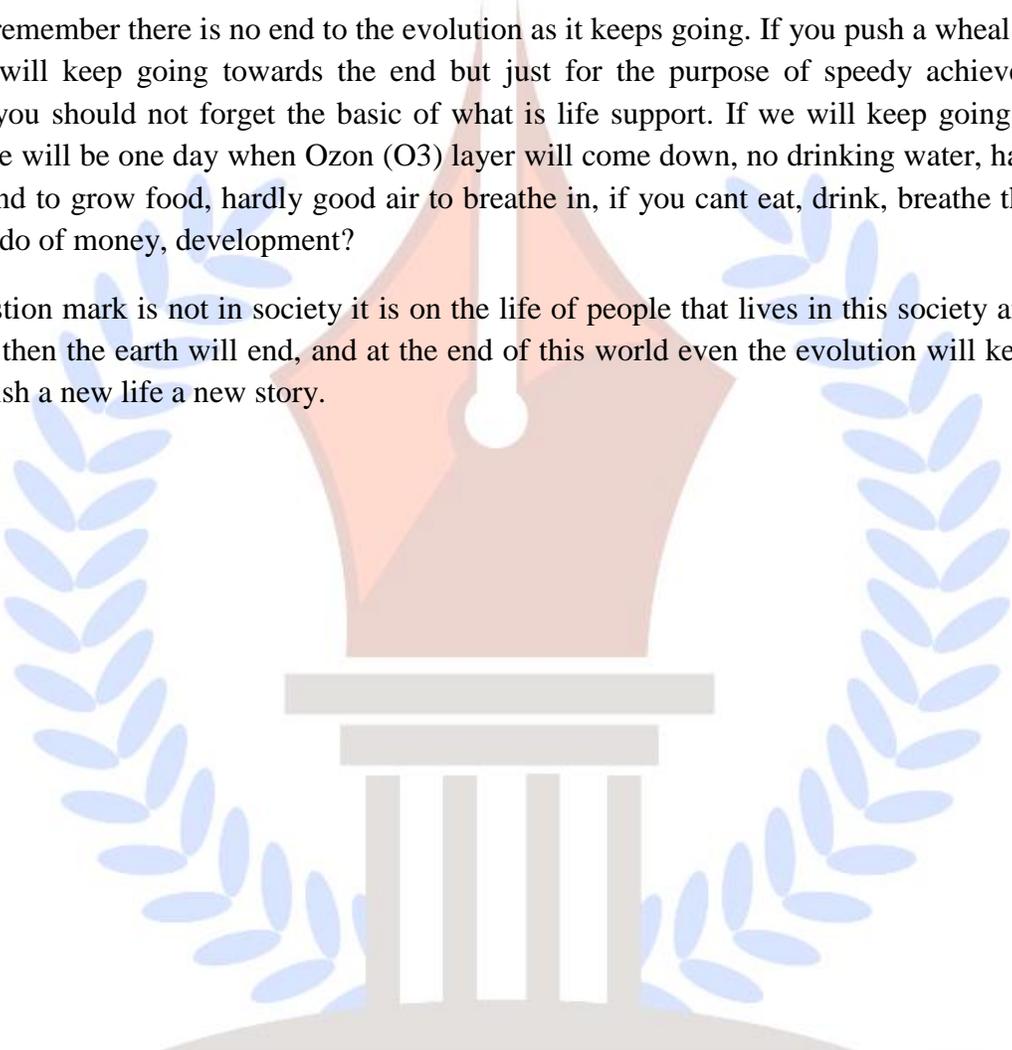
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CONCLUSION

Thus environment has always been a skim that gives you life enlightening resources but not if you use them to damage the environment. in the water if there is an air bubble then that air bubble is our environment, we cannot go out of it as in space we cannot live. And if we pollute this air bubble then that is what we are living in so that is what we will be getting.

Always remember there is no end to the evolution as it keeps going. If you push a wheel from the slope it will keep going towards the end but just for the purpose of speedy achievement of success you should not forget the basic of what is life support. If we will keep going like this then there will be one day when Ozon (O3) layer will come down, no drinking water, hardly any fertile land to grow food, hardly good air to breathe in, if you cant eat, drink, breathe then what you will do of money, development?

The question mark is not in society it is on the life of people that lives in this society and if this gets end then the earth will end, and at the end of this world even the evolution will keep going to establish a new life a new story.



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